

# INSPIRE 02

## ENGAGING HUMAN RIGHTS TREATY BODIES



In this second note of the *Decoding Injustice* Inspire module, we shed light on international institutions to engage in advocacy efforts. Here, activists and changemakers will identify entry points to the United Nations accountability ecosystem, which have helped to achieve progress in social and economic rights around the world.

### Key Questions

What are the UN Treaty Bodies?

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Why are these human rights oversight mechanisms relevant?

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How can we engage effectively with these mechanisms?

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## ADVOCACY AND FOLLOW-UP

### Introduction

There is a whole international system working to advance human rights and monitor the ways laws and policies impact on people's rights. These are known as **human rights oversight bodies**. Advocacy with these bodies offers opportunities to make visible human rights problems, broaden established standards, and generate new mechanisms for accountability. Here we focus on one type of human rights oversight bodies that CESR engages with frequently: the United Nations (UN) Treaty Bodies.

However, it is worth noting that apart from human rights oversight bodies, there are also "technical" institutions working on development and finance, including the International Monetary Fund (IMF) and the World Bank. Their decisions have a significant impact on crucial human rights concerns, such as climate justice, gender equality and inclusive growth. Human rights bodies and technical institutions are often very disconnected, even though both kinds of organizations influence domestic economic policies and human rights. As we will see in this note, UN Treaty Bodies offer important opportunities to show the connections between these two worlds and to inspire change by demanding greater accountability from governments for the ways their actions sustain injustices in the economic system.

### HELPFUL TIP

If you want to know more about the IMF and the World Bank, please consult our [Advocacy Toolkit](#)

### What Are These Bodies and How Do They Work?

Human rights oversight bodies can be found at both global and regional levels. At the global level, the bodies responsible for the promotion and protection of human rights are generally set within the framework of international human rights declarations and instruments. This is the case with the United Nations Treaty Bodies.

#### WHAT ARE TREATY BODIES?

There are currently 10 United Nations Treaty Bodies, or Committees. Made up of independent experts, they oversee the ten main international human rights treaties. For example, the [Committee on the Rights of Persons with Disabilities](#) (CRPD) and the [Committee for the Elimination of Discrimination against Women](#) (CEDAW Committee) arose from the [Convention on the Rights of Persons with Disabilities](#) (CRPD) and the [Convention for the Elimination of All forms of Discrimination against Women](#) (CEDAW), respectively.

#### WHAT DO THEY DO?

- **Periodic country reviews:** The main function of these reviews is to promote and monitor compliance with the conventions' provisions, primarily by reviewing reports that each country must present periodically. The outcome of these reviews are assessments of a country's progress on implementing the treaty, with specific recommendations for improvement.
- **General Comments:** The committees also prepare authoritative interpretations of governments' obligations under the respective treaties.

This document is organized according to an innovative method for collecting, analyzing and presenting evidence around three steps:



#### INTERROGATE

Map the problem in depth using OPERA to identify indicators and benchmarks.



#### ILLUMINATE

Spotlight the underlying issues by collecting, analyzing and visualizing data.



#### INSPIRE

Take action to build power and hold decision-makers accountable.

- **Individual petitions:** Almost all the Treaty Bodies have complaint procedures, established by Special Protocols. These are quasi-judicial in nature, meaning they hear individual claims alleging concrete violations to human rights and determine if a violation has been proven. It is important to note that Committees do not have the power to compel governments to comply with their decisions. But they may adopt alternative measures, such as asking the government to follow up with information after a violation is found.
- **The Committees are generally very receptive to the information provided by civil society.** This information enables them to assess countries more effectively and to put forward more specific recommendations, or to know which aspects they need to request more information about.
- **Civil society organizations may attend the sessions when countries are questioned, and can publicize them.** The sessions can also offer opportunities to give visibility to a particular issue at the domestic level (through social media, for example).

## HOW DO THEY WORK?

The Treaty Bodies meet at certain times of the year for a certain number of weeks. These meeting periods are called sessions. Their length varies according to the number of reports and petitions to be reviewed. There are usually two or three sessions each year. The set dates are available on the official website of the [Office of the High Commissioner for Human Rights](#). During the sessions, which take place in the UN's Geneva headquarters, the Treaty Bodies have audiences with the countries undergoing review, resolve individual petitions, and discuss the drafting of future General Comments.

