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# Protecting socio-economic rights internationally

## CHAPTER 3



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## KEY WORDS

Adopt	Formally accept something, eg adopt a treaty through ratification.
Binding/Bound	What must be followed as the law – means the same as ‘legally binding’. After it ratifies a treaty, a State is bound by the treaty.
Civil society	Non-State role players, such as non-governmental organisations, community organisations and trade unions.
Compliance/Comply	Whether or not countries carry out their obligations under treaties.
Customary international law	Practices that States accept and follow over time, eg not discriminating on grounds of race or sex – also called ‘international custom’.
Domestic remedies	Relief or solutions for violations of human rights available within a State. For you to approach an international monitoring body for relief, you must ‘exhaust domestic remedies’ first, meaning that you must first try everything possible within your own legal system to find a solution, eg go to the highest court in the land.
International instruments	International documents like conventions, declarations, treaties and charters.
Jurisdiction	The power that a State has over an area or people – also often used to refer to the power of courts to decide a particular issue.
Marginalisation	Being sidelined and excluded.
Mechanisms	Methods, tools or procedures to help enforce treaties.
Non-binding	What you can use as a guide, but do not have to follow.
Obligations	Duties.
Petition	A formal written statement to claim a right or complain about something. Also called ‘complaint’ or ‘communication’.

Provisions	Sections and clauses in formal documents like laws, regulations, treaties and charters.
Ratify	Accept that a treaty is binding, and respect and carry out duties under the treaty.
Shadow report	Unofficial NGO report with information, statistics and analysis on whether a country is complying with its treaty obligations, alongside the official report of the Government – also called a ‘parallel’ or ‘alternate’ report.
Special procedures	When special rapporteurs, experts or working groups gather information and report on specific human rights violations or the situation in a particular country.
Special rapporteur	A person appointed by a committee or commission to act as the official monitor and reporter on a particular issue, eg on the right to education, or on human rights in a country.
State party	A State that has adopted and is bound by a particular treaty.
Submissions	Verbal or written views, eg to a reporting body.
Remedy	An order by a court or other body that prevents a human rights violation, or requires a body to take certain steps to correct a human rights violation, or compensates you when your rights have been violated. A remedy can also mean finding solutions in other ways, eg through negotiation or mediation.
Treaty	An international agreement between States creating rights and duties that are legally binding under international law. Also called a ‘convention’, ‘covenant’ or ‘charter’.

## 3.1

# Introducing international law

### Abbreviations for international documents

African Charter	African Charter on Human and Peoples' Rights, 1981
African Children's Charter	African Charter on the Rights and Welfare of the Child, 1990
African Women's Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women, 1979
CERD	International Convention on the Elimination of All Forms of Racial Discrimination, 1966
CRC	Convention on the Rights of the Child, 1989
ICESCR	International Covenant on Economic, Social and Cultural Rights, 1966
ICCPR	International Covenant on Civil and Political Rights, 1966
Refugee Convention	Convention Relating to the Status of Refugees, 1951
UDHR	Universal Declaration of Human Rights, 1948

### Abbreviations for international supervisory bodies

African Commission	African Commission on Human and Peoples' Rights
African Committee	African Committee of Experts on the Rights and Welfare of the Child
African Court	African Court on Human and Peoples' Rights
CESCR	Committee on Economic, Social and Cultural Rights
CEDAW Committee	Committee on the Elimination of All Forms of Discrimination Against Women
CERD Committee	Committee on the Elimination of Racial Discrimination
CRC Committee	Committee on the Rights of the Child
ECOSOC	Economic and Social Council

### 3.1.1 What is international law?

International law is the law that mainly governs relations between States. However, it increasingly also regulates the conduct of other actors, including individuals, international organisations, insurgents and national liberation movements.

The two most important sources of international law are:

- International treaties.
- International custom.

#### a) International treaties

Treaties are international agreements entered into by States. A treaty can be:

- *Bilateral* if it is agreed to by two States, or
- *Multilateral* if it is agreed to by more than two States.

#### Some important concepts for understanding treaties

<i>Declarations</i>	Unlike a treaty, a declaration is not legally binding on the States that have adopted it. But declarations can lead to the formation of binding obligations through customary international law. They may also be considered when interpreting provisions of treaties. Declarations can be made by the United Nations (UN) General Assembly, such as the <i>Universal Declaration of Human Rights, 1948 (UDHR)</i> . Declarations can also be adopted by international conferences, for example, the <i>1974 Universal Declaration on the Eradication of Hunger and Malnutrition</i> that was adopted at the World Food Conference.
<i>Protocol</i>	An additional agreement to the main treaty. States can decide for themselves whether they also want to become a party to this additional agreement. For this reason, they are also sometimes called 'Optional Protocols'. An example is the <i>1989 Second Optional Protocol to the International Covenant on Civil and Political Rights</i> , aimed at the abolition of the death penalty.
<i>Ratification</i>	When a State ratifies a treaty after it has signed it, it means the State declares that it is now formally 'a State party' to the treaty. It is then bound under international law by the treaty, and must respect the rights and carry out the duties of the treaty. A treaty will normally say that a certain number of States must ratify it before it comes into force. Sometimes the word 'accession' is used instead of 'ratification'. Although there is a technical difference, the effect is the same. The word ratification will be used throughout this book.
<i>Reservations</i>	Statements made by a State at the time of becoming a party to the treaty, for example, that it wants to exclude or change the legal effect of certain parts of the treaty on that State.
<i>Signature</i>	When a State signs a treaty, it usually shows that the State intends to become party to the treaty. Once a State has signed a treaty, it must not act in a way that defeats the aim and purpose of the treaty.


Treaties address a wide range of inter-State issues including taxation, the environment, trade and cooperation between States on security and other issues. Human rights treaties are multilateral treaties.

The treaty system is based on the consent of States. The decision to adopt a particular treaty is made by each State out of its own free will. A State also has the right to renounce (formally withdraw from) the treaty it has ratified if it no longer wants to be bound by it.

Human rights treaties are either adopted by States under the control of the UN or at regional level under the control of a regional organisation such as the African Union (AU), for example:

- A UN treaty: the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).
- A regional treaty: the *African Charter on Human and Peoples' Rights* (African Charter).

## b) Customary international law

<b>EXAMPLE</b>	<p><i>The principle of non-discrimination on the grounds of race and sex.</i></p>
	
<b>INTERNATIONAL CUSTOM</b>	

*Customary international law* is made up of rules of law flowing from the consistent conduct of States acting out of the belief that the law requires them to act in that way. In order for a practice to become a rule of customary international law, it must be accepted and followed by States over time out of a sense of legal obligation.

The practice must be followed by a significant number of States and not rejected by a significant number of States. In this way, States are bound by rules of customary international law without signing and ratifying them as a treaty.

## 3.1.2 The development of international human rights law

### a) Forming the United Nations

The Second World War set the stage for the development of an international system for protecting and promoting human rights. It highlighted the need for some form of action by the international community to prevent another war and widespread violations of human rights. It also showed that domestic legal systems (the legal systems of particular countries) were not enough to protect the human rights of people living in those countries.

