

***The ICESCR – “South Africa engaged but not married?
– a test of our commitments to International Covenants”***

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Background

A seminar entitled “Addressing Poverty and Inequality through International Law” was held on 23rd September 2009, approximately a month ago, as a partnership between the SA Human Rights Commission; UWC Community Law Centre; People’s Health Movement SA; the Black Sash, the National Welfare Forum and SANGOCO Western Cape.”

It was strategically held on the eve of the signing ceremony for the Optional Protocol to the ‘International Covenant on Economic, Social and Cultural Rights’ (ICESCR) in New York – an event that provided South Africa to unique chance to sign this important Covenant. It brought together community leaders from civil society, the media and other stakeholders to raise awareness about South Africa’s failure to ratify the ICESCR, and to reflect on South Africa’s track-record in fulfilling its international obligations. Speakers included Jennifer Williams (Women’s Legal Centre), Fadlah Adams (SAHRC); Linda Mashingaidze and a team from the Black Sash, namely Elroy Paulus, Marcella Naidoo and Evashnee Naidu.

Why civil society must engage on international covenants



***Opening address by Commissioner
ICESCR Event
Pregs Govender SAHRC
and***



***Participants engaging in the
entitled “Addressing Poverty
Inequality through International Law”***

What our colleague in New York had to say

Simultaneously, Dr. Lilian Chenwi, a both a member of the International NGO Coalition (INGO) for an Optional Protocol to the ICESCR, and the South African ICESCR Ratification Steering Committee, was in New York to try and influence and monitor developments in New York. The INGO Coalition, as a civil society body, has access to UN Committees and the General Assembly and as well as tried to influence the rules of procedure of the Committee on Economic, Social and Cultural Rights (CESCR).

They organised a series of meetings over three days (23-25 September) to this end. One of the recommendations from these meetings, in order to strengthen our (SA) campaign was to use the Constitutional Court judges to put pressure on government to ratify. Also, a useful learning was that, overall the role of parliament was key in all national level actions.

Big SA delegation but no ratification or further signing

Despite persistent lobbying and conversations with the South African government, our country has sadly not sign, nor indicated whether it would sign the OP-ICESCR before the events came to an end on 29 Sept. (sentence from High Commissioner Navi Pillay).

To date, only South Africa and the USA stand out as the 2 countries that have signed but not ratified the ICESCR – see map below. For more information see:

http://www.blacksash.org.za/index.php?option=com_content&task=view&id=1410&Itemid=187



Yet, other developing countries have, or indicated that they would - these include Gabon, Senegal, Ecuador, the Slovak Republic, Madagascar, Congo, Cape Verde, Ghana, Timor Leste, Guatemala, Paraguay, Chile, Guatemala and others.

Of equal concern, according to High Commissioner Navi Pillay, the SA government is not in support of the appointment of a Special Rapporteur on Discriminatory Laws, despite national organisations putting pressure on government to support this crucial mandate, which is of great relevance to women – to date the reasons for them not signing is not clear – for understanding more on this Covenant, visit <http://www.communitylawcentre.org.za/Socio-Economic-Rights/publications/ser-publication-files/claiming-esc-rights-at-the-international-level.pdf> to download a very useful and enlightening publication.

Insights and lessons for civil society

Progressive realisation of human rights at a global level has been a long and much debated process. General comments on the ICESCR have been developed globally to further entrench and describe the requirements to realise Articles in the ICESCR.

The table below describes these comments crafted over 19 years. If South Africa signed at the time of ratification, it would have had 15 years of support at an international level on this important obligation.

Annex III

General Comments of the CESCR

Source: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>

No	Subject	Date adopted
1	Reporting by States parties	1989
2	International technical assistance measures (art. 22)	1990
3	The nature of States parties' obligations (art.2 (1))	1990
4	The right to adequate housing	1991
5	Persons with disabilities	1994
6	The economic, social and cultural rights of older persons	1995
7	The right to adequate housing: forced evictions (art.11 (1))	1997
8	The relationship between economic sanctions and respect for economic, social and cultural rights	1997
9	The domestic application of the Covenant	1998
10	The role of national human rights institutions in the protection of economic, social and cultural rights	1998
11	Plans of action for primary education (art. 14)	1999
12	The right to adequate food (art. 11)	1999
13	The right to education (art. 13)	1999
14	The right to the highest attainable standard of health (art. 12)	2000
15	The right to water (arts. 11 and 12)	2002
16	The equal right of men and women to the enjoyment of all economic, social and cultural rights (art.3)	2005
17	The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (art. 15 (1) (c)) -Final edited version	2005
18	The Right to work (art. 6) -Final edited version	2005
19	The right to social security	2008

Why the Black Sash Supports the ICESCR Ratification Campaign

There are 31 Articles in the Covenant. Of these Article 9, viz. “Article 9 - The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance,” is the shortest of them all.

