Sustaining Development Through Socio-Economic Rights: Prospect And Challenges In Selected African Countries

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ABSTRACT

One of the most nagging problems in Africa today in general and countries under review in particular is the struggle for sustainable development. The paper discusses this aspect and contends that sustainable development in the countries under review is achievable through adequate protection of socio-economic rights. There are, however, prospects and some challenges for sustaining development through the instrumentality of socio-economic rights. The paper makes an analytical exposition of these challenges and hypothesizes that if these challenges are surmounted, the countries will experience sustainable development through adequate protection of socio-economic rights.

Key words: Socio-economic rights, Sustainable development, African Countries.

Introduction

One of the major problems facing many African nations today is how to sustain development. This has therefore called to question the mechanisms put in place by many of them to solve this nagging problem of underdevelopment and sustainability of its existing development. A number of works have been done in the enforcement of socio-economic rights (D. Brand and C. Heyns (eds) Comparative constitutional discourses of these rights appear not to have come to the forefront (Stewart, 2010). These works have also not been to advocate for socio-economic rights in order to have sustainable development in the African countries.

The paper hypothesizes that sustainable development is achievable through an adequate protection of socio-economic rights in Africa. It seeks to make an analytical exposition of the legal mechanism put in place in the selected African countries to promote sustainable development in Africa in order to discuss the prospects and challenges in the countries. The objective of the paper is to provide adequate legal framework for the protection of socio-economic rights thereby leading to sustainable development in selected African countries. The countries under review therefore are Nigeria, South Africa, Uganda, Ghana and Namibia.

The paper is therefore sought to be written at a time when democratic government is gaining more recognition in the countries under review and indeed the World. The challenge of sustainable democracy requires adequate protection of socio-economic rights in emerging global village with formal democracies accounting for about 60% of the States of the world (Adrian, 1996).

Notwithstanding the long years of military rule or socio-economic underdevelopment in the countries under review, the important role of the judiciary is constantly being stressed while calls for the respect for rule of law in this civilian rule have become apposite. Also, obedience to rule of law has become one of the cardinal agenda of the many regimes in Africa generally and in Nigeria specifically which makes the populace taking more interest than before in judiciary and judicial process. All these coupled with the fact that various movements towards the rule of law, human rights, power sharing, political pluralism etc in many countries ultimately implies that the courts will often be called upon to pronounce on issues that border on or which cannot be separated neatly from policy making.

The paper is divided into five parts. The first part introduces the issues and sets the tone of the research. In order to examine the adequacy of the legal frame work put in place by the countries under review in protecting socio-economic rights, the second part makes an analytical exposition into the background inclusion or historical reason for these rights in the countries under review, the constitutional perspective, the judicial and extra judicial perspective to these rights. The third part makes an over view of international legal instruments for these rights to show that some of these instruments have been ratified by the countries under review. The fourth

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part focuses on the prospect and challenges for the adequate protection of these rights and will contend that if these challenges are put aside in the countries under review, there would be sustainable development through socio-economic rights. The last part concludes the paper.

The Historical Reason For Socio-economic Rights in Nigeria, South Africa, Uganda, Ghana and Namibia:

We have to quickly reveal that a detailed discussion on constitutional history of the countries under review falls beyond the scope of this paper. Suffice it to say that in all, Nigeria has had eight Constitutions so far; the recent being the 1999 Constitution as amended. South Africa on the other hand has had five constitutions so far.

In Nigeria, socio-economic rights came up for the first time in the 1979 Constitution. The objective was perhaps to prevent the Military from further incursion into the politics of the country as Nigeria at that time suffered long Military intervention into her politics. Although these rights appear to have been fashioned out of the Irish Constitution of 1937, the aim perhaps was that if these rights were enshrined in the Constitution, it would serve as blue-prints for good governance and social justice for all thereby preventing further Military incursions into politics in the country. These objectives were however not realized as the Military seized political power again in 1984 and ruled till 29th May, 1999.

The Committee set up in 1979 headed by Professor B.O. Nwabueze recommended that while fundamental objectives are to be made justiciable, directive principles are to be made non-justiciable. However, in the final draft of the 1979 Constitution, the two concepts were lumped together and made non justiciable. The same has been repeated in the 1999 Constitution.

