

# **INTERNATIONAL WOMEN'S RIGHTS ACTION WATCH**



## **NGO SHADOW REPORTING TO CESCR: A PROCEDURAL GUIDE** *(June 2003)*

### **INTRODUCTION: CESCR COUNTRY REVIEW PROCESS AND NGO SHADOW REPORTING**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a powerful instrument for articulating, advocating, and monitoring women's human rights. NGOs have a crucial role in making the Covenant an instrument of women's empowerment, through advocacy and monitoring their government's implementation of the treaty with respect to women. The Covenant's enforcement mechanism is primarily a reporting and review system. NGOs can use this system to maintain government accountability inside the country and internationally.

The treaty is known informally as "the Covenant" or ICESCR. The reviewing body, the Committee on Economic, Social and Cultural Rights (CESCR) is known as "the Committee," and economic, social and cultural rights articulated in the treaty are ESC rights. These guidelines are designed to assist NGOs in producing shadow reports for the CESCR to use in evaluating government efforts to meet the obligations of the ICESCR Covenant and to assist NGOs in participating at different stages of the country review process.

### **TIMELINE FOR NGO ACTIVITY**

<b><i>EVENT AT THE UN</i></b>	<b><i>NGO ACTION</i></b>	<b><i>WHEN</i></b>
Ratification of ICESCR by a State Party	1.establish contact with CESCR Secretariat 2.monitor the preparation of initial State Party report or: 3.participate in the preparation of the initial State party report in the country	Immediately
Submission of State Party report to CESCR	1.obtain a copy of the government report from Foreign Ministry 2.submit relevant information to the CESCR Secretariat (will be kept in special country files)	Immediately
CESCR Review Schedule Established (usually approximately one year in advance) Schedules can be found on the CESCR website at: <a href="http://www.unhchr.ch/html/menu2/6/cescr.htm">http://www.unhchr.ch/html/menu2/6/cescr.htm</a>	1. organize an NGO coalition and set deadlines for the completion of a shadow report 2. prepare a list of issues and write shadow report	Immediately
Pre-Sessional Working Group Meeting <b>(TYPICALLY NOT FOR INITIAL REPORTS, BUT FOR SECOND AND SUBSEQUENT REPORTS)</b>	1.send a shadow report or compiled materials to the Pre-Sessional Working Group 2.make an oral presentation to the Pre-Sessional Working Group	At least 2 weeks prior to the Pre-Sessional Meeting  First morning of the Pre-Sessional Working Group meeting
Prior to the Session at which the State Party is reviewed	1. send a shadow report to CESCR members and to the CESCR Secretariat	Committee prefers 3 months before the session, but experts will consider reports received closer to the session. Reports received at the opening of session are not guaranteed attention.
CESCR session at which the State Party is reviewed	1.make an oral presentation at the meeting 2.approach CESCR members during the session to clarify issues and lobby 3.attend the official presentation of the government and “constructive dialogue” of the Committee with the government	On the first day of the session (Monday) During the session  On the scheduled day of the review
Following the Review and issuance of Concluding Comments by CESCR	1.report to other NGOs, media, etc. in country on the government review 2.disseminate the Concluding Comments 3.submit information to the CESCR Secretariat on the implementation of Concluding Comments	Immediately  As soon as possible  As soon as possible

**Reporting and review requirement.** States parties (countries that have ratified the ICESCR) are required to submit an initial report to the Committee within two years of

ratification. Thereafter they are required to submit a periodic report every five years on measures taken toward the realization of the ESC rights enshrined in the Covenant, including through international cooperation. The state report is a public document, the review takes place at public meetings at which representatives of the government introduce the report and answer questions by Committee members. The Committee essentially holds a conversation termed a “constructive dialogue,” about the government’s implementation efforts. NOTE: for periodic reports, the government responds to the list of issues prepared at the pre-sessional. On the final day of the session, the Committee adopts concluding observations summarizing its main concerns and making suggestions and recommendations for government action to improve implementation.

**Review schedules.** The Committee meets twice a year in sessions of three weeks each (April/May and November/December), at Palais Wilson in Geneva, Switzerland. Occasionally, an extraordinary third session is held to deal with the backlog. Reports are considered roughly in the order in which they were submitted, with some variations to provide geographical balance and a balance of initial and periodic reports in each session. Countries are invited to be reviewed according to a list drawn up by the Committee at each session for future sessions. Governments that have been scheduled for review at a particular session, but decide to withdraw presentation of the report are not granted a deferment. The Committee will go forward with the consideration of the report without a State party representative.

