Human Rights Obligations in Development Planning

Contents

Principal Obligation of Progressive Realization
Core Obligations
Obligation of Equality
Obligation of Nondiscrimination
Obligations of International Cooperation and Assistance
Respect bound Obligations
Protection bound Obligations
Fulfillment bound Obligation
Violations of Human Rights
Table 4 Examples of Obligations of Conduct and of Result
5 Examples of Core Obligations
6 Examples of Human Rights Compliant and Non-Human Rights Compliant Strategies, Programs, Projects or Actions
Checklists 1 - Compliance with Human Rights Obligation of Progressive Realization
2 - Compliance with Human Rights Core Obligations
3 - Compliance with Human Rights Obligation of Equality
4 - Compliance with Human Rights Obligation of Nondiscrimination
5 - Compliance with Human Rights Obligation of International Cooperation and Assistance
6 - Compliance with Human Rights Respect-Bound Obligations
7 - Compliance with Human Rights Protection-Bound Obligations
8 - Compliance with Human Rights Fulfillment-Bound Obligations
Figures 4 Obligations Arising from the Right to Adequate Food
5 - Obligations Arising from the Right to Water
6 - Obligations Arising from the Right to Education
7 - Obligations Arising from the Right to the Highest Attainable Standard of Health
8 - Obligations Arising from the Right to Work
9 - Obligations Arising from the Right to Social Security
10 - Obligations Arising from the Right to Adequate Housing
Executive Summary

HUMAN RIGHTS OBLIGATIONS IN DEVELOPMENT PLANNING

All human rights carry corresponding obligations, mostly on States, to take a particular course of passive or active action and to achieve a certain result. These are often referred to as state obligations of *conduct* (i.e., to act in a way that respects human rights limitations and constraints) and *result* (i.e., to attain a result that is consistent with human rights). By entering into international human rights treaties, states such as the Philippines, contract legally binding obligations and are therefore required to comply with these obligations in good faith.

Obligations of *conduct* require from the state a specific course of conduct in the form of an action or an omission. Obligations of conduct require states to perform an action (such as, for instance, enacting a law, formulating and implementing a policy or program, or providing a public service or public good, etc.) or to refrain from performing a specified act (such as, for example, not engaging in torture, not imposing capital punishment on children, not discriminating against women, etc.). Obligations of conduct prescribe operative actions and/or specific impermissible actions.

Obligations of *result,* on the other hand, require states to bring about a specific situation or social practice or result, without prescribing the means to achieve that result. States are therefore free to choose all the appropriate means to realize the specific situation envisioned by human rights. Some human rights treaties suggest a particular means to achieve the desired result but the suggestions are by no means compulsory on the state. The state may adopt means other than what the treaties suggest so long as the means enable the state to concretely achieve the desired result.

Obligations of result have been described as more permissive or more variable than obligations of conduct, because obligations of result "allow the State an initial freedom of choice of the means by which the result is to be achieved [and] permit the State to achieve the result by completely obliterating, through different conduct, the consequences of any initial conduct calculated to frustrate the achievement of the result."[1]

A better understanding of obligations of *conduct* and of *result* can be gleaned from examples drawn from human rights treaties ratified by the Philippines. (*Table 4*)

[1] *Sixth Report on State Responsibility by Mr. Roberto Ago, Special Rapporteur – the internationally wrongful act of the Sate, source of international responsibility (continued)*, UN Doc. A/CN.4/302 and ADD.1, 2 & 3, in Yearbook of the International Law Commission, 1977, vol. II(1).

Table 4. Examples of Obligations of Conduct and of Result		
Treaty	**Obligations of Conduct**	**Obligations of Result**
ICCPR	▪ Not to impose death penalty on persons below 18 years of age and not to carry out death sentences on pregnant women (Article 6(5)) ▪ Enact law prohibiting propaganda for war and advocating national racism or religious hatred (Article 20)	▪ Guarantee of civil and political rights without discrimination
ICESCR	▪ Enact law punishing employment of children in hazardous work (Article 10(3)) ▪ Provide free and compulsory primary education to all children (Article 13(2)(a)) ▪ Establish adequate fellowship system in education (Article 13(2)(e))	▪ Progressive realization of economic, social and cultural rights (Article 2(1)) ▪ Achievement of steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms (Article 6(2)) ▪ Improvement of methods of production, conservation and distribution of food (Article 11(2)(a)) ▪ Conservation, development and diffusion of science and culture (Article 15)
CRC	▪ Establish social programs to protect children from abuse, neglect or exploitation (Article 19(2)) ▪ Investigate, treat and follow-up all instances of child maltreatment (Article 19(2)) ▪ Abolish traditional practices prejudicial to child health (Article 24(3)) ▪ Regulate intra- and inter-country adoption (Article 21)	▪ Protection of child (Articles 2(2) and 19(1)) ▪ Eradication of infant and child mortality (Article 24(2)(a)) ▪ Development of primary health care system (Article 24(2)(f)) ▪ Reduction in drop-out rates (Article 28(1)(e)
CERD	▪ Nullify laws and regulations which create or perpetuate racial discrimination (Article 2(1)(c)) ▪ Enact law punishing dissemination of ideas based on racial superiority or hatred (Article 4(a))	▪ Elimination of all forms of racial discrimination (Article 2(1))
CEDAW	▪ Refrain from discriminating against women (Article 2(d)) ▪ Repeal laws, rules and policies which discriminate against women (Article 2(g) ▪ Suppress all forms of traffic in women and exploitation of women (Article 6)	▪ Elimination of all forms of discrimination against women in all fields (Article 2) ▪ Modification of social and cultural patterns of men and women to eliminate prejudices, customary and other practices of discrimination against women (Article 5(1))

Table 4 (continued). Examples: Obligations of Conduct and of Result		
Treaty	**Obligations of Conduct**	**Obligations of Result**
CAT	▪ Promptly and impartially investigate all allegations of torture (Article 12) ▪ Systematically review interrogation rules, instructions, methods, practices and custody arrangements and treatment of all persons under any form of arrest or detention (Article 11)	▪ Prevention of torture under all circumstances (Article 2(1))
CMW	▪ Formulate and implement policies on migration (Article 65(1)(a)) ▪ Provide adequate consular and other services to migrant workers and their families (Article 65(2)) ▪ Prevent and eliminate illegal or clandestine movements and employment of migrant workers in irregular situation (Article 68)	▪ Creation of sound, equitable and humane conditions of international migration of workers and their families (Article 64)
CPD	▪ Modify or abolish laws, regulations, customs and practices that constitute discrimination against persons with disabilities (Article 4(b)) ▪ Include rights of persons with disabilities in all policies and programs (Article 4(c)) ▪ Employ teachers with disabilities, qualified in sign language and/or Braille (Article 24(4) ▪ Collect appropriate disaggregated information, statistical and research data (Article 31(1)) ▪ Designate focal points within government to implement CPD (Article 33(1)	▪ Full realization of all human rights of all persons with disabilities without discrimination (Article 4)

Obligations of *conduct* and of *result* are implicit in the different levels of human rights obligations; they form part of the obligation of *progressive realization; core* obligations; the obligation of *equality*; the obligation of *nondiscrimination*; obligations of *international cooperation and assistance*; the obligation to *respect* human rights; the obligation to *protect* human rights; and the obligation to *fulfill (facilitate* and *provide)* human rights.

Human rights obligations of *conduct* and of *result* have procedural, policy, substantive and resource implications on development planning. It is important to keep in mind the warning aired in the *Vienna Declaration and Programme of Action*: "while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights";[2] heeding this warning calls for effective development policies, strategies, programs and projects that consistently focus on equitable outcomes and those most at risk by guaranteeing adherence to human rights obligations.

Human rights obligations of *conduct* and of *result* serve as standards to review and assess existing policies, programs and projects and act as gauges to monitor and evaluate existing conditions and the impact of development interventions on people's lives. Human rights obligations of

[2] Part I, Paragraph 10, *Vienna Declaration and Programme of Action,* adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

result inform the formulation of development goals and objectives. Human rights obligations of *conduct* provide guidance on the development of strategies and targets as well as on the *process* of development planning.

Human rights obligations of *conduct* and of *result* influence the allocation and use of the country's resources. The UN Committee on Economic, Social and Cultural Rights has noted that inappropriate resource allocation can lead to covert discrimination, where, for instance, sharp disparities in spending policies result in differing qualities of education for persons residing in different geographic locations or where investments disproportionately favour expensive water supply services and facilities that are often accessible only to a small, privileged fraction of the population, rather than investing in services and facilities that benefit a far larger part of the population.[3]

Principal Obligation of Progressive Realization

Article 2.1 of the ICESCR imposes the principal obligation of progressive realization: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

The obligation of progressive realization consists of three undertakings: *first* is the *immediate* undertaking to *take deliberate, concrete and targeted steps*; this undertaking is *not qualified* or *limited* by other considerations. The means to satisfy the undertaking to take steps include adopting legislative measures, providing judicial remedies and implementing administrative, financial, educational and social measures.[4]

Second is the undertaking to *make maximum use of available resources*. Available resources include, among others, physical factors, natural resources, human power, existing productive capacities, financial resources in domestic currency and foreign exchange, and receipts from borrowings, grants and assistance programs, which are available for State use. In a Statement,[5] the UN Committee on Economic, Social and Cultural Rights elaborated on the meaning of the phrase "maximum available resources." The Committee stressed: "The undertaking by a State Party to use 'the maximum' of its available resources towards fully realizing the provisions of the Covenant entitles it to receive resources offered by the international community. In this regard, the phrase 'to the maximum of its available resources' refers to both the resources existing within

[3] *See* 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, 1990, UN Doc. E/C.12/1999/10 and General Comment No. 15, "The right to water (arts. 11 and 12)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its twenty-ninth session, 2002, UN Doc. E/C.12/2002/11.

