

# AN OVERVIEW OF THE IMPACT OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN AFRICA

By

Danwood Mzikenge Chirwa\*

## 1 Introduction

The International Covenant on Economic, Social and Cultural Rights (the ICESCR) represents one limb of an expanded hard law version of the 1948 Universal Declaration of Human Rights (UDHR).<sup>1</sup> The other limb is contained in the International Covenant on Civil and Political Rights (the ICCPR), which guarantees civil and political rights. The assumption that economic, social and cultural rights required obligations and enforcement mechanisms of a different nature formed the basis of the decision to draft the two instruments separately. Among other things, this assumption was based on the argument that, unlike civil and political rights, economic, social and cultural rights are incapable of immediate implementation. Rather, they are realisable progressively.<sup>2</sup> Interestingly, African leaders and scholars soon after independence claimed that “the protection of civil and political rights should await the implementation of economic, social and social rights”<sup>3</sup> thereby depicting the latter as more important than the former. In this contribution, I assess the impact the ICESCR has had in Africa since its entry into force on 3 January 1976.

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\* Legal Practitioner in Malawi, LLM (Pretoria), LLB Hons (Malawi).

<sup>1</sup> The ICESCR was adopted and opened for signature, ratification and accession by the United Nations (UN) General Assembly on 16 December 1966 and entered into force on 3 January 1976.

<sup>2</sup> Such argument and others have been adequately rebuffed. See S Leckie “Another step towards indivisibility: Identifying the key features of violations of economic, social and cultural rights (1998) 20 *Human Rights Quarterly* 81; S Liebenberg “The International Covenant on Economic, Social and Cultural Rights (1995) 11 *South African Journal on Human Rights* 359; P de Vos “Pious wishes or directly enforceable human rights? Social and economic rights in South Africa’s 1996 Constitution” (1997) 13 *South African Journal on Human Rights* 67; *Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa, 1996*, 1996(4) SA 744, 1996 (10) BCLR 1253 (CC); *The Government of the Republic of South Africa and others V Grootboom and others* 2000 (II) BCLR 1169 (CC).

<sup>3</sup> J Oloka-Onyango “Beyond the rhetoric: Reinvigorating the struggle for economic social and cultural rights in Africa” in (1995) *California Western International Law Journal* <<http://www1.umn.edu/humanrts/africa/Oloka-Onyango.html>> (accessed on 28 August 2001).

## 2 An overview of the provisions of the ICESCR

The ICSECR contains “some of the most significant international legal provisions establishing economic, social and cultural rights.”<sup>4</sup> It begins by guaranteeing all peoples self-determination.<sup>5</sup> Article 2 of the ICESCR<sup>6</sup> is particularly important for two reasons; namely, it outlines the nature of State Parties’ obligations under the Covenant and determines how they must approach the implementation of the substantive rights contained in articles 6 to 15.

Most often, the obligations under article 2 are divided into layers reflecting duties to respect, protect, promote and to fulfill each right contained in the Covenant.<sup>7</sup> For the purposes of this contribution, four components of article 2 need to be highlighted. The first is that although article 2(1) particularly obliges States to adopt legislative measures to ensure the enjoyment by everyone of the rights in the Covenant, the Covenant generally requires States to adopt “all appropriate measures.” This takes into cognizance the fact that laws alone may not be a sufficient response at the national level for the implementation of economic, social and cultural rights. Administrative, judicial, policy, economic, social and educational measures and many other steps will be required by governments in order to ensure these rights to all.<sup>8</sup>

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<sup>4</sup> Fact Sheet No 16 (Rev.1), The Committee on Economic, Social and Cultural Rights. <<http://www.unhchr.ch/html/menu6/2/fs16.htm>> (accessed on 19 August 2001).

<sup>5</sup> Art 1 of the ICESCR.

<sup>6</sup> Article 2 of the ICESCR provides:

“1 Each State Party to the present Covenant undertakes to take steps, individually or through international assistance and cooperation, especially economic and technical, to the maximum of it’s available resources, with a view to achieve progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2 The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status.

3 Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”

<sup>7</sup> The precise scope of these obligations has been canvassed in General Comment No 3 (Fifth session, 1990) “The nature of State Parties’ obligations (art 2(1) of the Covenant)” UN Doc E/1991/23. See also Liebenberg (n 2 above) 363-367, and Leckie (n 2 above) 90-108.

<sup>8</sup> Fact Sheet No 16 (n 4 above).

