

# HAKI ZETU

## ESC rights in Practice

---

## Main book

*Haki Zetu* is Swahili for Our Rights

© 2010 Amnesty International Netherlands

ISBN 9789064632600

Published in collaboration with:

Agency for Co-operation and Research in Development, ACORD

Hakijamii, Economic & Social Rights Centre

Foundation for Human Rights and Democracy

Uganda Debt Network

Cover painting: Lawson B Sworh, Liberia

Illustrations: Sammy Mwangomba, Tanzania

Design and lay-out: Connie Kraaikamp, Netherlands

Printing: Drukkerij Bariet, Netherlands

Distributed by:

Amnesty International Netherlands

Special Programme on Africa (SPA)

PO Box 1968

1000 BZ Amsterdam

The Netherlands

Email: [spa@amnesty.nl](mailto:spa@amnesty.nl)

As PDF file available at [www.amnesty.nl/spa](http://www.amnesty.nl/spa)




This main book should be used in conjunction with the subsidiary booklets on specific rights published in the *Haki Zetu, ESC rights in Practice* handbook series.


The main book includes a CD with a compilation of International Human Rights Instruments, published by United Nations, Geneva, 2002.


Also available at [www.ohchr.org/Documents/Publications/Compilation1en.pdf](http://www.ohchr.org/Documents/Publications/Compilation1en.pdf)


This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning or teaching purposes, but not for resale. When doing so, please acknowledge Amnesty International Netherlands as your resource. For copying in any other circumstances, or for re-use in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers.

**Amnesty International** is publishing this Handbook in collaboration with the following partners:

- 

• **ACORD** (Agency for Co-operation and Research in Development) is a pan African organisation working for social justice and development in 17 African countries since 1976. ACORD's vision is a society in which all citizens are equally able to achieve their rights and fulfil their responsibilities. ACORD analyses and responds to the root causes and consequences of development issues related to Food Sovereignty, Conflict, Gender and HIV&AIDS. ACORD's methodology combines practical work and capacity building, research and advocacy at national, continental and global levels. Website: [www.acordinternational.org](http://www.acordinternational.org)
- 

• **FOHRD** (Foundation for Human Rights and Democracy) is a human rights organisation in Liberia. FOHRD seeks to spread democratic values and principles as well as promote the protection and respect for social and economic rights. As a research, training and advocacy NGO, FOHRD promotes economic and social justice and combats poverty in all its principal dimensions, HIV/AIDS and works toward peace-building and on development issues. Website: [www.fohrd.org](http://www.fohrd.org)
- 

• **Hakijamii** Economic and Social Rights Centre in Kenya works to strengthen and support local communities with their social rights advocacy. Its strategies include training, support for community movements, advocacy and litigation, participation of grassroots groups in policy and law formulation, assisting community groups to improve democratic governance structures and conflict resolution. Hakijamii has achieved impact in both concrete gains and influencing policy and processes. Website: [www.hakijamii.net](http://www.hakijamii.net)
- 

• **UDN** (Uganda Debt Network) works to promote and advocate for pro-poor policies and full participation of poor people in influencing poverty-focused policies, monitoring the utilisation of public resources and ensuring that borrowed and national resources are prudently managed in an open, accountable and transparent manner so as to benefit the Ugandan people. UDN has the following programme areas:

  - a. Community Participation and Empowerment;
  - b. Policy Analysis and Socio-Economic Research;
  - c. Budget Advocacy Initiative;
  - d. Governance and Rights; and
  - e. Civil Society Capacity Building.

Website: [www.udn.or.ug](http://www.udn.or.ug)



## Acknowledgements

The Main Book was researched and written by Gillian Nevins who worked with Amnesty International for 25 years, of which 18 years as researcher in the Africa Program and the last two years as Campaign and Training Coordinator in the ESC rights team. As a researcher she wrote a major report on forced evictions and the right to adequate housing in Angola. In the ESC rights team she helped to prepare Amnesty International's worldwide Demand Dignity campaign.

This Handbook would not have been possible without the advice and support of many individuals and organisations in Africa and outside. First of all we would like to thank the members of the Editorial Advisory Committee who helped to develop the concept and framework for this Handbook series in two 2-day meetings: Odindo Opiata, Hakijamii Economic & Social Rights Centre, Kenya; Aloysius Toe, Foundation for Human Rights and Democracy, Liberia; Valérie Traoré, consultant, Burkina Faso, previously working for Oxfam America, ACORD and ActionAid; George Omona, previously ACORD Uganda; Grace Isharaza, Aga Kahn Foundation, Kenya; Saloum Traoré, Amnesty International Mali; Samuel Muthee Thuku, Laikipia Human Rights Forum, Kenya; Daniel Lukwaga, previously Uganda Debt Network, Uganda; Juana Sotomayor, previously Centre for Economic and Social Rights, Ecuador, presently Human Rights Officer, Office of the High Commissioner for Human Rights; Professor Paul Gready, Centre for Applied Human Rights, University of York. We also like to thank Aye Aye Win of Dignity International, Suad Elias of ESCR-Net and Ann Blyberg of International Human Rights Internship Program for their contributions to developing the Framework for this handbook series. We specifically like to thank Ann Blyberg, Monique van Es of ACORD International and Cristina Sganga for their detailed comments on the draft of the Main Book. We are grateful to Duncan Wilson, formerly of Amnesty International, and Meghna Abraham and Kolawole Olaniyan of Amnesty International for their advice and comments. We thank Paul McAdams for his editing work and design advice, without which this handbook series would not be as reader-friendly as it is.

We are also grateful to the individuals and organisations who participated in testing the draft Main Book and the booklet on the Right to Adequate Housing and gave us invaluable suggestions and comments based on their work with communities in Kenya: Minicah Otieno, Nairobi People's Settlement Network; Kerubo Okioga, COHRE Kenya; Paul Ogendi, East African Coalition on Economic, Social and Cultural Rights; Ezekiel Rema Oeri, Muungano wa Wana Vijiji; Christine Wambugu, Hakijamii; Erickson Sunday, Kisumu Social Rights Association; Samuel M.Thuku, Laikipia Human Rights Forum; Josiah Omotto,

Umande Trust; Naomi Vulenywa Barasa; Amnesty International Kenya; Jackline Mwendu, Kituo Cha Sheria; and Odindo Opiata for organising this test and Selina Ogweni for writing a report of the concluding meeting.

We are grateful to Hivos, Netherlands, for a financial contribution to this Handbook series.

Peter van der Horst, Coordinator of Amnesty International Netherlands' Special Programme on Africa managed the project.



## Table of contents Parts I + II

- **List of figures, boxes & tables IX**

---
- **Introduction to the handbook series on Economic, Social and Cultural rights 1**

---

  - Purpose of this handbook series 2
  - Some challenges and opportunities 4
  - Users of these books 4
- **What these books contain and how to use them 7**

---

  - Main Book 7
    - Structure of the Main Book 8
    - Acronyms, Glossary and Endnotes 8
    - Appendices 8
  - Booklets on specific ESC rights 9
  - How to use these books 9

### **Part I: Basic information 11**

---

- 1 **Introduction to Part I 12**

---
- 2 **Key concepts used in Part I 13**

---
- 3 **What are human rights? 15**

---

  - 3.1 Defining human rights 15
  - 3.2 Human dignity 18
  - 3.3 International and regional treaties and standards 18
  - 3.4 ESC rights 21
  - 3.5 Treaty bodies and Special procedures 24
    - 3.5.1 Reporting to human rights treaty bodies 25
    - 3.5.2 General Comments and advice to governments 25
    - 3.5.3 Special procedures 25
    - 3.5.4 Human Rights Council 26
- 4 **What are States' obligations with respect to ESC rights? 27**

---

  - 4.1 The human rights framework: obligations to respect, protect and fulfil 27
  - 4.2 Additional obligations 29

- 4.3 The obligation to end discrimination 33
- 4.4 Special provisions for certain groups of people 35
  - 4.4.1 Children 36
  - 4.4.2 Women and girls 36
  - 4.4.3 Refugees 37
  - 4.4.4 Internally Displaced People 38
  - 4.4.5 Migrant workers and their families 39
  - 4.4.6 Persons with disabilities 39
  - 4.4.7 Self-determination and indigenous peoples 39
- 4.5 Cultural rights 40
- 4.6 Violations of ESC rights 42
- 4.7 The right to a remedy 44
  - 4.7.1 National level remedies 44
  - 4.7.2 African level remedies 46
  - 4.7.3 Regional courts 46

## **5 What is the role of non-State actors? 47**

---

- 5.1 Types of non-State actors 47
- 5.2 Human rights abuses by non-State actors 48
- 5.3 Due diligence 48
- 5.4 The impact of transnational corporations 49
- 5.5 The impact of International Financial Institutions 50

## **6 What are some efforts by government and non-government agencies to improve ESC rights? 54**

---

- 6.1 International cooperation and assistance 54
- 6.2 (Pan)-African and African regional institutions and economic organisations 55
- 6.3 The Millennium Development Goals (MDGs) 57
- 6.4 The Human Rights Based Approach to Development 58
- 6.5 The right to information and to participate 60

## **Part II Working with ESC rights 65**

---

### **1 Introduction to Part II 66**

---

- 1.1 Claiming, defending and promoting human rights 66
- 1.2 Human rights work: from local to global 66

## **2 Making strategic choices for your organisation 68**

---

- 2.1 Identifying the problem and conducting an initial assessment 68
- 2.2 Analysing the organisation's capacity 70
- 2.3 Identifying the role of the organisation in relation to the community 71
- 2.4 Making a preliminary choice 73

## **3 Getting to know the community 74**

---

- 3.1 What is “the community”? 74
- 3.2 Preparing to meet the community 75
- 3.3 Learning about the community 76
  - 3.3.1 Power relations between men and women 76
  - 3.3.2 Other marginalised or excluded groups 77
  - 3.3.3 Traditional leaders 77

## **4 Developing a plan of action with the community 78**

---

- 4.1 Mobilising the community to work for change 78
- 4.2 Analysing problems and identifying strategies or solutions 80
  - 4.2.1 Problem trees and strategy or solution trees 80
  - 4.2.2 Mapping 83
- 4.3 Identifying key stakeholders and analysing their influence 83
  - 4.3.1 Stakeholders 84
  - 4.3.2 Stakeholder analysis tool 88
- 4.4 Goal, objectives and actions 91

## **5 Gathering documentary information 92**

---

- 5.1 Why is documentary information necessary? 92
- 5.2 What kind of information is needed? 92
- 5.3 Content of rights under national and international law 95
- 5.4 Information-gathering with the community: a form of participatory research 96

## **6 Monitoring and fact-finding – gathering information on the spot 98**

---

- 6.1 Why monitor ESC rights? 99
- 6.2 Approaches to monitoring 99
- 6.3 The principles of monitoring 101
- 6.4 Identifying and recording alleged violations of ESC rights 103
- 6.5 Community surveys and focus groups 105
- 6.6 In-depth interviews 108



- 6.7 On-the-spot observation 110
- 6.8 Note-taking 110
- 6.9 Consolidating and analysing information 111
- 6.10 Consulting the community 112

## **7 Monitoring government policies and budgets 113**

---

- 7.1 Why monitor policies and budgets? 113
- 7.2 Decentralised government 114
- 7.3 Monitoring policies and budgets: a three-step process 115
- 7.4 Participating in the development of local policies and budgets 118

## **8 Keeping records and managing information 120**

---

- 8.1 What kind of information to keep and why 120
- 8.2 Safety, confidentiality and storage of information 121
  - 8.2.1 Safety and confidentiality of information 121
  - 8.2.2 Systematic storage of information 122
- 8.3 Communicating results 123
- 8.4 How to prepare reports 126

## **9 Claiming and defending ESC rights 128**

---

- 9.1 Claiming, defending and enforcing rights 128
- 9.2 Taking action 130
- 9.3 Engagement with officials at the local, provincial, and national levels 132
  - 9.3.1 A strategy for engagement 132
  - 9.3.2 Ways to engage with local officials 133
  - 9.3.3 Ways to engage with provincial and national officials 133
  - 9.3.4 Approaching other institutions at the local, provincial and national levels 134
- 9.4 Engagement with non-State actors at the local, provincial and national levels 136
- 9.5 Transnational corporations 137

## **10 Taking action at regional and international levels 138**

---

- 10.1 Submitting information to regional and international human rights bodies 138
  - 10.1.1 Submitting complaints to the African Commission 139
  - 10.1.2 Submitting a shadow report 140
  - 10.1.3 The Human Rights Council 140
  - 10.1.4 Contacting Special Rapporteurs 141
- 10.2 Pan-African and regional institutions, economic communities and processes 142
  - 10.2.1 Regional Economic Communities 142

- 10.2.2 The AU Assembly and Parliament 143
- 10.2.3 NEPAD and PRSPs 143
- 10.3 International institutions and PRSPs 143

## **11 More suggestions for action 145**

---

- 11.1 Raising awareness of human rights 145
- 11.2 Introducing the HRBA into development projects 146
- 11.3 Working in partnership 148
- 11.4 Working with media 149
- 11.5 Electronic means of communication 151
- 11.6 Public events 151
  - 11.6.1 Public hearings 152
  - 11.6.2 Report cards 152
  - 11.6.3 People's parliament 152
  - 11.6.4 Participatory theatre 153
  - 11.6.5 Visual arts 153
  - 11.6.6 Sporting events 154
- 11.7 Evaluation 154

## **Conclusion 155**

---

## **Acronyms 156**

---

## **Glossary 157**

---

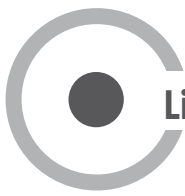
## **Endnotes 165**

---

## **Appendices 167**

---

- 1 Planning Box 168
- 2 Human rights in national constitutions 170
- 3 International and regional human rights instruments 172
- 4 Human rights manuals and other resources 178
- 5 Principal international NGOs working on ESC rights 183
- 6a International inter-governmental organisations and programmes aimed at realising ESC rights 185
- 6b African inter-governmental organisations realising ESC rights 188



## List of figures, boxes & tables

### Part I

---



#### Figures

---

Figure 1: Types of human rights 1

Figure 2: Using a holistic approach to human rights 5

Figure 3: Universal human rights 16



#### Boxes

---

Box 1: Promoting women's reproductive rights: an example from Tanzania 4

Box 2: A simple definition to use with the community 15

Box 3: Early African human rights charter 16

Box 4: International and African treaties 17

Box 5: How human rights are interrelated and interdependent 18

Box 6: Villagers lobbying authorities to fulfil obligations 29

Box 7: The obligation to monitor 32

Box 8: ICESCR Article 2 32

Box 9: Marginalised and vulnerable groups 33

Box 10: Discrimination 34

Box 11: Unequal power relations contributing to discrimination 35

Box 12: Protecting the rights of refugees, IDPs and migrant workers 38

Box 13: Culture in international standards and treaties 41

Box 14: Human rights violations 43

Box 15: Combating corruption 44

Box 16: The right to a remedy 45

Box 17: Non-State actors and international order 48

Box 18: Bringing TNCs to justice 50

Box 19: The UN Global Compact 50

Box 20: Defining poverty 50

Box 21: Trade liberalisation 51

Box 22: Abolishing user fees 53

Box 23: Principles and Guidelines on a Human Rights Approach to Poverty Reduction Strategies 53

- Box 24: Encouraging examples of state action 54
- Box 25: The human rights based approach 60
- Box 26: Ensuring participation 61
- Box 27: Access to information 62
- Box 28: Principles of participation 62



## Tables

---

- Table 1: Key concepts used in Part I 13
- Table 2: Myths and realities about ESC rights 20
- Table 3: Content of ESC rights 22
- Table 4: State obligations are part of the human rights framework 28
- Table 5: Key obligations related to ESC rights 30
- Table 6: Misconceptions about indigenous people 40
- Table 7: Comparing the "needs-based" approach to the HRBA 58

