



## Good governance: A legal determinant for the enforcement of socio-economic rights in Africa

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### Abstract

In discussions concerning the abysmal level of poverty in Africa which has been a hot topic for decades, the topic of economic, social and cultural (socio-economic) rights is always up for controversy. There are constant reports on the poor state of socio-economic development on the continent. African countries also share the constant criticism for the poor state of socio-economic rights. This paper analyzes the journey of good governance and institutions as a fundamental determinant of the sustainable realization of social and economic right. It explains the position of fundamental rights and directive principles in the Constitutions of some African States. Furthermore, it examines the judicial approach of dealing with the relationship between fundamental rights and directive principles. The findings of this paper go beyond the executive domain and investigate the contributions of judicial institution in realization of socio-economic rights and development in Africa. In this light, it looks into the enforceability of socio-economic rights and recommends establishment of independent institutions in each African state for the enforcement of socio-economic rights.

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### 1. Introduction

Governance is defined as the traditional institution by which rules, regulations and other authorities of the state are executed <sup>[1]</sup>. The hypothesis that governance influences growth and development is supported by the works of certain scholars, <sup>[2]</sup> who posit that governance cannot be isolated from development and included it as one of the sustainable development goals.

According to Reyes, <sup>[3]</sup> development is understood as a social condition within a nation, in which the needs of its population are satisfied by the rational and sustainable use of natural resources and systems. Todaro and Smith also define development as a multi-dimensional process that involves major changes in social structures, attitudes, and institutions, as well as economic growth, reduction of inequality, and eradication of absolute poverty <sup>[4]</sup>.

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<sup>1</sup> D Kaufmann, A Kraay, & M Mastruzzi, 'The Worldwide Governance Indicators: A Summary of Methodology, Data and Analytical Issues'. World Bank Policy Research Working Paper (2010), no. 5430.

<sup>2</sup> S Knack, & P Keefer, 'Does Social Capital Have an Economic Payoff?' The Quarterly Journal of Economics, (1997). Vol. 112, no. 4, pp. 1251-1288; N F Campos & J B Nugent, Development Performance and the Institutions of Governance: Evidence from East Asia and Latin America. World Development, (1999) Vol. 27, no. 3, pp. 439-452; D Acemoglu, J Simon, & A R James 'The Colonial Origins of Comparative Development', American Economic Review, (2000) 91, no. 5, pp. 1369-1401.

<sup>3</sup> G E Reyes, 'Four Main Theories of Development: Modernization, Dependency, World-System and Globalization'. Nómadas. Revista Crítica de Ciencias Sociales y Jurídicas, 4(2), 109-124. University of Pittsburgh, USA (2001).

<sup>4</sup> M P Todaro & S C Smith, Economic Development, Reading: Addison-Wesley (8th ed.) (2006).

Several theories have been put forward to explain the concept of development. They include the modernization, dependency, world systems and globalization theories. The modernization theory of development distinguishes between two main categories of society in the world, namely the traditional and modern societies. The theory, according to Tipps<sup>[5]</sup> argues that the traditional societies are entangled by norms, beliefs and values, which are hampering their development. Therefore, in order to progress, the traditional societies must emulate the culture of modern societies, which is characterized by accumulation of capital and industrialization which are compatible with development. In essence, this theory seeks to improve the standard of living of traditional societies through economic growth by introducing modern technology<sup>[6]</sup>.

Socio-economic crisis means the factors or conditions that have an adverse influence on individuals' social and economic activities, including health issues, lack of education, disaster, racial and religious discrimination, poverty, overpopulation, unemployment, political unrest, and corruption<sup>[7]</sup>. Human rights are the rights held by all persons by virtue of their common humanity to live a life of freedom and dignity. These rights are universal and everyone, regardless of sex, race, nationality, and economic background, shares them equally. They are inalienable (i.e. they can neither be taken away nor given up), and they are indivisible (i.e. no right can be suppressed in order to promote another right)<sup>[8]</sup>. Accordingly, The United Nations Charter affirms that "universal respect for, and observance of human rights and fundamental freedoms for all without distinction" is essential. One of the most striking features of contemporary human rights is the juridical marginalization of socio-economic rights. The extent of this marginalization may be gauged by the fact that the absence of any effective enforcement mechanism in respect of social and economic rights has led to the denial of rights' status to these rights. Marginalized within legal systems, socio-economic rights represent one of the greatest challenges confronting the human rights community in the twenty-first century. At the practical level this marginalization has resulted in catastrophic effects in developing and underdeveloped countries of the world.

