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## **Report: OP-ICESCR Ratification - Building a Regional Strategy in Africa**

### **Africa Regional Social Rights Litigation Workshop**

**14 March 2012, Johannesburg South Africa**

The NGO Coalition for the Ratification of the OP to the ICESCR organized a day-long session as part of the Social Rights Litigation Workshop held in South Africa on 12-14 March 2012. Participants were supported and encouraged to research the position of their countries in relation to the ICESCR and OP-ICESCR and come prepared to discuss strategies. The main objectives of this discussion were to expand the common understanding of the current context in the African region toward fostering ratification of the OP, as well as receiving and sharing knowledge about opportunities and obstacles. This was done by gathering an understanding of where various states are at now, various contexts, obstacles and opportunities and by working together to draw up a road map for our next steps. We began the session with an overview of the International NGO Coalition's Campaign and the work undertaken to date.

#### **Overview and Introduction**

Lilian Chenwi, Professor at the University of Witwatersrand, and part of the steering committee of the International NGO Coalition opened the session with an overview of the OP Ratification Campaign and the current context of OP ratification in Africa, including the importance of OP for African states. Lilian also explained the main goals/objectives as well as key activities of the NGO Coalition campaign. She summed up the goals of the Campaign as follows:

- Entry into force of the OP & widespread ratification, including a large and regionally diverse number of ratifications/accessions
- Effective implementation/functioning of the OP, including the adoption of effective Rules of Procedures and election of strong members to the CESC.
- Strategic litigation support by facilitating appropriate cases to the CESC to set positive precedent

- Extensive involvement of organisations: to increase awareness of the OP and strengthen the capacity of organisations to use this instrument as an important tool to advance ESC rights work at the national levels; and to expand and strengthen the network of organisations working on the OP, the ICESCR, and ESC rights-related issues.

Regarding the current context in the Africa region, Lilian informed participants that as at 10 March 2012, ten (10) African countries had signed the OP-ICESCR but none have yet ratified. Another important issue shared was the role that African states played during the OP adoption process. Most of them had a very active role, as they were of the view that the OP would contribute to the promotion of ESCRs. Most of the African states championed the discussion on international cooperation and assistance and the establishment of a fund. Using the African Charter as a benchmark, they were not willing to accept any standard that falls below the standards in the African Charter or other relevant African regional human rights system.

She stressed the fact that Ethiopia and Egypt were very active in drafting the OP but they have not yet signed it. Regarding South Africa, she stressed that it was also active during the process of OP drafting and adoption and has not yet signed the ICESCR, a prerequisite for it to ratify the OP. Lilian concluded by highlighting the importance of the OP for African states in: (a) strengthening the existing protection of ESCRs as justiciable rights, (b) promoting domestic enforcement of the rights in the ICESCR, and (c) facilitating international assistance for African states, amongst others.

### **Key Issues in Ratification Debates of the OP-ICESCR in Africa**

During this exchange chaired by Elin Wrzoncki, from the International Federation for Human Rights (FIDH), the focus was on civil society advocacy in Nigeria, Kenya and South Africa around the OP-ICESCR. Contributions from a variety of participants were key to understanding specific situations and common obstacles in the different countries.

Victoria Ibezim-Ohaeri, *Social and Economic Rights Action Center - SERAC (Nigeria)*, gave an overview of the process that SERAC and other civil society groups have begun towards securing Nigeria's commitment to ratify the OP-ICESCR. The Nigerian OP-ICESCR campaign drew inspiration from the meeting organized by ESCR-Net in October 2010 in New York that focused on Strategic Litigation under the OP-ICESCR. Following the meeting in New York, SERAC made a submission to the President of Nigeria and relevant government departments to help build awareness on OP-ICESCR ratification. Another issue identified was the lack of information about which government departments were responsible for overseeing the process of ratification of international treaties. In this context - alongside 22 other national and international organizations – they formed a national advocacy group in Nigeria.

