UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

HUMAN RIGHTS 75

Ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR)

A toolkit

Content

About the Toolkit **2**

Why Ratify? **3**

Frequently Asked Questions **5**

Simplified Version **7**

Process for Ratification and Accession **11**

- *Model Instrument of Full Powers*
- *Model Instrument of Ratification, Acceptance or Approval*
- *Model Instrument of Accession*

About the Toolkit

The 75th anniversary of the Universal Declaration of Human Rights celebrated in 2023 is an occasion to renew the ground-breaking commitments made by States when they adopted the text in 1948. The Declaration has inspired the norms and standards that are embodied in the core human rights treaties and their optional protocols. These instruments aim to realize the rights contained in the Declaration, by making human rights legal entitlements with legally binding obligations for States.

Ratifying these instruments is an essential means to translating the human rights enshrined in the Declaration into reality on the ground, while conveying a message of commitment to the international community.

Human Rights 75 is an initiative led by UN Human Rights and its partners. It seeks, among others, to promote universality and renewed commitment, including through a campaign advocating for the ratification of the core human rights treaties and their optional protocols. Thus, this year, States are called upon to formally re-commit to the protection and respect of human rights by ratifying outstanding human rights instruments.

This toolkit presents the benefits of ratifying the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights (OP-ICESCR), answers questions on its content and application, provides a simplified version of the provisions of the Optional Protocol and provides practical information on ratification and accession of treaties.



Why Ratify?

The Optional Protocol introduces a communications procedure allowing individuals and groups to submit complaints to the Committee on Economic, Social and Cultural Rights if they believe that their rights protected by the International Covenant on Economic, Social and Cultural Rights have been infringed.

Ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights:

1. Reaffirms economic, social and cultural rights as human rights *and recognizes that they are legally enforceable at the national and international levels.*

2. Reiterates the equal value, interdependence, and indivisibility of human rights, *by giving equal access to international individual complaints procedures for all human rights.*

Why Ratify?



3. Reaffirms the commitment to "leave no one behind" *and gives an additional voice to disadvantaged and marginalized individuals and groups, who are vulnerable to infringement of their economic, social and cultural rights.*

4. Provides guidance to the legal system *as decisions on individual complaints clarify the content of economic, social, and cultural rights and the scope of States' obligations through concrete cases. They thus offer guidance to national authorities, including courts, especially as these rights are often recognized in national constitutions.*

5. Complements national legal mechanisms *and encourages the development of effective domestic remedies for economic, social and cultural rights.*



6. Sends a strong signal that a State is committed to ensuring accountability *for violations of economic, social and cultural rights, including for the most marginalised and disadvantaged individuals and groups.*

7. Empowers States to mainstream economic, social and cultural rights in its activities *and encourages them to take steps to fully integrate the International Covenant on Economic, Social and Cultural Rights into national law and policies.*



8. Contributes, with a leading role, to the development of international law *as decisions on cases can clarify how cross-cutting human rights principles, such as equality and non-discrimination, consultation and participation, transparency and access to information and accountability apply to economic, social and cultural rights.*

Frequently Asked Questions



Does the Optional Protocol create new economic, social and cultural rights or obligations?

No. The Optional Protocol is a procedural protocol and does not impose any new obligations on the State.

Does the Optional Protocol include a reporting procedure?

No. No reporting requirement is attached to the ratification of the Optional Protocol.

Does the ratification of the Optional Protocol have financial implications?

No. Ratification does not entail additional costs for the States.

Does the complaints procedure under the Optional Protocol represent an excessive burden for the State?

No. The Optional Protocol respects the national judiciary system through the requirement of exhaustion of domestic remedies, limited timeframe for applications to be submitted and strict admissibility requirements. As at 2022 only 13% of the communications submitted to the Committee were found admissible.

Does the Committee re adjudicate cases that have been decided by national authorities?

No. The jurisprudence of the Committee has established that it shall not act as a fourth instance.

Frequently Asked Questions



Does the Optional Protocol allow 'forum shopping' or application to multiple international procedures?

No. The Optional Protocol has strict admissibility criteria to prevent duplication of applications between treaty bodies and other international investigation or settlement procedures.

What will be the procedure for the State party when a complaint is received against it?

The State party will receive the content of the complaint and will be granted enough time to respond to the allegations on at least two opportunities.

