



Frequently Asked Questions on the Human Rights-based Approach in Development Cooperation

About this publication

This publication addresses frequently asked questions about human rights in general and the human rights-based approach in development cooperation in particular. The FAQs are best read on screen, to make use of the numerous links to related subjects. We will add to these FAQs, so come and visit again.

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commissioned by



Federal Ministry
for Economic Cooperation
and Development

In cooperation with



German Institute
for Human Rights

As of 1 January 2011:

giz Deutsche Gesellschaft
für Internationale
Zusammenarbeit (GIZ) GmbH

1. Are human rights universal?

Human rights are inherent to all human beings solely because of being human, no matter where they live. Human rights originate in the equal dignity of all human beings and at the same time aim at protecting it. Since “All human beings are born free and equal in dignity and rights” (Universal Declaration of Human Rights of 1948, Article 1), human rights are universal. This normative assumption on universality contained in the Universal Declaration has been spelled out as binding law in the international human rights treaties of the United Nations (UN). The origins of contemporary human rights treaties can be traced back to the experiences of injustice during the two world wars and to the decolonization movement starting in the 1940s. Almost all human rights treaties have meanwhile been ratified by the majority of states and are the most important instrument for the universal implementation of human rights.

Human Rights Treaty	Year of adoption/entry into force	Number of ratifying states
International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)	1965/1969	173
International Covenant on Economic, Social and Cultural Rights (ICESCR)	1966/1976	157
International Covenant on Civil and Political Rights (ICCPR)	1966/1976	160
Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)	1979/1981	185
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	1984/1987	145
Convention on the Rights of the Child (CRC)	1989/1990	193
International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW)	1990/2003	42
Convention on the Rights of Persons with Disabilities (CPD)	2007 open for signature and ratification	66
Convention for the Protection of all Persons from Enforced Disappearance (CED)	2007 open for signature and ratification	13

(Last update: 31th August 2009, www.ohchr.org)

States that have not ratified a particular treaty are still bound to observe certain human rights. Thus the right to life and the ban on genocide, torture, slavery and discrimination on grounds of race is binding for all states under all circumstances.

In addition to the international human rights protection system of the United Nations there are various regional human rights treaties with corresponding implementation mechanisms. Core regional instruments are the European Convention for the Protection of Human Rights and Fundamental Freedoms ([ECHR](#)) of 1950, the American Convention on Human Rights ([ACHR](#)) of 1969, the African ([Banjul](#)) Charter on Human and Peoples' Rights of 1981, and the [Arab Charter on Human Rights](#) which entered into force in 2008. Like international human rights law regional human rights treaties refer to the universality of human rights and relate explicitly to the Universal Declaration of Human Rights ([UDHR](#)) of 1948. This demonstrates two things: international and regional human rights protection interlock, and secondly, human rights always have to be implemented against the background of the respective regional context. Human rights are no Western values: their historical origins in European enlightenment do not run counter to their universality. If proof was needed: consider how social movements and civil society organisations all over the world use human rights in their work.

2. What does signature of a treaty entail and what is the difference to ratification?

By signing a human rights treaty a state declares that it has agreed upon the content of the treaty, and intends to work towards its implementation. But only the ensuing ratification leads to a legally binding obligation. Ratification is usually done by the head of state who represents it internationally.

In addition, the term ratification also stands for the domestic procedure that translates treaties under international law into domestic law. In many legal systems, e.g. in Germany, the legislative body has to pass the treaty in question. That is why it can take a considerable amount of time until a signed treaty gets ratified. In other legal systems, human rights treaties are directly applicable, i.e. without any implementing legislative act.

Like other treaties under international law, human rights treaties only enter into force once a certain number of states, stipulated in the treaty, has ratified them. Sometimes this happens rather fast: the Convention on the Rights of the Child entered into force within a year; the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, however, were open for ratification for ten years before entering into force.