## Why Advocate Before UN Treaty Bodies?

**Visibilize:** Advocacy with these bodies helps to make visible the human rights problems that have been hidden or denied by national authorities, or that require coordinated responses among States. The periodic reviews usually allow civil society to make submissions. This is an opportunity to make use of the information you have gathered and the analysis you have produced, to show how certain policies are affecting human rights on the ground.

- **Make governments accountable for their actions and omissions:** The injustices you have illuminated through your data may direct the experts of the Treaty Bodies to request more information from States and ask for specific measures to address the problem reported. Sometimes these requests are made in audiences, which can be good opportunities to expose governments' actions or omissions and leverage the impact of campaigns.
- **Push for better standards:** Sometimes there can be opportunities to advocate for new or deeper interpretations of human rights instruments. This, in turn, may help to support claims for social and economic justice at the national level. In addition, it may be possible to broaden or define established standards in international instruments, regulations and agreements. These could subsequently be invoked in different judicial and/or extrajudicial forums and bodies.

## ADVANTAGES OF THESE BODIES

- **The Committees' interest is usually in advancing the treaties' implementation as far as possible.** This creates a space for broadening interpretations of the treaties in a way that is favorable for human rights priorities, which in turn can be used to push for the inclusion of economic justice issues in the Committees' analysis.

- **Recommendations made by these bodies (and non-compliance with them) involve a reputational cost.** In some national contexts, it is considered obligatory to comply with the recommendations and their implementation can be reinforced through judicial mechanisms.
- **When recommendations are systematically repeated, they create a body of jurisprudence** and are considered to be authoritative interpretations of the conventions and standards that States must take into account. Based on this jurisprudence, Guiding Principles or compendiums that bring together these standards have been drafted, such as the [Report on Austerity Measures and Economic and Social Rights](#) by the Office of the High Commissioner for Human Rights (OHCHR) and the [Guiding Principles for Human Rights Impact Assessments for Economic Reform Policies](#) developed by the [Independent Expert on Debt and Human Rights](#), and recognized by the [Human Rights Council](#).
- **Recommendations and decisions by Treaty Bodies, may encourage other initiatives by civil society** that enable their impact to be amplified. Among potential activities are public debates, campaigns, monitoring and other mechanisms for exerting pressure that make strategic use of these decisions to bring about policy changes. In most cases, the resulting actions and initiatives may be more important than the recommendations themselves.

## CHALLENGES WITH THESE BODIES

- The Committees can have difficulties accessing information and they lack mechanisms to carry out investigations or visits to countries. This makes submissions by civil society organizations particularly important.
- Their recommendations typically have a fairly low level of compliance, and the United Nations lacks specific mechanisms to impose sanctions for non-implementation. The incentives to comply with the Committees' informative process depends largely on each country's political context. In this respect, it is important to make the most of the symbolic power of the recommendations by using creative ways to exert pressure on governments.
- Governments' capacity to provide appropriate responses to the Committees requirements vary greatly according to each country's resources and institutions: for example, if a country has a ministry focusing on that area, if reliable statistical systems exist, and if specialized offices exist that can assist the officials involved in the process before



the Committee. If a State lacks capacity to prepare for a meeting with the Committee, it may mean that while the event offers visibility to issues and information presented by civil society, a Committee may be unable to make new and more detailed recommendations, leaving it to reiterate the same recommendations, review after review.

## What Are the Opportunities for Advocacy?

Civil society organizations can participate in country reviews, via the presentation of individual petitions, and in the consultation processes for the drafting of general comments. Sometimes participation is channeled through formal processes such as calls for inputs or short interventions in public audiences. At other times it may be more informal, for example in ad hoc closed meetings with expert members to provide feedback on preliminary versions of general comments.

