Referendum on the Bill of Rights, which had included ESCRs, would have succeeded.

Zambia is one of the 160 states that have ratified the ICESCR. A number of states have domesticated the ICESCR by including ESCRs in their Constitutions and national laws. However, Zambia has not yet done so. The domestication of ESCRs into the Bill of Rights by Zambia will provide for effective remedies where such rights are violated as the case is with civil and political rights, which are protected under the Bill of Rights.

WHAT IS THE HUMAN RIGHTS COMMISSION DOING TO PROMOTE AND PROTECT ESCRs IN ZAMBIA?

The Human Rights Commission (HRC) is a National Human Rights Institution (NHRI) mandated under Article 230 of the Constitution of Zambia (Amendment) Act No. 2 of 2016 to ensure that the Bill of Rights is upheld and protected.

In implementing its promotional and protective mandate, the Commission strives to strengthen the promotion and protection of ESCRs by:

- Conducting stakeholders' engagement meetings to promote understanding and appreciation of the need to expand the Bill of Rights and include ESCRs;
- Conducting research and analysis to develop policy positions and advocacy on ESCRs;
- Providing policy, technical advice and capacity building support on ESCRs to different stakeholders to advocate the reforming and expansion of the Bill of Rights to, among others, include ESCRs.
- Strengthening partnerships with key stakeholders such State Actors and Non-State Actors to jointly promote ESCR;
- Engaging the Government to develop and implement a transparent Road Map on amending the Constitution, including holding a National Referendum to adopt a Bill of Rights that will incorporate ESCRs.

WHAT CAN I DO AS A ZAMBIAN TO CLAIM ESCRs?

- Demand for the amendment of the Bill of Rights to include Economic, Social and Cultural Rights;
- Support efforts towards promoting Economic, Social and Cultural Rights such as free education, access to adequate health services, employment and labour related matters, increased social protection measure such Social Cash Transfer and demand that they be enshrined in the Bill of Rights to guarantee their continuity or sustainability;
- Share with other the information received from the Human Rights Commission to contribute towards understanding and appreciation of the need to amend the Bill of Rights to include ESCRs; and
- Send your suggestions, concerns or complaints relating to violation of human rights, including ESCRs, to the contact numbers and other HRC social media platforms indicated on this brochure for redress.

BENEFITS OF INCLUDING ESCRs UNDER THE BILL OF RIGHTS

Once the ESCRs are enshrined in the Bill of Rights:

- the Government will be compelled to create conditions necessary for their enjoyment such as putting in place appropriate policies, implementation frameworks, providing adequate planning and budgeting for their progressive realization within the maximum available resources;

- The provision of ESCRs such as free education, employment, clean and safe drinking water, adequate food and social protection measures will be an obligation of the state as opposed to simply being a programme or policy of respective political parties that form government;

- The dignity of the majority citizens and generally people in Zambia may be enhanced overtime due to an enhanced standard of leaving resulting from the progressive realization of ESCRs;

- Zambia will have an adequate Bill of Rights that meets the international standard of what constitutes a Bill of Rights [that includes civil, political, economic, social, cultural and further rights];

- If the state or any other third party is not fulfilling an individuals' or a group of individuals' ESCRs, the affected individual or groups of individuals may seek redress for the violation. Thus, ESCRs will be justiciable or legally enforceable in the courts of law, tribunal or administrative institution of entity.

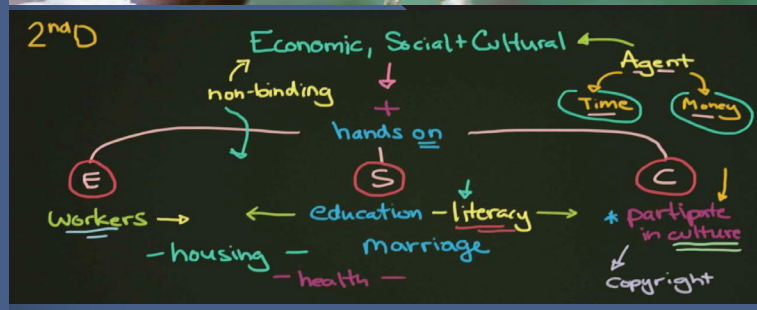
Report any violations or abuses of human rights to the Human Rights Commission

1 Lusaka Province Lusaka: 0764-353 501
2 Central Province Kabwe: 0957-445 833
3 Copperbelt Province Ndola: 0970-520 355
4 Eastern Province Chipata: 0970-520 352
5 Luapula Province Mansa: 0970-520 355
6 Muchinga Province Chinsali: 0970-520 358
7 Northern Province Kasama: 0957-446032
8 Northwestern Province Solwezi: 0764-353 519
9 Southern Province Livingstone: 0764-353 543
10 Western Province Mongu: 0957-445 829

www.hrc.org.zm

Human Rights Commission

WHAT ARE ECONOMIC SOCIAL AND CULTURAL RIGHTS?