3. How are human rights implemented and how is this monitored?

Human rights treaties are legally binding contracts. The parties to the treaties (“state parties”) are responsible for their implementation and have to report to the United Nations (UN). Some states also issue domestic reports about the realisation of human rights; Germany for example does so every two years.

To implement human rights treaties domestically, states will usually need to:

- adapt existing laws or pass new laws;
- change or adapt administrative or financial measures;
- issue national action plans and similar programmes;
- guarantee and facilitate access to legal protection if someone feels violated in his or her human rights;
- regularly review and evaluate the results of these measures.

Next to domestic courts, civil society organisations play an important role in the implementation of human rights, and so do National Human Rights Institutions ([NHRI](#)) and the media. They can inform about human rights, demand the ratification of human rights treaties, document violations of human rights as well as monitor, call for and support the implementation of human rights obligations. Two recent human rights treaties even oblige states to establish national monitoring mechanisms: the Optional Protocol to the UN-Convention Against Torture and the Convention on the Rights of Persons with Disabilities ([LINK](#)). In Germany, the [Federal Agency for the Prevention of Torture](#) was founded in 2008, and the Monitoring Mechanism for the Disability Convention was established in May 2009 at the German Institute for Human Rights.

4. How are human rights monitored internationally?

At the international level, various bodies within the United Nations system monitor the compliance of states with their human rights obligation: These are in particular the so-called [treaty bodies](#), but also the Human Rights Council, the General Assembly and the Security Council. International human rights NGOs are likewise essential for monitoring human rights practices. On the regional level, the organs of the European, Inter-american, and African human rights protection system are important since the rulings of regional human rights courts are binding for the member states.

Treaty bodies

The [treaty bodies](#) are expert panels. They examine the [state reports](#) about states’ implementation of treaty obligations. In their examination, treaty bodies often resort to information from civil social organizations, the so-called parallel reports. The treaty bodies then issue what is called [Concluding Observations](#). These assess and comment on the progress and the deficits with regard to the domestic implementation of the treaty.

Some treaty bodies decide upon [individual complaints](#) (these include the treaty bodies of the International Convention on the Elimination of all Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination against Women and the Convention against Torture and

Other Cruel, Inhuman or Degrading Treatment or Punishment). Currently, there is a campaign to establish such a mechanism for the children's rights convention. If persons feel their human rights have been violated, and they have exhausted all national judicial remedies, they can turn to the treaty body with their complaint. The treaty body then issues a decision on whether rights guaranteed under the treaty have been violated.

The Human Rights Council

The Human Rights Council ([HRC](#)) is the most important political human rights body of the United Nations. Its 47 members are representatives of the UN member states and are elected by the UN General Assembly. Among other things, the Human Rights Council is tasked with the regular examination of the human rights situation within all UN member states (Universal Periodic Review). In addition, the Council follows up on the situation in individual countries - in the form of country reports and resolutions. It also appoints [Special Rapporteurs](#) for specific topics, e.g. on the right to food, on torture and on the right to adequate housing.

The UN General Assembly and the UN Security Council

The UN General Assembly ([GA](#)) has established the Human Rights Council and adopts human rights treaties by resolution. It also issues other resolutions on human rights issues, as a December 2007 declaration calling for a moratorium on the death penalty.

Last but not least, the UN Security Council ([SC](#)) can impose political, economical or military sanctions against states that systematically violate human rights.

Civil Society

As a watch dog, civil society also plays an important role for international monitoring. The large international human rights NGOs, like Amnesty International, Human Rights Watch, FIAN or Physicians for Human Rights, issue regular reports on country situations and engage in the international human rights debates and fora, like the Human Rights Council.

5. Can a state denounce a human rights treaty it has ratified?

Yes, some treaties permit this. Only the International Covenant on Civil and Political Rights, its Second Additional Protocol, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination against Women and the International Convention Disappearance do not permit a denunciation of the treaty.

