The Philippine Human Rights Framework for Development Planning

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The Philippine Human Rights Framework for Development Planning

A country's human rights framework provides the direction and standards of development planning. The human rights framework consists of the country's fundamental law as interpreted by the country's highest judicial authority, customary law and international conventions signed and ratified by states.

The 1987 Philippine Constitution

The Philippines' fundamental law is its Constitution adopted in 1987. The Constitution represents the country's basic values and principles, establishes the structure, powers and duties of government, and guarantees fundamental human rights. Many provisions of the 1987 Constitution are relevant to the human rights based approach to development planning.

Article II (Declaration of Principles and State Policies)[1] sets the intent and objectives of development planning: to promote a just and dynamic social order to free people from poverty and provide for an improved quality of life for all; to promote social justice in all phases of national development; and to guarantee full respect for human rights.

Article III (Bill of Rights)[2] of the Constitution guarantees the rights to life, liberty and property, and related civil and political rights, thus prohibiting development planning from compromising or endangering the enjoyment of these rights. By enshrining the rights of redress and free access to courts and quasi-judicial bodies, the Constitution also requires development planning to incorporate mechanisms of redress.

Article V (Suffrage)[3] prohibits the use of literacy, property or other substantive requirements to limit the exercise of suffrage and requires procedures for persons with disabilities and those not literate to vote without the assistance of other persons. The Constitution thus mandates electoral reform policies and programs to focus on those who are largely excluded from exercising their right of suffrage.

Article XI (Accountability of Public Officers)[4] mandates that public office is public trust and sets forth standards for all public officers and employees. These standards require public officers and employees at all times to be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives. The Constitution thus requires the principle of public accountability to guide development planning.

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[1] *See* Sections 1, 5, 9, 10, 11, 15, 16, 17, 21, 22 and 23.
[2] *See* entire Article.
[3] *See* entire Article.
[4] *See* Section 1.

Article XII (National Economy and Patrimony)[5] sets forth the goals of the national economy: a more equitable distribution of opportunities, income, and wealth; sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and expanding productivity as the key to raising the quality of life for all, especially the underprivileged. It prescribes the following actions to achieve these goals: promotion of industrialization and full employment based on sound agricultural development and agrarian reform and through competitive industries and protection of Filipino enterprises against unfair foreign competition and trade practices; preferential use of Filipino labor, domestic materials and locally produced goods; and trade policy based on equality and reciprocity. Importantly, the Constitution decrees that the use of property bears a social function and recognizes the rights to own, establish and operate economic enterprises.

The Constitution thus demands that national development planning should meet the greater human rights objectives of equity, social justice, and improved quality of life for all and should be guided by the constitutional standards of protection of Filipino enterprises, and the preferential use of Filipino labor, domestic materials and locally produced goods.

The Constitution also requires that the country's trade policy and programs, key features of development planning, should be guided by the principles of protectionism, equality and reciprocity. The deliberations of the 1986 Constitution Commission[6] provide greater clarity of these principles by requiring that trade policy should "serve the general welfare—whether one is a producer, a consumer, a farmer, or an industrialist," "protect both the domestic industries and also the domestic consumers," and "prohibit the use of the Philippine market as a dumping ground for unwanted surplus production or also disallow obsolete, inappropriate and backward technology."

Because national development planning also sets targets for private sector participation in development, development planning should always be guided by the constitutional principle that the use of property bears a social function and should contribute to the common good.

Article XIII (Social Justice and Human Rights)[7] accords the highest priority to the protection of human dignity, reduction of social, economic, and political inequalities, and the removal of cultural inequities by regulating the acquisition, ownership, use, and disposition of property and its increments and by promoting social justice. The Article is divided into seven parts: labor, agrarian and natural resources, urban land reform and housing, health, women, people's organizations and human rights.

The section on labor fully protects local, overseas, organized and unorganized labor, and promotes full employment and equality of employment opportunities for all. The Constitution thus requires national development planning to guarantee the rights of workers, especially their right to a living wage, and incorporate strategies that promote full employment and equality of

[5] *See* Sections 1, 6, 12 and 13.
[6] Record of the Constitutional Commission, Vol. 2, at pp. 642-643 in relation to pp. 608 and 657.
[7] *See* entire Article.

employment opportunities for all, bearing in mind the principle of shared responsibility between workers and employers.

The section on Agrarian and Natural Resources Reform requires an agrarian reform program founded on the rights of landless farmers and regular farm workers to own directly or collectively lands they till and to receive a just fair of the fruits. The Philippine Constitution expressly recognizes the right to land; interestingly, the right to land is not recognized in international human rights law, which sees land as part of the right to property. The Constitution sets comprehensive rural development and agrarian reform as priority areas for national development planning and enshrines the twin principles of participation in the planning, organization, and management of the agrarian program, and stewardship in the disposition or utilization of natural resources. The Constitution also guarantees the rights of subsistence fishermen and fish workers and requires national development planning to provide support for them through various policies, programs and mechanisms. The Constitution also mandates the protection, development and conservation of natural resources.

The section on Urban Land Reform and Housing requires the implementation of urban land reform and housing, the promotion of adequate employment opportunities, and respect for the rights of small property owners; it prohibits the demolition of homes of urban or rural dwellers living in poverty except in accordance with law and in a just and humane manner and requires prior consultation with urban or rural dwellers and communities where they are to be relocated before resettlement. The Constitution thus places urban land reform and housing as principal sectors for national development planning, and relates this sector to the human rights objective of promoting adequate employment opportunities. The Constitution stresses the principle of prior consultation with urban or rural dwellers and communities prior to relocation.

The section on Health sets the standards for national development planning of the health sector: it requires the adoption of an integrated and comprehensive approach to health development, which gives priority to the underprivileged sick, elderly, disabled, women, and children, and provides free medical care to those living in poverty. It also requires the establishment and maintenance of an effective food and drug regulatory system, appropriate health manpower development and research, and a special agency for persons with disabilities.

The section on Women requires the provision of safe and healthful working conditions for women, taking into account their maternal functions. While the Constitutional provision on women is obviously lacking, Republic Act 9710, the Magna Carta of Women, further clarifies the rights of women. The Magna Carta is a comprehensive law that guarantees women's human rights and seeks to eliminate discrimination against Filipino women. It defines discrimination as any gender-based distinction, exclusion or restriction, which has the purpose or effect of nullifying or impairing the equal enjoyment of all human rights; or any act or omission that directly or indirectly excludes or restricts women's human rights; or any measure or practice that fails to provide for mechanisms to address sex or gender-based disadvantages of women; or discrimination compounded by or intersecting with other grounds, status or condition. The Magna Carta guarantees all human rights embodied in the 1987 Constitution, as well as all human rights recognized under international instruments signed and ratified by the Philippines.

The recognition of women's rights has development policy and planning implications. The Magna Carta of Women requires development planning to eliminate discrimination in all its forms and in all its fields. Among others, the Magna Carta requires[8] the adoption of gender mainstreaming in planning, budgeting, monitoring and evaluation for gender and development, creation and/or strengthening of gender and development focal points, the generation and maintenance of gender statistics and sex-disaggregated databases to aid in planning, programming and policy formulation, and the use of gender and development budgets to implement its provisions.

The section on the Role and Rights of People's Organizations in Article XIII (Social Justice and Human Rights) recognizes the role of independent people's organizations and guarantees their right to effective and reasonable participation at all levels of social, political, and economic decision-making, all of which are within the ambit of national development planning. It defines independent people's organizations as *bona fide* associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure.

The section on Human Rights creates the Commission on Human Rights as an independent office, not a constitutional commission,[9] which enjoys only limited fiscal autonomy.[10] The section delineates the composition and qualifications of the Commission as well as its powers and functions. Other special laws have since been enacted which expanded the powers and functions of the Commission.[11]

The nature of the Commission and extent of its powers were determined by the Supreme Court in several cases. In *Cariño v. Commission on Human Rights*,[12] the Court held that the Commission is neither a court of law nor a quasi-judicial agency and thus has no power to try and decide, hear and determine certain types of cases. In *Export Processing Zone Authority v. Commission on Human Rights,*[13] the Court held that because the Commission is not a court of justice, it has no powers to issue writs of injunction or restraining orders against violators of human rights to compel them to cease and desist from continuing the acts complained of. In *Simon v. Commission on Human Rights,*[14] the Court reiterated its rulings in *Cariño* and *Export Processing Zone Authority,* and further limited the extent of the Commission's investigative power to only all forms of human rights violations *involving civil and political rights*.

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[8] *See* Republic Act 9710, Magna Carta of Women.

