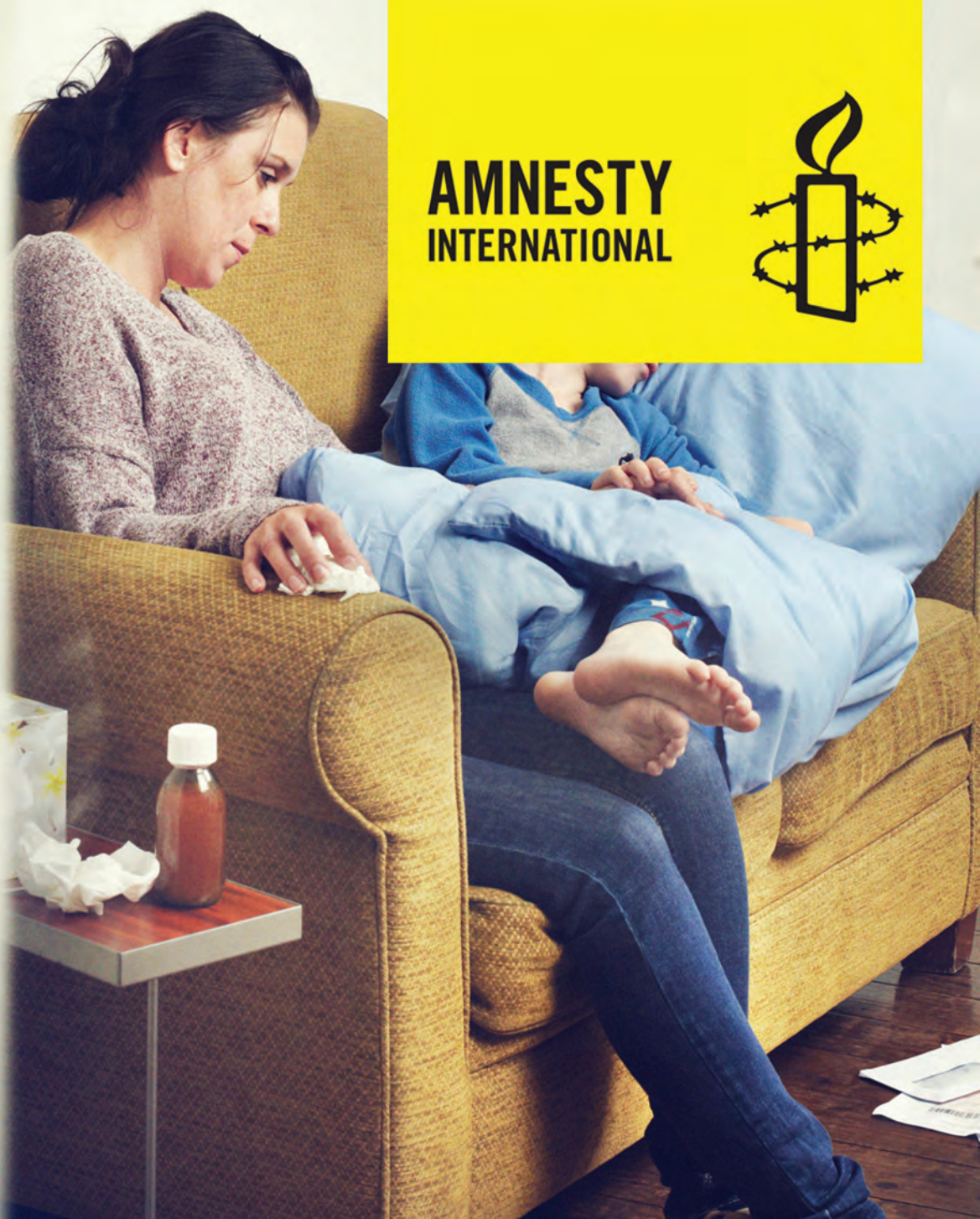


HOLDING GOVERNMENT TO ACCOUNT

A GUIDE TO SHADOW REPORTING ON ECONOMIC SOCIAL AND CULTURAL RIGHTS

**AMNESTY
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HOLDING GOVERNMENT TO ACCOUNT

A Guide to Shadow Reporting on Economic Social and Cultural Rights

Under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Irish Government is responsible for the delivery of a range of human rights for people in Ireland. The ICESCR periodic reporting process can help to put pressure on the Government to take steps to improve the enjoyment of human rights.