This was confirmed by the Human Rights Committee in its [General Comment No. 26](#) from 1997. The Human Rights Committee had already declined North Korea's denunciation from the International Covenant on Civil and Political Rights, and it also declined Jamaica's denunciation from the Second Additional Protocol to the International Covenant on Civil and Political Rights.

When a state finds itself in a state of emergency, some civil-political human rights may be temporarily restricted (Article 4, International Covenant on Civil and Political Rights). However, a state of emergency always has to be officially declared and accounted for, and has to be limited in time. Some human rights like the prohibition of torture cannot be derogated under any circumstances.

6. What are State Reports and Concluding Observations?

The [Concluding Observations](#) (or Concluding Comments) are assessments of the implementation of human rights treaties by a state. They are issued by the respective [treaty bodies](#) after their examination of the [State Reports](#). States have to submit these reports for the first time at the latest two years after the ratification of a human rights treaty and then subsequently every four to five years. Treaty bodies discuss these State Reports at their meetings with representatives of the respective state. National or international non-governmental organizations may be heard, too. In the Concluding Observations the treaty bodies summarise their assessment of progress and deficits in the implementation of the human rights treaties in the particular state and give recommendations for an improved realisation.

Non-governmental organizations and National Human Rights Institutions ([NHRI](#)) often compile additional information, in the form of so-called parallel reports, publicise the Concluding Observations and use them in calling for political measures for the implementation of human rights.

7. What are General Comments?

Next to the examination of treaty implementation, the treaty bodies also interpret the human rights guaranteed in the treaties and have issued a number of so-called [General Comments](#). These are authoritative interpretations of individual human rights or of the legal nature of human rights obligations. They are issued by the [treaty bodies](#) monitoring the implementation of human rights treaties. General Comments provide orientation for the practical implementation of human rights and form a set of criteria for evaluating the progress of states in their implementation of these rights.

- The [General Comment No. 31](#) (2004) of the Human Rights Committee ([HRC](#)) describes the legal nature of the obligations resulting out of the International Covenant on Civil and Political Rights ([ICCPR](#)) as obligations to respect, to protect and to fulfil human rights. This also includes the obligation to establish mechanisms for redress, accessible for all persons in case of human rights violations.
- The [General Comment No. 24](#) (1999) of the Committee on the Convention on the Elimination of all Forms of Discrimination against Women ([CEDAW](#)) details the obligation to respect women's rights to health: Access to health services for women may not be restricted on grounds that a woman is unable to provide permission for treatment by her husband, parents or health authorities.
- In [General Comment No. 15](#) (2002), the Committee on the International Covenant on Economic, Social and Cultural Rights ([CESCR](#)) declares the human right to water to be derived from Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights ([ICESCR](#)). Availability, quality, geographic access and affordability, prohibition of discrimination as well as access to information are defined as core elements of the right to water and explained in detail.

When examining a state report, the treaty body uses the General Comments to evaluate whether a state implements the respective human rights and identifies progress or setbacks. There are a number of international initiatives to develop indicators for human rights, based on the General Comments.

8. What are the human rights obligations of the countries receiving German foreign aid?

The partner countries of German development cooperation have ratified nearly all core human rights treaties, e.g.

- all have ratified the Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Discrimination against Women;
- 99 % of them have ratified the International Convention on the Elimination of all Forms of Racial Discrimination;
- 95 % of them have ratified the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights;
- 90 % of them have ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

By ratifying human rights treaties, states are obliged to implement the respective human rights, i.e. to respect, protect and fulfil them. The obligation to respect means that a state is not allowed to prevent persons from enjoying their human rights - neither indirectly nor directly. At the same time the state has to take steps to prevent third parties (e.g. private companies or individuals) from interfering indirectly or directly with the enjoyment of a human right (obligation to protect). And finally, a state is obliged to work towards full realisation of human rights by using adequate legislative, administrative, financial, legal and other measures - this is called the obligation to fulfil.

