

Annex to the ABC of Human Rights for Development Cooperation

European Human Rights System

Introduction

This electronic info tool complements [The ABC of Human Rights for Development Cooperation](#) (PDF, 220 KB). It gives an overview of the human rights system of the [Council of Europe](#) (CoE) in Strasbourg and its relevance for development cooperation. It addresses development practitioners, civil society organisations, and the interested public. It seeks to encourage the use of the CoE human rights system in policy dialogue and programming within the context of development cooperation in Europe. In addition, the info tool provides useful information on best practices in regional human rights protection and monitoring mechanisms for practitioners working outside Europe.

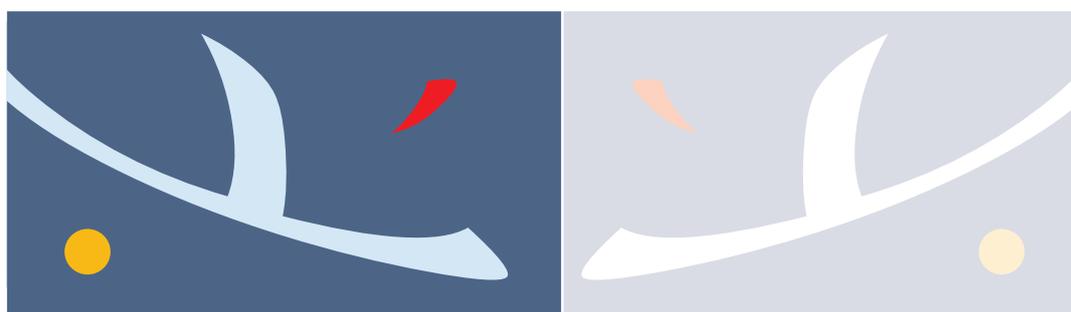
This publication aims at contributing to the implementation of a human rights-based approach as envisaged by the strategy paper of the Federal Ministry for Economic Cooperation and Development (BMZ) of 2011, [Human Rights in German Development Policy](#) (PDF, 573 KB). The BMZ human rights strategy highlights the growing significance of regional human rights systems. International and regional human rights instruments and their corresponding protection and monitoring mechanisms complement and reinforce each other. In addition, the different human

rights systems influence and learn from each other. Therefore, this publication should be viewed in line with the corresponding tools on the [African Human Rights System](#) (PDF, 429 KB, barrier-free) and the Inter-American Human Rights System.

While this tool informs about the human rights system of the CoE, another info tool provides information on the European Union's (EU) policy on human rights and development. CoE and EU are distinct entities; however, they cooperate in many ways.

Content

- | | |
|---|---|
| 1. Core European Human Rights Instruments | 2 |
| 2. Monitoring and Enforcement Mechanisms | 3 |
| 3. Other Important CoE Institutions | 5 |
| 4. Relevance for Development Cooperation | 6 |
| 5. Additional Links | 6 |



1. Core European Human Rights Instruments

European Convention on Human Rights

The heart of human rights protection in Europe is the [Convention for the Protection of Human Rights and Fundamental Freedoms](#) (European Convention on Human Rights; ECHR). It was adopted by the Council of Europe (CoE) in 1950. Ratifying the ECHR is one of the pre-conditions to become a CoE Member. Currently, the CoE has 47 Members, among them Switzerland, all 28 EU Member States, east European countries (including German development cooperation partner countries Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Serbia, and Ukraine), as well as Russia and Turkey. Kosovo is not yet State Party to the ECHR because of its contested status under international law but cooperation projects are nonetheless under way between Kosovo and the CoE. The EU is in the process of ratifying the ECHR. Its accession to the Convention is foreseen by the Treaty of Lisbon of 2007.

Human rights listed in the ECHR include:

- Right to life (Art. 2)
- Prohibition of torture (Art. 3)
- Prohibition of slavery and forced labour (Art. 4)
- Right to liberty and security (Art. 5)
- Right to a fair trial (Art. 6)
- No punishment without law (Art. 7)
- Freedom of conscience and religion (Art. 9)
- Freedom of expression (Art. 10)
- Freedom of assembly and association (Art. 11)
- Right to an effective remedy (Art. 13)
- Prohibition of discrimination (Art. 14)

Non-derogable human rights of the ECHR are the right to life, the prohibition of torture, and the prohibition of slavery (Arts 2, 3, 4), as well as Art. 7 ECHR. This means that authorities have to comply with these human rights even in **cases of public emergency** (Art. 15).

