

MONITORING AND CLAIMING ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN ZAMBIA

An introductory handbook for Churches and CSOs

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Acronyms

AU	African Union
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CPR	Civil and Political Rights
CRC	Convention on the Rights of the Child
ECOSOC	UN Economic and Social Council
ESCR	Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
JCTR	Jesuit Centre for Theological Reflection
MDGs	Millennium Development Goals
NCC	National Constitutional Conference
NGOs	Non-Governmental Organisations
OEA	Organisation of the American States
OHCHR	Office of the High Commissioner for Human Rights
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNAIDS	Joint United Nations on HIV/AIDS
UNDP	United Nations Development Programme

1. Introduction

One of the basic foundations of human dignity is the enjoyment and/or realisation of economic, social and cultural rights (ESCR). ESCR are entitlements which guarantee that socio-economic opportunities are made available, accessible and affordable by the State in order for the citizens to live a life befitting a human being. It is therefore necessary that people enjoy their rights to food, work, education, health and housing in order for them to live decently and to fully develop. However, as one human right activist puts it, “when women and men cannot find jobs which provide just wages; when people cannot afford to buy food or are unable to access food for themselves and their families; when parents cannot send their children to school; when individuals are not able to access basic health care services, this means that not only is their existence inhuman, but also that their economic, social and cultural rights are violated”. These negative conditions indicate failure on the part of the State to fulfil its human rights obligations to its citizens and entail the urgency for citizens to claim their rights to realise their dignity. This is why knowing one’s human rights is a necessary condition for people to claim and assert them. Having a firm grasp and understanding of basic human rights concepts, principles and approaches provide people with a tool that guide them towards appropriate action.

The role that Churches and Non-Governmental Organisations (NGOs) play in the education of human rights cannot therefore be overlooked. Churches and NGOs have a civic responsibility to educate the citizenry and to ensure that the Zambian government complies not only to its international obligations but also with its domestic obligations. A commitment to international instruments, declaration and optional protocols is not enough to ensure effective protection and promotion of ESCR in Zambia. Churches and NGOs must, among others, ensure that they increase their capacity to understand and apply the appropriate domestic and/or international, and regional human rights system; develop effective internal systems, procedures and plans to address implementation of ESCR; and identify the most effective and appropriate strategies to address particular issues related to ESCR.

This introductory handbook by the Jesuit Centre for Theological Reflection (JCTR) is written with the aim of equipping Churches and NGOs working in Zambia with knowledge and skills to engage with the government to comply with its international obligations on the realisation of ESCR, and to intervene, prevent and/or stop the violation of ESCR. There is no doubt that familiarity with issues such as scope, nature of State obligations, monitoring and documentation of human rights violations, will help Churches and NGOs to conduct their advocacy and lobby efforts of fostering implementation of ESCR in Zambia more effectively.

The main aim of this handbook is to help Churches, human rights organisations, and interested individuals in monitoring Zambia’s commitment to the realisation of ESCR. Therefore, the handbook has a two-fold purpose. Firstly, it provides basic essential information on monitoring and claiming ESCR in Zambia based on international human rights standards, especially through the United Nations (UN) and the African human rights systems. Secondly, it gives useful insights on monitoring and claiming ESCR in Zambia using the current constitutional and/or other available local remedies such as the human rights commission. The handbook is one of the recent documents by the JCTR on the status and realisation of ESCR in Zambia.

The handbook is divided into seven sections. The first section gives a brief overview of the nature and purpose of human rights. The second section examines the state obligations and/or violations of international human rights treaties. The third section addresses the issue of ESCR protection and remedies available at international and national levels. The fourth section explores the different ways of monitoring ESCR such as through assessment of government

compliance with ESCR standards, indicators and benchmarks. The fifth section highlights the generally accepted understanding of the scope, key targets and indicators regarding the rights to housing, education, health and food. It also gives input on HIV/AIDS, corporations and realisation of ESCR. The sixth section looks at data gathering and documentation techniques necessary in monitoring ESCR. Finally, the seventh section advances the urgent need for Churches and NGOs to be involved in monitoring ESCR in Zambia.

This handbook draws on a wide range of resources, particularly human rights manuals and guides, which have been developed in recent years by various organisations working on the realisation of ESCR including the Office of the High Commissioner for Human Rights (OHCHR), African Union (AU), United Nations Development Programme (UNDP), Philippine Human Rights Information Center and ESCR-Net. We highly recommend and encourage organisations interested in monitoring ESCR to constantly visit these organisations' websites for updates on current ESCR developments. This handbook is written with a view of promoting practical action that puts ESCR at the centre of human and national development in Zambia.

2. Human Rights: Nature and Purpose

2.1. Definition of Human Rights

The concept of "human rights" has been defined in various ways. Here are a few examples:

"Human rights are the rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity. They give all people moral claims on the behaviour of individuals and on the design of social arrangements – and are universal, inalienable and indivisible. Human rights express our deepest commitments to ensuring that all persons are secure in their enjoyment of the goods and freedoms that are necessary for dignified living". (UNDP, 2000, 16)

"Human rights are universal legal guarantees protecting individuals and groups against actions by governments which interfere with fundamental freedoms and human dignity. Human rights law obliges governments to do some things, and prevents them from doing others. 'Human rights' are now defined with far more detail and specificity. International human rights law is, therefore, more protective of vulnerable individuals and groups, including children, indigenous groups, refugees and displaced persons and women". (UN, 2001, 8)

"Human rights are universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity. Human rights law obliges Governments (principally) and other duty-bearers to do certain things and prevents them from doing others". (UN, 2006, 1)

In other literature (Santos et al., 2006) human rights are summarised as including:

- A set of guarantees for humans not only to exist, but also to live with all the necessary conditions that befit a rational being.
- Human rights are inherent in our nature, without which we cannot live as human beings. These include basic needs and essential qualities and requirements that allow every person to grow and develop.
- Human rights make individuals humans. They constitute the essence of one's humanity.

- Human rights serve as the foundation of a life of dignity. They are birthrights which every person is entitled to by virtue of being human.
- Human rights are normative standards/guideposts by which States are to conduct themselves when relating to their citizens/constituents.

Therefore, human rights are means to affirm, promote, and realise the value of being human. Human rights provide the necessary conditions and situations for unfolding, realising and blossoming to a fuller life as a human being, i.e., as persons and as a people (collective).

2.2. Human dignity

Human dignity is the foundation of human rights. (i.e., Human dignity is the basis upon which human rights are founded.) Everyone is born with human dignity. Human dignity is inherent and inborn, inalienable and indivisible. Human dignity is the totality of all human rights which makes a person whole. No country or government is allowed to deny universal human rights.

2.3. Basic Principles of Human Rights

Some of the most important characteristics of human rights are that:

Human rights are inherent. Human rights are innate, natural, and inborn in every person. They are not granted by any authority.

Human rights are universal. Human rights equally belong to every human being everywhere regardless of, for example, race, colour, age, sex, language, religion, class, political belief, or social origin.

Human rights are inalienable. Human rights cannot be separated, transferred, taken away, lost or surrendered regardless of who or what the person does.

Human rights are indivisible. All human rights – civil, political, economic, social, and cultural – are co-equal and all-important. They are entitlements to the totality of a person as a human being, and thus, cannot be divided into parts.

Human rights are interrelated and interdependent. Human rights are mutually dependent and exist in a reciprocal relationship. The enjoyment or fulfilment of one right is often dependent on the enjoyment of other rights. Likewise, when one right is violated, often times other rights are violated as well. They are sources of other rights, e.g., from the right to life springs other rights like the right to food and water, right to work, right to a healthy environment, and right to shelter or housing.

Human rights are imprescriptible. Human rights do not have any time limit; that is, no expiration period.

2.4. Categories of Human Rights

Human rights may be classified into several ways, usually according to source, recipient and aspects of life.

First, **according to source:**

Natural Rights – refer to rights which are God-given. They may be unwritten but acknowledged by everyone as morally good.

Constitutional Rights – refer to rights enshrined in the Constitution. They cannot be disregarded unless the Constitution is amended or changed.

Statutory Rights – refer to rights which are provided by law, promulgated by a law-making body such as Parliament, and therefore may be abolished by the same body.

Second, **according to recipient:**

Individual Rights – These are rights accorded to individuals such as the right to life, education, health, work; right of suffrage; freedom of expression; freedom from torture, cruel or degrading treatment and punishment; freedom of expression; and right to a fair trial. The Zambian Bill of Rights guarantees individual civil and political rights.

Collective Rights – These are also known as peoples' rights or solidarity rights enjoyed by groups of people or only in the company of others. For example, the right to development, self-determination, a healthy and balanced environment, and ancestral domain are all enjoyed by groups of people.

Third, **according to aspects of life:**

Civil Rights – refer to rights which the law accords to private individuals for the purpose of securing the enjoyment of their means and happiness (e.g., right to life, freedom of expression, association, speech, movement, and right to marry and form a family).

Political Rights – refer to rights which enable an individual to participate (directly or indirectly) in running the affairs of the government (e.g., right to vote, right to information on matters of public concern, and right to run for public office).

Economic and Social Rights – refer to rights which the law confers upon the people to enable them to achieve social and economic development, thereby ensuring their well-being, happiness and financial security (e.g., right to work and just compensation, right to property, right to health, right to food, and right to education).

Cultural Rights – refer to rights that ensure the well-being of the individual and foster the preservation, enrichment and dynamic evolution of national culture based on the principle of unity in diversity in a climate of free, artistic and intellectual expression (e.g., right to participate in cultural life, and right to cultural identity).

Solidarity Rights – The right to development, the right to environment and the right to peace are so called “rights of solidarity”. These are new rights that were not expressly recognised by the 1966 Covenants. It is often assumed that these rights should benefit not only individuals but also groups and peoples (collective rights) and their realisation requires global cooperation based on the notion of international solidarity. Collective rights respect, protect, and fulfil the freedoms and entitlements of a group of people with common socio-economic, political, and cultural status in society.

2.5 Global recognition of Human Rights

The concept of human rights began way before the Universal Declaration of Human Rights (UDHR) in 1948 was promulgated. Its origins can be traced from the beginnings of human society when people had to set rules or guidelines on how to relate and treat each other to attain harmony and order in a community (Santos et al., 2006). Moreover, the idea of human rights gained more prominence and recognition after World War II as a response to the atrocities committed by States against defenceless people. The UN General Assembly adopted the UDHR on 10 December 1948 as standards that all peoples of the world must enjoy and governments must uphold. Every year on 10 December the world commemorates the World Human Rights Day.

Human rights and fundamental freedoms are enumerated in the UDHR and in various treaties (also called “covenants” and “conventions”), declarations, guidelines and bodies of principles elaborated by the UN and by regional organisations such as the AU. Human rights norms and standards are derived from two principal types of international sources, namely “customary international law” and “treaty law” (UN, 2000). Customary international law (or, simply, “custom”) is international law which develops through a general and consistent practice of States, followed because of a sense of legal obligation. Treaty law includes the law of human rights as set out in many international agreements (treaties, covenants, conventions) collectively (either bilaterally or multilaterally) developed, signed and ratified by States. All of these instruments are legally binding on the States which are parties to them (UN, 2000). Table 1 shows the international Bill of Rights. The Second Optional Protocol to ICESCR was adopted in 2008. The protocol was opened for signature in 2009.

Table 1: The International Bill of Human Rights

Instrument	Adopted on:	Entered into force on:
Universal Declaration of Human Rights (UDHR)	10 December 1948	-
International Covenant on Civil and Political Rights (ICCPR)	16 December 1966	23 March 1976*
International Covenant on Economic, Social and Cultural Rights (ICESCR)	16 December 1966	3 January 1976*
First Optional Protocol to the ICCPR	16 December 1966	23 March 1976*
Second Optional Protocol to the ICCPR on Death Penalty	15 December 1989	11 July 1991*

*An instrument, e.g., covenant or convention, is enforced after the required number of member states, which has ratified it, has been obtained.

Source: Santos et al. (2006); OHCHR, www.ohchr.org.

Human rights standards are also enshrined in other types of instruments: declarations, recommendations, bodies of principles, codes of conduct and guidelines such as the Declaration on the Right to Development, and Millennium Development Goals (MDGs). These instruments are not legally binding on States in and of themselves. Nevertheless, they have moral force and provide practical guidance to States in their conduct (UN, 2000). The value of such instruments rests on their recognition and acceptance by a large number of States and, even without binding legal effect, they may be seen as declaratory of principles that are broadly accepted within the international community. Some of the major international treaties and their monitoring bodies are shown in Table 2.

Table 2: Main United Nations International Human Rights Treaties

Treaty	Adopted	Monitoring body
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	1965	Committee on the Elimination of Racial Discrimination
International Covenant on Civil and Political Rights (ICCPR)	1966	Human Rights Committee
International Covenant on Economic, Social and Cultural Rights (ICESCR)	1966	Committee on Economic, Social and Cultural Rights
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	1979	Committee on the Elimination of Discrimination Against Women
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	1984	Committee against Torture
Convention on the Rights of the Child (CRC)	1989	Committee on the Rights of the Child
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC)	1990	Committee on Migrant Workers

Source: United Nations Treaties Database, OHCHR, www.ohchr.org.

When reading these treaties the following terms are necessary for the basic understanding of the status of a country (UNDP, 2000).

States parties – States parties to an international agreement are the countries that have ratified it and are thereby legally bound to comply with its provisions.

Ratification of a treaty (covenant, convention) – Ratification of an international agreement represents the promise of a state to uphold it and adhere to the legal norms that it specifies.

Signing of a treaty (covenant, convention) – Signing a treaty, covenant or convention represents a promise of the state to adhere to the principles and norms specified in the document without creating legal duties to comply with them. Signing is the first step that states undertake towards ratifying and thus becoming states parties to an agreement.

Reservation to a treaty (covenant, convention) – A reservation to a treaty indicates that a state party does not agree to comply with one or more of its provisions. Reservations are, in principle, intended to be used only temporarily, when states are unable to realise a treaty provision but agree in principle to do so.

Treaty bodies – Treaty bodies are the committees formally established through the principal international human rights treaties to monitor states parties' compliance with the treaties. Treaty bodies have been set up for most of the core UN human rights treaties to monitor states parties' efforts to implement their provisions.

The status of Zambia with regard to the major UN treaties is shown in Table 3.

