

**PROGRESS REPORT OF THE CHAIRPERSON OF THE WORKING GROUP
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
44TH Ordinary Session, Abuja, Nigeria**

By: Dr. Angela Melo, Chairperson of the Working Group

I- INTRODUCTION

1. The Working Group on Economic Social and Cultural Rights (Working Group) was established by resolution **78.ACHPR/Res.73 (XXXVI) 04** on Economic, Social and Cultural Rights in Africa adopted at the 36th

Ordinary session held from 23 November to **7 December 2004** in Dakar, Senegal. In the same resolution, the Commission adopted the Declaration of the Pretoria Seminar on Economic, Social and Cultural Rights.

2. The Working Group was mandated to:

- **develop and propose to** the African Commission on Human and Peoples' Rights a draft Principles and Guidelines on Economic, Social and Cultural Rights;
- **elaborate** a draft revised guidelines pertaining to economic, social and cultural rights, for State reporting;
- **undertake**, under the supervision of the African Commission on Human and Peoples' Rights, studies and research on specific economic, social and cultural rights;
- **make** a progress report to the African Commission on Human and Peoples' Rights at each Ordinary session;

II. ACTIVITIES THE WORKING GROUP

3. In the implementation of its mandate the working group held three formal meetings and one informal meeting. Hence, the Working Group undertook its activities based on the above referenced resolution and in accordance with paragraph one of its mandate, to develop a draft Principles and Guidelines on Economic, Social and Cultural Rights and draft revised guidelines pertaining to economic, social and cultural rights, for State reporting.

FIRST MEETING OF THE WORKING GROUP

4. At the first meeting held between **4 and 5 August 2005** at the centre for Human Rights at the University of Pretoria in South Africa, Sandy Liebenberg and Alain Olinga were appointed as consultants and were tasked with elaborating the draft guidelines and principles on ESCR and revising the current state reporting guidelines to enable comprehensive reporting on the implementation of ESCRs during the African Commission's state reporting procedure. It was decided that the drafts prepared by the two experts would be tabled for consideration by the Working Group. However the Working Group guided the two experts by determining the format and the content of the guidelines. during its first meeting
5. *Regarding the format* participants agreed that the general framework of the guidelines would include a preamble and the main body which would

take into account the decisions and resolutions that the African Union has adopted in the area of ESCRs like the NEPAD framework and the various declarations on relevant thematic areas. The working group also agreed that references would be made to the provisions of regional and international human rights instruments.

6. *On the content*, the working group underscored the justiciability of ESCRs and pledged to explore the dynamics of poverty alleviation devised by richer countries and its impact on African countries. It noted that the respect of political and civil rights facilitates the enjoyment of ESCRs. Participants agreed to avoid using the term “citizen” and rather use the term “*individual*” as the former excludes Africans resident in other countries from protection.
7. During the two day meeting, the working group considered the ESCRs rights provisions of the African Charter namely:
 - a. The Right to Property, Article 14
 - b. The Right to Work, Article 15
 - c. Right to Good Health, Article 16
 - d. The Right to Education Article 17
 - e. Cultural Rights, Article 17(2), (3)
 - f. The Sanctity of the Family, Article 18
 - g. The Rights of Peoples’, Article 21
 - h. The Right to Development, Article 22
 - i. The Right to a Satisfactory Environment, Article 24
8. The working group suggested that it would look at rights which are not explicitly mentioned in the Charter i.e., the right to housing, the right to food in terms of the important links they have with other rights, i.e., the right to life and the right to health. The working group discussed the capacity of the African Commission to prepare general comments on the relevant provisions of the African Charter and the possibility of collaboration with stakeholders in this regard. The African Commission would identify specific thematic areas that would benefit from general comments (taking into account its own jurisprudence and relevant regional and international human rights instruments).

SECOND MEETING OF THE WORKING GROUP

9. At the second meeting held in *London from 6-7 October 2005*, the working group reviewed the first draft of the principles and guidelines submitted by the two experts, Sandy Liebenberg and Alain Didier Olinga in the absence

- of these experts. Participants were of the view that for the next meeting both participants should come up with one document to facilitate the deliberation process. It was agreed that for the guidelines to be user friendly, they should be brief with detailed information provided for in explanatory notes.
10. The working group undertook the consideration of the guidelines beginning with the preamble which makes reference to principles cited in international and AU instruments. Thereafter, the working group examine the principles pertaining to state obligations namely; the obligation to respect (which requires State parties to refrain from interfering directly or indirectly with the enjoyment of ESCRs); the obligation to protect (requiring States to take legislative and other measures to give effect to ESCR, such as educational, constitutional, legislative, budgetary and administrative measures, as well as ensuring appropriate administrative and judicial remedies for the violation of these rights).
 11. Under the obligation to protect States should ensure that individuals are protected from violations perpetrated by both state actors and private actors. Individuals should have the opportunity to seek reparation of the violation of ESCRs through national judicial systems.
 12. Further, the third obligations included in this draft document is the obligation of States to promote and protect ESCRs by adopting measures to enhance people's awareness of their rights, and to make available and accessible information relating to the programmes and institutions established to realize these rights. States also have the obligation to fulfill ESCRs by adopting positive legislative and other measures to advance the realization of the rights. Such measures should be comprehensive, co-ordinated, transparent and contain clear goals, indicators and benchmarks for measuring progress.
 13. The draft guidelines take into account retrogressive measures which reduce the extent to which ESCRs are enjoyed and suggest that states must justify such measures.
 14. On the issue of lack of resources - a common justification given by states for the non-implementation of ESC rights - the draft guidelines urge states to take concrete and targeted steps, while taking full advantage of available resources to ensure that ESCRs are fully realised in all aspects without discrimination of any kind. The document reminds states that they have a constant and continuing duty to move as expeditiously and effectively as possible towards the full realization of ESCRs.
 15. States are encouraged to develop and sustain a regular process of monitoring the allocation and implementation of budgets within all spheres

