IMPEDIMENTS TO LOCALISATION OF HUMAN RIGHTS NORMS IN NIGERIA, GHANA AND SOUTH AFRICA

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INTRODUCTION

Human rights have gained remarkable attention, prominence, and significance in our world of pluralism, diversity, and interdependence stems from their very nature.[1] Human rights are rights which all human beings have by virtue of their humanity, such as right to life, dignity of human person, personal liberty, fair hearing and freedom of thought, conscience and religion. They provide a common standard of behavior among the international community.[2] To demonstrate the important character of human rights, a Thomas Wilson insightfully stated that: "the issue of human rights in the recent past, has penetrated the international dialogue, become an active ingredient in interstate relations and has burst the sacred bounds of national sovereignty."[3]

It is for the foregoingreason that virtually all nations of the world, including Nigeria, Ghana and South Africa have subscribed to the major international human rights instruments, such as the Universal Declarationof Human Rights, 1948; the International Covenant on Civil and Political Rights, 1966 (ICCPR); The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR); and otherregional human rights instruments. However, it must be remembered that human rights are more than a collection of formal norms, they are dynamic political, social, economic, juridical, as well as moral, cultural and philosophical conditions which define the intrinsic value of man and his inherent dignity.

The practical implication of this is that international human rights promotion, protection, and enforcement transcend mere formal subscription[4] to their ideals or—more poignantly put—mere

domestication. As Bhagwati[5] has noted,

[1] Universal Declaration of Human Rights, G.A.Res. 217A, pmbl., U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810.

[2]Haleem, M.*The Domestic Application of International Human Rights Norms*, in Developing Human Rights Jurisprudence: The Domestic Application Of International Human Rights Norms (1988) 91, 91-92.

[3] Thomas W. W. Jr., *A Bedrock Consensus of Human Rights*, in Human Dignity: The Internationalization Of Human Rights (Henkin, A. H. ed., 1979), 47.

[4]Dada, J. A. Impediments to Human Rights Protection In Nigeria. " Annual Survey of International & Comparative Law: Vol. 18: Iss. 1, Article 6. Available at: http://digitalcommons.law.ggu.edu/annlsurvey/vol18/iss1/6 accessed on 6th October, 2019.

[5] P. N. Bhagwati, Inaugural Address, in *Developing Human Rights Jurisprudence: The Domestic Application Of International Human Rights Norms* xx, xx (1988). delivered at the Judicial Colloquium in Bangalore, held 24th – 26th February, 1988.

The language of human rights carries great rhetorical force of uncertain practical significance. At the level of rhetoric, human rights have an image which is both morally compelling and attractively uncompromising. But what is necessaryis that the highly general statements of human rights which ideally use the language of universality, inalienability and indefeasibility should be transformed into more particular formulations, if the rhetoric of human rights is to have major impact on the resolution of social and economic problems in a country.

LOCALIZATION

The question then is what is localization of Human Rights? Localization means making the rights available, it is an undertaking by any country that is a signatory to the treaty or covenant. Rights consciousness is however, a fluid and shifting phenomenon.[6] So what happens when global human rights ideas are localized and established in the form of laws? Once local channels of redresses such as human rights institutions are established to reflect local issues, the shifting local rights consciousness may come in conflict with established laws and, intermediaries may attempt to respond to changing issues by working towards broadening the scope of laws. Localization is therefore an ongoing process where, adopting global ideas into domestic laws is not the end. Local rights consciousness continues to shift and hence re-evaluation of local human rights laws and institutions is necessary.[7] In summary, localization means making global or international human rights available locally. It is an undertaking entered into by any country that is a signatory to a treaty or covenant.

NIGERIA

Nigeria is a signatory to many international human rights instruments including the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), and the African Charter on Human and Peoples' Rights (1981). The Country has laudable and inspiring constitutional provisions for their protection as stated in Chapters two and four of the 1999 Constitution. Nigeria has also put in place institutional framework to protect and guarantee these rights as provided for under the treaties. Bodies such as the National Human Rights Commission

[6] Chayes, A. and Chayes A. H. *The New Sovereignty: Compliance with International Regulatory Agreements.* Cambridge, MA: Harvard University Press.1998

[7]Ranita, R. and Purkayastha, B. *Challenges in Localizing Global Human Rights.* Societies Without Borders 7 (1): 29-51. Available at: http://scholarlycommons.law.case.edu/swb/vol7/iss1/2 accessed on 7th October, 2019.

and the Public Complaints Commission have been set up. The Court system from the Magistrate Court, the High Court, the Court of Appeal and the Supreme Court are all set up to protect human rights. There are however still significant impediments to the localization or domestication of International Human Rights Norms in Nigeria.