The second component is that State Parties are obliged “to (achieve) progressively the full realization of the rights” recognized in the ICESCR. This does not imply that States must defer indefinitely efforts to ensure the enjoyment of the rights laid down in the ICESCR. Rather, the duty in question obliges States, notwithstanding their level of national wealth, to move immediately and as quickly as possible towards the realization of economic, social and cultural rights.<sup>9</sup> Further, whereas certain rights, by their nature, may be more apt to be implemented in terms of the progressive obligation rule, many obligations under the ICESCR are clearly required to be implemented immediately.<sup>10</sup>

The third component is the duty of each State Party to ensure the enjoyment of the rights in the ICESCR “to the maximum of it’s available resources.” While recognizing the reality that the extent of realisation of these rights depends on the financial muscle of the State Party, the latter shoulders the onus of showing that it has done its utmost within the constraints of its available resources. Where resources are demonstrably inadequate to attain the desired standard, the State Party is enjoined to monitor the extent of non-realisation and to devise appropriate remedial measure.<sup>11</sup> Additionally, a State Party is obliged to fulfill a “minimum core obligations” so as to satisfy at least the essential levels of the rights such as basic nutrition, primary healthy care, shelter and basic education. Failure to satisfy these basic needs constitutes a prima facie violation of the ICESCR. The burden lies on the State Party to demonstrate that every effort has been made to gather all resources available to satisfy these minimum obligations as a matter of priority.<sup>12</sup> The term “available resources” includes both domestic resources and any international economic or technical assistance or cooperation available to a State Party.<sup>13</sup>

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<sup>9</sup> General Comment No 3 (n 7 above) para 9; The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Doc E/CN.4/1987/17. Annex (1987), reprinted in (1987) 9 *Human Rights Quarterly* 122 (Limburg Principles).

<sup>10</sup> Eg non-discrimination provisions and the obligation of State Parties to refrain from actively violating economic, social and cultural rights or withdrawing legal or other protection relating to those rights.

<sup>11</sup> General Comment No 3 (n 7 above) para 11 as read with General Comment No 1 (Third session, 1989) “Reporting by State Parties” UN Doc E/1989/22 paras 4 and 6.

<sup>12</sup> General Comment No 3 (n 7 above) para 10.

<sup>13</sup> General Comment No 3 (n 7 above) paras 13 and 14; General Comment No 2 (Fourth session, 1990) “International technical assistance measures (article 22 of the Covenant)” UN Doc E/1990/23.

The last is the obligation to ensure the enjoyment of these rights “without discrimination.” This obliges State Parties to desist from discriminatory behaviour and to alter laws and practices which allow discrimination. It also obliges State Parties to prohibit private persons and bodies from practicing discrimination in any field in public life.<sup>14</sup> However, special measures taken for the sole purpose of securing adequate advancement of certain groups or individuals in order to ensure their equal enjoyment of economic, social and cultural rights with others are not considered discrimination, provided that such measures do not lead to the maintenance of separate rights for different groups and are not continued after their objectives have been achieved.<sup>15</sup>

The substantive rights guaranteed in the ICESCR include the right to work,<sup>16</sup> the right to just and favourable conditions of work,<sup>17</sup> and the right to form and join trade unions and other trade union rights.<sup>18</sup> The right to social security and social insurance is guaranteed in article 9. Article 10 guarantees the right to protection and assistance of the family. Other rights guaranteed are the right to adequate standard of living,<sup>19</sup> the right to the highest attainable standard of physical and mental health,<sup>20</sup> the right to education,<sup>21</sup> and the right to culture and to benefit from scientific progress.<sup>22</sup>

By articles 16 and 17 of the ICESCR, State Parties undertake to submit periodic reports to the Committee on Economic, Social and Cultural Rights (the ICESCR Committee)<sup>23</sup>

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<sup>14</sup> The Limburg Principles (n 9 above) para 38.

<sup>15</sup> The Limburg Principles (n 9 above) para 39.

<sup>16</sup> Art 6 of the ICESCR. It includes the right to choose work, and to vocational training and guidance.

<sup>17</sup> Art 7 of the ICESCR. It includes, in particular, minimum remuneration, equal opportunities for promotion, safe and healthy working conditions and rest, leisure and reasonable limitation of working hours.

<sup>18</sup> Art 8 of the ICESCR.

<sup>19</sup> Art 11 of the ICESCR. It includes, among other things, adequate food, clothing and housing and continuous improvement of living conditions.

<sup>20</sup> Art 12 of the ICESCR.

<sup>21</sup> Arts 13 and 14 of the ICESCR. This right requires States to establish, among other things, free and compulsory primary education, generally available and accessible secondary (including technical or vocational) education, equally accessible higher education, and to encourage fundamental education.

