



## E-Info Tool

On the human rights-based approach  
in German development cooperation

# Human Rights in Development Cooperation with Zambia

## Introduction

In March 2008, the German Federal Ministry for Economic Cooperation and Development (BMZ) adopted the second [Development Policy Action Plan on Human Rights 2008-2010](#), to systematically integrate a human rights-based approach into German development policy and practice across sectors and levels of intervention.

The GTZ project "[Realizing Human Rights in Development Cooperation](#)" was launched in June 2005. It provides advisory support to BMZ and its governmental implementing organisations in achieving this objective.

This e-info tool consists of four parts with the following

## Table of Content

1. Zambia's Ratification of International and Regional Human Rights Conventions
2. Zambia's Human Rights Obligations
3. Interpretation and Operationalisation of Human Rights
4. The Zambian Human Rights Commission

## 1. Zambia's Ratification of International and Regional Human Rights Conventions

United Nations (UN) human rights treaties are the basis of international human rights protection. The international human rights treaties are legally binding, and have been ratified by most UN member states.

In addition to the international treaties, there are several regional human rights treaties for [Africa](#), [the Arab World](#), [the Americas](#), and [Europe](#). They support the implementation of human rights on the regional level, and often reflect additional human rights concerns particular to specific cultural contexts.

Zambia has ratified seven of the nine core international human rights treaties (see next page). As a ratifying party, Zambia is obliged to implement the rights guaranteed by these treaties and to regularly report on progress to the UN treaty bodies.

So far, Zambia has not ratified the Optional Protocols to the human rights treaties which enable individuals to submit complaints to the UN treaty bodies (e.g. the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women), the exception being the First Optional Protocol to the International Covenant on Civil and Political Rights, which was ratified by Zambia in 1984.

In November 2002, Zambia ratified the [Rome Statute for the International Criminal Court](#).

As of 1 January 2011:

**giz** Deutsche Gesellschaft  
für Internationale  
Zusammenarbeit (GIZ) GmbH



## Ratification of the Core International Human Rights Treaties by Zambia

International Convention on the Elimination of All Forms of Racial Discrimination ([ICERD](#))  
Ratified 4 February 1972

International Covenant on Civil and Political Rights ([ICCPR](#))  
Ratified 10 April 1984

International Covenant on Economic, Social and Cultural Rights ([ICESCR](#))  
Ratified 10 April 1984

Convention on the Elimination of All Forms of Discrimination against Women ([CEDAW](#))  
Ratified 21 June 1985

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([UNCAT](#))  
Ratified 7 October 1998

Convention on the Rights of the Child ([CRC](#))  
Ratified 6 December 1991

International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families ([CMW](#))  
Not ratified

Convention on the Rights of Persons with Disabilities ([CRPD](#))  
Ratified 1 February 2010

International Convention for the Protection of All Persons from Enforced Disappearance ([CPED](#))  
not ratified

Last Update: 7 May 2010

Regionally, Zambia is party to the [African Charter on Human and Peoples' Rights](#), and has ratified the [Protocol on the Rights of Women in Africa](#), as well as the [Convention Governing Specific Aspects of Refugee Problems in Africa](#).

It has also ratified the [African Charter on the Rights and Welfare of the Child](#).

Zambia has signed and ratified [the Protocol on the Statute of the African Court of Justice and Human Rights](#), merging the African Court on Human and Peoples' Rights and the African Court of Justice. Thus, it accepts the

jurisdiction of the [African Court for Human Rights](#).

## 2. Zambia's Human Rights Obligations

By ratifying human rights treaties, Zambia has accepted certain obligations, which are essential and legally binding for Zambian development strategies. One obligation is harmonizing domestic legislation with human rights. This is an important prerequisite for citizens to hold their state to account. Another obligation relates to the implementation of human rights in policies, strategies, budgeting, and administration in general.