However, abdication of governance imperatives by way of omission of fundamental governance duties by the State cannot be allowed to go unchallenged on the basis of it being not a case of State acting arbitrarily and therefore perhaps there is a strong case for broadening our understanding of constitutionalism to include within its fold arbitrary and unexplained omissions in relation to fundamental governance imperatives as well<sup>[9]</sup>. It is also significant that fundamental governance imperatives do not flow from directive principles only; even fundamental rights impose positive obligations and therefore positive obligations of State even by the narrative of fundamental rights being only obligatory cannot be placed outside the confines of constitutionalism<sup>[10]</sup>.

However, understanding the link between governance and

socio-economic conditions in Africa is important because effective development may not depend on the type of government, but on the quality of governance. It should, therefore, be noted that the extent to which the interconnection between governance and socio-economic conditions is perceived would depend on how socio-economic crisis is understood<sup>[11]</sup>.

Broadly, socio-economic crisis means the factors or conditions that have an adverse influence on individuals' social and economic activities, including health issues, lack of education, disaster, racial and religious discrimination, poverty, overpopulation, unemployment, political unrest, and corruption. In this case, growing poverty and a dysfunctional economy with massive unemployment, exacerbated by a lack of even the most basic human rights and fundamental freedoms, could place the concerned economy at a low level of human development in the long run<sup>[12]</sup>. A couple of questions stemming from this study are, What is the current situation of socio-economic terms in Africa? Have the said terms improved socio-economic rights and political governance in Africa? What have been their development consequences? What is the nature of the governance challenge currently? And, what are the implications for the future?

## 2. Research Methodology

Research Methodology postulates the methodology adopted in this study. It discusses the research methods, research design and research analysis. It also analyzes the sources of data and method of analyzing data. Research plan discovers answers to meaningful questions through the application of scientific procedures. This research design provided the researcher with the structure or framework that was used in the study. Through the process of research analysis, the research was guided to the collection, analysis and interpretation of data for the purpose of answering the research questions and achieving the research objective. Research Methodology means the principles, strategies, theoretical and philosophical frameworks that guide the researcher in gathering, analyzing and presenting data/information. There are research methods/approaches, which include the doctrinal and non-doctrinal approaches, the qualitative and quantitative approaches, historical method, descriptive method, comparative method, analytical method, exploratory method, it also includes the use of primary and secondary sources.

This study adopted the doctrinal method of legal research which entails the use of primary and secondary legal sources. The primary sources utilized for the research of this study include the International Covenant of Social, Economic and Cultural rights, The African Charter, the Nigerian Constitution, South African Constitution, case laws, including judicial decisions of some Nigerian and South African courts, various others laws and International

<sup>5</sup> D Tipps, *Modernization Theory and the Comparative Study of Societies: A Critical Perspective* (New York: Free Press pp. 65–77, (1976).

<sup>6</sup> S Huntington, *The Change to Change: Modernization, Development and Politics* (New York: Free Press Vols. 30–31, pp. 45 (1976)

<sup>7</sup> Fisayo Fagbemi, Geraldine Ejiaka Nzeribe, Tolulope Temilola Osinubi & Simplice Asongu, *Interconnections between Governance and Socio-economic Conditions: Understanding the Challenges in Sub-Saharan Africa, Regional Sustainability*, Volume 2, Issue 4, 2021, 337-348.