<sup>22</sup> Art 15 of the ICESCR.

<sup>23</sup> Unlike the five other human rights treaty bodies, this Committee was not established by its corresponding instrument. The United Nations Economic and Social Council (ECOSOC) established it in 1985 following the less than ideal performance of two previous bodies entrusted with monitoring of the Covenant. It comprises of 18 members who are experts with recognized competence in the field of human rights. The members are supposed to be independent and to serve in their personal capacity.

within two years of the entry into force of the Covenant for a particular State, and thereafter once every five years. In the reports, State Parties are supposed to outline the legislative, judicial, policy and other measures which they have taken to ensure the enjoyment of the rights contained in the ICESCR. They are also requested to provide data on the degree to which the rights are implemented and areas where particular difficulties have been faced in this respect.

Presently, it is not possible for individuals or groups who feel that their rights have been violated to submit formal complaints to the ICESCR Committee. However, the drafting of an Optional Protocol to the International Covenant on Economic Social and Cultural Rights (the Optional Protocol) is underway to compliment and reinforce the reporting system under the ICESCR.

### **3 Formal commitment**

44 African Countries have ratified the ICESCR as of 16 July 2001. Those that are yet to ratify include Botswana, Djibouti, Liberia, Mauritania, Mozambique, Saõ Tomé and Príncipe, South Africa and Swaziland. This status of ratification signifies an overwhelming formal commitment to economic, social and cultural rights by African States. However, it must be noted that the tally of ratifications of the ICESCR by African States has increased only recently. By the time the ICESCR came into force (3 January 1976), only 7 African States had ratified the Convention.<sup>24</sup> 18 more States were to ratify the Convention between 1976 and 1989.<sup>25</sup> It is only after 1990 that most African States ratified the Convention.<sup>26</sup> One may point to the pressure for democratic change and

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ECOSOC elects the members for four-year terms. A member may be reelected for another term if renominated. See Fact Sheet No. 16.

<sup>24</sup> These are Kenya, Libyan Arab Jamahiriya, Madagascar, Mali, Mauritania, Rwanda and Tunisia. See *Status of ratification of the principal international human rights treaties* <[http: www.unhchr.ch](http://www.unhchr.ch)> (accessed on 25 August 2001).

<sup>25</sup> These are Algeria, Central African Republic, Cameroon, Congo, The Democratic Republic of Congo, Egypt, Gabon, Gambia, Guinea, Equatorial Guinea, Morocco, Niger, Sudan, Senegal, Togo, Uganda, United Republic of Tanzania and Zambia. See *Status of ratification of the principal international human rights treaties* <[http: www.unhchr.ch](http://www.unhchr.ch)> (accessed on 25 August 2001).

<sup>26</sup> They include, Angola, Benin, Burundi, Burkina Faso, Chad, Cape Verde, Cote d' Ivoire, Eritrea, Ethiopia, Ghana, Guinea Bissau, Lesotho, Malawi, Namibia, Nigeria, Seychelles, Sierra Leone, Somalia, and Zimbabwe. See *Status of ratification of the principal international human rights treaties* <[http: www.unhchr.ch](http://www.unhchr.ch)> (accessed on 25 August 2001).

globalisation influence, among other things, as major factors that contributed to the wide ratification of the ICESCR after 1990.

Out of the 44 States that have ratified the ICESCR, 8 States have entered reservations as of 11 June 2001.<sup>27</sup> Algeria and Egypt have both entered interpretive declarations that are essentially aimed at rejecting the recognition of colonialism and any form of domination of one State by another implied in article articles 1(3) and 14 of the ICESCR. These declarations do not necessarily reduce the obligations of the two States under the ICESCR. Algeria has made a further interpretive declaration (in relation to article 8 of the ICESCR) that it understands article 8 as saying that the law is the framework for action by the State with respect to the organisation and exercise of the right to organise. It has further declared that article 13 (2) and (3) of the ICESCR do not in any way impair its right to organize its educational system freely. While the first declaration does not avoid the Convention's obligations in a significant way, by the last declaration, Algeria is withdrawing from key obligations regarding the full realisation of the right to education, and respect of the rights parents to choose for their children schools and to ensure the religious and moral education of their children in conformity with their own convictions.