All governmental bodies are bound to respect human rights and to protect individuals from infringements of their human rights by third parties, e.g. private individuals or companies. Departments of education, for instance, need to assure that teachers do not use violence against students, and the governmental bodies overseeing agriculture need to protect farm workers from unfair or unhealthy labour conditions. In addition to the obligations to respect and protect human rights, the government is obliged to fulfil human rights, particularly for individuals and groups in vulnerable situations. These are for example those affected by natural disasters and those marginalized in and by society, among them women, ethnic minorities, persons living with HIV/AIDS or disabilities, or the extremely poor.

A government's efforts to fulfil human rights will have budgetary implications. Therefore, article 2 of the International Covenant on Economic, Social and Cultural Rights envisions the progressive realisation of the respective rights should resources not permit otherwise.

Nevertheless, 'progressive realisation' is subject to certain conditions. The government needs to make effective use of all its available resources to promote and fulfil human rights. If the government needs to decide to (temporarily) give priority to fulfilling certain human rights, this decision has to be based on legitimate grounds. Furthermore, while some aspects of human rights fulfilment are subject to progressive realisation, others such as the prohibition of discrimination are not. Discrimination is defined as unequal treatment without legitimate reason, for example on the grounds of colour, sex, age, ethnicity, religious or political belief, or health status. The prohibition of discrimination requires governments to remove legislative, structural and institutional discrimination without delay.

The ratification of human rights treaties implies an obligation to report to the UN treaty bodies on the state of implementation in the country, including progress and failures. All human rights treaties require state parties to submit an initial report; the ensuing reporting cycle differs between two to five years.

Zambia used to be one of the many states not taking her reporting obligations seriously and frequently did not report on time or failed to report at all. Zambia's reporting record has improved considerably and many overdue reports have been handed in.

The treaty bodies are committees of independent experts with a wide range of responsibilities. They issue decisions on individual complaints, and monitor the implementation of human rights obligations by commenting on state parties' reports. These comments are called Concluding Observations or, in the case of the women's rights convention, Concluding Comments. The Concluding Observations document progress and failings, and give recommendations on how to improve the implementation of the respective treaty provisions.

The treaty bodies encourage civil society groups to contribute to the process of state

reporting. There are for instance [various opportunities](#) for Zambian NGOs to participate in the work of the Committee on Economic, Social and Cultural Rights with regard to Zambia's state report, which is due in June 2010, particularly in the consideration hereof.

Whilst the more recent Concluding Observations of the several treaty bodies generally endorse several policy measures taken by Zambia (for example the establishment of the Zambian Human Rights Commission and the adoption of several policies and programmes to eliminate discrimination against women), they notice that international human rights have not been sufficiently incorporated into the Zambian legal framework.

Furthermore, they identify a number of shortcomings with regard to the fulfilment of several rights. As will become obvious below, most of these shortcomings touch upon issues also central to Zambian-German Development Cooperation: among them access to social services and to justice.

As a UN-member state, Zambia was subject to the so-called Universal Periodic Review (UPR) in the framework of the Human Rights Council in 2008. The UPR is of political relevance and all UN-member states are subjected to it. It offers a wealth of information on how the government and national stakeholders – like NGOs – assess the human rights situation in the country. Domestically, UPR-reporting should be done in a consultative, transparent way, and – like reporting to the treaty bodies – can initiate domestic dialogue on human rights challenges.

The UPR also [summons up the recommendations and observations made by the various treaty bodies](#).

## **Zambia's State Reports and Concluding Observations**

International Convention on the Elimination of All Forms of Racial Discrimination ([ICERD](#))  
[Last report 2003](#),  
[Concluding Observations \(2005\)](#)  
subsequent report overdue since March 2009

International Covenant on Civil and Political Rights ([ICCPR](#))  
[Last report 2005](#)  
[Concluding Observations \(2007\)](#), next report due July 2011

International Covenant on Economic, Social and Cultural Rights ([ICESCR](#))  
[Last report 2003](#)  
[Concluding Observations \(2005\)](#);  
next report due June 2010

Convention on the Elimination of All Forms of Discrimination against Women ([CEDAW](#))  
[Last report 1999](#),  
[Concluding Recommendations \(2002\)](#)  
5<sup>th</sup> and 6<sup>th</sup> periodic reports handed in together to be considered at 49<sup>th</sup> session 2011

