STAKEHOLDER'S CONFERENCE THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

AT THE SAROVA WHITESANDS BEACH RESORT & SPA HOTEL

International Conference Report

Workshop organizers

a) **Konrad Adenauer Stiftung;**
b) **Network of African National Human Rights Institutions**

SUMMARY

This report covers the proceedings of the international stakeholders' conference on the Optional Protocol to the International Convention on Economic, Social and Cultural Rights (OP-ICESCR) that took place in Mombasa, in the Republic of Kenya, on the 2nd to 3rd September 2010. The conference was co-organized by Konrad Adenauer Stiftung (KAS) under the aegis of its Rule of Law Program for Sub Saharan Africa and the Network of African National Human Rights Institutions. The Optional Protocol to the International Convention on Economic, Social and Cultural Rights (OP-ICESCR) is open for signature and ratification by States that are already parties to the International Convention on Economic, Social and Cultural Rights (ICESCR). It was adopted by the UN General Assembly on 10th December 2008 and opened for signature on 24th September 2009. As of February 2010, the Protocol had 32 signatories and no State parties. The protocol is expected to enter into force upon ratification by 10 State parties.

The OP-ICESCR has mechanisms that make it possible for aggrieved individuals or groups to submit complaints to the Committee on Economic, Social and Cultural Rights in regard to violations of their economic, social and cultural rights by a State party. Thus, it allows its parties to recognize the competence of the Committee to consider complaints from individuals or groups who claim their rights under the Covenant have been violated. Unless the Optional Protocol to ICESCR is ratified and enters into force, individuals or groups of individuals cannot seek redress or obtain remedies in an international forum for violations of their economic, social and cultural rights protected in this treaty. The OP-ICESCR thus provides a forum for complaint and an avenue for disadvantaged groups within societies to obtain remedies for breaches of their economic, social and cultural rights.

The mere possibility that complaints might be brought before an international forum is likely to encourage governments to ensure that more effective local remedies are made available. More specifically, there are several ways in which a complaints procedure contributes to the implementation by State parties of the obligations under the ICESCR. The stakeholders' conference in Mombasa, Kenya sought to keenly interrogate this protocol with the ultimate objective of promoting effective engagement of state and non-state actors in championing the ratification of and accession to the OP-ICESCR by States. The International Conference's main objective was to raise awareness on the protocol; to grant a platform to participants to share experiences, challenges and good practices as regards the popularization of international and regional instruments; and to explore areas and strategies for greater involvement and engagement of state and non-state actors in popularizing the OP-ICESCR

The participants were drawn from 14 African States and they comprised of government officials from the ministries of Justice and Foreign Affairs; State Law Offices; State and non-state Human Rights Institutions; Civil Society and the Academia. In attendance were some international experts as well.

1.0 OPENING SESSION: MASTER OF CEREMONY – MR. PETER WENDOH

The program commenced at 09.30am with the introduction of guests, resource persons and other participants. The opening ceremony was graced by the Hon. William Cheptumo, MP and the Assistant Minister, Ministry of Justice, National Cohesion and Constitutional Affairs of the Republic of Kenya.

Preliminary remarks were made by:

- **Ms. Anke Lerch**, Country Representative, Konrad Adenauer Stiftung, Kenya & Tanzania. She gave brief background information on the Foundation and its engagement in the promotion and protection of human rights, rule of law, democracy, development and environmental protection not only in Africa but also in other parts of the world.

- **Prof. Christian Roschmann**, Director of KAS' Rule of Law Programme for Sub Saharan Africa informed participants of the specific mandate that the program carries out in Africa, that of the promotion and protection of the rule of law and pointed out that this particular conference was a follow-up to a similar conference that was held in Cape Town, the Republic of South Africa in 2009.

a) **Mrs. Florence Simbiri-Jaoko**, Chairperson of the Kenya National Commission on Human Rights Commission (KNCHR) and Member of the Steering Committee of the NANHRI expressed her appreciation to Konrad Adenauer Stiftung for their fruitful partnership with NANHRI that has borne what in her opinion was a very successful meeting. Ms. Jaoko hailed all the African National Human Rights Institutions for their fervent commitment to expand the frontiers of human rights observance in their respective countries noting that the NHRIs' heavy presence at the conference authenticates their resolute mission to steer Africa to take her rightful place among the human rights community both regionally and globally.

   Ms Jaoko noted that the conference's rendezvous and venue in Kenya was timely if not symbolic since the country had just underwent what is a kin to a rebirth by ushering in a fresh constitutional dispensation that guarantees a splendid

complete paradigm shift in governance coupled with constitutional governance, equity and fairness in resource allocation, a reinforced rule of law and justice system and a very augmented bill of rights that takes cognizance of the economic, social and cultural rights as enshrined in the Optional Protocol to the International Convention on Economic, Social and Cultural Rights which was the intent and purpose of the international conference.

In her capacity as a member of the Steering committee of NANHRI, Ms Jaoko congratulated the Kenyan populace and their leaders with particular reference to the two Principals, His Excellency the President of the Republic of Kenya Hon. Mwai Kibaki and the Prime Minister of the Republic of Kenya, the Right Hon. Eng. Raila Amolo Odinga for their temerity, resilience and endurance with which they led Kenyans to the attainment of a new constitutional dispensation that has catapulted Kenya to the international limelight for all the good reasons, not bad reasons as might have been expected especially during an electioneering period like the just concluded referendum campaigns.

Ms. Jaoko pointed out that the conference was tasked to prop up valuable engagement of state and non-state actors to champion the ratification and accession to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights since ratification and accession to this Optional Protocol puts a state party in the right track in promotion and protection of her citizens' human rights because the Optional Protocol provides for a complaint mechanism that makes it possible for individuals or groups to submit a complaint.

Ms. Jaoko expressed her appreciation to the government of Kenya for accepting to host the Secretariat of the Network of African National Human Rights Institutions.

1.2 OFFICIAL OPENING REMARKS BY THE HON. WILLIAM CHEPTUMO, MP AND THE ASSISTANT MINISTER, MINISTRY OF JUSTICE, NATIONAL COHESION AND CONSTITUTIONAL AFFAIRS OF THE REPUBLIC OF KENYA

The Hon. William Cheptumo, the Assistant Minister in the Ministry of Justice, National Cohesion and Constitutional Affairs extended his utmost and sincere welcome to all the participants and resource persons. He noted the zeal with which Konrad Adenauer Stiftung and the Network of African National Human Rights Institutions ensured the

conference took place. Hon. Cheptumo reiterated the Kenyan government's commitment to guaranteeing Economic, Social and Cultural Rights as enshrined in the new constitution of the Republic of Kenya. He also noted that as part of granting justice to those whose Economic, Social and Cultural Rights have been infringed on in the past, the Government of Kenya is in the process of establishing the necessary mechanisms of dealing with past human rights violations and historical injustices as a prerequisite for the ultimate restoration of fraternal relationship among the Kenyan people. He mentioned the establishment of the Truth, Justice and Reconciliation Commission a case in point.

The Assistant Minister pointed out the existence of an invaluable benefit to actively engage state and non-state actors to champion the ratification and accession to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. On this note he was particularly impressed by NANHRI's involvement in this activity since the later as membership body with an oversight role on African NHRIs, has the discretion to encourage and support the establishment of strong and independent NHRIs in accordance with *the Paris Principles thus* reinforcing the African NHRIs' capacity by facilitating and coordinating regional activities between NHRIs themselves, intergovernmental and international institutions to enable the NHRIs to more effectively undertake their national mandates on emerging areas of human rights concerns.

He equally hailed Konrad Adenauer Stiftung's inexhaustible support and commitment to the realization of human rights in Africa from as early as the 1970s noting that the partnership between Konrad Adenauer Stiftung and NANHRI that borne the conference is mutually strategic in human rights promotion and protection in Africa. The Assistant Minister underscored the essence of a dual approach for effective human rights protection and for building a culture of human rights in Africa since the protection of human rights requires complementary and multi-layered enforcement mechanisms since the promotion and protection of human rights demands a multifaceted approach by all stakeholders noting that African NHRIs must work in close cooperation with their respective states to realize the objectives of this optional protocol thus creating a greater awareness of the need to respect, protect, promote and realize economic, social and cultural rights.

Hon. Cheptumo encouraged the conference to seek and adopt consensus and commitment from the leadership of African NHRIs and state representatives present at the conference to develop a strategy for effective engagement with state and non-state actors to popularize the Optional Protocol and identify gaps within states for capacity development.

PLENARY SESSIONS

2.0 SESSION 1: AN OVERVIEW OF THE RATIFICATION AND DOMESTICATION OF INTERNATIONAL INSTRUMENTS IN AFRICA.

The first session was chaired by the Attorney General of Botswana, Dr. Athaliah Molokomme. She indicated to the participants that Botswana isn't a signatory to the International Covenant since her country provides Economic, Social and Cultural Rights to the Citizenship of Botswana. Dr. Molokomme took the opportunity to applaud the people and government of Kenya for having ushered in a new constitutional dispensation in a very peaceful referendum.