The declaration by Egypt states that "taking into consideration the provisions of Islamic *Sharia* and the fact that they do not conflict with the text annexed to the instrument, we accept, support and ratify it." It must be noted that although *Sharia* makes extensive provisions for economic social and cultural rights, it is far from complying with international human rights standards regarding equality between men and women, which is one of the key obligations States have to fulfill under the ICESCR.<sup>28</sup> On its part, Kenya has declared that the present circumstances obtaining in Kenya do not render it necessary or expedient the imposition of obligations recognized in article 10(2). Thus Kenya does not guarantee by law special protection to mothers before and after

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<sup>27</sup> These include Algeria, Egypt, Guinea, Kenya, Libyan Arab Jamahiriya, Madagascar, Rwanda, and Zambia. Congo has, since 21 March 2001, withdrawn its reservation. See *Reservations and declarations* <[http://www.unhchr.ch/html/menu3/b/treaty4\\_asp.htm](http://www.unhchr.ch/html/menu3/b/treaty4_asp.htm)> (accessed on 25 August 2001).

<sup>28</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: Libyan Arab Jamahiriya. 16/05/97. E/C.12/1/Add.15. Art 11 of the Constitution of Egypt provides that "The State shall guarantee the proper coordination between the duties of women towards the family and her work in society, considering her equal with men in the fields of public, social, cultural and economic life without violation of the rules of Islamic jurisprudence"

childbirth. The declaration of Libya is political and does not reduce its obligations under the Covenant.<sup>29</sup> By contrast, the effect of Madagascar's and Zambia's reservations is to postpone the obligation to establish compulsory and free education.<sup>30</sup> On the whole, it is fair to say that the reservations by African States constitute insignificant departures from the obligations of the ICESCR.

#### 4 Constitutional entrenchment

Although human rights have become internationalized, accessible and effective municipal remedies remain the primary means of protecting social and economic rights.<sup>31</sup> At the municipal level, constitutional entrenchment offers the best protection of human rights especially in countries that have constitutional supremacy combined with judicial review. As the UN Committee on Economic, Social and Cultural rights has stated, judicial remedies are important because other "appropriate means" referred to in article 2(1) of the ICESCR "could be rendered ineffective if they are not reinforced or complimented by judicial remedies."<sup>32</sup>

In the constitution, economic, social and cultural rights may be protected either directly or indirectly. Direct entrenchment takes the form of the inclusion of economic, social and cultural rights as justiciable rights in a bill of rights. This provides the best forum of protection because it enables individuals or groups to seek redress from courts for violations of their rights easily without having to rely on judicial activism, as is the case with indirect protection. Thus, direct protection challenges the traditional liberal conception that a bill of rights is a shield from arbitrary interference in individual liberties by the state and underscores the fact that economic, social and cultural rights also

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<sup>29</sup> It states that "The acceptance and accession to this Covenant by the Libyan Arab Republic shall in no way signify a recognition of Israel or be conducive to entry by the Libyan Arab Republic into such a dealing with Israel as are regulated by the Covenant." n 27 above.

<sup>30</sup> These declarations state that Madagascar/Zambia "reserves the right to postpone the application of article 13(2) ...especially as it relates to primary education" since either of them "fully accepts the principles embodied in the same article and undertakes to take necessary steps to apply them in their entirety, the problems of implementation, and particularly the financial implications, are such that full application of these principles in question cannot be guaranteed at this stage." n 27 above.

<sup>31</sup> S Liebenberg "The domestic protection of economic and social rights in domestic legal systems" in A Aide *et al* (eds) *Economic, Social and Cultural Rights*, 2<sup>nd</sup> ed, (2001) 55, 57.

<sup>32</sup> General Comment No 9 (Nineteenth session, 1998) "The domestic application of the Covenant" UN Doc E/1999/22 117-121 para 3.

impose negative duties and that the meeting of social needs through the imposition of positive obligations on the state is an equally fundamental value in a constitution.<sup>33</sup>

Indirect protection of economic, social and cultural rights takes place through the interpretation of civil and political rights.<sup>34</sup> The use of directive principles of state policy provides one example of indirect protection. Expressly declared as non-enforceable, these principles constitute a set of social and economic objectives to guide the government in applying laws. Nevertheless, the Supreme Court of India has held that these principles are essential in interpreting the content of fundamental rights. Thus, the right to life, the Indian Courts have concluded, includes the right to a livelihood, the basic necessities of life such as adequate nutrition, clothing, reading facilities and the rights to shelter, health and education.<sup>35</sup>

Most African countries have constitutions. Most of the constitutions that were adopted before 1990 did/do not guarantee economic, social and cultural rights. They either had/have no bills of rights at all<sup>36</sup> or only entrenched civil and political rights with either not more than 3 guarantees of economic social and cultural rights or none at all.<sup>37</sup> Egypt is among the few African States that have detailed economic, social and cultural rights in constitutions adopted before 1990. Articles 7 to 39 of the 1980 Egyptian Constitution

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<sup>33</sup> Liebenburg (n 31 above) 57-58.