<sup>8</sup> See UNDP, *Human Rights and the Millennium Development Goals Making the Link* (Oslo, Norway: Oslo

Governance Centre, 2007) at 8, online: <[www.undp.org/content/undp/en/home/librarypage/environmentenergy/water\\_governance/human-rights-and-the-millennium-development-goals-making-the-link.html](http://www.undp.org/content/undp/en/home/librarypage/environmentenergy/water_governance/human-rights-and-the-millennium-development-goals-making-the-link.html)>. Retrieved 02 May, 2023.

<sup>9</sup> Ibid

<sup>10</sup> L Stewart, 'Adjudicating Socio-Economic Rights under a Transformative Constitution', 28 Penn. St. Int'l L. Rev. (2010) 487.

<sup>11</sup> Ibid, Fisayo Fagbami.

<sup>12</sup> R K Merton, *Social Theory and Social Structure*, Free Press, New York (1949).

Treaties/conventions. Other secondary sources include standard textbooks by learned authors, journal/articles, newspaper and magazine publications and internet materials to offer an analytical and comparative perspective to the study. Lastly, this study employed a theoretical, qualitative and exploratory research study by investigating how the governance affect the proper enforcement of socio-economic rights in specific states in Africa.

### 3. Theories of Human Rights

There are two main theories for the enforcement of rights, they are the will theory and the interest theory. Each theory presents itself as capturing an ordinary understanding of what rights do for those who hold them. Which theory offers the better account of the effect of bad governance on the socio-economic rights of citizens?

#### a. The Will Theory

Will theorists maintain that a human's right makes the right holder "a small scale sovereign"<sup>[13]</sup>. More specifically, a will theorist asserts that the function of a right is to give its holder control over another's duty. Your property right diagrammed in the figure above is a right, says the will theorist, because it contains a power to waive (or annul, or transfer) others' duties. You are the "sovereign" of your computer, in that you may permit others to touch it or not at your discretion. In Hohfeldian terms, will theorists assert that every right includes a Hohfeldian power over a claim. In colloquial terms, will theorists believe that all rights confer control over others' duties to act in particular ways<sup>[14]</sup>. Within the will theory, there can be no such thing as an unwaivable right: a right over which its holder has no power. Yet intuitively it would appear that unwaivable rights are some of the most important rights<sup>[15]</sup>. Moreover, since the will theorist holds that all rights confer sovereignty, it cannot acknowledge that being incapable of exercising sovereignty have rights. Within the will theory, it is impossible for incompetents like infants, animals, and comatose adults to have rights.

#### b. The Interest Theory

Interest theorists disagree. Interest theorists maintain that the function of a right is to further the right-holder's interests<sup>[16]</sup>. An owner has a right, according to the interest theorist, not because owners have choices, but because the ownership makes owners better off. A promisee has a right because promisees have some interest in the performance of the promise, or (alternatively) some interest in being able to form voluntary bonds with others. Your rights, the interest theorist says, are the Hohfeldian incidents you have that are good for you. The interest theory is more capacious than the will theory. It can accommodate both unwaivable rights (the possession of which may be good for their holders) and the rights of incompetents (who have interests that rights can

protect). The interest theory also taps into the deeply plausible connection between holding rights and being better off<sup>[17]</sup>.

### 4. Results and Findings

Litigation to enforce human rights, the reasons for judgments, publication of the judgments and media coverage of the case are all powerful educative tools that assist in improving understanding of human rights principles in any state. A criticism of many good governance programs is that they address the "supply side" and do not give adequate consideration to the needs of citizens whose "demand" they should be answering<sup>[18]</sup>. Consequently, development programs tend to reflect a "top-down" approach to administrative reform and restructuring and do not prioritize the needs and concerns of the poor and marginalized. This approach detracts from the sense of ownership and participation that communities should feel for development programs. Since civil society organizations are generally established to promote the interests of the common citizen, they are better suited at planning and delivering "bottom up" programs, including the delivery of human rights information<sup>[19]</sup>.