Members of the Nigerian OP-ICESCR Advocacy Group include SERAC, the Open Society Initiative for West Africa, Women Environmental Programme, Global Rights and the National Human Rights Commission, Socio-Economic Rights Accountability Project (SERAP). They also raised public awareness through media campaigning, held high-level meeting with key government representatives, like the

Attorney General of the Federation, and received first hand information about their government's concerns and questions. Some of these concerns are: a) an increase in obligation without the necessary corresponding resources; b) a potential overflow of petitions from people in need; and c) what the roles of government departments would be. The Advocacy group has been explaining the OP's scope and content, providing additional materials and resources to assist their understanding of the normative content and character of the OP-ICESCR.

To date, they have some important outcomes, including an official declaration by the Nigerian government to ratify the OP and the designation of a special assistant to oversee OP issues. Challenges identified include lack of good coordination among state departments, limited awareness of the OP-ICESCR among members of the civil society, and the lack of cohesiveness among civil society OP-ICESCR agenda. Recommended action includes exerting international pressure on the issue.

Odindo Opiata, Hakijamii (Kenya), reported that Kenya has been taking an active role in relation to UN bodies of monitoring the presentation of Government reports (HRC, UPR, CESCR). A national coalition of organizations monitors the country's performance in implementing the recommendations made under UPR. He also shared that Kenya has a very active National Human Rights Commission (KNHRC) looking at access to justice, transitional justice, protection of HR for witness, freedom of expression, death penalty, torture, children's rights, ESC rights, etc. 158 recommendations were made to Kenya during the working group session. During the September 2011 adoption of its report, the State indicated that out of all the recommendations, only the recommendation on decriminalization of same sex marriages would be completely rejected.

Recently, Kenyans adopted a new constitution. Intensive lobbying was done by civil society organizations to recognize all human rights treaties as domestic laws. This resulted in the inclusion of a provision that explicitly recognized all treaties ratified by the Government as part of the domestic law. The actual implication of this is yet to be clear. The Constitution Implementation Commission, for example, has interpreted this to mean that new legislation has to be passed before the provision can be enforced. Consequently a Bill on Treaties has been drafted that lays down a comprehensive procedure to be followed by the government before they can ratify a treaty. One of the provisions of the Bill requires that a cabinet paper for implementation, outlining which national institutions are affected by the treaty, what is required from the government regarding implementation, what are the new obligations and what are the costs. It is not yet clear the ramifications this Bill, if passed by Parliament, will have on the process toward OP-ICESCR ratification.

Currently, the Kenya Stakeholders Coalition on the Universal Periodic Review met with Government officials to follow up the process of ratification of Optional Protocol. The Ministry of Justice and Constitutional Affairs is now taking the lead on the OP ratification. When asked about next steps, authorities replied that ratification was put on hold until the Bill on Treaties is ready. In 2012 the country is focused on the elections and the process is likely to be de-prioritized as politics take centre stage.

Odindo's analysis of the situation was that potentially, the proposed Bill may turn out to be a positive development regarding the implementation of international treaties as it will now be a requirement that the country carefully takes into account all the factors before ratifying any international treaty. Clearly, on the other hand it will make ratification more difficult and time consuming. Currently there is a feeling of reluctance by sections of the government regarding international human rights systems, especially as a result of the ongoing International Criminal Court process in the country. This may have some adverse impact on the campaign for the ratification of the Optional Protocol, at least in the short term. Tactically, it is still possible to lobby the government to proceed with the ratification by reminding it that it has, in any case, already ratified ICESCR, and other treaties.

Lilian Chenwi (*University of Witwatersrand*) and Ebenezer Durojaye (Community Law Centre), discussed the challenges and opportunities in South Africa. They started by explaining the peculiar South African situation:

- a) SA signed the ICESCR over 17 years ago but has not ratified it.
- b) During the process of the adoption of the OP-ICESCR at the UN General Assembly, South Africa was very active.
- c) The SA Constitution has important provisions relating to economic and social rights, which are justiciable and have been enforced by the courts.
- d) The government has made public commitments at both the national and international levels at various forums about ratifying the ICESCR and its OP.

