



GICJ Report
May 2020

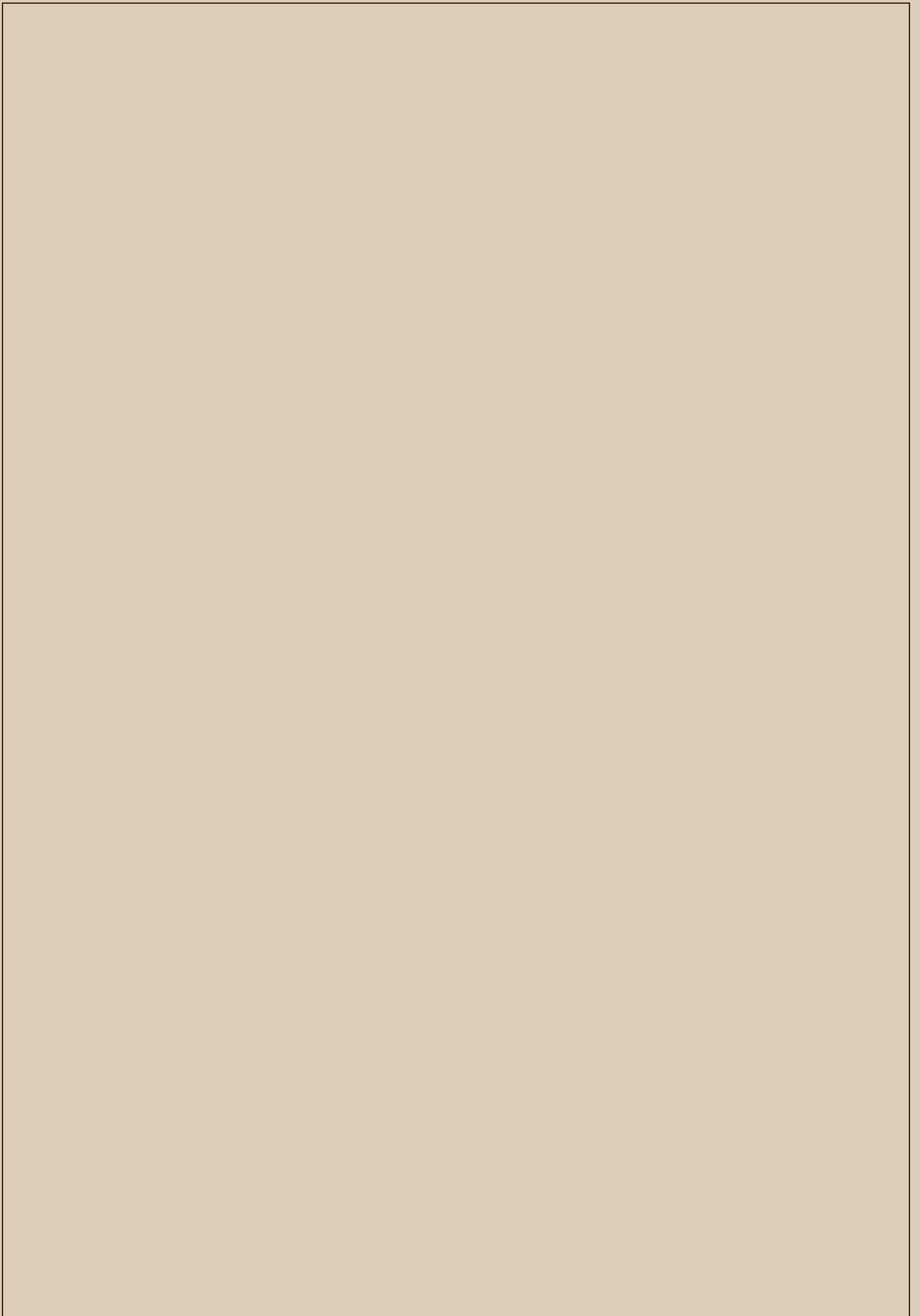


**Committee on Economic, Social
and Cultural Rights
(CESCR)**



Geneva International Centre *for* Justice

www.gicj.org



GICJ Report

May 2020

Committee on Economic, Social
and Cultural Rights
(CESCR)