African States need to do better, to ensure a proactive representation and enforcement of the human rights, predominantly, the socio-economic rights of its citizens by adopting direct approaches and mechanisms. Whatever human rights mechanisms are adopted, there must be a heavy emphasis on education and promotion. In this respect, the role of civil society organizations (NGOs) is important and their role should be formally recognized. The findings of this study indicate that bad governance results in poor living conditions across African countries. In this context, the effect of an improved socio-economic growth could be exacerbated by bad governance, as sustainable socio-economic development depends on governance quality. Hence, understanding major challenges in Africa is of utmost importance for addressing the issue of governance in African development.

### 5. The Concept of Governance

The conceptualization of the term governance does not, however, seem to have been consistent and it has generated various definitions and meanings in the literature. Governance can be broadly defined as 'a system of values, policies and institutions by which a society organizes collective decision-making and actions related to political, economic and socio-cultural and environmental affairs through the interaction of the state, civil society and the private sector'<sup>[20]</sup>. It is argued further that governance is central to creating and sustaining an environment that fosters strong and equitable development, and it is an essential complement to sound economic policies.

Democratic governance requires an informed citizenry, a

<sup>13</sup> Hart H., *Essays on Bentham: Studies in Jurisprudence and Political Theory*, Oxford: Clarendon Press. (1982) 183.

<sup>14</sup> Hohfeld W, *Fundamental Legal Conceptions*, W. Cook (ed.), New Haven: Yale University Press (1999).

<sup>15</sup> MacCormick, N, *Legal Right and Social Democracy*, Oxford: Oxford University Press (1982).

<sup>16</sup> Kurki V., 'Rights, Harming, and Wrongs: A Restatement of the Interest Theory,' *Oxford Journal of Legal Studies*, (2018) 38: 430–50.

<sup>17</sup> Lyons D, *Rights, Welfare and Mill's Moral Theory*, Oxford: Oxford University Press (1994).

<sup>18</sup> See, for example, the publication of the Australian Council for International Development, entitled *Good Governance Development*

*Programs: Responding to the Voices of Communities*. An electronic version is available at: [www.acfid.asn.au/pubs/papers/ACFID\\_good\\_governance\\_paperMar04.pdf](http://www.acfid.asn.au/pubs/papers/ACFID_good_governance_paperMar04.pdf). Accessed 25<sup>th</sup> August 2023.

<sup>19</sup> Published in the Background Note of the Seminar on Good Governance Practices for the Promotion of Human Rights, Seoul, 15-16 September, 2004. UN Doc: HR/SEL/GG/SEM/2004/2. The Seminar was jointly organized by the Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme.

<sup>20</sup> A Heywood, A. (2007). *Politics*. 4th Edition. London: Palgrave Macmillan.

proactive and empowered media, popular participation in policy making, and a responsive state whose processes are open, transparent and broadly inclusive. Improving relationships between citizens and the government is therefore both an outcome of good governance, and at the same time a basic requirement for effective leadership. This underscores the importance of citizens' action and participation for good governance. [21]. Good governance became a subject of intense international debate in the 1990s, with the debate predominantly centering on the shift from top-down to bottom-up participatory governance. Proponents of the latter claimed that additional political participation improves the quality of politics and impacts positively on the socio-economic development of SSA countries. As the twenty-first century dawned, good governance was most commonly used by donor agencies, social scientists, philanthropists and civil society.

Africa's peculiarities and socio-economic conditions require the adoption of optimal strategies to reform governing systems and attain sustainable socio-economic development. There is a consensus recognizing that, to improve efficiency and social service delivery in Africa, raising accountability and maintaining political stability have become more central in recent times given the increased poverty, poor governance, growing insecurity, and pervasive corruption [22]. Despite this, studies on the link between governance quality and socio-economic development are limited, as much of the literature on the quality of institutions is concerned with its effect on economic growth, not on the socio-economic conditions themselves [23]. Struggles for economic development in Africa are often seen as demands for better governance. However, the new consensus over good governance supported by international financial institutions represents a much narrower program of reform based on neoclassical economic theory [24]. This agenda focuses on developing governance attributes in Africa that are theoretically supposed to enhance growth by making markets more efficient [25]. Some of these governance capabilities such as measures to improve government accountability and lower corruption appear to coincide with goals supported by social justice movements for better governance. After the economic crisis of 2008 that affected all aspects of life political instability, rising financial troubles for both private and public finances, and a growing number of business bankruptcies, it increased the demand for government support from good government policies to provision of market oriented reforms and social services [26]. Thus, from the above view, international experience suggests that there seems to be a strong association between the politics of governance and economic development.