Table 3: Zambia's status with core international instruments

Treaty	Signature	Formal confirmation(c), Accession(a), Ratification
Economic, Social and Cultural Rights		
ICESCR (1966)		10 Apr 1984 a
Optional Protocol to ICESCR (2008)	-	-
Civil and Political Rights		
ICCPR (1966)		10 Apr 1984 a
First Optional Protocol to ICCPR (1966)		10 Apr 1984 a
Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty (1989)	-	-
Women's Rights		
CEDAW (1979)	17 Jul 1980	21 Jun 1985
Optional Protocol to CEDAW (1999)	29 Sep 2008	
Children's Rights		
CRC (1989)	30 Sep 1990	6 Dec 1991
Person's with disabilities		
Convention on the Rights of Persons with Disabilities (2006)	9 May 2008	1 Feb 2010
Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)	29 Sep 2008	-

Source: United Nations Treaty Database, www.ohchr.org. [Accessed 08/10/2010]

Visiting the UN treaty database is the starting point when monitoring state compliance with its international obligations. The database also contains information on state reporting. With regard to the ICESCR, Zambia's initial report (E/1990/5/Add.60) was reviewed by the CESCR in 2005. At the end of the Committee's 34th Session, it subsequently issued "concluding observations" (available online) in May 2005. Similarly, monitoring domestic protection and realisation of ESCR should begin with establishing the current constitutional status of these rights. The National Assembly of Zambia website (www.parliament.gov.zm) is very important for this exercise.

2.6. Human rights and development

One of the 20th century's hallmark achievements was its progress in human rights. Human rights and human development share a common vision and a common purpose, to secure the freedom, well-being and dignity of all people everywhere (UNDP, 2000). Human rights and human development are both about securing basic freedoms. Human rights express the bold idea that all people have claims to social arrangements that protect them from the worst abuses and deprivations, and that secure the freedom for a life of dignity. Human development, in turn, is a process of enhancing human capabilities, to expand choices and opportunities so that each person can lead a life of respect and value. When human development and human rights advance together, they reinforce one another, expanding people's capabilities and protecting their rights and fundamental freedoms. Human rights can add value to the agenda of development. The tradition of human rights brings legal tools and institutions – laws, the judiciary and the process of litigation – as means to secure freedoms and human development.

Rights also lend moral legitimacy and the principle of social justice to the objectives of human development. The rights perspective helps shift the priority to the most deprived and excluded, especially to deprivations because of discrimination. Similarly, human development brings a dynamic long-term perspective to the fulfilment of rights. It directs attention to the socio-economic context in which rights can be realised or threatened. Simply put, human development is essential for realising human rights, and human rights are essential for full human development.

Therefore, human rights and development both aim to promote well-being and freedom, based on the inherent dignity and equality of all people. The concern of human development is the realisation by all of basic freedoms, such as having the choice to meet bodily requirements or to escape preventable disease; and it also includes enabling opportunities, such as those given by schooling, equality guarantees and a functioning justice system. Human rights and human development share a preoccupation with necessary outcomes for improving people's lives, but also with better processes (UNDP, 2006). Being people-centred, they reflect a fundamental concern with institutions, policies and processes as participatory and comprehensive in coverage as possible, respecting the agency of all individuals.

Moreover, MDGs explicitly places both human rights commitments and development goals at the centre of the international agenda for the new millennium. Member States agreed on eight quantified and time-bound development goals. Human rights and the MDGs are interdependent and mutually reinforcing. MDGs and human rights both aim to monitor the progressive realisation of certain human rights. There are periodic reporting processes for each at both national and international levels, although ensuring accountability for human rights requires a more extensive set of laws and institutions (UNDP, 2006). MDGs are important milestones for the realisation of the often neglected economic and social rights. The eight Goals are: (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) achieve a global partnership for development.

Moreover, it is now generally understood that poverty is a result of *disempowerment* and *exclusion*. Poverty is not only a lack of material goods and opportunities, such as employment, ownership of productive assets and savings, but the lack of physical and social goods, such as health, physical integrity, freedom from fear and violence, social belonging, cultural identity, organisational capacity, the ability to exert political influence, and the ability to live a life with respect and dignity (UNDP, 2006). Human rights violations are both a cause and a consequence of poverty. The essential idea underlying the adoption of a human rights approach to poverty eradication is that policies and institutions should be based explicitly on the norms and values set out in the international law of human rights (UN, 2002).

3. Economic, Social and Cultural Rights (ESCR)

The starting point for monitoring and claiming rights begins with having a basic idea of the nature and state obligations to the realisation of ESCR. This section, among others, briefly looks at what constitutes ESCR, some of the myths or misconceptions and general principles applicable to the implementation of ESCR.

3.1. Definition and Nature of ESCR

ESCR guarantee everyone without discrimination of any sort with socioeconomic and cultural opportunities that allow individuals and families to live adequately in dignity (Santos et al., 2006).

ESCR as enumerated in the ICESCR include the following rights:

- Right to self-determination (Article 1)
- Right to work (Article 6)
- Right to just and favourable conditions of work (Article 7)
- Right to form and join trade unions (Article 8)
- Right to social security (Article 9)
- Right to protection of the family (Article 10)
- Right to an adequate standard of living (e.g., food, clothing and housing) (Article 11)
- Right to health (Article 12)
- Right to education (Articles 13-14)
- Right to take part in the cultural life of the community (Article 15)
- Right to enjoy the fruits of scientific progress (Article 15)
- Freedom to pursue scientific research and creative activity (Article 15)
- A person's right to benefit from scientific, literary and artistic creation of which that person is the author (Article 15)

3.2. Legal Embodiment of ESCR

As mentioned in the previous section, ESCR are recognised in several international human rights treaties, covenants and conventions. Often used interchangeably, the terms *treaty*, *covenant* and *convention* refer to legally binding agreements between states. These agreements define the duties of states parties to the treaty, covenant or convention (UNDP 2000).

ESCR in UN Instruments

- Universal Declaration of Human Rights (UDHR) (Articles 22-28)
- International Covenant on Economic, Social, and Cultural Rights (ICESCR)
- Convention on the Rights of the Child (CRC)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Declaration on the Right to Development

ESCR in African Regional Treaties

- African Charter on Human and Peoples' Rights (1981)
- African Charter on the Rights and Welfare of the Child (1990)
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)

3.3. Myths about ESCR

a) *ESCR are positive rights while civil and political entitlements are negative rights, therefore, the latter are easier to realise.*

Based on this, civil and political rights are much easier to realise because all that government has to do is refrain from committing acts that will jeopardize the enjoyment of these rights. For example, to comply with freedom from torture, government only has to ensure that its agents do not resort to physical and/or mental cruelty to extract information and/or admission from suspected criminals.

This is not true because there are civil and political rights (CPR) that also require budgetary allocation like ensuring clean and fair elections and speedy administration of justice. On the other hand, certain aspects of ESCR also simply require States to respect like right to unionise, right to establish educational institutions.

b) ESCR are second-generation rights and CPR are first-generation rights.

This means that in terms of historical development and codification or translation into laws and policies, CPR are way ahead of the ESCR. Therefore, ESCR are “second class rights” compared to its CPR.

But this delineation came into being because of the historical Western countries’ preference to CPR. This should be remedied by giving special attention to ESCR because the totality of human beings requires both freedom or liberty and the means to live in dignity. This means that both ESCR and CPR are necessary for “authentic” human existence.

c) ESCR are “state aspirations only” while CPR are “human rights proper”.

Based on this assumption, ESCR are perceived as social goals only and not legal rights and therefore, do not demand any legal mechanisms from the State or any international human rights body. But technically, this kind of distinction is only a matter of language. Given proper attention and resources, ESCR can also be formulated in the same way that CPR are articulated in covenants, well defined and legally demandable and justiciable. (See JCTR Submission to NCC for more discussion on myths, available on: www.jctr.org.zm)

The justification for this mutual relationship is largely based on the understanding of ESCR and CPR as interrelated and indivisible. This was fully affirmed by the international community during the Vienna Conference on Human Rights as illustrated below.

Interrelatedness and Indivisibility of ESCR and CPR

Indivisibility: Freedom and well-being are inseparable requirements of humane existence and so are the rights embodied in CPR and ESCR. That is to say, fulfilling certain rights should not be used as an excuse for violating other rights. This is a common practice in development projects where local communities are asked “to sacrifice” their livelihood and their environment for the greater good.

Interrelatedness: Each right, whether civil and political rights or economic, social, and cultural rights, is integral to the enjoyment of other human rights. For example, an individual’s right to food is compromised if the individual’s right to work is neglected or abandoned by the State.

Vienna Declaration

The debate on CPR and ESCR was settled during the 1993 World Conference on Human Rights. The declaration stated that:

“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.” (Vienna Declaration, paragraph 5)

3.4. State obligations under ICESCR

According to the ICESCR (hereafter referred to as the “covenant”), obligations deriving from ESCR should be analysed by reference to state parties’ duties to respect, protect and fulfil. The three main **state obligations** are:

First, the **obligation to respect** requires refraining from interfering with the enjoyment of the right. It requires the duty-bearer not to breach directly or indirectly the enjoyment of any human right.

Second, the **obligation to protect** requires the prevention of violations of such rights by other persons or third parties. It requires the duty-bearer to take measures that prevent third parties from abusing the right.

Third, the **obligation to fulfil** requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realisation of such rights. It requires the duty-bearer to adopt appropriate measures towards the full realisation of ESCR.

Rights and obligations demand *accountability*: unless supported by a system of accountability, they may become little more than window-dressing. Accordingly, the commitment to realisation of human rights emphasizes obligations and requires that all duty-holders, including States and intergovernmental organisations, be held to account for their conduct in relation to international human rights. While duty-holders must determine for themselves which mechanisms of accountability are most appropriate in their particular case, all mechanisms must be accessible, transparent and effective (UN, 2002).

Moreover, there are two key elements that relate to state obligations to the realisation of ESCR. These are the obligation of conduct and the obligation of result.

Obligation of Conduct requires action reasonably calculated to realise the enjoyment of a particular right. For example, for the right to health the obligation of conduct is to involve the adoption and implementation of a plan of action that will reduce maternal mortality.

Obligation of Result requires States to achieve specific targets to satisfy a detailed substantive standard. For example, for the right to health the obligation of result requires the reduction of maternal mortality to levels agreed at the 1994 Cairo International Conference on Population and Development and the 1995 Beijing World Conference on Women.

Table 4: A Framework for Defining Rights and Obligations (*The Right to Health*)

Concept	Definition	Example
Core content of a right	The specific individual entitlements that make up a right	The right to immunisation against preventable epidemic or endemic diseases
State obligation	The responsibilities of the state to respect, protect, promote and fulfil the entitlements under the right	The state is to develop policies and programmes to meet obligations. Health policies and programmes of promotion, prevention, treatment and rehabilitation
Obligation of conduct	Obligation to undertake specific steps (acts or omissions)	Developing immunisation campaigns
Obligation of result	Obligation to obtain a particular outcome	Decrease in mortality from epidemic or endemic diseases

Source: Bolívar & González (2000)

While the full realisation of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognised in the Covenant.

Nature of Human Rights Violations by the State:

- (a) **Omission** – the non-interference or inaction of the State in any situation that requires action to respect, protect or fulfil the human rights of its citizens
- (b) **Commission/Breach** – any act by the government in violation of any covenant or instrument on human rights which the State is committed to uphold
- (c) **Arbitrary Derogation** – violations due to arbitrary suspension of liberty (e.g., state of emergency rule, authoritarian regime/state)

3.5. State Violations under ICESCR

(a) According to the Limburg Principles, a State Party is violating the covenant if:

- It fails to take steps which it is required to take based on the Covenant;
- It fails to promptly remove obstacles which it is under duty to do so in order to allow the immediate fulfilment of a right;
- It fails to implement without delay a right which it is required by the Covenant to provide immediately;
- It wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its power to meet;
- It applies a limitation to a right recognised in the Covenant other than in accordance with the Covenant;
- It deliberately retards or halts the progressive realisation of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources; and
- It fails to submit reports as required under the Covenant.

(b) According to the Maastricht Guidelines on “Progressive Realisation”

Although full realisation of ESCR can only be achieved progressively, there are immediate steps that can be taken by the States to implement these rights.

Governments must also show they are making **measurable progress** towards the full implementation of these rights. For example, even if the current standards for secondary education are availability and accessibility to all, the ICESCR also mandates State parties to “progressively” introduce free secondary education. This implies that governments must concretely show how they are progressing towards providing free secondary education to its constituents.

These guidelines also emphasise the need for governments to meet **minimum core obligations**. These are internationally agreed upon “minimum essential levels” of ESCR that States are obliged to implement irrespective of their socio-economic and political conditions. Failure to do so constitutes a violation of these rights. Examples of these are free and compulsory primary education, absence of forced evictions, and freedom from hunger. Such minimum core obligations apply irrespective of the availability of resources in the country concerned or any other actors and difficulties (UN, 2001).

The state can therefore violate the covenant either through its acts of commission or omission (McChesney, 2000). A checklist for violations is given in the following examples:

Violations by Acts of Commission

- Removal or suspension of an existing legislation on ESCR;
- Active denial of such rights to particular individuals or groups, whether through legislated or enforced discrimination;
- Active support for measures adopted by third parties which are inconsistent with ESCR;
- Adoption of legislation or policies manifestly incompatible with existing legal obligations;
- Adoption of any deliberate retrogressive measure that reduces the extent to which any such right is guaranteed;
- Calculated obstruction of, or stopping the progressive realisation of a right protected by the Covenant unless the State is acting within the limitations set by the Covenant; and
- Reduction or diversion of public funds that will jeopardise the enjoyment of ESCR.

Violations by Acts of Omission

- Failure to take appropriate steps as required under the Covenant;
- Failure to reform or repeal legislation which is manifestly inconsistent with an obligation of the Covenant;
- Failure to enforce legislation or put into effect policies designed to implement provisions of the Covenant;
- Failure to regulate activities of individuals or groups in order to prevent them from violating ESCR;
- Failure to use the maximum available resources towards the full realisation of the Covenant;
- Failure to monitor the realisation of ESCR, including the development and application of criteria and indicators for assessing compliance;
- Failure to promptly remove obstacles that hinder the immediate fulfilment of a right guaranteed by the Covenant;

- Failure to implement without delay a right which is required by the Covenant to be provided immediately;
- Failure to meet a generally accepted international minimum standard of achievement, which is within its power to meet; and
- Failure of a State to take into account its international legal obligations in the field of ESCR when entering into bilateral or multilateral agreements with other States, international organisations or multinational corporations.