THE NIGERIAN CONSTITUTION AND HUMAN RIGHTS TREATIES

The provisions of Section 12 of the 1999 Constitution of Nigeria as amended concerns treaties and their implementation. Since international human rights instruments are, essentially, multi-lateral treaties, a careful examination of the provisions of section 12 becomes not only relevant but imperative. The section provides that:

(i) No treaty between the Federation and any other country shall have force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

(ii) (ii) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.

What therefore is the implication of the foregoing in light of the well-known principle of international law of treaties that a state cannot be bound by any agreement to which it has not given its consent—either by signing, ratification, accession or any other means of declaration of intent to be bound? Besides, most treaties are not self-executing and as such, parties to them are usually enjoined to institute municipal measures to guarantee the application of such treaties within their domestic systems.[8] The implication of the provisions of section 12 of the 1999 Constitution is simply that human rights treaties entered into by Nigeria will not become binding until the same have been passed into law by the National Assembly. In General Sani Abacha v. Gain Fawehinmi,[9] the Supreme Court held that by section 12(1) of the 1979 Constitution (which is the exact provision of section 12(1) of the 1999 Constitution), "an international treaty entered into by the government

[8]Dada, J. A. Impediments to Human Rights Protection In Nigeria. " Annual Survey of International & Comparative Law: Vol. 18: Iss. 1, Article 6. Available at: http://digitalcommons.law.ggu.edu/annlsurvey/vol18/iss1/6 accessed on 6th October, 2019.

[9] [2000] 6 NWLR 228.

of Nigeria does not become ipso facto binding until enacted into law by the National Assembly and before its enactment, an international treaty has no force of law as to make its provisions actionable in Nigerian law courts." The court unanimously further held that "unincorporated treaties cannot change any aspect of Nigerian law even though Nigeria is a party to those treaties" but that they may "however indirectly affect the rightful expectation by the citizen that governmental acts affecting them would observe the terms of the unincorporated treaties."

The practical significance of the provisions of section 12 of the 1999 Constitution in the context of human rights promotion and protection, therefore, is that international human rights treaties are not ipso facto applicable and enforceable in Nigeria unless they are domesticated as in the case of the African Charter on Human and Peoples' Rights.[10] Accordingly, the effectiveness of ratified human rights treaties is predicated on their being domesticated. This is so because the provision of the constitution is supreme. The Supreme Court unequivocally made the foregoing point as follows: Constitution is the supreme law of the land; it is the grundnorm. Its supremacy has never been called to question in ordinary circumstance. Thus, any treaty enacted into law in Nigeria by virtue of section 12(1) 1999 Constitution) is circumscribed in its operational scope and extent as may be prescribed by the legislature.[11]

Another instance where the 1999 Constitution presents itself as a formidable impediment to optimal enjoyment, protection, and promotion of human rights in Nigeria is also located in the various constitutional limitations and qualifications imposed on these rights. Section 45(1) of the 1999 Constitution provides a veritable foundation upon which any law invalidating fundamental rights may be justified. The section provides, inter-alia that:

> Nothing in sections 37, 38, 39, 40 and 41 of [this] constitution shall invalidate any law that is reasonably justifiable in a democratic society
>
> (a) in the interest of defence, public safety, public order, public morality or public health; or (

[10] The African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3/Rev.5 (1981), reprinted in 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986. Nigeria signed (1982), ratified (1983), and domesticated the African Charter as Cap 10, LFN, 1990 or Cap A9, LFN, 2004.

[11] Abacha V Fawehinmi

b) for the purpose of protecting the rights and freedom of other persons.[12]

From the foregoing provision, it can be safely implied that the right to private and family life, freedom of thought, conscience and religion, freedom of expression and the press, right to peaceful assembly and association and right to freedom of movement may be circumscribed or limited. Also, other human rights constitutionally guaranteed are not sacrosanct or absolute but are expressly and specifically limited. Admittedly, there may be no absolute right without qualifications, but the constitutional provisions limiting the rights guaranteed are somewhat imprecise, indeed nebulous, and as such, constitute a real drawback in the effort to promote human rights[13]. For instance, what law is "reasonably justifiable in a democratic society" does not enjoy any definition and neither is it capable of any precise articulation.[14]

This undoubtedly poses a verygrave danger to optimal realization of human rights. In the case of DPP v. Chike Obi[15] which wasfollowed in Queen v. Amalgamated Press,[16] the Court held that the sedition law, though it evidently gravely circumscribed the constitutionally guaranteed right of freedom of speech, was "reasonably justified in a democratic society." See also Medical and Dental Practitioners Disciplinary Tribunal V Emewulu.[17]