Written by
Marcel Florian Loehr

Geneva International Centre *for* Justice

www.gicj.org

Committee on Economic, Social and Cultural Rights

Contents

- I. Introduction..... 2
- II. Covenant..... 3
- III. Reporting..... 5
 - Initial Reports 6
 - Periodic Reports 6
 - Consideration of the Reports by the Committee 7
 - Follow-up to concluding observations 8
- IV. Procedures..... 8
 - Interstate complaints..... 8
 - Urgent Actions and Inquiries..... 9
 - Inquiry Procedure..... 9
 - Individual Complaints..... 10
- V. NGO Participation 10
 - NGO Reports 10
 - Participation in Meeting..... 11

I. Introduction

The Committee on Economic, Social and Cultural Rights (CESCR) is a body of independent experts that monitors the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The ICESCR flows directly from the 1948 Universal Declaration of Human Rights (UDHR). The latter establishes an unprecedented elaboration of fundamental Human Rights and Principles applied in International Law. The UDHR is broad and general and, to articulate more specific rights, a more specific instrument was needed. Through the schism of the Cold War emerged two schools of thought. Some States such as the United States defended the notion that in International Law only civil and political rights (such as the right to liberty, physical integrity, religion) ought to be recognized. On the other stood the opinion shared by the Soviet Union that only economic and social rights (such as labour rights, the right to health, or the right to social security) had priority. For most of the International Community such as debate was needless and as such the ICESCR was eventually adopted in 1966 by the United Nations General Assembly, separately from the International Covenant on Civil and Political Rights, adopted on the same day.

CESCR was established by the UN Economic and Social Council (ECOSOC) Res 1985/17 of May 1985 with an aim to monitor the implementation by State Parties of their obligations under the ICESCR. State Parties are obliged to report to CESCR about the implementation of Covenant obligations in regular intervals of 5 years.

In addition, following the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP) in May 2013, the Committee is empowered to receive and consider communications from individuals claiming that their rights under the Covenant have been violated. The OP gives the Committee, under certain circumstances, the competence to undertake inquiries on grave or systematic violations of any right set forth in the Covenant and consider inter-state complaints.

As such it is worth noting that, unlike the other treaty bodies, CESCR is based on an older document which did not provide for a reporting system, nor a complaint procedure. Such elements were gradually incorporated as the need arose.

The Committee consists of 18 independent experts that meet twice per year and are elected for terms of four years. These experts, who must be of high-moral character, are tasked with the review of submitted state reports.

This Report will therefore present three fundamental aspects of the CESCR. It will first present its founding document, the ICESCR, in more detail. It will then explain the process by which the Committee reviews State reports. The report will then elaborate on the complaint mechanism

provided for in the OP. Finally, the report will review the important role of NGOs in assisting the Committee in its functions.



II. Covenant

The Committee draws its source from the provisions of the ICESCR. The Covenant was adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. It entered into force 3 January 1976, after the 35th State ratification, as provided in Article 27 of the Covenant.¹

“...Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights...”

Preamble ICESCR

¹ ICESCR (1966) United Nations [online available at: <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>]

Humans are granted certain rights according to the Universal Declaration of Human Rights (UDHR). These rights are further guaranteed, in part, through the ICESCR which protects and promotes economic, social, and cultural human rights. While the rights established in the UDHR are incorporated in many national legal frameworks across the globe, the UDHR is de facto not legally binding. That is where the ICESCR comes into play; it creates legally binding international obligations for all ratifying states.

One of the cornerstones of the ICESCR is equality and non-discrimination in the application of the rights it contains. State parties are obliged to ensure rights in a way that prohibits discrimination based on “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”²

An important right is the right to self-determination, which promotes the ability to, for example, determine political status and pursuance of economic, social, and cultural development.

Social rights stated within the Covenant include the right to social security, the right to family, and the right to an adequate standard of living.

Next to social rights, the Covenant establishes the economic rights of people, economic rights include, for example, a fair minimum wage and working conditions, access to employment and the possibility of labour unions.

