REPORT OF THE WORKING GROUP ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS SINCE ITS ESTABLISHMENT

By

Mr Mohamed Béchir Khalfallah
Commissioner, Chairperson of the Working Group

52nd Ordinary Session and 25th Anniversary of the African Commission on Human and Peoples’ Rights

Yamoussoukro - Côte d’Ivoire, 9 to 22 October 2012
I-  Introduction

1. The present report is part of the celebration of the 25\textsuperscript{th} anniversary of the African Commission on Human and Peoples’ Rights (the Commission). It is presented in accordance with Rule 23(3) of the Rules of Procedure of the African Commission and takes into account the recommendations made by the Commission during its 12\textsuperscript{th} Extraordinary Session, which include highlighting the progress made by special mechanisms since their establishment, the challenges faced and plans for enhancing their effectiveness.

2. As such, this report outlines the progress made by the Working Group on Economic, Social and Cultural Rights, its challenges and plans for ensuring greater promotion and protection of economic, social and cultural rights (ESCRs) in Africa. However, it is important at this point to provide background information on the Mechanism.

II-  Establishment of the Working Group on Economic, Social and Cultural Rights

3. The Working Group on Economic, Social and Cultural Rights (WGESCRs) was established by the Commission at its 36\textsuperscript{th} Ordinary Session held in Dakar, Senegal, from 23 November to 7 December 2004 through the adoption of Resolution 78.ACHPR/Res.73 (XXXVI) 04. Its mandate is as follows:
   - develop and submit to the Commission a draft principles and guidelines on economic, social and cultural rights;
   - prepare a revised draft of State reporting guidelines for economic, social and cultural rights;
   - under the supervision of the Commission, conduct studies and research on economic, social and cultural rights;
- Present an activity report at each Ordinary Session of the African Commission.

4. By Resolution 78.ACHPR/Res.73 (XXXVI) 04, the Commission also adopted the Pretoria Declaration on Economic, Social and Cultural Rights in Africa.

5. The mandate of the Working Group was renewed by the Commission in 2007 during its 42nd Ordinary Session held from 14 to 28 November in Brazzaville, Congo, 2009 during its 46th Ordinary Session held from 11 to 25 November in Banjul, The Gambia, and in 2011 during its 50th Ordinary Session held in Banjul, The Gambia.

6. Since its establishment, the WGESCRs has had the following Chairpersons: Commissioner Sanji Monageng of Botswana (2004-2006), Commissioner Melo Angela of Mozambique (2006-2008), Commissioner Dupe Atoki of Nigeria, acting on behalf of Commissioner Melo (2008-2009), and Commissioner Mohamed Béchir Khalfallah of Tunisia (2009 to present). The various Chairpersons, with the collaboration of the members of the Working Group, contributed significantly to achieving the objectives of the Working Group. It should be emphasized that the Nairobi Principles were finalised and adopted under the acting chairmanship of Commissioner Atoki.

III- Progress made by the Working Group on Economic, Social and Cultural Rights in Africa since its establishment

A- Adoption of the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter

7. The adoption of the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter (Nairobi Principles) was a landmark achievement for the Working Group as part of
the implementation of its mandate as provided for in Resolution 78.ACHPR/Res.73 (XXXVI) 04 of the Commission.

8. The aim of drafting the Nairobi Principles was to define in clear and precise terms the nature of the obligations of States Parties regarding the promotion and protection of the economic, social and cultural rights enshrined in the African Charter and the content of these rights. The Principles were the outcome of several meetings organised by experts of the Working Group. It should be noted that the Working Group, through the Secretariat, adopted a participatory approach\(^1\) which consisted of inviting African and international partners to make individual and group comments on the draft which was posted on the Commission’s website. As such, the Working Group received the comments of African and international NGOs and organisations, including the Department of Economic, Social and Economic Rights of the Office of the High Commissioner for Human Rights. As a result, all the comments of the various stakeholders here present were incorporated into the document that was finalised and adopted in Nairobi by the Working Group and subsequently adopted by the Commission. The final document was adopted by the Commission on 26 May 2010 and officially launched on Tuesday, 25 October 2011 in a public session during the 50\(^{th}\) Ordinary Session of the Commission.