- of government to ensure compliance with the obligations imposed by economic, social budgetary processes which allocate specific amounts of funds for different sectors of the economy.
16. In ensuring real and effective equality in the enjoyment of ESCRs, States parties must pay particular attention to groups suffering from systemic patterns of discrimination and take steps to remove de facto and legalized discrimination where individuals and groups are deprived of the means or entitlements necessary for realizing economic, social and cultural rights. The draft document points out that those measures should not, as a consequence, lead to the maintenance of separate rights for different groups and should be discontinued after their intended objectives have been achieved.
 17. It recommends that states adopt legislative and other remedies to prohibit private persons and bodies from discriminating against people in their access and enjoyment of economic, social and cultural rights.
 18. Available effective remedies which include both administrative and judicial remedies should be made accessible, affordable and timely and effective legal aid schemes as detailed in the African Commission's Fair Trial Guidelines should form part of states' legal systems. Administrative tribunals and the courts should recognize their jurisdiction over economic, social and cultural rights, and grant appropriate remedies in the event of violations of these rights by State agents and non-State actors.
 19. The document notes that where ESCRs are not expressly included in the constitution of a State party, the courts and administrative tribunals should strive to protect the interests and values underlying these rights through an expansive interpretation of other rights, for example, the right to life, human dignity, and security of the person, equality and equity. Domestic law must be interpreted as far as possible in a way which conforms to States parties obligations under the African Charter.
 20. Following the consideration of the first draft, the working group agreed that further work is necessary before the Principles and Guidelines are ready to be considered by the working group and the African Commission. Principally, the Principles and Guidelines need to be edited to reflect the experiences and challenges of implementing Economic, Social and Cultural Rights in Africa.
 21. Interights took up the task to input into the existing draft so as to meet the challenges in the implementation of ESCR. INTERIGHTS did so by adding to the draft, as amended at the two meetings, African standards into the draft. Work has been done especially in incorporating the Pretoria Declaration and the African Commission's Reporting Guidelines into the

draft. Work has also been done in incorporating some declarations, resolutions and plans of Action of the African Union and the Commission into the draft.

THIRD MEETING OF THE WORKING GROUP

22. The third meeting of the working group was an informal meeting held on the margins of the 43rd ordinary session of the Commission in Ezulwini, Swaziland (7-22 May 2008). At this meeting, the working group agreed on a 2008 -2009 work plan. Among others, the work plan provides for a meeting to consider the draft document on principles and Guidelines in its new revision presented by interights.
23. The work plan also provides for a Consultation of States parties, NGOs, and a Peer Review on the guidelines and principles so as to involve all stakeholders through their comments and thereby making the process more participatory. According to the work plan, it is only after this consultation that the working group will submit the draft guidelines to the Commission for consideration.

THE FOURTH MEETING OF THE WORKING GROUP

24. The fourth meeting of the working group was held from 5-6 November 2008 in Abuja, Nigeria.
25. The main objective of the meeting was to follow up on the implementation of the 2008-2009 work plan and the specific objectives were to:
 - Discuss and adopt the concept note on the work plan
 - Discuss the draft principles and guidelines prepared by Interights;
26. Based on these objectives, the working group took a first look at the draft guidelines and principles. It is worth mentioning that though the structure agreed upon remains the same as the first draft, the new version of the draft is more detailed and it addresses all the ESCR issues in a holistic manner.
27. At this fourth meeting, the working group agreed to meet again to take a final look at the draft and adopted it before making it available for comments from all stakeholders and its submission to the Commission for consideration.

CONCLUSION

28. The overall conclusion we can draw is that the draft Guidelines define the precise nature of the obligations for states parties under the ESCR provisions as enshrined in the African Charter. These guidelines enable the African Commission, international and regional institutions; National Human Rights Institutions and civil society promote and protect ESCRs in their different roles.
29. Therefore, given the participatory nature the working group intends to make of this process, States parties and other stakeholders are encouraged to input into the draft once they are made available for comments.
30. The revised State Reporting Guidelines resulting from this process provide information on the form and content of ESCRs and should, in the long run, enhance state reporting on these issues before the African Commission. These guidelines enable the Commission to engage more effectively with State parties on ESCR issues and monitor their implementation on the continent.