The ECHR was inspired by the adoption of the Universal Declaration of Human Rights of 1948 and entered into force in 1953. This made Europe the first region with a binding treaty on human rights. Over the years many additional protocols to the ECHR have been adopted, adding substantial new rights or amending the redress procedure laid down in the Convention. Just like the ECHR itself, additional protocols need to be ratified to legally bind a Member State. The Convention's **focus is on civil and political rights**, while economic, social and cultural rights are mainly covered by the European Social Charter (see below). Nevertheless, work-related rights may be applicable through ECHR Art. 6 (fair trial within a reasonable time), Art. 8 (right to respect for private and family life), Art. 10 (freedom of expression) and Art. 14 (non-discrimination).

The European Court of Human Rights (ECtHR; see below) has interpreted the Convention's provisions beyond what was foreseeable at the time of its drafting and thus made the Convention a living instrument that must be interpreted in the light of present-day conditions. The ECtHR introduced this approach in [Tyler v. United Kingdom](#) (1978), in which it found that corporal punishment (birching) amounted to degrading treatment in the sense of Art. 3 ECHR.

Art. 1 ECHR requires immediate respect for the human rights listed in the Convention by the State Party at the moment of ratification without any additional act of implementation. It creates individual rights. However, the question of how the ECHR is translated into domestic legislation and its **status in the internal laws of the CoE Member States** is to be settled by each national legal system. While in some cases the ECHR is superior to national legislation and might be at (e.g. Austria) or even above the level of the national constitution (e.g. the Netherlands), in others it is equal to national laws but below the constitution (e.g. Germany).

The **principle of non-discrimination** is enshrined in Art. 14 ECHR with regard to the rights enshrined in the ECHR and extended to any right set forth by law by Protocol No. 12 of 2000. Convention and Protocol No. 12 cover the prohibition of indirect discrimination and segregation as well as anti-stereotyping.

Resources

- [European Convention on Human Rights and its Protocols](#)
- [The Convention in 50 Questions](#) (PDF, 311 KB)
- [List of Ratifications of ECHR Protocols](#)

European Social Charter

The European Social Charter (ESC) was adopted in 1961 ([European Social Charter](#)), supplemented in 1988 ([First Additional Protocol](#)) and revised in 1996 ([Revised European Social Charter](#)). The ESC complements the ECHR with regard to economic and social rights. The Second Additional Protocol of 1995 provides for a collective complaints procedure (see below). Individual and collective labour rights as well as social benefits are the main focus of the 1961 Charter. The First Additional Protocol and the 1996 Revised Charter have added more and more social rights and strengthened the principle of non-discrimination.

States Parties have to accept at least six out of the nine core provisions of the **Revised European Social Charter (1996)**:

- Right to work (Art. 1)
- Freedom of association (Art. 5)
- Collective bargaining (Art. 6)
- Right of children and young persons (Art. 7)
- Right to social security (Art. 12)

- Right to social and medical assistance (Art. 13)
- Right of the family to protection (Art. 16)
- Right of migrant workers and their families (Art. 19)
- Right to equal opportunities and treatment on the grounds of sex (Art. 20)

The 1996 Revised Charter is designed to eventually replace the 1961 Charter. However, the 1961 Charter is still in place and some CoE Member States, including Germany, are only bound by the 1961 Charter. So far, the Revised Charter has been ratified by 33 Member States.

Rights covered in the Revised Charter include, in addition to the nine core rights listed in the box, housing, health, education, employment, legal and social protection, free movement of persons and non-discrimination.

Resources

- [European Social Charter](#): European Social Charter 1961, the Additional Protocol 1988, Amending Protocol 1991, Additional Protocol 1995, Revised European Social Charter 1996
- [FAQs about the European Social Charter](#)
- [Ratifications to the European Social Charter](#) (PDF, 27 KB)

Convention on Action against Trafficking in Human Beings

The focus of the [Conventions on Action against Trafficking in Human Beings](#) of 2005 is placed on the protection of victims of trafficking and the safeguard of their rights. It also aims to prevent trafficking and to prosecute traffickers. Poverty and the lack of (economic) perspectives are the main risk factors for being subjected to human trafficking. In this regard, a human rights-based approach to development cooperation is crucial: Assisting authorities (duty-bearers) and empowering the population, especially marginalised groups (rights-holders), helps to prevent trafficking in the first place in countries of origin and countries at risk. The Convention on Action against Trafficking in Human Beings can also be ratified by non-CoE Member States. There are currently [41 States Parties](#) to this Convention. Its implementation is supervised by a Group of Experts (GRETA; see below).

Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The [Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment](#) of 1987 is based on the idea that the protection of persons in custody against torture and inhuman treatment could be strengthened by non-judicial means of a preventive character based on visits by a monitoring body. It was drafted in a spirit of cooperation and aims to overcome human rights deficits through advice and monitoring. The Con-

vention provides for a complex mechanism of on-site inspections of prisons and other places of detention. It is supervised by a Committee (CPT; see below). The Convention has been ratified by all 47 CoE Member States.

2. Monitoring and Enforcement Mechanisms

European Court of Human Rights

The European Court of Human Rights (ECtHR) in Strasbourg monitors and enforces the ECHR as an independent judicial body. It is a permanent court with compulsory and binding jurisdiction. The ECHR allows for both inter-state cases as well as individual complaints although the former was only used on a few occasions. In 2012, the ECtHR received more than 65,000 individual applications and is facing a backlog of pending cases.

Individual applications

“Any person, non-governmental organisation or group of individuals” claiming to be a victim of human rights violations, has **direct access to the Court** (Art. 34, [Protocol No. 11 ECHR](#), in force since 1 November 1998).

The Court has one judge per CoE Member State. It is divided into five sections that reflect the different legal systems of the contracting parties. Every section constitutes four chambers with seven judges each. The Grand Chamber has 17 judges. The ECtHR has contentious jurisdiction, which means jurisdiction between (at least) one applicant and a state in a matter of controversy, as well as advisory jurisdiction, where the Court gives opinions on an abstract question concerning the interpretation of the Convention. Advisory opinions have an authoritative character although they are non-binding in principle. A new additional protocol, soon open for ratification, will strengthen the advisory function of the ECtHR ([Draft Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms](#) (PDF, 193 KB)).

Generally, for a case to be admissible, domestic remedies must have been exhausted. However, the Court states that no “excessive formalism” should be applied and that the “rule of exhaustion is neither absolute nor capable of being applied automatically” ([Kozacıoğlu v. Turkey](#), 2009, para. 40; see also [Practical Guide on Admissibility Criteria](#) (PDF, 783 KB)).

Judgements of the ECtHR are binding (Art. 46 ECHR). In principle, a judgement of the Court is only binding between the State Party in question and the applicant. However, the impact of the Court’s case-law has shown to have a general dimension for all CoE Member States. Court’s judgments are **authoritative interpretations of the ECHR** and thus States Parties aim to bring their own national legislation and case-law in line with the Strasbourg judgments.

Where a State Party is found to be in breach of the Convention, it is obliged to provide compensation (material or immaterial) to the injured party (Art. 41 ECHR) and to take measures (individual and general) in its domestic legal order that end the violation and redress its consequences. In principle, states are fairly free to choose these measures but the Court gives guidance as to **individual measures** (such as re-trial, the re-opening of a case or the immediate release of an applicant) and has the competence to indicate **general measures**. These include the amendment of case-law by refusing to apply the national law at issue or the adoption of a new interpretation of the law concerned, an amendment of the applicable regulations, legislation or constitution but also measures of a more practical nature, including the recruitment of judges or the training of police officers.

The ECtHR delivers around 1,000 judgements a year. The human rights which are dealt with by the Court most often are the right to liberty and security (Art. 5 ECHR), the right to a fair trial (Art. 6 ECHR), torture or inhuman and degrading treatment (Art. 3 ECHR) and the right to an effective remedy (Art. 13 ECHR). In 2012, the largest number of complaints was filed against Russia with 134 cases, followed by Turkey (123), Romania (79), Poland (74) and Ukraine (71).

Most of the judgments are relevant for development cooperation. They reveal human rights challenges in a particular country or region and point to the most vulnerable groups which need special attention. For example, in the leading decision D.H. and Others v. The Czech Republic (PDF, 217 KB, barrier-free), the Grand Chamber decided in 2007 that the placement of school children of Roma origin in special schools is not justified. Subsequent decisions confirmed the rights of school children of Roma origin not to be discriminated against (Art. 14 ECHR) and their right to education (Art. 2 Protocol No. 1; Horváth and Kiss v. Hungary, 2013 and Lavida and Others v. Greece (PDF, 184 KB, not barrier-free, 2013).

Relevance for development cooperation:

Topics which are of particular relevance for development cooperation are, for example, the **right to education** (Art. 2 Protocol No. 1), **freedom of expression** (Art. 10 ECHR), **freedom of assembly and association** (Art. 11 ECHR) and the **right to a fair trial** (Art. 6 ECHR).

Development cooperation can be a sound partner in assisting to implement ECtHR case-law and addressing systematic human rights problems.

