The Universal Periodic Review: A Skewed Agenda?

Trends analysis of the UPR's coverage of economic, social and cultural rights

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CENTER FOR ECONOMIC AND SOCIAL RIGHTS
SOCIAL JUSTICE THROUGH HUMAN RIGHTS

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INTRODUCTION

The Universal Periodic Review (UPR) is a peer review mechanism of the Human Rights Council which evaluates the human rights records of all members of the United Nations, every four and a half years. As articulated in its founding resolution, the UPR aims to promote the universality, interdependence, indivisibility and interrelatedness *of all human rights* (A/HRC/RES/5/1). Nevertheless, the experience of many NGOs engaging with the UPR since its inception has suggested that economic, social, and cultural rights (ESCR) may be comparatively neglected in terms of how much attention they have received in the Council's reviews.

In order to test—in a systematic way—whether this criticism is well-founded, the Center for Economic and Social Rights (CESR) and the Sciences Po Human Rights Clinic have undertaken a quantitative trends analysis of the recommendations that have been made through the UPR so far. This analysis seeks to discover if perceived shortcomings in the attention given to ESCR are reflected in the content of UPR recommendations. The questions guiding this analysis were as follows:

- How do UPR recommendations on ESCR compare to civil and political rights (CPR) in terms of their quantity and quality (i.e. degree of specificity)?
- How do UPR recommendations on ESCR compare to CPR in terms of how often they are accepted by the state under review?
- Are some regional or economic groupings of states more likely to give, receive or accept recommendations on ESCR?
- Which ESCR issues are more or less likely to be addressed in recommendations?
- Have these trends changed over the course of the UPR's two cycles?

To answer these questions, students of the Sciences Po Law School Clinic, under the guidance of CESR, analyzed the dataset created by UPR Info (which includes all recommendations made in the UPR). Their analysis adopted a dual approach. First, they looked at the entire UPR Info dataset in order to identify broad trends. The dataset used for this analysis is current up to the 24th session of the UPR Working Group (January 2016). Second, a sample of 21 countries was then selected and the

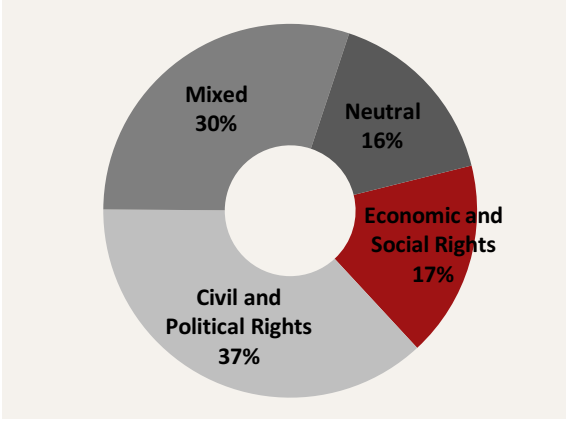
recommendations made to them were re-categorized in order to facilitate a more in-depth analysis. The data in the sample is current up to the 20th session (November 2014). A full methodological note is included in the Annex. However, it is worth clarifying up front how ESCR-focused recommendations were identified. For the full dataset, UPR Info's issue "tags" were used to classify recommendations as focused on ESCR, focused on CPR, focused on a mix of rights, or neutral (meaning they targeted all rights generally). Recommendations in the sample were each read and then categorized accordingly.

Initial findings of this research were shared with representatives of permanent missions, staff at the Office of the High Commissioner for Human Rights (OHCHR), NGOs in Geneva and other stakeholders, who offered insightful feedback about some of the reasons why ESCR may receive less attention in the UPR. On the basis of this feedback, the students studied the documents used in the reviews of two countries— Cambodia and Egypt—to see how how the information they provided on CPR and ESCR influenced the recommendations made to these countries.

