

### Statement from seminar on Social, Economic and Cultural Rights in the African Charter

The African Charter on Human and Peoples' Rights (African Charter) is often lauded as the first international human rights instrument to include socio-economic and cultural rights alongside civil and political rights, without drawing any distinction between the justiciability or implementation of the two 'categories of rights'.<sup>1</sup> In two of its findings, *Purohit and Moore v The Gambia*<sup>2</sup> and *The Social and Economic Rights Action Centre and Another v Nigeria*,<sup>3</sup> the African Commission on Human and Peoples' Rights (African Commission) has demonstrated the practical application of the principle that these Charter provisions are justiciable, and has held that 'no right in the African Charter cannot be made effective'.<sup>4</sup>

At a meeting (or seminar) of members of the African Commission, government officials and members of NGOs, held from 13 to 17 September 2004 in Pretoria, an effort was made to clarify the content of the social, economic and cultural rights in the African Charter. In the previous issue of this *Journal*, Sibonile Khoza provided a background to this meeting, and highlighted some of the discussions during the seminar.<sup>5</sup> A full text of the statement adopted at the conclusion of the seminar is provided here:

### Statement on social, economic and cultural rights in Africa

Pretoria, 17 September 2004

In conformity with its mandate under article 45 of the African Charter on Human and Peoples' Rights to promote and protect human rights in

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<sup>1</sup> See eg F Ouguerouz *The African Charter on Human and Peoples' Rights: A comprehensive agenda for human dignity and sustainable democracy in Africa* (2003) 200.

<sup>2</sup> Communication 241/2001, Sixteenth Annual Activity Report of the African Commission on Human and Peoples' Rights.

<sup>3</sup> Communication 155/96, Fifteenth Annual Activity Report of the African Commission on Human and Peoples' Rights.

<sup>4</sup> Communication 155/96, para 68.

<sup>5</sup> S Khoza 'Promoting economic, social and cultural rights in Africa: The African Commission holds a seminar in Pretoria' (2004) 4 *African Human Rights Law Journal* 334.

Africa, the African Commission on Human and Peoples' Rights in collaboration with the International Centre for Legal Protection of Human Rights (Interights), the Cairo Institute for Human Rights Studies and the Centre for Human Rights, University of Pretoria, held a Seminar on Economic, Social and Cultural Rights in Pretoria, South Africa, from 13 to 17 September 2004. The participants at the workshop, who included members of the African Commission, representatives of 12 African states, civil society organisations, national human rights institutions, academics and representatives of UN organisations and regional economic communities, adopted the following statement, which is recommended for consideration and adoption by the African Commission on Human and Peoples' Rights at its next ordinary session:

### **Preamble**

**RECALLING** that the African Charter enshrines economic, social and cultural rights, in particular the right to property in article 14, the right to work in article 15, the right to health in article 16, the right to education in article 17 and the cultural rights in articles 17(2) and (3), 18(1) and (2) and 61;

**RECOGNISING** the existence of regional and international human rights standards that stress the indivisibility, interdependence and universality of all human rights. Among these are the African Charter, the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the Universal Declaration of Human Rights, the Declaration on the Right to Development, the International Covenant on Economic, Social and Cultural Rights and the Convention for the Elimination of All Forms of Discrimination Against Women;

**RECOGNISING** also that the objectives and principles of the Constitutive Act include a commitment to the promotion and protection human and peoples' rights, respect for democratic principles, human rights, the rule of law and good governance and the promotion of social justice to ensure balanced economic development;

**NOTING** that despite the consensus on the indivisibility of human rights, economic, social and cultural rights remain marginalised in their implementation;

**CONCERNED** that there is resistance to recognising economic, social and cultural rights that results in the continued marginalisation of these rights, which excludes the majority of Africans from the full enjoyment of human rights;

**APPRECIATING** the vast positive impact that information and communication technologies (ICTs) can have on the promotion, protection and realisation of economic, social and cultural rights;

**RECOGNISING** that there are several constraints that preclude the full realisation of economic, social and cultural rights in Africa;

**DEEPLY DISTURBED** by the ongoing and longstanding conflicts in the regions of Africa, which impede the realisation of economic, social and cultural rights;

**DISTURBED FURTHER** by the lack of human security in Africa due to the prevailing conditions of poverty and under-development and the failure to address poverty through development;

**FURTHER RECOGNISING** the urgent need for human rights, judicial and administrative institutions in Africa to promote human dignity based on equality and to tackle the core human rights issues facing Africans, including food security, sustainable livelihoods, human survival and the prevention of violence;

