

# Access to Justice for Economic, Social and Cultural Rights

A Case Study: Ratifying the Optional Protocol to the  
International Covenant on Economic, Social, and Cultural  
Rights in Uruguay

**Justice NOW! Ratify to  
Protect all Human Rights**

CAMPAIGN FOR THE RATIFICATION AND IMPLEMENTATION  
OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL  
COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS



The *Platanus acerifolia* (Platano) tree is found throughout Montevideo, the capital of Uruguay, providing shade in parks and adding color to city streets.

# Access to Justice for Economic, Social and Cultural Rights

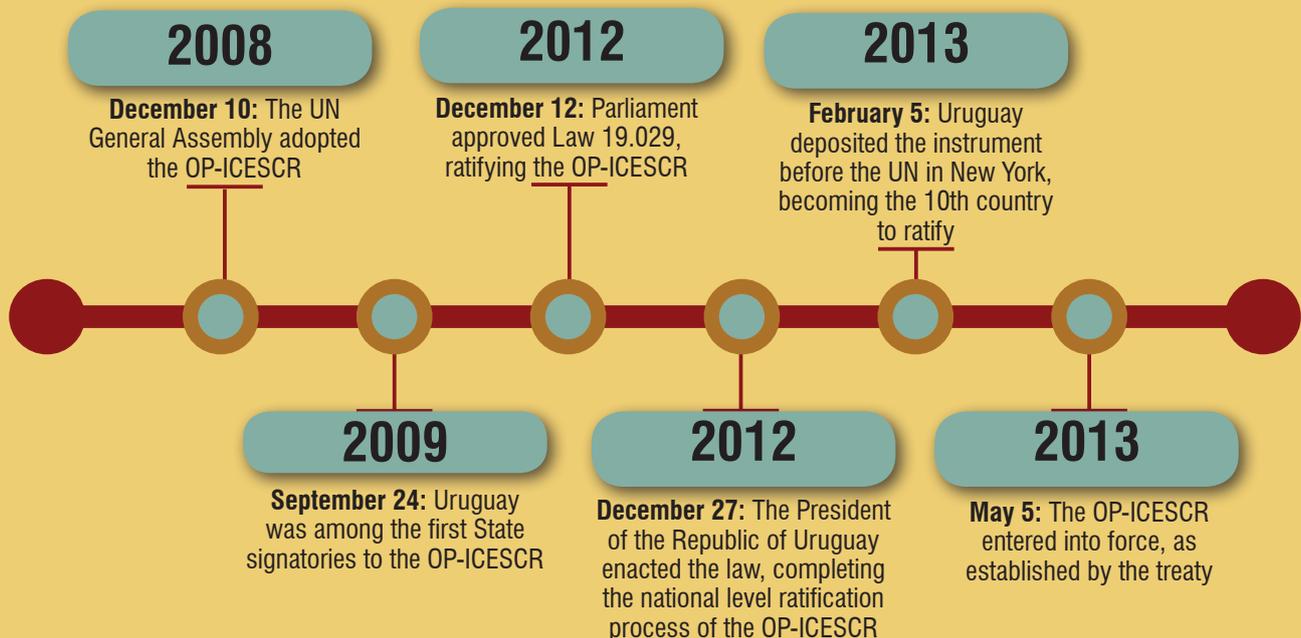
## A Case Study: Ratifying the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights in Uruguay

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) is a key human rights treaty that strengthens access to justice in relation to people's economic, social and cultural rights.<sup>1</sup> It establishes an international complaints mechanism that allows individuals who have exhausted all attempt at remedy within their own countries, to claim before the UN Committee on Economic, Social and Cultural Rights (CESCR) that their rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>2</sup> have been violated, in order to get redress. The OP-ICESCR corrected the historical imbalance between the protection of civil and political rights, on the one hand, and economic, social, and cultural rights, on the other.<sup>3</sup> As such, it is an important confirmation of the equality, interdependence, and indivisibility of all human rights, and an important tool to strengthen access to justice globally.

National, regional and international mobilization efforts of civil society – facilitated in large part by the NGO Coalition for the OP-ICESCR<sup>4</sup> – played a decisive role in the discussion, adoption and ratification of this treaty.