In an effort to raise the profile of ESCR in the UPR—so as to ensure that it does in fact advance the indivisibility and interdependence of rights—this paper examines how the UPR has addressed ESCR. First, it looks at how recommendations on ESCR compare in their quantity and quality, presenting the findings of the analysis of the UPR Info database. Second, it explores some of the reasons for the lack of quality recommendations on ESCR, sharing feedback from stakeholders and observations on the documents reviewed. Finally, it suggests ways to craft SMART recommendations, to address the imbalanced focus of the UPR.

HOW HAVE ECONOMIC, SOCIAL AND CULTURAL RIGHTS BEEN ADDRESSED BY THE UPR?

FIGURE 1 PERCENT OF RECOMMENDATIONS BY CATEGORY BOTH CYCLES, FULL DATASET



The full dataset contained 7,483 recommendations that focused on ESCR.[1] This amounts to 17% of all recommendations. By comparison, 37% of recommendations in the database focused on CPR.

The fact that less than a fifth of recommendations made are focused on ESCR, despite these being enshrined in roughly equal measure as CPR in the core international human rights treaties, illustrates that

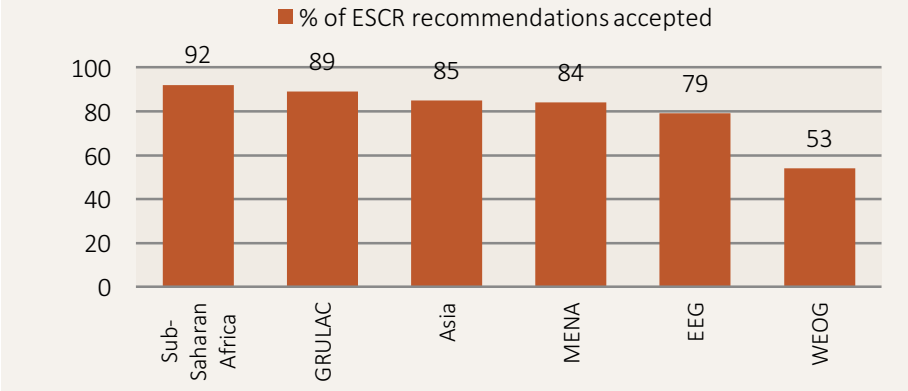
[1] NB: see Appendix for definition.

considerably less attention has been paid to this category of rights. Recommendations focused on ESCR increased slightly from 16% in the first cycle, to 18% in the second cycle to date.

There was significant variation in the number of ESCR-focused recommendations *provided* by countries in different regions. Over both cycles, the number of ESCR-focused recommendations ranged from 8% of the total recommendations given by countries in the Middle East and North Africa (MENA) region; to 9% from Western Europe and Others Group (WEOG); 11% from the Eastern European Group (EEG); 19% from Group of Latin America and the Caribbean (GRULAC), 23% from Sub-Saharan Africa, and 29% from Asia. The fact that WEOG has paid such little attention to ESCR has an outsized impact, given that 35% of all recommendations come from the region (by comparison, Asia gave 15%).

In terms of acceptance of ESCR-focused recommendations by states under review, the average for the two cycles was 83%. This is notably higher than the average of 72.3% for recommendations not focused on ESCR. Over time, there has been an increase in the acceptance rate of recommendations focused on ESCR; it was 90% in the second cycle, up from 75% in the first. However, stark regional differences can be observed in the percentage of ESCR-focused recommendations accepted, as can be seen from the chart to the left. WEOG stands out as having an acceptance rate of only 53%. This is similar to the acceptance rate for high income OECD countries, which only accepted 56% of ESCR-focused recommendations, compared to 75% for high income non-OECD countries.