Regarding the delay in the process of South Africa ratifying of the ICESCR, they pointed out that initially, concerns were raised about the right to work since the SA Constitution does not explicitly recognise this right. They also mentioned previous concerns regarding possible conflict between the SA Constitution and the ICESCR but noted that these concerns have now fallen away. The primary issue now relates to finding a lead department within the government to oversee the implementation of the ICESCR. The government has indicated that a resolution of this would be found shortly. Lilian's analysis was that the national government context is favourable to ratification: Zuma's government is focused on poverty issues, very involved in the MDGs, and with a strong commitment on becoming an active leader in the international community. Thus, it is a good opportunity to campaign on ICESCR and its OP ratification.

At the national level, organizations are running a campaign to achieve ICESCR and OP ratification. They started informally in 2007 and formally in 2009. They have undertaken several actions, including advocacy and research as well as strategic engagement with government and media strategies. The campaign has been driven by 7 organizations and supported by 30 other organizations, institutions and individuals. Some next steps the civil society groups in SA will take include: planning actions around the celebration of the signing date of the ICESCR, OP and Mandela's Day; strategic engagement with the South African Human Rights Commission and relevant government departments; and taking advantage of international forums (such as the African Commission's session and the upcoming review of South

Africa under the Universal Periodic Review mechanism) to raise the issue of ratification.

Impacts achieved by the SA Campaign to date include: success in promoting debate around the issue; display of increased willingness to engage; creating a platform for CSOs to raise pertinent issues, and encouraging parliament to raise questions about ratification for the first time. The primary challenges for the SA Campaign are the need for a broad-based platform of civil society groups to follow up activities and secure funding, addressing lack of political will, identifying the responsible government agency and addressing false arguments on incompatibility.

After the three presentations some questions and inputs were raised from participants:

- Could it be helpful to push on interpretation for a constitutional provision?
- Constitutional reviews are opportunities.
- Identifying a Ministry/Department to move the issue forward is a challenge identified in several countries.
- Peer to peer exchanges might be a useful opportunity, e.g. among Latin American and African states.

Victoria Ibezim-Ohaeri shared that in Nigeria it was difficult to meet with government official and that it would be helpful to work with international organizations on this. Also a good idea could be to have joint statements from African and international organizations.

Odindo mentioned that Kenya's new provision in the constitution to incorporate international treaties as part of national law may not necessarily result in abandoning the dualistic character of the country's practice. It is therefore important that advocacy should continue. Government officials are always willing to travel abroad to engage in international discussions. It would thus be useful to identify strategic friendly foreign governments who can use their influence on the Kenyan government to provide additional support.

Bruce Porter, Social Rights Advocacy Centre (Canada), highlighted the issue around African countries and resource availability. African countries were very active during negotiations of the OP text in stressing the importance of international cooperation. This is a dimension that is not available through regional procedures, guaranteeing that the consideration of "available resources" will include consideration of whether necessary international assistance has been provided. The dimension of international cooperation and assistance will likely be addressed in recommended remedies as well. The OP directs the Committee to engage with UN Agencies and development organizations in order to ensure that international assistance and cooperation is included in follow-up measures. These are important aspects of the OP to emphasize in explaining its value to states.

## **Obstacles at National Level**

Following the opening presentations, there was an open discussion focusing on the obstacles faced in each country to advance OP-ICESCR ratification. This session aimed at providing a better understanding on existing obstacles and the context in which those obstacles are framed, which was facilitated by Sandra Ratjen, International Commission of Jurists – ICJ and Victoria Ibezim-Ohaeri, -Social and Economic Rights Action Center - SERAC (Nigeria).

Gertrude Angote (Kituo) from Kenya identified the necessity of a united voice on this matter from civil society organizations in order to succeed in circulating information and fostering ratification. There is a lack of awareness on the issue but there are opportunities to raise it by working on economic and social rights.

Imen Bejaoui (Tunisian Forum on Economic, Social and Cultural Rights) from Tunisia shared the country context and pointed out that it is a key moment to foster ratification due to the government's willingness for having a good image at the international level and to demonstrate its disposition to protect rights at a national level. Also the country is rewriting its constitution and inclusion of ESC rights could be an avenue for considering OP ratification.

