



human  
rights

law  
resource  
centre



Human Rights Law Resource Centre Ltd  
Level 1, 550 Lonsdale Street  
Melbourne VIC 3000  
P: + 61 3 9225 6695  
F: + 61 3 9225 6686  
[hrlrc@vicbar.com.au](mailto:hrlrc@vicbar.com.au)  
[www.hrlrc.org.au](http://www.hrlrc.org.au)

13 March 2008

The Hon Rob McClelland MP  
Attorney-General of Australia  
Parliament House  
Canberra ACT 2600

By email: [jonathan.kirkwood@ag.gov.au](mailto:jonathan.kirkwood@ag.gov.au)

Dear Attorney General

### **Negotiation of Optional Protocol to the International Covenant on Economic, Social and Cultural Rights**

As you will be aware, the UN Working Group on the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* is meeting in Geneva from 31 March to 4 April 2008 to further negotiate the text of this draft instrument. The Working Group is aiming to finalise negotiation of the text by December 2008 to coincide with the 60<sup>th</sup> anniversary of the *Universal Declaration of Human Rights*.

The Human Rights Law Resource Centre calls on the Australian Government to strongly support the negotiation and adoption of an effective, comprehensive complaints and inquiries mechanism for the *ICESCR*. At an international level, this position would demonstrate leadership and be consistent with your Government's commitment to engage more positively and constructively with international human rights bodies and mechanisms. We applaud the recent announcement of your intention to ratify the *Optional Protocol to the Convention against Torture* and your support for the Declaration on the Rights of Indigenous Peoples. At a domestic level, support for the *OP to ICESCR* would promote your Government's policy of social inclusion and the alleviation of disadvantage, as evidenced by such initiatives as the preparation of a White Paper to address homelessness, amending unfair workplace laws, and commissioning an inquiry into a paid maternity leave scheme.

The international human rights framework recognises the 'crucial interdependence' of human rights, and that civil, political, economic, social and cultural human rights are universal, interdependent, interrelated and indivisible. This interdependence is reflected in everyday realities in Australia. The

right to privacy, for example, is largely illusory for homeless people who are forced to live their private lives in public space. Similarly, the right to security of person is diminished for Indigenous people without access to adequate health care.

The *OP to ICESCR*, in its present draft form, would provide individuals and groups with a means to seek and obtain a remedy for violations of their economic, social and cultural rights at the international level, where they are denied one domestically.

The Human Rights Law Resource Centre is concerned about proposals for an 'à la carte' approach to rights protection under the *OP to ICESCR* pursuant to which governments could pick and choose which rights would be justiciable. We urge the Australian government to reject such a proposal. An 'à la carte' approach would significantly diminish the universality of human rights and undermine the principle of equal recognition and effective protection of economic, social and cultural rights.

The Centre is also concerned that the threshold for admissibility of complaints has been set at a higher level than in other similar mechanisms and that limitations being proposed for interim measures will render them ineffective. Finally, the Centre urges the Australian Government to reject attempts to incorporate into the text the doctrine of 'margin of appreciation'. This doctrine would substantially diminish governmental accountability under the *OP to ICESCR* and is clearly incompatible with the 'core minimum obligations' that exist under the Covenant, particularly with respect to adequate food, water, housing and health care.

We would appreciate any opportunity to discuss the *OP to ICESCR* further and hope that the Australian Government will play a positive and constructive role in the negotiation and adoption of this important instrument. We would also be happy to prepare and provide you with a Briefing Paper on the *OP to ICESCR* if this would be of assistance.

Yours sincerely



Philip Lynch  
Director