In South Africa, multi-party negotiations which led to the post apartheid constitutional regime considered the inclusion of socio-economic rights in the Constitution. The result of this was the inclusion of these rights initially in the 1993 Interim Constitution and later in the 1996 Final Constitution. The inclusion of these rights in the Constitution was however contested. Some were of the view that socio-economic rights were inherently non-justiciable and not fit for judicial enforcement. The proponent of this view submitted that the protection of such rights should be a task for the legislature and the executive and that constitutionalizing them would mean transferring powers from these two branches to the judiciary, which does not have direct democratic legitimacy necessary make decisions concerning allocation of social and economic resources (Klug, 2000). Those who argue in support of the inclusion of socio-economic rights in the Constitution on the other hand contend that there is no principled objection to the inclusion of those rights in a justiciable bill of rights and that the vital question should be the extent and nature of the inclusion of these rights.

One hastens to point out that the inclusion of socio-economic rights in the South African Constitution needs to be seen in the context of unique history of the country. Her history was known characterized by denial of access to social goods and services to the majority of the people, lack or inadequate access to economic resources and means and gross violation of human rights. Also, one has to see it in the context of widespread of poverty level caused by historically unfair economic and political system— a system created by a society of gross inequality described long ago as a country of ‘poverty amidst plenty.’ It was therefore anticipated that where these rights were included in the constitution, it would play some roles in reducing the inequality and off-setting the imbalance in the socio-economic status in the country.

Uganda also experienced long history of Military dictatorship with series of human right abuses before the 1995 Constitution was enacted. Prior to this Constitution, the three earlier constitution of Uganda did not have provisions for socio-economic rights.

Ghana also witnessed Military regime with many violations or abuses of human rights. There was also widespread poverty in Ghana. She actually needed to democratize her system at that time and improve the lives and living conditions of the citizens. This actually led to the Constitution put in place in the 1992.

One needs also to examine the socio-economic conditions of Namibia which justifies the ratification of international instruments on socio-economic rights and constitutional provisions for the rights. Research has revealed that poverty was and is still widespread in many parts of Namibia, where nearly half the people spend more than 60% of their income on food. It is unreasonable and not justifiable that, in an open and democratic society based on human dignity and freedom, a large majority of the population still lives in abject poverty alongside enormous wealth. Indeed, Namibia’s Gini coefficient is still one of the highest in the world. Moreover, despite the fact that government spends a considerable part of its budget on basic services like education and health, the majority of the population still has insufficient access to such services. With reference to education, there is a general consensus that Namibia has made significant progress in terms of access to education. However, there are still high disparities in the rate of enrolment amongst the various language groups. It was therefore justified to recognize the rights in the constitution.
Constitutional Perspectives of Socio-Economic Rights in Nigeria, South Africa, Uganda, Ghana and Namibia:

The Constitution of the Federal Republic of Nigeria provides for socio-economic rights in form of fundamental objectives and directive principles of state policy. From the perspective of socio-economic rights, sections 16, 17, 18 and 20 appear to be most relevant. This is submitted guarantees socio-economic rights in Nigeria notwithstanding the way it was couched. It provides for social objectives by stating that the state social order is founded on the ideals of freedom, equality and social justice and that every citizen of Nigeria has equal rights and opportunity before the law; and that sanctity and dignity of human persons shall be recognized; the governmental actions shall be humane; exploitation of natural resources shall be for common good and that the independence and impartiality of the courts shall be secured and maintained. The state is also enjoined to shun all forms of discrimination, cater for peoples’ health and welfare. The state is also required to provide a self-reliant economy and control the national economy in such a way as to secure maximum welfare, freedom and happiness of the citizen and direct its policy towards promotion of balanced and planned economy. The security and welfare of the people shall be the primary purpose of governance. The state is to strive where applicable to eradicate illiteracy by providing free and compulsory education. The state is also to protect its environment and safeguard water, air, land, forest and wild life in Nigeria. The Constitution further requires the three organs of government namely executive, legislature and judiciary to conform observe and apply these rights. These are in addition to fundamental rights guaranteed under the Constitution. However, while the fundamental objectives and directive principles are not justiciable, fundamental rights are justiciable. The government is also enjoined to establish and regulate authorities to promote and enforce these rights.

