

# Claiming Women's Economic, Social and Cultural Rights

A Resource Guide to Advancing Women's Economic, Social and Cultural Rights Using the Optional Protocol and Convention on the Elimination of All Forms of Discrimination Against Women and the Optional Protocol and International Covenant on Economic Social and Cultural Rights

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International Network for  
Economic, Social and Cultural Rights



International Women's Rights  
Action Watch–Asia Pacific

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Published April 2013



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This manual was jointly developed by IWRAP Asia Pacific and ESCR Net and was made possible through the generous support of Oxfam Novib, Ford Foundation, AJWS and Hivos.

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## Foreword

**W**omen's lives are impacted by a myriad of issues such as the frequent lack of basic services, *de jure* inequality, lack of accountability of States, corporations and other global actors, discriminatory cultural stereotypes, beliefs and the impact of harmful practices, religious fundamentalisms and development agendas which exclude consideration of the rights and experiences of women and differences among women. Within this context, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) are the two key human rights instruments which provide a forum for demanding realization of women's human rights.

International Women's Rights Watch (IWRAP) Asia Pacific and International Network for Economic, Social and Cultural Rights (ESCR-Net) have been consistently promoting a holistic approach to realization of women's human rights, through mobilization and capacity building of civil society, women's rights organizations and NGOs advocating on economic, social and cultural rights. We have also sustained engagement with the Committees monitoring State Parties fulfillment of obligations under CEDAW and ICESCR to ensure that national level realities of women's economic, social and cultural rights are effectively raised internationally. With the adoption of the Optional Protocol to CEDAW and Optional Protocol to ICESCR, the role of activists and lawyers in using litigation to advance women's economic, social and cultural rights becomes key to changing the situation on the ground for women claiming their rights nationally, regionally and internationally as they offer important additional opportunities to seek accountability.

The collaborative work of IWRAP Asia Pacific and ESCR-Net since 2008 aims to facilitate the work of women's rights activists and NGOs and NGOs working on economic, social and cultural rights in advocating for the promotion and protection of women's economic, social and cultural rights using the substantive equality framework clearly articulated

in CEDAW and echoed by the CESC. Our work aims to build effective advocacy strategies and support activists and NGOs in their campaigning and engagement with key stakeholders. A key component of IWRAP Asia Pacific and ESCR-Net's collaborative strategy was the creation of resources to facilitate and support engagement of activists and NGOs with the mechanisms monitoring the implementation of CEDAW and ICESCR, namely, the CEDAW Committee and Committee on Economic, Social and Cultural Rights.

In 2009, IWRAP Asia Pacific and ESCR-Net began work towards the development of this *Resource Guide: Claiming Women's Economic, Social and Cultural Rights: A Resource Guide to Advancing Women's Economic, Social and Cul-*

*tural Rights* Using the Optional Protocol and Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol and International Covenant on Economic Social and Cultural Rights. This Resource Guide aims to improve the existing knowledge and understanding of activists and lawyers on international norms and standards, such as substantive equality, in addressing women's economic, social and cultural rights. It further aims to provide a practical and substantive guideline on using the two Optional Protocols in a comprehensive litigation strategy as part of advocacy

by these activists and lawyers in advancing the realization of women's economic, social and cultural rights.

Many women's rights activists may not be fully familiar with the range of existing international norms and standards on women's economic, social and cultural rights. Further, we have found that even where groups use both litigation and advocacy strategies together to realize women's ESCR, there still tends to be less reliance on economic and social rights standards and obligations and a much greater focus on non-discrimination. Finally, there is a significant gap in awareness amongst activists, NGOs and lawyers, of the potential and advantages of the international compliance mechanisms created under the two Optional Protocols.