## Part II

---



## Figures

---

- Figure 1: SWOT analysis 70
- Figure 2: Power relations within the community 77
- Figure 3: An example of a problem tree 81
- Figure 4: An example of a strategy or solution tree 82
- Figure 5: Three-step process to monitoring policies and budgets 115



## Boxes

---

- Box 1: Working with local communities 67
- Box 2: Entry points into ESC rights work 67
- Box 3: CBOs and NGOs working with communities 74
- Box 4: Examining the interests of all stakeholders 76
- Box 5: Characteristics of a good motivator 79
- Box 6: "Solution" or "Strategy"? 83
- Box 7: Mapping resources 83
- Box 8: Who are the stakeholders and what are their duties or obligations? 84
- Box 9: Getting everyone's opinion 85
- Box 10: Power struggles or other tensions 86
- Box 11: Understanding government power relations 87
- Box 12: Getting information 87

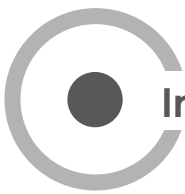
- Box 13: Stakeholder analysis tool 89
- Box 14: Analysing a stakeholder 91
- Box 15: Applied Budget Groups 94
- Box 16: Using treaties 96
- Box 17: Monitoring, fact-finding, and documenting 98
- Box 18: Checking the facts 99
- Box 19: Dealing with difficult officials 101
- Box 20: Practical advice on adhering to principles of monitoring and fact-finding 102
- Box 21: Identifying alleged violations of ESC rights: an example 104
- Box 22: Survey to obtain information about health and safety issues 106
- Box 23: Focus group to discuss discriminatory attitudes towards women 107
- Box 24: Becoming a good interviewer 109
- Box 25: Disaggregated data 110
- Box 26: A court can demand to see notes of interviews 111
- Box 27: Policies and budgets 113
- Box 28: Decentralisation 114
- Box 29: Linking policies and budgets to rights 116
- Box 30: Using human rights indicators 117
- Box 31: Uganda's Constitution includes the right to participate in policy development 119
- Box 32: Retrieving information easily 122
- Box 33: Dealing with reactions to statements or reports 126
- Box 34: Asserting the rights of domestic workers 128
- Box 35: The Treatment Action Campaign (TAC) in South Africa 129
- Box 36: Planning effective meetings 134
- Box 37: Using complaints mechanisms 135
- Box 38: Making submissions 138
- Box 39: Learning more about the African Commission and how to file a complaint 139
- Box 40: Checklist before sending complaints 140
- Box 41: List of country reviews 141
- Box 42: The Mozambique Poverty Observatory 144
- Box 43: Micro-finance schemes 146
- Box 44: Service delivery for human rights 147
- Box 45: Partnerships 148
- Box 46: Working in partnership 149
- Box 47: Regular radio programmes on human rights 150
- Box 48: Participatory theatre in Kenya 153



## Tables

---

- Table 1: Identifying the problem and conducting an initial assessment 68
- Table 2: Using the Human Rights Based Approach 72
- Table 3: Criteria to consider when making a preliminary choice 73
- Table 4: Different types of information and where to find them 93
- Table 5: Framework for monitoring and fact-finding 100
- Table 6: Types of information 120
- Table 7: Different formats for communicating results 124
- Table 8: Sample questions to develop an action plan with the community 131
- Table 9: Principles of human rights education 145

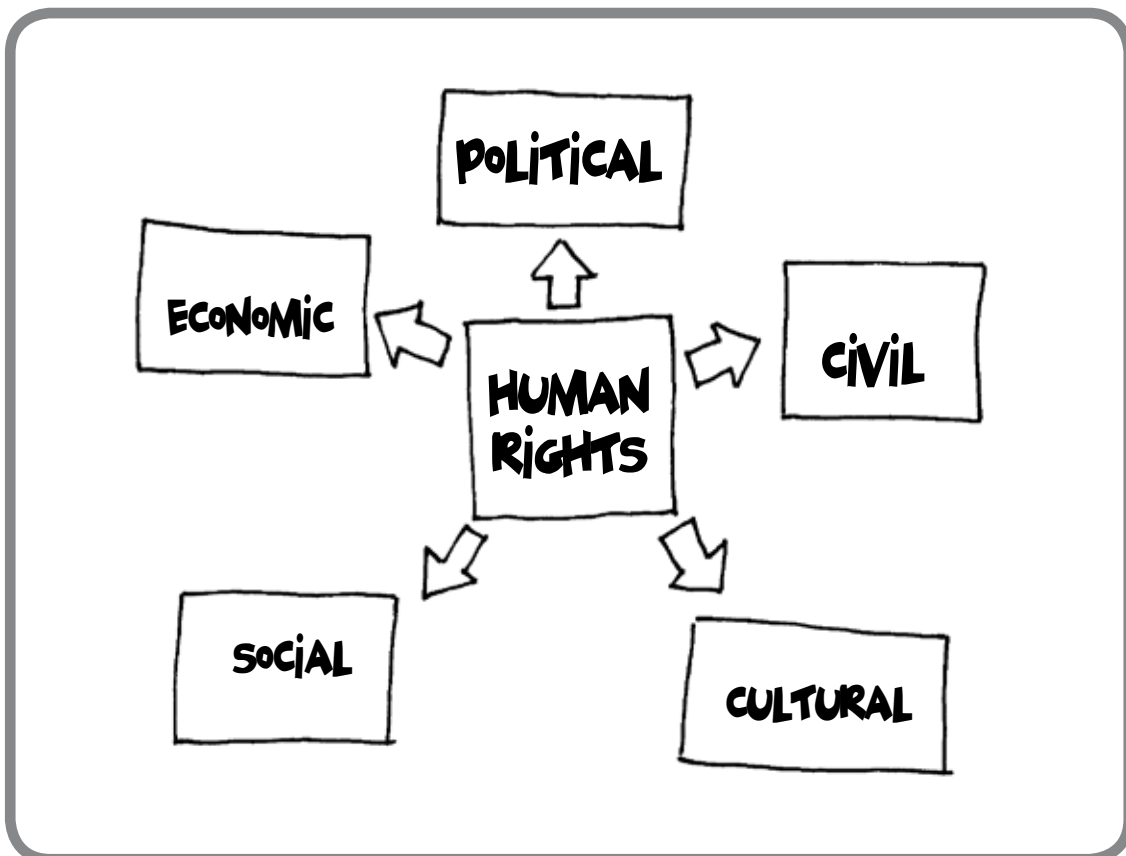


Everyone has the right to live in dignity, free from fear and free from want, meaning: living without the threat of being physically or mentally ill-treated or of being deprived of basic necessities such as shelter, food and water.

A life of dignity is one where all > human rights are realised – for everyone. Human rights are often categorised as > civil and political (CP) rights, such as the right to freedom of expression or the freedom from being tortured, and > economic, social and cultural (ESC) rights, such as the right to education or the right to health. Despite these two categories, all rights are of equal value, indivisible and interdependent: no human right can be realised in isolation from other rights<sup>1</sup>. This series focuses particularly on ESC rights<sup>2</sup>.

Words marked with a > are defined in a glossary at the end of the Main Book.

FIGURE 1: Types of human rights



People all over the world are deprived of their ESC rights. Just a few examples paint an alarming picture:

- Over a billion people in the world do not have enough to eat<sup>3</sup>;
- About 72 million children of primary school age in the developing world were not in school in 2007. Over half of these were girls<sup>4</sup>; and
- Over a billion people in developing countries have inadequate access to water, and over two billion lack basic sanitation<sup>5</sup>.

Also, for many Africans, the right to live in dignity remains out of their reach. With about two out of five Africans living on less than one dollar a day<sup>6</sup>, poverty remains a significant reason why so many Africans do not enjoy a decent standard of living free from fear and want.

For example, concerning ESC rights, statistics show that:

- By 2030 most Africans will be living in urban areas, yet little is being done to increase access to adequate housing, water and sanitation;
- Food security (having enough food and access to it) must increase to withstand droughts and floods that may result from natural disasters and other > environmental catastrophes, including those caused by > climate change;
- Enrolment in primary schools in Africa increased by 36% between 2000 and 2005 but Africa still has the highest number of out-of-school children; and
- Few Africans have access to social security to protect them when they are orphaned, old or ill.

People have, and always have had, a notion of justice and injustice within their own community. Most also know, or at least have an idea, when State authorities are acting properly or unjustly. People resist abuse of power and protest against injustice. Yet, due to the poor quality of education and lack of information from governments, many people don't know their own constitution, leave alone universal human rights standards. Yet, human rights are essential to every human being. They are the standards that States must uphold. They are also the instruments that people and organisations can use to demand respect, protection and fulfilment of their human rights.

Within the United Nations (UN) and in the African Union (AU), States have defined people's rights and States' duties in human rights > treaties or conventions (binding agreements). Most national constitutions reflect parts of these international standards.

For a long time CP rights were given higher priority than ESC rights and much more has been done to make them a reality. In recent years, more attention has been given to ESC rights. Increasingly > Community Based Organisations (CBOs), > Non-Governmental Organisations (NGOs), international institutions like the UN and AU and even governments are trying to find ways to realise ESC rights. This creates opportunities, but there are also challenges. Many



governments say they lack resources to realise ESC rights. Others lack the political will or the capacity.

In addition to this, a State's ability to protect rights is undermined by the interests of powerful national companies and those of international enterprises, development banks and aid donors. The industrialised world puts huge pressure on African governments to accept trade conditions that push hundreds of thousands of Africans into poverty. Also foreign corporations have taken large stretches of agricultural land in Africa to produce food for their own countries, posing a severe threat to food security of the growing African population.

Around the world, communities are taking a stronger stand against neglect and marginalisation and are demanding their rights. People living in slums, exploited plantation workers or those deprived of education or medical care are organising themselves, with or without help from NGOs. Many of them are exercising their ESC rights without realising that their struggle is about human rights.

This handbook series, *HAKI ZETU – ESC rights in Practice*, is for local civil society groups in Africa. While human rights are the same for everyone in the world, civil society groups in each region face specific challenges. This series was developed in collaboration with a committee of African civil society organisations and written by African and international experts. Much of the advice given in these handbooks reflects the strategies and actions that African NGOs and CBOs have undertaken to make rights a reality.

## **Purpose of this handbook series**

---

Human rights are defined in international treaties such as the Convention on the Rights of the Child. In Africa, all States have adhered to at least one human rights treaty: the African Charter on Human and Peoples' Rights (or the "African Charter"). In doing so they have undertaken an > obligation to make these rights a reality.

This series is based on the principle that to achieve lasting change it is essential to use the human rights > framework, a collective term for the international human rights treaties and monitoring mechanisms. The human rights framework is a powerful tool that communities and NGOs can use to persuade their governments to live up to their commitments.

This book and the subsidiary booklets on specific rights give step by step advice on how civil society groups can use the African and international instruments in their work with communities at local level.

The Haki Zetu series focus mainly on ESC rights in Africa using examples and issues most relevant to this region so as to make the books most useful for NGOs and CBOs in this part of the world.

**Box 1: Promoting women's reproductive rights: an example from Tanzania**



Kuleana, a local NGO working with the NGO African Medical and Research Foundation (AMREF), carried out a project to gather information about health issues and to promote women's reproductive health rights in Tanzania. Results included a by-law against harmful practices (female genital cutting, also referred to as female genital mutilation) and improvements to sexual and reproductive health services.<sup>7</sup>

### **Some challenges and opportunities**

---

This handbook series is mainly addressing the role of the State at local and national levels. However, it should be recognised that also within communities there are obstacles that prevent some people from enjoying human rights. Social and cultural norms and opinions lead to discrimination of individuals or groups (see Section 4. 3). Women increasingly are aware of their rights and demand to be treated and respected as equals. Still, in many communities male dominance and traditional practices and beliefs severely restrict women's enjoyment of their rights. Therefore, ending discrimination against women, and other groups and individuals, should be a core element of work on ESC rights.

National constitutions and international human rights standards regulate the role and the obligations of the State. All government officials are representatives of the State, and as such they all should respect, protect and fulfil human rights. However, in many African countries, while officials at the national level may know about their responsibilities regarding ESC rights, those at the local level, especially in remote areas, may not. Instead of assuming that local officials have the necessary knowledge it may be appropriate to start with informing them about their obligations to respect, protect and fulfil human rights.

A related challenge is sometimes that the local government does not receive sufficient resources from the national government.

Increasingly, > development organisations are using a human rights approach in their work, while more and more human rights organisations are expanding their mission to include ESC rights. These developments create huge opportunities to join forces and work together.

### **Users of these books**

---

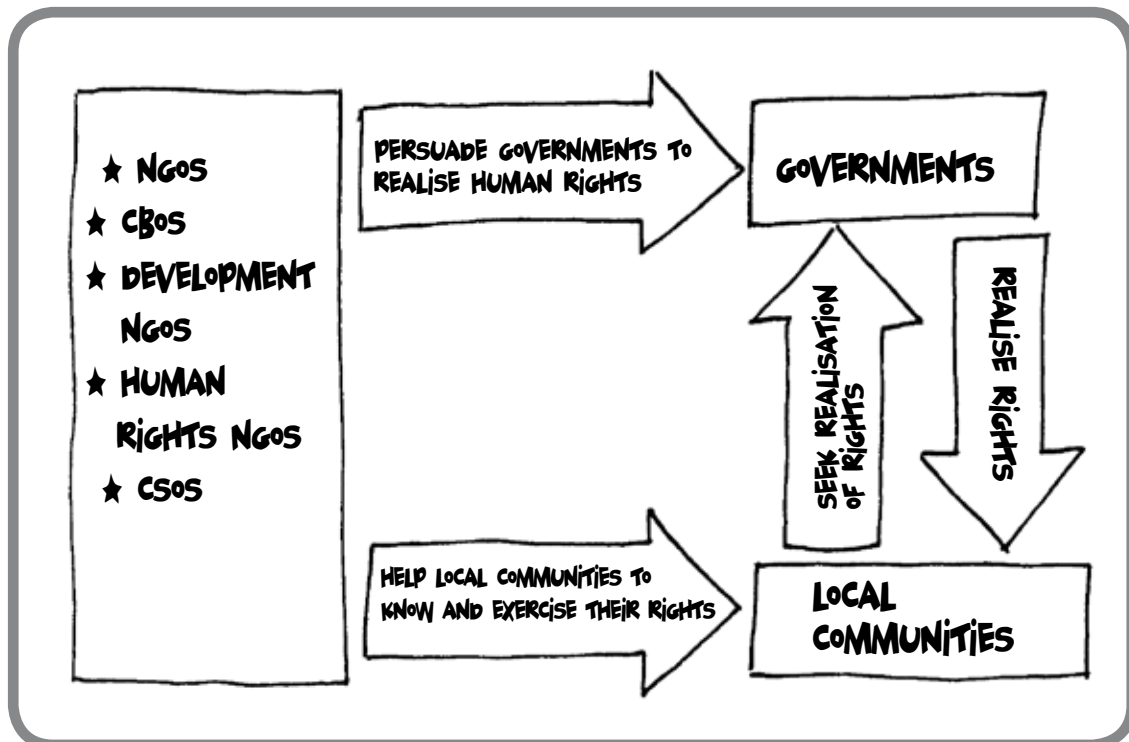
Users of these books are people working to improve the lives of local communities. They may be > development workers, members of human rights groups, women's groups, faith-based groups or members of a community. They also have access to information and to other organisations at national and international levels directly or indirectly working to realise human

rights. They are in a position to press for positive change – from the government level to the lives of local community members.