The Bill of Rights contained in the South African Constitution is not in particular order or sequence but provides for a number of socio-economic rights. These include rights dealing with labour relations, environmental rights, property rights, right of access to adequate housing; right of access to health care, sufficient food and water; the right to social security, basic and on-going education. It is also for this reason that sections 26 and 27 are seen as the most significant of all the socio-economic rights in the South African Bill of rights. This has to been seen in the context of the preamble to the Constitution which envisions the adoption of the constitution as the supreme law of the Republic in order to, inter alia, improve the quality of life of all citizens and to free the potentials of each person.

It is therefore not amazing that almost all cases involving socio-economic rights that have come before the South African Courts, particularly the Constitutional Courts have been based on the rights under section 26 and 27.

The Constitution of Ghana provides for the traditional civil and political rights (first generation rights) and some social, economic and cultural rights (second generation rights). These are contained in chapter 5 entitled Fundamental Human Rights and Freedoms. These constitutional bill of rights provide the fundamental legal framework for the protection of human rights in Ghana. Although the Ghanaian Constitution does not provide for socio-economic rights as extensively as the Nigerian and the South African Constitution do, the similarity with the South African Constitution however is that most of the socio-economic rights protected are contained within the body of the bills of rights and not as policies and principles as in the case of the Nigerian Constitution.

As far as socio-economic rights are concerned, article 20 of the Ghanaian Constitution provides for freedom from deprivation of private property. It protects the right to adequate compensation where property is compulsorily acquired and such acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning. The right of workers is provided for under article 24. This include the right to work under satisfactory, safe and healthy condition; the right to equal pay for equal work; the right to a reasonable number of working hours and holidays as well as remuneration for public holidays. Workers also have the right to form or join trade unions of their choice. The only justifiable restriction on the rights to join trade unions are those imposed by law in the interest of national security, public order and the protection of the rights of others. Comparatively speaking, Ghana’s constitutional position on the rights of worker is close to that of South Africa.

Article 25 of the Constitution of Ghana provides for the right to equal educational opportunities and facilities with the view of achieving full realization of that right. Article 25 also provides for the availability of free and compulsory basic educational and general availability and accessibility of secondary and higher education. The right of individuals to establish and maintain private schools is also guaranteed. In many respects, this constitutional provision is similar to that of South Africa in that both provisions attempt to explain what is included in the right to education. Unlike South Africa, the Ghanaian bill of rights does not provide for the right to health. In that respect, the Ghanaian Constitution become similar to other African Constitutions as it only acknowledges the right to health as one of the goals and objectives includes a bill of rights and in drafting its constitution, objectives of the government as laid down in the directive principles of state policy.

Another African country that is worth examining is Uganda. This is because the 1995 Constitution of the Republic of Uganda includes a bill of rights. Uganda would appear to have taken guidance from the then newly
adopted South Africa Constitution which she regarded as a good model at the time. However, the bulk of the rights contained in chapter 4 of the Ugandan Constitution are mainly civil and political rights. In so far as socio-economic rights are concerned, Uganda’s position is similar to that of Namibia and in contrast to that of South Africa. Just as the Namibian bill of rights, chapter 4 of the Ugandan Constitution pays minimum attention to such rights. The only socio-economic rights provided for under the Ugandan bill of rights are: protection from deprivation of property; right to education; the right to work and participate in trade union activity and the right to a clean and healthy environment. Other socio-economic rights that should ordinarily be included in the bill of rights are contained in the preamble to the Constitution under a section entitled national objectives and directive principles of state policy. It is therefore submitted that the right to health, water, food, natural resources, education and arguably, development are covered in the section relating to national objectives and directive principles of state policy and this makes their justiciable doubtful.

Another country worth taking a look at is Namibia mainly because it was one of the first few countries in Africa to enact a constitution containing the bill of rights. Unfortunately, the rights enumerated in the (Namibian bill of rights) are confined to the so-called first generation or traditional human rights. The second and third generation rights do not feature in the constitution but only as principles of state principles in chapter 2 and not of judicially enforceable rights. What should ordinarily be categorized as socio-economic rights are stipulated as policy objectives in chapter 2 of the constitution entitled principles of state policy. These really are societal goals which do not have the force of law. It is evident therefore that the only constitutional socio-economic rights in the Namibian constitution that can be categorized as such are the right to education, and to some extent, children’s right and property rights. In that sense, it may be said that the Constitution of Namibia does not go further as far as its South African counterparts in protecting socio-economic rights.