## COUNTRY REVIEWS

Each State that is a party to a treaty must present reports every four to five years informing the Committee of all the measures taken to realize the rights protected in it. Examples of these measures include enacting or repealing laws, creating programs, allocating resources and reforming tax systems. This information assists Committees in monitoring whether States are fulfilling the minimum content of each right, if they are advancing them progressively, or whether there have been any retrogressive measures. Generally, a Committee will assess the information provided by the States and issue a report called **Concluding Observations**, which flag particular concerns and include recommendations for the State to take specific measures such as allocating more resources, reforming or issuing certain laws, creating programs, ensuring proper remedies, etc.

It is common that the information provided by States is too vague, insufficient, or lacks enough disaggregation to allow an analysis that is consistent with a human rights approach. This is why the information provided by civil society organizations is so valuable for Committees. A **shadow report** (also called a parallel report) is prepared by civil society groups that provides extra information for the United Nations Treaty Bodies in addition to that officially provided by governments. They are very useful documents for developing aspects that are omitted (or sometimes distorted) by governments. They can include individual and collective cases, diagnoses and statistics (not necessarily official) and comments on the responses of the States' representatives, as well as the concerns of civil society. The shadow reports are usually published on the Committee's official website (unless the authors would prefer that the report be kept confidential), together with all the other contributions received.

During the period prior to the session (usually some weeks before), the Treaty Body's Pre-session Working Group asks civil society organizations to **present their reports** (either virtually or in person). The aim is for civil society organizations (CSOs) to propose relevant issues that the Treaty Body should question the State about, and discuss in its final report. CSOs can also provide

information that may be useful for analyzing compliance with the country's commitments to the Convention. They can also provide reports before the adoption of the Lists of Issues (generally, two or three months before the session), with the aim of providing suggestions for the List.

After presenting its report and responding to the List of Issues, the State must answer questions from the Committee members in an oral audience. The audience or **constructive dialogue** takes place with the States' representatives. Generally, CSOs can attend the audiences (albeit sometimes only virtually in the pandemic context), as well as the formal and informal meetings organized by the Committee members, the UN Secretariat or partner organizations in Geneva. These opportunities to engage with the expert members may result in the State's representatives being asked certain questions, or in recommendations being added to the Treaty Body's agenda or its Concluding Observations.

**When do country reviews take place?** Generally, countries are reviewed every four years by each Treaty Body; these reviews may coincide or happen at different times. The list of countries to be reviewed in each session is published in advance on the [UN website](#). The deadline for presenting the periodic reviews is also stipulated online and in the Concluding Observations by each Committee for each country. For example, to know when the Argentinian government is due to present its next periodic review to the CEDAW Committee, look at the last Concluding Observations presented to that country.

**After the Concluding Observations for a country have been presented, what can CSOs do?** The Concluding Observations can be disseminated and followed up domestically, among relevant institutional actors such as government agencies, ombudsmen, trade unions, professional associations, as well as the mainstream media and via social media. It is very useful for communication purposes to prepare summaries, which can be used as key messages for other domestic groups to claim rights. The Concluding Observations can help forge partnerships among civil society actors, inform action plans and lead to advocacy campaigns. The Concluding Observations can also be used as input for other national and international forums, such as the Human Rights Council, on the occasion of the Universal Periodic Review (UPR). The UPR involves a review of the human rights records of all UN member States by the Human Rights Council and affords all member States the opportunity to review their peers.

**Note that Concluding Observations usually contain priority recommendations for States.** As a follow-up mechanism, the Treaty Bodies usually require States to inform them within one or two years about the status of implementation of these measures (the rest of the recommendations will be evaluated in the following periodic review). When the year expires, CSOs can contribute shadow reports that provide additional or alternative information to that reported by the State. On the basis of these analyses, the Committee will prepare a follow-up report, in which it requests the State to adopt new measures or to provide more information. In this way, the follow-up system becomes a new opportunity for visibilization and participation, both internationally and domestically.

## GENERAL COMMENTS

Sometimes there are different views on the specific meanings or scope of different parts or sections of the UN Human Rights Treaties. It is common for States' governments to try to avoid full compliance by defending narrow interpretations of the text. To overcome these challenges, the Committees can issue **General Comments**.