The non– justiciability of Chapter two of the1999Constitution of the Federal Repubic of Nigeriavis–a–vis the justiciabilityof Chapter four of the1999ConstitutionoftheFederalRepublicofNigeraThe provision of Chapter 2 and Chapter 4 of the constitution[18] are conflicting with each other, while certain rights are fundamental and enforceable some are consider fundamental principle and not justiceable and cannot be enforced. Chapter two of the 1999 Constitution (as amended)is aptly titled"FundamentalObjectiveandDirectivePrinciplesofStatePolicy".It provides for the fundamental obligations of the Government and the founding principles of the Nigerian State. The non-justiability of Chapter II of the 1999 Constitution (as amended) is predicated on Section6 (6)(c)of the 1999 Constitution (as amended) which provides:

[12]Section 45, 1999 Constitution of the Federal Republic Of Nigeria as amended.
[13]N 8
[14] See the cases of, Olawoyin v. Attorney Gen. of N. Region, [1961] 1 N.L.R 269; Williams v. Majekodunmi, [1962] 1 N.L.R 413; Adegbenro v. Attorney Gen. of the Fed'n & Ors., [1962] 1 N.L.R. 431.
[15] [1961] 1 N.L.R. 186.
[16] [1961] 1 N.L.R. 199.
[17] [2001] 3 S.C.N.J. 106.

[18] 1999 Constitution

"The judicial powers vested in accordance with the foregoing provisions of This section-(c) Shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental objectives and Directives Principles of State Policy set out in Chapter II of this Constitution.''

In essence while Chapter II creates rights, Section6 (6)(c) purports to takes away the Ability to enforce those rights. In Ugwu v Ararume[19] while determining the meaning of justiciability in the context of Section 34 of the Electoral Act and the right of political parties to select nominees for elections, the Supreme Court per Honourable Justice Muhammad, JSC further held"… This means that the Executive does not have to comply with the enactment unless and until the Legislature enacts specific laws for its enforcement. In our constitutional law we have typical examples of such enactments particularly those contained in Chapter II of the Constitution of the Federal Republic of Nigeria,1999, placed under the caption, 'Fundamental Objectives and Directive Principles of State Policy.'These are non justiciable(sic), generally, they run subsidiary to the Fundamental Rights contained in Chapter IV of the constitution."

Chapter four of the 1999 Constitution, guarantees a catalogue of enforceable fundamental rights. The fundamental rights guaranteed under chapter four are essentially, the civil and political rights guaranteed in major international human rights instruments.

THE PROBLEM OF PRIMACY BETWEEN INTERNATIONAL HUMAN RIGHTS NORMS AND DOMESTIC LEGISLATION.

In Nigeria, the dualist or indirect system applies by virtue of the provision of section 12 of the 1999 Constitution. It is for this reason that the Supreme Court unequivocally held that no treaty applies unless it is ratified. Further, the court held that the Constitution, by virtue of its supremacy, has primacy over international law in the event of conflict between the two.[20] In the words of the court, any treaty enacted into law in Nigeria by virtue of section 12(1) of the 1999 Constitution, is

[19] (2007) 12NWLR pt 1048,365 (2007) 4 s.c pt 1,88, (2007) LPELR-3329(SC)
[20]General Sani Abacha V Gani Fawehinmi

circumscribed in its operational scope and extent as may be prescribed by the legislature. As relating to the conflict between international law and other national law, the Supreme Court unfortunately did not make an unequivocal pronouncement. However, the court noted that "in incorporating African Charter, this country (Nigeria) provided that the treaty shall rank at par with other ordinary municipal laws."[21] On the other hand, Justice Mohammed (JSC) held that: [T[he African Charter on Human and Peoples' Rights (Notification and Enforcement Act, Cap 10 Laws of the Federation of Nigeria, 1990) is a statute with international flavor. Therefore, if there is a conflict between it and another statute, its provisions will prevail over those of that other status for the reason that it is presumed that the legislature does not intend to breach an international obligation.

Thus it possesses a greater vigor and strength than any other domestic statute.[22] The view that international instruments, including human rights instruments, should take precedence over domestic legislation, it is submitted is a better and preferred view. The subscription of Nigeriato those norms by ratification of the treaties means that the Nigerian governments and their judicial agencies are not legally permitted to derogate from those norms. Accordingly, international human rights norms should be interpreted and enforced in such a manner as to confer primacy on international human rights instruments over domestic legislation.[23]

ABSENCE OF TRUE JUDICIAL INDEPENDENCE

The term judicial independence, otherwise referred to as the independence of the judiciary, does not lend itself to a generally accepted definition. Consequently, an examination of some attempts which have been made to define it will suffice for the present purpose. According to Oyeyipo, Judicial independence postulates that no judicial officer should directly or indirectly, however remote be put to pressure by any person whatsoever, be it government, corporate body or an individual to decide any case in a particular way. He should be free to make binding orders which must be respected by the legislature, the executive and the citizens, whatever their status.[24] From

