

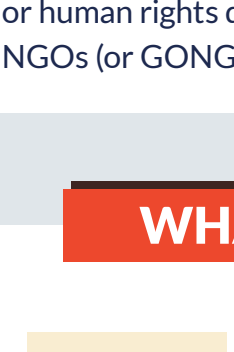
China's 2023 review by the UN Committee on Economic, Social and Cultural Rights



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

Created in 1985, the CESCR is the body monitoring the implementation of the International Covenant on Economic, Social and Cultural (or 'ICESCR'). It is composed of 18 experts who meet twice a year in Geneva for sessions of three weeks each.

1985

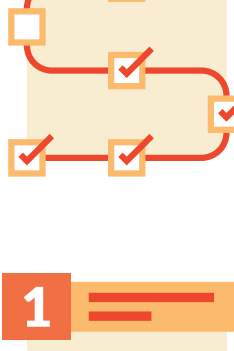


The CESCR is an indispensable tool for human rights defenders and civil society groups working to promote and protect economic, social and cultural rights, including related areas such as business and human rights, environmental rights and climate justice, or land and minority rights.

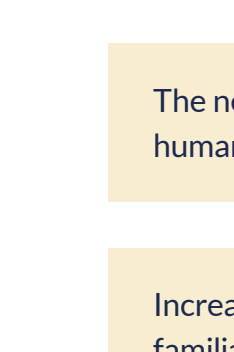
In February 2023, the CESCR conducted its third periodic review of China, Hong Kong and Macau. This was the first such review by the Committee since 2014. Eighty-nine (89) stakeholders from civil society took part; less than half of those (38) could be considered independent civil society groups or human rights defenders, while the remainder were government-organised NGOs (or GONGOs).



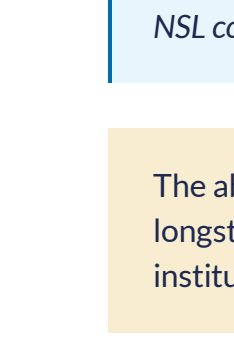
WHAT WAS THE OUTCOME OF THE REVIEW?



During **both days** of the meeting, the Chinese delegation made many claims about their work to advance economic, social and cultural rights in the three jurisdictions. They also provided some information, for example related to lawyers' right to practice; the effects of the National Security Law (NSL) in Hong Kong; and some case studies of efforts to protect human rights overseas.



The CESCR experts asked many detailed questions, including pressing on the need for the Chinese government to not retaliate against individuals or organisations who provided information to the Committee or engaged in the review.



The Committee's findings – known as the **Concluding Observations** – recognise limited progress. They make recommendations for how the government should ensure protection of the economic, social and cultural rights under threat.



The Concluding Observations starts with a list of areas where **rights protection needs to be strengthened as a foundation for better implementing the Covenant itself**. This section focuses on systemic and structural concerns, such as:

The need to improve data-gathering, by ensuring disaggregated data and a human-rights based approach to effectively identify disadvantaged groups

Increasing political interference in the work of the judiciary, and a lack of familiarity with economic, social and cultural rights overall

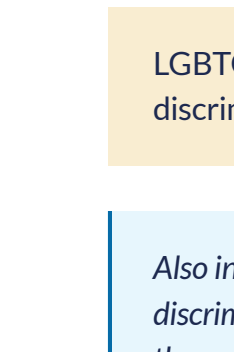
The experts looked especially at Hong Kong, where they raised concerns that the NSL could be used to interfere with judicial decisions.

The absence of independent oversight bodies, including non-action on longstanding recommendations to establish a national human rights institution

This goes for Hong Kong too, where once again the UN has said that the Equal Opportunities Commission has a mandate too limited to play a safeguarding role effectively.

Excessive restrictions on independent NGOs and a lack of an enabling environment for civil society, including human rights defenders and lawyers

In light of the National Security Law, the Committee raised the need for transparency around trials of those detained under NSL or related charges; full respect for due process; and the chilling effect of new governance or enforcement tools, such as the National Security Hotline.