<sup>34</sup> *Ibid* 71-74.

<sup>35</sup> *Tellis & Another v Bombay Municipal Corporation and others* (1987) LRC (Const) 351; *Francis Coralie Mullin v The Administrator, Union Territory of Delhi* (1981) 2 SCR 516; *Ahmedabad Municipal Corporation v Nawab Khan Gulab Khan & Others* (1997) AIR SC 152; *Paschim Banga Khet Mazdoor Samity v State of West Bengal* (1996) AIR SC 2426; *Jain v State of Karnataka* (1992) 3 SCC 666; *Krishnan v State of Andhra Pradesh & Another* (1993) 4 LRC 234.

<sup>36</sup> Eg the 1966 Constitution of Malawi, 1972 Constitution of Cameroon, The 1983 Constitution of South Africa, 1985 Sudanese Constitution, the 1986 Constitution of Central African Republic, the 1960 Constitution of Cote d'Ivoire, and the 1987 Constitution of Botswana.

<sup>37</sup> Eg the 1966 Constitution of Mauritius as amended up to 1985, provides for the rights to property and education in arts 8 and 14; the 1975 Mozambican Constitution guarantees protection of marriage, family, motherhood and childhood, right to work and education, and protection of the aged and disabled in arts 29, 31, and 32; the 1963 Constitution of Senegal as amended up to 1992, provides for the rights to protection of marriage and family, education and work in arts 14, 15, 16,17,18 and 20; the 1987 Constitution of Botswana guarantees the right to property in art 8; the Zairian Constitution of 1978 as amended up to 1990 provides for the rights to education, property and family protection in arts 19 to 21; the 1951 Constitution of Tunisia as amended up to 1988, provides for the right to property in art 14; the 1977 Constitution of Tanzania guarantees the rights to

guarantees the right to protection of the family, motherhood and childhood, health, social security, education, work and property. The 1979 Constitution of Somalia also guarantees the rights to work, education, property, culture and health in articles 21,23,28,51 and 52. Similarly, the 1975 Constitution of Angola as revised and altered by the MPLA Party in 1980 guarantees the rights to medical and healthy care, assistance in childhood, motherhood and old age, education, culture and work. The 1989 Constitution of Algeria also guarantees such rights like the right to property, education, health protection, work, rest, strike, family protection and protection of living conditions in arts 49 to 56.

By contrast, most African Constitutions adopted from 1990 have directly entrenched economic, social and cultural rights alongside civil and political rights.<sup>38</sup> Amongst the constitutions with the most elaborate provisions in this regard are the 1990 Constitution of Cape Verde,<sup>39</sup> the 1996 Constitution of South Africa,<sup>40</sup> the 1991 Constitution of Gabon,<sup>41</sup> the 1992 Constitution of Madagascar,<sup>42</sup> the 1990 Constitution of Saõ Tomé and Príncipe,<sup>43</sup> and the 1993 Constitution of Seychelles.<sup>44</sup> There are several other African Constitutions with at least 6 economic, social and cultural rights. They include the 1991 Constitution of Burkina Faso,<sup>45</sup> the 1990 Constitution of Benin,<sup>46</sup> the 1992

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work, just pay and property in arts 22-24, and the 1979 Constitution of Zimbabwe as amended up to 1985, provides for the right to property.

<sup>38</sup> Exceptions include the 1991 Transitional Charter of Ethiopia which merely refers to the UDHR as binding on Ethiopia. See art 1.

<sup>39</sup> Arts 58 to 64 provide for the right to work, freedom to form and join trade unions and the right to strike. Arts 65 to 72 guarantee the rights to economic activity, property, social security, health, housing, healthy environment, and protection of the elderly and the disabled. Arts 73 to 78 guarantee the right to education. These rights are enforceable in courts of laws. See arts 15 and 17.

<sup>40</sup> Arts 22-31 guarantee the rights to choice and practice of trade, occupation and profession, fair labour practices, environment, property, housing, health, food, water and social security, protection of children, education and culture.

<sup>41</sup> Arts 7 to 20 provide for the rights to work, social security, health, leisure, rest, property, family protection and education.

<sup>42</sup> Arts 17 to 40 provide for the rights to health, family protection, education, culture, strike, property and protection of the aged and disabled.

<sup>43</sup> Arts 40 to 55 guarantee the rights to work, strike, rest, leisure, social security, property, private enterprise, housing and environment, health care, protection of the family, childhood, protection of the youth and the aged, education and culture. Enforceability of these rights is provided for in art 19.