The last set of rights included in the Covenant is cultural rights. A cultural right that is of special interest in many countries nowadays is the right to education and enjoyment of scientific progress. In state parties that share territory with indigenous people, the protection and integration of those cultures is heavily emphasised by the Committee.

When reading through the Covenant, it becomes obvious that it covers a wide variety of everyone’s daily life activities, thus the strict implementation of the Covenant is of major importance.

In addition to the Covenant itself, state parties have the possibility to sign an optional protocol.

This protocol allows the Committee a more thorough investigation of potential human rights violations and the possibility of individual complaints.³

² ICESCR Art. 2(2) (1996) United Nations

³ Optional Protocol to the ICESCR (2008) United Nations [online available at: https://www.ohchr.org/Documents/HRBodies/CESCR/OPProtocol_en.pdf]

III. Reporting

The Committee was not created by its corresponding instrument, unlike the other UN treaty-bodies. It was created in 1985 through a Resolution of the Economic, Social and Cultural Council (ECOSOC) and held its first meeting in 1987⁴. This followed two initial but unsuccessful attempts at creating a body to monitor the implementation of the Covenant. However, the ECOSOC Resolution elaborated the process of State reporting.

“The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.”

Art. 16(1) ICESCR

The Committee examines the extent to which the obligations outlined in the Covenant are being achieved by state parties, formulates policies that promote ESCR via General Comments, and provides a forum for the public to learn about the work of their governments concerning the achievement of ESCR. The CESCR reviews five or six country reports every session. If a country fails to report, the CESCR may review the situation in that country using alternative sources. After examining a country's report and other sources, the CESCR then releases concluding observations which highlight the progress made in fulfilling ESCR, difficulties in achieving these rights, areas of concern, and recommendations.

Nations that ratify the Covenant oblige themselves to report about the implementation of the Covenant. These reports show the developments made in the country's territory and how the, through the Covenant, defined rights are applied and protected in practice. There are two different kinds of reports: initial reports and periodic reports.

State parties are obliged to submit an initial report **within two years** of the entry into force of the Covenant for the state party concerned and thereafter in a periodic cycle of **5-year intervals**. The Committee meets for two sessions per year, which each consist of a 3-week plenary phase plus one week of pre-session working groups. Within these sessions, country reports are assessed.

As of May 2020, 170 States have ratified the Covenant. An additional four states have signed, but not yet ratified, the Covenant.

⁴ <https://www.ohchr.org/Documents/Publications/FactSheet16rev.1en.pdf>



Dark Blue: signed and ratified / **Light Blue:** signed but not yet ratified / **Orange:** neither signed nor ratified

Source: OHCHR

Initial Reports

Initial Reports to the CESCR elaborate upon geographic, demographic, economic and social characteristics of the state party, and give a brief overview of constitutional and legal structures. Then they demonstrate how articles 1-15 are currently protected and promoted within the state party's territory or show plans on how the articles will be implemented in the future.

Periodic Reports

Periodic reports follow a similar structure to initial reports but are more interactive. Periodic reports discuss the time frame between the last review and the writing of the report, furthermore, they contain specific issues that were requested to be discussed within the report. While **initial reports build the foundation of discussion, periodic reports aim to respond to criticisms or ambiguities.**

The Committee normally considers the reports submitted by states parties under article 16 of the Covenant in the order in which they are received by the Secretary-General. Any reports by States parties received by the Secretary-General for processing less than 12 weeks before the opening of the session is made available to the Committee at its session in the following session. Representatives of the reporting States are entitled to be present at the meetings of the Committee when their reports are examined. Such representatives make statements on the reports and reply to questions which may be put to them by the members of the Committee.

If a report of a State party to the Covenant, in the opinion of the Committee, does not contain sufficient information, the Committee may request the State concerned to furnish additional information, indicating the manner as well as the time within which the said information should be submitted. The Committee makes suggestions and recommendations of a general nature on the basis of its consideration of reports submitted by States parties and of the reports submitted by the UN's specialized agencies in order to assist the Committee to fulfil, in particular, its responsibilities under articles 21 and 22 of the Covenant. The Committee may also make suggestions for the consideration by the Council with reference to articles 19 and 23 of the Covenant. The Committee may prepare general comments based on the various articles and provisions of the Covenant with a view to assisting States parties in fulfilling their reporting obligations.