Countries that have ratified the Covenant and were placed in the queue for review, but failed to submit a report (“non-reporting countries”) will be reviewed in light of all available information relevant to ESC rights including NGO information. The Committee makes an effort to review one non-reporting country at each session.

**NGO reporting.** *NGO input is essential in the review of non-reporting countries. In such cases, in the absence of materials from the State party, information provided by NGOs becomes particularly valuable to the Committee and can have a strong impact.* Governments’ assessments of their efforts to comply with the Covenant frequently are incomplete and tend to minimize problems and maximize accomplishments. Recognizing this, the Committee asks governments whether they have involved NGOs in preparing the government report. The Committee has invited direct input from NGOs—both from those that have consultative status with the Economic and Social Council (ECOSOC)<sup>1</sup> and those that do not—in the form of independent or shadow written reports and oral presentations, to bring country’s residents’ concerns to national and international attention.

NGOs that have worked with the government to prepare the official report may find that the government report as submitted may not include their concerns. Even where the NGOs have been consulted in preparation of the official report, the final version may omit their point of view. Therefore, it is important for NGOs to submit their own materials to complete the record.

**Pre-sessional working group (Second and subsequent country reports).** After each session, a working group of approximately 5 Committee members remains in Geneva for a week to prepare for the following (typically, one year later) Committee session. This “pre-

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<sup>1</sup> Economic and Social Council (ECOSOC) is a UN organ under the authority of the General Assembly, which serves as the central forum for discussing international economic and social issues.

sessional” working group discusses five State party periodic reports scheduled for review at the following session with each group member serving as a “country rapporteur” for one of the reports. The country rapporteur is responsible for preparing a list of issues concerning the particular report. The list of issues is then sent to the State party, which is required to provide written replies in advance of the session at which its report is scheduled for review.

***NGO contribution at this stage of the process is essential as it is the best opportunity to ensure that issues of concern to NGOs find their way into the list of issues and will be the focus of the dialogue between the Committee and the State party. To participate at this stage, NGOs should submit written information (ideally the full shadow report) directly to the country rapporteur and/or to the CESCR Secretariat in advance of the pre-sessional group meetings. NGO representatives also may make oral statements in person during the first morning of the pre-sessional working group meeting.***

## ORGANIZING THE SHADOW REPORT

**Obtaining the government report.** The government report is the basis of the CESCR review. Reports are prepared by the relevant Ministries. Upon completion, the Ministry of Foreign Affairs submits the report to the UN. If the current report is available, the NGO report can be organized as a commentary on it. Try to obtain both the previous and current official reports from the Foreign Ministry. However, NGOs may choose to provide information on selected articles or just one article.

State parties’ reports should be available from the Foreign Ministry. Some governments fail to distribute the report within the country, despite the Committee’s recommendation that they do so. The government report is a public document and should be available to all citizens once it is submitted to the UN. If this is not the case, a note of the failure of the government to distribute the reports should be made in the shadow report.

Government reports are available from the UN for public distribution after they are translated into all six official UN languages (Arabic, Chinese, English, French, Russian, Spanish). Frequently the reports may not be available from the UN until fairly close to the beginning of the CESCR session, so it is important to request the report first from the government. If the report cannot be obtained within the country, check the United Nations High Commissioner for Human Rights (UNHCHR) web site (see Annex), where most reports are posted prior to the session, or contact IWRAP or the CESCR Secretariat for information on the status of particular country reports.

**Coordinating the contributors.** It is entirely possible for a single organization to prepare a helpful shadow report. However, many NGOs have chosen to collaborate with other national and international NGOs in preparing reports. Collaboration can enhance the impact of the report on the government, as it can demonstrate a consensus voice and existence of broad constituencies in favor of positions taken in the report. Coordination also helps the Committee use NGO information effectively, as the experts cannot be expected to give adequate attention to multiple reports, especially if they arrive in the last few days before the session. If submitting a report in alliance with other NGOs, it is important to budget time for coordination, identifying the strengths of each participating NGO, the tasks, resource- and cost-sharing, how to make final editorial decisions, etc.

