

**NATIONS UNIES
HAUT COMMISSARIAT AUX DROITS DE
L'HOMME**



**UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN
RIGHTS**



**Workshop on Economic, Social and Cultural Rights
in the Southern African Region
3-5 December 2001
Gaborone, Botswana**

REPORT

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Report of Proceedings

DAY 1

Opening session

In her opening remarks, **Mrs. Comfort Tetteh**, Resident Representative, a.i., UNDP Botswana, drew attention to the role undertaken by UNDP field offices and UN Country Teams, in mainstreaming human rights, and the possible part to be played notably with regard to follow-up to the workshop in the Southern African region.

Ms. Olatokunbo Ige, Coordinator, Africa Team, Activities and Programmes Branch, OHCHR, made a statement on behalf of the High Commissioner for Human Rights. She asserted the belief of the High Commissioner in the indivisibility of all human rights, and the need to address with greater focus economic, social and cultural rights, notably as this related to HIV/AIDS. The workshop was thus an initiative towards this end.

Mr. Ernest Mpofo, Permanent Secretary for Foreign Affairs, Botswana, delivered the welcome address. He said that although Botswana was not a State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), its Government has embraced the principles contained in the document through its, laws, governmental structures and development programming, such as in education. In terms of areas remaining to be addressed in the sub-region, he pointed to rising levels of poverty. In this regard he sought the assistance of the international community.

Ms. Alisa Clarke, Human Rights Officer, Activities and Programmes Branch, and Chairperson adopted the workshop programme following a brief overview for the rest of the session. Emphasis was placed on the aims of the workshop with respect to exposing participants to what it means substantively and procedurally to be State Party to the ICESCR, and to facilitating exchanges of experience.

Mr. Biong Deng, Head, OHCHR Southern Africa Sub-Regional Office in Pretoria gave a presentation on the human rights based approach and its supporting framework including the human rights treaties and monitoring bodies. He outlined the main attributes of human rights – universality, indivisibility, interdependence and inter-relatedness, and the sources of human rights standards.

Mr. Deng also shared the status of all the states of the Southern African sub-region with respect to ratification, accession and reporting on the 6 major international human rights treaties:

- The ICESCR
- The International Covenant on Civil and Political Rights
- The International Convention on the Rights of the Child
- The International Convention on the Elimination of Discrimination Against Women
- The International Convention on the Elimination of Racial Discrimination
- The Convention Against Torture

He went on to give an overview of the mechanisms associated with the instruments. Particular consideration was given to the right-based approach to development and

elements of the approach in terms of participation, accountability, non-discrimination and the disaggregation of data.

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Session I: Ratification of the Covenant on ESCR

The presentation by **Ms. Kitty Arambulo**, Human Rights Officer, Support Services Branch, OHCHR, addressed three central issues:

1. Ratification

This demonstrates that a state is willing to comply with international human rights instruments. Ms. Arambulo noted that ratification strengthens the authority of the ICESCR, already ratified by 145 State Parties, and establishes a mechanism for supervision of adherence to the instrument. This mechanism involved reporting, which enhanced the understanding of the States Parties with regard to the application of the ICESCR to a given country context, and encouraged acceptance of the concept of entitlement. She noted that 10 of the 15 countries in the sub-region were State parties, but that there was a high incidence of non-reporting. She stressed that, following ratification, it was important for corresponding legislation to be incorporated into the Constitution.

2. The ICESCR

This instrument was one of the first adopted at the inception of the United Nations and was among those constituting the International Bill of Rights. She advised that it be examined in tandem with the other main human rights treaties in order to gain a clear understanding of its specific domain.

3. The Committee on Economic, Social and Cultural Rights (CESCR)

The Committee is an 18-member working group set up by the UN Economic and Social Council to monitor the Covenant. The members are independent persons, of balanced geographical representation, and meet twice a year at the OHCHR in Geneva, Switzerland. The Committee employs three main tools:

- Monitoring progress on the implementation of the ICESCR Articles through the examination of State Party reports
- Issuing General Comments on specific issues with a view to making the instrument relevant to the contemporary context
- Holding Days of General Discussion on particular issues, open to the public and especially for participation by civil society groups

Plenary Discussion

In response to questions from the group, Ms. Arambulo clarified that the Committee recommendations coming out of dialogues with States Parties on their reports were public once published by the UN, and while some were of immediate application, other referred to some point in the future. She noted that generally the Committee does not ask for follow-up to recommendations before the next report is due, unless urgent action is required or information has been omitted from a report. She

stipulated that the first report is due 2 years after ratification, and every 5 years thereafter.

With respect to the burden faced in fulfilling reporting obligations for multiple instruments, Ms. Arambulo acknowledged that these procedures did incur significant expense of State resources, and said that a review of these concerns by the UN was ongoing. She could nevertheless advise the use of cross-referencing to other reports as an efficiency measure that was accepted by the Committee. It was also noted that the UN Common Country Assessment/Development Assistance Framework (CCA/UNDAF) also provided a process for consolidation of reports. While states could submit reservations to the ICESCR, these could not contradict the principles of the Covenant.

