Human Rights and their Normative Elements in Development Planning

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Human Rights and their Normative Elements in Development Planning

The human rights based approach to development planning is expressly linked to human rights. Yet human rights are often misunderstood, or misinterpreted, hence misapplied. It must be recalled that human rights are both *freedoms of action* and *entitlements* to goods, services, institutions and resources necessary for a life of dignity. Entitlements are implicit in human rights and better identified through the normative elements of each human right; generally speaking, normative elements include: *availability, physical accessibility, economic accessibility, information accessibility, quality, safety and cultural acceptability*. It is important to note that entitlements vary depending upon the normative content of the right.

Human rights entitlements are influenced by a variety of factors, many of which are within state control, and are the subject or object of national development planning. How these factors relate to human rights entitlements is crucial to understanding and applying the human rights based approach to development planning.

The Right to Life

The Right to Life[1] is the right to live in a manner consistent with our common humanity and dignity. The right to life should not be interpreted narrowly: it is broader than simply physical or biological survival; it includes the right to the basic necessities of dignified life. The right to life is incompatible with situations of war, genocide, and other acts of mass violence, acts of enforced or involuntary disappearances, extrajudicial executions and murders committed by criminal acts. The right to life requires the reduction of infant mortality, the increase in life expectancy, the elimination of malnutrition and epidemics, and the impartial investigation and prosecution of all cases of its violation. The right to life is absolute; no derogations are permitted even in times of public emergency.

The UN Human Rights Committee has noted: "the right to life has been too often narrowly interpreted. The expression 'inherent right to life' cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures."[2] Among the positive measures are the compilation of and reporting on gender-disaggregated data on infant mortality rates, pregnancy- and childbirth-related deaths of women, measures to help women prevent unwanted pregnancies, measures to prevent women from undergoing life-threatening

[1] Article 3, Universal Declaration of Human Rights; Article 6, International Covenant on Civil and Political Rights; General Comment No. 6, "Article 6 (Right to life)," adopted by the United Nations Human Rights Committee at its sixteenth session, 1982, UN Doc. HRI/GEN/1/Rev. 9 (Vol. I), 27 May 2008; Article 5b, International Convention on the Elimination of All Forms of Racial Discrimination; Article 3, Convention on the Elimination of All Forms of Discrimination Against Women; Article 6, Convention on the Rights of the Child; Article 9, International Convention on the Rights of All Migrant Workers and Members of their Families; and Articles 10 and 11, Convention on the Rights of Persons with Disabilities.

[2] General Comment 6, "Article 6 (Right to life)," adopted by the United Nations Human Rights Committee at its sixteenth session, 1982, UN Doc. HRI/GEN/1/Rev. 9 (Vol. I), 27 May 2008.

clandestine abortions, measures to protect women from practices that violate their right to life, such as female infanticide, the burning of widows and dowry killings, and information on the impact of poverty and deprivation on human life.[3]

The Right to Participate in Government

The Right to Participate in Government[4] is the right of citizens to freely, voluntarily, effectively and fully participate in government, and in processes constituting the conduct of public affairs, without sanction or threat. It may be exercised directly as an elected or appointed public official or employee or indirectly, through elections or through freely chosen representatives, who exercise only those governmental powers allocated to them in accordance with constitutional provisions, and who must be accountable for their exercise of that power.[5] The right to participate in government may be exercised individually or collectively through organizations and associations at all levels of public social, political and economic decision-making.

The right to participate in government includes the freedom to engage in political activity, the freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign and to advertise political ideas. The right to participate in government is supported by ensuring freedom of expression, assembly and association.[6]

The UN Human Rights Committee has stressed that the right to participate in government and in the processes constituting the conduct of public affairs lies at the core of democratic government based on the consent of the people. The conduct of public affairs is a broad concept that relates to the exercise of political power (legislative, executive and administrative powers) and covers all aspects of public administration and the formulation and implementation of policy at international, national, regional and local levels.[7]

Freedom of Opinion and Expression

Freedom of Opinion and Expression[8] is the right to hold opinions without interference and the right to seek, receive and impart information and ideas through any media, either orally,

[3] General Comment 28, "Article 3 (The equality of rights between men and women)," adopted by the United Nations Human Rights Committee at its sixty-eighth session, 2000, UN Doc. HRI/GEN/1/Rev. 9 (Vol. I), 27 May 2008.

[4] Article 21, Universal Declaration of Human Rights; Article 25, International Covenant on Civil and Political Rights; Article 5c, International Convention on the Elimination of All Forms of Racial Discrimination; Article 7, Convention on the Elimination of All Forms of Discrimination Against Women; Articles 41 and 42, International Convention on the Rights of All Migrant Workers and Members of their Families; and Article 29, Convention on the Rights of Persons with Disabilities.

[5] General Comment 25, "Article 25 (Participation in public affairs and the right to vote)," adopted by the United Nations Human Rights Committee at its fifty-seventh session, 1996, UN Doc. HRI/GEN/1/Rev. 9 (Vol. I), 27 May 2008.

[6] General Comment 25, "Article 25 (Participation in public affairs and the right to vote)," adopted by the United Nations Human Rights Committee at its fifty-seventh session, 1996, UN Doc. HRI/GEN/1/Rev. 9 (Vol. I), 27 May 2008.

[7] General Comment 25, "Article 25 (Participation in public affairs and the right to vote)," adopted by the United Nations Human Rights Committee at its fifty-seventh session, 1996, UN Doc. HRI/GEN/1/Rev. 9 (Vol. I), 27 May 2008.

[8] Article 19, Universal Declaration of Human Rights; Article 19, International Covenant on Civil and Political Rights; Article 6.1, Declaration on the Right to Development; Article 5d.viii, International Convention on the Elimination of All Forms of Racial Discrimination; Article 3, Convention on the Elimination of All Forms of Discrimination Against Women; Articles 12 and 13, Convention on the Rights of the Child; Article 13, International Convention on the Rights of All Migrant Workers and Members of their Families; and Article 21, Convention on the Rights of Persons with Disabilities.

in writing or in print, in the form of art, or through any media. Freedom of opinion and expression implies a *free* and *responsible* media.

The exercise of freedom of opinion and expression carries special duties and responsibilities (e.g., respect the honor, reputation, rights and dignity of others) and so may be restricted or limited when provided by law and when necessary to respect the rights or reputation of others or to protect national security, public order or public health and morals.

The Right to Peaceful Assembly and Association

The Right to Peaceful Assembly and Association[9] is associated with the rights to free speech, expression, petition government for redress of grievances, and participate in government. It requires peaceful actions. The right to association includes the right to form and join organizations and associations concerned with political, social, economic, cultural and public affairs. The right to peaceful assembly and association is not absolute; it may be restricted or limited by law under certain reasonable conditions to protect national security, public safety, public order, public health, public morals or the rights and freedoms of others.

The Right to Equal Access to Public Service

The Right to Equal Access to Public Service[10] is both the right to *opportunities to serve in public office* and the right to *access services provided by government*, without discrimination. The right to equal access to public service is closely allied to the rights to *self-determination*[11] (or the right to freely determine political status and freely pursue economic, social and cultural development, which recognizes the principle that people's interests are paramount, and which includes the obligations to take into account people's aspirations, develop independent public institutions, promote people's well-being and advancement and promote human rights for all); *nationality* (which prohibits the denial or deprivation of nationality as a means to deny or deprive anyone of their human rights); *take part in government* (or the right to freely, voluntarily, effectively and fully participate in government without sanction or threat, which recognizes that the will of the people is the basis of authority for government); *freedom of opinion and expression* (or the right to seek, receive and impart information and ideas of all kinds, either orally, in writing, through art or any other media); *freedom of peaceful assembly and association,* and *petition government for redress of grievances*; *vote, be elected* and *hold elective and non-elective public office*; and the *rights to an adequate standard of living, food, health, housing, education, water, work,* and *social security.*

[9] Article 20, Universal Declaration of Human Rights; Articles 20 and 21, International Covenant on Civil and Political Rights; Article 5d.ix, International Convention on the Elimination of All Forms of Racial Discrimination; Article 3, Convention on the Elimination of All Forms of Discrimination Against Women; Article 15, Convention on the Rights of the Child.

[10] Article 21, UDHR; Article 8, Declaration on the Right to Development; Article 25. ICCPR; Articles 6, 7, 9, 10, 11, 12, and 13, ICESCR; Article 5 (c), CERD; Articles 7, 8, 10, 11, 12, 13, and 14 CEDAW; Articles 23, 24, 26, 27, and 28, CRC; Articles 5, 6, 7, 9, 19, 20, 21, 24, 25, 25, 27, 28, 29 and 30 CPD; Articles 43 and 45, CMW.

[11] Common Article 1, ICESCR and ICCPR; Article 1, Declaration on the Right to Development.

Right to opportunities to serve in public office, without discrimination

The right to opportunities to serve in public office is closely intertwined with the *right to work*; its three normative elements are:

1. *Availability of equal access modalities*, which means that objective and reasonable criteria (generally merit-based) and processes for the appointment, promotion, suspension and dismissal of public officials must be available and must always comply with the requirements of *due process*. Equal access modalities also include *coordinated and periodically assessed integrity measures* in public sector management.

2. *Accessibility of equal access modalities*, which means that public service positions are open to all; however eligibility limitations may be imposed by law so long as the limitations apply to all without discrimination. Accessibility includes both *physical accessibility,* meaning government offices are within safe physical reach of all public officials and public employees; and *information accessibility*, which refers to the right to seek, obtain, and impart information on the means of gaining access to employment in the public sector.

3. *Acceptability of equal access modalities*, which means just and favorable conditions of work in the public sector, including security of tenure and merit based standards, as well as equal protection for all public officials and employees and equal conditions for public sector employment.

Right to access services provided by government, without discrimination

The right to access services provided by government without discrimination ensures equal access and the same standard of public service to all; its normative elements consist of:

1. *Availability of public services* necessary for the enjoyment and exercise of human rights, which includes an effective and efficient service delivery system, coordinated public service policies, public service integrity mechanisms, monitoring of service providers and service delivery systems, etc.

2. *Nondiscrimination in access*, which means that public services cannot be denied anyone on the basis of the prohibited grounds of discrimination and that benefits arising from public service are accessible to all without discrimination.

3. *Physical accessibility*, which means that public services are within safe physical reach of all.

4. *Economic accessibility*, which means that public services are affordable for all.

5. *Information accessibility*, which refers to the right to seek, obtain, and impart information on the means of gaining access to public service.

6. *Acceptability of public services,* which means high quality of public service provided to all under equal conditions and equal standards.

The Right to Education

The Right to Education[12] is the right to education directed at the full development of the human person, that enables all to participate effectively in a free society, that promotes understanding among all ethnic groups, nations, racial and religious groups, and that promotes gender equality and respect for the environment. It includes the rights to fundamental education, primary education, secondary education, technical and vocational education, and higher education, as well as the rights to a well functioning school system, adequate fellowship system, and improved material conditions for the teaching staff. The UN Committee on the Rights of the Child stressed that the right to education is indispensably interconnected with other rights and cannot be properly understood in isolation of them: "children's rights are not detached or isolated values devoid of context but exist within a broader ethical framework."[13]

The UN Committee on Economic, Social and Cultural Rights identified the four normative elements of the right to education:[14]

1. *Education availability*, which means that there must be sufficient number of functioning educational institutions and programs. The UN Committee on the Rights of the Child has said that well-functioning school and recreational facilities should include sufficient supply of water and sanitation facilities and should not pose health risks to students.[15]

2. *Education physical accessibility*, which means that functioning educational institutions and programs must be within safe physical reach.

3. *Education economic accessibility*, which means that costs for education must be readily affordable by all. In understanding the meaning of *education economic accessibility,* it is important to be aware of the differential wording of ICESCR, which mandates the provision of free primary education and the progressive introduction of free secondary and higher education.

4. *Education acceptability*, which means that both the form and substance of education (i.e., curricula, teaching methods, etc.) must be relevant, culturally appropriate and of good quality. The UN Committee on the Rights of the Child elaborated on *education acceptability* in terms of the educational curriculum, educational processes and pedagogical methods, and education environment.

[12] Article 26, Universal Declaration of Human Rights; Article 13, International Covenant on Economic, Social and Cultural Rights; General Comment No. 11, "Plans of action for primary education (Art. 14)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its twentieth session 1999, UN Doc. E/C.12/1999/4; General Comment No. 13, "The right to education (art. 13)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its twenty-first session 1999, UN Doc. E/C.12/1999/10; Article 8.1, Declaration on the Right to Development; Article 5e.v, International Convention on the Elimination of All Forms of Racial Discrimination; Article 10, Convention on the Elimination of All Forms of Discrimination Against Women; Articles 28 and 29, Convention on the Rights of the Child; Articles 30, 43 and 45, International Convention on the Rights of All Migrant Workers and Members of their Families; and Article 24, Convention on the Rights of Persons with Disabilities.

[13] General Comment 1, "The aims of education," adopted by the United Nations Committee on the Rights of the Child at its twenty-sixth session, 2001, UN Doc. HRI/GEN/1/Rev. 9 (Vol. II), 27 May 2008.

[14] General Comment Nos. 13, "The right to education (Article 13 of the Covenant), adopted by the United Nations Committee on Economic, Social and Cultural Rights at its twenty-first session, 1999, UN Doc. E/C.12/1999/10.

[15] General Comment 11, "Adolescent health and development in the context of the Convention on the Rights of the Child," adopted by the United Nations Committee on the Rights of the Child at its thirty-third session, 2003, UN Doc. HRI/GEN/1/Rev. 9 (Vol. II), 27 May 2008.

a. *Educational curriculum* must achieve the various aims of education. It must be directly relevant to the child's social, cultural, environmental and economic context and to present and future needs and the child's evolving capacities. It must provide basic skills, which include not only literacy and numeracy but also life skills such as ability to make well balanced decisions, resolve conflicts in non violent manner, develop healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents and other abilities. It should focus on problems within the child's own community and link issues of environmental and sustainable development with socio-economic, sociocultural and demographic issues.[16] It should always be consistent with equality. It should include relevant topics that promote healthy behavior, attitudes and activities.[17]

b. *Educational processes and pedagogical methods* must reflect the spirit and educational philosophy of CRC, and teaching methods must be tailored to meet the different needs of different children. Education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely and to participate in school life. The Committee noted that the type of teaching that is focused primarily on the accumulation of knowledge prompting competition and leading to excessive burden of work on children may seriously hamper the harmonious development of the child.[18]

Education must also be provided in a way that respects strict limits on discipline and promotes nonviolence; in this regard, the use of corporal punishment is impermissible. The UN Committee against Torture has said that the prohibition against ill-treatment extends to a prohibition against corporal punishment, "including excessive chastisement ordered as … an educative or disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions."[19]

The UN Committee on the Rights of the Child defines corporal punishment as "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light." The Committee recognizes that most forms of corporal punishment involve hitting children with the hand or with an implement; but it can also involve kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). The Committee has also recognized that other non-physical forms of punishment (for example, belittling, humiliating, denigrating, threatening, frightening or ridiculing children) are cruel and degrading and are thus proscribed by CRC.

[16] General Comment 1, "The aims of education," adopted by the United Nations Committee on the Rights of the Child at its twenty-sixth session, 2001, UN Doc. HRI/GEN/1/Rev. 9 (Vol. II), 27 May 2008.

[17] General Comment 11, "Adolescent health and development in the context of the Convention on the Rights of the Child ," adopted by the United Nations Committee on the Rights of the Child at its thirty-third session, 2003, UN Doc. HRI/GEN/1/Rev. 9 (Vol. II), 27 May 2008.

[18] General Comment 1, "The aims of education," adopted by the United Nations Committee on the Rights of the Child at its twenty-sixth session, 2001, UN Doc. HRI/GEN/1/Rev. 9 (Vol. II), 27 May 2008.

[19] General Comment 20, "Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)," adopted by the United Nations Human Rights Committee at its forty-fourth session, 1992, UN Doc. HRI/GEN/1/Rev. 9 (Vol. I), 27 May 2008.

The Committee, however, stresses that it does not reject the "positive concept of discipline," recognizing that parenting and caring for children, especially babies and young children, may require physical actions and interventions to protect them. The Committee distinguished these allowable actions from the proscribed "deliberate and punitive use of force to cause some degree of pain, discomfort or humiliation." The Committee also recognized that exceptional circumstances may justify the use of reasonable restraint by teachers and others working with children in institutions and with children in conflict with the law, when confronted by dangerous behavior; again the Committee differentiated the use of force motivated by the need to protect a child and the use of force to punish a child. The Committee emphasized, however, the "principle of the minimum necessary use of force for the shortest necessary period of time." The Committee recommended the provision of detailed guidance and training "to minimize the necessity to use restraint and to ensure that any methods used are safe and proportionate to the situation and do not involve the deliberate infliction of pain as a form of control."[20]

c. *Education Environment* must reflect freedom and the spirit of understanding, peace and tolerance. It must incorporate the appropriate balance between promoting physical, mental, spiritual and emotional aspects of education, intellectual, social and practical dimensions and childhood and lifelong aspects. The Committee noted that unsafe or unfriendly environments discourage girls' participation and can reinforce gender discrimination.[21]

The major relevant human rights treaties guarantee *nondiscrimination in education*. To ensure *nondiscrimination,* the UN Committee on the Elimination of Racial Discrimination has recommended that states take immediate measures to reduce school drop out rates for children of all communities in particular for children of descent-based communities, the review of all language in textbooks which conveys stereotyped or demeaning images, references, names or opinions concerning descent-based communities instead replacing these by images, references, names and opinions which convey the message of the inherent dignity of all human beings and their equality of human rights.[22]

The UN Committee on the Rights of the Child has said that the CRC equally applies to indigenous children, noting that most indigenous children have limited access to education due to a variety of factors (e.g., insufficient educational facilities and teachers, direct or indirect costs for education, lack of culturally adjusted and bilingual curricula) and that indigenous children are frequently confronted with discrimination and racism in school. To ensure indigenous children's right to education, the Committee has recommended the following measures:[23]

[20] General Comment 8, "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (Arts. 19; 28, para. 2; and 37, *inter alia*)," adopted by the United Nations Committee on the Rights of the Child at its forty-second session, 2006, UN Doc. HRI/GEN/1/Rev. 9 (Vol. II), 27 May 2008.

[21] General Comment 1, "The aims of education," adopted by the United Nations Committee on the Rights of the Child at its twenty-sixth session, 2001, UN Doc. HRI/GEN/1/Rev. 9 (Vol. II), 27 May 2008.

[22] General Recommendation XXIX, "On Article 1, paragraph 1, of the Convention (Descent)," adopted by the United Nations Committee on Racial Discrimination at its sixty-first session, 2002, UN Doc. HRI/GEN/1/Rev. 9 (Vol. II), 27 May 2008.

[23] Article 25, Universal Declaration of Human Rights; Article 11, International Covenant on Economic, Social and Cultural Rights; General Comment No. 12, "The right to adequate food (Art. 11)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its twentieth session, 1999, UN Doc. E/C.12/1999/5; Article 28, Convention on the Rights of Persons with Disabilities; Article 8, Declaration on the Right to Development.

- Review of curricula, educational materials and history textbooks to ensure that these provide a fair, accurate and informative portrayal of the societies and cultures of indigenous peoples;
- Elimination of discriminatory practices, such as restrictions on the use of cultural and traditional dress, in the school setting;
- Recognition of the right of indigenous peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples;
- Enhancement of access to education by, among others, locating school facilities in areas easily accessible to indigenous children; using media (radio, tv, internet) and establishing distance education programs; setting up mobile schools for indigenous peoples who practice nomadic tradition; and adjusting the school cycle to cultural practices, agricultural seasons and ceremonial periods;
- Provision of education in a manner which respects the indigenous child's culture, languages and traditions, including providing education in the child's own language and recruiting teachers from within indigenous communities;
- Development of bilingual and inter-cultural curricula.

The Right to Adequate Food

The Right to Adequate Food[24] is the right of all, alone or with others, to have physical and economic access at all times to adequate food or means to procure it. The right to adequate food is much broader than simply a minimum set of calories, proteins and other nutrients. The UN Committee on Economic, Social and Cultural Rights described the normative elements of the right to adequate food,[25] which have been clarified by the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* adopted at the 127th session of the Food and Agriculture Organization (FAO) Council in November 2004:[26]

1. *Food availability,* which means that persons may either feed themselves directly from the land they till or from other natural resources they gather, or from an efficient and operational distribution, processing and market system.

[24] Article 25, Universal Declaration of Human Rights; Article 11, International Covenant on Economic, Social and Cultural Rights; General Comment No. 12, "The right to adequate food (Art. 11)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its twentieth session, 1999, UN Doc. E/C.12/1999/5; Article 28, Convention on the Rights of Persons with Disabilities; Article 8, Declaration on the Right to Development.

[25] General Comment No. 12, "The right to adequate food (Art. 11)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its twentieth session, 1999, UN Doc. E/C.12/1999/5.

[26] The *Voluntary Guidelines* focus on 19 principal areas and provide practical guidance on both the normative elements of the right to adequate food and human rights obligations arising from the right to food.

