

AMNESTY INTERNATIONAL

Public Statement

AI Index: IOR 41/002/2006 (Public)
News Service No: 033
7 February 2006

Amnesty International calls on governments to ensure access to justice for victims of all human rights violations

Opening Statement by Amnesty International to the 2006 session of the UN Commission on Human Rights open-ended working group to consider options regarding the elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)

Madam Chair,

This year will mark the thirtieth anniversary of the entry into force of the two International Covenants on Human Rights. It is also the thirtieth anniversary of the creation of the first universal mechanism allowing individual victims of **certain** human rights violations to seek international redress after they have been denied an effective domestic remedy.

But the UN system of redress for human rights violations, for all of its achievements, has been based on an arbitrary division of rights, and one that has repeatedly been rejected by the international community. Human rights *are* indivisible and the drawing of distinctions among classes of rights is incoherent. For example, what sense can there be in providing a remedy to a protester arbitrarily detained while exercising her freedom of expression to denounce the forced eviction of her community, without also addressing the underlying violation of housing rights?

Individuals of many states have, for some time, had the opportunity to denounce treaty-based violations of torture or other ill-treatment, denials of freedom of assembly and other civil and political rights. Yet they have had no similar avenue to complain where they are denied access to education; are forcibly evicted from their homes or land; are denied affordable essential medicines; where their only clean water supply is polluted without restriction; and where they face other violations of their economic, social and cultural rights.

The failure of the international community to commit seriously to the principle of equality of all rights has had a particularly telling impact on the poorest and most marginalised who are most frequently denied economic, social and cultural rights. It has also sent a debilitating, though plainly false, signal to states, communities and individuals that these rights are not capable of being enforced or upheld by judicial or quasi-judicial bodies. This conclusion is utterly unsustainable, as evidenced in the experience of those jurisdictions, regional mechanisms and other international bodies which already consider communications relating to economic, social and cultural rights.

Amnesty International is committed to achieving global accountability for violations of all human rights, including economic, social and cultural rights. An effective Optional Protocol has the potential to improve the lives of people around the world. It will not only enhance the understanding of economic social

and cultural rights, but will also strengthen recognition of these rights, encourage greater compliance with obligations and the creation of effective remedies at the national level. Most importantly, it will provide individuals and groups with access, as a last resort, to international remedies when their rights under the Covenant have been violated.

Among other benefits, an Optional Protocol to the ICESCR would:

Provide an international mechanism holding states accountable for their international obligations and prompting them to ensure effective remedies at the national level;

Allow for a more extensive and in-depth framework of enquiry in specific cases and build a body of case-law which can be used as a reference and guide;

Contribute to a culture of understanding that ESC rights are human rights, and as such people are entitled to claim them and seek effective remedies for their violation through judicial and quasi-judicial mechanisms.

Amnesty International welcomes the substantial progress made by the Working Group during last year's session. Both the African Group and the Group of Latin American and Caribbean states voiced their support for a comprehensive individual and collective complaints mechanism. At the end of the session a large majority of states expressed support for the adoption of an Optional Protocol, some calling for a swift move towards drafting such an instrument. The constructive manner in which many states debated procedural issues, such as "admissibility" and "*locus standi*", during the previous session serves as a positive model for the discussion of elements during the current session. AI calls on the members of the Working Group to build on that momentum, so that the Working Group can move, from its next session, to draft and submit an Optional Protocol within the five year deadline for standard setting mechanisms agreed by the Commission on Human Rights in 2000. (CHR Decision 109 of 2000.)

In collaboration with other members of the NGO Coalition for an Optional Protocol, AI calls on the members of the Working Group to recognise that:

An optional protocol to the ICESCR should clearly address **violations of all of the economic, social and cultural rights enshrined in the Covenant**. An optional protocol must encompass the full range of economic, social and cultural rights. The so-called "*a la carte*" approaches should be rejected, as they would defeat the universal nature of the victim's right to a remedy and would create an unfortunate precedent which may have knock on effects in reducing the access to justice at the national and even regional levels;

An optional protocol should extend to violations of obligations to **respect, protect and fulfil** rights. That is, it should recognize states' obligations to: a) refrain from action which interferes with the enjoyment of Covenant rights, or obstructs the ability to realise such rights; b) ensure that other actors refrain from action which directly or indirectly interferes with the enjoyment of Covenant rights; and c) take steps in line with the maximum available resources to achieve progressively the full realization of Covenant rights;

An optional protocol should provide for both a **complaint and an inquiry** procedure;

An optional protocol should allow **individuals and groups of individuals** who claim to be victims of violations, as well as their **representatives**, to submit a communication;

An optional protocol should provide for a monitoring body, upon receiving a communication, to call for **interim measures to avoid irreparable harm**;

An optional protocol should contain a provision to preclude states parties from making **reservations** to the protocol.

We look forward to contributing to fruitful discussion on the elements of an Optional Protocol, our position on which is outlined in the background paper submitted by the NGO Coalition. We call on States to engage constructively in these discussions, using the ultimate purpose of an Optional Protocol as their primary guide: the fulfilment of the right of victims of human rights violations to access a meaningful and

effective remedy.

THANK YOU, Madam Chair