The resource person for the session was Ms. Joaquine De Mello, a Commissioner, with the Human Rights and Good Governance Commission of the United Republic Tanzania. Ms. De Mello gave her country's perspective as being a signatory to many of the existing international and regional obligations and a champion in ratifying these instruments. Commissioner De Mello underscored Tanzanian's Commission for Human Rights and Good Governance role in the ratification of international instruments involving making recommendations relating to any existing or proposed legislation, regulations, or administrative provisions to ensure compliance with human rights norms and standards and with the principles of good governance; promoting ratification and accession to treaties or conventions on human rights, harmonization of national legislations and monitor and assess compliance with human rights standards provided for in treaties or conventions or under customary international law to which the United Republic has obligations; and under the auspices of the government, to cooperate with agencies of the United Nations, the AU, the Commonwealth and other bilateral, multilateral or regional and national institutions of other countries which are competent in the areas of protection and promotion of human rights and administrative justice.

She however pointed out that on practical terms, the 'Legal Affairs Department of the Ministry of Foreign Affairs and International Cooperation', which is mandated and, is in charge of ensuring compliance and adherence to these instruments in accordance to the various obligations the country has assented to. Though Tanzania has been very responsive in ratifying treaties and, conventions, domestication still remains a major challenge.

Ms De Mello indicated that in numerous instances developing nations do opt to be party to international instruments / obligations not of their own will but to heed and impress on international and regional partners for recognition and respect. She added that there exists no doubt that ratification without domestication is not enough for the welfare of the country and its citizens for domestication is a tool on which such commitments can largely and legally be translated into human rights and for the welfare of the citizens.

3.0 SESSION 2: INTERNATIONAL AND NATIONAL TRENDS IN JUSTICIABILITY OF SOCIO-ECONOMIC RIGHTS: OBSTACLES AND OPPORTUNITIES

This session was chaired by Dr. Leon Wessels a former Commissioner with the South African Human Rights Commission. The resource person was Prof. Frans Viljoen, Director, Centre for Human Rights, University of Pretoria, South Africa.

Prof. Viljoen's presentation delved on international and national justiciability of socio economic rights focusing on obstacles and opportunities. He defined justiciability to mean claiming infringement of a subjective right as opposed to objective legal norms or 'legislative commands before a body resembling a court to obtain redress or some remedial order for a violation and establish a precedent. Prof. Viljoen indicated that it is incumbent on and obligatory of the government to respect, protect and fulfill social, economic and cultural rights'. Prof Viljoen listed compromised governance and ineffective judicial institutions as some of the problems and obstacles to justiciability of 'fulfilment rights'. On Justiciability at the national level: statutory socio-economic rights, he explained that direct incorporation of Economic, Social and Cultural Rights avoids problems that might arise in the translation of treaty obligations into national law, and provides a basis for the direct invocation of the Covenant rights by individuals in national courts. For these reasons, the Committee strongly encourages formal adoption or incorporation of the Covenant in national law.'

4.0 SESSION 3: THE ROLE OF WORLD TRADE AND ECONOMIC DEVELOPMENT IN THE REDUCTION OF POVERTY AND THE PROMOTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN AFRICA

The session was chaired by Justice (Rtd) Annel Silungwe, retired Chief Justice of the Republic of Zambia and judge in the judiciary of Namibia. The resource person was Dr.

Oliver Ruppel, WTO Chair holder / WTO Chairs Programme and a Lecturer, Faculty of Law, University of Namibia.

Dr. Ruppel underscored the role the promotion and protection of human rights plays in economic development for it has an impact on the investment climate which in turn contributes to growth, productivity and employment creation by way of state accessions to specific human rights treaties, conventions or declarations on the international, regional and sub regional level including International Covenant on Civil and Political Rights, on Economic, Social and Cultural Rights and the ACHPR. The Optional Protocol on ICESCR promises to protect victims of economic, social and cultural rights who are not able to get local remedy within their borders. Democracy, economic development and respect for human rights and fundamental freedoms are very interdependent and mutually reinforcing. Trade, poverty reduction and human development all come through economic growth. Free Trade Agreements (FTAs) can also bring about economic benefits by reducing barriers to trade and investment between participating parties. WTO is bound to respect human rights because these rights are incumbent on the members of the WTO and the WTO is bound to fulfill those obligations. Opening international trade creates efficiency for raising standards and conditions of living and in a way can contribute to implementing rights which require more than mere proclamation if they are to be respected.

5.0 SESSION 4: THE ROLE OF THE NATIONAL HUMAN RIGHTS INSTITUTIONS AND THE CIVIL SOCIETY IN THE RATIFICATION AND DOMESTICATION OF INTERNATIONAL INSTRUMENTS: THE AFRICAN PERSPECTIVE.

The chair of the Session was Mr. Gilbert Sebihogo, the Executive Director of NANHRI and the resource person was Ms. Lyn Muthoni Wanyeki, Executive Director, Kenya Human Rights Commission.

Ms. Muthoni pointed out the tendency to talk about international human rights law as though it's distinct from and an imposition on domestic law. She indicated that international law draws on 'best practice' globally but seeks to extrapolate norms around which there is consensus and as such the ICESCR itself is a reflection not just of the 'East' but of newly decolonised states, including African ones—the independence clarion call to 'eradicate illiteracy, poverty and disease'.

On the roles of NHRIs and CSOs in the ratification and domestication of international instruments, she listed the following as entry points, identification of national issues;

clarification of the same with regional and international colleagues; provision of evidence-base and conclusions: research; expert opinion; engagement with the diplomatic process regionally and internationally: lobbying (walking those corridors; on national delegations; and, before, catalysing/providing liaison between relevant agencies, departments and Ministries as well as with national constituencies). However, these roles are wrought with challenges including, lack of information sharing, a limited number of African civil society organisations whose core mandate is following multilateral processes, the costs involved and lack of follow up initiatives.

On domestication of these instruments, Ms. Muthoni underscored the legislative advocacy as a key role of NHRIs and CSOs. This she mentioned is achievable through initiating comprehensive bills—for example, equal opportunities; engagement through/ with parliament through relevant committees. Ms. Muthoni mentioned legal protection as another front for CSOs and NHRIs to ensure domestication of treaties. The Endorois case in Kenya that was determined last year, 2009 is a case in point. Establishment of legal aid clinics for arbitration and mediation, urgent action i.e. attending to matters as they come up are other measures to ensure domestication of these instruments is achieved.

6.0 SESSION 5: A RIGHTS-BASED APPROACH TO POVERTY REDUCTION IN AFRICA IN THE CONTEXT OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND ITS OPTIONAL PROTOCOL

The chair of the Session Prof. Christian Roschmann, Director, KAS Rule of Law Program for Sub Saharan Africa and the resource person was H.E. Hon. Justice Ariranga Govindasamy Pillay, Judge President SADC Tribunal and member and former Vice-Chairperson of the UN Committee on Economic, Social and Cultural Rights. Judge Pillay gave the Committee's (Committee on Economic, Social and Cultural Rights) broad definition of poverty "*as the lack of basic capabilities to live in dignity…as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights".* He also gave the World Bank's definition of poverty as follows: *"Poverty is hunger. Poverty is lack of shelter. Poverty is being sick and not being able to see a doctor. Poverty is not having access to a school and not knowing how to read. Poverty is not having a job, is fear for the future, living one day at a time. Poverty is losing a child to illness brought about by unclean water."* He pointed out that this definition is merely illustrative and is non-limitative.

Judge Pillay explained that a rights-based approach to poverty reduction essentially integrates norms, standards and principles of international human rights treaties and declarations into Poverty Reduction Strategies (PRSs). These norms, standards and principles, he added, consist of the entire range of civil, cultural, economic, political and social rights and the right to development and thus they inform and shape policies and institutions aimed at poverty reduction and empower the poor by granting them entitlements or rights.

Judge Pillay pointed out that freedom from poverty is a legal entitlement or right, rather than a privilege provided on a charitable basis, and poverty reduction becomes more than charity or welfare but a legal obligation. These rights he mentioned give rise to legal obligations on states, as primary duty-holders, which have ratified such treaties or subscribed to those declarations, to take concrete measures to respect, protect and fulfil those rights and to ensure that anyone operating within their jurisdiction, including individuals, communities, civil society organizations and the private sector, does the same. As such the Committee in which Judge Pillay was a vice-chairperson, has stressed that rights and obligations demand accountability and that international human rights law requires that mechanisms of accountability must be accessible, transparent and effective. Accountability he explained requires that all duty-bearers, including states and non-state actors, such as international organizations, national human rights institutions, civil society organizations and the private sector, are held to account for their conduct in relation to international human rights law. For instance, in the context of poverty reduction, the Committee examines, in monitoring the progress achieved by states parties, whether adequate laws, policies, institutions, administrative procedures and practices and mechanisms of redress, which conform to the provisions of the Covenant and prevent third parties from abusing Covenant rights, have been adopted at the national level. Judge Pillay explained that in this regard, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (the Covenant), adopted by the UN General Assembly, which provides for individual and group complaints at the international level in relation to any alleged violation of the Covenant rights will, inter alia, enhance the international accountability of states parties by obliging them to live up fully to their international obligations and provide effective mechanisms of redress at the national level while giving to the Committee an opportunity of re-affirming the universality, indivisibility, interdependence and interrelatedness of all human rights and the justiciability of economic, social and cultural rights and developing its own case-law.