Daouda Sarr (Association Mauritanienne des Droits de l'Homme) from Mauritania explained that one of the biggest obstacles in his country is political instability. Another obstacle identified is the lack of mobilization and awareness of civil society on the issue. There is a lack of available information from the government making it difficult for civil society groups to get involved in monitoring reporting and /or ratification processes in the country. The opportunities include that Mauritania is a member of the UN Human Right Council and it will be reviewed by the CESCR on the last quarter of the current year.

Alain Dieudonné (Observatoire Congolais des Droits de l'Homme) from Congo-Brazzaville: They approached the Justice Minister and realized that more civil society organizations are needed in order to foster the process. They also need resources to do this. The chair of Human Rights Commission is open to working on OP ratification.

Tafadzwa Christmas (Zimbabwe Human Rights NGO Forum) discussing the context in Zimbabwe explained that for the Zimbabwean government, Western governments are perceived as paternalistic. The authorities tend to reject initiatives when they don't know the content or the origins. Furthermore, outside pressure can often be more negative than positive on an issue. A good strategy to follow is try to "translate" the content into understandable language, working with civil society in the country and building capacity to put pressure on the government. The Government has announced they are going to ratify CAT very soon.

The political dimension was raised by several participants as an important aspect to pay attention to for lobbying and advocacy efforts. It is important to try to avoid repeating historical relationships between donors and developing countries. Thinking of this, Tafadzwa's impression was that a good strategy would be to work together with the organizations from all regions and put pressure in different countries, for example organizations from Africa supporting organizations in Europe for ratifications, and vice versa. From these considerations it is clear the importance of contextualizing and customizing the actions for each country. The necessity of having more African people taking part actively in the Coalition for OP ratification was also an issue that was raised. It is key to work on building ownership and joining efforts.

Summary of this exchange and the debate:

- Difficulties accessing authorities is a common situation.
- Constitutional reviews are opportunities to push for recognition of international law
- Capacity building is needed for people to work on advocacy for OP ratification.
- Dissemination of information among the public, media and governments is key to building awareness and capacity.
- Campaign should be contextualized, including relevant issues at national level.
- Attention to political dimensions and political stability is key.
- Continue to build diversity inside the Coalition to draw on the experiences of all regions.
- Develop an African OP Ratification network and have focal points to actively contribute in the International OP Ratification Campaign
- Friendly campaign materials in accessible languages with clear explanations on "why is this instrument important for me and my family?"

### **Building a Regional Campaign in Africa: Opportunities, Key Messages, Potential Actions, Focal Points, and What Are the Countries that Might Ratify the OP-ICESCR Soon?**

The second part of the day started with a short session in which some initiatives and strategies planned by the OP Coalition or Steering Committee members were shared.

Iain Byrne, Amnesty International shared the idea of submitting an open letter to the next African Commission Session in order to get participants involved and have their contributions heard. It was quickly agreed this should happen that having African organizations as leading signatures on the letter was paramount.

Ivahanna Larrosa (ESCR-Net/OP Coalition) shared information on how the Coalition had taken advantage of the regional venue MERCOSUR to advocate in favor of OP Ratification among member States. For this action the Coalition coordinated at national and regional level with member organizations and set a

strategy to participate at that event. Through country delegations, a call for States to ratify the OP was submitted. Part of the achievement was the commitment from countries to move the process forward at the national level. The petition and declaration in favor of OP ratification were included in meeting minutes and were made public.

**Opportunities, Key Messages, Key actors and Potential actions**

The next session included a truly vibrant debate where all participants contributed to identifying opportunities, key messages and actors and potential actions in order to foster OP ratification in each country and the African region.