[4] General Comment No. 3, "The Nature of States Parties Obligations (art. 2, para. 1 of the Covenant)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its fifth session, 1990, UN Doc. HRI/GEN/1/Rev. 2.

[5] "An Evaluation of the Obligation to Take Steps to the 'Maximum of Available Resources' Under an Optional Protocol to the Covenant," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its thirty-eighth session, 2007, UN Doc. E/C.12/2007/1.

a State as well as those available from the international community through international cooperation and assistance." [6]

Third is the undertaking to *achieve progressive realization*: "the concept of progressive realization constitutes recognition of the fact that full realization of economic, social and cultural rights will generally not be able to be achieved in a short period of time. … Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d'etre*, of the Covenant, which is to establish clear obligations for States Parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measure in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources."[7]

The principal obligation of progressive realization is an obligation of *result* and serves as the overall goal of national development planning. In practice, this means that all strategies, targets, programs and projects derived from development planning should constitute *steps* (such as, for example, legislative measures, judicial remedies, implementing arrangements, administrative, economic, financial, educational and social measures) towards the *progressive realization* of all human rights and that the national development plan, in and of itself, represents the maximum and efficient use of all available resources.

The UN Committee on the Rights of the Child has adopted the obligation of progressive realization as one of the obligations under CRC, but has stressed that the obligation must be exercised in light of Article 2 (the obligation of states to respect and ensure the rights set forth in the Convention within their jurisdiction without discrimination of any kind), Article 3(1) (the best interests of the child as a primary consideration in all actions concerning children), Article 6 (the child's inherent right to life and states' obligation to ensure to the maximum extent possible the survival and development of the child), and Article 12 (the child's right to express his or her views freely in "all matters affecting the child," those views being given due weight).[8]

The following *Checklist* may provide guidance to ensure adherence to the obligation of progressive realization in development planning.

[6] Paragraph 5, "An Evaluation of the Obligation to Take Steps to the 'Maximum of Available Resources' Under an Optional Protocol to the Covenant," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its thirty-eighth session, 2007, UN Doc. E/C.12/2007/1.

[7] Paragraph 9, General Comment No. 3, "The Nature of States Parties' Obligations (Art. 2, para. 1, of the Covenant)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its fifth session, 1990, UN Doc. HRI/GEN/1/Rev.2.

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

Human Rights Checklist 1: Compliance with Human Rights Obligation of Progressive Realization

Instructions:

1. Development planners complete this checklist to ensure adherence to the obligation of progressive realization. The obligation of progressive realization is the obligation of States to take steps, individually and through international cooperation and assistance, to the maximum of its available resources, to progressively achieve the full realization of human rights by all appropriate means. For more information on the obligation of progressive realization and its three undertakings, *see Part II, Chapter 3, HRBA Toolkit for Planning, Volume II, unabridged version.*
2. Answer the questions:

(a) Questions answered by "Yes" indicate that the plan, policy, strategy, program, project or action is likely to be compliant with the obligation of progressive realization.

(b) Questions answered by "No" indicate that the plan, policy, strategy, program, project or action is NOT likely to be compliant

(c) Use the "Remarks" section to identify potential safeguards and mechanisms of redress and accountability.

Guide Questions	Yes	No	Remarks
Does plan, policy, strategy, program, project or action constitute a deliberate, concrete and targeted step that the Philippines is required to take?	☐	☐	
Does plan, policy, strategy, program, project or action remove obstacles that the Philippines is required to remove?	☐	☐	
Does plan, policy, strategy, program, project or action make maximum use of available resources?	☐	☐	
■ Is retardation or halting of the progressive realization of a right within permissible limits?	☐	☐	
■ Is the retardation or halting due to lack of available resources?	☐	☐	
■ Is the retardation or halting due to *force majeure* ?	☐	☐	
Does plan, policy, strategy, program, project or action achieve the progressive realization of the human right?	☐	☐	

Core Obligations

Core obligations are *non-derogable*, and exist under any and all circumstances, including during situations of conflict, emergencies and natural disasters. They require states to ensure the satisfaction of the minimum essential levels of each human right.

Core obligations appear to be linked to the recognition that some obligations require a certain amount of resources that some States claim they do not possess. So "it is important to distinguish the inability from the unwillingness of a State to comply [with its obligations]. Should a State party argue that resource constraints make it impossible to provide access to food for those who are unable by themselves to secure such access, the State has to demonstrate that every effort has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations. … A State claiming that it is unable to carry out its obligation for reasons beyond its control therefore has the burden of proving that this is the case and that it has unsuccessfully sought to obtain international support to ensure the availability and

accessibility of the necessary food."[9] The UN Committee on Economic, Social and Cultural Rights emphasizes: "Even where a State faces severe resource constraints, whether caused by a process of economic adjustment, economic recession, climatic conditions or other factors, measures should be undertaken to ensure that the right to adequate food is especially fulfilled for vulnerable population groups and individuals."[10]

Core obligations may be summarized into three major categories, as indicated in *Table 5*: ensuring *nondiscrimination*; ensuring *equal access* for women and men to goods, services and resources implicit in economic, social and cultural rights; and adopting and implementing *national strategies and plans of action* to realize specific economic, social and cultural rights. Core obligations thus require national development planning to ensure nondiscrimination in its processes and outcomes; adopt measures, programs and projects that ensure equal access; and adopt and implement national strategies and plans of action for every economic, social and cultural right (*see* Part III, Chapter 8).

[9] Paragraph 17, 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..

[10] Paragraph 28, 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.

Table 5. Examples of Core Obligations Arising from Selected Human Rights
Right to Adequate Food: [11] ■Ensure access to minimum essential food which is nutritionally adequate and safe ■Ensure freedom from hunger for everyone ■ Adopt and implement national food strategy
Right to Education[12] ■ Ensure access to public educational institutions and programs on non-discriminatory basis ■Ensure that education conforms to objectives set out in article 13 (1) ■ Provide primary education for all ■ Adopt and implement national educational strategy ■ Ensure free choice of education without interference from State or third parties, subject to conformity with "minimum educational standards"
Right to Highest Attainable Standard of Health:[13]
■ Ensure access to health facilities, goods and services on non-discriminatory basis, especially for vulnerable groups ■ Ensure access to minimum essential food which is nutritionally adequate and safe ■ Ensure access to basic shelter, housing and sanitation, and adequate supply of safe and potable water ■ Provide essential drugs, defined under WHO Action Programme on Essential Drugs ■ Ensure equitable distribution of all health facilities, goods and services ■ Adopt and implement national public health strategy and plan of action ■ Ensure reproductive, maternal (pre- and post-natal) and child health care ■ Provide immunization against major infectious diseases occurring in community ■ Take measures to prevent, treat and control epidemic and endemic diseases ■ Provide education and access to information concerning main health problems in community, including methods of prevention and control ■ Provide appropriate training for health personnel, including education on health and human rights
Right to Water:[14] ■ Ensure access to minimum essential amount of water, which is sufficient and safe for personal and domestic uses to prevent disease ■Ensure access to water and water facilities and services on non-discriminatory basis, especially for disadvantaged groups ■ Ensure physical access to water facilities or services that provide sufficient, safe and regular water, with sufficient number of water outlets to avoid prohibitive waiting times, and at reasonable distance from household ■ Ensure personal security is not threatened when having to physically access water ■ Ensure equitable distribution of all available water facilities and services ■ Adopt and implement national water strategy and plan of action addressing whole population ■ Monitor extent of realization, or non-realization, of right to water ■ Adopt relatively low-cost targeted water programs to protect vulnerable groups Take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation

[11] 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.

[12] 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, 1990, UN Doc. E/C.12/1999/10.

[13] General Comment No. 14, "The right to the highest attainable standard of heath (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.

[14] General Comment No. 15, "The right to water (Arts. 11 and 12)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its twenty-ninth session, 2002, UN Doc. E/C.12/2002/11.

Table 5 (continued). Examples of Core Obligations Arising from Selected Human Rights
Right to Work:[15] ▪ Ensure access to employment, especially for vulnerable individuals and groups ▪ Avoid any measure that results in discrimination and unequal treatment in private and public sectors of disadvantaged ▪ Adopt and implement national employment strategy and plan of action based on and addressing concerns of all workers based on participatory and transparent process that includes employers' and workers' organizations
Right to Social Security:[16] ▪ Ensure access to social security scheme that provides minimum essential level of benefits to all to enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and most basic forms of education. If a State cannot provide minimum level for all risks and contingencies within its maximum available resources, the State may, after a wide process of consultation, select core group of social risks and contingencies ▪ Ensure access to social security systems or schemes on non-discriminatory basis, especially for disadvantaged individuals and groups ▪ Respect existing social security schemes and protect them from unreasonable interference ▪ Adopt and implement national social security strategy and plan of action ▪ Take targeted steps to implement social security schemes, particularly those that protect vulnerable individuals and groups ▪ Monitor extent of realization of right to social security

The following *Checklist* may assist development planners determine whether development plans, strategies, programs, projects or actions feature core obligations.