[9] *Commission on Human Rights Employees Association represented by its President Marcial A. Sanchez, Jr., v. Commission on Human Rights*, GR No. 155336, 25 November 2004.

[10] *Commission on Human Rights Employees Association represented by its President Marcial A. Sanchez, Jr., v. Commission on Human Rights*, GR No. 155336, 21 July 2006.

[11] Republic Act 7438, *An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof*, empowers the Commission to accredit national nongovernmental organizations for purposes of visiting persons arrested, detained or under custodial investigation. Republic Act 9344, the Juvenile Justice Law, appoints the Commission to the Juvenile Justice and Welfare Council and requires its existing Child Rights Center to "ensure that the status, rights and interests of children are upheld in accordance with the Constitution and international instruments on human rights." The Rules and Regulations on Children in Situations of Armed Conflict, adopted pursuant to Section 32 of Republic Act 7610, *An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes*, requires the Commission to immediately visit any child under arrest or detention, receive and refer reports of specific incidents of violations and request the appropriate court to release children on recognizance.

[12] G.R. No. 96681, 2 December 1991.

[13] G.R. No. 191476, 14 April 1992.

[14] G.R. No. 100150, 5 January 1994.

From its constitutional mandate, the succeeding special laws, and the Supreme Court rulings, it is quite clear that the Commission's primary function is to investigate cases involving violations of *civil and political rights*. While the Constitution limits the Commission's mandate to investigate *civil and political rights,* the Constitution does *not*, however, similarly limit its recommendatory, research and monitoring powers. Hence the Commission may still engage in recommendatory, research and monitoring activities related to economic, social and cultural rights.

Article XIV (Education, Science and Technology, Arts, Culture and Sports)[15] is divided into five sections: education, language, science and technology, arts and culture, and sports.

The section on Education guarantees the right to quality education at all levels and requires free public education in elementary and high school levels and compulsory elementary education for all children. It recognizes non-formal, informal and indigenous learning systems as well as the complementary roles of public and private educational institutions. It upholds academic freedom, the right to select a profession or course, and the right of teachers to professional advancement. It allocates the highest budgetary priority to education.

The Supreme Court has recognized the right to education as among the most important of economic, social and cultural rights.[16] Its decisions cover a range of issues related to the right to education.[17] One decision resolved the apparent conflict between prioritizing debt service over education.[18] While affirming the constitutional mandate to accord education the highest budgetary priority, the Court decreed that Congress cannot be deprived of the "power to respond to the imperatives of the national interest and … the attainment of other state policies or objectives." The Court found government complied with the constitutional mandate because it had increased the budget for education since 1985. The Court held: "Thus, if in the process Congress appropriated an amount for debt service bigger than the share allocated to education, the Court finds and so holds that said appropriation cannot be thereby assailed as unconstitutional."[19]

The Constitution sets *quality education accessible to all* as a key human rights and development objective; this requires development planning to address issues of quality and accessibility in education and accord education the highest budgetary priority. The Constitution also requires development planning to adopt and implement integrated strategies combining formal, non-formal, informal and indigenous learning systems, strategies relating to both academic and vocational education, and strategies that focus on those often excluded from the formal education system, including indigenous peoples, out-of-school youth, non-literate adults, and persons with disabilities.

The section on Language establishes Filipino as the country's national language and envisions the use of Filipino as the medium of official communication and the language of instruction in the educational system. For purposes of communication and instruction, the

[15] *See* entire Article.
[16] *Villar v. Technological Institute of the Philippines*, 135 SCRA 707 (1985).
[17] *See* Maria Socorro I. Diokno, *Shortchanging the Right to Education in the Philippines*, in Bulletin, Interights, London, United Kingdom, for a full discussion of Supreme Court decisions on the right to education.
[18] *Guingona, Jr. v. Carague*, 196 SCRA 221 (1991).
[19] At 227.

Constitution establishes Filipino and English as the country's official languages; regional languages, which are auxiliary official languages in the regions, serve as auxiliary media of instruction in the regions. The Constitution requires the establishment of a national language commission to undertake, coordinate and promote research for the development, propagation and preservation of Filipino and other languages. The Constitution thus requires national development planning to adopt both Filipino and English when communicating with Filipinos or imparting important information that affects the wellbeing of all Filipinos.

The section on Science and Technology recognizes its importance in national development and progress, and grants priority to research and development, invention, innovation and their utilization, science and technology education, training and services. It also requires support for indigenous, appropriate and self-reliant scientific and technological capabilities and their application to the country's productive systems and national lives. The Constitution thus mandates the advancement of the country's scientific and technological capabilities as a key human rights and development objective. To meet this objective, science and technology must form a priority area in national development planning, with appropriate participatory strategies and mechanisms of support for research and development, invention, innovation and utilization.

The section on Arts and Culture fosters the preservation, enrichment and dynamic evolution of a Filipino national culture. It recognizes, respects and protects the rights of indigenous peoples to preserve and develop their cultures, traditions and institutions and mandates that these rights should be considered in the formulation of national plans and policies. The Constitution thus sets the preservation, enrichment, conservation, promotion and popularization of the Filipino national culture, historical heritage, resources and artistic creations as key human rights and national development objectives and upholds the principles of unity in diversity and equal access. National development planning should incorporate strategies that encourage and support cultural opportunities and research into culture and the arts. In addition, development planners and policymakers must consider the impact of plans and policies on the rights of indigenous peoples.

The section on Sports promotes physical education, encourages sports programs, league competitions and amateur sports to foster self-discipline, teamwork and excellence and requires all educational institutions to undertake regular sports activities throughout the country in cooperation with athletic clubs and other sectors. The Constitution recognizes the importance of sports and requires national development planning to incorporate measures that foster physical and mental welfare.

Article XV (The Family)[20] protects marriage as an inviolable social institution and the foundation of the family and promotes the right of spouses to found a family in accord with their religious convictions and demands of responsible parenthood, the right of children to assistance, including proper care and nutrition and special protection from all forms of neglect, abuse, cruelty, exploitation and other prejudicial conditions, the right of the family to a family living wage and income, and the right of families or family associations to participate in planning and

[20] *See* entire Article.

implementation of policies and programs that affect them. It sets forth the duty of the family to care for its elderly members and requires the State to establish programs of social security.

Article XVI (General Provisions)[21] requires the provision of immediate and adequate care, benefits and other forms of assistance to war veterans and veterans of military campaigns, their surviving spouses and orphans, the periodic review of pensions and other benefits for retirees of both government and private sector, and the protection of consumers from trade malpractices and from substandard or hazardous products.

Table 1 summarizes the Constitutional parameters of national development planning and includes a list of development interventions required by the Magna Carta of Women.

[20] *See* Sections 7, 8, and 9.

Table 1. Constitutional Parameters of National Development Planning	
Constitutional and human rights objectives of national development planning	▪ Promote a just and dynamic social order to free people from poverty and provide an improved quality of life for all ▪ Promote equity and social justice in all phases of national development ▪ Enhance social, economic and political conditions ▪ Guarantee full respect for human rights ▪ Address mass poverty ▪ Promote full employment and equality of employment opportunities for all ▪ Reduce social, economic, and political inequalities, and remove cultural inequities ▪ Quality education accessible to all ▪ Advance the country's scientific and technological capabilities ▪ Conserve, promote and popularize the Filipino culture and the country's historical heritage, resources and artistic creations
Principles enshrined in the 1987 Constitution that should guide national development planning	▪ Principle directing that the use of property bears a social function and should contribute to the common good ▪ Principles of protectionism, equality and reciprocity in trade relations, ▪ Principle of public accountability ▪ Principle of attention to those who are largely excluded from exercising their rights, those most vulnerable to abuse, neglect, disease, including persons living in poverty, the elderly, persons with disabilities, women, children, indigenous peoples, subsistence fisher folk, landless farmers and tenants ▪ Principle of shared responsibility between workers and employers ▪ Principle of stewardship in the disposition or utilization of natural resources ▪ Principle of prior consultation of urban and rural dwellers living in poverty before resettlement ▪ Principle of participation at all levels of social, political, and economic decision-making and in the planning, organization, and management of programs and projects ▪ Principle of unity in diversity in a climate of free artistic and intellectual expression ▪ Principle of equal access to opportunities in all fields of life
Constitutionally mandated priority sectors for national development planning	▪ Labor and Employment ▪ Comprehensive rural development and agrarian reform ▪ Urban land reform and housing ▪ Education ▪ Science and Technology