Judicial Perspective to Socio-Economic Rights in Nigeria, South Africa, Uganda, Ghana and Namibia:

There are a number of cases in Nigeria where courts have rendered opinions on socio-economic rights. In the School Seizure Cases, suits were filed to challenge the abolition of private primary education by the Lagos State Government. The Courts in those cases upheld the non-justiciability of these socio-economic rights. Thus, the Court in Okogie v AG Lagos State, Adewole v Jakande, Ehinmare v Governor, Lagos State held that the courts did not have the judicial power to make any declaration as to any organ of government has acted in conformity with the directive principles which are the socio-economic rights.

Courts can protect socio-economic rights by playing two important roles. Firstly, through the ‘law making’ powers of interpreting legislations and developing the rules of common law. Secondly, by adjudicating constitutional and other challenges to state measures that are intended to advance those rights. It is through the latter role that the South Africa courts, particularly the constitutional courts, have demonstrated their ability to protect socio-economic rights.

Thus, in Soobramoney v Minister of Health, KwaZulu-Natal was the first case concerning socio-economic rights to be taken to the Constitutional Court. The case involved an application for an order directing a state hospital to provide the appellant with ongoing dialysis treatment and interdicting the respondent from refusing him admission to the renal unit. The Constitutional Court held that the applicant could not succeed in his claim and found that the denial of the required treatment did not breach section 27(1) right of everyone to have access to health care services, and the section 27(3) right to emergency medical treatment. This decision represents the low water-mark in relation to the application of socio-economic rights by the court.

In The Government of the Republic of South Africa v Grootboom, a group of adults and children had been rendered homeless as a result of eviction from their informal dwellings situated on private land ear-marked for low cost housing. They applied for an order directing the local government to provide them with temporary shelter, adequate basic nutrition, health care and other social services. The Constitutional Court held that the measures of provincial government to provide systematic housing over a period of time were unreasonable, since no contingent plans were for the temporary shelter of the homeless and destitute people. The Court also held that the state had failed to meet the obligation placed on it by section 26 and declared that the state housing programme was inconsistent with section 26(1) of the Constitution.

In Van Biljon v Minister of Correctional Services, the appellants were HIV infected prisoners who sought, inter alia, that their right to adequate medical treatment entitled them to the provision of expensive anti-retroviral medication. The applicant contended that because the right to adequate medical treatment was guaranteed in the Bill of rights, the prison authorities could not on the basis of lack of funds, refuse to provide treatment which was medically indicted. This court was of the view that lack of funds could not be an answer to a prisoner’s constitutional claim to adequate treatment. He had a constitutional right to adequate medical treatment. The applicant order was granted and the respondents were ordered to supply them with the combination of anti retro viral medication which had been prescribed for them for as long as such medication continued to be prescribed.

In The Government of the Republic of low water-mark in relation to the application of socio-economic rights by the court.
The case of Residents of Bon Vista Mansions v Southern Metropolitant Local Council concerned the disconnection of water supply based on arrears in payment. The applicant brought an action for an urgent interdict as a member and in the interest on Bon Vista residents, alleging that the disconnection of residents water was an infringement of section 27(1)(a) of the Constitution. In coming to the conclusion that the interdict should be granted, the court noted that as the disconnection deprived the applicant of an existing right, the action was *propter rem* in breach of constitutional duty to respect the and the onus accordingly fell right to access to water on the respondents to justify such breach. As the respondent had failed to discharge this onus, the court held that the applicant’s right of access to water had been infringed and the respondent were ordered to restore the water supplied.

In Manqueve v Durban transitional Metropolitan Council, the applicant water supply had been disconnected by the respondents on the basis of noon payment. The applicant sought a declaratory order that the disconnection was unlawful and invalid on the ground that the bye-law in terms of which the disconnection took place was * ultra vires* the water service Act, and that the disconnection resulted into the denial of access to water for the reason of non-payment due to being unable to pay contrary to section 4(3)(c) of the Act. Although the applicant did not rely directly on the constitutional guarantee to access to sufficient water but rather on the rights protected in section 3 of the Water Services Act, the Court nevertheless confirmed that this right was in turn rooted in section 27 of the Constitution, however, the applicant was unsuccessful in her case as the Court found that she had exceeded the 6 kiloliters of Water per month provided free of charge as a basic service by the respondent.

