

**SOCIO-ECONOMIC RIGHTS IN AFRICA: A CRITICAL EVALUATION OF LEGAL
PROTECTION MECHANISMS AND IMPLEMENTATION STRATEGIES**

**Submitted in partial fulfilment of the requirements of the degree LLM (Human
Rights and Democratisation in Africa)**



By

OLOWU Oladejo Justus

Registration number 21322296 (Pretoria)

Registration number 2155684 (Western Cape)

**UNIVERSITY of the
WESTERN CAPE**

**Prepared under the supervision of Professor Sandra Liebenberg at the Faculty of
Law, University of the Western Cape, Cape Town, South Africa**

30 November 2001

CERTIFICATION

I, Sandra Liebenberg, hereby certify that this study titled *Socio-economic rights in Africa: A critical evaluation of legal protection mechanisms and implementation strategies* is the result of an original research carried out by Oladejo Justus Olowu under my supervision at the Faculty of Law, University of the Western Cape.



TABLE OF CONTENT

TITLE PAGE	i
CERTIFICATION	ii
TABLE OF CONTENT	iii
LIST OF ABBREVIATIONS	v
DEDICATION	vi
ACKNOWLEDGEMENTS	vii
ABSTRACT	viii
CHAPTER 1: INTRODUCTION	1
1.1 Background to the study	1
1.2 Statement of the problem	1
1.3 Significance of the study	2
1.4 Definition of key terms and concepts	3
1.5 Literature review	3
1.6 Methodology and procedure	5
1.7 Limitations of the study	6
1.8 Suggestions for further study	6
CHAPTER 2: SOCIO-ECONOMIC RIGHTS IN PERSPECTIVE	7
2.1 Foundations of socio-economic rights	7
2.2 Conceptual problems in socio-economic rights	9
2.3 Contemporary trends in socio-economic rights	10
2.4 Some contextual issues on socio-economic rights in Africa	11
CHAPTER 3: LEGAL MECHANISMS FOR THE PROTECTION OF SOCIO-ECONOMIC RIGHTS IN AFRICA	14
3.1 International and regional protection mechanisms	14
3.1.1 The United Nations human rights system	14
3.1.2 The African regional human rights system	18
3.2 Domestic protection mechanisms	20
3.2.1 Effect of treaties in domestic law	20
3.2.2 National constitutions and bills of rights	21
3.2.3 Other statutory mechanisms	25
CHAPTER 4: IMPLEMENTING SOCIO-ECONOMIC RIGHTS IN AFRICA: THE ROLE OF NGOs	28
4.1 NGOs and the implementation of socio-economic rights in Africa	28

4.1.1	Limitations to the effectiveness of NGO initiatives	30
4.2	Implementation strategies at domestic levels	31
4.2.1	Public interest litigation	32
4.2.2	Education and awareness	33
4.2.3	Constitutional reform processes	35
4.2.4	Legislative and policy reform advocacy	35
4.2.5	Research and documentation	36
4.3	Implementation through international and regional mechanisms	37
4.3.1	Complaints procedures	38
4.3.2	Reporting procedures	39
4.3.3	Monitoring and advocacy	41
4.3.4	Networking	42
CHAPTER 5:	CONCLUSIONS AND RECOMMENDATIONS	44
5.1	Conclusions	44
5.2	Recommendations	45
5.2.1	International and regional levels	45
5.2.2	Domestic levels	47
BIBLIOGRAPHY		49



UNIVERSITY *of the*
WESTERN CAPE

LIST OF ABBREVIATIONS

AfCHPR	African Charter on Human and Peoples' Rights
AU	African Union
BCLR	Butterworths Constitutional Law Reports (South African)
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CESCR	(UN) Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
ECOSOC	Economic and Social Council
ESCRs	Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHRDA	Institute for Human Rights and Development in Africa
IHRIP	International Human Rights Internship Programme
ILO	International Labour Organisation
INGOs	International Non-Governmental Organisations
LRC	Legal Resources Centre
NCLR	Nigerian Constitutional Law Reports
NGOs	Non-Governmental Organisations
NWLR	Nigerian Weekly Law Reports
OAU	Organisation of African Unity
SAPs	Structural Adjustment Programmes
SAHRINGON	Southern African Human Rights NGO Network
SCC	Supreme Court Cases (Indian)
SCGLR	Supreme Court of Ghana Law Reports
SERAC	Social and Economic Rights Action Centre
UDHR	Universal Declaration of Human Rights
UN	United Nations (Organisation)
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
VCLT	Vienna Convention on the Law of Treaties
WLR	Weekly Law Reports (English)
ZLR	Zimbabwean Law Reports

DEDICATION

This work is dedicated to:

(a) The glory of the almighty God who inspired and nurtured this vision in me and gave me the required wisdom, *Jehovah Nissi* is his name;

(b) The blessed memory of my father and mentor, the Reverend Isaac Ojo Olowu (1913-1984), who led me by hand into the classroom of life, and taught me to 'learn these things by heart'; and

(c) The teeming millions of Africans wallowing in abject poverty, deprivation, disease, ignorance and squalor in the midst of plenty, but keeping hope alive, from day to day, for a better tomorrow.



UNIVERSITY *of the*
WESTERN CAPE

ACKNOWLEDGEMENTS

My successful participation in this LLM (Human Rights and Democratisation in Africa) programme bears eloquent testimony to divine favour and the goodwill of many.

I express gratitude to the Centre for Human Rights, University of Pretoria, for the privilege accorded me in participating in this unique programme. I am particularly grateful to the Director, Professor Chrystof Heyns; the assiduous academic coordinator, Professor Frans Viljoen; the administrative coordinator, Mr Norman Taku as well as all the eminent scholars in the collaborating African universities for their constant support and encouragement. Same appreciation is extended to Professor Michelo Hansungule for his fraternal support and incisive comments at crucial times.

I deeply appreciate my erudite supervisor, Professor Sandra Liebenberg, a distinguished scholar of no mean repute, for her thorough, well-focussed and insightful guidance throughout the process of this research effort.

My profound gratitude goes to my employers, the authorities of the University of Ibadan, Nigeria, and especially the Dean of the Faculty of Law, Professor JD Ojo, the Head of the Department of Public and International Law, Mrs AY Okediran, and my dependable colleague and friend, Mr Yemi Akinseye-George, who jointly secured my release from duties to attend this course. I shall always cherish their faith in me.

I am grateful to all the members of the Olowu family of Okeigbo in diaspora for their moral and prayerful support at all times. Adesola deserves special mention for effectively holding fort at home while I was away on this African sojourn.

I acknowledge the love and concern of those South Africans who strove consistently to instil in me a sense of belonging, particularly the Ndlovus of Meadowlands in Soweto; comrades Adeon and Nhlanhla of Johannesburg; and the entire staff of the Community Law Centre, University of the Western Cape. In their different capacities, they radiated the bright hope for the dawn of a new Africa.

I am grateful to the various human rights NGOs and activists all over Africa and beyond that gave their unflinching moral support to this research effort.

I commend the entire LLM class of 2001 for providing the atmosphere of keen challenge necessary for the pursuit of scholarly excellence.

So many other noble souls contributed immensely to the outcome of this academic pursuit who cannot be mentioned by name due to the constraint of space, but nonetheless remain evergreen in my memory. My God shall honour you all.

ABSTRACT

There is an emerging broad consensus that civil and political rights on the one hand, and socio-economic rights on the other, are interrelated and indivisible. Taken together, they embody the cardinal norms which inform modern human rights systems as expressed through the International Bill of Rights as well as other innovative human rights instruments. In spite of this agreement about the normative structure and relationship between the two categories of rights, it is common knowledge that within the province of international relations, the focus of African states and, to some considerable extent, transnational entities, has predominantly been on civil and political rights. So too have the monitoring activities of most African human rights non-governmental organisations been confined to this same set of rights. Although a few African human rights groups are seeking to change this approach, the overall trend remains significantly unaltered. The fall-out of the above phenomenon is the devaluation of socio-economic rights in Africa. This study attempts to analyse the crisis of implementing socio-economic rights standards in Africa, flowing from the attitudinal patterns of states as well as non-state actors in downgrading the obligations of states in this regard. Applying a generalised but qualitative sampling strategy across Africa, this study examines the impact of international and regional socio-economic rights instruments at domestic levels. A central concern is demonstrated in this study for the role of the civil society in evolving pragmatic strategies, within the applicable legal framework, to hold African states accountable to the people for the performance of their obligations. The study also explores the possibility of galvanising international, regional and domestic human rights instruments towards the attainment of an enhanced regime of socio-economic rights in Africa, and the ultimate improvement of the quality of the lives of the most vulnerable people all over Africa. Extrapolating from the dynamic interplay of legal protection mechanisms and implementation strategies, as well as the problematics involved therein, this study proffers viable trajectories for concerted activism at the levels of the civil society in Africa.

CHAPTER 1: INTRODUCTION

1.1 Background to the study

Although most African countries are parties to various global and regional human rights instruments that recognise socio-economic rights, these species of rights remain largely perceived as not justiciable. Even where such rights are made positive constitutional rights, little or no jurisprudence has developed therefrom. The fall-out of this phenomenon has been the devaluation of socio-economic rights in Africa.

However, while it is plausible to argue that most African constitutions which follow the non-justiciability model do not equate socio-economic rights with civil and political rights, there is no gainsaying the fact that there are legal mechanisms for the protection of socio-economic rights at domestic levels. Even against the backdrop of the non-justiciability paradigm in many constitutional provisions on socio-economic rights, efforts can still be made towards the progressive development of jurisprudence.

Experiences around the world show that through pragmatic legal action, socio-economic rights violations and the worst forms of deprivations can be pronounced upon by the courts towards improving the quality of life of the most vulnerable in the society.

The concern here is the ultimate establishment of increased socio-economic rights values in Africa. This necessitates concerted action at the level of the organised civil society for the enhancement of these rights. It is in this regard that the role of non-governmental organisations (NGOs) comes into focus.

1.2 Statement of the problem

Worldwide, many NGOs are promoting human development through the civil and political dimensions of human rights, but far fewer organisations are activating development through the framework of socio-economic rights. Times have rapidly changed, and many more groups now deal with socio-economic rights. Three reasons may be adduced for this shift. First, new geo-political realities, including the end of the Cold War, make it possible to address human rights without being accused of taking a specific ideological stance. Second, South Africa's leading role in extensively entrenching directly enforceable socio-economic rights in its constitution, largely as a result of civil society activism, is encouraging others to follow. Again, the intense level of

national and individual poverty coupled with the increasing incidence of HIV/AIDS and deepening inequalities in the advent of globalisation suggest the time has come for a paradigm that is based on rights rather than aspirations – and for methodologies to show that such rights can be implemented.

Regrettably however, the global trend in giving due attention to socio-economic rights lacks impact among Africa NGOs. NGOs being the prime motivators for positive actions in the human rights arena, it becomes foreseeable that the growth of these species of rights would remain stunted if African NGOs ignore the global trend.

It becomes compelling to examine why it has been problematic for African NGOs to effectively activate the available socio-economic rights protection mechanisms and to identify the modalities for translating same into viable tools for social empowerment and human development.

1.3 Significance of the study

This study makes a strong case for placing socio-economic rights squarely on the African human rights agenda. Apart from the fact that socio-economic rights are human rights in themselves, civil and political rights are better protected if socio-economic rights are accorded equal importance within the African regional system.

The above hypothesis is significant for a number of reasons. The current democratisation process underway in many African countries will expectedly lead to the creation of liberal democratic regimes. Although not particularly required for the realisation of socio-economic rights, it constitutes a useful framework for the overall protection of human rights. Any analysis of the democratic discourse in Africa today reveals that it is not addressing the crucial issues of social inequalities, continuing tensions of rural-urban migration, and material deprivation of the mass of the people.

It is apparent that the protection of socio-economic rights could become one of the vital mechanisms for ensuring the accountability of African governments. This will invariably support efforts to promote social justice, a veritable bedrock for the establishment of truly participatory democratic societies. In summary, socio-economic rights could be used to widen the ambits of emerging liberal democratic regimes. This would allow marginalised groups like peasants, workers, women, youths, people with disabilities and people living with HIV/AIDS to become relevant in mainstream African political and economic systems.

The study endeavours to proffer modalities for the enhancement of the role of the civil society in promoting and implementing socio-economic rights through various legal mechanisms at all levels.

1.4 Definition of key terms and concepts

'Non-governmental organisations' are civil society organisations that are involved in the promotion, protection and realisation of human rights. This excludes political parties, commercial, military or governmental entities.

'Networking' refers to the capacity-building strategy among NGOs which entails the sharing of information, ideas, methods and personnel or other scarce resources towards achieving maximum results from their human rights promotion and protection efforts.

'Socio-economic rights' encompass the entire species of rights broadly known as economic, social and cultural rights in all international, regional and domestic human rights instruments. The use of this expression reflects the emphasis of this study on the role of rights in addressing socio-economic deprivations in Africa and is not to be interpreted as connoting a demotion of the significance of 'cultural' rights.

1.5 Literature review

Socio-economic rights constitute an object of considerable controversy. Despite their recognition in various human rights instruments in positive language, the controversy rages on.

The volatile debate among writers in this field revolves around justiciability. While a school of thought argues that these rights are 'programmatic' and merely aspirational (Vierdag, 1978; Neier, 1993), another contends that these rights can be the subjects of judicial review (Eide and Rosas, 1995; Rosas and Scheinin, 1999).

While scholars in the advanced nations of the world have done extensive work in the area of socio-economic rights, the contributions of African scholars on the African context of the subject, have been relatively paltry until recent times. This phenomenon of scholarly inertia is traceable to the preoccupation of African leaders, jurists, researchers and other strata of the society with post-colonial governance conflicts and other transitional problems (for example, democratisation, justice and reconciliation processes).

Events over the last decade, particularly the demise of the Cold War, has opened new vistas to increased activity in the field of socio-economic rights by African scholars, jurists and NGOs.

Beyond the theoretical debate as to whether these rights are justiciable, human rights scholars and activists are now examining the potentials of securing the protection and implementation of these species of rights at domestic levels.

Oloka-Onyango (1995) examined the low level of commitment of African states to various socio-economic rights standards and consequently, the dismal scoreboard of implementation at domestic levels. He stressed the importance of a holistic approach in the articulation of appropriate strategies within domestic contexts, simultaneously drawing upon linkages of cooperation by the civil society and the international community.

Liebenberg (2001a) identified practical ways of enforcing these rights within constitutional and legislative contexts. She canvassed the approach of 'expansive interpretation' of certain civil and political rights as a means of securing the protection of socio-economic rights. She also highlighted the significance and the possibility of the horizontal application of these rights.

Writing instructively about the Indian experience of 'directive principles of state policy', a terminology found in many African constitutions, Muralidhar (2000) contended that socio-economic rights are by no means inferior rights and that within the constitutional scheme, they can be enforced when interpreted to supply the content of a fundamental right.

Obiagwu (2000) viewed the constitutional framework as a viable tool for the realisation of socio-economic rights. While noting that the status of the African Charter on Human and Peoples' Rights (AfCHPR) provides a veritable pedestal for socio-economic rights activism, he emphasised that the widening of the province of the *locus standi* doctrine remains a challenge to achieve the ultimate ends of these rights in domestic courts.

Reviewing the implications of contemporary South African jurisprudence, Liebenberg (2001b) argued that although socio-economic rights are usually couched as rights subject to 'progressive realisation', states can be made to perform their 'minimum core obligations' on the basis of constitutional or treaty framework. Against the backdrop of recent judicial decisions, she further submitted that there are justiciable dimensions in the 'progressive realisation' concept.

