



MAKE OUR RIGHTS LAW

ENFORCE ECONOMIC, SOCIAL AND CULTURAL RIGHTS

AMNESTY
INTERNATIONAL



Economic, social and cultural rights such as the rights to food, adequate housing, health, education and work are enshrined in the Universal Declaration of Human Rights and in various treaties, including the International Covenant on Economic, Social and Cultural Rights, which 160 countries are parties to. They are recognized in the national laws of many countries. Yet millions of people are denied these rights on a daily basis.



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Governments too often pay only lip service to their obligations under international law to ensure economic, social and cultural rights for all. Some deliberately violate people's rights, for example when they forcibly evict people from their homes. They sometimes fail to prevent, investigate and punish others who abuse people's rights, for example when mining companies pollute the drinking water that communities rely on.

Many governments violate rights by failing to take the urgent and feasible steps needed to ensure that economic, social and cultural rights are realized for all people, for example if they do not prioritize disadvantaged groups when allocating public resources.

When such violations occur, people often have no opportunity to obtain justice. In many countries, people cannot demand these rights because they are not recognized by national law. Remedies, where they do exist, can be ineffective or inaccessible. People living in poverty in particular face significant obstacles in

accessing justice. And governments do not always enforce decisions by courts and international human rights mechanisms. Consequently, human rights continue to be violated with impunity by governments who are not held accountable for their actions.

THE RIGHT TO AN EFFECTIVE REMEDY

Under international law, all people have the right to an effective remedy when their human rights are violated. Without access to remedies, human rights mean very little.

To be effective, all remedies must be accessible, affordable and timely. A remedy can be provided by a court or by another institution that can act on complaints. However, victims must have access to courts where this is the only effective means of securing a remedy.

THE RIGHT TO REMEDY AND REPARATION

International law entitles all victims of human rights violations to access to effective remedies and reparation. Reparation requires that, as far as possible, the consequences of the violation are corrected. The body providing a remedy should award the measures necessary to repair the specific harm suffered by victims, including some or all of the following:

- **restitution**, for example by restoring homes that were taken away during a forced eviction;
- **compensation**;
- **rehabilitation**, through services to address physical or psychological harm;
- **satisfaction**, by imposing additional or alternative remedies that are satisfactory to the victim; for example, a public apology and;
- a legally binding guarantee of **non-repetition**.



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'I am left with nothing, only what you see me wearing right now... My wife and I are caring for five children, between six and 15 years old.'



Above: On 10 July 2010, city council bulldozers flattened buildings in the Kabete NITD settlement in Nairobi, Kenya, leaving Joshua (pictured), his wife and their five children destitute. Kenya's new Constitution, adopted in August 2010, makes several economic and social rights, including the right to adequate housing, legally binding in the country for the first time. As a result, people under threat of forced eviction, like Joshua, will have access to stronger remedies in future.

Left: A rainwater harvesting cistern belonging to Palestinian villagers destroyed by the Israeli army under the pretext that it was built without a permit. Permits for water projects are very rarely granted to Palestinians.

Front cover: Domestic workers demonstrating in Jogjakarta, Indonesia for the law to recognize them as workers and ensure protection of their rights, February 2009.

© Rumpun Tjoek Nyak Dien



© Treatment Action Campaign

COURTS CAN MAKE A DIFFERENCE

As governments and judiciaries gradually remove barriers to enforcement, people around the world are successfully claiming their economic, social and cultural rights before the courts.

In India, in April 2001, an NGO, the People's Union on Civil Liberties, brought a petition before the Indian Supreme Court arguing that the government was violating the right to food by failing to address chronic malnutrition. Despite a funded programme of midday school meals and food rations for families below the poverty line in many states, inefficiencies meant that the quality and reach of such schemes were often limited.

In November 2001, the Court ruled that minimum food ration guarantees for families living below the poverty line should be legally binding and implemented in full. The Court ordered state authorities to provide cooked midday meals with specified minimum calorific and protein content

to all school children for a minimum of 200 days a year.