General Comments are prepared by the UN Committees to interpret the scope of a particular article or section of the Convention that they are in charge of monitoring. Unlike Concluding Observations, General Comments do not refer to particular countries but to a subject matter related to that Committee's expertise. **General Comments are considered to be official and authoritative interpretations of each treaty.** They contain valuable information both for CSOs — insofar as they are declarations by independent experts and may serve to guide regulations and judicial decisions — and for the Committees themselves, who will apply them in future recommendations and in the analysis of individual cases.

The opportunities for civil society participation during the preparation of General Comments are sometimes less systematic than during the country review process. In some cases, a wide consultation is held, as with the [developing General Comment on climate change](#) by the [Committee on the Rights of the Child](#). In many cases, a draft version of the document may be circulated to organizations with a request for comment on it. Sometimes, Committees hold a “day of discussion” in Geneva or virtually, as in the case of [General Comment 24](#) (see case study below), of the [Committee on Economic, Social and Cultural Rights](#) (CESCR), at which civil society organizations are able to participate.

## CASE STUDY

General Comment 24 was published by the Committee on Economic, Social and Cultural Rights (CESR) in 2017. It represented significant progress for the fiscal justice agenda. The need to place greater emphasis on fiscal issues was clear from evidence presented and arguments put forward during country reviews (see further case studies below).

General Comment 24 emphasized that States' obligations in relation to the Covenant included adopting progressive fiscal systems, in addition to measures to restrict corporate tax avoidance and evasion. Specifically, it mentioned the obligation of States to cooperate internationally to combat abusive fiscal practices by transnational corporations, such as the transfer of business profits to jurisdictions with lower or zero taxes, known as profit shifting. Furthermore, the CESCR condemned the practice of lowering corporate tax rates with the sole purpose of attracting investors, and providing excessive protection for bank secrecy, because they “undermine the ability of all States to mobilize resources domestically to realize Covenant rights.”

Since it was adopted, General Comment 24 has been used as a tool to continue pursuing the fiscal justice agenda, both in other human rights forums and with various agents of economic governance.

## INDIVIDUAL PETITIONS

Of the ten Treaty Bodies, eight have established a system of individual petitions, either in additional Optional Protocols to the Convention (such as the Human Rights Committee and the CESCR), or in the Convention itself (as with CEDAW and CRPD). While there may be slight differences in their formulation, in general, petitions consist of a written submission in which any person living in a State can report violations of their rights protected by the Convention. Both parties (petitioner/complainant and State) may provide their version of the judicial facts and arguments, which will result in a decision by the Committee about whether a violation has occurred, with recommendations for remedying it.

The system of individual petitions can be useful in advancing interpretations or providing visibility of the impacts that certain fiscal measures have on some disadvantaged groups. One challenge faced by CSOs is that governments' non-compliance with a Communication does not involve a high cost, insofar as these mechanisms have low visibility and Treaty Bodies have no means to enforce their decisions. However, where there is an appropriate advocacy and monitoring strategy, these Communications have proven effective in remedying human rights violations.