NGOs have a vital role in monitoring the activities and policies of the Government, to hold it accountable, both at a national and international level, for the obligations it has undertaken when ratifying human rights treaties.

Every few years the State party is obliged to submit a periodic report on how it is complying with ICESCR. There are many ways for NGOs to engage with the Committee on Economic, Social and Cultural Rights (CESCR). NGOs can attend and participate in periodic review sessions held by CESCR, although the most impactful way of engaging with the CESCR as an NGO, is by submitting a **shadow report**. NGOs can submit their own assessments of State compliance with ICESCR obligations, alongside the report submitted from the State to the CESCR.

These shadow reports do bring local voices to the international forum, and can gain the support of the CESCR's international experts, to affect Government policy. As well as this, shadow reporting is essential in assisting the work of the CESCR in monitoring how the State is complying with its obligations under the ICESCR. For the CESCR to get the most accurate view of the rights situation in a country, and for the process to have the fullest effect, it is essential that balancing views from a range of sources are provided to the CESCR members. Shadow reports from NGOs complement the information provided in State reports, and fill in gaps, correct inaccuracies, or clarify misleading statements in the State report.

WHAT IS THE ICESCR? WHAT ARE IRELAND'S OBLIGATIONS?

The ICESCR is one of the principal instruments of the International Bill of Human Rights (along with the Universal Declaration on Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR)).

The ICESCR protects the category of rights known as economic, social and cultural (ESC) rights, including:

• Right to Work (article 6)	• Right to Housing (article 11)
• Right to Social Security (article 9)	• Right to Food (article 11.2)
• Right to Family Life (article 10)	• Right to Health (article 12)
• Right to an Adequate Standard of Living (article 11)	• Right to Education (article 13, 14)

Its sister treaty is the International Covenant on Civil and Political rights (ICCPR). Ireland ratified the ICESCR in 1989 and has since been bound by it. The obligations on the State under the ICESCR are to respect, protect and fulfil the rights contained therein.

The following are the different types of state obligations:

1. **Duty to respect:** The State must refrain from interfering with the enjoyment of rights.
2. **Duty to protect:** The State must prevent violations of rights by third parties.
3. **Duty to fulfil:** The State must take appropriate legislative, administrative, budgetary or judicial steps to progressively realise full enjoyment of the rights of the treaty.

Some states make “reservations” when ratifying treaties, stating the condition under which they consider to be bound. Ireland’s reservations to the ICESCR relate to a parent’s rights to educate their children and preference of the Irish language for the purposes of promotion.

WHAT DOES THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR) DO?

The CESCR is the monitoring body of the ICESCR, composed of eighteen independent international experts, elected for four year terms. They are unpaid, voluntary and supported by the Office of the UN High Commissioner for Human Rights (OHCHR).

The CESCR is responsible for monitoring the implementation of the ICESCR, and for offering guidance to States. This involves overseeing the State periodic reporting mechanism, and issuing General Comments providing general advice to all States. The CESCR meets for two sessions per year in Geneva, three weeks per session and examines roughly ten State progress reports each session.

Additionally, under the Optional Protocol to the ICESCR, individuals or groups of individuals can make complaints directly to the CESCR if their rights under the ICESCR have been violated. Ireland signed the Optional Protocol in 2012, but has not yet ratified it. This means this option for engagement is not yet available in Ireland.

HOW DOES THE PERIODIC REPORTING MECHANISM WORK?

PRE SESSIONAL REPORTING MECHANISM

As part of the reporting process, States are obliged to submit reports to the CESCR, to update them on their progress in implementing the obligations which the ICESCR creates. The periodic report details the legal, administrative and policy steps they have taken to improve the enjoyment of economic, social and cultural rights in their country. States submit reports to the CESCR and a review session is scheduled.

At the end of each session, a smaller working group of CESCR remains for a week of pre-sessional preparatory work for the States scheduled for review in the next session. One of the working group members will be chosen as country rapporteur to lead the taskforce for Ireland's review session. This member and their team will assess all information available from the State, civil society and other sources to compile a *List of Issues*, a prioritised list of topics for discussion at the session with the Irish delegation, and questions to pose to the Irish delegation.