One of the leading advocates for recognising international human rights law was President Franklin D Roosevelt. In his famous 'Four Freedoms' speech, he argued for a new world order governed by four key freedoms – freedom of speech and expression, freedom of worship, freedom from want, and freedom from fear. This speech inspired the development of the current international system of human rights.



The basis for developing international human rights law was set out in the UN Charter that established the UN in 1945. While the UN Charter did not actually create a system for protecting human rights, it clearly recognised the promotion of and respect for human rights as an important goal to be achieved by the UN and its Member States.

South Africa played an important role in the creation of the UN and has been a party to the UN Charter since the beginning. However, South Africa was also one of the eight countries that abstained from adopting the UDHR. South Africa's apartheid policies of racial discrimination led to a number of steps being taken against it by the UN. In 1974, South Africa was excluded from participating in the General Assembly of the UN and from participating in the activities of a number of specialised agencies of the UN, such as the International Labour Organisation (ILO) and the Food and Agriculture Organisation (FAO).

## **b) Adopting the Universal Declaration of Human Rights**

The rights and freedoms referred to in the UN Charter were first defined in the UDHR. This declaration was adopted by the General Assembly of the UN in 1948. As it is not a treaty, it is not a legally binding document.

However, today the UDHR is almost universally accepted as being the main guide to the meaning of the human rights commitments in the UN Charter, and most of its provisions have been included in treaties and national constitutions. Some of its provisions have also become part of customary international law. Significantly, the UDHR protects both civil and political rights *and* socio-economic rights.

## **c) Adopting the ICESCR and the ICCPR**

Efforts to transform the UDHR into a legally binding treaty led in 1966 to the UN General Assembly adopting the ICESCR and the *International Covenant on Civil and Political Rights* (ICCPR). These covenants came into force in 1976 when enough States had ratified them.

The ICESCR protects economic, social and cultural rights, while the ICCPR protects civil and political rights. These treaties were adopted separately because of the disagreements between States that arose during the negotiations leading to their adoption. Western States argued for the recognition of civil and political rights only, but not socio-economic rights. The reasons for this centred on the possible differences between the two sets of rights. Socio-economic rights were considered to be positive rights requiring States to take action. They were therefore expensive rights that could not be easily realised.

Socio-economic rights were also considered to be unsuitable for judicial enforcement because they involved resource allocation – a function seen as part of the mandate for the legislative and executive branches of governments. Eastern States argued for recognising socio-economic rights because these rights were consistent with their political ideology at the time.

Adopting two separate treaties marked a victory for the Western States:

- Socio-economic rights in the ICESCR were defined with internal limitations. These rights were to be realised “progressively” and “within available resources”. No specific monitoring body was created for them and they did not have individual or State complaint mechanisms.
- Civil and political rights in the ICCPR were defined without internal limitations. The Human Rights Committee was created to monitor their implementation. It was given power to hear individual and inter-State complaints, and to consider State reports on realising these rights.

Since then, socio-economic rights have suffered from a lack of proper legal recognition and from inferior enforcement mechanisms.

At the time of writing, there are 151 State parties to the ICESCR, and 154 to the ICCPR. South Africa signed the ICESCR and the ICCPR on 3 October 1994. However, it ratified the ICCPR only on 10 December 1998 and has to date not ratified the ICESCR.

The fact that South Africa has a progressive *Constitution (Act 108 of 1996)* that recognises a wide range of socio-economic rights is not a justification for not ratifying the ICESCR. South Africa should have nothing to fear by ratifying the ICESCR since obligations under our ICESCR would be similar to its duties under our Constitution.

#### EXAMPLES



#### ADVANTAGES OF RATIFYING THE ICESCR

- South Africa would be able to call for international assistance from other State parties to the ICESCR to implement its socio-economic rights obligations under the ICESCR. This is because this treaty recognises the significance of international cooperation and assistance in realising these rights.
- The ICESCR could be an important bargaining tool with international financial institutions to resist donor or trade conditions that may compromise realising socio-economic rights under the ICESCR.

### d) Other human rights treaties

The UDHR, the ICESCR, and the ICCPR and its two Optional Protocols, form what is known as the *International Bill of Rights*. These documents contain the core of the human rights standards recognised by the international community.

There are a number of other treaties within the UN system dealing with human rights. Most of these treaties are specialised, as they deal with a specific issue or subject.

#### EXAMPLES



#### UN HUMAN RIGHTS TREATIES

- *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*, 1965.
- *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, 1979.
- *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*, 1984.
- *Convention on the Rights of the Child (CRC)*, 1989.


### 3.1.3 Regional systems for protecting human rights

In addition to the UN system for human rights protection, three regions in the world (Europe, the Americas and Africa) have developed their own regional human rights mechanisms.

Regional systems add to the international system of human rights in many ways:

- Regional treaties can consider the specific circumstances affecting the region in defining the rights to be protected. At the international level, regional circumstances may not be fully reflected because of the compromises reached during negotiating treaties.
- Regional mechanisms for protecting human rights can also be more accessible than the UN ones, with less distance and fewer costs needed to monitor or enforce the rights.

The African regional system was established in 1981 when the African Charter was adopted by the Organisation of African Unity (OAU). The OAU has since been dissolved and replaced by the African Union (AU). Since 1981, two more human rights treaties have been adopted in Africa focusing on protecting children's rights and women's rights.


<b>EXAMPLES</b>	
	
<b>TREATIES IN THE AFRICAN REGIONAL SYSTEM</b>	<ul style="list-style-type: none"> <li>• <i>African Charter on Human and Peoples' Rights, 1981.</i></li> <li>• <i>African Charter on the Rights and Welfare of the Child, 1990.</i></li> <li>• <i>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003.</i></li> </ul>