Ms. Arambulo also recognised the existence of controversies surrounding the ideological basis of the ICESCR, North-South divisions on acceptance of the Covenant and the role of international aid and international organisations in the implementation of the instrument. The Draft Optional Protocol, proposing the admission of individual and group complaints, promised to address this last concern to some degree.

In terms of implications for intellectual property rights, the Committee was trying to work with specialized agencies having a role in this area, with a view to incorporating the human rights perspective. The recent concession at the World Trade Organisation Ministerial Meeting in Doha on the price of important drugs, could be seen as a corollary to this dialogue.

Session II: Understanding Economic, Social and Cultural Rights

Ms. Olatokunbo Ige presented the OHCHR Secretariat background paper on “Understanding ESCR: the scope and application of ESCR”. She stressed that economic, social and cultural rights were increasingly recognized as justiciable, making particular reference to the African Charter on Human and Peoples’ Rights, and noted that indivisibility among the different families of rights was also evident in practical life.

Ms. Ige drew attention to the usefulness of the ICESCR for programming, especially when linked to reporting, and encouraged countries that have not yet done so, to ratify and accede to the Covenant. She said that the Committee had been important in trying to ensure that reports were truly national documents, with inputs from all actors, including governmental and non-governmental entities.

On the principle of progressive realization, there were minimum core obligations from which countries could not derogate, regardless of available resources. It was often a question of priorities, such as between spending on defence or education. In terms of individual and group complaints, she noted that these were already being used in the African human rights system.

Ms. Ige asserted that OHCHR sought to encourage the following main strategies in the protection, promotion and fulfillment of human rights:

- The establishment and effective functioning of national human rights institutions,
- the drafting and implementation of national human rights plans of action, and
- recognition of the UN Decade For Human Rights Education

She further encouraged states to approach OHCHR for technical assistance in this regard.

Plenary discussion

Ms. Ige reiterated the role of international development assistance in filling the gaps for the progressive realization of economic, social and cultural rights. She also noted that OHCHR was increasingly encouraging parliaments as actors for the implementation of the Covenant, especially with respect to the domestication of international instruments. The Bangalore principles were also useful in this context. It was further stated that it was up to individual states to set their own benchmarks, and these were not imposed by the Committee. She further encouraged closer collaboration between NGOs and Governments at the national level.

Session I (continued): Ratification

At the afternoon session the group was presented with a case study on Tanzania by **Ms. Esther Manyesha**, Ministry of Justice and Constitutional Affairs, Tanzania. Ms. Manyesha stated that the process for ratification involved the preparation of a green paper by the line Ministry responsible for sponsoring the proposal. This was then forwarded to the capital for approval. In follow-up to ratification, Tanzania has been in the last two years involved in a large-scale programme on education, with the help of development aid, non-governmental organisations (NGOs) and local communities. A report is due to be presented in March 2002.

Session III: Working with ESCR: Monitoring and Reporting under the CESC

In her presentation, **Ms. Kitty Arambulo** stated that the principal objective of reporting was to assist each State Party in fulfilling its obligation under the Covenant. The specific related functions were:

1. Initial review
2. Monitoring
3. Policy formulation
4. Public scrutiny
5. Acknowledgement of problems
6. Exchange of information and enhancement of awareness

The reporting procedure involved:

1. Preparation of the report according to the guidelines provided by the UN Manual on Human Rights Reporting, which has a section on the ICESCR and economic, social and cultural rights.
2. Consideration of the State report in constructive dialogue between the Committee and representatives of the State Party
3. Concluding Observations
4. Follow-up at the national level

Presentation/case study by **Ms. Locadia Majonga**, Principal Law Adviser, Ministry of Justice and Parliamentary Affairs, Zimbabwe.

Ms. Majonga stated that Zimbabwe had acceded to the ICESCR on 13 May 1991, and formed its Inter-Ministerial Committee on Human Rights and International Humanitarian Law in 1993. The Committee comprises 12 Government Ministries and Departments.

The Committee is charged with, *inter alia*, the co-ordination of human rights activities and functions of all government ministries, assistance to the state in fulfilling its obligations in terms of report writing for the five international instruments to which Zimbabwe is party, as well as advice to the government on these issues. The report is prepared and must be approved then adopted by members. NGOs are not included on the Committee but may be invited to speak on issues on a “needs” basis. Other entities such as the Inter-Parliamentary Union and UNICEF collaborate with the Committee. The Committee faces constraints in terms of resources, and has tried to seek partnerships for capacity building in this regard. It has nevertheless been successful in influencing child labour laws, and legislation on chemical weapons.

Plenary discussion

Ms. Majonga noted that there are no agreed criteria with respect to the membership of the Committee. She also indicated that the Committee broke into various groups to prepare the reports for different treaties.

DAY 2

Session III: Working with ESCR: National institutions

Facilitated by **Ms. Charlotte McClain**, Commissioner with the South African Human Rights Commission

Presentation by **Mr. Bowa**, representative of Zambia National Human Rights Commission.

In his presentation, Mr. Bowa asserted that while civil and political rights were enforceable in a court of law, economic, social and cultural rights were not. As such, the Zambia Permanent Human Rights Commission has sought to lobby the government, and in 1998 hosted a National Vision Conference on Human Rights bringing together diverse human rights actors. This led to the formulation of a National Plan of Action on Human Rights, adopted in 1999. Within the framework of this Plan, the Commission advocates in the areas of employment, access to adequate food, clothing and shelter, physical and mental health, education and the environment.