REVIEW SESSION

At the official review session, State delegates appear before the CESCR and discuss the report, the list of issues, and answer questions. Ireland has submitted its common core document (CCD) (see glossary) to the OHCHR. The CESCR will look at this too.

After the session, the country rapporteur writes a final report, the *Concluding Observations* with a set of findings (positive and negative) and recommendations for the State to consider and implement before the next reporting phase. This is a short, succinct document written in very measured terms.

SHADOW REPORTING

IMPORTANCE OF SHADOW REPORTING

- Shadow reporting is mutually beneficial to the CDESCR and to the work of NGOs. Shadow reporting is an important tool for advocacy and empowerment. Additionally, the CDESCR relies upon information from NGOs in conducting State reviews
- NGOs are important to ensure that the CDESCR has complete and comprehensive information, on which to base its review
- Shadow reports highlight how human rights are truly being enjoyed in practice, beyond what is said in the State reports. They illustrate the effectiveness or otherwise of administrative, legislative and budgetary measures the state is reporting on
- Concluding observations and recommendations of the CDESCR can be used as a basis for dialogue between the Government and NGOs
- NGOs can raise public awareness about treaty obligations, the reporting procedure, and the resulting recommendations through engaging with members and partners of the shadow reporting process and by engaging with media
- NGOs are in the best position to monitor implementation of the CDESCR recommendations and the treaty obligations, to ensure the Government is held accountable

Other things an NGO can do to influence concluding observations:

- attend the session during which there may be opportunities to informally meet the CDESCR members and in particular those that are sympathetic to your cause
- Follow up on the government implementation of Concluding Observations

OVERVIEW OF PROCESS

Depending on the stage of the reporting cycle, there are different ways to engage with the work of the CESCR. This involves written or oral reports, attendance at meetings, and lobbying the government to ensure effective implementation.

Stage of Process	What happens	Potential for Engagement
Ratification of the Treaty	States adopt the necessary legal measures to accept obligations and for the Treaty to enter into force	
Between reporting cycles	Before a State has submitted a scheduled Report to the CESCR	<ul style="list-style-type: none"> • Monitor the Government action in light of the ICESCR obligations • If a report is overdue: put pressure on the Government to submit • Participate in State Report consultation process • Promote the adoption of new instruments, such as the Optional Protocol to the ICESCR
Submission of State Report	State submits a draft review report to the CESCR and awaits the scheduling of their session date	<ul style="list-style-type: none"> • Publicise the report and its content • Stay current with the CESCR news for scheduling of session • Begin drafting shadow report
Pre-session Working Group	Meeting at the end of one session to prepare for the next review session. Country rapporteur reviews submissions and compiles a list of issues. Time is allocated to hear from NGOs.	<ul style="list-style-type: none"> • Submit shadow report • Make oral presentation • Influence list of issues • Recommend questions

Stage of Process	What happens	Potential for Engagement
Committee Session		<ul style="list-style-type: none"> • Submit shadow report • Submit a written statement (with the sponsorship of an NGO with ECOSOC consultative status)
- NGO hearings	Open meetings organised by the CESCR, specifically to hear from NGOs on the first day of the session. Time allocated to oral submissions.	<ul style="list-style-type: none"> • Oral presentation (usually 15 minutes assigned for NGOs) • Discuss the government report; summarise own report; identify trends in country; raise issues; propose solutions
- Constructive dialogue	Public meeting where all Committee members attend, as well as delegates from the State under review. The State presents to the CESCR and the CESCR asks questions of the State. Meeting is open to accredited NGOs.	<ul style="list-style-type: none"> • Attend as observers
Follow-up	Concluding observations are issued with recommendations. State may be required to supply Committee with further information.	<ul style="list-style-type: none"> • Raise public awareness of Concluding Observations • Use recommendations to support dialogue with government • Submit further implementation reports to Committee

RESEARCHING THE SHADOW REPORT

- It is recommended by the CESCR that NGOs consider a coordinated response, by consulting with each other and producing a consolidated report representing their common views and contributing their expertise from across a range of areas.

A consolidated report reduces the chance of overlapping or contradictory information. It is more efficient and makes the work of the CESCR easier.