With regard to freedom of expression, which is one important topic of development cooperation, the Grand Chamber decided in Goodwin v. United Kingdom (1996) that a disclosure order imposed on a journalist requiring him to reveal the identity of the source of information on a company's confidential corporate plan violates Art. 10 ECHR and stressed that "[p]rotection of journalist sources is one of the basic conditions for press freedom" (para. 39).

Some decisions of the Court **address a persistent human rights problem** in a given Member State. For example, in Kaverzin v. Ukraine (2012), the ECtHR had to deal with the ill-treatment of people held in police custody (Art. 3 ECHR). The Court noted that "Mr. Karverzin's ill-treatment in police custody reflected a recurring problem in Ukraine. In about 40 of its judgments, the Court had already found that the Ukrainian authorities had been responsible for ill-treatment of people held in police custody." The ECtHR indicated that "currently there are more than 100 other such pending cases [against Ukraine]." It therefore stressed that Ukraine had to urgently put in place specific reforms in its legal system "to ensure that the practice of ill-treatment in police custody was eradicated" (ECtHR, Ukraine, Press Country Profile, July 2013, page 3).

The Court provides fact sheets by country on its case-law and pending applications. They give an overview of frequent human rights challenges in specific countries and are therefore a helpful tool for development practitioners.

Fact Sheets by Topic: (including)

- Children's Rights (PDF, 308 KB)
- Gender Identity (PDF, 291 KB)
- Racial Discrimination (PDF, 293 KB)
- Roma and Travellers (PDF, 381 KB)
- Sexual Orientation (PDF, 410 KB)
- Violence against Women (PDF, 308 KB)

Resources

- European Court of Human Rights (ECtHR)
- HUDOC: Search Engine for ECtHR Decisions (watch introductory video and read HUDOC help)
- Statistics: Violations by Article and by Respondent State (PDF, 758 KB)

European Committee of Social Rights

While the ECtHR is the monitoring mechanism for the ECHR, the European Committee of Social Rights (ECSR) is tasked with monitoring the implementation of the European Social Charter (ESC). It is composed of 15 independent, impartial members. States Parties submit periodic reports to the ECSR indicating steps taken to implement the ESC in law and in practice. The provisions of the ESC are divided into four thematic groups. A report on each group and provision is issued every four years on the basis of a reporting calendar. The Committee issues its conclusions based on the examination of the reports. Non-compliance with the conclusions and thus with the Charter is followed-up by the CoE Committee of Ministers, assisted by observers representing trade unions and employers' organisations. Other stakeholders take part in the reporting process and submit reports or comments.

In addition to the monitoring procedure based on national reports, the 1995 Second Additional Protocol introduced a collective complaints procedure for certain organisations, including

international and national trade unions and employers' organisations, international non-governmental organisations (INGOs), as well as national NGOs. Individuals have no access to this mechanism. So far, 15 CoE Member States have accepted the collective complaints procedure. When a violation is found by the ECSR, the CoE Committee of Ministers adopts a recommendation which is not legally binding, but, since recommendations are made public, is nevertheless an important authoritative instrument.

Resources

- [Conclusions of the ECSR by State](#)
- [Comments and Reports of INGOs and Trade Unions to the Regular Reporting System](#)
- [List of Collective Complaints](#)

Group of Experts on Action against Trafficking in Human Beings (GRETA)

The monitoring mechanism corresponding to the Convention on Action against Trafficking in Human Beings is made up of two bodies, the [Group of Experts on Action against Trafficking in Human Beings \(GRETA\)](#) and the Committee of the Parties to the Convention. GRETA monitors the implementation of the Convention, publishes reports on the countries' performances with regard to the measures entailed in the Convention and suggests further action towards achieving full compliance.

Resource

- [GRETA Country Evaluation Reports](#)

Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\)](#) is the monitoring and enforcement mechanism for the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The CPT conducts visits, both regular and ad-hoc as well as follow-up visits to places of detention, in order to assess how persons deprived of their liberty are treated. Reports of these visits are prepared and a dialogue is initiated with the relevant governments. Country reports and activity reports of the CPT provide important information for development cooperation practitioners in a given regional or thematic context and shape projects, for example, security sector reform programmes and rule of law projects. Visiting delegations consist of at least two members of the Committee, assisted, if necessary, by experts and interpreters. The number of CPT members equals the number of states that have ratified the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, currently 47.