**Organizing the report for maximum impact.** The following suggestions are based on 10 years experience in submitting NGO information to UN human rights committees:

1. Organize the information according to articles of the Covenant, not by issue. If an issue concerns more than one article, choose the article that is most on point for a full discussion. Indicate briefly the other articles that may cover the issue.
2. Limit the report to no more than 30 pages. Not all the experts will be equally interested in each country and bear in mind that the language you use (English, Spanish, French preferred) may not be the reader's first language. *Regardless of length, provide a table of contents and executive summary.*
3. The executive summary should include specific language that the Committee could use in asking questions and drafting concluding observations. An executive summary should be no more than three pages (a very long report may require up to five pages of summary). The summary is essential to draw adequate attention to particular issues.
4. Describe the problems, the evidence, and the specific suggestions for change. Indicate who in the government is in position to make the suggested change. Indicate the role of civil society, but do not eliminate government responsibility.
5. Prioritize issues. The Committee will not be able to focus adequate attention on more than a few issues. It is important to decide, at some point in the process, the most important issues to the NGO community.
6. Include analysis of reservations and accounts of NGO efforts relating to their withdrawal.
7. Include some background information about the country or region.

**Organizing the content.** It may seem difficult to organize the report according to articles of the Covenant rather than according to the issues that most concern NGOs. However, organizing by article indicates knowledge of the treaty and respect for the Committee's time. One useful approach is to identify the issues, discuss and prioritize them, and then consider which articles of the Covenant apply. For each issue, it is important to provide examples or evidence of how the issue affects residents of the country and make specific recommendations for addressing the problem.

*1) Identify concerns and the applicable articles of the ICESCR.* This will be based on experience and knowledge. Organizations or coalitions may identify a series of issues and determine priorities at a later date.

*2) Gather documentation and evidence to illustrate the issue.* This is important to make the case for both the necessity and the possibility of change.

Documentation can include statistics, legal cases, testimony of individuals, news clips, academic research, provisions of national and local laws and regulations. Statistics are most useful if disaggregated by age, marital status, class, ethnicity, and circumstances such as migrant status, as well as by sex, if possible. Case histories and testimony should be complete, including enough detail and contextual information to indicate the impact of particular actions or inaction by the government.

3) *Identify major obstacles and recommend approaches to removing them.* Consider the practical approaches to solving the problem. Which actors should be involved? Who needs to be trained or made aware of the Covenant and national laws and regulations regarding economic, social, and cultural rights: judges, police, prosecutors, women's advocates, school administrators, teachers, etc? Keep in mind how local residents can be involved in monitoring the process.

Recommendations for action should be concrete, suggesting specific action. Language from the CESCR Committee General Comments or prior Concluding Observations of the Committee may be helpful. Questions that remain open from consideration of prior reports stated in the Concluding Observations should be addressed. Specificity is important; for example, "government should protect women from economic exploitation," is not sufficiently precise. It would be more helpful to propose:

"government should a) collect accurate data on the disparity in income and wages, incidences of forced labor, sexual harassment (on the national level, local level, etc.); b) increase the allocation of resources to enforce anti-discrimination and anti-trafficking laws by 50%; c) train the police and other officials to insure that they offer women timely assistance and prevention measures."

4) *Reservations.* If your government has entered reservations to the Covenant, it is important to suggest the changes that would allow for withdrawal. This could include analyzing the reservations in light of the current law and state of society to suggest narrowing the reservations to reflect the actual circumstances of society, or suggesting changing law and policy that would lead to withdrawal. Reservations are supposed to be made with a view to eventually withdrawing them as the law and culture change to better allow for meeting Covenant obligations. They are not supposed to indicate a total refusal to change.

**Special attention to context and analysis.** Even if the government report provides general information, the Committee will want to relate that information specifically to women's situation.

Context also will be important for appropriate evaluation of a particular situation. For example, if an employment law includes remedies available only through an administrative system, such as the Ministry of Labor or a local authority, it is important to analyze the general attitude of that authority. If the court system generally has not been sympathetic to claims by a particular constituency (for example, ethnic minority women), it is important to note how judges are selected and trained and address the obstacles and opportunities for changing that system.

With the practicalities in mind, the report should be focused carefully and provide and provide a framework for developing very specific points for lobbying. While your report may be ultimately intended for a large audience, including government officials and the public, it should be planned for effectiveness with the Committee. As an audience the Committee has particular requirements:

- The Committee experts read the shadow report to obtain specific information that can help them evaluate the government report.

- The Committee experts cannot be familiar with the political and economic background of every country. They may need contextual information to understand the issues.
- The Committee experts always have a limited amount of time and want to receive information about the most pressing issues in a concise format.