Human Rights Commission - Zambia | www.hrc.org.zm | Human Rights Commission Zambia | hrc_zambia | info@hrc.org.zm | @hrc_zambia | 0954 443 010 | Toll Free Line 8181

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EXAMPLES OF ESCRs

Economic social and cultural rights include the rights to adequate food, to adequate housing, to education, to health, to social security, to participate in cultural life, to water and sanitation, and to work, among others.

1. Adequate standard of living

The right to adequate standard of living encompasses the rights to:

Food of acceptable standard and to be free from hunger;
Adequate housing;
Clean and safe drinking water and decent sanitation; and
Decent clothing.

2. Health Services;

The right to health includes the right to:

Access to health facilities; medical equipment, drugs, services, personnel, etc;
Protection against epidemic diseases;
Rights relevant to sexual and reproductive health; and
Not to be denied emergency medical treatment; etc.

3. Worker's Rights

Workers' rights include the right to:

Employment;
Freedom from forced labour;
Fair wages and equal pay for equal work;
Safe and healthy working conditions;
Freedom to form and join trade unions and to strike; and
to reasonable limitation of working hours; etc.

4. The Right to Education

The right to education includes the right to:

Free and compulsory primary education;
Available and accessible secondary and higher education progressively made free of charge; and
Freedom of parents to choose schools for their children

5. The Right to Social Security and Protection

These include the right to:

Not to be denied social security cover arbitrarily or unreasonably;
Equal enjoyment of adequate protection in the event of unemployment, sickness, old age, disability or lack of livelihood in circumstances beyond one's control

6. Cultural Rights

Cultural Rights include the right to:

Participate in one's cultural life (use the language of one's choice, belong to, enjoy and participate in grouping or community of one's culture and language);
Share in and benefit from scientific advancement (The state must recognize the role of science, technology and indigenous tools and knowledge in the development of the country); and
Protection of the author's moral and material interests from scientific, literary or artistic production (Promotion and protection of intellectual property rights),
etc.

HOW CAN ESCRs BE VIOLATED

An individual's ESCRs can be violated through various means. Such violations occur when a State fails in its obligations to respect, protect and fulfil these rights.

Examples of such violations include:

- Forcibly evicting people from their homes (violation of the right to adequate housing)
- Water treatment facilities contaminating drinking water (violation of the right to health)
- Failure to provide safe and healthy working conditions (violation of the right to work)
- Failure to facilitate access to food and prevent starvation (violation of the right to food)
- Failure to provide access to information and services related to sexual and reproductive health (violation of the right to health)
- Failure to provide adequate education facilities, learning and teaching materials, teachers, etc (violation of the right to education)

STATE OBLIGATIONS

According to the International Covenant on Economic, Social and Cultural Rights (ICESCR), a State must take steps "to the maximum of its available resources" to progressively realise ESCR. In particular, a State (including its subnational levels) has the obligations:

- to respect ESCRs (itself refrain from any violation of ESCRs);
- to protect ESCRs (prevent third parties from violating ESCRs);
- to fulfil ESCRs (take necessary measures to realise ESCRs, including through legislative, administrative, budgetary and other processes); and
- to seek and provide international assistance and cooperation in the realisation of ESCRs.
- States must guarantee ESCRs without discrimination on the basis of grounds specified in the ICESCR, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, age, nationality, marital and family status, health status, place of residence, and economic and social situation

PROTECTION OF ESCRs?

ESCRs are protected under various international and regional treaties, and in national constitutions, where they exist.

INTERNATIONAL TREATIES

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is the most comprehensive treaty that protects ESCRs at the international level.

Other international treaties that guarantee Economic Social and Cultural Rights include the;

- Universal Declaration on Human Rights (UDHR)
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child (CRC)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Rights of Persons with Disabilities (CRPD)

REGIONAL TREATIES MOST RELEVANT TO ESCRS-AFRICAN CONTEXT

At the African Union level, the treaties that guarantee ESCRs include;

- 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)

STATUS OF ESCRs IN ZAMBIA

The current Constitution of Zambia [Amendment] Act No. 2 of 2016 does not make provisions for Economic, Social and Cultural Rights.

The Constitution of Zambia [Amendment] Act No 18 of 1996, provided for Economic, Social and Cultural Rights under Part IX [Nine] called the Directive Principles of State Policy and the Duties of a Citizen, which was a preamble and non-justiciable.

As a result, it was explicitly stated that "they 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".

It further stated that the ESCRs "may be observed only in so far as State resources are able to sustain their application".

Part IX of the Constitution was removed during the 2016 Constitutional Review on the understanding that the National