On a human rights approach to poverty reduction, Judge Pillay explained that the approach has to be grounded in the principles of equality and non-discrimination which are essential elements of international human rights law, including the ICESCR

since sometimes poverty arises when people have no access to existing resources because of who they are, what they believe or where they live. He added that discrimination may cause poverty, just as poverty may cause discrimination and inequality may be entrenched in institutions and deeply rooted in social values that shape relationships within households and communities. He added that since the poor are victims of inequalities and discrimination on various grounds such as, for example, birth, property, national and social origin, race, colour, gender and religion and their condition and attributes, such as dress or appearance, of poverty , the principles of equality and non-discrimination call for abstentions from inequalities and discrimination which may take various forms, including explicit legal inequalities in status and entitlements, policies of indirect discrimination and deeply rooted exclusions and distinctions. These principles also impose a duty on states to take positive steps to combat inequalities and discrimination by reducing the structural disadvantages suffered by the disadvantaged, marginalized or socially excluded individuals and groups e.g. women and girls, children, older persons, minorities and indigenous peoples; and giving appropriate preferential treatment in PRSs to such individuals or groups that are unable, on grounds reasonably considered to be beyond their control, to realize, for example, the right to an adequate standard of living. A human rights approach to poverty also requires that the poor "participate in the relevant decision-making processes" i.e. the formulation, implementation and monitoring of PRSs. If the poor are to participate effectively in PRSs, they must, apart from being able to take part in free and fair elections, have the right of association, the right of assembly, freedom of speech, the right to information and the right to enjoy at least a minimum or subsistence level of economic assistance and well being. The interdependence and indivisibility of economic, social and cultural rights, on the one hand, and civil and political rights, on the other, is thus recognised in a rights-based approach to poverty.

Judge Pillay underscored the fact that state parties to the Covenant have also core obligations to ensure, with immediate effect, the minimum essential levels of all Covenant rights, including the rights to work, adequate food, water and housing, health care, education and social security, which have a direct and immediate bearing upon the eradication of poverty, even in situations of conflict, emergency and natural disaster, which they are then required to improve over time. The obligations must be met as a priority and have a first call on the resources of those states. For example, the core content of the right to social security includes an obligation on the state party to ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

In conclusion, Judge Pillay indicated that the Committee considers that anti-poverty strategies are more likely to be effective, sustainable, inclusive, equitable and meaningful to those living in poverty if they are based upon international human rights. For this to occur, human rights need to be taken into account in all relevant policy-making processes. Such strategies should, as indicated already, be implemented not only by all states, irrespective of their level of economic development and national wealth, but also by non-state actors.

7.0 CONFERENCE WRAP-UP

At the end of the presentations, Mr. Dancan Ochieng gave a summary of the proceedings.

Mr. Gilbert Sebihogo gave a vote of thanks on behalf of the organisers.

ANNEXTURES

Annex A: Conference Synopsis

An optional protocol is a treaty that complements and adds onto an existing human rights treaty. The Optional Protocol to the International Convention on Economic, Social and Cultural Rights (OP-ICESCR) is one such treaty that is open for signature and ratification by States that are already parties to the International Convention on Economic, Social and Cultural Rights (ICESCR). It was adopted by the UN General Assembly on 10th December 2008 and opened for signature on 24th September 2009. As of February 2010, the Protocol had 32 signatories and no state parties. The protocol is expected to enter into force upon ratification by 10 State parties.

The OP-ICESCR sets out mechanisms that make it possible for individuals or groups to submit complaints to the Committee on Economic, Social and Cultural Rights in regard to violations of their economic, social and cultural rights by a State party. Thus, it allows its parties to recognize the competence of the Committee to consider complaints from individuals or groups who claim their rights under the Covenant have been violated.

Unless the Optional Protocol to ICESCR is ratified and enters into force, individuals or groups of individuals cannot seek redress or obtain remedies in an international forum for violations of their economic, social and cultural rights protected in this treaty. One of the limitations of the Reporting Procedure as stated in the Covenant is that it does not enable the Committee to focus on individual victims or to make recommendations on their behalf. The OP-ICESCR provides a forum for complaint and an avenue for disadvantaged groups within societies to obtain remedies for breaches of their economic, social and cultural rights.

The adoption of the Optional Protocol to the ICESCR will provide for an inquiry procedure which advances the principle that all human rights are universal, indivisible and interdependent. Additionally it will help overcome the common misconception that economic, social and cultural rights are non-justiciable hence cannot be determined by a court of law.

The ability to submit complaints at the international level for violations of economic, social and cultural rights will have a direct effect of improving the adjudication of these rights at the domestic level, thereby strengthening the protection of nationally disadvantaged groups. It is a reality that many governments will not move towards improved protection of economic, social and cultural rights unless shown the way by means of judicial or quasi-judicial initiatives or political pressure. The mere possibility

that complaints might be brought before an international forum is likely to encourage governments to ensure that more effective local remedies are made available. More specifically, there are several ways in which a complaints procedure contributes to the implementation by State parties of the obligations under the ICESCR.

The OP-ICESCR process provides an opportunity to generate greater awareness of the ICESCR at the national level as well as contribute to better implementation and greater ownership of the ICESCR by government officials and the civil society.

It is on this basis that the Konrad Adenauer Stiftung (KAS) under the aegis of its Rule of Law Program for Sub Saharan Africa and the Network of African National Human Rights Institutions (NANHRI) have convened a stakeholders' conference in Mombasa, Kenya to keenly interrogate this protocol with the ultimate objective of promoting effective engagement of state and non-state actors in championing the ratification of and accession to the OP-ICESCR by States.

The conference seeks to *inter alia*,

- Raise awareness on the protocol;
- Grant a platform to participants to share experiences, challenges and good practices as regards the popularization of international and regional instruments ;
- Explore areas and strategies for greater involvement and engagement of state and non-state actors in popularizing the OP-ICESCR;

The conference is expected to bring together participants from about 15 African States and some international experts from Europe and Asia as well as a representative from the UN High Commission for Human Rights. They shall mainly comprise of government officials from the ministries of Justice and Foreign Affairs; State Law Offices; State and non-state Human Rights Institutions; Civil Society; Academia and the media.

Annex B: Conference Program

September 1st, 2010	
	Arrival of Delegates
	Dinner
September 2nd, 2010	
08:30–09:00	Registration

09:00–09:05 Welcoming Remarks by **Ms. Anke Lerch**, Country Representative, Konrad Adenauer Stiftung, Kenya

09:05-09:30 Introductions

09:30–09:40 Remarks by **Prof. Christian Roschmann**, Director, Rule of Law Program for Sub Saharan Africa

09:40- 09:50 Remarks by **Commissioner Florence Simbiri-Jaoko,** Chairperson of the Kenya National Commission on Human Rights and a Member of the Steering Committee of NANHRI

09:50–10:20 Keynote address and Official Opening of the Conference by **Hon. William Cheptumo**, MP, Assistant Minister, Ministry of Justice, National Cohesion and Constitutional Affairs of the Republic of Kenya

10:20–10:45 Question/Answer

10:45-11:15 Health Break & Photo session

11:15–12:45 **Session 1 – Presentation and Plenary Discussion**
Session Chair: Dr. Athaliah Molokomme

An Overview of the Ratification and Domestication of International Instruments in Africa by **Commissioner Joaquine De Mello,** the Commission for Human Rights and Good Governance, United Republic of Tanzania

12:45–14:15 Lunch break

14:15-16:00 **Session 2 – Presentation and Plenary Discussions**
Session Chair: Dr. Leon Wessels

International and National Trends in Justiciability of Socio-Economic Rights: Obstacles and Opportunities by **Prof. Frans Viljoen**, Director, Centre for Human Rights, University of Pretoria, South Africa

16:00–16:30 Health Break

16:30-18:15 **Session 3 – Presentation and Plenary Discussions**
Session Chair: Justice (Rtd) Annel Silungwe

The Role of World Trade and Economic Development in the Reduction of Poverty and the Promotion of Economic, Social and Cultural Rights in Africa by **Dr. Oliver Ruppel,** WTO Chair holder / WTO Chairs Programme and a Lecturer, Faculty of Law, University of Namibia

Dinner

September 3rd, 2010

08:30–10:15 **Session 4 – Presentation and Plenary Discussions**
Session Chair: Mr. Gilbert Sebihogo

The Role of the National Human Rights Institutions and the Civil Society in the Ratification and Domestication of International Instruments: The African Perspective by **Ms. Lyn Muthoni Wanyeki**, Executive Director, Kenya Human Rights Commission

10:15–10:45 Health Break

10:45–12:30 **Session 5 – Presentation and Plenary Discussions**
Session Chair: Prof. Christian Roschmann

A Rights-based Approach to Poverty Reduction in Africa in the Context of the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol by **Hon. Justice Ariranga Govindasamy Pillay**, Judge President SADC Tribunal and member and former Vice-Chairperson of the UN Committee on Economic, Social and Cultural Rights

12:30–13:00 **Conference Wrap-up**

13:00–13:10 Votes Of Thanks by **Mr. Gilbert Sebihogo**, Executive Director, Network of African National Human Rights Institutions (NANHRI)

13:10–14:30	**Lunch break**
14:30–18:00	Excursions – Mombasa City Tour (Optional)
19h00	Farewell Reception and Gala Dinner

September 4th, 2010

Breakfast

Departure

ANNEX C: ABSTRACTS OF THE PRESENTATIONS

An Overview of the Ratification and Domestication of International Instruments in Africa: The Case of Tanzania by Joaquine De Mello, Commissioner, National Human Right Institution of Tanzania (CHRAGG).