State obligations with respect to the right to work

Obligation to respect: The state is not allowed to decree forced or compulsory labour. It has to refrain in particular from denying or limiting equal access to decent work for all persons. This holds particularly true for disabled or marginalized individuals or groups including prisoners or detainees, migrant workers and members of ethnic minorities. [...]

Obligation to protect: The state has to introduce appropriate measures to assure that third parties such as private enterprises also guarantee access to decent work and training without discrimination. Worker's rights are not to be undermined by privatisation, and a transition to a more flexible labour market may not reduce the social protection of workers. [...]

Obligation to fulfil: The state has to recognise the right to work in the national legal system and to adopt a national policy on the right to work as well as a detailed plan for its realisation. These include also measures to fight unemployment and a labour policy that stimulates economic growth and development, raises the population's level of living and overcomes un- and underemployment. Compensatory mechanisms are to be created for the event of loss of employment. The unemployment rate is to be measured and observed by the state. [...]

Source: abridged from UN, Committee on Economic, Social and Cultural Rights: General Comment 18 on the right to work, 06.02.2006. [[PDF](#)]

The Concluding Observations to the State Reports and the General Comments explain how states are supposed to realise these obligations. Taken together, they propose suitable measures and describe the dimensions and quality necessary for the implementation of a human right. When it comes to the rights enshrined in the International Covenant on Economic, Social and Cultural Rights these dimensions are usually summed up as:

- availability;
- accessibility (geographically and physically);
- affordability, and
- quality.

Furthermore, the General Comments stress that the realisation of human rights obligations cannot take place in a way that deprives persons of the right to choose or excludes certain groups of people. On the contrary, human rights are empowering so that even marginalized groups and individuals may effectively articulate their concerns in the political sphere and participate in the political and economic process. For this to occur, state action has to be transparent and accountable; it also needs to focus on those groups that by themselves are presently not able to articulate and assert their human rights.

For example, the General Comment on the human right to food clarifies that a state is not required to “feed” people but that it creates the conditions for people to support themselves. Only if this is not possible, for example because the people concerned are too young, too old, too sick or victims of humanitarian disasters, the state has to provide food aid - if necessary with international support.

9. What are Germany’s human rights obligations as a donor country?

As a member of the United Nations, Germany is obliged to promote human rights ([UN-Charter, Art. 55-56](#)) in all policy areas, including international cooperation. Germany thus has the same type of obligation as her partners. Furthermore, the International Covenant on Economic, Social and Cultural Rights stipulates that states realise economic, social and cultural rights by means of international cooperation. Most explicitly, the UN Convention on the Rights of Persons with Disabilities requires that measures of development cooperation are inclusive, and cater to the rights and needs of people with disabilities.

As a donor country, Germany has the following specific obligations:

- under no circumstances to take part in human rights violations through either acting or failure to act within the framework of bilateral or other forms of international cooperation (obligation to respect);
- to prevent human rights violations by German citizens or private enterprises
- abroad, provided these are under effective control of the state (obligation to protect);
- to go about development cooperation in such a way that it verifiably contributes to the fulfilment of human rights in the partner country.

10. Is a country obliged to implement human rights despite a lack of resources?

Yes. The obligations to respect and protect human rights often do not require the commitment of large financial resources. This differs with respect to the obligation to fulfil human rights. This is why the International Covenant on Economic, Social and Cultural Rights stipulates that some economic social and cultural rights may be achieved progressively, depending on the existing resources: “Each State Party to the present Covenant undertakes to take steps, ... with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” (Article 2, paragraph 1).

However, states have to act upon some obligations immediately. These include:

- a ban on discrimination (see question 11);
- effective steps towards a prompt realization of the economic, social and cultural rights enshrined in the Covenant, e.g. through national programmes or action plans;
- detailed reasoning if there is any setback from an already achieved standard in the realisation of a given human right (e.g. introduction of fees for public education institutions).