To ensure food availability, the *Voluntary Guidelines* recommend:

- The adoption and implementation of a combination of domestic production, trade, storage and distribution facilities and mechanisms;[27]

  A holistic and comprehensive approach to hunger and poverty reduction that incorporates measures that promote investment in productive activities, the development of appropriate institutions, functioning markets, and effective legal and regulatory framework;[28]

- "Inclusive, nondiscriminatory and sound economic, agriculture, fisheries, forestry, land use, and, as appropriate, land reform policies [that] permit farmers, fishers, foresters and other food producers, particularly women, to earn a fair return from their labor, capital and management, and encourage conservation and sustainable management of natural resources, including in marginal areas";[29]

- The improvement of the functioning of agricultural and food markets, by mobilizing public and private domestic savings, developing appropriate credit policies, generating sustainable adequate levels of national productive investment through credits in concessional terms and increasing human capacity;[30]

- The implementation of land and other policy reforms coherent with the right to adequate food;[31]

- The promotion of agricultural research and development towards basic food production;[32]

- Guaranteeing "women with secure and equal access to, control over, and benefits from productive resources, including credit, land, water and appropriate technologies";[33]

- The promotion and protection of security of land tenure, and conservation and sustainable use of land;[34]

- The conservation and sustainable use of genetic resources for food and agriculture;[35]

[27] The *Voluntary Guidelines* focus on 19 principal areas and provide practical guidance on both the normative elements of the right to adequate food and human rights obligations arising from the right to food.

[28] Guideline 2: Economic Development Policies, paragraph 2.3, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[29] Guideline 2: Economic Development Policies, paragraph 2.4, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[30] Guideline 2: Economic Development Policies, paragraph 2.5, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[31] Guideline 4: Market Systems, paragraph 4.1, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[32] Guideline 8: Access to Resources and Assets, paragraph 8.1, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[33] Guideline 8: Access to Resources and Assets, paragraph 8.4, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[34] Guideline 8b: Land, paragraph 8.10, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[35] Guideline 8d: Genetic Resources for Food and Agriculture, paragraph 8.12, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

- The protection of "ecological sustainability and the carrying capacity of ecosystems to ensure the possibility for increased, sustainable food production for present and future generations, prevent water pollution, protect the fertility of the soil, and promote the sustainable management of fisheries and forestry";[36] and

- "Support for the development of private and public sector initiatives to promote appropriate tools, technologies and mechanization in the provision of relevant services, including research, extension, marketing, rural finance and microcredit, to enable more efficient food production by all farmers … and to address local constraints such as shortage of land, water and farm power."[37]

The *Voluntary Guidelines* further recommend that "Where poverty and hunger are predominantly rural, States should focus on sustainable agricultural and rural development through measures to improve access to land, water, appropriate and affordable technologies, productive and financial resources, enhance the productivity of poor rural communities, promote the participation of the poor in economic policy decisions, share the benefits of productivity gains, conserve and protect natural resources, and invest in rural infrastructure, education and research. In particular, States should adopt policies that create conditions that encourage stable employment, especially in rural areas, including off-farm jobs."[38]

2. *Food physical accessibility*, which means that food must be readily accessible to all, especially those physically challenged and vulnerable like children, the elderly, persons with disabilities, etc.

3. *Food economic accessibility*, which means that costs of procuring food should not be too prohibitive that it adversely affects the satisfaction of other human rights.

To ensure food economic accessibility, the *Voluntary Guidelines* strongly urge:

- The adoption and implementation of legislation, policies, procedures and regulatory and other institutions that guarantee nondiscriminatory access to markets and prevent uncompetitive practices in markets;[39]

- The "development of corporate social responsibility and the commitment of all market players and civil society towards the progressive realization of the right … to adequate food";[40]

[36] Guideline 8e: Sustainability, paragraph 8.13, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*
[37] Guideline 8f: Services, paragraph 8.14, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*
[38] Guideline 2: Economic Development Policies, paragraph 2.6, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*
[39] Guideline 4: Market Systems, paragraph 4.2, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*
[40] Guideline 4: Market Systems, paragraph 4.3, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

- "Adequate protection to consumers against fraudulent market practices, misinformation and unsafe food, which "should not constitute unjustified barriers to international trade and should be in conformity with the WTO agreements";[41]

- The promotion of the "development of small-scale local and regional markets and border trade to reduce poverty and increase food security, particularly in poor rural and urban areas";[42]

- The adoption of measures "to ensure that the widest number of individuals and communities, especially disadvantaged groups, can benefit from opportunities created by competitive agricultural trade";[43]

- A "nondiscriminatory and market-oriented local, regional, national and world trade system" in food and agriculture;[44]

- The establishment of "well functioning internal marketing, storage, transportation, communication and distribution systems ... to facilitate diversified trade and better links within and between domestic, regional and world markets, [and] to take advantage of new market opportunities";[45]

- The adoption and implementation of measures to address "shortcomings of market mechanisms in protecting the environment and public goods";[46]

- "Particular attention to the specific access problems of women and of vulnerable, marginalized and traditionally disadvantaged groups, including all persons affected by HIV/AIDS," including the adoption and implementation of "measures to protect all people affected by HIV/AIDS from losing their access to resources and assets";[47]

- The implementation of programs "that include different mechanisms of access and appropriate use of agricultural land directed to the poorest populations";[48] and

- The improvement of access to the labor market, through education programs, adult literacy and additional training programs without discrimination.[49]

[41] Guideline 4: Market Systems, paragraph 4.4, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[42] Guideline 4: Market Systems, paragraph 4.5, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[43] Guideline 4: Market Systems, paragraph 4.6, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[44] Guideline 4: Market Systems, paragraph 4.7, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[45] Guideline 4: Market Systems, paragraph 4.8, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[46] Guideline 4: Market Systems, paragraph 4.10, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[47] Guideline 8: Access to Resources and Assets, paragraph 8.3, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[48] Guideline 8: Access to Resources and Assets, paragraph 8.7, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[49] Guideline 8a: Labor, paragraph 8.9, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

4. *Food safety,* which refers to food in sufficient quantity and quality that meets dietary needs, is free from adverse substances and is culturally acceptable. In this regard, it is important to note that women and children have *special* nutritional requirements.

Guideline 9 (Food Safety and Consumer Protection) of the *Voluntary Guidelines* is particularly instructive in understanding the notion of food safety. Guideline 9 requires:

- The adoption of "measures to ensure that all food, whether locally produced or imported, freely available or sold on markets, is safe and consistent with national food safety standards";[50]

- The establishment of "comprehensive and rational food-control systems that reduce risk of food borne disease using risk analysis and supervisory mechanisms to ensure food safety in the entire food chain including animal feed;[51]

- The streamlining of "institutional procedures for food control and food safety at [the] national level" and the elimination of "gaps and overlaps in inspection systems and in the legislative and regulatory framework for food," through the adoption of "scientifically based food safety standards, including standards for additives, contaminants, residues of veterinary drugs and pesticides, and microbiological hazards," the establishment of "standards for the packaging, labeling and advertising of food" that "take into consideration internationally accepted food standards (Codex Alimentarius) in accordance with the WTO Sanitary and Phytosanitary Agreement (SPS)" and the prevention of "contamination from industrial and other pollutants in the production, processing, storage, transport, distribution, handling and sale of food";[52]

- The establishment of a "national coordinating committee for food" that includes all actors involved in the food system, including those from civil society, to assist in the regulation and monitoring of controls on food production;[53]

- The provision of assistance to "farmers and other primary producers to follow good agricultural practices, food processors to follow good manufacturing practices, and food handlers to follow good hygiene practices," by "establishing food safety systems and supervisory mechanisms to ensure the provision of safe food to consumers";[54]

- The provision of education (a) on safe practices for food business operators "so that their activities neither lead to harmful residues in food nor cause harm to the environment, (b)

[50] Guideline 9: Food Safety and Consumer Protection, paragraph 9.1, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[51] Guideline 9: Food Safety and Consumer Protection, paragraph 9.2, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[52] Guideline 9: Food Safety and Consumer Protection, paragraph 9.3, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[53] Guideline 9: Food Safety and Consumer Protection, paragraph 9.4, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[54] Guideline 9: Food Safety and Consumer Protection, paragraph 9.5, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

on safe storage, handling and use food within the household for consumers, and (c) on food-borne diseases and food safety matters for the general public;[55] and

- The adoption of "measures to protect consumers from deception and misrepresentation in the packaging, labeling, advertising and sale of food and facilitate consumers' choice by ensuring appropriate information on marketed food, and provide recourse for any harm caused by unsafe or adulterated food, including food offered by street sellers."[56]

Guideline 10 (Nutrition) of the *Voluntary Guidelines* also prescribe specific actions to ensure food safety, including:

- The adoption and implementation of "measures to maintain, adapt or strengthen dietary diversity and healthy eating habits and food preparation, as well as feeding patterns, including breastfeeding, while ensuring that changes in availability and access to food supply do not negatively affect dietary composition and intake";[57]

- The prevention of "overconsumption and unbalanced diets that may lead to malnutrition, obesity and degenerative diseases" through education, information and labeling regulations;[58]

- The promotion of healthy eating though the involvement of all relevant actors in the design, implementation, monitoring and evaluation of food programs, the promotion of home and school gardens, the adoption of food fortification policies and programs;[59]

- Special measures to address specific food and nutritional needs of people living with HIV/AIDS or suffering from other epidemics;[60]

- The promotion and encouragement of breastfeeding;[61]

- The dissemination of information on "the feeding of infants and young children that is consistent and in line with current scientific knowledge and internationally accepted practices and … counteract(s) misinformation on infant feeding" as well as address "with

[55] Guideline 9: Food Safety and Consumer Protection, paragraph 9.6, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[56] Guideline 9: Food Safety and Consumer Protection, paragraph 9.7, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[57] Guideline 10: Nutrition, paragraph 10.1, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[58] Guideline 10: Nutrition, paragraph 10.2, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[59] Guideline 10: Nutrition, paragraph 10.3, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[60] Guideline 10: Nutrition, paragraph 10.4, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[61] Guideline 10: Nutrition, paragraph 10.5, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

utmost care issues regarding breastfeeding and human immunodeficiency virus (HIV) infection on the basis of the most up-to-date, authoritative scientific advice and referring to the latest WHO/UNICEF guidelines";[62]

- The adoption of parallel actions in the areas of health, education and sanitary infrastructure and the promotion of inter-sectoral collaboration to ensure the availability of all necessary services and goods to achieve nutritional well-being;[63]

- The eradication of all discriminatory practices relating to food and nutrition, especially within the household;[64]

- Special attention to practices, customs and traditions on matters related to food;[65] and

- The establishment of methods to promote "food safety, positive nutritional intake including fair distribution of food within communities and households with special emphasis on the needs and rights of both girls and boys, as well as pregnant women and lactating mothers, in all cultures."[66]

The Right to the Highest Attainable Standard of Health

The Right to the Highest Attainable Standard of Health[67] is the right to enjoy a variety of facilities, goods, services and conditions necessary to realize the highest attainable standard of health. The right to health includes its underlying determinants, which are food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, healthy environment, education and people's participation. The UN Committee on the Elimination of Discrimination against Women has stressed the importance of recognizing the interconnection with other articles that have bearing on women's health, such as family education including proper understanding of maternity as a social function, education, adequate living conditions, housing, sanitation, electricity, water supply, transport and communications.[68]

[62] Guideline 10: Nutrition, paragraph 10.6, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[63] Guideline 10: Nutrition, paragraph 10.7, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[64] Guideline 10: Nutrition, paragraph 10.8, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[65] Guideline 10: Nutrition, paragraph 10.9, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[66] Guideline 10: Nutrition, paragraph 10.10, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.*

[67] Article 25, Universal Declaration of Human Rights; Article 12, International Covenant on Economic, Social and Cultural Rights; General Comment No. 14, "The right to the highest attainable standard of health (art. 12)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its twenty-second session, 2000, UN Doc. E/C.12/2000/4; Article 8, Declaration on the Right to Development; Article 5e.iv, International Convention on the Elimination of All Forms of Racial Discrimination; Article 12, Convention on the Elimination of All Forms of Discrimination Against Women; Article 24, Convention on the Rights of the Child; Articles 28, 43 and 45, International Convention on the Rights of All Migrant Workers and Members of their Families; and Articles 25 and 26, Convention on the Rights of Persons with Disabilities.

[68] General Recommendation 24, "Article 12 of the Convention (Women and health)," adopted by the United Nations Committee on Discrimination against Women at its twentieth session, 1999, UN Doc. A/54/38/Rev. 1, chap. I.

The UN Committee on Economic, Social and Cultural Rights has said that the right to health consists of six normative elements:[69]

1. *Health availability*, which refers to the availability of a sufficient number of functioning public health and health care facilities, goods, services, programs and underlying determinants of health. The UN Committee on the Rights of the Child identified specific health services and programs that should be available; these include primary health care sensitive to the needs of adolescents, with special attention given to sexual and reproductive health and mental health; services to address mental disorders, psychosocial illness, depression, eating disorders and self-destructive behavior, violence, ill-treatment, abuse and neglect, including sexual abuse; accidental injuries or injuries due to violence and road traffic accidents; services for the prevention and treatment of STDs, including HIV/AIDS, including measures aimed at changing cultural views about adolescents' need for contraception and STD prevention and addressing cultural and other taboos surrounding adolescent sexuality; services to reduce maternal morbidity and mortality in adolescent girls, particularly caused by early pregnancy and unsafe abortion practices; sexual and reproductive health services, including family planning, contraception and safe abortion services where abortion is not against the law; adequate and comprehensive obstetric care and counseling; health facilities, goods and services for all adolescents with disabilities that promote self-reliance and active participation in the community.[70]

2. *Health physical accessibility*, which means that all health facilities, centers, programs and goods must be within safe physical reach for all, and includes timely access to health services;[71] *health physical accessibility* also requires the construction of access paths to buildings and other public places for persons with disabilities. The UN Committee on the Elimination of Discrimination against Women has noted that the distance from health facilities and the absence of convenient and affordable public transport constitute barriers to women's access to health care.[72] The UN Committee on the Rights of the Child has stressed the need for ease of access to health care services by indigenous children and so recommends that health services should be community based and planned and administered in cooperation with indigenous peoples concerned.[73]

3. *Health economic accessibility*, which means that the costs of availing health services, goods and facilities and the underlying determinants of health must be based on the principle of equity and must be affordable for all.

[69] General Comment No. 14, "The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its twenty-second session, 2000, UN Doc. E/C.12/2000/4.

[70] General Comment 4, "Adolescent health and development in the context of the Convention on the Rights of the Child," adopted by the United Nations Committee on the Rights of the Child at its thirty-third session, 2003, U N Doc. HRI/GEN/1/Rev. 9 (Vol. II), 27 May 2008.

[71] General Recommendation 24, "Article 12 of the Convention (Women and health)," adopted by the United Nations Committee on Discrimination against Women at its twentieth session, 1999, UN Doc. A/54/38/Rev. 1, chap. I.

[72] General Recommendation 24, "Article 12 of the Convention (Women and health)," adopted by the United Nations Committee on Discrimination against Women at its twentieth session, 1999, UN Doc. A/54/38/Rev. 1, chap. I.

[73] General Comment 11, "Indigenous children and their rights under the Convention," adopted by the United Nations Committee on the Rights of the Child at its fiftieth session, 2009, UN Doc. CRC/C/GC/11.

4. *Health information accessibility*, which refers to the right to seek, receive and impart information and ideas regarding health issues and concerns; health information accessibility, however, does not in any way impair the individual's right to privacy and confidentiality of personal health data. The UN Committee on the Elimination of Discrimination against Women has recommended that *health information accessibility* should include information about safe and reliable contraceptive methods, sex education and family planning services so that women can decide on the number and spacing of their children. The Committee noted that voluntary regulation of fertility leads to voluntary regulation of population growth.[74] The UN Committee on the Rights of the Child has said that *health information accessibility* should include information in indigenous languages, as well as information on issues relating to health and preventive care such as nutrition, breastfeeding, pre- and postnatal care, child and adolescent health, vaccinations, communicable diseases (in particular HIV/AIDS and tuberculosis,), hygiene, environmental sanitation and the dangers of pesticides and herbicides.[75] The Committee further said that *health information accessibility* targeted at adolescents should include accurate and appropriate information adequate and sensitive to the particularities and specific rights of adolescent girls and boys on how to protect their health and development and practice healthy behavior. In particular, information on sexual and reproductive health, including family planning and contraceptives, prevention of accidents, the dangers of early pregnancy, safe and respectful social and sexual behavior, diet, physical activity, protection from harmful traditional practices including early marriages, the prevention of HIV/AIDS, the prevention and treatment of sexually transmitted infections (STIs), and the use and abuse of alcohol, tobacco and other harmful substances should be provided to adolescent boys and girls, regardless of their marital status and whether their parents or guardians consent. The Committee urges the active involvement of adolescents in the design and dissemination of health information through a variety of channels beyond the school, including youth organizations, religious, community and other groups and the media.[76]

5. *Health acceptability*, which means that health services, goods and facilities and underlying determinants of health must respect medical ethics, be culturally appropriate, be sensitive to gender and life-cycle requirements, respect confidentiality of personal health data, and must be designed to improve everyone's health status. The UN Committee on the Elimination of Discrimination against Women has said that *acceptable health services* are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality, and is sensitive to her needs and perspectives. *Acceptable health services* include those that ensure safe pregnancies, childbirth and post-partum periods for women; and antenatal, maternity and post-natal services. The Committee further noted that older women often live longer than men and are more likely than men to suffer from disabling and degenerative chronic diseases such as osteoporosis and dementia; in addition, older women

[74] 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.

[75] General Comment 11, "Indigenous children and their rights under the Convention," adopted by the United Nations Committee on the Rights of the Child at its fiftieth session, 2009, UN Doc. CRC/C/GC/11.

[76] General Comment 4, "Adolescent health and development in the context of the Convention on the Rights of the Child," adopted by the United Nations Committee on the Rights of the Child at its thirty-third session, 2003, UN Doc. HRI/GEN/1/Rev. 9 (Vol. II), 27 May 2008.

often have the responsibility to care for their ageing spouses; therefore *acceptable health services* should include those services that address handicaps and disabilities associated with ageing.[77]

The UN Committee on the Rights of the Child defines *health acceptability* as health facilities, goods and services that respect cultural values, are gender sensitive, respectful of medical ethics and acceptable to adolescents and the communities in which they live.[78] The Committee stressed that a key feature of *health acceptability* is cultural sensitivity. This may include recruitment and training of health care workers and medical staff from indigenous communities, who may serve as a bridge between traditional medicine and conventional medical services, as well as measures that ensure that indigenous communities use conventional medicine in a way that is mindful of indigenous culture and traditions. The Committee recalled article 25(2) of ILO Convention No. 169 and articles 24 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples on the right of indigenous peoples to their traditional medicines.[79]

6. *Health quality*, which means that all health goods, services, facilities and underlying determinants of health must be scientifically and medically sound and of good quality. The UN Committee on the Rights of the Child has said that *health quality* requires that health services and goods are scientifically and medically appropriate, personnel are properly trained to care for adolescents, and adequate facilities and scientifically accepted methods are utilized.[80]

UNFPA's Human Rights and Reproductive Rights [81]

Reproductive rights are not "new" rights. They relate to the freedoms and entitlements of an individual woman or man to make and control decisions about her or his life, which will impact on her or his sexual and reproductive health.

All individuals have reproductive rights, which are grounded in a constellation of fundamental human rights guarantees (*see Box 1*)

Reproductive rights embrace specific human rights that are already recognized in national laws, international human rights treaties and other binding human rights documents. These rights rest on the recognition of the basic rights of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.[82]

TWELVE HUMAN RIGHTS KEY TO REPRODUCTIVE RIGHTS

1. The Right to Life
2. The Right to Liberty and Security of Person
3. The Right to Health, including Sexual and Reproductive Health
4. The Right to Decide the Number Spacing Children
5. The Right to Consent to Marriage and to Equality in Marriage
6. The Right to Privacy
7. The Right to Equality and Non-Discrimination
8. The Right to be Free from Practices that Harm Women and Girls
9. The Right not be Subjected to Torture or Other Cruel, Inhuman, or Degrading Treatment or Punishment
10. The Right to be Free from Sexual and Gender-Based Violence
11. The Right to Access Sexual and Reproductive Health Education and Family Planning Information
12. The Right to Enjoy the Benefits of Scientific Programs

Box 1. Twelve Human Rights Key to Reproductive Rights

[77] General Recommendation 24, "Article 12 of the Convention (Women and health)," adopted by the United Nations Committee on Discrimination against Women at its twentieth session, 1999, UN Doc. A/54/38/Rev. 1, chap. I.

[78] General Comment 4, "Adolescent health and development in the context of the Convention on the Rights of the Child," adopted by the United Nations Committee on the Rights of the Child at its thirty-third session, 2003, UN Doc. HRI/GEN/1/Rev. 9 (Vol. II), 27 May 2008.

[79] General Comment 11, "Indigenous children and their rights under the Convention," adopted by the United Nations Committee on the Rights of the Child at its fiftieth session, 2009, UN Doc. CRC/C/GC/11.

[80] General Comment 4, "Adolescent health and development in the context of the Convention on the Rights of the Child," adopted by the United Nations Committee on the Rights of the Child at its thirty-third session, 2003, UN Doc. HRI/GEN/1/Rev. 9 (Vol. II), 27 May 2008.

[81] This section is written by UNFPA Country Office Philippines; see UNFPA Country Office Philippines, *Reproductive Rights and Development Planning,* 2010.

[82] ICPD Programme of Action, para. 7.3

Many of the human rights defined in international treaties have implications for reproductive health services. Human rights principles should guide almost every aspect of the delivery of services, defining what services must be offered, to whom, and in what fashion.

Three principles are key:

■ Individuals have the right to control their sexual and reproductive lives and make reproductive decisions without interference or coercion. This principle is based on the rights to liberty, to marry and found a family, and to decide the number and spacing of one's children.

■ The right to non-discrimination and respect for differences requires governments to ensure equal access to health care for everyone and to address the unique health needs of women and men.

■ To fulfill individual's rights to life and health, governments must make comprehensive reproductive health services available and remove barriers to health care.

The specific human rights, basis for the HR agreement and examples of rights-based actions for each right are shown in the matrix below.