However, as noted in the UN “Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies” (2002), the non-fulfilment of human rights does not necessarily mean that a State is in non-compliance with its international human rights obligations. Provided that it is taking all reasonable measures towards realising rights that are subject to progressive realisation and taking immediate steps to fulfil those meant to be fulfilled without delay, the State cannot be held responsible for the fact that many rights remain unfulfilled at any point in time and hence cannot be said to be in non-compliance with its obligations. It can, nonetheless, be held responsible for not taking all measures within its power to ensure progressive realisation of rights as expeditiously as possible. To help distinguish cases in which the State should be held responsible from those in which it should not is one of the functions of a proper monitoring and accountability system, which is an essential feature of the human rights approach.

3.6. Problems and prospects of ESCR

The lack of clarity on the content and meaning of most ESCR is often used as a rationale for not recognising this set of rights as rights proper. But difficulties of definition are also encountered regarding civil and political rights such as defining what “inhuman conditions” mean remain relatively ill-defined. Activists working to advance ESCR may thus find themselves involved in the process of defining the content of these rights. The building block essential for understanding and defining the content of rights is the study of international standards and documents, national constitutions, as well as interpretations and analyses of these documents. One useful source of information is found with the CESCR that often issue a number of very important General Comments related to specific rights. This handbook highlights some of these specific definitions in Section 6.

The process of building up an argument can thus be a difficult, complex and drawn-out process, but it is essential for the development of more precise understandings and greater protection of ESCR at the national and international levels. The CESCR, which has the responsibility for supervising and monitoring the implementation of the ICESCR, has had to confront this same dilemma. In the process of tackling this question, the CESCR developed a conceptual distinction with which activists should be familiar, whether or not they actively employ that distinction in their work. A tool evolved by the CESCR was to develop a “minimum threshold approach” whereby certain minimum standards should be achieved by all states, irrespective of their economic situation. By adopting this approach, the CESCR believed it could avoid the problem of measuring progress against resource availability, of speculating as to alternative courses of action, or of acquiring evidence of state responsibility (Bolívar & González, 2000). The CESCR therefore referred to “core content” of the right and “minimum core content” of the right.

The “**core content**” of a human right refers to the set of guarantees that constitute the right. The core content of an ESCR has both “universal” and “unique” characteristics. The universal characteristics are those which apply to all rights such as non-discrimination. There are also certain characteristics of the core content of each ESCR

that are unique to the specific right. For example, access “to immunisation against preventable epidemic or endemic diseases” is a key component of the core content of the right to health, but is not applicable to other rights.

The “**minimum core content**” of a right is the intangible baseline level that must be guaranteed for all persons in all contexts. It indicates a minimum below which no government should perform, even in unfavourable conditions. Some elements of the core content may be limited in special circumstances, but the minimum core content establishes a basic minimum for the action of all governments.

It is helpful to remember that the concepts of core content and minimum core content are not unique to ESCR (Bolívar & González, 2000). An example of minimum core content in the area of civil and political rights can be found in the right to freedom from arbitrary detention. One element of the core content of this right is that a warrant for a person’s arrest must be obtained by the state and presented to the individual. Another element of the core content is that an individual who is detained cannot be held for an indefinite period of time.

The question of defining the core and minimum core contents of ESCR is not without debate and controversy. According to Bolívar & González (2000), some activists believe that focusing on such definition can be counterproductive to activism. Others believe that such a focus is essential to effectiveness. Some of the arguments against definition focus on the difficulty of establishing universally applicable standards. On the other hand, several authors maintain the need to define the minimum core content of each right as a way to identify what it is that the right confers upon those who enjoy the entitlement, and to help identify the specific obligations that a state assumes by recognising those contents. Others point out that this could be construed as operating to limit the overall guarantee of rights, by establishing a defined standard of compliance. Thus, it may lend itself to the argument that everything that is excluded from that content is not within the right. Some activists maintain that the definition of minimum core content of a right is necessary to ensure the justiciability of such a right. Establishing such a framework ensures a uniform baseline that must be respected, even by those states with insufficient economic resources, to promote realisation of the right and to guarantee equity in the distribution of available resources.

However, despite all these debates, there is a general consensus that core content simply means the key components of the right. It is accepted that those concerned with ESCR should play a role in developing an international consensus on the key components of rights.

3.7. General Principles Applicable to ESCR

- **Equality and non-discrimination** - The right to equality and the principle of non-discrimination are among the most fundamental elements of international human rights law (UN 2002). The right to equality guarantees, first and foremost, that all persons are equal before the law, which means that the law shall be formulated in general terms applicable to every human being and enforced in an equal manner. Secondly, all persons are entitled to equal protection of the law against arbitrary and discriminatory treatment by private actors. In this regard, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability and health status, including HIV/AIDS, age, or other status. The twin principles of equality and non-discrimination require States to take special measures to prohibit discrimination.

- **People's participation** – Different stakeholders in society must be involved in the process of realising and fulfilling ESCR.
- **Empowerment** - Implementation of ESCR must contribute and result to building capabilities, confidence and self-reliance of the people in the community and enable them to become active agents of change and development.
- **Progressive realisation** – Since the realisation of most human rights is at least partly constrained by the availability of scarce resources, and since this constraint cannot be eliminated overnight, realisation of ESCR allows for progressive realisation of rights (UN 2002). The idea of progressive realisation has two major strategic implications. First, it allows for a time dimension in the strategy for ESCR fulfilment by recognising that their full realisation may have to occur in a progressive manner over a period of time. Second, it allows for setting priorities among different ESCR at any point in time since the constraint of resources may not permit a strategy to pursue all rights simultaneously with equal vigour. The *process* of setting priorities must involve effective participation of all stakeholders.
- ESCR and civil and political rights are **interdependent, interrelated, and indivisible**.
- **ESCR are justiciable**. This means conflicts or violations of these rights can be brought to a court of justice or quasi-judicial bodies for mediation, decision and corresponding resolution.

The relevance of having background knowledge on the nature and state obligations on ESCR is necessary for a better understanding of how these rights are protected and/or remedied once denied of the citizenry or violated either by the state or any other third-party such as corporations. ESCR remedies are available both at the international and national levels. One has to exhaust all local or domestic possibilities before embarking on accessing international alternatives.

4. Economic, Social and Cultural Rights Protection and Remedies

The mere fact of establishing a set of rules is not enough to ensure their application. The implementation of human rights standards is closely monitored at several levels such as through international institutions (e.g., the CESCR), national institutions (e.g., Human Rights Commission) and organisations (e.g., religious organisations and NGOs). The section examines some of the international and national protection and remedy systems that Churches and NGOs could make use of in monitoring realisation of ESCR in Zambia.

4.1. International Protection and Remedies

4.1.1. United Nations Systems

Human rights treaties require countries that have ratified them to submit their human rights performance (good or bad) to international supervision (Santos et al, 2006). In general, at the international level, States report on their own performance to bodies set up by the UN to monitor each of the major human rights treaties: ICESCR, ICCPR, CERD, CEDAW, CRC and CAT.

Self-reporting has obvious drawbacks, one of which includes countries' general reluctance to give up part of their "sovereignty" (power to run their own affairs) and to allow their actions to be judged by outsiders. The desire by countries to maintain control over their internal affairs makes it hard to monitor and ensure implementation of human rights. McChesney (2000), for example, highlights other factors that hamper supervision and enforcement as including the following:

- Enforcement of international law requires the voluntary co-operation of governments, yet they are the main violators of international human rights. They don't like their human rights violations to be exposed or condemned. For that reason, NGOs efforts to expose human rights violations are essential, and may sometimes be risky.
- The UN's methods to combat violations of human rights usually consist of publicity, political pressure and advice, rather than court cases or other actions that are often used to enforce laws within a country. Punishments for international human rights violations occur rarely, and are not harsh. Besides any public embarrassment suffered by a country or its diplomats, penalties may involve restrictions on trade, investment or diplomatic privileges, which may not cause much harm to a nation's elite, or to the country generally.
- The UN uses only a small portion of its resources to encourage protection and fulfilment of human rights. (Remember that governments provide the money for running the UN, and they determine its budget.)

Despite the problems that hinder monitoring and protection of international human rights, Churches and NGOs often succeed in their efforts to advance human rights. By signing the Covenant, representatives of countries or "States" show their intention to comply with it. As a treaty, the Covenant is a contract among States. Each State that ratifies the Covenant becomes a "State Party" to it, and the State concerned has a legal obligation to abide by it. According to Article 16(1) of the ICESCR, each State Party is required to submit periodic reports to the UN, describing the measures it has adopted and the progress made in achieving the observance of the rights recognised in the Covenant. The CESCR acts as the supervisory body for the Covenant and also publishes General Comments explaining many facets of the Covenant and how it can be implemented better, so that States can be more successful in their efforts to comply with and report on their treaty obligations.

Box 1: Treaty-monitoring bodies

Committees:

- Human Rights Committee (ICCPR).
- Committee on Economic, Social and Cultural Rights (ICESCR).
- Committee on the Elimination of Racial Discrimination (ICERD).
- Committee on the Elimination of Discrimination Against Women (CEDAW).
- Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
- Committee on the Rights of the Child (CRC).

Functions:

- Receiving and discussing country reports on the status of human rights by engaging in constructive dialogue with states parties.
- Receiving shadow, or alternative, reports from civil society institutions.
- Providing concluding country observations on human rights in states parties.
- Providing general comments or recommendations on treaty rights.
- Providing procedures for hearing individual complaints.
- Providing inquiry procedures for gross or systemic human rights violations.
- Hearing complaints from one state party against another.

Source: OHCHR, www.ohchr.org.

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

The CESCR is the body of independent experts that monitors implementation of the ICESCR by its States parties. The Committee was established under United Nations Economic and Social Council (ECOSOC) Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the ECOSOC in Part IV of the Covenant (www.ohchr.org). All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially within two years of accepting the Covenant and thereafter every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”.

On 10 December 2008, the General Assembly unanimously adopted an Optional Protocol to the ICESCR which provides the Committee competence to receive and consider communications regarding individual complaints (GA resolution A/RES/63/117). The Optional Protocol was opened for signature in 2009. The Committee meets in Geneva and normally holds two sessions per year, consisting of three-weeks plenary and a one-week pre-session working group. The Committee also publishes its interpretation of the provisions of the Covenant, known as General Comments (www.ohchr.org). In addition to the CESCR, other committees with competence can consider individual communications involving issues related to ESCR in the context of its treaty. For example, the Committee on CEDAW can examine realisation of women’s access to ESCR in a particular country.

Box 2: The Committee on Economic, Social and Cultural Rights

- Created by ECOSOC in 1985 to monitor the compliance of State Parties to the ICESCR
- Composed of 18 human rights experts
- Reviews and issues concluding observations on the official reports submitted by the State Parties
- The CESCR may write to a specific government to raise its concerns regarding the status of ESCR in that particular country
- The CESCR may also opt to visit or conduct a fact-finding mission to countries that neglect or violate these rights
- The CESCR also accepts and gives weight to “shadow reports” coming from civil society organisations regarding ESCR realisation in a particular country
- Other functions are to further clarify, specify, define, and identify key elements and parameters of a particular ESCR. It has so far issued twenty-one (21) General Comments on the ICESCR (Checked 08/10/2010).

Source: OHCHR, www.ohchr.org.

(b) Special Rapporteurs

- Human rights experts are appointed to clarify and strengthen the recognition, implementation, and realisation of different ESCR and are under the OHCHR. Zambia was recently visited by an independent expert, Magdalena Sepulveda Carmona, on the question of human rights and extreme poverty (See GA report A/HRC/14/31/Add.1).
- They conduct negotiations and fact-finding missions in countries where there are substantial issues affecting the recognition and implementation of these rights.
- They also submit reports on the status, compliance, and violations of a specific right of their focus.
- Human rights advocates can also network and cooperate with the OHCHR to highlight rights violations and pressure the government to comply with its duties and obligations in relation to ESCR.

(c) Optional Protocols

- The draft optional protocol to the ICESCR was formulated by the CESCR in 1996. The protocol was only adopted in December 2008. The optional protocol serves as a complaint mechanism where groups and individuals can submit communications regarding violations of ESCR in their respective countries.
- ESCR advocates can also utilise the Optional Protocol to CEDAW.
- It should be noted, however, that optional protocols only binds those states parties that are party to them. Zambia has not yet ratified the protocol (as of 08 Oct. 2010), meaning that this option is still out of the reach for Zambians.

4.1.2. African Human Rights System

The African Charter on Human and Peoples Rights (1981), hereafter referred to as the “charter”, embodies provisions on basic CPR and on ESCR. These are guaranteed without distinction of any kind such as race, ethnic group, colour, sex, language, religion or political or any other opinion, national and social origin, fortune, birth or other status. The African Charter entrenches the principle of indivisibility and interdependence of all human rights. The Charter guarantees several ESCR including the right to work (Article 15), the right to education (Article 17), and the right of all peoples to their economic, social and cultural development (Article 22).

The Charter does not include some ESCR, such as the right to housing. However, these may be claimed derivatively. For example, article 14, which guarantees the right to property, may provide a basis for claiming the right to adequate housing (Morka, 2000). Despite the fact that the right to food is not expressly guaranteed under the Charter, the African Commission on Human and Peoples’ Rights established under the Charter has declared that food deprivation constitutes a violation of the Charter because it contravenes the right to respect of the dignity inherent in a human being (Morka, 2000).

The African Commission on Human and Peoples’ Rights

The African Charter established the African Commission on Human and Peoples’ Rights, hereafter the Commission. The mandate of the Commission is to promote and protect the rights guaranteed under the Charter. The Commission is composed of eleven (11) members who are elected by the Assembly of Heads of State and Government of the AU. In the discharge of its functions, the Commission is supported by a Secretary and staff appointed by the Secretary-General of the AU. The Commission’s Secretariat is based in Banjul, the Gambia.

(a) Monitoring ESCR through states parties’ reports

As a treaty-monitoring body, the Commission is charged with broad promotional, protective and interpretive responsibilities (Article 45), including the examination of states parties’ reports (Article 62), and consideration of interstate (Articles 47-54), individual and NGOs’ communications. As with other treaty-monitoring bodies, the African Commission is mandated to receive and examine states parties’ reports on legislative and other measures taken to give effect to the Charter within their jurisdictions. Review of states’ reports is usually conducted in open sessions of the Commission and can provide a useful opportunity for Churches and NGOs to provide independent reports and other critical information to the commissioners in order to sharpen their scrutiny of the human rights situation in the state under review. However, although, the states’ reporting guidelines issued by the African Commission requires the inclusion of ESCR specific information, states parties’ reports to the Commission hardly contain any useful information on the implementation of the ESCR provisions of the Charter (Morka, 2000).

(b) Receiving individual and/or organisation’s communication

The process for filing an individual or NGO communication or complaint to the Commission is as specified under Articles 55-58 of the African Charter. The requirements for admissibility of a communication are specified under Article 56 of the Charter. To be eligible to file a communication, the complainant must be the alleged victim of a violation(s) of a right under the Charter (or a representative, if the victim is unable to file on his or her own behalf). An

individual or NGO alleging serious or massive human and peoples' rights violations may also submit a communication.

