

Claiming
Economic, social &
cultural rights
at the international level

Lilian Chenwi

2009

Legal disclaimer

The information contained in this booklet is for general information and guidance only and is not intended to address specific circumstances. As such, it should not be used as a substitute for seeking advice from a lawyer, an organisation involved in the adjudication of economic, social and cultural rights or the respective human rights body. While every attempt has been made to ensure that the information herein has been obtained from reliable sources and is accurate, the Community Law Centre or the author is not responsible for any errors or omissions, or for the consequences of using this booklet.

© May 2009 Community Law Centre (University of the Western Cape)

ISBN 9781868086955

For permission to make copies of this booklet, please contact:
Trudi Fortuin (tfortuin@uwc.ac.za) or Socio-Economic Rights Project (serp@uwc.ac.za)

Community Law Centre
University of the Western Cape
Private Bag X17
Bellville 7535
Tel: (+27) (21) 959 2950
Fax: (+27) (21) 959 2411

Author

Lilian Chenwi is the Co-ordinator of, and Senior Researcher in, the Socio-Economic Rights Project of the Community Law Centre.

External editor

Danwood Mzikenge Chirwa

The author would like to thank Christian Courtis for his assistance with contact details relating to the OHCHR and the meeting venue of the Working Groups on Communications and Situations of the Human Rights Council, and Heleba Siyambonga for his comments on an earlier draft.

Production

Design and layout: Page Arts cc

Photographs: Israel Abate Photography (cover, iv, 4, 9, 18, 20, 26, 31, 39, 44, 56); Page Arts cc (3, 6, 13, 29); Awie Badenhorst/Red Images (35); Louf/Red Images (53).

Print: Salty Print, Cape Town

This booklet was made possible with financial support from the Norwegian Embassy through the Norwegian Centre for Human Rights and with supplementary funding from the Ford Foundation. The views expressed in the booklet do not necessarily represent the official views of the Norwegian Embassy/Norwegian Centre for Human Rights, or the Ford Foundation.

Contents

1. Introduction	1
2. The International Covenant on Economic Social and Cultural Rights	5
3. Optional protocols and complaints mechanisms	7
4. The Optional Protocol to the ICESCR	10
5. Individual complaints under the OP-ICESCR	14
6. Inter-state complaints under the OP-ICESCR	21
7. The inquiry procedure under the OP-ICESCR	23
8. International assistance and cooperation	27
9. Other complaints mechanisms	30
 Annex I	 45
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights	
 Annex II	 55
Historical milestones of the Optional Protocol to the ICESCR process	
 Annex III	 58
General comments of the CESCR	



the right to housing

1. Introduction

Rights can result in real changes in people's lives if they are able to enforce them through domestic courts and international human rights monitoring bodies. Various international human rights treaties, national constitutions and legislation recognise the right to a remedy for violations of human rights. However, until recently there was no way for victims of economic, social and cultural (ESC) rights violations to lay complaints with the United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR).

The CESCR monitors how the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) is implemented. It was established by the UN Economic and Social Council (ECOSOC) through Resolution 1985/17 of 28 May 1985. It meets twice a year in Geneva and consists of 18 independent experts elected by state parties to the ICESCR. For more information see <http://www2.ohchr.org/english/bodies/cescr>

The CESCR monitors how ESC rights are implemented under the ICESCR. So far, it has mainly done this by examining the reports submitted to it by states (articles 16 and 17 of the ICESCR). After the CESCR examines each report, it informs the state of its concerns and recommendations in the form of 'concluding observations'.

The CESCR also sets out 'general comments'. These are its interpretation of the rights and the nature of the obligations they impose on states. See annex II for a list of the general comments the CESCR has adopted so far.

On 10 December 2008, the UN General Assembly adopted the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR). (See General Assembly resolution A/RES/63/117.) The Optional Protocol provides a way for

people to make complaints to the CDESCR about violations of their rights under the ICDESCR. This means that the job of the CDESCR will now include examining individual and inter-state complaints, as well as making inquiries into grave or systematic violations of socio-economic rights.

'Grave' refers to how severe the violation is. 'Systematic' refers to the size of the violation and how often it happens, or to the schemes or policies underlying it.

By making a complaint to the CDESCR, victims of ESC rights violations who could not get justice in their own countries may now look for help at the international level. International intervention is always a last resort. It can be used only when the national justice system has failed to give an appropriate remedy. It is therefore important to educate people about their socio-economic rights and the various national and international mechanisms through which they can claim them.

This booklet aims to raise awareness of the OP-ICDESCR and the various mechanisms it sets up.

Complaints are often referred to as 'communications' or sometimes as 'petitions' in the OP-ICDESCR. As 'communication' can have many other meanings, this booklet uses the term 'complaint'.

This booklet:

- briefly explains what the ICESCR is and the rights it guarantees;
- explains what an optional protocol is and the importance of having the OP-ICESCR;
- provides information on the complaints and inquiry procedures established under the OP-ICESCR;
- underlines the role of international assistance and cooperation in the realisation of ESC rights; and
- draws attention to other complaints mechanisms at the UN and African levels.





2. The International Covenant on Economic, Social and Cultural Rights

The ICESCR is one of the most important international instruments on ESC rights. South Africa has signed it but has not yet ratified it. However, the South African Constitution enshrines almost all the socio-economic rights protected in the ICESCR. Also, South African courts have referred to the ICESCR and its general comments when interpreting the Constitution (see, for example, *Government of the Republic of South Africa v Grootboom and Others* 2001 (1) SA 46 (CC), para 45).

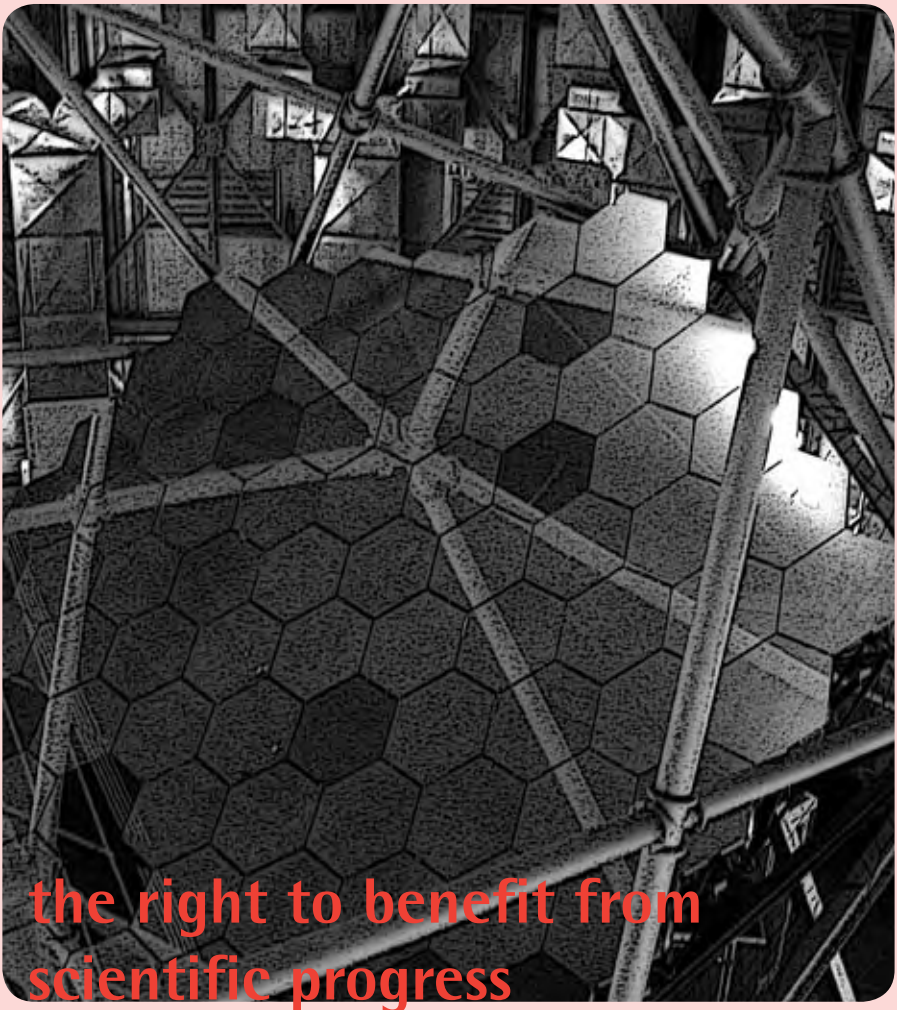
What are the rights in the ICESCR?

The rights protected in the ICESCR include:

- the right to work, including the right of everyone to earn a living through freely chosen work (article 6);
- the right to just and favourable conditions of work (article 7);
- the right to form trade unions and join a trade union of one's choice (article 8);
- the right to social security, including social insurance (article 9);
- the right to family protection (article 10);
- the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions (article 11);
- the right to enjoy the highest possible standard of physical and mental health (article 12);
- the right to education, including compulsory primary education (article 13); and
- the rights to take part in cultural life, to enjoy the benefits of scientific progress and its applications, and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production (article 15).

States must guarantee these rights without discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2(2)). They must also ensure the equal right of women and men to the enjoyment of these rights (article 3).

It is important to understand these rights because a person submitting a complaint has to show that a state party has violated them.