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([UNCAT](#))  
[Last report 2005](#)  
[Concluding Observations \(2008\)](#)

Convention on the Rights of Child ([CRC](#))  
[Last report 2001](#)  
[Concluding Observations \(2003\)](#)  
subsequent report overdue since Jan. 2009

Last Update: 7 May 2010

The overarching concern of the cited documents is that Zambia has not yet fully incorporated the UNCAT, the ICERD, the ICESCR and the ICCPR into its domestic law (paragraph 2), although this was a [pledge made by Zambia before the Human Rights Council as part of its candidature](#) for a seat on the Council. Zambia pledged furthermore that it would “continue to cooperate with UN human rights treaty bodies by meeting deadlines for submission of periodic reports and acting on their concluding observations

and recommendations” (page 4 of the pledge).

The UN-Committee against Torture, in its 2008 Concluding Observations voiced its regret “that the State party was unable to implement all the recommendations made by the Committee during the consideration of the initial report of Zambia, in 2001” (paragraph 2). Listed below are some of the further concerns stated by the different treaty bodies in their most recent reports.

The Human Rights Committee as treaty body for the ICCPR noted that it was alarmed that “the precedence of statutory law over customary law is not always ensured in practice, due especially to the low level of awareness that the population has of its rights.” Similarly, the Committee on the elimination of all forms of racial discrimination (CERD) “remained concerned that most people living in Zambia are not aware of their rights.” Both Committees recommended that Zambia increase its efforts to raise awareness of people about their rights, and about the right to appeal before statutory courts (paragraph 16).

The Committee on economic, social and cultural rights (CESCR) was deeply alarmed “that extreme poverty in Zambia had negatively affected the enjoyment of economic, social and cultural rights, especially by the most disadvantaged and marginalized groups, including girl children and those afflicted by HIV/AIDS. The Committee on the rights of the child (CRC) expressed similar concerns. The CRC and CESCR recommended that Zambia guarantee an adequate standard of living, including through the provision of social safety-nets. The CESCR further urged Zambia to extend the social protection under the National Pension Scheme Authority” (paragraph 25).

The CESCR was moreover concerned “at the high-level of unemployment and urged Zambia to undertake and implement employment action plans, which could gradually reduce employment in the informal sector” and further recommended “that

Zambia take effective measures to ensure that the minimum wage enables workers and their families to enjoy an adequate standard of living and that appropriate legislative measures enabling workers to form trade unions be taken” (paragraph 17).

### 3. Interpretation and Operationalisation of Human Rights

Human rights treaties are legal documents, rendered in a rather abstract and general language. Over the years, the treaty bodies have adopted so-called General Comments. They interpret the core elements of the respective human rights norms and the measures necessary and appropriate to implement them. The General Comments use examples to illustrate the state obligations to respect, protect and fulfil human rights. General Comments also clarify the essential human rights principles, that are participation and empowerment, non-discrimination and equality of opportunities, transparency and accountability. There are General Comments for all human rights treaties.

Complementary to the General Comments, UN special mechanisms have issued guidelines, which further operationalise certain rights for development.

In addition to the treaty bodies, the work of so-called Special Rapporteurs constitutes another important human rights mechanism. Special Rapporteurs are appointed by the [Human Rights Council](#). To date, there are [Special Rapporteurs](#) for about 30 human rights issues from among all human rights treaties, and a number of Rapporteurs dealing with country situations.

Special Rapporteurs have numerous tasks and different mandates. They take part in developing new standards and some may communicate allegations of human rights violations to governments in the form of urgent appeals. All Special Rapporteurs have a mandate to request country visits. In 2008, Zambia issued a standing invitation, thereby announcing that the country will always accept requests to visit from all Special Rapporteurs. Reports on country visits

analyse the implementation of human rights in detail, and give recommendations on how to improve it. Some Special Rapporteurs have also developed indicators on how to measure the fulfilment of human rights obligations.