<b>Key Messages:</b>	
	<ul style="list-style-type: none"> <li>• Governments should meet their obligations.</li> </ul>
	<ul style="list-style-type: none"> <li>• Ratify to show solidarity with other countries.</li> </ul>
	<ul style="list-style-type: none"> <li>• Covenant rights and the OP are aligned with the African Charter and several African countries' constitutional provisions on ESC rights.</li> </ul>
	<ul style="list-style-type: none"> <li>• Use recommendations of the African Commission in national advocacy for ratification.</li> </ul>
	<ul style="list-style-type: none"> <li>• Use statements made by the African group during the development of the OP to argue for ratification.</li> </ul>
	<ul style="list-style-type: none"> <li>• Need for caution regarding mentioning the fund for assistance, as it has not yet been created.</li> </ul>
<b>Key Actors identified:</b>	
<b>Organizations to work with as allies</b>	<ul style="list-style-type: none"> <li>• Organizations working on OP ratification at the national level in other countries in Africa and at regional level.</li> </ul>
	<ul style="list-style-type: none"> <li>• OP Coalition, including organizations which form the steering committee (FIDH, FIAN, Amnesty, ICJ, SRAC, IRAW Asia Pacific, Plataforma, CLC).</li> </ul>
	<ul style="list-style-type: none"> <li>• ESCR-Net</li> </ul>
<b>National entities to lobby and partnering as possible</b>	<ul style="list-style-type: none"> <li>• Ministries on Foreign Affairs, Justice, Law Commissions.</li> </ul>
	<ul style="list-style-type: none"> <li>• Members of parliaments willing to support (allies).</li> </ul>
	<ul style="list-style-type: none"> <li>• National Human Rights Institutions.</li> </ul>
	<ul style="list-style-type: none"> <li>• Find National focal points in countries likely to ratify or sign soon.</li> </ul>
<b>International actors, bodies and agencies.</b>	<ul style="list-style-type: none"> <li>• Human Right Council</li> </ul>
	<ul style="list-style-type: none"> <li>• Partners in Geneva.</li> </ul>
	<ul style="list-style-type: none"> <li>• CESCR &amp; other committees.</li> </ul>
	<ul style="list-style-type: none"> <li>• UN Special Rapporteurs.</li> </ul>
	<ul style="list-style-type: none"> <li>• Country leading African Group.</li> </ul>
	<ul style="list-style-type: none"> <li>• UN Development/Human Right Agencies.</li> </ul>
<b>Regional bodies at Africa Region</b>	<ul style="list-style-type: none"> <li>• Pan African Parliament (relevant committees).</li> </ul>
	<ul style="list-style-type: none"> <li>• Summit Latin America + Africa, being held in Malabo next May.</li> </ul>
	<ul style="list-style-type: none"> <li>• ACHPR- Working Group on Economic Social and Cultural Rights</li> </ul>
	<ul style="list-style-type: none"> <li>• African Court</li> </ul>
	<ul style="list-style-type: none"> <li>• ECOWAS</li> </ul>
	<ul style="list-style-type: none"> <li>• SADC Tribunal</li> <li>•</li> </ul>

Opportunities:
<ul style="list-style-type: none"> <li>• Constitutional/Law Reforms processes:(E.g. Tunisia, others)</li> <li>• States Reporting process: UPRs, CESCR and to other Committees. E.g. Action on Mauritania, member of Human Right Council.</li> <li>• Take advantage of Special Rapporteur Visits.</li> <li>• ACHPR Session.</li> <li>• Summit Latin America+Africa</li> </ul>

Potential actions suggested.	Next Steps -Possibilities of collaboration	Organizations able to provide or get collaborations
<ul style="list-style-type: none"> <li>• Broaden campaign beyond HR NGOs.</li> <li>•</li> </ul>	Map together other actors that would be key in the process of fostering OP ratification.	African Organizations and the OP Coalition.
<ul style="list-style-type: none"> <li>• Join ESCR Net and the OP Coalition.</li> <li>• Join national networks working ESCR issues.</li> </ul>	Foster membership with the OP Coalition and ESCR Net.	African Organizations the OP Coalition and ESCR-Net
<ul style="list-style-type: none"> <li>• Involve regional voices more in the development of the OP Ratification Campaign. Adapt messages to specific contexts.</li> <li>• Strengthen regional ownership with regard to the OP campaign.</li> <li>• Build a regional network with regard to the OP campaign.</li> </ul>	<p>Identify specific support and substantive issues needed to form a regional network on OP-related issues and building capacity on the OP ratification.</p> <p>Agree on steps to define focal points (for regional/international campaigns) and tasks to undertake.</p> <p>Enhance participation of African organizations within the OP Coalition.</p>	African Organizations and the OP Coalition.
<ul style="list-style-type: none"> <li>• Events at national level with international participants to move</li> </ul>	Work in partnership with national organizations and give them support for planning,	FIDH, ICJ, AI, ESCR-Net and OP Coalition.