[194] General Comment No. 18, "The right to work Art. 6 of the Covenant) (thirty-fifth session 2005)," 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.

[195] 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.

Human Rights Checklist 2: Compliance with Human Rights Core Obligations

Instructions:

1. Development planners complete this checklist to ensure adherence to human rights core obligations. Core obligations require States to ensure the satisfaction of the minimum essential levels of each human right; core obligations are non-derogable and exist under any and all circumstances, including during situations of conflict, emergencies and natural disasters. For more information on core obligations, its major categories and examples, *see Part II, Chapter 3, HRBA Toolkit for Planning, Volume II, unabridged version.*

2. Answer the questions:

(a) Questions answered by "Yes" indicate that the plan, policy, strategy, program, project or action is likely to be compliant with core obligations arising from specific human rights.

(b) Questions answered by "No" indicate that the plan, policy, strategy, program, project or action is NOT likely to be compliant with core obligations arising from specific human rights. Development planners are advised to rethink and re-calibrate the plan, policy, strategy, program, project or action.

(c) Use the "Remarks" section to identify potential safeguards and mechanisms of redress and accountability.

Guide Questions	Yes	No	Remarks
Does plan, policy, strategy, program, project or action ensure equal access to the minimum essential goods, facilities and services required to realize a human right?	☐	☐	
Does plan, policy, strategy, program, project or action guarantee nondiscrimination in access to the minimum essential goods, facilities and services required to realize a human right?	☐	☐	
Is there a comprehensive national strategy to realize specific human rights?	☐	☐	
■ Does the comprehensive national strategy to realize specific human rights incorporate the substantive elements articulated by United Nations treaty monitoring bodies?	☐	☐	

Obligation of Equality

States have the non-derogable, primary, mandatory and immediate obligation to ensure both *de jure* and *de facto* equality in the exercise, enjoyment and realization of human rights. *De jure* or *formal* equality refers to equality achieved when laws or policies treat women and men in a neutral manner; *de facto* or *substantive* equality refers to equality achieved when the effects of laws, policies and practices do not maintain but alleviate the inherent disadvantages that women experience.[17] It is important to note that compliance with the obligation of equality is not achieved solely through the enactment of laws but requires resort to all appropriate means.

In understanding the obligation of equality, it is important to consider gender, which affects the equal enjoyment by women and men of their human rights. The UN Committee on Economic, Social and Cultural Rights defines gender as cultural expectations and assumptions about the behavior, attitudes, personality traits, and physical and intellectual capacities of men and women, based solely on their identity as men or women. The Committee notes that gender-based assumptions and expectations generally place women at a disadvantage and that gender-

[17] General Comment No. 16, "The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (art. 3 of the Covenant)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its thirty-fourth session, 2005, U N Doc. E/C.12/2005/4.

based assumptions about economic, social and cultural roles preclude the sharing of responsibility between men and women in all spheres necessary to equality.[18]

The 1999 World Survey on the Role of Women in Development defines gender as "the social meanings given to biological sex differences. It is an ideological and cultural construct, but is also reproduced within the realm of material practices; in turn, it influences the outcomes of such practices. It affects the distribution of resources, wealth, work, decision making and political power, and enjoyment of rights and entitlements within the family as well as public life. Despite variations across cultures and over time, gender relations throughout the world entail asymmetry of power between men and women as a pervasive trait. Thus, gender is a social stratifier, and in this sense, it is similar to other stratifiers such as race, class, ethnicity, sexuality, and age. It helps us understand the social construction of gender identities and the unequal structure of power that underlies the relationship between the sexes."[19]

The UN Committee on the Elimination of Discrimination against Women has noted that inequality is deeply entrenched in tradition, history and culture, including religious attitudes. The Committee urges states to "ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights." The Committee further noted that discrimination against women is often intertwined with discrimination on other grounds, and thus urges states to address the "ways in which any instances of discrimination on other grounds affect women in a particular way."[20]

In the exercise of its obligation of equality, states are mandated to refrain from discriminatory actions that directly or indirectly result in the denial of human rights. This means that states must not adopt, must repeal or rescind policies, administrative measures and programs that do not conform with the equal right of women and men. States must pay particular attention to *apparently gender-neutral laws, policies and programs*, and determine whether these are indeed gender-neutral or gender-biased.

States are also required to take steps to directly eliminate prejudices, customary and all other practices that perpetuate the notion of inferiority of either sex and the stereotyped roles for men and women, adopt programs, strategies and measures to protect women from discrimination, and address gender issues, factors and concerns in national plans and policies. Among the programs, strategies and measures designed to protect women are the provision of accessible remedies against discrimination; the conduct of awareness-raising and training programs on equality; the integration of equality in all educational institutions; the equal participation of men and women, boys and girls, in schools and other education programs; the equal representation of men and women in public office and decision making bodies; and the equal participation of men and women in development planning, decision making and in the benefits of development and all programs related to human rights.

[18] Paragraph 14, General Comment No. 16, "The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its thirty-fourth session, 2005, UN Doc. E/C.12/2005/4.

[19] Note 2 citing 1999 World Survey on the Role of Women in Development, United Nations, New York, 1999, page ix in General Recommendation 25, "Article 4, paragraph 1, of the Convention (temporary special measures)," adopted by the United Nations Committee on Discrimination against Women at its thirtieth session, 2004.

[20] 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.

In complying with the obligation of equality, states may pursue and implement *temporary special measures* to bring disadvantaged or vulnerable persons or groups of persons to the same substantive level as others. *Temporary special measures* must, however, be (a) necessary to redress *de facto* discrimination and (b) terminated when *de facto* equality is achieved.

The Philippines has adopted the *Harmonized Gender and Development Guidelines for Project Development, Implementation, Monitoring and Evaluation.*[21] In light of the recently enacted *Magna Carta of Women,* the review of the *Guidelines* is recommended, to determine whether the *Guidelines* sufficiently meet the dictates of the law, or require refinement or updating.

The *Checklist* below may provide guidance on the practical application of the obligation of equality to the formulation and review of development strategies.

[200] Adopted by the National Economic and Development Authority, the National Commission on the Role of Filipino Women and the Official Development Assistance Gender and Development Network, 2nd Edition, November 2007.

Human Rights Checklist 3: Compliance with Human Rights Obligation of Equality

Instructions:

1. Development planners complete this checklist to ensure adherence to the obligation of equality. The obligation of equality is the non-derogable, primary, mandatory and immediate obligation of States to ensure both *de jure* and *de facto* equality in the exercise, enjoyment and realization of human rights. *De jure* or formal equality refers to equality achieved when laws or policies treat women and men in a neutral manner; *de facto* or *substantive* equality refers to equality achieved when the effects of laws, policies and practices alleviate the inherent disadvantages women face. For more information on the obligation of equality, and the notions of *de jure* and *de facto* equality, *see Part II, Chapter 3, HRBA Toolkit for Planning, Volume II, unabridged version.*

2. Answer the questions:

(a) Questions answered by "Yes" indicate that the plan, policy, strategy, program, project or action is likely to be compliant with

(b) Questions answered by "No" indicate that the plan, policy, strategy, program, project or action is NOT likely to be compliant

(c) Use the "Remarks" section to identify potential safeguards and mechanisms of redress and accountability.

Guide Questions	Yes	No	Remarks
Does plan, policy, strategy, program, project or action directly eliminate prejudices, customary and all other practices that perpetuate the notion of inferiority of either sex or stereotyped roles of women and men?	☐	☐	
Does plan, policy, strategy, program, project or action protect women from discrimination?	☐	☐	
Does plan, policy, strategy, program, project or action address gender issues, factors or concerns?	☐	☐	
■ Does plan, policy, strategy, program, project or action provide women with accessible remedies against discrimination?	☐	☐	
Does plan, policy, strategy, program, project or action incorporate temporary special measures to ensure equality?	☐	☐	
Was plan, policy, strategy, program, project or action formulated with equal, active and genuine participation of women and men?	☐	☐	

Obligation of Nondiscrimination

States have the immediate and crosscutting obligation to guarantee nondiscrimination. Discrimination is defined as any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on prohibited grounds and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise on equal footing of human rights.[22] Discrimination is constituted not simply by unjustifiable "distinction, exclusion or restriction" but also by an unjustifiable "preference."[23] Discrimination has many forms,[24] such as:

[22] General Comment No. 20, "Nondiscrimination in Economic, Social and Cultural Rights (art. 2, para. 2)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its forty-second session, 2009, UN Doc. E/C.12/GC/20.

[23] General Recommendation XXXII, "The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination," adopted by the United Nations Committee on Racial Discrimination at its seventy-fifth session, August 2009.

[24] Paragraphs 8, 10, 11 and 12, General Comment No. 20, "Nondiscrimination in Economic, Social and Cultural Rights (art. 2, para. 2)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its forty-second session, 2009, UN Doc. E/C.12/GC/20.