Table 1 (continued). Constitutional Parameters of National Development Planning	
Constitutional standards of national development planning	▪ Protection of children against neglect, abuse and exploitation ▪ Protection of Filipino enterprises and preferential use of Filipino labor, domestic materials and locally produced goods ▪ Incorporation of mechanisms of redress ▪ Incorporation of strategies for subsistence fishermen ▪ Integrated and comprehensive approach to health development ▪ Appropriate participatory strategies and mechanisms of support for research and development in science and technology ▪ Strategies to enhance equal access to cultural opportunities and encourage and support research and studies on the arts and culture ▪ Programs of social security for family, war veterans and veterans of military campaigns, their surviving spouses and orphans, and retirees of both government and private sector ▪ Protection of consumers from trade malpractices and from substandard or hazardous products
Interventions required by the Magna Carta of Women	▪ Incremental increase in the recruitment and training of women in government services that cater to women victims of gender related offenses ▪ Mandatory training on human rights and gender sensitivity to all government personnel involved in the protection of women against gender based violence ▪ Mechanisms to ensure the protection of women in all phases of relief, recovery, rehabilitation and construction efforts arising from disasters, calamities and other crisis situations ▪ Adoption and implementation of temporary special measures and affirmative action to accelerate and ensure women's equitable participation and representation in third level civil service, development councils and planning bodies, political parties, international bodies and the private sector ▪ Amendment or repeal of existing laws that discriminate against women ▪ Revision of educational materials and curricula to remove gender stereotypes and images ▪ Mechanisms to remove gender-based barriers in competitive and non-competitive sports ▪ Adoption and implementation of health policies, programs and projects that address the major causes of women's mortality and morbidity, ensure women's access to maternal care, responsible, ethical, legal, safe and effective methods of family planning, and encourage healthy lifestyle activities to prevent disease ▪ Designation of a gender focal point in the consular section of all Philippine embassies or consulates who shall address gender concerns of women migrant workers, especially those in distress ▪ Complementary strategies, programs and projects to deliver services to women migrant workers ▪ Adoption of gender mainstreaming in planning, budgeting, monitoring and evaluation for gender and development, creation and/or strengthening of gender and development focal points, and generation and maintenance of gender statistics and sex-disaggregated databases to aid in planning, programming and policy formulation ▪ Use of gender and development budgets to implement the provisions of the Magna Carta

International Human Rights Law

The Philippine human rights framework also consists of international human rights instruments, which form part of Philippine law through two constitutional processes: *incorporation*[36] and *transformation*.[37] The Supreme Court has enforced international human rights instruments in a number of decisions.

International human rights law is a branch of international law that consists mainly of customary law and international conventions signed and ratified by states.

Customary law refers to "conduct, or the conscious abstention from certain conduct, of states that becomes in some measure a part of international legal order. By virtue of a developing custom, particular conduct may be considered to be permitted or obligatory in legal terms, or abstention from particular conduct may come to be considered a legal duty."[38] "Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation."[39]

Customary international law refers to general norms of international law principles and practice often written in declarations, proclamations, rules, guidelines, recommendations and principles. While these have no binding legal effect, they represent a broad consensus of the international community, exert a strong moral force on the conduct of states, and are considered broadly accepted principles within the international community.

Treaties are "the primary expression of international law;"[40] they are agreements by states to be bound by particular rules. A treaty may be called a covenant, charter, pact, protocol (generally supplemental to other agreements), convention, or accord. Following *pacta sunt servanda* ("agreements must be kept"), the rule that agreements and stipulations, especially those contained in treaties, must be observed,[41] treaties are legally binding on those who are parties to it (formally express their consent to it). Because treaties are legally binding on those who are parties to it, treaties impose legal duties and obligations.

The Supreme Court elaborated on *pacta sunt servanda,* which "requires the parties to a treaty to keep their agreement therein in good faith."[42] In *Wigberto E. Tanada et. al. v. Edgardo Angara, et. al.,*[43] the Supreme Court held that "(a) treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties x x x. A state which has contracted valid international obligations is bound to make in its legislations such modifications as may be necessary to ensure the fulfillment of the obligations undertaken."

[36] The process of *incorporation* arises from Section 2, Article II, 1987 Constitution, which mandates: "The Philippines … adopts the generally accepted principles of international law as part of the law of the land…"

[37] The process of *transformation* arises from Section 21, Article VII, 1987 Constitution, which requires Senate ratification of all treaties or international agreements.

[38] Henry J. Steiner and Philip Alston (eds.), International Human Rights in Context, Oxford: Clarendon Press, 1996, at p. 28.

[39] Clause (2), Section 102, *Restatement (Third): Foreign Relations Law of the United States* cited in Steiner and Alston (eds.), International Human Rights in Context, Oxford: Clarendon Press, 1996, at p. 28.

[40] Henry J. Steiner and Philip Alston, International Human Rights in Context, Oxford: Clarendon Press, 1996, at p. 30.

[41] Black's Law Dictionary.

[42] *Secretary of Justice v Hon. Ralph C. Lantion and Mark B. Jimenez,* G.R. No. 139465, 18 January 2000.

[43] G.R. No. 118295, 2 May 1997.

The Philippines signed the major customarily binding human rights instruments and ratified a number of legally binding human rights instruments. (*Table 2*)

Table 2. Human Rights Instruments Customarily or Legally Binding on the Philippines

	Human Rights Instrument	Adoption	Signature	Ratification	Entry into Force
Customarily Binding Instruments	Universal Declaration of Human Rights (UDHR)	1948 Dec 10	*Not applicable*	*Not applicable*	*Not applicable*
	Declaration on the Right to Development (Declaration on RTD)	1986 Dec 4	*Not applicable*	*Not applicable*	*Not applicable*
Legally Binding Instruments	International Covenant on Economic, Social and Cultural Rights (ICESR)	1966 Dec 16	1966 Dec 19	1974 May 17	1976 Jan 03
	International Covenant on Civil and Political Rights (ICCPR)	1966 Dec 16	1966 Dec 19	1986 Feb 28	1987 Jan 23
	First Optional Protocol(ICCPR-OP1)	1966 Dec 16	1966 Dec 19	1989 Aug 22(a)	1989 Nov 22
	Second Optional Protocol aiming at the abolition of the death penalty (ICCPR-OP2-DP)	1989 Dec 15	2006 Sep 20	2006 Nov 20	2006 Nov 20
	International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	1965 Dec 21	1966 Mar 07	1967 Aug 15	1969 Jan 04
	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	1979 Dec 18	1981 Jul 15	1981 Jul 19	1981 Sep 04
	Optional Protocol (CEDAW-OP)	1999 Oct 06	2000 Mar 21	2003 Nov 12	2004 Feb 12
	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	1984 Dec 10		1986 Jun 18(a)	1987 Jun 26
	Convention on the Rights of the Child (CRC)	1989 Nov 20	1989 Jan 26	1990 Jul 26	1990 Sep 20
	Optional Protocol on Involvement of Children in Armed Conflict (CRC-OP-AS)	2000 May 25	2000 Sep 08	2003 Aug 26	2003 Sep 26
	Optional Protocol on Sale of Children, Child Prostitution and Child Pornography (CRC-OP-SC)	2000 May 25	2000 Sep 08	2002 May 28	2002 Jun 28
	International Convention on the Rights of All Migrant Workers and Members of their Families (CMW)	1990 Dec 18	1993 Nov 15	1995 Jul 5	2003 Jul 01
	Convention on the Rights of Persons with Disabilities (CPD)	2006 Dec 13	2007 Sep 25	2008 Apr 15	2008 May 3

Customarily Binding Human Rights Instruments

The Supreme Court defined "generally accepted principles of international law" as "norms of general or customary laws which are binding on all states,"[44] and includes declarations and resolutions of the United Nations General Assembly. The most prominent among these is the Universal Declaration of Human Rights, which the Court enforced in a number of decisions.[45]

The **Universal Declaration of Human Rights** (UDHR) was adopted on 10 December 1948; it is the common standard of achievement for all peoples and nations. It consists of a Preamble and 30 articles, which set forth human rights and fundamental freedoms for all, everywhere, all the time, and without discrimination.

The first cornerstone of UDHR is Article 3, upholding the rights to life, liberty and security of the person. Article 3 introduces Articles 4 to 21, which specify civil and political rights that spring from the rights to life, liberty and security of the person. These rights include freedoms from slavery, torture and cruel and unusual treatment or punishment, and arbitrary arrest, rights to recognition as a person everywhere, to effective judicial remedy, to be presumed innocent, to asylum, to peaceably assemble, to redress of grievances, to associate and to take part in government, and freedoms of movement, residence, thought, conscience, religion, opinion and expression.