[21]N 20
[22]N 20
[23] Obiagwu, C. E. International Human Rights Framework: A Challenge to Nigerian Courts, in CURRENT THEMES IN THE DOMESTICATION OF HUMAN RIGHTS NORMS 51, 58 (C.C. Nweze & Obiageli Nwankwo eds., 2003).
[24] T.A. Oyeyipo, Commentary on the paper captioned Whether the Establishment of the National Judicial Council and the Set-Up Will Bring a Lasting Solution to the Perennial Problems Confronting the Judiciaries in this Nation 5,

delivered at the 1999 All Nigerian Judges Conference (NJC) held at International Conference Centre, Abuja, Nigeria November 1-5, 1999.

the above premise, it can be safely concluded that judicial independence is not yet a reality but a mere aspiration in Nigeria today. The appointment and removal of judges are not insulated or isolated from politics, ethnicity favoritism, and other primordial considerations.[25] Lamenting on the constraint against judicial independence in Nigeria, Tobi insightfully declared that "there were instances in the past where appointing bodies by sheer acts of favoritism and nepotism overturned the A.J.C. (Advisory Judicial Committee) list and planted their own by way of replacement."[26] Other authors have also categorically noted that "the appointment of judges cannot through the institutional mechanism of NJC (National Judicial Council) be insulated from political consideration and control."75 Apart from the problem of appointment and removal, the judiciary is faced with other formidable problems which inevitably compromise its independence and impartiality. The Nigerian Judiciary lacks financial autonomy in the real sense of the word, even though under the present constitutional dispensation, a measure of financial autonomy is sought to be enthroned.

PROBLEM OF DISOBEDIENCE TO COURT ORDERS

Without doubt, respect and obedience to the judgment and orders of the court is yet another important consideration. It is a notorious fact that judgments and orders of courts are not self executing and the judiciary does not have its own body or institution charged with the responsibility of enforcing its judgments. The implication of this fact is that the judiciary inevitably depends on the executive for the enforcement of its judgments. The executive branch, without doubt, is the greatest violator of human rights.[27] It is the major "predator" from which judicial protection is often sought. This being the case, there is little guarantee that when an order is made against the executive branch, the same will be treated as sacrosanct. On the contrary, the unfortunate and regrettable experience has been regular disobedience of the executive to lawful and subsisting court orders.[28] Often, government chooses the orders to obey. It obeys those it is

[25]Dada, J. A.Op. Cit.

[26] N. Tobi, paper entitled Whether the Establishment of the National Judicial Council and the Set-Up Will Bring a Lasting Solution to the Perennial Problems Confronting the Judiciaries of this Nation, delivered at the Annual Conference of Judges held at the International Conference Centre, Abuja, Nigeria, between 1st and 5th November, 1999.

[27] Odinkalu,C. A. *Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa*, 47 J. of Afr. L. (2003) 1-37.

[28] See the cases of *Military Governor of Lagos State v. Chief Emeka O. Ojukwu*, [1986] 1 NWLR 62; *Lakanmi & Kikelomo Ola v. Attorney General (Western State)*, [1971] UNIV. IFE L. REP. 201.

comfortable with and disobeys those which are in conflict with its interest, ignoring the consequences to the individuals whose rights have been violated.

WEAK INSTITUTIONAL INFRASTRUCTURE

A major deficiency in the development of human rights is one of enforcement. Since the enforcement of human rights largely depends on the domestic machinery of national governments, Nigeria has erected seemingly firm institutional infrastructure to safeguard human rights in the country. The institutional infrastructure includes the judiciary, the National Human Rights Commission,[29] the Public Complaints Commission,[30] and the Legal Aid Council.[31] Regrettably, the various institutional mechanisms are not strong enough or capable of providing adequate and effective platforms for meaningful human rights promotion and protection. This is especially so because many of these institutional mechanisms are not independent and do not have the financial and logistical capability to meaningfully function as they ought to. This article earlier spotlighted some of the problems confronting the judiciary. The extra-judicial bodies are in a more precarious position. Being controlled, directly or indirectly, by the government through funding, composition of membership, and provision of operational guidelines, among others, government interference or influence becomes not a mere possibility but a reality.