Ankumah (1996) examined the practice and procedure of the African Commission on Human and Peoples' Rights and highlighted viable prospects for strengthening NGO input in the implementation processes for socio-economic rights.

Odinkalu (2001) reviewed the normative framework of the AfCHPR and the sweeping potentials its 'cross-cutting' provisions have for the emergence of a stronger protective regime for socio-economic rights in Africa. He stressed the compelling necessity for judicial activism, propelled by NGOs.

Steiner (1991) reviewed the operations of NGOs in Third World countries and concluded that there is a weak perception of socio-economic rights by the majority of these organisations. He noted the constraints of resources among such NGOs and therefore stressed the need for effective networking strategies.

While the works of foreign authors are considered in providing the theoretical basis for this study, the contributions of African scholars, and foreign writings that are relevant to Africa, are extensively relied upon for contextual purposes.

1.6 Methodology and procedure

The study is divided into five chapters. Chapter 1 highlights the structure of the entire discourse. Chapter 2 entails the dialectical discussion of socio-economic rights perspectives *vis-à-vis* the African dimension within the broader human rights context.

The study proceeds to discuss the framework of socio-economic rights protection in Africa in chapter 3. Since this study cannot give a detailed experiential view of every country in Africa, for the purposes of generalised but effective discussion of domestic systems, the author presents the discourse drawing on illustrations from the justiciability and non-justiciability paradigms in Africa.

In chapter 4, through a comparative method of assessment, based on examination of the use of conventional implementation mechanisms at various levels, this study broadly analyses the operations of African NGOs in the field of socio-economic rights to identify their strengths and weaknesses, and prospects lying therein.

Chapter 5 consists of the conclusions drawn from all the discussions, and the recommendations proffered by the author.

Besides literary works, this study relies on the first-hand knowledge and experiences of activists about the operations of NGOs in various African countries. The author also relies on internet research, interpersonal discussions and observations.

1.7 Limitations of the study

This study was carried out under enormous constraints. There were strict guidelines relating to time-frame and volume. The entire study was carried out in less than three months from the approval of the research proposal. The volume was restricted to a maximum of 18000 words.

Apart from the limitations of time and volume, the author could only rely on his direct personal experience of human rights issues in his home country, Nigeria, as well as in South Africa, the base for the study. For discussions on most other African states, the author relies on secondary sources of information.

Notwithstanding these constraints, given the scale of the study, it can safely be adjudged to be adequate for analysing, and therefore useful for understanding the broad dynamics of socio-economic rights in Africa. Such knowledge should provide a basis for devising strategies.

1.8 Suggestions for further study

This study does not represent an *ex cathedra* pronouncement on the contextual concerns it raises. The process of international human rights development is endless. New human rights instruments will be adopted. The fact that the UN and other regional human rights systems keep reviewing the possibility of formulating additional protocols to existing human rights treaties supports this assertion.

The need therefore arises for a multi-dimensional approach that would ensure that the development of human rights is linked to the reinforcement and implementation of existing norms.

Strategies for promoting socio-economic rights in Africa may include but are not limited to the litigation model of rights enforcement. There is need for the systematic development of expansive strategies incorporating more sectors of the society, developing alternative understanding of law or using a mix of judicial and other methods. These remain dynamic concerns for well-founded multi-disciplinary research.

Another area of further investigation is the horizontal broadening of the terrain of socio-economic rights in Africa, namely, the possible application of these rights to the activities of private actors, for example, private enterprises, and the considerations which would inform such process.

CHAPTER 2: SOCIO-ECONOMIC RIGHTS IN PERSPECTIVE

2.1 Foundations of socio-economic rights

The origins of these species of rights are of great antiquity. This is because as soon as human beings accepted the idea of staying together in large, organised communities, the need for rights became imperative. Even in traditional societies, certain rights were recognised as belonging to human beings by the very nature of their humanity. Sometimes these rights were conceptualised as divine, antedating the state or society. For this reason, it was the position of natural law theorists that to deprive human beings of these rights was an affront to justice. It was on the basis of this thinking that the denial of some rights gave rise to some historical revolutions.¹

Scholars have traced the internationalisation of these rights to the efforts of the International Labour Organisation (ILO) since 1919. The complaint mechanisms within the ILO system have also been identified as providing the basis for the development of socio-economic rights case law.² However, the present corpus of socio-economic rights is the crystallisation of the efforts that were begun towards the end of World War II. Worried by the wanton destruction of lives and properties, and the dehumanising experiences of mankind, efforts were made to prevent a reoccurrence of such an event. These efforts led to the establishment of the United Nations (UN) in 1945.³ Against this background, the UN Charter affirmed the principles of human rights.⁴

There is no gainsaying the fact that the UN has influenced several pragmatic actions for the protection of human rights on all fronts. It has put in place several mechanisms for the actualisation and protection of these rights. One such mechanism is the Economic and Social Council (ECOSOC) which established the Commission on Human Rights. Through these mechanisms, the UN has progressively developed elaborate human rights schemes. These include the adoption of the International Bill of Rights and several other instruments.

¹ Jande and Aligba (2000) 2.

² Scheinin (1995) 56.

³ Starke (1977) 672.

⁴ 2nd preambular paragraph and articles 55 and 56 of the UN Charter. Concluded 26-06-1945; entered into force 10-01-1946. 1 UNTS xvi. For the human rights implications of the UN Charter, see Holmstrom and Karlbrink (1998) 3-4.

In 1948, all UN member-nations unanimously adopted the Universal Declaration of Human Rights (UDHR).⁵ The UDHR established the very first international catalogue of human rights, including, significantly, a set of socio-economic rights, as 'a common standard of achievement for all peoples and all nations'.⁶ To translate the ideals of the UDHR into concrete legal obligations, two distinct instruments were drafted, namely, the International Covenant on Civil and Political Rights (ICCPR)⁷ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁸ both of 1966. For our present purposes, the ICESCR is the most significant.

Socio-economic rights are also found as part of many international instruments. Among the relevant universal instruments adopted by the UN apart from the International Bill of Rights are the Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965;⁹ the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979;¹⁰ the Convention on the Rights of the Child (CRC), 1989;¹¹ and the Convention on the Rights of All Migrant Workers, 1990.¹² As would be discussed in chapter 3, these instruments emphasise the fundamental principles of equality and non-discrimination.

At regional levels, the following are particularly relevant: The American Declaration of the Rights and Duties of Man, 1948;¹³ the American Convention on Human Rights, 1969;¹⁴ the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador), 1988;¹⁵ the European Social Charter, 1961;¹⁶ and the African Charter on Human and Peoples' Rights, 1981.¹⁷ References to socio-economic rights are also found in numerous other instruments.

⁵ UN General Assembly Resolution 217A (III) of 10-12-1948. UN Doc A/810 1.

⁶ 8th preambular paragraph of the UDHR.

⁷ Concluded 16-12-1966; entered into force 23-03-1976. 999 UNTS 171.

⁸ Concluded 16-12-1966; entered into force 03-01-1976. 999 UNTS 3.

⁹ Concluded 07-03-1965; entered into force 04-01-1969. 60 UNTS 195.

¹⁰ Concluded 18-12-1979; entered into force 03-09-1981. 1249 UNTS 13.

¹¹ Concluded 20-11-1989; entered into force 02-09-1990. 28 ILM 1456.

¹² Concluded 18-12-1990; not yet in force.

¹³ Adopted 02-05-1948. OAS Doc OEA/Ser LV/II 65, Doc 6.

¹⁴ Concluded 22-11-1969; entered into force 18-07-1980. 1144 UNTS 331.

¹⁵ Concluded 17-11-1988; not yet in force. OAS Treaty Series No 69.

¹⁶ Concluded 18-10-1961; entered into force 26-02-1965. ETS No 35. A Revised European Social Charter has added a new set of socio-economic rights to the original framework. It was concluded 21-10-1991; entered into force 01-07-1999. ETS No 163.

¹⁷ Concluded 27-06-1981; entered into force 21-10-1986. 21 ILM 58.

2.2 Conceptual problems in socio-economic rights

Neither in the UDHR nor in many of the contemporary instruments, such as the CRC, was any division made between civil and political rights on the one hand, and socio-economic rights on the other. In contrast however, within the framework of the International Bill of Rights, the content of the UDHR was divided into two sets, with different enforcement mechanisms for each set.

An apparent conceptual problem in socio-economic rights discourse is that the separation between those two instruments has often been used as evidence of inherent differences between the two 'categories' of rights. The notion of three generations of human rights which classified civil and political rights as belonging to the 'first generation'; socio-economic rights as belonging to the 'second generation'; and such rights as the right to self-determination and the right to development as belonging to the 'third generation' was propounded by Karel Vasak, a UN Special Representative, in 1979.¹⁸ This has not only led to the widespread philosophical and legalistic tradition establishing a hierarchy where civil and political rights are put at the top as evident in the provision of differentiated mechanisms for each set of rights within various human rights systems; it has also affected the work of NGOs which pay much less attention to socio-economic rights than to civil and political rights.¹⁹ This division has been explained as partly being the result of the intense ideological controversy of the Cold War era.²⁰ This dichotomy has had significant influence in the Inter-American and European human rights systems which provide for differentiated states' obligations and implementation mechanisms.²¹ As we shall see shortly, it has also had impact in the conceptualisation of these rights at domestic levels.

It is submitted that the notion of 'generations' of rights is hypothetical as it emphasises differences rather than linkages and it also wrongly suggests that certain rights are of less relevance to mankind.

¹⁸ Eide and Rosas (1995) 16-18.

¹⁹ For further discussion, see Eide (2000) 111-112.

²⁰ Rosas and Scheinin (1999) 51-52.

²¹ Van der Wilt and Krsticevic (1999) 384; and Merrills (1999) 279.

2.3 Contemporary trends in socio-economic rights

Following the end of dictatorships in some Latin American countries, the freeing of most political prisoners in Eastern Europe, and the spate of democratisation processes across Africa, particularly the end of apartheid in South Africa, deteriorating socio-economic conditions began to claim the attention of activists around the globe. Many NGOs felt freer to explore socio-economic rights concerns arising out of endemic poverty and inequality exacerbated by macro-economic policies. Many NGOs had also accumulated experiences that better enable them to address socio-economic problems as rights issues.²²

Today, international law is making frantic inroad in the universalisation and integration of human rights.²³

One of the most significant effects of the demise of the Cold War was reflected in the text of the Vienna Declaration adopted in 1993. The Declaration addressed most modern human rights concerns in a politically balanced and unequivocal manner.

Paragraph 5 of the Declaration proclaims:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis...It is the duty of States...to promote and protect all human rights...²⁴

It has been asserted that one landmark of the Declaration was the removal of the stereotyped dichotomy of human rights and the repositioning of socio-economic rights as rights whose attainment should be pursued immediately.²⁵

It is noteworthy that the stereotype in the categorisation of rights is fast crumbling at national levels with some states incorporating both sets of rights into their constitutions without qualification or distinction. Such constitutions contain provisions on socio-economic rights which are protected by the usual fundamental rights

²² IHRIP (2000) 9.

²³ Leckie (1998) 20 *Human Rights Quarterly* 82-124. An earlier attempt towards the evolution of the interdependence principle in human rights was made in *The Final Act of the International Conference on Human Rights 1968*, article 3. UN Doc A/CONF 32/41.

²⁴ *The World Conference on Human Rights: Vienna Declaration and Programme of Action*. UN Doc A/CONF 157/23.

²⁵ Symonides (2000) 17. This trend has been stepped up at the UN level with the increase of thematic mechanisms in respect of diverse socio-economic rights matters which efforts are making an impact towards the emergence of a complaint mechanism under the ICESCR. 'Thematic mandates' www.unhchr.ch/html/menu2/7/b/tm.htm (accessed 15-09-2001).

mechanisms.²⁶ One constitution that has been hailed as giving unparalleled importance to socio-economic rights is the 1996 Constitution of South Africa. On the same footing with civil and political rights, it provides for extensive socio-economic rights as well as a strong framework for their enforcement.²⁷

Similarly, international and local NGOs, including some working outside the human rights field, are becoming more active in addressing socio-economic rights. A paradigm shift is noticeable in the policies of some NGOs with traditional civil and political rights focus – such as Human Rights Watch – towards socio-economic rights.²⁸ Other non-state actors such as the World Bank and the UNDP have also acknowledged the relevance of these species of rights on the global agenda.²⁹

The bottom-line is that the age-long relegation of socio-economic rights within the broader human rights context and the artificial dichotomy of rights are receding at a steady pace.

2.4 Some contextual issues on socio-economic rights in Africa

Despite the fact that a sizeable number of African countries are parties to various treaties which create obligations to observe socio-economic rights, these species of rights remain the most prone to violations.³⁰ The scoreboard of African countries on compliance with standards on socio-economic rights is dismal: Compared to other regional groupings in the world, African states have more overdue reports, and where reports are even filed, it is often found that the recommendations of the treaty monitoring bodies are not usually fully implemented, if at all.³¹

On the domestic scenes, the most critical obstacle to the effective realisation of socio-economic rights is the question of their legal framework.

Most emergent states of Africa of the 1960s incorporated elements of the UDHR provisions in their post-colonial constitutions. One remarkable feature however, is that

²⁶ Craven (1999) 40.

²⁷ This is further discussed in chapter 3.

²⁸ Goldewijk and Fortman (1999) viii.

²⁹ 'Plan of action to strengthen the implementation of the ICESCR' www.unhchr.ch/html/menu2/6/cescr.htm (accessed on 15-09-2001).

³⁰ As at 16 July 2001, 44 African states had ratified the ICESCR. 'Status of ratification of the principal international human rights treaties' www.unhchr.ch/treaty_bodies/ (accessed on 15-09-2001).

³¹ Oloka-Onyango (1995) 'Beyond the rhetoric: Reinvigorating the struggle for economic and social rights in Africa' www.umn.edu/humanrts/Africa/Oloka-Onyango.html (accessed on 15-09-2001). A general statistical survey is given in the next chapter.

while civil and political rights are entrenched as fundamental rights, making them immediately enforceable, socio-economic rights, are largely classified as directive principles of state policy.³²

Apart from some states that give direct justiciability to socio-economic rights, as we shall further discuss, these species of rights are non-justiciable within many domestic legal domains in Africa.³³ Where some socio-economic rights are even couched as directly enforceable, jurisprudence is underdeveloped.³⁴

The most notable case made against the immediate implementation of socio-economic rights in Africa is that most states are poor and that consequently, they cannot afford to protect these rights since such protection necessitates long-term investment to generate the requisite economic capacity to meet the obligations engendered by this category of rights.³⁵

While it is indeed common knowledge that many African countries are poor, we cannot deny that a good deal of the much-taunted poverty has to do with misallocation of resources; warped prioritisation of policies; wanton corruption; fraudulent state practices; personalisation of the machinery of statehood; and debilitating lack of public accountability. In the midst of mass poverty in many African countries, there exists considerable individual wealth which is not unrelated to the causes of the poverty of the mass of the people. In addition, the lack of protection afforded socio-economic rights may, to some extent, be due to the neo-liberal orientation of most governments, which

³² This is particularly so in countries of the 'neo-Nigerian' model of bill of rights such as Kenya, Lesotho, Malawi, Namibia, Sierra Leone, The Gambia, Zambia, Zimbabwe among others. Under such constitutions, there is usually an overriding clause which excludes the jurisdiction of the courts in matters related thereto. An illustration is found in section 6(6)(c) of the Nigerian Constitutions of 1979 and 1999 in the following words 'the judicial powers vested...shall not extend to any issue or question as to whether any act or omission...is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution'. For a discussion of the neo-Nigerian constitutional concept in Africa, see Hansungule (2001) 8-10. This aspect is discussed further in chapter 3.