The second cornerstone of UDHR is Article 22, upholding economic, social and cultural rights and stressing that these rights must be realized through national effort and international cooperation. Article 22 introduces Articles 23 through 27, which particularize economic, social and cultural rights including the rights to social security, work, equal pay for equal work, rest and leisure, standard of living for health and well being, education, and participate in the cultural life of the community.

The third cornerstone of UDHR is Article 28 which promotes the right to a social and international order in which human right are realized. Article 28 introduces Articles 29 and 30, which discuss the duties of individuals to the community and the circumstances under which rights may be limited. Rights may be limited (a) by law, (b) for the purpose of securing due recognition and respect for the rights of others, or (c) required by public morals, public order or general welfare in a democratic society.

The Supreme Court held that while the UDHR is not a treaty, "the principles contained in the said Declaration are now recognized as customarily binding upon the members of the international community,"[46] including the Philippines.

The UDHR is an important document for development planners in many respects. *First*, it stresses that human rights derive from the inherent dignity of the human person, and thus

[44] *Pharmaceutical and Health Care Association of the Philippines v. Health Secretary Francisco T. Duque, et. al.,* G.R. No. 173074, 9 October 2007.

[45] *See,* among others, *Government of Hong Kong Special Administrative Region v. Olalia*, G.R. No. 153675, 19 April 2007; *Mejoff v. Director of Prisons*, G.R. No. L-2855, 30 July 1949; *Mijares v. Ranada,* G.R. No. 139325, 12 April 2005; and *Shangri-la International Hotel Management Ltd. v. Developers Group of Companies, Inc.*, G.R. No. 159938, 31 March 2006.

[46] *Government of Hong Kong Special Administrative Region v. Olalia*, G.R. No. 153675, 19 April 2007.

requires development planning to always and foremost promote the dignity and worth of the human person. *Second,* it emphasizes the interdependence and interrelatedness of human rights, and thus reminds development planning to keep in mind that while development policies, plans, programs, projects and activities may appear to affect only one human right, in reality development interventions actually interact with and impact on other civil, political, economic, social and cultural rights. *Third*, it introduces the principles of nondiscrimination, equality, accountability and participation, which should guide development planning. *Fourth*, it sets human rights objectives that should guide development planning: to promote social progress and better standards of life, to secure universal and effective recognition and observance of all human rights through national effort and international cooperation, and to create a social and international order in which human rights and freedoms can be fully realized. *Fifth,* it emphasizes that human rights have corresponding duties to other individuals and to the community to exercise human rights responsibly and to strive to promote and observe human rights of all, so that as development planners possess human rights, they too must exercise these rights with responsibility. *Finally*, while it allows human rights to be limited, it stresses that such limitations must be "determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." This means that where development planning imposes or results in a limitation on any rights guaranteed by UDHR, such limitations must be compatible with the requisites imposed by it.

The **Declaration on the Right to Development** was adopted on 4 December 1986 by the United Nations General Assembly through resolution 41/128. The Declaration consists of a Preamble and 10 articles.

The Declaration enshrines the right to development and the right to self-determination. It stresses that people are the central subjects, active participants and beneficiaries of development. The Declaration lists a series of state obligations to pursue the right to development; these include the obligations of international assistance and cooperation and the obligations to: formulate appropriate national development policies that aim to improve the well-being of all; eliminate massive and flagrant violations of human rights; promote respect for human rights; ensure equality of opportunity for all in access to basic resources, education, health services, food, housing, employment and fair distribution of income; ensure that women have an active role in the development process; eradicate all social injustices; and encourage popular participation in all spheres of development.

The Declaration establishes human rights objectives and standards that should guide development planning. Chief among these are the overall objectives to formulate appropriate national development plans, policies, strategies and mechanisms that constantly improve the wellbeing of the entire population, based on their active, free and meaningful participation in development and in the fair distribution of resulting benefits, and to remove the barriers to development. The Declaration thus requires development planning to adopt *integrated, indivisible, comprehensive, participatory* and *nondiscriminatory* strategies geared towards the human person as the main participant and beneficiary of development.

Legally Binding Human Rights Instruments

The **International Covenant on Civil and Political Rights** (ICCPR) was adopted on 16 December 1966. The ICCPR consists of a Preamble and 6 Parts with 53 Articles. It upholds civil and political rights, including the rights to life, equality before the law, equal protection, guarantees in criminal and civil proceedings, privacy, honor, reputation, peaceful assembly, association, marry, found a family, take part in public affairs, vote, be elected, and access public service. It recognizes the rights of the child and ethnic, religious and linguistic minorities. It guarantees freedoms from torture, slavery, involuntary servitude, arbitrary arrest and detention. It promotes freedoms of thought, conscience, religion, opinion, and expression. These rights protect the person's physical integrity, guarantee procedural fairness whenever one is deprived of liberty, guarantee equal protection norms, freedom of belief, speech and association, and the right to political participation. Some of the rights that are important in development planning are described in greater detail in Chapter 2.

Civil and political rights serve to protect the individual from the arbitrary exercise of power by the state. While some philosophers, theorists, political scientists and human rights activists sometimes refer to civil and political rights as *negative* rights (or rights not to be interfered with, abused or coerced), civil and political rights also impose *positive* obligations on states to develop and enforce an adequate legal system to address claims of violations of human rights.

The ICCPR creates the Human Rights Committee, the body tasked to monitor whether and how well states that have ratified the treaty comply with its terms and obligations.

The ICCPR is accompanied by two Optional Protocols: the First Optional Protocol, which consists of 14 Articles and essentially recognizes the competence of the Human Rights Committee to receive and consider communications for violations of ICCPR; and the Second Optional Protocol, which consists of 11 Articles on the abolition of capital punishment.

The Supreme Court applied the ICCPR in *Government of Hong Kong Special Administrative Region v Olalia*, where it ruled: "the Philippine authorities are under obligation to make available to every person under detention such remedies which safeguard their fundamental right to liberty … Under these treaties, the presumption lies in favor of human liberty. Thus, the Philippines should see to it that the right to liberty of every individual is not impaired."[47]

The ICCPR requires development planning to refrain from adopting strategies and implementing programs or projects that will lead to or result in an infringement of anyone's civil and political rights. At the same time, the ICCPR requires development planning to incorporate policies, measures and mechanisms for an appropriate, effective and independent legal system to redress human rights violations.

[47] G.R. 153675, 19 April 2007.

The **International Covenant on Economic, Social and Cultural Rights** (ICESCR) was adopted on 16 December 1966; it consists of a Preamble and 5 Parts with 31 Articles. The ICESCR upholds the rights to: work, just and favorable conditions of work, form and join trade unions, social security, protection and assistance for family, adequate standard of living including food, water and housing, highest attainable standard of health, education, and take part in cultural life. These rights are described in more detail in Chapter 2.

While some philosophers, theorists, political scientists and human rights activists sometimes refer to ICESCR rights as *positive* rights, or rights that demand certain actions by the state, the ICESCR also imposes *negative* obligations on the state, i.e., not to interfere, limit or restrain *access* to goods and services inherent in economic, social and cultural rights, and to refrain from infringing upon the rights to food, water and health.

The ICESCR establishes the Committee on Economic, Social and Cultural Rights, the body tasked to monitor state compliance with the Covenant.

The ICESCR is accompanied by an Optional Protocol, which recognizes the competence of the Committee on Economic, Social and Cultural Rights to receive and consider communications for violations of ICESCR. The Philippines has *not yet* ratified the Optional Protocol to the ICESCR.

The ICESCR is the guiding human rights standard for national development planning, for it describes in detail human rights objectives as well as the kinds of development actions needed to realize economic, social and cultural rights. These include: the adoption of policies and measures to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms; the provision of technical and vocational guidance and training programs; the widest possible protection and assistance to the family; special protection to mothers during a reasonable period before and after child birth; special measures of protection and assistance for all children and young persons without any discrimination; improvement of 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 utilization of natural resources; application of equity in trade in world food supplies; reduction of stillbirth-rate and infant mortality; measures for the healthy development of the child; improvement of all aspects of environmental and industrial hygiene; prevention, treatment and control of epidemic, endemic, occupational and other diseases; creation of conditions to assure medical service and medical attention to all in the event of sickness; provision of compulsory and free primary education to all; progressive introduction of free secondary education in its different forms, including technical and vocational secondary education; progressive introduction of free higher education; provision of fundamental education; development of a system of schools at all levels, including the establishment of an adequate fellowship system and the improvement of the material conditions of the teaching staff; and the conservation, development and diffusion of science and culture.