The order strengthened the bargaining power of civil society groups campaigning for the right to food. In addition, the Court appointed commissioners to monitor its implementation. It is estimated that an additional 350,000 girls per year are enrolling in school due to the increased availability of school meals following the litigation.

In South Africa in 2000, the government refused to provide the anti-retroviral drug Nevirapine – used to prevent mother-to-child HIV transmission – to all those who required the treatment, even though 70,000 infants were being infected each year. The authorities decided that the drug would only be provided at certain pilot locations until they had fully devised their own programme. This decision was made despite support for the drug by the World Health Organization and the South African Medicines Control Council, and an offer by the manufacturer to provide the drug free for five years.

Treatment Action Campaign activists demonstrate at an AIDS conference in Durban, South Africa, August 2003.

The advocacy group Treatment Action Campaign carried out extensive mobilization on the issue and took the government to court. In 2002, South Africa's Constitutional Court ruled that the government must permit and expedite the use of Nevirapine throughout the public health sector in order to ensure the right to health. The decision helped to undermine the government's opposition to widespread provision of anti-retroviral drugs. Additionally, it bolstered Treatment Action Campaign's lobbying work for the wider provision of anti-retroviral treatment. In 2003, South Africa's cabinet adopted an operational plan to combat AIDS that included anti-retroviral treatment as one of its core components.



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RIGHTS UNRECOGNIZED

The continuing lack of recognition of economic, social and cultural rights in national law remains a major obstacle to their enforcement in many countries. This has real consequences for people.

In the USA, despite recent legislation to significantly extend health insurance coverage, it is anticipated that over 20 million people will remain uninsured. The US Medicaid scheme for people on low incomes involves complicated, bureaucratic requirements, with the result that eligible women often face significant delays in receiving prenatal care. Some low-income women have no source of affordable care and therefore go without prenatal care altogether. Public health education is inadequate and there is insufficient information about and access to contraception. Because the USA does not recognize the right to health in national law, women have limited options to seek legal remedies for these gaps in access to health care.

Some governments claim that economic, social and cultural rights are not legally enforceable and do not recognize them for that reason. However, an increasing number of countries such as Argentina, Colombia, Egypt, Germany, Indonesia, Latvia and South Africa have made economic, social and cultural rights part of their national law, which can and have been enforced by the courts.

In Bangladesh, India and Pakistan the courts have interpreted the right to life embodied in their constitutions to include several economic and social rights. Regional human rights systems, such as those established by the Organization of American States, the African Union and the Council of Europe each include complaint mechanisms that can provide a remedy for violations of some of these rights.

Some governments argue against legal remedies for economic, social and cultural rights as they are concerned that this would allow the courts, rather than parliament, to set economic and other

People wait through the night, in temperatures of minus 10°C, in eastern Kentucky, USA, to ensure that they are seen by Remote Area Medical (RAM) workers. RAM, a charitable organization made up of volunteers, was founded in 1985 to provide free health care in the developing world. However, it now provides 60 per cent of its services in the USA to people without health insurance.

policies, and interfere with budgetary processes. However, in practice, courts generally only order governments to develop new policies or revise existing ones. This allows the courts to assess whether policies are consistent with a country's human rights obligations under national and international law, but not to determine which policy a government adopts.



REMEDIES DENIED

Recognizing rights and providing an institution that can address them do not, by themselves, guarantee an effective remedy for violations when they occur. If the body that hears the case is unwilling to provide justice, or is not permitted to award effective remedies or can be swayed by government, then violations can go unpunished.

When governments carry out actions that result in human rights violations in other countries, such as funding projects that lead to forced evictions, remedies for victims are commonly limited or non-existent. Victims of abuses by powerful transnational companies frequently find that their governments are either unable or unwilling to provide a remedy. Efforts to seek justice before the courts in the company's home country are costly, time-consuming and rarely successful.