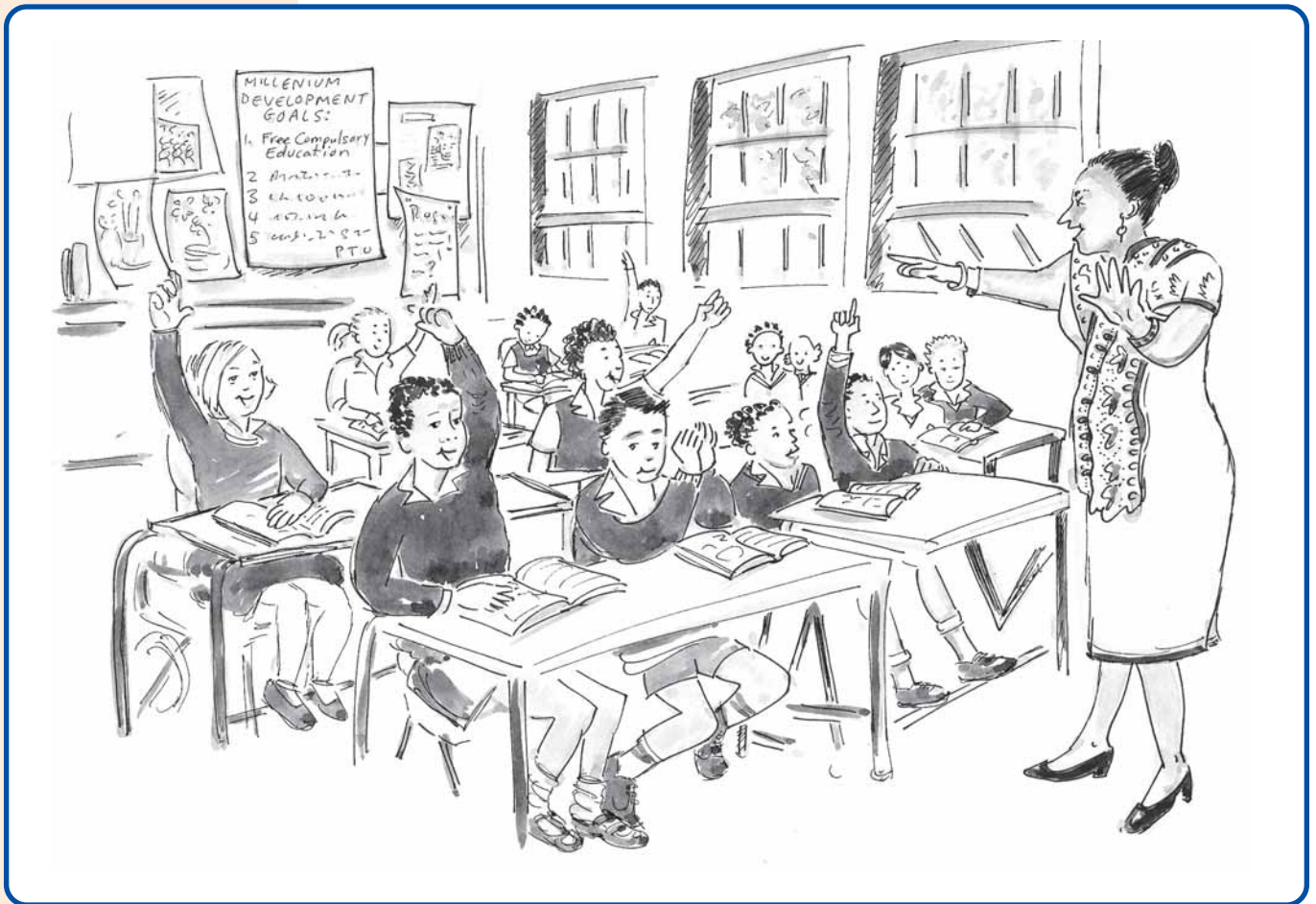
### 3.1.4 International and regional policies

#### a) Millennium Development Goals

On 8 September 2000, the UN General Assembly adopted the *UN Millennium Declaration* affirming the principles and purposes of the UN Charter.

Through this Declaration, world leaders agreed to set time-bound and measurable goals for combating poverty and environmental degradation, protecting the vulnerable, promoting and protecting human rights and democracy, meeting the special needs of Africa, and securing peace and security.

<b>EXAMPLES</b>	
	
<b>DEVELOPMENT GOALS FOR 2015</b>	<ul style="list-style-type: none"> <li>• <i>Halve extreme poverty and hunger.</i></li> <li>• <i>Achieve universal primary education.</i></li> <li>• <i>Empower women and promote equality between women and men.</i></li> <li>• <i>Reduce the mortality of children under the age of 5 by two-thirds.</i></li> <li>• <i>Reduce maternal mortality by three-quarters.</i></li> <li>• <i>Reduce the spread of diseases, especially HIV and malaria.</i></li> <li>• <i>Ensure environmental sustainability.</i></li> <li>• <i>Create global partnership for development, with targets for aid, trade and debt relief.</i></li> </ul>



These goals, now popularly known as the *Millennium Development Goals* (MDGs), provide a framework for the UN and all States to work towards achieving a common goal. With assistance from the UN and other international organisations, States have to integrate the MDGs in their programmes and policies. The UN Secretary General prepares a global report on the extent of achieving the MDGs. Countries have also begun to produce their own reports to complement the global report of the UN Secretary General.

Civil society has a role to play in ensuring that States make progress in achieving the MDGs. In order to effectively monitor your country's progress, you can join the Millennium Campaign, an initiative of the UN that supports efforts of people aimed at holding their governments accountable for the MDGs.

To link with the Millennium Campaign, see our useful websites on page 124.

## **b) NEPAD**

### **What is NEPAD?**

*The New Partnership for Africa's Development* (NEPAD) is an important economic and development programme adopted by African leaders in 2001 to eradicate poverty and to participate actively in the world economy. It aims to end Africa's underdevelopment and marginalisation from the globalisation process.

The long-term aims of NEPAD are:

- To eradicate poverty in Africa and to place African countries, both individually and collectively, on a path of sustainable growth and development, and thus halt the marginalisation of Africa in the globalising process.
- To promote the role of women in all activities.

The expected outcomes of NEPAD are:

- Economic growth and development, and increased employment.
- Reducing poverty and inequality.
- Diversifying productive activities.
- Enhancing international competitiveness and increased exports.
- Increasing African integration.

NEPAD has a Programme of Action that identifies three priority areas – securing conditions for sustainable development, undertaking policy reforms and increased investment in certain identified priority sectors, and mobilising resources.

### **The Implementation Committee**

At the time of its adoption, the NEPAD document did not set out any mechanism for its implementation. This task was left to the Heads of State promoting the initiative, working under a Heads of State Implementation Committee, consisting of five Heads of States (the promoters of NEPAD) and 15 others to be appointed (three for each region). The AU Chairperson and the Head of the AU Commission are also part of the Committee.

The powers of this Committee are to identify strategic issues, set up mechanisms for reviewing progress on the mutually agreed targets, and review progress in the implementation of past decisions. The Committee reports to the AU Assembly of Heads of State and Government annually.

### **The African Peer Review Mechanism**

The main monitoring body of NEPAD is now the African Peer Review Mechanism (APRM). States choose whether to participate in the review mechanism or not. The APRM has four parts:

- The Committee of Participating Heads of State and Government (called the *APR Forum*) acts as the highest decision-making authority in the APRM process.
- The Panel of Eminent Persons (called the *APR Panel*) oversees the review process, considers review reports and makes recommendations to the APR Forum. The APR Panel is made up of between five and seven eminent persons, who have distinguished themselves in careers relevant to the work of the APRM.
- The APRM Secretariat provides the secretarial, technical, coordinating and administrative support services for the APRM.



For details about countries accepting the APRM and the review of participating countries, see NEPAD's website address on page 124.

- A Country Review Team is appointed only for the period of a country review visit. Its composition has to be carefully designed to enable an integrated, balanced, technically competent and professional assessment of the reviewed country, and is approved by the APR Panel.

The APRM is designed to assess the quality of a participating country's draft Programme of Action and help it to strengthen its capacity to implement it. Once approved, follow-ups are made to check on the country's progress in implementing the Programme of Action. So far, 23 countries, including South Africa, have voluntarily agreed to the APRM.

Civil society has a role to play in the APRM process. Non-governmental organisations (NGOs) can bring important information, including information on human rights, to the attention of the APRM. This can help to assess the Programme of Action of a country under review. For example, civil society was allowed to participate in the review process conducted by members of the APRM in South Africa in November 2005.

## NEPAD and realising socio-economic rights in Africa

NEPAD is an economic programme, rather than an international treaty. Its legal basis in international law is therefore weak. Its main focus is on eradicating poverty and facilitating the development of the continent.

