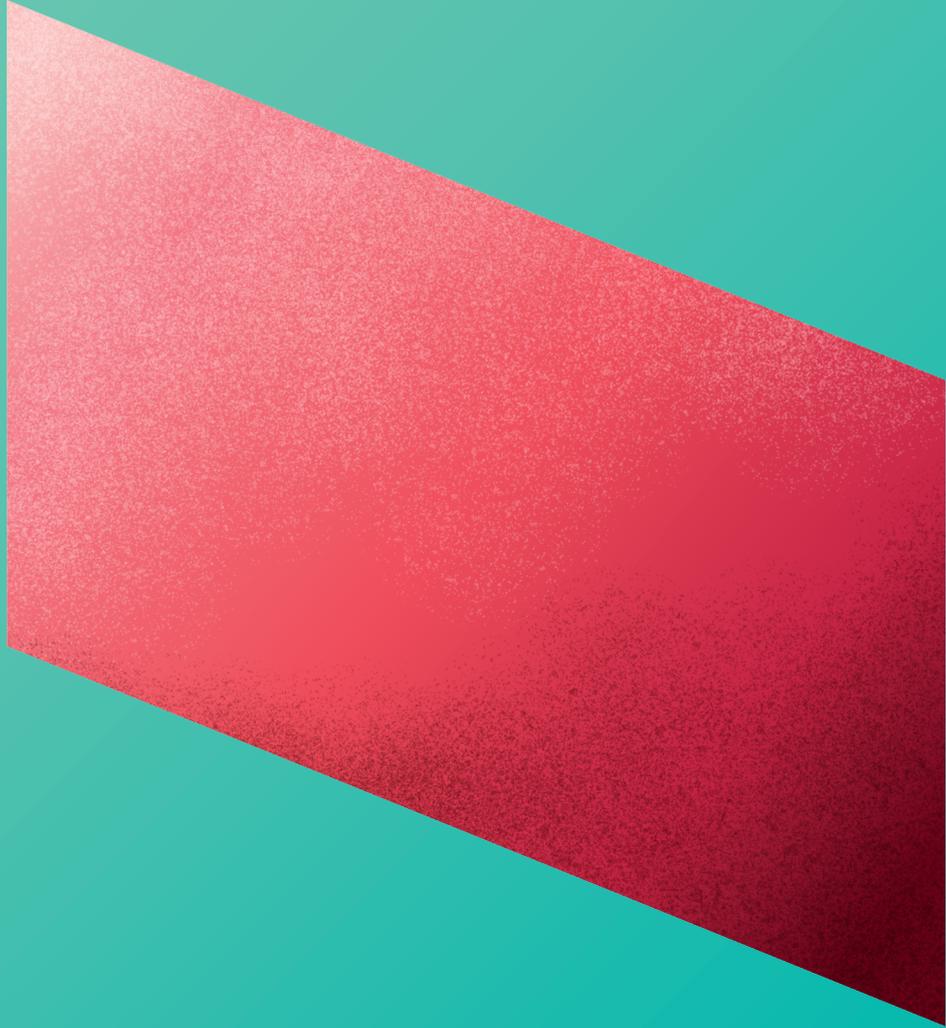




INITIATIVE FOR
ECONOMIC AND
SOCIAL RIGHTS



**What do the Signing and Ratification
of the Optional Protocol to the
International Covenant on Economic,
Social and Cultural Rights Bring Us?**



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The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights was adopted on 10 December 2008 at the LXIII session of the United Nations General Assembly - on the day of the sixtieth anniversary of the adoption of the Universal Declaration of Human Rights. The Optional Protocol is important in that it allows individuals or groups to submit communications to the United Nations Committee on Economic, Social and Cultural Rights when they consider that their Covenant enshrined rights have been violated and they have exhausted all available domestic remedies. Therefore, the adoption of the Optional Protocol represents a **historic milestone in the UN human rights system**. Specifically, it equated the status of the groups or individuals submitting communications relating to the protection of economic, social and cultural rights with the status of those submitting communications relating to the violation of civil and political rights. The Protocol entered into force on 5 May 2013. Since then, 50 countries have signed and 26 have rat-

ified it. The number of countries ratifying this international agreement is constantly growing.

In our region alone, four countries have signed the Optional Protocol, and two have ratified it. Specifically, Montenegro and Bosnia and Herzegovina have signed and ratified the Protocol, while Slovenia and the Republic of Northern Macedonia have signed it and the ratification is expected.

The opportunities presented by the signing and ratification of the Optional Protocol

By signing and ratifying the Optional Protocol, a State Party recognizes the competence of the Committee on Economic, Social and Cultural Rights to receive and consider communications from individuals or groups that are under the jurisdiction of that State Party, claiming to be victims of a violation of any of the rights set forth in the International Covenant on Economic, Social and Cultural Rights. The Committee will consider cases of individuals or groups who address it only after they prove that they have exhausted all available domestic remedies or that the available domestic remedies are ineffective.