GHANA

Ghana has had a chequered history with regards to the protection of human rights. It has however, strengthened the protection and assurance of economic, social and cultural rights after it attained independence. The country mandated free education by law[32]and provided generous allowance for tertiary education which was also free. The 1992 Constitution of Ghana came into force on 7 January, 1993 and was amended in 1996.[33] The Constitution has several provisions which ostensibly guarantee fundamental rights and freedoms which include economic, social and cultural rights.[34]The Country has a Commission on Human Rights And Administrative Justice which is

[29]Established pursuant to the National Human Rights Commission Act, (2004) Cap. 46.
[30] Established by the Public Complaints Commission Act, (2004) Cap. 37.
[31] Established under the Legal Aid Act, (2004) Cap. L9.
[32]See Education Act, 1961 (Act 87).
[33]The Constitution of the Republic of Ghana (Amendment) Act 1996 (Act 527).
[34]Chapter Five, (Art 12 – 33), The Constitution of the Republic of Ghana (Amendment) Act 1996 (Act 527).

established by the Constitution.[35] It is therefore apparent on the face of it that Ghana has a strong constitutional and institutional framework in place for the protection of human rights as enshrined in several international instruments. There are still impediments to the domestication of these international instruments, norms and conventions.

THE GHANAIAN CONSTITUTION AND HUMAN RIGHTS TREATIES

The provisions of the Ghanaian Constitution do not expressly recognize international human rights law or treaties as part of the laws of Ghana. Article 11of the Constitution is apposite in this regard.

> THE LAWS OF GHANA
>
> 1) The laws of Ghana shall comprise
>
> a) this Constitution;
>
> b) enactments made by or under the authority of the Parliament established by this Constitution;
>
> c. any Orders, Rules and Regulations made by any person or authority under a
>
> power conferred by this Constitution;
>
> d. the existing law; and
>
> e. the common law.
>
> 2. The common law of Ghana shall comprise the rules of law generally known as
>
> the common law, the rules generally known as the doctrines of equity and the
>
> rules of customary law including those determined by the Superior Court of
>
> Judicature.
>
> 3. For the purposes of this article, "customary law" means the rules of law which by
>
> custom are applicable to particular communities in Ghana.

[35]Chapter Eighteen, (Art 216 – 230), The Constitution of the Republic of Ghana (Amendment) Act 1996 (Act 527).

4) The existing law shall, except as otherwise provided in clause (1) of this article, comprise the written and unwritten laws of Ghana as they existed immediately before the coming. into force of this Constitution, and any Act. Decree, Law or statutory instrument issued or made before that date, which is to come into force on or after that date.

5) Subject to the provisions of this Constitution, the existing law shall not be affected by the coming into force of this Constitution.[36]

6) The existing law shall be construed with any modifications, adaptations, qualifications and exceptions necessary to bring it into conformity with the provisions of this Constitution, or otherwise to give effect to, or enable effect to be given to, any changes effected by this Constitution.

7) Any Order, Rule or Regulation made by a person or authority under a power conferred by this Constitution or any other law shall

a) be laid before Parliament;

b) be published in the Gazette on the day it is laid before Parliament; and

c) Come into force at the expiration of twenty-one sitting days after being so laid unless Parliament, before the expiration of the twenty-one days, annuls the Order, Rule or Regulation by the votes of not less than two-thirds of all the members of Parliament.[37]

The implication of the foregoing therefore is that the Ghanaian Constitution does not expressly provide for the recognition of international human rights norms as part of the domestic laws of Ghana. However, Article 73 provides that the government of Ghana shall conduct its international

[36] Article 11, The Constitution of the Republic of Ghana (Amendment) Act 1996 (Act 527
[37]Article 11, The Constitution of the Republic of Ghana (Amendment) Act 1996 (Act 527).

affairs in consonance with accepted principles of international law and diplomacy in a manner consistent with the national interest of Ghana. This places an obligation on Ghana to conduct its international affairs in conformity with international law with the caveat that such international law must be in consonance with the national interest of Ghana. Article 75 of the 1992 Constitution of Ghana as amended in 1996 provides:

> EXECUTION OF TREATIES
>
> 1. The President may execute or cause to be executed treaties, agreements or conventions in the name of Ghana.
>
> 2. A treaty, agreement or convention executed by or under the authority of the President shall be subject to ratification by-
>
> a) Act of Parliament; or
> b) a resolution of Parliament supported by the votes of more than one-half of all the members of Parliament.[38]

This provision expressly states that the treaties entered into by the President must be subject to ratification by an Act of Parliament. Therefore, if there is no Act of Parliament for any international treaty or norm, executed by the President, such treaty can't be enforced as part of the domestic laws of Ghana. This is clearly a major impediment to the localization of international norms in Ghana. It means that no matter how well intentioned an international instrument, treaty or convention is, if more than one half of the Ghanaian parliament do not vote in favor of it, such cannot be ratified or localized or made accessible within the territory of Ghana. However in the case of New Patriotic Party V Inspector General Of Police[39] Archer CJ in relying on the African Charter on Human and Peoples Rights held:

> Ghana is a signatory to this African Charter and members state of the OAU and parties to the charter are expected to recognize the rights, duties and freedoms enshrined in the Charter and to undertake to adopt legislative or other measures to give effect to the rights and duties. I do not think that the fact that Ghana has not

[38]The Constitution of the Republic of Ghana (Amendment) Act 1996 (Act 527).
[39](1993 – 94) 2 GLR 459.

passed specific legislation to give effect to the charter means that the charter cannot be relied upon.