Origin of Human Rights / Concept of Human Rights:

Definition of Human Rights:
There is no easy, concise or internationally accepted definition of human rights. International consensus at the UN has succeeded in procuring a large market of legal texts, usually called **'human rights instruments'**. They set out what, by consensus at the UN, are considered to be human rights.

The concept of human rights means that **'every person is entitled to the standards or conditions necessary for living a decent life'**. In simple terms, human rights are those '**basic entitlements that protect our ability to satisfy our basic needs with dignity and respect'**. They are claims which we have by virtue of the fact that we are human beings rather than as citizens of a particular country. They are **'universally recognized, interdependent and inalienable'** as fundamental to the dignity of the individual. The foundation of all human rights is the inherent worth and, dignity of the human being.

Origin of Human Rights:
Historically, the concept of human rights has been linked to the notion of a natural or divine law binding on all people. This notion was tied to the idea of natural rights in

the writings of such philosophers as **'Locke and Jefferson'** as well as in certain historical declarations of rights such as the '**French Declaration of the Rights of Man and the Citizen (1789) and the US Bill of Rights (1791)'**. A very inspiring formulation of the divine origin of human rights can be seen in the American Declaration of Independence which runs as follows:

> *"…. We hold these truths to be self evident that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are 'life liberty and the pursuit of happiness'. That to secure these rights, Government are instituted among men, deriving their just power from the consent of the government, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute new government … "*

It will be seen from the above discussion that, human rights have certain defining characteristics. First, it is said that they are **universal** i.e. all peoples are entitled to them irrespective of their citizenship, nationality, religion, gender, ethnic origin or social status. They are also not dependent on recognition by law or any legal system.

Secondly, human rights are **normative** i.e. they prescribe how people should behave. The concept of human rights is an ideal or a goal. They are the outcome of some kind of global discourse as to how people and governments should behave. However, human rights standards are not absolute from which there is no derogation.

Thirdly, they are said to be **inherent i**n mankind meaning that **we are born** with them. They are not given to us by the benevolence of governments.

The contemporary idea of human rights can be traced to the Universal Declaration of Human Rights, which was adopted inn **1948 by the United Nations** after the **2nd World War**. Its adoption was seen as a reaction of the civilized international community to the '**horrors of World War II'**, especially the holocaust. The atrocities of the war and, the extent of man's inhumanity to man led the United Nations to declare that if the world was to avoid the scourge of war and, if there was to be peace in the world, then *'certain rights called human rights should be secured and observed by all member states'.*

The preamble to the Universal Declaration of Human Rights is **instructive** and explains the **justification for a universal code of human rights**. It states, among other things, that:

> *"1. Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;*

2. Whereas disregard and, contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspirations of the common people;

3. Whereas it is essential if man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and, oppression that human rights should be protected by the rule of law;

4. Whereas it is essential to promote the development of friendly relations between nations;

The General Assembly proclaims this '**Universal Declaration of Human Rights as a common standard'** of achievement for all nations, to the end that every individual and, every organ or society, keeping this declaration constantly in mind, shall strive by teaching and, education to promote respect for these rights and, freedoms and, by progressive measures, national and, international, to secure their universal and effective recognition and observance both among the peoples of member states themselves and among the peoples of territories under their jurisdiction."

International Instruments:

International Human Rights Instruments can be classified into two categories; **Declarations and Conventions**. Adopted by bodies such as the United Nations General Assembly, **'Declarations'** are not legally binding although they may be politically so. However, **'Conventions'** are legally binding instruments concluded under the '**International law'**. Most **Conventions establish mechanism** to oversee their implementation with varying power depending on the political and, government will of the state party. **Mechanism also vary** to the degree of individual access to them. Individual access is contingent on the acceptance of that right by the relevant state party, either by **declaration at the time of ratification or accession,** or through **ratification of or accession to an optional protocol to the convention.**

International instruments can further reflect two patterns, one that of **'Global Nature'** and, or **'Regional'**. The difference is that the later is when a state can be a party to e.g **United Nations, Office of Human Rights Commission (OHRC), Commonwealth, International Labour Organization (ILO),** while the latter belongs to the particular specified region e.g **African Union, East Africa Community (EAC), Southern African Development Corporation (SADC)** etc.

Treaty;
International treaties and, even declarations can over time obtain the status of **Customary International law.**

Rationale for Ratification:
Ratification of international treaties is accomplished by filing instruments of ratification as provided for in the relevant treaty. In most jurisdiction, it is the '**legislature that authorizes the government to ratify treaties'** through standard legislative procedures (passing a bill) The treaty shall not apply until it has been ratified. Accession has the same legal effect as ratification, most times synonymous to ratification for, treaties already negotiated and, signed by other states. Tanzania, as a signatory to many of the international and regional obligations, has been a champion in ratifying these instruments as displayed in very exhaustive list herein attached.
(List of Ratified Instruments by Tanzania (herein-attached)

The rights of the citizens of Tanzania are guaranteed of not only their basic human rights but also their social and economic rights. In a special way the entire Part 3 from Article 12 – 32 of the 1977 Constitution of the United Republic of Tanzania recognizes and, re- affirms the country's obligation to observe and respect rights of its citizen, Further. Moreover, Article one twenty nine (129) of the same, strongly pronounce the obligation to the establish a National Human Rights Institution (CHRAGG).

This obligation was officially adopted by establishing the Commission of Human Rights and Good Governance by the act of parliament number 7 of 2001.

Role of the Commission in Ratification:
The Commission has a very wide mandate as stipulated under article six (6) of its legislation. Of particular reference to ratification is, sub section (k), (l) & (m) of that article and I would wish to refer,

> (*k) to make recommendations relating to any existing or proposed legislation, regulations, or administrative provisions to ensure compliance with human rights norms and standards and with the principles of good governance.*
> *(l) to promote ratification of accession to treaties or conventions on human rights, harmonization of national legislations and monitor and assess compliance… with human rights standards provided for in treaties or conventions or under customary international law to which the United Republic has obligations.*
> *(m) under the auspices of the government, to cooperate with agencies of the United Nations, the AU, the Commonwealth and other bilateral, multilateral or regional and national institutions of other countries which are competent in the areas of protection and promotion of human rights and administrative justice;*

It is however and on practical terms, the **'Legal Affairs Department of the Ministry of Foreign Affairs and International Cooperation',** which is mandated and, is in charge of ensuring compliance of these instruments are in accordance and adhered to the various obligations the country has assented to. The question then is, how positioned and, active is the Commission in pursuing these roles? Is there a linkage between the two on which such matters can be harmoniously addressed? Again, being an independent autonomous institution under the **'Ministry of Constitutional Affairs and Justice'**, is Chragg accommodated to share its input and, views on these and, many other human rights matters ? A provision under article 33 of the Commission's legislation of which the Commission could table and discuss Chragg annual reports has been removed for unclear reasons. This was one of the unique opportunities upon which the Commission could submit and table its various reports for discussions and, deliberation by this legislative body. This was the best link on which matters of this nature and many others could be spearheaded and accomplished.

Observations: The only convention ratified and, wholly domesticated into local legislation is the **'Law of Child Act number 2009'**. The legislation is fully compliant with the CRC. This is a result of collaborative, strategic initiatives by a number of stakeholders, passionate and believing in **'Welfare Interest of Children'**. Lead by the **Ministry of Community Development, Gender and Children, the Law Reform Commission, Non-governmental organizations, UNICEF, UNDP, Pact (T), Save the Children, Tanzania Women Lawyers Association (Tawla), Women Legal Aid Centre (WLAC)** and, many others, went through a rigorous process to **lobby, advocate** and, **draft** what is now a reflection of the requirements as provided in the **'Convention on the Rights of the Child,' (CRC).** As I am presenting this papers the government is fully fledged and, in the process of reviewing and, amend laws on **marriage, probate and, administration of estate and, inheritance,** which have demonstrated many shortcomings.

Underlying all this is, the controversial protocol on death penalty on which the government is yet to ratify. Speaking on the **capital punishment,** the Minister for Constitutional Affair and Justice had this to say, and I quote, ' **We are not ready to abolish the death penalty at this moment owing to a rise in number of murder cases with intent, such as the killings of Albinos'.** The Law Reform Commission of Tanzania highly recommended to government for abolishing the death penalty on the ground and, I quote" There are several African countries which have passed through great upheavals, civil wars and, yet have been brave enough to abolish death penalty from their laws', it is not convincing to say that Tanzania still needs the law. Several arguments not in favor of the governments position have been adduced, with one coming from the Executive Director of a prominent civil organization, the Legal and

Human Rights Centre (LHRC**), 'the infamous law is ineffective because it has not deterred any crimes more effectively than other punishments'**. Besides, the death penalty is cruel, inhumane and degrading punishment. As such the protocol to CATS is yet to be ratified by Tanzanian government.

To a greater extent also is, the **2004 Employment and Labour Relations Act** is by large complaint to the labour standards as portrayed in the ILO Conventions and to which the country has fully submitted to by ratification. It has, by large replaced the three previous conflicting legislations governing and, supervising the standards of employment in the country, which were **the 1964 Security of Employment Cap 574, Employment Ordinance Cap 366, Regulation of Wages and Terms of Employment Ordinance wages and Workmen's Compensation Act.**

However, there are still yet a number of many discriminative legislations and, those whose nature violate rights, inclusive of the **Law of Marriage Act of 1971, the Inheritance, the Probate and administration Act**, the **Civil Procedure Act, the Criminal Procedure Act and the Penal Code,** just to mention a few.