Plenary discussion

Ms. McClain noted that the Paris Principles for national human rights institutions set broad guidelines, but in reality different organisations derived their authority from different sources, and thus functioned differently; in South Africa, the institution is constitutionally based, and its reports are submitted to the parliament.

On the question of independence, it was noted that the institutions in Zambia and South Africa were both funded by their Governments. Mr. Bowa expressed the opinion that this was unavoidable, and Ms. McClain asserted that it was the responsibility of states to provide for these bodies. Both Commissions also received funding from the UN and other donors such as NORAD for programming activities.

Session III: Working with ESCR: National Human Rights Plans of action

Facilitated by **McDonald Mumba**, of the Malawi Human Rights Commission

Presentation/case study of South African experience by **Ms. Kamla Govender**, Ministry of Justice and Constitutional Development

Ms. Govender said that the South African Human Rights Commission had called for a National Human Rights Conference in May 1997. Participants were drawn from the government, NGOs and national institutions, and adopted a Statement and Programme of action for the Commission to set in motion on behalf of the Government, a process leading to the adoption of a National Action Plan (NAP) for human rights. The process was officially launched on 10 December 1997, and national and regional workshops were held throughout South Africa from June 1998 on International and Regional Human Rights Instruments. The NAP was finalised at a national workshop held in October of that year, and launched on 10 December, when it was also deposited with the UN. The Cabinet subsequently approved the establishment of a National Consultative Forum on Human Rights (NCFHR) and a permanent secretariat

to service it in the Justice Department. After initial obstacles with funding, the NAP has recently become functional.

Ms. Govender further outlined the process in terms of the Concept, Planning and Implementation Phases. From January –February 1999 the NCFHR was conceived, developed and approved.

Plenary discussion

Ms. McClain asserted that the role of the Commission in this process did not compromise the independence of the organisation. It was also noted that the process brought certain issues to the fore, such as examination at the workshops of issues of race and equality, and the overall meaning and implications of human rights.

Session IV: Regional concern: Human rights and HIV/AIDS

Presentation by **Ms. Miriam Maluwa**, Law and Human Rights Adviser, UNAIDS

In her presentation Ms. Miriam Maluwa, UNAIDS Law and Human Rights Adviser addressed the linkages between HIV/AIDS and human rights; the rights most relevant in the context of HIV/AIDS and the tools available to advance this area at national and international level.

Ms. Maluwa reiterated the following points:

- Health and Human rights are complementary, inter-dependent and mutually reinforcing, rather than conflicting, goals. Both share the common objective of promoting and protecting the dignity and wellbeing of all individuals. Health is a fundamental human right indispensable for the exercise of other human rights. In practice, there is a trickle cause and effect. On the one hand, violations of human rights may cause ill health and on the other ill health may impede enjoyment of other human rights leading to further human rights violations.
- HIV/AIDS and Human rights are inter-related. Lack of respect, protection and fulfilment of human rights increases people's vulnerability to HIV/AIDS; exacerbates the negative impact once infected and hinders an effective HIV/AIDS response.
- Human rights relevant to HIV/AIDS are those contained in the various international human rights instruments such as the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic Social and Cultural Rights, Convention Against Torture, Convention on Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child.

These rights have also been adopted in regional instruments such as the African Charter on Human and People's Rights, the American Convention on Human Rights, the European Convention on Human rights.

All these are instruments which States have willingly signed and thus are legally obliged to implement.

- States Parties to these international human rights instruments, States have obligations to *respect protect* and *fulfil* human rights.

The obligation to *respect* requires States to refrain from interfering directly or indirectly with the enjoyment of human rights. For example, refraining from identifying or limiting equal access of all persons, including prisoners, minorities, illegal immigrants preventive and curative HIV/AIDS health services and care or abstaining from enforcing discriminatory practices as State policy. The obligation to *protect* requires States to take measures that prevent third parties from interfering with human rights. For example, adopting of legislation to ensure the equal access to health care and health related services provided by third parties; to control the marketing of medicines and medical equipment and to ensure that medical practitioners and other health professionals meet appropriate standards of education, skill and ethical codes of conduct and the obligation to *fulfil* requires States to adopt appropriate legislative, budgetary, judicial, promotional and other measures for the full realisation of human rights. For example, adoption of a national health policy with a detailed plan; promotion of HIV/AIDS education, as well as information campaigns and vaccine research.