## **SUGGESTED FORMAT FOR SHADOW REPORTS**

To provide the essential information and guidance to the reader, the report should include:

1. Title page including title, author(s) and date of the report;
2. Executive summary (see below);
3. Table of contents;
4. Introduction that gives more information about the production of the report;
5. The main body, organized by Covenant article, including recommended actions;
6. Concluding remarks;
7. Appendix (if necessary: can include text of important laws, media clips, etc.)

**Executive Summary.** An executive summary is a very brief presentation of information that allows busy readers to *instantly* get a clear idea of the main points in the shadow report. A good executive summary saves time for the reader and helps determine which part of the shadow report is of most interest. It is imperative for use by Committee members whose first language is not the language in which the report is written.

An executive summary is usually no more than three pages long (if the body of the report is over twenty pages, the executive summary can be somewhat longer). Information must be concise, accurate, and carefully selected from the full report. It should include:

- the main points of the report;
- the evidence/data included to support the main points;
- the recommendations for government action to address the key issues, in language the Committee can use in its concluding observations.

The executive summary usually is the most difficult part of the report to produce. It should state clearly where in the shadow report the reader can find more details about a particular point. Some suggestions:

- All the information about one article of the Covenant should be possible to summarize in one paragraph. If you cannot do so, it probably means that the information in the discussion does not have a clear focus and may have to be reorganized.
- Every important paragraph can be reduced to one sentence.
- Not every sentence or paragraph needs to be represented in the executive summary.

### **Useful Materials**

- 1) *The ICESCR Covenant and the General Comments.* As of June 2002 there are 14 General Comments to the CESCRC Covenant. General Comments are adopted by the CESCRC Committee to give guidance to governments as to the intent, meaning, and content of the Covenant and to emphasize specific issues the Committee wishes to see addressed in reports. Currently, the Committee is preparing a General Comment on Article 3 of ICESCR concerning equality between men and women, which is scheduled to be adopted in 2003. Copies of the General Comments can be obtained from the UNHCHR web site or from the University of Minnesota Human Rights Library (see Annex).
- 2) *CESCRC Concluding Observations.* The official reports of the CESCRC sessions include questions asked of the States parties in prior reviews. At the end of each CESCRC session, the Committee issues Concluding Observations on each country, highlighting shortcomings, accomplishments, and recommended action to further implement the Covenant. Copies of the CESCRC reports, and in particular the Concluding Observations, should be available from the UNHCHR web site. There are two UNHCHR web addresses (see Annex) to access documents and information related to the human rights treaties. Both should be consulted as neither of them is complete.
- 3) “Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights: NGO participation in the activities of the Committee on Economic, Social and Cultural Rights (Note by Secretariat)” (E/C.12/2000/6, 7 July 2000). Available at the CESCRC web site.
- 4) “Revised general guidelines regarding the form and content of reports to be submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights” (E/C.12/1991/1). Available at the CESCRC web site.
- 5) *Assessing the Status of Women: A Guide to Reporting Under the Convention on Elimination of Discrimination Against Women.* The manual is published by IWRAW and the Commonwealth Secretariat. It is designed to assist individuals and organizations to evaluate the implementation of the CEDAW Convention. Since many of the articles and issues overlap, it can be used to assess the status of women under the ICESCR Covenant. Available in English, Chinese, French, Spanish, Russian and Arabic; contact IWRAW.
- 6) *Samples of NGO shadow reports* can be obtained directly from NGOs or, in some cases, from IWRAW. IWRAW maintains a list of NGO reports that have been submitted to the Committee and can provide addresses.

## **WORKING WITH THE CESCRC COMMITTEE**

The CESCRC Committee consists of eighteen independent experts, who are elected by ECOSOC from a list of nominees proposed by nations that have ratified the Covenant. The membership represents a geographical distribution as well as an attempt to include experts from different political and legal systems. Because they are by the terms of the CESCRC treaty “independent,” the members serve in their individual capacity and do not take formal instructions from their government in receiving the reports. However, they must be nominated by their government for election, so they are likely to be prominent and their views acceptable to the government. This independence allows for a certain flexibility in organizing their working procedures and in working with NGOs.