The ICESCR also prescribes human rights obligations that national development planning should adhere to. These obligations are discussed more elaborately in Chapter 3.

Both the **ICCPR** and **ICESCR** share a common Preamble, which emphasizes the indivisibility and interdependence of all human rights, the obligations of states to promote human rights and the human rights responsibilities of individuals. Both the ICCPR and ICESCR also share Article 1, which guarantees the right to self-determination, i.e., the right to freely determine political status and freely pursue economic, social and cultural development; Article 3, which reaffirms the equal right of women and men to enjoy all human rights; and Article 5, which imposes safeguards against the destruction or undue limitation of any human rights and against misinterpretation of any provision of the Covenants to justify infringement or limitations of a right to a greater extent than that provided for in the Covenants.[48]

Derogable and Non-Derogable Rights

Under the **UDHR, ICCPR** and **ICESCR,** some rights may be restricted or subjected to limitations or adaptations under certain conditions, while other rights may never be limited or restricted under all conditions. These are generally referred to as *derogable* and *non-derogable* rights.

Derogable rights are rights that may be limited or adapted to meet the State's interest to promote public safety, public morals, public health or national security *only when these are authorized by law, are compatible with the nature of the rights, and solely promote the general welfare in a democratic society*.[49]

Article 4 of the **ICCPR** allows a *temporary* derogation or suspension of human rights during states of exception or states of emergency so long as these are (a) necessary in a democratic society, (b) to protect national security, public order, public safety or public health or morals, and (c) consistent with the rights and freedoms of others. But:[50]

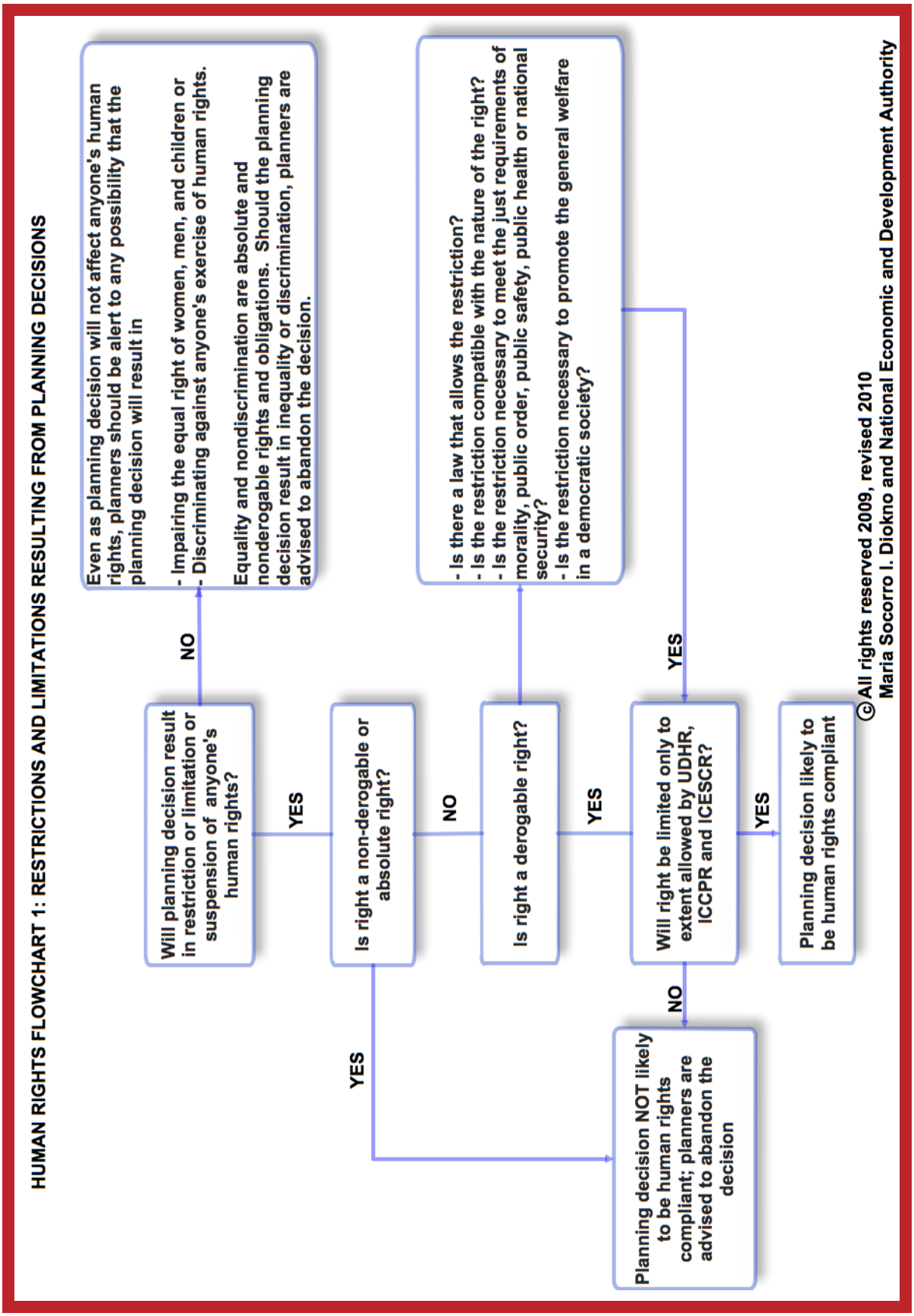
- The suspension must be authorized by national law, not be arbitrary, unreasonable or retroactive, and must be compatible with international human rights law;
- The suspension must be made in good faith, based on an objective assessment of situation; this means that the emergency must actually exist or be imminent and must involve the whole country, and must threaten the organized life of the community;
- The rule of law should always prevail;
- The suspension must be temporary and last only as long as the life of the entire nation is actually threatened; and
- The crisis must be so exceptional that normal measures are plainly inadequate.

[48] UN Office of the High Commissioner for Human Rights, Fact Sheet No. 2 (Rev. 1), The International Bill of Human Rights, undated.
[49] Article 29, UDHR; Articles 12, 14, 18, 19, 21 and 22, ICCPR; Articles 4 and 8, ICESCR.
[50] *See* Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, 1984, Annex, UN Doc E/CN.4/1984/4.

Examples of derogable civil and political rights are: freedom of expression, freedom of assembly, freedom of association, and freedom from arbitrary detention and arrest.

Non-derogable rights are rights that are *absolute* and may never be suspended or limited under any and all circumstances, including states of exception or states of emergency; these are rights that may never be denied, and nothing justifies imposing a limitation on them. Non-derogable rights are the right to life, right against torture, cruel, inhuman or degrading treatment or punishment, right against slavery and servitude, right against imprisonment for debt or failure to comply with a contractual obligation, right against ex post facto (retroactive) laws, right to be recognized as a person everywhere, and freedom of thought, conscience and religion.

Flowchart 1 assists development planners determine whether planning decisions result in restrictions, limitations or suspensions of human rights guaranteed by the **UDHR**, **ICCPR** and the **ICESCR.**


HUMAN RIGHTS FLOWCHART 1: RESTRICTIONS AND LIMITATIONS RESULTING FROM PLANNING DECISIONS
Will planning decision result in restriction or limitation or suspension of anyone's human rights?
NO
Even as planning decision will not affect anyone's human rights, planners should be alert to any possibility that the planning decision will result in
- Impairing the equal right of women, men, and children or
- Discriminating against anyone's exercise of human rights.
Equality and nondiscrimination are absolute and nonderogable rights and obligations. Should the planning decision result in inequality or discrimination, planners are advised to abandon the decision.
YES
Is right a non-derogable or absolute right?
YES
Planning decision NOT likely to be human rights compliant; planners are advised to abandon the decision
NO
Is right a derogable right?
- Is there a law that allows the restriction?
- Is the restriction compatible with the nature of the right?
- Is the restriction necessary to meet the just requirements of morality, public order, public safety, public health or national security?
- Is the restriction necessary to promote the general welfare in a democratic society?
YES
Will right be limited only to extent allowed by UDHR, ICCPR and ICESCR?
NO
Planning decision NOT likely to be human rights compliant; planners are advised to abandon the decision
YES
Planning decision likely to be human rights compliant
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Maria Socorro I. Diokno and National Economic and Development Authority

The **Convention on the Rights of the Child** (CRC) was adopted on 20 November 1989; it consists of a Preamble and 3 Parts with 54 Articles. The CRC defines a child as a human being below the age of 18 unless national law decrees an earlier age of majority. In the Philippines, Republic Act 9344 or the *Juvenile Justice and Welfare Act of 2006*, similarly defines a child as a person under 18 years of age. The CRC has four foundation principles: *survival and development; nondiscrimination, best interests of the child;* and *views of the child.*

Article 6 of the CRC underscores the principle of *survival and development* and requires development planners to address issues of accessibility, guarantee children's rights to basic services and promote equity of opportunity for all children to achieve full development.