- Human rights principles that are most relevant to protect the dignity of those infected, affected and vulnerable by HIV AIDS and also to prevent the spread of infection include the right to Non-discrimination (Article 2(2) CESCER); the right to health (Article 12 CESCER); the right to equality between men and women (Article 3 CESCER); the rights of children; the right to privacy, the right to work (Article 6 CESCER); Right to education and information (Articles 13 and 14); the right to marry and found a family; Right to social security, assistance and welfare (Articles 9 and 10); the right to enjoy benefits of scientific progress (Article 15 CESCER); the right to liberty and the right to freedom of movement.
- A number of mechanisms exist to advance human rights in the context of HIV/AIDS:

At the international level

- Tools from Treaty Bodies, such as, the General Comment 14 on the Right to Health (ESCR)
- Tools from Charter based Bodies such as, the UN Commission on Human Rights Resolutions 2001/50 “*The protection of human rights in the context of HIV/AIDS*” ; 2001/31 “*Access to medication in the context of pandemics such as HIV/AIDS*” , the UN General Assembly Declaration on HIV/AIDS June 2001.
- *International Guidelines on Human Rights and HIV/AIDS*. These Guidelines issued jointly by the Office of the High Commissioner for Human Rights and UNAIDS, *synthesise* human rights norms applicable to HIV/AIDS and highlight a series of practical action that can be taken by States, NGOs and the UN system. The Guidelines aim at improving governmental capacity for multi-sectoral co-ordination and accountability; widespread reform of

laws and legal support services, with a focus on anti-discrimination, protection of public health, and supporting increased private sector and community participation to respond ethically and effectively to AIDS.

At the national level

- HIV/AIDS legal/policy reform that integrates human rights principles, norms and standards
- Litigation/Redress of HIV/AIDS related violations of human rights
- Conducting campaigns and advocacy on protection of HIV/AIDS related rights
- Integration of HIV/AIDS related human rights issues in State reports to the Treaty Bodies such as the Committee on ESCR.

Plenary discussion

In the discussions, participants noted the need for capacity building in this area and requested UNAIDS to disseminate some of the key documents that it has produced to NGOs working at national level. It was noted that very few National Human Rights Institutions have recognized HIV/AIDS as integral to their mandate. The South African Human Rights Commission was one of the few Commissions in Africa undertaking significant work in this field.

Session IV: Regional concern: Human rights and HIV/AIDS (cont'd)

Panel discussion: Chairperson from OHCHR, Ms. Olatokunbo Ige

Brief overview of regional HIV/AIDS situation – **Mr. Dan Odallo**, Programme Development Adviser, UNAIDS Inter-country Team for Eastern and Southern Africa:

Mr. Odallo outlined the rates of prevalence of HIV/AIDS for the regions and corresponding trends. He stressed that governments need to consider the urgency with which HIV/AIDS should be treated

Namibian NGO country experience - **Ms. Rosalia Shipiki**, Namibian NGO, AIDS Law Unit: Legal Assistance Centre:

Ms. Shipiki emphasized that civil society involvement had been central to bringing attention to the HIV/AIDS crisis in Namibia, and bringing about changes from the government. She further noted that implementation of policy would require the adoption of new attitudes by the larger society.

South African NGO experience - **Mr. Mandla Majola**, NGO Treatment Action Campaign:

Mr. Majola said that his organisation worked through support groups, education on HIV/AIDS as well as conducting workshops with health workers such as nurses. He pointed out that the Treatment Action Campaign ensured its independence by not accepting money from the government or pharmaceutical companies.

Plenary discussion

It was suggested that the low rates of HIV/AIDS infection quoted for the Indian Ocean islands were not reflective of the true situation and created a false sense of security among inhabitants. Others asserted that the root problem was a prevailing culture that was not open about sex and addressing sexual behaviour.

The representative of SADC urged the use of national SADC committees for the targeting of advocacy activity that would allow for better prioritizing of human rights and related issues. She especially noted that NGOs had the right to participate in these committees.

Session IV cont'd: Regional concern: Human rights and HIV/AIDS

During this session the group broke into three smaller working groups on:

- The right to health
- The right to education
- The right to housing

Participants were presented with true to life case studies, from they were required to

1. Identify the link between human rights and HIV/AIDS,
2. Identify responses or mechanisms for addressing the human rights concerns raised,
3. Identify the roles of national partners in advancing economic, social and cultural rights in the context of HIV/AIDS

The groups then returned to plenary, and reported on the discussion, with feedback provided by Ms. Maluwa. The case studies are attached Annex II.

DAY 3

Session V: Working with ESCR: Monitoring and Reporting under the CDESCR

Participants again broke into groups, retaining the working groups of the previous day. The groups were presented with a case study of a fictitious state which is required to report on the various rights to the Committee on Economic, Social and Cultural Rights.

Plenary discussion - facilitated by Ms. Kitty Arambulo

The groups then returned to plenary, and reported on the discussion, with feedback provided by Ms. Arambulo. The case study is attached in the annex.

Plenary discussion session on draft Workshop Conclusions and Recommendations - facilitated by Ms. Olatokunbo Ige

Ms. Ige went through the draft document paragraph by paragraph, and incorporated comments and proposals by participants. The final version was then adopted. The document is annexed.

Session VI: ESCR - Context and follow-up

Ms. Comfort Tetteh congratulated the participants and resource persons on the success of the workshop, and expressed her good wishes for follow-up activity

Ms. Ige spoke on behalf of OHCHR in thanking the participants for their enthusiasm and active participation, and the facilitators for their excellent contributions to a successful workshop. She hoped that it would mark the beginning of a process of exchange and regional and national action for the promotion, protection and fulfilment of economic, social and cultural rights in the Southern African region.