- The collective report can be submitted alongside a more specific report, relating to a narrower range of issues, providing more detail on selected areas.
- **CESCR's General Comments** are useful when referring to specific articles. They provide official guidance on the essential elements of rights and markers of implementation. Presenting problems in this language and framework gives coherence to a submission.

For example, General Comment 4 on the right to housing identifies aspects of that right which need to be fulfilled in order for shelter to be deemed "adequate housing". General Comment 14 elaborates the necessary elements of implementing the right to health.

For a full list of General Comments see the OHCHR website.

- **Concluding observations** and recommendations from previous sessions are a useful reference point for what steps Ireland should have taken since the last review. Use these to highlight successes and failures in implementation.
- Remember that the report is for a body of international experts with varying languages. The OHCHR emphasises the need for clarity, precision, accuracy and objectivity in language and research.
- Ireland has submitted its third periodic report to the CESCR and is waiting for a date in 2015 for its review session. A copy of the report is available on the OHCHR website.
- What is required from the shadow report can be understood by reference to the State report. The shadow report should ideally follow a similar structure, without duplicating the information provided.

WHAT GOES INTO A SHADOW REPORT?

- New evidence from NGOs of which the CESCR was not already aware
- Critique of State assessment of human rights: address inaccuracies in the State Report
- Additional context and information: to assist the CESCR's understanding of Ireland's political, social and economic environment
- Evidence of violations and failures: with concrete supporting documentation
- Supporting evidence or testimonies which offer a more nuanced perspective to the reporting process, and which add weight to any arguments made in the reporting process
- **Recommendations** for how the State can improve on meeting its obligations under the ICESCR
- **Questions** which you would like the CESCR to ask the State

STYLE GUIDE:

- According to the CESCR, shadow reports which follow the structure of the official State-submitted report facilitate comparative readings and make the work of the CESCR easier
- Consider use of a glossary of terms to assist non-Irish readers
- Use the ICESCR articles to frame the report although a thematic approach is also fine
- Use General Comments as a guide to the language of the ICESCR rights
- Information should be:
 - ▶ Relevant to the ICESCR rights
 - ▶ Based on authoritative sources
 - ▶ Correctly referenced
 - ▶ Concise and succinct
 - ▶ Language should be accessible
 - ▶ Language can be critical but respectful and not abusive

Suggested format for the report:

- ▶ Executive Summary/Summary of Recommendations
- ▶ Glossary of Terms
- ▶ Table of Contents

- ▶ Introduction: information on the NGO itself and on how the report was drafted
- ▶ Main body, including:
 - General environmental information, not found in State report
 - Chapters organised by themes or by the ICESCR articles
 - If you wish to address just once of the ICESCR articles that is also fine

This is similar to the format used in the following shadow reports:

- Joint Shadow Report to UN Committee Against Torture (2011) from Irish Penal Law Reform Trust (IPLRT) and Irish Council for Civil Liberties (ICCL) submission
- Joint Shadow Report under the ICCPR (June 2008) from FLAC, ICCL, IPRT

WHEN AND HOW SHOULD A SHADOW REPORT BE MADE?

Stage	Deadline	Number of copies
Pre-sessional working group	Two months before meeting	12
State Review Session	One month and a half before session	20

Ireland's third report has been scheduled for examination in 2015, at the 54th session of the CESCR. The Pre-Sessional Working Group will be held from 1- 5 December 2014.

Electronic copies may also be submitted, with the hard copies to the Secretariat. When Ireland's review is scheduled, the date and time will be available from the OHCHR website.

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USEFUL RESOURCES:

OHCHR website

Ireland's draft 3rd periodic report to CESCR

OHCHR handbook for NGOs

Information note for NGOs from the Secretariat of CESCR

CESCR webpage for civil society organisations

CESCR guidelines for NGO participation

CESCR Concluding Observations for Ireland 2002

CESCR reporting guidelines for State Parties

Irish Council for Civil Liberties: Civil Society Toolkit on International Human Rights Reporting

Index of General Comments from CESCR

How to cite UN documents:

University of Bournemouth provides a quick guide to citation

For more detail on researching UN Human Rights documents:
www.research.un.org/en/docs/humanrights

DID YOU KNOW?