**the right to benefit from
scientific progress**

3. Optional protocols & complaints mechanisms

An optional protocol is an extra treaty which supplements an earlier one. It is usually used to close a loophole in the original treaty, or to deal with a new concern, or to make the enforcement mechanism of the original treaty stronger. As the name suggests, states can choose whether or not to ratify an optional protocol. This means that states are not automatically bound by them.

An Optional Protocol can choose from three main complaints procedures. The first is **individual complaints**, also known as communications. These are complaints made by individuals or groups, or by third parties on their behalf. The person making the complaint ('the author') must have experienced a breach of a right or rights protected under the treaty. The author must have first tried to get justice in his or her home country, without success, except if there were no ways to do so. The second procedure is **inter-state complaints**. These are complaints made by one state against another. The last procedure is **inquiries**. These allow a mandated body to investigate grave and systematic violations of human rights.

A complaints procedure gives the mandated body the power to receive and examine complaints about violations of human rights and to make decisions, including recommendations to the state concerned.

As there are many treaties that protect human rights, it is important for a victim of a human rights violation to know which treaty and monitoring body are the most relevant, accessible and capable of providing the best result.

When there has been a human rights violation, the first questions to ask include the following:

- Is there a specific victim or victims? If yes, how many?
- Who will bring the case?
- What is the nature of the violation?
- Which rights have been violated?
- Who has committed the violation?
- Who should be held responsible for the violation?
- What remedy should be sought?
- Which treaties are relevant to the violation(s)?
- Which monitoring bodies have the mandate to receive the complaint?
- Which monitoring body is the most accessible and likely to produce the desired result?
- Has the victim tried all possible ways to get justice in his or her home country?



the right to food

4. The Optional Protocol to the ICESCR

The OP-ICESCR was adopted by the UN General Assembly on 10 December 2008. It offers an opportunity to those whose ESC rights have been violated to get justice at the international level. It empowers the CESCR to receive complaints about violations of the rights protected under the ICESCR. The OP-ICESCR sets up a procedure for individual and inter-state complaints, as well as an inquiry procedure.

Points to note on the OP-ICESCR:

- It does not create new substantive rights.
- People bringing complaints have a choice between the three procedures: individual complaints, inter-state complaints and the inquiry procedure.
- Only states parties to the ICESCR can be parties to the OP-ICESCR.
- The OP-ICESCR is optional. States parties to the ICESCR are not automatically bound by the OP-ICESCR.
- States parties to the OP-ICESCR must raise awareness of the ICESCR, the OP-ICESCR and decisions of the CESCR (article 16).
- The OP-ICESCR recognises the important role of international cooperation and assistance in the realisation of ESC rights (article 14).

Is the OP-ICESCR in force?

The OP-ICESCR is not yet in force. It will come into force three months after the deposit of the 10th instrument of ratification. Three months after a state ratifies the OP-ICESCR after it has come into force, that state will be bound by the treaty.

The CESCR has not started receiving complaints or conducting inquiries. This will only begin once the OP-ICESCR comes into force.

What are the advantages of having the OP-ICESCR?

The OP-ICESCR will play an important role in defining and strengthening ESC rights and addressing systematic violations. Its benefits include:

- It reinforces the universality and indivisibility of all human rights, placing ESC rights on an equal footing with civil and political rights.
- It provides individuals and groups with the opportunity to get justice for violations of these rights at an international level.
- It will contribute to the development of international jurisprudence. This will, in turn, promote the development of domestic jurisprudence on ESC rights.
- It will enable the CESCR to study concrete cases and thus develop standards which are practical.
- It will encourage states to implement ESC rights.
- It places renewed emphasis on these rights nationally and internationally, thus increasing public awareness about them.

Also, the inquiry procedure means the CESCR can initiate an investigation into grave and systematic abuses of the ICESCR. This makes it possible to respond more quickly to these violations. This procedure will strengthen and complement the complaints procedure by focussing attention on situations in which individual or group complaints cannot be effective.

In addition, the OP-ICESCR will help in the struggle against poverty. As explained by the former UN High Commissioner for Human Rights, Louise Arbour:

The Protocol will provide an important platform to expose abuses that are often linked to poverty, discrimination and neglect, and that victims frequently endure in silence and helplessness. It will provide a way for individuals, who may otherwise be isolated and powerless, to make the international community aware of their situation. (UN Press release, 2008)

What was the process leading to the adoption of the OP-ICESCR?

The development of the OP-ICESCR went through a number of key stages (see annex II). The Open-Ended Working Group on an Optional Protocol to the ICESCR (OEWG) was established, which drafted the Optional Protocol.

Points to note on the OEWG sessions:

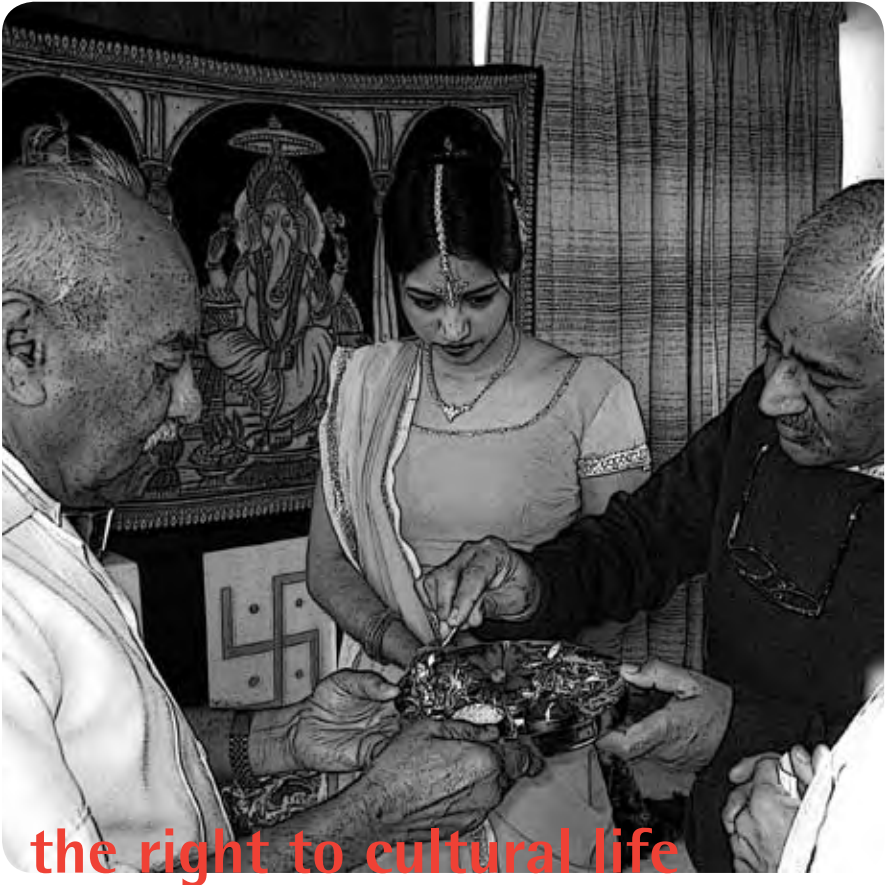
- Participants in the sessions of the OEWG included representatives of UN member states; UN organisations, bodies, programmes and specialised agencies; national human rights institutions; intergovernmental organisations and non-governmental organisations (NGOs). (The NGOs' campaign for the OP-ICESCR was facilitated mainly through the International NGO Coalition for an Optional Protocol to the ICESCR [the NGO Coalition]. For more information on the NGO Coalition and its work, see <http://www.opicescr-coalition.org>.) The Holy See – a non-UN member state – participated as an observer. A representative of the CESCR attended the meetings as a resource person.
- The OEWG was composed of state representatives. For more information on the OEWG and its reports, see <http://www2.ohchr.org/english/issues/escr/intro.htm>.

Does it conflict with other complaint procedures?

Within the human rights law framework, there is the need to address particular subjects of concern, to bring special protection to vulnerable groups and to respond to regional specificities. The OP-ICESCR mechanism will complement existing mechanisms. It will also reinforce the monitoring and enforcement of ESC rights. The fact that the CESCR can receive complaints about violations of ESC rights does not mean that other bodies that receive complaints about specific violations cannot still do so.

Did South Africa support the OP-ICESCR?

South Africa participated in the discussions and supported the OP-ICESCR. She firmly supported the justiciability of all ESC rights and the view that all the rights in the ICESCR should be subjected to the complaints procedure, allowing both individuals and groups of individuals to submit complaints. The views of South Africa are contained in the various reports of the OEWG, available on its website (<http://www2.ohchr.org/english/issues/escr/intro.htm>).



the right to cultural life

5. Individual complaints under the OP-ICESCR

Who can make a complaint?

Complaints, also known as communications, can be made by individuals or by a group of individuals. They may be acting on their own behalf or on behalf of another person or group of persons who are the actual victims of the violation (article 2). They must be under the jurisdiction of the state party being sued. The person making the complaint is called the 'author'. When a complaint is made on someone's behalf, the author must show that the victim's consent has been obtained. If not, then the author has to justify acting without the victim's consent (for example, if the victim was not able to give consent due to serious illness or detention).

To submit a complaint, the author must show that a state party has violated at least one of the ESC rights guaranteed in the ICESCR. If not, the CDESCR will not consider the complaint.

What does the CDESCR look for in deciding whether a complaint is admissible?