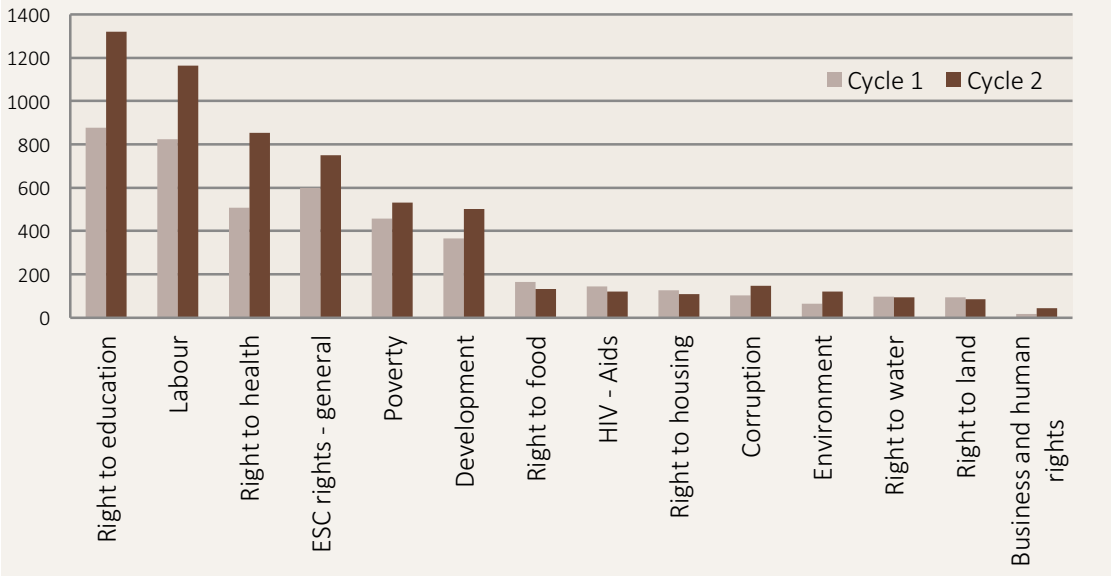
FIGURE 2 ACCEPTANCE RATES FOR ESCR RECOMMENDATIONS, BOTH CYCLES, BY REGION, FULL DATASET



Within the category of ESCR-focused recommendations, some issues received significantly more attention than others. As shown in the graph below, the distribution of recommendations by issue, as tagged by UPR Info (see Appendix for fuller methodological discussion) has stayed roughly the same across the two cycles, although some issues—such as the rights to education and health—received even greater attention in the second cycle. Recommendations relating to key ESCR—such

as the rights to food and water, and rights in relation to land and the environment—have received consistently scant attention.

FIGURE 3 FREQUENCY OF ISSUES TAGGED PER CYCLE, FULL DATAEST



As noted above, recommendations in the 21 country sample were analyzed more comprehensively. These are countries whose reviews CESR engaged in (Egypt, Spain, Equatorial Guinea and the USA), as well as additional countries chosen to reflect different regional groups as well as income levels (Australia, Belarus, Bolivia, Botswana, Burkina Faso, Cambodia, Republic of Congo, Czech Republic, Dominican Republic, India, Kenya, Democratic Republic of Korea, Saudi Arabia, Sri Lanka, Turkmenistan, Tonga, and Vanuatu). These recommendations were analyzed in the same manner as the full dataset, to identify differences between regions, income-levels and cycles, as well as analyzing additional categories.

As summarized in the table below, similar trends were noted in the sample in terms of percentages of recommendations received that focused on ESCR, as well as the acceptance rates of those recommendations.

Breakdown of Recommendations from Sample				
Category	Recommendations per Category	% of Total	Recommendations Accepted	% Accepted
ESCR	982	17.6%	862	87.7%
CPR	2271	40.7%	1373	60.4%
Mixed	1431	25.6%	1201	83.9%
Neutral	892	15.9%	722	80.9%

Recommendations were also analyzed on the basis of additional categories, in order to get a better picture of their quality in a way that captures their relevance for policymaking at the national level. The particular goal in this respect was to see how specific, measurable and actionable, ESCR-focused recommendations were in comparison to CPR. Given that the realization of ESCR often depends on governments meeting their positive duty to take steps, the 21 country sample was re-categorized according to the "type of action" recommended. In order to measure the specificity of the actions urged in recommendations, a categorization system was created, which provided more nuance than the UPR Info classifications.