Realising human rights does not form part of the priority areas of NEPAD, although reference to human rights is made in it. Its implementation mechanisms are also not linked to the regional human rights monitoring bodies on the continent such as the African Commission on Human and Peoples' Rights (African Commission).

### EXAMPLES



### OPPORTUNITIES TO USE NEPAD TO HELP REALISE SOCIO-ECONOMIC AND OTHER RIGHTS

- *In the review process, the APRM mechanism pays attention to the human rights record of a country. While the weight given to a country's commitment to human rights remains unclear, the review process offers an opportunity for bringing important human rights concerns in the country under review to international attention.*
- *Realising NEPAD's aims may also involve realising socio-economic rights, because poverty and socio-economic rights overlap in important ways. Ending poverty may mean better enjoyment of socio-economic rights, while realising socio-economic rights is also vital in efforts to do away with poverty.*

These opportunities show us that it is important for civil society to take the APRM process seriously and to participate in it to advance socio-economic rights.

## 3.2

# Socio-economic rights in international human rights law

### 3.2.1 Strengthening the protection of socio-economic rights

Although the adoption of the ICCPR and the ICESCR as separate treaties weakened the protection of socio-economic rights, the international community has since stressed that all rights are 'indivisible and interdependent'. This was reinforced in the *Vienna Declaration and Programme of Action* adopted by the World Conference on Human Rights in 1993.

In keeping with this belief, the international community has increasingly accepted that the enforcement mechanisms for economic, social and cultural rights need to be strengthened.

#### EXAMPLES



#### OPPORTUNITIES FOR MAKING COMPLAINTS

- *Economic, social and cultural rights under CERD, the African Charter, the African Children's Charter, and the African Women's Protocol are subject to individual and inter-State complaints.*
- *The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women was adopted on 12 March 1999, providing for both individual petitions and an enquiry procedure. It came into force on 22 December 2000.*
- *The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights was adopted in 1988 and came into force on 16 November 1999. It provides for individual petitions to the Inter-American Commission and Inter-American Court on Human Rights for alleged breaches of trade union rights and the right to education.*
- *The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints was adopted in 1995 and came into force on 7 January 1998. This Protocol allows NGOs, trade unions and employers' organisations to refer complaints alleging breaches of the Charter to the Committee of Independent Experts.*

In 2001, the UN Commission on Human Rights appointed an independent expert to examine the question of an Optional Protocol to the ICESCR. At its 59<sup>th</sup> session, the Commission established a working group to consider options for this Optional Protocol. The working group was mandated to report to the Commission at its 60<sup>th</sup> session and make specific recommendations. Once adopted, this Optional Protocol will give economic, social and cultural rights similar enforcement tools to the ones used for civil and political rights in the ICCPR.

NGOs with an interest in socio-economic rights and UN Economic and Social Council (ECOSOC) consultative status can attend meetings of the working group. Many NGOs are also working together to push for the adoption of the Optional Protocol. They include the Economic, Social and Cultural Rights Network and the International Commission of Jurists.

For details of the websites of these structures and information on the Optional Protocol, see the websites listed on page 124.

### 3.2.2 Key treaties protecting socio-economic rights

#### ICESCR

##### **Rights protected:**

The most important UN treaty dealing with socio-economic rights is the ICESCR. It protects the right to work and to just and favourable conditions of work, trade union rights, the right to social security, family rights, the right to an adequate standard of living (including adequate food, clothing and housing), the right to health, and educational and cultural rights.

##### **Monitoring:**

The supervisory body is the Committee on Economic, Social and Cultural Rights (CESCR), established under the ECOSOC Resolution 1985/17 of 28 May 1985. The CESCR has the power to receive State reports, but not to decide individual and inter-State petitions. The draft Optional Protocol to the ICESCR (to extend the powers of the CESCR to receive and determine individual and inter-State petitions) is still being considered.

#### CERD

##### **Rights protected:**

CERD prohibits discrimination based on race. It calls on States to eliminate racial discrimination in all its forms and to guarantee the right of everyone to enjoy human rights. The rights listed include the right to work, trade union rights, the right to housing, the right to public health, rights to medical care, social security and social services, the right to education and training, and the right to equal participation in cultural activities.

##### **Monitoring:**

The implementation of CERD is monitored by the Committee on the Elimination of Racial Discrimination (CERD Committee). This Committee has the power to receive State reports and inter-State complaints, and individual complaints (in cases where the State against which the complaint is made has accepted the right of the Committee to receive individual complaints).

#### CEDAW

##### **Rights protected:**

A number of articles of CEDAW deal with women's equal access to socio-economic rights. These include rights dealing with education, work, health, rural women and the family.

##### **Monitoring:**

The supervisory body is the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee). It has the power to receive State reports. Individual petitions may be brought against States that have ratified the Optional Protocol to CEDAW.

#### CRC

##### **Rights protected:**

Some parts of the CRC deal with children's socio-economic rights. These rights focus on the survival and development of the child, family responsibilities, children living with mental or physical disabilities, health, social security, an adequate standard of living and education.

##### **Monitoring:**

The supervisory body is the Committee on the Rights of the Child (CRC Committee). This body has the power to receive State reports.



## Refugee Convention

### Rights protected:

Parts of this Convention deal with socio-economic rights of refugees including employment, rationing of products in short supply, housing, education, public relief, labour legislation and social security.

### Monitoring:

The Office of the High Commissioner for Refugees is the supervisory body. It can request information and statistics from States.

## African Charter

### Rights protected:

For South Africa, the most important regional treaty protecting socio-economic rights is the African Charter. It protects these socio-economic rights: work, health, education, development, environment, and special assistance to the family, children, the aged, and people living with disabilities.

### Monitoring:

The supervisory body is the African Commission on Human and Peoples' Rights. This body has the power to receive State reports, inter-State and individual complaints, and undertake investigations. On 25 January 2004, the *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights* came into force. The Court will have the protective mandate, while the African Commission will retain the mandate to promote these rights.

## African Children's Charter

### Rights protected:

The African Charter on the Rights and Welfare of the Child has various articles protecting children's socio-economic rights. These deal with the survival and development of the child, education, children living with disabilities, health, child labour, family responsibilities, and the right to development.

### Monitoring:

The supervisory body is the African Committee of Experts on the Rights and Welfare of the Child (African Committee). It has the power to receive State reports, inter-State and individual complaints, and undertake investigations.

## African Women's Protocol

### Rights protected:

The AU adopted the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* on 11 July 2003. It is yet to become operational. The African Women's Protocol protects a wide range of the rights of women, including these socio-economic rights: education, work, health and reproductive rights, food security, adequate housing, positive cultural context, peace, development and environment.

### Monitoring:

The African Commission and the African Court have the same powers to monitor the implementation of this Protocol as they have for the African Charter.

Other examples of regional treaties protecting economic and social rights:

- In Europe, the *European Social Charter* (1961).
- In the Inter-American System, the *American Convention on Human Rights* (1969) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988).

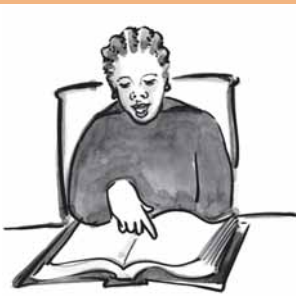
### 3.2.3 Interpreting socio-economic rights under international law

Socio-economic rights remain underdeveloped compared to civil and political rights due to the fact that they have received too little legal protection in international and domestic law. There is now an increasing body of materials that can help us to understand the content of these rights.