Article 3 of the OP-ICESCR lists the following requirements for a complaint to be admissible:

- The author must first try to obtain a domestic remedy. This means he or she must try all available judicial and administrative remedies at the national level, in his or her home country. The application of this requirement normally depends on the circumstances of each case. (An administrative remedy is available through government ministries or departments, agencies and other bodies that are not formal courts. An example is an appeal to the Department of Health about the denial of access to health care. A judicial remedy is provided by a court, judge, magistrate, or other judicial authority. An example is a mandatory injunction or a declaration that a law is invalid.). However, if it is not

possible to obtain a remedy within a reasonable time (i.e. if it is unreasonably prolonged), the requirement to exhaust all available domestic remedies falls away (is 'waived').

- The complaint should be made within a year after the author has tried all domestic remedies. However, an exemption is possible if the author can show that it was not possible to submit the complaint within this period. (For example, if the author experienced delays in getting key documents relevant to the case or was seriously ill or detained and therefore could not submit the case in time).
- The facts of the case (the violation) must have taken place after the OP-ICESCR came into force for the state party concerned. The CESCR will not consider complaints that arose before then unless the violation(s) continued after the OP-ICESCR came into force.
- If a violation has already been examined by the CESCR, or has at the same time been made to another international investigation or settlement procedure, it will not be considered by the OP-ICESCR.
- The complaint should fit the provisions of the ICESCR.
- The complaint should be backed up by facts and may not just be based only on mass media reports.
- The complaint must not be an abuse of the right to make a complaint (the author should not have malicious intent). (The UN Human Rights Committee, for instance, found that a complaint submitted 15 years after domestic remedies were tried and failed, but with no reasonable explanation justifying the delay, was an abuse of the right to make a complaint [*Fillacier v France*, Communication 1434/2005, UN doc. CCPR/C/86/D/1434/2005, para 4.3]).
- The complaint must be in writing.
- It should not be made anonymously.

If these requirements are met, can the CESCR still decide not to consider the complaint?

The CESCR can still decide not to consider a complaint if the author has not suffered a 'clear disadvantage' (article 4). This is so that the CESCR does not deal with complaints of minor importance. However, even if the author has not suffered a clear disadvantage,

the CESCR can still proceed with the complaint if it believes that it raises a serious issue of general importance.

Can the CESCR give interim relief?

In situations where there is a possibility of the victim suffering irreparable harm before the CESCR's decision has been reached, the CESCR can ask the state party concerned to adopt interim measures to prevent that harm from happening (article 5). This is done in 'exceptional circumstances', and the state must consider the request urgently.

A request for interim measures does not mean that the CESCR has decided that a complaint is either admissible, or that it has merit (article 5(2)).

Is there a possibility of a friendly settlement?

The CESCR must try to resolve complaints through conciliation and friendly settlement (article 7). If the parties reach a friendly settlement, it closes the complaint under the OP-ICESCR. But if they do not, the CESCR will resolve the complaint based on its merits.

The friendly settlement option is not mandatory. The parties might prefer that the CESCR examines the complaint.

What documents can the CESCR consider when examining complaints?

Generally, the CESCR examines complaints based on all the documents given to it, as long as these documents are available to all the parties to the case (article 8(1)). The CESCR may also consider, where appropriate, documents from:

- other UN bodies, specialised agencies, funds, programmes and mechanisms;
- other international organisations;
- regional human rights systems; and
- observations or comments by the state party concerned (article 8(3)).

Are complaints examined in public or private?

Complaints are examined in private, in closed meetings (article 8(2)).

Oral hearings

The OP-ICESCR does not specifically provide for oral (verbal) hearings when examining individual complaints. Some regional human rights mechanisms allow oral hearings. The African Commission on Human and Peoples' Rights is an example. The CDESCR may decide to follow this option through its rules of procedure. The inter-state complaints procedure, on the other hand, provides for both oral and written submissions.

What standard will the CDESCR apply when deciding whether a state has violated the ICESCR?

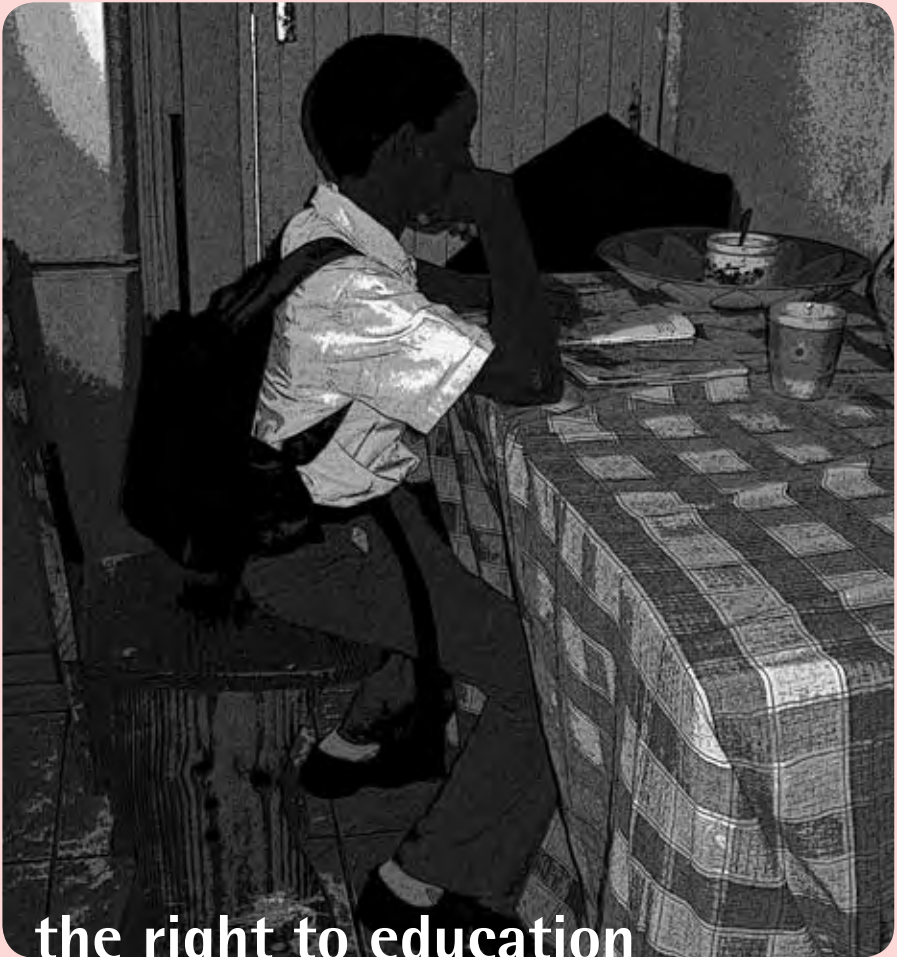
The CDESCR will consider the 'reasonableness' of the steps taken by the state party in accordance with its obligations (article 8(4)). The OP-ICESCR recognises that states have discretion to decide on what measures they will take in implementing socio-economic rights.

What happens if the CDESCR finds there is a violation?

If it finds that there is a violation, the CDESCR will state its views on remedies and make recommendations to the state concerned. 'Views' normally focus on providing relief for the individual. They also identify the violations and the cause(s) of the violations.

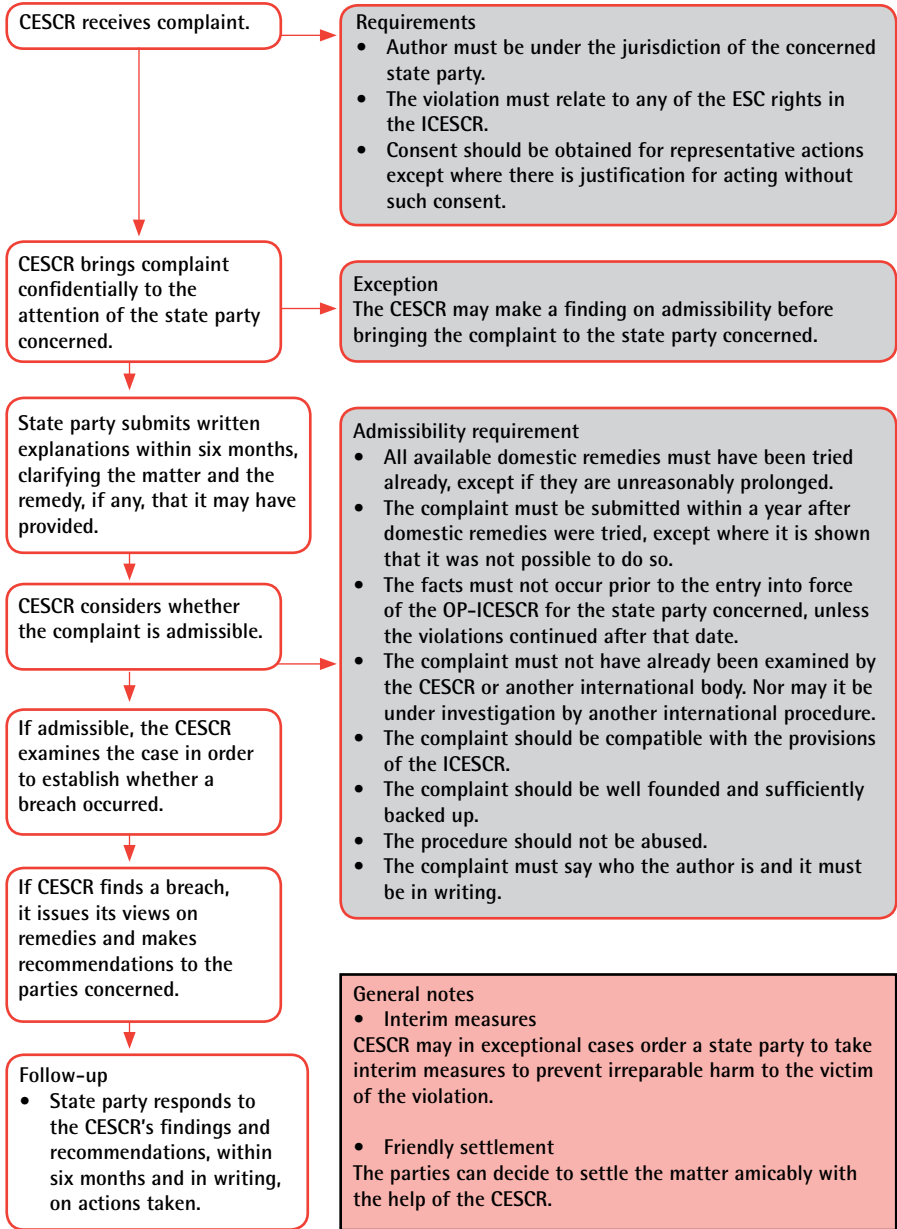
Is the CESCR able to check on compliance by the state with its views and recommendations?