These categories rank actions from 1 – 6, according to their degree of specificity:

Category	Explanation	Example
1. Take general action	Commonly includes language such as promote, advance, reinforce, intensify, consider, etc.	Continue its efforts to promote economic, social and cultural rights and intensify national and anti-poverty programs.
2. Engage with international bodies	Commonly includes any special procedure of the UN, National Human Rights Institutions, and UN agencies.	In cooperation with UNESCO and other relevant organizations, continue to step up efforts to improve access to quality education
3. Accede to treaties	Includes all human rights treaties such as CEDAW, CERD, etc.	Ratify the International Covenant on Economic, Social and Cultural Rights.
4. Enact law, policy or programs	These could refer to specific programs, general legislative schemes, or national action plans.	Take legal measures to provide free and compulsory education for all under the right to education, and implement the inclusive education policy
5. Ensure enforcement or implementation	Request that the state take action on policies, laws, and procedures that were in existence. Commonly include language such as implement, enforce, as required by law.	Take effective measures to fully implement National Rural Health Missions
6. Dedicate resources	Urge the state to dedicate resources (financial, human, or physical resources) to a particular policy or program.	Ensure universal access to health for all, by providing adequate funding in undertaking such a policy; Devote an adequate share of the national budget to social policies.

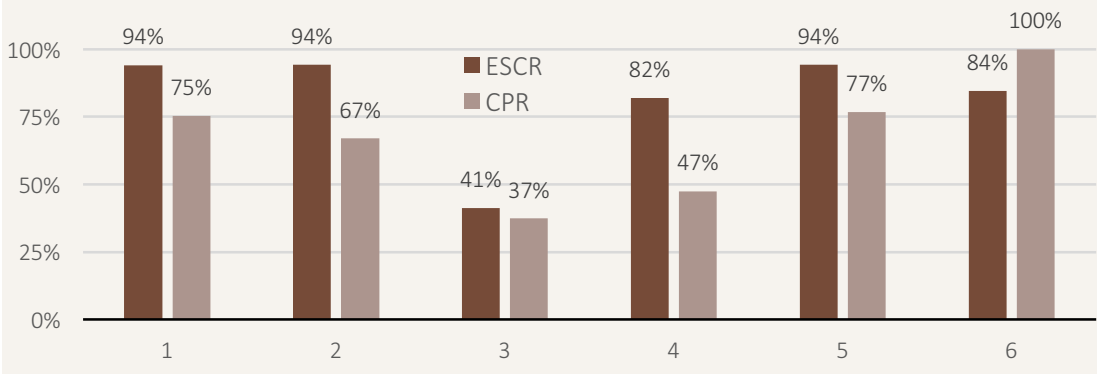
Almost two thirds of ESCR-focused recommendations suggested only a general action, compared to 32% for recommendations on CPR, as shown in the chart below. Only 10% of ESCR-focused recommendations encouraged the state to enact law, policy, or programs (Type 4) or to ensure enforcement or implementation of a

policy (Type 5). This is critical given that recommendations regarding enacting new policies and enforcing existing policies would be helpful in guiding states to fulfill their obligation to take steps towards realizing ESCR. Considering that dedication of resources is a critical component to realizing ESCR it is also notable that only 4% of ESCR-focused recommendations urged this action.