The communication should refer to the Charter, where relevant provisions exist; indicate the author (even if anonymity is requested) [Article 56(2)]; must not be based primarily on news reports [Article 56(4)]; and must not be written in a language disparaging or insulting to states parties or to the AU [Article 56(3)]. Before a communication can be considered on its merits, the complainant must demonstrate that all domestic remedies have been exhausted [Article 56(5)]. This requirement was designed to ensure that the Commission does not become a tribunal of first instance (Morka, 2000).

While the Charter provides that states parties must accede to its jurisdiction, the Commission's jurisdiction is far from compulsory and its enforcement powers are limited to only making recommendations to the Assembly of Heads of States and Government. The Commission perceives itself as a mediator cognizant of its inherent incapacity to compel a particular outcome even in extremely obvious and deserving cases of flagrant human rights violations (Morka, 2000).

Box 3: The African Human Rights System

INSTRUMENTS

African Charter on Human and Peoples' Rights (1981)

- Covers civil and political and economic, social and cultural rights.
- Provides for collective rights and for state and individual duties.
- Includes claw-back clauses restricting human rights to the maximum extent allowed by domestic law.

African Charter on Human and Peoples' Rights (1981)

African Charter on the Rights and Welfare of the Child (1990)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)

IMPLEMENTATION INSTITUTIONS AND MECHANISMS

African Human Rights Commission (1987)

- Serves more promotional and less protective functions.
- Examines state reports.
- Considers communications alleging violations.
- Expounds the African charter.

African Human Rights Court

- Consists of 11 judges appointed in their personal capacity.
- Complements the work of the African Human Rights Commission.
- Serves more protective and less promotional functions.
- Has a jurisdiction not limited to cases or disputes arising out of the African charter.

Source: UNDP (2000); AU Treaty Database, www.africa-union.org.

4.2. National Human Rights Protection and Remedies

Most states include within their constitutional or legislative system clauses, provisions, or sections embodying ESCR standards. These rights are either embodied within a comprehensive "bill of rights," which is constitutionally entrenched (i.e., protected from repeal) and which enables courts to strike down inconsistent legislation or governmental acts or in another part of the constitution as "directive principles of state policy". In Zambia, ESCR has not received yet the required legal recognition. As such, claiming of ESCR has not been vigorously pursued largely because of the in-built constitutional limitation denying Zambian citizens from claiming these rights. This section highlights the limitations of the current constitutional status of ESCR. It is, however, argued that proper protection of ESCR must be in the Bill of Rights and not through subsidiary legislation. Secondary legislation is highly limited in terms of its application. Good will alone is not enough to guarantee ESCR in Zambia. Unless ESCR provisions suggested in the National Constitutional Conference (NCC) draft Constitution are incorporated in the new Zambian Bill of Rights and the claw-back clause (intended to shield government from legal suits) are removed, then, realisation of ESCR shall remain illusive (See NCC June 2010, draft Constitution released for public comments).

4.2.1. Constitutional Mechanisms

(a) Constitutional status of ESCR in Zambian Constitution

ESCR are not explicitly provided for in Part III, "Protection of Fundamental Rights and Freedoms of the Individual" (Bill of Rights) of the 1996 Zambian Constitution. However, some of these principles are mentioned within Part IX, "Directive Principles of State Policy". Article 112, stipulates among other principles that government shall endeavour to provide: clean and safe water, equitable educational opportunities in all fields and at all levels; adequate medical and health facilities; decent shelter for all persons; and development of a person's culture, tradition, custom or language that is not inconsistent with the Constitution.

According to Article 111, however, these directive principles set out in this Part "shall not be justiciable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity." This means Zambian citizens cannot go to a law court and sue the government on the grounds that their right to education, for example, has been denied.

As the Constitution currently stands, therefore, the State is only expected to consider these rights in formulating and implementing its policies relating to development, law reform and application of law "only in so far as State resources are able to sustain their application, or if the general welfare of the public so unavoidably demands, as may be determined by Cabinet" (Article 110). Due to this current status, several Church organisations and NGOs continue to advocate for the incorporation of ESCR in the Bill of Rights. The issue of lack of resources, as being advanced by several high-ranking government officials, cannot be used as an excuse to delay domestication of ESCR in the new Zambian Constitution. Arguably, no country is too poor or underdeveloped as not to respect, protect and fulfil human rights obligations (McChesney, 2000). The fact that a country is poor is not a legitimate excuse for it to avoid striving to ensure that its citizens enjoy adequate food, education, health care and so on. However, a poor nation is not expected *immediately* to ensure the same level of ESCR benefits that a rich nation can afford (Mwale, 2004).

In the exception of judicial means, what other avenues exist in Zambia towards realisation of ESCR. There are other alternatives to the realisation of ESCR. (For more discussion on “alternatives” see JCTR report on “Alternative ways of protecting and promoting economic, social and cultural rights in Zambia”, January 2010, available at JCTR Offices.)

(b) Alternative pieces of legislation protecting ESCR in Zambia

Zambia has a number of secondary legislation (or pieces of legislation, or Acts of Parliament) that have a bearing on the realisation of ESCR. But one of their limitations is that they have been designed for “sector specific administrative purposes and processes and do not adequately reflect human rights ‘protective nor promotional’ perspectives” (Ndhlovu-Chanda, 2010). Monitoring of Zambia’s compliance with international agreements on ESCR requires that Churches and NGOs working in Zambia not only know about their existence, but also should be able to assess empirically citizens’ enjoyment of these rights. Some of the pieces of legislation with implications on realisation of ESCR are shown in Table 5.

Table 5: Subsidiary legislation on ESCR in Zambia

ESCR	Examples of Acts of Parliament
Education	Technical Education and Vocational Entrepreneurship Training Act University Act
Health	National Health Services Act
Food	The National Food and Nutrition Commission Act
Housing	National Housing Authority Act
Workers’ rights	Industrial and Labour Relations Act
	Employment Act
	Minimum Wages and Conditions of Employment Act
	Workers Compensation Act
	National Pensions Scheme Act

Source: National Assembly of Zambia Database, www.parliament.gov.zm

Despite the fact that other pieces of legislation clearly address ESCR in Zambia, realisation of these rights remains a challenge and problematic. First, enjoyment of these rights is largely dependent on the “good will” of the government in power. Good will alone is not a sufficient condition for the proper realisation of ESCR. Second, government spending on social services continues to be erratic. Available assessments illustrate wide discrepancies between budget allocations and actual disbursements (See CSPR Budget Reviews, www.cspr.org.zm). Therefore, both constitutional requirement and political commitment are critical to the realisation of ESCR.

4.2.2. Alternative Government Mechanisms

(a) Judicial Activism

There is case-law from which Zambia can draw lessons demonstrating that due to the indivisibility and interrelatedness of human rights, the directive principles of state policy create enforceable obligations against the State. The Indian Supreme Court was the first to successfully link the right to life to include the right to provision of emergency medical treatment in 1996 (See *Paschin Banga Khet Mazdoor Samity v State of West Bengal* AIR). Therefore, the

“principles can therefore affect the interpretation of other rights (civil and political) by being ‘read into’ those rights or may be relevant to the interpretation of legislation” (Ndhlovu-Chanda, 2010).

(b) The Human Rights Commission

A human rights commission is a state-sponsored and state-funded entity set up under an act of the legislature or under the constitution, with the broad objective of protecting and promoting human rights (Gomez, 2000). It may perform a range of functions including monitoring of human rights violations, dispute resolution through adjudication or mediation, human rights education, documentation and research, advising governments on human rights issues and human rights standard-setting. In Zambia, the Human Rights Commission was constitutionally created in 1996 (Article 125, Constitution of Zambia, 1996).

One of the advantages of human rights commission is that they do have a potential to reach well beyond that of most NGOs, largely because of their either statutory or constitutional basis, they are able to interact with a lot of sectors, both in government and outside, in a way that NGOs cannot. However, many human rights commissions including the Zambian Human Rights Commission are not given the explicit mandate to address ESCR. In such cases the commission would need to creatively interpret its mandate to enable it to address these rights.

The South African Human Rights Commission is one of the few commissions with an explicit mandate to consider ESCR. According to the constitutional mandate, every year the South African Human Rights Commission must: “Require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment” [Section 184(3), Constitution of South Africa, 1996].

The Indian National Human Rights Commission is empowered to inquire into complaints of violations of human rights or abetment thereof either on its own motion or in response to a petition presented by a victim or by any person on his or her behalf (Gomez, 2000). The term human rights has been defined to mean “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the courts in India” [Section 2(1)(d), Protection of Human Rights Act, 1993]. The term “International Covenants” includes the ICESCR; and thus, ESCR that are enforceable by the courts in India can also be the subject matter of the functions of the Indian National Human Rights Commission (Gomez, 2000).

In 1998, the CESCR adopted a General Comment No. 10 which dealt specifically with the role of Human Rights Commissions in the protection of ESCR. The Committee observed that Article 2(1) of the Covenant requires each state party to take steps with a view to achieving progressively the full realisation of the Covenant rights by all appropriate means. One such means, through which important steps could be taken, is the work of national institutions for the promotion and protection of human rights. The CESCR noted that national institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights.

The CESCR lists some of the activities that national institutions could perform in relation to ESCR:

- The promotion of educational information programmes designed to enhance awareness and understanding of ESCR, both within the population at large and among particular

groups, such as the public service, the judiciary, the private sector and the labour movement.

- The scrutinising of existing laws and administrative acts, as well as draft bills and other proposals, to ensure that they are consistent with the requirements of the ICESCR.
- Providing technical advice or undertaking surveys in relation to ESCR, including at the request of public authorities and/or other appropriate agencies.
- Identifying national-level benchmarks against which the realisation of Covenant obligations can be measured.
- Conducting research and inquiries designed to ascertain the extent to which particular ESCR are being realised, either within the state as a whole or in specific areas, or in relation to particularly vulnerable communities.
- Monitoring compliance with specific rights recognised under the Covenant and providing reports thereon to the public authorities and civil society.
- Examining complaints alleging infringements of applicable ESCR standards within the state.

4.3. Domestic Application of International Human Rights Law

The domestic application of international human rights law such the ICESCR varies from country to country and largely depends on the nature of the legal system in that country. In what is known as a "monist" system, when a state ratifies an international treaty, the provisions of the treaty automatically becomes part of domestic law. International law thus becomes self-executing. The notion that underlies monism is that international law and domestic law are one and the same. Argentina follows the monist doctrine (Rossi, 2000).

In a "dualist" system, when a state ratifies a human rights treaty, the provisions of the treaty do not automatically become part of its domestic law. International law and domestic law are seen as two separate systems (Rossi, 2000). International law thus has to be incorporated through legislation before it is applied in the domestic arena. Zambia follows the dualistic doctrine. Therefore, both international and regional treaties must be specifically incorporated into the domestic law if they are to be enforceable in Zambia. This distinction is critical for monitoring state compliance to ESCR.

However, it is important to note that international human rights treaties have established some principles for domestic application irrespective of the nature of the legal system (Rossi, 2000). The basic principle governing domestic application of international human rights treaties is that "the States [when becoming party to an international treaty] are deemed to submit themselves to a legal order in which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction" (Inter-American Court of Human Rights, Advisory Opinion OC-2/82). (See also General Comment No. 9)

The enjoyment of ESCR depends primarily on the state's domestic conduct. Domestic protection cannot be assured without the judiciary, which is the ultimate guarantor of rights (Rossi, 2000). Therefore, a key task facing human rights activists is to ensure the enforcement of human rights treaties by domestic courts. Ultimately, it is the state's obligation to ensure the administrative, judicial, or legislative protection of internationally protected ESCR. It is now indisputable that ESCR, like civil and political rights, are justiciable (General Comment No. 9). The states parties to international human rights treaties that recognise ESCR have adopted specific and enforceable obligations that arise principally from the ICESCR and the General Comments adopted by its implementing body.

In many constitutional systems, there are essentially two parameters that govern the efficacy of the domestic protection of human rights. The first concerns the *content* of the rights recognised, and the second concerns their *status*. As noted by Julieta Rossi (2000), while it is not uncommon for some constitutional recognition of ESCR, it is rare for them to be endowed with the same mechanisms for review or enforcement as civil and political rights. This is mainly because ESCR are regarded as "non-justiciable" or "policy-oriented" rights, unsuited to judicial enforcement in any form. Such an approach tends to overplay the characteristic differences between the two categories of rights and ignores the multifaceted nature of "rights" that embody a range of different types of claims.

Traditionally, claiming ESCR has either been through:

Using courts for ensuring direct enforceability of ESCR: When the obligations of a state are clearly determined, rights are directly enforceable, through either an individual or collective claim. In enforcing a right, it is important to identify the omission that caused the non-realisation of that right. Strategies for ensuring enforceability include two steps: the first is to establish that the state's omission resulted in the non-realisation of the right in question; the second is to ensure that the state engages in the proper conduct, with proper conduct defined in the most specific terms possible.

Or through,

Ensuring justiciability by demanding public information on the status of the realisation of ESCR: Another way to make ESCR justiciable is to demand information on the status of the ESCR policies being implemented or planned. The state has an obligation to produce public information and provide access to such information.

However, litigation is just one strategy for ensuring domestic application of international human rights law (Rossi, 2000). There are risks and benefits in pursuing litigation. Undoubtedly, litigation should be part of the education and mobilisation process. But human rights activists advancing ESCR should also take into consideration access problems in using law and the legal system, especially as faced by the poor and disadvantaged groups. Most often, the poor experience law as a tool of oppression.

In addition, national constitutional guarantees and laws may be vague in their coverage and thus, standing alone, may provide inadequate protection against ESCR violations. It may be possible in such cases to expand domestic protection of ESCR by interpreting the constitutional guarantees using more developed international standards such as development indicators as shall be illustrated in the next section.

Overview

Under human rights treaties, governments have the final responsibility for guaranteeing that people have the opportunity to enjoy the benefits of ESCR. In order for people to enjoy the benefits of ESCR, the government must play a positive role. It should be noted also that the government is not always the direct provider of what a particular human right requires (McChesney, 2000). Full ESCR can thus be achieved only gradually. Resources and time may be required. It should be recalled, however, that under the ICESCR many government obligations do not cost any money and can be implemented immediately, notably the obligations to respect and protect existing rights.