The state must consider the views and recommendations, take appropriate actions, and report back (in writing) to the CESCR within six months (article 9(2)). The CESCR can also ask for further information from the state when considering its periodic state report submitted in terms of article 16 and 17 of the ICESCR.



the right to education

The individual complaint procedure at a glance





the right to food

6. Inter-state complaints under the OP-ICESCR

The inter-state complaint procedure is a mechanism for a state party to bring a complaint against another state party that is not fulfilling its obligations under the ICESCR (article 10).

Who is bound by this procedure?

Inter-state complaints can be made against states parties which have made a declaration saying that they accept that the CESCER can receive and consider such complaints (article 10(1)).

Can a state decide not to be bound by the inter-state complaints procedure any longer?

A state can say at any time that it no longer agrees to be bound by the inter-state complaints procedure. It does so by notifying the UN Secretary-General (article 10(2)). However, if it does so, complaints already submitted to the CESCER against that state will not be affected (article 10(2)). The CESCER can still decide on those complaints.

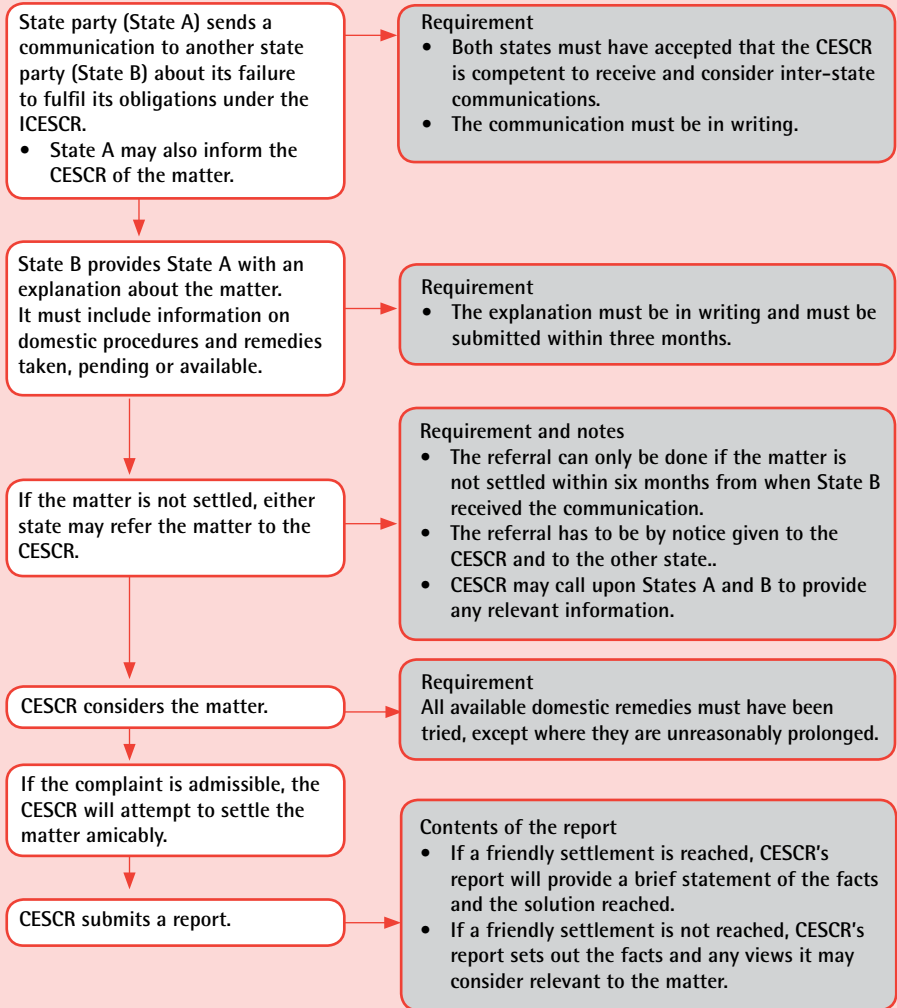
How does the inter-state procedure work?

If a state party (the complainant, State A) believes that a second state party (State B) is not fulfilling its obligations under the ICESCR, it may first bring the matter to the attention of State B through a written communication. It may also inform the CESCER about this (article 10(1)). State B then has three months to submit a written explanation to State A. The explanation should include information about the relevant domestic procedures and remedies that have been taken, that are pending or that are available. If both states are not satisfied, either of them has the right to complain directly to the CESCER.

Must all domestic remedies be tried first?

Yes. The CESCER will only consider the matter if all available domestic remedies have been tried.

The inter-state complaint procedure at a glance



7. The inquiry procedure under the OP-ICESCR

The inquiry procedure is a way for the CESCR to respond urgently to serious violations of ESC rights. It is useful where individuals or groups are unable to make a complaint for practical or other reasons, such as fear of reprisal. The inquiry procedure is unique because:

- It does not need a formal submission of a complaint – it is up to the CESCR to initiate the inquiry.
- The inquiry may include a visit to the state party (subject to its consent), where necessary.
- It is applicable only in cases of 'grave or systematic violations'.

Who is the inquiry procedure applicable to?

Like the inter-state procedure, the inquiry procedure is applicable to states parties which have accepted that the CESCR is competent to conduct inquiries (article 12(1)).

Can a state later withdraw this acceptance?

A state party may at any time decide that it no longer accepts the CESCR's competence to conduct inquiries. It does so by notifying the UN Secretary General (article 11(8)). The OP-ICESCR is not clear on what effect this will have. However, it is unlikely that it would affect pending inquiries.

How does the inquiry procedure work?

The CESCR can initiate the inquiry procedure based on 'reliable information' revealing grave or systematic violations of any of the ESC rights in the ICESCR by a state party (article 11(2)). The CESCR will then invite the state party to cooperate in the inquiry and to submit its observations (article 11(3)). After this, the CESCR will say which one or more

of its members will conduct an inquiry and write a report. The inquiry may include a visit to the state party concerned, if it agrees.

What happens after the inquiry is completed?

The CESCR will then examine the findings of the inquiry and send them, together with any comments and recommendations, to the state party concerned (article 11(5)). The state party can then submit its observations, within six months of receiving the findings, (article 11(6)).

Is a summary of the inquiry proceedings included in the annual report of the CESCR?

After an inquiry, the CESCR may, after consulting the state party concerned, include a summary account of the results of the inquiry in its annual report (article 11(7)).

Can the CESCR enforce its recommendations?

As with the individual complaint procedure, the inquiry procedure has a follow-up mechanism. The CESCR may invite the state party to provide details of what measures it has taken in response to the enquiry. It would do this in its periodic state report to the CESCR (article 12(1)). Also, at the end of six months from the time the findings were handed over, the CESCR may invite the state party to inform it of what measures it has taken in response (article 12(2)).

