



INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

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ICJ Intervention on the Report of the Open-ended Working Group on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights from its fourth session

Distinguished Mr. President,
Madam Chairperson-Rapporteur,

The International Commission of Jurists welcomes the efforts of the Chairperson, Secretariat and States that participated in the session of the Open-ended Working Group on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, in accordance with the Human Rights Council Resolution 1/3.

The open-ended working group has been mandated with the historic task of closing the protection gap between civil and political and economic, social and cultural rights, in order to turn into reality the notions of universality, and interdependence and indivisibility of all human rights. In this respect, the ICJ wishes to:

- welcome the draft prepared by the Chairperson, well-grounded in existing human rights protection standards, and offering a solid basis to start negotiations, as the swift development of the session has already demonstrated;
- praise the high level of engagement by states, and the openness to constructive dialogue showed by most of the participants;
- express satisfaction with the positive direction of the process and the progress in negotiations as reflected in the report of the Working Group (A/HRC/6/8).

The ICJ welcomes the position adopted by the majority of states, which showed a clear preference for adopting the Optional Protocol that will provide for a comprehensive protection of all substantive rights of the Covenant. This will provide victims of violations and of inadequate enjoyment of economic, social and cultural rights with complaints mechanism and guarantees similar to those already offered to victims of violations of civil and political rights.

However, there are important points still to be discussed, and the task of agreeing on the draft Optional Protocol will require a joint and collaborative effort by the participant States - with the support and critical appraisal of NGOs.

The ICJ takes this opportunity to recall some of the principles that should guide further negotiations of the Working Group:

- The Optional Protocol, as a procedural instrument, should reflect a comprehensive approach, providing protection to all the rights and enforcement of all the duties enshrined in the Covenant. Departing from this basic principle would not only weaken the protection of ESC rights - thus failing to honour the notions of interdependence and indivisibility of all human rights - but would also set an unfortunate precedent for enhancing protection of human rights in general.

- Reservations to the Optional Protocol incompatible with its object and purpose should be expressly forbidden.
- The Optional Protocol will need to encompass the highest standards of protection as achieved in recently adopted human rights instruments, such as the International Convention on the Rights of Persons with Disabilities and its Optional Protocol.

The negotiation of a new procedural Optional Protocol also offers an opportunity for innovation where universal and regional experiences have shown that existing instruments can be improved. Improvements can be achieved with respect to *locus standi* for collective complaints of violations, *amicus curiae* initiatives in support of victims and precautionary or preventive measures, as well as by establishing a follow-up procedure to the views adopted by the Committee.

Careful consideration should also be given to the proposals underscoring the links between a complaints mechanism and a need for improvement of international cooperation and assistance.

We stand ready to assist further in drafting the Optional Protocol, which would provide for remedies to individuals in case of violations of their ESC rights, underline the justiciability of ESC rights and enhance their interpretation in the context of practical application.

Mr. President,
I thank you.