Most readers of these books belong to organisations including:

- Community-based organisations (CBOs): organisations that provide social services – such as health and education programmes to assist vulnerable people – at the local level and rely mainly on community members for labour, material and financial support<sup>8</sup>;
- NGOs that are independent of the government and work on a wide variety of issues either on their own or with the participation of community groups. Some NGOs receive funding from governments and may not be fully independent;
- Development NGOs. These may work independently but often work in partnership with governments to provide services to the community. This gives them good opportunities to influence government policy development. Those taking the > human rights based approach (HRBA) take care to keep their civil society identity and avoid being seen as mere agents of the State;
- Human rights NGOs may work on all human rights or they may focus on specific rights or on specific groups of people; and
- Civil society organisations (CSOs). CSO is a general term covering all the above groups.

Figure 2: Using a holistic approach to human rights



Traditionally, human rights NGOs have focused on > accountability by reminding governments of their human rights obligations under national and international law. Development organisations, on the other hand, have concentrated more on access to services, helping to meet people's needs in practical ways.

Increasingly, both types of organisations are working towards common goals. Development organisations recognise that sustainable development means increasing people's capacity to participate in policy making and demand government accountability. Human rights NGOs that traditionally focused on CP rights are taking a more holistic approach and addressing > human rights violations that cause and sustain poverty. Some human rights NGOs focus specifically on ESC rights and have broadened the general understanding of these rights.

These books are meant to guide ESCR advocates on how to defend and exercise rights by applying a > human rights framework. When you apply a human rights framework to your work, you begin to look at a community's problems or issues in terms of their rights, not in terms of their needs.



## What these books contain and how to use them

There are clear benefits to using a human rights framework:

- States that have ratified international and regional human rights treaties are, at least in theory, accountable for realising rights;
- CSOs using this framework have clearly advanced the realisation of civil and political rights. The same may be achieved for ESC rights;
- Human rights are the same for everyone. A human rights framework therefore ensures a more equal distribution of resources; and
- Most importantly, the framework allows individuals to seek realisation of rights instead of asking for charity.

Most community members have a clear understanding of the obstacles they face, but may not have had a chance to realise that they have rights and may be able to claim them. Government officials and judges may talk about human rights but many don't fully understand them. A human rights framework, if applied, could change government policies so that resources are managed and distributed more fairly.

This series includes a Main Book divided into two parts and several booklets on different ESC rights.

### Main Book

---

*Part I: Basic Information* describes what ESC rights are (and are not) and analyses government obligations (also called “State obligations”) under international and African human rights treaties. It considers the rights of different groups of people and the roles of different actors like governments and NGOs in realising ESC rights. *Part I* outlines the “theory” behind human rights and offers a number of concrete examples on what this theory means.






Readers who already know the basic principles of human rights could turn to *Part II* of this Main Book or to the separate booklet on a specific ESC right that is most relevant to their needs.

*Part II: Working with ESC rights* turns the theory into practice. After the introductory Section 1, the next two sections of *Part II* deal with understanding the priorities of a particular target community and making strategic choices. Sections 4 to 10 are about working with the community to monitor ESC rights and taking action to bring positive changes to people's lives. Section 11 suggests additional forms of action.

### Structure of the Main Book

---

In order to make the content of the Main Book easy to read and accessible for future reference, *Part I* and *Part II* contain the following:

- An introduction;
- A table listing key concepts frequently used;
- Words marked with a > which are defined in a glossary at the end of the Main Book;
-  **Example** boxes providing concrete examples of concepts or terms described in the text;
-  **Info** boxes providing more information about certain concepts or terms described in the text;
-  **International law** boxes providing more information on human rights in international and regional laws and standards (these boxes are only in Part I);
-  **Challenge** boxes which prompt the reader to reflect on how they can practically work with ESC rights;
-  **Tip** boxes providing the reader with additional tips (these boxes are only in Part II).

### Acronyms, Glossary and Endnotes

---

At the end of the Main Book there are:

- A list of acronyms;
- A glossary of words marked with a > in the text; and
- A list of endnotes.

### Appendices

---

After the list of acronyms and the glossary, there are *Appendices* which contain:

- Appendix 1: Planning Box. The *Planning Box* is a template which follows a step-by-step process to help NGOs working with communities to understand and exercise their rights. The *Planning Box* helps CSOs and communities develop strategic actions. This strategy for action is meant to be a joint task done in cooperation with the community. Because it is a template, it can be photocopied and used again and again when working with different communities;
- Appendix 2: Human rights in national constitutions;
- Appendix 3: International and regional human rights instruments;
- Appendix 4: Human rights manuals and other resources;
- Appendix 5: Principal international NGOs working on ESC rights;

- Appendix 6A: International inter-governmental organisations and programmes aimed at realising ESC rights; and
- Appendix 6B: African inter-governmental organisations realising ESC rights.

## Booklets on specific ESC rights

---

Each of the booklets covers a specific ESC right in more depth. Taking the contents of the Main Book as a basis, the booklets provide additional information on the ESC right and suggest relevant strategies and actions. The booklets cover the following ESC rights:

- Booklet 1 is on the right to **adequate housing**;
- Booklet 2 is on the right to **adequate food**;
- Booklet 3 is on the right to **water and sanitation**;
- Booklet 4 is on the right to **health**; and
- Booklet 5 is on the right to **education**.

Other booklets will be published over a period of time after publication of the Main Book. Information on forthcoming booklets will be published on Amnesty International Netherlands' website [www.amnesty.nl/spa](http://www.amnesty.nl/spa).

## How to use these books

---

This handbook series on ESC rights is meant to be a practical resource which helps CSOs to learn about what ESC rights are and how they can be applied in their work. This handbook series is meant to be used in the office as well as in the field.

For CSOs, this handbook series on ESC rights can be used to help staff:

- Gain a basic understanding of human rights standards and become familiar with human rights language;
- Learn what a human rights framework is and how to apply it to their work;
- Learn about specific ESC rights;
- Learn what governments should do to realise ESC rights; and
- Identify strategic actions in order to claim and defend human rights.

In the field, this handbook series on ESC rights can be used:

- As a reference on specific ESC rights;
- As a source of examples on how to promote and defend ESC rights; and
- As a tool for working with communities on promoting and defending their rights.







# Part I: Basic information



LAWSON B. SWOYN  
'09-LIBERIA

# 1 Introduction to Part I

Part I describes what ESC rights are (and are not) and analyses State obligations under international and African human rights treaties. It considers the rights of different groups of people and the roles of different actors like governments and CSOs in realising ESC rights.

Section 2 lists the key concepts mentioned in the Main Book.

The remaining sections each address a specific question related to ESC rights. These questions are listed below:

- Section 3: What are human rights?
- Section 4: What are States' obligations with respect to ESC rights?
- Section 5: What is the role of non-State actors?
- Section 6: What are some efforts by government and non-government agencies to improve ESC rights?

# 2 Key concepts used in Part I

**Table 1: Key concepts used in Part I**

Key concept	Understanding the concept
<p>What are human rights?</p>	<p>Human rights can be defined as those basic standards without which people cannot live in dignity as human beings. Human rights are the foundation of freedom, justice and peace. Their respect allows the individual and the community to develop fully. Human rights are:</p> <ul style="list-style-type: none"> <li>• Inherent: they belong to people because they are human. We are born with them;</li> <li>• Universal: they apply to everyone;</li> <li>• Inalienable: they cannot be taken away (they can be limited - for example, a lawful detention limits a person's right to freedom of movement); and</li> <li>• Indivisible: rights are interconnected and interdependent.</li> </ul>
<p>What are the different categories of rights?</p>	<p>While rights are indivisible (cannot be divided), they have been classified, in international standards, into different types of rights:</p> <ul style="list-style-type: none"> <li>• Civil and political rights focus on freedom. They include the rights to life, liberty and security of the person, freedom from slavery, freedom from torture, freedom of opinion, expression, thought, conscience and religion, and freedom of association and assembly;</li> <li>• Economic, social and cultural rights are about standards of living and social security. They include the rights to education, work, an adequate standard of living, food, shelter, health care and to cultural development; and</li> <li>• Environmental and developmental rights are about the right to an ecologically sound environment and sustainable development.</li> </ul>
<p>What are treaties and international standards? What are treaty bodies?</p>	<ul style="list-style-type: none"> <li>• Treaties (&gt; treaty) are formal agreements between two or more States. They are legally binding;</li> <li>• &gt; Treaty bodies are committees set up by some treaties to monitor the way States implement the rights contained in the treaty;</li> </ul> <p style="text-align: right;">&gt; continued</p>

Key concept	Understanding the concept
	<ul style="list-style-type: none"> <li>• &gt; Standards, like the Universal Declaration of Human Rights (UDHR), are agreements about best practice. States should be guided by them, but they are not legally binding; and</li> <li>• The term &gt; international human rights instruments includes both treaties and standards.</li> </ul>
<p>What are human rights mechanisms?</p>	<p>They are a variety of bodies and procedures set up by the United Nations and other inter-governmental agencies that can take action to protect human rights. They include Special Rapporteurs who are experts appointed to monitor specific rights and assist governments to implement them. (See Section 3.5.3)</p>
<p>What is the difference between the terms State, nation and government?</p>	<ul style="list-style-type: none"> <li>• A <b>State</b> is a self-governing political entity. We usually say “country” instead of “State”. Sometimes there are separate states within a country which may also have self-governing powers;</li> <li>• A &gt; <b>nation</b> is a stable, historically developed community of people with a territory, economic life, distinctive culture, and language in common;</li> <li>• A <b>nation-state</b> is a nation which has the same borders as a State; and</li> <li>• A <b>government</b> is the body that is responsible for making policy and ensuring that policies are carried out.</li> </ul>
<p>What is the difference between State actors and non-State actors?</p>	<ul style="list-style-type: none"> <li>• &gt; State actors are government officials and the officials of State enterprises; and</li> <li>• &gt; Non-State actors are private individuals, business enterprises or institutions.</li> </ul>
<p>What terminology is used concerning human rights?</p>	<p>When describing actions about human rights, there are actions by the State and actions by others:</p> <ul style="list-style-type: none"> <li>• States can “provide”, “realise”, or “implement” rights; and</li> <li>• Individuals can “exercise”, “demand”, “call for implementation”, or seek to “claim” rights through a mechanism such as a court.</li> </ul>

# 3

## What are human rights?

### 3.1 Defining human rights

---

Every human being, simply because he or she is human, has certain rights and freedoms. We are not “given” rights; we simply have human rights because we are human.

#### Box 2: A simple definition to use with the community



Human rights are about living a decent or dignified life. They are the things everyone should have and the things that should not be allowed. For example, everyone should be allowed to follow their religion. No one should be left to die of hunger. (The examples may be adapted so that they are relevant to the community).

The term “human rights” is fairly recent. However the idea of individuals and groups having rights goes back thousands of years. There are many examples of societies in the past which lived according to “codes” or “charters” of human rights (see Box 1 for an African example).

Each individual has her or his own sense of what is right and what is wrong. These ideas of right and wrong are what often form the basis of customs or law that are common to a community.

As communities merged into nations and States, they included their customs, rights and duties in their constitutions. Together, the States of the world developed international laws and standards (see Box 4). Most of the international laws and standards which we use today were formed after the Second World War by a group of States today known as the United Nations (UN).

The relationship linking human rights with individuals, communities, States and the international community is illustrated in Figure 3.

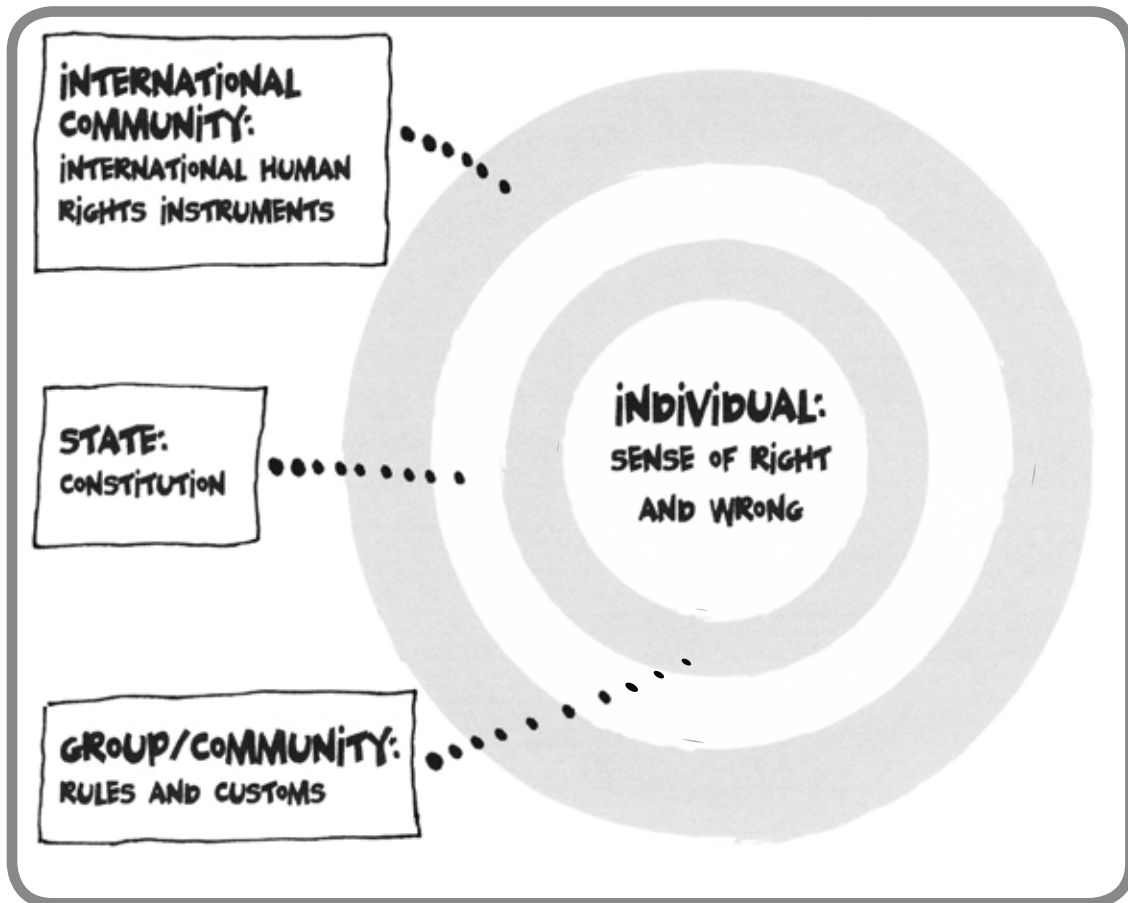
The creation of these laws and standards meant that human rights became part of international law. Therefore States that have agreed to respect international law have the legal obligation to realise the rights of individuals and that individuals can legally try to claim their rights.

Box 3: Early African human rights charter



Some old rules have survived in oral tradition. The Charter of Kurukan Fuga of the Mandinga people in West Africa was developed in the 13th century. It included the principles of equality, respect for others and the right to a remedy for damages. It forbade slavery and said that while food was available no one should be hungry.

Figure 3: Universal human rights



Box 4: International and African treaties



In 1948 many nations contributed to drafting the Universal Declaration of Human Rights (UDHR). This, together with two treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), comprise the International Bill of Human Rights.

**Universal Declaration of Human Rights (UDHR)** December 10, 1948

**International Covenant on Civil and Political Rights (ICCPR)**

Adopted by the UN General Assembly in 1966, entered into force in 1976

**International Covenant on Economic, Social and Cultural Rights (ICESCR)**

Adopted by the UN General Assembly in 1966, entered into force in 1976

**Optional Protocols (OP) to the ICCPR**

- States parties permit individuals or groups to report personal human rights violations
- Abolition of the death penalty

**Optional protocol to the ICESCR**

States Parties permit individuals or groups to report personal human rights violation

Other important international treaties are:

- International Convention on the Rights of the Child (CRC);
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- Convention on the Rights of Persons with Disabilities (CRPD); and
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CPRMW).

