



## Comparing the International Covenant on Economic, Social and Cultural Rights to South Africa's Constitutional and International Obligations on Socio-Economic Rights

South Africa Has Already Committed to the Rights in the ICESCR – Now It's Time to Ratify the Covenant

### Summary

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is one of the UN's major international frameworks for human rights. Nelson Mandela signed the Covenant on South Africa's behalf fifteen years ago, but the Government has still failed to act on ratification.

The chart below compares the text of the language protecting rights in the ICESCR, the South African Constitution, the African Charter on Human and Peoples' Rights, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. It demonstrates that, in our own Constitution and in these other agreements that we have ratified, South Africa has already committed to protecting the vast majority of the rights enumerated in the ICESCR. South Africa should thus ratify the Covenant to maintain its place as a global leader on human rights and ensure that its international commitment in signing the ICESCR is followed-up on by ratification of rights that the government has already supported.

In particular, rights in the ICESCR have been addressed by South Africa as follows:

- **Human Dignity** – The ICESCR recognizes that human dignity is a foundational principle of socio-economic rights, an approach that is taken in African Charter on Human and Peoples' Rights (African Charter) and embraced – perhaps more

strongly than in any other legal document in the world – in South Africa’s constitution and the jurisprudence of South Africa’s Constitutional Court.

- **Self-Determination** – The ICESCR characterizes the pursuit of and self-determining nature of one’s economic, social and cultural development as basic tenets of socio-economic human rights. South Africa has clearly supported this notion through the African Charter, which states that self-determination and right to pursue economic and social development are “inalienable.”
- **Equality** – Equality is a nearly universal goal and an actionable claim under the Constitution. Equality is protected more strongly in the Constitution than in the ICESCR.
- **Right to Work** – The ICESCR provides that the State Parties recognize a right of persons to seek employment as well as the steps necessary to achieve this right, including training programmes and policies and programmes to achieve “steady” and “productive” employment. The Constitution is not as specific as the ICESCR, though it does recognize the right to pursue employment freely. However, South Africa has committed itself to a right to work that is almost identical to the ICESCR in the CEDAW.
- **Working Conditions** – The ICESCR focuses on equality and safety in working conditions. Again, the Constitution does not address specifics in this area; however, South Africa has already made similar commitments to the ICESCR in the African Charter and the CEDAW.
- **Trade Unions/Striking** – The ICESCR and the Constitution contain quite similar provisions regarding the right of persons to join trade unions and to strike, with the Constitution providing stronger rights in this area than even the Covenant.
- **Social Security** – The ICESCR, the Constitution and the CEDAW provide for the right to social security. The most modest protections are likely those in the ICESCR, with the CEDAW providing the most specific right to social security.
- **Family, Mothers, Marriages** – The Constitution does not explicitly include the same recognition of the centrality of the family to society as does the ICESCR. However, the same rights that the Covenant recognizes are embodied in the African Charter, the CEDAW and the African Charter on the Rights and Welfare of the Child. The rights specified in those agreements include the equal rights of women to work, property and parental rights as men, among others.

- **Children** – The ICESCR provides that States should take special measures to protect children from exploitation, such as minimum working ages. Through the African Charter and the African Charter on the Rights and Welfare of the Child, South Africa has already committed to much more detailed protections for children, and such protections are further enshrined in the Constitution.
- **Adequate Standard of Living** – Like the CEDAW, the ICESCR includes the right to progressive realization of an adequate standard of living and food, clothing and housing. In addition to the CEDAW, South Africa has committed to rights to food and housing in the Constitution.
- **Food** – The ICESCR, like the Constitution, includes a right to food and a commitment that State Parties will take steps towards realising that right.
- **Highest Attainable Standard of Physical and Mental Health** – The right to access to health care is contained in varying forms in the ICESCR, the Constitution, the African Charter and the CEDAW. The text of the ICESCR imposes no material burdens on government to which South Africa has not already committed through either the Constitution or the African Charter.
- **Education** – The ICESCR, like the Constitution, includes a right to basic education. Further, the details of the rights to primary education and access to secondary and higher education are almost identical to those to which South Africa has committed itself in the African Charter on the Rights and Welfare of the Child. However, the ICESCR provides the right to education in more detail than the Constitution.
- **Culture and/or Science** – The ICESCR, the Constitution, the African Charter and the CEDAW all provide for a right for persons to follow the traditions of their culture.

### Comparison

RIGHT	ICESCR <sup>1</sup>	SOUTH AFRICAN	SOUTH AFRICA'S EXISTING TREATY
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1. International Covenant on Economic, Social and Cultural Rights, opened for signature, Dec. 16, 1966, art. 1, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976), available at [http://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch\\_IV\\_3p.pdf](http://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch_IV_3p.pdf).