³³ The Constitutions of Cape Verde, 1990; Egypt, 1971; Gabon, 1991; Madagascar, 1992; Morocco, 1992; Sao Tome and Principe, 1990; Seychelles, 1993; and South Africa, 1996 contain extensive socio-economic rights provisions while the Constitutions of Benin, 1990; Burundi, 1992; Djibouti, 1992; Mali, 1992; Mauritania, 1991; Niger, 1992; Rwanda, 1991; Tanzania, 1984; and Togo, 1992 contain a few socio-economic rights provisions, which are directly justiciable.

³⁴ For example, during a study trip to Tanzania in April 2001, this author discovered, through personal interactions with some Tanzanian advocates and senior court officials, that although the rights to work and to just remuneration are unqualified rights in the Constitution of the United Republic of Tanzania, 1977 (as amended), no litigation has ever been brought in respect thereof. For more discussion on the status of the Tanzanian Bill of Rights, see Mbunda (1994) 148-149.

³⁵ *Statement and Recommendations of a Seminar for Magistrates*, organised by the African Centre for Democracy and Human Rights Studies, Banjul, 8-12 February 1993 (Unpublished).

protects and promotes the forces of free market economy and deregulation policies rather than the non-availability of resources.³⁶

The argument is supported here, that even when resources are scarce, in accordance with the interpretation given by the CDESCR, states should show how they have made use of existing resources.³⁷

A view related to the above, which has been placed in the African context, is the argument that there is a fundamental difference in the role of the state in the implementation of socio-economic rights in comparison to civil and political rights. According to that school of thought, the protection of the latter requires a *laissez-faire* role that is cost-free.³⁸ It is submitted that both 'categories' of rights entail a measure of cost.

It has also been argued that in the light of ongoing structural adjustment programmes (SAPs) imposed by the IMF and the World Bank, one should not expect the same states to fulfil their human rights obligations.³⁹ Since the 1980s when the SAPs began, there has been considerable decline in state expenditure on the welfare sectors. A UN Special Rapporteur report on the effect of SAPs shows that the adjustment processes have negatively influenced socio-economic rights.⁴⁰ There is no persuasive evidence to suggest that SAPs have assisted African economies in making a breakthrough. Indeed, the evidence available after almost twenty years of the application of these programmes is quite the opposite.⁴¹

The consequence is that most Africans are generally experiencing the double agony of socio-economic rights being violated and no cogent human development being discernible.

³⁶ Busia and Mbaye (2001) 109-110.

³⁷ *The Limburg Principles on the Implementation of the ICESCR*. UN Doc E/CN.4/1987/17, para 26.

³⁸ Vierdag (1978) 9 *Netherlands Yearbook of International Law* 69 103.

³⁹ Busia and Mbaye (n 36 above) 110.

⁴⁰ Turk, D *The Realisation of ESCRs*. E/UN4/Sub2/1991/17, 57-58. Oloka-Onyango (n 31 above).

⁴¹ 'UNDP Human Development Report 1999' www.undp.org/hdro/report.html (accessed 15-09-2001). Oloka-Onyango (n 31 above).

CHAPTER 3: LEGAL MECHANISMS FOR THE PROTECTION OF SOCIO-ECONOMIC RIGHTS IN AFRICA

3.1 International and regional protection mechanisms

From the provisions of various human rights treaties, the corpus of socio-economic rights consists of the right to an adequate standard of living, the enjoyment of which entails that everyone shall enjoy the necessary subsistence rights of adequate clothing, housing, food;⁴² the right of families to assistance;⁴³ the right to property;⁴⁴ the right to work;⁴⁵ the right to social security;⁴⁶ the right to a high standard of health and health care;⁴⁷ and the right to education⁴⁸ among others.

This chapter examines the normative framework provided in various human rights systems for the protection and implementation of socio-economic rights in Africa and the operations of these standards.

3.1.1 The United Nations human rights system

The ICESCR (the covenant) is the most fundamental instrument at the UN level for the protection of socio-economic rights. Its article 2 illustrates the approach of the UN system towards these rights, creating an obligation for states parties to take steps to the 'maximum of their available resources' to 'achieve progressively' the full realisation of the rights enumerated therein.

The wordings of that key provision have been the subject of much controversy among scholars.⁴⁹ It is submitted that since the ICESCR is an international treaty, it must be interpreted, in accordance with the Vienna Convention on the Law of Treaties (VCLT), 1969,⁵⁰ in good faith, taking into account its object and purpose, the ordinary meaning, the *travaux préparatoires* and relevant practice.

⁴² Art 25 UDHR; art 11 ICESCR; art 27 CRC.

⁴³ Art 10 ICESCR; art 27 CRC.

⁴⁴ Art 17 UDHR.

⁴⁵ Art 23 UDHR; art 6 ICESCR.

⁴⁶ Arts 22, 25 UDHR; art 9 ICESCR; art 26 CRC.

⁴⁷ Art 25 UDHR; art 12 ICESCR.

⁴⁸ Art 26 UDHR; art 13 ICESCR.

⁴⁹ Scheinin (n 2 above) 42; Craven (n 26 above) 107.

⁵⁰ Article 31 of the VCLT. Concluded 23-05-1969; entered into force 27-01-1980. UN DocA/Conf 39/28. 8 ILM 679.

An analysis of the nature of the obligations relating to socio-economic rights under the ICESCR, as well as the mechanisms of monitoring their implementation, is vital to a proper understanding of this subject.

Nature of states' obligations under the ICESCR

States parties have an obligation to begin immediately to take steps towards the full realisation of the rights in the covenant through all appropriate measures consistent with the nature of the rights.⁵¹

The treaty body for the ICESCR has adopted a four-fold typology of duties in assessing whether states have complied with their obligations under the covenant, namely, to respect; to protect; to promote; and to fulfil.⁵²

A related concept is that of 'minimum core content'. This has been described as the non-negotiable foundation of a right to which everyone, in all contexts, is entitled. The minimum core content implies a 'floor' below which no government can go regardless of its economic situation.⁵³

A notable scholar has contended that 'the latitude to achieve the realisation of the rights "progressively" should not be interpreted as an invitation for the state to drag its feet interminably'.⁵⁴

Today, there is a positive recognition of the concept of progressive realisation as implying the avoidance of retrogressive measures that reduce either the number of beneficiaries who have access to the rights or the substance of the benefits.⁵⁵

It is noteworthy that the more recent CRC, which includes many socio-economic rights and corresponding state obligations, does not contain the qualifying clause of 'progressive realisation' as the obligations are immediate although their implementation is qualified by the phrase 'to the maximum extent of their available resources'.⁵⁶

⁵¹ Committee on Economic, Social and Cultural Rights (CESCR) General Comment No 3 *The Nature of States Parties Obligations*. UN Doc E/1991/23 paras 2, 3, 7. Limburg Principles (n 37 above) para 38.

⁵² See the analytical discussion in IHRIP (1997) 19-21.

⁵³ IHRIP (n 52 above) 20. However the CESCR recognises that constraints of resources can only be considered as a reason for the failure of a state to meet its obligations where such a state demonstrates that it has exhausted all efforts in applying all its resources to the fulfilment of its minimum obligations. General Comment No 3 (n 51 above) para 10.

⁵⁴ Liebenberg (1999) 40.

⁵⁵ IHRIP (n 22 above) 163-166. General Comment No 3(n 51 above) para 9; Limburg Principles (n 37 above) para 72 and *The Maastricht Guidelines on the Violations of ESCRs 1996*, para 14.

⁵⁶ Article 4 CRC.

Supervisory mechanisms under the ICESCR

The CESCR (the committee) monitors compliance with states' obligations under the covenant and the level of implementation of the rights therein.

The ICESCR requires each state party to submit periodic reports, describing the measures adopted and the progress made in achieving the rights recognised in the covenant. The committee provided assistance in this process by issuing a set of guidelines specifying the types of information it requires in order to monitor implementation.⁵⁷

The committee considers a state's report and then prepares its opinion on the state party concerned (Concluding Observations). It also publishes periodic General Comments elaborating on the nature of particular rights, the obligations imposed on states and how it can be better implemented.⁵⁸

Recognising that the ultimate effectiveness of these rights is contingent on the measures taken by states, the committee emphasised the importance of legislative measures and judicial remedies, indicating the very legal nature of these rights.⁵⁹

In its efforts at ensuring a legally enforceable status for these rights, the committee expatiated on making socio-economic rights justiciable at domestic levels with the issuance of General Comment No 9 stressing that:

While the respective competences of the various branches of government must be respected, it is appropriate to acknowledge that...a rigid classification of economic, social and cultural rights which puts them...beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.⁶⁰

⁵⁷ *Revised Guidelines Regarding the Form and Contents of Reports to be Submitted by States Parties Under Articles 16 and 17 of the ICESCR*. UN Doc E/C 12/1989/SR 8.

⁵⁸ Holstrom and Karlbrink (n 4 above) 314-324. Although such General Comments do not have a binding force, they can greatly influence the interpretation of these rights especially at regional and domestic levels. McChesney (2000) 15.

⁵⁹ General Comment No 3, para 5. Craven (1993) 40 *Netherlands International Law Review* 360 367. The committee has indicated that a number of provisions in the covenant are capable of immediate implementation, namely the rights in articles 3; 7(a)(i); 13(2)(a), (3) and (4); and 15 (3).

⁶⁰ *The Domestic Application of the ICESCR*. UN Doc E/C 12/1998/24, para 10. Liebenberg (2001) 55.

In the absence of an Optional Protocol establishing an individual complaints procedure as found under the ICCPR, the reporting process is increasingly becoming a viable instrumentality for the monitoring of the implementation of socio-economic rights at the international level, similar to a judicial setting to identify critical issues in dispute.⁶¹ NGOs are permitted brief oral submissions and may submit written briefs to the pre-sessional working group. Without effective NGO input, the working group of the committee would have little grasp of the issues of primary concern.⁶²

The question that confronts us at this juncture is: How far has the reporting procedure assisted the evolution of enhanced socio-economic rights protection in Africa? To this we now turn.

As at September 2001, 44 African states had ratified the ICESCR, with three others being mere signatories and another six being neither signatories nor states parties.⁶³ Compared to other countries of the world, the few reservations and declarations entered by African states parties are largely interpretative and do not constitute significant departures from covenant obligations.⁶⁴

African states parties to the ICESCR have shown a general lackadaisical attitude towards compliance with its provisions. As at September 2001, out of a total of 581 reports filed by states parties before the committee, only 124 originated from Africa, and out of a total of 192 overdue state reports worldwide, 79 accrued from Africa. Eleven African states parties have three overdue reports each while there are nineteen that have never submitted any report.⁶⁵

⁶¹ Porter (2000) 15 *Journal of Law & Society* 125-126. A draft optional protocol to the ICESCR has been prepared allowing for a formal complaints procedure. *Report of the CESCR*. UN Doc E/CN4/1997/105; Holstrom and Karlbrink (n 4 above) 324-325. In furtherance of this, the UN Commission on Human Rights has recently appointed an independent expert, Hatem Kotrane (Tunisia), whose mandate commenced in 2001, to examine the question of a draft optional protocol to the ICESCR. 'Thematic mandates' (n 25 above).

⁶² The role of NGOs in the work of the CESCR is discussed in chapter 4.

⁶³ Liberia; Sao Tome and Principe; and South Africa are signatories while Botswana; Comoros; Djibouti; Mauritania; Mozambique; and Swaziland are neither signatories nor states parties. 'Status of ratification – Non-state parties' www.unhchr.ch/doc.nsf/RepStatfrset?OpenFrameSet (accessed on 22-09-2001).

⁶⁴ There are eight reservations and two interpretative declarations entered by Algeria, Egypt, Guinea, Kenya, Libya, Madagascar, Rwanda and Zambia; and Algeria and Egypt respectively. 'Reservations and declarations to the ICESCR' www.unhchr.ch/html/menu3/b/a_cescr.htm (accessed 22-09-2001).

⁶⁵ 'Reporting status - Overdue by treaty' www.unhchr.ch/tbs/doc.nsf/RepStatfrset?OpenFrameSet (accessed on 22-09-2001).

Similarly, very few African states parties do fully comply with the concluding observations and recommendations which the committee issues at the end of the reporting process.⁶⁶

This trend of not giving serious attention to the reporting process has reflected in the work of African NGOs before the committee and this would be further examined in chapter 4.

3.1.2 The African regional human rights system

x [Regional human rights mechanisms are commonly thought to be potentially more effective than UN mechanisms, because they are able to take better account of regional peculiarities. The UN itself has encouraged the creation of regional mechanisms to deal with human rights to complement UN mechanisms. African regional human rights instruments are specific to Africa, and take into consideration certain values and customs peculiar to the continent.] Today, the entire 53 member states of the OAU (now AU) have ratified the AfCHPR.⁶⁷ → Introduce African Charter & working group.

The AfCHPR places all 'categories' of human rights on equal legal footing. The fact that the rights provided for in the AfCHPR are not divided into different categories but are contained in a single document confirms the non-hierarchical approach of the African regional system to all human rights. Apart from the explicit preambular and substantive provisions of the AfCHPR which attest to this claim, it is also clear that it was intended to be so. This is manifest in the *travaux préparatoires* as well as the writings of the eminent visionaries of the AfCHPR.⁶⁸

From the views expressed by eminent publicists and other renowned African jurists and writers, it is arguable that notwithstanding the scepticism in certain quarters, socio-economic rights are immediately justiciable under the AfCHPR.

⁶⁶ Welch, Jnr (1995) 56-60. See for example 'Concluding observations of the CESC-R-Nigeria' www.unhcr.ch/Huridocda/Huridoca.nsf (accessed 22-09-2001) where the CESC-R berated the general failure of states to implement its recommendations in previous reports.

⁶⁷ The 54th state, Morocco, voluntarily withdrew from the OAU in 1984 following the recognition of the Saharawi Arab Democratic Republic. See IHRDA (2001) 20.

⁶⁸ Busia and Mbaye (n 36 above) 107-108.

Communiqués and statements have also been issued which, *inter alia*, reaffirm the legal status of socio-economic rights in the AfCHPR.⁶⁹ However, while there is every reason to support that position, reality shows that there is noticeable inertia in relation to the socio-economic rights provisions in the AfCHPR, compared to its civil and political rights components.⁷⁰ It is also worthwhile to examine the reporting procedure under this system.

Article 62 of the AfCHPR calls upon states parties to submit to the African Commission, every two years, a report on the measures taken towards the enjoyment of the rights guaranteed by the AfCHPR. A scrutiny of these reports reveals the wrong perception of African states of their obligations under the AfCHPR as being identical with those under the ICESCR.⁷¹ This perception is wrong in the light of the guidelines issued by the commission to guide states in the reporting process.⁷² It is submitted that while socio-economic rights are subject to progressive realisation under the ICESCR, under the AfCHPR, the drafting of socio-economic rights provisions suggests immediate implementation.⁷³

NGOs can play a vital role in these respects in promoting the socio-economic rights dimension in the work of the commission, and this shall be considered in detail in the next chapter.⁷⁴

African scholars are enthusiastic about an increased relevance for socio-economic rights with the emergence of the additional protocol on the African Court on

⁶⁹ See the statement of a former chairman of the African Commission, El-Badawi, quoted in *Report of the African Seminar on International Human Rights Standards and the Administration of Justice*, Cairo, 8-12 July 1991, HR/PUB/6, 39. Umozurike (1992) 1; Busia and Mbaye (n 36 above) 108; Odinkalu (2001) 23 *Human Rights Quarterly* 327-352-353; and 'Communiqué of the SERAC Workshop on The African Commission and ESCRs Activism in Africa', Lagos, 3-4 September 1999 in (1999) 2(2) *ESR Review* 18-20.