Economic development requires the mobilization of

countries' physical, human and financial resources and their appropriate deployment into productive activities in economies. Furthermore, since the main goal of economic development is to raise people's standard of living, what is produced by deploying a country's resources should be equitably distributed. The mere creation of material wealth and resultant material welfare are not the only goals of economic development. The prime objective of economic development is not merely the elimination of material poverty but more importantly the eradication of illiteracy, disease, environmental degradation, and through them improving the quality of life and establishing peace and tranquillity in the society. In other words, political leadership plays an important role in good governance and in turn plays an important role in pushing up the pace of economic development. Realising the importance of governance in achieving economic growth in developing countries, World Bank experts have studied the association between governance and growth in such countries. These studies identified voice and accountability, political stability, governmental effectiveness, regulatory quality, rule of law and 'control of corruption' as the main indicators of good governance. The study also found a strong correlation between quality of governance and level of growth in a majority of the countries studied. Political leadership does influence to a large extent these indicators of governance [27]. Hence, this growing public demand heightened the quest for good governance and further threatened economic development. Over the years, the World Bank governance indicators have shown that most African countries are challenged by poor governance, political instability and violence, and corruption [28].

## 6. Promoting Socio-Economic Rights in Africa

The African Charter's aim to achieve, is not a preference for any category of rights, but rather maintaining the principle of the indivisibility of all human rights [29]. The African Charter recognizes the indivisibility of all rights, all "generations" of rights are recognized and SERs are justiciable. There is a growing wind of change globally and this has affected the underlying dynamics regarding the protection of human rights, even in countries, such as Nigeria, whose constitution generally denies recognition to socioeconomic rights. Notwithstanding the provisions for socio-economic rights in the African Charter on Human and Peoples' Rights, many African countries have not incorporated socio-economic rights in their constitutions. The negativity of such rights is in the fact that they are found in the Directive Principles of State Policy as the situation in Nigeria [30]. And are constitutionally made non-justiciable [31]. Within the context of this research, the justiciability of the rights determines

<sup>21</sup> K Bofo-Arthur, Voting for democracy in Ghana: The 2004 elections in Perspective. Legon Accra: Freedom Publications (2006).

<sup>22</sup> F Fagbemi, T T Osinubi, 'Leveraging Foreign Direct Investment for Sustainability: An Approach to Sustainable Human Development in Nigeria', *Resour. Environ. Sustain*, 2 (2020), p. 100005.

<sup>23</sup> Ibid

<sup>24</sup> H S Gray and M H Khan, (2010). 'Good Governance and Growth in Africa: What Can We Learn from Tanzania?' in Padayachee, V (ed.), *The Political Economy of Africa*. London: Routledge, 2010. Pp. 339-356.

<sup>25</sup> M H Khan, 'Governance, economic growth and development since the 1960s', in Ocampo, J.A, Jomo, K. S. and Vos, R. (eds.) *Growth Divergences: Explaining Differences in Economic Performance*. (2007). Hyderabad, London and Penang: Orient Longman, Zed Books and Third World Network. Available at: [http://www.un.org/esa/desa/papers/2007/wp54\\_2007.pdf](http://www.un.org/esa/desa/papers/2007/wp54_2007.pdf)

<sup>26</sup> A B AlBassam, 'The Relationship between Governance and Economic Growth during Times of Crisis', *European Journal of Sustainable Development*. Pp. 2, 4, 1-18 (2013).