FIGURE 4 PERCENT OF RECOMMENDATIONS BY ACTION TYPE, BOTH CYCLES, SAMPLE

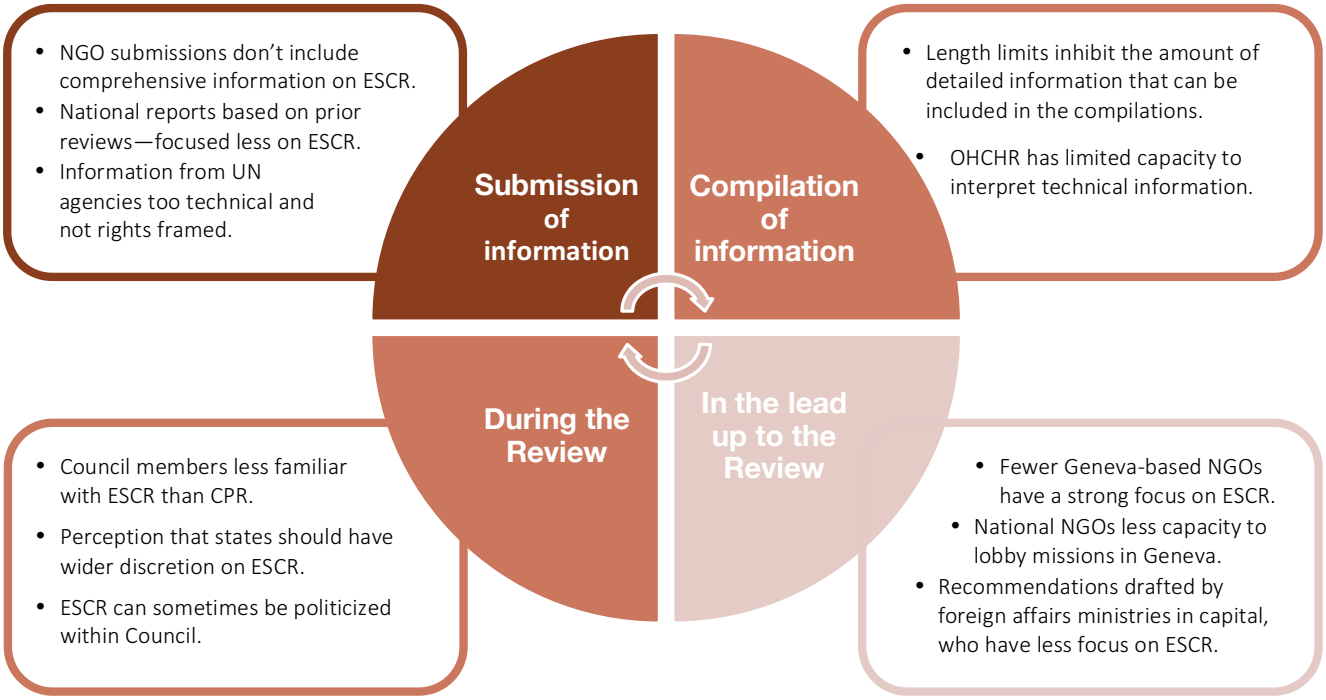
Contrary to a seemingly widely held belief, recommendations that called for more specific action did not lead to lower rates of acceptance, especially for ESCR-focused recommendations, as the chart below demonstrates. Acceptance rates were consistently higher for ESCR than CPR-focused recommendations—across the action types recommended. Notably, 82% of ESCR-focused recommendations seeking the state to enact a specific law, plan or policy (Type 4) were accepted, compared with 47% for CPR. The only variation was recommendations to dedicate resources (Type 6); this could be explained by the very small number of CPR-focused recommendations (only 10) urging this type of action.

FIGURE 5 PERCENT OF RECOMMENDATIONS ACCEPTED BY ACTION TYPE, BOTH CYCLES, SAMPLE



WHY HAVE ECONOMIC, SOCIAL AND CULTURAL RIGHTS RECEIVED LESS ATTENTION?

Outreach on the above findings with various stakeholders uncovered a range of issues—at all stages of the UPR process—that may be contributing to the comparatively limited quantity and quality of recommendations on ESCR coming out of the UPR. These are summarized in the graphic below.



A recurrent theme in feedback received from stakeholders was the lack of information on ESCR provided during the course of the UPR. To look into these concerns, the students reviewed the documentation for and recommendations from the most recent reviews of two countries in our sample: Cambodia and Egypt. This analysis revealed that each document devoted less attention and detail to ESCR compared to CPR:

- Both countries devoted significant attention to ESCR in their **national reports**, but in both cases ESCR received less attention that CPR overall and the information provided was less specific. For instance, Egypt's report had general sections on ESCR and CPR that were roughly the same length. However, the report contained additional sections on three CPR-specific topics. Similarly, Cambodia's report included an extensive section on land rights, but devoted only two of its 25 pages to all other ESCR topics.

