

INTERGOVERNMENTAL ORGANIZATIONS

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ESTABLISHING A COMPLAINT PROCEDURE FOR ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

Critics often assert that the International Covenant on Economic, Social and Cultural Rights (ICESCR) is an aspirational document, as it calls for the progressive realization of its provisions to the maximum of States Parties' available resources. But, while this limiting language persists, the UN High Commissioner for Human Rights and a coalition of leading human rights NGOs have hailed the news that soon the rights enshrined in the ICESCR will become justiciable at the international level. On May 5, 2013, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Optional Protocol) entered into force. Under the Optional Protocol, the Committee on Economic, Social, and Cultural Rights (Committee) will have the power to receive and consider complaints against States Parties from other States Parties as well as individuals or groups within their jurisdiction.

The UN General Assembly adopted the Optional Protocol on December 10, 2008, the sixtieth anniversary of the adoption of the Universal Declaration of Human Rights (UDHR). The UDHR linked civil, political, economic, social, and cultural rights as one universal and interdependent set of rights. But, the Cold War and its East/West divide stymied efforts to translate the UDHR into a single binding treaty. As a result, there arose two core treaties, the International Covenant on Civil and Political Rights (ICCPR) and the ICESCR, with the United States and its allies seeking the superiority of civil and political rights over economic, social, and cultural rights and the Soviet Union and its allies seeking the reverse. As the North/South divide eclipsed the East/West divide at the conclusion of the Cold War, this artificial hierarchy continued. However, as UN High Commissioner for Human Rights Navi Pillay noted, by choosing to adopt the Optional Protocol on the UDHR's anniversary the General Assembly reaffirmed

the equal and interdependent nature of civil, political, economic, social, and cultural rights.

The Optional Protocol entered into force earlier this year when Uruguay entered the necessary tenth ratification, joining Argentina, Bolivia, Bosnia and Herzegovina, Ecuador, El Salvador, Mongolia, Portugal, Slovakia, and Spain. In addition, 32 other States Parties have signed but not yet ratified the Optional Protocol.

The entry into force of the Optional Protocol means the Committee and impacted individuals and groups will soon enjoy an individual complaints procedure similar to the systems in place for the UN treaty bodies overseeing the ICCPR, the Convention on the Elimination of Discrimination Against Women, the Convention Against Torture, the Convention on the Elimination of Racial Discrimination, the Convention on the Rights of Persons with Disabilities, and the International Convention for the Protection from Enforced Disappearance. As Pillay stated, because of this new procedure "a jurisprudence will now be developed that will help define the scope of application of economic, social and cultural rights and outline adequate remedies for victims."

Under the Optional Protocol, the Committee can receive two types of communications. First, it can receive communications from individuals or groups claiming a violation of a right under the ICESCR. However, the Optional Protocol contains procedures to respect the State Party's legal system and may only consider communications after the exhaustion of domestic remedies, unless they have been "unreasonably prolonged." Second, the Committee can consider inter-state communications when a State Party believes that another State Party failed to fulfill its obligations under the ICESCR. Like the individual complaint procedure, the second option requires the exhaustion of domestic remedies before the Committee can take up the issue.

By establishing procedures that defer, in the first instance, to States Parties' legal

systems, the creation of the complaint procedure under the Optional Protocol creates an additional incentive for States Parties to strengthen their legal systems to better ensure the realization of economic, social, and cultural rights. In addition, the Optional Protocol provides a forum for developing jurisprudence concerning standards for economic, social, and cultural rights. Finally, the Optional Protocol, as it increases its ratification count, will serve as a mechanism to further erode the artificial divide and hierarchy between civil and political, and economic, social, and cultural rights. In doing so, it can help move the international human rights system back to the universality and interdependence of the UDHR.

ENVIRONMENTAL RIGHTS ARE HUMAN RIGHTS, AND VICE VERSA

When the "worst drought in 60 years" struck eastern Africa in 2011, over ten million people were in need of emergency food aid. When Typhoon Bopha struck the Philippines last December, more than 1,000 people lost their lives. To address these and other environmental concerns at the local, national, and international level, communities around the world are utilizing the international human rights framework. Thus, human rights and the environment are interrelated and interdependent. John H. Knox, the United Nations Independent Expert on human rights and the environment, reinforced this conclusion in his recent report to the Human Rights Council. In addition, he stated that there now exists an "explicit new right" to a healthy environment.

Because science did not recognize the negative impact of human activity on the environment, environmental rights were omitted from the Universal Declaration of Human Rights (UDHR) when it was adopted in 1948. But, as scientific understanding of the environment increased over the following decades, so too did the connection between a healthy environment and the realization of human rights. As Knox stated, if the UDHR were drafted today, it is "easy to imagine" that it would include an explicit right to a healthy environment.

In fact, at the national and regional level this overt recognition has already occurred. More than ninety states have added explicit environmental rights into their constitutions. A number of regional human rights instruments have also recognized this right, including the African Charter on Human and Peoples' Rights (Article 24), the 1988 Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador) (Article 11), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Articles 18-19), and the Arab Charter on Human Rights (Article 38). Furthermore, while international human rights treaties have not explicitly codified the "right to a healthy environment," some explicitly refer to threats posed by the environment to the realization of human rights. The Convention on the Rights of the Child, for example, mandates that States Parties "take appropriate measures . . . [t]o combat disease and malnutrition . . . through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution."

Knox discussed the need for states to protect environmental rights defenders from physical attacks, threats, and intimidation at the hands of both state and non-state actors. Indeed, Knox found that such actions hurt not only the environmental rights defenders, but also the environment they are trying to protect

and "all those whose full enjoyment of human rights depends on that environment." Knox's report also highlighted the importance of ensuring human rights that are vital to the furtherance of environmental rights, including the rights to freedom of expression and association, the rights to information and to participate in government, and the right to seek remedies through the judicial process. Indeed, in discussing the decisions of the Inter-American, African, and European regional human rights tribunals, Knox noted that ensuring these rights will "produce[] a healthier environment" which will "contribute[] to a higher degree of compliance with [] rights such as rights to life, health, property[,] and privacy."

But, Knox also stated that two areas vital to ensuring a healthy environment are in need of further exploration. First, how does international human rights law apply to transboundary and global environmental concerns? In a 2011 report on human rights and the environment, the Office of the High Commissioner of Human Rights found that "[o]ne country's pollution can become another country's environmental and human rights problem." But, because human rights treaties use varying language to define their reach, there is need for increased clarification on this question in spite of the "heightened attention to the extraterritoriality of human rights obligations."

Second, how do these human rights obligations apply to non-state actors, such as corporations? A report by the UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises found that out of 300 alleged corporate-related human rights abuses reviewed, "nearly a third of cases alleged environmental harms that had corresponding impacts on human rights." Knox stated that while states' obligation to protect human rights extends to the actions of non-state actors, and that this obligation extends to "infringement from environmental harm," the "specific application of this obligation in the environmental context needs closer examination."

While global leaders argue over how to balance development, profit, and environmental stewardship, within international human rights law a consensus has formed—there now exists a right to a healthy environment. Though the reach of the obligation on states *vis-à-vis* the right to a healthy environment needs further exploration, the takeaway of this report is clear—the realization of environmental rights is necessary for the realization of human rights, and vice versa.

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