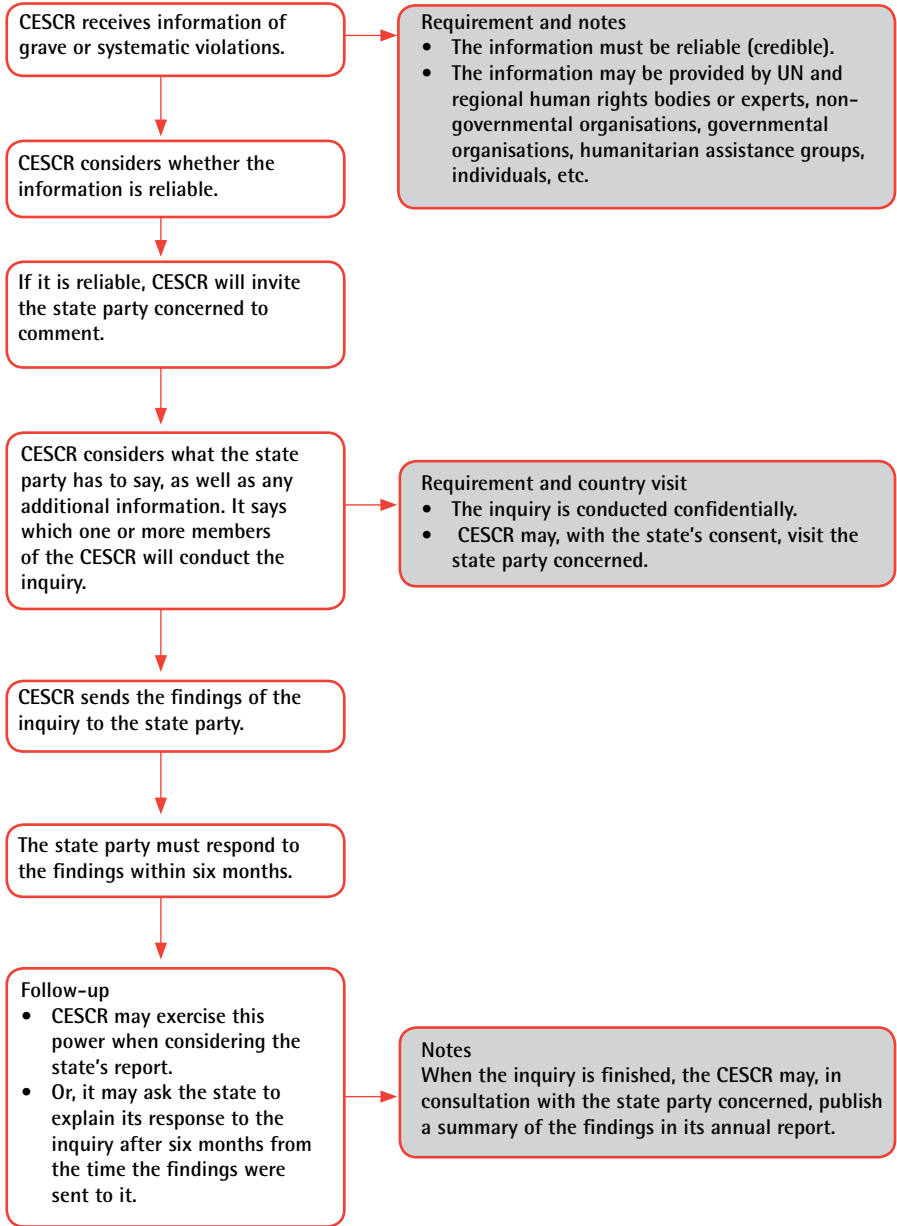
Is the inquiry procedure private or public?

The inquiry procedure is confidential (article 12(4)). All meetings of the CESCR dealing with the inquiry procedure will be closed to the public.

Is the state party required to cooperate at all stages?

Yes. The state party must cooperate at all stages of the inquiry (article 12(4)).

The inquiry procedure at a glance





the right to social security

8. International assistance and cooperation

International assistance and cooperation is essential to the realisation of ESC rights and the implementation of the ICESCR.

Article 2(1) of the ICESCR says that states parties must take steps to achieve progressively the full realisation of the rights in the ICESCR. They must do this individually and through international assistance and co-operation, especially economic and technical cooperation. They must do so to the maximum of their available resources.

Furthermore, the UN ECOSOC must advise other UN organs and specialised agencies of any international measures which may help to implement the ICESCR (article 22). International help and cooperation may take the form of technical assistance and donor aid, cooperation in resolving common problems, and fair trade (article 23 of the ICESCR).

International assistance and cooperation are based on the free will of states.

What does the CESCR say about international cooperation and assistance?

The CESCR has highlighted the importance of international development cooperation in the activities of the UN and its agencies (General Comment 2, 1990, UN doc. E/1990/23, para 3). It has also encouraged states parties to identify areas where they might have particular needs for international assistance and cooperation (General Comment 2, para 10).

Article 2(1) of the ICESCR defines the obligations of states. It says that if all states that are capable of taking part in an active programme of international assistance and cooperation do not do so, it will not be possible to realise ESC rights to the fullest extent in many countries (General Comment 3, 1990, UN doc. E/1991/23, para 14).

What does the OP-ICESCR say about international cooperation and assistance?

If there are complaints and inquiries that suggest that a state needs technical advice or assistance, the CESCR may send its views or recommendations to UN specialised agencies, funds, programmes and other competent bodies (article 14(1)). The state must give its consent to this and its observations and suggestions may be included in the CESCR's submission.

When decisions are made about whether international measures are needed to help states parties to implement the rights in the ICESCR, the CESCR may also inform these bodies about any matter that arises out of complaints under the OP-ICESCR that may be relevant (article 14(2)).

The OP-ICESCR says that a trust fund must be established to facilitate international assistance and cooperation. It will be used to provide expert and technical help to states parties on how to implement the rights in the ICESCR (article 14(3)). The trust fund will be established in terms of the relevant rules and procedures of the UN General Assembly and it will be administered in terms of the financial regulations of the UN.

Points to note on the trust fund:

- States parties are the direct beneficiaries of the trust fund.
- Individuals are indirect beneficiaries, as they will benefit from the improved implementation of ESC rights by states.
- Other treaties which have provided for the establishment of a fund include the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002 (OP-CAT) (article 26 of OP-CAT); and the Rome Statute of the International Criminal Court, 1998 (article 79 of the Rome Statute).



**the right to benefit from
scientific progress**

9. Other complaints mechanisms

What other treaty-based complaints procedures are there at the UN level?

Human Rights Committee

Optional Protocol and Covenant: First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), 1966.

Rights protected: Civil and political rights.

Body empowered: Human Rights Committee.

To do what: 1. Receive and consider individual complaints about violations of the rights under the ICCPR. 2. Start 'urgent action' processes in cases of imminent danger. 3. Receive inter-state complaints (article 41).

South Africa: Ratified the ICCPR on 10 December 1998 and the First Optional Protocol on 28 August 2002.

The Human Rights Committee has protected socio-economic rights through civil and political rights. For example, it has protected the right to social security based on equality (see *Young v Australia*, Communication 941/2000, UN doc. CCPR/C/78/D/941/2000; *Zwaan-de Vries v The Netherlands*, Communication 182/1984, UN doc. Supp. No. 40 (A/42/40)).

The Human Rights Committee monitors the implementation of the ICCPR. It meets three times a year in Geneva and New York and consists of 18 independent experts elected by states parties to the ICCPR. For more information see <http://www2.ohchr.org/english/bodies/hrc>

Committee on the Elimination of Racial Discrimination

Convention: Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1979.

Rights protected: Prohibits racial discrimination. CERD recognises ESC rights such as trade union rights, rights to work, housing, health and social security, education and equal participation in cultural activities (article 5(e)).

Body empowered: Committee on the Elimination of Racial Discrimination (CERD Committee).

To do what: 1. Receive and consider individual and inter-state complaints. 2. Initiate 'urgent action' processes to respond to problems that need immediate attention, to prevent or limit the scale or number of serious violations of the CERD. 3. Initiate 'early warning' processes, aimed at preventing existing situations escalating into conflicts.

Declaration: For a state party to be bound by the individual complaints procedure, it must make a declaration under article 14 of the CERD recognising the competence of the CERD Committee.

South Africa: Ratified the CERD on 10 December 1998. Has recognised the competence of the CERD Committee to receive and consider individual complaints.

The CERD Committee monitors the implementation of the CERD. It meets twice a year in Geneva and consists of 18 independent experts elected by state parties to the CERD. For more information see <http://www2.ohchr.org/english/bodies/cerd>



Committee on the Elimination of Discrimination against Women

Optional Protocol and Covention: Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1999.

Rights protected: Women's rights. CEDAW recognises ESC rights such as the right to adequate health care facilities, the right to benefit from social security programmes, the right to obtain all types of training and education and the right to enjoy adequate living conditions (article 14(2)).

Body empowered: Committee on the Elimination of Discrimination against Women (CEDAW Committee).

To do what: 1. Receive and consider individual complaints about violations of women's rights in CEDAW. 2. Start inquiries into situations of grave and systematic violations of women's rights.

South Africa: Ratified the CEDAW on 15 December 1995 and its Optional Protocol on 18 October 2005.

The CEDAW Committee monitors the implementation of the CEDAW. It meets three times a year in Geneva (meetings have also been held in New York), and consists of 23 independent experts on women's rights elected by state parties to the CEDAW.

For more information see <http://www2.ohchr.org/english/bodies/cedaw>

Committee against Torture

Convention: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984

Rights protected: The CAT prohibits all forms of torture and cruel, inhuman and degrading treatment or punishment.

Body empowered: Committee against Torture (CAT Committee)

To do what: 1. Receive and consider individual and inter-state complaints. 2. Conduct inquiries into situations of systematic practices of torture.

Declaration: A state party must make a declaration under article 22 of the CAT recognising the competence of the CAT Committee.

South Africa: Ratified the CAT on 10 December 1998 and has recognised the competence of the CAT Committee to receive and consider individual complaints.

The CAT Committee monitors the implementation of the CAT. It meets two times a year in Geneva and consists of 10 independent experts elected by state parties to CAT.

For more information see <http://www2.ohchr.org/english/bodies/cat>

Committee on the Protection of Migrant Workers

Convention: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), 1990.