Lastly in Khosa v Minister of Social Development, legislation that excluded permanent residents and their children from access to social assistance was successfully challenged and found to be inconsistent with section 27(1) which provides for the right of everyone to have access to social security and assistance and also section 9(3) which prohibits unfair discrimination.

It is therefore crystal clear from the foregoing decisions of courts that while the courts in Nigeria did not uphold the justiciability of these socio-economic rights, it is being upheld in South Africa. The reason appears to be that the Nigerian courts’ powers have been limited by section 6(6)(c) of the Constitution which precludes the courts from deciding matters contained under chapter II of the Constitution. In South Africa however, the Constitution as earlier stated allows it justiciability and the courts have done a lot to uphold it justiciability.

In Uganda, there has been very few judicial decisions on socio-economic rights. Thus, in Byabazaire Grace v Mukwano Industries, the court held that before a right to healthful environment could be determined, the National Environment Management Authority must show and establish air quality standards. But in Joseph Eryau v Environmental Action Network, the court held that smoking in public violates the rights of the non-smokers and thus violating their right to clear and healthy environment guaranteed under Article 39 of the Constitution. In Dimanche Sharon v Makerere University, the students claimed that the University violated their right to education because the school activities disturbed their normal academic programme on Saturday. The court held that their right to education was not violated.

In Ghana, judicial powers extend to matters in directive principles of the state policy. Thus, in New Patriotic Party v Attorney General the court held that although Directive Principles of the State Policy are not themselves enforceable legally, they become enforceable where it is contained in other parts of the constitution. There are however few cases on this area of law perhaps because of the role of other bodies protecting socio-economic rights.

In Namibia, there appears to be paucity of judicial authorities on the justiciability of socio-economic rights. This is perhaps because of the perception of its non-justiciability by many. However, it can be argued that can indirectly enforce socio-economic rights notwithstanding its non-justiciability in the constitution. This is because Article 144 of the Constitution provides for the bindingness of international law and agreements and forms part of the Namibian law. Since Namibia ratified on the 28th February, 1995, it becomes part of its laws and have the same effect with it. This provision has been used by the courts in the past to invoke the bindingness of international instruments in Namibia. Thus, in Kwaesa v Minister of Home Affairs & Others, the court held that the African Charter on Human and Peoples’ Rights had become binding on Namibia and formed part of the law of Namibia and, therefore, had to be given effect in Namibia.

Extra-judicial Protection of Socio-Economic rights in Nigeria, South Africa, Uganda, Ghana and Namibia:

The Nigerian Constitution makes it a duty on the three organs of government namely the legislature, executive and judiciary to observe, conform and apply these socio-economic rights. There appears to be no body overwhelmingly empowered for the purpose of enforcing these socio-economic rights. In the absence of anybody or authorities saddled with the responsibility of enforcing these socio-economic rights and this constitutes a lacuna in the Nigerian Constitution. Although Nigeria has human right commission, it appears the commission is not empowered to enforce socio-economic rights in Nigeria.
Besides, the judiciary, there are other role players in the enforcement and protection of socio-economic rights in South Africa. These include the so called chapter 9 institutions, established by the 1996 Constitution to support constitutional democracy and non-state actors. Of those chapter 9 institutions, the South African Human Rights Commission and the public protector are particularly significant in the protection and enforcement of socio-economic rights.

Apart from the courts in Uganda, there are other constitutional institutions that play a significant role in the protection of socio-economic rights. The Ugandan Human Rights Commission is conferred with judicial functions in relation to socio-economic rights. It has also decided some issues relating to the violations of socio-economic rights.

In Ghana, apart from the courts, the Commission on Human Rights and Administrative Justice (CHRAJ) is conferred with some judicial functions in relation to the protection of socio-economic rights. The commission has also decided some issues relating to socio-economic rights of the people of Ghana.

In Namibia, there are a number of role players in the enforcement of these rights. Thus, the ombudsman plays a role in the enforcement of socio-economic rights. The role of Legal Assistance Committee and National Society of Human Rights is also worth mentioning. This is in addition to a number of Non-Governmental Organizations such as the Big Coalition.

