



**The Jesuit Centre for Theological Reflection
(JCTR)**

Economic, Social and Cultural Rights (ESCR): Foundations for Daily Living

**Right
to Education**



**Right
to Healthcare**



**Right to
Good Sanitation**



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ABOUT THE JCTR

The JCTR is a research, education and advocacy faith-based organisation that promotes study and action on social, cultural and economic issues. Since its inception in 1988, the Centre has fostered a faith-inspired perspective, to critically understand and responded to current issues in Zambia, which emphasise overall human dignity at the individual, household, community and national levels. With the vision of promoting social justice, especially for the poor, the Jesuit Centre for Theological Reflection (JCTR) works on enhanced good governance, promotion of access to economic, social and cultural rights with a focus on health, education and water and sanitation. It also works on promotion of sustainable agricultural policies and practices and climate change management.

INTRODUCTION

In 1948, the *United Nations General Assembly* adopted the Universal Declaration of Human Rights (UDHR), outlining the basic civil, cultural, economic, political and social rights that all human beings should enjoy. In 1966, Economic, Social and Cultural Rights (ESCR) were explicitly recognized as legal rights in the International Covenant on Economic, Social and Cultural Rights (ICESCR) (which together with the UDHR and the International Covenant on Civil and Political Rights form the International Bill of Rights), in addition to other key human rights treaties and regional mechanisms. Although Zambia ratified the ICESCR in 1984, it has not enshrined its commitment to ESCR through the Constitution. This has real life consequences.

ESCR and the Bill of Rights are not new concepts and did not start with the UN Declaration of 1948 and 1966 but instead originate with God. The idea of human dignity (the basis for Human Rights and ESCR promotion) that we are created in the image of God (Genesis 1:27), forms the basis for human equality and our call for enshrining ESCR in the Bill of Rights as JCTR. The inclusion of ESCR in the BoR secures individuals' rights and limits government intervention.

People's standards of living may be improved through greater access to ESCR which includes right to health, education and water and sanitation. These services are key to living a dignified life which every human being aspires to lead. When basic supports and services are not available in the areas of life, such as health, education and water and sanitation, people's dignity and opportunities to live fulfilled lives are compromised. Therefore, the rights encompassed in the economic, social and cultural rights (ESCR) are core to the enjoyment of human rights and freedoms, and fundamental to people reaching their full potential as God intended. The absence of full-enjoyment of these rights in Zambia is further compounded by inadequate legislation. In the Zambian Constitution's Bill of Rights, the ESCR are not provided in a comprehensive way, and are limited to piecemeal application through specific pieces of legislation, such as Acts of Parliament. The ESCR's absence in the Bill of Rights means that they are not justiciable, with the result that citizens cannot take government to court when it does not take appropriate steps to facilitate authentic and practical access to these fundamental rights. So while the Constitution provide a rule of law for the government to govern, the Bill of Rights protects the individual fundamental rights of citizens including political, civil, economic, social and cultural rights.

Part 3 of the Constitution of Zambia-Bill of Rights

The Zambian Bill of Rights is entrenched in the Constitution. The Bill of Rights is a list of fundamental rights and freedoms covered in Part III of the Constitution of Zambia, which is the Supreme Law of the Land. Part Three of the Constitution can only be amended through a national referendum in which not less than two thirds of the registered voters vote and at least 50% vote in favour of the amendment is achieved. During the 2016 general elections, the referendum to vote for an inclusion of ESCR in the Bill of Rights did not go through as it did not meet the referendum thresholds. As a result, Part III of the 1996 Constitution still remains the Zambian Bill of Rights. Article 11 of 1996 Amendment and Article 2 of 2016 Amendment declare that every person in Zambia is entitled to fundamental rights and freedoms, regardless of race, place of origin, political opinion, colour, creed, belief, religion, sex or marital status. However, the enjoyment of these fundamental rights and freedoms are subject to limitations based on the affordability or availability of state resources determined by Cabinet, and as long as their enjoyment do not prejudice the rights and freedoms of others. This severely limits the actual realization of rights. In fact, it essentially maintains these “rights” as privileges as opposed to basic, concrete and necessary rights of citizenship.



Background to the ESCR

ESCR are those human rights relating to many aspects of our daily lives including the workplace, social security, family life, participation in cultural life, and access to housing, food, water and sanitation, health care and education. The desire to promote and protect ESCR has grown around the globe. Institutions, organisations and nations are paying increased attention to the protection of these rights in their programmes, policies and case law. Highlighting the need to respect and promote ESCR through legislation is key to ensuring greater overall enjoyment of human rights. However, the denial of basic economic, social and cultural rights continues, and is even intensifying disparity between rich and poor people in both wealthy and poor countries; Zambia included.