This factsheet examines the ratification of the OP-ICESCR by Uruguay and outlines the advocacy strategies adopted by civil society, given that the efforts that led to this 10<sup>th</sup> ratification of the OP-ICESCR triggered the entry into force of this treaty.

### National campaign milestones



<sup>1</sup> For more information about the OP-ICESCR, see: NGO Coalition for the OP-ICESCR, *A Toolkit for Action – Booklet 2: Overview: The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, available at [https://docs.escr-net.org/usr\\_doc/Booklet\\_2\\_Jan\\_2011\\_FINAL.pdf](https://docs.escr-net.org/usr_doc/Booklet_2_Jan_2011_FINAL.pdf).

<sup>2</sup> For more information about the ICESCR, see: NGO Coalition for the OP-ICESCR, *A Toolkit for Action – Booklet 1: Refreshing Your Knowledge about the International Covenant on Economic, Social and Cultural Rights*, available at [https://docs.escr-net.org/usr\\_doc/Booklet\\_1\\_FINAL-12-7-2010\\_\(3\).pdf](https://docs.escr-net.org/usr_doc/Booklet_1_FINAL-12-7-2010_(3).pdf).

<sup>3</sup> A similar international complaints mechanism has existed in connection with the International Covenant on Civil and Political Rights since 1976.

<sup>4</sup> The NGO Coalition for the OP-ICESCR is formed of over 300 organizations and individuals around the world, working collectively to encourage ratification of the OP-ICESCR. For more information, see: <https://www.escr-net.org/op-icescr>.

## Stage One:

# Beginning the national mobilization process towards the development of the OP-ICESCR

From the early 2000s, there was a very active civil society advocacy in Uruguay in support of the OP-ICESCR. Amnesty International-Uruguay (AIU) led efforts to raise awareness regarding the importance of the OP-ICESCR, and subsequently joined forces with other organizations – including those belonging to the Uruguay chapter of the Inter-American Platform for Human Rights, Democracy and Development (PIDHDD-UY)<sup>5</sup> – to advocate before the Uruguayan government for the development of this international instrument.

### Key advocacy actions included:

- Communications and letters to the Ministry of Foreign Relations.
- Meetings with authorities to explain the importance of the OP-ICESCR.
- Interventions in Parliament before the Thematic Commission tasked with considering human rights.

The civil society goal at this time was to ensure that the Uruguayan government supported a strong treaty that included a complaints mechanism addressing all of the human rights contained in the ICESCR, rather than – as promoted by some States during the UN negotiation process – one which would only consider claims about certain rights. In the intense and prolonged negotiations regarding the scope of the OP-ICESCR, the NGO Coalition for the OP-ICESCR played a leading, and ultimately successful, role in amplifying civil society advocacy, facilitating meetings with State representatives and UN officials, producing declarations and documents that helped support an organized position by the international community, and advocating for an OP-ICESCR covering all ICESCR rights.

**Advocacy outcome: The UN General Assembly adopted the OP-ICESCR on December 10, 2008, during the commemoration of the 60th anniversary of the Universal Declaration of Human Rights.**

UN General Assembly  
New York, 10 December, 2008  
*Foto ONU/Eskinder Debebe*



<sup>5</sup> The PIDHDD – the Inter-American Platform for Human Rights, Democracy and Development – is a regional platform with national chapters, and a member of the NGO Coalition for the OP-ICESCR, that has advocated for the OP-ICESCR since the process of adoption.

## Stage Two:

# Taking action to ensure widespread signing of the OP-ICESCR by States

Following the UN adoption of the OP-ICESCR, civil society took action in Uruguay to encourage the government to make sure that Uruguay was one of the first States to sign the OP-ICESCR.