5. Monitoring Economic, Social and Cultural Rights

This section focuses on the different ways used to determine the extent of the enjoyment of ESCR through the process of monitoring and assessing the situation in Zambia. It also discusses the potential problems of monitoring ESCR, and highlights some of the approaches used to monitor ESCR that make use of standards, indicators and benchmarks.

5.1. The meaning of monitoring ESCR

Monitoring, broadly defined refers to the *active collection, verification and immediate use* of information to address human rights problems (UN 2001). It is the process of systematically tracking the actions by institutions, organisations or governmental bodies.

5.2. Monitoring and Documentation

Monitoring involves the repeated and periodic collection of information. Often, it involves investigating and documenting a large or a representative number of human rights events. **Investigation** refers to the process of looking for facts surrounding an event involving a violation or determining if violations of human rights did occur. The term investigation is often synonymously used with the term “fact-finding”. In some forms of monitoring, the more precise term is **examination** rather than investigation (See Santos et al., 2006; Guzman & Verstappen, 2003). In monitoring ESCR, human rights activists are particularly interested in determining at least the following:

- What are the human rights violations or neglect prevalent in a particular area? Who are accountable? What is the impact of these violations and neglect in the lives of the people in the community?
- What are the concrete steps currently undertaken by the government to respect, protect, and fulfil these rights? What are the gaps? What are the public services, infrastructure, and goods present in the area? What are not available?

Documentation means the recording of the results of an investigation or examination. Documentation is needed so that the facts can always be revisited, especially for purposes of comparison of past and current situations (Guzman & Verstappen, 2003).

Human rights documentation serves as a basis or source of information for the following courses of action (Santos et al., 2006):

- Sending petitions before a particular government agency;
- Negotiating with government officials;
- Lobbying for a certain law, policy, ordinance, or an executive order;
- Filing a complaint or case in court;
- Launching information and education campaigns;
- Conducting media work;
- Utilising international human rights protection mechanism.

5.3. Monitoring Government Compliance with its ESCR Obligations

Generally speaking, monitoring is an activity carried out to determine a problem in a certain situation or individual case. The following elements constitute monitoring:

- It is carried out over a long period of time;
- It involves collecting or receiving as much data as possible;
- It means close observation of the situation, usually through constant or periodic examination or investigation and documentation of developments;
- Standards or norms are used as references to determine what is wrong with the situation;
- The product of monitoring is usually a report about the situation; and
- The report that comes out embodies an assessment of the situation that provides a basis for further action.

5.3.1. Purpose of Monitoring

The general purpose of monitoring is to pinpoint a problem in a situation or a case and to indicate steps what can be taken to remedy the situation (Santos et al., 2006). Most activities that are carried out eventually as a response to the situation can be considered reactive activities. However, monitoring is also undertaken to forewarn people such as presenting an assessment of a certain situation citing the likelihood of an outbreak of conflict or emergency situation.

Box 4: Specific aims of human rights monitoring

These include:

- to assist governments in applying international standards;*
- to pressure governments to adopt and implement international standards;**
- to undertake domestic legal actions like taking cases to court;**
- to undertake other actions like denunciations and publicity campaigns with the aim of putting pressure on the government and/or to enhance public awareness;**
- to help particular victims;**
- to give advance warning in potential conflict areas.***

Key:

* for UN human rights monitoring bodies

** generally for human rights organisations

*** usually pursued by special inter-governmental and/ or non-governmental bodies

Source: Santos et al. (2006)

When an organisation decides to monitor ESCR compliance, it is essential that the organisation first be clear about its own purpose, strategies and objectives. All monitoring and assessing should be undertaken within this framework, and should be designed to further the organisation's purpose, strategies and objectives (Bolívar et al., 2000). The strength of a human rights-based analysis is that it is able to reveal capacity gaps in *legislation, institutions, policies and voice* (UNDP, 2006).

An example of monitoring state compliance to ICESCR in Zambia

At the international level, the CESCR monitors how State Parties to the ICESCR implement ESCR. Generally, the purpose is to determine how each Party to the Covenant implements their ESCR obligations and to formulate comments or recommendations for better ESCR implementation. The Covenant obliges all State Parties to submit regular reports on how the rights are implemented, initially within two years of accepting the Covenant and every five years, thereafter. The Committee examines each report and addresses its concerns and recommendations to the State Party in the form of “concluding observations”. In 2005, JCTR working with other NGOs produced a “parallel report” to the CESCR. The report is available on JCTR website and “concluding observations” could be access on the OHCHR website. By producing this handbook, JCTR hopes that many other NGOs would be interested in developing monitoring state compliance to ESCR at international and national levels. The development of specific indicators to effectively monitor ESCR in Zambia should thus be a collaborative effort by all stakeholders.

Box 5: Steps in Monitoring

How to Conduct Documentation

- Determining what situation/events to monitor.
- Determining the population and area that will be monitored.
- Preparation of monitoring tool (survey questionnaire).
- Actual data gathering/documenting.
- Preparation of report.

Source: Santos et al. (2006)

5.3.2. Potential Problems and Issues in Monitoring

Monitoring and assessing governments’ actions to determine the extent of enjoyment of ESCR is in some cases simple, but often times is a complex undertaking. Monitoring ESCR requires having a background on where ESCR are protected: either in the Bill of Rights and/or subordinate legislation. Some of the challenges that activist are likely to face include the following (See UNDP, 2000; Bolívar et al., 2000):

First, human rights work involves monitoring governments’ actions and assessing them against established human rights standards. Activists may thus find themselves more involved in a process of defining the content of rights as part of their monitoring and advocacy work than would generally be the case with, for example, civil and political rights. For example, they may have to undertake research to arrive at a fuller elaboration and deeper understanding of specific standards in order to argue the application of the standards to the specific case. This back-and-forth process can be complex and drawn out, but it is essential for the development of more precise understanding of ESCR at the national and international levels and, in turn, for more focused and effective monitoring.

Second, the government’s obligations with respect to ESCR are multifaceted. A government has an obligation of conduct and an obligation of result. This means that

activists seeking to monitor and assess governments' actions must look not only at what the government is doing, but also at the results of its actions.

Third, the government has to fulfil its obligations progressively and to the maximum of its available resources. The term "progressively" implies that activists will need to monitor the government's actions over time, to ensure that progress is being made with respect to the particular right. This, in turn, will necessitate a familiarity with the use of indicators and benchmarks. Activists may also need to look at expenditures of government resources to determine whether the government is devoting the "maximum of its available resources" to meeting its obligations. This necessitates an understanding of budget analysis.

Fourth, a government's failure to meet its ESCR obligations affects individuals. It is individuals who are denied access to education, a safe job or a healthy environment. In the majority of situations, activists will be working with groups of people, rather than simply individuals, because large numbers of people are normally affected by government's policies or plans on ESCR. As a result, monitoring and assessing the impact of a government's policies and plans may necessitate a review and analysis of complex data, such as statistics related to mortality or morbidity, levels of education, or numbers of unemployed, whether produced by the government or by independent institutions and organisations.

Fifth, human rights monitoring has traditionally focused on the conduct of public officials and the institutional structure within a society. This focus may be unduly narrow, but it reflects something important. Human rights are fulfilled when individuals enjoy certain goods and freedoms and when there are measures in place to secure these goods and freedoms. Human rights analysis thus involves assessments of the extent to which institutions and social norms are in place that provide security to the human development achievements within a society.

Other difficulties include:

- Lack of human rights-based reliable indicator/s that can be used to assess and monitor the performance of the State
- Absence of commonly agreed indicators
- Incomplete, outdated, and unreliable data base
- Lack of access to government documents
- Exaggerated data or figures to enhance performance

Any state party to the ICESCR must **respect, protect, promote** and **fulfil** its ESCR obligations. These requirements thus involve a four-part assessment of the government's actions.

5.4. Standards, Indicators and Benchmarks

5.4.1. Standards

A **standard** is defined as an accepted or approved norm or level of excellence or quality against which others are judged or measured (Santos et al., 2006).

Examples:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including [...] medical care, and the right to security in the event of [...] sickness, disability [...]” (UDHR, Article 25,1)

Article 12 of the ICESCR enumerates the following standards which States Parties must take steps to realise: “reduction of the still-birth and infant mortality, and healthy development of the child;” “prevention, treatment and control of epidemic, endemic, occupational and other diseases,” and “conditions assuring all medical services and attention in the event of sickness.”

“Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment” (UDHR Article 23,1).

The ICESCR: Article 8, right to form trade unions; and Article 9, the right to social security, among others, refer to: rights against discrimination; right to rest and recreation; right to profit sharing

5.4.2. Indicators

Indicators are guided measures based on standards to illustrate performance and change. Generally, an indicator is a tool that shows the direction of an action or serves as a sign or symptom of a problem. Indicators are very useful for analysis, even without a consensus definition of their content (Santos et al., 2006; Bolívar et al., 2000).

There are two kinds of indicators: result indicators and process indicators.

A **result indicator** measures the outcome of efforts, or lack of it, by the State to meet a particular obligation. It therefore provides an indication of the current status of the enjoyment of a certain right. Results indicators refer to the core content of the right and make it possible to gauge the status of the right.

Example: With respect to the right to health, the proportion of children who have suffered mortality or morbidity from childhood diseases preventable by immunisation is a results indicator.

A **process indicator**, on the other hand, measures the degree to which the State is complying with its obligations. Process indicators are constructed based on the respective state’s obligations. They make it possible to measure the degree to which the state is complying with its general obligations.

Example: The extent to which universal coverage of basic immunisations has been accomplished, measured as the proportion of children completely immunised against childhood diseases, is a process indicator.

In other words, while process indicators help assess and monitor a government’s fulfilment of its obligation of conduct, results indicators help assess fulfilment of its obligation of result with respect to ESCR. At the same time, the indicators should facilitate a quantitative and qualitative analysis of the performance of the general obligations of the state (legislative recognition, adoption of measures to the maximum of available resources) as well as of the specific obligations attaching to each right. Quantitative indicators are made up of numerical data, and

qualitative indicators allow for an evaluation of the quality of enjoyment of the right (Bolívar et al., 2000).

However, there is a lot of confusion in the discussion about human rights indicators. It is not a term that is commonly used in civil and political rights work. There are many indicators already used by various intergovernmental agencies, such as the World Health Organisation (WHO) and the United Nations Development Programme (UNDP), to measure the status of economic and social conditions within countries. These indicators, however, are not exhaustive, nor are they necessarily linked to human rights concepts (Bolívar et al., 2000).

(a) Use of Indicators

The precise and systematic use of indicators can contribute in several ways to the realisation of ESCR (Santos et al., 2006; Bolívar et al., 2000). Indicators can help:

- evaluate advances made in the progressive application of rights;
- identify human rights violations or neglect;
- reveal difficulties encountered; and
- develop basic content and establish a “minimum” starting point.

Indicators can also be used as a tool for:

- making better policies and monitoring progress;
- identifying which actors have an impact on the realisation of rights;
- revealing whether the obligations of these actors are being met; and
- prompting preventive actions exposing issues that had been neglected or silenced.

(b) Characteristics of Indicators

Ethical – The gathering, processing, and presentation of the data must be ethical because indicators should respect the rights of the respondents to confidentiality, freedom of choice in supplying data, and informed consent regarding the nature and implications of the data required must be sort.

Useful – If the principal use of an indicator at whatever level serves as a “marker of progress” towards improved social and economic status, then, an indicator that is either a direct or proxy measure of impact is thus useful.

Valid – Measures the issue or condition it is supposed to measure. It is an essential starting point to establish exactly what the indicator is supposed to be measuring.

Specific – Reflects changes in the issue or condition under consideration.

Sensitive – Has the ability to reveal changes in the issue or condition of interest.

Reliable – Gives the same value of its measurement; may be repeated in the same way on the same population/group/community.

Representative – Adequately encompasses all the issues or population groups it is expected to cover.

Understandable – Must be simple and unambiguous; its value must be easy to interpret in terms of the status or condition; all terms used in the description of the indicator must be explicitly defined.

Accessible – The data required should be available or relatively easy to acquire through feasible survey methods that can be validated in field trials.

5.4.3. Benchmarks

Benchmarks as used in human rights parlance are, in essence, targets established by governments, on the basis of appropriately consultative processes, in relation to each of the ESCR obligations that apply in the state concerned. Those targets will be partly quantitative and partly qualitative. They will be linked to specific time frames, and they will provide a basis upon which "progressive realisation," as mandated in the ICESCR, can be measured. Benchmarking is a very useful approach to overcoming a lack of action at the national level in relation to ESCR. In order to use indicators and benchmarks for monitoring, activists need quantitative data and/or qualitative information pertaining to the indicator under consideration (Bolívar et al., 2000; Santos et al., 2006).

5.5. Development of ESCR Indicators

Human rights scholars and practitioners working in the academic and non-governmental sector have been developing a wide range of indicators since the early 1970s, such that there is now a range of indicators across different categories and dimensions of human rights. Several indicators have been developed for assessing human rights based development programmes. From the side of international development, the demand for indicators comes from the need to mainstream human rights into development projects and to monitor and implement a human rights-based approach (HRBA) to development more generally. From the side of human rights, the demand has come from recognition among the human rights treaty monitoring bodies, the OHCHR, and a variety of special rapporteurs on the need to develop indicators to monitor state compliance with human rights treaty obligations (UNDP, 2000).

Table 6: Categories and Dimensions of Human Rights

HUMAN RIGHTS DIMENSIONS			
	I RESPECT (<i>no interference in the exercise of the right</i>)	II PROTECT (<i>prevent violations from third parties</i>)	III FULFIL (<i>provision of resources and outcomes of policies</i>)
Civil and political rights	Torture, extra-judicial killings, disappearance, arbitrary detention, unfair trials, electoral intimidation, disenfranchisement	Measures to prevent non-state actors from committing violations, such as torture, extra-judicial killings, disappearance, abduction, and electoral intimidation.	Investment in judiciaries, prisons, police forces, and elections, and resource allocations to ability.
Economic, social and cultural rights	Ethnic, racial, gender or linguistic discrimination in health, education, and welfare and resource	Measures to prevent non-state actors from engaging in discriminatory behaviour that limits	Progressive realisation Investment in health, education and welfare, and resource

	allocations below ability.	access to health, education, and other welfare.	allocations to ability.
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Source: UNDP (2006)

Table 6 depicts a matrix for the different categories and dimensions of human rights, and includes examples of how their different understandings have implications for the development of indicators.

Indicators for Column I in the table measure the degree to which states are responsible for violating human rights (e.g., measures of incidences of torture, or acts of discrimination in public health authorities).

Indicators for Column II measure the degree to which states are able to prevent non-state actors and other third parties from violating human rights (e.g. incidences of third party deprivation of liberty or denial of access to private sector health provision).

