



E-Info Tool

On the human rights-based approach
in German development cooperation

Human Rights in Development Cooperation with Kenya

Introduction

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

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

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

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

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

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

Kenya has ratified seven of the nine core international human right treaties (see next page). As a ratifying party, Kenya is obliged to implement those rights guaranteed by the treaties and to regularly report on progress to the UN treaty bodies. Kenya also has ratified the Optional Protocols to the Children's Rights Convention on the rights of [children in armed conflict](#) and on [the prohibition of child trafficking, prostitution and pornography](#). In June 2005, Kenya ratified the [Rome Statute for the International Criminal Court](#).

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In cooperation with



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for Human Rights

So far, Kenya has not ratified the Optional Protocols to the human rights treaties which enable individuals to submit complaints to the UN treaty bodies.

Regionally, Kenya is party to the 1986 [African Charter on Human and Peoples' Rights](#), and has ratified the [Convention Governing Specific Aspects of Refugee Problems in Africa](#), and the [African Charter on the Rights and Welfare of the Child](#).

By ratification of the [Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights](#) in 2005 Kenya has accepted the jurisdiction of the [African Court for Human Rights](#) but does not accept its jurisdiction on individual complaints. The [Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#) has not yet been ratified by Kenya.

Ratification of the Core International Human Rights Treaties by Kenya

International Convention on the Elimination of All Forms of Racial Discrimination ([ICERD](#))
[Ratified 13 Sept. 2001](#)

International Covenant on Civil and Political Rights ([ICCPR](#))
[Ratified 1 May 1972](#)

International Covenant on Economic, Social and Cultural Rights ([ICESCR](#))
[Ratified 1 May 1972](#)

Convention on the Elimination of All Forms of Discrimination against Women ([CEDAW](#))
[Ratified 24 August 1984](#)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([CAT](#))
[Ratified 21 Feb. 1990](#)

Convention on the Rights of the Child ([CRC](#))
[Ratified 30 July 1990](#)

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

Convention on the Rights of Persons with Disabilities ([CRPD](#))
[Ratified 19 May 2008](#)

International Convention for the Protection of All Persons from Enforced Disappearance ([CPED](#))

Signed 6 Feb. 2007, not ratified

Last Update: 11 August 2009

2. Kenya's Human Rights Obligations

By ratifying human rights treaties, Kenya has accepted certain obligations, which are essential and legally binding for Kenyan development strategies. One obligation is harmonizing domestic legislation with human rights. This is an important prerequisite for citizens to hold their respective states to account via the judiciary. Another obligation relates to the implementation of human rights in policies, strategies, budgeting, and, more generally, administration.

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

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

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

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

Kenya used to be one of the many states not taking her reporting obligations seriously and frequently did not report on time or failed to report at all. As the box below shows, this has improved in the past years.

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

The Concluding Observations document progress and failings, and give recommendations on how to improve the implementation of the respective treaty.

In general, while the Concluding Observations endorse several policy measures taken by Kenya (for example recent legislation strengthening core labour standards, a National Human Rights Policy and Plan of Action), they notice that international human rights have not been sufficiently incorporated into the Kenyan legal framework and are thus in practice not invoked in courts. Furthermore, the Concluding Observations identify a number of shortcomings with regard to the fulfilment of several rights. As will become obvious below, most of these shortcomings touch upon issues also central to Kenyan-German Development Cooperation: among them access to social services and to justice, and the discrimination of women.

Kenya's State Reports and Concluding Observations

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

No report submitted,

[last report due in Oct. 2006](#)

International Covenant on Civil and Political Rights ([ICCPR](#))

[Last report due in April 2008](#)

[Concluding Observations \(2005\)](#)

International Covenant on Economic, Social and Cultural Rights ([ICESCR](#))

[Last report 2006](#)

[Concluding Observations \(2008\)](#)

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

[Last report 2006](#)

[Concluding Observations \(2007\)](#)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([CAT](#))

[Initial report due in 1998, submitted 2007](#)

[Concluding Observations \(2008\)](#)

Convention on the Rights of Child ([CRC](#))
[Last report 2005](#)
[Concluding Observations \(2007\)](#)