- *Formal discrimination* or discrimination perpetrated through a State's constitution, laws and policy documents (for example, the provision in the Philippine Labor Code banning nighttime work for women);

- *Substantive discrimination* or discrimination in practice brought about by historical or persistent prejudice or attitudes towards an individual or group of individuals (for example, requiring married women to secure spousal consent as a prerequisite to accessing credit);

- *Racial segregation*, which may manifest itself in residential patterns influenced by group differences in income, sometimes combined with differences of race, color, descent, national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds (for example, segregation of Muslim communities in urban areas). The UN Committee on the Elimination of Racial Discrimination has noted that conditions of racial segregation can also arise without any initiative or direct involvement by public authorities. The Committee has recommended that states monitor trends that give rise to racial segregation and work for the eradication of negative consequences of racial segregation.[25]

- *Direct discrimination* or discrimination arising when a person is treated less favorably than another in a similar situation for reasons related to prohibited grounds (for example, where individuals are not hired for employment or not qualified for promotion because of their sexual orientation or gender identity); *direct discrimination* also includes detrimental acts or omissions based on prohibited grounds where there is no comparable or similar situation (for example, where married women are not eligible for employment or promotion simply because they may become pregnant);

- *Indirect discrimination* or discrimination arising from laws or policies that appear neutral but have a disproportionate impact on the exercise and enjoyment of human rights (for example, requiring marriage contracts as a condition for enrolment in school may discriminate against children whose parents are not legally married);

- *Systemic discrimination* or discrimination against some groups entrenched in social behavior and organization (for example, discrimination against indigenous peoples or against those of a particular ethnic origin); *systemic discrimination* also refers to legal rules, policies, practices or predetermined cultural attitudes in the public or private sector which create relative disadvantages for some and privileges for others;

- *Multiple* or *cumulative* or *intersectional*[26] discrimination or discrimination based on more than one of the prohibited grounds (for example, discrimination against persons with disabilities who are women and members of indigenous communities).

[25] General Recommendation XIX, "On article 1, paragraphs 3 of the Convention," adopted by the United Nations Committee on Racial Discrimination at its forty-seventh session, 1995, UN Doc. A/50/18.

[26] General Recommendation XXXII, "The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination," adopted by the United Nations Committee on Racial Discrimination at its seventy-fifth session, August 2009.

In order to comply with the obligation of nondiscrimination, states may grant *special and differential treatment* so long as the treatment is (a) reasonable; (b) objective; (c) legitimate; (d) compatible with human rights; (e) solely for the purpose of promoting the general welfare in a democratic society; and (f) demonstrate a clear and reasonable relationship of proportionality between the aim and the measures or omissions and their results.

The list of prohibited grounds of discrimination has recently been expanded to include the following:[27]

- Race and Color, which includes ethnic origin
- Sex, which includes gender stereotypes, prejudices and expected roles
- Language
- Religion
- Political or Other Opinion
- National or Social Origin, which refers to a person's state, nation or place of origin, and includes inherited social status and descent-based discrimination or birth
- Property, which includes real and personal property
- Birth, which includes descent especially on the basis of social stratification such as caste or analogous systems of inherited status; descent-based communities who suffer from discrimination may be identified through their inability or restricted ability to alter their inherited status, socially enforced restrictions on marriage outside the community, private and public segregation including in housing and education, access to public spaces, places of workshop and public sources of food and water, limitation of freedom to renounce inherited occupations or degrading or hazardous work, subjection to debt bondage, subjection to dehumanizing discourses referring to pollution or untouchability, and generalized lack of respect for their human dignity and equality[28]
- Disability
- Age
- Nationality
- Marital and family status
- Sexual orientation and gender identity
- Health status
- Place of residency
- Economic and social situation
- Membership-in-group, which must be based on self-identification, and includes association by blood (or consanguinity) and/or by affinity (or relation).

[27] Section III, Paragraphs 15 to 35, General Comment No. 20, "Nondiscrimination in Economic, Social and Cultural Rights (art. 2, para. 2)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its forty-second session, 2009, UN Doc. E/C.12/GC/20.

[28] 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.

The obligation of nondiscrimination requires states to refrain from any and all discriminatory practices; it also requires states to adopt laws to address discrimination by eliminating *formal* and *substantive* discrimination and to review and amend laws to ensure they do not discriminate or lead to discrimination.

In the field of national planning, the obligation of nondiscrimination requires states to adopt policies, plans and strategies to (a) address discrimination by public and private actors and address the consequences of such discrimination; (b) target those distinguished by the prohibited grounds; (c) adopt temporary special measures; (d) devote greater resources to traditionally neglected groups; (e) provide mechanisms and institutions for redress and accountability; and (f) base national strategies, policies and plans on appropriate indicators and benchmarks that are disaggregated on the basis of the prohibited grounds of discrimination. The UN Committee on Economic, Social and Cultural Rights stresses: "Economic policies such as budgetary allocations and measures to stimulate economic growth should pay attention to the need to guarantee the effective enjoyment of the Covenant rights without discrimination"[29]

To ensure the application of the obligation of nondiscrimination in the formulation and review of development strategies, development planners may resort to the following *Checklist*:

[29] General Comment No. 20, "Nondiscrimination in Economic, Social and Cultural Rights (art. 2, para. 2)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its forty-second session, 2009, UN Doc. E/C.12/GC/20.

Human Rights Checklist 4: Compliance with Human Rights Obligation of Nondiscrimination

Instructions:

1. Development planners complete this checklist to ensure adherence to the obligation of nondiscrimination. The obligation of nondiscrimination is the immediate and crosscutting obligation of States to guarantee nondiscrimination. Discrimination is defined as any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on prohibited grounds and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise on equal footing of human rights. For more information on the obligation of nondiscrimination, prohibited grounds of discrimination, and forms of discrimination, *see Part II, Chapter 3, HRBA Toolkit for Planning, Volume II, unabridged version.*

2. Answer the questions:

(a) Questions answered by "Yes" indicate that the plan, policy, strategy, program, project or action is likely to be compliant with the obligation of nondiscrimination.

(b) Questions answered by "No" indicate that the plan, policy, strategy, program, project or action is NOT likely to be compliant with the obligation of nondiscrimination. Development planners are advised to rethink and re-calibrate the plan, policy, strategy, program, project or action.

(c) Use the "Remarks" section to identify potential safeguards and mechanisms of redress and accountability.

Guide Questions	Yes	No	Remarks
Does plan, policy, strategy, program, project or action address discrimination by public and private actors?	☐	☐	
■ Does plan, policy, strategy, program, project or action incorporate special measures to ensure nondiscrimination?	☐	☐	
Does plan, policy, strategy, program, project or action address the consequences of past discrimination?	☐	☐	
Does plan, policy, strategy, program, project or action target those most distinguished by the prohibited grounds of discrimination?	☐	☐	
Does plan, policy, strategy, program, project or action devote greater resources to traditionally neglected groups in society?	☐	☐	
Does plan, policy, strategy, program, project or action provide accessible and transparent mechanisms for redress and accountability?	☐	☐	
Was plan, policy, strategy, program, project or action based on appropriate indicators and benchmarks disaggregated by the prohibited grounds of discrimination?	☐	☐	

Obligations of International Cooperation and Assistance

Obligations of international cooperation and assistance arise from Article 56 of the Charter of the United Nations, and Articles 2.1 and 23 of the ICESCR.

In the exercise of obligations of international cooperation and assistance, the UN Committee on Economic, Social and Cultural Rights reminds states of their twin obligations to "scrupulously avoid involvement in projects which, for example, ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation" and to "act as advocates of projects and approaches which contribute not

only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights."[30]

Obligations of international cooperation and assistance require states to conduct their activities with due regard for the human rights of the peoples of other states. These obligations operate on various levels and include:[31]

a. The obligation to ensure that economic, social and cultural rights are given due attention in all international agreements, whether bilateral or multilateral. In negotiating and adopting trade agreements, especially those concerning trade liberalization, states should ensure that a country's capacity to ensure the full realization of economic, social and cultural rights is not curtailed or inhibited. With respect to the right to social security, this obligation includes the adoption of reciprocal bilateral and multilateral agreements to coordinate or harmonize contributory social security schemes for migrant workers.

b. The obligation to refrain from imposing embargoes or similar measures that restrict the supply of food, water, essential medicines and medical equipment or that endanger conditions for food production and access to food, water and health care. The UN Committee on Economic, Social and Cultural Rights has stressed time and again that food, water, medicines and medical equipment "should never be used as an instrument of political and economic pressure." The Committee has reminded the international community to distinguish between "the basic objective of applying political and economic pressure upon the governing elite of the country to persuade them to conform to international law, and the collateral infliction of suffering upon the most vulnerable groups within the targeted country," when considering sanctions.[32]

c. The obligation to seek disaster relief and humanitarian assistance and the obligation to provide disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons. Disaster relief and humanitarian aid may be given in many forms: food supplies, potable water, clothing, medicines and medical supplies, medical missions, financial assistance, equipment, etc. Priority in the delivery of humanitarian aid goods and services should always be given to the most vulnerable groups in the population. With respect to food aid, the obligation requires that food aid must be provided in ways that will not adversely affect local producers and local markets, must be organized in ways to facilitate the return to food self-reliance and food aid products must be safe and culturally acceptable. With respect to medical aid, the obligation includes the collective responsibility of all states to address the possibility that disease outbreaks associated with natural disasters or calamities may be easily transmitted beyond borders.