⁷⁰ Between 1994-1999, only five out of 108 decided communications tangentially related to socio-economic rights provisions in the AfCHPR as all mainly dealt with civil and political rights violations. See *Union Africaine des Droits de l'Homme/Angola*, Communication 159/96 (right to property); *Annette Pagnouelle/Cameroon*, Communication 39/90 (right to work); *Free Legal Assistance Group/Zaire*, Communications 25/89; 47/90; 56/91; and 100/93 (right to education); Communication 159/96 *supra* (protection of the family and vulnerable groups). Full reports are in IHRDA (2000) 247-255.

⁷¹ Illustrations of this trend abound in many states' reports where state obligations on socio-economic rights are perceived as being of 'progressive' and not 'immediate' implementation. Ghana's report to the 15th session of the commission, ACHPR/PR/GH/XV, 1993; Mauritius' and Zimbabwe's reports to the 20th session of the commission, ACHPR/PR/MAU/XX and ACHPR/PR/ZIM/XX, respectively, 1996; and Namibia's report to the 29th session of the commission, ACHPR/PR/NAM/XXIX, 2001.

⁷² *Guidelines for National Periodic Reports*, adopted at the 4th ordinary session of the African Commission, Cairo, 17-26 October 1988. AFR/COM1HPR 5 (IV).

⁷³ Examples are articles 15 (right to work); 16(right to health); 17(right to education and cultural life); 18(right to the protection and support of the family); and 24(right to satisfactory environment).

⁷⁴ The impact and prospects of NGOs' 'shadow reports' are discussed further in chapter 4.

Human and Peoples' Rights. One is hopeful that the fulfilment of the mandate to perform judicial functions *stricto sensu* beyond the traditional purview of the commission, more so as the protocol makes no distinction in the nature of the rights protected.⁷⁵ This would predictably lead to the potential development of regional jurisprudence on socio-economic rights.

3.2 Domestic protection mechanisms

Generally all over Africa, socio-economic rights are usually reflected in the main bodies of constitutions or found as piece-meal provisions in statutes. While some constitutions contain directly enforceable socio-economic rights, others express them as non-justiciable provisions. Many others only contain a sprinkling of these rights.⁷⁶ There are also states where legislative enactments provide the strong basis for socio-economic rights.

3.2.1 Effect of treaties in domestic law

Implementing socio-economic rights provisions in treaties lies more on governments who are expected to provide legislative framework for their implementation. This is consistent with international law and practice.⁷⁷ Traditionally, the methods of giving domestic legal effect to international treaties have been classified along the dichotomy of 'dualistic' and 'monistic' theories. In the former, domestic law and international law are understood as separate legal systems. In the latter theory, international law and domestic law form a unified legal system, often characterised by the primacy of international norms.

Dualistic model of giving effect to international treaties (both are considered separate legal systems)
Monistic & unified legal system

⁷⁵ Ankumah (1996) 198; IHRDA (n 67 above) 3-4. Article 3 of the Protocol vests the court with jurisdiction to interpret and apply all human rights instruments ratified by the states parties.

⁷⁶ Discussed in chapter 2 above. Articles 24, 25 and 27 of the Constitution of Ghana, 1992 make certain socio-economic rights seemingly justiciable. The decision in *New Patriotic Party v Attorney General of the Republic of Ghana* (1996-97) SCGLR 729 appears to support this view.

⁷⁷ Article 27 VCLT provides that 'a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'.

The methods of formulating legislative framework for socio-economic rights vary in Africa as in other parts of the world. Although a survey of African legal systems shows that the majority of states are of the dualist model, a sizeable number of states have constitutional provisions which confer superior status on treaties over domestic law.⁷⁸

As a result of the growing use of more liberal implementation methods like incorporation; the possibility of the judiciary applying open sources of law doctrines that allow a wide use of international norms even without their formal status as norms of domestic law; and the growing heterogeneity of international norms, the traditional distinction between “dualism” and “monism” is already having a diminished relevance in assessing the concrete operation of various international norms in the legal framework of states.⁷⁹ This should be seen as a positive omen for increased socio-economic rights activism at domestic levels in Africa.

3.2.2 National constitutions and bill of rights

While the constitutions of some African countries give explicit recognition to socio-economic rights as positive rights, others classify them as ‘directive principles of state policy’ which render these rights merely aspirational and non-justiciable.⁸⁰

The Indian Constitution, 1950, as amended, is the focal point of reference for the codification of socio-economic rights as ‘directive principles of state policy’.⁸¹ The Indian judiciary has been in the lead, among the common law jurisdictions, in giving expansive interpretation to civil and political rights to include socio-economic rights. The strategy is to expand the substantive content of constitutional rights by reference to directive principles. Under this mode of judicial interpretation, ‘life’ and ‘liberty’ were interpreted by the Supreme Court to also mean:

(Living) with human dignity...taking within this fold some of the finer grace of human civilisation which makes life worth living and (including within) the expanded concept of life...of the persons concerned.⁸²

⁷⁸ Such states include Benin; Burundi; Cameroon; Central African Republic; Chad; Guinea; Mali; Mauritania; Namibia; Niger; and Senegal. See ‘How to ensure the judiciary enforces treaty obligations’ www.acts.or.ke/Innova99/Judiciary.htm (accessed 22-09-2001).

⁷⁹ Scheinin (1999) 418.

⁸⁰ It must be mentioned that there is no constitution in Africa does not recognise at least one socio-economic right except Swaziland which has no written constitution.

⁸¹ These are contained in part IV, articles 36-50, and many of these provisions correspond with the ICESCR provisions. For a scholarly discussion of the Indian experience, see Muralidhar (2000) 435-446.

⁸² *Rathinam v Umed Sharma* (1994) 3 SC 394 at 409. See also *Coradie v Union of India* (1981) AIR SC 746.

obligation under section 27(2) of the 1996 Constitution (right of access to health care). In upholding the rationality of the hospital guidelines under which the applicant was disqualified for dialysis treatment, the court declared that the treatment required did not constitute emergency medical treatment under section 27(3).⁹⁵

Although South Africa is yet to ratify the ICESCR, it has extensively modelled its constitutional provisions on socio-economic rights after the ICESCR, and over the years, the committee's interpretations of the ICESCR in its periodic comments have proved to be veritable tools for developing South African jurisprudence in this regard.

A judicial landmark on socio-economic rights is the more recent decision of the South African Constitutional Court in *Government of the Republic South Africa & Others v Grootboom & Others*.⁹⁶

In its analysis of section 26 which guarantees the rights of access to adequate housing, the court asserted that the state must not only take reasonable measures towards the progressive realisation of this right but such measures must also be reasonably implemented. In considering the housing policies and programmes of the respondents in meeting the obligations in section 26(2), the court held that those programmes adopted by the state fell short of the requirements of that section in that no provision was made for relief to the categories of people identified as being in desperate need.⁹⁷ The court however ended up with a declaratory relief.

The implications of the above decision for African states in developing a coherent jurisprudence on socio-economic rights, which can be concretely implemented in government policies, laws and programmes cannot be over-emphasised. It expresses the capacity of courts to declare that a government policy fails the standard of reasonableness particularly in providing for the basic needs of vulnerable people. The judicial approach in that case is a remarkable universal precedent originating from the African continent. The strategy offered by the judicial approach in this case is further discussed in the next chapter.

Beyond the purview of state obligations under the South African Constitution, scholarly efforts and policy strategies are now being directed towards the possibilities of

⁹⁵ n 94 above 11. Although the claimant's relief was not granted, the court asserted that while the state has a margin of discretion in determining which measures it will implement and how it will utilise its resources, it must show that it is exercising its discretion rationally and in good faith, para 29. For further discussion, see De Waal, Currie and Erasmus (2001) 431-454.

⁹⁶ 2000 (11) BCLR 1169.

⁹⁷ n 96 above 67-69. The core of the court's reasoning on the reasonability principle is in paras 43-44. General Comment 4 *The Right to Adequate Housing*. UN Doc HRI/GEN/1/Rev 1, 53, paras 4 and 11.

giving these provisions horizontal application through the expansive interpretation of section 8 of the 1996 Constitution, such that would make the negative components of these obligations have effect even in the private domain.⁹⁸

As regards accessibility by citizens to socio-economic rights, the South African Constitution contains generous provisions relating to legal standing, allowing a broad range of individuals and groups to enforce all the rights in the Constitution.⁹⁹

While it is plausible to posit that formal access to court does not guarantee access to justice, it is crucial for the legal protection of rights, especially in jurisdictions with little legal guarantee for socio-economic rights.

3.2.3 Other statutory mechanisms

(a) Legislation

One cardinal mechanism recognised as crucial to the implementation of socio-economic rights at the domestic level is legislation.¹⁰⁰ However, the most notable limitation of this mechanism lies in the possibility of redundancy or repeal where there is no political will or when there is a change in the political climate.

It is a commonplace all over Africa to find statutes containing elaborate provisions on socio-economic rights and supported by the availability of remedies.¹⁰¹

One African state that has utilised the mechanism of legislation to implement socio-economic rights, to a remarkable extent, is Libya.¹⁰² Its Labour Act, 1970 and the Labour Act, 1975 guarantee the right to employment and state assistance in finding

⁹⁸ Liebenberg (n 60 above) 68-69; Liebenberg (2001) 7. De Vos (1997) 13 *South African Journal of Human Rights* 67 100.

⁹⁹ The liberal approach to the issue of "standing" under section 38 of the 1996 Constitution was emphasised in *Ngxusa & Others v Secretary, Dept of Welfare, Eastern Cape & Another* 2000 (12) BCLR 1322 (E) at 1327 per Judge Froneman. Liebenberg (n 98 above) 8.

¹⁰⁰ Article 2(1) ICESCR and General Comment Nos 3, para 3; and 9, para 8. Liebenberg (n 60 above) 79-82.

¹⁰¹ In Nigeria, as an illustration, such rights are contained in the revised Laws of the Federation, 1990. The Labour Act; the Factories Act; and the Workmen's Compensation Act regulate the health and safety, remuneration, compensation and other workers' rights. The National Provident Fund Act and the Pensions Act cover a range of social security rights. The Federal Environmental Protection Agency Act; the Petroleum Act; the Oil in Navigable Waters Act; and the Minerals Act, regulate the effect of oil and mineral exploration on land tenure and environment. These pieces of legislation have become pedestals for socio-economic rights litigation in Nigeria. In *Farrah v Shell* (1994) 3 NWLR (part 264) 313, the Court of Appeal granted compensation to a community whose environment was destroyed by oil production activities by the defendants.

¹⁰² Libya is a party to all key human rights treaties including the ICESCR and the AfCHPR. The Libyan Great Green Charter, proclaims a wide range of socio-economic rights on the same justiciable footing as civil and political rights.

employment, which includes provision of necessary vocational training. Article 31 of the Labour Act prohibits remuneration below the minimum wage; forbids differentiation on the ground of gender in terms of wages, promotion, bonus or paid vacations. It guarantees compensation for workplace injuries and the formation of labour and trade unions, within statutory limits.¹⁰³ Beyond the guarantee of the right to education in the Great Green Charter, the *al-'ilmu haqqun li-kulli al-muwatin* (Law on Education), 1970 required all Libyan children to complete primary education. It compels education for boys and girls, and children of nomadic families. This law was revised in 1992 to create opportunity for all Libyans to study up to doctorate level at government expense.¹⁰⁴

While it may be correct to criticise the Qhadhafi regime in terms of civil and political rights violations, its efforts in implementing socio-economic rights must not be overlooked. The regime has consistently invested in improving socio-economic conditions and the process of advancing socio-economic rights.¹⁰⁵ It has been asserted that through the use of legislation, Libya has advanced the frontiers of socio-economic rights than most other Islamic, Arab or North African states.¹⁰⁶

Apart from legislative mechanisms, these rights may also be subject to quasi-judicial remedies such as the ombudsman or human rights commissions and other administrative complaints.¹⁰⁷

(b) National human rights commissions

The CESCR recognises human rights commissions as potential mechanisms in the protection of socio-economic rights, as part of the obligations of states under the ICESCR.¹⁰⁸

¹⁰³ *Al-Idarat al-ammah lii-qanoun*, 1989, 3-11.

¹⁰⁴ It is noteworthy that while these guarantees are justiciable, they are yet to be tested in the law courts. Vandewalle (1995) 3-46.

¹⁰⁵ This was noted in the concluding observation of the CESCR at the review of the initial report of Libya in 1997. 'Concluding observations of the CESCR-Libyan Arab Jamahiriya' [www.unhchr.ch/tbs/doc.nsf/\[Symbol\]/?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/[Symbol]/?Opendocument) (accessed 22-09-2001).

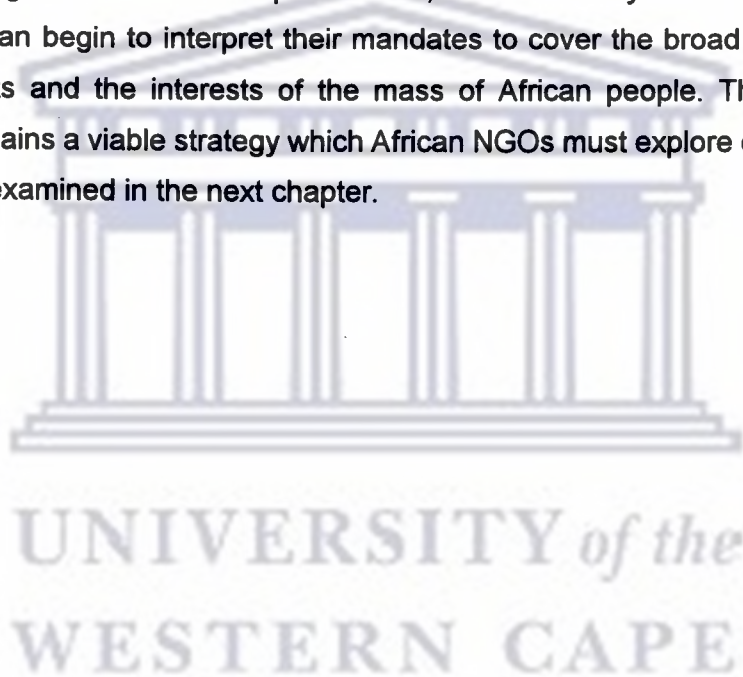
¹⁰⁶ Merheb (1998) 258. The repressive nature of the Qhadhafi regime has however stultified the independence of the Libyan judiciary, and invariably, the enforcement of these positive rights. 'Libya' www.mideastinfo.com/libya.htm (accessed 22-09-2001), 'Department of state human rights reports for 2000:Libya' www.humanrights-usa.net/reports/libya.html (accessed 22-09-2001).

¹⁰⁷ Rosas and Scheinin (1995) 379.

¹⁰⁸ CESCR General Comment No 10 *The role of national human rights institutions in the protection of economic, social and cultural rights*. UN Doc E/C 12/1998/25, para 3.