Good Sanitation



Poor Sanitation

Importance of ESCR

- They reflect concerns and desires of every individual and family, especially the most vulnerable
- With increasing economic globalization and inequality within and between states, ESCR can assist grassroots groups, NGOs and academics to unite in response to local struggles and to demand the practical extension of human rights to all persons
- ESCR place obligations on States and non-state actors to prevent and address patterns of poverty, inequity and deprivation as violations of ESCR
- The ESCR framework is useful to reinforce actions for justice and amplify progressive alternatives to enhance the enjoyment of ESCR
- ESCR unite all people, women, men, youth and persons with disabilities in the collective realisation of our common humanity, serving as a foundation for universal human freedom and dignity



Implications of denying citizens their ESCR

- The denial of ESCR can have devastating effects. Forced displacement or eviction often results in homelessness, the loss of livelihood and the destruction of social networks. Lack of access to quality health care, for example, has health implications on children under the age of five (5) which affects their organs for life, including the healthy development of brain, liver and heart, as well as their immune system.

- Denying ESCR can affect large numbers of people. For example, diarrhea and dehydration caused by a lack of access to safe drinking water has claimed a lot of lives in developing countries that have overlooked the provision of quality public services.
- Gross violations of ESCR have been among the root causes of conflicts, and failure to address systematic discrimination and inequities in the enjoyment of these rights can impede recovery from conflict.
- Lack of accessibility and availability of education and healthcare have been one of the primary causes of socio-economic disparities in Zambia. Bridging the gap between the poor and the rich can be addressed through improved provision and delivery of quality and accessible education, health, and water and sanitation services
- The denial of economic, social and cultural rights can lead to violations of other human rights. For example, it is often harder for individuals who cannot read and write to find formal employment, take part in political activities, be active in their communities, and exercise their freedom of expression. Failing to protect a woman's right to adequate housing, for example, can make her more vulnerable to domestic violence, as she might have to choose between remaining in an abusive relationship or becoming homeless.



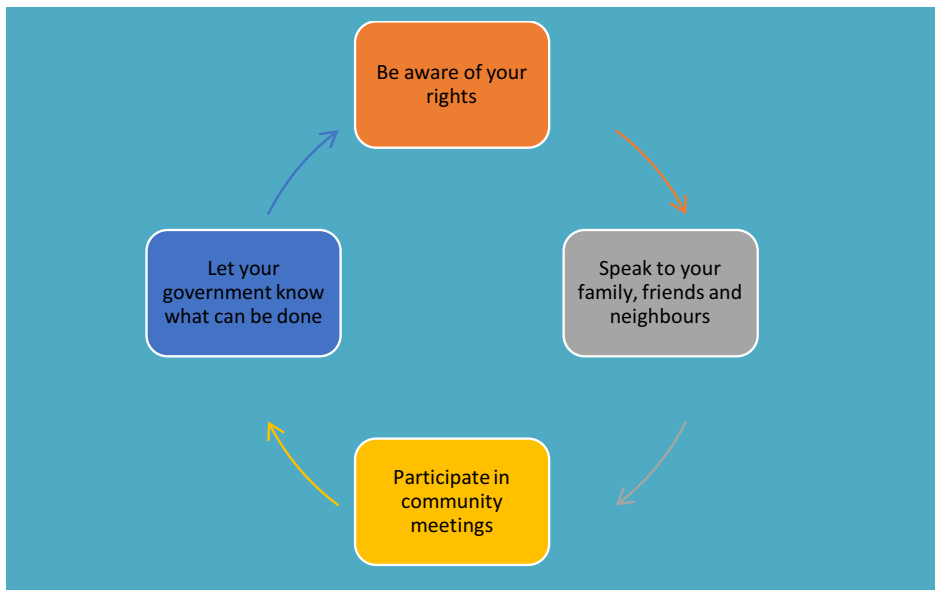
Zambia has in the past years continued to be hit by the cholera outage due to poor water and sanitation services especially in high density areas

The role of government in fulfilling, protecting and promoting ESCR

- The government has an obligation to take appropriate measures towards the full realization of economic, social and cultural rights to the maximum of resources as well as meet international obligations
- The government has the responsibility to promote constitutional amendments that support the progressive realization of ESCR

The government has an obligation to respect, protect and fulfil ESCR

What can you do?



Conclusion

- Rights are available to all, and should not be treated simply as privileges when economically or politically convenient to implement
- The government has a duty and an obligation to mobilize resources to fulfil international obligations and provide these basic rights for all Zambians. Fulfilling this obligation on the part of Government should not only be motivated by the desire to fulfill the requirements of the Constitution but as part obeying the higher authority than the civil authority – the law of God (Acts 5:29).
- Inherent in the implementation of these rights is our common humanity and consideration of the physical, spiritual and mental integrity and worth of every individual
- The recognition and promotion of basic human material and social needs, from a human rights viewpoint, is essential to human dignity
- ESCR should not be at the mercy of changing governmental priorities, policies and programmes, **but should be defined as entitlements**
- Recognition of our common humanity must be the first step to be made, and it can be achieved only with the identification of fundamental needs as rights





Vision:

"A just Zambian society guided by faith, where everyone enjoys fullness of life".

Mission Statement:

"From a faith inspired perspective the JCTR promotes justice for all in Zambia, especially for the poor, through research, education, advocacy and consultations".

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