
Fact Sheet No. 5

Why do we want an OP to the ICESCR?

The Coalition for the Optional Protocol to the ICESCR firmly considers that the Optional Protocol to the ICESCR will benefit individuals, States Parties and the international community through:

BENEFIT ONE: Providing an international remedial mechanism for the infringement of ICESCR Rights

The Optional Protocol to the ICESCR will provide individuals and groups with access to international remedies where ICESCR rights have been violated. Ideally comprising of a complaint's mechanism and an inquiry procedure, the Optional Protocol to the ICESCR would possess the potential to significantly contribute towards the realisation of economic, social and cultural rights as enshrined in the ICESCR. The Optional Protocol complaint's mechanism would provide individuals and groups with access to an international adjudicative procedure and remedies concerning specific ICESCR violations. The the inquiry procedure would empower the United Nations Committee on Economic, Social and Cultural Rights, (“the Committee”), to initiate an investigation into particularly grave ICESCR abuses. The inquiry procedure would strengthen and compliment the proposed Optional Protocol complaint's procedure as it would:

- (i) Address situations where individual/group communications could not adequately reflect the gravity or the systemic nature of violations of the provisions of the ICESCR;
- (ii) Allow grave and/or systematic ICESCR violations to be investigated where individuals or groups were unable to utilise the complaint's mechanism for reasons including fear of reprisals;
- (iii) Enable a more-timely response to grave and/or systematic violations of the provisions of the ICESCR, and to continuing violations in particular.¹

BENEFIT TWO: Identifying and clarifying State party ICESCR obligations

As demonstrated through the first Optional Protocol to the International Covenant on Civil and Political Rights, (hereinafter ICCPR), an Optional Protocol to the ICESCR would contribute, through the development of international jurisprudence, to the further understanding of the rights contained in the ICESCR. Particularly, it would contribute to the identification of what constitutes a violation of these rights and to the development of corresponding State party obligations. Further, the Optional Protocol would assist in transforming general ICESCR provisions into concrete, tangible and achievable norms. The communications procedure, with its focus on specific violations of the rights of the individual, enables the Committee to provide States

¹ Inter-American Institute of Human Rights, *Optional Protocol, Convention on the Elimination of all Forms of Discrimination against Women*, Costa Rica: 2000 at 71-72. An Optional Protocol to the ICESCR inquiry procedure could be modelled after either Article 20 of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* or Article 8 of the *Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women*, both of which authorise inquiry procedures in prescribed situations.

parties with guidance as to their ICESCR obligations in actual situations. These recommendations in turn could constitute guidelines for the effective domestic implementation and promotion of economic, social and cultural rights as contained in the ICESCR.

BENEFIT THREE: Assisting States parties in protecting and promoting ICESCR enshrined rights

The elaboration of an Optional Protocol to the ICESCR will encourage States parties to take steps towards the full implementation of all rights enshrined in the ICESCR. This would mark an important step in strengthening the principle that, through ratification, States parties have committed themselves to progressively realise ICESCR rights. Through the promotion of the Optional Protocol's complaint mechanism and inquiry procedure, States parties would be provided with further opportunities to develop the concept of economic, social and cultural rights at the national level, to increase understanding and awareness of these rights and to remedy any existing inequalities in their laws, policies or procedures. The Optional Protocol will encourage the implementation of all the rights enshrined in the ICESCR through progressive changes in national law and policy. Such changes will, in turn, trigger an increased recognition of economic, social and cultural rights at all levels of society and assist all, including the most marginalized, to seek and access justice.

BENEFIT FOUR: Encouraging the development of domestic jurisprudence concerning economic, social and cultural rights

The Optional Protocol would provide States parties with a direct role in the development of international economic, social and cultural rights jurisprudence i.e. a body of case law that could be used by the Committee and others in interpreting the provisions of the ICESCR and clarifying state obligations. In turn, international ICESCR jurisprudence would promote the development of domestic jurisprudence on economic, social and cultural rights issues. In deliberating on issues such as the right to health, food, housing and social security, national level Courts could take judicial notice of international Optional Protocol jurisprudence in their own work to further domestic recognition of economic, social and cultural rights. In essence, the concept of violations of economic, social and cultural rights, how they should be recognized and interpreted and how violations might be remedied will be investigated and documented within national and international tribunals. Such documentation will in turn be vital in influencing the enactment, execution and interpretation of domestic laws or procedures to protect the rights as contained in the ICESCR.

BENEFIT FIVE: Strengthening International Enforcement of Economic, Social and Cultural Rights

The Optional Protocol to the ICESCR will serve to strengthen the relationship between States parties and the Committee by creating an impetus, at the national level, for nations to promote the effective national implementation of ICESCR rights. Through cases brought under the Optional Protocol to the ICESCR, the Committee and States parties will be required to provide detailed information on the implementation of economic, social and cultural rights in their community. This will strengthen the institutional knowledge of the ways in which economic, social and cultural rights are realised in different communities. Scholars and non-governmental organisations have long noted that one of the major constraints faced by the Committee has been the lack of information available to the Committee. The Optional

Protocol would lead to a new and more involved relationship between the Committee and States parties. Assisting with the effective implementation of economic, social and cultural rights, the Optional Protocol would also discourage other non-economic, social and cultural rights complaints mechanisms from entering the ICESCR field, which has become current practice in the absence of this instrument.² Given that the ICESCR and its Optional Protocol would comprise the sole specific international complaints mechanism dedicated to economic, social and cultural rights, this is of the utmost importance, both for the legal development of the rights at the international level, and for the progressive interpretation and enactment of law at the national level.

BENEFIT SIX: Reinforcing the universality, indivisibility, interrelatedness and interdependence of all human rights

Gathering together representatives from over 170 States, the 1993 Vienna World Conference on Human Rights was unequivocal in confirming the universality, interdependence, indivisibility and interrelatedness of civil, cultural, economic, political and social rights. Given the existence of an international complaint's procedure concerning the adjudication of ICCPR rights infractions, the creation of an Optional Protocol to the ICESCR would enable States Parties to reinforce the universality, interdependence, indivisibility and interrelatedness of all human rights.

BENEFIT SEVEN: Increase public awareness of economic, social and cultural rights

The Optional Protocol to the ICESCR would place a renewed emphasis on economic, social and cultural rights nationally and internationally. It would provide a platform for victims of violations of economic, social and cultural rights to identify and publicise their complaints and to influence the development of international human rights standards. Further, the publication of communications and inquiries, would serve to promote public awareness, nationally and internationally, of the human rights standards enshrined in the ICESCR.³

Additionally, the beauty of an Optional Protocol to the ICESCR is its capacity to contribute to an existing economic, social and cultural rights campaign. Because the Optional Protocol to the ICESCR would require that all domestic judicial processes have been exhausted it is likely that the case will already have been linked to domestic campaigns. Moreover, because the Committee recognises that both judicial and programmatic responses are required to implement ICESCR rights, the Committee would make recommendations in both areas.

² In adjudicating over complaints under the first Optional Protocol to the *ICCPR*, the United Nations Human Rights Committee has delved into issues specifically covered by the *ICESCR*.

³ This has been the case with communications submitted under existing complaints procedures and in particular, communications under the first Optional Protocol to the *ICCPR*.