## Key advocacy actions included:

- At the national level: national organizations strategized about how, and in which spaces, to promote the OP-ICESCR with government officials.
- At the regional level: during the MERCOSUR<sup>6</sup> Meeting of High-Level Authorities on Human Rights in 2009, civil society advocates requested States, and in particular Uruguay, to sign the OP-ICESCR once it opened for signatures and ratifications in September 2009.<sup>7</sup>

**Advocacy outcome: Uruguay was among the first State signatories to the OP-ICESCR, affixing its signature during the official UN ceremony, September 2009, together with 29 other States.<sup>8</sup>**



Treaty Event opening ceremony for the signature of the **Optional Protocol to the International Convention on Economic, Social and Cultural Rights**  
Pedro Vaz (seated), Minister of Foreign Affairs of Uruguay  
*UN Photo/Devra Berkowitz*

<sup>6</sup> MERCOSUR is a sub-regional inter-governmental group with the following governmental members: Argentina, Brazil, Paraguay, Uruguay and Venezuela (full members), and Bolivia, Chile, Peru, Colombia, Ecuador and Suriname (associate countries).

<sup>7</sup> Minutes of the Meeting of RAADDHH-MERCOSUR, available at <http://www.mec.gub.uy/innovaportal/file/1825/1/xvi-raaddhh-acta.pdf> (in Spanish).

<sup>8</sup> For information about the status of signatures and ratifications of OP-ICESCR, see: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3-a&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&clang=_en).

## Stage Three:

# Developing a strategic civil society plan to bring the OP-ICESCR into force

Once open for signature, international treaties generally require a certain number of States to complete ‘ratification’ (that is, formally agree to be bound by the instrument) for its provisions to have practical effect. The OP-ICESCR required 10 State ratifications to enter into force. In Uruguay, the ratification process was supported by civil society actions in a variety of interconnected and context-specific ways, encompassing verification of relevant national procedures regarding international treaties, and advocacy at the national, regional and international levels.

In the paragraphs that follow, general strategic approaches are discussed in conjunction with specific examples of the Uruguay experience. More advocacy ideas can be found in the NGO Coalition for the OP-ICESCR’s ‘Toolkits for Action’.<sup>9</sup>

**Verifying the national procedure for the ratification of international treaties:** Prior to planning advocacy actions, it is important to verify what the established process is in your country. This allows civil society to identify the relevant stakeholders and to design appropriate advocacy strategies.

### Key advocacy steps for verification include:

- Identify civil society allies and **form a coalition or national group** to lead efforts and become a reference point for authorities and other interested parties.
- **Map the national process**, including guidance in the Constitution and other legislation for the ratification of international treaties.
- **Identify key decision-making actors**, including officials, departments, ministries and other authorities whose approval is needed for ratification.
- **Identify other key actors** to support public education and awareness-raising of the issue, including media outlets, academia, legal collectives, etc.



**Action in Uruguay:** During this stage of the Campaign, a National Coordination Group was formed, including AIU, PIDHDD-UJ and the Instituto de Estudios Legales y Sociales del Uruguay (IELSUR), in association with the NGO Coalition for the OP-ICESCR.

According to Uruguayan legislation, treaty ratification generally requires the signature of 13 ministers in order to be sent to Parliament for a ratification law to be drafted. An alternative process (pursuant to Article 85(7) and Article 168(25) of the Uruguayan Constitution) involves the collection of ministry signatures relevant to the treaty topic, requiring fewer signatures in order to be presented to Parliament.

Following civil society advocacy, the Ministry of Foreign Affairs, the authority responsible for leading the process in the executive branch, agreed to present the treaty to Parliament using the alternative procedure mentioned above.

### Key advocacy actions at the national level:

- Engage in **sustained advocacy before the Ministry of Foreign Affairs:** provide relevant information, arrange explanatory and advocacy meetings, and follow up on the process by requesting information on ratification status.

<sup>9</sup> NGO Coalition for the OP-ICESCR, *A Toolkit for Action – Booklet 3: Why Should States Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights?* and NGO Coalition for the OP-ICESCR, *A Toolkit for Action – Booklet 4: Tools to Lobby Your Country and Advocate for the Ratification and Implementation of the Optional Protocol*, both available at <https://www.escr-net.org/resources/toolkit-action-op-icescr>.

- Take **action before the legislative branch**: arrange meetings with legislators from all parties, including members of specific thematic commissions or other areas of Parliament relevant to the treaty issues, provide informational materials, and continue to monitor the legislative process.
- **Support the role of the judiciary**: share information about the treaty with the judiciary and – in the longer term, following ratification – consider supporting judicial capacity-building on the new instrument.
- **Mobilize communities and raise awareness** through workshops with civil society, roundtables and public events with authorities and experts, discussions between representatives of civil society and the UN to align strategies and share information during the process, dissemination of press releases and informational materials.
- **Share experiences** regarding campaigning, strategic litigation, and training.
- **Make and sustain connections** between national advocates and any international coordination of the campaign to agree on an aligned message before government authorities and society generally, and to ensure fluid communication among all allies throughout the ratification process.