One remarkable phenomenon in African states in this regard is the increasing establishment of human rights commissions.¹⁰⁹ This mechanism has attained international recognition in contemporary times. Section C (7) of the Principles relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights¹¹⁰ emphasised the key role of the civil society in expanding the work of national institutions to the protection of the rights of particularly vulnerable groups and in bringing about greater accountability and respect for human rights by governments.

The mandates of African human rights commissions basically vest them with the responsibility to promote and protect human rights generally, while only those of Mauritania and South Africa are given explicit mandates to monitor socio-economic rights.¹¹¹ Through the exercise of political will, and efforts by the civil society, these commissions can begin to interpret their mandates to cover the broad issues of socio-economic rights and the interests of the mass of African people. The use of these institutions remains a viable strategy which African NGOs must explore extensively. This will be further examined in the next chapter.



¹⁰⁹ To date, there are 23 national human rights commissions in Africa comprising of Algeria; Benin; Cameroon; Central African Republic; Chad; Ethiopia; Ghana; Kenya; Liberia; Malawi; Mali; Mauritania; Morocco; Nigeria; Rwanda; Senegal; Sierra Leone; South Africa; Sudan; Togo; Tunisia; Uganda and Zambia. 'National human rights commissions in Africa' www.hrw.org/reports/2001/Africa/overview/record.html (accessed 22-09-2001).

¹¹⁰ (The Paris Principles). UN Doc E/CN 4/1992/54.

¹¹¹ 'Protectors or pretenders? Government human rights commissions in Africa – Overview' www.hrw.org/reports/2001/Africa/overview/factors.html (accessed 22-09-2001).

CHAPTER 4: IMPLEMENTING SOCIO-ECONOMIC RIGHTS IN AFRICA: THE ROLE OF NGOS

Generally, national legal systems do not have much practice in implementing the socio-economic rights enshrined in international and regional instruments.¹¹² Although monitoring bodies are created to clarify and apply treaty provisions, monitoring is only an element. Implementation has to do, not only with the reception of socio-economic rights, but also with their real-life application. What emerges from the foregoing thesis is the broad question of evolving viable implementation strategies by the civil society within the ambits of existing mechanisms. This chapter raises some contextual concerns on the traditional approaches to the implementation of socio-economic rights in Africa and attempts to identify modalities for stronger activism.

4.1 NGOs and the implementation of socio-economic rights in Africa

The role of NGOs in standard setting and their involvement in implementation arises from their adequate grounding in the practical realities of human rights violations. They are often more aware than governments and individuals of weaknesses and gaps, thus leading them to push for new standards, or the strengthening of existing ones.

Although many African NGOs increasingly believe that socio-economic rights must figure in human rights work, few have had experience in systematically protecting them. It has been recognised that the protection of these rights poses complex problems, and that this might have inhibited experimentation and investigation.¹¹³

The question that confronts us at this juncture is: How have African NGOs responded to the challenges posed by socio-economic rights implementation across the continent?

It must be noted from the onset that African NGOs vary enormously in their history, structure and aims. For example, many portray legal emphasis and may indeed have evolved as committees of local law societies. Some are membership organisations, many are not. While some have specific mandates, most have mandates that are much broader and more vaguely defined.¹¹⁴

¹¹² Goldewijk and Fortman (n 28 above) x.

¹¹³ Steiner (1991) 41.

¹¹⁴ 'The status of human rights organisations in sub-Saharan Africa-characteristics and problems of human rights NGOs' www.unige.ch/humanrts/africa/overview/htm (accessed 29-09-2001).

The liberal system of granting consultative status to NGOs before UN bodies has led to increased relevance for NGOs in the protection of human rights at the UN level. Such groups are entitled to attend meetings of the ECOSOC and its subsidiary bodies and to submit written statements which may be accepted and distributed as UN documents.¹¹⁵

In addition to making statements to draw attention to human rights violations, either by country or by issue, NGOs have a broad range of opportunities of interacting with the various thematic mechanisms at the UN level.¹¹⁶ There are also the 'confidential 1503 procedure' and the 'public 1235 procedure' which could be useful complaints mechanisms at the UN despite their limitations.¹¹⁷

The tremendous impact of NGOs at the reporting stage of the ICESCR has been recognised by the CESCR. It is remarkable to note that the CESCR was the first treaty body to provide NGOs with the opportunity to submit written statements and make oral submissions dealing with issues relating to the enjoyment of the rights in the ICESCR.¹¹⁸ The active participation of NGOs in the work of the CESCR has been fundamental in ensuring the wide distribution of information about socio-economic rights at national levels and in generating media attention in countries after the adoption of concluding observations.

Regrettably however, the participation of African NGOs within the UN human rights system has been at a very low ebb. For instance, it was discovered that as late as February 1997, only two national NGOs in Africa had consultative status with the UN Commission on Human Rights.¹¹⁹ The fall-out of this is that African NGOs have not been effective in the developmental processes of international human rights.¹²⁰

While the growth of the African human rights movement has indeed been remarkable since the 1990s, yet it must be acknowledged that its problems and

¹¹⁵ 'Committee on NGOs' www.un.org/esa/coordination/ngo/ (accessed 29-09-2001).

¹¹⁶ 'Thematic mandates' (n 25 above).

¹¹⁷ Flinterman (1999) 146-148.

¹¹⁸ Holstrom and Karlbrink (n 4 above) 322-23.

¹¹⁹ These are the *Fé y Algeria* and the *Country Women Association of Nigeria*. Across the globe as at 10 February 1997, 79 NGOs had general consultative status; 488 have special consultative status; and 646 are on the Roster. 'List of NGOs in consultative status with ECOSOC'

www.ngos.net/ecosocngolist.html (accessed on 29-09-2001).

¹²⁰ Two illustrations of this trend are found in the consideration of the 2nd periodic report of Senegal during the 26th extraordinary session of the CESCR in August 2001 and the initial periodic report of Benin in September 2001 where it was found that no NGO made an input and the CESCR had to consider only the states' versions of the reports. 'Committee on ESCR - Notes on sessions' www.unhcr.ch/html/menu2/6/cescrnote.htm#26th (accessed 29-09-2001).

limitations have been formidable. It therefore becomes essential to consider the limitations of African NGOs in this segment, in order to understand and address them.

4.1.1 Limitations to the effectiveness of NGO initiatives

One seemingly intractable problem of African NGOs is lack of funds for day-to-day operations. Many NGOs function without basic office equipment. Many operate with less than average manpower. It is important to note that in Africa generally, the personal contributions of small numbers of highly committed individuals who are often hard-pressed themselves, have been fundamental in maintaining NGOs through difficult times.¹²¹

Beyond the limitations of inadequate funds is the over-emphasis on civil and political rights. The efforts of African NGOs have tended to focus more, if not exclusively, on civil and political rights, understandably, as a result of the pressures of governance conflicts and democratisation processes. It has also been mentioned that this emphasis is perhaps due, in part, to the significant involvement in human rights initiatives of lawyers and other professionals whose interests tend to be affected by infringements of those species of rights.¹²²

Furthermore, NGOs that have sought to promote socio-economic rights have often been seriously constrained by the lack of the expertise that NGOs need to be able to effectively monitor these rights. It is also discernible that many NGOs hold the perception that donors are less interested in supporting socio-economic rights efforts.

Another major problem is the lack of coordination and collaboration. African NGOs have themselves always recognised this problem but it remains to be surmounted. There is a marked absence of articulation in activities of African NGOs as they often fail to consult with one another for the purposes of networking, let alone collaborate with other sectors of their societies with similar interests.¹²³ It has been identified that one particularly acute example of this phenomenon lies in the dichotomy between francophone and anglophone NGOs. It is shown that even where regional or sub-regional human rights collaboration exists, such as the *Union Interfricaine des*

¹²¹ The author discovered through personal interactions with his colleagues from various African countries that financial constraints are a commonplace among NGOs across the continent.

¹²² 'The status of human rights organisations in sub-Saharan Africa overview-characteristics and problems of human rights NGOs' (n 114 above).

¹²³ Welch, Jnr (1995) 297.

Droits de l'Homme based in Burkina-Faso, they tend to be hampered by the political rivalries of the colonial era, perpetuated by post-independence governments.¹²⁴

Another related problem is the undemocratic organisational structures of many NGOs across the continent. Most of these bodies consist of a small group of policy makers without broad membership while so many are effectively one-man organisations. This breeds the cults of personality and few NGOs in Africa are run in a participatory way.¹²⁵ While it is recognised that this is not a peculiar African problem, it impairs the ability of NGOs to sustain themselves because there is often little or no investment in professional training.

At the regional level, one obstacle faced by NGOs in relation to the African regional human rights system has been the difficulty in obtaining Observer Status, which requires the support of five states and no active opposition from any member state. Among 54 African organisations currently enjoying that status, fewer than ten work directly on human rights issues.¹²⁶ Hopefully, with the ongoing review of the rules for obtaining observer status, more opportunity would be given to NGOs to contribute more positively.

4.2 Implementation strategies at domestic levels

It is often very difficult for NGOs to positively establish socio-economic rights violations which would ground legal action. Where they are able to establish such, it often turns out that for reasons of the underdevelopment or non-existence of jurisprudence, they find themselves in a position of inadequacy to grapple with the question of redress through legal mechanisms.

The implementation of socio-economic rights at domestic levels has given rise to many issues particularly on what constitutes a violation, given the lack of jurisprudential basis in the ICESCR and AfCHPR practices. For example, while the facts of detention without trial or invasion of privacy are usually self-evident, the violation of, say, the right to food or housing does not so manifest. Coupled with this is the onerous task of ascertaining the sufficiency of state resources to cater for socio-economic rights within the framework of budgetary allocations. These are quandaries which have constrained

¹²⁴ n 115 above. Author observed that the same problem reflects in the operations of the Southern African Human Rights NGO Network (SAHRINGON).

¹²⁵ Steiner (n 113 above) 77.

¹²⁶ IHRDA (n 67 above) 1.

NGOs in evolving an effective juridical approach to the implementation of socio-economic rights. The struggle for enhanced socio-economic rights regime in Africa requires radical departure from the traditional approaches to civil and political rights activism. An attempt is made in this segment to examine various techniques adopted by NGOs in the past and the trend of new approaches in these regards.

4.2.1 Public interest litigation

The most common method of implementation employed by African NGOs is litigation. This is explained by the developmental process of human rights culture in Africa which introduced justiciability in constitutions as a basis for the recognition of rights.¹²⁷

Perhaps due to the peculiar constitutional history of most African countries, which accorded greater relevance to civil and political rights, the trajectory of litigating socio-economic rights violations through domestic mechanisms has generally been stunted until recent years. The *Grootboom* decision in South Africa,¹²⁸ the *Re Mlambo*¹²⁹ decision by the Supreme Court of Zimbabwe; and a plethora of Nigerian cases¹³⁰ where resort to international standards in socio-economic rights litigation have shown how innovative lawyering could assist in the struggle.

In most states that entrenched a sprinkling of directly enforceable socio-economic rights in their constitutions, the general picture portrays underdeveloped jurisprudence, and in some cases, a cloud of uncertainty. Since most legal systems in Africa permit the courts to consider international law principles in the interpretation of constitutional provisions,¹³¹ it would be a disservice to the struggle if socio-economic rights advocates ignore the great potential that lies in the use of international legal influences in domestic litigation. In this regard, the AfCHPR stands out as a formidable

¹²⁷ Hansungule (n 32 above) 10-12.

¹²⁸ Discussed in chapter 3.

¹²⁹ (1991) 2 ZLR 242 where the court acknowledged its wide enforcement powers in respect of international standards on socio-economic rights although they are constitutionally couched as non-justiciable.

¹³⁰ In *Akilla v Government of Lagos State* and *Atanda v Government of Lagos State*, an NGO is representing school-age children and their families who were forcibly evicted from Maroko in Lagos, on the grounds that their rights to education, housing, physical and mental health were violated in contravention of human rights treaties. Also in *National Association of Nigerian Students v Minister of Education*, the plaintiffs are asking the courts to determine whether the increase in fees is consistent with the right of education as entrenched in international standards to which Nigeria is a party. The suit seeks to compel the minister to apply the funds derived from the education tax and the National Education Bank to address the conditions of Nigerian universities. SERAC (1999) 1 *Access Quarterly* 1 20.

¹³¹ Obiagwu (2000) 11-20. The rights to life and liberty can begin to entail a broad range of other rights. n 84 above.

instrument of socio-economic rights litigation in African states particularly in states where these rights are non-justiciable or where jurisprudence is not well developed. An illustration in support of this argument is found in the Ghanaian case of *New Patriotic Party v Inspector General of Police and others* where the Supreme Court observed as follows:

Ghana is a signatory [sic] to this African Charter. I do not think that because Ghana has not passed specific legislation to give effect to the Charter, the Charter cannot be relied upon.¹³²

The implication of that pronouncement is that, Ghana having ratified the AfCHPR, the provisions of the AfCHPR can be considered, applied and enforced in Ghanaian courts.

From the above, the compelling need for NGOs to explore the application of international standards cannot be overemphasised. Even where socio-economic rights have attained express protection in domestic law, the dearth of domestic jurisprudence and judicial nescience in the field points to the inevitability of turning to international human rights law and practice for guidance.

Relying on the Indian experience as discussed in chapter 3 above, a strong case has been made for legal activism giving constitutional protection to socio-economic rights through the expansive interpretation of certain civil and political rights.¹³³ This is a novel direction worthy of exploration.

4.2.2 Education and awareness

Across the world, groups invest heavily in the human rights education of their members, of rights-violated people, and of the society at large. In India, *Mazdoor Kisan Shakti Sangathan* and in Guyana, the Guyana Human Rights Association found that by continuously explaining these rights to others, their own members evolved better understanding of them. In several other cases, groups work to raise the awareness of rights-violated people.

¹³² [1992-1993] GBR SC 87 per Archer CJ, quoted in Baiden (2000) 49. Ghana ratified the AfCHPR on 24-01-1989.

¹³³ Liebenberg (n 60 above) 73. Porter (n 61 above) 145 on the Canadian approach.

For example, in Egypt, the Land Centre for Human Rights spent a lot of time educating farmers about their rights and the rights of their children before they could agree to take steps to achieve them.¹³⁴

Several other groups educate the public, particularly teachers, the media, civil servants, legal and development practitioners, about socio-economic rights. In South Africa, the Legal Resources Centre (LRC), besides its litigation focus, educates paralegals and others about the implications of new laws, while in Mexico, *Grupo de Informacion en Reproduccion Elegida* holds workshops for civil servants and others on reproductive rights.¹³⁵ The methodology of these groups is to educate human rights practitioners, policy makers, students, artisans, peasant farmers and members of other strata of the society, to make socio-economic rights become part of day-to-day life.

Central to the realisation of socio-economic rights is the strategy of mass mobilisation through education and awareness. Although a vast number of African NGOs define their mandates as 'human rights education', the methodologies and the content of many of such programmes are ill-defined and inappropriately targeted. To move these rights beyond their rhetorical values, the economic indices of wasteful procurements and other programmes that deplete state treasuries, being matters which are essential to the assessment of violations, but remaining largely unknown to those who are expected to be vanguards of the socio-economic rights struggle, must be taught to them.¹³⁶

Even the above approach must be widened. This strategy must go beyond the confines of the enlightened elites as human rights education efforts in Africa are often largely conceived along elitist patterns. Any meaningful mobilisation strategy must be conceptualised and executed in ways to ensure their relevance to the deprived masses and to the effective sensitisation of society to the stark realities.¹³⁷

¹³⁴ Hijab (2000) 'Human rights and human development: Learning from those who act' www.undp.org/hdro/rioforum/Hijab2000.html (accessed 29-09-2001).