Indicators for Column III measure the degree to which states provide the necessary resources and policies for realising and promoting the protection of human rights (e.g., investment in police training on issues of torture and inhuman treatment or investment in the infrastructure for health, education and welfare).

As the table shows, different types of indicators are needed to measure the same sets of human rights, since each category of human rights has different dimensions.

5.6. Different approaches used to measure ESCR Indicators

UNDP (2006) identifies three main approaches available to measure human rights, including ESCR:

- As they are laid out in national and international legal documents (***human rights in principle***)
- As they are enjoyed by individuals and groups in nation states (***human rights in practice***)
- Through the generation of official statistics that may not have been devised originally to measure rights, but that nevertheless may serve as important proxy measures related to human rights protection (***official statistics***)

First, indicators for **human rights in principle**, in many ways, are the simplest forms of measurement, since the source data are well known, publicly available, relatively easy to code, and are arguably the most objective. Indicators that measure human rights in principle are suitable for providing some background information on the formal commitments that countries have made to protect human rights. The Churches and NGOs interested in using such indicators would need to consult the sources on treaty ratification at the international and regional level and national constitutional documents at the country level. Not all states have ratified all human rights treaties, and a comparison across rights found in treaties provides a useful baseline assessment of a particular state's commitment to different rights. In addition, many states including Zambia have filed significant reservations to treaties upon ratification that may undermine their full object and purpose.

Second, **human rights in practice** are those rights actually enjoyed and exercised by groups and individuals regardless of the formal commitment made by a government. The increase in the salience of human rights as an issue, combined with organisations dedicated to documenting human rights violations, means that there is greater availability of comprehensive information on actual practices of states and the conditions under which individuals live. But this information is limited and incomplete, since reporting of human rights violations is fraught with difficulties, including fear amongst victims, power of the offenders, comprehensiveness of evidence, and quality of communications technology, among others.

UNDP (2006) further identifies three main types of data available for measuring human rights in practice: event-based data, data based on experts' judgement, and survey-based data.

One, **events-based data** chart the reported acts of violation committed against groups and individuals by state and non-state actors, and therefore address the dimensions of respect and protect. Events-based data answer the important questions of what happened, when it happened, and who was involved, and then report descriptive and numerical summaries of the events. Event-based data on human rights have included only the violations of civil and political rights by state and non-state actors, although the method can be applied to violations of social, economic, and cultural rights.

There are three main sources for obtaining events-based data: narrative and qualitative reports, newswire generated data, and "who did what to whom" data (UNDP, 2006). *Narrative and qualitative* reports are produced by foreign and domestic governmental organisations and foreign and domestic NGOs. For example, international non-governmental organisations such as Amnesty International and Human Rights Watch produce annual reports on human rights practices around the world. A second type of events-based human rights indicator has been developed using computer programmes and software that code multiple *newswire generated data* to capture and count events and acts carried out by state and non-state actors that may have a bearing on human rights. A third type of events-based human rights indicator has been developed in *Truth Commissions* that have taken place in El Salvador, Haiti, South Africa, Guatemala, Peru, Sierra Leone, and East Timor, where increasingly complex forms of the model have been used to capture large-scale human rights violations in these countries.

Two, **data generated from experts' judgement** establish how often and to what degree violations occur, and then translate such judgements into quantitative scales that are designed to achieve commensurability across the world. Such measures are thus one level removed from event counting and violation reporting, and merely apply some sort of scale to qualitative information.

Three, **survey-based data** use samples of country populations to ask a series of standard questions on the perception of rights protection. Such measures track individual level perceptions of rights violations and may even capture direct or indirect individual experiences of rights violations. Dominant cross-national examples of such survey data projects include the various "barometer" surveys, and the World Governance Assessment project. There are national level survey projects on general perceptions of human rights, the human rights policies and performance of government, and retrospective evaluations of human rights violations. Government statistical agencies and intergovernmental organisations also produce a variety of socio-economic statistics that can be used to approximate measures of human rights such as the Human

Development Index (HDI) by UNDP and the UN Food and Agriculture Organisation (FAO) data on prevalence of hunger and the level of under-nourishment.

Another important source of data used in human rights monitoring are the **socio-economic and other administrative statistics**. It has been noted that “*socio-economic statistics* do not formally count events or acts of human rights violations or the number of victims of these violations” since their link with human rights are not always explicit (Malhotra & Fasel, 2005). At present, indicators have not been developed for all categories and dimensions of human rights. Even the ones that have been developed, nonetheless, have limitations including the following:

- *Biases*, stemming from the type of organisations that produce the information;
- *Validity*, concerning the degree to which an indicator actually measures what it purports to measure;
- *Reliability*, concerning the degree to which the indicator can be produced consistently across different contexts by different groups at different times;
- *Transparency*, concerning the degree to which the coding rules and procedures for producing an indicator are publicly available;
- *Variance truncation*, concerning the degree to which information on human rights at the national level is forced into limited categories, such as those found in the standardised scales derived from expert judgements; and
- *Aggregation*, concerning the ways in which indicators are combined as well as the degree to which they provide information on different groups of people in a country. (UNDP, 2006)

Due to these limitations, Churches and NGOs monitoring ESCR should carefully use these indicators. It is usually advisable to use multiple sources and to think carefully about proxy measures that can be used as indicators. Both quantitative and qualitative indicators should be set to monitor the achievement of human rights through development programmes. One recommendation is that indicator selection and monitoring should be participatory, allowing stakeholders to assess progress. Human rights standards should guide the selection of indicators (UNDP, 2006).

Available literature suggests three clusters of indicators (*structural, process* and *outcome*) when developing indicators to monitor the achievements of human rights at national level (UN, 2002; UNDP, 2006; Malhotra & Fasel, 2005; OEA, 2008).

Outcome indicators reflect summary information on the state of realisation of a human right. They, for example, measure the actual impact of government strategies, programmes, and interventions. To some extent, they are an indication of how those government measures impact on the aspects that determine how effective a right is recognised in the covenant. Thus, they offer a quantitatively verifiable and comparable measurement of the performance of the State in terms of the progressive realisation of rights.

Process indicators identify information that relates particular policy instruments to “milestone outcomes” that contribute to the protection and progressive realisation of human rights. They, for example, measure the quality and extent of state efforts to implement rights by measuring the scope, coverage, and content of strategies, plans, programmes, or policies, or other specific activities and interventions designed to accomplish the goals necessary for the realisation of a given right. These indicators help to monitor directly the application of public policies in terms of progressive realisation of

rights. Process indicators can also offer information on shifts in the quality or coverage of social services or programmes over a given time.

Finally, **structural indicators** capture information reflecting the legal and institutional framework for the realisation of the human right. They, for example, collect information in order to evaluate *how* the State's institutional apparatus and legal system are organised to perform the obligations under the covenant.

In order to improve the possibility of analysis and better organise information collected in the process, the reporting guidelines on indicators by the Organisation of the American States (OEA) are quite informative. The OEA guidelines suggest making a division of state realisation of ESCR into three broad categories: (i) incorporation of the right; (ii) state capabilities; and, (iii) basic financial context and budgetary commitment. Realisation of ESCR is normally within states parties' "**margin of discretion**". This means whatever targets a state sets for itself, these may not all be achieved immediately. States should identify appropriate indicators, and set realistic benchmarks (i.e., intermediate targets) corresponding to each ultimate target, so that the rate of progress can be monitored and, if progress is slow, corrective action taken (UNDP, 2000). Thus, indicators measure progress towards both intermediate and ultimate targets.

Statistical indicators are a powerful tool in the struggle for human rights. They make it possible for people and organisations, from grassroots activists and civil society to governments and the United Nations, to identify important actors and hold them accountable for their actions (UNDP, 2000). That is why developing and using indicators for human rights has become a cutting edge area of advocacy in recent years. As procedures of accountability are developed, they create important opportunities to collect information. However, rights can never be fully measured merely in statistics terms: the issues go far beyond what can be captured in numbers. As a tool for analysis, statistics if carefully collected, analysed and interpreted could become an important means for promoting human rights.

Historically, statistical indicators have been used in development for advocacy and for focusing policy. There has been a shift from purely focusing on economic indicators to more broad categories of indicators since the launch of the *Human Development Reports* in 1990. These Reports have presented composite indices such as the Human Development Index (HDI), Human Poverty Index (HPI), Gender-related Development Index (GDI) and Gender Empowerment Measure (GEM) that have captured policy-makers' attention and created debates on strategies for human development (UNDP, 2000).

In sum, there are several points relating to *indicators* that are worth noting (UN, 2002). First, the construction of human rights indicators is an ongoing enterprise. What has been presented in this handbook is based on existing literature and therefore these sets of indicators are likely to change over time. Second, the proposed list of indicators is by no means exhaustive. At the same time, it is not expected that all the indicators proposed here could be applied in Zambia at all times. Third, most of the indicators proposed in this handbook have a striking resemblance to the standard indicators of socio-economic progress. These indicators have been designed to monitor realisation of ESCR usually with a view to holding the duty-bearer to account. Hence, the likely overlap between ESCR targets and socio-economic progress.

Finally, it is important to note that human development indicators and human rights indicators have some common features. They both share the goal of producing information that will give policy-makers signals on how to better realise human freedoms, such as freedom from want, freedom from fear and freedom from discrimination. They both rely on measures of outcomes

and inputs to tell the story, such as the teacher-pupil ratios and immunisation rates. But there are three important contrasts in approach (UNDP, 2000). First, *conceptual foundations*: Human development indicators assess the expansion of people's capabilities. Human rights indicators assess whether people are living with dignity and freedom, and also the extent to which critical actors have fulfilled their obligations to create and uphold just social arrangements to ensure this. Second, *focus of attention*: Human development indicators focus primarily on human outcomes and inputs, drawing attention to unacceptable disparities and suffering. Human rights indicators also focus on these human outcomes but bring additional attention to the policies and practices of legal and administrative entities and the conduct of public officials. Third, *additional information*: A human rights assessment needs additional data, not only on violations, such as torture and disappearances, but also on the processes of justice, such as data on judicial institutions and legal frameworks and opinion poll data on social norms. The need for additional information requires building capacities in data gathering and documentation as further discussed in the next section.

6. The Scope and Elements of ESCR

There is a growing recognition in the understanding of definitions and key indicators of ESCR some of which are provided here. The other two important issues addressed in this section concern ESCR in relation to the activities of corporations and HIV/AIDS. For each of the right discussed, the scope is given and a few key targets and indicators are presented.

6.1. The Right to Adequate Housing

*ICESCR, Article 11:

The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including ... housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.

***General Comment No. 4** (E/1992/23) and **General Comment No. 7** (E/1998/22, annex IV) adopted by the CESCR

*See also **CERD (art. 5)**, **CEDAW (art. 14.2)**, **CRC (arts. 16.1 and 27.3)**,

***World Conferences**: Habitat II: Istanbul Declaration, Declaration on Cities and Other Human Settlements in the New Millennium.

***Millennium Development Goal 7**: Ensure environmental sustainability (slum dwellers).

6.1.1. Scope of the right to adequate housing

The right to adequate housing should not just be interpreted "as having a roof over one's head or views shelter exclusively as a commodity" but the right to live in a community in "security, peace, and dignity" (General Comment No. 4 of the CESCR).

The CESCR identified 7 core elements of the right to housing in General Comment No. 4:

Security of Tenure – is a legal form of protection that ensures occupants' stay in their homes and communities. This may take different forms such as ownership, rental,

accommodation, cooperative housing, lease, owner occupation, and emergency housing.

Availability of services, materials, facilities and infrastructure – Access to natural resources, safe drinking water, energy for cooking, heating, and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.

Affordability – Housing expenses should not compromise other basic needs such as food, education, and clothing.

Habitability – Housing should have adequate space, ventilation and built with strong and durable materials to protect inhabitants from cold, damp, heat, rain, wind or other threats to health, structural hazards, and diseases.

Accessibility – Housing projects must prioritise disadvantaged groups such as persons with disabilities, victims of natural disasters, etc.

Location – Housing must be located near employment and social services centres such as schools, hospitals, recreation areas, etc.

Cultural Adequacy – Housing design must enable expression of cultural identity and diversity of housing.

The CESCR also issued General Comment No. 7 prohibiting forced evictions, which are defined as “permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land, which they occupy without the provision of and access to appropriate forms of legal or other protection”.

According to General Comment No.7, forced evictions do not only happen in urban areas but also in areas where there is “armed conflict, forced population transfers, mass exodus and refugee movements”. In all these cases, a State must restrain itself from carrying out forced evictions and prevent other actors from doing the same (UN, 2002).

6.1.2. Key targets and indicators¹

Target 1: All people to have a home

Indicators:

- ❖ Proportion of homeless people in the overall population
- ❖ Number of homeless shelter beds per homeless person

Target 2: All people to enjoy security of tenure

Indicators: Proportion of people in the overall population:

- ❖ With legal title (e.g., freehold, leasehold, collective tenure) to their homes
- ❖ With statutory or other (e.g., common law) legal due process protections with respect to eviction
- ❖ Living in informal settlements
- ❖ Squatting
- ❖ Forcibly evicted within a given period

¹UN (2002)

Target 3: All people to enjoy habitable housing

Indicator:

- ❖ Average number of square metres per poor person or poor household

Target 4: All people to enjoy housing situated in a safe and healthy location

Indicator:

- ❖ Proportion of poor households within 5 kilometres of a hazardous site (e.g., toxic waste, garbage dump)

Target 5: All people able to afford adequate housing

Indicator:

- ❖ Monthly housing expenditure by median poor household as a proportion of its monthly income

Target 6: Adequate housing physically accessible to all

Indicator:

- ❖ Proportion of multi-unit residential buildings occupied by the poor that are accessible to persons with physical disabilities

Target 7: All people to enjoy housing with access to essential services, materials, facilities and infrastructure

Indicators: Proportion of households with:

- ❖ Potable water
- ❖ Sanitation facilities
- ❖ All-weather roads
- ❖ Electricity

6.2. The Right to Education

*ICESCR, Article 13:

- (1) *The States Parties to the present Covenant recognise the right of everyone to education. They agree (...) that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*
- (2) *The States Parties to the present Covenant recognise that, with a view to achieving the full realisation of this right:*
 - (a) *Primary education shall be compulsory and available free to all;*
 - (b) *Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;*
 - (c) *Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;*
 - (d) *Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;*

- (e) *The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.*
- (3) *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.*
- (4) *No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.*

***ICESCR, Article 14:**

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

***General Comment No. 11 adopted by the CESCR (E/C.12/1999/4)**

***General Comment No. 13 adopted by the CESCR (E/C.12/1999/10)**

***See also CRC (arts. 28 and 29 and General Comment No. 1); CERD (art. 5(e)(v)); CEDAW (art. 10)**

***World Conferences:** World Declaration on Education for All (Jomtien, 1990); Education for All Summit: The Delhi Declaration and Framework for Action (1993); Education for All: Dakar Framework for Action (2000)

***Millennium Development Goal 2: Achieve universal primary education**

6.2.1. Scope of the right to education

International human rights treaties define the right to education in a comparatively precise manner. In addition to providing free and compulsory primary education for all children, States have an obligation progressively to introduce free and equal secondary education (including vocational training) for all and equal access to free higher education on the basis of capacity. They also have an obligation to intensify fundamental (basic) education, leading above all to the elimination of illiteracy, for adults who have not satisfied their basic learning needs. Equality and non-discrimination are important aspects of the right to education, and States should give priority to equal access for the girl child and particularly vulnerable groups, such as children with disabilities and minority and refugee children (UN, 2002).