In closing remarks by **Ms. Attalia Molokomme** on behalf of the Executive Secretary of the Southern African Development Community, Mr. Ramsamy, reference was made to the relative neglect of economic social and cultural rights. He suggested that this may be due to limited resources at the disposal of countries in the region for fulfilment of these rights. SADC was, however, devoted to the delivery of these rights, notably through its policies for sustainable human development and for combating poverty. The eradication of HIV/AIDS was a priority element in this respect. The role of civil society organisations was critical to progress on these concerns and their ongoing work encouraged. Mr. Ramsamy congratulated the OHCHR for focussing attention on the importance of economic, social and cultural rights, and hoped that the Workshop Conclusions and Recommendations would be disseminated at the national level for application of the commitments made.

ANNEX I

NATIONS UNIES
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CONCLUSIONS OF THE WORKSHOP ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN SOUTHERN AFRICA



GABORONE, BOTSWANA, 3-5 DECEMBER 2001

Preamble

Participants from Botswana, Lesotho, Madagascar, Malawi, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe, consisting of representatives of governments, national human rights institutions, non-governmental organizations, as well as of international and regional organizations, such as ILO, UNAIDS, UNDP, UNIFEM, UNESCO and SADC, attending the workshop on economic, social and cultural rights in the Southern African sub-region, held in Gaborone, Botswana, from 3 to 5 December 2001,

1. Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights – civil, political, economic, social and cultural rights and the right to development, as proclaimed in the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the African Charter of Human and Peoples' Rights, the 1993 Vienna Declaration and Program of Action, the 1986 Declaration on the Right to Development, the 2000 United Nations Millennium Declaration;
2. Recalling the Declaration of the United Nations General Assembly on HIV/AIDS of 2001, and the Commission on Human Rights resolutions 2001/31 and 2001/50;
3. Recalling further the 2001 Durban Declaration and Programme of Action adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance;
4. Mindful of the interrelationship between poverty, underdevelopment and the inadequate attention on the promotion, protection and fulfilment of economic, social and cultural rights;

5. Noting with deep concern the increasing challenges of the HIV/AIDS pandemic and recognizing the need for intensive efforts to ensure universal respect for human rights to prevent infection, and reduce vulnerability and discrimination;
6. Committed to enhancing national, regional and international co-operation to promote universal respect for and observance of human rights and fundamental freedoms;
7. Reiterating the importance of an inclusive, step-by-step, practical and building blocks approach towards enhancing regional co-operation for the promotion and protection of human rights, especially economic, social and cultural rights;
8. Recalling the role of Governments, national institutions, regional intergovernmental organizations, civil society and the private sector in Southern Africa to the promotion and protection of human rights and its mainstreaming in all activities at the national level;
9. Recognizing in particular the significant role of SADC, in the promotion and protection of human rights, development, good governance and the rule of law in Southern Africa;
10. Reaffirming that the primary focus for the promotion and protection of human rights is at the national level, and that it is the primary responsibility of States to ensure that human rights are promoted and protected;
11. Convinced of the need to further strengthen the implementation of economic, social and cultural rights in the Southern Africa region in order to promote sustainable and durable development;
12. Reiterating the central role of human rights education as a tool for developing and nurturing an integrated human rights culture at the national and regional levels;

Hereby:

1. Express their appreciation to the Government and the people of Botswana for hosting the workshop on economic, social and cultural rights in the Southern African sub-region;
2. Express their intention and willingness to continue the dialogue at the national and sub-regional levels to develop effective strategies and to strengthen national capacity, in accordance with national conditions and needs, for the promotion and protection of economic, social and cultural rights;
3. Emphasize that international development co-operation and assistance, both multilateral and bilateral, is an essential requirement to improve national capacity;

4. Encourage States to undertake, in consultation with relevant partners, steps to ensure that relevant laws, policies and practice respect, protect and fulfil human rights in the context of HIV/AIDS, and in particular economic, social and cultural rights;
5. Recognize that effective and meaningful public participation, without discrimination, of all members of civil society, including non-governmental organizations and the private sector, is an essential component of successful and sustainable development, and of the implementation of economic, social and cultural rights and the right to development;

On the ratification of and reporting on the ICESCR

6. Affirm the central function of the human rights treaty system in providing a legal framework, within which States parties comply with their obligations to respect, protect and fulfil human rights; in creating processes which enable the harmonization of law and policy needed to achieve progressive realization of economic, social and cultural rights; in clarifying the content of specific rights; and in promoting awareness among the public and other stakeholders of the provisions and principles concerning economic, social and cultural rights;
7. Emphasize the importance of ratifying or acceding to regional and international human rights instruments, in order to strengthen the international human rights legal framework, especially the ICESCR and the need to incorporate these into domestic law, where necessary;
8. Acknowledges the work of the Committee on Economic, Social and Cultural Rights in promoting and protecting economic, social and cultural rights, through the monitoring of compliance by States parties to the ICESCR;
9. Recognizes in particular the Committee's efforts to contribute to a better understanding of these rights through its normative work, such as the adoption of General Comments and the holding of Days of General Discussion;
10. Further recognizes the need to bring these General Comments and the normative framework for the protection of economic, social and cultural rights to the attention of the national judiciary and parliaments with a view to facilitating their use;

On national human rights institutions

11. Emphasize the importance of independent national human rights institutions in the Southern African sub-region to promote and protect all human rights, and in particular economic, social and cultural rights;