The government's commitment to recognize and, incorporate a number of international and, regional obligations into its policies should not be underrated. The **National Strategy for Growth and Reduction of Poverty (MKUKUTA)** is a second national organizing framework for putting the focus on poverty reduction high on the country's development agenda. It compliments the aspirations of **Tanzania Development Vision (VISION 2025),** for high shared growth, high quality lively hood, peace, stability and, unity, good governance, high quality education and, international competitiveness. It is a commitment towards the **Millenium Development Goal (MDG's)** as internationally agreed targets for reducing poverty, hunger, diseases, illiteracy, environmental degradation and discrimination against women by 2015. It strives to widen the space for country's ownership and effective participation of civil society, private sector development and, fruitful local and external partnerships in development and commitment to regional and other international initiatives for social and economic development. In addition the strategy seeks to address among others and pertinent to this paper the following;

- *Paying attention to mainstreaming cross cutting issues – HIV/AIDS, gender(a law is in place already), environment, employment, governance, children, youth, the elderly, disabled and settlements.*
- *Address discriminatory laws, customs and practices, that retard socio economic development or negatively affect vulnerable social groups. This is clear testimony of the government's obligation and commitment to the spirit of both international and regional treaties.*

Conclusion:

Tanzania has been very responsive in ratifying treaties and, conventions, though domestication still remains a major challenge. Many reasons, justifiable and, unjustifiable, have been advanced by member states on the failure.

By large, problems are classified into two; **unclear and bureaucratic government cumbersome processes and procedures**, while on the other hand **lack of sensitive to issues of rights, highly attributed by passiveness and lack of political and government** will. There is a very strong argument brought forward by activists and, political analysts that developing nations have opted to be party to these instruments / obligations not of their own will, rather is, to heed and impress on international and regional partners for recognition and respect. We will all agree to the fact that ratification without domestication is un health for the welfare of the country and its citizens. Domestication is a tool on which such commitments can largely and legally be translated into human rights and for the welfare of the citizens. As pointed out by Professor Chris Peter Maina when presenting his paper on '**The State of Human Rights in Tanzania'**, during the first ever commemorated Human Rights day in Tanzania, on 10th December 2008 and I quote, **" Signing and Ratifying without domestication has little instrinct value, given the dualistic system which the country follows".** More has to be done if at all, in the endeavor, to realize the overall spirit of **'Promoting and Protecting Rights.**

THANK YOU FOR YOUR ATTENTION!

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National and International Trends in Justiciability of Socio-economic Rights: Obstacles and Opportunities by Prof. *Frans Viljoen, Centre for Human Rights frans.viljoen@up.ac.za*

1 Definitions: What is 'justiciability': (i) claiming infringement of a subjective right (as opposed to objective legal norms or 'legislative commands'?); (ii) before a body resembling a court; (iii) to obtain redress or some remedial order for a violation and establish a precedent

Is 'enforceability' something different? (lack of resources)

What are 'social, economic and cultural rights'? – the obligation on government to 'respect', 'protect' and 'fulfil' (Shue, Eide) – the issue is: justiciability of claims imposing extensive fulfilment-obligation ('essentials of life')

2 Problems and obstacles to justiciability of 'fulfilment rights'

- Democratically inappropriate: separation of powers threatened; compromise democratic deliberation
- Judiciary institutionally incapable: ineffective; lack expertise; inappropriate for collective claims

Exacerbated at international level? Dennis, M J & Stewart, D P "Justiciability of economic, social, and cultural rights: Should there be an international complaints mechanism to adjudicate the rights to food, water, housing, and heath?" (2004) 98 *American Journal of International Law* 462 – 515

3 Justiciability at the national level: statutory socio-economic rights

CESCR General Comment 9, para 8: 'while the Covenant does not formally oblige States to incorporate its provisions in domestic law, such an approach is desirable. Direct incorporation avoids problems that might arise in the translation of treaty obligations into national law, and provides a basis for the direct invocation of the Covenant rights by individuals in national courts. For these reasons, the Committee strongly encourages formal adoption or incorporation of the Covenant in national law.'

- **Finland:** Employment Act 275 of 1987(unemployed person entitled to be provided with six-month employment)
- **South Africa:** Social Assistance Act 13 of 2004 (mechanism to access eg child, foster, disability grants)
- **Nigeria:** Act on Compulsory Free Universal Education (2004)
- **Benin:** Law 2003-04 of 3 March 2003 (*Loi Relative à la Santé Sexuelle et à la Reproduction*) (The Benin Law on Sexual Health and Reproduction) art 6 provides, amongst others, that every individual and couple has the right

to benefit from the best possible quality health care that is certain, effective, accessible, acceptable and affordable.

Why is statutory justiciability arguably preferable?
Is there still a need for constitutional justiciable socio-economic rights?
Is there still a need for ratification of relevant international human rights treaties?

4 Constitutional justiciability

Burkina Faso 1991 Constitution, art 18: Education, instruction, formation, work, social security, housing, sport, leisure, health, protection of motherhood and of infancy, assistance to the aged or handicapped persons and in social cases, artistic and scientific creation, constitute social and cultural rights recognized by the present Constitution which aims to promote them.
Mozambican 2004 Constitution, art 91(1): All citizens shall have the right to a suitable home, and it shall be the duty of the State, in accordance with national economic development, to create the appropriate institutional, normative and infra-structural conditions.
Colombia 1991 Constitution, article 366: The general welfare and improvement of the population quality of life are social purposes of the state. A basic objective of the state's activity will be to address unsatisfied public health, educational, environmental, and potable water needs. For this purpose, public social expenditures will have priority over any other allocation in the plans and budgets of the nation and of the territorial entities.
South Africa: Sec 26, 27

Interpretation and application:

- ***Minimum content and implications of justiciability:*** *Tutela* No T-505/92, 22 August 1992; Rights of Sick Persons/AIDS Patients; Plaintiff: Diego Serna Gomez. *Tutela* No T-760/2008, 31 July 2008, Constitutional Court of Colombia
- ***Reasonableness approach and implications of justiciability:*** *Treatment Action Campaign* case; *Grootboom* case; *Mazibuko* case (www.constitutionalcourt.org.za)

5 Directive Principles of State Policy (DPSP) and 'connections' with existing 'civil and political' rights

India: *Tellis v Bombay Municipality* [1987] LRC 351; *Mohini Jain v State of Karnataka* (1992) AIR 1861 (SC): "The fundamental rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other rights under Art. 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity ... The "right to education", therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution).

Lesotho: *Baitsokoli and Another v Maseru City Council and Others* (2004) AHRLR 195 (LeCA 2004)
Nigeria: *Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v Nigeria*, ECOWAS Court of Justice, ECW/CCJ/0808, 27 October 2009; *Odafe and Others v Attorney-General and Others* (2004) AHRLR 205 (NgHC 2004)
Philippines: *Minors Oposa v Factoran*
What is the main prerequisite/ problem of relying on this approach?

6 Justiciability of socio-economic rights contained in international human rights treaties
ICESCR (General Comment 9: "While the general approach of each legal system needs to be taken into account, there is no Covenant right which could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions.")
'Monism and dualism' / self-execution:

- **Benin:** Preamble (Universal Declaration 'integral part of Constitution; value superior to internal law); art 7: African Charter integral part of Constitution 'and Beninese law') -- **E/C.12/1/Add.78 (Concluding Observations: Benin) 05/06/2002** (emphasis added), **para 28:** the CESCR Committee "strongly urges the State party to ensure that the Covenant is fully taken into consideration in the formulation and implementation of all measures relating to economic, social and cultural rights and that, *in practical terms*, legal proceedings may be brought on the basis of its provisions"
- **Nigeria: African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, art 1:** Charter has "force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria"

Towards effective domestication and 'self-execution': what are 'self-executing provisions'? CESCR: General Comment 3, para 5: [T]here are a number of other provisions in the International Covenant on Economic, Social and Cultural Rights, including articles 3, 7 (a) (i), 8, 10 (3), 13 (2) (a), (3) and (4) and 15 (3) which would seem to be capable of immediate application by judicial and other organs in many national legal systems. (analogy: art 9(3) of ICCPR: victim of unlawful detention has right to compensation – SA: *Claassen* case [2009] ZAWCHC, 8 December 2009)

7 Beyond justiciability; beyond the law: interpretation; legal education; broader legal reform; transformation of the state and state institutions; global political economy

The Role of World Trade and Economic Development in the Reduction of Poverty and the Promotion of Economic, Social and Cultural Rights in Africa by Oliver C. Ruppel*

The protection of human rights plays an essential role in economic development as it has an impact on the investment climate, which in turn contributes to growth, productivity and employment creation, all being essential for sustainable reductions in poverty. One reason certainly is that states have committed themselves to respecting human rights by acceding to specific human rights treaties, conventions or declarations on the international, regional and sub-regional level, including the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights.

On December 10 2008, on the 60 Anniversary of the Universal Declaration of Human Rights, the United Nations adopted the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) bringing the possibility of international justice one step closer for millions of excluded people, groups, communities and peoples worldwide. The Optional Protocol is important because it promises to provide victims of economic, social and cultural rights violations that are not able to get an effective remedy in their domestic legal system with an avenue to of redress.