We have seen how some of the supervisory bodies have the power to receive petitions. The views of these bodies given in their decisions become authoritative interpretations of these rights. For example:

- The Human Rights Committee of the ICCPR has found violations of some civil and political rights in cases based on facts revealing violations of socio-economic rights.
- The African Commission has handed down a number of decisions interpreting socio-economic rights and finding States responsible for violating rights under the African Charter.

#### COURT CASE



#### NIGERIA

In *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria* (Communication 155/96), the African Commission decided that:

- Nigeria had violated a range of rights, including the right not to be discriminated against, the right to life, the right to property, the right to health, the right to family protection, the right of peoples to freely dispose of their wealth and natural resources, and the right to a general satisfactory environment.
- Nigeria had violated the right to housing and the right to food, which are not expressly (directly) recognised by the African Charter.

According to the African Commission, the right to housing is implicitly (indirectly) recognised by a combined reading of the rights to property, family protection, and to enjoy the best attainable state of mental and physical health. Similarly, the right to food is implicitly recognised by a combined reading of the provisions guaranteeing the rights to life, and to enjoy the best attainable state of physical and mental health, and economic, social and cultural development. The Commission decided Nigeria had violated these rights because it:

- Allowed its military forces to be used by oil companies to perpetrate various human rights violations.
- Did not regulate and control the oil companies to prevent polluting the environment.

## COURT CASE



## THE GAMBIA

In *Purohit and Moore v The Gambia* (Communication 241/2001), the complainants argued that:

- The Lunatic Detention Act, the principal legislation governing mental health, was outdated and inadequate to protect the rights of mental patients.
- The Act did not provide safeguards to protect the rights of people undergoing diagnosis for mental illness, and during their certification and detention as mental patients.
- The Psychiatric Unit, where mental patients were detained, was overcrowded, the living conditions in the Unit were poor, and people were treated without giving consent.

The African Commission decided that The Gambia had violated the right to health and other rights.

## a) General Comments

For information on interpreting our Bill of Rights, see page 111.

For a list of General Comments, see page 122.

Supervisory bodies established under UN treaties or human rights systems have established a practice of adopting General Comments that interpret specific provisions of treaties.

The CESCR has issued 16 General Comments on the ICESCR. The purpose of these General Comments is to help clarify the meaning of the rights and duties in the Covenant. General Comments have also been useful in interpreting the provisions of the South African Constitution's Bill of Rights.

## EXAMPLE



## GENERAL COMMENT 3

*The CESCR's General Comment No. 3 on the nature of State party obligations has been used by the Constitutional Court to interpret "progressive realisation" in section 27 of the South African Bill of Rights. In the **Government of the Republic of South Africa and Others v Grootboom and Others** (Grootboom case), the Court referred to paragraph 9 of General Comment 3 and said that:*

*"Although the Committee's analysis is intended to explain the scope of State parties' obligations under the Covenant, it is also helpful in plumbing the meaning of 'progressive realisation' in the context of our Constitution" (paragraph 45 of judgment).*

## b) Concluding Observations

When considering State reports, some supervisory bodies adopt Concluding Observations. These are comments, concerns and recommendations made by supervisory bodies after considering a State report. Concluding Observations often also include interpretations of human rights provisions and the duties they impose.

For example, the CESCR may say that particular actions of a State party (eg cutbacks in social security) are a violation of the rights to social security and an adequate standard of living protected in the ICESCR. Concluding Observations are therefore also a valuable aid to interpreting socio-economic rights provisions in our Constitution.

**Concluding observations:  
The right to social security in Zambia**

The CESCR:

- Noted its concern about the low amount of money spent on social security and that comprehensive social protection was not available to the vast majority of the population, especially low-income workers, workers older than 55 and those employed in the informal sector.
- Expressed concern that privatised social security schemes were not financially sustainable, leaving their beneficiaries without adequate protection.
- Urged Zambia to extend the protection of the National Pension Scheme Authority to cover low-income workers, workers older than 55 and workers employed in the informal sector, especially in rural areas.
- Recommended that Zambia more strongly monitor private social security schemes and funds so that these schemes are able to provide adequate social protection for their beneficiaries.

*Concluding Observations of the Committee on Economic, Social and Cultural Rights: Zambia, 2005*

**c) Powers of UN agencies**

UN agencies may also have powers to implement socio-economic rights. Examples are the United Nations Educational and Scientific Organisation

(UNESCO) and the Food and Agriculture Organisation (FAO). When carrying out their mandate, these organisations also adopt documents interpreting socio-economic rights. These can also be used when interpreting the South African Constitution.

**EXAMPLE**



**FOOD AND AGRICULTURE ORGANISATION**

*On 24 November 2004, the FAO adopted Voluntary Guidelines on the Right to Adequate Food.*

*These Guidelines provide some practical steps on how States can implement this right, and they help us understand the meaning of this right and its obligations.*

## 3.3

# Implementation mechanisms

### 3.3.1 Treaty mechanisms

Most human rights treaties create their own monitoring body. For example, each one of the six UN treaties listed on page 92, as well as the African Charter, have their own

supervisory body, whose main job is to see to it that States meet their obligations (duties) under the treaty.

The ICESCR is one of the few treaties that did not provide for a specific monitoring body. However, the ECOSOC created the CESCR to monitor the implementation of this treaty.

These supervisory bodies usually have between 10 and 23 members, who are meant to be independent human rights experts, elected by State parties. These bodies are usually called 'committees'.

The supervisory bodies use four main types of monitoring systems: reporting systems, individual complaint systems, inter-State complaint systems and investigatory systems.

#### EXAMPLES



#### BODIES SUPERVISING TREATIES

- *The supervisory body of the ICCPR is the HRC.*
- *The supervisory body of the ICESCR is the CESCR.*
- *The supervisory bodies of the African Charter are the African Commission and the African Court.*





## a) Reporting systems

States that have ratified a treaty must submit regular reports to the supervisory body on progress made in implementing the treaty, for example, reporting every two years. This procedure is based on dialogue between the supervisory body and the State party.

Once an official country report is submitted, together with other information such as an NGO shadow report, members of the supervisory body prepare a list of questions. These questions form the basis of the dialogue with the State party's representatives. At the end of the discussion, the supervisory body adopts Concluding Observations on the extent to which the State has implemented the treaty.

The problem with the reporting process is that the Concluding Observations made at the end of the process are not legally binding on States. There is no way that the supervisory body can force a State to implement the observations.

However, a conclusion that a State has not met its human rights duties can embarrass the State greatly in the international community and provide a platform for public pressure on the State to deal with the situation. Also, perceptions about a country's human rights record can affect contact between countries around tourism, trade and cultural exchanges.

## b) Individual complaint systems

The individual complaint system gives the supervisory body the power to receive written statements from individuals, who claim to be victims of violations of any of their rights protected in the particular treaty:

- After receiving the defending statement of the State that the allegation was made against, the supervisory body decides if rights have been violated (called its 'views').
- The supervisory body then recommends to the State that it gives the affected person a suitable remedy, eg pays compensation to that person.