**Action in Uruguay:** During the National Campaign, a key public event was held in June 2012, bringing together representatives of civil society, Parliament, and the executive and judicial government branches with the aim of raising awareness and encouraging discussion about the OP-ICESCR, while also building positive positions towards its ratification.

In association with the public event, the NGO Coalition for the OP-ICESCR and its national members (National Coordination Group) carried out a workshop to build capacity and strategize with civil society allies. Following these events, the National Coordination Group facilitated other advocacy meetings, including with representatives from the National Human Rights Institution and the Office of High Commissioner for Human Rights (OHCHR).

### Key advocacy actions at the regional/sub-regional level:

- **Verify the relevant regional mechanisms** your country is party to, as well as opportunities for advocacy with key stakeholders through submissions, meetings, requests for solidarity, and awareness-raising.
- **Use regional spaces to connect with civil society groups** to exchange tactics for ratification, share information, request messages of solidarity and advocate collectively before authorities.



**Action in Uruguay:** Civil society groups identified MERCOSUR's Meeting of High-Level Authorities on Human Rights<sup>10</sup> as a key space to coordinate efforts and advocate for OP-ICESCR ratification more broadly across the Latin American region.

For example, during the MERCOSUR High-Level Meeting held in Montevideo in December 2011, the NGO Coalition for the OP-ICESCR and AIU advocated in favor of the OP-ICESCR by drawing attention to the lack of ratification and presenting a joint press release and Declaration by prominent international jurists and other experts in favor of OP-ICESCR ratification.<sup>11</sup>

In response, Uruguay, in its capacity as the presiding State at MERCOSUR session, reiterated its commitment to ratify in the near future, and called on other members of MERCOSUR to move the ratification process forward in their countries.<sup>12</sup>

During this regional meeting, the NGO Coalition also resumed conversations with a number of States, such as Uruguay and Argentina, to get them involved in reinvigorating the Group of Friends of the OP-ICESCR, a group of States, which had a leadership role during the UN Open-Ended Working Group for the OP-ICESCR.

<sup>10</sup> For more information about MERCOSUR's Meeting of High-Level Authorities on Human Rights, see: <http://www.raadh.mercosur.int/> (in Spanish).

<sup>11</sup> See [https://www.escr-net.org/sites/default/files/declaration\\_to\\_support\\_the\\_ratification\\_op-icescr.pdf](https://www.escr-net.org/sites/default/files/declaration_to_support_the_ratification_op-icescr.pdf).

<sup>12</sup> Minutes of MERCOSUR's Meeting of High-Level Authorities on Human Rights, available at [http://www.mec.gub.uy/innovaportal/file/16114/1/acta\\_xx.pdf](http://www.mec.gub.uy/innovaportal/file/16114/1/acta_xx.pdf).

## Key advocacy actions at the international level:

- Engage in **advocacy before UN treaty bodies** and present parallel civil society reports during reviews of State treaty compliance, which include a request for a clear recommendation to the State to ratify relevant treaties including the OP-ICESCR.
- Undertake **advocacy before UN special procedure mandate holders**, such as Special Rapporteurs and Working Groups, to request that the ratification of the OP-ICESCR be included as a key point in country recommendations or general reports.



**Action in Uruguay:** In September 2010, civil society organizations, coordinated by PIDHDD-UY, **submitted a parallel report** to CESCR denouncing Uruguay's delay in OP-ICESCR ratification and demanding immediate action.<sup>13</sup>

In November 2010, the **Uruguayan government was reviewed by CESCR** in relation to its compliance with ICESCR. Prior to the presentation of its State report, the State delegation expressed a commitment to ratification of the OP-ICESCR.

In December 2010, CESCR issued its concluding observations to the Uruguayan government in response to the State report, including a **recommendation that the Uruguayan government immediately ratify the OP-ICESCR**.

