

**These following points represent a selection of the main ideas raised during the
High Level Expert Seminar on Economic, Social and Cultural Rights
held in Nantes, France, September 2005.**

These concluding remarks are presented as a short summary of the key ideas raised in the presentations and discussions. It is not possible to include all of the many good ideas and concerns relating to an Optional Protocol (OP) that were discussed, and because of that this is not an attempt to conclude the views of all of those in the room. Rather, it is offered as a brief overview of some of the main ideas that were discussed. These ideas could be used to enhance our thinking, and to take with us to the next Working Group.

Première session : quelles améliorations un protocole facultatif est-il susceptible de produire pour la protection des droits?

- Un protocole facultatif ne crée pas de nouvelles obligations. Un mécanisme n'oblige pas à mettre en œuvre des politiques précises mais examine les différentes options possibles. Il n'y a pas une seule façon de mettre en œuvre les DESC.
- Un protocole va permettre une plus grande justiciabilité de ces DESC au niveau international mais également au niveau national.
- Un protocole peut être un outil fondamental pour permettre une plus grande jouissance des droits économiques, sociaux et culturels s'il comprend l'ensemble des droits.
- Le temps est désormais venu de commencer la rédaction.

Second Session: Mediation to litigation, the different approaches

- The research of friendly solutions can be a useful step within a mechanism, if the outcomes confirm in full with human rights law.
- In case an amicable settlement is integrated in an Optional Protocol, a clear timeframe should be determined in order to guarantee that the whole procedure does not last too long.
- Indeed, the procedure should remain a meaningful remedy for the victims.

Troisième session : Comparaison entre les différents mécanismes régionaux

- Les systèmes nationaux, régionaux et internationaux peuvent coexister, car ils ont tous des lacunes et se complètent.
- Un mécanisme de communication aidera à clarifier les droits économiques, sociaux et culturels. L'examen de rapports étatiques et un mécanisme de plaintes se complètent.
- De manière générale, les mécanismes régionaux s'inspirent du travail du Comité DESC, en particulier de ses Observations générales.

Fourth Session: Harmonisation and articulation between national, regional and international procedures

- Harmonisation between the different mechanisms is not really an issue since they apply the principles of subsidiarity, maximum effectiveness and reasonableness. In addition, they cooperate regularly.
- Even if a good protection is guaranteed at the national level and rights are justiciable before national courts, the international level remains crucial.
- The exhaustion of domestic remedies, when efficient and available, serves the articulation between the national and international levels.

Cinquième Session: Complémentarité entre le protocole et les procédures internationales existantes

- Si l'articulation et la coopération entre les différents mécanismes fonctionnent bien, un protocole facultatif serait un complément aux procédures de l'UNESCO et de l'OIT qui sont limités du fait de leur nature (procédure confidentielle de l'UNESCO), des possibilités de recours (la procédure de l'OIT n'est pas accessible aux individus ni aux ONG) et de leur champ d'application (limités à certains droits).
- L'exclusion de certains droits du protocole car ils entrent dans le champ d'application d'autres procédures menacerait l'indivisibilité et l'interdépendance de tous les droits et ne garantirait pas aux victimes un recours effectif.

Sixth Session: International Cooperation in the context of an Optional Protocol

- Article 2.1 (international cooperation) is an integrated part of the Covenant and could be looked at under an individual complaint procedure, an inquiry procedure or an inter-state one.
- Financial aid is not the only component of international cooperation, which entails quality requirements and negative obligations (i.e. respect and protect in the context of cooperation and assistance).
- International cooperation should also contribute to address problems highlighted in a complaint or inquiry procedure.

Septième Session: Quels types de communications seraient recevables, quelles procédures seraient mises en oeuvre, quels effets seraient attendus?

- Un protocole facultatif devrait être aussi simple et pratique que possible.
- Le protocole devrait permettre aux individus, aux groupes et à leurs représentants (ONG, syndicats) de soumettre des communications concernant des violations de chacun des droits contenus dans le Pacte.

- L'épuisement des voies de recours internes est essentiel, dans la mesure où ces recours sont disponibles et efficaces.

Eighth Session: What forms could take the justiciability of the ESCR Covenant

- After an OP is adopted, thought could be given to overhauling the remaining divisions between economic, social and cultural rights and civil and political rights through continued treaty body reform.
- There will be an impact on national adjudication if at the international level adjudication is provided for some rights but not others. There is a danger that a non comprehensive approach could be retrogressive.
- The Committee, in their initial drafting exercise, stressed that this is an *optional* protocol, but that its content and scope should not be optional and no reservations should be permissible.
- An OP should include a complaint procedure, an investigation procedure, a follow-up procedure, as well as the possibility to take interim measures.
- In general, participants to the seminar recognised that the debate according to which an OP would constitute interference in national political processes is obsolete.
- Generally the seminar participants expressed a desire to proceed to drafting an Optional Protocol without delay, and to conclude this drafting exercise as promptly as possible.