Human Rights	Establishing Agreement	Human Rights-based Actions that are inspired by this right
The Right to Life	UDHR, article 3; ICCPR, article 6; CRC, article 6; ICPD PoA, principle 1	■ Prevent avoidable maternal deaths ■ Ensure access to dual-protection contraceptive methods ■ Eliminate violence against women
The Right to Liberty and Security of the Person	UDHR, article 3; ICESCR, article 12; CEDAW, articles 11, 12 & 14; ICPD PoA, principle 1	■ Encourage clients to make independent sexual and reproductive health decisions
		■ Strengthen human rights protection systems to protect the reproductive rights of women and girls, including the right to be free from violence
The Right to the Highest Attainable Standard of Health	ICESCR, article 12; CEDAW, articles 11, 12 & 14; CRC, article 24; ICPD PoA, principle 8	■ Provide access to available, accessible, acceptable and good quality sexual and reproductive health
The Right to Decide the Number and Spacing of one's children	UDHR, article 12; ICCPR, article 17; ICESCR, article 10; CEDAW, article 16; CRC, article 16; ICPD PoA, principle 8	■Provide access to a range of modern contraceptive methods
		■ Help people choose and use a family planning method
The Right to Consent to Marriage and to Equality in Marriage	CEDAW, articles 11, 12 & 14; ICPD PoA, principle 9	■ Prevent early or coerced marriages

Human Rights	Establishing Agreement	Human Rights-based Actions that are inspired by this right
The Right to Privacy	ICCPR, article 17(1,2); CRC, article 16(1,2); ICPD PoA, paragraph 7.45; BPfA, paragraph 106(f), 107(e)	■ Ensure privacy in the provision of sexual and reproductive health care services, such as confidentiality of information given during the consultation and care.
The Right to Access Sexual and Reproductive Health Education and Family Planning Information	UDHR, article 19; ICCPR, article 19; CEDAW articles 10(e), 14(b) & 16(e); CRC, articles 12, 13 & 17; ICPD PoA, principle 8	■ Make family planning information freely available ■ Offer appropriate information for people to make informed sexual and reproductive health decisions
The Right to Enjoy the Benefits of Scientific Progress	UDHR, article 27; ICESCR, article 15	■ Fund research on women's as well as men's health needs ■ Provide access to obstetric care that can prevent maternal deaths ■ Increase demand, access to and utilization of quality HIV and STI prevention services

Maternal health has a particularly close relationship with the right to the highest attainable standard of health. This fundamental human right is recognized in the International Covenant on Economic, Social and Cultural Rights, as well as other international human right treaties. It requires action to break down political, economic. social and cultural barriers that women face in accessing the interventions that can prevent maternal mortality. It calls for participation by stakeholders in policy and service development and it entails accountability for maternal mortality. In short, the promotion and protection of the right to health demands actions that lead to a significant and sustained reduction in maternal mortality.[142]

The right to health should lie at the heart of the human rights response to maternal mortality. The right to health include entitlements to a range of key health interventions which have an important role to play in reducing maternal mortality. These include:

- Emergency obsteric care (EmOC);
- A skilled birth attendant
- Education and information on sexual and reproductive health;
- Other sexual and reproductive health care services, such as family planning services; and
- Primary health services

[83] Hunt, Paul, and Judith Bueno de Mesquita. *Reducing Maternal Mortality: The contribution of the right to the highest attainable standard of health*. UK: University of Essex, 2010. *www.unfpa.org*.

The state State has an obligation to provide these goods and services in order to prevent maternal mortality. Particular attention must be given to EMOC. As Lynn Freedman, a global expert on maternal health research, has emphasized: "We know from health research and experience that not all interventions are equal ... if the human right in question is the right not to die and avoidable death in pregnancy and childbirth, then the first line of appropriate measures that will move progressibely toward the realization of the right is the implementation of EmOC. In human rights analysis, EmOC is not just one good idea among manu. It is an obligation." [143]

International Human Rights Law and the Right to Reproductive Health

International Covenant on Economic, Social and Cultural Rights

Article 10 (2)

- Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits

Convention on the Elimination of All Forms of Discrimination against Women

Article 12

- States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health-care services, including those related to family planning.
- Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Women are affected by many of the same health conditions as men, but women experience them differently. The prevalence of poverty and economic dependence among women, their experience of violence, gender bias in the health system and society at large, discrimination on the grounds of race or other factors, the limited power many women have over their sexual and reproductive lives and their lack of influence in decision-making are social realities which have an adverse impact on their health. So women face particular health issues and particular forms of discrimination, with some groups, including refugee or internally displaced women, women in slums and suburban settings, indigenous and rural women, women with disabilities or women living with HIV/AIDS, facing multiple forms of discrimination, barriers and marginalization in addition to gender discrimination.

[84] L. Freedman, "Using Human Rights in Maternal Mortality Programs: From Analysis to Strategy," 75 International Journal of Obstetrics and Gynecology 2001.

Both the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women require the elimination of discrimination against women in health care as well as guarantees of equal access for women and men to health-care services. Redressing discrimination in all its forms, including in the provision of health care, and ensuring equality between men and women are fundamental objectives of treating health as a human right. In this respect, the Convention on the Elimination of All Forms of Discrimination against Women (art. 14) specifically calls upon States to ensure that "women in rural areas… participate in and benefit from rural development" and "have access to adequate health-care facilities, counseling and services in family planning."

The Committee on the Elimination of Discrimination against Women further requires States parties to ensure women have appropriate services in connection with pregnancy, childbirth and the post-natal period, including family planning and emergency obstetric care. The requirement for States to ensure safe motherhood and reduce maternal mortality and morbidity is implicit here.

Sexual and reproductive health is also a key aspect of women's right to health. States should enable women to have control over and decide freely and responsibly on matters related to their sexuality, including their sexual and reproductive health, free from coercion, lack of information, discrimination and violence.

The Programme of Action of the International Conference on Population and Development (ICPD)

■ The International Conference on Population and Development (ICPD) explicitly recognized that "everyone has the right to the enjoyment of the highest attainable standard of physical and mental health," which includes the right to reproductive health, defined in the consensus documents of both conferences as "the basic right of all couples and individuals to decide freely and responsibly the number and spacing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health."

Beijing Platform for Action

■ Women have the right to the enjoyment of the highest attainable standardof physical and mental health. The enjoyment of this right is vital to their life and well-being and their ability to participate in all areas of public and private life. Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. Women's health involves their emotional, social and physical well-being and is determined by the social, political and economic context of their lives, as well as by biology.

■ Women's right to the enjoyment of the highest standard of health must be secured throughout the whole life cycle in equality with men.

■ The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behavior and its consequences.

Both ICPD and the Beijing Platform for Action highlighted the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.

Convention on the Rights of the Child

Article 24

- States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health-care services.
- States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
  - To diminish infant and child mortality;
  - To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
  - To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution;
  - To ensure appropriate prenatal and post-natal health care for mothers;
  - To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
  - To develop preventive health care, guidance for parents and family planning education and services.
- States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

- States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Key Human Rights Standards and Sexual and Reproductive Health

When supporting the implementation of a HRBA in a Sexual and Reproductive Health program, the key human rights standards to keep in mind are the elements of availability, accessibility, acceptability, and quality (3AQ).

AVAILABILITY

The national SRH programme should aim to make functioning sexual and reproductive health and health-care facilities, goods and services, as well as programs, available in sufficient quantity within the country. These goods and services include, for example, safe and potable drinking water and adequate sanitation facilities; hospitals, clinics and other health-related buildings; trained medical and professional personnel receiving domestically competitive salaries; and essential drugs (including antiretroviral therapy) as defined by the WHO Action Programme on Essential Drugs.

ACCESSIBILITY

Sexual and reproductive health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

- ***Non-discrimination :*** Sexual and reproductive health facilities, goods and services must be accessible to all, especially the most marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

- ***Physical accessibility*** : Sexual and reproductive health facilities, goods and services must be within safe physical reach for all sections of the population, especially marginalized groups, such as those living in extreme poverty, especially disadvantaged adolescents and youth; women survivors of violence and abuse; out-of-school youth; women living with HIV; women engaged in sex work; minorities and indigenous people; women living with disabilities; refugees and internally displaced persons; women living under occupation; and aging populations. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.

- ***Economic accessibility (affordability) :*** Sexual and reproductive health facilities, goods and services must be affordable for all. Payment for sexual and reproductive health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

**** Information accessibility*** : Accessibility includes the right to seek, receive and impart information and ideas concerning sexual and reproductive health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

ACCEPTABILITY

All sexual and reproductive health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as designed to respect confidentiality and improve the health status of those concerned.

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QUALITY

As well as being culturally acceptable, sexual and reproductive health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, for example, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water and adequate sanitation.

The Right to Adequate Housing

The Right to Adequate Housing[85] is the right to live somewhere in peace, dignity and security; the UN Committee on Economic, Social and Cultural Rights identified the seven normative elements of the right to adequate housing:[86]

1. *Housing legal security of tenure,* which means there should be guarantees of legal protection against forced eviction, harassment and other threats to the right to housing. UN Special Rapporteur on the right to adequate housing, Miloon Kothari, said that legal security of tenure, "whether freehold, leasehold, or other form of individual and collective rights to housing, involves protection from forced eviction, harassment and other threats. It also effectively guarantees access to, use of and control over land, property and housing resources."[87] UN OHCHR and UN HABITAT (2009) note that legal security of tenure takes

[85] Article 25, Universal Declaration of Human Rights; Article 11, International Covenant on Economic, Social and Cultural Rights; General Comment No. 4, "The right to adequate housing (Art. 11 (1) of the Covenant)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its sixth session, 1991, UN Doc. E/1992/23; General Comment No. 7, "The right to adequate housing (art. 11(1) of the Covenant) forced evictions," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its sixteenth session, 1997, UN Doc. E/1998/22, Annex I; Article 8, Declaration on the Right to Development; Article 5e.iii, International Convention on the Elimination of All Forms of Racial Discrimination; Articles 43 and 45, International Convention on the Rights of All Migrant Workers and Members of their Families; and Article 28, Convention on the Rights of Persons with Disabilities.

[86] General Comment No. 4, "The right to adequate housing (Art. 11 (1) of the Covenant)," adopted by the United NationsCommittee on Economic, Social and Cultural Rights at its sixth session, 1991, UN Doc. E/1992/23.

[87] Miloon Kothari, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, *Annex 3, Questionnaire on Women and Adequate Housing*, UN Doc. A/HRC/4/18, 5 February 2007.

a variety of forms (e.g., rental accommodation, cooperative housing, lease, owner-occupation, emergency housing or informal settlements) and is not limited to the conferral of formal legal titles; they recommend the adoption of measures to "prevent homelessness, prohibit forced evictions, address discrimination, focus on the most vulnerable and marginalized groups, ensure security of tenure to all, and guarantee that everyone's housing is adequate. These measures can require intervention from the Government at various levels: legislative, administrative, policy or spending priorities. It can be implemented through an enabling approach to shelter where the Government, rather than playing the role of housing provider, becomes the facilitator of the actions of all participants in the production and improvement of shelter."[88]

2. *Housing availability*, which means that there should be sufficient quantity of essential facilities necessary to house all in comfort and security. UN Special Rapporteur on the right to adequate housing, Miloon Kothari, identified access to public goods and services (such as water, health care, transport, fuel, sanitation, lighting and electricity, sewerage and waste disposal, childcare and communications) and access to land, water and other natural resources as crucial components of housing availability.[89] Similarly, the UN OHCHR and UN HABITAT (2009) noted that sustainable and nondiscriminatory access to land and common property resources (e.g., safe drinking water, energy for cooking, heating, lighting, sanitation and washing facilities, means of storing food, refuse disposal, site drainage and emergency services) are key parts of housing availability.[90]

3. *Housing affordability,* which means that personal or household financial costs related to housing should not compromise costs for exercising other human rights. UN Special Rapporteur on the right to adequate housing, Miloon Kothari, emphasizes: "Individuals and communities should have access to affordable housing and must have the corresponding right to livelihood so as to be able to afford decent housing."[91]

4. *Housing habitability,* which means that the physical safety of occupants must be guaranteed, that there must be adequate space for all occupants taking into consideration gender and life-cycle requirements, including adequate conditions conducive to learning (especially for children), and that houses must be protected against cold, damp, heat, rain, wind, threats to health, disease vectors and structural hazards.

5. *Housing accessibility*, which means that housing law and policies should address the concerns, needs and interests of disadvantaged persons and groups, who must be accorded full and sustainable access to adequate housing resources.

[88] United Nations Office of the High Commissioner for Human Rights and United Nations Human Settlements Program (UN HABITAT), The Right to Adequate Housing, Fact Sheet No. 21 (Rev. 1), November 2009.

[89] Miloon Kothari, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, *Annex 3, Questionnaire on Women and Adequate Housing*, UN Doc. A/HRC/4/18, 5 February 2007.

[90] United Nations Office of the High Commissioner for Human Rights and United Nations Human Settlements Program (UN HABITAT), The Right to Adequate Housing, Fact Sheet No. 21 (Rev. 1), November 2009.

[91] Miloon Kothari, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, *Annex 3, Questionnaire on Women and Adequate Housing*, UN Doc. A/HRC/4/18, 5 February 2007.

6. *Housing location,* which means that houses should be built in proximity to employment options, health care services, schools, child care centers, and other social facilities; housing location also means that houses should not be built on polluted sites nor close to pollution sources that threaten the right to health. According to UN Special Rapporteur on the right to adequate housing, Miloon Kothari, "Adequate housing must be in a place that enables access to employment, primary health care, education and other social services and civic amenities. The financial and temporal cost of transport must not place excessive financial and other demands on the household. In addition, both rural and urban housing must be in a location that is safe, particularly from environmental hazards and pollutants."[92]

7. *Housing cultural adequacy*, which means that the way houses are constructed, the building materials used, and the policies supporting construction and building materials, must allow the expression of cultural identity and diversity.

UN Special Rapporteur on the right to adequate housing, Miloon Kothari, identified other normative elements of the right to adequate housing:[93]

- *Freedom from dispossession, damage and destruction*, which means living in a place without threat of dispossession from land, all forms of property, homes and resources, and individual and collective holdings required to sustain livelihood.

- *Access to information*, which means access to "appropriate data, documents and intellectual resources that impact upon the right to obtain adequate housing. Having access to appropriate data means being informed about potential industrial and natural hazards, infrastructure, planning design, availability of services and natural resources and other factors that affect the right."

- *Effective participation in decision-making*, which includes the rights to express and share views and to contribute substantively to processes affecting housing (e.g., location, spatial dimensions, links to community, social capital and livelihood, housing configuration and other practical features) and the obligation of states to "ensure that building and housing laws and policies do not preclude free expression, including cultural and religious diversity."

- *Resettlement, restitution, compensation, non-refoulement and return*, which are crucial in cases of natural or man-made disasters, including conflict and post-conflict situations, and which require that "any resettlement arrangement, whatever the cause, must be consensual, fair and adequate to meet individual and collective needs."

- *Access to remedies* for protection against "abuse by landlords, property developers, landowners or any other third party capable of abusing human rights," and include access to judicial redress (e.g., legal and equitable remedies).

[92] Miloon Kothari, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, *Annex 3, Questionnaire on Women and Adequate Housing*, UN Doc. A/HRC/4/18, 5 February 2007.
[93] Miloon Kothari, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, *Annex 3, Questionnaire on Women and Adequate Housing*, UN Doc. A/HRC/4/18, 5 February 2007.

- *Education and empowerment*, which requires access to technical assistance to improve living standards and fully realize human rights.

- *Freedom from violence against women*, which requires the prevention of all individual and structural forms of violence against women that may be committed by state or non-state actors.

Particularly useful to national development planners are the ***Basic Principles and Guidelines on Development-Based Evictions and Displacement***,[94] which constitute a "practical tool to assist States and agencies in developing policies, legislation, procedures and preventive measures to ensure that forced evictions do not take place, and to provide effective remedies to those whose human rights have been violated, should prevention fail." The *Basic Principles and Guidelines* "address the human rights implications of development-linked evictions and related displacement in urban and/or rural areas" and are based on international human rights law. The guidelines "apply to acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection." Note that the "prohibition of forced evictions does not apply to evictions carried out both in accordance with the law and in conformity with the provisions of international human rights treaties."[95]

The *Basic Principles and Guidelines* recognize that "development-based evictions include evictions often planned or conducted under the pretext of serving the 'public good,' such as those linked to development and infrastructure projects (including large dams, large-scale industrial or energy projects, or mining and other extractive industries); land-acquisition measures associated with urban renewal, slum upgrades, housing renovation, city beautification, or other land-use programs (including for agricultural purposes); property, real estate and land disputes; unbridled land speculation; major international business or sporting events; and, ostensibly, environmental purposes. Such activities also include those supported by international development assistance." These evictions "often take place without regard for existing human rights and humanitarian standards, including the right to adequate housing."[96]

The *Basic Principles and Guidelines* impress duty bearer responsibility not only upon public officials, but also upon other actors, including project managers and personnel, international

[94] Miloon Kothari, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, *Annex 2, Basic Principles and Guidelines on Development-Based Evictions and Displacement,* UN Doc. A/HRC/4/18, 5 February 2007.

[95] Miloon Kothari, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, *Annex 2, Basic Principles and Guidelines on Development-Based Evictions and Displacement,* UN Doc. A/HRC/4/18, 5 February 2007.

[96] Miloon Kothari, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, *Annex 2, Basic Principles and Guidelines on Development-Based Evictions and Displacement,* UN Doc. A/HRC/4/18, 5 February 2007.

financial and other institutions or organizations, transnational and other corporations, and private landlords and landowners, etc.[97]

The *Basic Principles and Guidelines* emphasize the human rights principles of *nondiscrimination and equality* in the enjoyment of the right to adequate housing, and the *rights to resettlement, adequate and effective legal or other remedies* as protection against forced evictions.[98]

The *Basic Principles and Guidelines* prescribe a series of actions directed at government:[99]

- Ensure that evictions only occur in exceptional circumstances, with full justification, are authorized by law, are carried out in accord with international human rights law, are undertaken solely to promote the general welfare, are reasonable and proportional, are regulated to ensure full and fair compensation and rehabilitation, and are carried out in accordance with the *Basic Principles and Guidelines.*

- Adopt legislative and policy measures that prohibit evictions that do not conform to international human rights obligations. Such measures may include investigations and prosecutions of those who carry out prohibited evictions and the provision of adequate legal and other remedies to victims of forced evictions.

- "Refrain, to the maximum extent possible, from claiming or confiscating housing or land, and in particular when such action does not contribute to the enjoyment of human rights. For instance, an eviction may be considered justified if measures of land reform or redistribution, especially for the benefit of vulnerable or deprived persons, groups or communities are involved."

- Immediately adopt all appropriate measures to protect individuals, groups and communities from forced eviction and its consequences.

- Undertake comprehensive reviews of relevant national laws and policies, including those relating to privatization of public services, inheritance and cultural practices, etc., to ensure nondiscrimination in the enjoyment of the right to adequate housing.

- Immediately confer legal security of tenure upon those who currently lack protection, including those without formal titles to homes and lands.

- Adopt and implement special measures to protect women from forced evictions, including the conferment upon women of titles to homes and lands.

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[97] Miloon Kothari, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, *Annex 2, Basic Principles and Guidelines on Development-Based Evictions and Displacement,* UN Doc. A/HRC/4/18, 5 February 2007.

[98] Miloon Kothari, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, *Annex 2, Basic Principles and Guidelines on Development-Based Evictions and Displacement,* UN Doc. A/HRC/4/18, 5 February 2007.

[99] Miloon Kothari, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, *Annex 2, Basic Principles and Guidelines on Development-Based Evictions and Displacement,* UN Doc. A/HRC/4/18, 5 February 2007.

- Integrate human rights standards in international relations, trade, investment, and development assistance relating to the right to adequate housing.

- Take specific preventive measures to "eliminate the underlying causes of forced evictions, such as speculation in land and real estate."

- "Review the operation and regulation of the housing and tenancy markets and, when necessary, intervene to ensure that market forces do not increase the vulnerability of low-income and other marginalized groups to forced eviction. In the event of an increase in housing or land prices, States should also ensure sufficient protection against physical or economic pressures on residents to leave or be deprived of adequate housing or land."

- Grant priority in housing and land allocation to the elderly, children, and persons with disabilities.

- Undertake comprehensive and holistic impact assessments before initiating any project that could result in development-based eviction and displacement and adopt safeguards against forced eviction. "Impact assessments must take into account the differential impacts of forced evictions on women, children, the elderly, and marginalized sectors of society. All such assessments should be based on the collection of disaggregated data, such that all differential impacts can be appropriately identified and addressed."

- Require adequate human rights training "for relevant professionals, including lawyers, law enforcement officials, urban and regional planners and other personnel involved in the design, management and implementation of development projects. This must include training on women's rights, with an emphasis on women's particular concerns and requirements pertaining to housing and land."

- Disseminate adequate, timely and appropriate information on human rights, and laws and policies on forced evictions through culturally appropriate channels and methods.

- Before evictions, urban and rural planners should:
  - Involve all those likely to be affected in the planning process;
  - Provide appropriate notice to all potentially affected persons that eviction is being considered;
  - Provide advance relevant information, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups;
  - Set a reasonable time period for public review of, comment on, and/or objection to the proposed plan;
  - Create opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons;

- Hold public hearings with the *active and genuine participation* of affected persons and their advocates;
- Fully explore all possible alternatives to evictions;
- Create opportunities for dialogue and participation in the planning process;
- Demonstrate that "eviction is unavoidable and consistent with international human rights commitments protective of the general welfare";
- Announce all decisions relating to evictions "in writing in the local language to all individuals concerned, sufficiently in advance. The eviction notice should contain a detailed justification for the decision, including on: (a) absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions. All final decisions should be subject to administrative and judicial review. Affected parties must also be guaranteed timely access to legal counsel, without payment if necessary. Due eviction notice should allow and enable those subject to eviction to take an inventory in order to assess the values of their properties, investments and other material goods that may be damaged. Those subject to eviction should also be given the opportunity to assess and document non-monetary losses to be compensated";
- Ensure that evictions do not result in rendering individuals homeless or vulnerable to the violation of other human rights;
- Adopt "appropriate measures, to the maximum of available resources, especially for those who are unable to provide for themselves, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available and provided. Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted"; and
- Ensure that "all resettlement measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads and allocation of land and sites, (are) consistent with the … guidelines and internationally recognized human rights principles, and completed before those who are to be evicted are moved from their original areas of dwelling."