African human rights treaties include:

- African Charter on Human and Peoples' Rights (African Charter);
- Protocol to the African Charter on the Rights of Women in Africa (African Women's Protocol);
- African Charter on the Rights and Welfare of the Child (African Child Charter);
- African Union (AU) Convention on Preventing and Combating Corruption; and
- AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).

For examples of how rights in national constitutions reflect those in international and African treaties, refer to Appendix 2.

Note that all human rights treaties and other standards contain, and usually begin with, the requirement of non-discrimination (see Section 4.3).

## 3.2 Human dignity

The concept of “human dignity” is the basis of human rights. People live in dignity if their basic human rights are respected, protected and fulfilled. Governments that respect human rights are working to achieve dignity. Dignity expresses the idea that every human being has worth and should be treated with respect and without discrimination.

Ensuring human rights for everyone offers a way of adjusting the unequal power relations that separate people from the things that help sustain and improve their lives. These include skills and knowledge as well as facilities, goods and material resources. The more these power relations become balanced, the more people live in dignity and escape from poverty.

This book focuses on ESC rights, but it is important to emphasise that human rights are interrelated and interdependent: they relate to each other, uphold each other and depend on each other. This relationship is shown in Box 5.

### Box 5: How human rights are interrelated and interdependent



- All ESC rights relate to the right to life;
- The right to the highest attainable standard of health (an ESC right) is one of the rights that is denied when people are tortured (physical security is a CP right);
- The right to adequate housing and the right to safe water and sanitation, both ESC rights, are interrelated and interdependent because people need safe water and sanitation to maintain a decent home;
- Monitoring ESC rights depends upon the right to receive and impart information (which is a CP right);
- The rights to speak freely, to hold political or religious opinions and to join with others (CP rights) enable us to campaign for ESC rights;
- Forced evictions (being evicted without due process) violate the right to privacy of the home (a CP right) and the right to adequate housing (an ESC right); and
- Freedom of information (a CP right) is essential to the realisation of ESC rights: for example, people monitoring the right to health need to have access to the government's health policy.

## 3.3 International and regional treaties and standards

ESCR advocates base their work on national constitutions, laws and policies. Increasingly they are also using international human rights instruments (treaties and standards).

It is important to know and use international human rights instruments because:



- International instruments describe what the rights are and how States should realise them;
- The State has an obligation to incorporate the rights in the treaties into domestic (national) law and into its policies and programmes, though many States have not done this;
- Some constitutions say that judges should interpret national law in the light of international instruments;
- In other cases, a treaty may be directly applied. For example, Benin's Constitution, in Article 7, says that the rights and duties in the African Charter are an integral part of the Constitution and Benin's legislation;
- Few national constitutions provide the full range of ESC rights. Some may even contradict international human rights standards; and
- Most human rights treaties have set up monitoring bodies (treaty bodies) to oversee the way States implement the treaties.

A State that ratifies (> ratification) or accedes to (> accession) a treaty becomes a State Party to the treaty. A States Party commits itself to realising the rights and freedoms contained in the treaties. This is often expressed by the term obligations. The > articles or separate paragraphs of the treaties set out the State's obligations.

Standards like the Universal Declaration of Human Rights (UDHR)<sup>9</sup>, other UN declarations and resolutions and those of the African Union (AU) and African Commission on Human and Peoples' Rights (African Commission) are not legally binding. They are sometimes called "soft law". They do however have strong moral force because they have been adopted by intergovernmental bodies such as the UN.

Treaties like the IC-CPR, the ICESCR and the African Charter expanded on the rights in the UDHR. Some people have considered ESC rights to be hopes or aspirations instead of rights. Table 2 lists myths (ideas not based on fact) and realities about ESC rights.



However, this may be changing. In December 2008 the UN General Assembly adopted by consensus the Optional Protocol to the ICESCR. This Optional Protocol is similar to the first Optional Protocol to the ICCPR which allows people and States to bring complaints about violations of civil and political rights.

Our understanding of human rights continues to evolve but there are still hot debates on various topics, such as cultural rights. New international and regional human rights treaties and standards continue to be developed and courts are making judgements that provide new insights into the realisation of these rights.

Advice on how to use international instruments is given in Part II, Section 5.3.

**Table 2: Myths and realities about ESC rights**

Myths	Realities
ESC rights, as opposed to CP rights, are “aspirations” rather than “rights”.	ESC rights cannot be separated from CP rights. Both can and must be implemented through concrete, targeted steps immediately and through longer-term policies and programmes. ESC rights are contained in binding public international law treaties.
ESC rights cannot be upheld in the courts.	Courts in various countries have made decisions on ESC rights <sup>10</sup> .
Implementing CP rights only requires governments to refrain from or prevent violations, but implementing ESC rights involves great expense.	Dealing with violations of CP rights involves setting up and maintaining a police service, a judicial system and prisons, and other institutions which is very expensive.
Governments do not have sufficient resources to realise ESC rights.	Much can be, and has been, done to ensure the realisation of ESC rights, even by the poorest countries (See section 6). Also, other States have obligations to provide assistance and cooperation to such countries. Relocating resources or ending discrimination are important steps that do not involve any new resources.
The role of government is to ensure individual liberties and freedoms (CP rights), so that people can meet their own needs.	Government ministries such as health, education, and housing develop laws and policies to implement these rights, especially for those less able to help themselves.
It is not the government’s job to provide ESC rights such as food and housing.	Implementing ESC rights is not a matter of directly providing food and other ESC rights, but of ensuring, for example, access, quality and availability of essential food products.

### 3.4 ESC rights

ESC rights, such as the right to health or housing, do not mean that we have a right to be healthy or that the State should give us houses. ESC rights place duties on the State. For example, to realise the right to health, the State must promote health services. It must also improve access to other rights necessary for health, including nutritious food, safe water and sanitation, and safe and healthy working conditions.

More on international and regional human rights instruments can be found in Appendix 3.

The content of some ESC rights is described in Table 3. ESC rights appear in many international standards: only some are mentioned here. “Articles” (abbreviated as “Art.”) are numbered paragraphs in treaties.

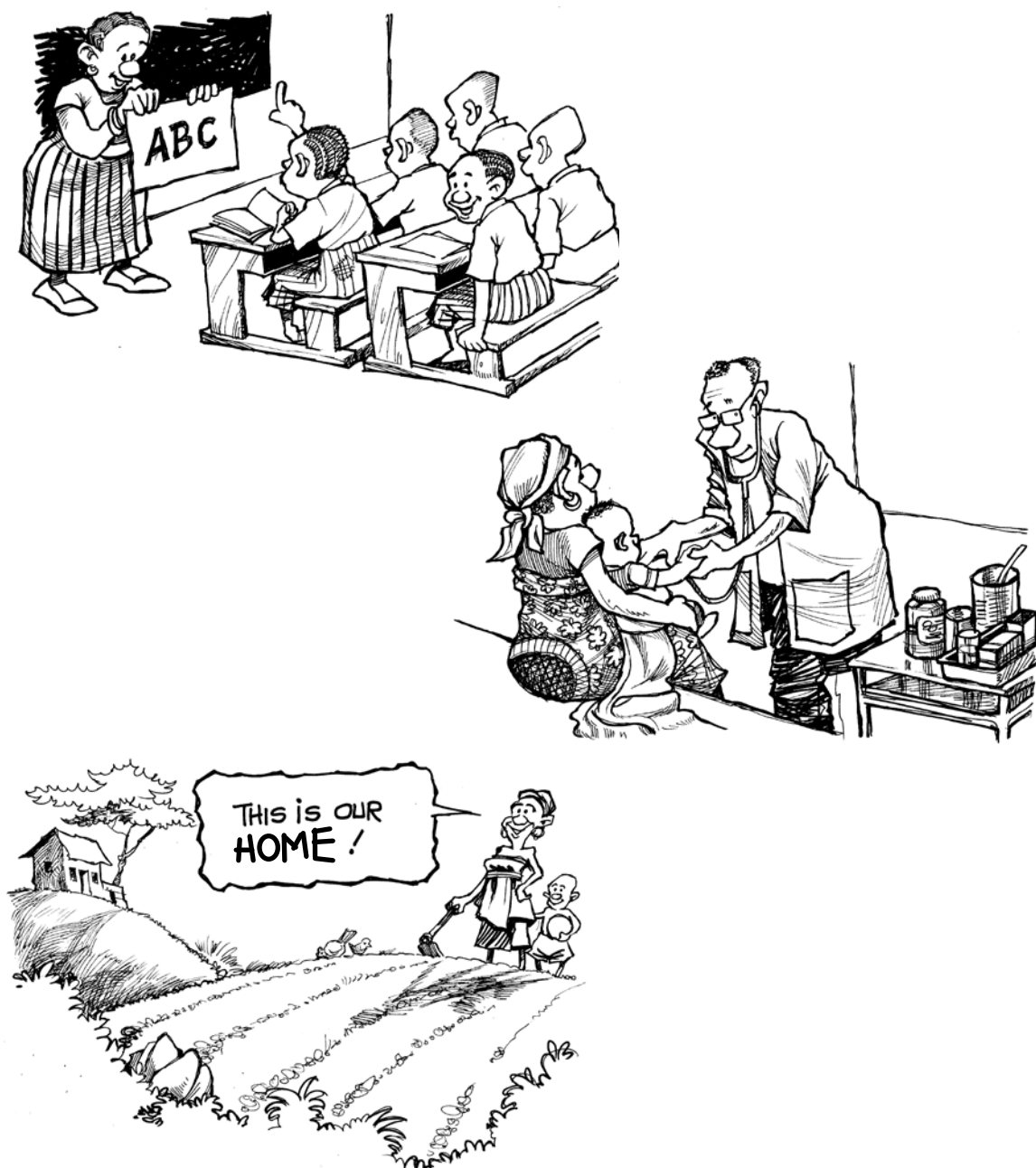


Table 3: Content of ESC rights

Right	International standard and article	Content of right
<b>Social security</b>	UDHR, Art. 22; ICESCR, Arts. 9, 10; African Convention on the Rights and Welfare of the Child, Arts. 19, 21, 27	Everyone has the right to social security and to receive assistance in cases of need – orphans, for example – and to protection. Families, especially those with dependent children, should have the widest possible protection and so should mothers, before and after childbirth. Marriage must be entered into freely by both spouses. Children should be protected from economic and social exploitation.
<b>Work</b>	UDHR, Art. 23; ICESCR, Arts. 6-8	Everyone has the right to earn a living through work which they freely choose or accept. Every man and woman has a right to equal pay for equal work and equal opportunities for promotion. Workers should be able to earn a decent living for themselves and their families. Conditions of work must be safe and healthy. Everyone must be allowed to join trade unions.
<b>Adequate standard of living</b>	UDHR Art. 25; ICESCR, Art. 11; Migrant Workers' Convention, Art. 25	The right to an adequate standard of living for individuals and families includes adequate food, clothing and housing. The right to adequate housing includes the right not to be arbitrarily evicted. It also includes access to safe sanitation and clean drinking water.
<b>Health</b>	UDHR Art. 25; ICESCR, Art. 12; ACHPR Art. 16	The right to the highest attainable standard of physical and mental health includes having access to medical care and necessary social services. Mothers and children are entitled to special care and assistance. Governments must take steps to provide a clean environment, to prevent, treat and control diseases, and to provide medical services for all.
<b>Education</b>	UDHR, Art 25; ICESCR, Arts. 13-14; ACHPR, Art. 17 Convention on the Rights of Persons with Disabilities, Art. 24	The right to education includes free and compulsory primary education for all. Secondary education and technical and professional education should be available and governments should work towards making this free. Governments should ensure that schools meet minimum educational standards. Parents should be able to send their children to schools that provide religious or moral education of their choice. Education should contribute to the overall development of individuals.

> continued

Right	International standard and article	Content of right
<b>Cultural rights</b>	UDHR, Art. 27; ICESCR, Art. 15; ICCPR, Art. 1	<p>The UDHR and ICESCR provide the rights to take part in cultural life and to enjoy the benefits of scientific progress. The UN Educational, Scientific and Cultural Organisation (UNESCO), in its Declaration on Cultural Diversity, defines culture as: "... the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, [which] encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs".</p>
<b>Indigenous peoples' rights</b>	International Labour Organisation's Convention 169, Art. 2; UN Declaration on the Rights of Indigenous Peoples	<p>Art. 2(2)b of the ILO Convention 169 requires that States promote "the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions". When the Declaration on the Rights of Indigenous Peoples was tabled at the UN, many States, including, African ones, were worried that this might encourage calls for independence from certain groups. The African Commission requested a delay so that some amendments could be made. This was agreed and in September 2008 most African states voted for the UN Declaration. It gives indigenous peoples collective rights including:</p> <ul style="list-style-type: none"> <li>• The right to autonomy or self-government in matters relating to their internal and local affairs (Art. 4);</li> <li>• The right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State (Art. 5); and</li> <li>• The right not to be subjected to forced &gt; assimilation or destruction of their culture. This includes the right to redress for "any action which has the aim or effect of dispossessing them of their lands, territories or resources" (Art. 8).</li> </ul> <p>(See also Section 4.4.7)</p>

> continued

Right	International standard and article	Content of right
Access to land		<p>International human rights instruments do not provide any right to land. However:</p> <ul style="list-style-type: none"> <li>• There is increasing recognition of the need to respect rights of Indigenous Peoples to access the lands and resources that are a part of their culture; and</li> <li>• The Committee on ESC Rights, in its General Comment No. 14 on the Right to Adequate Food (see Section 3.5.2) (par. 12) and No. 4 on the Right to Adequate Housing (par. 8), recognises that: <ul style="list-style-type: none"> <li>- people should have access to the use of productive land;</li> <li>- people should not be evicted from land which they own or occupy without &gt; due process of law; and</li> <li>- States should increasingly provide access to land to people who are landless or poor.</li> </ul> </li> </ul>

More information about General Comments is given in Section 3.5.2.

### 3.5 Treaty bodies and Special procedures

As mentioned earlier, treaties are legally-binding documents. Human rights treaties describe different types of human rights. They also say what States must do to realise these rights. In order to monitor how well a State is doing this, a treaty body is set up within the terms of a particular treaty. The treaty bodies monitor how States put the treaty rights into practice. The members are experts appointed by States Parties. Some treaty bodies also accept complaints of human rights violations from individuals or groups.

Sources of electronic or paper copies of the treaties and other documents or procedures mentioned in this section may be found in Appendix 6A.

This section focuses on:

- The Committee on Economic, Social and Cultural Rights (CESCR) that oversees implementation of the ICESCR; and
- The African Commission on Human and Peoples' Rights (the African Commission) that monitors implementation of the African Charter.

All African States are parties to the African Charter and most are parties to the ICESCR.

### 3.5.1 Reporting to human rights treaty bodies

---

The CESCR and the African Commission follow similar procedures and principles:

- Two years after becoming a party to the treaty, the State submits a report to the treaty body explaining what it has, and has not, done to implement the treaty. There are guidelines to help the State write its report. The reports are available on the internet;
- State representatives meet the treaty bodies to discuss their report. The treaty bodies obtain additional material from other sources, including CSOs;
- The treaty bodies produce > Concluding Observations recognising positive developments, pointing out failures and making recommendations; and
- Thereafter, States must submit further reports to the African Commission every two years and to the CESCR every five years.

Part II, Section 10 gives various suggestions of how CSOs can send information and complaints to the treaty bodies.

### 3.5.2 General Comments and advice to governments

---

- The CESCR, and other treaty bodies, produce > General Comments. These contain explanations of the content or meaning of the right as well as detailed advice to States on how to fulfil their obligations. CSOs should use these important tools when claiming rights from the government. Referring to the General Comments in legal cases helps to increase their importance. If lawyers use them as arguments in court they will become part of the country's jurisprudence (stock of legal arguments)<sup>11</sup>;
- The African Commission does not produce General Comments but it produces > Advisory Opinions on specific topics. Its rulings on the complaints it receives also serve as standards for States to follow.