[30] Paragraph 6, General Comment No. 2, "International technical assistance measures (art. 22 of the Covenant)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its fourth session, 1990, UN Doc. E/1990/23.

[31] *See* all General Comments adopted by the United Nations Committee on Economic, Social and Cultural Rights, UN Doc. HRI/GEN/1/Rev. 9 (Vol. I), 27 May 2008.

[32] Paragraph 4, General Comment No. 8, "The relationship between economic sanctions and respect for economic, social and cultural rights," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its seventeenth session, 1997, UN Doc. E/C.12/1997/8.

d. The obligation to assist poorer developing states to realize human rights. This obligation may be exercised through the facilitation of access to goods and services implicit in human rights and the provision of financial and technical assistance. The obligation must only be exercised depending on the availability of resources of the assisting state and when international assistance is provided in a manner consistent with human rights standards, is sustainable and culturally appropriate.

e. The obligation of international financial institutions and their regional counterparts such as the International Monetary Fund and the World Bank to pay greater attention to the protection of economic, social and cultural rights in their lending policies, credit agreements, and other international measures including those that deal with the debt crisis or structural adjustment or reform. This obligation also requires international financial institutions to refrain from policies and practices that adversely interfere with recognized human rights.

The UN Committee on the Rights of the Child stressed the need for international cooperation in the implementation of CRC and recommends that assistance provided by states should be human rights-based. The Committee urged states to meet internationally agreed targets, including the United Nations target for international development assistance of 0.7 percent of gross domestic product, and encouraged states that receive international aid and assistance to allocate a substantive part of that aid specifically to children. The Committee also endorsed the aims of the 20/20 initiative, to achieve universal access to basic social services of good quality on a sustainable basis, as a shared responsibility of developing and donor States. The Committee also urged United Nations agencies to provide appropriate technical assistance to implement CRC and to mainstream children's rights throughout their activities. The Committee also urged the World Bank Group, the International Monetary Fund and the World Trade Organization to ensure that their activities related to international cooperation and economic development give primary consideration to the best interests of children and promote full implementation of CRC.[212]

Obligations of international cooperation and assistance are particularly relevant to countries that face severe resource constraints and to countries that are vulnerable to severe weather conditions or are prone to natural disasters. The obligation implies that national development planning should include risk identification, risk management and mitigation strategies and identification of circumstances or conditions when resort to international cooperation and assistance is warranted. Development plans should also identify areas other than humanitarian aid and disaster relief where international cooperation and assistance (through technical assistance, grants in aid, and similar programs) may be sought. Finally, national development plans should outline the human rights parameters for bilateral and multilateral negotiations in all relevant fields and establish appropriate indicators to determine whether international agreements comply with the requirements of human rights obligations.

The *Checklist* below may assist development planners assess whether their plans, policies, strategies, programs, projects or actions comply with the obligation of international cooperation and assistance.

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

Human Rights Checklist 5: Compliance with Human Rights Obligations of International Cooperation and Assistance

Instructions:

1. Development planners complete this checklist to ensure adherence to the obligations of international cooperation and assistance. Obligations of international cooperation and assistance require States to conduct their activities with due regard for the human rights of peoples of other States and include the obligations to ensure due attention to economic, social and cultural rights in all international agreements; refrain from imposing embargoes or similar measures that restrict the supply of food, water, essential medicines and medical equipment or endanger conditions for food production and access to food, water and health care; seek and provide disaster relief and humanitarian assistance in times of emergency; assist poorer developing states to realize human rights; and the obligation of international financial institutions to pay greater attention to economic, social and cultural rights in lending policies, credit agreements and other measures. For more information on the nature and levels of obligations of international cooperation and assistance, *see Part II, Chapter 3, HRBA Toolkit for Planning, Volume II, unabridged version.*

2. Answer the questions:

(a) Questions answered by "Yes" indicate that the plan, policy, strategy, program, project or action is likely to be compliant with obligations of international cooperation and assistance.

(b) Questions answered by "No" indicate that the plan, policy, strategy, program, project or action is NOT likely to be compliant with obligations of international cooperation and assistance. Development planners are advised to rethink and re-calibrate the plan, policy, strategy, program, project or action.

(c) Use the "Remarks" section to identify potential safeguards and mechanisms of redress and accountability.

Guide Questions	Yes	No	Remarks
Are human rights promoted in international bilateral or multilateral agreements related to the plan, policy, strategy, program or action?	☐	☐	
Do trade negotiations or agreements related to the plan, policy, strategy, program, project or action limit access or availability of goods, services, resources or facilities implicit in human rights?	☐	☐	
Does plan, policy, strategy, program, project or action include seeking assistance from the international community in times of calamities or other disasters?	☐	☐	
■ Does plan, policy, strategy, program, project or action include disaster preparedness, risk identification, risk management and risk mitigation measures?	☐	☐	
Does plan, policy, strategy, program, project or action include seeking financial and/or technical assistance from the international community to enable the realization of human rights?	☐	☐	
■ Do conditions for the receipt of international assistance or cooperation contribute to the realization of human rights?	☐	☐	
■ Do conditions for the receipt of international assistance or cooperation enhance the country's capacity to realize human rights for all?	☐	☐	

Respect bound Obligations

The obligation to respect human rights requires states to abstain from doing anything that violates the integrity of the individual or infringes on the individual's freedom. The respect-bound obligation forbids states to act in any way that directly encroaches upon recognized rights and freedoms. It is, in essence, a prohibition against state interference. Although it appears that respect-bound obligations are negative in character, these obligations carry with them positive aspects. While the obligation to respect human rights requires States to desist from restricting human rights, at the same time, they demand that the state accept the corresponding duty to create and facilitate an economic, social and political environment conducive to the enjoyment, exercise and realization of human rights. The obligation to respect human rights is *immediate* and *unconditional*.

The obligation requires national development planning to, among others, refrain from incorporating strategies or measures resulting in forced evictions,[34] unless these are authorized by law, are compatible with the nature of the right to adequate housing, and solely for the purpose of promoting the general welfare in a democratic society; refrain from adopting targets, strategies, programs or projects that restrict or limit or prevent access to food, water, education, work, social security and other human rights; abstain from adopting programs or measures that limit access to contraceptives and other means of maintaining sexual and reproductive health; refrain from obstructing action taken by women in pursuit of their health goals or from restricting women's access to health services or clinics on the ground that women do not have the authorization of husbands, partners, parents or health authorities because they are unmarried or because they are women;[214] refrain from incorporating programs or measures that encourage censorship or withholding of information on health, nutrition and water issues and concerns; refrain from adopting policies, strategies or programs that result in diminution or pollution of water resources; refrain from policies, programs or projects that support deforestation; refrain from adopting targets, strategies, programs and projects that may appear gender-neutral but result in discrimination against women; and abstain from incorporating strategies that encourage child labor.

The *Checklist* below may provide guidance to ensure faithful compliance with obligations to respect human rights.

[213] General Comment No. 7, "The right to adequate housing (Art. 11.1): 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 IV, defines forced evictions as "permanent or temporary removal against their will of individuals, families and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."

[214] 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.

Human Rights Checklist 6: Compliance with Human Rights Respect-Bound Obligations

Instructions:

1. Development planners complete this checklist to ensure adherence to the obligation to respect human rights. Respect-bound obligations require States to abstain from doing anything that violates the integrity of the individual or infringes on the individual's freedoms. For more information on the obligation to respect human rights, *see Part II, Chapter 3, HRBA Toolkit for Planning, Volume II, unabridged version.*

2 . Answer the questions:

(a) Questions answered by "Yes" indicate that the plan, policy, strategy, program, project or action is likely to be compliant with respect-bound obligations.

(b) Questions answered by "No" indicate that the plan, policy, strategy, program, project or action is NOT likely to be compliant with respect-bound obligations. Development planners are advised to rethink and re-calibrate the plan, policy, strategy, program,

(c) Use the "Remarks" section to identify potential safeguards and mechanisms of redress and accountability.

Guide Questions	Yes	No	Remarks
Does plan, policy, strategy, program, project or action restrict or limit or prevent access to goods, services, resources, institutions or facilities inherent in human rights?	☐	☐	
Does plan, policy, strategy, program, project or action encourage censorship or withholding of information on health, water, food and nutrition, education, social security, housing, and work issues and concerns?	☐	☐	
Does plan, policy, strategy, program, project or action diminish or halt normative elements (availability, accessibility, quality, safety, acceptability) of human rights?	☐	☐	
Does plan, policy, strategy, program, project or action result in a violation of any human right of any individual or group?	☐	☐	
Does plan, policy, strategy, program, project or action include appropriate, transparent and accessible mechanisms for redress?	☐	☐	

Protection-Bound Obligations

The obligation to protect human rights compels states to prohibit others from violating recognized rights and freedoms. The protection-bound obligation binds states from taking any measures that would erode the legal and practical status of human rights, and imposes upon states the duty to act to preclude further deprivation. The protection-bound obligation places sufficient legal and policy emphasis on the full realization of human rights through a series of active measures, including the guarantee of access to legal remedies for any infringement caused by a third party. The protection-bound obligation requires states to prevent violations of human rights by third parties, meaning states must not connive with any third party who destroys the enjoyment or realization of human rights.