On national plans of action for human rights

12. Welcome the development of national action plans for the promotion and protection of human rights in some of the countries of the Southern African sub-region;

13. Recognize the value of regional co-operation in sharing useful practices and methodologies in the development of national action plans;
14. Recognize further the value of comprehensive national consultative processes involving government, national institutions, civil society, especially human rights non-governmental organizations in preparing and drafting national plans of action for human rights;
15. Affirm the role of national human rights institutions, civil society organizations and the general public in monitoring the implementation of national plans of action for human rights;
16. Acknowledge that national human rights action plans advance human rights education, promote equality and address discrimination;

On human rights education

17. Recognize that human rights education is an important tool for enhancing respect for human rights and fundamental freedoms, and can contribute to the promotion of economic, social and cultural rights, sustainable development and the prevention of human rights violations;
18. Reaffirm the important role that non-governmental actors, including national human rights institutions, the media and non-governmental organizations, can play in furthering human rights education;

RECOMMENDATIONS

The participants of the Gaborone workshop hereby recommend that:

General

1. States recognize and make concerted efforts to address the root causes of violations of economic, social and cultural rights in the Southern African sub-region. Special consideration should be given to, *inter alia*, the impact of poverty, HIV/AIDS, the treatment of women and gender and other inequalities;
2. States explore and make full use of international technical assistance in facilitating the progressive realization of economic, social and cultural rights, especially through engaging with the Committee on Economic, Social and Cultural Rights;
3. States explore the organization of national level consultations as a follow-up to this workshop in order to develop national strategies for enhancing the enjoyment of economic, social and cultural rights in their countries;
4. The Office of the High Commissioner for Human Rights (OHCHR), and in particular its Southern African Sub-Regional Office, ensure follow-up to this workshop through provision of technical co-operation, as and when requested. OHCHR should co-ordinate its efforts with those of other UN agencies and regional institutions, such as SADC, in this regard;
5. SADC provide an institutional framework for the mainstreaming of human rights into all SADC policies, programmes and activities;

On the ratification of and reporting on the ICESCR

6. States undertake steps towards the ratification of and accession to international human rights instruments, in particular the ICESCR, in order to strengthen further the international human rights legal framework. States are encouraged to collaborate with national human rights institutions and civil society towards this end;
7. The report of this workshop be brought to the attention of national parliaments in Southern African countries to foster their active involvement in advocating for ratification, accession and implementation of the ICESCR;
8. The review of human rights mechanisms by the United Nations be continued and that the reporting procedures be harmonized and streamlined to assist States in coping with their reporting requirements under the various treaties;
9. States establish a mechanism to facilitate the active and meaningful participation of all sectors of civil society in the preparation of reports, given the importance of this consultative and participatory process for national

capacity-building in promoting and protecting economic, social and cultural rights;

10. States seek technical assistance from the OHCHR to assist in their reporting obligations;
11. States, national human rights institutions and civil society organizations ensure at the national level the dissemination of and follow-up to concluding observations emanating from the treaty bodies, and in particular the Committee on Economic, Social and Cultural Rights;

On national human rights institutions

12. States, which do not have independent national human rights institutions in accordance with the 1991 Paris Principles, undertake steps to create such institutions and provide adequate resources for their effective functioning;
13. National human rights institutions work in co-operation with international and regional intergovernmental organizations, in particular SADC, UNAIDS and OHCHR, to strengthen their capacity to address human rights issues, especially relating to HIV/AIDS;
14. OHCHR, in collaboration with UNAIDS, organize a meeting for national human rights institutions, to discuss how to integrate strategies to address HIV/AIDS into their mandates and work plans;

On national plans of action for human rights

15. States, which have not yet done so, initiate a national dialogue on human rights with a view to developing national plans of action for the promotion and protection of human rights. All members of civil society should be engaged in wide-spread decentralized national consultations in the preparation and drafting of such national plans of action;
16. The OHCHR provide technical assistance and guidance on the development of national plans of action;

On human rights education

17. States publish and widely disseminate the international human right instruments, and in particular the ICESCR, and the Committee's General Comments. This includes the use of simple language and the translation of such documents in national languages, for easy access by and use of the general public;
18. States, in co-operation with relevant national partners, and in particular the media, develop national strategies for human rights education, training and advocacy, which are comprehensive, participatory, effective and sustainable, thereby taking into consideration the UN Decade for Human Rights Education;

19. Human rights education should be aimed at all sectors of society, and should have a particular focus on combating poverty, social exclusion, gender inequality and HIV/AIDS in the Southern African sub-region;
20. The OHCHR, in collaboration with UNESCO, provide technical assistance and resources to assist States and other actors in promoting human rights education, training and advocacy.

Gaborone, 5 December 2001

ANNEX II

WORKING GROUP CASE STUDIES

Session IV: Regional concern: Human rights and HIV/AIDS

Group I: The right to health

Halina's Story

Halina is 7 1/2 months pregnant and has to rush to the doctor due to premature labour pains. During the examination, it becomes clear that she will need a caesarean operation. The doctor tests her for HIV/AIDS without consulting her before. Her result is positive. The doctor then refuses to deliver the baby, on the basis of the fact that she is HIV positive and it is not safe for the hospital to conduct the necessary operation. She then goes to another hospital, during which, the baby dies. Upon arrival in the second hospital, the baby has to be removed from her womb. Subsequently, Halina develops infections and results in her being unable to have more children. She also has to undergo compulsory sterilization.