Linked to this is a discussion of how the government uses **international cooperation and economic resources** for the ends of realizing economic, social and cultural rights, both within its own territory and in its multilateral engagement. Concerns here include:

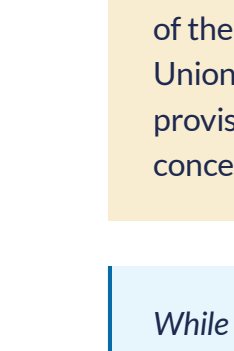
Regulation of companies and investors to ensure respect for human rights

Access to remedy for victims of human rights violations abroad

Contradictions between statements on climate change and development assistance

The Belt and Road Initiative and other major investment projects, notably with regard to debt

Anti-corruption measures that are in line with human rights standards and protect whistle-blowers



Many of the recommendations focus on **the need to combat discrimination, and the worrying lack of comprehensive anti-discrimination legislation**. According to the Covenant, governments must guarantee that individuals can exercise all the rights it details 'without discrimination of any kind'. This cuts across many populations that the experts list, including:

Uyghur, Kazakh, Kyrgyz, Hui and other non-Han ethnic groups in the 'Xinjiang Uyghur Autonomous Region', who have been subject to 'severe, systematic, vast and undue restrictions on a wide range of economic, social and cultural human rights'

Nomadic peoples (Tibetans) and herders, who are denied 'free, prior and informed consent' and meaningful participation in poverty alleviation and 'ecological restoration' policies

Women, who face a significant gender wage gap and struggle for representation in leadership positions in public and private sectors

Hong Kong is no different, with particular challenges being gender stereotypes that persist, and limited senior leadership representation by women.

LGBTQI individuals and groups, who should be protected from employment discrimination, harassment and hate speech

Also in Hong Kong, the Committee urged the government to act to combat discrimination and hate speech targeting the LGBTQI community, including through public awareness-raising campaigns.

Persons with disabilities, who continue to face barriers in employment despite quotas

Rural *hukou* holders, who should have equal access to public service in urban areas, including for social security, healthcare, and education

Residents of 'poorer, inland regions', whose local governments could be empowered to make changes with better sharing of resources



The **right to freely-chosen work** – and related rights to safe conditions, fair wages, representation, and pensions and social security – make up three separate Articles of the Covenant. These were also a focus for the Committee, who highlighted:

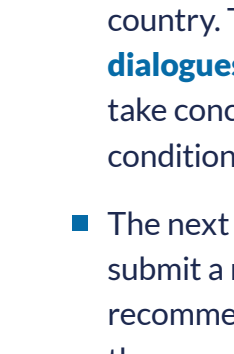
Reports of coerced or forced labour, especially of Uyghurs deprived of liberty in Xinjiang, but also arising from labour transfer schemes across the country

Non-payment of wages and labour conditions that were dangerous or demeaning, including exposure to sexual harassment, and which worsened in the context of informal work and low regulation of the formal sector

In Hong Kong, the experts drew attention to the situation of migrant domestic workers, and the need to amend legislation such as the live-in requirement and lack of minimum wage protections. This should be accompanied, they note, by stepped up enforcement and monitoring.

The inability of workers to freely form and join unions, outside the structure of the Chinese Communist Party-controlled All-China Federation of Trade Unions. While the Chinese government has filed a formal reservation to provisions of the Covenant related to trade union rights, it remains a concerning topic for the Committee.

While in Hong Kong the formation of trade unions is possible, the experts raised concerns that the existing law, exacerbated by the NSL, is being used to hamper the exercise of this right.

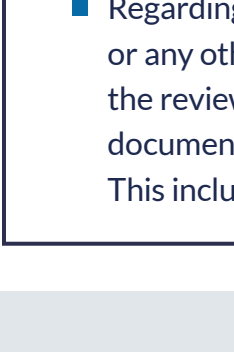


The Covenant outlines, in several Articles, the **rights to family life**, to an adequate standard of living, and to the highest attainable standard of health. In this regard, the experts drew attention to:

Alarming trends of invasions of family life and the right to privacy, such as through the *fanghuiju* or homestay programme implemented in the Uyghur region, as well as mass surveillance more broadly

Continued coercive measures in the area of family planning policy, through forced abortions and sterilisations for which authorities enjoy impunity, and for which victims have little or no means of redress

Poverty alleviation programmes, including climate change adaptation schemes, as well as healthcare provision, that fail to effectively address regional disparities in livelihoods and outcomes



Since 2020, the Committee has paid particular attention to countries' responses to the **COVID-19 pandemic**. Coming on the heels of China's abrupt rollback of its 'zero COVID' policy, the experts note:

Strains on the healthcare system, both human and material resources

Hong Kong, say the experts, should also invest in resilience, including for both physical and mental health services.