- On the surface, there was balanced attention to both sets of rights in the **compilations of United Nations information**; thematic headings were equally divided and all major treaty bodies and special procedure reports were referenced. However, there were significant differences in the depth and specificity of the information provided. In each of the compilations reviewed, there were roughly twice as many paragraphs on CPR-specific issues as ESCR specific issues. Certain ESCR topics were notably under-developed. For instance, the Cambodia compilation only contained two short paragraphs on the right to education and one each on the rights to work and to culture.

- For both countries reviewed, fewer civil society submissions were specifically focused on ESCR and OHCHR's **summary of stakeholders' information** reflected a similar trend. While the thematic headings were equal in number there were more than twice as many specific paragraphs regarding CPR as ESCR. Additionally, notable issues raised in civil society submissions were not mentioned in the summaries. For instance, the summary for Egypt did not mention sexual and reproductive health, the rights of domestic workers, or rights issues relating to progressive taxation, even though these were raised in more than one civil society submission.

The lack of detailed information in these documents may indeed be impacting the quantity and quality of the final recommendations related to ESCR. For the two countries reviewed, the final recommendations—especially those that made specific calls for action—drew heavily from these documents. In Cambodia's review, 80% of the ESCR-focused recommendations that called for a specific action used language directly drawn from the National Report, the compilation of UN information, and/or the stakeholders' summary. The number was similarly high in the Egyptian review; 75% of ESCR-focused recommendations used language from those documents.

HOW COULD RECOMMENDATIONS ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS BE STRENGTHENED?

Given that the acceptance rate does not appear to decrease when recommendations propose more specific actions, there is great scope for strengthening recommendations on ESCR, to better support states operationalize their obligations for these rights and to facilitate more effective implementation of UPR recommendations on them. In its *Guide for Recommending States*, UPR Info suggests using "SMART" (Specific, Measurable, Ambitious, Realistic, and Time-Bound) as criteria for helping to write precise and action-oriented recommendations. Contrary to the misperception that it is impossible to make concrete recommendations on ESCR, the analysis above identified a significant number of recommendations that met these criteria. From these, a number of qualified suggestions can be drawn as to how these criteria relate to ESCR.

Specific Recommendations

Specific recommendations identify one concrete action the state should take, to address one particular issue (rather that "omnibus" recommendations that throw in a whole raft of suggested actions on various rights). Specific recommendations often contain examples of certain laws or policies to enact, amend, or effectively implement. Consider the following examples:

SPECIFIC	Reform the Native Title Act, amending strict requirements which can prevent the Aboriginal peoples from exercising the right to access and control their traditional lands and take part in cultural life.
NOT SPECIFIC	Exert further efforts towards the realization of the rights to health, work and women's rights, with a view to achieving the Millennium Development Goals by 2015.

The first recommendation names a specific policy and details the amendments needed to it. The second identifies a broad goal, but does not propose any concrete action to meet it.

Measurable Recommendations

Measurable recommendations provide an objective method for determining the extent to which they have been implemented. Consider the following:

MEASURABLE	Continue efforts to implement the road map aimed at reducing maternal mortality by half by 2015, and by 80 per cent by 2020.
NOT MEASURABLE	Make continued efforts in promoting education to deliver high-quality education.

The first identifies an indicator that can be assessed periodically—the maternal mortality rate—and sets a benchmark for how much that indicator should change over set periods. The second, by comparison, does not give any guidance on measuring 'high-quality'.

Ambitious Recommendations

Ambitious recommendations encourage the state to take actions that will make a meaningful difference on the ground. Consider the following:

AMBITIOUS	Fund and implement a single plan and timeline with clear annual targets aimed at eliminating school segregation for Roma children and ensuring inclusive education.

NOT AMBITIOUS	Continue efforts to protect the rights of persons with disabilities.