At each of the two CESCRC sessions, approximately five reports of State parties are reviewed. For each country, the Committee members listen to a presentation by a government representative and ask questions. For periodic reports, as noted earlier, questions are prepared in advance of the session by a pre-session working group and conveyed to the



country's UN mission for written answer prior to its appearance before the Committee. In the review session, the country representative introduces the report, presenting comments and information pertaining to the preliminary list of issues posed by the pre-sessional working group. The Committee members ask follow-up questions and engage the State party representatives in a constructive dialogue.

At the conclusion of the session, the Committee adopts Concluding Observations on the country, including both commendable progress and recommendations for improvement concerning ESC rights. These Concluding Observations are the crucial product for NGO action, as it is a public statement given to the government that specifies further action required to live up to its obligations under ICESCR. ***Thus, it is important that NGO shadow reports highlight the major priorities that can be readily reflected in the Concluding Observations.***

The country rapporteur (for both initial and periodic reports) is responsible for reading all the background material provided by the UN (and NGOs) on a given country and presenting his or her analysis of that information to the Committee during its deliberations. The country rapporteur usually is assigned to write the Concluding Observations on that country. Contacting this Committee member as early as possible after the country is scheduled for review is very important. Contact information can be obtained from the CESCR Secretariat. NOTE that a member from a country under review, according to the Committee's rules, is not permitted to participate in the review of his or her country.

**Access to the UN building.** In order to attend any UN meetings, NGO representatives need to obtain a pass issued to the individual, for the session, at the security office of Palais Wilson. In order to receive the badge, they will need to present a letter of accreditation and an identity document, such as passport. NGOs should request accreditation from the CESCR Secretariat in advance of the session. Letters should name the person(s) individually. A letter without the individual's name may not be accepted.

**NGO input at the CESCR session.** As noted in the Timeline for NGO Activity table on page 2, there are several stages at which NGOs may approach the Committee members. The process is relatively open, and at least some of the members are very willing to work directly with NGO materials.

- The pre-sessional working group is a crucial moment for NGOs to have input because this is when a list of issues for the review of periodic reports is given to State parties. The pre-sessional working group meets at the end of the session one year prior to the one at which a given government will be reviewed (for April/May session, for example, the pre-sessional will be held after the close of the April/May session the year before). If NGOs can be present in Geneva at that time, they may make an oral presentation to Committee members at the beginning of the pre-sessional. It is useful to submit a written report to the members of the pre-sessional working group.
- Most of the Committee members want to have written shadow reports to enable them to ask useful questions. They should be sent by e-mail attachment or courier to the Secretariat and to at least a few members, including the Chairperson and the country rapporteur, prior to the session. All eighteen members should receive a copy of the shadow report at the opening of the CESCR session. Some experts will accept submission by e-mail attachment, as will the Secretariat, but hard copy should be delivered as well, as a backup. *In addition to shadow reports, NGOs in consultative status and NGOs*

*without status (but sponsored by an organization in consultative status) may submit a very short written statement, which will be translated into all the working languages of the Committee and issued as a UN document. Such a written statement must be sent to the CESCR Secretariat at least three months in advance of the session for which it is intended (e.g. if the State party is to be reviewed at the April/May 2003 session, the Secretariat needs to receive the statement no later than late December 2002 or early February 2003). The written statement should be double-spaced and no longer than 2,000 words for NGOs in general consultative status and no longer than 1,500 words for NGOs in special consultative status (check with the Secretariat concerning the consultative status).*

- The Committee's meetings on the first day of the session are reserved for NGO presenting country-specific information. This is the best opportunity to be heard by a number of the experts at once. Depending on the number of speakers, each has 5-15 minutes to present the information. Simultaneous interpretation in English, Spanish, French, and Russian is provided.
- Many of the Committee experts are readily approachable individually before and after the working sessions to talk informally about the issues that concern NGOs. Some will be willing to have a full-length meeting before a working session or at midday. Most will be approachable to at least have a few words. ***Be prepared for these meetings by having your specific points of concern ready to be conveyed in a few words and/or on a single sheet of paper.***

## ANNEX

### **CESCR SECRETARIAT:**

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Web site: <http://www.igc.org/iwraw>

### **CESCR COMMITTEE WEBSITE**

<http://www.unhchr.ch/html/menu2/6/cescr.htm>

### **UNHCHR WEBSITE CONTAINING TREATY DATABASE**

<http://www.unhcr.ch> (click on DOCUMENTS; click on TREATY BODIES DATABASE and follow search options)

**UNIVERSITY OF MINNESOTA HUMAN RIGHTS LIBRARY**

<http://www.umn.edu/humanrts>