The first visit to Zambia by a Special Rapporteur was undertaken by the Independent [Expert on human rights and extreme poverty](#) in August 2009. Her report will be presented at the 14<sup>th</sup> session of the Human Rights Council, which will be held in June 2010. Having concluded her visit, she issued a [press statement](#) stating the preliminary findings of her mission.

The Independent Expert expressed her profound concern at the devastating effects of the persisting extreme poverty in urban and rural areas and called the current actions taken by the Zambian government “insufficient”. She therefore urged it to implement the commitments made and “do more with its limited resources in the battle against extreme poverty”. Likewise she complimented Zambia on the programmes and institutions in place, but criticized the lack of funding for these programmes. She particularly highlighted the positive effects of the social cash transfer schemes and called upon the government to expand them in order to reach more beneficiaries.

The Independent Expert pointed out that in particular the Government could do more to ensure effective participation, accountability and transparency. She underlined that participation in public life is a human right and that public policies are not effective unless they are developed in a participative and consultative way. For NGOs to play an important part in this process, they need to be able to work independently. That is why the Independent Expert expressed extreme concern at provisions included in the recently adopted NGO Act, which could lead to interference with this independence thus undermining the democratic process.

Furthermore, she noted that the current ongoing review of the Constitution by the National Constitutional Conference was a unique opportunity to bring the Zambian legal

framework in line with international human rights standards and “to ensure that international human rights treaties are automatically incorporated into domestic law”.

The review process should also be used “to concretely work towards the progressive realization of all economic, social and cultural rights, placing them on equal footing with civil and political rights.” These include among others the right to water, which has been interpreted and substantiated by the Committee on Economic, Social and Cultural Rights in its [General Comment No. 15](#).

#### 4. The Zambian Human Rights Commission

The establishment of the Zambian Human Rights Commission was welcomed by the UN treaty bodies. The Commission was accredited to the [International Coordination Committee of National Institutions](#) in October 2007, with “A” status, thereby certifying that it is in full compliance with the Paris Principles in law and practice.

Since then, however, concerns have been voiced by various bodies. For instance in 2006, the Special Representative of the Secretary-General on human rights defenders noted that “the mandate of the Commission was fairly broad (...). However, she noted with concern reported limitations to its work such as lack of funds, lack of enforcement powers (e.g. no power to initiate legal proceedings, no enforcement mechanisms vis-à-vis state institutions that are addressees of recommendations), failure to follow up on

initial recommendations when they are rejected by the Government and too much caution in addressing more politically sensitive abuses by the Government” (UPR Report paragraph 3).

The CERD, the Human Rights Committee, the CESCR and the CRC also expressed similar concerns and recommended that Zambia make all possible efforts to increase the Commission’s resources. The CRC expressed further concern about the Commission’s lack of independence.

The UN-Committee against torture (CAT) echoed these findings in its 2008 Concluding Observations and, in addition, recommended that “it [the State party] should also reinforce the independence of the commissioners, especially with regard to the appointment process, and enhance the enforcement power of the Commission” (paragraph 8).

The ongoing constitutional review is seen as an opening to address these issues. The UPR report states: “CERD noted with interest the plan to decentralize the Commission’s offices and the information that the new draft Constitution contains provisions enhancing the effectiveness of the Commission” (paragraph 3).

#### Resources

[General Comments](#), by treaty

[Special Rapporteurs: Thematic Mandates](#)

[Universal Periodic Review](#).

#### Imprint

Published by:  
Deutsche Gesellschaft für  
Technische Zusammenarbeit (GTZ) GmbH

Dag-Hammarskjöld-Weg 1-5  
65760 Eschborn, Germany  
T +49 61 96 79-0  
F +49 61 96 79-11 15  
E [info@gtz.de](mailto:info@gtz.de)  
I [www.gtz.de](http://www.gtz.de)

#### Contact

Juliane Osterhaus  
T +49 61 96 79-1523  
E [juliane.osterhaus@gtz.de](mailto:juliane.osterhaus@gtz.de)  
I [www.gtz.de/human-rights](http://www.gtz.de/human-rights)

Cross-sectoral project  
“Realising Human Rights in Development Cooperation”  
Division ‘Governance and democracy’

Eschborn, May 2010