The first recommendation requests that the state take concrete steps towards meaningfully realizing Roma children's right to education. The second does not push the state to meaningfully improve its current practices.

Realistic Recommendations

Realistic recommendations are possible for the state to achieve within the timeframe of the UPR cycle. Recommendations should not request actions that there is no possibility of achieving before the next review. Consider the following examples:

REALISTIC	Ensure the adoption, in the near future, of a list identifying types of hazardous work prohibited to persons under the age of 18 years.
NOT REALISTIC	Reach the integral development of all segments of the population and regions, improve the standard of living of its citizens, including vulnerable groups of the population.

The first recommendation requests a concrete action that can be achieved before the state undergoes its next review. The second, while laudable, is requesting something that perhaps no state could achieve within a four year period. Another consideration in determining how realistic a recommendation is, is how likely it is to be accepted by the state under review.

Time-Bound Recommendations

Time-bound recommendations contain a clear timeline for the recommendation to be implemented. The periodic nature of the UPR means all recommendations have an implied timeline—the next review—but shorter deadlines may be appropriate, particularly where more immediate action is required to achieve a more medium or long term goal. Consider the following:

TIME-BOUND	Continue its efforts in promoting and protecting the rights of the child, including finalizing and implementing the new draft of a national plan to eliminate the worst forms of child labor for the period 2013-2018.
NOT TIME-BOUND	Take legislative measures to guarantee universal access to secondary schooling for all children.

CONCLUSIONS

Despite a rhetorical commitment to indivisibility and interdependence, the findings outlined above clearly show that ESCR receive much less attention throughout entire UPR process. This results in comparatively fewer ESCR-focused recommendations, on a limited range of topics, that lack specificity and detail. Nevertheless, the high acceptance rate across most regions is an important sign of the potential for the UPR to improve the realization of ESCR.

Given that the acceptance rate does not appear to decrease when recommendations propose more specific actions, there is great scope for improving the quantity and quality of recommendations on ESCR. One way to do this is to build the awareness and capacity of states and civil society organizations to develop SMART recommendations on ESCR. SMART recommendations show where the state is falling short and where change is needed; identify the actions that need to be prioritized to make that change; and require states to explain and justify failures to take such action. These criteria are very interlinked; recommendations that are not specific are difficult to measure, those that are not measurable difficult to achieve.

Of course, the utility of these concepts in judging recommendations is heavily context-specific. The UPR is an inherently diplomatic process and there is a limit to how prescriptive member states may be willing to be when it comes to recommending action. Nevertheless, using these criteria as a guide in drafting recommendations can help to bolster the capacity of the UPR to foster accountability through ongoing dialogue among peers.

Ultimately, strengthening UPR recommendations on ESCR depends on all stakeholders giving greater political priority to these rights. With that, there is a variety of ways that the information on these rights that feeds into the process could be increased. This, in turn, can provide the basis for SMART recommendations that better support states operationalize their obligations in respect of these rights and to facilitate more effective implementation of UPR recommendations on them.

Addressing the UPR's blind spots when it comes to ESCR is an important means for redressing the comparative lack of attention these rights still receive on the international human rights agenda overall. Advocating for the effective fulfilment of ESCR through the UPR will also be crucial if it is to serve as an effective accountability mechanism for the Sustainable Development Goals (SDGs). International human rights mechanisms are vital part of the web of accountability needed to achieve the SDGs. As a peer review mechanism, which also allows for civil society participation, the UPR is particularly well-placed to foster accountability for states' respective responsibilities in meeting their global commitments. However, it cannot live up to this potential unless efforts are taken ensure it meaningfully addresses the indivisibility of all human rights.

Annex: Methodology

For the analysis, recommendations were categorized as focused on civil and political rights (CPR), focused on economic, social and cultural rights (ESCR), focused to a mix of civil and political and economic and social rights (Mixed), or neutrally related to all rights in general and not targeting a specific right (Neutral). The approach adopted for identifying which recommendations to include in which category differed for the full dataset and the sample.