## Making the Most of Treaty Bodies' Work in Practice

1. Monitor the countries to be reviewed by the Committee each year, identify whether areas of your interest are raised, and then use the occasion to produce shadow reports.
2. To prepare your reports, remember to articulate your claims with:
  - a. a link to the State's obligations in economic, social and cultural rights and its framing at both the domestic level and the international level. To do this, you can draw on the Committee's own interpretations, as well as on those of other Committees and oversight bodies;
  - b. the [Decoding Injustice](#) approach can help frame violations of those obligations and show why and how the State is failing to fulfill rights;
  - c. including data on relevant indicators—compared against relevant benchmarks—helps to illuminate how those violations are taking place.
3. Consider what information is especially valuable for the Committee. Gaps in the information provided by the State, or information that contrasts with the conclusions the government tries to suggest in its presentation, can be essential. Fiscal policy data may evidence that certain rights are not being adequately satisfied, or that certain programs and activities are, in fact, regressive when one considers how they are being financed.
4. Information that can fill those gaps may not always be available. However, if relevant information is missing or official data is seriously deficient, it's important to mention this expressly in your report. This may be an effective way to cast doubt on the government's conclusions and to encourage the Committee to make specific observations in this regard (for example, for the State to ensure the autonomy and capacity of certain statistical institutions or to regulate fiscal secrecy in a more narrow way). It's important to keep in mind that States have obligations to produce financial information and to ensure that people have unfettered access to it (remember the "PANTHER" human rights principles of Participation, Accountability, Non-discrimination, Transparency, Human Dignity, Empowerment and Rule of Law.).
5. Other times, gaps in information can provide a good opportunity for CSOs to provide the Committee with their own factsheets featuring primary or secondary data, and highlight the connection between economic issues and human rights. Factsheets can also help you to present data concisely and clearly and avoid "data dumping," as this facilitates the work of Committees, which usually lack the time and resources to process large volumes of information. CESR's factsheets, which condense a large volume of information in simple and convincing graphics, have proven to be an effective means of communicating and substantiating key messages.
6. Working collaboratively with other organizations can improve shadow reports. Writing reports jointly will ensure the document is more complete, coherent and impactful.
7. When selecting a case for the system of individual communications or a subject for the system of individual petitions to a Committee, it is important to consider issues such as:
  - a. the potentially favorable predisposition of a particular Committee to advance economic issues (for example, a positive sign could be that a Committee usually pays attention to budgetary obligations);
  - b. the capacity to build partnerships and gain support on the basis of the issues raised, insofar as this will help to give greater visibility and document more evidence, making the case stronger.
8. When submitting arguments to the Committee, it is important to:
  - a. connect the economic issue with arguments already made by the Committee;
  - b. reference or cite jurisprudence developed by other Committees and Special Rapporteurs or Independent Experts (and also by officially recognized bodies such as the [Organisation for Economic Co-operation and Development](#) (OECD) and the [Economic Commission for Latin America and the Caribbean](#) (ECLAC);
  - c. always give examples of more abstract and general ideas, so they are seen to have a concrete application. This will also make your communication more effective.
9. It is essential to have a clear strategy for what can be done after the recommendations have been formulated. The recommendations or decisions by Treaty Bodies should not be the final goal, but rather the beginning of a plan for future advocacy to ensure the recommendations are implemented.

## CASE STUDIES

**With the aid of effective advocacy strategies, these interventions by NGOs in Treaty Body reviews have proven effective in drawing attention to an issue, increasing pressure for change or bringing about reforms to legislation/policies.**

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### Switzerland

Pursuing the economic justice agenda requires a global perspective on how multinational corporations operate. This includes restricting their ability to store their wealth in certain jurisdictions with the aim of not paying taxes, or paying less than they should. Switzerland, for example, is one of the jurisdictions that receives the highest amount of offshore investment and illicit capital because of regulations that favor confidentiality and financial secrecy, according to a ranking created by the [Tax Justice Network](#). One way of making a country accountable for the extraterritorial impacts of its tax regulation is to prove its negative effects on the rights of a specific population group (such as women) and present the evidence to one of the UN Committees when the country is being reviewed.

CESR, along with organizations including the Global Justice Clinic of New York University School of Law, the Tax Justice Network and the Swiss civil society organizations Alliance Sud and Public Eye, submitted a shadow report to the CEDAW Committee suggesting that it should assess the negative impact of Swiss financial regulations on Switzerland's extraterritorial obligations to combat gender inequality and promote sustainable development.

In line with evidence and suggestions presented by CESR and its partners, the [Committee's Concluding Observations](#) included the recommendation that Switzerland "undertake independent, participatory and periodic impact assessments of the extraterritorial effects of its financial secrecy and corporate tax policies on women's rights and substantive equality, ensuring that such assessments are conducted impartially, with public disclosure of the methodology and findings." Although the Swiss government did not take prompt, meaningful action on this recommendation, it created a reputational cost for a government that sees itself as a champion of women's empowerment globally. It increased the public pressure on them to undertake reforms, and was forcefully raised in other multilateral fora such as the UN High-Level Political Forum on Sustainable Development in New York. Moreover, the Committee's strong inclusion of this issue in their Concluding Observations helped to spur a greater interest from women's rights organizations in monitoring and reporting on the effects of tax systems and abuses on gender inequality.