Consideration of the Reports by the Committee

A pre-session working group meets for five days prior to each of the Committee's sessions. It is composed of five members of the Committee nominated by the chairperson, taking account of the desirability of a balanced geographical distribution and other relevant factors.⁵

The principal purpose of the working group is to identify in advance the questions that will constitute the principal focus of the dialogue with the representatives of each of the reporting States. The aim is to improve the efficiency of the system and to ease the task of States' representatives by facilitating more focused preparations for the discussion. Based on its discussions, the working group drafts a list of issues that is then sent to the state party concerned. The Committee's examination of the report concludes with the drafting and adoption of its concluding observations. For this purpose, the Committee usually sets aside a brief period in closed session immediately after the conclusion of the dialogue to enable its members to express their preliminary views. The country rapporteur then prepares, with the assistance of the secretariat, a draft set of concluding observations for consideration by the Committee. The agreed structure of the concluding observations is as follows: introduction, positive aspects, principal subjects of concern, and suggestions and recommendations. The Committee then discusses the draft, again in private session, with a view to adopting it by consensus.

⁵ Working Methods (2010) CESCR [online available at: <https://www.ohchr.org/EN/HRBodies/CESCR/Pages/WorkingMethods.aspx>]

Follow-up to concluding observations

In all concluding observations, the Committee requests the State party to inform the Committee, in its next periodic report, about steps taken to implement the recommendations in the concluding observations.

Where appropriate, the Committee may, in its concluding observations, make a specific request to a State party to provide more information or statistical data or to respond to any pressing specific issues identified in the concluding observations prior to the date that the next report is due to be submitted.

If the Committee is unable to obtain the information it requires based on the above-mentioned procedures, it may decide to request that the State party concerned accept a visit from one or two members of the Committee. The purposes of such an on-site visit would be: (a) to collect the information necessary for the Committee to continue its constructive dialogue with the State party and to enable it to carry out its functions in relation to the Covenant; and (b) to provide a more comprehensive basis upon which the Committee can exercise its functions in relation to articles 22 and 23 of the Covenant concerning technical assistance and advisory services. The Committee would specify the issues about which its representatives would seek to gather information. The representatives would also have the task of considering whether the programme of advisory services administered by the Office of the United Nations High Commissioner for Human Rights could be of assistance in connection with a specific issue at hand.

IV. Procedures

The third step in the Committee's evolution is its complaint procedure, which was established by the 2013 Optional Protocol. Through this document, State parties recognized the competence of the Committee to receive complaints from States and individuals, which, in turn, may lead to formal inquiries.

Interstate complaints

The Committee may, under certain circumstances, undertake inquiries on grave or systematic violations of any of the economic, social, and cultural rights set forth in the Covenant on the basis of inter-state complaints.

Article 10 of the Optional Protocol to ICESCR sets out a procedure for the Committee to consider complaints from one State party which considers that another State party is not giving effect to the provisions of the Convention. This procedure applies only to States parties who have made a declaration accepting the competence of the Committee in this regard.

“A State Party to the present Protocol may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant.”

Art. 10(1) Optional Protocol ICESCR

Urgent Actions and Inquiries

The Committee on Economic, Social and Cultural Rights may also initiate inquiries on its own initiative if it receives reliable information containing well-founded indications of serious or systematic violations of the Convention in a State party. Inquiries may only be conducted with respect to States parties that have recognized the competence of the Committee in this regard. States parties may opt out from the inquiry procedure, at the time of signature or ratification or accession, or anytime under (article 11(8) of the Optional Protocol to ICESCR) by making a declaration that they do not recognize the competence of the Committee in question to conduct inquiries.

“If the Committee receives reliable information indicating grave or systematic violations by a State Party of any of the economic, social and cultural rights set forth in the Covenant, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.”

