



EXTERNAL DOCUMENT

5 February 2013

AI Index: IOR 51/001/2013

Q&A: OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

1. What are economic, social and cultural rights and why are they important?

Economic, social and cultural rights include the rights to work, health, education, food, water, sanitation, housing, social security and to take part in cultural life, amongst others. They are essential for a life of dignity, security and freedom.

Economic, social and cultural rights have the same status under international law as other human rights, and are interlinked. For example, it is impossible for people who are homeless to vote and difficult for those who are ill and without access to healthcare to actively participate in society.

These rights are defined in a UN treaty called the International Covenant on Economic, Social and Cultural Rights (ICESCR). Countries choose voluntarily whether to sign up to this treaty, and be bound by the obligations under it. 160 countries are parties to the ICESCR and are obligated under international law to ensure everyone has access to these rights without discrimination.

For more information, please see Amnesty International's [webpage on economic, social and cultural rights](#)

2. What is the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Protocol)?

The Protocol is a landmark achievement for economic, social and cultural rights. It essentially sets up a complaints mechanism which, for the first time, will enable people whose rights (as defined in the ICESCR) have been violated and who have not received justice in their own country to make complaints to the UN. Decisions on complaints will be made by an independent panel of 18 experts called the UN Committee on Economic, Social and Cultural Rights. The panel will recommend what course of action governments should take in response to complaints.

3. Why do we need the Protocol?

Governments often fail to meet their obligations under international law to ensure the adequate and equal enjoyment of economic, social and cultural rights for all. Some governments deliberately violate people's rights, for example when they forcibly evict people from their homes. Many governments deliberately neglect disadvantaged groups, such as people living in informal settlements, or do not allocate enough money to ensure everyone has access to clean water. Governments can also fail to prevent, investigate and punish others who abuse people's rights, for example when oil and mining companies pollute the drinking water that communities rely on. When such violations occur, people, particularly those living in poverty,

often have little opportunity to seek justice in their country – this is where the Protocol comes in, as an independent and international path to justice for such people.

4. What are some examples of violations of economic, social and cultural rights?

Amnesty International has documented many cases around the world where people are finding it impossible to obtain justice for violations of their economic, social and cultural rights. In Nigeria, the Rivers State Government in Port Harcourt ignored a Federal High Court injunction preventing them from demolishing a waterfront settlement there and in August 2009, forcibly evicted more than 13,000 men, women and children from their homes without adequate alternative accommodation or even emergency shelter. In Slovenia, many Roma families living in informal settlements are denied access to water and sanitation and the government has failed to put in place mechanisms to monitor and provide a remedy for the denial of their rights. In the USA, women, particularly those on low incomes, often face considerable obstacles in obtaining maternal health care. The US government's failure to ensure that women have access to maternal health services reduces their chances of having a healthy pregnancy and delivery.

5. How will the Protocol help those living in poverty?

The Protocol will provide an important route to justice for people who have been unable to seek redress through their own governments. It will expose abuses often linked to poverty, discrimination and neglect, whose victims often suffer in silence. It will provide a way for people, who may be isolated and powerless, to make the world aware of the violation of their rights. It will also allow the Committee on Economic, Social and Cultural Rights to recommend a course of action to governments so they ensure these people get justice.

6. What impact will decisions made under the Protocol have on Governments?

The Committee on Economic, Social and Cultural Rights cannot decide on new policies for governments, but it may recommend that they develop new policies or revise existing ones. It will be up to the government to decide how they should comply with any Committee decision, and correct any violation identified. It is also important to note that the Protocol will benefit not just the people who make complaints, as its decisions will influence national and regional courts around the world and help to set precedents that will benefit others. A decision taken about one country will also help to guide governments in other countries about how they protect economic, social and cultural rights.

7. How will the complaints process work under the Protocol?

A complaint can only be submitted to the Committee on Economic, Social and Cultural Rights after the person whose rights have been violated, having gone through the court system in their own country, has not received justice. This allows the government an opportunity to provide an effective remedy through its national legal system. However, where the victims can show that they cannot get justice in their own country, e.g. because their rights are not protected in national law, they can go straight to the UN. Both individuals and groups, such as an organisation representing a number of evicted tenants, can submit complaints.

