THE PROTECTION AND ENFORCEMENT OF SOCIO-ECONOMIC RIGHTS IN AFRICA: LESSONS FROM THE SOUTH AFRICAN EXPERIENCE

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1. Introduction

A lot has been said and written about the protection and enforcement of socio-economic rights in South Africa.¹ Many commentators are in agreement that the South African Constitution² is well known for its entrenchment of a range of such rights. Indeed the uniqueness of the South African Constitution lies in the fact that it contains a Bill of Rights which provides for all categories of human rights that are ordinarily included in most international human rights

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instruments, namely, the so-called first-generation rights (which consist of the traditional civil and political rights) and the rather controversial second and third generation rights (which consist of social, economic and cultural rights). For that reason, the South African Bill of Rights is generally regarded as one of the most progressive in the world. The same cannot be said about the constitutions of many other countries.

This article first deals with the background to the inclusion of socio-economic rights in the South African Constitution, the role such rights can and do play, and the mechanisms that have been adopted in implementing and enforcing those rights. A brief evaluation of how some African countries such as Namibia, Uganda and Ghana have attempted to constitutionalise and enforce socio-economic rights is then attempted followed by a discussion on the prospects and various challenges faced by many African countries in protecting and enforcing socio-economic rights. The conclusion of the paper focuses on the lessons that can be learnt from the South African experience.

2. Socio-Economic Rights under the South African Constitution

2.1. Historical Context

A detailed discussion of South Africa’s constitutional history falls beyond the parameters of this paper. Suffice to say that in all, South Africa has had five constitutions so far. The very first of these was adopted after the formation of the South African Union in 1910, the second was adopted in 1961, the third in 1983 and the last two in 1993 and 1996 respectively. All the three constitutions before the 1993 Interim Constitution contained no bill of rights. As such, human rights were constitutionally alien to South Africa and therefore any talk of human rights, let alone socio-economic rights, would have been meaningless.

It was only during the multi-party negotiations that led to the new constitutional dispensation that consideration was given to the inclusion of socio-economic rights in the constitution. This resulted in the inclusion of these rights initially in the 1993 Interim Constitution and later in the 1996 “final” Constitution. The inclusion of such rights