<sup>44</sup> Arts 26 to 36 provide for the rights to property, health care, special protection of working mothers, education, shelter, protection of the aged and the elderly, social security, environment, and culture.

<sup>45</sup> Arts 14 to 30 provide for the rights to property, freedom of enterprise, education, work, strike, health, healthy environment and culture.

Constitution of Burundi,<sup>47</sup> the 1992 Constitution of Togo,<sup>48</sup> the 1992 Constitution of Mali<sup>49</sup> and the 1992 Constitution of Niger.<sup>50</sup> Others have a number of economic social and cultural rights in the bill of rights but they also have directive principles of state policy in a separate chapter of the constitution. These include the 1992 Constitution of Ghana,<sup>51</sup> the 1994 Constitution of Malawi,<sup>52</sup> and the 1990 Constitution of Namibia.<sup>53</sup> Others have directive principles of state policy and a property guarantee only. The 1999 Constitution of Nigeria<sup>54</sup> and the 1991 Constitution of Sierra Leone<sup>55</sup> are examples in this respect. Constitutions adopted after 1990 with less than 4 economic, social and cultural rights include the 1991 Constitution of Rwanda,<sup>56</sup> the Constitution of Mauritania,<sup>57</sup> the 1992 Constitution of Morocco,<sup>58</sup> and the 1992 Constitution of Djibouti.<sup>59</sup> It a nutshell, on a formal level, African countries' commitment to the implementation of economic, social and cultural rights seems to have grown largely after 1990, notably, during the same time most African countries ratified the ICESCR.

## 5 Reporting obligations

As has been noted above, State Parties are obliged to submit periodic reports to the ICESCR Committee regarding the implementation of the ICESCR. The reporting

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<sup>46</sup> It provides for the rights to development, culture, education, healthy environment, property, work and strike in arts 9-13, 22, 27-29, and 30-31.

<sup>47</sup> It provides for the right to property, development, education, culture, work, equal pay and strike in arts 27, and 31- 36.

<sup>48</sup> It provides for the rights to property, family protection, protection of the handicapped and aged from social injustice, health, education, work, and environment.

<sup>49</sup> Arts 8, 13, and 15-20 provide for the rights to culture, property, healthy environment, education, work, leisure, health, social protection, work, and strike.

<sup>50</sup> Arts 15, 19-20, 22, and 26-28 guarantee the rights to education, family protection, property, work, strike and healthy environment.

<sup>51</sup> Principles of state policy are contained in chapter 6 while arts 20, 24, 25, 27, 29, and 30 provide for property, work, education, culture, and protection of women, children and the disabled.

<sup>52</sup> Principles of state policy are contained in chapter III while arts 28, 25, 26, 30, 29, and 31 provide for the rights to economic activity, education, culture, work, fair and free labour practices, strike, to form and join trade union, economic, social and cultural development and healthy environment.

<sup>53</sup> See arts 14, 16, 19 and 20, and chapter 11

<sup>54</sup> See art 44 and chapter II.

<sup>55</sup> See art 21 and chapter II.

<sup>56</sup> Arts 23, 24, 30, 32, 26 and 27 provide for the rights to property, family protection, work, strike, and education.

<sup>57</sup> Arts 12, 14 and 15 guarantee the right to property strike and work.

<sup>58</sup> Arts 12-15 guarantee the rights to work, education, strike and property.

<sup>59</sup> Arts 14 and 15 guarantee the rights to strike, to join trade unions and property.

obligation achieves a variety of objectives.<sup>60</sup> Firstly, it offers an opportunity to reaffirm a State Party's commitment to respect the rights of its citizens and to reassert that commitment in the domestic political forum. Secondly, it offers the reporting state an opportunity for domestic stocktaking and for the adoption of measures to remedy any shortcomings which have been identified. Again, an opportunity is created for a State Party to proclaim to the international community that it is seriously concerned about its human rights obligations. So too does state reporting provide the State Party with an occasion to undertake a comprehensive review of national legislation, administrative rules and procedures in order to ensure the fullest possible conformity with the provisions of the Convention. Lastly, the reporting process acts as a catalyst to the formulation of appropriate policies to solve the problems that are identified.

