

SLWG GUIDELINES FOR CASE SELECTION FOR THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The test case "criteria" below should be thought of as strategic dimensions to strive for in identifying important cases. It is not a basis for denying support to claimants where they are trying to address serious violations, even where some of the ideal factors for a test case are not present. ESCR-Net has, however, limited resources. Ideally, we will develop test cases that meet as many of these criteria as possible.

INDIVIDUAL COMPLAINTS

Guidelines regarding systemic and policy issues

1. Balance between advancing jurisprudence on ESCR and not moving too quickly on the most challenging issues
2. Initial focus on concrete targeted cases rather than more complex or abstract cases where this is necessary to ensure that the Committee has all the evidence it needs to make sound assessments of compliance
3. Where complaints involve more complex systemic issues, a high priority will need to be given to ensuring that expert evidence and various perspectives are made available to the Committee to ensure that all interests are properly understood and considered in the assessment of reasonableness
4. Guidelines as to the added value of the CDESCR over regional bodies (below)

Guidelines regarding stakeholders

1. **Individuals** or, preferably, **specified group of individuals** with clear standing as victims and willingness to move forward to the UN System (an individual complainant might suffer too much pressure to withdraw while a non-specified group of individuals presents challenges regarding standing).
2. Identification of **one or more local or national NGOs** to work with the claimants (both to assure political legitimacy with regard to victims, assist in demonstrating the seriousness of violations and to assure a constant connection between what is happening in international procedures and the ongoing experiences of the claimants). NGOs should also be **open** to working collaboratively with the **project team**.
3. Where **legal counsel** is involved in representing the group, openness to working collaboratively with a **project team**, composed of the petitioners/claimants, social movements, local and international NGOs, pro bono lawyers and researchers, with clear roles (in order to ensure information is passed along to claimants and social movements, to ensure claimants participate in key decisions, to produce evidence, and to ensure monitoring of recommendations)
4. Focus on or inclusion of individuals or groups representing **the most adversely affected communities**, such as persons with disabilities, indigenous groups, women, members of the poorest communities, among others

5. **A strong connection between the individual claims and social movements** (among other reasons, to promote broader implementation)

Guidelines as to admissibility issues

6. **Exhaustion of domestic remedies or clear lack of effective domestic remedies** (Rules of Procedure Draft) or unreasonably **prolonged** remedies (Rules of Procedure Draft). Admissibility has been the greatest obstacle before UN Committees.
7. Where necessary, the Committee may consider whether a petition reveals that the author has suffered a “clear disadvantage.” While this is not an admissibility guideline, it will be advantageous to support claimants who are able to show that they have suffered a clear disadvantage as a result of the alleged violation (article 4, OP-ICESCR).

Guidelines as to the Committee’s added value

8. Regional systems may take considerably longer to decide cases
9. Regional systems have not analyzed the content of ESCR in depth, or have the mandate to examine the full range of ESCR which are recognized under the ICESCR

Guidelines as to facts, evidence and the merits

10. **Solid evidentiary record, preferably with favourable findings by domestic courts on the evidentiary basis of the claim and** preferably including opinions of experts or official bodies such as NHRI’s and/or independent monitoring bodies, **possibly** including alternative formats such as videos.
11. **Compelling facts** (including number of victims affected)
12. **Quality of the framing of legal issues in the domestic litigation** so that important arguments, perhaps related to gender, racial or disability-related issues, cannot be excluded because they were not pleaded in the exhaustion of domestic remedies.
13. Focus on structural or **systemic issues** with a collective dimension that might have a regional or a national impact (due to CDESCR limited capacity, aim at broad impact cases). Such claims should be **accompanied by sufficient information (and evidence)** on how to change public policies in a way that might be politically feasible and effective.
14. Helpful if issues addressed in the case have been included in the **CDESCR recommendations for the particular country** or have been the subject of recommendations by a UN Special Rapporteur, where the recommendations have been ignored.
15. Cases raising **unique obligations imposed by the ICESCR: reasonableness standard of review** (supporting a shift of the burden of proof to the State once a prima facie violation has been established) **substantive equality, progressive realization, maximum available resources and the obligation to fulfill** (including with regard to private actors providing public services, ECHR, CEDAW, IASHR), where compelling and solid evidence is available, will be considered strong test cases for establishing jurisprudence and demonstrating the value of the OP.

Guidelines as to remedies and implementation

16. **Possibility of analyzing existing national institutions and design feasible remedies** and demands with a focus on the obligation to fulfill (in order to make enforcement regarding positive obligations more plausible in spite of current low implementation rates for UN recommendations). Possibility (in the future) of requesting **dialogical remedies, with ongoing participation of the parties** (the latter would require monitoring).
17. Possibility of **ongoing monitoring for implementation** by national NGOs (part of the project team).
18. Likelihood of **successful finding and implementation of a remedy**. (Litigation objectives vary significantly on a case-by-case basis and the assessment of success will reflect the specific objectives chosen for each case.)

Guidelines as to diversity

19. **Diversity of States and legal systems** with regard to the set of cases selected
20. **Diversity of rights and principles** with regard to the set of cases selected (in order not to build a tradition, present for other UN Committees, of targeting only a few issues)
21. **Diversity of claimants: disability, race, indigenous, ethnicity, etc.**

INQUIRY PROCEDURE

Requests to support the Inquiry Procedure in cases of grave or systematic violations will also be considered and the SLWG may also assist individuals and groups to decide in these cases whether to proceed via a communication or alternatively to provide the CESCR with reliable information on the basis of which it may initiate an Inquiry. While this procedure does not require a complaint from a victim, it will be important to ensure that victims have a meaningful role in the procedure.

The Inquiry procedure will be an important strategic option to consider when domestic remedies have not been exhausted but where the Committee's involvement could play an important role in preventing further violations.

OTHER COMMITTEES

Support may be provided to claims taken to other UN Committees. These cases will focus on the protection afforded to ESCR by rights such as non-discrimination or the right to life and will emphasize indivisibility and interdependence among rights. In countries where ESCR are not explicitly protected, and where claims are brought under rights such as equality and right to life, jurisprudence before other Committees engaging these other rights will be extremely important to promoting effective domestic remedies. A priority will be to develop or support cases alleging violations of ESCR under the CRPD, CRC, CERD and CEDAW.