Issue categorizations in the full dataset:

For the full dataset, recommendations were categorized by using the issue "tags" developed by UPR Info. UPR Info has 54 tags, which adopt the following approach:

a) In some cases, these tags clearly identify a given right, like the right to housing or water.

b) In other cases, they identify issues related to these rights, but without tagging the right as such. For example, HIV-AIDS is tagged separately, instead of being tagged under health.

c) Other tags relate to groups, such as minorities, people with disabilities, women, or internally displaced persons.

d) Other tags refer to very broad, cross-cutting and overarching human rights issues, principles or mechanisms such as "environment", "poverty", "development", "international instruments", and "national plans of action".

e) The "other" tag sometimes refer to country-specific situations or to debated international issues.

Classification	Tag
CPR	Asylum-seekers; Civil society; Counter-terrorism; Civil and political rights – general; Death penalty; Detention; Elections; Enforced disappearances; Extrajudicial executions; Freedom of association and peaceful assembly; Freedom of movement; Freedom of opinion and expression; Freedom of religion and belief; Freedom of the press; Human rights defenders; Human rights violations by state agents; Impunity; International humanitarian law; Justice; Public security; Torture and other CID treatment

ESCR	Business and human rights; Corruption; Development; Environment; ESC rights – general; HIV – Aids; Labor; Poverty; Right to education; Right to food; Right to health; Right to housing; Right to land; Right to water
M	Disabilities; Indigenous peoples; Internally displaced persons; Migrants; Minorities; Racial discrimination; Rights of the Child; Sexual Orientation and Gender Identity; Trafficking; Women's rights
N	General; Human rights education and training; International instruments; National human rights institutions; Other; Special procedures; Technical assistance and cooperation; Treaty bodies; UPR process

Each recommendation may have up to six issue tags, with the most critical issue, as determined by UPR Info, listed first. If the first tag fell into the category of CPR or ESCR as noted above, then this was the final category used in the analysis. If the first tag fell into the category of Mixed (e.g. Women's Rights) or Neutral (e.g. International instruments) and there were no subsequent issue tags, then the recommendation would be categorized accordingly. However, if there were subsequent tags they would be reviewed. For instance, if the first tag was Women's Rights (M) and the second tag was Right to Education (ESCR), then it would be categorized as ESCR. If the second tag was Justice (CP), then it could be categorized as CPR. However, if the second tag was either Neutral or Mixed, then the first tag would be used.

Categorizing recommendations by issue for the 21 country sample:

For the 21 country sample, all recommendations were read for content and then categorized using the four categories outlined above. If a specific right was addressed, the recommendation was categorized as ESCR, CPR, or Mixed. If all rights were targeted, the recommendations was categorized as neutral.

ESCR-focused refers to recommendations that clearly related to an identifiable economic, social or cultural right. For example, "Accelerate programs focused on education of girls." CPR focused referred to recommendations that clearly related to an identifiable civil and political right. For example, "Abolish the death penalty." Recommendations that referred to both CPR and ESCR were classified as Mixed. Common recommendations in this category relate to the ratification of a number of treaties or to treaties (e.g. CRPD, CEDAW and CRC) that address both types of rights, as well as general recommendations targeted at groups of people such as migrants or women (e.g. "Develop policies that ensure gender equality"). Recommendations that did not target any specific right (e.g. those that refer to human rights mechanisms and monitoring systems) were classified as Neutral. Common recommendations in this category relate to establishing, strengthening or engaging with national human rights institutions, special procedures, treaty bodies etc. without specifying a particular issue area.

ACKNOWLEDGEMENTS

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Cover image: UN Photo/Pierre Albouy

About CESR

The center for Economic and Social Rights (CESR) was established in 1993 with the mission to work for the recognition and enforcement of economic, social and cultural rights as a powerful tool for promoting social justice and human dignity. CESR exposes violations of economic, social and cultural rights through an interdisciplinary combination of legal and socio-economic analysis. CESR advocates for changes to economic and social policy at the international, national and local levels so as to ensure these comply with international human rights standards.

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