

**AN ARGUMENT FOR SOUTH AFRICA'S ACCESSION TO THE *OPTIONAL
PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS* IN THE LIGHT OF ITS IMPORTANCE AND
IMPLICATIONS**

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SUMMARY

The universality, indivisibility, interdependence and interrelatedness of all rights have been universally acclaimed since the drafting in 1948 of the *Universal Declaration of Human Rights*. However, despite the doctrine of indivisibility, civil and political rights (CPRs) have for a long time been treated as being enforceable judicially at the national, regional and international levels, while socio-economic rights (SERs) have not. With the elaboration and adoption of an *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (OP-ICESCR), which mandates the Committee on Economic, Social and Cultural Rights (CESCR) to consider individual communications detailing the violations of SERs, the justiciability of SERs was also fully recognised at the international level.

This paper undertakes an analysis of the importance and implications of the individual communications procedure under the OP-ICESCR and details some of the reasons why it would be beneficial for South Africa to accede thereto. The argument for accession by South Africa to the OP-ICESCR departs from the premise that South Africa's ratification of the ICESCR is imminent. Having signed the ICESCR on 3 October 1994, the South African Cabinet on 10 October 2012 decided that South Africa should ratify the Covenant. The authors argue that acceding to the OP-ICESCR will complement domestic protection and will confirm South Africa's global leadership in the field of justiciable SERs. Logic dictates that South Africa should confirm at the international level its position as a world leader on the national

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justiciability and legal enforcement of SERs, as indeed it has done during the drafting process of the OP-ICESCR. Accession to OP-ICESCR, the argument continues, will not detract from the country's sovereignty, especially in the light of the requirement of the exhaustion of domestic remedies, including the condition that applicants must show that they have suffered a "clear disadvantage". In any event, South Africa already has undertaken obligations as to SERs under regional human rights treaties that are equal to and in some respect more arduous than the obligations emanating from the ICESCR.

KEYWORDS: Socio-economic rights; justiciability; Optional Protocol; *International Covenant on Economic, Social and Cultural Rights*; ratification; accession.