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For example: In late 2008, the ICESCR Committee noticed wide-spread disparities in the enjoyment of economic, social and cultural rights such as access to land. These disparities were a structural cause of the inter-ethnic tensions and post-election violence in late 2007. The Committee urged Kenya to bring perpetrators to justice, and address broader historical injustices and inequalities within the Truth, Justice and Reconciliation Commission and in future policy measures. Another recommendation relates to providing adequate access to housing and employment for internally displaced persons. With regard to the right to health, the Committee recommends, among others: "... that the State party progressively extend the scope of the National Hospital Insurance Fund so as to reimburse all hospitalization costs, in particular medical expenses, and to cover all workers, including informal, casual, domestic and part-time workers and the self-employed, as well as persons without employment. As a first step, it recommends that the State party consider removing any penalties imposed on persons who are unable to pay their contributions on time. It also recommends that the State party take immediate steps to introduce a comprehensive compulsory health insurance scheme for everyone ..." (paragraph 20).

With respect to access to water, the Committee "recommends that the State party take immediate measures to ensure affordable access to adequate water and sanitation in informal settlements and arid or semi-arid rural areas, ... by, inter alia, reducing waiting times for collecting water, adequately controlling prices charged by private water services and water kiosks, and connecting Kibera to the Nairobi city sewage system. It also recommends that the State

party ensure that slum upgrading projects give priority to the construction of social housing which is affordable for disadvantaged and marginalized individuals and families and that affected communities are effectively consulted and involved in the planning and implementation of such projects." (paragraph 31)

With regard to agriculture, the Committee points out that livelihoods of farmers may be adversely affected by the Economic Partnership Agreements with the European Union and other actors, and recommends to undertake respective assessments assuring that human rights of Kenyan residents are not adversely affected.

The Committee monitoring the implementation of the anti-torture convention noticed in its [2008 Concluding Observations](#) the urgent need to improve the overall judiciary system and access to justice, to act against arbitrariness and corruption of the police, and against the wide-spread use of sexual violence against women and children, committed also by law enforcement officers. Overall, it recommends Kenya to take systematic measures to prevent the occurrence of torture, ill-treatment and violence, and urgent measures to end impunity.

While the CEDAW Committee in 2007 appreciates several steps taken by Kenya, its experts criticize that the national gender machinery remains under-resourced, lacks institutional authority and capacity. Violence against women, including female genital mutilation, and impunity for perpetrators of such violence, remain pressing human rights concerns, and so is inequality of men and women in the draft constitution (article 82, paragraphs 4 and 90) and in social practice (e.g. disinheritance of rural women).

Similar observations relating to discrimination of girls are made by the Committee monitoring the CRC. In addition, the CRC Committee points out the lack of birth registration of children, particularly in rural

areas. The CRC Committee also puts a particular focus on the health rights of children and adolescents, by “improving prenatal care and preventing malaria and communicable diseases; establish more child health clinics in order to reduce distances for mothers and pregnant mothers; improve access to safe drinking water and sanitation facilities and ensure sustainability, availability, sufficiency and affordability to all, particularly children...” With respect to adolescent health, the CRC Committee notes, among others, the high rates of teenage pregnancies and the difficulties pregnant girls face in order to continue their education. The criminalization of the termination of pregnancies in cases of rape and incest is likewise a point of concern as is the lack of adequate and accessible sex education and reproductive health services. The Committee recommends Kenya to adopt decisive measures to address these concerns, with the full participation of adolescents (paragraphs 48-49).

3. Interpretation and Operationalisation of Human Rights

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

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

publications is one by the UN High Commissioner for Human Rights' on a practical [human rights framework to achieve the Millennium Development Goals](#) and the [Voluntary Guidelines on the Right to Adequate Food](#) issued by the FAO in 2004.

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

Special Rapporteurs have numerous tasks and different mandates. They take part in developing new standards and some may communicate allegations of human rights violations to governments in the form of urgent appeals. All Special Rapporteurs have a mandate to request country visits; and many governments issue [standing invitations](#). Reports on country visits analyse the implementation of human rights in detail, and give recommendations on how to improve it. Some Special Rapporteurs have also developed indicators on how to measure the fulfilment of human rights obligations, among them the Special Rapporteur on Health.