		CONSTITUTION <sup>2</sup>	OBLIGATIONS
<b>Human Dignity</b>	<p><b>Preamble:</b> Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, 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, Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.</p>	<p><b>Ch. 2, § 10:</b> Everyone has inherent dignity and the right to have their dignity respected and protected.</p>	<p><b>AFRICAN CHARTER<sup>3</sup></b>  <b>Preamble:</b> Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;  <b>Art. 5:</b> Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.</p>
<b>Self-Determination</b>	<p><b>Art. 1- (1) – [F]</b>freely determine their political status and freely pursue their economic, social and cultural development</p>		<p><b>AFRICAN CHARTER</b>  <b>Art. 20 –</b> All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.</p>
<b>Equality</b>	<p><b>Art. 3:</b> The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social</p>	<p><b>Ch. 2 9(1):</b> Everyone is equal before the law and has the right to equal protection and benefit of the law.  (2) Equality includes the full and</p>	<p><b>AFRICAN CHARTER</b>  <b>Art. 19:</b> All peoples shall be equal; they shall enjoy the same respect and shall have the</p>

2. S. Afr. Const. 1996, available at <http://www.info.gov.za/documents/constitution/index.htm>.

3. See African Charter on Human and Peoples' Rights (ACHPR), done June 27, 1981, 21 I.L.M. 58 (1982) (entered into force Oct. 21, 1986), available at [http://www.achpr.org/english/\\_info/charter\\_en.html](http://www.achpr.org/english/_info/charter_en.html).

	and cultural rights set forth in the present Covenant.	equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken. (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.	<p>same rights. Nothing shall justify the domination of a people by another.</p> <p><b>CEDAW<sup>4</sup></b></p> <p><b>Art. 2:</b> States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:</p> <p>(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle</p>
<b>Right to Work</b>	<p><b>Art. 6:</b> (1) The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.</p> <p>(2) The steps to be taken by a State</p>	<p><b>Ch. 2 §22:</b> Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.</p>	<p><b>AFRICAN CHARTER</b></p> <p><b>Art. 8:</b> Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms</p> <p><b>CEDAW</b></p> <p><b>Art. 11(1):</b></p> <p>(a) The right to work as an inalienable right of</p>

4. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), G.A. Res. 34/180, U.N. GAOR, 34th Sess., U.N. Doc. A/34/46 (1979), available at <http://www2.ohchr.org/english/law/cedaw.htm>.



	<p>Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.</p>		<p>all human beings;  (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;  (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training.</p>
<p><b>Working Conditions</b></p>	<p><b>Art. 7:</b> [R]ight of everyone to the enjoyment of just and favourable conditions of work...  (a)(i) Fair wages and equal remuneration for work of equal value without distinction of any kind...  (a)(ii) A decent living for themselves and their families...  (b) Safe and healthy working conditions...  (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence...  (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.</p>		<p><b>AFRICAN CHARTER</b>  <b>Art. 15:</b> Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.  <b>CEDAW</b>  <b>Art. 11(1)(f):</b> The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.</p>
<p><b>Unions/Strike</b></p>	<p><b>Art. 8:</b> 1. The States Parties to the present Covenant undertake to ensure:  (a) The right of everyone to form trade unions and join the trade union</p>	<p><b>Ch. 2 §23</b> provides that everyone has the right to fair labour practices. Every worker has the right; to form and join a trade union; to participate in the</p>	

	<p>of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. . . .</p> <p>(b) The right of trade unions to establish national federations or confederations . . . ;</p> <p>(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;</p> <p>(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.</p>	<p>activities and programmes of a trade union; and to strike.</p>	
<b>Social Security</b>	<p><b>Art. 9:</b> The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.</p>	<p><b>Ch. 2 § 27(1)(c)</b> Provides that everyone has the right to have access to . . . social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.</p>	<p><b>CEDAW</b></p> <p><b>Art. 11(1)(e):</b> The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave</p> <p><b>Art. 11(2)(c):</b> To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities</p>
<b>Family, Mothers, Marriage</b>	<p><b>Art. 10:</b> (1) The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of</p>		<p><b>AFRICAN CHARTER</b></p> <p><b>Art. 18:</b> (1) The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical</p>

	<p>society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.</p> <p>(2) Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.</p>	<p>health and moral.</p> <p>(2) The State shall have the duty to assist the family which is the custodian or morals and traditional values recognized by the community.</p> <p>(3) The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.</p> <p><b>AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD<sup>5</sup></b></p> <p><b>Art. 18:</b> 1. The family shall be the natural unit and basis of society. it shall enjoy the protection and support of the State for its establishment and development.</p> <p>2. States Parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the event of its dissolution. In case of the dissolution, provision shall be made for the necessary protection of the child.</p> <p><b>CEDAW</b></p> <p><b>Art. 16:</b> The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.</p>
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5. African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), available at <http://www.africanunion.org/root/au/Documents/Treaties/Text/A.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf>.