Supervisory bodies usually do not automatically have the power to receive complaints. A State has to specifically accept the authority of the supervisory body to deal with individual complaints against it. At the moment, CERD, ICCPR and CAT have this additional form of supervision for those States that have accepted it.

All the three AU human rights treaties – the African Charter, the African Children's Charter and the African Women's Protocol – recognise an automatic right of individuals to bring complaints against State parties alleged to have violated their rights.


## c) Inter-State complaint systems

A State party to a treaty can submit a claim alleging that another State party is not complying with the provisions of a particular treaty. This happens when both States have accepted the authority of the particular supervisory body to receive inter-State communications or petitions.

The ICCPR, CERD, CAT and the African Charter have an inter-State complaint system in addition to their reporting procedures.

For more on shadow reports, see page 114.

## d) Investigatory systems

<b>EXAMPLES</b>	
	
<b>TREATIES WITH INVESTIGATING POWERS</b>	<ul style="list-style-type: none"><li>• <i>The CAT (article 20).</i></li><li>• <i>The Optional Protocol to CEDAW also allows the CEDAW Committee to enquire into serious violations of CEDAW. But State parties can choose to exclude the right of the Committee to hold an enquiry by making a declaration at the time the State becomes a party to the Optional Protocol. This Optional Protocol also gives individuals the right to complain under CEDAW.</i></li></ul>

Some treaties give the supervisory body special powers to investigate if a particular State is violating the human rights protected by the treaty. So far, these powers have not been used to investigate violations of socio-economic rights.

### 3.3.2 Special procedures

#### a) UN Commission on Human Rights

Special procedures are special mechanisms for protecting human rights. Special procedures were created by the UN Commission on Human Rights, a body established by the ECOSOC.

The UN Commission on Human Rights developed special procedures to deal with:

- Specific human rights problems, called *thematic procedures*, or
- The human rights situation in a particular country, known as *country-specific procedures*.

Special procedures usually consist of an individual called a special rapporteur, representative or independent expert, or a group of individuals called a working group.

<b>EXAMPLES</b>	
	
<b>THEMATIC PROCEDURES</b>	<p><b>Special rapporteurs</b></p> <ul style="list-style-type: none"><li>• <i>Special Rapporteur on the Right to Education</i></li><li>• <i>Special Rapporteur on the Right to Food</i></li><li>• <i>Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living</i></li><li>• <i>Special Rapporteur of the Commission on Human Rights on the Right of Everyone to the Enjoyment of the Right to the Highest Attainable Standard of Physical and Mental Health.</i></li></ul> <p><b>Working groups</b></p> <ul style="list-style-type: none"><li>• <i>Open-ended Working Group to Consider Options Regarding the Elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.</i></li></ul> <p><b>Independent experts</b></p> <ul style="list-style-type: none"><li>• <i>Independent Expert on the question of human rights and extreme poverty</i></li><li>• <i>Independent Expert on the effects of economic reform policies and foreign debt.</i></li></ul>

## EXAMPLES



## COUNTRY PROCEDURES

- *Special Rapporteur on the situation of human rights in the Sudan, 2005*
- *Independent Expert on the situation of human rights in the Democratic Republic of the Congo, 2004.*

Special procedures mainly report on serious human rights violations so that the UN Commission on Human Rights or General Assembly may take appropriate action. They also help to identify ways of improving the implementation of human rights. The main role of thematic procedures is to:

- Gather information on the implementation of a particular right.
- Identify patterns of violations of rights and perpetrators of violations.
- Propose methods of preventing violations or for improving the realisation of the right.

While thematic procedures deal with implementing a right internationally, country-specific procedures focus on implementing particular human rights within a given country. Country-specific procedures are established to provide the UN Commission on Human Rights and other relevant bodies with a solid analysis of the human rights situation in a particular country.

## b) **New UN Human Rights Council**

The system of special procedures is currently under review. This follows the establishment of the UN Human Rights Council in April 2006 to replace the UN Commission on Human Rights. The Human Rights Council was formed as a response to growing concerns that the Commission on Human Rights:

- Had become too political.
- Had a membership open to known human rights violators.
- Could not act in time to address serious human rights concerns in emergency situations.
- Had procedures that blocked its effective operation.

The Human Rights Council was established to strengthen the protection of international human rights. It falls under the UN General Assembly and its 47 members are elected directly by the General Assembly – this reduces the chances of States with poor human rights records being members.

The functions of the Human Rights Council are to:

- Promote the full implementation of human rights.
- Follow up on the goals and commitments related to promoting and protecting human rights.
- Do a periodic review of the fulfilment by each State of its human rights duties.
- Contribute towards the prevention of human rights violations.

The Human Rights Council's founding resolution gives it a specific obligation to:

*“Assume, review and, where necessary, improve and rationalise all mandates, mechanisms, functions and responsibilities of the Human Rights Commission in order to maintain a system of special procedures, expert advice and a complaint procedure.”*



The review process should be completed in June 2007. The hope is that its new mandate gives the Human Rights Council a better chance of success in promoting and protecting human rights, compared to the Commission on Human Rights. The success of the new Council will depend on the political will of States. However, some concerns have been raised about:

- Lack of clarity on the role that NGOs should play in the procedures of the Human Rights Council.
- Lack of transparency during the drafting of the resolution creating the Human Rights Council.
- The fact that the first Human Rights Council includes some States with bad human rights records.

## 3.4

# The relevance of international law for South Africa

### 3.4.1 Drafting the Bill of Rights

#### EXAMPLE



#### THE ICESCR AND OUR BILL OF RIGHTS

For more on progressive realisation, see Chapter 1 on page 38.

- *Article 2 of the ICESCR says that State parties must “take steps ... with a view to achieving progressively the full realisation of the rights recognised”.*
- *Section 27(2) of the South African Bill of Rights dealing with the right of access to health care, food, water and social security says that the State “must take reasonable measures to ... achieve the progressive realisation of each of these rights”.*

International law played a key role in the drafting of our *interim Constitution (Act 200 of 1993)* and final Constitution of 1996. There are a number of clauses in the Bill of Rights of the final Constitution that are similar to clauses in international treaties.

### 3.4.2 Interpreting the rights in the Bill of Rights

The Constitution gives international law a special role when South African courts and other bodies have to interpret the rights in the Bill of Rights. Section 39 of the Constitution says that when a court or other body interprets a right in the Bill of Rights, it “must consider international law”.

In the *Grootboom* case, the Constitutional Court said that international law, including non-binding international instruments, was an important guide to the interpretation of the Bill of Rights. The weight to be given to a rule of international law would vary. For example, the Court said that a principle of international law that is binding on South Africa may be directly applied in South African law.

The Constitutional Court has relied on General Comments of the CESCR when interpreting socio-economic rights provisions under the Bill of Rights. For example, in the *Grootboom* and *TAC* cases (*Minister of Health and Others v*

## EXAMPLES



## MINIMUM CORE OBLIGATIONS FOR THE RIGHT TO HEALTH

- *The duty to ensure the right to health facilities, goods and services on a non-discriminatory basis.*
- *The duty to provide essential drugs.*
- *The duty to ensure equitable distribution of all health facilities, foods and services.*

*Treatment Action Campaign and Others*), the Constitutional Court adopted the same meaning as the CESCR for the terms “progressive realisation” and “available resources”. However, it refused in both cases to adopt the ‘minimum core obligations’ concept of the Committee, arguing that South African conditions did not justify doing this.