CORRUPTION

This is another challenge which has bedeviled the Ghanaian system.Corruption was present in all branches of government. The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and some officials frequently engaged in corrupt practices.[40]The Judiciary is not insulated from the challenge of corruption. Judicial officials reportedly accepted bribes to expedite or postpone cases, or to "lose" records. In September an investigative journalist announced he possessed 500 hours of video taken during the last two years depicting 180 judicial officials, including 34 judges, allegedly soliciting and negotiating bribes to influence their decisions on pending court matters. The country's chief justice constituted a five-member committee headed by a Supreme Court judge to investigate the allegations, and its deliberations continued at year's end. Twelve High Court judges were under investigation and 22 circuit and magistrate judges were suspended pending an assessment of their culpability. Several state's attorneys and prosecutors were also implicated. Three hours of the video recordings were publicly presented as a documentary film at the Accra International Conference Center to thousands of attendees during four showings.[41]

WEAK INSTITUTIONAL STRUCTURE

Ghana has incorporated the provisions of the International Covenant on Civil and Political Rights into the 1992 Constitution. The 1951 UN Convention relating to the status of refugees, the 1967 UN Protocol relating to the status of refugees and the1969 OAU convention governing the Specific Aspects of Refugee Problems in Africa have been incorporated into the Refugee Law of 1992.[42]The provisions of the UN Convention on the rights of the child have been incorporated into the Children's Act.[43]From the foregoing, it is clear that the framework for the protection and localization of international human rights treaties and norms is quite strong. However, the United

[40]Bureau of Democracy, Human Rights and Labour: 2010 Country Report on Human Rights Practices available via https://www.state.gov/j/drl/rls/hrrpt/2010/af/154349.htm accessed on 7th October, 2019.
[41]United States Department of State. Bureau of Democracy, Human Rights and Labour.Ghana 2015 Human Rights Report available via https://www.state.gov/documents/organization/252899.pdf accessed on 8th October , 2019.
[42]1992 (PNDCL 305).
[43]1998 (Act 560).

States Department has over time issued country reports on the Human Rights status of Ghana. In the 2015 report, several instances of unenforced laws were raised. For example, the report stated that: The law prohibits discrimination in employment or occupation on grounds of gender, race, color, ethnic origin, religion, political opinion, social or economic status, or disability. The law does not prohibit discrimination on the grounds of age, language, sexual orientation and/or gender identity, HIV-positive status, or having other communicable diseases. The government did not effectively enforce prohibitions on discrimination, and penalties were not adequate to deter violations. Discrimination in employment and occupation occurred with respect to women, the disabled, HIV-positive persons, and LGBTI persons. Women in urban centers and those with skills and training encountered little overt bias, but resistance persisted to women entering nontraditional fields.[44] Another example is the issue of minimum wage. The Ministry of Employment and Labor Relations was unable to enforce the wage law effectively. There was widespread violation of the minimum wage law in the formal economy across all sectors. The minimum wage law was not enforced in the informal sector. Legislation governing working hours was largely followed in the formal sector but widely flouted and not enforced in the informal sector.[45]

SOUTH AFRICA

South Africa has Africa's fourth largest population and its most viable market. Sustained mineral, agricultural and industrial production over many decades resulted in the continents most advanced commercial, financial and infrastructural services. However, the country went through a dark period of apartheid in which several human rights atrocities were committed. On 10th May, 1994, Nelson Mandela was sworn in as President and by 1997, after South Africa had joined many international organizations, a new constitution came into force.[46]The South African Constitutional Court was also inaugurated and it heard its first case in February, 1995. By the provisions of the South African Constitution, the President is empowered to negotiate and sign international agreements.[47] However such an agreement or treaty only becomes part of national law if the Parliament gives it approval.[48] The treaty becomes part of national law only if the Parliament

[44]Ibid.
[45]Ibid.
[46]The Constitution of the Republic of South Africa Act 108 of 1996.
[47]Section 82(1)(i) Constitution of the Republic of South Africa 1996.
[48]Section 231(3) Constitution of the Republic of South Africa 1996.

expressly so provides and the provisions of the treaty are not inconsistent with the Constitution. From 1994, more than 60% of legislation passed under the auspices of the Department of Justice have had as its purpose to give effect to the spirit of the constitutional dispensation and to implement decisions of the Constitutional Court. Some of the legislation include the Abolition of Corporal Punishment Act,[49] the Domestic Violence Act,[50] the Recognition of Customary Marriage Act[51] and the Promotion of Equality and Prevention Of Unfair Discrimination Act.[52]

THE SOUTH AFRICAN CONSTITUTION AND HUMAN RIGHTS TREATIES.