The UN Committee on the Elimination of Discrimination against Women has stressed that states may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence against women or fail to provide compensation. The Committee defined gender based violence as violence directed against a

woman because she is a woman or that affects women disproportionately; gender based violence includes actual mental, physical or emotional harm, threats, coercion, and other deprivation of liberty, sexual harassment, rape, abuse, sexual assault, and compulsory sterilization. The Committee recommended a series of actions to combat violence against women, including gender sensitive training of judicial and law enforcement officers and other public officials; compilation of statistics and research on the extent, causes and effects of violence and effectiveness of measures to prevent and deal with violence; identification of the nature and extent of attitudes, customs and practices that perpetuate violence against women, and the kinds of violence that result; education and public information programs to help eliminate prejudices that hinder women's equality; specific preventive and punitive measures to combat trafficking and sexual exploitation; effective complaints procedures and remedies including compensation and support services for women victims; and rehabilitation programs for perpetrators of domestic violence.[36]

The obligation to protect human rights reinforces the regulatory functions of the state and has many practical implications on national development planning, particularly as it relates to private sector participation in the country's life. The UN Committee on the Rights of the Child noted the serious impact of privatization on children's rights and emphasized states' legal obligation to ensure that private service providers must operate according to the dictates of CRC. The Committee emphasized: "enabling the private sector to provide services, run institutions and so on does not in any way lessen the State's obligation to ensure for all children within its jurisdiction the full recognition and realization of all rights in the Convention."[37]

Like the UN Committee on the Rights of the Child, the UN Committee on the Elimination of Discrimination against Women emphasized that "states cannot absolve themselves of responsibility … by delegating or transferring … powers to private sector agencies."[38]

The obligation to protect requires national development planning to, among others:[39]

- Incorporate strategies that ensure the continuous and sustainable supply of materials, goods and services necessary for the enjoyment of all human rights (for example, food, water, medicines, construction materials, etc.);

- Avoid adopting policies, strategies and targets that benefit already advantaged groups at the expense of vulnerable groups;

- Incorporate strategies and measures that regulate the provision of education in public and private schools, including teaching standards, teaching protocols, quality of textbooks, etc.;

[213] General Recommendation 19, "Violence against women," adopted by the United Nations Committee on Discrimination against Women at its eleventh session, 1992, UN Doc. A/47/38.

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

[217] 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.

[218] *See* all General Comments adopted by the United Nations Committee on Economic, Social and Cultural Rights, UN Doc. HRI/GEN/1/Rev. 9 (Vol. I), 27 May 2008.

- Incorporate strategies that regulate the food industry, including setting standards for the manufacture, production, processing, sale, distribution and price of food;

- Set and enforce standards in grading, sampling, tests, analysis, code of practice, advertising and packaging of food;

- Adopt strategies that require regular sanitary and hygienic inspections of food producers and sellers, laboratories, public and private hospitals, public and private educational institutions, etc.;

- Adopt strategies, programs and policies that require regular labor inspections;

- Adopt strategies, programs and policies that require regular home inspections to ensure compliance with building codes and safety from disease vectors and structural hazards;

- Adopt policies and mechanisms that strengthen the investigation and prosecution of food hoarders, food cartels etc.;

- Adopt programs on environmental hygiene and sanitation and on occupational safety health and work environment;

- Adopt strategies, programs and projects that regulate the health sector, including setting standards for the manufacture, production, processing, sale, distribution, advertising and marketing of health goods and products;

- Adopt policies and programs that regulate the construction industry, including setting ceilings on the costs of construction materials and on house rental costs;

- Adopt environmental programs, projects and strategies that target reforestation, combat soil erosion, sedimentation and siltation, control pollution, address climate change, and undertake geo-hazardous mapping;

- Adopt strategies, programs and projects that regulate the provision of water, including water quality standards, testing protocols and policies, and mechanisms to reduce water wastage in consumption, regularly monitor water quality in dams, reservoirs and distribution systems, control pollution of water resources through surveillance, disincentives, and pollution penalties;

- Incorporate strategies that set forth standards to govern water treatment, recycling, and distribution, wastewater collection, treatment and disposal, and water pricing that may include flexible payment schemes and cross subsidies;

- Adopt a water resource management plan, that: focuses on water use, water allocation and water efficiency, prevents the decline in aquifer levels, promotes efficient disposal of

storm water, controls water pollution at point and nonpoint sources, controls water diversion and wastage, and prevents the depletion of fresh water;

- Adopt strategies, programs and projects that regulate the pre-need industry and other social security and social insurance schemes, including setting standards for the advertising and marketing of related products and services and price and payment schemes;

- Adopt and enforce strategies to eradicate corruption in public life;

- Adopt regulatory mechanisms relating to child-care institutions, services and facilities and intra- and inter-country adoption;

- Adopt immediate and effective measures in teaching, education, culture and information to combat prejudice and promote understanding, tolerance and friendship and to raise awareness, combat stereotypes, prejudices and harmful practices; and

- Adopt policies, strategies, measures and mechanisms to enable an appropriate, effective, fair and independent legal system to promptly and impartially investigate all instances of human rights violations (including abuse, exploitation and trafficking in women and children, abuse, exploitation and violence against persons with disabilities, illegal or clandestine movements and employment of migrant workers) and provide redress and remedies for human rights violations including a variety of dispositions for children in conflict with the law.

Adherence of development plans, strategies, program, projects and activities with the obligation to protect human rights may be assessed through the use of the following *Checklist*.

Human Rights Checklist 7: Compliance with Human Rights Protection-Bound Obligations

Instructions:

1. Development planners complete this checklist to ensure adherence to the obligation to protect human rights. Protection-bound obligations require States to prohibit others from violating recognized rights and freedoms. For more information on the obligation to protect human rights, see Part II, Chapter 3, HRBA Toolkit for Planning, Volume II, unabridged version.

2. Answer the questions:

(a) Questions answered by "Yes" indicate that the plan, policy, strategy, program, project or action is likely to be compliant with protection-bound obligations.

(b) Questions answered by "No" indicate that the plan, policy, strategy, program, project or action is NOT likely to be compliant with protection-bound obligations. Development planners are advised to rethink and re-calibrate the plan, policy, strategy, program, project or action.

(c) Use the "Remarks" section to identify potential safeguards and mechanisms of redress and accountability.

Guide Questions	Yes	No	Remarks
Does plan, policy, strategy, program, project or action ensure sustainable and continuous supply of goods, services, resources or facilities provided by the public and private sectors?	☐	☐	
Does plan, policy, strategy, program, project or action ensure that no benefits are given to already advantaged groups at the expense of vulnerable groups?	☐	☐	
Does plan, policy, strategy, program, project or action include measures that regulate the private sector?	☐	☐	
Does plan, policy, strategy, program, project or action address corruption and abuse?	☐	☐	
Does plan, policy, strategy, program, project or action include appropriate quality and safety standards?	☐	☐	
Does plan, policy, strategy, program, project or action provide for fair, prompt and immediate investigation of all instances of human rights violations, including victim redress and remedies?	☐	☐	

Fulfillment-Bound Obligation

The obligation to fulfill has two dimensions: *obligation to fulfill (facilitate or promote)* and *obligation to fulfill (provide)*.

The obligation to fulfill (facilitate or promote) human rights requires states to actively create conditions aimed at achieving full realization of human rights. This obligation also requires states to take necessary measures to ensure that each individual has the opportunity to obtain the entitlements of human rights that cannot be secured by personal or individual efforts alone. The obligation to fulfill human rights has been characterized as the *most interventionary obligation* and as a *programme obligation*. It implies a long-term view, which requires financial inputs which cannot be contributed by individuals alone, and which involves issues of public expenditures, state regulation of the economy, basic services, taxation, and related redistributive measures. The fulfillment-bound obligation requires more from states than mere legislation; it requires states to

take measures that actually promote the realization of human rights. The fulfillment-bound obligation requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of human rights.[40]

The obligation to fulfill (facilitate or promote) is central to national development planning; for it involves many current programs of government including agrarian reform, urban land reform, environmental protection, research and development, technological advancement, etc. It requires the adoption and implementation of development strategies, programs, projects and measures that seek first and foremost to realize human rights for all.

The UN Committee on Economic, Social and Cultural Rights, has noted that that the obligation to fulfill (provide) human rights is not one that merely provides, but one that fulfills, so that the state is called upon as the ultimate provider of productive resources and, if necessary, goods and services.[41] The obligation to fulfill (provide) requires the adoption and implementation of development strategies, programs and projects that, among others: establish housing subsidies and housing finance for those unable to obtain housing; provide education for all, but the extent of this obligation is not uniform for all levels of education;[42] design and develop educational curricula; develop a system of schools, including building school buildings with toilets for girls and boys and with continuous supply of potable water, properly ventilated classrooms with black boards, desks and chairs, delivering education, providing quality teaching materials and textbooks, training teachers and paying them domestically competitive salaries, etc.; regularly implement immunization programs against major infectious diseases; provide sexual and reproductive health goods and services including safe motherhood; provide sufficient number of hospitals, clinics and other health related facilities; provide public, private or mixed health insurance system affordable for all; regularly conduct health information/health awareness campaigns on, among others, HIV-AIDs, sexual and reproductive health, traditional practices, domestic violence, abuse of alcohol, use of tobacco, drugs and other harmful substances, etc.; provide continuous supply of safe and potable water to prisoners and detainees; establish noncontributory schemes or other social assistance measures to support individuals and groups unable to make sufficient contributions for their own protection; and design low-cost and alternative social security schemes to immediately cover those without access to social security.