In principle, States can provide these rights in the context of both private and public educational institutions. Since private schools usually do not guarantee free primary education for all children, States are under an obligation to establish a sufficient number of public schools, hire the required number of qualified teachers and provide for the quality of education as laid down in international human rights law. In addition to these positive obligations to fulfil the right to education, States have an obligation to respect the liberty of parents to establish and direct their own educational institutions, to choose private schools for their children and to ensure the

religious and moral education of their children in conformity with their own convictions (UN, 2002).

UDHR mandates that education should be geared towards the holistic development of an individual, promotion of human rights, tolerance and understanding among racial and cultural groups and peace among nations.

The ICESCR added that education should enable an individual to have a “sense of dignity” and facilitate effective participation in a free society.

Based on General Comment No.13, the following are the elements of the right to education:

Availability – of functioning educational institutions and programmes in sufficient quantity.

Accessibility - educational institutions and programmes must be accessible to everyone, without discrimination. Accessibility has three overlapping dimensions: non-discrimination, physical accessibility and economic accessibility.

Acceptability - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g., relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents.

Adaptability - education has to be flexible for it to adapt to the needs of changing societies and communities and respond to the needs of the students within their diverse social and cultural settings.

6.2.2. Key targets and indicators²

Target 1: To ensure universal primary education for boys and girls Indicators:

- ❖ Net enrolment ratio in primary education
- ❖ Proportion of pupils starting grade 1 who reach grade 5
- ❖ Literacy rate in the age group 15-24
- ❖ Drop-out and attendance rates in primary schools
- ❖ Share of public expenditure on primary education

Target 2: To make free primary education available to all children

Indicators:

- ❖ Proportion of primary school pupils in State schools not paying school fees
- ❖ Average fees paid by primary school pupils in State schools

Target 3: To implement compulsory primary education

Indicator:

- ❖ Number of years' schooling made compulsory

Target 4: To eradicate illiteracy

Indicators:

- ❖ Overall adult literacy rate
- ❖ Literacy rate in the age group 15-24

²UN (2002); See McChesney (2000) for examples on state violations

Target 5: To ensure equal access for all to secondary education

Indicators:

- ❖ Net enrolment ratio in secondary education, disaggregated for poor and non-poor
- ❖ Share of public expenditure on secondary education
- ❖ Ratio of girls to boys in secondary education
- ❖ Drop-out and attendance rates in secondary education
- ❖ Proportion of children with disabilities attending secondary education

Target 6: To make free secondary education available to all children

Indicators:

- ❖ Proportion of secondary school pupils in State schools not paying school fees, disaggregated for poor and non-poor
- ❖ Average fees paid by secondary school pupils in State schools

Target 7: To eliminate gender disparity in primary and secondary education

Indicators:

- ❖ Ratio of girls to boys in primary education
- ❖ Ratio of girls to boys in secondary education
- ❖ Ratio of literate females to males in the age-group 15-24

Target 8: To improve the quality of primary and secondary education

Indicators:

- ❖ Pupil- teacher ratio
- ❖ Teacher-classroom ratio
- ❖ Proportion of primary/secondary school pupils receiving textbooks free of charge

6.3. The Right to Adequate Food

***ICESCR, Article 11:**

- (1) *The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food ... The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.*
- (2) *The States Parties to the present Covenant, recognising the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:*
 - (f) *To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources;*
 - (g) *Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.*

***General Comment No. 12 adopted by the CESCR (E/C.12/1999/5)**

***See also CRC (arts. 24 and 27), CEDAW (art. 14.2 g)**

***World Conferences:** Rome Declaration on World Food Security and World Food Summit Plan of Action (1996); Declaration of the World Food Summit: five years later (2002)

***Millennium Development Goal 1 (Eradicate hunger)**

6.3.1. Scope of the right to adequate food

According to the UN (2002) draft guidelines on poverty reduction strategies, the right to adequate food is the right of all individuals, alone or in community with others, to enjoy physical and economic access to adequate food or the means for its procurement. It should be understood primarily as the right to feed oneself, rather than the right to be fed. The right to be free from hunger is the minimum essential level of the right to adequate food. The same guidelines further provide the following insights on the right to adequate food.

The right to food implies (i) the availability of food in sufficient quantity and quality to satisfy the dietary needs of all individuals in a form that is culturally acceptable; (ii) the accessibility of food in ways that are sustainable and do not interfere with the enjoyment of other human rights.

The “availability of food” refers either to the possibility of feeding oneself directly from productive land or other natural resources, or to the existence of a well functioning distribution, processing and market system that moves food from the site of production to where it is needed in accordance with demand.

The “accessibility of food” encompasses both economic and physical accessibility. “Economic accessibility” implies that personal or household costs associated with the acquisition of food for an adequate diet should be at such a level that the satisfaction of other basic needs is not compromised. “Physical accessibility” implies that adequate food must be accessible to everyone, including the vulnerable such as women, children, the elderly, the sick, persons with physical disabilities, persons who are mentally ill, and victims of natural disasters and armed conflicts. If access to their ancestral lands is threatened, indigenous peoples are particularly vulnerable.

The right to adequate food also encompasses food safety and food security. Food safety implies that food should be free from adverse substances, whether from adulteration, poor environmental hygiene or other causes. Food security implies the absence of vulnerability to hunger, i.e., a low risk of falling victim to hunger through changes in personal or external circumstances. In other words, people are food secure if they can afford and have access to adequate food at all times.

“The right to adequate food is realised when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement” (General Comment No.12, Par. 6).

The same General Comment of the CESCR enumerated the following core elements or normative contents of this right:

Adequacy and sustainability of food resources – Adequacy of food depends on the prevailing economic, social, cultural, and other conditions in a particular country or region. Sustainability refers to long-term availability and accessibility of food.

Dietary Needs - Everyday diet must contain nutrients for physical and mental maintenance and growth of individuals.

Free from Adverse Substance – The government must ensure food safety.

Availability – The capacity to feed oneself by producing food or by accessing food from a well-functioning food distribution, processing, and market systems.

Physical and Economic Accessibility – Physical accessibility warrants that everyone especially those from disadvantaged groups must have access to food at all times while economic accessibility prescribes that food costs should not be detrimental to the enjoyment of other basic needs.

6.3.2. Key targets and indicators³

Target 1: All people to be free from chronic hunger

Indicators:

- ❖ Proportion of people with inadequate intake of dietary energy
- ❖ Proportion of adults and adolescents with low body mass
- ❖ Proportion of underweight among under-five children

Target 2: Eliminate gender inequality in access to food

Indicators:

- ❖ Proportion of males and females with inadequate intake of dietary energy
- ❖ Proportion of male and female adults and adolescents with low body mass
- ❖ Proportion of underweight boys and girls

Target 3: All people to be free from food insecurity

Indicators:

- ❖ Proportion of households not able to have two square meals regularly
- ❖ Proportion of household expenditure on food
- ❖ Variability of prices of staple foods

Target 4: All people to have access to food of adequate nutritional value

Indicators:

- ❖ Proportion of poor people with inadequate intake of protein
- ❖ Proportion of poor people with inadequate intake of micronutrients

Target 5: All people to have access to safe food

Indicators:

- ❖ Proportion of poor people vulnerable to consumption of unsafe food
- ❖ Proportion of people exposed to public information and education campaigns (including school instruction) regarding nutrition and food safety

6.4. The Right to Health

*ICESCR, Article 12:

(1) The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

³UN (2002); for further examples on targets and indicators, see UN FAO (2003) and Künnemann & Epal-Ratjen (2005)

- (2) *The steps to be taken by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for:*
- (a) *The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;*
 - (b) *The improvement of all aspects of environmental and industrial hygiene;*
 - (c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
 - (d) *The creation of conditions which would assure to all medical service and medical attention in the event of sickness.*

***General Comment No. 14 adopted by the CESCR (E/C.12/2000/4)**

***See also CRC (arts. 6 and 24); CEDAW (arts. 10(h), 11(f), 12(1), 14(b) and General Recommendation No. 24); CERD (art. 5(e)(iv))**

***World Conferences:** United Nations General Assembly Special Session (UNGASS) on AIDS (2001): Declaration of Commitment on HIV/AIDS “Global Crisis - Global Action”; World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban (2001): Durban Declaration and Programme of Action; Second World Assembly on Ageing (2002): Political Declaration and Madrid International Programme of Action on Ageing

***Millennium Development Goals 4 (Reduce child mortality), 5 (Improve maternal health) and 6 (Combat HIV/AIDS, malaria and other diseases)**

***International guidelines on HIV/AIDS and human rights**

6.4.1. Scope of the right to health

The right to health is not to be understood as the right to be healthy: the state cannot provide protection against every possible cause of ill-health (UN, 2002). It is the right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realisation of the highest attainable standard of health. The right includes both health care and the underlying determinants of health, including access to potable water, adequate and safe food, adequate sanitation and housing, healthy occupational and environmental conditions, and access to health-related information and education.

The Covenant on ESCR states that everyone has the “right to the enjoyment of highest attainable standard of physical and mental health”. The Committee further clarified that the right to health encompasses many socioeconomic factors and “underlying determinants” such as food, nutrition, and safe drinking water.

The normative contents of the right to health as discussed in General Comment No. 14 are as follows:

Availability - Functioning public health and health care facilities, goods and services, as well as programs, have to be available in sufficient quantity.

Accessibility – This element has three dimensions when applied to right to health:

- ✓ **Physical accessibility** means that health services, facilities, and goods should be within safe physical reach for all, especially for vulnerable groups.
- ✓ **Economic accessibility** means that health services, facilities, and goods must be affordable to all, especially for disadvantaged groups. This also includes the principle of equity implying that poor households must not be burdened disproportionately with health costs compared to rich households.

- ✓ **Accessibility of information** guarantees the right to seek, receive, and impart information and ideas on health issues. But this must not compromise the right of individuals to confidentiality of health information.

Acceptability - All health facilities, goods and services must be respectful of medical ethics and be culturally appropriate, i.e., respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements.

Quality - Health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires skilled medical personnel, scientifically approved drugs (not expired drugs) and hospital equipment, safe and potable water, and adequate sanitation.

6.4.2. Key targets and indicators⁴

Target 1: All people to have access to adequate and affordable primary health care

Indicators:

- ❖ Life expectancy at birth
- ❖ Proportion of public expenditure on primary health care
- ❖ Proportion of the poor population not covered by any kind of pre-payment mechanisms, by non-discretionary interventions (e.g., exemption schemes, cash subsidies, vouchers) in relation to health user fees, or by privately funded health insurance
- ❖ Number of primary health care units per thousand population
- ❖ Number of doctors per thousand population
- ❖ Proportion of the poor population with access to affordable essential drugs

Target 2: To eliminate avoidable child mortality

Indicators:

- ❖ Under-five mortality rate
- ❖ Infant mortality rate
- ❖ Proportion of under-five children immunised against communicable diseases

Target 3: To eliminate avoidable maternal mortality

Indicators:

- ❖ Maternal mortality ratio
- ❖ Proportion of births attended by skilled health personnel
- ❖ Proportion of mothers with access to pre-natal and post-natal medical care facilities

Target 4: All men and women of reproductive age to have access to safe and effective methods of contraception

- ❖ The rate of use of safe and effective methods of contraception among poor couples of reproductive age who wish to use contraceptives

Target 5: To eliminate HIV/AIDS

Indicators:

- ❖ HIV prevalence among pregnant women
- ❖ Condom use rate
- ❖ Number of children orphaned by HIV/AIDS

⁴UN (2002); See McChesney (2000) for examples of state violations on the right to health

Target 6: To eliminate the incidence of other communicable diseases

Indicators:

- ❖ Prevalence and mortality rate associated with communicable diseases
- ❖ Proportion of people with access to clean, safe drinking water
- ❖ Proportion of people with access to adequate sanitation
- ❖ Proportion of people immunised against communicable diseases

Target 7: To eliminate gender inequality in access to health care

Indicators:

- ❖ Sex ratio (overall, birth and juvenile)
- ❖ Disability-adjusted life years lost for men and women
- ❖ Ratio of women and men treated in medical institutions

6.5. Corporations and the realisation of ESCR

There is no question that corporations can act to the detriment of people's ESCR. Poor and discriminatory wages, arbitrary hire and fire policies, dangerous conditions of work and lack of adequate training all affect the enjoyment of the rights to work and enjoy fair working conditions (Articles 6 & 7, ICESCR). In addition, the exposure of a work force and community to dangerous chemicals as well as the production and sale of dangerous goods and products are just few ways in which corporate activities may affect the right to health (Article 12, ICESCR). Activities of corporations having a negative impact on ESCR may be addressed in varying ways (Bergman, 2000) including the following:

- Human rights obligations may be imposed on non-state actors by national constitutions or laws, and activists should research and identify such applicable constitutional provisions or laws.
- State-owned corporations are considered to be part of the state and held responsible under the state's obligations.
- The courts in some countries have placed human rights obligations directly on non-state actors. Activists should be aware of the jurisprudence in the venue of concern to them.
- Non-state actors, including corporations, can be held directly responsible according to the provisions of certain human rights treaties, like the Genocide Convention.
- Corporate activities may be addressed indirectly through the state's "obligation to protect".

Human rights law (through the states obligation to protect) obliges states to regulate the conduct of non-governmental actors, including corporations, to ensure they do not commit human rights abuses (Bergman, 2000). For example, when people die as a result of a company knowingly exposing workers to dangerous conditions, or knowingly dumping toxic chemicals in the drinking water supply of local communities, it can be argued that companies are "arbitrarily" depriving people of their lives. The companies and their controlling officers may be committing violent crime-murder or manslaughter. The state's failure to prevent companies from acting in this way, and its failure to investigate and bring companies and their controlling officers to account, is a violation of its legal obligation to protect. This obligation has been given further force by the Maastricht Guidelines on Violations of ESCR. Section 18 of the guidelines states:

The obligation to protect includes the State's responsibility to ensure that private entities or individuals, including transnational corporations, over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights. States are

responsible for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-State actors.