<sup>27</sup> J Pierre and B Guy Peters, *Governance, Politics and the State*; Macmillan Press (2000).

<sup>28</sup> P Tandoh-Offin and A Gbensuglo Bukari, 'Towards Consolidating Sustainable Socio-Economic Development: Progress In Ghana And Sub-Saharan Africa', *AJPSDG*, Vol 1 No 1 October/Octobre/Outubro (2018).

<sup>29</sup> A Uchegbu 'Economic Rights: The African Charter on Human and Peoples Rights' in Omotola J A and Adeagun AA (eds.) *Law and Development* (Lagos: Lagos University Press, 1987) 169, 170.

<sup>30</sup> ss. 16-18

<sup>31</sup> Section 6 (6) (c) of the the Constitution of the Federal Republic of Nigeria (As amended)

their nature; negative or positive. In other words, the rights are positive as in the case of South Africa where the rights are not only constitutionalized, but also justiciable.

International human rights law has long declared the link between SERs and CPRs, they are inter-dependent, universal and indivisible<sup>[32]</sup>. Being applied, this demonstrates the importance of human rights. Practically, it is obvious that there exists SERs extent in CPRs claims, and vice versa. Repudiating judicial protection towards SERs does not only ignore one category of rights, but it in fact also disregards a central element of all human rights, and this in turn has huge repercussions in the society. Ignoring a category of rights leads to grave disparities in the implementation towards its realization. Notwithstanding its categorization, there has been amplified consideration that has facilitated to elucidate and outline these rights. Relatively, with the adoption of the African Charter regarding the issue of its justiciability, the inclusion of both categories of rights in the African Charter on equal footing ought to have brought an end to the justiciability debate. In Africa, this is primarily the most significant contribution to the argument on the justiciability of SERs<sup>[33]</sup>.

There is no doubt that, as contained in the preamble to the African Charter on Human and Peoples Rights the "satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights." What is in controversy is the means of satisfying the socio-economic rights, and also still uncertain is the judicial approach to adjudication in socio-economic rights matters<sup>[34]</sup>. A consideration of the controversies<sup>[35]</sup>. Surrounding the implementation of socio-economic rights, though crucial for the development of a robust jurisprudence of socio-economic rights, suggests the judicial review of socio-economic rights difficult than in cases of first generation rights<sup>[36]</sup>. This is simply because socio-economic rights involve positive actions by the government unlike the civil and political rights that command restraint and abstaining from doing certain acts that affect or likely to affront the fundamental rights of the people.

In other to protect socio-economic rights in Africa, there is a need for a universal standard or a continental standard in adjudicating socio-economic rights. This becomes expedient if the African Charter must meet its goals. It may be true that implementation of socioeconomic rights is better left to the discretion of the administration<sup>[37]</sup>. Doing that would however foreclose constitutional control in administration and indeed makes the executive arm the almighty decider of the fate of those rights and their contents, and by extension the scope of beneficiaries. The consequence of this is that judicial review of executive and legislative actions becomes

irrelevant in this context. The courts may not interfere where socio-economic rights are within the discretionary powers of the state, the Courts would certainly interfere where the law imposes positive obligations, to ensure constitutionalism; ensuring that the obligations invested on each branch is religiously protected and duly implemented. This position was equally articulated by the *Constitutional Court of South Africa in Minister of Health and others v Treatment Action Campaign*<sup>[38]</sup>.

## 7. Challenges to the Protection and Realization of Socio-Economic Rights in Africa

It has been explicitly observed that experience in the protection of social and economic rights in international law is varied. The arguments raised against their inclusion in state constitutions have, albeit to a lesser degree, also been applied to international law. A difficulty with the operationalization of social and economic rights and the setting of universally acceptable benchmarks for their realization is that capacities, standards, priorities and resources differ substantially from country to country. This raises the question whether one could not develop a "minimum threshold for human rights realization". This would mean that thresholds would be used to measure indicators such as nutrition, infant mortality, unemployment, income and life expectancy.