The subsidiary booklets contain advice on how to use the relevant General Comment.

### 3.5.3 Special procedures

---

A > Special procedure is the general name given to the mechanisms established by the UN to address either specific country situations or thematic issues in all parts of the world.

Special procedures can be either an individual, like a Special Rapporteur, or a working group which monitors the implementation of specific rights and recommends solutions. For example, Special Rapporteurs work on various rights including the ESC rights to education, health, housing and food. There are other Special Rapporteurs, for example those dealing with human rights defenders, business and human rights and indigenous peoples, who have also made important contributions to ESC rights.

The African Commission has set up a Working Group on ESC rights<sup>12</sup>. It has not appointed any rapporteurs to monitor specific ESC rights but has asked all its Special Rapporteurs to take ESC rights into account.

CSOs can send information to the Special Rapporteurs who also communicate with governments regarding specific issues of concern or alleged abuses.

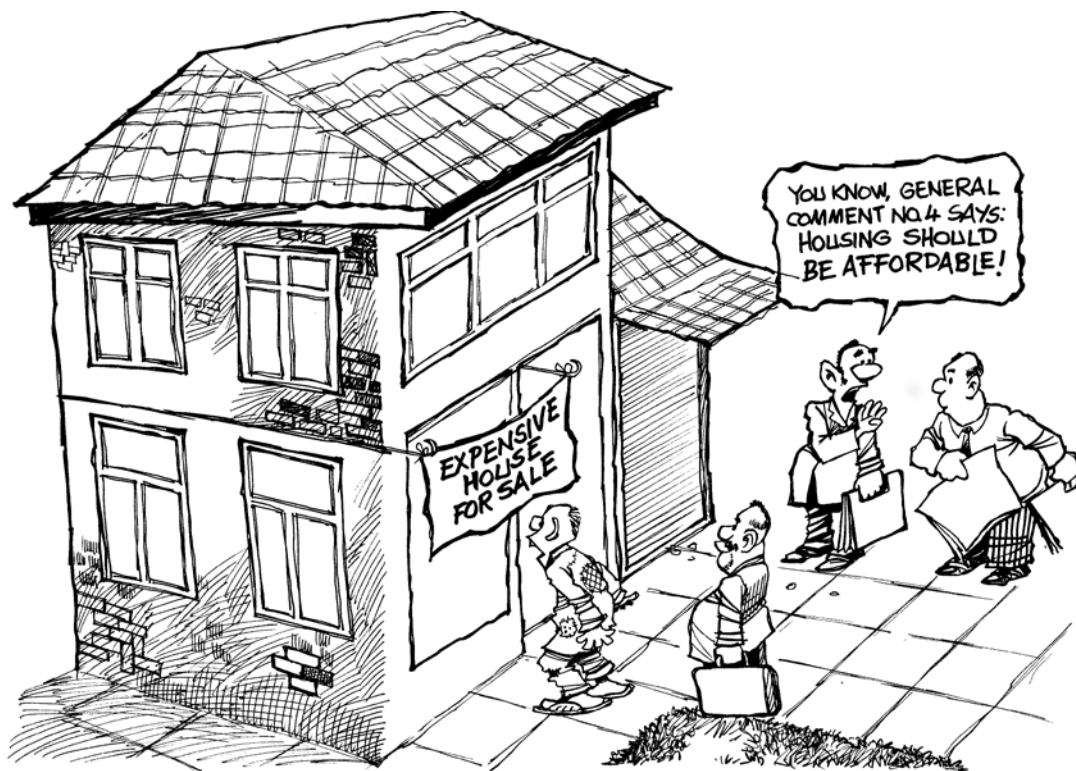
The reports of Special Rapporteurs are an important source of advice to governments and information for CSOs.

### 3.5.4 Human Rights Council

The Human Rights Council is an inter-governmental body within the UN system made up of 47 States responsible for strengthening the promotion and protection of human rights around the world. The Council was created by the UN General Assembly with the main purpose of addressing situations of human rights violations and making recommendations on them.

See Part II, Section 10.1.3 and Appendix 6A for more information on the Human Rights Council.

The Universal Periodic Review (UPR) is a mechanism within the Council which assesses the human rights situations in all UN member States.





# 4

## What are States' obligations with respect to ESC rights?

### 4.1

#### The human rights framework: obligations to respect, protect and fulfil

---

Once a State has ratified a treaty, it has a legal obligation to ensure that the rights described in the treaty are being respected, protected and fulfilled.

Over the years, human rights experts have broken down State obligations into the obligations to respect, protect and fulfil rights<sup>13</sup>. This three-part classification or “framework” described in Table 4 provides the basis for working on ESC rights.

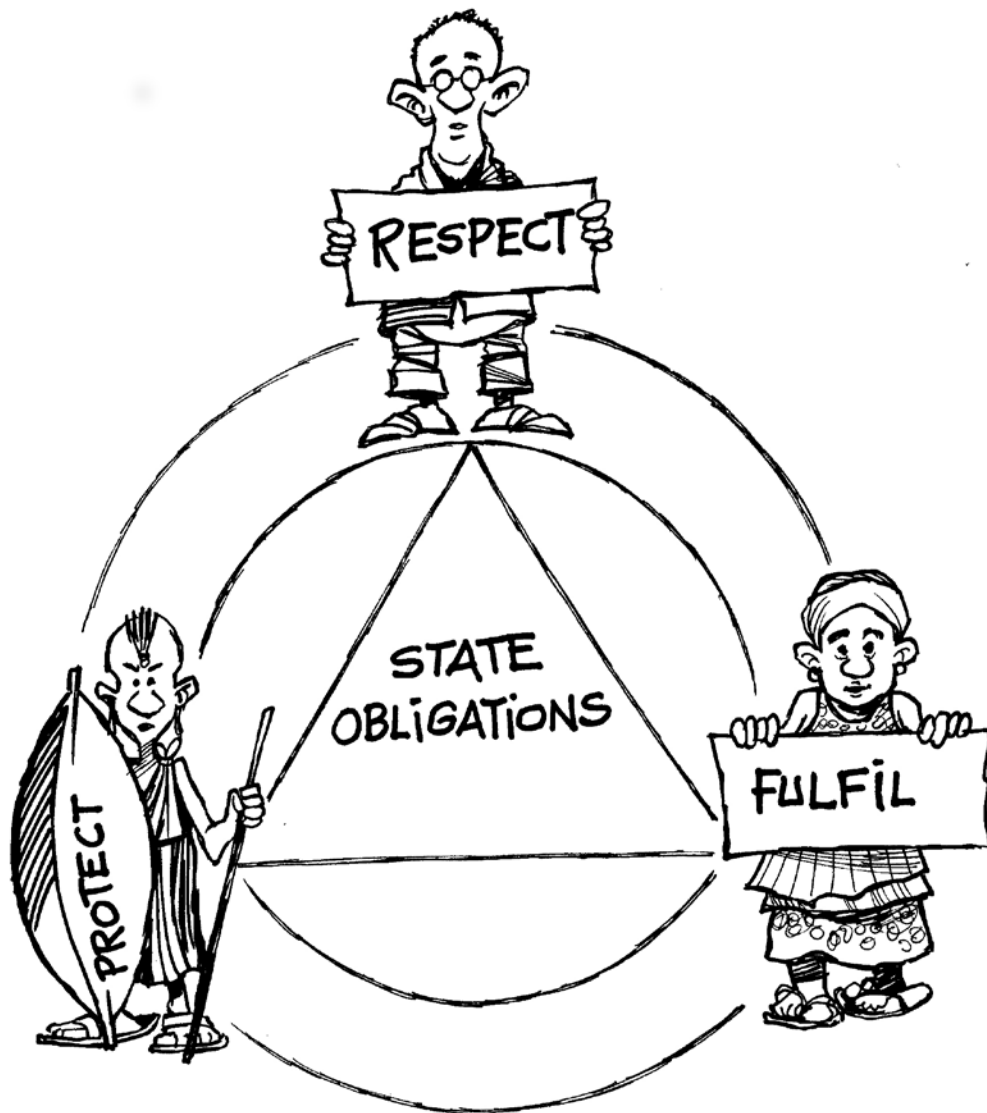


Table 4: State obligations are part of the human rights framework

Human rights obligations	Meaning
The obligation to <b>respect</b> means that the State should not:	<ul style="list-style-type: none"> <li>• Interfere with people who are trying to provide for themselves; nor may they</li> <li>• Prevent people's access to resources necessary for their livelihood.</li> </ul>
Under the obligation to <b>protect</b> , the State must:	<ul style="list-style-type: none"> <li>• Ensure that non-State actors (individuals or enterprises that are not part of the government) do not interfere with access to essential resources, for example by polluting the environment (See Article 21 (5) of the African Charter in Appendix 3); and</li> <li>• Ensure that non-State actors do not commit human rights abuses.</li> </ul>
The obligation to <b>fulfil</b> includes	<p>The State must take all steps to ensure that everyone may enjoy at least a minimum essential level of all their ESC rights. People should enjoy these rights on the basis of equality. This so-called &gt; minimum core obligation includes 3 elements: facilitate, promote and provide.</p> <ol style="list-style-type: none"> <li>1. <b>Facilitate:</b> the State must take measures aimed at improving people's access to and use of goods and services such as safe drinking water and sewage systems. Measures could include: new or adapted laws, better procedures or more budget.</li> <li>2. <b>Promote:</b> the State should set up claims procedures and inform people of their rights and how to claim them; and</li> <li>3. <b>Provide:</b> The State must provide goods and services if people, for reasons beyond their control, are unable to get them.</li> </ol> <p>The State must also ensure that the services it provides (such as a health clinic) meet certain standards and serve people's needs. For example, is the clinic:</p> <p><b>Available:</b> Does a community actually have a clinic?</p> <p><b>Accessible:</b> Can everyone in the community visit it without discrimination? Is it near or far away? Are the services free? If not, are they affordable?</p> <p><b>Acceptable:</b> Are the needs of different people, including marginalised groups (such as women, minority groups, persons with disabilities) respected?</p> <p><b>Of good quality:</b> Are the services scientifically and medically appropriate and of good quality?</p> <p>Note: General Comments Nos. 4 and 14 mention "affordability" but some services should be free. No one should be denied access to necessary services because of inability to pay.</p>

The following example gives an idea of how the framework can be used to analyse whether the State is fulfilling its obligations. The separate booklets provide advice on how CSOs and communities can use this framework to claim rights.

**Box 6: Villagers lobbying authorities to fulfil obligations**



Villagers complained that the authorities had failed to respect, protect and fulfil their right to the highest attainable standard of health by:

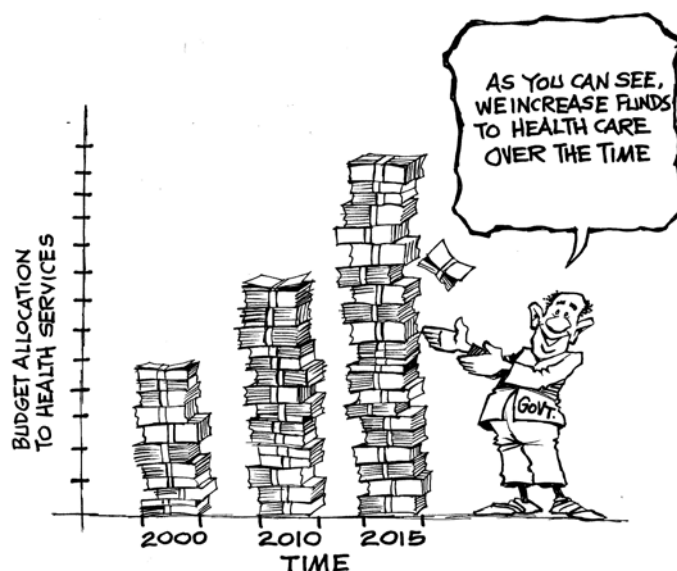
- Building a dam which cut off their access to the nearest health clinic in another village (failure to respect);
- Failing to stop a commercial company from polluting the water (failure to protect); and
- Failure to provide access to alternative health services (failure to provide).

The villagers lobbied the authorities asking them to stop the pollution and to respect and fulfil their obligations by providing:

- A clinic in their village (available);
- An ambulance for people living outside the village (accessible);
- A free service (economically accessible);
- Separate wards for women and men (acceptable); and
- Qualified and well equipped staff (quality).

**4.2 Additional obligations**

The language used to describe how ESCR should be realised is sometimes different from that of CP rights. This is because the realisation of many ESC rights requires a lot of time and resources. For example, everyone has the right to the highest attainable standard of health. But this may not be possible for a poor country. The State has to take a number of steps, using available resources, to make sure that the right to health is progressively realised. Therefore, a State where only 50% of people live within 10 kilometres from a health facility could take steps to increase that percentage to 70% within 10 years. That would be an example of taking positive steps towards making sure that more people receive health care. No matter how poor the State is it must also fulfil minimum core obligations. According to the CESCR, if many people are malnourished or have no access to primary health care, adequate housing or primary education, the State is not carrying out its minimum core obligations<sup>14</sup>.



Even a State with very few resources must adopt relatively low-cost targeted programmes to protect the most vulnerable sectors of society. Article 2.1 of the ICESCR sets out a State's obligations to realise ESC rights. The State must "...**take steps**, individually and through **international assistance** and co-operation, especially economic and technical, to the **maximum of its available resources**, with a view to **achieving progressively** the full realisation of the rights recognised in the present ICESCR by **all appropriate means**, including particularly the adoption of **legislative measures**." (Emphasis added.) These obligations are defined more fully in CESCR's General Comment No. 3. The obligations in bold above are explained in Table 5. The African Commission also uses this formulation for realising ESC rights.

Table 5: Key obligations related to ESC rights

Obligation related to ESC rights	Meaning
Take steps	<p>The State must:</p> <ul style="list-style-type: none"> <li>• Assess the situation concerning each right;</li> <li>• Make a plan for realising the rights;</li> <li>• Adapt laws and policies to put the plan into action;</li> <li>• Abolish any discriminatory law or policy; and</li> <li>• Develop mechanisms for monitoring the situation providing up-to-date &gt; disaggregated information according to sex, age, social-economic situation, geographical area and ethnic group).</li> </ul>
Work progressively towards the full by realisation of the rights	<ul style="list-style-type: none"> <li>• Taking steady, targeted steps, for example by making a plan to build more primary schools and train more teachers. The plan should set targets for achievement, based on up-to-date statistics on things like the birth rates and literacy rates;</li> <li>• Moving deliberately and effectively as possible towards fulfilling its obligations. This might include adopting laws, reforming procedures or setting up monitoring systems to make sure the obligations are being fulfilled;</li> <li>• Not moving backwards without a very good reason, for example, the state could halt the construction of a university in order to give the money to victims of a natural disaster if it could not obtain funds from any other sources;</li> <li>• Prioritising minimum essential levels of each right (minimum core obligations); and</li> <li>• Prioritising the most vulnerable groups, particularly by tackling discrimination.</li> </ul>

> continued

Obligation related to ESC rights	Meaning
Seek international assistance and cooperation	<p>If the State cannot meet its obligations, it has a duty to seek help. Other States that are in a position to do so are obliged to assist, especially towards meeting minimum core obligations. This includes sharing technology and skills.</p>
Use the maximum available resources	<p>This is not only a matter of properly allocating funds. Resources include people, skills, good management and other assets. A State is not using its available resources to the best effect if, for example:</p> <ul style="list-style-type: none"> <li>• Food is abundant in one part of the country while people in another part are hungry;</li> <li>• Budget allocations for policies and programmes in the social sector favour the cities rather than rural areas, or areas where the majority of the poor live; or</li> <li>• Discrimination keeps women out of the economy, for example by preventing their access to credit or to owning or inheriting land.</li> </ul> <p>Even in a crisis, the State would have to show that it has used the maximum of its available resources and that it has done this effectively. Questions to ask when determining whether or not a State has used its maximum available resources include:</p> <ul style="list-style-type: none"> <li>• Where has it spent its resources? Has it built grand new buildings, while neglecting basic social needs?</li> <li>• Has it used its resources efficiently, for example has it provided a lot of money for health posts but very little for training the staff?</li> <li>• Is corruption affecting the delivery of services and, if so, is the State acting to stop this?</li> <li>• Is it monitoring the extent to which each right is, or is not, being realised?</li> <li>• Has it used updated disaggregated data to decide which groups or sectors of the population are in most need of specific resources?</li> <li>• If its available resources have all been used, has it asked other States to assist?</li> </ul>
Use all appropriate means, including particularly the adoption of legislative measures	<p>For example, not only making an appropriate law, but also providing appropriate systems for monitoring its implementation, including policies, action plans and strategies (see Box 7).</p> <p style="text-align: right;">&gt; continued</p>

Obligation related to ESC rights	Meaning
Prohibit and eliminate discrimination	Discrimination should be made illegal and steps taken to end it (see Section 4.3).
Ensure access to a remedy for those whose rights are violated	Set up appropriate mechanisms (see Section 4.7).