#### **THE PARTICIPANTS STATE:**

- 1 States parties to the African Charter on Human and People's Rights have solemnly undertaken to respect, protect, promote and fulfil all the rights in the Charter, including economic, social and cultural rights.
- 2 By doing so, states parties have agreed to adopt legislative and other measures, individually or through international co-operation and assistance, to give full effect to the economic, social and cultural rights contained in the African Charter, by using the maximum of their resources. States parties have an obligation to ensure the satisfaction of, at the very least, the minimum essential levels of each of the economic, social and cultural rights contained in the African Charter.
- 3 States are therefore called upon to address with all appropriate measures their obligations in relation to the full realisation of economic, social and cultural rights as well as tacking the following constraints:
  - lack of good governance and planning and failure to allocate sufficient resources for implementation of economic, social and cultural rights;
  - lack of political will;
  - corruption, misuse and misdirection of financial resources;
  - poor utilisation of human resources and absence of effective measures to curtail brain drain;
  - failure to ensure equitable distribution of income from natural resources;
  - trafficking in women and children;
  - continued outflow and existence of refugees and internally displaced persons;
  - illiteracy and lack of awareness,
  - conditionality of aid and unserviceable debt burdens,
  - privatisation of essential services;

- cost recovery, including access fees and charges for essential services;
  - lack of support for and recognition of the work of civil society organisations;
  - lack of implementation of obligations assumed under international law into national law,
  - under-development of social amenities;
  - limited engagement with human rights on the part of some judges;
  - lack of protection of African indigenous knowledge;
  - failure to enforce some judicial decisions against the state;
  - the adverse effects of globalisation
- 4 States parties have also undertaken to eliminate all forms of discrimination, including all forms of discrimination against women, and to promote the equal enjoyment of all human rights. Non-discrimination and equal treatment are the key components of economic, social and cultural rights, since vulnerable and marginal groups, including refugees and internally displaced persons, are disproportionately affected by a failure of the state to respect, protect and fulfil these rights.
- 5 The right to property in article 14 of the African Charter relating to land and housing entails among other things the following:
- protection from arbitrary deprivation of property;
  - equitable and non-discriminatory access, acquisition, ownership, inheritance and control of land and housing, especially by women;
  - adequate compensation for public acquisition, nationalisation or expropriation;
  - equitable and non-discriminatory access to affordable loans for the acquisition of property;
  - equitable redistribution of land through due process of law to redress historical and gender injustices;
  - recognition and protection of lands belonging to indigenous communities;
  - peaceful enjoyment of property and protection from arbitrary eviction;
  - equal access to housing and to acceptable living conditions in a healthy environment.
- 6 The right to work in article 15 of the Charter entails among other things the following:
- equality of opportunity of access to gainful work, including access for refugees, disabled and other disadvantaged persons;

- conducive investment environment for the private sector to participate in creating gainful work;
  - effective and enhanced protections for women in the workplace including parental leave;
  - fair remuneration, a minimum living wage for labour, and equal remuneration for work of equal value;
  - equitable and satisfactory conditions of work, including effective and accessible remedies for work place-related injuries, hazards and accidents;
  - creation of enabling conditions and taking measures to promote the rights and opportunities of those in the informal sector, including in subsistence agriculture and in small scale enterprises activities;
  - promotion and protection of equitable and satisfactory conditions of work of women engaged in household labour;
  - the right to freedom of association, including the rights to collective bargaining, strike and other related trade union rights;
  - prohibition against forced labour and economic exploitation of children, and other vulnerable persons;
  - the right to rest and leisure, including reasonable limitation of working hours, periodic holidays with pay and remuneration for public holidays.
- 7 The right to health in article 16 of the Charter entails among other things the following:
- availability of accessible and affordable health facilities, goods and services of reasonable quality for all;
  - access to the minimum essential food which is nutritionally adequate and safe to ensure freedom from hunger to everyone and to prevent malnutrition;
  - access to basic shelter, housing and sanitation and adequate supply of safe and potable water;
  - access to reproductive, maternal and child health care based on the life cycle approach to health;
  - immunisation against major infectious diseases;
  - education, prevention and treatment of HIV/AIDS, malaria, tuberculosis and other major killer diseases;
  - education and access to information concerning the main health problems in the community including methods of preventing and controlling them;
  - training for health personnel, including education on health and human rights;
  - access to humane and dignified care of the elderly and for persons with mental and physical disabilities;