By ratifying the Optional Protocol, States Parties also recognize the competence of the Committee to transmit communications requesting States Parties to take *interim measures* to avoid irreparable damage in cases when it is unable to take a decision on the merits in a manner that will timely remove the immediate damage.

Considering the recent practice of the Committee, it can be concluded that there are a number of objective factors indicating that this mechanism is very significant for improving the protection of economic, social and cultural rights in the States Parties.

Specifically, in the case of *I.D.G. v. Spain*,¹ the Committee concluded that Spain had denied the author her right under article 11, paragraph 1, of the Covenant on Economic, Social and Cultural Rights,

despite the fact that the Spanish national authorities previously concluded that there had been no violation. After the Committee submitted its opinion and recommendation to the Spanish Government, the author was able to exercise her right to adequate housing. She would not have been able to do so otherwise, as she had already been forcibly evicted via decisions of Spanish courts, and was exposed to the risk of homelessness. In addition, the case is important in and of itself because, at the time when it was being deliberated upon, 400,000 Spanish citizens were at risk of forced eviction due to the same or similar problems the applicant had, which were partly the consequence of the 2008 world economic crisis. The Committee's decision enabled the Spanish competent authorities to improve their practice and prevent potential violations of the economic, social and cultural rights of their citizens.

Another case that testifies to the benefit of submitting an individual communication to the Committee is the case of *Marcia Cecilio Trujillo Calero v. Ecuador*,² in which the Committee found that there had been a violation of the right to social protection under article 9 of the International Covenant on Economic, Social and Cultural Rights. The applicant was prevented from exercising her right to a special retirement pension even though, as an unpaid domestic worker (also called "housewife"), she had been timely paying her monthly retirement contributions to the Ecuadorian So-

1 Committee on Economic, Social and Cultural Rights, *I.D.G. v. Spain*, Communication 2/2014, UN Doc. E/C.12/55/D/2/2014 (17 June 2015).

2 Committee on Economic, Social and Cultural Rights, *Marcia Cecilia Trujillo Calero v. Ecuador*, Communication 10/2015, UN Doc. E/C.12/63/D/10/2015 (26 March 2018).

cial Security Institute for more than twenty years. After receiving oral confirmation from the above mentioned body on several occasions that she had fulfilled the conditions for a special retirement pension, the applicant decided to use that opportunity. However, after considering her request, the Commission for Benefits of the Ecuadorian Social Security Institute decided that the applicant had not fulfilled all the conditions for exercising that right because she had allegedly not paid her retirement contributions since 1989, and her request was rejected and the appeal was dismissed. In its decision, the Committee found that the domestic authorities had violated the applicant's rights and that the Ecuadorian Social Security Institute should pay her a pension in accordance with the law and the provisions of the Covenant. Following the Committee's decision, the applicant finally succeeded in exercising her rights.

In addition to these mechanisms, the ratification of the Optional Protocol provides an opportunity for countries to *communicate to other countries that have ratified the Protocol* in situations where they consider that the other country's actions do not meet the obligations of the Covenant on Economic, Social and Cultural Rights. Thereby, they can raise the issue of the enjoyment of economic, social and cultural rights in the State in which they consider that the violation has occurred.

Finally, Article 14 of the Optional Protocol opens the possibility for the Committee, in agreement with the State Party, to seek *expert and technical assistance of United Nations* in resolving issues related to the realization of the economic, social and cultural rights of its citizens and thereby provide

support for the progressive exercise of the rights set forth in the Covenant, in accordance with the provision of article 2 (1) of the Covenant.

The signing and ratification of the Optional Protocol provide all citizens of the Republic of Serbia the opportunity to protect their rights when they fail to obtain protection before national authorities, and represent an additional mechanism that can further normatively improve the protection of economic, social and cultural rights in the Republic of Serbia, thereby improving the work of institutions, domestic judicial and administrative bodies responsible for the protection of the human rights of individuals.

Considering all the benefits of ratification of this document, as well as the recommendations from paragraph 37 of the last concluding observations of the Committee on Economic, Social and Cultural Rights received by the Republic of Serbia, A 11 - Initiative for Economic and Social Rights appeal to the Government of the Republic of Serbia to open a dialogue on the need to ratify the Optional Protocol to the Covenant on Economic, Social and Cultural Rights.

The Republic of Serbia would thus provide its citizens with access to another mechanism for the protection of their rights and make a major stride towards the progressive realization of the rights enshrined in the Covenant.

In addition, we believe that by ratifying the Optional Protocol to the Covenant on Economic, Social and Cultural Rights, the Republic of Serbia would show that the improvement of respect for human rights is of key importance for its work.



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This document was prepared within the programme “Active Citizens – Better Society: Advocating for Cooperation and Democratic Development”, implemented by BOS with the support of the American people through US Agency for International Development (USAID). The content of the documents is the sole responsibility of the A11- Initiative for Economic and Social Rights and does not necessarily reflect the views of the USAID, US Government or BOS.