<p><b>Children</b></p>	<p><b>Art. 10 (3):</b> Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law</p>	<p><b>Ch. 2§28(1):</b> Every child has the right (a) to a name and a nationality from birth; (b) to family care or parental care, or to appropriate alternative care when removed from the family environment; (c) to basic nutrition, shelter, basic health care services and social services; (d) to be protected from maltreatment, neglect, abuse or degradation; (e) to be protected from exploitative labour practices; (f) not to be required or permitted to perform work or provide services that are inappropriate for a person of that child's age; or lace at risk the child's well-being, education, physical or mental health or spiritual, moral or social development; (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be kept separately from detained persons over the age of 18 years; and</p>	<p>Article 16 specifies the right to enter into a chosen marriage, equal rights among parents, same personal rights between husband and wife, among many others.</p> <p><b>AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD</b> The entire Charter deals with child rights, based on principles of non-discrimination and best interest of the child standards. These rights include freedom of association, freedom of thought and conscience, as well as rights to education, healthcare, and freedom from exploitation, among many others.</p> <p><b>CONVENTION ON THE RIGHTS OF THE CHILD</b><sup>6</sup> The entire Convention deals with children's rights, such as the right to life, right to adequate child protection from government, the right to remain with natural parents, the right to freedom of thought and religion, and the right to be free from economic exploitation, among many others.</p>
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6. Convention on the Rights of the Child, GA Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) 167, U.N. Doc. A/44/49 (1989) (ratified on 16 June 1995), available at <http://www.unhchr.ch/html/menus/b/k2crc.htm>.

		<p>treated in a manner, and kept in conditions, that take account of the child's age; (h) o have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.</p>	
<p><b>Adequate Standard of Living</b></p>	<p><b>Art. 11(1):</b> [R]ight of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.</p>	<p><b>Ch. 2 §26:</b> - Everyone has the right to have access to adequate housing.</p> <p>The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.</p> <p>No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions</p> <p><b>Ch. 2 §27:</b> (1) Everyone has the right to have access to . . . sufficient food and water.</p>	<p><b>CEDAW</b> <b>Art. 14(h)</b> provides the right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.</p>
<p><b>Food</b></p>	<p><b>Art. 11(2):</b> The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take,</p>	<p>right to have access to . . . sufficient food and water.</p>	

<p><b>Highest Attainable Physical and Mental Health</b></p>	<p>individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) 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.</p>		
<p><b>Art. 12: (2)</b> The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:</p> <p>(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;</p> <p>(b) The improvement of all aspects of environmental and industrial hygiene;</p> <p>(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;</p> <p>(d) The creation of conditions which would assure to all medical service and medical attention in the event of</p>	<p><b>Ch. 2 § 24(a):</b> Everyone has the right to an environment that is not harmful to their health or well-being . . .</p> <p><b>Ch. 2 § 27(1):</b> Everyone has the right to have access to - (a) health care services, including reproductive health care . . .</p>	<p><b>AFRICAN CHARTER</b></p> <p><b>Art. 16:</b> (1) Every individual shall have the right to enjoy the best attainable state of physical and mental health.</p> <p>(2) States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.</p> <p><b>CEDAW</b></p> <p><b>Art. 12(1):</b> States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.</p>	

	sickness.		
<p><b>Education</b></p>	<p><b>Art. 13:</b> (1) The States Parties . . . recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.</p> <p>(2) The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:</p> <p>(a) Primary education shall be compulsory and available free to all;</p> <p>(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;</p> <p>(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;</p> <p>(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;</p> <p>(e) The development of a system of</p>	<p><b>Ch. 2 § 29 (1):</b> Everyone has the right to a basic education, including adult basic education; and (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.</p> <p>(2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account (a) equity; (b) practicability; and (c) the need to redress the results of past racially discriminatory laws and practices.</p> <p>(3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that (a) do not discriminate on the basis of race; (b) are registered with the state; and (c) maintain standards that are not inferior to standards at comparable public educational institutions.</p> <p>(4) Subsection (3) does not preclude state subsidies for independent educational</p>	<p><b>AFRICAN CHARTER</b></p> <p><b>Art. 17(1):</b> Every individual shall have the right to education.</p> <p><b>AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD</b></p> <p><b>Art. 11:</b> 1. Every child shall have the right to an education.</p> <p>3. States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular: (a) provide free and compulsory basic education; (b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all; (c) make the higher education accessible to all on the basis of capacity and ability by every appropriate means; (d) take measures to encourage regular attendance at schools and the reduction of drop-out rates; (e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.</p> <p><b>CEDAW</b></p> <p><b>Art. 10</b> provides that women must have the same education opportunities along a variety of standards as do men.</p>

	<p>schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.</p> <p><b>Art. 14:</b> Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.</p>	institutions.	
<p><b>Culture and/or Science</b></p>	<p><b>Art. 15:</b> 1. The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.</p>	<p><b>Ch. 2 § 31(1):</b> Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community (a) to enjoy their culture, practise their religion and use their language; and (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.</p>	<p><b>AFRICAN CHARTER</b>  <b>Art. 17(2):</b> Every individual may freely, take part in the cultural life of his community.</p> <p><b>CEDAW</b>  <b>Art. 13(c):</b> The right to participate in recreational activities, sports and all aspects of cultural life.</p>