Other Articles, particularly Article 10, 11 and 12 (regarding protection and assistance to the family; an adequate standard of living and enjoyment of the highest attainable standard of physical and mental health) are particularly significant to the work of the Black Sash. Many other articles in the Covenant clearly intersect with social security and protection.

Many academic papers refer to the South African Constitution and its commitment to the progressive realization of socio-economic rights as an ideal to be sought after. However, as we who live in South Africa all know, this was a difficult objective to realize, and which we all continue to strive towards.

There remains many huge gaps in our social security system, despite the huge gains made by government in the past decade and a half. Specifically these are:

- No clear roadmap to realizing its social security – we need to ask government (again) to provide such a plan to explain how they are going to realize social security commitments
- South Africa has attained much in the arena of cultural rights, specifically with regards to sexual orientation. Despite the fact that it was tough to move forward in this arena, the Constitutional Court pushed through same sex marriages issues, despite little political will behind this issue.
- It is our understanding that the UN requires a written report, every 5 years on how we have realized our commitments. Civil society is allowed to provide a shadow report –the question is what weight is there behind this shadow report? Moreover, what can be done to strengthen its impact in order to hold governments more accountable.
- It is there merit in calling for National Treaties to hold erring states accountable if they are guilty of socio-economic rights violations – similar to the International Criminal Court?

The Black Sash has been supporting the International Covenant for Economic, Social and Cultural Rights (ICESCR) Ratification Campaign since mid 2009. As a human rights organization, we do so since the article of social security holds particular significance for our work.

The International Covenant on Economic, Social and Cultural Rights¹ has a broad and inclusive definition of social security: It includes contributory and non-contributory

¹ 1966: General Comment No 19 (2008), art 9

schemes. It holds that the relevant schemes must guarantee everyone a minimum enjoyment of this human right:

- “All persons should be covered by the social security system, especially individuals belonging to the most disadvantaged and marginalised groups, without discrimination [on prohibited groups’]. In order to ensure universal coverage, non-contributory schemes will be necessary” (Sandy Liebenberg, Human Rights Lawyer)
- The covenant enforces the fundamentals our post-apartheid nation striving for human dignity, equality, freedom, non-racism and non- sexism.
- The State is required to look at progressive realization within resources constraints but must take immediate, deliberate, concrete and targeted steps for the full realization of the right to Social Security. In other words, a core obligation of States is to realise the right to social security, and in doing so, ensure a minimum essential level of benefits to all individuals and families. (Sandy Liebenberg, Human Rights Lawyer)
- To do this, there must be a strategy and a plan for implementation that embrace our fundamental principles of accountability and transparency
- Furthermore, our view is that the ratification of the ICESCR will provide an important counter to harmful practices by the private sector as well. The extent to which the interests and rights of multi – and transnationals corporations are increasingly secured and protected often happens in developing countries that do not have required legal expertise or experience or to protect workers, and the poor.

Conclusion

In concluding the Seminar, Linda Mashingaidze, Africa Coordinator for PHM-Global asserted that, “As PHM SA, we support this process to use international law to hold government accountable, in particular towards the realisation of the right to health. The seminar has revealed a “strong urgency for the South African government to ratify the International Covenant on Economic, Social and Cultural Rights for the realization of the rights of people living in South Africa”. Reasons for this view includes a rationale already in the public domain, namely the **Submission to the South Human Rights Commission- Economic and Social Rights in South Africa (2006-2009)**, which was facilitated by SANGOCO Western Cape in collaboration with PHM, Learning Network, Metro Health Forum, TAC, CEJ, COSATU and WCNOD and input from various other persons. It maintained that:

- **Unemployment rate is high in the Western Cape (17.2% narrow definition and 23.9%expanded definition)**
- **There is backlog in housing (approximately 400 000 units)**
- **TB rates are high (30 to 40% higher than the national rates) and an increase in Drug resistant TB – a reflection of poverty and inequality**
- **HIV prevalence nationally is high**
- **Childhood illness is high (diarrhoea, ...) linked to poor living conditions(lack of water and sanitation)**
- **Sanitation is a ticking time bomb in most of our communities and is evident by the numerous cholera outbreaks each years and the lack of sanitary facilities.**
- **Comparison of all these indicators reflects higher rates in the townships compared to the metro.**

What was clear from the Seminar was that that the implications of not ratifying the covenant are quite prevalent in our society. Being committed to the idea of 'health as a right' requires the urgent ratification of this Campaign.

Finally, it would be remiss of us, in conclusion, not to emphasise the great work done by the SA Human Rights Commission (Western Cape) and the ICESCR Ratification Committee, who not only convened such a seminar, with the kind cooperation of the Human Sciences Research Council (Democracy and Governance Programme), but has demonstrated and highlighted the future need for the establishment of a civil society treaty body forum and secretariat.

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- *Evashnee Naidu – Regional Director – KwaZulu Natal*

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