Group II: The right to education

Minna's Story

Today Minna has told her teacher she has to stop going to school. Minna is 12 years old. She lives in a small town. Her father was a bus driver and her mother a seamstress. Her father died of AIDS 6 months ago after an illness that exhausted the family's resources. Her mother is very sick and has had to stop working. Two months ago, she had to sell her sewing machine to buy needed drugs. Her mother has told Minna that she must stop attending school and help to take care of her. There is no more money for school fees. Minna has been a very good student and is eager to continue. Minna has 2 brothers, ages 14 and 16. They will be able to continue going to school because relatives will pay their school fees.

Minna's relatives have approached the local education authority asking them to waive her school fees but were told this was not possible. They turned to a local AIDS service organisation for help but were told that while Minna's situation was unfortunate, their mandate was still limited to assuring care and support for people living with HIV. They turned to a local NGO *Education For All*. This NGO had a long waiting list for children seeking their support.

Minna's family met and decided they had done all they could do and that Minna should be sent to the capital city where young girls can easily find employment as domestic helpers.

Group III: The right to adequate housing

Lucinda's story

Lucinda is a 28-year old single mother of two sons, one of 5 and one of 2. Her husband died of AIDS 4 months ago, and was left behind to take care of her family. She herself is HIV-positive. Fortunately, Lucinda has kept her job at the factory. However, she is not able to afford the apartment she has been living since her husband died and she has been seeking to find cheaper housing. The landlord of her present housing has given her 2 months' notice, before she has to leave her home. Her family is able to give her some assistance in terms of childcare and food, but she is not able to move in with her relatives.

She has applied for cheaper apartments in the private sector, but has not been able to obtain one. She fears that one of the reasons for her being rejected is that most people know of her family history, and her status of being HIV-positive. The town where she lives has a project for social housing, and she has applied. The waiting list, however, is long and the criteria for eligibility are loosely applied, especially for those with connections in the municipal government.

Session V- Monitoring And Reporting

Fictitious Case Study: United Republic of Mapogo

Geography

Area: *Mainland*--945, 000 sq. km. (378,000 sq. mi.); slightly smaller than New Mexico and Texas combined. *Kalungu*--1, 658 sq. km. (640 sq. mi.).

Cities: *Capital*--Nuanga

Terrain: Varied.

Climate: Varies from tropical to arid to temperate.

People

Nationality: Mapogon(s).

Population: 32 million. *Kalungu*.

Religions: Muslim 45%, Christian 45%, Indigenous beliefs 10%.

Language: Katu (official), English.

Education: *Attendance*--74% (primary). *Literacy*--67%.

Health: *Infant mortality rate*--98/1,000. *Life expectancy*--50 years.

Work force: *Agriculture*--80%; *industry, commerce government*--20%.

Population distribution in Mapogo is extremely uneven. Density varies from 1 person per square kilometer (3 per sq. mi.) in arid regions to 51 per square kilometer (133 per sq. mi.) More than 80% of the population is rural. Nuanga is the capital and largest city.

Each ethnic group has its own language, but the national language is Katu, a Mantu-based tongue with strong Spanish borrowings.

Government

Type: Republic.

Independence: 1964. Constitution adopted in 1982.

Branches: *Executive*--president (chief of state and commander in chief) vice president, and Prime Minister. *Legislative*--unicameral National Assembly (for the union), House of Representative. *Judicial*--Court of Appeals, High Courts, resident Magistrate Courts, district courts, and primary courts. Administrative subdivisions: 25 regions
Mapogo's President and National Assembly members are elected concurrently by direct popular vote for 5-year terms. The president appoints a Prime Minister who serves as the government's leader in the National Assembly. The president also selects his cabinet from among National Assembly members.

Mapogo has a five-level judiciary combining the jurisdictions of tribal, Islamic, and British common law. Appeal is from the primary courts through the district courts, resident magistrate courts, to the high courts, and Court of Appeals. Judges are appointed by the Chief Justice, except those for the Court of Appeals and the High Court who are appointed by the President.

Economy

GDP (2001): \$9.3 billion.

Average growth rate: 3.8% (last 3 yrs.).

Per capita income: \$260.

Natural resources: Hydroelectric potential, coal, iron, gemstone, gold, natural gas, nickel, diamonds.

Agriculture (60% of GDP): *Products*--coffee, cotton, tea, tobacco, cloves, sisal, cashew nuts maize.

Industry (10% of GDP): *Types*--textiles, agribusiness, light manufacturing, oil refining, and construction.

Trade: *Exports*--coffee, cotton, tea, sisal, diamonds, cashew nuts, tobacco, and cloves.

Agriculture dominates the economy, providing more than 60% of GDP and 80% of employment. Accounting for only about 10% of GDP, Mapogo's industrial sector is one of the smallest in Africa.

The main industrial activities include producing raw materials, import substitutes, and processed agricultural products. Foreign exchange shortages and mismanagement continue to deprive factories of much-needed spare parts and have reduced factory capacity to less than 30%.