Rights protected: Rights of migrant workers. The ICRMW recognises ESC rights such as the right to not be arbitrarily deprived of property (article 15), to equal enjoyment of social security (article 27), to emergency medical care (article 28), of access to education (article 30) and to cultural identity (article 31).

Body empowered: Committee on the Protection of Migrant Workers (CMW).

To do what: 1. Receive and consider individual and inter-state complaints.

Declaration: The individual and interstate complaints procedures shall come into force when the number of states parties that have made a declaration recognising the competence of the CMW in this regard reaches 10.

South Africa: Has not yet signed or ratified the ICRMW.

The CMW monitors the implementation of the ICRMW. It meets once a year in Geneva and currently consists of 10 independent experts elected by state parties to the ICRMW. The composition of the CMW will be increased to 14 members once the Convention gains 41 state parties. For more information see <http://www2.ohchr.org/english/bodies/cmw>

Committee on the Rights of Persons with Disabilities

Optional Protocol and Convention: Optional Protocol to the Convention on the Rights of Persons with Disabilities (Disabilities Convention), 2006.

Rights protected: Rights of persons with disabilities. The Disabilities Convention recognises ESC rights such as the right to education without discrimination (article 24), to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability (article 25), to work (article 27), to enjoy adequate living conditions (article 28) and the right to participate in cultural life (article 30).

Body empowered: Committee on the Rights of Persons with Disabilities (CRPD)

To do what: 1. Receive and consider individual complaints. 2. Examine situations of grave or systematic violations of the rights in the Convention.

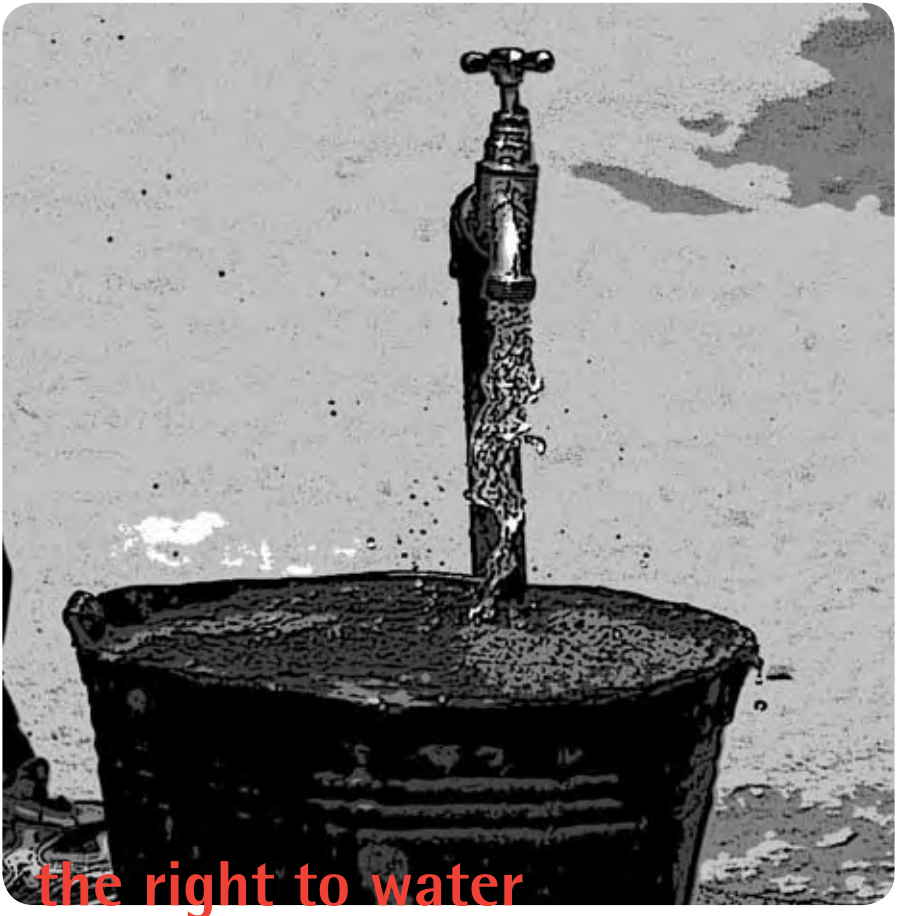
Declaration: The individual and interstate complaints procedures shall come into force when the number of states parties that have made a declaration recognising the competence of the CMW in this regard reaches 10.

South Africa: South Africa ratified both the Disabilities Convention and its Optional Protocol on 30 November 2007.

The CRPD monitors the implementation of the Disabilities Convention. It meets twice a year in Geneva and currently consists of 12 independent experts elected by state parties to the Disabilities Convention. The composition of the CRPD will be increased to 18 members once the Convention secures 80 state parties.

For more information see

<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>



How do special procedures work?

Special procedures were created by the UN Human Rights Commission (now superseded by the Human Rights Council). These procedures bind all members of the UN. A special procedure can be an individual (such as a special rapporteur or independent expert) or a group of individuals (such as a working group).

The mandate of a special procedure is normally set out in the resolution establishing it. In general, special procedures report on serious human rights violations so that the Human Rights Council or the UN General Assembly can take appropriate action. They gather information on the implementation of rights, identify patterns of violations and propose methods of preventing violations or improving the realisation of the relevant rights. They may also visit countries where there are concerns about human rights.

Some special procedures can receive complaints about violations of human rights that fall within their mandates. The special procedure has the discretion of whether or not to intervene. The decision to intervene also depends on a number of things, including the reliability of the source, the credibility of the information received, the details provided and the scope of the mandate.

The criteria and the procedure involved in responding to an individual complaint vary, depending on the special procedure. It is therefore important to follow the specific requirements of each special procedure.

For more information see

<http://www2.ohchr.org/english/bodies/chr/special/communications.htm>

The process involves sending a letter to the state concerned asking for information and comments on the allegation and, where necessary, asking the state to take preventive or investigatory action. A complaint must:

- identify the alleged victims;
- identify the alleged perpetrators of the violation;
- identify the persons or organisations submitting the complaint, unless there is a reason for keeping it confidential;
- state the date and place of the incident; and
- describe in detail the circumstances of the incident in which the alleged violation occurred.

The above is the minimum information that must be provided.

If you would like to report violations of human rights to a special procedure, you may use questionnaire available at <http://www2.ohchr.org/english/bodies/chr/special/questionnaires.htm>

How does the complaints mechanism of the Human Rights Council work?

In 2007, the Human Rights Council adopted a resolution to establish a complaints procedure 'to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances' (resolution 5/1 on institution-building of the United Nations Human Rights Council, UN doc. A/HRC/Res/5/1, para 85). This resolution effectively endorses what previously existed as the 1235 and 1503 procedures of the UN Commission on Human Rights.

This procedure is confidential, in order to enhance cooperation with the state concerned (resolution 5/1, para 86).

A complaint will be found admissible if:

- it is not politically motivated and it is consistent with the UN Charter, the Universal Declaration of Human Rights and other applicable instruments in the field of human rights law;
- it discloses alleged violations of human rights, including the rights which are alleged to be violated;
- its language is not abusive. If it is abusive, the complaint must be able to survive after deleting the offensive parts;
- it is submitted by victims of violations of human rights or by any person, or group of persons acting on their behalf or in good faith in accordance with the principles of human rights;
- it is not exclusively based on reports in the mass media;
- it has not already been dealt with by another special procedure or international or regional body; and
- all domestic remedies have already been tried, unless it appears that such remedies would be ineffective or unreasonably prolonged (resolution 5/1, para 87).

The identity of a complainant will not be disclosed to the state concerned if a request is made for confidentiality.

The complaints are examined by two distinct working groups – the Working Group on Communications (WGC) and the Working Group on Situations (WGS). They must report to the Human Rights Council about any findings of consistent patterns of gross violations of human rights

The WGC decides on the admissibility and merits of a complaint, including whether a consistent pattern of gross violations of human rights and fundamental freedoms is shown. If the complaint is admissible, it is sent to the state concerned for its views. All admissible complaints and recommendations are then sent to the WGS.

The WGC meets twice a year in Geneva and is composed of five independent experts.

The WGS examines the complaints sent to it by the WGC, including the replies of the state concerned. It then presents the Human Rights Council with a report and makes recommendations on what must be done. The WGS may also dismiss the complaint.

The WGS meets twice a year in Geneva and is composed of five members.

The Human Rights Council has the final say on what must be done about each situation brought to its attention.

For detailed information on the procedure, see resolution 5/1, available at <http://www2.ohchr.org/english/bodies/chr/complaints.htm>



What African treaty-based complaints procedures are there?

African Court on Human and Peoples' Rights

Protocol: Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol), 1998.

Body established: African Court on Human and Peoples' Rights (African Court).

To do what: Consider cases and disputes about the interpretation and application of the African Charter on Human and Peoples Rights, 1981 (African Charter), the African Court Protocol and any other relevant human rights instrument ratified by the states concerned (article 3(1) of the African Court Protocol).

Those who can submit cases (article 5(1)):

- the African Commission on Human and Peoples' Rights (African Commission);
- any state party that lodged a complaint to the African Commission;
- any state party against which a complaint was lodged at the African Commission;
- a state party whose citizen is a victim of human rights violation; and
- African intergovernmental organisations.

Any state party that has an interest in a case may request permission from the African Court to join.