Resources

- [CPT Documents per Country](#)
- [CPT Annual General Reports](#)
- [2014 List of Countries \(Regular Visits\)](#)

3. Other Important CoE Institutions

Directorate General on Human Rights and Rule of Law

The mandate of the [Directorate General on Human Rights and Rule of Law](#) is human rights standard setting as well as promoting and monitoring compliance with human rights, both inside the CoE as well as among Member and non-Member States. The Directorate coordinates development cooperation, training and capacity building with a focus on human rights and the rule of law. For some activities the CoE is the only donor, while others are co-financed through the EU and/or Member States' contributions. The [Human Rights Law and Policy Division](#) is a sub-body of the Directorate. It is tasked with inter-governmental cooperation and human rights policy development and provides support to national activities implementing human rights.

Resource

- [Cooperation Projects of the Directorate with EU and other Donors](#)

Commissioner for Human Rights

The [Commissioner for Human Rights](#) serves a preventive function. The Commissioner's office undertakes human rights education and awareness-raising in CoE Member States and assists them in the implementation of human rights standards. The Commissioner for Human Rights identifies shortcomings in law and practice with regard to human rights through country visits and dialogue with national authorities and civil society. The Commissioner prepares opinions, issues papers and reports and provides advice on the prevention of human rights violations. Cooperation with inter-governmental partners is crucial to the Commissioner's mandate and involves working with the United Nations, EU and Organization for Security and Cooperation in Europe (OSCE) bodies as well as national human rights structures. Many topics covered by the Commissioner's mandate are of relevance for development cooperation, such as the situation of asylum seekers, refugees, Roma and Traveller communities as well as post-war justice and reconciliation.

Juliane Osterhaus,
juliane.osterhaus@giz.de

Steering Committee for Human Rights

Working under the auspices of the CoE Committee of Ministers, the [Steering Committee for Human Rights \(CDDH\)](#) main task is to set new standards commonly accepted by the CoE Member States and to oversee and coordinate the intergovernmental work of the CoE in the area of human rights. The CDDH is also responsible for improving the protection procedures on both national and European level. Moreover, it makes [recommendations](#) with regard to human rights issues in all CoE Member States, covering a broad range of human rights topics, such as corporate social responsibility or the reform of the ECtHR.

4. Relevance for Development Cooperation

The European human rights system complements both the national and the international human rights system institutionally as well as substantially. The European Convention of Human Rights (ECHR) is a binding reference for national legislation and practice in all 47 CoE Member States. The other European core human rights instruments supplement the ECHR, in particular in the field of social and economic rights.

The conclusions and recommendations of the CoE human rights bodies are relevant for development cooperation with CoE Member States and can be used in political dialogue, design of country strategies and programming: Judgements of the European Court of Human Rights (ECtHR), recommendations of the

European Committee of Social Rights (ECSR) as well as conclusions and reports of other bodies are important references and offer valuable information for negotiations with development cooperation partner countries. They help to identify human rights challenges in the respective countries and should inform strategies and programme-design.

On a practical level, partner countries can be assisted in bringing their laws and practice in line with the ECHR and other core European human rights instruments as well as in implementing the judgements of the ECtHR and the recommendations of the ECSC and other bodies. Civil society can be supported by development cooperation to submit reports and launch complaints under the collective complaints procedure of the European Social Charter (ESC) and to comment on periodic state reports under the ESC and other human rights instruments.

5. Additional Links

- Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH: [Human Rights](#)
- German Institute for Human Rights: [Development and Human Rights](#)
- OHCHR: [International Human Rights Instruments](#)
- OHCHR: [FAQs](#) (PDF, 962 KB) on a Human Rights-Based Approach to Development Cooperation
- Council of Europe: [Human Rights, Democracy and Rule of Law](#)

Published by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Registered offices
 Bonn and Eschborn, Germany

Cross sectoral programme
 'Realising Human Rights in Development Cooperation'
 Dag-Hammarskjöld-Weg 1 - 5
 65760 Eschborn, Germany
 T +49 (0)61 96 79 - 1523
 F +49 (0)61 96 79 - 801523
sv-menschenrechte@giz.de
www.giz.de

Layout Ira Olaleye

As at December 2013

GIZ is responsible for the content of this publication.

In cooperation with German Institute for Human Rights
 Zimmerstraße 26/27
 10969 Berlin, Germany

On behalf of Federal Ministry for Economic Cooperation and Development (BMZ)

Division Human rights; gender equality; culture and development

Addresses of the BMZ offices

BMZ Bonn Dahlmannstraße 4 53113 Bonn, Germany T +49 (0)228 99 535 - 0 F +49 (0)228 99 535 - 3500	BMZ Berlin Stresemannstraße 94 10963 Berlin, Germany T +49 (0)30 18 535 - 0 F +49 (0)30 18 535 - 2501
--	---

poststelle@bmz.bund.de
www.bmz.de