- During evictions,
  - All governmental officials or their representatives must be present on site during evictions; they must identify themselves to the persons being evicted and present formal authorization for the eviction action.
  - Neutral observers, including regional and international observers, should be allowed access upon request.
  - No evictions are carried out "in a manner that violates the dignity and human rights to life and security of those affected. States must also take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions, and that the human rights of children are protected."
  - "Any legal use of force must respect the principles of necessity and proportionality, as well as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and any national or local code of conduct consistent with international law enforcement and human rights standards."

- "Evictions must not take place in inclement weather, at night, during festivals or religious holidays, prior to elections, or during or just prior to school examinations."
- "Ensure that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women and children, or arbitrarily deprived of property or possessions as a result of demolition, arson and other forms of deliberate destruction, negligence or any form of collective punishment. Property and possessions left behind involuntarily should be protected against destruction and arbitrary and illegal appropriation, occupation or use."
- "Never require or force those evicted to demolish their own dwellings or other structures. The option to do so must be provided to affected persons, however, as this would facilitate salvaging of possessions and building material."

- After evictions,
  - "Ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions."
  - "Ensure equal participation of women in all planning processes and in the distribution of basic services and supplies."
  - Provide medical care and attention to "all evicted persons who are wounded and sick, as well as those with disabilities, … without distinction on any non-medically relevant grounds."
  - Provide all evicted persons with access to psychological and social services.
  - Pay special attention to: "(a) the health needs of women and children, including access to female health-care providers where necessary, and to services such as reproductive health care and appropriate counseling for victims of sexual and other abuses; (b) ensuring that ongoing medical treatment is not disrupted as a result of eviction or relocation; and (c) the prevention of contagious and infectious diseases, including HIV/AIDS, at relocation sites."
  - Identified relocation sites must include "(a) security of tenure; (b) services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and to natural and common resources, where appropriate; (c) affordable housing; (d) habitable housing providing inhabitants with adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and ensuring the physical safety of occupants; (e) accessibility for disadvantaged groups; (f) access to employment options, health-care services, schools, childcare centers and other social facilities, whether in urban or rural areas; and (g) culturally appropriate housing. In order to ensure security of the home, adequate housing should also include the following essential elements: privacy and security; participation in decision-making; freedom from violence; and access to remedies for any violations suffered."

- Strictly comply with the following guidelines:
  - "No resettlement shall take place until such time as a comprehensive resettlement policy consistent with the present guidelines and internationally recognized human rights principles is in place";
  - "Resettlement must ensure that the human rights of women, children, indigenous peoples and other vulnerable groups are equally protected, including their right to property ownership and access to resources";
  - "The actor proposing and/or carrying out the resettlement shall be required by law to pay for any associated costs, including all resettlement costs";
  - "No affected persons, groups or communities shall suffer detriment as far as their human rights are concerned, nor shall their right to the continuous improvement of living conditions be subject to infringement. This applies equally to host communities at resettlement sites, and affected persons, groups and communities subjected to forced eviction";
  - "The right of affected persons, groups and communities to full and prior informed consent regarding relocation must be guaranteed. The State shall provide all necessary amenities, services and economic opportunities at the proposed site;"
  - "The time and financial cost required for travel to and from the place of work or to access essential services should not place excessive demands upon the budgets of low-income households";
  - "Relocation sites must not be situated on polluted land or in immediate proximity to pollution sources that threaten the right to the highest attainable standards of mental and physical health of the inhabitants";
  - "Sufficient information shall be provided to the affected persons, groups and communities on all State projects and planning and implementation processes relating to the concerned resettlement, including information on the purported use of the eviction dwelling or site and its proposed beneficiaries. Particular attention must be paid to ensuring that indigenous peoples, minorities, the landless, women and children are represented and included in this process";
  - "The entire resettlement process should be carried out with full participation by and with affected persons, groups and communities. States should, in particular, take into account all alternative plans proposed by the affected persons, groups and communities";
  - "If, after a full and fair public hearing, it is found that there still exists a need to proceed with the resettlement, then the affected persons, groups and communities shall be given at least 90 days' notice prior to the date of the resettlement";
  - "Local government officials and neutral observers, properly identified, shall be present during the resettlement so as to ensure that no force, violence or intimidation is involved."
- Include programs designed for women and vulnerable groups in all rehabilitation policies.
- "Persons, groups or communities affected by an eviction should not suffer detriment to their human rights, including their right to the progressive realization of the right to adequate housing. This applies equally to host communities at relocation sites."

- Provide appropriate remedies for forced evictions, including "a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation."

  - Compensation:
    - Provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property when eviction is unavoidable, and necessary for the promotion of the general welfare. "Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services. Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better."
    - Compensation covers loss, salvage and transport of affected properties, including the original dwelling and land lost or damaged; "consideration of the circumstances of each case shall allow for the provision of compensation for losses related to informal property, such as slum dwellings."
    - All compensation packages must ensure that women and men are co-beneficiaries; "single women and widows should be entitled to their own compensation."
    - "To the extent not covered by assistance for relocation, the assessment of economic damage should take into consideration losses and costs, for example, of land plots and house structures; contents; infrastructure; mortgage or other debt penalties; interim housing; bureaucratic and legal fees; alternative housing; lost wages and incomes; lost educational opportunities; health and medical care; resettlement and transportation costs (especially in the case of relocation far from the source of livelihood). Where the home and land also provide a source of livelihood for the evicted inhabitants, impact and loss assessment must account for the value of business losses, equipment/inventory, livestock, land, trees/crops, and lost/decreased wages/income."
  - Restitution and return
    - When circumstances allow, persons, groups and communities subjected to forced evictions should be allowed to return to their homes, lands or places of origin; however, no one may forced against their will to return to their homes, lands or places of origin.
    - "When return is possible or adequate resettlement in conformity with these guidelines is not provided, the competent authorities should establish conditions and provide the means, including financial, for voluntary return in safety and security, and with dignity, to homes or places of habitual residence. Responsible authorities should facilitate the reintegration of returned persons and exert efforts to ensure the full participation of affected persons, groups and communities in the planning and management of return processes. Special measures may be

required to ensure women's equal and effective participation in return or restitution processes in order to overcome existing household, community, institutional, administrative, legal or other gender biases that contribute to marginalization or exclusion of women."

- ⇨ Assistance should be provided to "returning persons, groups or communities to recover, to the maximum extent possible, the property and possessions that they left behind or were dispossessed of upon their eviction."
- ⇨ "When return to one's place of residence and recovery of property and possessions is not possible, competent authorities must provide victims of forced evictions, or assist them in obtaining, appropriate compensation or other forms of just reparation."

- Resettlement and rehabilitation
  - ⇨ All resettlement must occur in a just and equitable manner and in full compliance with international human rights law.

- "Actively monitor and carry out quantitative and qualitative evaluations to determine the number, type and long-term consequences of evictions, including forced evictions, that occur within the jurisdiction and territory of effective control. Monitoring reports and findings should be made available to the public and concerned international parties in order to promote the development of best practices and problem-solving experiences based on lessons learned."

- "Entrust an independent national body, such as a national human rights institution, to monitor and investigate forced evictions and State compliance with these guidelines and international human rights law."

The Right to Water

The Right to Water[100] is the right to sufficient, safe, acceptable, physically accessible and affordable water, water services and facilities for personal or domestic use. The right to water is not equated merely with volumetric quantities and technologies; water should not be treated primarily as an economic good but should be treated as a social and cultural good. The UN Committee on Economic, Social and Cultural Rights has said that the right to water consists of five normative elements:[101]

[100] Articles 3 and 25, Universal Declaration of Human Rights; Articles 1.2, 11.1 and 12.1, International Covenant on Economic, Social and Cultural Rights; General Comment No. 15, "The right to water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights),"adopted by the United Nations Committee on Economic, Social and Cultural Rights at its twenty-ninth session, 2002, UN Doc. HRI/GEN/1/Rev. 9 (Vol. I), 27 May 2008; Article 6, International Covenant on Civil and Political Rights; Article 14.2h, Convention on the Elimination of All Forms of Discrimination against Women; Article 24.2c, Convention on the Rights of the Child; Article 28, Convention on the Rights of Persons with Disabilities; Articles 20, 26, 29 and 46, Geneva Convention relative to the Treatment of Prisoners of War (1949); Articles 85, 89 and 127, Geneva Convention relative to the Treatment of Civilian Persons in Time of War (1949); Articles 54 and 55, Additional Protocol I to Geneva Conventions (1977); Articles 5 and 14, Additional Protocol II to Geneva Conventions (1977).

[101] General Comment No. 15, "The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights),"adopted by the United Nations Committee on Economic, Social and Cultural Rights at its twenty-ninth session, 2002, UN Doc. HRI/GEN/1/Rev. 9 (Vol. I), 27 May 2008.

1. *Water availability*, which means there must be sufficient and continuous supply of water for each person for personal and domestic use. The ***Draft Guidelines for the Realization of the Right to Drinking Water and Sanitation*** proposed by then UN Special Rapporteur on the right to water, El Hadji Guissé, links water availability with equitable distribution of water, and recommends:[102]

   - The adoption and implementation of integrated water resource management programs and water efficiency plans, that combat the depletion of water resources due to unsustainable extraction, diversion and damming, reduce water wastage during distribution and establish mechanisms to respond to emergency situations;

   - The adoption and implementation of "measures to prevent over-consumption and promote efficient water use, such as public education, dissemination of appropriate conservation technologies and, as necessary, restrictions on water use beyond an acceptable consumption threshold, including through the imposition of charges";

   - The grant of priority access to water resources to disadvantaged farmers and other vulnerable groups to support the realization of the right to adequate food; and

   - The sustainable exercise of the right to water.

2. *Water quality,* which means that water must be color-free, odor-free, safe, and free from microorganisms, chemical and radiological hazards that threaten a person's health. The *Draft Guidelines* elaborate on water quality, by requiring:[103]

   - The establishment of water quality standards based on World Health Organization guidelines;

   - Water quality standards to prioritize the elimination of pollutants with the most significant impact on health in the particular country or context, rather than set high thresholds that cannot be attained immediately within the available resources;

   - The periodic review of, and progressive increase in, water quality standards;

   - The adoption and implementation of policies and regulations to "control pollution of water resources by all persons and organizations, both public and private, including surveillance, disincentives, pollution penalties and assistance with compliance";

   - The prevention and progressive reduction of "contamination of watersheds and aquatic ecosystems by substances such as bacterial pathogens and chemical pollutants";

[102] El Hadji Guissé, Realization of the right to drinking water and sanitation: Report of the Special Rapporteur, El Hadji Guissé, UN Doc._E/CN.4/Sub.2/2005/25, 11 July 2005.
[103] El Hadji Guissé, Realization of the right to drinking water and sanitation: Report of the Special Rapporteur, El Hadji Guissé, UN Doc._E/CN.4/Sub.2/2005/25, 11 July 2005.

- The monitoring of water quality in reservoirs and distribution systems;

- The provision of "financial and technical assistance, including information and training, to communities which depend on small-scale water supply systems, particularly low-income communities."

The current UN Special Rapporteur on the right to water, Catarina de Albuquerque, suggested other concrete actions to ensure water quality, including "environmental regulation, consumer protection (including in case of disconnections), the regulation of water quality, economic regulation, and general monitoring of the sector." In this regard, the current UN Special Rapporteur recommends the setting and monitoring of performance standards to ensure water availability, water quality, regularity of supply, safety of sanitation facilities, acceptability of sanitation facilities, accessibility of water and sanitation services and affordability of water and sanitation services. She notes the particular challenges of informal small-scale (water and sanitation) providers:

"Compared to the regulation of utilities, far less attention has been paid to the regulation of informal small-scale providers. Operating unregulated, they often provide poor quality services at exorbitant prices. Yet, many people would be far worse off without their services. Any attempt to regulate the activities of such providers first requires an overview of the sector and the political will to acknowledge their activities. Human rights law does not prescribe the choice of policy and approach to small-scale providers, which is rather left to the State. It can decide to aim for regulation, or to use incentives for the provision of quality services at affordable prices, or to phase out small-scale providers in the long term and replace them by formal provision. The best policy option will depend on the circumstances and cannot be determined in the abstract. Any measures taken must comply with human rights obligations. There has to be a clear strategy with the end goal of providing universal access to services in line with human rights standards. At the same time, States must ensure that the measures taken -- for instance strict licensing requirements -- do not worsen the situation and leave people without access to services. In particular when granting exclusivity to formal providers extending into areas that have previously been served by small-scale providers, States have to ensure that the network actually constitutes an affordable alternative for poor people and that they are not lacking service provision until the formal provider is ready to fill the gap.

"Given the decentralized and often on-site nature of small-scale services provision, distinct regulatory instruments are needed. For instance, many on-site sanitation solutions require the emptying of septic tanks. To ensure that sludge is actually brought to treatment plants and not dumped into the environment, payment for the service could be made only upon arrival at the plants. It is unlikely that a central agency can adequately oversee the activities by small-scale providers, but rather a different institutional set-up may be required, for instance involving local governments."[104]

[104] El Hadji Guissé, Realization of the right to drinking water and sanitation: Report of the Special Rapporteur, El Hadji Guissé, UN Doc._E/CN.4/Sub.2/2005/25, 11 July 2005.

3. *Water physical accessibility*, which means that water, water facilities and services must be within safe physical reach, or "in the immediate vicinity of the household, educational institution, workplace or health institution"[105] and "in a location where physical security can be guaranteed."[106]

4. *Water economic accessibility*, which means that procuring water and availing of water services and facilities should be affordable for all. The *Draft Guidelines* suggest that water economic accessibility requires:[107]

   - "Appropriate water and sanitation pricing policies, including through flexible payment schemes and cross-subsidies from high-income users to low-income users";

   - Subsidies for low-income households and those who live in poverty, noting that "subsidies should normally be used for connection to distribution networks or for the construction and maintenance of small-scale water supply and sanitation facilities, such as wells, boreholes and latrines"; and

   - Low-cost technology options.

   The *Draft Guidelines* further recommend before a person's access to water and sanitation services is reduced because of non-payment, that person's ability to pay must be taken into account; the *Draft Guidelines* emphasize: "No one should be deprived of the minimum essential amount of water or access to basic sanitation facilities."

   In elaborating on water economic accessibility, the current UN Special Rapporteur on the right to water, Catarina de Albuquerque, notes: "water and sanitation services do not have to be provided for free and tariffs are necessary to ensure the sustainability of service provision. To meet human rights standards, the essential criterion is that tariffs and connection costs are designed in a way, including through social policies, that makes them affordable to all people, including those living in extreme poverty. Linked to the question of affordability of services is the issue of disconnections. When water disconnections take place despite people's inability to pay, individuals must still have at least access to minimum essential levels of water."[108]

5. *Water information accessibility*, which refers to the right to seek, receive and impart information concerning water issues and concerns.

[105] El Hadji Guissé, Realization of the right to drinking water and sanitation: Report of the Special Rapporteur, El Hadji Guissé, *Draft Guidelines for the Realization of the Right to Drinking Water and Sanitation,* UN Doc. E/CN.4/Sub.2/2005/25, 11 July 2005.
[106] El Hadji Guissé, Realization of the right to drinking water and sanitation: Report of the Special Rapporteur, El Hadji Guissé, *Draft Guidelines for the Realization of the Right to Drinking Water and Sanitation,* UN Doc. E/CN.4/Sub.2/2005/25, 11 July 2005.
[107] El Hadji Guissé, Realization of the right to drinking water and sanitation: Report of the Special Rapporteur, El Hadji Guissé, UN Doc. E/CN.4/Sub.2/2005/25, 11 July 2005.
[108] Catarina de Albuquerque, Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, UN Doc. A/HRC/15/31, 29 June 2010.

The *Draft Guidelines* identify additional key elements of the right to water, including:[109]

- *Nondiscrimination and addressing the needs of vulnerable groups*, which:
  - Prohibits all discriminatory practices that limit access to water and sanitation based on prohibited grounds of discrimination;
  - Requires special attention to those most vulnerable or those who "traditionally faced difficulties in exercising their right to water and sanitation, including women, children, indigenous peoples, persons living in rural and deprived urban areas, nomadic and traveler communities, refugees, asylum-seekers, internally displaced persons, migrant workers, prisoners and detainees, as well as other groups facing difficulties with gaining access to water";
  - Places priority in the provision of water and sanitation services to "institutions serving vulnerable groups, such as schools, hospitals, prisons and refugee camps"; and
  - Requires the enactment and implementation of legislation that protects access to traditional water sources in rural areas.

- *Participatory rights*, which
  - Requires special measures that ensure "equitable representation in decision-making of vulnerable groups and sections of the population that have traditionally been marginalized, in particular, women";
  - Enshrines the right of communities "to determine what type of water and sanitation services they require and how those services should be managed and, where possible, to choose and manage their own services with assistance from the State"; and
  - Requires "equal access to full and transparent information concerning water, sanitation and the environment held by public authorities or third parties."

- *Remedies and monitoring,* which require (a) access to administrative or judicial procedures to complain about acts or omissions committed by persons or public or private organizations that violate the right to water and sanitation and (b) monitoring of the implementation of obligations arising from the right to water and sanitation, "including by establishing or authorizing independent institutions such as human rights commissions or regulatory agencies to carry out monitoring activities in a manner that ensures full transparency and accountability."

The *Draft Guidelines* also suggest the following concrete actions to guarantee enjoyment of the right to water:[110]

- "Progressively ensure that everyone has access to water and sanitation services and that these services are equitably distributed. Where available resources are not sufficient to guarantee the delivery of high-quality services, States should invest in services that give priority to the needs of those without basic access, normally through low-cost services

[109] El Hadji Guissé, Realization of the right to drinking water and sanitation: Report of the Special Rapporteur, El Hadji Guissé, UN Doc._E/CN.4/Sub.2/2005/25, 11 July 2005.
[110] El Hadji Guissé, Realization of the right to drinking water and sanitation: Report of the Special Rapporteur, El Hadji Guissé, UN Doc._E/CN.4/Sub.2/2005/25, 11 July 2005.

that can be upgraded, rather than through expensive services that would only benefit a small section of the population";

- "Promote hygienic use of water and sanitation services";
- Design water and sanitation facilities taking into account the needs of women and children.
- Do not deny anyone access to water and sanitation because of his/her housing or land status.
- Upgrade informal human settlements by providing water and sanitation services and assisting them with the construction of their own water and sanitation facilities;
- Prioritize persons without any basic access in all water and sanitation policies and programs;
- Adopt and implement a plan of action to fully realize the right to water and sanitation with specific targets, indicators, time frames and necessary national and international resources;
- "Formally recognize the right to water and sanitation in relevant laws and regulations";
- "Refrain, and ensure that private persons and organizations refrain, from interfering with the enjoyment of the right to water and sanitation or any other human rights, unless such interference is permitted by law and includes appropriate procedural protection";
- Ensure that "no one whose access to water and sanitation may be legally curtailed after the appropriate procedures have been followed [is] deprived of the minimum essential amount of water or of minimum access to basic sanitation services";
- "Establish a regulatory system for private and public water and sanitation service providers that requires them to provide physical, affordable and equal access to safe, acceptable and sufficient water and to appropriate sanitation and includes mechanisms to ensure genuine public participation, independent monitoring and compliance with regulations."

The current UN Special Rapporteur on the right to water, Catarina de Albuquerque, recently applied the normative elements of the right to water to sanitation; she suggests that sanitation must be:[111]

1. *Availability of sanitation facilities and associated services*, which means that sanitation facilities and associated services should not only be "within, or in the immediate vicinity, of each household, health or educational institution, public institutions and places, and the workplace" but should also be of sufficient number "to ensure that waiting times are not unreasonably long."

[111] Catarina de Albuquerque, Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, UN Doc. A/HRC/12/24, 1 July 2009.

2. *Quality of sanitation facilities*, which means that sanitation facilities must be hygienically safe to use, and effectively prevent human, animal and insect contact with human excreta. Sanitation facilities must also "ensure access to safe water for hand washing as well as menstrual hygiene, and anal and genital cleansing, as well as mechanisms for the hygienic disposal of menstrual products. Regular cleaning, emptying of pits or other places that collect human excreta, and maintenance are essential for ensuring the sustainability of sanitation facilities and continued access."

"Sanitation facilities must also be technically safe to use, which means that the superstructure is stable and the floor is designed in a way that reduces the risk of accidents (e.g., by slipping). People must be enabled to use them safely at night, whether through lighted paths, flashlights, or other measures. Furthermore, special attention should be paid to the safety needs of persons with disabilities, as well as the safety needs of children. Maintenance is crucial to guarantee technical safety."

"Ensuring safe sanitation requires adequate hygiene promotion and education to encourage individuals to use toilets in a hygienic manner that respects the safety of others. Manual emptying of pit latrines is considered to be unsafe (as well as culturally unacceptable in many places, leading to stigmatization of those burdened with this task), meaning that mechanized alternatives that effectively prevent direct contact with human excreta should be used."