Individuals, and NGOs that have observer status with the African Commission, can submit cases directly to the African Court. The state party concerned must have made a declaration recognising the competence of the Court to receive cases from individuals and NGOs with observer status (articles 5(3) and 34(6) of the African Court Protocol).

The African Court complements the complaint procedure of the African Commission. It sits in Arusha and is composed of 11 judges elected at the Eighth Ordinary Session of the Executive Council of the African Union in 2006. There are plans to merge the African Court with the African Court of Justice. The African Court of justice is intended to be the principal judicial organ of the African Union (see article 2(2) of the Protocol of the Court of Justice of the African Union, 2003).

The African Court Protocol and the Protocol of the Court of Justice of the African Union are available at <http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm>

For additional information see <http://www.africancourtcoalition.org>

African Commission on Human and Peoples' Rights

Charter: African Charter on Human and Peoples Rights, 1981 (African Charter).

Body empowered: African Commission.

To do what: 1. Receive and consider individual and inter-state complaints. 2. Undertake visits in cases of serious human rights violations.

Rights protected: Civil and political, ESC and peoples' rights. The African Charter recognises ESC rights such as the right to property (article 14), to work (article 15), to enjoy the best attainable state of physical and mental health (article 16), to education (article 17) and to economic, social and cultural development (article 22). The African Commission found that the right to food is implied by article 4 (right to life), article 16 and article 22. It found that the right to housing, including a prohibition on unjust evictions, is implied by article 14, article 16 and article 18(1) (protection of the family) [see *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria*, Communication 155/96, (2001) *African Human Rights Law Reports* 60 (ACHPR 2001)].

South Africa: Ratified the African Charter on 9 July 1996.

The African Commission monitors the implementation of the African Charter. Its secretariat is in Banjul, but it meets twice a year in different countries. It is composed of 11 independent experts elected by the Assembly of Heads of State and Government of the African Union. For more information see <http://www.achpr.org>

African Committee of Experts on the Rights and Welfare of the Child

Charter: African Charter on the Rights and Welfare of the Child (African Children's Charter), 1990.

Body empowered: African Committee of Experts on the Rights and Welfare of the Child (ACRWC).

To do what: 1. Receive and consider individual complaints.

Rights protected: Children's rights. The African Children's Charter recognises ESC rights such as the right to education (article 11), to participate freely in cultural life (article 12), to enjoy the best attainable state of physical, mental and spiritual health (article 14), and to nutrition and housing (article 20).

South Africa: Ratified the African Children's Charter on 21 January 2000.

The ACRWC monitors the implementation of the African Children's Charter. It usually meets twice a year in Addis Ababa. It is composed of 11 independent experts elected by the Assembly of Heads of State and Government of the African Union. For more information see <http://www.africa-union.org/child/home.htm>

Contact details

African Commission on Human and Peoples' Rights	Office of the High Commissioner for Human Rights*
P. O. Box 673	Petitions Team, OHCHR-UNOG
Banjul, The Gambia	Palais des Nations
Fax: +220 4390 764	8-14 Avenue de la Paix
E-mail: achpr@achpr.org	1211 Geneva 10, Switzerland
African Committee of Experts on the Rights and Welfare of the Child	Fax:+41 22 917 90 22 (particularly for urgent matters)
The Director, Department of Social Affairs	E-mail: tb-petitions@ohchr.org
AU Commission	Complaints mechanisms of special procedures**
African Union Headquarters	OHCHR-UNOG
P. O. Box 3243, Addis Ababa, Ethiopia	Palais des Nations
Fax: +251 1 53 57 16	8-14 Avenue de la Paix
E-mail: dsocial@africa-union.org	1211 Geneva 10, Switzerland
Human Rights Council's complaints procedure	Fax: + 41 22 917 90 06
Human Rights Council and Treaties Division	E-mail: urgent-action@ohchr.org
Complaint Procedure	United Nations Information Office Pretoria
OHCHR-UNOG	P. O. Box 12677
Palais des Nations	The Tramshed
8-14 Avenue de la Paix	0126 Pretoria
1211 Geneva 10, Switzerland	Fax: 012 354 8501
Fax: +41 22 917 90 11	Email: unic@un.org.za
E-mail: CP@ohchr.org	
Notes	
*The Petitions Unit handles all the petitions submitted to any of the treaty bodies. Say which treaty body the complaint is addressed to.	**Say which special procedure mechanism the information is addressed to in the subject line of the e-mail or fax, or on the cover of the envelope.



the right to education

Annex I

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted on 10 December 2008

Source:

<http://www2.ohchr.org/english/bodies/cescr/docs/A-RES-63-117.pdf>

Preamble

The States Parties to the present Protocol,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Noting that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that the Universal Declaration of Human Rights and the International Covenants on Human Rights recognize that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy civil, cultural, economic, political and social rights,

Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms,

Recalling that each State Party to the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the Covenant) undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures,

Considering that, in order further to achieve the purposes of the Covenant and the implementation of its provisions, it would be appropriate to enable the Committee on Economic, Social and Cultural Rights (hereinafter referred to as the Committee) to carry out the functions provided for in the present Protocol,

Have agreed as follows:

Article 1

Competence of the Committee to receive and consider communications

1. A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications as provided for by the provisions of the present Protocol.
2. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2

Communications

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 3

Admissibility

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted. This shall not be the rule where the application of such remedies is unreasonably prolonged.
2. The Committee shall declare a communication inadmissible when:
 - (a) It is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit;
 - (b) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date;
 - (c) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
 - (d) It is incompatible with the provisions of the Covenant;
 - (e) It is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media;
 - (f) It is an abuse of the right to submit a communication; or when
 - (g) It is anonymous or not in writing.

Article 4

Communications not revealing a clear disadvantage

The Committee may, if necessary, decline to consider a communication where it does not reveal that the author has suffered a clear disadvantage, unless the Committee considers that the communication raises a serious issue of general importance.

Article 5

Interim measures

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations.
2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 6

Transmission of the communication

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.
2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

Article 7

Friendly settlement

1. The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter on the basis of the respect for the obligations set forth in the Covenant.
2. An agreement on a friendly settlement closes consideration of the communication under the present Protocol.

Article 8

Examination of communications

1. The Committee shall examine communications received under article 2 of the present Protocol in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned.
2. The Committee shall hold closed meetings when examining communications under the present Protocol.
3. When examining a communication under the present Protocol, the Committee may consult, as appropriate, relevant documentation emanating from other United Nations bodies, specialized agencies, funds, programmes and mechanisms, and other international organizations, including from regional human rights systems, and any observations or comments by the State Party concerned.
4. When examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the

Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant.

Article 9

Follow-up to the views of the Committee

1. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.
2. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.
3. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under articles 16 and 17 of the Covenant.

Article 10

Inter-state communications

1. A State Party to the present Protocol may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant. Communications under the present article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under the present article shall be dealt with in accordance with the following procedure:
 - (a) If a State Party to the present Protocol considers that another State Party is not fulfilling its obligations under the Covenant, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;
 - (b) If the matter is not settled to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
 - (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter. This shall not be the rule where the application of the remedies is unreasonably prolonged;
 - (d) Subject to the provisions of subparagraph (c) of the present paragraph the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the Covenant;

- (e) The Committee shall hold closed meetings when examining communications under the present article;
- (f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
- (g) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;
- (h) The Committee shall, with all due expediency after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:
 - (i) If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
 - (ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned.

2. A declaration under paragraph 1 of the present article shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 11

Inquiry procedure

1. A State Party to the present Protocol may at any time declare that it recognizes the competence of the Committee provided for under the present article.
2. If the Committee receives reliable information indicating grave or systematic violations by a State Party of any of the economic, social and cultural rights set forth in the Covenant, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.
3. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.
4. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

5. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.
6. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.
7. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2 of the present article, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report provided for in article 15 of the present Protocol.
8. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

Article 12

Follow-up to the inquiry procedure

1. The Committee may invite the State Party concerned to include in its report under articles 16 and 17 of the Covenant details of any measures taken in response to an inquiry conducted under article 11 of the present Protocol.
2. The Committee may, if necessary, after the end of the period of six months referred to in article 11, paragraph 6, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 13

Protection measures

A State Party shall take all appropriate measures to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

Article 14

International assistance and cooperation

1. The Committee shall transmit, as it may consider appropriate, and with the consent of the State Party concerned, to United Nations specialized agencies, funds and programmes and other competent bodies, its views or recommendations concerning communications and inquiries that indicate a need for technical advice or assistance, along with the State Party's observations and suggestions, if any, on these views or recommendations.
2. The Committee may also bring to the attention of such bodies, with the consent of the State Party concerned, any matter arising out of communications considered under the present Protocol which may assist them in deciding, each within its field of competence, on the advisability of international measures likely to contribute to assisting States Parties in achieving progress in implementation of the rights recognized in the Covenant.
3. A trust fund shall be established in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, with a view to providing expert and technical assistance to States Parties, with the consent of the State Party concerned, for the enhanced implementation of the rights

contained in the Covenant, thus contributing to building national capacities in the area of economic, social and cultural rights in the context of the present Protocol.

4. The provisions of the present article are without prejudice to the obligations of each State Party to fulfil its obligations under the Covenant.

Article 15

Annual report

The Committee shall include in its annual report a summary of its activities under the present Protocol.

Article 16

Dissemination and information

Each State Party undertakes to make widely known and to disseminate the Covenant and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party, and to do so in accessible formats for persons with disabilities.