Art. 11(2) Optional Protocol ICESCR

Inquiry Procedure

The procedure may be initiated if the Committee receives reliable information indicating that the rights contained in the Convention are being systematically violated by the State party.

The Committee invites the State party to co-operate in the examination of the information by submitting observations. The Committee may, based on the State party's observations and other relevant information available to it, decide to designate one or more of its members to conduct an inquiry and report urgently to the Committee. Where warranted and with the consent of the State party concerned, an inquiry may include a visit to its territory.

The findings of the inquiry are then examined by the Committee and transmitted to the State party together with any comments and recommendations. The State party is requested to submit its own observations on the Committee's findings, comments and recommendations within a specific time frame (usually six months) and, where invited by the Committee, to inform it of the measures taken in response to the inquiry.

The inquiry procedure is confidential, and the cooperation of the State party must be sought at all stages of the proceedings.

Individual Complaints

The Committee may consider individual communications alleging violations of the Covenant by States parties to the Optional Protocol.

Any individual can lodge a complaint with the Committee. Complaints may also be brought by third parties on behalf of individuals, provided the individuals have given their written consent. In certain cases, a third party may bring a case without such consent, for example, where a person is in prison without access to the outside world or is a victim of an enforced disappearance. In such cases, the author of the complaint should state clearly why such consent cannot be provided.

V. NGO Participation

Since the Covenant covers such a wide variety of issue areas, the participation of civil society is of special importance. Reviewing the implementation of the ICESCR across all member states, results in an enormous workload, a workload that is impossible to be handled by 18 independent experts alone, thus the NGO participation is a form of informative subsidy that increases the chances of a fair evaluation by the experts.

NGO Reports

One form of informative subsidy are reports handed in by NGOs, those reports can cover a broad range of economic, social, or cultural issues. Those reports are required to be as specific, reliable, and objective as possible. Furthermore, reports that are directed at the pre-session working groups, should focus on information that is relevant to the List of Issues (LOI) or the

Participation in Meeting

Organizations that have submitted reports to the Committee get the possibility to deliver a statement at a public meeting dedicated to partners. Furthermore, organizations that have submitted information for the meeting of the pre-sessional working group can brief working group members. The Committee also encourages NGOs to work together in their briefings and presentation of information in order to make the process as smooth and varied as possible.

An example of GICJ's participation with the CESCR can be found on our website: <https://www.gicj.org/99-conferences-meetings/committee-on-economic-social-and-cultural-rights/364-statement-delivered-by-gicj-56-session-cescr>.

Geneva International Centre *for* Justice

Independent, non-profit, International non-governmental organization

GICJ is an independent, non-profit, international non-governmental organization dedicated to the promotion and reinforcement of commitments to the principles and norms of human rights. GICJ is headquartered in Geneva, Switzerland and is governed by the Swiss Civil Code and its statutes. Basing its work on the rules and principles of International Law, International Humanitarian Law and International Human Rights Law, GICJ observes and documents human rights violations and seeks justice for their victims through all legal means available.

Mission: GICJ's mission is to improve lives by tackling violations and all forms of violence and degrading or inhumane treatment through the strengthening of respect for human rights; reinforcing the independence of lawyers and judiciaries; consolidating the principles of equity and non-discrimination; ensuring rule of law is upheld; promoting a culture of awareness on human rights; and combating impunity.

Work: GICJ has been tackling issues of justice and accountability since it was established. GICJ maintains a partnership with various NGOs, lawyers and a vast civil society network around the world. Through these channels, GICJ is able to receive documentation and evidence of human rights violations and abuses as they occur in several countries. GICJ continues to bring this information to the attention of relevant UN bodies in order to gain justice for all victims.

Geneva International Centre *for* Justice



Postal address:

P.O. Box: GICJ 598 CH-1214
Vernier, Geneva – Switzerland

Office address:

150 Route de Ferney, CH 1211
Geneva 2 - Switzerland



facebook.com/GIC4J



[@Geneva4Justice](https://twitter.com/Geneva4Justice)



[@Geneva4Justice](https://www.instagram.com/Geneva4Justice)



info@gicj.org



+41 22 788 19 71