- 8 The right to education in article 17 entails among other things the following:
- provision of free and compulsory basic education that will also include a programme in psycho-social education for orphans and vulnerable children;
  - provision of special schools and facilities for physically and mentally disabled children;
  - access to affordable secondary and higher education;
  - accessible and affordable vocational training and adult education;
  - addressing social, economic and cultural practices and attitudes that hinder access to education by girl children;
  - availability of educational institutions that are physically and economically accessible to everyone;
  - development of curricula that address diverse social, economic and cultural settings and which inculcate human rights norms and values for responsible citizens;
  - liberty of parents and guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down by the state, and to ensure the religious and moral education of their children in conformity with their own convictions;
  - continued education for teachers and instructors, including education on human rights and the continuous improvement of the conditions of work of teaching staff;
  - education for development that links school curricula to the labour market and society's demands for technology and self-reliance.
- 9 The right to culture in articles 17(2) and (3), 18(1) and (2) and 61 entails among other things the following:
- positive African values consistent with international human rights realities and standards;
  - eradication of harmful traditional practices that negatively affect human rights;
  - participation at all levels in the determination of cultural policies and in cultural and artistic activities;
  - measures for safeguarding, protecting and building awareness of tangible and intangible cultural heritage, including traditional knowledge systems;
  - recognition of and respect of the diverse cultures existing in Africa.
- 10 The social, economic and cultural rights explicitly provided for under the African Charter, read together with other rights in the Charter, such as the right to life and respect for inherent human

dignity, imply the recognition of other economic and social rights, including the right to shelter, the right to basic nutrition and the right to social security.

11 Having highlighted the core contents of economic, social and cultural rights under the African Charter, participants make the following recommendations:

**(a) The African Union should:**

- (i) urge member states that have not done so, to ratify the human rights treaties mentioned in the Preamble, in particular the Protocol on Women's Rights;
- (ii) provide sufficient funds for African human rights institutions to enable them to effectively fulfil their mandate;
- (iii) establish the African Court on Human and Peoples' Rights without further delay;
- (iv) urge member states that have not done so to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, and to make the necessary declaration under article 34(6) of the Protocol;
- (v) establish the Human Rights Fund as recommended by the First AU Ministerial Conference on Human Rights held in Kigali, Rwanda, in May 2003;
- (vi) strengthen the Secretariat to enhance the functioning of the African Commission;
- (vii) urge the AU Peace & Security Council to adopt urgent measures to address the conflicts in Africa in order to create a conducive environment for the respect of economic, social and cultural rights;
- (viii) call upon the organs of the AU to encourage member states to uphold economic, social and cultural rights and to hold them accountable for violations economic, social and cultural rights;
- (ix) integrate the monitoring of economic, social and cultural rights into the work of relevant AU institutions as well as the CSSDCA Peer Review Mechanism and New Partnership for Africa's Development (NEPAD)'s African Peer Review Mechanism process;
- (x) follow up recommendations of the African Commission to ensure implementation of its decisions by member states.

**(b) The African Commission should:**

- (i) elaborate principles and guidelines on economic, social and cultural rights and establish a working group for this purpose;

- (ii) integrate economic, social and cultural rights into the mandates of existing Special Rapporteurs and Working Groups;
- (iii) urge states to duly submit their reports to the African Commission under article 62 of the African Charter;
- (iv) address economic, social and cultural rights during the examination of state reports under article 62 during questions and concluding observations;
- (v) review its guidelines for state reporting pertaining to economic, social and cultural rights;
- (vi) consider alternative means of examining implementation of provisions of the Charter by a state that is in perpetual default of its reporting obligations under article 62 of the Charter;
- (vii) provide substantive recommendations to the AU Assembly on economic, social and cultural rights;
- (viii) undertake studies and research under article 45 on specific economic, social and cultural rights;
- (ix) pay special attention to economic, social and cultural rights during promotional visits to states;
- (x) ensure effective dissemination of relevant decisions and resolutions of the Commission in collaboration with relevant governmental and non-governmental national and sub-regional institutions;
- (xi) further elaborate the economic and social rights implicit in the African Charter;
- (xii) urge the AU to establish the African Human Rights Court without further delay and those states that have not done so, to ratify the Protocol establishing the Court and to make the necessary declaration under article 34(6) of the Protocol.

**(c) States should:**

- (i) ratify, if they have not done so, the treaties mentioned in the Preamble, especially the Protocol on the Rights of Women;
- (ii) incorporate into domestic law and fully implement the provisions of regional and international treaties on economic, social and cultural rights;
- (iii) establish constitutional protection of economic, social and cultural rights subject to non-discrimination and equality;
- (iv) come up with national plans of action, which set out benchmark indicators for the progressive realisation of social, economic and cultural rights;
- (v) take effective measure to ensure budgetary processes are transparent and consultative;