**B- Adoption of the State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter**

9. It should be noted that the Working Group initially presented a single document outlining State reporting principles and guidelines for ESCRs in Africa. However, during consideration for adoption by the Commission at its 48\(^{th}\) Ordinary Session, it was decided that the State reporting guidelines for

---

\(^1\) The same approach was adopted for gathering comments on the draft of the current Rules of Procedure of the Commission.
ESCRs should be separated from the document. As such, the State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter (Tunis Guidelines) were separated, finalised and adopted by the Working Group in Tunis in July 2010. The main objective of the document is to guide States Parties to the African Charter in preparing their reports on the implementation of policies and programmes to promote the enjoyment of ESCRs.

10. With the adoption of the Nairobi Principles and the Tunis Declaration, the Working Group on Economic, Social and Cultural Rights has remained faithful to and has implemented part of its mandate.

C- Undertaking promotion missions to some States Parties to the African Charter

11. In the exercise of their duties, the various Chairpersons of the WGESCRs undertook promotion missions to some States Parties to the African Charter. Such visits are often conducted as part of general human rights promotion missions. As such, Commissioner Khalfallah went on mission to Angola, DRC, Central African Republic and, recently, Sahrawi Arab Democratic Republic.

12. During these visits, the issue of ESCRs was discussed at length with the highest authorities. The WGESCRs Chairperson called on the States visited to seriously take into account the content of the Nairobi Principles when developing their economic, social and cultural policies and programmes. He also called on them to take into account the Tunis Guidelines when preparing their reports under Article 62 of the African Charter.
D- Fruitful collaboration with civil society organisations involved in the promotion and protection of ESCRs in Africa

13. The work accomplished by the WGESCRs is also the outcome of its fruitful collaboration with civil society organisations working in the area of promoting and protecting ESCRs in Africa. In this regard, it is important to commend the crucial role played by Interights, the Centre for Human Rights of the University of Pretoria, the Institute for Human Rights and Development in Africa, Amnesty International, FIDH and several other organisations which contributed their expertise to the implementation of the mandate of the Working Group.

E- Advocacy for the ratification of the Protocol to the International Covenant on Economic, Social and Cultural Rights

14. The WGESCRs Chairperson conducts advocacy campaigns among States Parties to the African Charter for the ratification of the Protocol to the International Covenant on Economic, Social and Cultural Rights. The Protocol was adopted on 10 December 2008 by the UN General Assembly and empowers the Committee on Economic, Social and Cultural Rights to receive and consider communications submitted by or on behalf of individuals or groups of individuals under the jurisdiction of a State Party. For it to enter into force, a minimum of ten States have to deposit their instruments of ratification or accession with the UN Secretary-General. To date, eight States have already done so, with none of them from Africa, even though ten States (Togo, Cape Verde, Congo, DRC, Gabon, Ghana, Mali, Senegal, Madagascar and Guinea-Bissau) are signatories.

15. Under the leadership of the WGESCs, the Commission adopted, at its 51st Ordinary Session held from 18 April to 2 May 2012 in Banjul, The Gambia, Resolution 223 urging States Parties to the African Charter that have not yet
done so to ratify the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol. In addition, a note verbale was sent to all States Parties to the African Charter emphasizing the importance of the Protocol and the need to ratify it. The WGESCRs reiterates its wish to see African States ratify the said Protocol given the important role played by the Africa Group during the 2009 UN plenary session decision to submit the instrument for ratification.

F- Publishing press releases condemning violations of ESCRs and meetings with victims of ESCRs violations

16. The WGESCRs closely monitors the situation of ESCRs in States Parties. Its Chairperson publishes press releases condemning violations of ESCRs. An example is the recent press release condemning the destruction of the mausoleums of Muslim saints in the Malian northern city of Timbuktu.

17. Regarding meetings with victims of ESCRs violations, it is important to highlight the meeting held on 9 June 2012 in Nairobi, Kenya, between the Chairperson of the Working Group and the inhabitants of the Kibera shantytown. The meeting was organized through Amnesty International. The objective was to inform the WGESCRs Chairperson of the violations experienced by the population as a result of the forced evictions carried out by the Government of Kenya.

18. Even though the WGESCRs continues to implement its mandate, it however faces numerous challenges.
IV- Challenges faced by the Working Group on Economic, Social and Cultural Rights since its establishment

1- Few meetings of Members of the WGESCRs

19. Members of the WGESCRs are scattered across the continent. Unfortunately, they have seldom met in order to discuss themes relating to the Group. This is a major problem which affects the functioning and effectiveness of the Group.

