



HELP PROTECT OUR HUMAN RIGHTS!

Support our campaign to ratify the 'International Covenant on Economic, Social and Cultural Rights' and its 'Optional Protocol'!

WHAT CAN PARLIAMENT DO TO PROMOTE RATIFICATION?

Introduction

Parliament is a guardian of human rights due to its role of representing the people and managing public affairs.¹ It plays an important role in the integration of international human rights instruments and standards within the domestic human rights system.

A number of principles guide Parliament in carrying out its mandate. These include advancement of human rights, human dignity, equality, social justice, accountability, responsiveness and openness, among others.²

Our Constitution gives the power to negotiate and sign international treaties to the national executive.³ However, the approval of the National Assembly and the National Council of Provinces (NCOP) by resolution is required for the international treaties to be binding on South Africa.⁴ There is an exception to the approval obligation with regard to treaties signed by the executive that are of a technical, administrative or executive nature or that do not require ratification or accession. Such treaties do not require the approval of the NA or NCOP but must be tabled before these bodies within a reasonable time.⁵

Parliament's approval is normally sought before the government submits its instrument of ratification to the relevant body in relation to a particular treaty.⁶

What has Parliament done to promote ratification?

Members of Parliament have raised questions about why South Africa has not yet ratified the ICESCR.

¹ Inter-Parliamentary Union and Office of the UN High Commissioner for Human Rights, *Human rights: A handbook for parliamentarians*, No 8 (2005) 9 & 63. The IPU is the world (international) organisation of parliaments and was established in 1889.

² See the preamble and section 1 of the Constitution, which state the human rights and democratic principles that must shape the South African society and government.

³ Section 231(1) of the Constitution.

⁴ Section 231(2) and (3) of the Constitution.

⁵ Section 231(3) of the Constitution.

⁶ See the example of the African Charter on the Rights and Welfare of the Child of 1990, - Parliamentary Monitoring Group, 'Ratification of the African Charter on the Rights and Welfare of the African Child', 1999, available at <http://www.pmg.org.za/print/5402> (accessed 18 July 2010) – subsequently ratified by South Africa on 7 January 2000.

- In 2009, the **Chairperson of the Portfolio Committee on Justice and Constitutional Development** asked the South African Human Rights Commission (SAHRC) ‘to explain why South Africa had yet to ratify the International Covenant in relation to social, economic and cultural rights’. The SAHRC responded that it ‘was given to understand that Cabinet had taken the decision to ratify the Covenant , but the process included making available that Covenant to all the departments that might be affected by or have an interest in it ... Ratification of the Covenant would certainly have implications for South Africa, but ... these were not insurmountable’.⁷
- In 2010, **Ms LH Adams** of COPE asked the President why South Africa has not ratified the ICESCR despite signing it on 3 October 1994 (the president’s response is stated above).⁸

What you can do as a Parliamentarian

- Ask the Government whether it has the intention of ratifying the ICESCR and its Optional Protocol and encourage the Government to set clear time frames for ratification.
- Establish if Government intends to make any reservations to the ICESCR and its Optional Protocol.
- If yes, determine whether the reservations are necessary and compatible with the purpose and content of the treaty. If not necessary, encourage Government to reconsider its decision.
- With regard to the Optional Protocol to the ICESCR, Parliament needs to ascertain if the Government intends to make the necessary declarations accepting to be bound by the inquiry and inter-state procedures when it ratifies the Protocol (which it is familiar with under other human rights treaties).
- If not, determine the reasons and if groundless, encourage it to accept these procedures.

Parliament has in fact voiced its concern over ill-advised reservations made by South Africa upon ratification of another treaty. It emphasised that when a state ratified protocols with reservations, it encouraged other states to do the same, to the detriment of the cause being promoted. It was further underscored that the ratification of protocols had to go through a parliamentary process and get parliamentary approval.⁹

⁷ Parliamentary Monitoring Group, ‘South African Human Rights Commission: Briefing’ (2009). Available at <http://www.pmg.org.za/report/20090708-south-african-human-rights-commission-matters-interest-briefing>.

⁸ Parliamentary Monitoring Group, ‘Questions and replies: Question No. 1225’, submitted on 4 May 2010. Available at <http://www.pmg.org.za/node/21347>.

⁹ Parliamentary Monitoring Group, ‘South Africa’s compliance with the Convention on the Elimination of all Forms of Discrimination against Women & 1995 Beijing Platform for Action reporting requirements: Commission on Gender Equality briefing’ (2010); available at <http://www.pmg.org.za/print/22240> (accessed 7 August 2010).