3. *Physical accessibility of sanitation facilities*, which means that sanitation facilities must be "within, or in the immediate vicinity of, each household, health or educational institution, public institutions and places, and the workplace. Physical accessibility must be reliable, including access at all times of day and night. The location of sanitation facilities must ensure minimal risks to the physical security of users. This has particular implications for the path leading to the facility, which should be safe and convenient for all users, including older people and persons with disabilities and it must be maintained in this state. Moreover, sanitation facilities should be constructed in a way that minimizes the risk of attack from animals or people, particularly for women and children."

"Sanitation facilities should be designed in a way that enables all users to physically access them, including, especially, those with special access needs, such as children, persons with disabilities, elderly persons, pregnant women, parents accompanying children, chronically ill people and those accompanying them. Considering the needs of these groups would have implications for the entrance size, the interior space, handrails or other support mechanisms, the position of defecation, as well as other aspects."

4. *Affordability of sanitation facilities*, which means that "sanitation facilities and services, including construction, emptying and maintenance of facilities, as well as treatment and disposal of fecal matter, must be available at a price that is affordable for all people without limiting their capacity to acquire other basic goods and services, including water, food, housing, health and education guaranteed by other human rights. Water disconnections resulting from an inability to pay also impact on waterborne sanitation, and this must be taken into consideration before disconnecting the water supply."

"Various systems and structures can be put in place to ensure affordability, including income support measures, and measures that aim to reduce the cost of sanitation services. One option might be subsidy schemes to ensure affordability. Governments could also consider setting targets which represent a percentage of the household income. Experience suggests that in-kind contributions (such as labor) are also effective in sanitation projects. Technology choice can also have an impact on affordability (as well as sustainability). Human rights do not dictate which policy is best, but insist on a context-specific consideration of the situation."

"Concerning the cost of sanitation, there may be differences depending on the area. For example, in urban areas, a connection to the sewerage system will almost always be the cheapest and most convenient option for the user. However, as with water connections, the price of a connection to the sewerage system will often be prohibitive for users living in poverty, and governments should develop policies to address this. In remote areas, where sewerage is normally not available, on-site sanitation is likely to be the preferable option. This may require subsidies for construction, emptying of receptacles for the collection of human waste, and associated maintenance. Assistance should also be provided to families who are unable to afford soap and cleaning products, or sanitary products for women."

5. *Acceptability of sanitation facilities and services*, which means that these must be culturally acceptable; recognizing the cultural sensitivity attached to personal sanitation, sanitation acceptability may be reflected in the design, positioning, conditions for use, requirements for privacy, separation of public sanitation facilities for women/girls and men/boys of sanitation facilities, and special requirements for women's toilets to accommodate menstruation needs. In understanding sanitation acceptability, it is important to recognize: "Facilities will need to allow for culturally acceptable hygiene practices, such as hand washing and anal and genital cleansing."

The Right to Social Security

The Right to Social Security[112] is the right to access and maintain cash or in-kind benefits without discrimination to be protected from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; and (c) insufficient family support particularly for children and adult dependents. It includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage and the right to the enjoyment of adequate protection from social risks and contingencies. The UN Committee on Economic, Social and Cultural Rights identified the three normative elements of the right to social security:[113]

[112] Articles 21 and 22, Universal Declaration of Human Rights; Article 9, International Covenant on Economic, Social and Cultural Rights; General Comment No. 5, "Persons with disabilities," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its eleventh session, 1994, UN Doc. HRI/GEN/1/Rev. 9 (Vol. I) 27 May 2008; General Comment No. 6, "The economic, social and cultural rights of older persons," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its thirteenth session, 1995, UN Doc. HRI/GEN/1/Rev. 9 (Vol. I) 27 May 2008; General Comment No. 19, "The right to social security (Art. 9)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its thirty-ninth session, 2007, UN Doc. E/C.12/GC/19; Article 8.1, Declaration on the Right to Development; Articles 11c and 11e, Convention on the Elimination of All Forms of Discrimination Against Women; Article 25, Convention on the Rights of the Child; Article 27, International Convention on the Rights of All Migrant Workers and Members of their Families; and Article 28, Convention on the Rights of Persons with Disabilities.

[113] General Comment No. 19, "The right to social security (Art. 9)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its thirty-ninth session, 2007, UN Doc. E/C.12/GC/19.

1. *Social security availability*, which means a functioning and sustainable social security system established by law and publicly administered or under public supervision. The social security system should address nine principal branches of social risks and contingencies:

   i. Health care, or provision of access to health care for all;

   ii. Sickness, or provision of cash benefits to those incapable of working due to ill health covering periods of loss of earnings;

   iii. Old age, or provision of benefits to older persons starting at a specific retirement age prescribed by law;

   iv. Unemployment, or provision of benefits to cover loss or lack of earnings due to inability to obtain or maintain suitable employment, paid for adequate period of time;

   v. Employment injury, or provision of benefits to cover costs and loss of earning from injury or morbid condition and loss of support for spouses or dependents suffered as a result of the death of the breadwinner;

   vi. Family and child support, or provision of cash benefits and social services without discrimination, including food, clothing, housing, water and sanitation and other rights as appropriate, to the child and persons having responsibility for the maintenance of the child and adult dependent;

   vii. Maternity, or paid maternity leave granted to all women including those involved in a typical work and provision of benefits for adequate period;

   viii. Disability, or provision of adequate income support to persons with disabilities who, owing to disability or disability related factors have temporarily lost or received reduced income, or been denied employment opportunities or have permanent disability;

   ix. Survivors and orphans, or provision of benefits upon the death of the breadwinner who was covered by social security.

2. *Social security adequacy*, which refers to the provision of cash or in kind benefits that are adequate in amount and duration and are nondiscriminatory.

3. *Social security accessibility*, in five dimensions:

   i. *Coverage* must be universal and without discrimination and requires noncontributory schemes;

   ii. *Eligibility*, which refers to reasonable, proportionate and transparent qualifying conditions and to reasonable grounds, subject to due process, and provided by law to cover the withdrawal, reduction or suspension of benefits;

iii. *Affordability* of contributory schemes, which means that direct and indirect costs and charges associated with making contributions must be affordable for all and must not compromise the realization of other human rights;

iv. *Participation and information* of beneficiaries in the administration of the social security system and includes the right to seek, receive and impart information on all social security entitlements in a clear and transparent manner; and

v. *Physical access*, which means that benefits are provided in a timely manner and beneficiaries have safe physical access to social security services, benefits and information.

The Right to Work

The Right to Work[114] is the right to the opportunity to gain a living by work freely chosen or accepted. It is both an individual and collective right and includes all forms of *decent* work, i.e., work that respects human rights in terms of conditions of work safety and remuneration and physical and mental integrity. The right to work includes the right not to be deprived of work unfairly; it is linked to the obligation to create conditions for full employment in the absence of forced labor. The right to work recognizes the existence of structural and other obstacles arising from international factors. The right to work is not an absolute and unconditional right to obtain employment, but rather guarantees the opportunity to obtain gainful employment.

The right to work includes the right to enjoy just and favorable conditions of work, including remuneration that is fair, equal for work of equal value, and provides decent living; safe and healthy working conditions; equal opportunity to be promoted; and rest, leisure, reasonable limitation of working hours, periodic holidays with pay and remuneration for public holidays.

The right to work also includes the right to form and join trade unions; the right of trade unions to establish national federations or confederations and form or join international trade-union organizations; the right of trade unions to function freely; and the right to strike exercised in conformity with the laws of the country.

The UN Committee on Economic, Social and Cultural Rights identified the five normative elements of the right to work;[115] these normative elements are more fully understood through the prism of internationally recognized labor standards and principles articulated in Conventions adopted by the International Labor Organization (ILO), and ratified by the Philippines therefore legally binding upon it.

[114] Article 23, Universal Declaration of Human Rights; Articles 6, 7 and 8, International Covenant on Economic, Social and Cultural Rights; General Comment No. 18, "The right to work," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its thirty-fifth session, 2005, UN Doc. E/C.12/GC/18.; Article 8.1, Declaration on the Right to Development; Article 5e.i.ii, International Convention on the Elimination of All Forms of Racial Discrimination; Article 11, Convention on the Elimination of All Forms of Discrimination Against Women; Article 32, Convention on the Rights of the Child; International Convention on the Rights of All Migrant Workers and Members of their Families (*entire*); and Article 27, Convention on the Rights of Persons with Disabilities.

[115] General Comment No. 18, "The right to work," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its thirty-fifth session, 2005, UN Doc. E/C.12/GC/18.

1. *Work availability*, which means that employment opportunities must be available to all.

ILO Convention 122, *Employment Policy Convention, 1962*, which the Philippines ratified on 13 January 1976, requires states to adopt, *as a major goal*, an *active* policy designed to promote *full, productive* and *freely chosen* employment.[116] The Convention stipulated that the *active* employment policy *must ensure*: (a) work available for all who able and seeking work; (b) productive available work; and (c) freedom of choice of employment and *fullest possible opportunity* for all workers to qualify for a job well suited to him/her, irrespective of the prohibited grounds of discrimination. The Convention stresses that the employment policy must be coherent with other economic and social objectives and implemented in coordination with economic and social policy. Finally, the Convention requires consultation with all persons affected, especially employers and workers, in the formulation of the employment policy.

ILO Convention 88, *Employment Service Convention, 1948*, ratified by the Philippines on 29 December 1953, requires states to maintain a free public employment service, which is primarily tasked with ensuring *the best possible organization of the employment market*. To ensure effective recruitment and placement, the Convention requires the employment service to, among others: assist workers find suitable employment and assist employers find suitable workers; register applicants for employment; obtain precise information on vacancies and eligibility requirements from employers; refer applicants and vacancies from one employment office to another; take appropriate measures to: (a) facilitate occupational mobility in order to adjust the supply of labor to employment opportunities in various occupations, (b) facilitate geographical mobility in order to assist the movement of workers to areas with suitable employment opportunities, (c) facilitate temporary transfers of workers from one area to another in order to meet temporary local maladjustments in the supply or demand for workers, and (d) facilitate any movement of workers from one country to another; and cooperate in the administration of unemployment insurance and assistance for those unemployed. Such employment service must consist of a national system of employment offices under the direction of a national authority, sufficient in number and conveniently located to service the working population throughout the country.

2. *Work nondiscrimination*, which means that the labor market must be open to everyone without discrimination. *Work nondiscrimination* also refers to the principle of *equal remuneration for work of equal value*, enshrined in ILO Convention 100, *Equal Remuneration Convention, 1951*, ratified by the Philippines on 29 December 1953. This principle imposes upon governments the obligation to ensure its operation to all workers through the adoption of national law or regulation, legally established or recognized machinery for wage determination, collective agreements or a combination of these means. In order to apply the principle, the Convention recommends an *objective appraisal of jobs on the basis of work to be performed*. The Convention stresses that differential rates between workers based on differences determined by an objective appraisal—and not based on sex—would not be considered contrary to the principle of *equal remuneration for work of equal value*.

[116] Article 1.

Work nondiscrimination is more fully described in ILO Convention 111, *Discrimination (Employment and Occupation) Convention, 1958*, ratified by the Philippines on 17 November 1960. The Convention proscribes discrimination, i.e., any distinction, exclusion and preference in employment or occupation based on prohibited grounds of discrimination or which have the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The Convention stresses that employment or occupation includes access to vocational training, access to employment and particular occupations and terms and conditions of employment. The Convention highlights obligations arising from nondiscrimination; these include, among others, the promotion of equality of opportunity and treatment in employment and education; the elimination of discrimination in employment and occupation; the enactment of legislation and promotion of educational programs on nondiscrimination; and the repeal of discriminatory laws or regulations. The Convention, however stresses that special measures of protection or assistance provided for in other Conventions or Recommendations are not discriminatory.

To ensure *work nondiscrimination* based on disabilities, ILO Convention 159, *Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983*, which the Philippines ratified on 23 August 1991, requires states to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of persons with disabilities. The twin policy aims are: to ensure the availability of appropriate vocational rehabilitation measures to all persons with disabilities, and to promote employment opportunities for persons with disabilities in the open labor market. The policy must be based on the principle of *equal opportunity and treatment between workers with disabilities and workers without disabilities*; the Convention stresses that "special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers." The Convention requires consultation with those affected in the implementation of the policy.

3. *Work physical accessibility*, which means that places of employment must be within safe physical reach of workers.

4. *Work information accessibility*, which refers to the right to seek, obtain, and impart information on the means of gaining access to employment. ILO Convention 88, *Employment Service Convention, 1948*, requires the maintenance of a free public employment service that also collects and analyzes the fullest available information on the situation of the employment market and its probable evolution in the country as a whole and in the different industries, occupations and areas, and to make such information systematically and promptly available to all.

5. *Work acceptability and quality*, which refers to the rights to just and favorable conditions of work, safe working conditions, form and join trade unions and to freely choose and accept work.

ILO Conventions further elaborate on *work acceptability and quality* in several respects: the suppression of forced labor, including the worst forms of child labor; the minimum age for admission to employment; and freedom of association, right to organize and collectively bargain.

On the Suppression of Forced Labor:

ILO Convention 29, *Forced Labor Convention, 1930*, ratified by the Philippines on 15 July 2005, requires governments to immediately take steps to suppress the use of forced or compulsory labor in all its forms; the Convention, however, allows recourse to forced or compulsory labor *only during the transitional period towards full or complete suppression, for public purposes and as an exceptional measure*. The Convention defines forced or compulsory labor as "work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily"; forced or compulsory labor *does not include* any work or service exacted in military service laws for work of purely military character; any work or service that forms part of normal civic obligations of citizens; any work or services exacted as a consequence of conviction by a court of law so long as that work or service is carried out under the supervision and control of a public authority and the person is not hired to or placed at the disposal of private individuals or companies; any work or service exacted in cases of emergency; and minor communal services performed by members of the community for the direct benefit of the community, which may be considered part of normal civic obligations. The Convention prohibits states from imposing or permitting forced or compulsory labor for the benefit of private individuals or corporations and from granting concessions to private individuals or associations that involve any form of forced or compulsory labor.

ILO Convention 105, *Abolition of Forced Labor Convention, 1957*, which the Philippines ratified on 17 November 1960, requires states to *suppress* and not use any form of forced or compulsory labor as a means of: (a) political coercion or education or punishment for holding or expressing political or ideological views opposed to the established political, social or economic system; (b) mobilizing and using labor for economic development; (c) labor discipline; (d) punishment for participating in strikes; and (e) racial, social, national or religious discrimination. The Convention further requires states to secure the immediate and complete abolition of forced or compulsory labor.

ILO Convention 182, *Worst Forms of Child Labor Convention*, *1999*, which the Philippines ratified on 28 November 2000, requires governments to take immediate and effective measures to prohibit and eliminate the worst forms of child labor, including all forms of slavery or practices similar to slavery (e.g., sale and trafficking of children, debt bondage and serfdom, forced or compulsory labor, forced or compulsory recruitment of child soldiers); use, procurement or offer of child for prostitution, pornography or pornographic performances; and the use, procurement or offer of a child for illicit activities, in particular for the production and trafficking of drugs or for activities involving unlawful carrying or use of firearms or other weapons; and work which, by its nature or by the circumstances in which it is carried out, is detrimental to the health, safety or morals of children. The Convention requires governments to identify, through national law or regulations, and with due consultation, the types of work which constitute the worst forms of child labor, to determine where the types of work exist and periodically examine and revise the list of the types of work. The Convention also requires governments to establish appropriate mechanisms to monitor the implementation of the Convention; design and implement programs of action to eliminate the worst forms of child labor; provide and apply penal and other sanctions; prevent engagement of children in the worst forms of child labor; provide necessary and appropriate

direct assistance for removal, rehabilitation and social integration of children suffering the worst forms of child labor; ensure access to free basic education and appropriate vocational training to children removed from the worst forms of child labor; identify and reach out to children at special risk; and pay special attention to the situation of girls. The Convention also highlights the obligation of international cooperation and assistance including support for social and economic development, poverty eradication programs and universal education.

On the Minimum Age for Admission to Employment:

ILO Convention 138, *Minimum Age Convention, 1973*, which the Philippines ratified on 04 June 1998, requires states to pursue a national policy to effectively abolish child labor and to progressively raise the minimum age for employment to a level consistent with the fullest physical and mental development of young persons. The Convention requires that the minimum age for admission to any type of work should not be less than 18 years; however, the Convention allows the minimum age to be set at 16 years so long as consultations between organizations of employers and workers have been held and so long as the health, safety and morals of young persons are fully protected and young persons have received adequate specific instruction or vocational training. The Convention does not apply to work done by children and young persons in schools for general, vocational or technical education, when these are part of a course of education or a training program or guidance or orientation program designed to facilitate the choice of occupation or line of training. The Convention allows the employment of persons aged between 13 to 15 years only for *light work*, or work that is not likely to be harmful to health or development and does not prejudice their attendance at school. The Convention allows exceptions to the minimum age rule for participation in *artistic performances*, subject to a permit issued by the competent authority that limits the number of hours and prescribes the conditions under which employment or work is allowed. The Convention requires states to adopt national laws or regulations, which include the provision of appropriate penalties and the requirement to maintain registers or other documents of employed persons who are below 18 years of age.

The UN Committee on the Rights of the Child has urged states to continuously review national regulations on minimum ages for employment to make them compatible with international standards, and to regulate the working environment and conditions for adolescents who are working (in accordance with article 32 of the Convention, as well as ILO Conventions No. 138 and 182).[117]

On Freedom of Association, Right to Organize and Collectively Bargain:

ILO Convention 87, *Freedom of Association and Protection of the Right to Organize Convention, 1948*, which the Philippines ratified on 29 December 1953, upholds the rights of workers, without distinction, to establish and join organizations of their own choosing without prior authorization, draw up their own constitutions and rules, freely elect their representatives, organize their administration and activities and formulate their programs. The Convention expressly prohibits

[117] General Comment 11, "Adolescent health and development in the context of the Convention on the Rights of the Child," adopted by the United Nations Committee on the Rights of the Child at its thirty-third session, 2003, UN Doc. HRI/GEN/1/Rev.9 (Vol. II), 27 May 2008.

governments from interfering with or impeding the exercise of these rights. The Convention also protects workers' and employers' organizations from dissolution or suspension by public administrative authorities. The Convention also upholds the right to form and join federations and confederations and the right of federations and confederations to affiliate with international organizations of workers and employers. The Convention stresses the *responsible exercise* by workers and employees of their rights. The Convention imposes upon governments the obligation to take steps to ensure that workers and employees freely exercise their right to organize.

ILO Convention 98, *Right to Organize and Collective Bargaining Convention, 1949*, ratified by the Philippines on 29 December 1953, enshrines the right of workers to adequate protection against anti-union discrimination, particularly for protection from acts calculated to (a) make employment subject to a condition that the worker shall not join a union or shall relinquish trade union membership, and (b) cause dismissal or prejudice a worker because of union membership or participation in union activities. The Convention also grants workers' and employers' organizations protection against any acts of interference in their establishment, functioning or administration by each other or by each other's agents or members; acts of interference include acts designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or support workers' organizations by financial or other means in order to place workers organizations under the control of employers or employers' organizations. The Convention highlights the obligation of states to take appropriate measures to encourage and promote the full development and use of machinery for voluntary negotiation between employers and workers in order to achieve the regulation of terms and conditions of employment by means of collective agreements.

The Right to Take Part in Cultural Life

The Right to Take Part in Cultural Life[118] is the *freedom, individually or in association with others, to exercise cultural practices and access cultural goods and services*. The right to take part in cultural life is closely related to the right to enjoy the benefits of scientific progress and its applications, the right to benefit from the protection of moral and material interests resulting from any scientific, literary or artistic production of which they are the author, the right to freedom indispensable for scientific research and creative activity, and the rights to education, self determination, adequate standard of living, and development.

The UN Committee on Economic, Social and Cultural Rights[119] further elaborated on the meaning of the right to take part in cultural life by defining the following key terms:

- The term "*everyone*" refers to the exercise of the right *as an individual, in association with others, or within a community or group*.

[118] Article 27, para. 1, UDHR; Article 8, Declaration on the Right to Development; Articles 17, 18, 19, 21 and 22. ICCPR; Article 15, ICESCR; General Comment No. 21, "Right of Everyone to Take Part in Cultural Life (art. 15, para. 1(a)) of the International Covenant on Economic, Social and Cultural Rights)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its forty-third session, 2009, UN Doc. E/C.12/GC/21); Article 5 (e) (vi), CERD; Article 13 (c), CEDAW; Article 31, para. 2, CRC; Article 30, para. 1, CPD; Article 43, para. 1(g), CMW.

[119] General Comment No. 21, "Right of Everyone to Take Part in Cultural Life (art. 15, para. 1(a)) of the International Covenant on Economic, Social and Cultural Rights)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its forty-third session, 2009, UN Doc. E/C.12/GC/21).

- The phrase "*cultural life*" encompasses, among others, "ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives." The Committee stresses: "Culture shapes and mirrors the values of well-being and the economic, social and political life of individuals, groups of individuals and communities."

- The phrases "*to participate*" or "*to take part*" are used interchangeably and refer to *participation in, access to, and contribution to* cultural life.
  - *Participation* refers to the right to act freely, choose one's own identity, identify or not identify with one or several communities or change that choice, take part in society's political life, engage in one's own cultural practices and express oneself in the language of choice. *Participation* also includes the rights to seek, develop and share cultural knowledge and expressions, act creatively and take part in any creative activity. *Participation* may be exercised alone or in association with others.
  - *Access* refers to knowing and understanding one's own culture and the culture of others through education and information, and includes the right to receive quality education and training with due regard for cultural identity. *Access* also includes the "right to learn about forms of expression and dissemination through any technical medium of information or communication, to follow a way of life associated with the use of cultural goods and resources such as land, water, biodiversity, language or specific institutions, and to benefit from the cultural heritage and the creation of other individuals and communities."
  - *Contribution to cultural life* refers to the right to be involved in creating the spiritual, material, intellectual and emotional expressions of the community, and includes the right to take part in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of cultural rights.