2- Lack of human and financial resources

20. The lack of financial resources seriously handicaps the activities of the WGESCRs. The budget allocated to the Group does not enable it to fully conduct its activities. The Tunis Guidelines and Nairobi Principles are still unknown to many stakeholders involved in promoting and protecting ESCRs. It should be noted that since the launch of the two documents, it has not been possible to organize any other activity to really promote them due to the lack of financial resources. It does not suffice to print the two documents and distribute them during Sessions and missions undertaken by Commissioners. They have to be made accessible to African populations through dissemination strategies such as making the documents available for the common reader of English and French and translating them into African languages as well as disseminating them through the various means of communication. Without the necessary financial resources, it will be difficult for the WGESCRs to continue implementing its mandate.

21. It is also important to note that there is a lack of human resources in addition to the limited financial resources. The shortage of staff prevents the Working Group from functioning properly. At the Secretariat of the Commission, there has been no permanent staff member working for the WGESCRs since the
departure of the Senior Legal Officer who was assigned to the Working Group. The first and the present Legal Officer who have succeeded the Senior Legal Officer in assisting the Working Group are funded by partners who do not offer them a contract of more than one year. This means that the mechanism does not have an institutional memory. The desperate search for partners is becoming wearisome and undermines our dignity as African officials.

V- Plans for greater effectiveness of the Working Group on Economic, Social and Cultural Rights

A- Active and effective involvement of Member States

22. The promotion and protection of ESCRs on the continent is primarily the responsibility of States Parties to the African Charter. Therefore, States Parties have to be actively involved in order to guarantee these rights, including taking ownership and complying fully with their obligations under the Nairobi Principles.

23. This involvement through the ownership by States should also have an impact on the WGESCRs. In other words, there is need for a close collaboration between States Parties and the WGESCRs. Such collaboration may include open invitations to the Working Group which will enable detailed discussions on issues of ESCRs, facilitate promotion missions on ESCRs and the organisation of conferences on ESCRs.
B- Enhancing collaboration with other partners in order to raise awareness about the Commission and the Working Group on ESCRs

24. The Commission and its special mechanisms, as well as African human rights promotion and protection legal instruments, in particular those on ESCRs, are still unknown to civil society organisations in many countries. National human rights institutions and NGOs are therefore called upon to redouble their efforts towards further publicizing these instruments by organising seminars on the Commission and its WGESCRs at the regional and national levels.

C- The need for an increase in financial resources and dissemination of the Tunis Guidelines and Nairobi Principles

25. Increasing the financial resources of the WGESCRs is a necessity. With the necessary financial resources the Working Group will be able to meet very often and will be able to fully implement its mandate.

26. The necessary financial resources will enable a wide dissemination of the Tunis Guidelines and the Nairobi Principles. It will be possible for the documents to be published in English, French, Portuguese, Arabic and Spanish and translated into African local languages with a view to raising the awareness of local populations about ESCRs.

D- Enhancing collaboration with international and regional mechanisms to promote and protect ESCRs

27. It is important for the WGESCRs to work in close collaboration with all international mechanisms to promote and protect ESCRs, including the Committee on Economic, Social and Cultural Rights, the UN High Commissioner for Human Rights and UN special mechanisms on ESCRs.
28. Such a close collaboration will help to streamline and give greater effectiveness to activities conducted in the area of ESCRs in Africa. It is for this reason that the ongoing initiative between the special mechanisms of the UN and AU systems is welcome.

VI- Conclusion

29. ESCRs are at the crossroads of all the rights contained in the African Charter and other relevant regional and international instruments. Despite the progress noted in most African countries, one may wonder if such progress is based on the strict respect of ESCRs which has led to sustainable development or if it is a sham. This means that the situation of ESCRs is a major problem for the continent. Compliance with the international and regional instruments guaranteeing these rights is still a problem. The African Commission has demonstrated through its jurisprudence that these rights are justiciable which, however, is not yet the case in many African countries. This means that much still needs to be done. Since its establishment, the Working Group has been working hard to accomplish its mission.

30. However, as mentioned earlier, there is need for synergy between all stakeholders at all levels and in all areas in order to ensure greater promotion and protection of ESCRs. If this strategy is put in place, there will be greater respect for and enjoyment of ESCRs in the next twenty-five (25) years towards sustainable development in Africa.