An Overview of International Instruments on Socio-economic Rights:

International Covenant on Economic, Social and Cultural Rights is the major international instrument on socio-economic rights. The Convention gives all peoples whose States are parties to the Convention, the right to freely determine their social and economic development. In no case therefore should a people be deprived of their legal means of subsistence. However, the convention allow the developing states to determine with due regard to human rights and national economy to what extent it is to guarantee economic rights. States are also enjoined to recognize the right to work; to gain his living by work which he free chooses and accepts and state shall take appropriate measures to safeguard this right. It is also to ensure steady economic and social development. There is also the right to workers’ remuneration with fair wages and equal remuneration for equal work; safe and healthy working condition; equal opportunity of promotion; rest, leisure and reasonable working hours and periodic holidays; right to form and join trade unions of choice; social security; protection of family, special protection for mothers during and after birth and children; adequate standard of living which includes good food, clothing and housing. The right to accessible and to some extent free education is guaranteed by the Convention.

Apart from ECOSOC, some other international instruments also provide for a number of socio-economic rights for instance, American Declaration of the Rights and Duties of man provides for rights to equality of all persons before the law and inviolability of home. It further provides for the right to education; right to work and for a fair remuneration; the right to leisure time, social security and property.

Another international human rights instrument that provides for socio-economic rights is the Universal Declaration of Human Rights. It provides for the rights to recognition and equality of all persons before the law. It further makes provision for property rights; social security; right to work and free choice of employment and to just and favourable condition of work and protection against unemployment. It provides for the right to leisure and limitation of work hours. A person also has the right to adequate standard of living, health and wellbeing of himself and the family. The right to education is also guaranteed.

Universal Islamic Declaration of Human Rights is also worth mentioning as it has a number of provisions relating to socio-economic rights. It provides for the equality of all persons before the law and right against any form of discrimination. All persons are entitled in their economic pursuit to the full benefit of nature and its natural resources. The right to own property is also guaranteed and the poor has the right to a prescribed share of the rich according to law. The means of production shall be utilized in the interest of the community. It forbids monopolies and restriction of trade, usury etc in order to promote the development of balanced government and prevent the society from exploitations. It permits economic activities provided that they do not conflict with the interest of the community, Islamic laws and values. It further provides for right against expropriation of document except for public interest and on payment of fair and adequate compensation; status and dignity of workers; the right to social security and adequate education.

Furthermore, The Cairo Human Rights Declaration in Islam also contains some provisions relating to socio-economic rights. It provides for the right of every person to live in security for himself, religion and family and the equality of all persons before the law shall be guaranteed without any distinction between the ruler and the ruled. The right to a clean environment, medical and social care is guaranteed. A right to decent living; including food. Clothing, shelter, education, medical care and all other basic needs. It also provides for the right to property acquired in a legitimate way and prohibits expropriation except for public interest and upon immediate and adequate compensation.
Also, International Convention on the Elimination of all Forms of Racial Discrimination has provisions relating to socio-economic rights. It provides for the right to work and free choice of employment. It further provides for the right to form and join trade unions of one’s choice; the right to housing; the right to medical care; the right to social security, education and training. Convention on the rights of child is equally relevant as it makes provisions for socio-economic rights. A child has a right to protection against all forms of discrimination, and attack He has a right to preventive health care, guidance and family planning. He has a right to education and to a protection against sexual exploitation. Convention on the Elimination of all Forms of Discrimination against Women also has a number of provisions dealing with socio-economic rights. It provides that the state shall take all necessary measures, social and economic, to ensure full development and advancement of women. The state is to eliminate all forms of discrimination against women in employment. It further provides for the right to equality of men and women; right to work; same job opportunities; free choice of profession, right to promotion and job security; right to equal remuneration; social security; and health and safety working conditions. It also provides for right to family benefits, bank loans and mortgages; health care facilities; social security; training and education; equal access to economic opportunities and adequate living conditions. At regional level, the African Charter on Human and Peoples’ Rights protects the right to work, the right to health, and the right to education.