- (vi) involve civil society in meaningful consultations in policy-making and in the implementation of social, economic and cultural rights generally;
- (vii) review all national policies, which undermine the realisation of specific social, economic and cultural rights;
- (viii) provide reports under article 62 of the Charter on how far they have gone in making social economic and cultural rights both accessible and non-discriminatory;
- (ix) adopt measures for the prudent use of resources, including the investigation of affordable alternatives for health drugs, eg generic vs patent medicines;
- (x) ensure effective citizen participation in government through credible electoral processes, liberalisation of the mass media and in the formulation of legislation and policies;
- (xi) adopt special measures for women and address the economic, social and cultural rights of vulnerable and marginalised groups, including children, indigenous peoples, displaced persons, refugees, persons living with HIV/AIDS and the disabled;
- (xii) develop mechanisms to hold non-state actors, especially multi-national corporations and business, accountable for violations of economic, social and cultural rights in such matters relating to child labour, industrial safety standards, protection against forced evictions and low wages, protection of the environment, including global warming and its impact on ecosystems, livelihood and food security;
- (xiii) strengthen the capacity of state institutions to produce disaggregate data that would provide an accurate assessment of the implementation of economic, social and cultural rights;
- (xiv) promulgate and implement comprehensive ICT policies and programmes;
- (xv) consult with civil society organisations in the nomination and election of members of the African Commission and judges of the African Court;
- (xvi) ratify the Protocol on the African Human Rights Court and make the declaration under article 34(6) of the Protocol allowing individuals and non-governmental organisations to file cases, if they have not done so;
- (xvii) nominate and elect judges of the African Human Rights Court so that it may be established without further delay;
- (xviii) take necessary measures to reduce military spending significantly in favour of increasing spending on the implementation of economic, social and cultural rights;

- (xix) ensure that economic, social and cultural rights take primacy in the negotiations of bilateral and multilateral trade and economic agreements;
- (xx) create independent, impartial and well-resourced national human rights institutions and if they already exist to strengthen their independence and impartiality.

**(d) Civil society should:**

- (i) play a more pro-active role in the nomination of and lobby for the election of candidates to the African Commission who are conversant with economic, social and cultural rights;
- (ii) advocate for states to ratify the Protocol of the African Human Rights Court and to make the declaration allowing NGOs and individuals to file cases;
- (iii) advocate for the African Human Rights Court to be established without further delay;
- (iv) prioritise monitoring of economic, social and cultural rights in their advocacy work;
- (v) play a role in raising public awareness of economic, social and cultural rights and the obstacles to fulfilment of these rights, in particular harmful cultural practices;
- (vi) actively participate in the budgetary process, both in terms of formulation and analysis;
- (vii) develop partnerships with both the state and private sector, where possible, for the protection of economic, social and cultural rights;
- (viii) compile and submit to the Commission shadow reports on economic, social and cultural rights;
- (ix) improve networking amongst NGOs and their support activities of the African Commission and its Special Rapporteurs and Working Groups;
- (x) bring more cases on economic, social and cultural rights to the African Commission, the African Committee on the Rights and Welfare of the Child, national courts, and the African Human Rights Court, when it is established;
- (xi) become involved in specific projects in the implementation of economic, social and cultural rights, especially in the rural areas;
- (xii) advocate for comprehensive national and regional ICT policies and programmes, and to incorporate ICT training, provision and access in their work plans.

**(e) National human rights institutions should:**

- (i) undertake studies, monitor and report on social, economic and cultural rights;

- (ii) scrutinise existing laws and administrative acts and make submissions to parliament on bills relating to economic, social and cultural rights;
- (iii) publish and distribute their reports on economic, social and cultural rights;
- (iv) establish regional networks/coalitions and involve NGOs in these coalitions;
- (v) apply for affiliate status with the African Commission, if they have not done so;
- (vi) raise awareness on economic, social and cultural rights among particular groups such as the public service, the judiciary, the private sector and the labour movement and encourage the government to integrate human rights in the school curricula;
- (vii) examine complaints of infringements of economic, social and cultural rights and make recommendations on redress, and where possible file cases before national courts;
- (viii) conduct follow up activities in the implementation of recommendations of international treaty bodies and publicise their reports, especially on economic, social and cultural rights;
- (ix) advocate for states to ratify the Protocol of the African Human Rights Court and to make the declaration allowing NGOs and individuals to file cases;
- (x) advocate for the African Human Rights Court to be established without further delay;

**(f) International and regional entities should:**

- (i) pay particular attention to African needs related to development and the realisation of economic, social and cultural rights;
- (ii) cancel the unserviceable debt burdens of African states;
- (iii) ensure that bilateral and multilateral trade and economic agreements conform to international treaty obligations relating to economic, social and cultural rights;
- (iv) play a role in the implementation of economic, social and cultural rights including through assistance and co-operation with African states;
- (v) take measures to regulate trade in extractive industries (such as oil, mining) that are exploitative, corrupt and fuel conflicts in Africa;
- (vi) co-operate with African countries in their efforts to repatriate money and cultural artefacts that have been unlawfully removed from African countries;

- (vii) ensure compliance with the principles of corporate social responsibility.

In conclusion, the African Union, its member states, international and national organisations and non-state actors should fully recognise human rights as a fundamental objective of development and that development has to achieve the full realisation of all human rights. Economic, social and cultural rights should therefore be integrated into development planning and implementation so that African needs and aspirations are fully addressed.