¹³⁵ Hijab (n 134 above). In this regard, it is remarkable to note the lofty contributions of the Community Law Centre of the University of the Western Cape in advancing the frontiers of socio-economic rights education and awareness in South Africa in recent times. See its latest publication Liebenberg and Pillay (eds)(2000) *Socio-economic rights in South Africa: A resource book* Cape Town: Community Law Centre, University of the Western Cape.

¹³⁶ Steiner (n 113 above) 48.

¹³⁷ As part of its efforts aimed at challenging the forcible evictions which took place during the execution of the World Bank-assisted Lagos Drainage and Sanitation Project in 1996/1997, SERAC works with slum residents and their leaders, educating them on their rights, providing training on organising and mobilising as well as legal counselling and documentation. Three class actions were also brought on behalf of the victims. 'Demolitions in Lagos' (1998) 1 *SERAC At Work* 2-3.

4.2.3 Constitutional reform processes

Constitutions, being the fundamental laws of modern states, are veritable channels for advancing the frontiers of socio-economic rights. Perhaps one of the most significant cases in this regard was the input of NGOs in the drafting process of the 1996 South African Constitution which ensured the entrenchment of socio-economic rights in justiciable terms.¹³⁸ The Assembly of the Poor in Thailand is keenly aware of the importance of securing its members' socio-economic rights and they participated actively in drafting the Constitution of Thailand and other laws, which is now used to agitate for their implementation.¹³⁹

The ongoing constitutional drafting/review processes in some parts of Africa presents an appropriate forum for NGO input to socio-economic rights provisions along the global trends of justiciability.¹⁴⁰

4.2.4 Legislative and policy reform advocacy

Besides constitutional reform, many groups around the world are consciously involved in legislative and policy reform in the process of evolving enhanced socio-economic rights regimes. SERAC consistently challenged the Nigerian government's policy of deregulating the educational sector, an agitation that contributed to a recently negotiated agreement ensuring unprecedented increment in the funding of tertiary education in the country.¹⁴¹ The LRC is involved in partnering the South African legislature in bringing municipal laws into concordance with internationally accepted standards as seen in the right to water and land redistribution policy reform agitations.¹⁴²

A related mechanism is the use of human rights commissions for the promotion of socio-economic rights. This mechanism has proved essential in India and South Africa where NGO activism remarkably contributed to the adoption, by such bodies, of a proactive approach in addressing the question of mass poverty and the deprivations of

¹³⁸ Sarkin (1998) 20 *Human Rights Quarterly* 629 631.

¹³⁹ Hijab (n 134 above).

¹⁴⁰ This is of significance in Kenya, Nigeria, Swaziland, Uganda and Zimbabwe where there are such ongoing processes.

¹⁴¹ 'Negotiations between federal government of Nigeria and the Academic Staff Union of Nigerian Universities: Government positions on negotiated issues' May 2001. (Unpublished).

¹⁴² 'The status of human rights organisations in sub-Saharan Africa – South Africa' www.unige.ch/humanrts/africa/southafrica/htm (accessed 29-09-2001).

the most vulnerable in society.¹⁴³ It is thus another strategy worthy of exploration by African NGOs.

Another increasingly formidable strategy is the budgetary process through which NGOs can urge that annual government financial plans should respect the state's obligations under human rights treaties. NGOs in some countries prepare and publicise alternative or parallel budgets. In Canada, the process is monitored by a coalition of NGOs which has developed alternative budgets that take into account the need to decrease yearly national debt and deficits while still respecting socio-economic rights. The coalition has been of tremendous influence in the annual federal budgets since 1994.¹⁴⁴ In India, the Developing Initiatives for Social and Human Action has used the budgetary process as a tool for advancing the socio-economic rights of the poor and tribal peoples, emphasising that budget books have to be available by law to expose the placement of budget allocations.¹⁴⁵

Similarly, in South Africa, concerted efforts are being made to entrench the culture of a "people's budgetary process".¹⁴⁶

Regrettably, this is an area where activism is still largely undeveloped in most African states. There is no gainsaying the fact that it holds great potentials for socio-economic rights struggle.

4.2.5 Research and documentation

Enormous influence does accrue to the work of NGOs through careful, detailed, persistent and appropriately circulated studies on the plight of marginalised and vulnerable people, and by special urgent appeals when necessary. An extensive study of African NGOs revealed that few groups give sufficient attention to this strategy while those that would have given greater commitment lack the resources to do so.¹⁴⁷ While

¹⁴³ Gomez, M (2000) 451-456. Liebenberg (n 60 above) 82-83.

¹⁴⁴ McChesney (n 58 above) 66-67.

¹⁴⁵ Hijab (n 134 above).

¹⁴⁶ The collaborative efforts of NGOs in South Africa are geared towards using the process as a means of redressing the imbalances created as a result of decades of apartheid planning. They seek to achieve an integrated socio-economic policy framework aimed at sustainable planning, improved quality of life in the marginalised communities and prioritisation of the needs of the poor. 'NGO matters-Focus on the budget' www.sangoco.org.za/resources/ngo_matters/Feb99.htm (accessed 29-09-2001). 'Towards a People's Budget' www.cosatu.org.za/docs/2000/mtbps2000.htm (accessed 29-09-2001).

¹⁴⁷ Welch, Jnr (n 123 above) 212-218. The study shows that most African NGOs focus on securing rapid governmental action for violations and spend less time in analysing the conditions. They try to influence those in power at a speedy premium.

commission in respect of socio-economic rights violations, the jurisprudence that will enhance the value of these rights across the continent cannot develop, and the mechanisms will only remain mere window-dressing. The only *caveat* in this trajectory is the necessity of adopting an approach that would eliminate the possibility of subjecting the African corpus of socio-economic rights to the conceptual limitations of the UN and other regional systems. In this regard, it has been suggested by some eminent African human rights experts that a 'minimal threshold approach' be adopted in assessing states' obligations with respect to these rights.¹⁵⁶ This approach is founded on the use of indicators of measurement for each right and also entails the defining of a state's obligation on each right on the basis of its economic capacity such that a violation of socio-economic rights would mean the 'wilful' failure of a state to meet the minimum requirement of a right which is within its power, resources and capacity to meet. Thus a clear distinction would emerge between a state's inability to implement its obligations and its unwillingness to do so. It would necessarily follow therefore, that where a communication alleges a violation of socio-economic rights, the complainant must show that the state is in a position to fulfil the right in question by adducing factual data as described above.

It is the position of this author that adopting such a pragmatic approach in evolving African socio-economic rights jurisprudence is a most welcome idea worthy of continental acceptance.

The question that arises then is: *Who* will champion this evolutionary process?

By the historical antecedents of human rights development and the peculiar normative and structural dynamics of the African regional human rights system, this onerous task is best left to African NGOs.¹⁵⁷

4.3.2 Reporting procedures

The mechanism which assures the submission of reports to the CESCR by states parties has become a viable tool for socio-economic rights activism by NGOs. The CESCR has recognised that it functions best in a more adjudicative role, facilitating and then drawing conclusions from an informal and indirect rights-based dialogue between

¹⁵⁶ Busia and Mbaye (n 36 above) 112.

¹⁵⁷ Article 45 of the AfCHPR; Amended Rules 6, 75-76 of the Rules of Procedure of the Commission; article 44 of the African Charter on the Rights and Welfare of the Child; and article 5(3) the Draft Protocol on the African Court of Human and Peoples' Rights all make NGOs the pivot on which the wheels of the African human rights system rotate. Ankumah (n 75 above) 186-194.

domestic NGOs and governments.¹⁵⁸ However, this is not always the case. The efficacy of such an approach depends on the ability of domestic NGOs to participate effectively in the review process.

The groundbreaking input of Canadian NGOs at the 1993 review of Canada's report introduced a radical departure from the traditional paradigm of socio-economic rights monitoring within the UN system which often allowed states to escape thorough scrutiny of their self-satisfying reports.¹⁵⁹ The oral submissions by NGOs focussed on two major themes which have continued to dominate socio-economic rights advocacy in Canada, namely, increasing poverty, homelessness and hunger in the midst of affluence; and the failure of government and its institutions to provide domestic remedies for socio-economic rights violations. They provided concise information on the extent and depth of poverty among vulnerable groups in Canada, demonstrating Canada's wealth and 'available' resources, and accompanying those presentations with slides showing the stark realities of socio-economic conditions. A summary of cases involving socio-economic rights claims at the domestic judicial level was also submitted.¹⁶⁰

Similarly, the Colombian Commission of Jurists submitted an alternative report to the CESCR in collaboration with other NGOs. Based on its review of the government's initial report to the CESCR inter-sessional working group, the NGOs raised a list of over 80 questions related to inaccuracies and deficiencies in the governmental reports. Those questions were utilised by the working group to examine the government representatives. The NGOs also wrote a summary of the reports which they disseminated in languages understood by the members of the CESCR.¹⁶¹

At the UN level, the oral presentations and written briefs to treaty bodies have emerged the most visible role for NGOs while at the regional level, it represents another potential tool for socio-economic rights activism.

From the experiences discussed above, African NGOs can begin to use the reporting process to focus attention on a particularly egregious situation with the aim of obtaining specific recommendations from the monitoring bodies.

¹⁵⁸ Holstrom and Karlbrink (n 4 above) 322-325.

¹⁵⁹ Porter (n 61 above) 124.

¹⁶⁰ Porter (1999) 2(1) *ESC Review (Economic and Social Rights in South Africa)* 13.

¹⁶¹ The summary was accepted by the UN as an official document and was translated into all the six UN working languages. IHRIP (1997) 67.

In this regard, the alternative/shadow reports can be translated into indirect but effective complaint mechanism, although it wields no capacity for enforcement against states.¹⁶²

A study of the reporting procedures at both UN and regional levels, *vis-à-vis* African NGOs show an absence of the pragmatic input similar to those referred to above.¹⁶³

4.3.3 Monitoring and advocacy

NGOs are increasingly discovering that they must advance the struggle within international and domestic legal orders to enhance the capacity of both domestic and international institutions in addressing global developments.

Through violations monitoring and advocacy strategy, Canadian NGOs have been able to elicit a consensus among UN treaty bodies on human rights violations and thus encouraged these bodies to deal with important socio-economic rights issues which might otherwise be ignored. Although the struggle still has a long way to go in reversing the erosion of socio-economic rights, the coalition has at least found a forum for the articulation of these cogent concerns which ensures that they are considered in the agenda of international human rights development.¹⁶⁴

It is regrettable that while there was remarkable input by many NGOs in Canada, Latin America and the Scandinavian countries in the evolution of thematic mechanisms at the UN to address, *inter alia*, the crises of toxic wastes and HIV/AIDS pandemic, apart from the input of few state representatives from African countries, African NGOs made no significant contribution despite the unmistakable implications which these issues hold for Africa.¹⁶⁵

¹⁶² NGOs in Philippines maximised the opportunity of the reporting process to draw the attention of the CESCR to the forcible eviction of large numbers of families from their homes. The committee was able to pressurise the government against carrying out such evictions unless adequate resettlement sites are made available. Craven (2001) 466.

¹⁶³ Ankumah (n 75 above) 94-95. A vivid illustration is found in the shadow report presented by the National Society of Human Rights at the examination of the first periodic report of Namibia before the 29th session of the African Commission where the NGO dwelt exhaustively on civil and political rights violations without any reference to socio-economic rights violations. *Namibia: Human Rights Report 1999/2000* (Unpublished).

¹⁶⁴ Porter (n 160 above) 6.

¹⁶⁵ The Nigerian representative's proposal on making access to medication for HIV/AIDS a basic human right failed, as it could not even secure the overwhelming support of representatives in the Africa Group. Some underground efforts by African NGOs might have changed the tide. 'Commission on Human Rights adopts six resolutions, two measures on ESCRs, civil and political rights' www.unog.ch/news2/documents/newsen/cn0164e.htm (accessed on 29-09-2001).

At the regional level, because of the devalued status of socio-economic rights, NGOs must begin to agitate collectively, in a pragmatic fashion, for the entrenchment of these rights on the agenda of the AU and its organs. It will be in line with anticipated civil society activism for NGOs to pressurise the commission to appoint a special rapporteur on socio-economic rights towards the development of sustainable modalities for their realisation in African states.¹⁶⁶

4.3.4 Networking

After the Cold War, increasing attention has been paid at the international level to socio-economic rights. A few international non-governmental organisations (INGOs) have been identified as working hard toward a more detailed understanding of the various international standards on these rights and how best to enforce governmental obligations in those regards while the enormous capacity-building benefits of networking strategies have found ample demonstration in diverse places across the globe.¹⁶⁷ The more successful local NGOs in various parts of the world consciously view coalition building as a cardinal methodology while the global trend in many Asian and Latin American countries is towards integration and cooperation.¹⁶⁸

Conversely, the proliferation of NGOs in African states has given rise to the noticeable trend towards duplication and overlap of efforts among NGOs. It reveals a gaping lack of coordination. Rather than collaborate to ensure enhanced efficiency and productivity, the reality is the tendency towards break-neck competition and the desire for dominance.¹⁶⁹

The glaring lack of integrative initiatives among NGOs along regional and international lines has been traced to the tensions in the relationships among local and INGOs which are often the result of disagreements over priorities and strategies.¹⁷⁰

Many African human rights activists feel that the relationship between the two has largely been exploitative, with most INGOs utilising the work of national and local NGOs without acknowledgement. As NGOs proliferate, INGOs have found themselves competing with domestic organisations for the same sources of funding, a trend which

¹⁶⁶ Harrington (2000) 114-127.

¹⁶⁷ IHRIP (n 161 above) 2. See a discussion of the Ecuadorian experience in IHRIP (n 161 above) 17.

¹⁶⁸ Hijab (n 134 above).

¹⁶⁹ Olorode (1997) 3-4.

¹⁷⁰ Steiner (n 113 above) 65-67.

has led to occasions when INGOs have used local NGOs to raise funds for themselves without consultation.¹⁷¹

The scoreboard of African regional/sub regional NGO collaboration presents a largely dismal picture. Networks are so widespread across the continent as to be only sporadically operational and *ad hoc*, with their membership usually defined along geographic, but in most cases, linguistic affinities.¹⁷²



¹⁷¹

Interights (2001) 39.

¹⁷²

Interights (n 171 above) 38. The efforts of the IHRDA based in Banjul in information dissemination and training on the African regional human rights system is worthy of commendation in this regard.

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

It is certainly not enough to simply adopt standards and establish relevant institutions and procedures towards the implementation of socio-economic rights. The most fundamental issue is whether, ultimately, these rights are realised in practice, that is, whether the standards and institutions help to bring about the urgently desired changes in order to enhance human values. This concern finds its most viable projectile for action in the work of NGOs.

5.1 Conclusions

This study demonstrates that the success of African NGOs in the realisation of socio-economic rights would be predicated on their ability to use a comprehensive approach and a mix of strategies by pulling together multi-disciplinary skills where necessary; ensuring that rights-violated people have a voice; being flexible enough to take advantage of new openings in the relationship with government and others; using their experiences to impact policy and legal framework; investing in capacity-building and leadership; educating their members and the public on these rights; building broad coalitions within and outside their narrow spheres; assessing impact and redirecting their courses accordingly; and finding creative ways to deal with constraints.

