

NGOs AND THE UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

DRAFT ONLY

The United Nations Committee on Economic, Social and Cultural Rights is responsible for monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) by all states which have ratified the Covenant. States Parties are required to submit a periodic report every five years to the Committee on the implementation of the Covenant in domestic law and policy. The reports must cover all rights in the Covenant including the right to an adequate standard of living (the right to adequate food, clothing and housing), the right to health care, education, just favourable conditions of work and the rights of workers to organize and bargain collectively. The Committee meets twice a year in May and November in Geneva, Switzerland. Each session is three weeks in duration. The first day of each session is devoted to NGO oral submissions.

NGOs play an important part in the United Nations review *process*, providing reliable and well-documented information to the UN Committee on which an objective assessment can be made of the Government's compliance with fundamental human rights.

NGOs can be involved in the Committee's process of review in a number of ways:

1. The Committee recommends that in drafting periodic reports, Government's should consult with non-governmental organizations (NGOs) to ensure a comprehensive and accurate assessment of its compliance with its obligations under the ICESCR. NGOs can correspond with the appropriate government officials – normally in the department of foreign or external – and request that they be included in the Government's process of drafting the periodic report.
2. The Government's periodic report should be made public and available to NGOs. NGOs can review the Government's report and submit an "Alternative" or "Parallel" report to the Committee. Drafting an Alternative or Parallel report provides NGOs with an opportunity to inform the Committee of inaccuracies and omissions in the Government report and also provides an opportunity for NGOs to highlight issues of particular concern to the community sector. These can be done collectively or individually, nationally or on a state by state basis. NGO Parallel Reports should be made available to the Committee well in advance of the review of the country and should also be provided to the Government. Transparency and cooperation with Government officials is essential in building a constructive dialogue with the Government.
3. NGOs can make oral and written submissions to the Committee *at any time* even if those submissions occur during a session when the country of concern is NOT being reviewed. These submissions are normally used to highlight a particularly pressing problem, to inform the Committee of this problem and to ask the Committee to take some action – prior to the review of the country – to help address the problem immediately. For example, although Australia is not scheduled for review until November 2000, advocates in Sydney could attend the Committee in May 1999 to provide oral and written submissions on the impact on Sydney residents of the lead-up to the 2000 Olympics. In this example, the Sydney advocates would hope to expose serious violations of

economic, social and cultural rights and encourage the Committee to write a letter of concern to the relevant Governments (Commonwealth and State). These letters rarely state that a Government is in breach of the ICESCR, but can stipulate that the Government MAY be in violation of the Covenant if the NGO information is true and if no change occurs. Letters of this sort are useful as they send a message to the Government that the international community is monitoring their activities and that they ought to take seriously the Committee's upcoming review of Government compliance with the Covenant.

4. Following the submission of the Government report to the Committee, the Government is scheduled to appear before the Committee to respond to questions and concerns. At the session preceding the session where the country will be reviewed, a "Pre-Sessional Working Group" reviews the Government's written report and prepares a "List of Issues" – questions or requests for further information – which are sent to the Government for a response. NGOs can attend the Pre-Sessional Working Group and make oral and written submissions to the Committee to assist it in preparing the List of Issues. This is an extremely important part of the process as the List of Issues more or less determines the content of the review of the Government for these Issues are focused upon during the review of the country.
5. After the Government receives the List of Issues it will respond in writing to the Committee. Their written response should be made accessible to civil society. Unfortunately, these written responses are often prepared and submitted to the Committee just prior (a few weeks) to the country review. This leaves little time for NGOs to respond to the Government's answers to the List of Issues. Nevertheless, NGOs can prepare brief responses and submit these to the Committee. These submissions can include suggestions of oral questions which the Committee may wish to put to the Government during its actual review of the country.
6. It is strongly recommended that NGOs make short oral and written submissions to the Committee at the beginning of the session at which the country of concern will be reviewed. Oral submissions can include a brief statement (10 minutes), the presentation of a short video and/or slides. NGOs should note that some of the Committee members do not speak English. Though oral statements are simultaneously translated, videos are not. Therefore, if presenting a video, NGOs should include a written text of the video in Spanish and French.
7. Lobbying Committee members is also a central part of all NGO work at the Committee, and is particularly important at the session during which the country is under review. When NGOs attend the Committee, particularly during the review of the country, they should schedule meetings with Committee members to discuss pertinent issues that must be put to the Country under review. Meetings with Committee members are normally quite short, ½ an hour maximum, therefore, the ability to express major concerns succinctly and clearly is vital.
8. Once the Committee reviews the Australian government, at the end of the session the Committee will release its Concluding Observations on Australia's compliance with the ICESCR. These Concluding Observations will highlight primary areas of concern and will provide suggestions and recommendations to the Australian government. These Concluding Observations can be brought back to Australia and used by lawyers, social

activists, advocates etc. to pressure the government to fulfil its international legal obligations.

9. At every stage of the Committee process NGOs should be in contact with the media and should send out press releases as events warrant.

This overview of possible NGO activities at the UN, indicates that a lot of time and energy could be spent at the Committee. It is difficult to advise NGOs as to how much time and energy they should spend at the Committee.

On the positive side: Involvement with this Committee can be regarded as a long term, ongoing project, particularly given that countries are reviewed every 5 years. As such, spending a lot of time at the Committee is beneficial as this is how good working relationships are developed between the Committee and NGOs. Without building such a relationship, it is unlikely that the Committee will become particularly interested in the country under review – as there is no one around to spark their interest. It is much easier for the Committee to be galvanized into action when face to face with NGO representatives, rather than when faced with a stack of paper.

On the negative side: Unless NGOs are fully committed to working the process to their own ends, the process may yield small results. From an NGO perspective, you get from the Committee what you put in. You will not receive media attention unless you go after it. You will not get hard-hitting Concluding Observations with solid recommendations unless you work with the Committee and convince them with facts and information that such Concluding Observations are warranted in the case of Australia.

Be Aware. Attending at the Committee will not necessarily result in immediate change. The Committee rarely “orders” governments to change/ revoke legislation or policies, it normally just recommends that such action occur. The Committee’s decisions are unenforceable (in a court of law). This means that your work cannot stop at the Committee, once you have the Concluding Observations in hand, you will have to use these as a tool for social change/action.

7 GOOD REASONS TO BECOME INVOLVED IN THE UN SYSTEM AND THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

1. International human rights law and mechanisms can provide another avenue to pursue social change and legal reform.
2. Affluent countries such as Australia pride themselves on their human rights record as compared with neighbouring nations. Using the international, UN system to challenge that perception can prove a persuasive tool for change as affluent countries are quite weary of having their reputation tarnished especially in an international forum.
3. Using the UN system can assist in putting neglected issues on the political agenda in Australia.
4. Work at the UN should be seen as complementary to other domestic activities. As such, it can enhance or reinforce activities undertaken at home.

5. Regardless of whether NGOs participate in the process, the Committee on Economic, Social and Cultural will review Australia's compliance with the International Covenant on Economic, Social and Cultural Rights and they will also release a legal decision regarding Australia's compliance with its international legal obligations under the ICESCR. If NGOs do participate, it is likely that the Committee will have a more complete understanding of the status of economic, social and cultural rights in Australia and the Committee will be able to reflect this better understanding in its legal decision on Australia.
6. In Australia there are no legal avenues available to claim economic, social and cultural rights as human rights. The UN Committee provides this opportunity.
7. Using the UN system and the Committee procedures provides an opportunity for the Australian social services and legal sectors to learn more about human rights and specifically economic, social and cultural rights.