There are a few challenges/problems with the protection of socio-economic rights in Africa. While some are due to their inherent broad nature, others are due to the fact that states cannot afford them and some of the problems are that there are practical hindrances to protecting laws on the continent even when those laws have been provided by the African Charter. One practical difficulty is in the capacity of the African Union through the African Court or Commission to make decisions that are binding on all countries that are member states in the African Union<sup>[39]</sup>.

Firstly, the decisions of the African Commission are not binding therefore there is no mandatory obligation on states to comply<sup>[40]</sup>. Secondly, the international nature of the African Court does not induce compliance by member states<sup>[41]</sup>. This is because there is a gap between the connection of the legal system of the African Union and that of its member states. An example is when the African Court makes a decision that challenges the legal system of a member state rooted in a constitutional instrument, there might eventually end up being a conflict of principles. Essentially, the treaty establishing the African court lacks a clearly defined municipal application. Therefore, a national judge will need to ask these questions when faced with a request to enforce a decision by the African Court "Is the African Court Protocol recognized under our laws?"<sup>[42]</sup>. Nwauche a legal academic

<sup>32</sup> S Craig, 'Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights.' *Osgoode Hall Law Journal* 27.3 (1989): 769-878.

<sup>33</sup> F Viljoen, *International Human Rights Law in Africa* (Oxford University Press 2012).

<sup>34</sup> D Landau, 'The Reality of Social Rights Enforcement' *Harvard International Law Journal* ((2012) 53(1) 408-411; Linda Stewart. 'Adjudicating Socio-Economic Rights under a Transformative Constitution' *Penn State International Law Review* (2010) 28(3) 489-491.

<sup>35</sup> *Ibid*, David Landau and Linda Stewart.

<sup>36</sup> C Mbazira, 'Enforcing the Economic, Social and Cultural Rights in the South African Constitution as Justiciable Individual Rights: The Role of Judicial Remedies' (Ph.D. Thesis, University of Western Cape, 2007).

<sup>37</sup> This would mean that the executive arm of the government could determine when to implement or when not to while at the same time determining the contents of the rights.

<sup>38</sup> 2002 (5) SA 703 (CC).

<sup>39</sup> N Jo-Madugu, 'Protection of Socio-Economic Rights in Africa: A Comparative Study of the African Union and Selected Countries', Master Thesis, In Partial Fulfilment of the Research Master in Law, Tilburg University, (2017).

<sup>40</sup> G Mukundi Wachira and A Ayinla. 'Twenty Years of Elusive Enforcement of the Recommendations of the African Commission on Human and Peoples' Rights: A Possible Remedy'. *African Human Rights Law Journal* 6.2 (2006): 465, 468.

<sup>41</sup> A O Enabulele 'Incompatibility of national law with the African Charter on Human and Peoples' Rights: Does the African Court on Human and Peoples' Rights have the final say?' 16 (2016) *African Human Rights Law* 1, 17

<sup>42</sup> Enabulele n 68, 17.

noted the issue with regional court decisions not being applicable to all countries within a specific region.<sup>43</sup> For instance, that the 1999 Nigerian Constitution does not protect socio-economic and cultural rights,<sup>44</sup> which are protected by both the Ghanaian Constitution of 1992 and the African Charter, is a clear indicator of the prevalence of national variations were national courts and constitutions to be the controlling factors<sup>45</sup>. Considering these states are members of the African Union and have therefore already agreed to the principles and laws of the African Charter, irrespective of the fact that it exemplifies 'a case where regional standards have been set above existing individual domestic standards',<sup>46</sup> it is unacceptable for the member states to narrow the application of the African Charter to them by constitutionally excluding the enforceability of Charter rights<sup>47</sup>.

This ambiguous ability to make decisions that are binding on all the countries is important for the African Union to achieve its goal of harmonizing the protection of human rights on the continent. However, although these mechanisms are present to enhance the safeguards of the Africa Charter their power is limited for a few reasons. One reason is that the African Court has a requirement that countries will have to opt-in specifically in order to fall under the jurisdiction of the African Court<sup>48</sup>. Therefore, if a decision of the African Court is incompatible with a state legislature, states who were not a party to the decision and this includes those who have not opted into the Protocol of the African Court, are not bound by the decision.