When states do not have sufficient resources, they will have to prioritise on how to implement human rights. [General Comment No. 3](#) (1990) of the Committee on the International Covenant on Economic, Social and Cultural Rights, supports states by laying down the following rules:

- The state has to establish that it has invested the maximum resources available for the realisation of all human rights in a targeted way. This includes how international assistance is used by the state.
- If priority is given to the implementation of one specific right, this choice needs to be objectively justifiable (e.g. to address previous discrimination against specific groups like minorities or women).
- Human rights law thus acknowledges that limited resources will lead to country-specific policy choices. It offers guidance on how to opt for specific policies while still being in accordance with human rights obligations.

11. What is discrimination?

Equality and the protection from discrimination constitute structural principles of human rights. They are thus of central importance to the human rights-based approach. As a legal term discrimination means unequal treatment without an objectively justified reason. From a sociological perspective, discrimination means that persons are being denied equal membership in society due to real or ascribed particular characteristics (like origin, sex, disability, sexual orientation etc.). This degrading message may be explicit or implicit and may manifest itself in either discriminating actions or discriminatory structures.

Protection from discrimination refers to protection of direct discrimination, which may be intended or immediate consequences of state actions. A prominent example is when law excludes women from the right to vote. But human rights law also entails protection from indirect forms of discrimination. These are regulations which appear to be neutral, but nevertheless have a de facto discriminating impact on a certain group of people. This is the case for example if

- inhabitants of rural areas do not have access to health care because health services are primarily established in far-away cities or towns;
- public water standpipes are built in such a way that people with a physical disability cannot operate them;
- school education is provided in a language that linguistic minorities have no command of.

Some types of discrimination are particularly challenging: imagine the consequences of a combination of individual behavioural patterns, social rules and/or institutional procedures. Taken together, this may create disadvantages for some groups of the population in central areas of life and is called structural or institutional discrimination. It may lead to social exclusion of whole sections of the population like e.g. indigenous groups.

Yet another form of discrimination is called multiple or multidimensional. Indigenous women, for example, are often discriminated against on grounds of their ethnic identity and on grounds of sex and gender. This multidimensional discrimination may be effective within and without the respective ethnic group.

If there is structural discrimination, the human rights principle of non-discrimination may require that states introduce temporary supportive measures, for example:

- introduction of quota systems in order to increase the percentage of members of ethnic minorities or women in state institutions;
- support the establishment of educational opportunities or other social services in hitherto deprived areas.

Discrimination often leads to social exclusion and marginalization, though in return those are not always the result of discrimination. Other reasons for social exclusion and marginalization can be an uneven distribution of power and unequal opportunities to participate in decision-making processes or an extremely disproportionate distribution of income and land. However, discrimination, social exclusion, and marginalization often share the same roots, and very often they also have similar negative consequences:

Discriminating Effects: Resource allocation for education in poor quarters in Buenos Aires

As in many major cities all over the world, educational opportunities for children in Buenos Aires differ starkly depending on where children live. Children from the well-off northern districts have access to a large array of educational opportunities, while children in the poor south of the city can only access schools of bad quality, in terms of educational outputs and conditions for teachers and learning. Among others, this discrimination results from unequal public spending. A study by the Argentinian NGO, Asociación Civil por la Igualdad y la Justicia, demonstrated:

- In poor quarters, only 32.6% of the proposed spending for educational infrastructure was actually disbursed, while in the five most affluent quarters 50% were disbursed.
- The amounts due to schools for maintenance and renovation are calculated on the basis of the number of classes in the school, and not the number of pupils enrolled. This has discriminatory effects for schools in poorer districts, which generally have more pupils in one class. In budget terms: Schools in poorer districts are allocated 42 US\$ per pupil per year for maintenance, schools in more prosperous districts 52 US\$. Source: Asociación Civil por la Igualdad y la Justicia: No School for the Poor. Discriminatory Treatment Towards the Poor, Nuria Becú (thanks to Nuria for her permission)

12. What is the relation between human rights and the Millennium Development Goals (MDGs)?

Human rights and the MDGs are complementary - conceptually, politically and in practice. In the [Millennium Declaration](#) (2000), the realisation of human rights is conceptualized as a prerequisite to development and the fight against poverty. According to the Millennium Declaration, the [MDGs](#) and sustainable poverty reduction cannot be accomplished without tangible improvements in all human rights.