As has been noted above, 44 African countries have ratified the ICESCR. This is merely a formal commitment. Only about four countries are up to date with their reporting obligations. These include Algeria, Benin, Morocco and Sudan.<sup>61</sup> The following countries have submitted at least one report under the ICESCR- Cameroon (2), Congo (1), Democratic Republic of Congo (1), Egypt (1), Gambia (1), Guinea (1), Kenya (1), Libyan Arab Jamahiriya (2), Madagascar (2), Mali (1), Mauritius (1), Morocco (2), Nigeria (1), Rwanda (1), Senegal (2), Sudan (1), Togo (1), Tunisia (2), Tanzania (1), Zambia (1) and Zimbabwe (1). However, these countries still have overdue reports to submit.<sup>62</sup> About 19 countries have not submitted any report. These include Burkina Faso (1), Burundi (2), Cape Verde (2), Central African Republic (3), Chad (1), Cote d' Ivoire (2), the Democratic Republic of Congo (2), Equatorial Guinea (3), Ethiopia (2), Gabon (3), Guinea Bissau (2), Lesotho (2), Malawi (2), Namibia (1), Niger (3), Seychelles (2), Sierra Leone (1), Somalia (2) and Uganda (3). Although not reporting or late reporting may not reflect a poor human rights situation, reporting is an obligation State Parties undertook to fulfill. It is only through reporting that a State party's respect for the rights guaranteed in

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<sup>60</sup> For more details see P Alston "The purposes of reporting" in *Manual on human rights reporting 1997* 19-24.

<sup>61</sup> Algeria and Morocco have so far submitted 2 reports each while Benin and Sudan have submitted an initial report each.

<sup>62</sup> Cameroon (1), Congo (3), Democratic Republic of Congo (2), Egypt (2), Gambia (3), Guinea (3), Kenya (1), Libyan Arab Jamahiriya (2), Madagascar (3), Mali (3), Mauritius (2), Morocco (2), Nigeria (1), Rwanda (3), Senegal (2), Togo (3), Tunisia (1), Tanzania (3), Zambia (3) and Zimbabwe (1).

the ICESCR can be assessed fairly and objectively.<sup>63</sup> Sadly, about half of the African countries that have ratified the ICESCR have not reaffirmed their commitment to the implementation of the ICESCR and most of the few that have done so still have overdue reports.

## **6 Areas on which the ICESCR has had little impact**

The periodic reports testify strongly for the fact that African States have adopted a variety of measures to implement economic, social and cultural rights in addition to legislative measures. Such other measures have included the establishment of ministries of human rights,<sup>64</sup> ministries of women's affairs,<sup>65</sup> the office of the Ombudsman,<sup>66</sup> human rights education institutions and human rights commissions,<sup>67</sup> just to mention a few, in various countries.

There are however a number of areas common to African States on which the ICESCR has had little impact. The first relates to the plight of women. The ICESCR Committee has noted that despite the presence of domestic legislation proscribing discrimination against women in most African States, systemic discrimination against women still subsists. In Morocco, for instance, women are discriminated against as regards family and personal status and by inheritance law.<sup>68</sup> In Sudan, women's participation in public life is particularly restricted.<sup>69</sup> In Nigeria, discrimination against women is pronounced at the workplace in terms of access to employment, promotions and equal pay.<sup>70</sup> In Zimbabwe, the Gambia, Cameroon and Libyan Arab Jamahiriya, traditional practices of arranged marriages and forced marriages of widows are still prevalent.<sup>71</sup> The Committee

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<sup>63</sup> Oloka-Onyango (n 3 above).

<sup>64</sup> Eg in Morocco, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Morocco.01/12/2000. E/C.12/1/Add.55.

<sup>65</sup> Eg in Cameroon and Nigeria. See Concluding Observations of the Committee on Economic, Social and Cultural Rights: Cameroon 08/12/99. E/C.12/1/Add.40; and Concluding Observations of the Committee on Economic, Social and Cultural Rights: Nigeria13/05/98. E/C.12/1/Add.23.

<sup>66</sup> Eg in Morocco (n 64 above).

<sup>67</sup> Eg in Nigeria (n 65 above) and Algeria, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Algeria. 08/12/95. E/C.12/1995/18, paras 278-305. n 66 above.

<sup>69</sup> See Concluding Observations of the Committee on Economic, Social and Cultural Rights: Sudan. 01/092/2000. E/C.12/1/Add.48.

<sup>70</sup> n 65 above.