In some circumstances a state can agree to the Committee on Economic, Social and Cultural Rights investigating economic, social and cultural rights in their country without an individual complaint being made, or can ask the Committee to investigate those rights in another country.

8. How do you make a complaint?

A complaint to a committee is sometimes also called a "communication" or a "petition". It need not take any particular form but it should be in writing and signed. It should provide basic personal information – the complainants name, nationality and date of birth - and specify the State party against which the complaint is directed. If a claim is being brought on behalf of another person, proof of their consent must be provided or clearly stated why such consent

cannot be provided. The facts on which the claim is based should be set out in chronological order. It is very important that the complaint contains all information relevant to the case.

For further details on how to submit a complaint and to see examples of complaints to other treaties, please see here: <http://www2.ohchr.org/english/bodies/petitions/individual.htm>

9. How can governments of poor countries find the money to change policies and put in place the human rights frameworks to secure these rights for people?

Countries are already obligated to make sure these rights are available to all without discrimination by using the resources they have. Many of these obligations, such as preventing companies mining on Indigenous People's traditional lands without getting their consent, do not require large amounts of money but involve simply respecting people and communities' own existing resources. Countries are not expected to realise rights overnight, but are required to take concrete steps for the longer term.

10. What about governments facing recession?

Governments must continue to protect human rights during a recession, indeed it becomes more important that they do so as vulnerable communities may be especially at risk. Austerity measures, like cuts in public spending for example, may be necessary but the government must balance this with the need to protect human rights. It must ensure these measures are non-discriminatory, do not disproportionately undermine existing rights, do not hit the most vulnerable and disadvantaged in society the hardest and do not drive people further into poverty.

11. Which countries have ratified the Protocol?

As of 5 February 2013, ten countries have joined the Protocol: Argentina, Bolivia, Bosnia and Herzegovina, Ecuador, El Salvador, Mongolia, Portugal, Slovakia, Spain and Uruguay. With Uruguay's ratification on 5 February 2013, the protocol will come into effect in three months time on 5 May 2013.

Despite this achievement, it is extremely disappointing that so far not a single African country has joined the Protocol, while Mongolia is the only Asian country to join it. The Protocol is only legally binding in those states that have joined it, meaning that victims of human rights violations in countries that have not joined still face significant hurdles in gaining justice.

12. Which countries have signed the Protocol?

As of 5 February 2013, the thirty-two countries who have signed and have yet to ratify the Protocol are: Armenia, Azerbaijan, Belgium, Burkina Faso, Cape Verde, Chile, Congo, Costa Rica, Democratic Republic of the Congo, Finland, France, Gabon, Ghana, Guatemala, Guinea-Bissau, Ireland, Italy, Kazakhstan, Luxembourg, Madagascar, Maldives, Mali, Montenegro, Netherlands, Paraguay, Senegal, Slovenia, Solomon Islands, Timor-Leste, Togo, Ukraine, and Venezuela.

13. Which countries have joined the International Covenant on Economic, Social and Cultural Rights (ICESCR)?

160 of the UN's 193 Member States have joined the ICESCR. The 32 Member States that have so far failed to join the ICESCR are in: **Africa** - Botswana, Comoros, Mozambique, São Tomé and Príncipe and South Africa; **Americas** - Antigua and Barbuda, Belize, Cuba, Haiti, Saint Kitts and Nevis, St. Lucia and the United States; **Europe** - Andorra; **Asia and the Pacific**: Bhutan, Brunei, Myanmar, Fiji, Kiribati, Malaysia, Marshall Islands, Micronesia, Nauru, Palau, Samoa, Singapore, Tonga, Tuvalu, and Vanuatu; and the **Middle East**: Qatar, Oman, Saudi Arabia and the United Arab Emirates.

Economic, social and cultural rights are also protected under other international treaties, such as those which deal with racial discrimination, discrimination against women and the rights of

children. They are also protected under regional treaties for Africa, the Americas, Europe and the Arab League.

For more information, please see Amnesty International's [webpage on the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights](#).