At a press conference held on December 22, 2010, by the Ministry of Foreign Affairs, **the Uruguayan government accepted the recommendation and publicly reiterated its commitment** to ratify the OP-ICESCR.

In February 2012, the NGO Coalition for the OP-ICESCR and national members capitalized on the presence of the UN Special Rapporteur on the human right to safe drinking water and sanitation in Uruguay, participating in a civil society meeting and requesting that the Special Rapporteur reiterated the importance of ratifying the OP-ICESCR. Upon concluding her mission, the **Special Rapporteur included the ratification of the OP-ICESCR in her recommendations** to the Uruguayan government.<sup>14</sup>

Public Event  
Protection of Economic, Social and Cultural Rights:  
Opportunities opened by the Optional Protocol to the ICESCR.  
Montevideo, Uruguay. July 16, 2012.



<sup>13</sup> Shadow report on ESCR edited by PIDHDD, Uruguayan Chapter, available at [http://www.cotidianomujer.org.uy/capitulo\\_uruguay.pdf](http://www.cotidianomujer.org.uy/capitulo_uruguay.pdf) (in Spanish).

<sup>14</sup> Audio-Press conference, closure visit of Special Rapporteur, Catarina de Albuquerque: <https://www.presidencia.gub.uy/sala-de-medios/audios/audios-completos/relatora-onu-acceso-agua-potable-saneamiento>

## Achievement: Ratification of the OP-ICESCR by Uruguay

- December 12, 2012: Parliament approved Law 19.029, ratifying the OP-ICESCR.
- December 27, 2012: the President of the Republic of Uruguay enacted the law, completing the national level ratification process of the OP-ICESCR.
- February 5, 2013: Uruguay deposited the instrument before the UN in New York, becoming the 10<sup>th</sup> country to ratify, and triggering the official entry into force of the OP-ICESCR.

**On May 5, 2013, the OP-ICESCR entered into force,**  
as established by the treaty, three months after the 10<sup>th</sup> ratification, by Uruguay.

## Strengthened access to justice following OP-ICESCR ratification

Following OP-ICESCR ratification, people in Uruguay now have the option to make a claim before the CDESCR regarding violations of the ICESCR, when they have not been able to obtain an effective remedy at the national level. Beyond this strengthened access to justice, ratification represents a binding commitment by Uruguay to deepen its understanding of its obligations in relation to economic, social and cultural rights (ESCR) at the national level, and to take targeted steps to monitor and strengthen the enjoyment of these rights in practice. Therefore, the post-ratification stage offers an important opportunity for civil society advocates to take continued action to raise awareness about the OP-ICESCR, ensure constructive use of the complaints mechanism, and encourage positive State measures towards enjoyment of ESCR at the national level, leading to the realization of ESCR for everyone.

Beyond ratifying the treaties, concrete steps should be taken in order to raise awareness among the judiciary, state officials and policy makers, on the implementation of human rights treaties in the courts and other state policies.

... The judiciary, as guarantor of rights, must apply the law derived from treaties and interpret the cases in the light of them.

Citizens should be aware, as rights holders, that these human rights standards have been accepted by the country and hold the state accountable for the effective implementation of these measures and concrete enjoyment of their human rights.

**Prof. Dr. Juan Ceretta**

Strategic Litigation Clinic, University of the Republic (UDELAR), Uruguay

The ratification of the OP-ICESCR (and other human rights treaties) is crucial to advancing the realization of rights, facilitating a dialogue between international and domestic law.

It is important to be aware of the enforceability of human rights. Using strategic litigation and providing training to justice officials is key, as well as setting key precedents.

**Dr. Ariela Peralta**

Chair of National Human Rights Institution, Uruguay

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### **NGO Coalition for the OP-ICESCR**

The NGO Coalition for the Optional Protocol to the Covenant on Economic, Social and Cultural Rights (OP-ICESCR), coordinated by ESCR-Net, led the international NGO Campaign for the OP-ICESCR and continues to support national efforts for the ratification and implementation of the OP-ICESCR to ensure that individuals and groups have access to justice for violations to their economic, social and cultural rights.



[www.escr-net.org/op-icescr](http://www.escr-net.org/op-icescr)  
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