### Box 7: The obligation to monitor



It is obvious that to meet all its obligations the State must monitor its progress. The CESCR General Comment No. 1, paragraph 3, says that the State must, among other things, investigate and monitor the situation with regard to each right in order to:

- Determine where rights are, or are not, being realised; and
- Give special attention to any worse-off regions or any particularly marginalised or disadvantaged groups.

To do this it must gather information and statistics and set benchmarks (see Box 8) and goals for progressive realisation.

While States have an obligation to monitor rights, many CSOs monitor specific rights as well.

### Box 8: ICESCR Article 2



Article 2 of the ICESCR requires that States take deliberate, concrete and targeted steps, using the maximum of available resources, towards meeting their obligations under the Covenant. This requires making a plan, setting goals and monitoring progress. Technical terms involved include:

- Indicators: something that measures a result (for example, the number of people who have completed primary education), or a process (such as how many children are currently in primary school); and
- Benchmarks: targets to reach, such as 80% literacy.

Work is being done to develop human rights indicators for each ESC right. These are described in the relevant booklets. Tips on using indicators are given in Part II of this book.

### 4.3 The obligation to end discrimination

Discrimination means treating people differently. When discrimination prevents people from realising their human rights, it is a human rights violation. No one may be discriminated against because of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In the UN Convention on the Elimination of All Forms of Racial Discrimination, racial discrimination is defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

Discrimination causes and sustains poverty. It excludes vulnerable groups from enjoying many of their ESC rights such as the right to education, access to quality health care, and adequate housing.

#### Box 9: Marginalised and vulnerable groups



Marginalised groups are those who are outside mainstream society or do not participate in society on an equal basis with the dominant group. They include indigenous people and minority ethnic groups.

Vulnerable people are those who are less able to protect themselves in certain situations. Examples include drought, to which farmers would be especially vulnerable; an epidemic that could kill people who are hungry or weak; or conflict, where rape may be used as a weapon. They may also be people whose have special physical or emotional needs such as children or people with disabilities.

Many people fall into both groups.

Unlike some State obligations which are progressively realised over a period of time, the obligation to prohibit, prevent and eliminate discrimination is an immediate obligation. In other words, the State must act immediately to prohibit discrimination and treat discrimination as defined above as a human rights violation.



### Box 10: Discrimination



- ICESCR, Article 2.2 says that States Parties undertake to exercise all the rights in the ICESCR .... “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”; and
- Article 2 of the African Charter prohibits discrimination against any person on grounds such as: “race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status”.

There are other treaties dealing with specific forms of discrimination (see Appendix 3).

Many States have anti-discrimination laws but this is not enough. Some laws are “gender-neutral”, that is, they do not appear to discriminate against women on paper, but do in practice.

States must identify where discrimination occurs, in law or in practice, and work to end it and prevent it from recurring. Tasks include:

- **Gathering information** or data about the number of people who have access to services and those who do not. This data must be disaggregated or separated into categories such as men/women, rural/urban, age groups, etc. so that the authorities can see where discrimination is occurring. Data must be updated regularly so that it is accurate;



- **Identifying the causes.** Discrimination stems largely from unequal power relations (see Box 11). It may be:
  - deliberate, for example under apartheid (racial segregation) laws;
  - a result of neglect; or
  - linked to cultural or traditional practices;
- **“Affirmative action” or “positive measures”.** States have a duty to take steps to eliminate discrimination. Some actions try to end discrimination through provisional or temporary measures to help the neediest. Such measures include providing special parliamentary seats for women or offering free university places to students from marginalised groups; and
- **Remedies:** > remedies are needed to restore justice. People should be able to make complaints about discriminatory treatment, for example to a national human rights commission. (See Section 4.7)

**Box 11: Unequal power relations contributing to discrimination**



- **In the family,** men usually have more economic power and control the family's finances and other resources more than women. Women have fewer opportunities, for example to access credit or own or inherit land and property. Also, fathers sometimes have more rights over their children than mothers;
- **At work,** women often get lower wages than men for the same work; undocumented migrant workers are exploited; children and young men and women are subject to sexual harassment and rape by their employers or supervisors;
- **In the community,** budget allocations often benefit the rich neighbourhoods at the expense of poorer communities; and
- **Internationally,** transnational or multi-national companies have more power over the use of natural resources than local communities.

#### **4.4 Special provisions for certain groups of people**

---

International human rights treaties and standards have special provisions which help reduce and eliminate discrimination of vulnerable and marginalised groups (these groups are defined in Section 4.3). In this section, special provisions for certain groups are examined.

International and regional treaties and most national constitutions forbid discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

As a first step towards meeting their obligations towards these groups, States must identify them and assess their needs. Data should be disaggregated according to sex, region, economic situation and other factors. (See also Box 8)

#### 4.4.1 Children

According to international standards, children are persons under 18 years of age, even if national legislation sets a different age limit. The main treaties [and treaty bodies in parentheses] are the:

- UN Convention on the Rights of the Child (Committee on the Rights of the Child); and the
- African Charter on the Rights and Welfare of the Child (African Committee of Experts on the Rights and Welfare of the Child).

Some countries, such as Kenya, have a lower age for marriage, in contravention of the African Women's Protocol and the African Convention on the Rights and Welfare of the Child



Both prioritise the following general principles:

- Non-discrimination;
- All decisions by parents or State officials must be in the child's best interests;
- The child's right to life, survival, protection and development should be ensured to the maximum extent possible; and
- Children who are able to express their views should be consulted on matters that affect them and have the right to express their opinions freely.

#### 4.4.2 Women and girls

The main treaties and treaty bodies are the:

- UN Convention on the Elimination of All Forms of Discrimination against Women (Committee on the Elimination of All Forms of Discrimination against Women); and the
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Commission on Human and Peoples' Rights).

Both treaties include provisions on:

- Equal access to adequate services including health and education;
- Equality of both partners in marriage;
- Protection against violence in the home, workplace and community and against harmful traditional practices;
- Women's equal participation in development; and
- The rights to own and inherit property, equal pay for equal work, equal opportunity for promotion; and the right to take part in political life.

Discrimination against girls and women severely affects their access to rights:

- Violence against women, child marriages and preventable maternal mortality violate their right to life and physical integrity;
- Statistics show that women, as mothers, carers and producers, do much more work than men – this affects their rights to leisure, and to participate in educational and cultural activities;
- Customs often limit women's right of access to land and resources;
- The custom of “inheriting” widows denies women's right to equality in marriage;
- Girls are often excluded from education – a right which underpins most others; and
- Women are often excluded from participation in decision-making at national and local levels.

The Women's Protocol to the African Charter, in Article 12 (2) c, specifically calls for the retention of girls in school.

#### 4.4.3 Refugees

---

Refugees are people who have left their country owing to:

- A well-founded fear of being persecuted because of their race, religion, nationality, social group or political opinion and are unwilling to return; or
- Conflict in or foreign domination of the whole or part of their country.

Relevant treaties:

- UN Convention relating to the Status of Refugees; and
- Convention Governing the Specific Aspects of Refugee Problems in Africa.

Under these treaties:

- Refugees should receive protection in the country of asylum;
- Their treatment should be as favourable as possible, and certainly not less favourable than the treatment given to other foreigners; and
- If they decide to return voluntarily to their own country, or if they are resettled in another country, they should be given the necessary assistance.

**Box 12: Protecting the rights of refugees, IDPs and migrant workers**



All three of these groups suffer from various forms of discrimination owing to their status. Many refugees and IDPs have left their homes owing to conflict or human rights violations. Many also suffered human rights violations during their journey from their homes or after their arrival. Migrant workers and their families, especially those who did not migrate through regular channels, face exclusion and ill-treatment.

The Committee monitoring implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) has pointed out that States must “remove all obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health.” Refugees and migrant workers are considered “non-citizens”.

#### **4.4.4 Internally Displaced People**

According to international law, internally displaced persons (IDPs) are those who have moved to another part of their own country:

- For fear of persecution, or
- As a result of natural disasters.

In Africa, IDPs are also people who have been displaced by major development projects and by lack of development. These additional categories are included in the AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa, adopted on 23 October 2009. At the time of writing this treaty had not yet entered into force.

States that become party to the treaty undertake the obligations not to cause or allow arbitrary displacement and to bring to justice those who are responsible for such displacement. States are also obliged, among other things, to:

- Ensure that humanitarian organisations and personnel have rapid and unhindered access to IDPs;
- Respect and protect the human rights of IDPs;
- Promote self-reliance and sustainable livelihoods among IDPs; and
- Provide, where possible, compensation and rehabilitation (see Section 4.7).

The treaty also places obligations on armed groups to refrain from: arbitrary displacement; restricting the movement of IDPs or the delivery of aid; and recruiting children.



#### **4.4.5 Migrant workers and their families**

Migrant workers are nationals of one country working in another – some enter the host country legally and others do not.

All migrants and their families are entitled to their basic rights. However, as non-citizens, they may be denied some rights, such as the right to vote.

The relevant treaty is the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which came into force in July 2003. By February 2010, only 42 States had ratified it.

#### **4.4.6 Persons with disabilities**

Persons with disabilities face physical and other barriers that prevent their full and effective participation in society, such as exclusion and discrimination.

Relevant standards:

- UN Convention on the Rights of Persons with Disabilities; and
- UN Declaration on the Rights of Disabled Persons.

#### **4.4.7 Self-determination and indigenous peoples**

The African Commission's Working Group on Indigenous Populations (WGIP) analysed the situation of many groups of people in Africa. It said that, instead of trying to form a definition of "Indigenous Peoples", it was better to identify them by their characteristics. They are groups whose "cultures and ways of life differ considerably from the dominant society and [...] are under threat, in some cases to the extent of extinction. A key characteristic for most of them is that the survival of their particular way of life depends on access and rights to their traditional land and the natural resources thereon."<sup>15</sup>

The WGIP also dismissed certain misconceptions (misunderstandings), summarised in Table 6.

**Table 6: Misconceptions about indigenous peoples**

Misconceptions	Explanation
Indigenous groups might seek independence	Policies could be developed that would give space and opportunities to all groups to self-determination within national borders.
Promoting indigenous rights would lead to tribalism and conflict	Recognising and respecting diverse ethnic and cultural groups prevents conflict. But trying to make them conform to some common identity would give rise to conflict.
Giving special rights to some groups would be unfair to the other groups	Certain groups face discrimination because of their culture and mode of production so it is right that they, like other groups, such as migrant workers, have standards that apply to their particular situation.
All Africans are indigenous, so the term "indigenous peoples" has no meaning	The term "indigenous peoples" does not mean to imply that other Africans are not indigenous. Africans who identify themselves as "indigenous peoples" are simply using the term used internationally to call attention to the particular forms of discrimination which these groups suffer.

Most African States voted in favour of the UN Declaration on the Rights of Indigenous Peoples. The African Charter also recognises and protects collective, or "peoples" rights. Those working on Indigenous Peoples' rights should refer to the UN Declaration and the summary of the WGIP report.<sup>16</sup>

## 4.5 Cultural rights

As is the case with defining "indigenous peoples", it is also difficult to define what culture is.

The Charter for African Cultural Renaissance<sup>17</sup>, adopted by the AU in January 2006 defined culture as "the set of distinctive linguistic, spiritual, material, intellectual and emotional features of the society or a social group, [that] encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs."

Culture changes with time and circumstances. While cultural rights are often associated with minority or indigenous groups, everyone belongs to a culture, or can associate themselves with different cultures.

## Box 13: Culture in international standards and treaties

**The ICESCR**

Article 15.1 provides the rights:

- a. To take part in cultural life;
- b. To enjoy the benefits of scientific progress and its applications; and
- c. To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he\* is the author.

**African Charter**

Article 17:

- (2) Every individual may freely take part in the cultural life of his community; and
- (3) The promotion and protection of morals and traditional values recognised by the community shall be the duty of the State.

Article 29 (7) states that the individual has a duty to “strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation.”

**African Women’s Protocol**

Article 1 (b) requires States to make laws and policies to prohibit “all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women.”

**Charter for African Cultural Renaissance**

The charter aims, under Article 3 (k) “to develop all the dynamic values of the African cultural heritage that promote human rights, social cohesion and human development.”

\* In international human rights standards 'he' also refers to 'she'.

Different societies, and the individuals within them, are defined by their culture. Within each culture there are specific cultural practices. Everyone has the right to take part in the cultural life of their communities. A person can also choose not to be bound by cultural practices and traditions.

Cultural practices often play a positive role in contributing towards human dignity. For example, extended families provide protection for orphans, the ill and the elderly. Also, traditional justice systems based on cultural traditions resolve disputes and involve society in the rehabilitation of offenders.

However, culture has sometimes been used by different actors as a way to suppress the rights of others.

For example:

- Some States have used “culture” as a way of rejecting human rights, saying that certain rights are not a part of their culture;
- Elders and other influential members of cultural groups may try to gain or retain power by oppressing sub-groups;
- Abuses of rights, particularly women’s rights, have been carried out in the name of culture;
- National and > transnational corporations have disregarded cultural as well as other rights; and
- To protect their power, some groups have used real or perceived cultural differences to oppress others, for example European colonialists or Hutus and Tutsis in Rwanda.

ESCR advocates can work on a number of cultural<sup>18</sup> and other ESC rights, which may include:

- Defending access to cultural and other rights. For example, Kenyan NGOs Porini and Afripad worked with communities living in the sacred Giitune forest to map their resources in order to protect them from exploitation<sup>19</sup>;
- Promoting access to services that meet cultural needs, such as culturally appropriate housing;
- Defending the rights of cultural groups whose intellectual property such as traditional medicines is at risk of illicit commercial exploitation; or
- Using human rights education to lead to practical outcomes, for example the “Human Rights Cities” programme developed by the People’s Movement for Human Rights Learning (PDHRE), an international NGO, enabled women in Mali and Senegal to challenge harmful and discriminatory customs<sup>20</sup>.

## 4.6 Violations of ESC rights

---

A human rights violation occurs when agents of the State fail to act in accordance with a human rights obligation under national or international law.

Other actors, who are not bound by international human rights law, such as an individual, a company or other group, may carry out similar acts.

It might be helpful for the sake of clarity to talk about acts by non-government actors as “abuses” instead of “violations”.

An act against human rights by a “non-State actor” could also be:

- A crime under national law (note that not every criminal act is a human rights violation or human rights abuse); or
- A crime under international law, such as a war crime or a crime against humanity. An example of this would be to intentionally deprive people of access to food or medicine with the intention of letting them die.