Rebecca Brown, human rights lawyer and Deputy Director

**ICESCR and CEDAW  
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at ESCR-Net and Alison Aggarwal, expert from IWRAP Asia Pacific’s pool of resource persons, as the authors of this guide, have provided explanations on international standards on women’s economic, social and cultural rights, the intersection between the substantive equality framework and rights enshrined in CEDAW and the specific rights recognised in the ICESCR, the nature and meaning of substantive equality in relation to women’s economic, social and cultural rights, and the nature and potential of the two Optional Protocols—OP-CEDAW and OP-ICESCR—in claiming women’s rights nationally and internationally. ESCR-Net’s experience and expertise in promoting the use of strategic litigation as a tool in advocacy for advancing economic, social and cultural rights has helped in developing a practical checklist of do’s and don’ts for lawyers litigating for women’s economic, social and cultural rights, especially using both Optional Protocols.

The Resource Guide is enhanced in terms of quality of its content and delivery of information by the feedback and suggestions provided by the women’s human rights lawyers who attended the Pilot-testing and Capacity Building Workshop on Bringing Women’s ESCR Claims before OP-CEDAW and OP-ICESCR, organised by IWRAP Asia Pacific and ESCR-Net in Penang (Malaysia) on 3-7 December 2010. The Pilot-testing of the Resource Guide also provided an opportunity to both the organizations to connect with activists, lawyers and experts actively working on women’s economic, social and cultural rights under CEDAW and ICESCR. We are grateful for the contributions of case studies to the development of this Guide made by The Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM), Center for Reproductive Rights (CRR) and the Women’s Law Centre (WLC) in South Africa. It was a great privilege to work with experts, namely, Leilani Farha, expert on women’s economic, social and cultural rights and Executive Director, Centre for Equality Rights in Accommodation (Canada) and Caroline Lambert, member of IWRAP AP’s team on Drafting of OP-ICESCR and Executive Director, Y.M.C.A. (Australia). Both helped IWRAP Asia Pacific and ESCR-Net with their critical insights and suggestions and in shaping the Resource Guide in its present form. The contribution by Lisa Pusey, former staff of IWRAP Asia Pacific, and her immense commitment towards completion of the Resource Guide is much appreciated and acknowledged.

## List of Abbreviations

<b>ESC Rights</b>	Economic, social and cultural rights
<b>CED</b>	Committee on Enforced Disappearances
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CERD</b>	Convention on the Elimination of Racial Discrimination
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CP Rights</b>	Civil and political rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICCPR-OP1</b>	Optional Protocol to the ICCPR, individual complaints
<b>ICCPR-OP2</b>	Second Optional Protocol to the ICCPR, abolition of the death penalty
<b>OP</b>	Optional Protocol
<b>OP-CAT</b>	Optional Protocol to the Convention Against Torture
<b>OP-CEDAW</b>	Optional Protocol to CEDAW
<b>OP-CRC</b>	Optional Protocol to the Convention on the Rights of the Child—currently being drafted
<b>OP-CRPD</b>	Optional Protocol to the Convention on the Rights of Persons with Disabilities
<b>OP-ICESCR</b>	Optional Protocol to ICESCR
<b>OP-ICRMW</b>	Optional Protocol to the International Convention on the Protection on the Rights of All Migrant Workers and Members of Their Families
<b>SPT</b>	Sub-Committee on the Prevention of Torture
<b>UDHR</b>	Universal Declaration of Human Rights

It was a conscious decision to make this Resource Guide an online resource for activists and lawyers in the current cyber-age. The case studies included in the Resource Guide demonstrate the challenging and interesting work undertaken by activists and lawyers in different regions, but this is just the tip of the iceberg. There are many of you located in different regions who are promoting substantive equality for women through the use and implementation of international norms and standards on women's human rights. We would be pleased to hear from you to learn about the diverse issues, realities and violations of women's economic, social and cultural rights and efforts undertaken to challenge the status quo and patriarchal hegemony which limit the rights of women.

## Acknowledgments

We express sincere thanks and appreciation for the work and commitment showed by the two authors of this guide—Alison Aggarwal, resource person, IWRAW Asia Pacific's pool of CEDAW experts, and Rebecca Brown, Deputy Director, ESCR-Net.

We appreciate the contribution by Paola Garcia Rey in assisting Rebecca Brown in development of the Guide.