As one of the leading organisations in Ireland working with the law for the benefit of marginalised and disadvantaged people, the Free Legal Advice Centres (FLAC) seeks to coordinate and produce a civil society shadow report for Ireland's forthcoming examination in 2015 by the UN Committee on Economic, Social and Cultural Rights (CESCR).

For details of this project, upcoming consultations and for further information on how to feed into the report please go to www.flac.ie or contact the project team on 085 836 3300 or by email at icescr@flac.ie.



GLOSSERY OF TERMS:

Ratification: Is an official acceptance of States to be bound by the treaty and all of its obligations (except reservations).

Signature: Is a good faith obligation on the part of States who agree with the object and principles of a treaty but have not yet agreed to be bound by its obligations. States still have a duty to refrain from acts contrary to the object and purpose of the treaty.

Reservations: Statements made by a state at the time of ratification or accession asserting that it will not be bound by one or more obligations under the treaty. Such statements must not defeat the object and purpose of the treaty. If they do so with regard to a multilateral human rights treaty, they may simply be invalid and the state will remain bound by the obligations, but this view (shared by Amnesty International) remains controversial.

Optional Protocol to the ICESCR (OP-ICESCR): The Optional Protocol to the ICESCR creates additional mechanisms to monitor State compliance with the ICESCR. Under the Optional Protocol, individuals can make complaints to the CESCR if they believe that their rights under the ICESCR have been violated and if they have exhausted all remedies in their own country. The Optional Protocol also provides for inter-state complaints and for an inquiries procedure.

General Comments: Official statements of interpretation of the ICESCR rights, published by the CESCR. They guide States on implementation of obligations and list the essential elements of rights. They can be a useful resource for framing sections of shadow reports and arguing that there has been a breach of rights.

State Reports: Implementation progress reports submitted to the CESCR under articles 16 and 17 of the ICESCR. The report sets out legal, administrative, judicial and other measures that the State has adopted to implement the treaty provisions, and lists the obstacles to implementation.

Common Core Document: A report from the State which can be used by all UN Treaty Monitoring Bodies. It explains the general framework for protection and promotion of human rights to provide background. It is separate from the State report which is specifically focussed on measures taken in relation to specific treaty articles.

Pre-sessional working group: A smaller group of members, selected by the ICESCR who meet at the end of one session to prepare for the next session. They appoint country rapporteurs, review submissions and compile a list of issues.

Country rapporteur: Committee member responsible for one of the States under review. Responsible for drafting the List Of Issues. Also responsible for drafting the concluding observations.

Country task force: Works with the rapporteur and receives information from NHRIs, civil society such as NGOs and professional associations and academic institutions.

List of Issues: At the pre-sessional stage, the Working Group decides on the most important issues relevant to a State's implementation of the ICESCR, to be raised at the session discussion and in the form of written and oral questions to the State under examination. Contains questions addressed to the States party, on the basis of documents submitted (from State and all other sources).

Concluding Observations: After the review session and discussion with State delegates and after the delegates have been given the chance to respond to questions, the Country rapporteur drafts its concluding observations to finish the reporting phase. It contains comments on positive impressions or points of concern of the State's implementation, along with recommendations to assist compliance with the ICESCR, to guide a State before the next reporting session.

UPR (Universal Periodic Review): A separate, consolidated review process, conducted in peer-review style format with the involvement of all other interested States. It is an overall assessment of a State's human right situation and compliance with their international obligations.

Treaty Monitoring Body: A panel of independent experts charged with oversight of implementation of the relevant Treaty. They monitor State progress in implementing the treaty, through the State reporting mechanism; issue General Comments; and depending on their mandate, receive individual or collective complaints.

ICESCR International Covenant on Economic, Social and Cultural Rights

CESCR Committee for Economic, Social and Cultural Rights

OHCHR Office of the High Commissioner for Human Rights

NHRI National Human Rights Institution

UDHR Universal Declaration of Human Rights

ICCPR International Covenant on Civil and Political Rights



Amnesty International Ireland

Amnesty International is a worldwide movement of people that campaigns for the protection of the fundamental human rights guaranteed to each one of us by the Universal Declaration of Human Rights. In Ireland, Amnesty International campaigns to strengthen the legal protection of economic, social and cultural rights.

For more information on our campaigns contact us at:

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