Article 2 of the CRC promotes the principle of *nondiscrimination,* and mandates that no child is to be restricted or excluded from the benefits of development; in this regard, data disaggregation becomes an essential aspect of development planning.

Article 3 of the CRC upholds the principle of the *best interests of the child* as the primary consideration for all actions concerning children. This principle requires development planning based on what is best for children and includes the adoption of a child-centered approach.

Article 12 of the CRC incorporates the principle of *views of the child* and requires everyone, including development planners, to give due consideration to the views of the child, and to the child's evolving capacities.

The CRC guarantees four broad categories of rights: survival rights, or the rights to life, health and health care and the right to an adequate standard of living; development rights, or the rights to education, to develop the child's physical and mental abilities to the fullest, and protection from performing work that may interfere with the child's education; protection rights, or the right to be safe from all forms of abuse, neglect and exploitation including violence, economic exploitation, drug abuse, sexual exploitation, sale, trafficking and abduction, torture, the death penalty, life imprisonment and deprivation of liberty; and participation rights, or the right to express their views, freedoms of expression, thought, conscience, religion, association and peaceful assembly, rights to privacy, information, and participate in cultural life and the arts.

The CRC establishes the Committee on the Rights of the Child to monitor compliance with the Convention.

The UN Committee on the Rights of the Child has recommended not only the incorporation of CRC into domestic law but also its precedence over domestic law in cases of conflict.[51] This is, however, not the case in the Philippines, where the Supreme Court has ruled that when conflicts arise between the implementation of international and domestic law, these must first be harmonized to make both applicable, but if they cannot be harmonized, then domestic law should be upheld.[52]

[51] General Comment 5, "General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)," adopted by the United Nations Committee on the Rights of the Child at its thirty-fourth session, 2003, UN Doc. HRI/GEN/1/Rev. 9 (Vol. II), 27 May 2008.

[52] *See*, for example, *Ichong vs. Hernandez,* 101 Phil. 1155 [1957]; *Gonzales vs. Hechanova,* 9 SCRA 230 [1963]; *In re: Garcia,* 2 SCRA 984 [1961].

The CRC is accompanied by 2 Optional Protocols: the **Optional Protocol on Involvement of Children in Armed Conflict**, which consists of a Preamble and 13 Articles and prohibits the compulsory recruitment of child soldiers; and the **Optional Protocol on Sale of Children, Child Prostitution and Child Pornography,** which consists of a Preamble and 17 Articles and prohibits the sale of children, child prostitution and child pornography.

The CRC is a key guiding document for development planners, considering that children comprise more than half of the entire Philippine population.[53] The CRC sets the realization of children's rights and the creation of conditions necessary for the child's development as key human rights objectives. To realize child rights, the CRC requires national development planning to adopt strategies towards the eradication of infant and child mortality; provision of necessary medical assistance and health care to all children; development of primary health care system including appropriate pre- and post-natal health care for mothers, measures to combat disease and malnutrition, and information dissemination on child health and nutrition; development of preventive health care system; abolition of traditional practices prejudicial to child health; establishment of free and compulsory primary education and development of different forms of secondary education; reduction in drop-out rates; appropriate assistance to parents and legal guardians; alternative care for child separated from family; regulation of child care institutions, services and facilities; regulation of intra- and inter-country adoption; provision of special assistance to children with disabilities; improvement of methods of rehabilitation, care, treatment and education of children with disabilities; protection of child refugees and provision of humanitarian assistance; prevention of recruitment of child soldiers; protection and care for children affected by armed conflict; prevention of illicit transfer and non-return of children, trafficking in children, all forms of physical or mental violence, injury or abuse, and economic exploitation; protection of children from sexual exploitation, sexual abuse, economic exploitation; protection of children from illicit use of narcotic drugs and psychotropic substances; prevention of use of children in illicit traffic and production of narcotic drugs and psychotropic substances; identification, report, referral, investigation, treatment and follow-up of all instances of child maltreatment; encouragement of mass media to respect the rights of child; and the incorporation of a variety of dispositions for children in conflict with the law.

The **Convention on the Elimination of All Forms of Discrimination against Women** (CEDAW) was adopted on 18 December 1979 and consists of a Preamble and 6 Parts with 30 Articles. The CEDAW defines discrimination as any distinction, exclusion or restriction made on the basis of sex. The CEDAW affirms the civil and political rights of women to vote and be elected, participate in the formulation of public policy, participate in development planning, hold pubic office, perform all public functions at all levels of government, participate in non-governmental organizations, represent Government at the international level, acquire, change or retain their nationality, education, work, health, social security, access to credit, rest and leisure, participate in the cultural life, adequate standard of living, property, enter into marriage with free and full consent, freely choose a spouse, and choose a family name, a profession and an occupation.

[53] National Statistical Coordination Board.

The CEDAW establishes the Committee on the Elimination of Discrimination against Women to monitor compliance with the Convention.

The CEDAW is accompanied by an **Optional Protocol,** which recognizes the competence of the Committee on the Elimination of Discrimination against Women to receive and consider communications for violations of CEDAW.

The CEDAW prohibits any policies, plans, programs and actions that place women at a disadvantage, regardless of intent. The CEDAW thus requires that national development planning focus on realizing the equal rights of women to ensure their full development and advancement. The CEDAW requires national development planning to adopt *temporary special measures* to accelerate substantive equality between women and men. It also requires national development planning to adopt and implement appropriate measures and strategies to: modify social and cultural patterns of men and women to eliminate prejudices, customary and other practices of discrimination against women; in this regard, the CEDAW, which recognizes the influence of culture and tradition on whether women enjoy human rights,[54] requires national development planning to adopt strategies that challenge and change stereotypes, customs and norms that discriminate against women and that address power relations between women and men at all levels. The CEDAW also requires the adoption and implementation of measures, strategies and mechanisms that: foster the proper understanding of maternity as a social function and recognize the common responsibility of men and women in upbringing and development of children; eliminate all forms of traffic in and exploitation of women; and eliminate all forms of discrimination against women in political and public life, in education, in health care, in economic and social life, in rural areas and in all matters relating to marriage and family relations.

The **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (CAT) was adopted on 10 December 1984 and consists of a Preamble and 3 Parts with 33 Articles. The CAT defines torture as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person to obtain information or a confession, to punish or intimidate or coerce the person committed by or at the instigation of or with the consent or acquiescence of a public official or person acting in an official capacity. The CAT prohibits torture under all circumstances, including during states of emergency; it requires the enactment of national laws prohibiting torture, the inclusion of the prohibition in the training of and rules governing security personnel, and the prompt and impartial investigation of all allegations of torture.

The CAT establishes the Committee against Torture to monitor compliance with the Convention.

The UN Committee against Torture recently stated that the prohibition against ill treatment, like the prohibition against torture, is non-derogable. States must therefore eliminate legal or other obstacles that impede the eradication of torture and ill treatment and take positive effective measures to ensure that torture and ill treatment do not occur. In particular, the Committee

[40] General Recommendation 21, "Equality in marriage and family relations," adopted by the United Nations Committee on Discrimination against Women at its thirteenth session, 1994, UN Doc. A/49/38.

recommends that states should prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of children, the aged, the mentally ill or disabled, in military service and other institutions.[55]

The CAT is accompanied by an **Optional Protocol,** which recognizes the competence of the Committee against Torture to receive and consider communications for violations of CAT. The Philippines has *not yet* ratified the Optional Protocol, despite its commitment and pledge before the international community to do so.[56]

The CAT requires national development planning to include policies, strategies, and measures to: prevent torture and ill treatment under all circumstances; include the prohibition of torture in the training and rules governing security personnel; systematically review interrogation rules, instructions, methods, practices and custody arrangements and treatment of all persons under any form of arrest or detention; protect complainants and witnesses against ill-treatment or intimidation as a consequence of the complaint or evidence given; and afford victim redress including adequate compensation and full rehabilitation.