The *right to take part in cultural life* has five normative elements:

1. *Availability* of cultural goods and services open for everyone's enjoyment and benefit, including libraries, museums, theatres, cinemas and sports stadiums; literature, including folklore, and the arts in all forms; shared open spaces essential to cultural interaction (e.g., parks, squares, avenues and streets); nature's gifts (e.g., seas, lakes, rivers, mountains, forests and nature reserves, including the flora and fauna found there); intangible cultural goods (e.g., languages, customs, traditions, beliefs, knowledge and history, and values); and the productive intercultural kinship arising where diverse groups, minorities and communities freely share the same territory.

2. *Accessibility* consists of effective and concrete opportunities to enjoy culture fully, within safe physical and affordable financial reach for all in both urban and rural areas, without discrimination. *Accessibility* also includes the right to seek, receive and share information on

all manifestations of culture in the language of the person's choice, and access to the means of expressions and dissemination.

3. *Acceptability* entails that laws, policies, strategies, programmes and measures related to the enjoyment of cultural rights should be formulated and implemented in ways that are acceptable to individuals and communities involved.

4. *Adaptability* refers to the flexibility and relevance of strategies, policies, programmes and measures in any area of cultural life, which must be respectful of cultural diversity.

5. *Appropriateness* refers to the realization of a specific human right in ways that are pertinent and suitable to a given cultural modality or context, and respectful of culture and cultural rights. The Committee stresses the "need to take into account, as far as possible, cultural values attached to, inter alia, food and food consumption, the use of water, the way health and education services are provided and the way housing is designed and constructed."

The Committee recognizes that the *right to take part in cultural life* may be subjected to certain limitations in certain circumstances such as in the case of "negative practices, including those attributed to customs and traditions, which infringe upon other human rights." However, any limitations must pursue a legitimate aim, be compatible with the nature of the right, be strictly necessary to promote general welfare in a democratic society, and be proportionate (i.e., least restrictive measures must be taken when several types of limitations may be imposed).

The Committee emphasizes the prohibition against discrimination in the exercise of the *right to take part in cultural life* and recognizes that the elimination of all forms of discrimination in this respect can be achieved with limited resources, by adopting, amending or repealing legislation or through publicity and information. The Committee also urges the adoption of temporary special measures with the sole purpose of achieving *de facto equality* in the enjoyment of the right.

The Committee identified persons and communities requiring special protection, including *women* who are equally entitled to exercise and enjoy the *right to take part in cultural life*, *children* especially as they play fundamental roles as bearers and transmitters of cultural values from one generation to the next*, older persons* especially for their creative, artistic and intellectual contributions and for their role as transmitters of information, knowledge, traditions and cultural values, *persons with disabilities* who should be provided with opportunities to realize their creative, artistic and intellectual potential, *minorities* whose rights to take part in, conserve, promote and develop their own culture should be respected, protected and fulfilled, *migrants* who require protection of their identities, language, religion, folklore and their rights to hold cultural, artistic and intercultural activities, *indigenous peoples* who require measures that guarantee that the exercise of their rights take due account of the values of cultural life, often strongly communal or expressed and enjoyed as a community, and are associated with their ancestral lands and their relationship with nature, and *persons living in poverty* recognizing that poverty restricts the ability of persons or groups to make significant contributions to the development of culture.

Finally, the Committee emphasizes the protection of cultural diversity as "an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, and requires the full implementation of cultural rights, including the right to take part in cultural life."

The Right of Reparation

The Right of Reparation[120] is the right to seek redress for a violation of a right; it becomes operational when other human rights are violated. The right of reparation relieves victims' suffering and affords them justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring future violations. The right of reparation imposes upon governments the obligation to prevent human rights violations, investigate violations, take appropriate action against violators and afford remedies to victims. It has four essential forms:

1. *Restitution,* which means re-establishing the situation that existed before the violation occurred; this could include restoring liberty, citizenship, residence, employment or property.

2. *Compensation*, which means providing monetary or financial amounts to countervail the damage victims suffered; such damage could include physical or mental harm, pain, suffering, emotional distress, lost opportunities, loss of earnings and earning capacity, medical treatment and rehabilitation, harm to property or business including lost profit, and harm to reputation or dignity.

3. *Rehabilitation*, which means providing legal, medical, psychological and all other measures and services to restore the dignity and reputation of the victim.

4. *Satisfaction and guarantee of non-repetition*, which means ending all violations, investigating all violations, and making full and public disclosure of the truth, publicly acknowledging the violations and accepting full responsibility for the violations, bringing perpetrators to justice, paying tribute to victims, including an accurate record of human rights violations in the educational curricula and teaching materials, and preventing the recurrence of violations by ensuring effective control over the military, strengthening the independence of the judiciary, strengthening the regulatory framework over economic and other activities, protecting the legal profession and human rights workers, and providing human rights education to all.

The UN Committee on the Elimination of Racial Discrimination has said that when indigenous peoples have been deprived of their lands and territories traditionally owned or otherwise inhabited or used by them without their free and informed consent, states must take

[120] Article 8, Universal Declaration of Human Rights; Article 2.3, International Covenant on Civil and Political Rights; Article 5, Declaration on the Right to Development; Article 6, International Convention on the Elimination of All Forms of Racial Discrimination; Article 2, Convention on the Elimination of All Forms of Discrimination Against Women; Articles 4 and 39, Convention on the Rights of the Child; Articles 19 and 24, International Convention for the Protection of All Persons from Enforced Disappearance; Article 23, International Convention on the Rights of All Migrant Workers and Members of their Families; and Article 13, Convention on the Rights of Persons with Disabilities; *see also* General Recommendation XXVI, "On article 6 of the Convention," adopted by the United Nations Committee on Racial Discrimination at its fifty-sixth session, 2000, UN Doc. HRI/GEN/1/Rev.9 (Vol. II), 27 May 2008.

steps to return those lands and territories. Only when, for factual reasons, states are not able to provide restitution, states may then provide just, fair and prompt compensation as far as possible in the form of lands and territories.[121]

Factors that Influence Human Rights Entitlements

The human rights based approach to development planning entails the equitable and nondiscriminatory delivery of entitlements to all on a universal basis through the formulation, implementation and review of appropriate rights-compliant strategies (*see* Part III, Chapter 8 for practical application of normative elements to strategy formulation and review). The normative elements of human rights (i.e., *availability, physical accessibility, economic accessibility, information accessibility, quality, safety and cultural acceptability*) are influenced by a variety of factors, many of which are within state control. These factors include, among others, infrastructure, power and energy, public transportation, traffic management and control, peace and order services, emergency services, agrarian reform, urban land reform, trade, national budget, land use regulations, investment climate, taxation, environmental policies, regulation, science and technology, etc. These factors may, in turn, be influenced by other factors that may or may not be under state control (population growth, migration, external environment, weather patterns, culture, etc.).

The relationship between factors within state control and human rights entitlements works on two levels: first, it helps identify where development attention *is* placed *vis-à-vis* where it *should be* placed within a particular sector: for example, are development interventions focused on the *availability* of education (by constructing school buildings and classrooms) and place little or no attention on the *quality of education* (by hiring teachers who may *not* be *competent in the subjects they teach* or by requiring the use of textbooks and teaching materials that contain *errors*)?

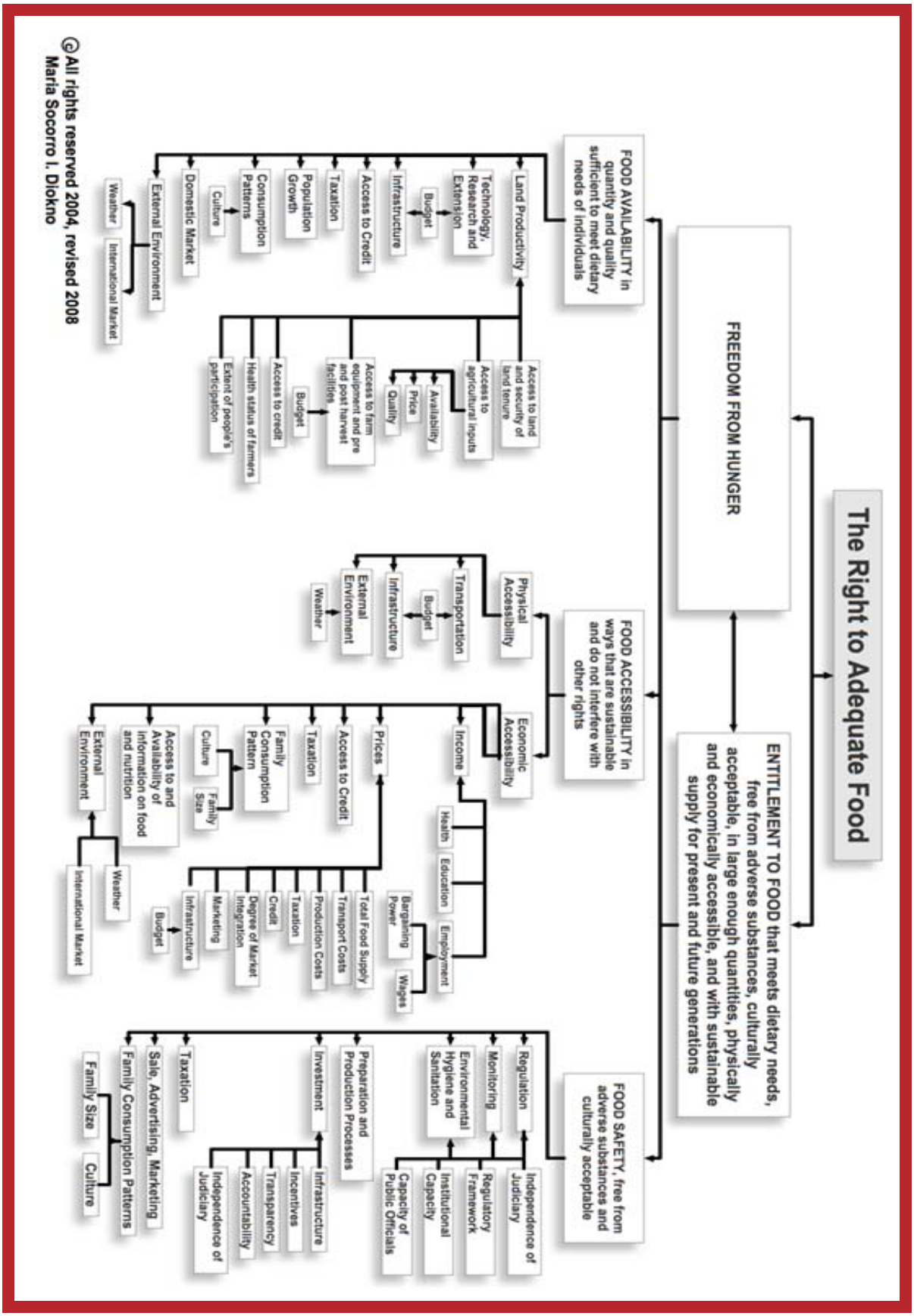
Second, it highlights the complementary roles of the different sectors of a country's economy that together contribute to the realization of human rights, and points to the need for holistic, complementary and integrated development plans. Consider, for instance, development planning to realize the right to adequate food (*Diagram 1*), which requires *complementary* and *integrated* policies and strategies in agriculture, agrarian reform, population, environment and natural resources, and trade, etc. to ensure *food availability*; in labor, finance, public works (infrastructure development), social welfare, trade and industry, health, education, etc. to ensure *food physical and economic accessibility*; and in justice, science and technology, health, environment and natural resources, etc. to ensure *food safety*.

Or consider development planning to realize the right to water (*Diagram 2*), which similarly requires *complementary* and *integrated* policies and strategies in finance, budget, infrastructure, environment and natural resources, investments, power and energy, population growth, density and ageing structure, science and technology and taxation, etc. to ensure *water availability*; in infrastructure, labor, health, education, customary practices including the differential roles of women and children in collecting water, social welfare, environment and natural resources, science

[121] 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.

and technology, budget, access to credit, investments, finance, etc. to ensure *water physical, economic and information accessibility*; and in justice, environment and natural resources, science and technology, budget, taxation, investments, etc. to ensure *water quality*.

Diagrams 1, 2, 3, 4, 5, 6 and *7* below present an *indicative* (not exhaustive) list of the different factors within and outside state control that impact on entitlements to the right to adequate food, the right to water, the right to education, the right to the highest attainable standard of health, the right to work, the right to social security, and the right to adequate housing.