4.0 Prospects and Challenges of Socio-Economic Rights in Nigeria, South Africa Uganda, Ghana and Namibia:

The prospects and challenges appear common to the selected countries. It has been argued that the resources requirement does not, of itself, necessarily mean that socio-economic rights cannot be justiciable, one cannot ignore the fact that the availability of resources plays an important role in a state’s ability to protect and enforce socio-economic rights. It is the context that the challenges and prospects have to be seen.

In terms of prospects, one can say that future appears bright. This is because all the selected African countries are parties to ECOOSOC, African Charter of Human and Peoples Rights and much of the International Instruments examined above. Also, democratic government is coming to stay in the countries under review and there are clamours for the observance of the rule of law. In fact, in Nigeria specifically, the present government has made observance to the rule of law as one of its cardinal principles of government. Also, during the last two decades or so, the wings of democratic change have been blowing over Africa ushering in a renewed commitment to the promotion and protection of human rights on the continent. This has resulted in a new constitutionalism that appears to be taking roots in Africa. In this regard, it is pertinent to note that since the early 1990s, many African Countries have adopted new constitutions with bills of right. Examples of such countries are South Africa, Namibia, Uganda, Ghana, and Nigeria. In the context of socio-economic rights, the challenge is to ensure that counties do not only enact constitutions with bills of rights, but that such bills of rights contain provisions on socio-economic rights, thereby making them justiciable as the case with South Africa.

One challenge of the protection and enforcement of socio-economic rights in countries under review in particular and Africa in general is ignorance resulting from illiteracy and lack of education. According to a United Nation’s report, while worldwide illiteracy is diminishing, illiteracy rates remain higher in Africa. As recently as 1995 for example, 19 countries worldwide had an illiteracy rate of at least 70%. 14 of those countries were in Africa. According UNESCO, ‘four out of ten Africans cannot read and write and there is no sign that the situation will change.’ This has serious implications for the protection and enforcement of socio-economic rights. There is no doubt that education is essential in the fight for, and the exercise for human right. In that regard, people require a certain minimum level of education in order to know their rights and how to reinforce them. One cannot enjoy or enforce rights that one is not aware of. This is particularly crucial with respect to the enjoyment and enforcement of socio-economic rights.

One of the main challenges to the protection and enforcement of socio-economic rights in the countries under review is the prevalent poverty. This has to be seen in the context of the earlier submission that many socio-economic rights reflects specific areas of basic needs or delivery of particular goods and services. In that regard, it has been argued elsewhere that of the entire social phenomenon that have a significant impact on human rights, poverty probably ranks highest. Some have actually argued that poverty is in itself a violation of human rights. Nowhere is this more true than on the African continent where about 315, 000, 000.00 (one in two people) survive on less than1 dollar per day. 33% of the populations suffer from malnutrition, 50% have no access to hospitals or doctors and the average life expectancy is about 41 years.

The problem of poverty particularly in the countries under review is unfortunately further compounded by other factors. These include low levels of education, widespread unemployment, poor political and economic policies, natural disasters and quite significantly pandemics such as HIV/AIDS. In the particular context of socio-economic rights, the inescapable link between poverty and HIV/AIDS cannot be over emphasized. Although HIV/AIDS has reached pandemic proportions in many parts of the world, the situation is much worst in Africa. According to the United Nations AIDS epidemic updates, in 2006, almost two-thirds (63%) of all
people infected with HIV/AIDS were living in sub-Saharan Africa (and estimated 24.7 million). The impact and HIV/AIDS of course not only in terms of human toll and suffering, but also in terms of human rights and healthcare. As such, socio-economic rights norms such as the right to health, access to housing, food, water and social security becomes very relevant.

Another challenge to the protection and enforcement of socio-economic rights, particularly in African countries is corruption. Although Nigeria has set up anti-corruption institution, this has not solved the problem of corruption as monies are being stolen day by day. Monies stolen from government coffers, bribery in the public and private sectors, corruption in the judiciary and embezzlement of public funds are good examples of practices that lead to violations of socio-economic rights. It could therefore be argued that the struggle to enforce and protect socio-economic rights and the campaign against corruption share a great deal of common grounds as the public funds meant for the provision of economic and social services is misappropriated, embezzled and misused. It is little wonder therefore that in countries where corruption is rampant, human rights violation are also abound. In such countries, any talk of the protection and enforcement of socio-economic rights is rather meaningless. Related to corruption is the issue of massive rigging of elections and high level of electoral malpractices thereby producing the emergence of leaders who are not true representatives of the people. This has contributed significantly to the protection and enforcement of these rights.