Article 17

Signature, ratification and accession

1. The present Protocol is open for signature by any State that has signed, ratified or acceded to the Covenant.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Covenant.
 4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 18

Entry into force

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying or acceding to the present Protocol, after the deposit of the tenth instrument of ratification or accession, the Protocol shall enter into force three months after the date of the deposit of its instrument of ratification or accession.

Article 19

Amendments

1. Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any

proposed amendments to States Parties, with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of the present article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

Article 20

Denunciation

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.
2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under articles 2 and 10 or to any procedure initiated under article 11 before the effective date of denunciation.

Article 21

Notification by the Secretary-General

The Secretary-General of the United Nations shall notify all States referred to in article 26, paragraph 1, of the Covenant of the following particulars:

- (a) Signatures, ratifications and accessions under the present Protocol;
- (b) The date of entry into force of the present Protocol and of any amendment under article 19;
- (c) Any denunciation under article 20.

Article 22

Official languages

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 26 of the Covenant.



the right to water

Annex II

Historical milestones of the Optional Protocol to the ICESCR process

1990

- The CESCR started discussing the possibility of drafting an optional protocol to the ICESCR.

1993

- The World Conference on Human Rights adopted the Vienna Declaration and Programme of Action (UN doc. A/Conf.157/23).
- The declaration said that 'all human rights are universal, indivisible and interdependent and interrelated'. It also declared that 'the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis'.
- It encouraged the Commission on Human Rights, in cooperation with the CESCR, 'to continue the examination of optional protocols to the International Covenant on Economic, Social and Cultural Rights'.

1996

- The CESCR reached consensus on the need for an individual complaints mechanism for the ICESCR.
- The CESCR finalised a draft Optional Protocol and presented it for consideration by the Commission on Human Rights in 1997 (UN doc. E/CN.4/1997/105).
- In its decision 1997/104 of 3 April 1997, the Commission requested the Secretary-General to transmit the text of the draft Optional Protocol to states and intergovernmental and non-governmental organisations for their comments.
- Only a handful of states submitted comments.

2001

- The UN High Commissioner for Human Rights (CHR) hosted, in collaboration with the International Commission of Jurists, a two-day workshop on the enforcement of ESC rights by courts, with particular reference to an optional protocol to the ICESCR. (The report on the workshop is contained in UN doc. E/CN.4/2001/62/Add.2.)
- The CHR decided to nominate an independent expert to examine the question of a draft optional protocol (Commission on Human Rights resolution 2001/30).
- The expert subsequently held a series of consultations with UN bodies and states.

2002

- Mr Hatem Kotrane, the independent expert, submitted his first report recommending the adoption of an optional protocol to the ICESCR (UN doc. E/CN.4/2002/57).
- The CHR renewed his mandate to allow him to study in greater depth the nature and scope of states parties' obligations under the ICESCR, the judicial enforcement of ESC rights, the

benefits and practicability of a complaint mechanism under the ICESCR, and the issue of the complementarity between different mechanisms (CHR Resolution 2002/24).

- The CHR established a working group 'with a view to considering options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights'.

2004

- The working group (Open-Ended Working Group on an OP-ICESCR–OEWG) held its first session (23 February–5 March).
- At the end of the session, the OEWG did not reach any consensus on whether to start drafting the optional protocol.

2005

- The OEWG held its second session (10–20 January).
- The Chairperson, Catarina de Albuquerque, was given the mandate to prepare a report containing elements of an optional protocol with a view to facilitating the discussions.
- The elements paper (UN doc. E/CN.4/2006/WG.23/2) addressed a range of issues including the scope of the right to a communication procedure, admissibility criteria, standing, proceedings on the merits, friendly settlement of disputes, interim measures, views, follow-up procedures, reservations, the inquiry procedure, the inter-state procedure, implications of the optional protocol for domestic decisions on resource allocation, the relationship between the optional protocol and other treaty and charter-based mechanisms, and international cooperation and assistance.

2006

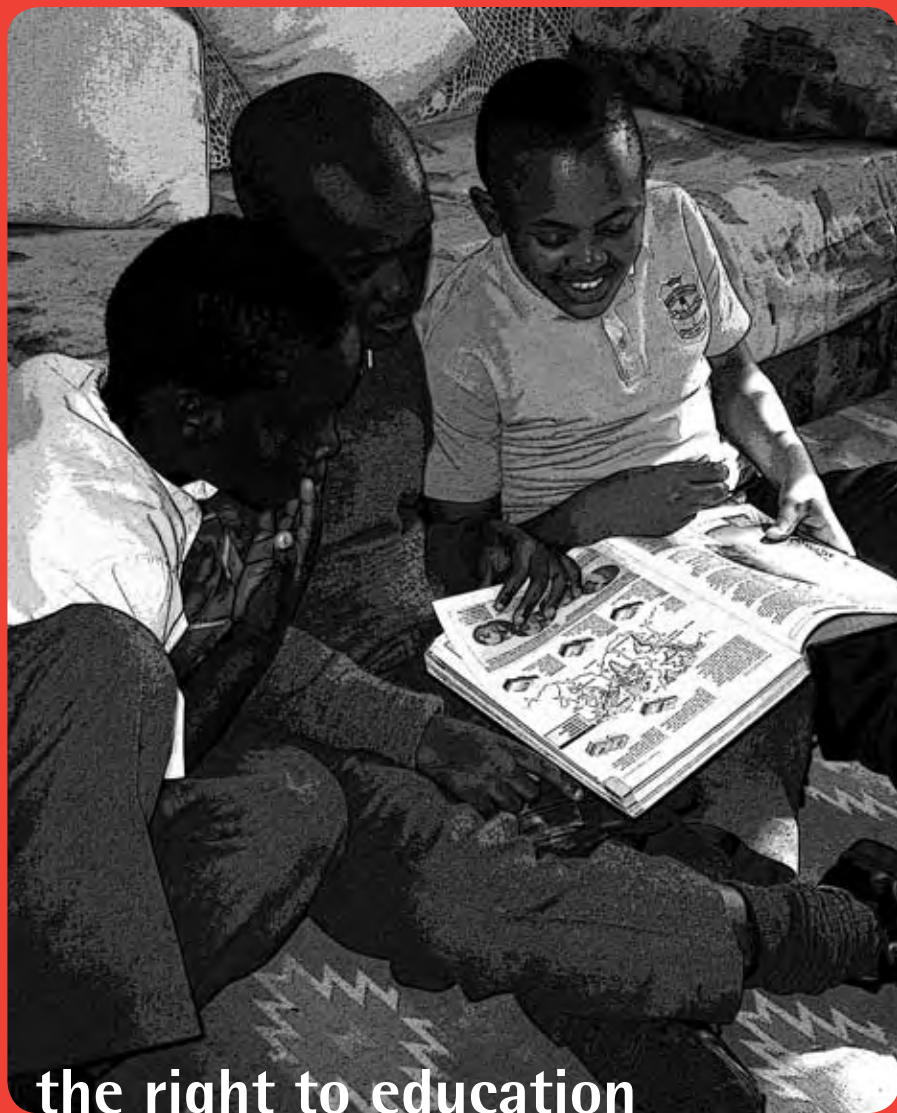
- The OEWG held its third session (6–16 February).
- Its mandate was renewed by consensus during the first session of the Human Rights Council for a further two years so that it could draft the OP-ICESCR.

2007

- The OEWG held its fourth session (16–27 July).
- The first draft of the OP-ICESCR was prepared by the Chairperson of the OEWG and discussed.

2008

- The OEWG held its fifth session in two parts (4–8 February 2008 and 31 March–4 April 2008).
- Subsequent drafts of the OP-ICESCR were presented and discussed.
- In April, the working group agreed by consensus to submit the draft optional protocol to the HRC for its consideration.
- In June, the Human Rights Council adopted by consensus the OP-ICESCR and recommended it for adoption by the UN General Assembly (Resolution on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, UN doc. A/HRC/8/L.2/Rev.1).
- In November, the Third Committee of the UN General Assembly approved by consensus a draft resolution on adoption of OP-ICESCR (Resolution A/C.3/63/L.47). 52 member states co-sponsored the resolution.
- In December, the General Assembly adopted by consensus the OP-ICESCR (Res. A/RES/63/117).



the right to education

Annex III

General Comments of the CESCR

Source: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>

No	Subject	Date adopted
1	Reporting by States parties	1989
2	International technical assistance measures (art. 22)	1990
3	The nature of States parties' obligations (art.2 (1))	1990
4	The right to adequate housing	1991
5	Persons with disabilities	1994
6	The economic, social and cultural rights of older persons	1995
7	The right to adequate housing: forced evictions (art.11 (1))	1997
8	The relationship between economic sanctions and respect for economic, social and cultural rights	1997
9	The domestic application of the Covenant	1998
10	The role of national human rights institutions in the protection of economic, social and cultural rights	1998
11	Plans of action for primary education (art. 14)	1999
12	The right to adequate food (art. 11)	1999
13	The right to education (art. 13)	1999
14	The right to the highest attainable standard of health (art. 12)	2000
15	The right to water (arts. 11 and 12)	2002
16	The equal right of men and women to the enjoyment of all economic, social and cultural rights (art.3)	2005
17	The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (art. 15 (1) (c)) –Final edited version	2005
18	The Right to work (art. 6) –Final edited version	2005
19	The right to social security	2008