

Africans directly or indirectly dependent on social assistance, grant distribution is a necessary instrument for addressing food insecurity. Thus, any interruption in it would have impacted heavily on millions of beneficiaries and their families.

Without the Court's timely intervention, the economies of rural communities – villages and small towns – would have been hit hard, given that numerous dwellers depend heavily on social assistance to access food, basic goods and services in local markets. An additional knock-on impact would have been felt by shop owners, who would have been unable to pay their staff since their income streams would have been strongly affected.

References

AllPay Consolidated Investment Holdings (Pty)

African Social Security Agency [2013] ZACC 42; 2014 (1) SA 604 (CC); 2014 (1) BCLR 1 (CC).

AllPay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer, South African Social Security Agency [2014] ZACC 12; 2014 (4) SA 179 (CC); 2014 (6) BCLR 641 (CC).

Dentlinger L. (22 February 2017) '#Budget2017: social grants to be increased' Eyewitness News.

Hyman A. (06 March 2017) 'Explosive Black Sash Trust claims involving favoured Sassa grants firm's owner' BusinessDay.

Mawson N. (22 February 2017) '#Budget2017: Inflationary increase for welfare grants' Independent Online.

The Black Sash Trust v Minister of Social Development and Others (CCT48/17) [2017] ZACC 8.

INTERVIEW

Honourable Commissioner Jamesina Essie L. King, Chairperson of the Working Group on Economic, Social and Cultural Rights, at the African Commission on Human and Peoples' Rights

Can you tell us briefly about your work before your election to the African Commission?

I was a Commissioner in the Human Rights Commission of Sierra Leone, a Commission established by law to protect and promote human rights in the country. The establishment of this Commission was recommended by the Lomé Peace Accord after the conflict as well as the Truth and Reconciliation Commission. I was the first Chairperson of that Commission.

Since your election, what would you regard as the Commission's major achievements and challenges?

The legislative measures that states take to give effect to the rights of the [African] Charter [on Human and Peoples' Rights], which they are required to do and report to the Commission every two years. You can actually see gradual and sustained steps by governments to give effect to the Charter. The participation by states, national human rights institutions and non-governmental organisations in the work of the Commission is also phenomenal.

Another achievement is the high volume of publications produced by the Commission in different thematic areas interpreting the Charter and aiding states in its implementation. The challenges are insufficient human and financial resources for effective and efficient operation of the Commission, and the non-implementation of the Commission's decisions and recommendations.

Reports indicate that poverty rates in Africa remain very high and inequality between the rich and the poor has widened. What is your take on this?

I believe that there has been progress in many respects in addressing poverty and inequality in Africa. There are many countries where high maternal and infant mortality rates have gone down. There is higher enrolment in schools, and there is more enjoyment of economic and social rights. In spite of this improvement, there are still challenges, particularly in rural areas. Political instability and the negative impacts of conflicts and climate change continue to halt progress and impede development in Africa.

As the Chairperson of the Working Group on Economic, Social and Cultural Rights, what you would consider as major challenges to the enjoyment of socioeconomic rights in Africa?

The notion that the economic, social and cultural rights are dependent on the whims and caprices of government and dependent on the availability of resources. This notion is misplaced and implies that economic and social rights are not on the same level as civil and political rights. Until states parties to the Charter, as well as those implementing economic, social and cultural rights within states, [recognise] that they have an obligation as parties to the Charter to give effect to these rights, individuals will not be able to fully realise these rights.

The uniqueness of the African Charter is that it guarantees both civil and political rights as well as economic, social and cultural rights. Its preamble states that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and [that] the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.

I also believe that citizens should understand the contents of these rights and should hold their governments accountable for their implementation. It is only quite recently that a lot of human rights non-governmental organisations are undertaking advocacy and monitoring on these rights.

Since your appointment as the chairperson on economic, social and cultural rights, what steps have you taken to ensure that African governments are fulfilling their obligations to realise these rights?

I do engage with states during the constructive engagement with the Commission in respect of their periodic reports to the Commission on the implementation of economic and social rights.

In my intersession reports I have urged governments to implement economic and social rights in accordance with their obligations in the Charter as well as commitments they have agreed to, particularly in the area of devoting a specific percentage of their budgets to health and education. I also support effective mainstreaming of economic, social and cultural rights in all the other thematic areas of work of the Commission.

What would you consider to be the achievements of the Working on ESCR since you became the chairperson?

I became Chairperson of the Working Group in 2015 and since then, the Working Group has been working on the development of guidelines on the implementation of the right to water as well as the development of a draft protocol on the right to social protection and social security in Africa. Both documents are work in progress and as such

I cannot say they are achievements. I believe that mainstreaming economic, social and cultural rights in the Commission's work has been an achievement. Documents developed by the Commission in interpreting other charter rights have made the link to the enjoyment of economic, social and cultural rights, which is an achievement.

Despite the recognition of socioeconomic rights in various human rights instruments and national constitutions in Africa, the enjoyment of these rights remains far from a reality for millions of Africans. What do you think is responsible for this?

I believe that only few constitutions in Africa recognise the justiciability of economic, social and cultural rights and [that] these are very recently reviewed constitutions. Most constitutions

make reference to these rights as fundamental principles of state policy, and it is unfortunate that they are not taken seriously by law- and policy-makers.

Would you want to say or two things about the draft Protocol on Social Protection and Social Security in Africa?

It would give an understanding of the content of the right to social protection and social security, particularly to policy-makers and human rights practitioners. When it is finalised and adopted by the African Union, the needs and priorities of the most vulnerable members of our communities will be better addressed through a human rights perspective.

What are the major constraints facing the Working Groups and the African Commission?

Limited human and financial resources to effectively and efficiently carry out the work of the Commission and Working Group on Economic Social and Cultural Rights. Economic, social and cultural rights are very wide and diverse, and require particular expertise, and it is quite difficult to have accurate and reliable monitoring reports on these rights.

What has been your experience of working with civil society groups and states in Africa?

Promotion work is extremely difficult without the collaboration of partners who work at a national level. In the area of economic, social and cultural rights, partners are very few and there are limited resources to support the promotion of these rights.

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At the end of your tenure as the Chairperson of the Working Group on ESCR, what would like to be remembered for?

That there was a marked increase in the visibility and commitment to implementing and monitoring economic, social and cultural rights in Africa by both states and NGOs. This should in turn lead to increased enjoyment of these rights in Africa.