Compound effects of postponed procedures that could overburden a weakened health system, even as COVID comes under control

The need for clear policies and directives that are publicly communicated

The importance of full, timely and accurate cooperation to share data and information with international partners

The Committee received a lot of information about **China's education system**, but remained concerned overall at the continued costs to families, including those in vulnerable situations and/or in rural areas. They further noted concerns with regard to negative and often discriminatory impacts of education policies, including:

Efforts that 'undermin[e] the linguistic identity of ethnic minorities' by privileging Putonghua (Mandarin)

The coerced residential school system (boarding schools) imposed on Tibetan children and communities

At the same time, the Covenant protects cultural life, and namely requires governments to take steps to realize the 'conservation, development and diffusion of science and culture'.

The tighter regulation of cultural and religious expression and practices, within and outside of education settings, and the destruction of cultural heritage sites

Limits on access to information, through traditional censorship and technological tools, that stymie the sharing of scientific information and a chilling environment for academic freedom.

In Hong Kong specifically, the effect of the NSL has been to shut down free speech in higher education institutions, putting academic freedom at risk, while concerns of surveillance of online content may limit enjoyment of 'scientific progress'.

WHAT CAN BE DONE NOW?

In general, governments who want to cooperate in good faith with the treaty bodies, including the CESCR, use the Concluding Observations to help **guide them as they improve laws and policies** to protect, respect and fulfill human rights.

The Chinese government should be called upon to comply with the Committee's recommendations.

For example, it is important to note that they were 'on the record' for their commitments on issues such as the importance of cooperation with UN mechanisms and equal protection of rights for LGBTQI individuals. These Chinese government official statements, while somewhat vague, could help provide an in-road for groups who have struggled to engage with relevant government ministries in the past, in areas such as healthcare, family life and employment discrimination.

However, many defenders may find that it is unproductive, counterproductive or even dangerous to try to use the CESCR review and its outcomes to engage with the government directly. In this case, there are still options for helping to make the review useful for broader advocacy purposes.

For example:

- The experts' recommendations can be considered as 'legally binding' given that they are meant to ensure **compliance with a binding treaty**. The Chinese government is a State Party to the treaty, and therefore has an obligation to ensure its effective application in the country. This means that other governments, especially those who have **human rights dialogues with China**, should be reiterating the expectation that the Chinese government take concrete steps to implement these recommendations – and consider opportunities to condition ongoing discussions on that implementation.
- The next 'formal' step is the **follow-up review**, to which the Chinese government must submit a report after two years, in 2025. They identified three specific sets of recommendations that were 'priority' for these purposes, and which should be the focus of the government reporting – and additional information from civil society.

BUT THAT'S A LONG TIME AWAY! WHAT ABOUT THE INTERIM?

- In combination with some of the quotes from the review itself, the Concluding Observations can help civil society better engage with, and leverage, **media and journalistic coverage** of human rights issues in China. While perhaps the fact that the review happened may not be considered a 'story', it can be really helpful background to strengthen other stories that journalists are telling, whether it's about women's rights and equality; COVID-19; the crackdown on civil society in the country; or the situation facing communities impacted by Chinese investment overseas, especially in light of China's ongoing investment in coal despite the climate crisis.
- When doing bilateral **advocacy with governments**, or when seeking to **engage with other UN agencies or private sector** entities, the Concluding Observations of the UN can carry a lot of weight.
 - Are there trade discussions between a country and China? Trade agreements, procurement rules, and many other frameworks often require a minimum standard of international human rights to be guaranteed. The CESCR's attention to labour conditions, the right to organise trade unions, and even the environmental and climate impacts of Chinese policies may come in handy.
 - Is there a desire by a state or UN agency to partner with China, such as for an event or conference? While we often see interest in seeking common ground on issues of women's or children's rights, or rights of persons with disabilities, the CESCR has made clear how there are real limits to ensuring and promoting these rights within China.
- Regarding **reprisals** against individuals and groups working on any of the above issues – or any other rights enshrined in the Covenant – the Chinese state commitments during the review, and the experts' concerns that they may nonetheless occur, can help to document cases of reprisals that are reported to other UN human rights mechanisms. This includes, but is not limited to, the Secretary-General's annual report on reprisals.