Human rights and good governance – the latter being an effective democratic form of government relying on broad public participation, accountability and transparency – play an essential role in economic development. The extent of good governance can be regarded as the degree to which the promise of civil, cultural, economic, political and social rights is realised. Both human rights and good governance have an impact on the investment climate, which again contributes to productivity and the creation of jobs, all essential for economic growth and sustainable reduction of poverty.

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It has been said that the defining feature of poverty is that it entails the restriction of opportunities for a person to pursue his or her well-being. It entails the failure of basic human capabilities to reach certain minimally acceptable levels. Poverty denotes an extreme form of deprivation, including adequate nutrition, adequate health, adequate clothing, adequate housing and a lack of adequate income. The Committee on Economic, Social and Cultural Rights (CESCR) has stated that poverty has always been one of the central concerns of the Committee.

Regardless of the aforementioned, there has been extensive debate on the status of economic, social and cultural rights. At one extreme lies the view that these rights are superior to civil and political rights… Of what use is the right to free speech to those who are starving or illiterate? At the other extreme we find the view that economic, social and cultural rights do not constitute rights - as properly understood - at all. Treating them as rights undermines the enjoyment of individual freedoms, distorts the functioning of free markets by justifying large-scale state intervention in the economy, and provides an excuse to downgrade the importance of civil and political rights. The socio-economic rights critics argue that in so far as the execution or implementation of these rights has budgetary implications, they cannot be justiciable as courts are incompetent to make such political decisions.

Yet, the evolving discourse on economic, social and cultural rights has brought to the fore the interrelated duties of the state. These are the duties to respect, protect, promote and fulfill. However, the triumph of market mechanisms has accelerated the process of globalisation. After the collapse of the competition between market-driven and state-commanded economies, developing countries seem to have only one option to follow for modernisation and development. Liberal democracy does not seem to have any serious competitors. Given this monolithic economic and political framework, where do social, economic and cultural rights fit in?

Most African countries are faced with serious and worsening poverty. Given the magnitude of the problem, it is often unrealistic for Governments to be left alone to tackle this daunting task – also in light of the financial and institutional crisis. Therefore, to achieve sustainable development there is need for a holistic approaches to dealing with the concerns of the poor. Private sector firms - large and small and both domestic and foreign - non-governmental organisations, community based organisations, also have a role to play in promoting people's welfare which was traditionally expected from the state. The state will of course continue to play an essential role in a number of areas including provision of basic social services, ensuring the appropriate policy environment, stimulating the development of entrepreneurship or promoting or

undertaking, as necessary, some functions which cannot, for reasons of scale or externality, be adequately initiated by the private sector.

There is a need for African governments to accelerate the process of creating enabling environment for the private sector to play an effective role in reducing poverty. To create this environment, countries and regions must ensure the efficient functioning of their markets, facilitate sufficient access of the poor to such markets and create the best possible conditions for competitiveness of their firms. In particular, enterprises in the informal sector are to be considered as part of the enterprise entity, which contributes to the development process.

I will now briefly examine the relation between market, development and well being, before assessing the influence of economic development on the alleviation of poverty in Africa: When it comes to the efficiency of the market mechanisms the curtailment of regulatory powers of national authorities, while broadening possibilities for the free play of market forces, can undermine existing social bonds and safety nets of protection, and, ultimately, jeopardise the security of the less privileged strata of the population.

To rigorously deregulate and privatise the economy has produced less, rather than greater well being. This stems from the fact that the economic development is not always concomitant with greater welfare of the median individual, as the gross national product's (GNP) growth is not a sufficient indicator to measure the level of security and the quality of life of people. Other policy matters, such as the existence of a network of social services, health care and public education, are quite central. The European social state, for instance, guarantees health care by universal schemes for nearly everybody. The basic precondition for democracy is not primarily a high level of wealth but rather the relatively equal distribution of resources among the different sections of the population. These findings show the relation between political and social rights as basic function of which is the fair redistribution of the resources. Democracy, economic development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Trade, poverty reduction and human development all come through economic growth.

Trade can be a powerful source of economic growth and trade liberalisation is the common policy prescription for increasing trade flows. But is trade liberalisation automatically or always associated with economic growth, let alone poverty reduction or human development? The answer is, it depends!

Recent Economic Partnership Agreements (EPA) negotiations between various states in Africa and the EU have proven that trade and investment liberalisation is not always

linked with development strategies, let alone with mechanisms which guarantee labour and other human rights. To move into any unbalanced agreement will potentially lead to violations of economic and social rights of people. Yet, altogether I argue that international trade is a vital part and *conditio* of economic growth!

No country has generated sustained economic growth and poverty reduction by closing itself off to international trade and investment. While a country's ability to benefit from trade and investment is dependent on a number of factors, particularly the quality of its domestic policies and institutions, it must also have access to the global marketplace.

How does world trade promote growth? Trade helps an economy grow in several ways. It encourages economies to specialise and produce in areas where they have a relative cost advantage over other economies. Over time, this helps economies to employ more of their human, physical and capital resources in sectors where they get the highest returns, boosting productivity and the returns to workers and investors.

Trade expands the markets so that local producers can access, allowing them to produce at a more efficient scale to keep down costs. Even in populous developing economies, low incomes often mean that producers' potential local market is small, so trading with the world is vital.

Trade diffuses new technologies and ideas, increasing local workers' and managers' productivity. Technology transfers through trade and investment are particularly valuable for developing economies, which employ less advanced technologies and typically have less capacity to develop new technologies themselves.

Removing tariffs on imports gives consumers access to cheaper products, increasing their purchasing power and living standards, and gives producers access to cheaper inputs, boosting their competitiveness by reducing their production costs.

Far more than any development aid, trade can provide the catalyst under the right conditions for lifting millions of people out of poverty. Although African countries could gain disproportionately from further global trade reform it is widely acknowledged that a level playing field does not yet exist in the current world trading system – at least not to the extent necessary. Developing countries still face numerous hurdles, including high tariffs against their exports and subsidised competition. This is especially true for agriculture.

Nevertheless is developing-country participation in the global trading system the most effective way of encouraging development and helping to alleviate poverty. A key

objective of the ongoing round of WTO negotiations – the Doha Development Round - is to help developing countries more fully reap the benefits of international trade. The liberalisation of agriculture in particular is hoped to provide significant benefits to developing countries in Africa.

Free trade agreements (FTAs) can also bring about economic benefits by reducing barriers to trade and investment between participating parties. Ambitious FTAs can open markets faster than would otherwise be possible through the WTO and build on the commitments already agreed in the WTO. Global interest in FTAs - from developed and developing countries – has increased substantially over the past decade. Genuinely liberalising FTAs can strengthen the global trading system. A comprehensive FTA is one which is not only WTO consistent but also covers trade in goods (both manufactured and agricultural), services, investment, intellectual property rights, government procurement and other areas. By addressing barriers to trade and expanding the scope of liberalisation, FTAs can maximise the economic gains for parties to the agreement. FTAs can also be useful in building and sustaining momentum for domestic reform so that governments are more able to commit to multilateral reform. High-quality FTAs also raise the profile of participating countries as trade and investment partners.

Over two-thirds of WTO Members are developing and least developed countries. These Members can gain access to a range of special provisions and assistance contained in WTO rules. The WTO's Committee on Trade and Development and its Sub-Committee on Least Developed Countries monitor the implementation of provisions designed to assist developing and least developed countries. These committees also monitor the substantial amount of training and technical assistance provided to developing countries by the WTO.

The economic interests and development needs of developing countries lie at the heart of the Doha Agenda. Firstly, economic integration with the world economy is an outcome of growth and development, not a prerequisite. Secondly, institutional innovations - many of them unorthodox and requiring considerable domestic policy space and flexibility - have been crucial for successful development strategies and outcomes.

As a result, the design of the multilateral trade regime needs to shift from one which overemphasises a market access perspective to one which prioritises enabling (or at least not disabling) the domestic policy space available to developing countries to make a range of diverse, including unorthodox, policy choices and pursue the concomitant strategies.

It should also be evaluated not on the basis of whether it maximises the flow of goods and services but on whether trade arrangements—current and proposed— maximise possibilities for human development, especially in developing countries. A world trade regime friendly to human development would provide domestic policy space and give developing countries flexibility to make institutional and other innovations. Such policy space should take precedence over mere market access considerations even as the trade regime continues to recognise that market access can make an important contribution to human development in specific situations and for specific sectors and issues.

An implication is that multilateral trade rules will need to seek peaceful co-existence among national practices, not forced harmonisation, especially if this takes the form of a 'one-size-fits-all' that only fits a few powerful members. There are other obvious implications for the framework of global trade governance, not least the need to permit asymmetric rules in favor of the weakest members, especially the least developed countries. In the long run, such rules will be beneficial for both developed and developing countries.

Therefore trade is a means to an end, not an end in itself. Trade rules have to allow for diversity in national institutions and standards. Countries should have the right to protect their own institutions and development priorities where necessary; and no country has the right to impose its institutional preferences on others. A trade regime friendly to poverty reduction and human development is possible if these principles are genuinely and consistently implemented. Such a trade regime must give governments the space to design appropriate policies and it will need to include the following elements if it were to seriously take such a development perspective.