Special thanks and appreciation for the contributions by Center for Reproductive Rights, Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer and Women's Legal Centre, for the case studies section of the Guide.

We are grateful to Caroline Lambert (YMCA, Australia) and Leilani Farha (Center for Equality Rights in Accommodation, Canada) for their insights and critical inputs provided as the two external reviewers, and to Lisa Pusey, who played a pivotal role in the conceptualisation and development of this Advocacy Guide, in her capacity as a Programme Officer at IWRAW Asia Pacific and as IWRAW Asia Pacific's resource person on CEDAW, OP-CEDAW and women's ESC rights. We appreciate consistent follow up and dedication of IWRAW Asia Pacific's Programme Staff, Gauri Bhopatkar and Ann Campbell, towards completion of this Guide.

We express special thanks to the women activists and lawyers from Asia, Africa, CEE-CIS and Latin America who participated in the Pilot-testing and Capacity Building Workshop on Bringing Women's ESCR Claims before OP-CEDAW and

OP-ICESCR, organised by IWRAW Asia Pacific and ESCR-Net in Penang (Malaysia) on 3-7 December 2010. Their comments, feedback and suggestions to the writers and the publishers have helped to deliver a practical Guide for application in advancing of women's economic social and cultural rights using CEDAW/ICESCR & OP-CEDAW/OP-ICESCR.

Thanks to Julieta Rossi, Sandra Ratjen, Ximena Andión Ibañez and to the staff members and ex-colleagues at IWRAW Asia Pacific for their inputs during the development of the Guide.



# Part One: Executive Summary

# 1



# 1. Executive Summary

## 1.1 Women's Economic, Social And Cultural Rights

Economic, social and cultural rights have a particular significance for women because they go to the heart of issues related to poverty and inequality. From women's lived daily experiences and social and cultural roles, they know the central nature of ensuring adequate and nutritious food is available for the family, the importance of being able to easily access clean water, of having a safe and secure dwelling and access to a health centre and medicine. Women know that due to their work life being more often interrupted because of care-giving and child-rearing obligations, or because their work is not formalized, or because they have always been paid less than their male colleagues, their access to adequate social security benefits when they are older may be limited. Women know that school fees, lack of adequate sanitation and privacy, sexual harassment by male teachers and policies excluding young mothers all create significant barriers for girl's educational opportunities. Women know that gender stereotypes impact their ability to achieve equality and success in work, education, politics and at home. Women know the daily impact that poverty and inequality have in their daily lives. As a group, women have less social, economic and political power and are disproportionately poor. In the context of the global financial crisis and deepening economic inequality, women are affected disproportionately by the presence or absence of social programs and policies that ensure health care, education, child care, housing, food and water because women are the principal unpaid providers for these needs when the State fails to do so.

## 1.2 Benefits of Using International Conventions and Optional Protocols

The international human rights framework and mechanisms

provide individuals with the ability to claim food, housing, employment, education and healthcare as basic rights. When needs are transformed into rights, it allows individuals to claim that these rights be respected, protected and fulfilled; and to hold governments accountable if they fail to do so. The international human rights framework also allows us to connect to the broader international community which is struggling for these rights around the world and to use a common language which can promote solidarity and movement-building, thereby increasing the impact of our work.

**The international human rights framework and mechanisms provide individuals with the ability to claim food, housing, employment, education and healthcare as basic rights.**

Within the international human rights system, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are particularly relevant for claims involving women's economic, social and cultural rights given these Committees' expertise on women's equality and substantive ESC rights, respectively. The treaty bodies monitoring State compliance with these two covenants should be central in any advocacy or litigation strategy involving women's ESC rights. Periodic review sessions are critical opportunities for civil society to bring inter-

national awareness to the situation of women's ESC rights in a country.

