

What is the new U.N. optional protocol on economic, social and cultural rights?

On December 10th, 2008, on the 60th anniversary of the Universal Declaration of Human Rights, the United Nations General Assembly adopted the **Optional Protocol** to the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The adoption of the Optional Protocol represents a historic advance, confirming the equal value and importance of all human rights. Forty-two years after a similar mechanism was adopted for civil and political rights, those who suffer from violations of their economic, social and cultural rights now have a complaints mechanism that is of equal status in the UN human rights system. Their right to an effective remedy is recognized.

"The approval of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights is of singular importance by closing a historic gap," Navi Pillay, the UN High Commissioner for Human Rights, told the UN General Assembly.

The Optional Protocol is important because it provides victims of economic, social and cultural rights violations who are not able to get an effective remedy in their domestic legal system with an avenue for redress. The adoption of the OP was the result of decades of advocacy by civil society organizations from around the world including the **OP-ICESCR Coalition**, of which the **International Network for Economic, Social & Cultural Rights** is a member.

Through review of cases, an international complaints mechanism will also contribute to clarifying the content of ESC rights and related states' obligations, as well offer guidance to national courts and human rights institutions.

What is the Optional Protocol (OP)?

The OP allows individuals to bring complaints about violations of their economic, social, and cultural rights to the attention of the Committee on Economic, Social & Cultural Rights. The Committee is the main monitoring body for the International Covenant on Economic, Social & Cultural Rights.

The Optional Protocol also provides for an inquiry procedure, which will allow the Committee to initiate an investigation if it receives allegations of grave or systematic violations of the ICESCR (although this is subject to an opt-in clause by governments).

Why is it important?

There are three basic reasons why it is important to allow individual complaints under the Covenant:

- First, individuals now have a venue in which to seek justice for ESCR violations. Any individual or group of individuals can now lodge a complaint to allege a violation of their economic, social or cultural rights. As with other individual complaint mechanisms at the international level, individuals would have to exhaust domestic remedies and their government would have to be a party to the ICESCR.
- Second, the OP gives equal value and importance to ESC rights as human rights, equal in status to civil and political rights. Despite a tremendous amount of international rhetoric on the importance of ESC rights, these rights long remained the only group of rights without an international individual complaints mechanism. Introducing such a mechanism puts ESCR on par with civil and political rights, and finally gives meaning to the rhetoric of indivisibility.
- Third, an individual complaints mechanism strengthens the body of law surrounding specific human rights. The value of an OP allowing individual complaints is clear from the experience of the International Covenant on Civil and Political Rights (ICCPR). The Human Rights Committee, which monitors the ICCPR, has developed a solid body of jurisprudence relating to specific rights found in the Covenant. That elaboration has strengthened the rights by clearly defining their parameters, and assisted with national advocacy for enforcement of the rights. Economic and social rights have so far been deprived of this opportunity to develop jurisprudence, and an OP provides such an opportunity.

How would the Optional Protocol work?

As its name states, any Optional Protocol is optional. Governments are not forced to become legally obligated to its terms. An Optional Protocol is a treaty and governments that support the OP may choose to sign and ratify (or accede, if the signature period has expired) to its terms. Once a government has ratified a treaty, that treaty is legally binding.

Individuals who are nationals of the governments that ratify or accede to the Optional Protocol would have the option of bringing an individual complaint to the attention of the Committee on Economic, Social & Cultural Rights. The procedure is set out in the OP itself, and includes certain procedural requirements (for example,

the requirement that domestic remedies be exhausted before an individual comes to the Committee). The Committee will review complaints received and write an opinion. Under the current individual complaint mechanism available for the ICCPR, these opinions are much like judicial decisions. Although they are not legally enforceable the way a domestic court opinion is, the governments concerned will have agreed to be legally bound by these decisions.