## Box 14: Human rights violations



A State is violating its obligations (listed in Sections 4.1 and 4.2) if it:

- Fails to respect a right, for example by forcibly evicting families from their homes without following proper procedures;
- Fails to protect a right (or remove an obstacle to the exercise of a right), for example by failing to stop a commercial company from contaminating sources of drinking water;
- Uses discriminatory methods, for example by preventing delivery of food supplies to areas where political opponents are living;
- Fails to take prompt, concrete and targeted steps towards the full realisation of a right, for example failing to make a plan to prevent communicable diseases;
- Fails to provide minimum essential levels (also called minimum core obligations) of each right, particularly for disadvantaged groups, excluded or vulnerable groups. An example of this would be to cut the budget allocated to health care in rural areas, while spending large sums on the beautification of the capital city;
- Limits a right in a way that is not recognised in international law, for example by denying foreign nationals the right to education; or
- Takes backward steps instead of progressive ones, for example by stopping a project to provide piped water to people in an informal settlement even though funding was available for this. However, suspending the progressive realisation of a right is permitted under international law if the State can show that:
  - It is unable to realise the rights within available resources; or
  - That the suspension is due to an event beyond its control.

Violations of ESC rights are usually a result of lack of political will, negligence or discrimination.



Corruption can also contribute towards violations of ESC rights. For example, if a judge is willing to accept gifts to rule against the law, or if a hospital director receives bribes from pharmaceutical companies to buy inappropriate medicines, there is a clear impact on the human rights of individuals and on the system as a whole.

At local levels, corruption is often evident in the delivery of services, for example when:

- Money to pay workers goes into the pockets of contractors;
- Contracts are awarded to suppliers for bribes rather than according to the quality and cost of the supplies; and
- Services of government officials, including police, are only delivered after paying bribes.

Extravagance by officials can have the same impact on those living in poverty as corruption. The Kenya National Commission on Human Rights and Transparency International Kenya published a report that showed that the money spent on luxury vehicles for senior officials, largely for their private use, came to about the same amount that allocated to the development of 31 of the country's poorest constituencies.

### Box 15: Combating corruption



The AU Convention on Preventing and Combating Corruption, which entered into force in August 2006, lists the actions that constitute corruption and requires States to take steps including:

- Passing laws against corruption;
- Setting up strong, independent anti-corruption authorities where people can safely make complaints;
- Requiring officials to declare their assets before taking and before leaving office;
- Encouraging civil society to join the fight against corruption; and
- Submitting yearly reports to the AU Advisory Board on Corruption. This Advisory Board does not have strong powers.

## 4.7 The right to a remedy

The availability of effective remedies for violations is a key requirement for any human rights system. At the international level, there are a few enforcement mechanisms for obtaining remedies. However, seeking an effective remedy must first be done at the local level and then taken through provincial, national, pan-African regional or African levels. Courts are a common and frequently-used way at all these levels to seek a remedy for violations of ESC rights.

Advice on bringing cases to court is given in Part II, Section 9.3.4.

### 4.7.1 National level remedies

At the national level, States are obliged to incorporate the content of the treaties they have ratified into domestic law. This makes the rights > justiciable, that is, they can be considered by a court of justice or any other relevant tribunal. Courts can then award a remedy for a violation of the right. Where appropriate, the State must provide legal aid to those who are unable to afford it.

Box 16: The right to a remedy



The ICCPR, Article 2 (3) says that States must ensure that:

- a. People whose rights are violated have an effective remedy, even if the violation has been committed by persons acting in an official capacity;
- b. The right to a remedy shall be determined by competent judicial, administrative or legislative authorities; and
- c. The competent authorities shall enforce such remedies when granted.

General Comment No. 9, paragraph 9, states that remedies must be accessible, affordable, timely and effective.

The African Charter, Article 21 (2) says: “In case of spoliation [deprivation] the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.”



Whether violations are carried out directly by State officials or by individuals, companies or other organisations, the State is ultimately responsible. Therefore, the State must establish mechanisms to correct such violations.

These include:

- Monitoring and investigating violations;
- Administrative measures, for example procedures for dealing with complaints;
- A court system where cases may be tried. Judicial remedies could include restitution, compensation or reparation. These terms are often used to mean the same thing:

- Restitution is giving something back that was taken away, for example, having a house restored to the occupant who has been forcibly (unlawfully) evicted;
- Compensation is when one party gives another party goods, services or money to repay losses caused by the first party to the second party. For example, the State may provide a family with other accommodation after an eviction. Some States have funds to compensate victims. Compensation should, as much as possible, attempt to put the victim in substantially the same position where she or he ought to have been were it not for the violation; and
- Reparation is some form of repair for damage caused by a human rights violation. This term is often used in connection with repairing damage caused by war, accidents or negligence. It has also been used, for example by truth and reconciliation commissions, to include asking forgiveness and giving guarantees that the damage will not be repeated;
- Restorative justice is a remedy that may be used for minor crimes, especially those involving youth. The victim, the offender and the State come to an agreement in which the offender:
  - Takes responsibility for the crime;
  - Asks forgiveness and promises not to repeat the crime; and/or
  - Makes some reparation to repair the harm caused by the crime.

#### **4.7.2 African level remedies**

---

At the African level, the African Court of Human and Peoples' Rights can hear cases of violations of the African Charter or any other African or international human rights treaties that have been ratified by the State party in question.

In July 2006, the 11 Judges of the Court were sworn in but, at the time of writing, this court had not yet begun to hear cases. States can seek advisory opinions from the Court, and NGOs can also seek advisory opinions (if the State concerned has formally agreed to this).

#### **4.7.3 Regional courts**

---

There are also courts operating at different regional levels within Africa:

- The Economic Community of West African States (ECOWAS), and the Southern African Development Community (SADC) have courts that can consider certain human rights cases;
- The East African Community (EAC) has a Court of Justice that hears cases relating to the treaty setting up the EAC common market. There are plans to establish an Appeals court and extend the court's jurisdiction to human rights;
- Some of these courts have dealt with cases of civil and political rights. For example, in November 2009, in a suit brought by SERAP, a Nigerian NGO, the ECOWAS court overruled the claim of the Nigerian Federal Government that education was not a legal right<sup>21</sup>; and
- Bringing ESC cases to them would help to increase accountability for these rights (see Part II, Section 9).

# 5

## What is the role of non-State actors?

Any group or individual not part of the State is considered to be a non-State actor. While there are many non-State actors that can affect human rights, this section is about those who have committed human rights abuses through their actions.

### 5.1 Types of non-State actors



Most economic, social and cultural activities take place in the home, the community or the workplace where those in power are not government (or State) officials. The human rights abuses that take place in these contexts are carried out by non-State actors. These abuses are often the result of unequal power relations where these non-State actors exert their power over others. Non-State actors are any group or individual not part of the State. Examples of non-State actors include:

In areas where the State has no control, armed groups are accountable under international humanitarian law for respecting human rights. For example, they should not destroy food crops or houses, and must allow for the safe delivery of medicine.

- Companies, including transnational corporations (TNCs);
- > Privatised services (such as water services);
- Armed groups, such as rebel groups in a conflict;
- Private citizens;
- NGOs; and
- International Financial Institutions (IFIs) such as the World Bank, the International Money Fund (IMF), and the World Trade Organisation (WTO).



**Box 17: Non-State actors and international order**



The UDHR calls on “every individual and every organ of society” to play its part in securing respect for human rights. This includes “non-State actors” whether they are individuals, groups or associations, or commercial or industrial corporations.

Article 28 states “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.”

The African Charter, Article 21 (5) requires States Parties to eliminate all forms of foreign economic exploitation, particularly that practised by international actors.

## 5.2 Human rights abuses by non-State actors

---

In legal terms, non-State actors do not violate human rights, but they can be held responsible for committing crimes or human rights abuses.

Some examples of human rights abuses by non-State actors are:

- A family grossly neglects an elderly relative or forces a woman to be “inherited”;
- A teacher in a private school bullies and mocks a child;
- A boss sexually assaults a female worker;
- A factory manager pays men more than women doing the same work;
- A construction company forcibly evicts people from their houses and land;
- An industrial enterprise allows chemical waste to pollute the water supply; or
- An international company diverts a river leaving a farming community without water.

Non-State actors committing such acts can be guilty of crimes or negligence. For example, if a national company deprives people of their rights, it should be possible under national law to sue the company and seek compensation and other remedies. It may also be possible to sue a government for not protecting people from abuses by a third party, including an international company.

However, it must be acknowledged that it is very difficult to hold non-State actors, such as international companies and privatised services, accountable for their actions: unlike governments, they do not have obligations to respect, protect and fulfil rights.

## 5.3 Due diligence

---

With regard to human rights abuses cited in Section 5.2, the State has a duty to protect people from human rights abuses by non-State actors. The State should provide the degree of care that a prudent person would exercise. This is known as > due diligence.

Exercising due diligence requires:

- Passing laws to prohibit abuses;
- Informing the public about the laws;
- Setting up monitoring systems; and
- Ensuring that victims of abuse have access to the courts, and free legal aid if needed.

If the State has not put systems in place to prevent or punish these abuses it is failing to exercise due diligence.

## 5.4 The impact of transnational corporations

---

It is much more difficult to bring transnational corporations to justice than a smaller company. Their structures are complex. Action against a TNC's local company will probably not affect the parent company. States have a primary responsibility to ensure that TNCs operating in a country respect human rights. But it is often difficult to control these powerful institutions. TNCs have been implicated in human rights abuses such as forced evictions, contamination of crops or water supplies and exploitation of local workers. State officials may collaborate with them, sometimes becoming involved in corruption.

The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights represent one of several standards concerning the behaviour of business enterprises. Some companies have their own codes of conduct<sup>22</sup>. According to these UN Norms, TNCs must respect and protect rights within their sphere of activity. This includes:

- Equal opportunity and non-discriminatory treatment;
- Security of persons;
- Workers' rights;
- Consumer protection; and
- Environmental protection.



While these UN Norms are encouraging, they are not very effective because they are not a legally binding instrument. See also Part II, Section 9.5.

**Box 18: Bringing TNCs to justice**



Bringing TNCs to justice is no easy task. However, attempts are being made to do so. A South African NGO, the Khulumani Support Group, has used an American law to try to sue transnational corporations that contributed to human rights violations. The corporations had supplied goods and services to the Apartheid regime's security apparatus. The corporations appealed against the lawsuits but on 8 April 2009 a judge ruled that some could proceed. The case will not prove that transnational corporations can be held responsible for human rights violations but it may result in some compensation being paid to victims and make TNCs think twice before abusing human rights.

**Box 19: The UN Global Compact**



Companies that join the Compact agree to 10 principles covering human rights, the rights of workers, the environment and anti-corruption. Civil society groups who participate in the Compact agree to work with companies helping them to implement the 10 principles. To join, go to the website ([www.unglobalcompact.org](http://www.unglobalcompact.org)) and click on Civil Society.

**5.5 The impact of International Financial Institutions**

The IFIs were set up to promote economic growth and stability and to reduce poverty. They lend money to governments but impose conditions on receiving countries, such as “good governance” and “privatisation”.

**Box 20: Defining poverty**



Poverty is sometimes defined in financial terms, for example people living on less than US\$1.00 per day. But living in poverty is not only lack of money; poverty is a reality for millions of Africans who are deprived from living in dignity because they live without:

- Access to resources such as land and housing;
- Education or skills;
- Adequate food, clean water and sanitation;
- Access to health care;
- Protection against violence, crime and corrupt officials;
- The opportunity to participate in decisions which affect their lives; and
- The ability to complain to those in power.

To a large extent, poverty is a result of States not fulfilling their human rights obligations.



In 1999, the IMF and the World Bank introduced Poverty Reduction Strategy Papers (PRSPs). Governments had to prepare these in order to receive debt relief. The IMF and the World Bank required that PRSPs should:

- Be country-driven, focused on results, long-term, comprehensive and partnership oriented;
- Be elaborated in a participatory and consultative way, involving national and local civil society organisations;
- Include a comprehensive analysis of poverty in the country;
- Set clear policy priorities; and
- Contain targets and indicators (see Box 8) for monitoring and evaluating progress.

Although the World Bank states that it is promoting human rights by financing sectors such as health and education, many of its projects have been found to disregard human rights standards. PRSPs often had negative impacts on human rights, for example:

- The benefits of the loans or aid went only to small groups of > beneficiaries (those expected to benefit);
- Services were sold to private companies which then charged “user fees” that many families could not afford. Women and girls usually suffered the most. For example, some families who could not afford school fees for all their children often sent the boys to school and not the girls;
- States have had to spend large proportions of their budgets on repaying the loans. This reduced the money available to spend on health care and education; and
- Improvements in the rule of law were mainly aimed at protecting property rights which benefited foreign companies rather than the local population.

#### Box 21: Trade liberalisation



In the early 1990s, developing countries were encouraged by International Financial Institutions to liberalise trade. This would allow greater participation by private entities.

Liberalisation involved the removal of the trade barriers, that limited the free flow of goods and services between countries. Barriers included tariffs (such as import duties, and export subsidies) and non-tariff barriers (such as licensing regulations).

Many African countries undertook liberalisation, but the results were disappointing, partly because the agreements involved countries with widely different levels of wealth and production capacity.

As a result of these negative impacts on human rights, there have been criticisms of the PRSPs. In particular, there are few opportunities for participation by civil society and parliaments. Also, PRSPs are often donor-driven, and as a result undermine a country's ability to decide its own development plans.

In order to meet conditions imposed by PRSPs, some countries have encouraged privatisation. As a result:

- Services like health, education and water have been privatised; and
- Private business is concerned with profits, so privatisation led to:
  - User fees;
  - Services being concentrated where richer people live; and
  - Cutting expenditure and failing to improve the infrastructure (buildings, machinery, roads, etc).

In the late 1990s, after NGO protests, aid donors and the World Bank recognised that user fees had negative impacts. As a result:

- Several countries, including Uganda, Zambia and Tanzania, cancelled user fees for education and began reducing them for health services; and
- Some donors have supported the removal of user fees for health care for those sections of the population that cannot afford to pay for essential health services.

Fee removal encourages people to use the services more so it is up to governments (and particularly the World Bank and bilateral donors) to fulfil their human rights obligations by providing extra funding to ensure that services can meet the needs of vulnerable people.



## Box 22: Abolishing user fees



In 1999 OXFAM funded a small Tanzanian NGO, Maarifa ni Ufunguo, to study the impact of primary education user fees on families in Kilimanjaro. Many NGOs helped to publish the results of the NGO's study. These were presented in two video-taped versions: one aimed at local communities and the other at education officials. Another NGO carried out a similar study in another part of Tanzania. In March 2000, the results were presented to the government and donors. Tanzania abolished user fees for primary education in January 2001.

Source: Joint Donor Staff Training Activity Partnership for Poverty Reduction, Tanzania, June 17, 2002. [www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf](http://www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf)

As a means to ensure that PRSPs took human rights into consideration, the UN Office of the High Commissioner for Human Rights (OHCHR) developed the Principles and Guidelines on a Human Rights Approach to Poverty Reduction Strategies in 2006 (see Box 23).

## Box 23: Principles and Guidelines on a Human Rights Approach to Poverty Reduction Strategies



To integrate human rights into their poverty reduction strategies, States and other actors should:

- **Identify those who are living in poverty**, such as those who lack adequate shelter, basic education, equal access to justice, or being able to earn a living;
- **Implement international human rights standards**;
- **Fulfil international commitments**, for example the Millennium Development Goals (see Section 6.3);
- **Ensure equality and non-discrimination**;
- **Encourage participation and empowerment**. This includes building institutions for participation and protecting rights to freedom of information, expression, association and equal access to justice;
- **Progressively realise human rights**. States must immediately fulfil rights that do not depend on resources, such as prohibiting discrimination, and make a timetabled plan for finding the resources to fulfil other rights; and
- **Monitor and ensure accountability** so that failures are identified and corrected.

# 6

## What are some efforts by government and non-government agencies to improve ESC rights?

Part II of this book describes actions which ESCR advocates can undertake to improve ESC rights by working with communities and local governments. There are also efforts at the international, Pan-African and national levels which contribute to improving ESC rights; these are addressed in Sections 6.1 to 6.3.