The South African Constitution like probably all other Constitutions is the supreme law in the Republic and any other law which is inconsistent with the Constitution is to the extent of its inconsistency void.[53]The Constitution however has as its second chapter a comprehensive Bill Of Rights[54] beginning from Section 7 of the Constitution all the way to Section 39 of the Constitution. The Rights contained in this chapter of the Constitution are about the most comprehensive in any of the Constitutions on the continent. The rights cut across civil, political, social, economic and cultural rights. The Chapter makes it clear that there is no distinction or hierarchy[55] between any of the rights contained therein and makes it clear that all the rights are binding on all arms of government.[56] The Constitution further stipulates that the State must respect, protect, promote and fulfill all the rights as contained in the chapter.[57] The Constitution further provides in Section 39 that:

> 39. (1) When interpreting the Bill of Rights, a court, tribunal or forum –
>
> (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;

[49]Act 33 of 1997.
[50]Act 116 of 1998.
[51]Act 120 of 1998.
[52]Act 4 of 2000.
[53]Section 2, Constitution of the Republic of South Africa 1996.
[54] Section 7
[55] Bertelsmann, E: Religion and Human Rights. Issues, Impact, Conflict and Developments in South Africa avaialable via https://www.iclrs.org/content/blurb/files/Eberhard%20Bertelsmann,%20South%20Africa.pdf accessed on 8th October, 2019.
[56]Section 8, Constitution of the Republic of South Africa 1996.
[57]Section 7(2) Constitution of the Republic of South Africa 1996.

(b) must consider international law; and

(c) may consider foreign law.

(2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.

(3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

It is clear from the foregoing that the South African Courts are empowered by the provision of Section 39 (1) (b) and (c) to consider international law and foreign law in enforcing the bill of rights. The Constitution further provides that When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.[58]

South African Constitutional Court has consistently upheld provisions of the Bill of Rights. In *Hoffmann V South African Airways*,[59] the Court held that the Defendant's choice not to employ people living with HIV/AIDS as cabin attendants was an unfair discrimination and prohibited by the Bill of Rights. The Defendant was ordered to employ the Claimant in that case. The right to access the courts was upheld in the case of *Mohlomi V Minister of Defence*.[60] In *Minister of Welfare and Population Development V Fitzpatrick and Others*,[61] the Court held that a law prohibiting the adoption of a South African child by None – South Africans breached the Constitutional requirement that the best interest of the child are to be given paramountcy in matters concerning the child. These are just some of the many cases where the Constitutional Court in South Africa has given judgments upholding the varied rights as contained in the second chapter of the Constitution.

[58]Section 233 Constitution of the Republic of South Africa 1996.
[5959]2001 (1) SA 1 (CC).
[60]1996 (12) BCLR 1559 (CC).
[61]2000 (3) SA 83 (CC).

This is not to say that there are no impediments to the localization of International Human Rights Norms in South Africa. Below are some of the impediments to the localization of International Human Rights Norms in South Africa:

THE BILL OF RIGHTS

This write is of the humble view that The Bill of Rights whilst being a blessing for the wide array of rights contained has turned out to be an albatross to the domestication of International Human Rights treaties. Only one treaty has been domesticated and incorporated into national law. It is the Hague Convention on the Civil Aspects of International Child Abduction which was domesticated into the Hague Convention on the Civil Aspects of International Child Abduction Act.[62] It is not farfetched to think that the extent of rights already guaranteed under the Bill of Rights is responsible for the Parliament's lethargy in domesticating other international human rights treaties.

FAILURE OF ENFORCEMENT.

In South Africa, public confidence in the government's willingness to tackle human rights violations, corruption, and respect for the rule of law has eroded. The government has failed to ensure that an estimated half-million children with disabilities have access to basic education. Rights groups expressed concerns about the government's failure to develop a national strategy to combat the high rate of violence against women and the continued underreporting of rape.[63] In March, the Supreme Court of Appeal of South Africa ruled that South Africa had acted unlawfully when the government failed to arrest Sudanese President Omar al-Bashir when he visited South Africa in June 2015 for an African Union (AU) summit. Al-Bashir is subject to arrest warrants for the International Criminal Court on charges of genocide, war crimes, and crimes against humanity in connection with crimes committed in the conflict in Darfur.[64]South Africa continued to face a number of human rights challenges, as the government failed to hold accountable those responsible for xenophobic attacks on the businesses and homes of refugees, asylum-seekers, and migrants between March and May, 2015. The South African Human Rights Commission (SAHRC) on

[62]Act 72 of 1996.
[63]Human Rights Watch: South Africa: Events of 2016. Available via https://www.hrw.org/world-report/2017/country-chapters/south-africa accessed on 7th october, 2019.
[64]Ibid.