Human rights and the human rights-based approach enhance the strategies for achieving the MDGs: human rights move beyond national averages so prominent in MDG monitoring and enable people-centred strategies to achieve the MDGs. Human rights require that those affected by poverty and discrimination participate in the processes towards achieving the MDGs.

Human rights thus enrich the MDGs and the goals and strategies followed to realize them.

13. Are states obliged to provide social services free of charge to the poor and extremely poor?

Yes, some services are to be provided free of charge:

- The human right to education obliges the state parties to provide free basic education for all (Article 13 paragraph 2a, International Covenant on Economic, Social and Cultural Rights);
- The human right to food obliges states to provide adequate food if persons or groups cannot feed themselves, e.g. prison inmates (General Comment Nr. 12 of the Committee on Economic, Social and Cultural Rights);
- Finally, the human right to a fair trial stipulates that state parties have to provide solicitors and interpreters to accused persons free of charge, when those persons do not have sufficient financial resources (Article 14 paragraph 3 d and f of the International Covenant on Civil and Political Rights).

On the other hand, the human rights to health and water do not oblige a state to provide services free of charge to the extremely poor. But when determining the fees for health services and drinking water, human rights laws requires that these are affordable for all sections of the population. To calculate what is “affordable” the costs for all other vital goods have to be included. If for example health-related spending compromises a households ability to afford sufficient food or to pay for the school attendance of children, then access to health care cannot be deemed affordable. This is all the more important since developing countries often do not have any effective form of social security, and thus fees for basic services hit households without any safety net.

There is a wide array of policy choices on how states may implement their human right obligation to guarantee affordable access to social services. The state can offer these services directly - e.g. by providing for public health centres- or subsidizes access of the poor to private health providers. The obligation to keep services affordable for all remains in place if a state privatises essential social services, like health care or water.

Overall, the human rights-based approach implies that poorer households may not be burdened with disproportionately higher costs for basic services.

14. Is it in accordance with human rights law to support the supply of services and infrastructure in comparatively better-off regions and groups?

The human rights principle of non-discrimination requires that public resources benefit disadvantaged regions and groups. Likewise, for development cooperation elite capture of development benefits poses a serious challenge to poverty reduction.

To effectively contribute to more equity, development cooperation may offer targeted support for persons in marginalized regions or for discriminated groups in order to enable them to access state services and infrastructure. Targeted support for comparably better-off regions or population groups is likewise possible but only if it can be shown to generate a substantial trickle-down effect for poorer groups.

15. May a state prioritise a specific sector of development cooperation despite the fact that human rights are indivisible and interrelated?

As so often: yes and no. On the one hand, the indivisibility and interrelatedness of human rights prohibit a rigid prioritisation of one human right at the expense of another. On the other hand, human rights law encourages states to set priorities if limited resources do not allow implementation of all human rights at the same time. The decision on which sector - e.g. provision of health care or basic education - is to be granted priority, is a political one and none that can be taken on the basis of human rights standards alone.

But there are limits to political discretion: Human survival - in terms of shelter, food, water, and health - needs to be addressed as a matter of priority. States need to use the available resources for maximum human rights gains for persons and groups in vulnerable situations.

Published by

Deutsche Gesellschaft für
Technische Zusammenarbeit
(GTZ) GmbH

Dag-Hammarskjöld Weg 1-5
D-65760 Eschborn
T +49 (0) 6196 -79-0
E info@gtz.de
I www.gtz.de

Sector project

“Realising Human Rights
in Development Cooperation”
Div. 42, State and Democracy

Contact

Juliane Osterhaus
Tel. +49 (0) 6196 79 1523
juliane.osterhaus@gtz.de
www.gtz.de/human-rights

Eschborn, September 2009