It has been shown that the strategies to promote socio-economic rights in Africa may include but are certainly not limited to the legal, monitoring and violations approach used for civil and political rights. The different strategies to which this study alludes include engaging the people whose rights have been violated; exploring broader dimensions of civil and political rights by moving beyond a narrow juridical focus; incorporating more sectors of the civil society; developing creative lawyering skills; using a mix of judicial or other methods; and investing in well-founded, multi-disciplinary research.

An attempt has been made to give an overview of the African human rights movement at the tripartite levels. Far from being an *ex cathedra* pronouncement on all the dynamics of the subject, this work has highlighted some of the strategic issues pertaining to the more effective enforcement of socio-economic rights in Africa. Where possible, initiatives that address neglected issues have been highlighted, particularly where they illustrate the strategic importance of cross-border collaboration.

5.2 Recommendations

The challenge in giving substance to socio-economic rights in Africa remains enormous, not only because so little efforts have been made, but also because of the complexity of the issues that must be addressed. Even the UN has recognised that this complexity arises not only from the nature of the rights themselves, but also from the dramatically uneven levels of human development that have been achieved, the impact of 'globalisation' on national economies and the shrinking role of the state.¹⁷³ Those difficulties, however, should serve only to emphasise the importance of developing more constructive approaches in promoting these rights. A world in which socio-economic rights are neglected will not long be one in which other rights can thrive. The fundamental assumptions on which the international human rights system is based are thus at risk unless a balanced approach is pursued.

5.2.1 International and regional levels

NGOs should play a vital role in increasing the effectiveness of the state reporting procedures through the preparation of alternative/shadow reports at both international and regional levels. In doing so, it is recommended that NGOs should begin to produce issue-specific reports or modified versions of the format used by states so that there is correlation with states' reports on an article-by-article presentation, but also ensuring that specialists in diverse fields make technical input to such formats. Alongside this is the need for NGOs to formulate fundamental questions which would help the monitoring bodies to ascertain the veracity of governments' claims during reviews. Although states are usually required to include copies of their relevant legislation in the reports, where they fail to do so, NGOs should supply such legislation. For maximum effect, NGOs should transmit their reports well in advance to the appropriate bodies, and attend sessions of the monitoring bodies to brief and lobby the members. Attending the sessions means that NGOs have an opportunity to update information.

The inertia of African NGOs in utilising the complaint mechanism afforded by the AfCHPR as a pedestal for socio-economic rights activism must be brought to an end. NGOs should begin to critically analyse the potential of litigating cases involving

¹⁷³ 'Plan of Action to strengthen the implementation of the ICESCR' www.unhcr.ch/html/menu2/6/cescr.htm (accessed on 15-09-2001).

violations of socio-economic rights. This is the only effective way of developing and charting new jurisprudential horizons for the African regional human rights system.

The trajectory of supra-national work among African NGOs is yet to be fully articulated and utilised. The importance of networking as a viable strategy for overcoming the perennial inadequacy of resources has been stressed and the problem can be managed to a great extent, if not surmounted, by networking. What is needed is some strategic thinking, drawing on experience as to what appropriate roles regional, sub-regional and national NGOs can best play, and what types of strategic alliances work best. This process calls for initiative on the part of NGOs themselves, researchers, activists as well as funding institutions. It is hoped that this work will be a vehicle for the prompt recognition of the importance of a multi-dimensional approach to these concerns.

Beyond strengthening activism at the level of the civil society, the African regional system must begin to address critically the ways of enhancing the status of socio-economic rights on the continent. Towards this end, all regional mechanisms relevant to the full realisation of socio-economic rights should be strengthened with the African Commission assuming a key role in the coordination of these measures. In reinforcing these efforts, the AU should identify and provide adequate resources that would strengthen the African Commission's capacity to promote and protect these species of rights. Of significance here is the need for an aggressive implementation of the Mauritius Plan of Action which contemplates both vertical cooperation between the commission and NGOs, and horizontal collaboration among NGOs.¹⁷⁴

Similarly, in accordance with the vision expressed in the Mauritius Plan of Action, a special rapporteur should be appointed on the monitoring and implementation of socio-economic rights in African states. NGOs should heighten agitations in this regard.

Considering the unwillingness of states to fulfil their human rights obligations, donor agencies should begin to place more premium on the level of performance of fund-seeking states in complying with their reporting and other implementation obligations under the various human rights instruments.

¹⁷⁴ 'The Mauritius Plan of Action 1996-2001' (1996-97) 6 *Review of the African Commission on Human and Peoples' Rights* 215 224, para 60-63.

5.2.2 Domestic levels

At domestic levels, NGOs must make coordinated efforts to raise socio-economic rights awareness among the various sectors of the populace. Human rights education should target in particular, the peasantry and pastorals to which the majority of Africans belong; people in urban areas especially those working in industrial or informal trade sectors; law enforcement agencies and civil servants; and all groups and personalities instrumental in disseminating information including the media, teachers, religious and traditional leaders. In the clamour for the integration of human rights education into school curricula from primary to tertiary institutions, NGOs should be involved in designing suitable curricula aimed at cognitive and experiential understanding of the subject.

Where there are constitutional guarantees for socio-economic rights, it becomes easier to seek remedies for violations. And similarly, when legislative reforms are carried out to reflect international normative values, states attain a higher threshold for protecting these rights. NGOs across Africa must take up the gauntlet in agitating for new treaties, urging the ratification and implementation of existing ones, and maximising major political transition and constitutional review processes to ensure the incorporation of socio-economic rights norms into municipal laws.

Against the background of negative judicial attitudes and a lack of knowledge in relation to socio-economic rights development in most African states, there is the necessity of a radical approach to the use of judicial methods in the enforcement of socio-economic rights. NGOs at the domestic levels must develop innovative lawyering skills and strategies to change judicial attitudes about the issues of *locus standi* and non-justiciability of these rights. The frontiers of developing an expansive interpretation of civil and political rights must be explored and expanded to accommodate these species of rights. This is particularly instructive in states where these rights are couched as directive principles or where there has been no demonstration of the political will to actualise them as justiciable rights.

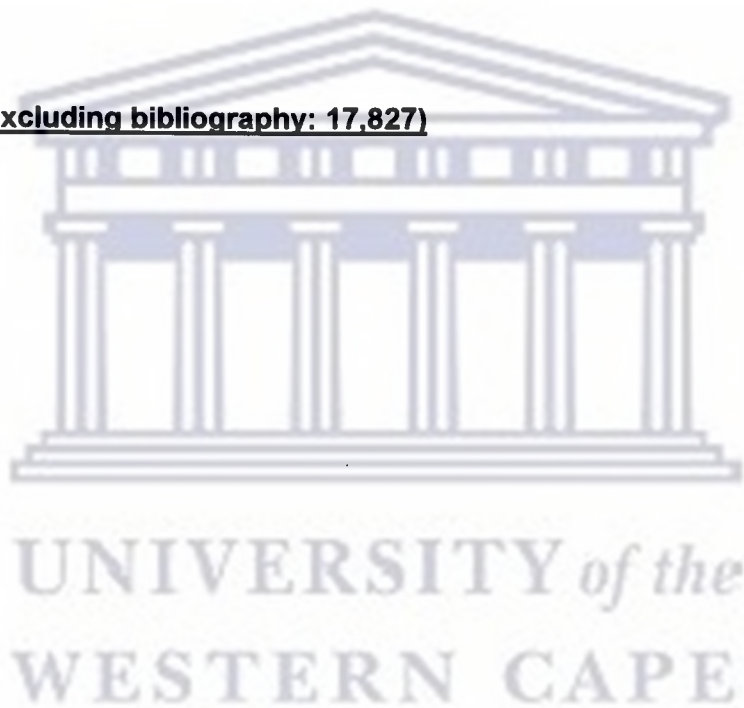
Similarly, NGOs must begin to activate the national institutional mechanisms for the protection of socio-economic rights. The near-total exclusion of socio-economic rights issues before most human rights commissions in Africa does not portend a good omen for human rights advancement in Africa.

It is a matter of urgency to develop and strengthen the discourse on all aspects of human rights, including socio-economic rights. They must become part of national

debates, to be taken up by individuals and groups in addressing their own governments, pointing out the responsibility that states have undertaken to ensure socio-economic rights, and to bring about the ways in which they can be realised, in particular, for the most vulnerable members of society.

The grave concern so far expressed for an enhanced regime of socio-economic rights is not an hypothetical, abstract or merely academic exercise. There is no gainsaying the fact that the fulfilment of civil and political rights is better guaranteed by the realisation of socio-economic rights. This should be the thrust of approach to human rights discourse in Africa.

(Word count excluding bibliography: 17,827)



BIBLIOGRAPHY

A Books

- Ankumah, E (1996) *The African Commission on Human and Peoples' Rights practice and procedures* The Hague: Kluwer Law International.
- De Waal, J, Currie, I and Erasmus, G (eds) (2001) *The bill of rights handbook* 4th edition Lansdowne: Juta & Co Ltd.
- Goldewijk, BK and Fortman, BG (1999) *Where needs meet rights: Economic, social and cultural rights in a new perspective* Geneva: WCC Publications.
- Holstrom, L and Karlbrink, L (eds) (1998) *United Nations Fact Sheets no 1-25* 6th edition Lund: Raoul Wallenberg Institute.
- IHRDA (2000) *Compilation of decisions on communications of the African Commission on Human and Peoples' Rights extracted from the commissions activity reports 1994-1999* Banjul: IHRDA.
- IHRDA (2001) *Procedures of the African regional human rights system workshop materials* Banjul: IHRDA.
- IHRIP (1997) *Ripple in still water: Reflections by activists on local- and national-level work on economic, social and cultural rights* Washington: IHRIP.
- IHRIP (2000) *Circle of rights: Economic, social and cultural rights activism: A training resource* Washington: IHRIP.
- Interights (2001) *Building bridges for rights: Inter-African initiatives in the field of human rights* London: Interights.
- Liebenberg, S and Pillay, K (eds) (2000) *Socio-economic rights in South Africa: A resource book* Cape Town: Community Law Centre, University of the Western Cape.
- McChesney, A (2000) *Promoting and defending economic, social and cultural rights: A handbook* Washington: American Association for the Advancement of Science.
- Obiagwu, C (2000) *Legal protection of human rights in Africa: Problems and challenges* Lagos: LEDAP.
- Starke, JG (1977) *Introduction to international law* London: Butterworths.
- Steiner, HJ (1991) *Diverse partners: Non-governmental organisations in the human rights movement* Cambridge: Harvard Law School.
- Umzurike, UO (1995) *Introduction to international law* Ibadan: Spectrum Law Publishing.

Welch, Jnr (1995) *Protecting human rights in Africa: Strategies and roles of non-governmental organisations* Philadelphia: University of Pennsylvania Press.

B Contributions to books

Brett, R "Non-governmental actors and human rights" in Hanski, R and Suski, M (eds) (1999) *An introduction to the international protection of human rights: A textbook 2nd* revised edition Turku/Abo: Institute for Human Rights.

Busia, NKA and Mbaye, BG "Filing Communications on economic and social rights under the African Charter on Human and Peoples' Rights" in IHRDA (2001) *Procedures of the African regional human rights system workshop materials* Banjul: IHRDA.

Craven, M "The International Covenant on Economic, Social and Cultural Rights" in Hanski, R and Suski, M (eds) (1999) *An introduction to the international protection of human rights: A textbook 2nd* revised edition Turku/Abo: Institute for Human Rights.

Craven, M "The UN Committee on Economic, Social and Cultural Rights" in Eide, A, Krause, C and Rosas, A (eds) (2001) *Economic, social and cultural rights: A textbook 2nd* revised edition The Hague: Kluwer International.

Eide, A and Rosas, A "Economic, social and cultural rights: A universal challenge" in Eide, A, Krause, C and Rosas, A (eds) (1995) *Economic, social and cultural rights: A textbook 2nd* edition The Hague: Kluwer International.

Eide, A "Economic and social rights" in Symonides, J (ed) (2000) *Human rights: Concept and standards* Aldershot: Dartmouth Publishing Company Limited.

Flinterman, C "Extra-conventional standard-setting and implementation in the field of human rights" in Hanski, R and Suski, M (eds) (1999) *An introduction to the international protection of human rights: A textbook 2nd* revised edition Turku/Abo: Institute for Human Rights.

Gomez, M "National human rights commissions and ESC rights" in IHRIP (2000) *Circle of rights Economic, social and cultural rights: A training resource* Washington: IHRIP.

Harrington, J "Special rapporteurs of the African Commission on Human and Peoples' Rights" in IHRDA (2001) *Procedures of the African regional human rights system workshop materials* Banjul: IHRDA.

Liebenberg, S "Socio-economic rights" in Chaskalson, M; Kentridge, J; Klaaren, J; Marcus, G; Spitz, D; and Woolman, S (eds) (1999) *Constitutional law of South Africa* Kenwyn: Juta & Co Ltd.

Liebenberg, S "The protection of economic and social rights in domestic legal systems" in Eide, A, Krause, C and Rosas, A (eds) (2001) *Economic, social and cultural rights* 2nd edition The Hague: Kluwer Law international.

Mbunda, LX "The bill of rights in Tanzania: Strategies for the protection and promotion of fundamental rights and freedoms in a multi-party Tanzania" in Mtaki, CK and Okema, M (eds) (1994) *Constitutional reforms and democratic governance in Tanzania* Dar es Salaam: Friedrich Naumann Foundation and University of Dar es Salaam.

Merheb, N "Libya" in Stokke, H, Suhrke, A and Tostensen, A (eds) (1998) *Human rights in developing countries yearbook 1997* The Hague: Kluwer Law International.

Merrills JG "Promotion and protection of human rights within the European arrangements" in Hanski, R and Suski, M (eds) (1999) *An introduction to the international protection of human rights: A textbook* 2nd revised edition Turku/Abo: Institute for Human Rights.

Muralidhar, S "Justiciability of ESC rights – the Indian experience" in IHRIP (2000) *Circle of rights Economic, social and cultural rights activism: A training source* Washington: IHRIP.

Olorode, T "NGOs, military rule and popular empowerment" in Olorode, T, Raji, W, Ogunye, J and Jegede, S (eds) (1997) *NIGERIA: Non-governmental organisations and democracy* Lagos: Committee for Defence of Human Rights (CDHR).

Rosas, A and Scheinin, M "Implementation mechanisms and remedies" in Eide, A, Krause, C and Rosas, A (eds) (1995) *Economic, social and cultural rights: A textbook* Dordrecht: Martinus Nijhoff Publishers.

Rosas, A and Scheinin, M "Categories and beneficiaries of human rights" in Hanski, R and Suski, M (eds) (1999) *An introduction to the international protection of human rights: A textbook* 2nd revised edition Dordrecht: Martinus Nijhoff Publishers.

Scheinin, M "Economic and social rights as legal rights" in Eide, A, Krause, C and Rosas, A (eds) (1995) *Economic, social and cultural rights: A textbook* Dordrecht: Martinus Nijhoff Publishers.

Scheinin, M "International human rights in national law" in Hanski, R and Suski, M (eds) (1999) *An introduction to the international protection of human rights: A textbook* 2nd revised edition Turku/Abo: Institute for Human Rights.

Symonides, J "Human rights: An historical perspective" in Symonides, J (ed) (2000) *Human rights concepts and standards* Aldershot: Dartmouth Publishing Company Limited.

Van der Wilt, H and Krsticevic, V "The OAS system for the protection of human rights" in Hanski, R and Suski, M (eds) (1999) *An introduction to the international protection of human rights: A textbook 2nd* revised edition Turku/Abo: Institute for Human Rights.