September 30 said Zulu King Goodwill Zwelithini's March 2015 speech calling for foreign nationals to "pack their bags and go home," was hurtful but did not incite xenophobic violence.[65]

The South African government has failed to guarantee the right to education for many children and young adults with disabilities, affecting an estimated half-million children. Contrary to the government's international and domestic obligations, many children with disabilities do not have equal access to primary or secondary education and face multiple forms of discrimination and barriers when accessing schools. They are turned away from mainstream schools, denied access to inclusive education, and referred instead to special schools by school officials or medical staff simply because they have a disability. The referrals system needlessly forces children to wait for up to four years at care canters or at home for placement in a special school.[66]

While education in mainstream government schools is free, children with disabilities who attend special schools are forced to pay school fees, and many who attend mainstream schools are asked to pay for their own class assistants as a condition to stay in mainstream classes. Once in school, many children with disabilities do not have access to the same curriculum as children without disabilities. Many children with disabilities are exposed to high levels of violence and abuse by teachers and students.[67]The government has not implemented key aspects of a national policy to provide inclusive education for all children with disabilities adopted in 2001. South Africa has not adopted legislation that guarantees the right to inclusive education for children with disabilities. The majority of the government's limited budget for learners with disabilities is allocated to special, segregated schools rather than to inclusive education.[68]

CORRUPTION

The biggest concerns for many South Africans, according to Human Rights Watch, include: access to treatment for people with disabilities, unemployment, corruption, freedom of expression, police brutality and violence.[69]Corruption undermines economic and social development of a country. It

[65]Ibid.
[66]Ibid.
[67]Ibid.
[68]Ibid.
[69] South African Human Rights Commission Report: *How Human Rights are Faring in South Africa Two Decades After Democracy*published 16th March, 2017 available via https://www.sahrc.org.za/index.php/sahrc-

is agreed that the consequences of corrupt practices are widespread and negative for any society. Evidently, corruption has the potential of undermining the enjoyment of human rights in all areas, be they economic, social, cultural, civil, or political. The rationale behind claiming that corruption is a violation of human rights usually stems from the general notion that money lost to corruption could be used to buy medicine, equip schools, and provide for food. The poor as well as vulnerable groups such as women, children, people with disabilities or minorities are the first ones hit by corruption when bribery and abuse denies them access to basic services, health, education, and land. The rights to food, water, education, health, and the ability to seek justice can be violated if a bribe is required to gain access to these basic rights."Corruption and nepotism impeded community access to housing and services, and led to the collapse of some municipal governments and to widespread protests among affected communities." [70]

GENERAL IMPEDIMENTS

Generally, the following have also been identify as general impediment to localization of human right.

1) Poverty
2) Ignorance
3) Access to justice
4) Impunity from users of the courts, unnecessary applications to stall cases in court
5) Mechanism for enforcement of rights
6) Corruption
7) Government bureaucracy

CONCLUSION

It is apparent from a comparative study of the three jurisdictions that while each has its peculiar impediment, there are other impediments to the localisation of international human rights norms

media/news/item/600-how-human-rights-are-faring-in-south-africa-two-decades-after-democracy accessed on 29th June, 2018.

[70]The Amnesty International Report 2010: State of the World's Human Rights available via https://www.thesouthafrican.com/corruption-and-nepotism-affecting-sa-amnesty/ accessed on 29th June, 2018.

that are consistently present in all three jurisdictions. These include the lack of enforcement mechanisms for these rights, corruption and the apparent apathy by the legislative processes to surrender their hold on the sovereignty of their Constitutions and territorial integrity of same. It is hoped that the Nigerian legislature can expand its Constitution to make the social, economic and cultural rights just as justiciable as the civil and political rights. The South African Constitution has shown that this is possible. Incidentally the South African Constitution was enacted prior to the Nigerian Constitution and the very lofty ideals of the bill of rights could have been adopted in the Nigerian Constitution.

All three jurisdictions have strong frameworks in place for the protection of human rights but the structures are too weak to support the framework in place. There is there a need for the three jurisdictions to ensure that the structures are bolstered and given the necessary backing to enforce and implement the framework for the localisation of international human rights norms.

RECOMMENDATIONS

From the above it is recommended that

1) There must be a way of making the states parties to localized the international treaties
2) It is recommended that the ongoing Constitutional amendment considers the removal of Section 6 (6) of the 1999 Constitution (Nigeria) so as to make the rights provided for in Chapter two guaranteed just as it is with Chapter four.
3) State party must fulfill their obligation.
4) Periodic reviews of state party activities