This leads to the next issue of lack of Ratification. Since many states have failed to ratify the Protocol of the African Court, the Court cannot create obligations or rights for a state<sup>49</sup>. Therefore, a decision reached in a case involving Tanzania for example, that imposes obligations on the Tanzanian government does not mean the same obligation is automatically imposed on Zambia<sup>50</sup>. This problem is also extended by the fact that the African Court requires states opt-in for to enable individuals to bring a case before the Court and many states are yet to comply. Thus, there is a limitation to parties on the continent capable of bringing cases before the African Court. On the other hand, the African Commission while having a wider range of jurisdiction since there is no opting in requirement, has its jurisdiction limited due to the fact that its decisions are not binding and so there is no obligation to either comply with the decision nor are there any enforcement mechanisms to ensure compliance<sup>51</sup>.

## 8. Conclusion and Recommendations

In conclusion, this study identified that governance in Africa is an obstruction to the development of the region's socio-economic conditions. A state that can effectively manage its affairs and implement the policies it devises is in need of good governance quality. Improved governance is absolutely fundamental to unlocking that potential and ensuring that this unprecedented opportunity to deliver lasting change for its

people is not missed. If Africa can leapfrog ahead with technology, then why not with governance?

Every African has an interest in helping to secure better governance in Africa. It is the most effective means of preventing failed states, for building democracy and enhancing an effective realization of socio-economic development. Its development is the only way to harness the planet's most resource-rich continent and create a truly integrated global economy. And, most importantly, it is the only way to lift 300 million of the world's people out of poverty. The salient conclusions drawn from this paper suggest that good governance is important for the economic growth of sub-Saharan African economies, especially in those countries which are at the low end of the income distribution spectrum.

To extinguish the persistent anemic economic growth trend in Africa, both domestic and external policy makers may have to place significant emphases on the maintenance of the voice and accountability, political stability, government effectiveness, regulatory quality, rule of law, and control of corruption. A national standard could be devised so as to enable the identification of problem areas and communities, the setting of priorities and the launching of programmes. A "core list of rights", accompanied by minimum thresholds, could for instance include rights to food, health and employment. However, account will have to be taken of the fact that even within countries differences will exist in capacities, resources, income levels, etc. The protection of socio-economic and some other human rights requires a form of state intervention in the economy which will ensure at least a minimum level of development and availability of public services. At the same time critics have emphasizes that state intervention actually weakens the ability of a country in the long term to develop its economy. Consequently, whatever a state does to meet basic needs will in another way reduce the country's ability to satisfy those needs.

Africa needs to tell its success stories and project its positive image, not least because the appetite for bad news from the continent is ever present.

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<sup>43</sup> E S Nwauche 'The ECOWAS Community Court of Justice and the Horizontal Application of Human Rights' (2013) 13 African Human Rights Law Journal 36.

<sup>44</sup> Socio-Economic Rights and Accountability Project v. Federal Republic of Nigeria and Universal Basic Education Commission, No. ECW/CCJ/APP/0808, where it was held that Nigeria bound by socio-economic rights, notwithstanding that they are non-justiciable under the Nigerian Constitution.

<sup>45</sup> Ibid. Nwauche n 70, 36

<sup>46</sup> A B Akinyemi 'The African Charter on Human and Peoples' Rights: An Overview' (1985) 46 The Indian Journal of Political Science 208, 238

<sup>47</sup> Ibid. Enabulele n 68, 22

<sup>48</sup> Article 34 (6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, adopted June 1998, entered into force January 2004 75 76 77 March 30, 2018

<sup>49</sup> Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331 art 34; Jonathan Charney 'Universal International Law' (1993) 87 American Journal of International Law 529, 534.

<sup>50</sup> Enabulele n 68, 15

<sup>51</sup> Ibid

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