Jurists debated at length whether the WTO is bound to respect human rights, but in my eyes and in full agreement with what was stated by Pacal Lamy the answer is a clear yes. All human rights have its place in international law first, because these rights are incumbent on the members of the WTO and because they themselves are bound to fulfil the obligations incumbent on them at international level. Next, because the case law of the WTO dispute settlement mechanism acknowledged that international trade law could not be interpreted "in clinical isolation" from international law in general. And, incidentally, how could the WTO - created in 1994 by an international legal instrument - be immune to the rules of the general international law from which it derives its mission and its very existence?

But what is the place of international trade law in promoting human rights in practice? I would argue that opening international trade creates efficiency for raising standards

and conditions of living and in this way can contribute to implementing rights which require more than mere proclamation if they are to be respected. This is particularly true in the case of those whom Amnesty International calls the "prisoners of poverty". As an example, I cite Article 11 of the International Covenant on Economic, Social and Cultural Rights, which concerns the right to food and advocates "taking into account the problems of both food importing and food exporting countries, to ensure an equitable distribution of world food supplies in relation to need".

Here again, the benefit of trade opening for human rights is not automatic. It presupposes rules that are both global and just. Rules of the kind that prompted others to say that "between the weak and the strong, poor and the rich ... , liberty is the oppressor and the law is freedom". Negotiating and implementing such rules is the WTO's basic mission, and its primary vocation in so doing is to regulate and not to deregulate as is often thought.

It also presupposes the existence of social policies, whether to secure redistribution or provide safeguards for the men and women whose living conditions are disrupted by changes in the international division of labour.

It does not suffice unless it is accompanied by policies designed to correct the imbalances between winners and losers; and the greater the vulnerability of economies, societies or individuals, the more dangerous the imbalances. It does not suffice unless it goes hand in hand with a sustained international effort to help the developing countries to build the capacity they need to take advantage of open markets.

If by way of conclusion I had to pinpoint one principle governing the conditions in which globalisation and the opening up of trade must help to promote and ensure respect for human rights, I would say that it is coherence: Coherence is the political commitment of citizens, of civil society, of trade unions, between the local and the global. Today the world needs more coherence in the organisation of governments between national and global, more coherence between the different islands making up the archipelago of international governance.[1]

In this sense I am proud to be one of the 14 worldwide Founding Chairholders in the International Chairs Programme of the World Trade Organisation which attempts to assist governments and academic institutions in providing a deeper understanding of trade policy issues.[2] Through analytical input into the formulation and implementation

[1] Such stated by Pascal Lamy in his speech dated 13 January 2010.
[2] http://www.wto.org/english/news_e/pres10_e/pr593_e.htm.

of trade policy, the Chairs are expected to help strengthen the participation of the beneficiary countries in international trade and foster the capacity of developing countries to participate fully in the trading environment of the 21st century.

Lastly, I would like to mention in my capacity as Coordinating Lead Author for the Chapter Africa for the fifth assessment report of the IPCC Working Group II of the Intergovernmental Panel on Climate Change (IPCC)[3], that the issue of climate change and its implications on economic, social and cultural rights has so far not been adequately addressed in terms of current interpretation of the International Covenant on Economic, Social and Cultural Rights. Yet, I have no doubt, that the rights to health, housing, food, water etc. are equally open to address concerns created or aggravated by climate change. In this sense, the Optional Protocol is also hoped to give rise for ground breaking-legislation, as there is a growing body of evidence that poor and other disenfranchised groups will be the greatest victims of climate change. In this respect I strongly advocate the concept of environmental justice. This concept requires that rights and responsibilities regarding the utilisation of natural resources are distributed with 'greater fairness' in future - both globally and domestically.

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The Role of National Human Rights Institutions and Civil Society in the Ratification and Domestication of International Instruments by *L. Muthoni Wanyeki*

Introduction

- Thank you
- Role of national human rights institutions and civil society in the ratification and domestication of international instruments
- Three caveats:
  - More about civil society (participants from national human rights institutions and civil society can add from the floor)
  - 'The African experience': one example is pan-African in scope; the others are Kenyan and from own organisation's experience (again, colleagues can add from the floor)

- Focused on examples relevant to the IESCR: some examples address both generations of rights

What roles?

- Before ratification and domestication, evolution of recognition of human rights through regional and international treaty-making
- Tend to talk about international human rights law as though it's distinct from and an imposition on domestic law
- More fluid and mutually reinforcing
- Legal treaties negotiated by member states—which African states are
- In lead up to negotiations, generally:
  - Agreement an issue warrants attention—brought up by member states, including African ones
  - Research by/commissioned the multilateral concerned—whose staff include nationals of member states, including Africans
  - Experts group meetings—selected with consideration to regional diversity, including African academics and/or practitioners
  - Initial drafting and circulation—comments by member states, but also own relevant agencies, departments, ministries, as well as by academics and civil society (in best case scenario, at home, more often, those that follow multilateral processes)
  - Negotiation by member states—with differing multilaterals having differing procedures for civil society participation (but practice generally improving with time)
- In that sense, international law draws on 'best practice' globally but seeks to extrapolate norms around which there is consensus and extend the same
- IESCR itself a reflection not just of the 'East' but of newly decolonised states, including African ones—the independence clarion call to 'eradicate illiteracy, poverty and disease'
- Ditto and in an increasingly expansive way human rights treaties that have followed
- Thus, the struggle to realise human rights taken to the regional and international levels
- Roles here clear:
  - Identification of national issues
  - Clarification of same with regional and international colleagues
  - Provision of evidence-base and conclusions: research; expert opinion
  - Engagement with the diplomatic process regionally and internationally: lobbying (walking those corridors; on national delegations; and, before,

catalysing/providing liaison between relevant agencies, departments and Ministries as well as with national constituencies)

- Challenges:
  - Information
  - Number of African civil society organisations whose core mandate is following multilateral processes
  - Costs
  - Follow up!

Ratification

- An example: Solidarity for African Women's Rights (SOAWR) and the Protocol to the African Charter on Human and People's Rights
- Background:
  - The Vienna Conference in 1993: 'women's rights are human rights'
  - Two meanings: violations of human rights experienced in gender specific ways (for example, torture); human rights violations experienced in the private domain also a responsibility of the public domain (for example, domestic violence and marital rape)
  - Following, the African Commission established a Special Rapporteur on Women's Rights whose brief was to: initiate research into the state of African women's rights; initiate discussions on a possible Protocol
  - Obviously, had no resources, financial or human
  - Research: supported by the African Women's Development and Communication Network (FEMNET);
  - Protocol: Women in Law in Africa (WiLDAF) initially took up (convening of EGMs)
- Eventually:
  - Draft evolved
  - Discussed within the ACHPR and moved to convenings of national gender machineries with civil society
  - Coalition evolved to support negotiations of the same, hosted by Equality Now
  - Many Addis-based discussions, given impetus by the transition process from the Organisation of African Unity to the African Union and new gender and women's human rights commitments in the Constitutive Act
  - Creative engagement when adopted and opened for signature (red cards at regional level)
  - Also at domestic level: coalition has lead organisations at national level who ensured built onto national level legislative reform menu re: women's human rights
- Shortest time ever for treaty to receive signatures required to enter into force

- About two thirds have now signed and ratified
- Challenge:
  - In common law countries, full domestication and use

Domestication

Legislative advocacy

- Initiating comprehensive bills—for example, equal opportunities
- Using annual omnibus (miscellaneous amendments) for piecemeal work
- Commenting on the same
- Engagement through/with the KNCHR as well as the standing Kenya Law Reform Commission and the relevant Ministries
- Engagement with parliament through relevant committees
- Challenges:
  - Expertise required beyond legal protection—for example, on equality and non-discrimination
  - Efficiency of parliament

Legal protection

- Testing the law
- Another example: Endorois case, determined last year
- KHRC's legal protection work:

Legal aid clinic

- Twice a week handled by interns; once a month handled by advocate; once a quarter, illustrative case
- Labour
- Arbitration and mediation

Urgent action

- As comes up
- Defence of civil and political rights (freedoms of assembly; association; expression) but often exercised in relation to economic, social and cultural rights (housing, livelihoods)

Public interest litigation (PIL)

- Citizenship (northern Kenyans, women, again civil and political but affecting realisation of economic, social and cultural rights)
- Torture (colonial period; Nyayo House)
- Economic Partnership Agreements (EPAs) (on behalf of small scale farmers)
- Internally displaced persons (IDPs)

- Challenges:
  - Costs (senior advocates)
  - Limited pool (senior advocates skilled in Constitutional and human rights law)
  - Interest and training (younger advocates)
  - Apparent 'strategy' of security services (ensure energies, finances, time spent defensively)
  - Role of Chief Justice (procrastination in formation of bench and composition of bench)
  - Directions to bench and/or training of bench (two recent conflicting decisions on the Kadhis' courts and ability to bring in relevant regional or international standards or precedents)
  - Role of the Attorney General (termination powers)
  - State responsibility or individual criminal responsibility: accountability and deterrence; institutional behavioural/cultural change? Claimants want remedies individually/collectively, obviously...
- Some problems addressed by new Constitution:
  - Composition of bench by vetting and at Supreme Court level as well as replacement of CJ: standards!
  - Training in Constitutional law not, however—for bench or bar: standing judicial training institution? Points for ranking of practising advocates from the Law Society of Kenya?
  - Separation of Director of Public Prosecutions from the Attorney General and limitation on powers to terminate proceedings
  - Standing for public interest: basically anybody

<u>Outside of legal protection</u>

- Traditional monitoring, documenting and reporting—for example, on the resettlement of IDPs and, more consistently, on the devolved funds
- Advocacy on the basis of same with dutybearers/service providers

Conclusion

- Scope for action is large
- Connecting the dots—seeing where can add value—for example, the KNCHR on anti-corruption and human rights
- Legal protection costly and lengthy
- Beyond the same?
- I thank you

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A Rights-based Approach to Poverty Reduction in Africa in the context of the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol by Judge A. Pillay

1. *Introduction*

The object of this paper is to define poverty and outline the meaning and essential characteristics of a rights-based approach to poverty reduction in Africa, before dealing with core obligations, which have a crucial role to play in national and international developmental policies, including anti-poverty policies.