Potential actions suggested.	Next Steps -Possibilities of collaboration	Organizations able to provide or get collaborations
<p>forward with the recognition of ESCR in national Constitutions. Also include (as possible) the OP Ratification issue in the agenda of these events.</p> <ul style="list-style-type: none"> <li>• Next possible event in Tunisia.</li> </ul>	<p>getting international participants and experts.</p>	
<ul style="list-style-type: none"> <li>• Follow up with countries that are willing to ratify (as to progress made).</li> </ul>	<p>Support on building messages, Petition submission, etc. Support on strategizing.</p>	<p>OP Coalition working in partnership with National African Organizations following national processes.</p>
<ul style="list-style-type: none"> <li>• Monitor countries by following and analyzing reports under the UPR and to the CESCR.</li> <li>• Work with CSOs on shadow reports</li> </ul>	<p>African organizations could develop or join projects to support shadow reports in various countries.</p>	<p>African organizations working with partners. ESCR Net/ OP Coalition giving support.</p>
<ul style="list-style-type: none"> <li>• Ask African states that have signed to ask other states to sign/ratify (UPR)</li> <li>• Work together with National NGOs attending UN sessions on UPRs.</li> </ul>	<p>The OP Coalition and ESCR Net may give support on drafting submissions.</p>	<p>OP Coalition ESCR-Net</p>
<ul style="list-style-type: none"> <li>• Coordinate meetings with Special Rapporteurs. Agree on the importance of highlighting the OP ratification issue once they</li> </ul>	<p>Support in contacting Special Rapporteurs teams.</p>	<p>ESCR Network/ OP Coalition.</p>

Potential actions suggested.	Next Steps -Possibilities of collaboration	Organizations able to provide or get collaborations
are in the country.		
<ul style="list-style-type: none"> <li>Side event at ACHPR and/or other venues</li> </ul>	Plan Side event to be carried out at ACHPR with African representatives involved.	FIAN, AI, OP Coalition and ESCR Network in coordination with African partners.
<ul style="list-style-type: none"> <li>Use recommendations of the African Commission in the OP campaign.</li> <li>Take advantage of regional /national meetings for OP advocacy</li> </ul>	<p>Check out possibilities of contacting representatives from Latin American states and foster OP ratification peer to peer at South America-Africa Summit to be developed in Malabo, Guinea the current year.</p> <p>Share information with the OP Coalition and ESCR Net. Map upcoming meetings likely to be opportunities.</p>	<p>OP Coalition and partners.</p> <p>African organizations at national and regional level mapping/sharing information.</p> <p>OP Coalition/ESCR Net and other partners, support in strategizing.</p>
<ul style="list-style-type: none"> <li>Build synergies between strategic litigation actors &amp; regional campaign actors.</li> <li>E.g.s.Kenya: litigate on OP-related matters.</li> <li>Nigeria: work with Nigerian Association of Lawyers</li> </ul>	<p>Map actors</p> <p>Foster partnership between regional actors working on SL and on the OP campaign.</p>	African partners working on SL; ADJ WG ESCR Net; OP Coalition, others.
<ul style="list-style-type: none"> <li>Awareness Campaign: explain the OP content and the need to include ESCR in constitutions</li> <li>Share ideas with local partners.</li> <li>South-South Campaign dialogue.</li> </ul>	<p>Start exchanging ideas on how a south-south dialogue would take shape.</p> <p>Exchange materials on ESCR and the OP ratification Campaign.</p>	<p>OP Coalition, ESCR Network, African Organizations.</p> <p>Other International Orgs.</p>