Using international human rights law is certainly one strategy for trying to force states to control corporations. However, it is important to keep in mind that there may well also be domestic remedies available. First, **constitutional law**: This law is primarily concerned with the relationship between the state and individuals. Depending on the particular rights enshrined in the Constitution, it may be possible to argue that the state has violated a person's constitutional rights by failing to stop a company from acting in a particular way. There are two possible ways of arguing this: (i) that the state has failed to act with due diligence to stop particular violations; (ii) or that the state has failed to undertake criminal investigations of companies or their senior officers, or to lay criminal charges against them where there is sufficient evidence, or to have the systems to ensure that investigations and prosecutions against them can take place. Second, **criminal law**: Deaths, injuries or property damage result from corporate activities can be the result of criminal conduct on the part of the company or its senior officers. Such conduct may call for the prosecution of the company or individual senior company officers for regulatory offences or conventional crimes of violence. Third, **civil law**: Claims for compensation are another possible remedy when, for example, there is evidence that the company acted negligently with resulting harm to person or property (Bergman, 2000).

6.6. ESCR and HIV/AIDS

Human rights promotion and protection is central to the response to HIV/AIDS (UNAIDS, 2003). Denying the rights of people living with HIV, and those affected by the epidemic, imperils not only their well-being, but life itself. Human rights violations, including stigma and discrimination faced by people living with or affected by HIV/AIDS, still constitute a major barrier both to prevention efforts and access to care. The CESC, in 2000 made clear that the right to health included, among others, access to treatment and to HIV-related education. In June 2001, Member States of the United Nations adopted a Declaration of Commitment on HIV/AIDS in which they pledged to scale up the response to HIV/AIDS within a human rights framework (UNGASS, 2001). Human rights are more than principles to guide the national and global response to AIDS: they are among the most powerful tools to ensure its success.

The International Guidelines on HIV/AIDS and Human Rights (1998)⁵

GUIDELINE 1: States should establish an effective national framework for their response to HIV/AIDS, which ensures a coordinated, participatory, transparent and accountable approach, integrating HIV/AIDS policy and programme responsibilities across all branches of government.

GUIDELINE 2: States should ensure, through political and financial support, that community consultation occurs in all phases of HIV/AIDS policy design, programme implementation and evaluation and that community organisations are enabled to carry out their activities, including in the field of ethics, law and human rights, effectively.

GUIDELINE 3: States should review and reform public health laws to ensure that they adequately address public health issues raised by HIV/AIDS, that their provisions applicable to casually transmitted diseases are not inappropriately applied to HIV/AIDS and that they are consistent with international human rights obligations.

⁵UNAIDS (2003), (E/CN.4/1997/37)

GUIDELINE 4: States should review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV/AIDS or targeted against vulnerable groups.

GUIDELINE 5: States should enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV/AIDS and people with disabilities from discrimination in both the public and private sectors, ensure privacy and confidentiality and ethics in research involving human subjects, emphasize education and conciliation, and provide for speedy and effective administrative and civil remedies.

GUIDELINE 6: States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure widespread availability of qualitative prevention measures and services, adequate HIV prevention and care information, and safe and effective medication at an affordable price.

GUIDELINE 7: States should implement and support legal support services that will educate people affected by HIV/AIDS about their rights, provide free legal services to enforce those rights, develop expertise on HIV-related legal issues and utilise means of protection in addition to the courts, such as offices of ministries of justice, ombudspersons, health complaint units and human rights commissions.

GUIDELINE 8: States, in collaboration with and through the community, should promote a supportive and enabling environment for women, children and other vulnerable groups by addressing underlying prejudices and inequalities through community dialogue, specially designed social and health services and support to community groups.

GUIDELINE 9: States should promote the wide and ongoing distribution of creative education, training and media programmes explicitly designed to change attitudes of discrimination and stigmatisation associated with HIV/AIDS to understanding and acceptance.

GUIDELINE 10: States should ensure that government and the private sector develop codes of conduct regarding HIV/AIDS issues that translate human rights principles into codes of professional responsibility and practice, with accompanying mechanisms to implement and enforce these codes.

GUIDELINE 11: States should ensure monitoring and enforcement mechanisms to guarantee the protection of HIV-related human rights, including those of people living with HIV/AIDS, their families and communities.

GUIDELINE 12: States should cooperate through all relevant programmes and agencies of the United Nations system, including UNAIDS, to share knowledge and experience concerning HIV-related human rights issues and should ensure effective mechanisms to protect human rights in the context of HIV/AIDS at international level.

7. Data Gathering and Documentation Techniques

Critical to an effective and efficient monitoring of ESCR requires investing in data gathering and documentation techniques.

7.1. Data Collection

Data collection involves the gathering of all available data, which are material and pertinent to the identification, description, and solution of a given condition or problem (Santos et al., 2006).

When data are abundant and plentiful, it will be necessary to employ selective processing in order to use only those that are the best and eliminate those of doubtful value or those which will merely serve as collaborative evidence since there are sufficient materials available.

However, when data are scarce and collection is difficult, care should be exercised in evaluating the importance of available information to avoid dismissing relevant data or accepting information without proper scrutiny. Care should therefore be taken when collecting data on any particular ESCR, otherwise, the conclusion(s) could result in unreliable and/or wrong. The dangers consist of: inadequate data; unreliable data; and wrong conclusions from the data.

There are two broad categories of sources for obtaining data or information pertaining to the indicators developed for monitoring a specific ESCR, that is, primary and secondary (Bolívar et al., 2000).

- **Primary data** or information is collected first hand by a research team.
- **Secondary data** or information is that information which has already been gathered by others, for the same or another purpose. Secondary sources may be published or unpublished, and include both quantitative and qualitative information.

Collection of primary data on these indicators would usually involve carrying out a community survey of households. For example, the survey could provide data on the proportion of population who have completed primary schooling, the proportion of children who are currently enrolled in primary school, and the number and distribution (in terms of distance from the households where children live) of primary schools in the community being studied. In order to make the best use of existing information, advocates of ESCR must be able to understand what the data mean, and they must develop a way of assessing their accuracy, reliability and limitations (Bolívar et al., 2000).

7.2. Data Collection Methods

7.2.1. Normative survey

Normative survey is a method of gathering data regarding current conditions. The method is concerned with ascertaining the conditions, which prevail in a group of cases chosen for study, and is essentially a quantitative method of description of the general characteristics of the group (Santos et al., 2006).

7.2.2. Interview

One of the most effective devices for gathering data directly from persons who have actual knowledge of events is through personal interviews. An interview is a specialised form of verbal interaction where data are obtained via a face-to-face encounter between a trained researcher and a respondent who possesses relevant information.

Types of Interviews

Interviews are classified according to the type of questions asked, the flow of the interview, the organisation of the whole session, and the interaction between the interviewer and interviewee (See Santos et al., 2006).

Structured interviews – consist of specific questions that follow a definite flow or sequence using a questionnaire or interview schedule.

Semi-structured interviews – these interviews are defined as guided conversations, where guide questions or topics provide direction. They are also a means of maintaining a relaxed atmosphere, as if the interviewer is simply conversing with the interviewee. Here, the method of asking around is important to maintain an informal atmosphere.

Unstructured interviews – these interviews are not constrained by guide questions. The respondent takes the lead and is free to talk about whatever s/he wants to. The advantage of this kind of interview puts the respondent at ease to share information s/he would normally refuse to disclose to a stranger. The disadvantage, though, is this type of interview that it is harder to control, thus requiring more time and commitment from the interviewer. This is very effective in evoking life stories.

Interview Sources

Experts/Key informants: Experts provide information, background and historical knowledge. They come from many different fields like law, medicine, science and technology, environment to human rights.

Government officials: These are local executives, officials of relevant national government agencies, area based agencies, and field-based personnel of agencies.

Affected individuals: In human rights documentation, one of the most important sources of information concerning government's actions and/or omissions is the actual individual or those mostly affected. They provide first hand account of the incident or experience which is very crucial in identifying immediate response and the responsible parties – facts that are required to petition for redress.

7.3. Documentation

Documentation refers to the process of recording information or the process of collecting and organising documents.

7.3.1. Kinds of documentation

(i) Library-type of Documentation – involves collection of documents

(ii) Documentation of Events – involves recording of information about ongoing or recent events

Box 6: Key steps in fact-finding

The process of gathering information to identify and investigate a particular event or a human rights violation is called fact-finding.

The usual steps of fact-finding are:

- interview
- visual inspection
- process observation
- collection of relevant documents
- taking pictures
- use of other recording instruments both audio and video
- forensic examination
- report writing

Source: Santos et al. (2006)

7.3.2. Purposes of human rights documentation

- Human rights education, popularisation
- Standard-setting
- Direct assistance to victims
- Pursuit of justice, to seek redress
- Local and international advocacy
- Preparation of the context and human rights reports
- Lobbying
- Establishment of historical records

7.3.3. How to conduct documentation

- Determine the information needed and establish the means to acquire it.
- Record the acquired information and store them in appropriate containers (called documents) or collect existing documents.
- Organise the documents for accessibility.
- Provide the documents to users who need the information.

7.3.4. Documentation tools

- Interview schedule
- Survey questionnaires/monitoring tool
- Field diary (for observation and reflection)

Equipment and accessories needed for documentation work

- Tape recorder, blank tapes

- Camera, film, batteries

8. Public Engagement in Monitoring and Claiming ESCR in Zambia

The task of ensuring that the Zambian government complies with both its international and national obligations in realising ESCR lies in the collaborative efforts of several Churches and NGOs. There should be a campaign to cultivate that interest in not only knowing about ESCR, but also in demanding or claiming them. This final section summarises the role that Churches and NGOs could play in promoting and protecting ESCR. It further discusses some challenges that these organisations are likely to face in their lobby and advocacy efforts.

8.1. The Role of Churches and NGOs in promoting and defending ESCR

First, joint civic education on ESCR is required: This would involve teaching the public about ESCR, and the related duties and State obligations. To maintain public awareness of Covenant rights, the Churches and NGOs could, for example, produce annual report cards on the performance of the country with respect to one or more rights (McChesney, 2000).

Second, providing information and advice to law-makers: Churches and NGOs could play an important role in promoting ESCR among law-makers. These organisations can, for example, promote human rights by sharing information and opinions with Members of Parliament (MPs). They can support and co-operate with individual MPs who share their concern, and can offer advice to legislative committees that monitor human rights and social issues. By describing the rights and obligations assured in the Covenant, and comparing them to the conditions in which people actually live, these organisations can help politicians to see the need for improvements based on human rights.

Third, preparation of “shadow” and/or “progress reports”: When a State prepares a report for the UN describing how ESCR are being fulfilled, Churches and NGOs could ask that one or more committees of the National Assembly review the report after it has been submitted. If an NGO or group of NGOs prepares an “alternative” or “parallel” report to send to one of the treaty bodies (e.g., CESCR), such a document and the preparation process can be used to educate members of the public and politicians during the time leading up to the CESCR session, as well as after it (McChesney, 2000). Public discussion might encourage other groups to become active in supplying information to the CESCR.

8.2. Some challenges to realisation of ESCR

Laws alone cannot guarantee full realisation of ESCR. There is no doubt that institutions supporting the legal process are also needed, as is a culture of social norms and ethics to reinforce the legal structures. An enabling economic environment is also essential. Many groups in society, as well as governments, can strengthen all these social arrangements. Community leaders, religious leaders, business leaders, parents, teachers – all have a role in building norms and upholding the values of respect for ESCR. However, the issue of access to justice remains a big challenge in Zambia. For more discussions on this subject see UNDP Report by Patrick Matibini (2007)⁶. States have the first obligation to participate in the international rights regime and to establish national legal frameworks. But human rights activists and movements

⁶ Some of the difficulties Matibini discusses include legal costs and delays in court proceedings.

can also press for legal reforms to give people access to legal processes, with institutional barriers removed (UNDP, 2000).

Moreover, even if ESCR obligations are codified in international human rights treaties, but the enforcement mechanisms remain weak. Treaty bodies merely recommend actions by states parties without any enforcement measures (UNDP, 2000). If a right is violated, there must be an entitlement to a remedy. Remedies should not only be through judicial means, i.e., reached through the courts of law. There should also be administrative or even official guarantees that the violation will not happen again. Indicators are therefore needed to assess whether effective remedies are provided or not. An assessment of judicial remedies can be made by studying the efficacy of the justice system designed to provide them.

9. Conclusion

In conclusion, this handbook aimed at providing insights necessary when monitoring and claiming ESCR in Zambia. It demonstrated that while monitoring of ESCR may in some instances be simple, assessment of government actions and/or omissions towards realisation of ESCR is quite complex and a mammoth exercise. In view of this, Churches and NGOs interested in engaging with ESCR monitoring needs to build their skills and capacities to keep track of the realisation and/or violations of ESCR. Monitoring is not a one time activity, but a gradual process demanding a constant check and re-evaluation of indicators and benchmarks.

The handbook stressed the relevance of generally acquiring basic knowledge on human rights, and the need for understanding the nature and state obligations arising from UN instruments like the ICESCR that Zambia has ratified and the role that treaty bodies like CESCR play in the realisation of ESCR. It further highlighted both international (particularly the UN and African human rights systems) and domestic remedies available for Zambian citizens. It was noted, however, that most often national laws are inadequate in promoting and protecting human rights and to ensure that everyone has the opportunity to benefit from them. This is why monitoring of government efforts towards realisation of ESCR is necessary. Since, government obligations with respect to ESCR are multifaceted, activists should therefore seek to monitor and assess not only what government is doing, but also at the results of its actions. Such an endeavour involves examining or investigating and documenting a large number of human rights events.

Moreover, further research is required to assess the effectiveness of secondary legislation in realising ESCR in Zambia. Available literature is limited, for example, on how these pieces of legislation could best be used by citizens to claim ESCR. Claiming ESCR through the courts of law remains one of the paramount ways of ensuring their enforcement. However, access to justice poses a lot of challenges in Zambia, especially for the poor and disadvantaged groups such as women. It is the hope of the JCTR that Churches and NGOs working in Zambia will continue to take a keen interest in monitoring the enjoyment of ESCR for it is indispensable for integral human development and national development.

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Advocacy on Economic, Social and Cultural Rights (ESCR)

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Jesuit Centre for Theological Reflection

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