In his [2004 report on Kenya](#), the [UN Special Rapporteur on the right to adequate housing](#) highlights the growing numbers of persons living in informal settlements. Predominantly, these people in vulnerable situations already are subject to discrimination, e.g. on grounds of sex and gender or on health-related grounds, like HIV/Aids status or disability. Due to the discrimination of women in the access to property, for example, the number of women in informal settlements has grown disproportionately. The Special Rapporteur also emphasizes the increasing costs for rent and water in informal settlements, particularly after the completion of programmes for slum-upgrading. Forced evictions from informal settlements in the cities and in the forest have not been accompanied by the provision of

viable housing alternatives. Similar issues are raised in a [2009 report](#) of Amnesty International.

The situation of indigenous communities is taken up in the [2006 report](#) by the [UN Special Rapporteur on Indigenous Peoples](#). He points to the loss and environmental degradation of land, forests, and natural resources, and thus the destruction of livelihoods for indigenous communities. Inappropriate development and conservationist policies have aggravated these infringements of economic, social and cultural rights. Another of his concerns relates to lack of access to health and social services, especially for indigenous women and children. Likewise, there is no effective political participation for some communities, since they face difficulties in obtaining identity documents. The Special Rapporteur urged the government to ratify the [ILO Convention No. 169 on Indigenous and Tribal Peoples](#) to establish effective mechanisms to remedy historical injustices. As a prerequisite to ensuring effective participation and consultation, he urges the Kenyan government to recognize the distinct cultural identity and needs of indigenous communities.

As all UN member states Kenya will be subject to the so-called Universal Periodic Review (UPR) in the framework of the Human Rights Council in 2010. The UPR is of political relevance, since all states are subjected to it. The UPR also offers a wealth of information on how the government and national stakeholders – like NGOs – see the human rights situation in the country. Domestically, UPR reporting should be done in a consultative, transparent way, and - like reporting to the treaty bodies – can be an avenue for domestic dialogue on human rights challenges.

The [Special Rapporteur on extrajudicial, summary or arbitrary executions](#) visited Kenya in February 2009. In his [report](#) he concluded that police in Kenya frequently execute individuals with impunity. Impunity also reigns also with regard to the widespread post-election violence in late 2007. His report denounces the existence of police death squads. These operated on the orders of senior police officials and were charged with the killing of alleged leaders and members of criminal organizations. In some areas, such as Mount Elgon, government security forces were engaged in widespread brutality, including torture and unlawful killings. The Special Rapporteur strongly urges the authorities to establish an effective internal or external investigation and oversight mechanism in the police and to amend existing laws and regulations so as to meet the requirements of international human rights treaties. While Kenya has cooperated with the aforementioned Special Rapporteurs, the government denied [requests for country visits](#) submitted by the Special Rapporteurs on [human rights defenders](#) (2003), on the [independence of lawyers and judges](#) (2004 and 2008), and on [extreme poverty](#) (2007). A 2009 request by the [Independent Expert on Minority Issues](#) is still pending.

Resources

[General Comments](#), by treaty

[Special Rapporteurs: Thematic Mandates](#)

[Universal Periodic Review](#), Kenya scheduled for 8th session in 2010.

4. The Kenya National Commission on Human Rights

In 2002, the Kenyan parliament established the independent [Kenya National Commission on Human Rights](#) (KNCHR). It is one of the 68 fully accredited National Human Rights Institutions (NHRI) worldwide. The international association of [National Human Rights Institutions](#) accredits only those NHRIs which are independent of the executive, and overall based on the 1993 [Paris Principles](#).

Based on law, the Commission has a strong mandate: Governmental bodies are to consult the KNCHR when drafting legislation; the KNCHR can monitor the implementation of legislation; the Commission may receive

human rights related complaints and investigate any human rights issue it sees fit. It has done so on several occasions and published the findings of its public inquiries or studies with respect to corruption, land rights, rights to an identity and other pertinent questions. More recently, it issued a thorough [report on post-election violence in 2008](#), which was [annexed](#) by 219 names alleged to have been involved in conducting, instigating or financing post-election inter-ethnic violence. The KNCHR has been an important partner for several donors, among them SIDA, UNDP and the GTZ.

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