Housing

Urban dwellings tend to be high as opposed to rural: (2001) 60%

State provided housing: 20%. Homeless persons 40%. Due to the low economic status, there is very little growth in the building industry and dwellings are scarce for rent.

Minimal brick houses (35%), the majority of the population (45%) live in mud houses, which leak when it rains. The number of squatters is growing.

ANNEX III

Training Workshop on Economic, Social and Cultural Rights in the Southern African Region 3-5 December 2001

Programme

DAY 1

8:30 – 9:00 Registration

Opening session

9:00 – 9:45 Opening remarks by Mrs. Comfort Tetteh, Resident Representative, a.i., UNDP-Botswana
OHCHR statement - Ms. Olatokunbo Ige, Coordinator, Africa Team, Activities and Programmes Branch, OHCHR on behalf of the High Commissioner for Human Rights
Welcome address by representative of the host country

Break

10:00-10:10 Programme overview - Ms. Alisa Clarke, Human Rights Officer, Activities and Programmes Branch
10:10-10:40 Overarching issues - the rights based approach and its supporting framework including the human rights treaties and monitoring bodies - Mr. Biong Deng, Head, OHCHR Southern Africa Sub-Regional Office

Session I: Ratification of the Covenant on ESCR

10:45 – 11:15 Presentation by Ms. Kitty Arambulo, Human Rights Officer, Support and Services Branch, OHCHR
11:15 – 11:45 Plenary discussion

Session II: Understanding Economic, Social and Cultural Rights

11:45 – 12:15 Understanding ESCR: the scope and application of ESCR – presentation by Ms. Olatokunbo Ige
12:15 – 13:00 Plenary discussion

LUNCH

Session III: Working with ESCR: Monitoring and Reporting under the CDESCR

14:30 - 15:00 Presentation/case study by Ms. Esther Manyesha, Ministry of Justice and Constitutional Affairs, Tanzania
15:00 – 15:30 Presentation by Ms. Kitty Arambulo
15:30 – 16:00 Presentation/case study by Ms. Locadia Majonga, Principal Law Adviser, Ministry of Justice and Parliamentary Affairs, Zimbabwe
16:00 – 17:00 Plenary discussion

DAY 2

Session III: Working with ESCR: National institutions

Facilitated by Ms. McClain, South African Human Rights Commission

9:00 – 9:20 Presentation by Mr. J.M. Bowa, representative of the Zambia National Human Rights Commission

9:20 – 10:00 Plenary discussion

Session III: Working with ESCR : National Human Rights Plans of action

Facilitated by McDonald Mumba, Malawi Human Rights Commission

10:00 – 10:20 Presentation/case study of the South African experience by Ms. Kamla Govender, representative of the South African Ministry of Justice and Constitutional Development

10:20 – 11:00 Plenary discussion

Break

Session IV: Regional concern: Human rights and HIV/AIDS

11:15 – 11:45 Presentation by Ms. Miriam Maluwa, Law and Human Rights Adviser, UNAIDS - Introduction to the “International Guidelines on HIV/AIDS and Human Rights” and UN Commission Resolutions relating to human rights and HIV/AIDS

11:45 - 12:30 Plenary discussion

LUNCH

Session IV: Regional concern: Human rights and HIV/AIDS (cont'd)

Panel discussion

14:00 – 15:20 Chairperson from OHCHR, Ms. Olatokunbo Ige
Brief overview of regional HIV/AIDS situation - Dan Odallo, Programme Development Adviser, UNAIDS Inter-country Team for Eastern and Southern Africa
Namibian NGO country experience - Ms. Rosalia Shipiki, Namibian NGO, AIDS Law Unit: Legal Assistance Centre
South African NGO experience - Mr. Mandla Majola, NGO Treatment Action Committee

15:20 - 16:00 Plenary discussion

Summary and conclusions by Chairperson

Break

Session IV cont'd: Regional concern: Human rights and HIV/AIDS

16:15 – 17:00 Simultaneous group discussions on:

- The right to health
- The right to education
- The right to housing

17:00 – 17:15 Reports from group discussions

17:15 – 18:00 Plenary discussion - facilitated by Ms. Miriam Maluwa

DAY 3

Session V: Working with ESCR : Monitoring and Reporting under the CESCR

9:00 – 10:00 Simulation exercise for drafting of CESCR reports

10:00 – 10:45 Plenary discussion - facilitated by Ms. Kitty Arambulo

Break

Session facilitated by Ms. Olatokunbo Ige

11:00 – 12:30 Discussion of draft Workshop Conclusions and Recommendations

LUNCH

Session VI: ESCR - Context and follow-up

Facilitated by Mr. Biong Deng

14:00 – 15:30 ESCR in regional and international development cooperation – with reference to the major 2001/2002 UN meetings

Procedures for follow-up to the training workshop

Adoption of the Workshop Conclusions and Recommendations

15:30 Closing remarks by Ms Attalia Molokomme of SADC

Closing remarks by Ms. Comfort Tetteh

Closing remarks by Ms. Olatokunbo Ige

ANNEX IV

**OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
WORKSHOP ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN SOUTHERN AFRICA
3-5 DECEMBER 2001
GABORONE, BOTSWANA**

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