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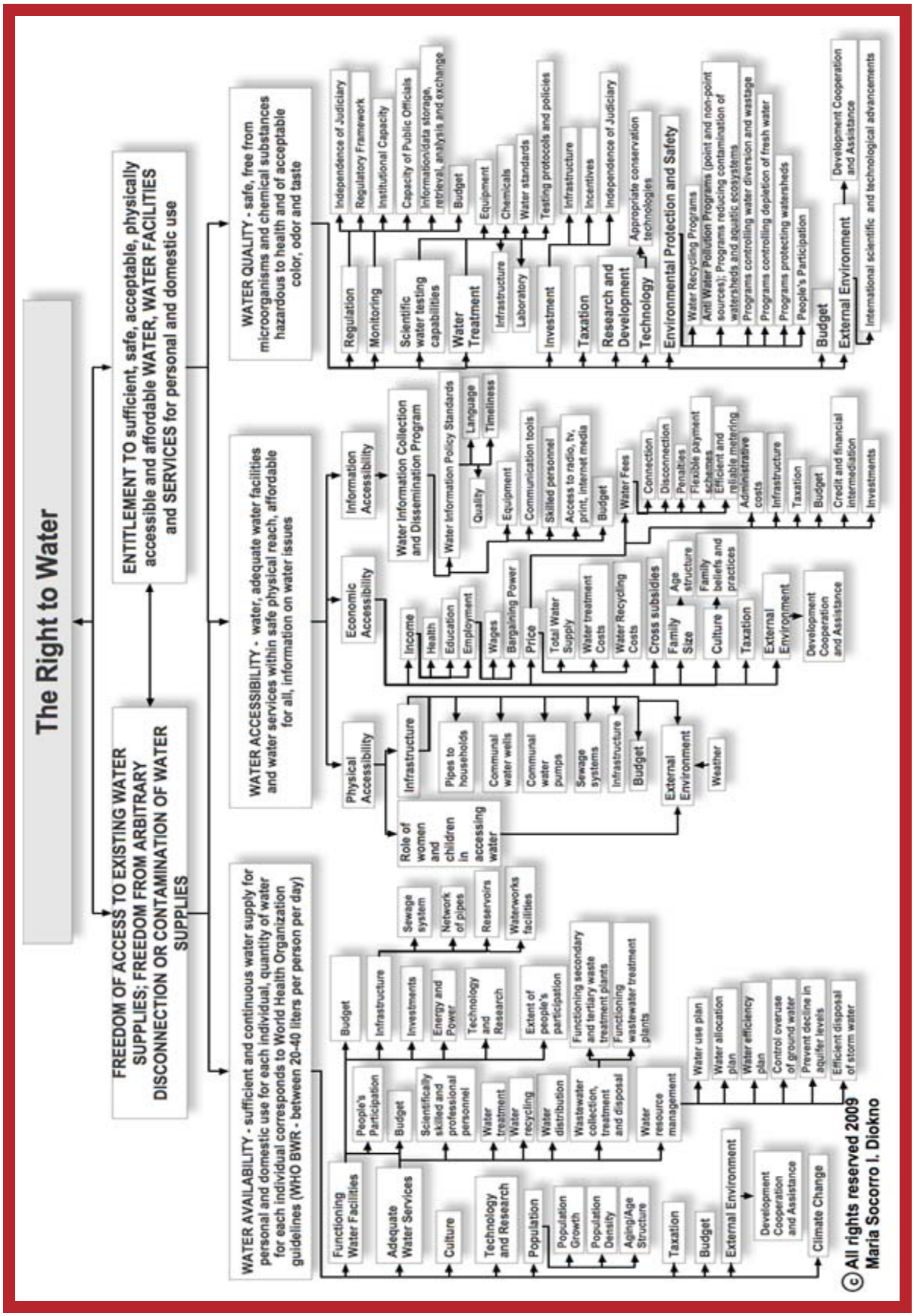
The Right to Water
FREEDOM OF ACCESS TO EXISTING WATER SUPPLIES; FREEDOM FROM ARBITRARY DISCONNECTION OR CONTAMINATION OF WATER SUPPLIES
ENTITLEMENT TO sufficient, safe, acceptable, physically accessible and affordable WATER, WATER FACILITIES and SERVICES for personal and domestic use
WATER AVAILABILITY - sufficient and continuous water supply for personal and domestic use for each individual, quantity of water for each individual corresponds to World Health Organization guidelines (WHO BWR - between 20-40 liters per person per day)
WATER ACCESSIBILITY - water, adequate water facilities and water services within safe physical reach, affordable for all, information on water issues
WATER QUALITY - safe, free from microorganisms and chemical substances hazardous to health and of acceptable color, odor and taste
Functioning Water Facilities
Adequate Water Services
Culture
Technology and Research
Population
Population Growth
Population Density
Aging/Age Structure
Taxation
Budget
External Environment
Development Cooperation and Assistance
Climate Change
People's Participation
Budget
Scientifically skilled and professional personnel
Water treatment
Water recycling
Water distribution
Wastewater collection, treatment and disposal
Water resource management
Water use plan
Water allocation plan
Water efficiency plan
Control overuse of ground water
Prevent decline in aquifer levels
Efficient disposal of storm water
Budget
Infrastructure
Investments
Energy and Power
Technology and Research
Extent of people's participation
Functioning secondary and tertiary waste treatment plants
Functioning wastewater treatment plants
Sewage system
Network of pipes
Reservoirs
Waterworks facilities
Role of women and children in accessing water
Physical Accessibility
Infrastructure
Pipes to households
Communal water wells
Communal water pumps
Sewage systems
Infrastructure
Budget
External Environment
Weather
Economic Accessibility
Income
Health
Education
Employment
Wages
Bargaining Power
Price
Total Water Supply
Water treatment Costs
Water Recycling Costs
Cross subsidies
Family Size
Age structure
Family beliefs and practices
Culture
Taxation
External Environment
Development Cooperation and Assistance
Information Accessibility
Water Information Collection and Dissemination Program
Water Information Policy Standards
Quality
Language
Timeliness
Equipment
Communication tools
Skilled personnel
Access to radio, tv, print, internet media
Budget
Water Fees
Connection
Disconnection
Penalties
Flexible payment schemes
Efficient and reliable metering
Administrative costs
Infrastructure
Taxation
Budget
Credit and financial intermediation
Investments
Regulation
Monitoring
Scientific water testing capabilities
Water Treatment
Independence of Judiciary
Regulatory Framework
Institutional Capacity
Capacity of Public Officials
Information/data storage, retrieval, analysis and exchange
Budget
Infrastructure
Laboratory
Equipment
Chemicals
Water standards
Testing protocols and policies
Investment
Infrastructure
Incentives
Independence of Judiciary
Taxation
Research and Development
Appropriate conservation technologies
Technology
Environmental Protection and Safety
Water Recycling Programs
Anti Water Pollution Programs (point and non-point sources); Programs reducing contamination of watersheds and aquatic ecosystems
Programs controlling water diversion and wastage
Programs controlling depletion of fresh water
Programs protecting watersheds
People's Participation
Budget
External Environment
Development Cooperation and Assistance
International scientific and technological advancements
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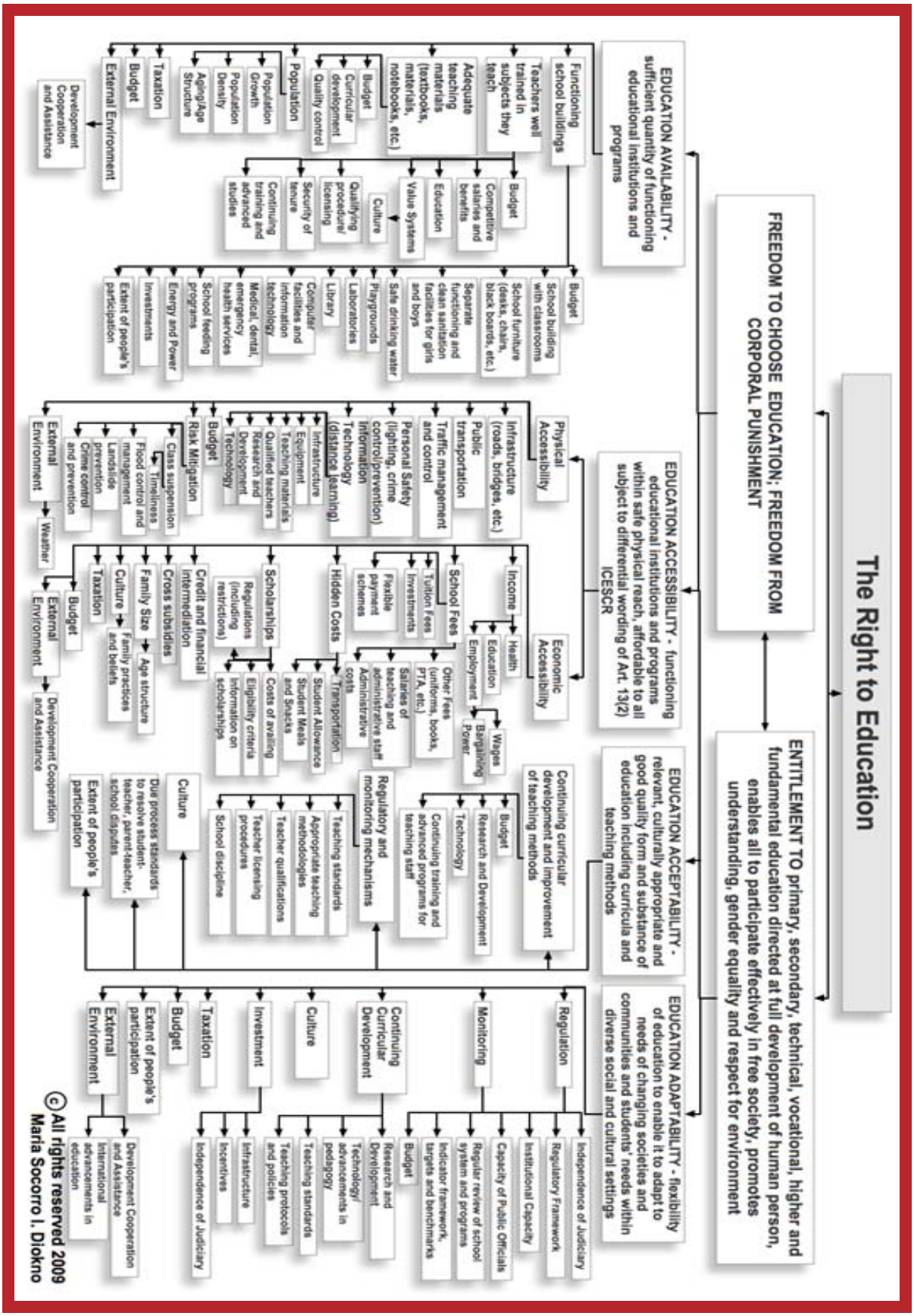
The Right to Education
FREEDOM TO CHOOSE EDUCATION; FREEDOM FROM CORPORAL PUNISHMENT
ENTITLEMENT TO primary, secondary, technical, vocational, higher and fundamental education directed at full development of human person, enables all to participate effectively in free society, promotes understanding, gender equality and respect for environment
EDUCATION AVAILABILITY - sufficient quantity of functioning educational institutions and programs
EDUCATION ACCESSIBILITY - functioning educational institutions and programs within safe physical reach, affordable to all subject to differential wording of Art. 13(2) ICESCR
EDUCATION ACCEPTABILITY - relevant, culturally appropriate and good quality form and substance of education including curricula and teaching methods
EDUCATION ADAPTABILITY - flexibility of education to enable it to adapt to needs of changing societies and communities and students' needs within diverse social and cultural settings
Functioning school buildings
Teachers well trained in subjects they teach
Adequate teaching materials (textbooks, materials, notebooks, etc.)
Budget
Competitive salaries and benefits
Education
Value Systems
Culture
Budget
Curricular development
Quality control
Budget
Qualifying procedure/ licensing
Security of tenure
Continuing training and advanced studies
Population
Population Growth
Population Density
Aging/Age Structure
External Environment
Taxation
Budget
Development Cooperation and Assistance
Budget
School building with classrooms
School furniture (desks, chairs, black boards, etc.)
Separate functioning and clean sanitation facilities for girls and boys
Safe drinking water
Playgrounds
Laboratories
Library
Computer facilities and information technology
Medical, dental, emergancy health services
School feeding programs
Energy and Power
Investments
Extent of people's participation
Physical Accessibility
Infrastructure (roads, bridges, etc.)
Public transportation
Traffic management and control
Personal Safety (lighting, crime control/prevention)
Information Technology (distance learning)
Infrastructure
Equipment
Teaching materials
Qualified teachers
Research and Development
Technology
Budget
Risk Mitigation
Class suspension
Timeliness
Flood control and management
Landslide prevention
Crime control and prevention
External Environment
Weather
Economic Accessibility
Income
Health
Education
Employment
Wages
Bargaining Power
School Fees
Tuition Fees
Investments
Other Fees (uniforms, books, PTA, etc.)
Flexible payment schemes
Salaries of teaching and administrative staff
Hidden Costs
Transportation costs
Student Allowance
Student Meals and Snacks
Scholarships
Costs of availing
Eligibility criteria
Information on scholarships
Regulations (including restrictions)
Credit and financial intermediation
Cross subsidies
Family Size
Age structure
Culture
Family practices and beliefs
Taxation
Budget
External Environment
Development Cooperation and Assistance
Continuing curricular development and improvement of teaching methods
Budget
Research and Development
Technology
Continuing training and advanced programs for teaching staff
Regulatory and monitoring mechanisms
Teaching standards
Appropriate teaching methodologies
Teacher qualifications
Teacher licensing procedures
School discipline
Culture
Due process standards to resolve student-teacher, parent-teacher, school disputes
Extent of people's participation
Regulation
Independence of Judiciary
Regulatory Framework
Institutional Capacity
Capacity of Public Officials
Monitoring
Regular review of school system and programs
Indicator framework, targets and benchmarks
Budget
Continuing Curricular Development
Research and Development
Technology/ advancements in pedagogy
Teaching standards and policies
Infrastructure
Incentives
Independence of Judiciary
Culture
Investment
Taxation
Budget
Extent of people's participation
External Environment
Development Cooperation and Assistance
International advancements in education
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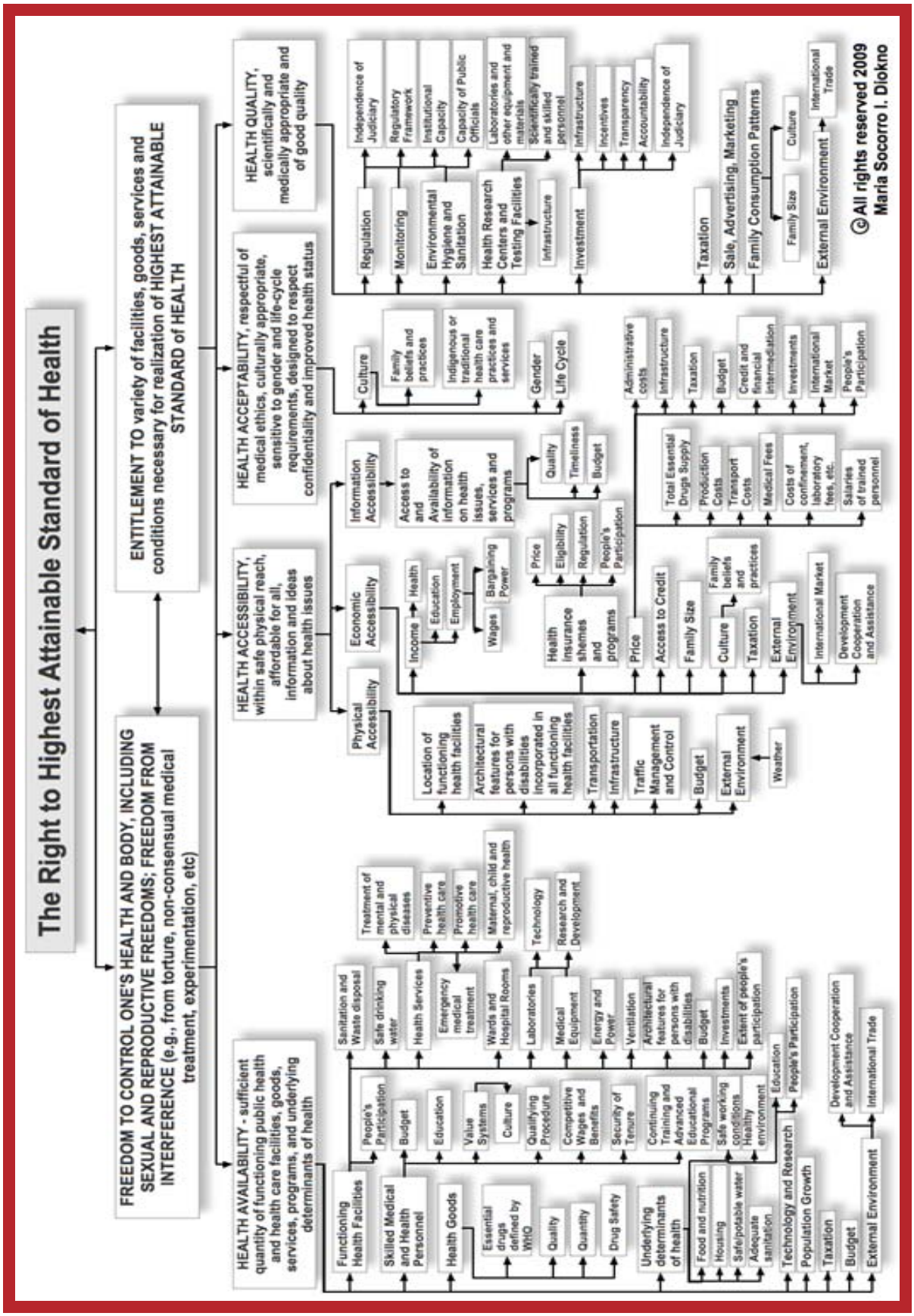
The Right to Highest Attainable Standard of Health
ENTITLEMENT TO variety of facilities, goods, services and conditions necessary for realization of HIGHEST ATTAINABLE STANDARD of HEALTH
FREEDOM TO CONTROL ONE'S HEALTH AND BODY, INCLUDING SEXUAL AND REPRODUCTIVE FREEDOMS; FREEDOM FROM INTERFERENCE (e.g., from torture, non-consensual medical treatment, experimentation, etc)
HEALTH QUALITY, scientifically and medically appropriate and of good quality
HEALTH ACCEPTABILITY, respectful of medical ethics, culturally appropriate, sensitive to gender and life-cycle requirements, designed to respect confidentiality and improved health status
HEALTH ACCESSIBILITY, within safe physical reach, affordable for all, information and ideas about health issues
HEALTH AVAILABILITY - sufficient quantity of functioning public health and health care facilities, goods, services, programs, and underlying determinants of health
Independence of Judiciary
Regulatory Framework
Institutional Capacity
Capacity of Public Officials
Laboratories and other equipment and materials
Scientifically trained and skilled personnel
Infrastructure
Incentives
Transparency
Accountability
Independence of Judiciary
Regulation
Monitoring
Environmental Hygiene and Sanitation
Health Research Centers and Testing Facilities
Infrastructure
Investment
Taxation
Sale, Advertising, Marketing
Family Consumption Patterns
Family Size
Culture
External Environment
International Trade
Culture
Family beliefs and practices
Indigenous or traditional health care practices and services
Gender
Life Cycle
Administrative costs
Infrastructure
Taxation
Budget
Credit and financial intermediation
Investments
International Market
People's Participation
Information Accessibility
Access to and Availability of information on health issues, services and programs
Quality
Timeliness
Budget
Total Essential Drugs Supply
Production Costs
Transport Costs
Medical Fees
Costs of confinement, laboratory fees, etc.
Salaries of trained personnel
Economic Accessibility
Income
Health
Education
Employment
Bargaining Power
Wages
Price
Eligibility
Regulation
People's Participation
Health Insurance shemes and programs
Price
Access to Credit
Family Size
Culture
Family beliefs and practices
Taxation
External Environment
International Market
Development Cooperation and Assistance
Physical Accessibility
Location of functioning health facilities
Architectural features for persons with disabilities incorporated in all functioning health facilities
Transportation
Infrastructure
Traffic Management and Control
Budget
External Environment
Weather
Treatment of mental and physical diseases
Preventive health care
Promotive health care
Maternal, child and reproductive health
Technology
Research and Development
Sanitation and Waste disposal
Safe drinking water
Health Services
Emergency medical treatment
Wards and Hospital Rooms
Laboratories
Medical Equipment
Energy and Power
Ventilation
Architectural features for persons with disabilities
Budget
Investments
Extent of people's participation
Education
People's Participation
Development Cooperation and Assistance
International Trade
Functioning Health Facilities
People's Participation
Budget
Education
Value Systems
Culture
Qualifying Procedure
Competitive Wages and Benefits
Security of Tenure
Continuing Training and Advanced Educational Programs
Safe working conditions
Healthy environment
Skilled Medical and Health Personnel
Health Goods
Essential drugs defined by WHO
Quality
Quantity
Drug Safety
Underlying determinants of health
Food and nutrition
Housing
Safe/potable water
Adequate sanitation
Technology and Research
Population Growth
Taxation
Budget
External Environment
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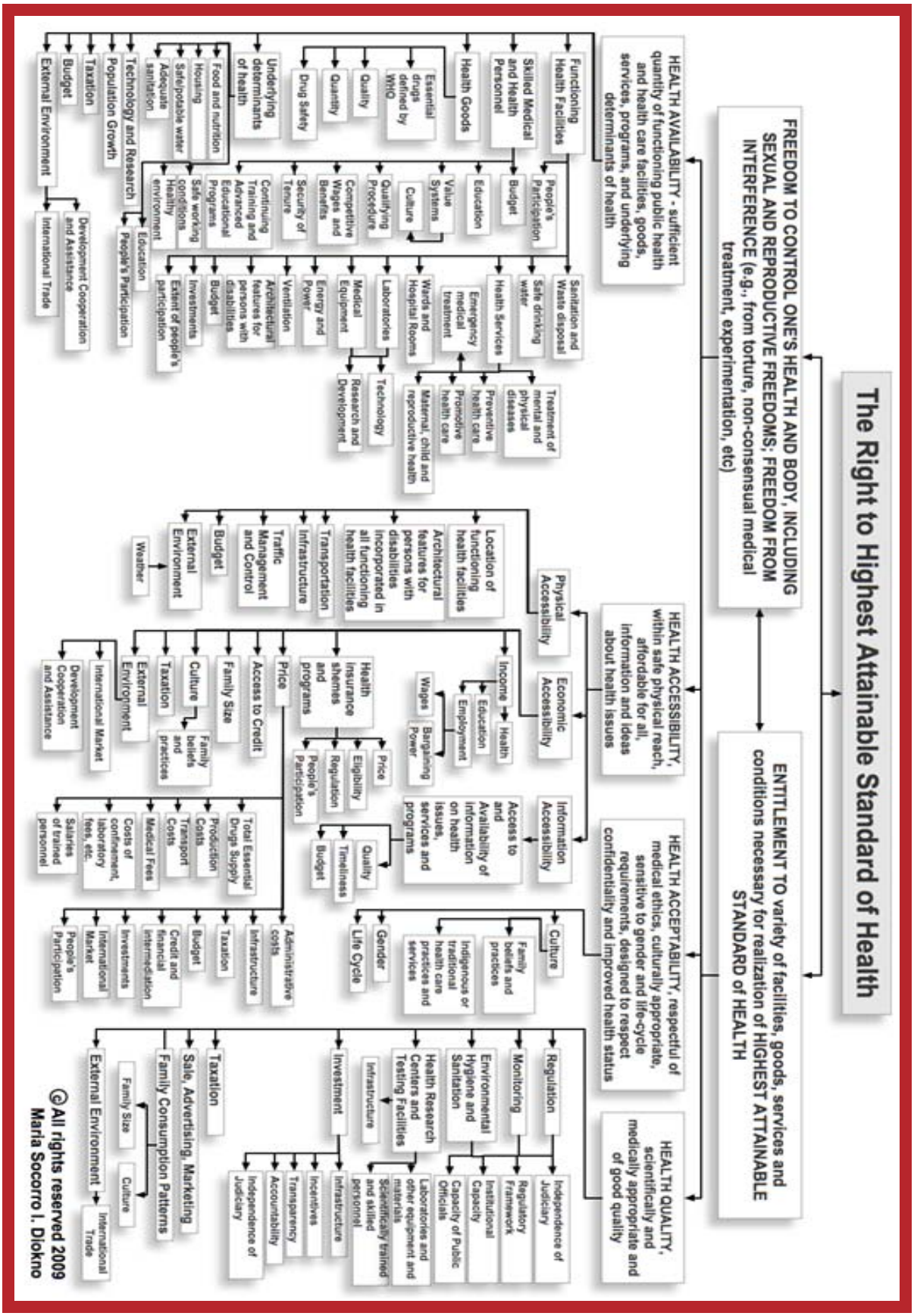
The Right to Highest Attainable Standard of Health
FREEDOM TO CONTROL ONE'S HEALTH AND BODY, INCLUDING SEXUAL AND REPRODUCTIVE FREEDOMS; FREEDOM FROM INTERFERENCE (e.g., from torture, non-consensual medical treatment, experimentation, etc)
ENTITLEMENT TO variety of facilities, goods, services and conditions necessary for realization of HIGHEST ATTAINABLE STANDARD of HEALTH
HEALTH AVAILABILITY - sufficient quantity of functioning public health and health care facilities, goods, services, programs, and underlying determinants of health
Functioning Health Facilities
People's Participation
Budget
Skilled Medical and Health Personnel
Health Goods
Essential drugs defined by WHO
Quality
Quantity
Drug Safety
Education
Value Systems
Culture
Qualifying Procedure
Competitive Wages and Benefits
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Sanitation and Waste disposal
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External Environment
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Income
Health
Education
Employment
Wages
Bargaining Power
Access to and Availability of information on health issues, services and programs
Quality
Timeliness
Budget
Health Insurance schemes and programs
Price
Eligibility
Regulation
People's Participation
Access to Credit
Family Size
Culture
Family beliefs and practices
Taxation
External Environment
International Market
Development Cooperation and Assistance
Total Essential Drugs Supply
Production Costs
Transport Costs
Medical Fees
Costs of confinement, laboratory fees, etc.
Salaries of trained personnel
Administrative costs
Infrastructure
Taxation
Budget
Credit and financial intermediation
Investments
International Market
People's Participation
HEALTH ACCEPTABILITY, respectful of medical ethics, culturally appropriate, sensitive to gender and life-cycle requirements, designed to respect confidentiality and improved health status
Culture
Family beliefs and practices
Indigenous or traditional health care practices and services
Gender
Life Cycle
Regulation
Independence of Judiciary
Regulatory Framework
Monitoring
Institutional Capacity
Environmental Hygiene and Sanitation
Capacity of Public Officials
Health Research Centers and Testing Facilities
Laboratories and other equipment and materials
Scientifically trained and skilled personnel
Infrastructure
Investment
Incentives
Transparency
Accountability
Independence of Judiciary
HEALTH QUALITY, scientifically and medically appropriate and of good quality
Taxation
Sale, Advertising, Marketing
Family Consumption Patterns
Family Size
Culture
External Environment
International Trade
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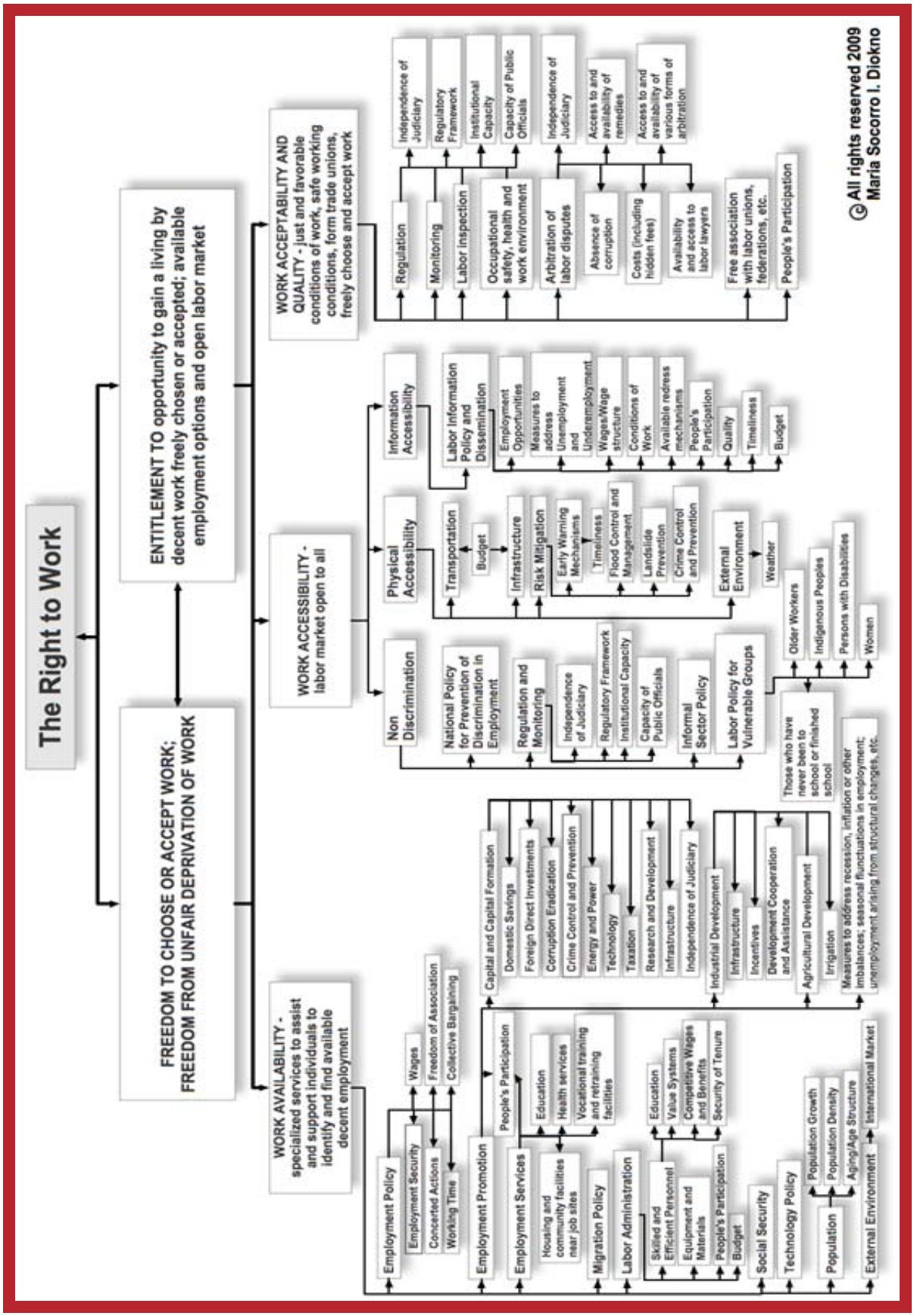