Further, both of these treaties have Optional Protocols which can be used to enhance the normative and accountability framework for women's ESC rights created by ICESCR and CEDAW. There are several benefits that Optional Protocols provide for the implementation of women's ESC rights and redress for violations of women's ESC rights. These include:

- creating an accountability mechanism at the international level for a State's failure to meet its obligations under the Convention;
- affording individuals and groups of women the possibility

of an effective remedy where none was available at national level;

- identifying specific law and policy reforms that must be undertaken by a State which has breached its obligations under the Conventions;
- building jurisprudence that can influence decision-making in national courts and by other human rights bodies;
- clarifying the scope and content of the provisions of the Convention in the context of a specific factual situation, so that all States Parties have more detailed guidance as to their obligations;
- creating opportunities for targeted capacity-building on advocacy and litigation of women's ESC rights;
- providing a focus for campaigning by national groups on particular issues, through ratification campaigns or advocacy to promote implementation of the CEDAW and CESCR Committee's concluding observations and recommendations; and
- encouraging strategic alliances among groups in civil society to support Optional Protocol related activities, including ratification, submission of communications, and inquiries.

## 1.3 About this Guide

This Guide is one of several initiatives aimed at bringing greater recognition and accountability to violations of women's economic, social and cultural rights. The Guide seeks to provide a practical tool for activists and lawyers to advance the protection and fulfilment of women's ESC rights through the use of CEDAW and ICESCR's normative framework and procedures in complimentary and mutually reinforcing ways.

The realisation of women's ESC rights implicates the norms enshrined in the nine international human rights treaties and in particular in the CEDAW and the ICESCR. While, it is important to work with all treaties, this Guide focuses on CEDAW and ICESCR as the two most relevant treaties. However, for women experiencing multiple discriminations, such as women with disabilities, racialised women or migrant women, conventions such as CRPD, CRC and CERD, will also be critical. Both CEDAW and the ICESCR through their normative framework and the specific expertise of their expert Committees, contribute to a greater

understanding of the intersection between discrimination against women and barriers to women's enjoyment of their economic, social and cultural rights. Using this analysis and expertise in tandem can provide a powerful tool for holding States accountable to fulfilling women's enjoyment of their economic, social and cultural rights.

Activists and lawyers have a key role to play in advancing human rights discourse and standards on women's economic, social and cultural rights. When engaging with the reporting and complaints procedures under CEDAW and ICESCR and their Optional Protocols, activists and lawyers can advance a gender-sensitive analysis of substantive economic, social and cultural rights and their relationship to the fulfilment of women's right to equality. Further, we hope this Guide will encourage and support women's rights advocates, activist and lawyers to take action to bring accountability to violation of women's economic, social and cultural rights and advance enjoyment of their rights. This Resource Guide aims to bring greater accountability and protection to women's economic, social and cultural rights by encouraging and supporting activists and lawyers to use CEDAW and CESCR in their national and international advocacy to advance women's human rights. This Guide also seeks to celebrate women's significant and often unrecognised contribution to economic, social and cultural life and hopes through the use of the mechanisms presented here, women's rights advocates can advance recognition and visibility of these contributions.

This guide lays out how organizations and individuals can use CEDAW and its OP as well as the ICESCR and its OP to implement women's economic, social and cultural rights. The manual also discusses how an Optional Protocol case might be framed, and what should be considered when determining which venue is most appropriate for the claim. The process of claiming one's rights requires strong collaboration between lawyers, and advocates, and the communities and women whose rights have been violated. This manual is intended to be a practical resource to inform the work of advocates, including lawyers, litigators and activists, to seek redress for human rights violations.

### **This resource guide is divided into the following parts:**

**Part One:** Executive Summary

**Part Two:** An overview of women's economic social and

cultural rights and the general and specific obligations of states.

**Part Three:** An overview of Optional Protocols.

**Part Four:** An overview of the redress mechanisms available under OP-CEDAW.

**Part Four:** An overview of the redress mechanisms available under OP-ICESCR.

**Part Six:** An overview of advocacy and litigation strategies for claiming women's ESC rights.

**The appendices contain:**

- The texts of CEDAW, ICESCR and their respective Optional Protocols—OP-CEDAW and OP-ICESCR.
- Supplementary charts and case studies; and
- Additional resources on the use of OP-CEDAW and OP-ICESCR.