In Bhopal, India, a massive leak of toxic chemicals from a pesticide plant operated by Union Carbide India Limited (UCIL) in 1984 led to the deaths of 18,000-20,000

people. Half a million people were exposed to the hazardous gases. Twenty-five years later, the site of the leak has still not been decontaminated. More than 100,000 people continue to suffer from related health problems and a lack of access to medical care.

The Indian government eventually reached an out-of-court settlement with the US-based Union Carbide Corporation (UCIL's parent company). The Supreme Court of India approved the settlement despite the lack of adequate compensation for victims in the agreed terms. In addition, survivors trying to access the compensation fund faced numerous obstacles, including corruption, long delays and denial of appropriate appeal mechanisms.

A court case seeking the clean-up of the industrial site is still ongoing. Despite an order by the Madhya Pradesh High Court to clean up the site, the government has yet to comply and legal arguments about liability have dragged on for years.





Far left: Two boys collect water from a contaminated well at the Sunder Nagar colony in Bhopal, India, 2004. Pumps at contaminated wells are painted red by the government.

Left: A gas flare close to the community of Iwhrekan, Delta State, Nigeria, February 2008.

Below: Women attending a women's rights course organized by the League of Women's Lawyers, Tajikistan, July 2009.



BARRIERS TO ACCESSING JUSTICE

The costs of seeking justice are often beyond the means of many people, particularly for those living in poverty. Victims of pollution by oil companies in Nigeria are faced with lawyers' fees, travel expenses, court fees and potential costs for expert witnesses and scientific evidence in order to prove how the pollution had affected them.

In Brazil, the courts are often willing to require the state to provide health care to individuals who have been denied it. But collective litigation to address systemic government failings to ensure the right to health has been far less successful. It is primarily those who can afford a lawyer who secure justice.

Governments and national judiciaries across the world must make justice accessible to all by removing procedural and other barriers that make it difficult for victims, and those acting on their behalf, to access the judicial system. They should ensure that

remedies address systemic government failings. Governments should provide legal aid and waive court fees for those on low incomes. They should also ensure that people are aware of their rights.

Many victims of violations are unable to devote time and money to holding governments to account. Some struggle simply to survive. The burden on victims needs to be reduced by mandating national human rights institutions and regulatory bodies to proactively monitor government performance, investigate allegations of violations, impose sanctions and, where necessary and possible, assist victims to access the courts.



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WHY LEGAL ENFORCEMENT IS KEY

In some situations, governments severely undermine the enforcement of rights by failing to implement binding decisions by national and regional courts.

The Yakye Axa and Sawhoyamaya Indigenous Peoples in Paraguay live in temporary homes on a narrow strip of land beside a busy highway with severely limited access to clean water, food and medicines. Their ancestral land is in the hands of private owners. In 2005 and 2006, the Inter-American Court of Human Rights ruled that the lands should be returned to the Yakye Axa and Sawhoyamaya.

Key members of the Paraguayan government, encouraged by economically powerful landowners, have resisted implementing the judgements. In October 2009, the Paraguayan Senate voted against the return of Indigenous lands to the Yakye Axa. The government is now seeking to provide them with alternative lands rather than returning the lands to which they have a close cultural tie.

In the Czech Republic, Romani children are frequently excluded from mainstream education and placed in practical schools and classes intended for pupils with “mild mental disabilities” that teach a significantly reduced curriculum. In 2007, the European Court of Human Rights required the authorities to end racial segregation in schools and provide redress as far as possible.

The Czech government asked school directors and regional authorities to stop placing Romani children improperly in practical schools. However, these directions have not been properly implemented and the government has not put in place adequate legal or practical safeguards or special measures to enable Roma inclusion in mainstream education.

The lack of enforcement of such decisions perpetuates a culture of impunity for violations and may discourage attempts by other victims to seek justice. Activism by civil society at the national and grassroots level and public support for human rights

Above: The home of Belén Galarza, a member of the Sawhoyamaya, where she lives with 10 family members, beside the Pozo Colorado-Concepción highway, Santa Elisa, Paraguay, November 2008.