When individuals or groups are unable to realize their rights by the means at their disposal, for reasons beyond their control, the state also has the obligation to fulfill (provide) the right in question. This obligation also applies to persons who are victims of natural or other disasters, including armed conflict.

The *Checklist* below may provide development planners with guidance on ensuring adherence to the obligations to fulfill human rights.

---

[40] Paragraph 6, Part II, The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.

[41] Rolf Kunnemann, "Violations of the Right to Food," in Theo C. van Boven, Cees Flinterman and Ingrid Westendorp (eds.), The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, SIM Special No. 20, SIM, Utrecht 1998, at 171.

[42] *Note* differential wording in the *International Covenant on Economic, Social and Cultural Rights*; *see also* 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, 1990, UN Doc. E/C.12/1999/10.

Human Rights Checklist 8: Compliance with Human Rights Fulfillment-Bound Obligations

Instructions:

1. Development planners complete this checklist to ensure adherence to the twin dimensions of the obligation to fulfill human rights. The obligation to fulfill (facilitate or promote) human rights requires States to actively create conditions to achieve the full realization of human rights. The obligation to fulfill (provide) human rights arises whenever individuals or groups are unable to realize their rights by the means at their disposal for reasons beyond their control. For more information on fulfillment-bound obligations, *see Part II, Chapter 3, HRBA Toolkit for Planning, Volume II, unabridged version.*

2. Answer the questions:

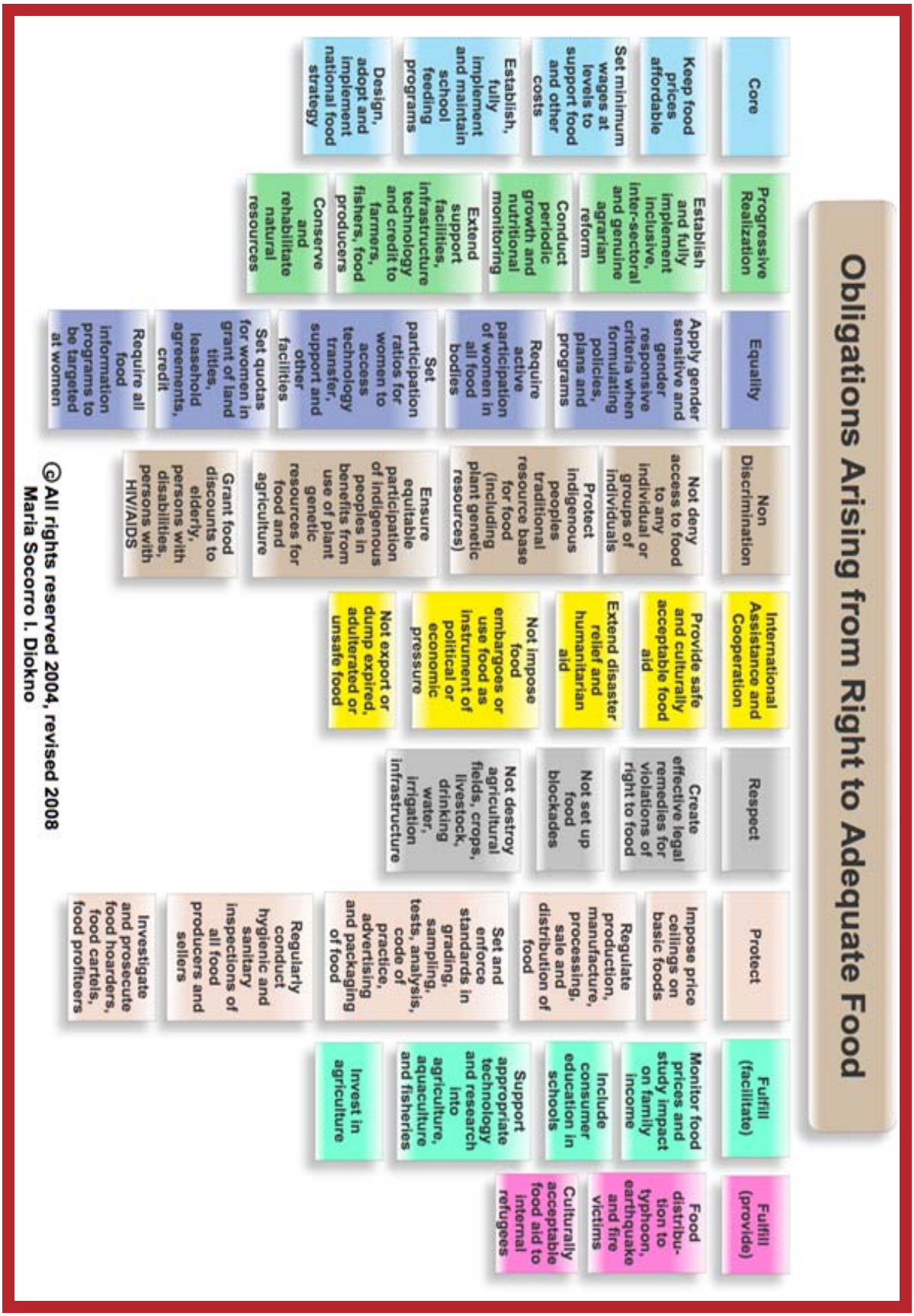
(a) Questions answered by "Yes" indicate that the plan, policy, strategy, program, project or action is likely to be compliant with fulfillment-bound obligations.

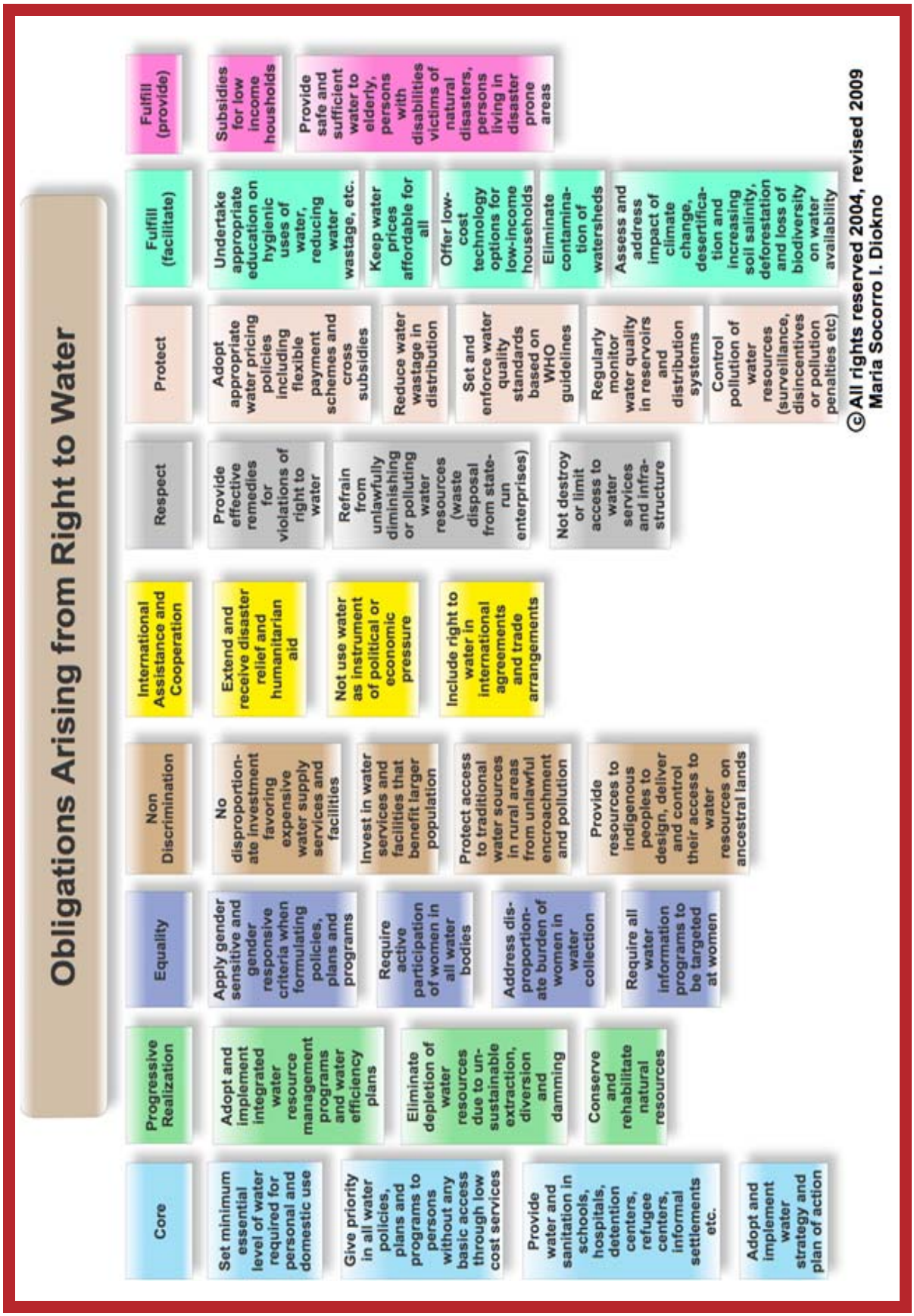
(b) Questions answered by "No" indicate that the plan, policy, strategy, program, project or action is NOT likely to be compliant with fulfillment-bound obligations. Development planners are advised to rethink and re-calibrate the plan, policy, strategy, program, project or action.