The **International Convention on the Elimination of All Forms of Racial Discrimination** (CERD) was adopted on 21 December 1965*;* it consists of a Preamble and 3 Parts with 25 Articles. The CERD defines racial discrimination as any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin. The CERD prohibits all forms of discrimination, racial segregation and apartheid, and propaganda based on the idea of superiority of one race or group or which promote racial hatred and discrimination. The CERD guarantees rights to equal treatment before the law, security of the person, vote and be elected, take part in government and in the conduct of public affairs at any level, equal access to public service, freedom of movement and residence, right to leave any country and return to own country, nationality, marriage and choice of spouse, property, inherit, freedom of thought, conscience, religion, opinion, expression, association, peaceful assembly, work, form and join trade unions, housing, health, education, take part in cultural activities, access any place or service intended for use by the general public, and the right to an effective remedy for any act of discrimination.

The CERD establishes the Committee on the Elimination of Racial Discrimination to monitor compliance with the Convention.

The UN Committee on the Elimination of Racial Discrimination has said that the provisions of CERD apply to indigenous peoples; CERD thus recognizes and protects the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and requires states to provide indigenous peoples with conditions towards sustainable economic and social development that are compatible with their cultural characteristics.[57]

[55] General Comment 2, "Implementation of article 2 by States parties," adopted by the United Nations Committee against Torture at its thirty-ninth session, 2007, UN Doc. HRI/GEN/1/Rev. 9 (Vol. II), 27 May 2008.

[56] *Note verbale* dated 18 April 2007 from the Permanent Mission of the Philippines to the United Nations addressed to the President of the General Assembly.

[57] General Recommendation XXIII, "On the rights of indigenous peoples," adopted by the United Nations Committee on Racial Discrimination at its fifty-first session, 1997, UN Doc. A/52/18, Annex V.

The Committee also said that CERD incorporates the *rule of self-ascription* or the rule that stipulates that the way individuals are identified as members of particular racial or ethnic groups is by self-identification by the individuals concerned.[58]

The CERD requires that national development planning guarantee nondiscrimination in its processes and outcomes. It requires national development planning to incorporate strategies, measures and mechanisms that eliminate racial discrimination in all its forms, promote understanding among all races, and provide effective protection and remedies for violations of human rights. The CERD requires the adoption of immediate and effective measures in teaching, education, culture and information to combat prejudice and promote understanding, tolerance and friendship. The CERD, coupled with the Philippine Constitutional mandate,[59] requires the consideration and inclusion of the rights of indigenous peoples in the formulation of national plans and policies.

The **International Convention on the Rights of All Migrant Workers and Members of their Families** (CMW) was adopted on 18 December 1990 and is composed of a Preamble and 9 Parts with 93 Articles.

The CMW applies to all migrant workers—persons who are about to be engaged, are engaged, or have been engaged in a paid activity in a country where they are not nationals—whether they are documented or undocumented.

The CMW guarantees the rights of migrant workers against discrimination, freedom of movement, leave and return to their countries, life, freedom from torture and cruel, inhuman or degrading treatment or punishment, freedom from slavery, servitude, and forced or compulsory labor, freedom of thought, conscience and religion, freedom to manifest one's religion or belief, freedom of opinion and expression, rights to privacy, property, liberty and security of the person, due process of law, equal protection of the law, presumption of innocence, freedom from collective expulsion, rights to recognition everywhere as a person before the law, just and favorable conditions of employment including compensation, social security, medical care urgently required to preserve their lives, and cultural identity.

The CMW guarantees the rights of children of migrant workers to a name, nationality, and education.

The CMW upholds additional rights for documented migrant workers; these include the rights to be informed, prior to departure, of terms and conditions of employment, liberty of movement and abode in country of employment, form and join associations and trade unions, participate in public affairs of country of origin including the right to vote and be elected in the country of origin, equal treatment in employment including access to educational institutions and services, vocational guidance and training, housing, social and health services, cooperatives

[58] General Recommendation VIII, "Concerning the interpretation and application of article 1, paragraphs 1 and 4 of the Convention," adopted by the United Nations Committee on Racial Discrimination at its thirty-eighth session, 1990, UN Doc. A/45/18.

[59] Article XIV, Section 17, 1987 Constitution.

and self-managed enterprises and participate in cultural life, protection of the family, transfer earnings and savings, freely choose their remunerated activity, protection against dismissal, unemployment benefits, access to public work schemes, and access to alternative employment.

The CMW also devotes provisions governing frontier workers, seasonal workers, itinerant workers, project-tied workers, specified-employment workers, and self-employed workers. The CMW also promotes sound, equitable, humane and lawful conditions covering international migration of workers and members of their families.

The CMW establishes the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families to monitor compliance with the Convention.

The CMW sets the promotion of sound, equitable and humane conditions of international migration of workers and their families as a key human rights objective. To achieve this objective, the CMW requires national development planning to incorporate strategies, programs, measures and actions that: provide appropriate services to deal with questions concerning international migration; regulate the recruitment of workers for employment in another State; facilitate the orderly return of migrant workers and families to State of origin; promote adequate economic conditions for resettlement of migrant workers and their families in regular situation and durable social and cultural reintegration in State of origin; prevent and eliminate illegal or clandestine movements and employment of migrant workers in irregular situation; ensure working and living conditions of migrant workers and members of their families in regular situation not less favorable than those applied to nationals; facilitate, whenever necessary, the repatriation to State of origin of bodies of deceased migrant workers or members of their families; and provide assistance to persons concerned for prompt settlement of compensation matters relating to death of migrant worker or member of the family.

The **Convention on the Rights of Persons with Disabilities** (CPD) was adopted on 21 December 1965; it consists of a Preamble and 50 Articles. The CPD promotes the rights of persons with disabilities including those with long-term physical, mental, intellectual or sensory impairments. The CPD is governed by the principles of *respect for the dignity, individual autonomy and independence* of persons with disabilities*, nondiscrimination, full and effective participation and inclusion in society, respect for difference and acceptance* of persons with disabilities*, equality of opportunity, accessibility, equality between women and men* and *respect for the evolving capacities and rights of children with disabilities.*

The CPD guarantees the rights to life, equal protection of the law, access to justice, liberty and security of the person, freedom from torture or cruel, inhuman or degrading treatment, freedom from exploitation, violence and abuse, rights to integrity of the person, liberty of abode, movement and nationality, personal mobility, freedom of expression and opinion, rights to access to information, privacy, education, health, habilitation and rehabilitation, work and employment, adequate standard of living, social protection, participation in political and public life, participation in cultural life, rest, recreation, leisure and sports.

The CPD incorporates specific state obligations, which include, among others, the adoption of appropriate measures to implement the rights recognized, modification or abolition of existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities, inclusion of rights of persons with disabilities in all policies and programs, elimination of all forms of discrimination based on disability, guarantee of access to available resources, and elimination of all obstacles and barriers to accessibility.

The CPD establishes the Committee on the Rights of Persons with Disabilities, the body tasked to monitor compliance with the Convention.

The CPD is accompanied by an **Optional Protocol**, which recognizes the competence of the Committee on the Rights of Persons with Disabilities to receive and consider communications for violations of CPD. The Philippines has *not yet* ratified the Optional Protocol.

The CPD requires national development planning to achieve the full realization without discrimination of all human rights of men, women and children with disabilities, by including their rights in all policies and programs and ensuring their active participation in the formulation and implementation of these programs and policies. The CPD requires national development planning to: modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities; promote research and development; provide effective legal protection against discrimination; guarantee access to available resources by identifying and eliminating all obstacles and barriers to accessibility and by developing, promulgating and implementing minimum standards and guidelines for accessibility; protect persons with disabilities in all situations of risk; prevent all forms of exploitation, violence and abuse of persons with disabilities; collect appropriate disaggregated information, statistical and research data; designate focal points within government to implement CPD; and maintain, strengthen, designate or establish a framework and independent mechanisms to promote, protect and monitor the implementation of the CPD.

Table 3 summarizes the human rights parameters of national development planning arising from international human rights instruments and treaties.