Right: Romani children attending a school intended for children with “mild mental disabilities” in Ostrava, Czech Republic, February 2009.

law and institutions is key to ensuring that governments are held accountable. Legal enforcement of human rights must go hand in hand with building public support for human rights for all, no matter who benefits. Those who accept violations of the rights of others are putting the future enjoyment of their own rights at risk.



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Above: School children learn about human rights in an initiative organized by the Mongolian Teachers' Trade Union in Ulaanbaatar, Mongolia.

Right: The Prestes Maia building in central São Paulo, Brazil. After being abandoned for over 12 years, it was occupied in 2003 by 468 families and became emblematic of the plight of the homeless. After being threatened with forced eviction for several years, the families had their eviction order suspended by São Paulo state's court of appeal while negotiations with the municipal government on alternative housing were successfully concluded.

Far right: Rasmata, a young woman in labour with her first child, lies in the maternity ward corridor, waiting to see a doctor, in Yalgado Hospital, Ouagadougou, Burkina Faso, 2009.



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INTERNATIONAL JUSTICE

In December 2008, the UN General Assembly adopted by consensus the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Protocol will enable people whose rights have been violated in their own country, and who have been denied an effective national remedy, to seek justice through the UN.

Complaints will be heard by the UN Committee on Economic, Social and Cultural Rights, an independent panel of international experts.

The Protocol will benefit not just those individuals who make complaints; its decisions are likely to influence national and regional courts around the world. Additionally, it will help to focus attention on failures by governments to enforce economic, social and cultural rights.

The Protocol is only legally binding in those countries which are party to it. It will come into force once 10 states have ratified it.



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The Protocol was opened for signature on 24 September 2009. By July 2010, 33 countries had signed it, thereby indicating their intention to ratify. Ecuador and Mongolia were the first nations to ratify.

Amnesty International is part of the international NGO Coalition for an Optional Protocol to the ICESCR, which successfully advocated for the UN to establish the Protocol, and continues to campaign for its ratification globally.

MILLENNIUM DEVELOPMENT GOALS

World leaders have made a commitment to meet the UN Millennium Development Goals (MDGs), which include targets to reduce poverty, ensure maternal health, increase access to water and sanitation and improve the lives of slum dwellers. But many people living in poverty, such as slum dwellers, are often excluded from MDG programmes. They cannot access the mechanisms that make governments accountable. Instead, they must rely on governments' goodwill.

When governments lack accountability, their stated aims regarding MDGs may fail.

In Burkina Faso, the government's policy to provide subsidized health care for pregnant women has been undermined by illegal charges imposed by hospitals. Women faced with such costs have limited options to lodge their complaints; accessible mechanisms to do so – either within the hospital, via a medical regulatory body, or through the courts – are lacking.

If governments are serious about ensuring human rights and reducing poverty, they must establish or strengthen national accountability mechanisms and join regional and international mechanisms, such as the Optional Protocol to the ICESCR.

RECOMMENDATIONS

Amnesty International calls on all governments to:

■ **Ensure economic, social and cultural rights are enforceable**

All countries must ratify the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol. Governments must also ensure these rights are enforceable in national law.

■ **Ensure effective and accessible remedies for violations**

Governments must remove obstacles to access to justice for victims of human rights violations, in particular those that exclude people living in poverty, and provide legal aid. They should ensure national human rights institutions and regulatory bodies have the capacity and mandate to investigate complaints of violations and monitor government performance to ensure compliance with human rights.

■ **Comply with judgements in full**

Governments must comply with human rights decisions by the judiciary and regional and international human rights mechanisms.

'*Make our rights law*' is one of the key themes in Amnesty International's Demand Dignity campaign, which aims to end the human rights violations that drive and deepen poverty.

To find out if your government has signed or ratified the Optional Protocol to the ICESCR and to obtain resources and campaigning materials on economic, social and cultural rights, visit our website: www.amnesty.org/demand-dignity



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Amnesty International is a global movement of 2.8 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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