Generally, therefore, the Constitutional Court has relied on

For more on ‘minimum core obligations’, see Chapter 1 on page 39.

international law to interpret provisions in the Bill of Rights that are similar to international law provisions. But it has not followed the interpretations of international law where the provisions of the Bill of Rights are not the same as international law provisions, or where specific circumstances in South Africa call for a different interpretation.

### 3.4.3 Applying international law in South Africa’s legal system

Under our Constitution (section 231):

- An international treaty is only binding on South Africa once it is approved by resolution of both Houses of Parliament – in other words, the National Assembly and the National Council of Provinces.
- A ratified treaty usually only becomes part of South African law when it is incorporated (included) in our law by national legislation.



- The exception to this general rule is when a treaty has a provision that can be implemented by our courts without the need for legislation (called *self-executing provisions*). Provisions like this form part of South African law, unless they go against the Constitution or an Act of Parliament. For example, treaty provisions protecting the right to non-discrimination are usually considered self-executing, and can thus be applied by our courts.

#### EXAMPLES



#### MAKING HUMAN RIGHTS TREATIES EFFECTIVE IN OUR LAW

- *None of the human rights treaties ratified by South Africa have been fully incorporated into South African law. These treaties are therefore not as a whole binding on South African courts. However, some of the provisions in these treaties have been included in various pieces of legislation. For example, the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 includes provisions of CERD and CEDAW.*
- *The Hague Convention on the Civil Aspects of International Child Abduction, 1980, was included in our national law by the Hague Convention on the Civil Aspects of International Child Abduction Act 72 of 1996.*

### 3.4.4 When a treaty is not made part of South African law

When a treaty is not made part of our law:

- It is not binding on South Africa, but is still binding under international law – thus South Africa can be held accountable through international mechanisms.
- The courts and other bodies like the South African Human Rights Commission can also use the treaty to interpret the meaning of the rights in the Bill of Rights.

At the moment, South Africa has strong mechanisms for the protection of human rights at national level. International law can help us strengthen the protection of human rights that we have in our Constitution.

#### UN treaties including socio-economic rights that South Africa has ratified

Treaty	Date of ratification
CRC	16/06/1995
CEDAW	15/12/1995
Refugee Convention	12/01/1996
CERD	10/12/1998

#### Regional treaties including socio-economic rights that South Africa has ratified

Treaty	Date of ratification
African Charter	09/07/1996
African Children's Charter	07/01/2000
African Women's Protocol	17/12/2004

At the date of writing:

- South Africa had signed the ICESCR on 3 October 1994, but not yet ratified it.
- South Africa ratified the ICCPR and CAT on 10 December 1998.

## 3.5

# Using international human rights mechanisms

We have seen that there are four types of supervisory systems of treaties: the reporting, individual complaint, inter-State complaint and investigatory systems. In this part, we focus mainly on the reporting and individual complaint systems.

### 3.5.1 Using reporting systems

Once a State ratifies one of the UN human rights treaties, it has to prepare and send reports to the supervisory body on the progress that it has made in realising the rights in the treaty.

Under the ICESCR, State parties must submit:

- A first report within two years after ratifying the treaty.
- Further reports every five years, or whenever the CESCR requests a report.

Under the African Charter, State parties have to submit a report every two years from the date the Charter came into force, or from the date of ratification by the State.

South Africa submitted its first and only report to the African Commission on 14 October 1998.

NGOs can play an important role by participating in the reporting system. Depending on the supervisory body, NGOs can make verbal or written submissions to the Committee. These submissions can influence:

- The type of questions that the supervisory body asks the reporting State.
- The Concluding Observations after considering the State's report.

#### EXAMPLES



#### TYPES OF SUBMISSIONS

- *A list of suggested questions.*
- *A short report or letter to the Committee, including relevant information that is not included in the official State report.*
- *A **shadow report** (sometimes also called a 'parallel' or 'alternative' report). This is an independent report, usually submitted by national or international NGOs, commenting on the implementation of the treaty by the State.*

#### a) Shadow reports

A shadow report will need a lot of extra work by the staff of your organisation. It also costs a lot of money to send someone to attend the session in Geneva or The Gambia (for the African Commission), where South Africa's report is going to be considered.

Thus, it is a good idea for a broad coalition of NGOs to work together on a shadow report, and to raise funds especially for this project. Collaboration among NGOs also helps to eliminate problems of duplicating information or NGOs giving conflicting information.

#### CASE STUDY



#### CHILDREN'S RIGHTS IN SOUTH AFRICA

In 1998, the South African National Children's Rights Committee submitted a shadow report to the initial report of the South African Government under the CRC. Each of the country's nine provinces had a task team overseeing the shadow report process, and a national task team was established to consolidate the report.

The reasons for preparing this shadow report were to:

- Give relevant information where gaps in the country report were identified.
- Table civil society's additional recommendations on children's rights delivery and performance monitoring in South Africa.
- Produce a document that will guide reconstruction and development initiatives of the children's rights movement in South Africa.

## b) CESCR: NGO participation

#### GUIDELINES



#### NGO PARTICIPATION IN CESCR REPORTING

The CESCR values the contribution of NGOs in its work. Thus, it allows NGOs to participate in its work in many ways. When considering State party reports, the CESCR allows for the participation of NGOs at various stages.

##### 1. *Participation when a State ratifies the ICESCR*

- When a State party ratifies the ICESCR, NGOs working in the area of socio-economic and cultural rights are encouraged to make contact with the CESCR's secretariat. This early contact is important because it enables the CESCR to get information from national NGOs when a State party submits a report later on.
- NGOs can also assist the Government in the preparation of its report.

##### 2. *Participation following the submission of a State party's report*

- NGOs may submit any type of information to the secretariat of the CESCR when a State has just submitted its report. These could include press clippings, NGO newsletters, videos, reports, academic publications, studies and joint statements.
- This information will help the CESCR to develop a country profile that provides an overview of the human rights situation of the reporting State.





### **3. Participation in the pre-sessional working group**

- When a State report is received, the CESCR appoints a pre-sessional working group (made up of five of its members) to prepare the list of issues arising from State reports to be discussed at the CESCR's next session. Each of the five members acts as a country rapporteur for one of the State reports to be considered.
- NGOs can submit any relevant information to the country rapporteur or to the Secretariat before the meeting of the working group. They may also make oral statements during the pre-sessional working group meeting.
- This information will help the working group to draft the list of issues to be addressed by the State party before the session of the CESCR at which the report will be considered.

### **4. Participation at the CESCR's session**

- NGOs that have a general or special consultative status with the ECOSOC may submit a written statement (2000 words long) to the CESCR at its reporting session. General consultative status is given to NGOs with a broad interest in ECOSOC activities. Special consultative status is given to NGOs with interest in specific aspects of ECOSOC activities.
- An NGO without a consultative status may submit a written statement (1500 words long) where it is sponsored by an NGO with consultative status.
- NGOs may also submit a shadow report providing an alternative or additional interpretation of the status of implementing the ICESCR in their country. They may also make an oral statement (15 minutes long) on the first day of the reporting session.