Table 3. Human Rights Parameters of National Development Planning	
UDHR	▪ Promote dignity and worth of human person ▪ Human rights are interdependent and interrelated ▪ Principles of nondiscrimination, equality, accountability and participation ▪ Promote social progress and better standards of life ▪ Secure universal and effective recognition and observance of all human rights through national effort and international cooperation ▪ Create social and international order where human rights and freedoms can be fully realized ▪ Exercise human rights with responsibility ▪ Any limitation on any rights guaranteed by UDHR must be compatible with requisites imposed by it
Declaration on RTD	▪ Constantly improve wellbeing of entire population, based on their active, free and meaningful participation in development and in fair distribution of resulting benefits ▪ Remove barriers to development ▪ Adopt integrated, indivisible, comprehensive, participatory and nondiscriminatory strategies geared towards the human person as main participant and beneficiary of development ▪ Eliminate massive and flagrant violations of human rights ▪ Promote respect for human rights ▪ Ensure equality of opportunity for all in access to basic resources, education, health services, food, housing, employment and fair distribution of income ▪ Ensure that women have an active role in development process ▪ Eradicate all social injustices ▪ Encourage popular participation in all spheres of development
ICCPR	▪ Refrain from adopting strategies and implementing programs or projects that lead to or result in violations of civil and political rights ▪ Incorporate measures and mechanisms for appropriate, effective and independent legal system to redress human rights violations

Table 3 (continued). Human Rights Parameters of National Development Planning	
ICESCR	▪ Progressively realize economic, social and cultural rights for all ▪ Adopt policies and measures to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms ▪ Provide technical and vocational guidance and training programs ▪ Provide widest possible protection and assistance to family ▪ Provide special protection to mothers during reasonable period before and after child birth ▪ Adopt and implement special measures of protection and assistance for all children and young persons without any discrimination ▪ Improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, disseminating knowledge of principles of nutrition and developing or reforming agrarian systems to achieve most efficient development and utilization of natural resources ▪ Apply equity in trade in world food supplies ▪ Reduce stillbirth-rate and infant mortality ▪ Adopt and implement measures for healthy development of the child ▪ Improve all aspects of environmental and industrial hygiene ▪ Prevent, treat and control epidemic, endemic, occupational and other diseases ▪ Create conditions to assure medical service and medical attention to all in event of sickness ▪ Provide compulsory and free primary education to all ▪ Progressively introduce free secondary education in its different forms, including technical and vocational secondary education ▪ Progressively introduce free higher education ▪ Provide fundamental education ▪ Develop a system of schools at all levels, including adequate fellowship system and improvement of material conditions of teaching staff ▪ Conserve, develop and diffuse science and culture

Table 3 (continued). Human Rights Parameters of National Development Planning	
CRC	▪ Realize child rights ▪ Create conditions necessary for child's development ▪ Eradicate infant and child mortality ▪ Provide necessary medical assistance and health care to all children ▪ Develop primary health care system including appropriate pre- and post-natal health care for mothers, measures to combat disease and malnutrition, and information dissemination on child health and nutrition ▪ Develop preventive health care system ▪ Abolish traditional practices prejudicial to child health ▪ Establish free and compulsory primary education and develop different forms of secondary education ▪ Reduce drop-out rates ▪ Adopt and implement appropriate assistance to parents and legal guardians ▪ Adopt and implement measures for alternative care for child separated from family ▪ Regulate child care institutions, services and facilities ▪ Regulate intra- and inter-country adoption ▪ Provide special assistance to children with disabilities ▪ Improve methods of rehabilitation, care, treatment and education of children with disabilities ▪ Protect child refugee and provide humanitarian assistance ▪ Prevent recruitment of child soldier ▪ Provide care for child affected by armed conflict ▪ Prevent illicit transfer and non-return of children, trafficking in children, all forms of physical or mental violence, injury or abuse, and economic exploitation ▪ Protect child from sexual exploitation, sexual abuse, economic exploitation ▪ Protect child from illicit use of narcotic drugs and psychotropic substances ▪ Prevent use of child in illicit traffic and production of narcotic drugs and psychotropic substances ▪ Identify, report, refer, investigate, treat and follow-up all instances of child maltreatment ▪ Encourage mass media to respect rights of child ▪ Adopt and implement variety of dispositions for child in conflict with law
CERD	▪ Guarantee nondiscrimination ▪ Prohibit all forms of discrimination, racial segregation and apartheid, and propaganda based on idea of superiority of one race or group or which promote racial hatred and discrimination ▪ Eliminate racial discrimination in all forms ▪ Promote understanding among all races ▪ Provide effective protection and remedies for violations of human rights ▪ Adopt immediate and effective measures in teaching, education, culture and information to combat prejudice and promote understanding, tolerance and friendship

Table 3 (continued). Human Rights Parameters of National Development Planning	
CEDAW	▪ Realize women's rights ▪ Adopt and implement appropriate measures for full development and advancement of women ▪ Adopt temporary special measures to accelerate de facto equality ▪ Adopt and implement appropriate measures to modify social and cultural patterns of men and women to eliminate prejudices, customary and other practices of discrimination ▪ Adopt and implement appropriate measures fostering proper understanding of maternity as social function and recognition of common responsibility of men and women in upbringing and development of children ▪ Eliminate all forms of traffic in and exploitation of women ▪ Eliminate discrimination against women in political and public life ▪ Eliminate discrimination against women in education ▪ Eliminate discrimination against women in health care ▪ Eliminate discrimination against women in economic and social life ▪ Eliminate discrimination against women in rural areas ▪ Eliminate discrimination against women in all matters relating to marriage and family relations
CAT	▪ Prevent torture and ill treatment under all circumstances, including during states of emergency ▪ Include prohibition of torture in training and rules governing security personnel ▪ Conduct prompt and impartial investigation into all allegations of torture ▪ Seek international cooperation and assistance to prevent torture and ill treatment ▪ Systematically review interrogation rules, instructions, methods, practices and custody arrangements and treatment of all persons under any form of arrest or detention ▪ Protect complainant and witnesses against ill-treatment or intimidation as consequence of complaint or evidence given ▪ Adopt and implement mechanisms of victim redress including adequate compensation and full rehabilitation

Table 3 (continued). Human Rights Parameters of National Development Planning	
CMW	▪ Promote sound, equitable and humane conditions of international migration ▪ Provide appropriate services to deal with questions concerning international migration ▪ Provide adequate consular and other necessary services ▪ Regulate recruitment of workers for employment in another State ▪ Adopt measures for orderly return of migrant workers and families to State of origin ▪ Promote adequate economic conditions for resettlement of migrant workers and their families in regular situation and durable social and cultural reintegration in State of origin ▪ Prevent and eliminate illegal or clandestine movements and employment of migrant workers in irregular situation ▪ Adopt and implement measures not less favorable than those applied to nationals to ensure working and living conditions of migrant workers and members of their families ▪ Facilitate, whenever necessary, repatriation to State of origin of bodies of deceased migrant workers or members of their families ▪ Provide assistance to persons concerned for prompt settlement of compensation matters relating to death of migrant worker or member of family
CPD	▪ Fully realize without discrimination all human rights of persons with disabilities ▪ Adopt appropriate measures to implement rights ▪ Modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities ▪ Include rights of persons with disabilities in all policies and programs ▪ Promote research and development ▪ Provide accessible information on mobility aids, devices and assistive technologies ▪ Provide training to professionals and staff working with persons with disabilities ▪ Ensure active participation of persons with disabilities in formulation and implementation of laws and policies ▪ Provide effective legal protection against discrimination ▪ Adopt and implement immediate, effective and appropriate measures to raise awareness, combat stereotypes, prejudices and harmful practices ▪ Guarantee access to available resources ▪ Identify and eliminate all obstacles and barriers to accessibility ▪ Develop, promulgate and monitor implementation of minimum standards and guidelines for accessibility ▪ Provide in buildings and facilities open to public signage in Braille and in easy to read and understand forms ▪ Design, develop, produce and distribute accessible information and communications technologies and systems ▪ Protect safety of persons with disabilities in all situations of risk ▪ Prevent all forms of exploitation, violence and abuse ▪ Employ teachers, including teachers with disabilities, qualified in sign language and/or Braille ▪ Collect appropriate disaggregated information, statistical and research data ▪ Designate focal points within government to implement CPD ▪ Maintain, strengthen, designate or establish framework and independent mechanisms to promote, protect and monitor implementation of CPD

EXECUTIVE SUMMARY

Chapter 1, The Philippine Human Rights Framework for Development Planning, presents the Philippine human rights framework (the 1987 Philippine Constitution, Universal Declaration of Human Rights, Declaration on the Right to Development, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child, International Convention on the Rights of All Migrant Workers and Members of their Families, and Convention on the Rights of Persons with Disabilities) as these are interpreted by the Philippine Supreme Court and by United Nations treaty monitoring bodies, highlighting constitutional and human rights objectives of development planning, and related human rights standards and principles that guide development planning. Chapter 1 presents Human Rights Recapitulative Tables 1 (*Constitutional Parameters of National Development Planning*), 2 (*Human Rights Instruments Customarily or Legally Binding on the Philippines*) and 3 (*Human Rights Parameters of National Development Planning*), and Human Rights Flowchart 1 (*Restrictions and Limitations Resulting from Planning Decisions*).