2. *Definition of poverty*

In its Statement on Poverty adopted in May 2001 (the Statement), the Committee on Economic, Social and Cultural Rights (the Committee) has given a broad definition to poverty "*as the lack of basic capabilities to live in dignity…as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights" (*para. 7 and 8*).*

The World Bank has defined poverty as follows: "Poverty is hunger. Poverty is lack of shelter. Poverty is being sick and not being able to see a doctor. Poverty is not having access to a school and not knowing how to read. Poverty is not having a job, is fear for the future, living one day at a time. Poverty is losing a child to illness brought about by unclean water." It is to be noted that this definition is merely illustrative and is non-limitative.

3. *A rights-based approach to poverty reduction* and its *essential elements*

(a) *Rights and obligations*

A rights-based approach to poverty reduction integrates, in essence, the norms, standards and principles of international human rights treaties and declarations into poverty reduction strategies (PRSs).

These norms, standards and principles consist of "*the entire range of civil, cultural, economic, political and social rights and the right to development*" (para.10 of the Statement), inform and shape policies and institutions aimed at poverty reduction and empower the poor by granting them entitlements or rights.

Consequently, freedom from poverty is a legal entitlement or right, rather than a commodity or service provided on a charitable basis, and poverty reduction becomes more than charity or welfare but a legal obligation.

These entitlements or rights give rise to legal obligations on states, as primary duty-holders, which have ratified such treaties or subscribed to those declarations, to take concrete measures to respect, protect and fulfil those entitlements and to ensure that anyone operating within their jurisdiction, including individuals, communities, civil society organizations and the private sector, does the same.

The Committee has stressed, in this connection, that "*rights and obligations demand accountability" and* that international human rights law requires that "*mechanisms of accountability must be accessible, transparent and effective"* (para.14 of the Statement).

(b) *Accountability*

Accountability requires that all duty-bearers, including states and non-state actors, such as international organizations, national human rights institutions, civil society organizations and the private sector, "*are held to account for their conduct in relation to international human rights law*" (para.14 of the Statement).

For instance, in the context of poverty reduction, the Committee examines, in monitoring the progress achieved by states parties, whether adequate laws, policies, institutions, administrative procedures and practices and mechanisms of redress, which conform to the provisions of the Covenant and prevent third parties from abusing Covenant rights, have been adopted at the national level.

Moreover, appropriate indicators, disaggregated to reflect the condition of the poor and of specially disadvantaged and marginalized individuals or groups among them, which have been identified by states parties, in terms of which they have set targets or benchmarks , will also enable the Committee to monitor the progress achieved by the state parties in reducing poverty and to recommend any remedial measures required.

In this regard, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (the Covenant), adopted by the UN General Assembly, which provides for individual and group complaints at the international level in relation to any alleged violation of the Covenant rights will, inter alia, enhance the international accountability of states parties by obliging them to live up fully to their international obligations and provide effective mechanisms of redress at the national level while giving to the Committee an opportunity of re-affirming the universality, indivisibility,

interdependence and interrelatedness of all human rights and the justiciability of economic, social and cultural rights and developing its own case-law.

(c) *Principles of equality and non-discrimination*

A human rights approach to poverty reduction is also grounded in the principles of equality and non-discrimination which are essential elements of international human rights law, including the Covenant. As stated by the Committee, "*sometimes poverty arises when people have no access to existing resources because of who they are, what they believe or where they live. Discrimination may cause poverty, just as poverty may cause discrimination. Inequality may be entrenched in institutions and deeply rooted in social values that shape relationships within households and communities*" (para.11 of the Statement).

Since the poor are victims of inequalities and discrimination on various grounds such as, for example, birth, property, national and social origin, race, colour, gender and religion and their condition and attributes, such as dress or appearance, of poverty , the principles of equality and non-discrimination call for abstentions from inequalities and discrimination which may take various forms, including explicit legal inequalities in status and entitlements, policies of indirect discrimination and deeply rooted exclusions and distinctions.

These principles also impose a duty on states to take positive steps to combat inequalities and discrimination by (a) reducing, for example, the structural disadvantages suffered by disadvantaged , marginalized or socially excluded individuals and groups e.g. women and girls, children, older persons, minorities and indigenous peoples and (b) giving appropriate preferential treatment in PRSs to such individuals or groups that are unable, on grounds reasonably considered to be beyond their control, to realize, for example, the right to an adequate standard of living.

(d) *Participation*

A human rights approach to poverty also requires that the poor "*participate in the relevant decision-making processes"* i.e. the formulation, implementation and monitoring of PRSs.If the poor are to participate effectively in PRSs, they must, apart from being able to take part in free and fair elections, have the right of association, the right of assembly, freedom of speech, the right to information and the right to enjoy at least a minimum or subsistence level of economic assistance and well being.

The interdependence and indivisibility of economic, social and cultural rights, on the one hand, and civil and political rights, on the other, as already mentioned above in paragraph.8 of the Statement, is thus recognised in a rights-based approach to poverty.

(e) *Progressive realization and resource availability*

It is a fact that the Covenant rights are subject to the concepts of progressive realization and resource availability-- vide article 2(1) of the Covenant.

On account of resource constraints, the Covenant allows for the progressive realization of the rights over a period of time and for the setting of priorities among rights in the course of progressive realization or making trade-offs among rights, in the light of social priorities and resource constraints.

(f) *Obligations of immediate effect*

State parties, however, have also some obligations that must be implemented immediately and do not admit of any trade-off.

For instance, they are under an immediate obligation to guarantee that all Covenant rights are enjoyed equally by men and women and without discrimination of any kind.

4. *Core obligations and the setting up of an international minimum threshold*

States parties to the Covenant have also core obligations to ensure, with immediate effect, the minimum essential levels of all Covenant rights, including the rights to work, adequate food, water and housing, health care, education and social security , which have a direct and immediate bearing upon the eradication of poverty, even in situations of conflict, emergency and natural disaster, which they are then required to improve over time.

Core obligations also do not permit any trade-off since they must be met as a priority and have a first call on the resources of those states

For example, the core content of the right to social security includes "*an obligation on the state party to ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education*" (para.59 of General Comment No.19).

The Committee underlines the fact that it is particularly incumbent on all those in a position to assist, including developed states and international organizations, to provide international assistance and cooperation, especially economic and technical, to enable developing countries to fulfil their core obligations.

If core obligations give rise to national responsibilities for all states parties to the Covenant, they engender international responsibilities for developed states and international organizations.

Consequently, the core obligations corresponding to all the Covenant rights establish an international minimum threshold that all national and international developmental strategies, including anti-poverty strategies, must respect.

Developed states and international organizations must assist developing countries to comply with all their core obligations and meet this international minimum threshold.

"If *a national or international anti-poverty strategy does not reflect this minimum threshold, it is inconsistent with the legally binding obligations of the state party*" (para.17 of the Statement).

Moreover, in this regard, developed states must, for example, support human rights-related development projects and ensure that their international assistance to developing countries is no less than the U.N. target of 0.7 per cent of GDP.

Accordingly, the Committee has underlined in all its General Comments that states parties which are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the Covenant rights are taken into account in their lending policies, credit agreements and other international measures.

International financial institutions must also ensure that the Covenant rights are considered in their lending policies, credit agreements and other international measures so that the enjoyment of those rights, particularly by disadvantaged and marginalized individuals and groups, is promoted and not impaired.

According to the Committee, international cooperation for development is also needed to remove the "*global structural obstacles to the eradication of poverty in developing countries such as unsustainable foreign debt, the widening gap between rich and poor, and the absence of an equitable multilateral trade, investment and financial system*"(para.21 of the Statement).

In its latest Statement on the World Food Crisis adopted in May 2008, the Committee stressed again the importance of states parties to the Covenant to address the structural causes of the world food crisis and, we may add, poverty, " *by introducing and applying human rights principles, especially those relating to the right to adequate food and freedom from hunger, and by undertaking ex ante impact assessments of financial, trade and development*

policies, at both the national and international levels, to ensure that their bilateral and multilateral financial, trade and development commitments do not conflict with their international human rights obligations, particularly under the Covenant" (para.13).

5. *Conclusion*

The Committee considers that anti-poverty strategies "*are more likely to be effective, sustainable, inclusive, equitable and meaningful to those living in poverty if they are based upon international human rights. For this to occur, human rights need to be taken into account in all relevant policy-making processes"* (para.13 of the Statement).

Such strategies should, as indicated already, be implemented not only by all states, irrespective of their level of economic development and national wealth, but also by non-state actors.

Ariranga G.Pillay,
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&
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