### **5. Participation in the follow-up procedure**

- Once the CESCR makes Concluding Observations on the status of the implementation of the treaty in the reporting State, NGOs can help publicise these observations locally and internationally, and monitor the Government's implementation of them.
- NGOs can also keep the CESCR informed about the progress made by the State in following up on the observations.

### **6. Participation when a State does not report**

- When a State party has taken too long to prepare a report, the CESCR can start its own review process. Then it will notify the country about its intentions and ask it to report as soon as possible. If the State still does not report, the CESCR can consider the status of implementing the ICESCR in the State without an official State report.
- NGOs can be called on to provide relevant information to the CESCR. NGOs should then submit information on each article of the treaty and make an oral presentation at the CESCR's NGO oral hearing.

*CESCR Report, 7 July 2000*

## 3.5.2 Using individual complaint systems

You can only use individual complaint systems under international law at the UN and regional levels:

- If there is no solution to a legal or human rights problem at the national level – in other words, within the national law of countries (called a *domestic remedy*), or
- If you have gone to the highest court of law or other forum in your country and cannot take the case any further – in other words, you have exhausted your domestic remedies.

The only exception to this rule is if the domestic remedies are unavailable, ineffective or take a very long time.

We have seen that communications or individual complaints can be submitted under each of:

- CERD.
- CEDAW.
- The African Charter.
- The African Children's Charter.
- The African Women's Protocol.

South Africa is a party to the African Charter and the African Children's Charter, and therefore must receive communications under these treaties. It has also accepted the complaint procedure under CERD.

## 3.5.3 Using non-treaty mechanisms

We have also referred to non-treaty mechanisms for protecting human rights. These mechanisms are increasingly being used to address violations of socio-economic rights.

NGOs can send relevant information on realising socio-economic rights to individuals acting as special rapporteurs, independent experts or members of a working group.

## 3.6

# NGO guidelines on using international law

### GUIDELINES



### USING INTERNATIONAL LAW TO PROMOTE AND PROTECT SOCIO-ECONOMIC RIGHTS

1. Use the socio-economic rights in international law to argue and campaign for a progressive interpretation of the socio-economic rights in the South African Bill of Rights. This can be done through submissions to Parliament and government, campaigns on human rights issues, and in court cases.
2. Educate and share information with communities, government officials and judges about the socio-economic rights protected in international law and their relevance for South Africa.
3. Lobby the Government to ratify international treaties protecting socio-economic rights like the ICESCR, and to ratify the Optional Protocol allowing for individual complaints under treaties, eg to the ICCPR and CEDAW (when it comes into force).
4. Lobby the Government to pass legislation that makes international treaties effective in our national law.
5. Organise together with other NGOs, community organisations, trade unions and civics to prepare a shadow report under treaties such as the African Charter, the CRC, CEDAW, and CERD.
6. After you have tried unsuccessfully to get a remedy in South Africa, assist individuals or groups who have experienced violations of socio-economic rights to submit a complaint to a supervisory body under a treaty, eg the African Charter.
7. Link up with NGOs in other countries that are interested in using international law to advance socio-economic rights. Share experiences and learn from each other's successes and failures.
8. Link up with NGOs from other countries, especially in Africa, to form pressure groups to help to strengthen the implementation mechanisms for socio-economic rights.



## Discussion ideas



### TALKING POINT 1

Let's say that the Constitutional Court decided that the Government did not violate the right to health of mothers, who were denied access to antiretroviral treatment for purposes of reducing mother-to-child transmission of HIV. Which international human rights bodies would you approach to resolve the case? What arguments would you use?

### TALKING POINT 2

What arguments can you think of to support the need to adopt an Optional Protocol to the ICESCR providing for a system of complaints to address violations of economic, social and cultural rights?

### TALKING POINT 3

How can NGOs advocate for the more effective implementation of socio-economic rights at the African regional level?

## TALKING POINT 4

Imagine your NGO has to draft a shadow report on South Africa for the African Commission on Human and Peoples' Rights. What key areas of concern in implementing socio-economic rights in South Africa would you highlight?



# References and resource materials

## Constitution, legislation and policy documents

Constitution of the Republic of South Africa, Act 108 of 1996.

Hague Convention on the Civil Aspects of International Child Abduction Act 72 of 1996.

Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

## Cases

*Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC).

*Minister of Health and Others v Treatment Action Campaign and Others* 2002 (10) BCLR 1075 (CC).

## Individual complaints under international human rights treaties

*Purohit and Moore v The Gambia*, Communication 241/2001.

*The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria*, Communication 155/96.

## International documents

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988.

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, 1995.

African Charter on Human and Peoples' Rights, 1981.

African Charter on the Rights and Welfare of the Child, 1990.

American Convention on Human Rights, 1969.

Charter of the United Nations, 1945.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

Convention on the Rights of the Child, 1989.

Convention Relating to the Status of Refugees, 1951.

European Social Charter, 1961.

Hague Convention on the Civil Aspects of International Child Abduction, 1980.

International Covenant on Civil and Political Rights, 1966.

International Covenant on Economic, Social and Cultural Rights, 1966.

International Convention on the Elimination of All Forms of Racial Discrimination, 1966.

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 1999.

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 2004.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003.

Second Optional Protocol to the International Covenant on Civil and Political Rights, 1989.

The New Partnership for Africa's Development, 2001

UN Millennium Declaration, 2000.

Universal Declaration of Human Rights, 1948.

Universal Declaration on the Eradication of Hunger and Malnutrition, 1974.

Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, 1993.

Voluntary Guidelines on the Right to Adequate Food, FAO, 2004.

## International reports

Concluding Observations of the CESCR: Zambia, 23 June 2005, E/C.12/1/Add.106.

## List of General Comments adopted by the CESCR

General Comment No. 1 (1989) Reporting by State parties.

General Comment No. 2 (1990) International technical assistance measures (art. 22).

General Comment No. 3 (1990) The nature of States parties' obligations (art. 2(1)).

General Comment No. 4 (1991) The right to adequate housing (article 11(1)).

General Comment No. 5 (1994) Persons with disabilities.

General Comment No. 6 (1995) The economic, social and cultural rights of older persons.

General Comment No. 7 (1997) The right to adequate housing: forced evictions (art. 11(1)).

General Comment No. 8 (1997) The relationship between economic sanctions and respect for economic, social and cultural rights.

General Comment No. 9 (1998) The domestic application of the Covenant: The duty to give effect to the Covenant in the domestic legal order.

General Comment No. 10 (1998) The role of national human rights institutions in the protection of economic, social and cultural rights.

General Comment No. 11 (1999) Plans of action for primary education (art. 14).

General Comment No. 12 (1999) The right to adequate food (art. 11).

General Comment No. 13 (1999) The right to education (art. 13).

General Comment No. 14 (2000) The right to the highest attainable standard of health (art. 12).

General Comment No. 15 (2002) The right to water (art. 11 and 12).

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## Publications

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Office of the UN High Commissioner for Human Rights: [www.unhchr.org](http://www.unhchr.org), for full text of General Comments and other information relating to the ICESCR and human rights treaties.