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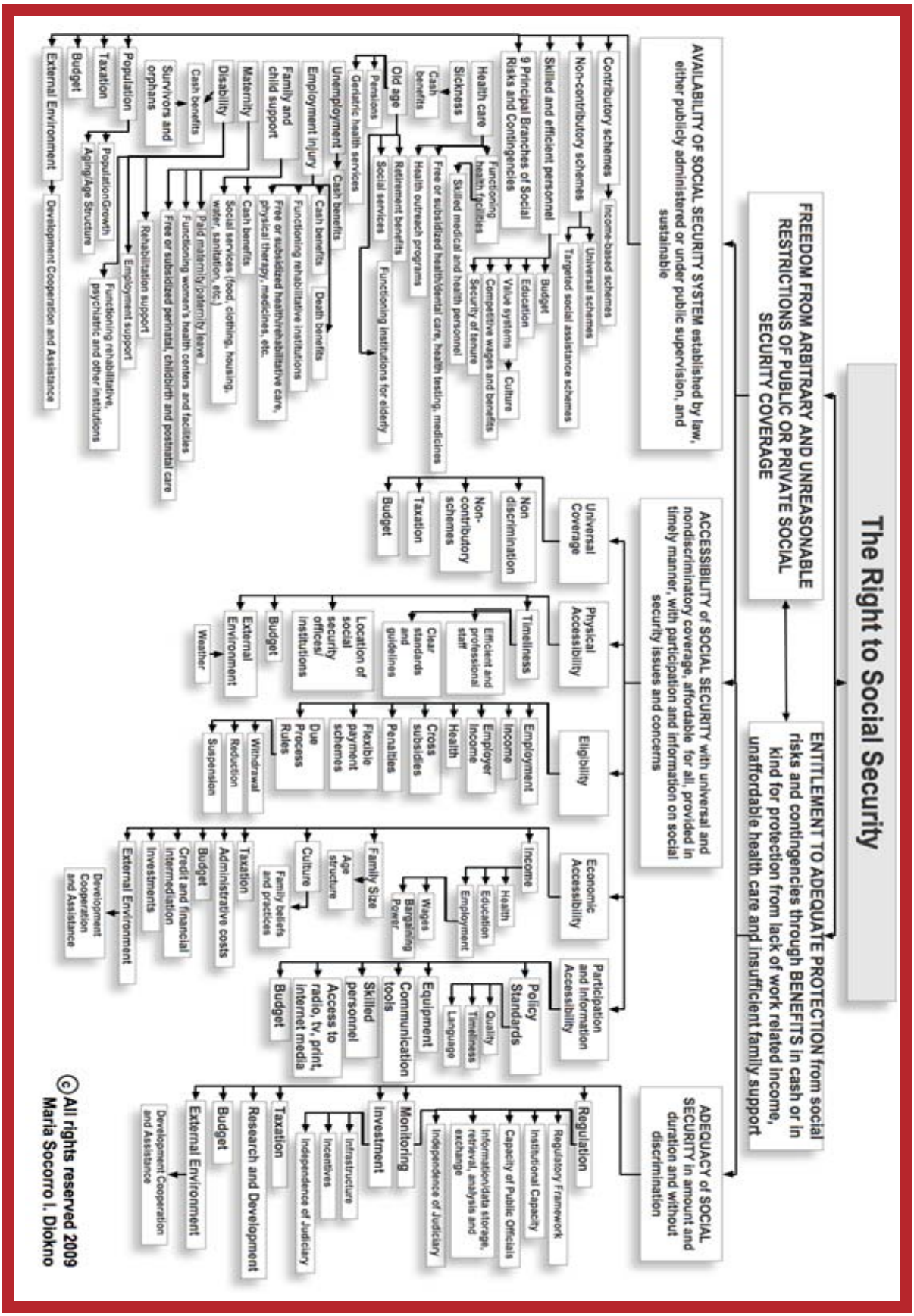
The Right to Social Security
FREEDOM FROM ARBITRARY AND UNREASONABLE RESTRICTIONS OF PUBLIC OR PRIVATE SOCIAL SECURITY COVERAGE
ENTITLEMENT TO ADEQUATE PROTECTION from social risks and contingencies through BENEFITS in cash or in kind for protection from lack of work related income, unaffordable health care and insufficient family support
AVAILABILITY OF SOCIAL SECURITY SYSTEM established by law, either publicly administered or under public supervision, and sustainable
Contributory schemes
Income-based schemes
Non-contributory schemes
Universal schemes
Targeted social assistance schemes
Skilled and efficient personnel
Budget
Education
Value systems
Culture
Competitive wages and benefits
Security of tenure
9 Principal Branches of Social Risks and Contingencies
Health care
Functioning health facilities
Skilled medical and health personnel
Free or subsidized health/dental care, health testing, medicines
Sickness
Cash benefits
Old age
Pensions
Retirement benefits
Health outreach programs
Social services
Functioning institutions for elderly
Geriatric health services
Unemployment
Cash benefits
Death benefits
Employment Injury
Cash benefits
Functioning rehabilitative institutions
Free or subsidized health/rehabilitative care, physical therapy, medicines, etc.
Family and child support
Cash benefits
Social services (food, clothing, housing, water, sanitation, etc.)
Maternity
Paid maternity/paternity leave
Disability
Cash benefits
Functioning women's health centers and facilities
Survivors and orphans
Free or subsidized perinatal, childbirth and postnatal care
Rehabilitation support
Population
Employment support
Taxation
PopulationGrowth
Functioning rehabilitative, psychiatric and other institutions
Aging/Age Structure
Budget
External Environment
Development Cooperation and Assistance
ACCESSIBILITY of SOCIAL SECURITY with universal and nondiscriminatory coverage, affordable for all, provided in timely manner, with participation and information on social security issues and concerns
Universal Coverage
Non discrimination
Non-contributory schemes
Taxation
Budget
Physical Accessibility
Timeliness
Efficient and professional staff
Clear standards and guidelines
Location of social security offices/ institutions
Budget
External Environment
Weather
Eligibility
Employment
Income
Employer Income
Health
Cross subsidies
Penalties
Flexible payment schemes
Due Process Rules
Withdrawal
Reduction
Suspension
Economic Accessibility
Income
Health
Education
Employment
Wages
Bargaining Power
Family Size
Age structure
Culture
Family beliefs and practices
Taxation
Administrative costs
Budget
Credit and financial intermediation
Investments
External Environment
Development Cooperation and Assistance
Participation and Information Accessibility
Policy Standards
Quality
Timeliness
Language
Equipment
Communication tools
Skilled personnel
Access to radio, tv, print, internet media
Budget
ADEQUACY of SOCIAL SECURITY in amount and duration and without discrimination
Regulation
Regulatory Framework
Institutional Capacity
Capacity of Public Officials
Information/data storage, retrieval, analysis and exchange
Independence of Judiciary
Monitoring
Investment
Infrastructure
Incentives
Independence of Judiciary
Taxation
Research and Development
Budget
External Environment
Development Cooperation and Assistance
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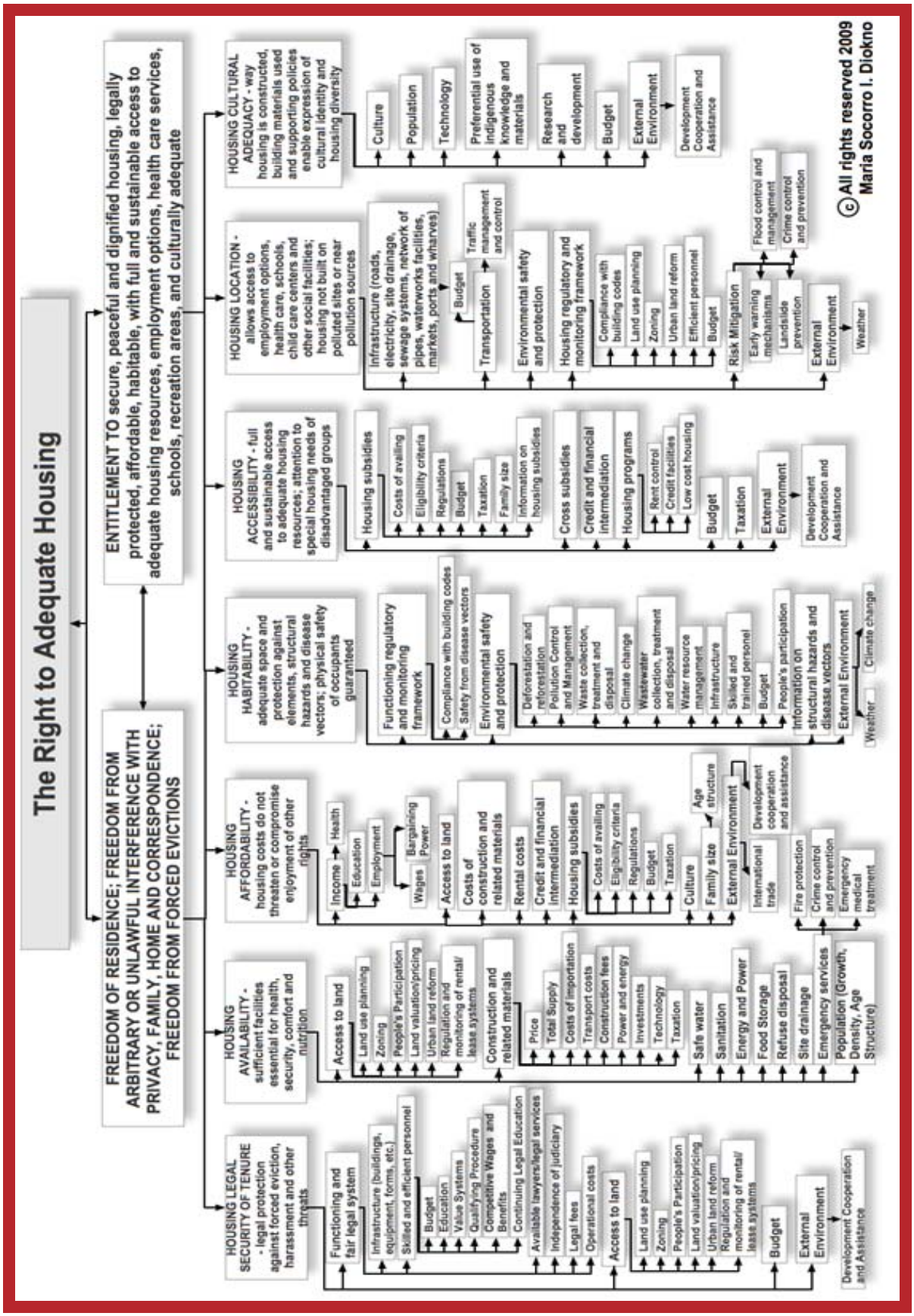
The Right to Adequate Housing
ENTITLEMENT TO secure, peaceful and dignified housing, legally protected, affordable, habitable, with full and sustainable access to adequate housing resources, employment options, health care services, schools, recreation areas, and culturally adequate
FREEDOM OF RESIDENCE; FREEDOM FROM ARBITRARY OR UNLAWFUL INTERFERENCE WITH PRIVACY, FAMILY, HOME AND CORRESPONDENCE; FREEDOM FROM FORCED EVICTIONS
HOUSING LEGAL SECURITY OF TENURE - legal protection against forced eviction, harassment and other threats
Functioning and fair legal system
Infrastructure (buildings, equipment, forms, etc.)
Skilled and efficient personnel
Budget
Education
Value Systems
Qualifying Procedure
Competitive Wages and Benefits
Continuing Legal Education
Available lawyers/legal services
Independence of judiciary
Legal fees
Operational costs
Access to land
Land use planning
Zoning
People's Participation
Land valuation/pricing
Urban land reform
Regulation and monitoring of rental/ lease systems
Budget
External Environment
Development Cooperation and Assistance
HOUSING AVAILABILITY - sufficient facilities essential for health, security, comfort and nutrition
Access to land
Land use planning
Zoning
People's Participation
Land valuation/pricing
Urban land reform
Regulation and monitoring of rental/ lease systems
Construction and related materials
Price
Total Supply
Costs of importation
Transport costs
Construction fees
Power and energy
Investments
Technology
Taxation
Safe water
Sanitation
Energy and Power
Food Storage
Refuse disposal
Site drainage
Emergency services
Population (Growth, Density, Age Structure)
HOUSING AFFORDABILITY - housing costs do not threaten or compromise enjoyment of other rights
Income
Health
Education
Employment
Bargaining Power
Wages
Access to land
Costs of construction and related materials
Rental costs
Credit and financial intermediation
Housing subsidies
Costs of availing
Eligibility criteria
Regulations
Budget
Taxation
Culture
Age structure
Family size
External Environment
Development cooperation and assistance
International trade
Fire protection
Crime control and prevention
Emergency medical treatment
HOUSING HABITABILITY - adequate space and protection against elements, structural hazards and disease vectors; physical safety of occupants guaranteed
Functioning regulatory and monitoring framework
Compliance with building codes
Safety from disease vectors
Environmental safety and protection
Deforestation and reforestation
Pollution Control and Management
Waste collection, treatment and disposal
Climate change
Wastewater collection, treatment and disposal
Water resource management
Infrastructure
Skilled and trained personnel
Budget
People's participation
Information on structural hazards and disease vectors
External Environment
Weather
Climate change
HOUSING ACCESSIBILITY - full and sustainable access to adequate housing resources; attention to special housing needs of disadvantaged groups
Housing subsidies
Costs of availing
Eligibility criteria
Regulations
Budget
Taxation
Family size
Information on housing subsidies
Cross subsidies
Credit and financial intermediation
Housing programs
Rent control
Credit facilities
Low cost housing
Budget
Taxation
External Environment
Development Cooperation and Assistance
HOUSING LOCATION - allows access to employment options, health care, schools, child care centers and other social facilities; housing not built on polluted sites or near pollution sources
Infrastructure (roads, electricity, site drainage, sewage systems, network of pipes, waterworks facilities, markets, ports and wharves)
Budget
Transportation
Traffic management and control
Environmental safety and protection
Housing regulatory and monitoring framework
Compliance with building codes
Land use planning
Zoning
Urban land reform
Efficient personnel
Budget
Risk Mitigation
Early warning mechanisms
Landslide prevention
Flood control and management
Crime control and prevention
External Environment
Weather
HOUSING CULTURAL ADEQUACY - way housing is constructed, building materials used and supporting policies enable expression of cultural identity and housing diversity
Culture
Population
Technology
Preferential use of indigenous knowledge and materials
Research and development
Budget
External Environment
Development Cooperation and Assistance
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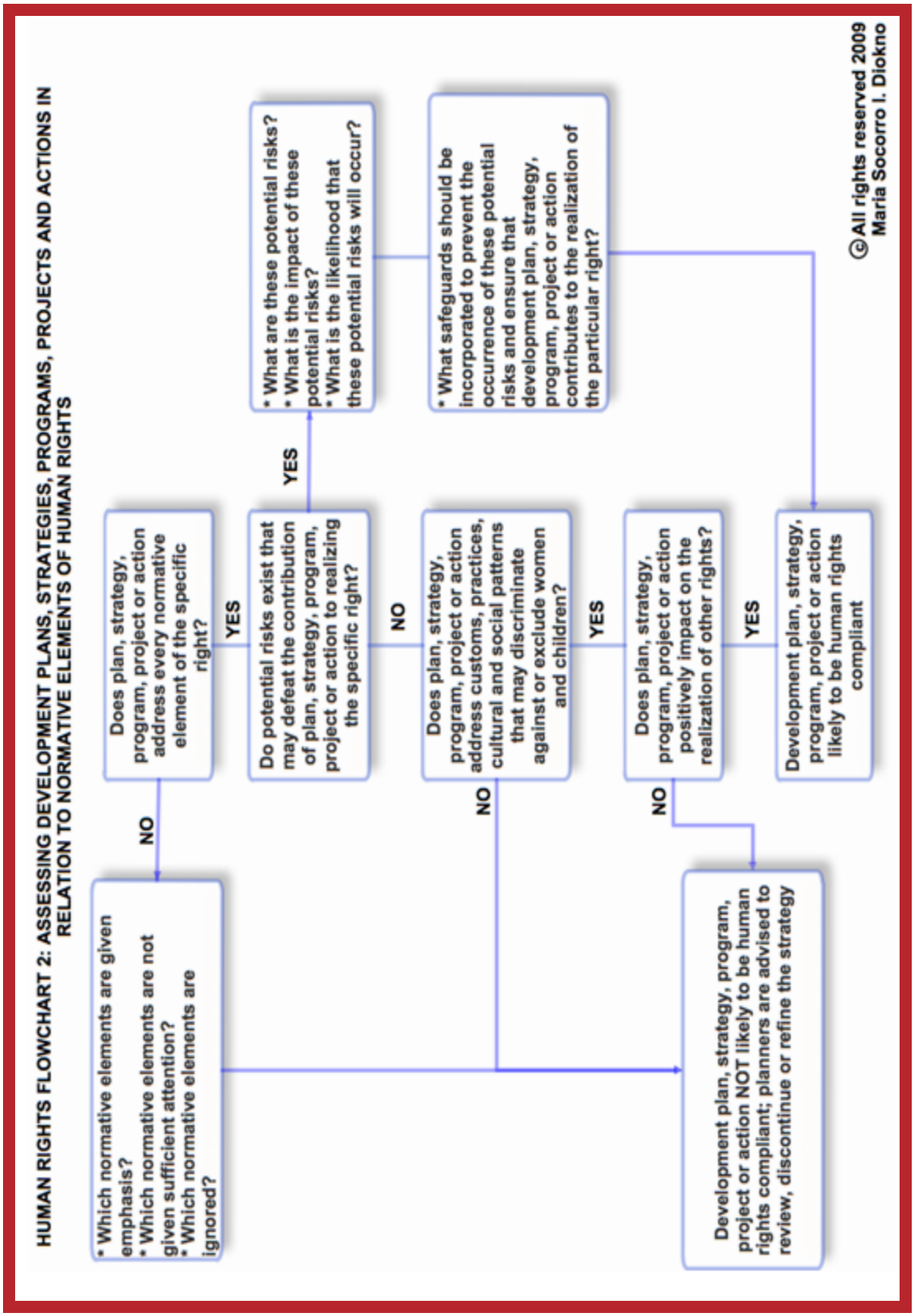
To apply the human rights based approach to development planning, development planners are encouraged to identify and link the different factors within and outside state control to human rights entitlements. This may be done by:

First, fully understanding the meaning and normative elements of human rights. The definition and normative elements of human rights may be gleaned from a review of the relevant provisions of the country's Constitution, as well as customarily and legally binding international human rights instruments, coupled with an in-depth study of the relevant General Comment adopted by the human rights treaty monitoring body.

Second, listing the different factors within and outside the control of the state that affect entitlements. These factors may include sectors of a country's economy, economic processes, public or private goods and services, institutional arrangements, administrative functions, and roles, customs, practices, or social or cultural patterns. To list the different factors, development planners should draw on their own insights, experiences and expertise as well as conduct additional research.

Third, identifying the different *kinds* of development strategies that should be pursued to ensure the equitable and nondiscriminatory delivery of human rights entitlements, noting who should be involved in designing, implementing and monitoring these strategies, when these strategies should be implemented, and how these strategies should be prioritized and pursued.

Once strategies have been formulated, development planners may use the following *Flowchart* to assess whether the strategy comprehensively addresses the normative elements of human rights or whether there is need to refine the strategy.


HUMAN RIGHTS FLOWCHART 2: ASSESSING DEVELOPMENT PLANS, STRATEGIES, PROGRAMS, PROJECTS AND ACTIONS IN RELATION TO NORMATIVE ELEMENTS OF HUMAN RIGHTS
Does plan, strategy, program, project or action address every normative element of the specific right?
NO
* Which normative elements are given emphasis?
* Which normative elements are not given sufficient attention?
* Which normative elements are ignored?
YES
Do potential risks exist that may defeat the contribution of plan, strategy, program, project or action to realizing the specific right?
YES
* What are these potential risks?
* What is the impact of these potential risks?
* What is the likelihood that these potential risks will occur?
* What safeguards should be incorporated to prevent the occurrence of these potential risks and ensure that development plan, strategy, program, project or action contributes to the realization of the particular right?
NO
Does plan, strategy, program, project or action address customs, practices, cultural and social patterns that may discriminate against or exclude women and children?
NO
YES
Does plan, strategy, program, project or action positively impact on the realization of other rights?
NO
YES
Development plan, strategy, program, project or action likely to be human rights compliant
Development plan, strategy, program, project or action NOT likely to be human rights compliant; planners are advised to review, discontinue or refine the strategy
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EXECUTIVE SUMMARY

Chapter 2, Human Rights and their Normative Entitlements in Development Planning, defines selected human rights in development (rights to life, participate in government, freedom of opinion and expression, peaceful assembly and association, equal access to public service, education, adequate food, highest attainable standard of health, adequate housing, water, social security, work, take part in cultural life, and reparation), identifies the normative elements inherent in these particular rights, and links human rights to factors within and outside the state's control that contribute to the equitable and nondiscriminatory delivery of entitlements to all on a universal basis. Chapter 2 includes Human Rights Diagrams 1 (*The Right to Adequate Food*), 2 (*The Right to Water*), 3 (*The Right to Education*), 4 (*The Right to the Highest Attainable Standard of Health*), 5 (*The Right to Work*), 6 (*The Right to Social Security*), and 7 (*The Right to Adequate Housing*), and Human Rights Flowchart 2 (*Assessing Development Plans, Strategies, Programs, Projects and Actions in Relation to Normative Elements of Human Rights*).