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### Spain

Treaty Bodies have also featured in strategies to combat austerity measures, which were adopted in Spain as a result of the 2008 international financial crisis and included the exclusion of undocumented migrants and other groups from the public health system.

CESR was part of a coalition that intervened in different international human rights spaces over a number of years, making submissions that provided concrete evidence of the negative impacts of Spain's austerity measures on socio-economic rights, with disadvantaged groups such as immigrants and women affected most acutely.

Among other actions, a coalition of civil society organizations prepared two shadow reports for the Committee on Economic, Social and Cultural Rights (CESCR) in 2012 and 2018. [The Committee urged the Spanish government to assess the impact of its fiscal austerity measures](#), to encourage citizen participation and to adopt measures to tackle discriminatory effects on immigrants, women and children. The second report was supported by 34 civil society organizations (coordinated by CESR and Doctors of the World) and resulted in specific recommendations by the Committee, including criticism of the government for not having adopted previous recommendations.

In October 2018, these recommendations were a key factor in the Spanish government's decision to repeal Royal Decree Law 16 of 2012, which had excluded several groups from the public health system, and universal access was reestablished. In 2019, several organizations within the coalition responded to the follow-up report submitted by the government, pointing out that there were gaps in the new legislation to reverse the omissions that the original law had generated.

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### South Africa

CESR and partners submitted a shadow report to the Committee on Economic, Social and Cultural Rights (CESCR) on the occasion of South Africa's first review in 2018. The shadow report showed how austerity measures undertaken by the government were deepening inequality and violating South Africa's obligations under [Article 2\(1\)](#) of the International Covenant on Economic, Social and Cultural Rights. The report illustrated how issues related to the generation and expenditure of resources were drivers of many socio-economic challenges faced by South Africa, and it detailed a set of more human rights-compliant economic alternatives. CESR and partners showed how cuts and reprioritizations in social spending were not justified when compared with fairer alternatives, such as progressive tax reforms and tackling corruption.

In line with evidence and suggestions presented by CESR and its partners, the Committee called on South Africa to implement a number of reforms including: (i) reversal of austerity measures and increase in the level of funding to social security, health and education; (ii) ensure that those between the ages of 18 and 59 with little or no income have access to social assistance; (iii) design and regularly update a composite index on the cost of living; and (iv) ensure that all migrant, refugee and asylum-seeking children have access to education regardless of their immigration status.

CESR and its partners subsequently participated in the follow-up process to the Committee's concluding observations in 2021. Notably, the Committee found in line with the concerns raised by civil society submission, that South Africa had made insufficient progress in respect of all four of its urgent recommendations. CESR and its partners in South Africa have engaged in further advocacy by publishing p-eds; campaigning for the introduction of a basic income grant and participating in a workshop hosted by the South African government on measures it has taken to implement the Committee's recommendations. In a notable victory for South Africa's civil society, the Presidency announced in February 2022, that the Special Covid-19 Social Relief of Distress Grant would be extended for a further year until the end of March 2023..

# CONCLUDING THOUGHTS

**As we have summarized, Treaty Bodies perform various functions that rely on analysis from activists, including periodically reviewing States, issuing authoritative interpretations on how States are obligated to act, and hearing individual complaints when those obligations are breached. This gives us various opportunities to make use of the information we have gathered and the analysis we have produced, to show how dysfunctions in the ways policies are designed and implemented –and how the distribution of resources and power in the economic system leads to those dysfunctions– are affecting human rights on the ground.**

Nevertheless, the degree of influence these bodies have over economic policymaking at the national level is often quite limited. For this reason, the recommendations or decisions by Treaty Bodies should not be the final goal, but rather be part of a broader advocacy plan to ensure the recommendations are implemented. In designing such a plan, forging partnerships and finding the right path of action requires experimentation and learning. Some actors will be more receptive than others to attempts to inform and persuade in the process of calling for change, but it is important to persevere with the task. The road is long, but using all available channels for influencing those who make decisions about public resources is essential to demand that those in power live up to their promises and right the wrongs of historic oppression.