Is the complaints procedure necessarily contentious?

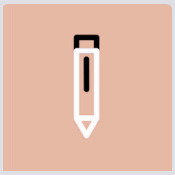
No. The Optional Protocol offers the possibility for parties to engage in a friendly settlement process and if agreed the complaint will be closed and no longer examined by the Committee.

What other procedures are provided for by the Optional Protocol?

The Optional Protocol features an optional inquiry procedure that allows the Committee to investigate grave or systematic economic, social and cultural rights violations if the State has agreed to this process, thereby further supporting accountability. Additionally, an optional inter-state complaint procedure enables one State party to file complaints against another State party for not fulfilling its obligations under the Covenant as long as both parties involved have agreed to use the mechanism.

Simplified Version

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR)



Entry into force: 5 May 2013, in accordance with article 18(1).
Registration: 5 May 2013, No. 14531
Status as of August 2024: Signatories: 46. Parties: 29.

Competence of the Committee to receive and consider communications (Art. 1)

Only States that have ratified both the Covenant on Economic, Social and Cultural Rights and this Protocol accept the competence of the Committee on Economic, Social and Cultural Rights to receive complaints from individuals or groups of individuals.

Communications (Art. 2)

Complaints must be submitted by the alleged victim(s) or someone acting with their consent. The exception will be if there is a good reason to do so without expressed consent from the alleged victim(s).

Admissibility (Art. 3)

Only complaints that were brought to the attention of national courts up to the last level will be considered admissible by the Committee. This is unless the remedies at the national level are unreasonably prolonged. In addition, the Committee may consider a complaint inadmissible in the following situations:

- *The complaint is submitted to the Committee more than a year after the last decision of national courts on the case. The exception will be if the author of the complaint can demonstrate that it had not been possible to submit the complaint within that time limit;*

- *If the issue at stake in the complaint happened before the State accepted the competence of the Committee to deal with complaints. The exception will be if the facts/the issue has started before but continues after the Protocol entered into force;*

Simplified Version

- *If the same facts have already been examined by the Committee or has or is being examined by another international investigation or settlement procedure;*
- *If the complaint is incompatible with the content covered by the Covenant;*
- *It is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media;*
- *If it is considered by the Committee as an abuse of the right to submit a complaint; or*
- *When it is anonymous or not in writing.*

Communications not revealing a clear disadvantage (Art. 4)

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

Interim measures (Art. 5)

If, while the complaint is being examined by the Committee, the victim or the author of the complaint considers that irreparable harm may be caused, the alleged victim can submit a request for urgent interim measures that will be communicated to the State. The fact that the Committee decides to request the State to take urgent measures to avoid a risk of irreparable harm to the alleged victim does not mean that it has decided on the admissibility or the substance of the complaint.

Transmission of the communication (Art. 6)

Registered complaints are sent to the State in a confidential manner. Within six months, the State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided to the victim/author of the complaint.

Friendly settlement (Art. 7)

The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter as long as it is respectful of the obligations under the Covenant.

Simplified Version

If an agreement on a friendly settlement is found by both parties, the complaint will be closed and no longer considered by the Committee.

Examination of communications (Art. 8)

The Committee will examine, in a closed meeting, the complaint based on all the documentation provided to it as long as the documentation has been shared with the parties.

The Committee may consult, as appropriate, relevant documentation from international and regional organizations and bodies and any observations or comments by the State concerned.
The Committee shall consider whether the steps taken by the State were reasonable in accordance with part II of the Covenant.

Follow-up to the views of the Committee (Art. 9)

After examining a complaint, the Committee shall transmit its views together with its recommendations, if any, to the parties concerned (victim and State).

The State 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 to follow up on the views and recommendations of the Committee.

The Committee may invite the State to submit further information about any measures the State has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State's subsequent reports under articles 16 and 17 of the Covenant.

Inter-State communications (Art. 10)

It allows a State party to submit complaints to the Committee regarding claims that another State party is not fulfilling its obligations under the Covenant, provided that both States involved have made a declaration accepting this mechanism.

Simplified Version

Inquiry procedure (Art. 11)

The Committee can carry out investigations into grave or systematic violations of economic, social and cultural rights if the State party has accepted this procedure.