Another challenge, common to most the countries under review, is the legal framework for the enforcement of these rights. This is termed the constitutional challenge. The constitutions of most of the states do not empower the court with the power to decide issues relating to socio-economic rights. As noted above, the constitutions merely provide for these rights as mere directive principles without protecting its justiciability under the constitutions. The only exception in this regards is the constitution of South Africa.

Akin to the above challenge is the attitude of the courts in the countries under review. The courts as noted above have generally been reluctant in deciding issues that border on socio-economic rights. The South Africa Courts however stands out in this regards also as the courts have in a number of ways decided this issue. In fairness to the courts of other countries under review apart from the South Africa, as noted above, the constitution does not really empower them to decide issues on socio-economic rights. However, the constitutions also provide a way in order to resolve this issue. The leeway ways here are that the provisions on directive principles are contained in other provisions of the constitutions, it would be enforceable. Secondly, most of all of these countries have ratified many of the above discussed international legal instruments on socio-economic rights. It therefore means that what is left to make it enforceable is the active posture of the courts.

Finally, one important factor that affects the realization of socio-economic rights in Africa is the high level of internal conflict and political strife. In the last two or three decades, there have been armed conflict in the following African countries; Libya, Tunisia, Algeria, Burundi, Congo, Democratic Republic of Congo, Cote d’Ivoire, Eritrea/Ethiopia, Liberia, Nigeria, Rwanda, Sierra Leone, Sudan, Uganda and Zimbabwe. There is no doubt that such conflict lead to widespread human rights violations, economic decay and poverty. Inevitably, this leads to economic collapse as economic activities are abandoned, infrastructure is destroyed and social services are disrupted or neglected. Moreover, conflicts lead to death, disability and poor health. The implications for the protection and enforcement of socio-economic rights are quiet obvious. Also, in Nigeria, a lot of crisis such as the Niger Delta crisis, the Boko Haram crisis in the north, the Jos crisis, etc also in one way or the other affects the protection and enforcement of socio-economic rights in Nigeria.

Conclusion:

From the foregoing discussion, it has been revealed that sustainable development is achievable through an instrumentality of adequate protection of socio-economic rights in the constitutions of the countries under review. The paper has therefore noted that there is an inadequate legal framework work put in place in the countries under review to protect socio-economic rights in order to develop or sustain the existing development. The historical antecedent of these countries reveal that there were and are still gross human rights violations, poverty amidst plenty, human and material resources. Yet, the countries are still under developed or finding it difficult to sustain the existing little development. This therefore justifies an adequate protection of socio-economic rights in their constitutions.

From the existing legal framework to protect socio-economic rights in these countries, one can see that South Africa stands out. This is because the socio-economic provisions are made justiciable in the country compared to other countries under review which have merely provided it in their constitutions as directive principles or rendering it non-justiciable. The judicial attitude to these rights are not also encouraging as they have shown unwillingness to enforce these rights perhaps based on their perceived non-justiciability of those provisions. This perception appears in correct because all of these countries are parties to at least one of the international legal instruments relating to socio-economic rights. In particular, all the countries are parties to African Charter on Human and People Rights which have also made provisions for socio-economic rights. This therefore becomes their national laws and become enforceable. The extra-judicial protection appears to have
done a little to protect these rights where in existence in their countries. However, the effect is yet to be seen in this regards. This it is submitted is as a result of the challenges facing Africa generally and countries under review.

In terms of prospect, the future is bright as democracy which breeds constitutionalism, rule of law, political pluralism, interest in judiciary and judicial process is now in place in the countries. However, the challenges for realizing adequate protection of these rights are enormous. They include, as revealed in this paper, illiteracy, poverty, unemployment, lack of political will, pure implementation of economic policies, internal conflicts and political strife, corruption in public office, non-justiciability of these provisions in many of the constitutions, poor judicial attitude. All these contribute in no small measure to realize sustainable development through socio-economic rights thereby retarding the development of the countries under review and its sustainability. Where these challenges are surmounted, there would be sustainable development through the instrumentality of socio-economic rights.

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