Other efforts which are useful for ESCR advocates are the human rights based approach to development and the principles of participation which are being adopted more and more by NGOs in their human rights or development work. These are addressed in Sections 6.4 and 6.5 and provide a useful introduction to the practical approach of working with communities and local governments described in Part II.

### 6.1 International cooperation and assistance

For most developing countries, assistance from other States, known as International Cooperation and Assistance, Official Development Assistance (ODA), or bilateral aid, is an important source of revenue. But often aid is given to suit the economic and political interests of the donors, rather than to reduce poverty or advance human rights. Problems include:

- A requirement to privatise services, for example water or electricity;
- A requirement to spend some of the aid money on goods or services from the donor country;
- Donors delivering less aid than they have promised; and
- Donors providing finance in an unpredictable way and on a short-term basis, making it difficult for the receiving government to plan its public spending.

However, some donors are committed to providing assistance to help fight poverty<sup>23</sup>.

#### Box 24: Encouraging examples of State action



**Eritrea** developed a National Policy on Adult Education in 2005. This recognised that adult literacy contributes to poverty reduction and that disadvantaged groups including women, girls and people in rural areas needed particular attention.

Source: [www.unesco.org/fileadmin/MULTIMEDIA/INSTITUTES/UII/confintea/pdf/National\\_Reports/Africa/Africa/Eritrea.pdf](http://www.unesco.org/fileadmin/MULTIMEDIA/INSTITUTES/UII/confintea/pdf/National_Reports/Africa/Africa/Eritrea.pdf)

**Madagascar** adopted a National Program for Safe Water Supply and Sanitation (PNAEPA) in 2005 in order to meet the MDGs targets by 2015.

Source: [pdf.usaid.gov/pdf\\_docs/PNADO933.pdf](http://pdf.usaid.gov/pdf_docs/PNADO933.pdf), (also refer to Water booklet)

**Morocco** declared it would promote the health sector and the training of medical staff in order to meet the MDGs.

Source: WHO Director General lauds Morocco's commitment to promote health sector, Agence Maghreb Arabe Presse, 6 October 2009,

Source: [www.map.ma/eng/sections/social/who\\_director\\_general/view](http://www.map.ma/eng/sections/social/who_director_general/view)

**Southern Africa (SADC):** six countries – South Africa, Malawi, Mozambique, the DRC, Tanzania and Madagascar – have expressly guaranteed the right to information within their constitutional framework.

Source: Mukelani Dimba, Africa: the Right to Information in Continent, Pambazuka News, 25 September 2008, Source: [allafrica.com/](http://allafrica.com/)

Both donors and the governments of the States receiving assistance should ensure that they act in accordance with their human rights obligations, and that the aid that is provided is used first and foremost to alleviate poverty and fulfil human rights for all.

## 6.2 (Pan-) African regional institutions and economic organisations

---

The following is a list of treaty-based institutions which address human rights as part of their mandates or missions. Some of the treaties contain human rights and provide for mechanisms to include CSO participation in dialogue. ESCR advocates at local levels may have to collaborate with other CSOs to take action at regional and pan-African levels.

- The **African Union (AU):** The AU's vision of a united and strong Africa includes building "partnership between governments and all segments of civil society, in particular women, youth and the private sector, in order to strengthen solidarity and cohesion amongst the peoples of Africa." <sup>24</sup>
- The **Assembly of Heads of State and Government** is a supreme organ which determines the AU's common policies. Various organs were set up to advise the AU Assembly. These include the Pan-African Parliament (PAP) and the Economic Social and Cultural Council (ECOSOCC).
- The **Pan-African Parliament (PAP):** Set up in 2004, the PAP is composed of parliamentarians from African countries. Parliamentary committees investigate and debate

## What are some efforts by government and non-government agencies to improve ESC rights?

a range of issues including human rights, agriculture, trade, labour and transport. The PAP does not (yet) make laws. It provides advice and makes resolutions. Institutions and individuals can write petitions. Mechanisms for civil society participation are being set up.

- The **Economic Social and Cultural Council (ECOSOCC)**: Set up in March 2005, ECOSOCC is made up of NGOs, businesses, service providers, research institutions and other civil society organisations. Before each AU summit, civil society representatives are briefed on AU developments at the AU-CSO Forum. They can then submit recommendations to the AU summit.

An ECOSOCC Assembly of 150 civil society representatives elected at national, regional levels and the diaspora (Africans living outside Africa) was set up in September 2008 and accepting candidatures to be part of the Assembly by the end of 2008.

- The **African Economic Community (AEC)** and **Regional Economic Communities (RECs)**: The AEC is an advisory organ of the AU. Its “pillars” are the RECs, such as the Common Market for East and Southern Africa (COMESA) and the Economic Community of West African States (ECOWAS). Many RECs have overlapping memberships. The AU is seeking to reduce their number and to strengthen them. In October 2008, three RECs, COMESA, the EAC and the South African Development Community (SADC), agreed to merge and form a Free Trade Area (FTA) which would include 26 countries.

Each REC is set up under a treaty setting out the community’s objectives. In addition to the economic objectives, such as forming a common market, there are others such as promoting peace and security, democracy, and human rights. Several have courts of justice to deal with breaches of the treaty. Some have parliaments and some have mechanisms for civil society engagement.

- **The New Partnership for Africa’s Development (NEPAD)**: NEPAD was set up by five African heads of State and adopted by the AU in 2001. Its principles include good governance; protecting human rights; participation by all sectors of society; achieving the Millennium Development Goals (see Section 6.3) and reforming the system of debt relief and international aid.

Civil society groups may participate in NEPAD’s monitoring system the African Peer Review Mechanism (APRM). Countries carry out a self-assessment to check their progress towards meeting NEPAD’s goals, including human rights goals, and develop Programmes of Action. The APRM reviews this process and adds its own comments and recommendations. The final report is presented to the APRM Heads of State Forum, then tabled at the AU Summit and eventually made public.

### 6.3 The Millennium Development Goals (MDGs)

In the year 2000, all UN States and the main development institutions agreed to implement eight Millennium Development Goals (MDGs) that would halve the number of people living in poverty by 2015:

1. Eradicate extreme poverty and hunger;
2. Achieve universal primary education;
3. Promote gender equality and empower women;
4. Reduce child mortality;
5. Improve maternal health;
6. Combat HIV/AIDS, malaria and other diseases;
7. Ensure environmental sustainability; and
8. Develop a global partnership for development.

Goal 8 on aid, trade and debt, which is the responsibility of the international community, is the only goal that has no targets.



Progress (defined according to targets for each Goal) towards achieving the MDGs is slow. In the 2008 report on the MGDs<sup>25</sup>, the UN admits that several targets will not be met by 2015. In particular, Sub-Saharan Africa is the region with the least amount of progress in many of the targets.

Human rights experts have criticised the MDGs because they are limited in scope and are not expressed as human rights obligations. The Millennium Declaration<sup>26</sup>, from which the goals were derived, does emphasise human rights. But few national MDG reports reflect any clear human rights analysis.

For NGOs working on ESC rights, the national MDG reports, like the PRSP reports mentioned in Section 5.5, provide useful information and statistics. They also provide the opportunity to press for links to human rights, such as non-discrimination in the realisation of rights to health and education. The MDGs will be referred to in more detail in the separate booklets in this series.

## 6.4 The Human Rights Based Approach to Development

It is now widely recognised that protection for human rights is an essential basis for development. Previously, development was based on the desire to fulfil needs. Aid was given in a spirit of charity.

> Development agencies are those set up to support economic growth in a specific country or region. They are increasingly adopting what is called the human rights based approach to development (HRBA). In turn, human rights NGOs are learning from this approach and, as a result, have started to pay more attention to ESC rights. This is because the HRBA focuses on the interdependence and interrelatedness of human rights.

**Table 7: Comparing the “needs-based” approach and the HRBA**

The “needs-based” approach	The HRBA
People in need are “victims” or beneficiaries.	People are rights-holders.
Aid is given to solve problems.	Supplying goods does not solve problems: the causes of deprivation, such as discrimination, need to be addressed.
Donors provided aid to meet what they perceived to be people’s needs. However, in recent years, many development agencies have recognised the right to participate (see Section 6.5).	Communities and individuals define their own needs and are empowered to claim their rights. The HRBA also insists on the right to information (see Section 6.5), which helps people to exercise their rights.
Aid is a matter of charity, not justice.	Human rights focus on State accountability for realising rights of individuals.
Aid is often tied up with political and economic interests.	Governments have freely agreed to respect human rights and should place them above other interests.
Development agencies cooperate with States but rarely criticise violations openly.	Human rights require that States be held accountable.

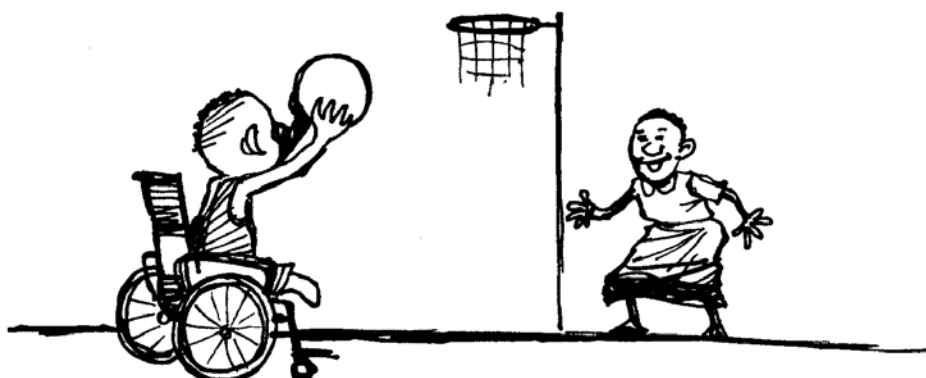


There are different interpretations of the HRBA. For example, many development agencies are only adopting some aspects of the HRBA, which undermines the approach.

Most interpretations do describe a set of aspects similar to the ones listed below. All the following aspects of the HRBA refer to unequal power relations that trap the poor and limit their ability to control their own lives. The HRBA seeks to reverse this.



- People have rights: Things that used to be seen as “needs” are recognised as “rights”;
- Accountability and the right to a remedy: States and other agencies must be held accountable for realising rights. People whose rights are not respected should have access to justice or other forms of remedy;
- Discrimination and exclusion are principal causes of poverty. The HRBA requires the elimination of discrimination. This may require “affirmative actions” to help discriminated people catch up with those who have not suffered discrimination;
- The right to participate includes people’s right to participate in decisions that affect them at local and national level (see Section 6.5);
- The rights to freedom of information, expression, assembly and association. Without access to these rights, it is impossible to claim rights or to participate in public affairs; and
- A universal obligation: the international human rights framework makes international cooperation for human rights, and therefore for development and poverty reduction, a universal obligation. The national government has the primary responsibility for realising the rights of its people, but other States have obligations to contribute, or at the very least, not to violate people’s rights in their cooperation activities.



**Box 25: The human rights based approach**



The HRBA brings certain contradictions and challenges:

- Some CSOs prefer to work for individuals rather than for a change in policy, for example they might try to use mediation to stop practices such as discrimination or domestic violence without exposing the perpetrators. The challenge is to expose violations while protecting the identity of the victim;
- It can be difficult to combine working with the authorities (service delivery or capacity building) and speaking out against abuses. Speaking out can damage relations with the government, but keeping quiet in the face of abuse can damage an organisation's integrity. However, some organisations do manage to do both;
- Service delivery on its own can encourage the government to rely on CSOs rather than fulfil its own obligations. Service delivery can, however, be an entry point to human rights work. Meeting people's immediate needs can give them the confidence that will eventually enable them to participate in their own development and exercise their rights; and
- Organisations focusing exclusively on advocacy at the national level need ensure that they do not lose touch with the people they are seeking to help.

Source: How an RBA Works in Practice: Exploring How Oxfam Novib and its Counterparts Apply an RBA. Oxfam Novib, October 2006.

## **6.5 The right to information and to participate**

People have a right to participate in the decisions that affect them, yet international agencies, governments, companies, and CSOs often fail to respect this. The only way to break the chains of exclusion, powerlessness, lack of knowledge and physical insecurity is to allow people to participate in making decisions that affect them. Various terms are used in this context such as: participation, empowerment, and inclusion.

Participation is a human right. The ICCPR's Article 25 concerns the right to participate in public affairs, directly or through freely chosen representatives. The Human Rights Committee's General Comment No. 25 on Article 25 states that the term "public affairs" "covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels." This includes participating directly in the design of policies and budgets as well as monitoring how the State puts these into practice.

The UN Declaration commonly known as the declaration on human rights defenders states that the right to participate includes the right to obtain information, to make submissions to the government about any aspect of human rights and make proposals for improvement.

When defining participation, it is important to distinguish between “instrumental” and “transformative” participation, because they do not equally empower people:

- Instrumental participation is where people are used as tools or “instruments” – they may be involved in discussions but have no decision-making power, or they may merely contribute their labour to a project. This is usually because power structures are unwilling to give up their control; and
- Transformative participation is where people have real power to change or transform a situation. This may be because a real effort has been made to empower them and power structures are willing to respect their decisions.

The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms was adopted through General Assembly resolution 53/144 of 9 December 1998. See also the African Commission Resolution on Human Rights Defenders (2004) and the African Charter for Popular Participation in Development and Transformation (1990).

### Box 26: Ensuring participation



The African Charter on Democracy, Elections and Governance, adopted by the AU in January 2007, has as one of its objectives, to “Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs.”

The right to participate is closely linked to the right to seek and obtain information. The ICCPR Article 19 and the African Charter Article 9 both concern the right to information. Without access to information, meaningful participation is impossible. Yet in many countries it is very difficult to find information about government policies and budgets. Some NGOs focus on media freedom and others are pressing for access to information on policies and budgets. Both are campaigning for legislation on freedom of information.

The African Commission’s Declaration of Principles on Freedom of Expression, Article IV, says that the right to information includes:

- Access to information held by public bodies;
- Access to information held by private bodies which is necessary for the exercise or protection of any rights; and that
- Any refusal to disclose information shall be subject to appeal to an independent body and/or the courts.



## What are some efforts by government and non-government agencies to improve ESC rights?

### Box 27: Access to information



In May 2007, the Malawi Economic Justice Network (MEJN) and its partners in five SADC States carried out surveys to see how easy (or difficult) it was to obtain access to information about State policies including privatisation of State enterprises and food security. The ultimate aim was to promote good laws on access to information. *Source: [www.mejn.mw/ati.html](http://www.mejn.mw/ati.html)*

Meaningful, **transformative** participation is an important aspect of ESCR advocates' work. This type of participation is the basis for the practical approach for addressing ESC rights outlined by the steps in Part II. Principles of participation are outlined in Box 28.

### Box 28: Principles of participation



To ensure effective participation when addressing ESC rights with a community, the participants should be:

- Members of the community for whom the project is intended. (Note that powerful members of the community can “capture” the process and turn it to their own advantage); and
- Those involved in bringing the project to the community.

#### **Participation should be:**

- An equal partnership;
- Non-discriminatory;
- Informed through effective access to information;
- Built on existing consultation systems as far as possible; and
- Not just listening and agreeing, but with freedom to discuss and the power to make choices.

#### **Participation is important throughout the different stages of a project:**

- Planning: participants analyse the problem, make the plan and set priorities;
- Implementation: participants ensure that the project is being carried out properly and decide what changes are needed; and
- Evaluation: participants monitor the project throughout and ensure that an independent evaluation is carried out at the end.

#### **Barriers to participation include:**

- Absence of a culture of rights;
- Discriminatory laws or policies;
- Lack of access to information;
- Corruption; and
- Absence of complaint mechanisms.

#### **Advantages of participation include:**

- Empowerment of the participants; and
- Projects which are supported and more likely to last.