Vandewalle, D "The Libyan Jamahiriya since 1969" in Vandewalle, D (1995) *Qadhafi's Libya: 1969-1995* London: St Martin's Press.

C Publications in journals and periodicals

Amadi, S "The African Charter on Human and Peoples' Rights and the judicial protection of economic, social and cultural rights in Nigeria" (1998) 1(3) *HURI-LAWS Quarterly Review of Human Rights Law and Practice* 1.

Craven, M "The domestic application of the International Covenant on Economic, Social and Cultural Rights", (1993) 40 *Netherlands International Law Review* 360.

"Communique of the SERAC Workshop on Breathing life into words: The African Commission on Human and Peoples' Rights and economic, social and cultural rights activism in Africa", held in Lagos, Nigeria 3-4 September 1999 in (1999) 2(2) *ESR Review (Economic and Social Rights in South Africa)* 18.

De Vos, P "Pious wishes or directly enforceable human rights? Social and economic rights in South Africa's 1996 Constitution" (1997) 13 *South African Journal of Human Rights* 67.

Leckie, S "Another step towards indivisibility: Identifying the key features of violations of economic, social and cultural rights" (1998) 20 *Human Rights Quarterly* 82.

Morka, K "When wilful blindness doesn't cut it: Making a case for World Bank accountability to the women in Lagos slums" (1999) 1 *Access Quarterly* 5.

Odinkalu, CA "Analysis of paralysis or paralysis by analysis? Implementing economic, social and cultural rights under the African Charter on Human and Peoples' Rights" (2001) 23 *Human Rights Quarterly* 327.

Porter, B 'Socio-economic rights advocacy – using international law: Notes from Canada' (1999) 2 (1) *ESC Review (Economic and Social Rights in South Africa)* 1.

Porter, B "Judging poverty: Using international human rights law to refine the scope of charter rights" (2000) 15 *Journal of Law and Social Policy* 117.

Sarkin, J "The development of a human rights culture in South Africa" (1998) 20 *Human Rights Quarterly* 629.

SERAC "Demolitions in Lagos" (1998) 1 *SERAC At Work* 1.

SERAC "Nigeria in the new millennium" (1999) 1 *Access Quarterly* 20.

Vierdag, EG "The legal nature of the rights granted by the International Covenant on Economic, Social and Cultural Rights" (1978) 9 *Netherlands Yearbook of International Law* 103.

D Unpublished documents

Baiden, CED "Litigating socio-economic rights in Ghana" LLM (Human Rights and Democratisation in Africa) dissertation submitted to the Faculty of Law, University of Ghana, November 2000.

Hansungule, M "Domestic implementation of human rights in African constitutions" Lecture material presented to the LLM (Human Rights and Democratisation in Africa) 2001 class at the Centre for Human Rights, University of Pretoria, Pretoria, South Africa.

Jande, GG and Aligba, A "Socio-economic rights and stable democracy" Paper presented at the 37th Annual Law Teachers Conference of Nigeria, held at Benue State University, Makurdi, Nigeria, 4-7 December, 2000.

Liebenberg, S (2001) "South Africa's evolving jurisprudence on socio-economic rights" Background paper presented at the Authors' Workshop on socio-economic rights and transformation in South Africa: The implications of *Grootboom* for social policy, held at the University of the Western Cape, Cape Town, South Africa, 3 August 2001.

National Society of Human Rights (Namibia) *Namibia: Human Rights Report 1999/2000*.

"Negotiations between federal government of Nigeria and the Academic Staff Union of Nigerian Universities: Government positions on negotiated issues" May 2001.

Obiagwu, C "Promoting economic, social and cultural rights using domestic legal mechanisms" paper presented at the Training of Trainers Workshop on Human Rights and Law Office Management, organised by the Legal Defence and Assistance Project (LEDAP) in collaboration with the Law Society of England and Wales and the European Union, held in Lagos, Nigeria, 4-7 November 2000.

Report of the African Seminar on International Human Rights Standards and the Administration of Justice held in Cairo 8-12 July 1991.HR/PUB/6.

Statement and Recommendations of a Seminar of Magistrates from Western, Central, Southern and Eastern Africa, organised by the African Centre for Democracy and Human Rights Studies, held in Banjul, The Gambia, 8-12 February 1993.

Umzurike, UO "The African human rights system in a comparative perspective" paper presented at the Conference on Regional Systems of Human Rights Protection in Africa, America and Europe, held in Strasbourg, France, 15-19 June 1992.

E Treaties

African Charter on Human and Peoples' Rights. Concluded 26-06-1981 and entered into force 21-10-1986. 21 ILM 58.

American Convention on Human Rights. Concluded 22-11-1969 and entered into force 18-07-1978. 1144 UNTS 331.

(American Convention on Human Rights) Additional Protocol in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador). Concluded 17-11-1988, not yet in force. OAS Treaty Series No 69.

Convention on the Rights of the Child. Concluded 20-11-1989 and entered into force 02-09-1990. 28 ILM 1456.

European Social Charter. Concluded 26-10-1961 and entered into force 26-02-1965. ETS No 35.

International Convention on the Elimination of All Forms of Discrimination Against Women. Concluded 18-12-1979 and entered into force 03-09-1981. 1249 UNTS 13.

International Convention on the Elimination of All Forms of Racial Discrimination. Concluded 07-03-1966 and entered into force 04-01-1969. 60 UNTS 195.

International Covenant on Civil and Political Rights, including Optional Protocol. Concluded 16-12-1966 and entered into force 23-03-1976. 999 UNTS 171.

International Covenant on Economic, Social and Cultural Rights. Concluded 16-12-1966 and entered into force 03-01-1976. 999 UNTS 3.

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. Concluded 09-06-1998, not yet in force. OAU/LEG/EXP/AFCHPR/PROT III.

Revised European Social Charter. Concluded 21-10-1991 and entered into force 01-07-1999. ETS No 163.

United Nations Charter. Concluded 26-06-1945 and entered into force 10-01-1945. 1 UNTS xvi.

Universal Declaration of Human Rights. Adopted 10-12-1948. UN Doc A/810 1.

Vienna Convention on the Law of Treaties. Concluded 23-05-1969 and entered into force 27-01-1980. 8 ILM 679.

F African regional system documents

Ghana's Report to the 15th session of the African Commission on Human and Peoples' Rights. ACHPR/PR/GH/XV, 1993.

Guidelines for National Periodic Reports, adopted at the 4th ordinary session of the African Commission on Human and Peoples' Rights, held in Cairo, Egypt 17-26 October 1988. AFR/COM1HPR 5, 1988.

Mauritius' Report to the 20th session of the Africa Commission on Human and Peoples' Rights. ACHPR/PR/MAU/XX, 1996.

Namibia's Report to the 29th session of the African Commission on Human and Peoples' Rights. ACHPR/PR/NAM/XXIX, 2001.

"The Mauritius Plan of Action 1996-2001" reproduced in (1996-97) 6 *Review of the African Commission on Human and Peoples' Rights* 215.

Zimbabwe's Report to the 20th session of the African Commission on Human and Peoples' Rights. ACHPR/PR/ZIM/XX, 1996.

G Other international human rights documents

Committee on Economic, Social and Cultural Rights General Comment No 3 *The Nature of States Parties Obligations.* UN Doc E/1991/23.

Committee on Economic, Social and Cultural Rights General Comment No 4 *The Right to Adequate Housing.* UN Doc HRI/GEN/1/Rev 1.

Committee on Economic, Social and Cultural Rights General Comment No 9 *The Domestic Application of the International Covenant on Economic, Social and Cultural Rights.* UN Doc E/C 12/1998/24.

Committee on Economic, Social and Cultural Rights General Comment No 10 *The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights.* UN Doc E/C 12/1998/25.

Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights. UN Doc /CN 4/1987/17.

Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (the Paris Principles). UN Doc E/CN.4/1992/54, Annex.

Revised Guidelines Regarding the Form and Contents of Reports to be submitted by States Parties Under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights. UN Doc E/C.12/1989/SR.8.

Report of the Committee on Economic, Social and Cultural Rights. UN Doc E/CN.4/1997/105.

The Final Act of the International Conference on Human Rights, Tehran, 1968. UN Doc A/CONF/32/41.

The World Conference on Human Rights: Vienna Declaration and Programme of Action. UN Doc A/CONF.157/23.

Turk, D (Special Rapporteur) *The Realisation of Economic, Social and Cultural Rights*. E/UN4/Sub2/1991/17.

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 1996.

H Constitutions and national statutes

Ghana

The 4th Republican Constitution of Ghana, 1992.

Libya

The Great Green Charter, 1975.

Al-'ilmu haqqin li-kulli al-muwatin (Law on Education), 1970.

Al-Idarat al-ammah lil-qanoun, 1989.

Nigeria

Constitution of the Federal Republic of Nigeria, 1999.

Factories Act, cap 126, LFN 1990.

Federal Environmental Protection Agency Act, cap 131, LFN 1990.

Labour Act, cap 198, LFN 1990.

Minerals Act, cap 226, LFN 1990.

National Provident Fund Act, cap 273, LFN 1990.

Oil in Navigable Waters Act, cap 337, LFN 1990.

Pensions Act, cap 346, LFN 1990.

Petroleum Act, cap 350, LFN 1990.

Workmen's Compensation Act, cap 471, LFN 1990.

South Africa

Constitution of the Republic of South Africa, Act No 108, 1996.

Tanzania

Constitution of the Republic United Republic of Tanzania, 1977 as amended in 1984 to incorporate the Bill of Rights.

I Case law

African Commission on Human and Peoples' Rights

Annette Pagnouelle/Cameroon Communication 39/90.

Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Temoins de Jehovah Jireh/Zaire Communication 25/89; 47/90; 56/91; and 100/93.

Union Africaine des Droits de l'Homme, Rencontre Africaine des Droits de l'Homme, Organisation Nationale des Droits de l'Homme au Senegal and Association Malienne des Droits de l'Homme/Angola Communication 159/96.

English

Inland Revenue Commissioner v National Federation of Self-Employed and Small Businesses (1981) 2 WLR 723 (English House of Lords).

Ghanaian

New Patriotic Party v Attorney General of the Republic of Ghana (1996-97) SCGLR 729.

Indian

Bandhua Morcha v Union of India (1984) SCC 161.

Coradie v Union of India (1981) AIR SC 746.

Krishnan v State of Andhra Pradesh & Other (1993) 4 LRC 234.

Olga Tellis v Bombay Municipal Corporation (1985) 3 SCC 545.

Rathinam v Umed ram Sharma (1994) 3 SC 394.

Nigerian

Abacha v Fawehinmi (2000) FWLR (part 4) 533.

Adesanya v President of the Federal Republic of Nigeria (1981) 2 NCLR 388.

Adewole v Alhaji Jakande (Governor of Lagos State) (1981) 1NCLR 262.

Farrah & Others v Shell Development Corporation (1994) 3 NWLR (part 264) 313.

Fawehinmi v Abacha (1996) 9 NWLR (part 475) 710.

Ogugu v State (1994) 9 NWLR (part 366) 1.

Okogie v Attorney General of Lagos State (1981) 1 NCLR 218.

Oshevire v British Caledonian Airways (1990) 7 NWLR (part 163) 507.

Uzuokwu v Ezeonu II (1991) 6 NWLR (part 200) 708.

Pakistani

Kajing Tubek & Others v Ekran BAD & Others (1995) Saman Remula 55-27-66
(Pakistani Supreme Court).

South African

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

Ngxusa & Others v Secretary, Dept of Welfare, Eastern Cape & Another 2000 (12)
BCLR 1322 (E).

Soobramoney v Minister of Health, KwaZulu-Natal 1998 (1) SA 765 (CC).

UN treaty bodies

Broeks v The Netherlands Communication No 182/1984 (Human Rights Committee).

Zimbabwean

Re Mlambo (1991) ZLR 242.

J Internet resources

'Commission on Human Rights adopts six resolutions, two measures on economic, social and cultural rights, civil and political rights'

www.unog.ch/news2/documents/newsen/cn0164e.html (accessed 29-09-2001).

'Committee on Economic, Social and Cultural Rights - Notes on sessions'

www.unhchr.ch/html/menu2/6/cescrnote.htm#26th (accessed 29-09-2001).

'Committee on NGOs' www.un.org/esa/coordination/ngo/ (accessed 29-09-2001).

'Concluding observations of the Committee on Economic, Social and Cultural Rights - Libya Arab Jamahiriya'

[www.unhchr.ch/tbs/doc.nsf/\[Symbol\]/?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/[Symbol]/?Opendocument) (accessed 22-09-2001).

'Concluding observations of the Committee on Economic, Social and Cultural Rights - Nigeria'

www.unhchr.ch/Huridocda/Huridoca.nsf (accessed 22-09-2001).

'Department of State human rights reports for 2000:Libya'

www.humanrights-usa.net/reports/libya.html (accessed 22-09-2001).

Hijab, N (2000) 'Human rights and human development: Learning from those who act'
www.undp.org/hdro/rioforum/Hijab2000.html (accessed 29-09-2001).

'How to ensure the judiciary enforces treaty obligations'
www.acts.or.ke/Innova99/Judiciary.htm (accessed 22-09-2001).

'List of NGOs in consultative status with ECOSOC'
www.ngos.net/ecosocngolist.html (accessed 29-09-2001).

'National human rights commissions in Africa'
www.hrw.org/reports/2001/Africa/overview/record.html (accessed 22-09-2001).

'NGO matters-Focus on the budget'
www.sangoco.org.za/resources/ngo_matters/Feb99.htm (accessed 29-09-2001).

Oloka-Onyango, J (1995) 'Beyond the rhetoric: Reinvigorating the struggle for economic, social and cultural rights in Africa'
www.umn.edu/humanrts/Africa/Oloka-Onyango.html (accessed 15-09-2001).

'Plan of action to strengthen the implementation of the International Covenant on Economic, Social and Cultural Rights'
www.unhchr.ch/html/menu2/6/cescr.htm (accessed 15-09-2001).

'Protectors or pretenders? Government human rights commissions in Africa – Overview'
www.hrw.org/reports/2001/Africa/overview/factors.html (accessed 22-09-2001).

'Reporting status – Overdue by treaty'
www.unhchr.ch/tbs/doc.nsf/RepStatfrset?OpenFrameset (accessed 22-09-2001).

'Reservations and declarations to the International Covenant on Economic, Social and Cultural Rights'
www.unhchr.ch/html/menu3/b/a_ cescr.htm (accessed 22-09-1999).

'Status of human rights organisations in sub-Saharan Africa overview – characteristics and problems of human rights NGOs'
www.unige.ch/humanrts/Africa/overview/htm (accessed 29-09-2001).

'Status of human rights organisations in sub-Saharan Africa – South Africa'
www.unige.ch/humanrts/Africa/southafrica/htm (accessed 29-09-2001).

'Status of ratification – Non-state parties'
www.unhchr.ch/doc.nsf/RepStatfrset?OpenFrameSet (accessed 22-09-2001).

'Status of ratification of principal international human rights treaties'
www.unhchr.ch/treaty_bodies/ (accessed 15-09-2001).

'Thematic mandates'
www.unhchr.ch/html/menu2/7/b/tm.htm (accessed 15-09-2001).

'Towards a People's Budget'

www.cosatu.org.za/docs/2000/mtbps2000.htm (accessed 29-09-2001).

'UNDP Human Development Report 1999'

www.undp.org/hdro/report.html (accessed 15-09-2001).



UNIVERSITY *of the*
WESTERN CAPE