<sup>71</sup> See Concluding Observations of the Committee on Economic, Social and Cultural Rights: Zimbabwe. 20/05/97. E/C.12/1/Add.12; Concluding Observations of the Committee on Economic, Social and Cultural Rights: The Gambia, UN Doc.E/C.12/1994/9 (1994);

has also raised alarm at the prevalence of such practices like domestic violence, sexual harassment and genital mutilation which affect women's health rights.<sup>72</sup>

The other area relates to the standard of living. The periodic reports and the concluding observations made thereon reveal that the standard of living in African countries is still very low. Great disparity exists between people living in rural and urban areas. Access to food, clean water and other basic amenities is remarkably limited. In Guinea, Mauritius and Cameroon, for instance, more than 50% of the population lives below the poverty line.<sup>73</sup> In Libyan Arab Jamahiriya, 68.8% of urban families do not have enough food while malnutrition is as high as 40%.<sup>74</sup> Similar situations obtain in such countries like Nigeria, Sudan, Morocco, Tunisia, Cameroon, Mali, and Kenya, just to mention a few.<sup>75</sup>

As regards children, access to education is limited<sup>76</sup> and the school drop out rate is high. For instance, Tunisia has a 50% school drop out rate while Nigeria has a school drop out rate of over 20%.<sup>77</sup> In Morocco less than 50% of the children attend primary school.<sup>78</sup> The situation of the girl child is actually worse. Apart from this, absence or lack of measures to ensure social security and shortage of housing also remain subjects of concern in most of African Countries, at least in those that have reported.<sup>79</sup>

The ICESCR Committee has noted various factors that have impeded the full implementation of the ICESCR in African countries. Those that are common to most countries include lack of the rule of law due to political instability and civil wars. This has been noted in respect of Nigeria, Tunisia, Sudan, the Gambia, Guinea, Kenya and

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Concluding Observations of the Committee on Economic, Social and Cultural Rights: Zimbabwe. 20/05/97. E/C.12/1/Add.12; and n 28 above in respect of Libya.

<sup>72</sup> Eg in Algeria, Nigeria, the Gambia, Guinea and Cameroon. See n 65, 67 and 71 above. For Guinea, see Concluding Observations of the Committee on Economic, Social and Cultural Rights: Guinea 28/05/96. E/C.12/1/Add.5.

<sup>73</sup> For Cameroon see n 65 above. For Guinea, see n 72 above. For Mauritius, see Concluding Observations of the Committee on Economic, Social and Cultural Rights: Mauritius 07/05/96. E/C.12/1995/18.

<sup>74</sup> n 28 above.

<sup>75</sup> See concluding observations in respect of each country mentioned.

<sup>76</sup> Eg in Kenya, Morocco, Mauritius and Guinea, etc.

<sup>77</sup> n 65 above and Concluding Observations of the Committee on Economic, Social and Cultural Rights: Tunisia 14/05/99. E/C.12/1/Add.36.

<sup>78</sup> n 64 above.

<sup>79</sup> Eg in Zimbabwe, Nigeria, Guinea and Kenya, see concluding observations in respect of each.

Mali.<sup>80</sup> The second common impeding factor has been the servicing of foreign debt and the implementation of structural adjustment programmes.<sup>81</sup> Interestingly, the Committee has made no statement unfavourable to the Bretton woods institutions in this regard.<sup>82</sup> Lastly, the persistence of traditional practices and attitudes deeply entrenched in African societies has been an obstacle difficult to surmount regarding the implementation of economic, social and cultural rights of women and children in Africa.<sup>83</sup> It is noteworthy that the Committee has not noted such factors like corruption and misallocation of resources as other factors that impede the full realization of these rights in Africa.

## 7 Conclusion

In conclusion, it is clear from the discussion above that the ICESCR has impacted Africa in a way that cannot be ignored. African states have shown overwhelming formal commitment to economic, social and cultural rights by ratifying the ICESCR widely and by not making reservations that depart radically from the obligations of the Covenant. Apart from the formal commitment, a considerable number of African states have entrenched economic, social and cultural rights as justiciable rights in their Constitutions. Other measures including setting up domestic institutions have been set up to implement these rights. It is, however, worrying to note that most African States have not fulfilled their reporting obligations. This casts doubts on the reality of the commitment of African States to implement these rights beyond the paper. It also becomes difficult to identify factors that impede the full implementation of these rights and areas where much has not been done, as has been shown above, for possible future remedial attention.

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<sup>80</sup> See Concluding Observations in respect of each.

<sup>81</sup> See Concluding Observations in respect of Morocco, Libyan Arab Jamahiriya, Tunisia, Cameroon, Sudan, the Gambia, and Kenya.

<sup>82</sup> Yet, it has been argued that “the policies of the international financial institutions (IFIs) have resulted in substantial violations of economic, social and cultural rights within the range of developing nations, particularly the poorest countries with the least economic or political leverage.” Leckie (n 2 above) 112.

<sup>83</sup> See Concluding Observations in respect of Morocco, Tunisia, Cameroon, and the Gambia.