Follow-up to the inquiry procedure (Art. 12)

The Committee may ask the State to provide information on the steps it has taken either in the next report to the Committee or ask for such information within six months following the request.

Protection measures (Art. 13)

A State 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.

International assistance and cooperation (Art. 14)

The Committee shall transmit, as appropriate, and with the consent of the State concerned, to United Nations specialized agencies, funds and programmes and other competent bodies, its views or recommendations concerning complaints and inquiries that indicate a need for technical advice or assistance, along with the State's observations and suggestions, if any, on these views or recommendations.

The Committee may also bring to the attention of such bodies, with the consent of the State concerned, any issue related to complaints which may help them decide on international measures that could help the State achieve progress in the implementation of its obligations.

A trust fund shall be established to provide advice and technical assistance to States Parties, with the consent of the State concerned, with a view to building their national capacities to implement the rights of the Covenant.

Process for Ratification and Accession

What is ratification?

When a State ratifies an international human rights treaty, it legally commits to implement its provisions. By depositing instruments of ratification, a State expresses its consent to be bound by the treaty. Ratification is preceded by the signature of the treaty. Upon the signature, the State is obliged not to act contrary to the object and purpose of the treaty. The State may use the time between the signature and ratification to enact the necessary legislation to ensure the application of the treaty nationally.

What is accession?

Accession is the act by which a State accepts to become a party to a treaty that has already been negotiated and signed by other States. It has the same legal effect as ratification. Accession usually takes place after the treaty has entered into force.

What are the steps for formalizing a ratification or accession?

*Model instruments of ratification or accession can be found on the **United Nations Treaty Collection** website. These templates are available in all six UN languages. The date indicated in the instrument of ratification or accession is the date on which the State becomes bound by the treaty. More information is available in the **Treaty Handbook**. The annexes to the model instruments of full powers, ratification and accession are also available in this toolkit.*

*Once completed and signed by the competent authority in the State, e.g., the Head of State or Government or the Minister for Foreign Affairs, the signed copy of the original instrument can be emailed to **treatysection@un.org** for deposit. However, the originals must be delivered to the Treaty Section as soon as they arrive at the Permanent Mission in New York. The Depositary Unit office is at 2 UN Plaza, 323 E 44th Street, 5th Floor, Room DC2-0500, Tel: 1-212 963 504. New York, NY 10017 USA.*

The Permanent Representative in New York may deliver instruments of ratification or accession. There may be a ceremony for the deposit of instruments (pictures). Alternatively, the Government may wish to deposit the instruments at the Treaty Event held during the opening of the General Assembly, which will provide a high-level setting for this treaty action and give visibility to the Government's commitment to human rights.

ANNEX I

MODEL INSTRUMENT OF FULL POWERS

(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

FULL POWERS

_____

I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs],

HEREBY AUTHORIZE [name and title] to [sign [2], ratify, denounce, effect the following declaration in respect of, etc.] the [title and date of treaty, convention, agreement, etc.] on behalf of the Government of [name of State].

Done at [place] on [date].

[Signature]

[2] * Subject to the provisions of the treaty, one of the following alternatives is to be chosen: [subject to ratification] or [without reservation as to ratification]. Reservations made upon signature must be authorized by the full powers granted to the signator

ANNEX II

MODEL INSTRUMENT OF RATIFICATION, ACCEPTANCE OR APPROVAL

(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

[RATIFICATION / ACCEPTANCE / APPROVAL]

_____

WHEREAS the [title of treaty, convention, agreement, etc.] was [concluded, adopted, opened for signature, etc.] at [place] on [date],

AND WHEREAS the said [treaty, convention, agreement, etc.] has been signed on behalf of the Government of [name of State] on [date],

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs] declare that the Government of [name of State], having considered the above-mentioned [treaty, convention, agreement, etc.], [ratifies, accepts, approves] the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of [ratification, acceptance, approval] at [place] on [date].

[Signature]

ANNEX III

MODEL INSTRUMENT OF ACCESSION

(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

ACCESSION

_____

WHEREAS the [title of treaty, convention, agreement, etc.] was [concluded, adopted, opened for signature, etc.] at [place] on [date],

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs] declare that the Government of [name of State], having considered the above-mentioned [treaty, convention, agreement, etc.], accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of accession at [place] on [date].

[Signature]

Treaty Body Capacity Building Programme, August 2024.