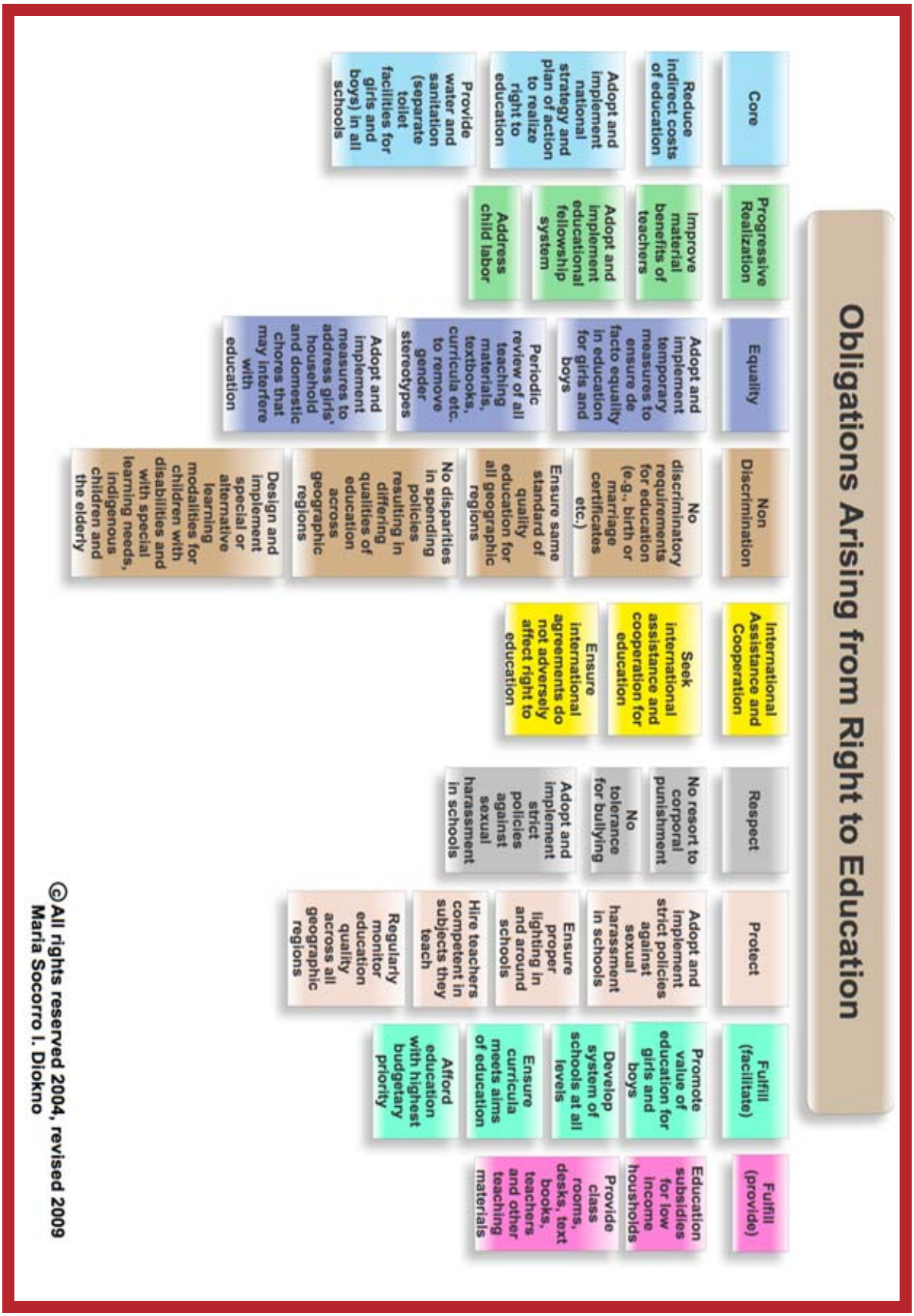
(c) Use the "Remarks" section to identify potential safeguards and mechanisms of redress and accountability.

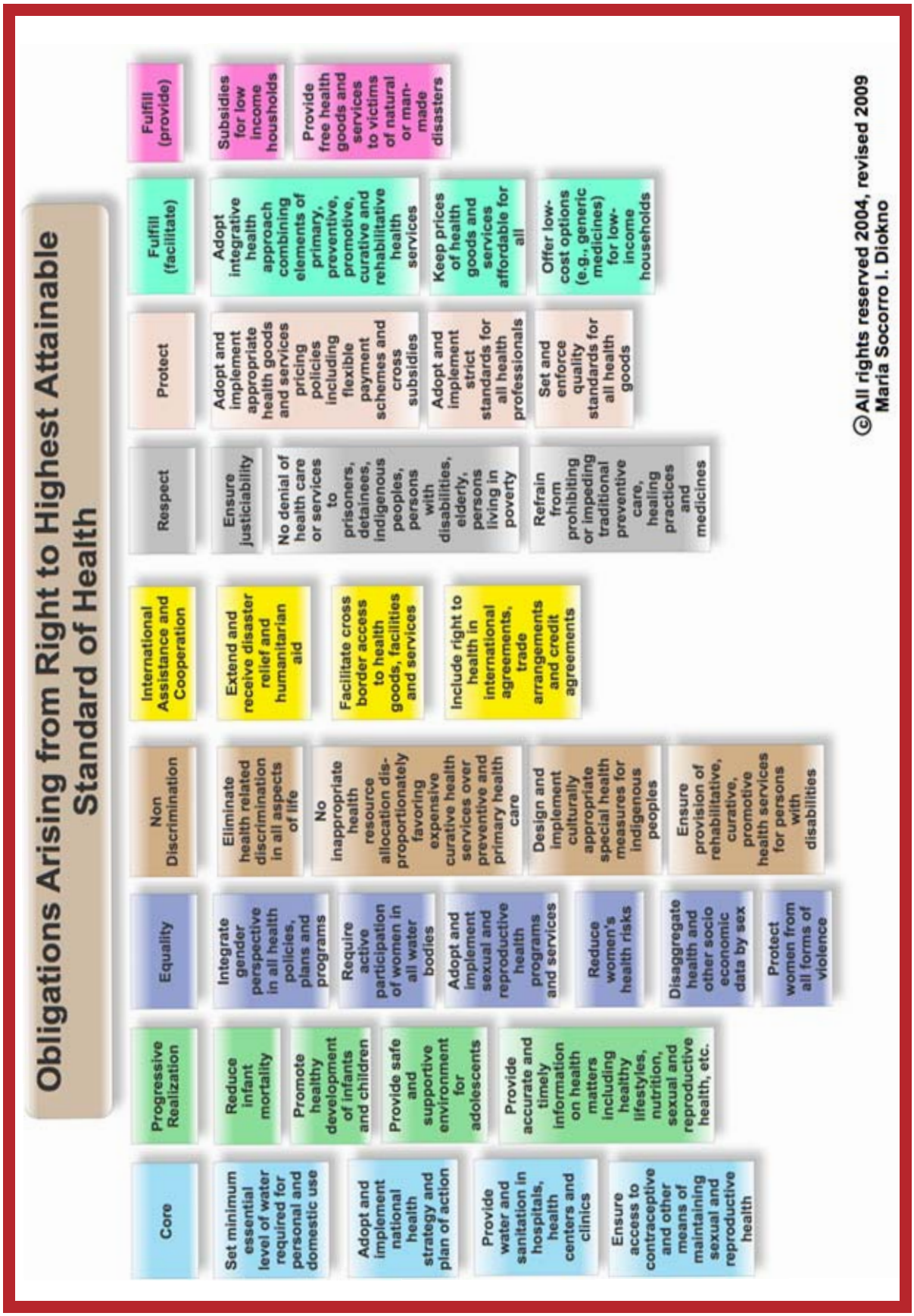
Guide Questions	Yes	No	Remarks
Does plan, policy, strategy, program, project or action actually promote human rights?	☐	☐	
Does plan, policy, strategy, program, project or action provide productive resources, goods, and services needed to realize human rights?	☐	☐	
Does plan, policy, strategy, program, project or action include low-cost and alternative measures or schemes to enable those most vulnerable to realize their human rights?	☐	☐	
Does plan, policy, strategy, program, project or action include subsidies and other assistance for those unable to enjoy and exercise their human rights?	☐	☐	
Does plan, policy, strategy, program, project or action provide emergency assistance, relief and rehabilitation to those affected by natural or man-made calamities and disasters (earthquakes, floods, landslides, mudslides, fire, armed conflict, etc.)?	☐	☐	

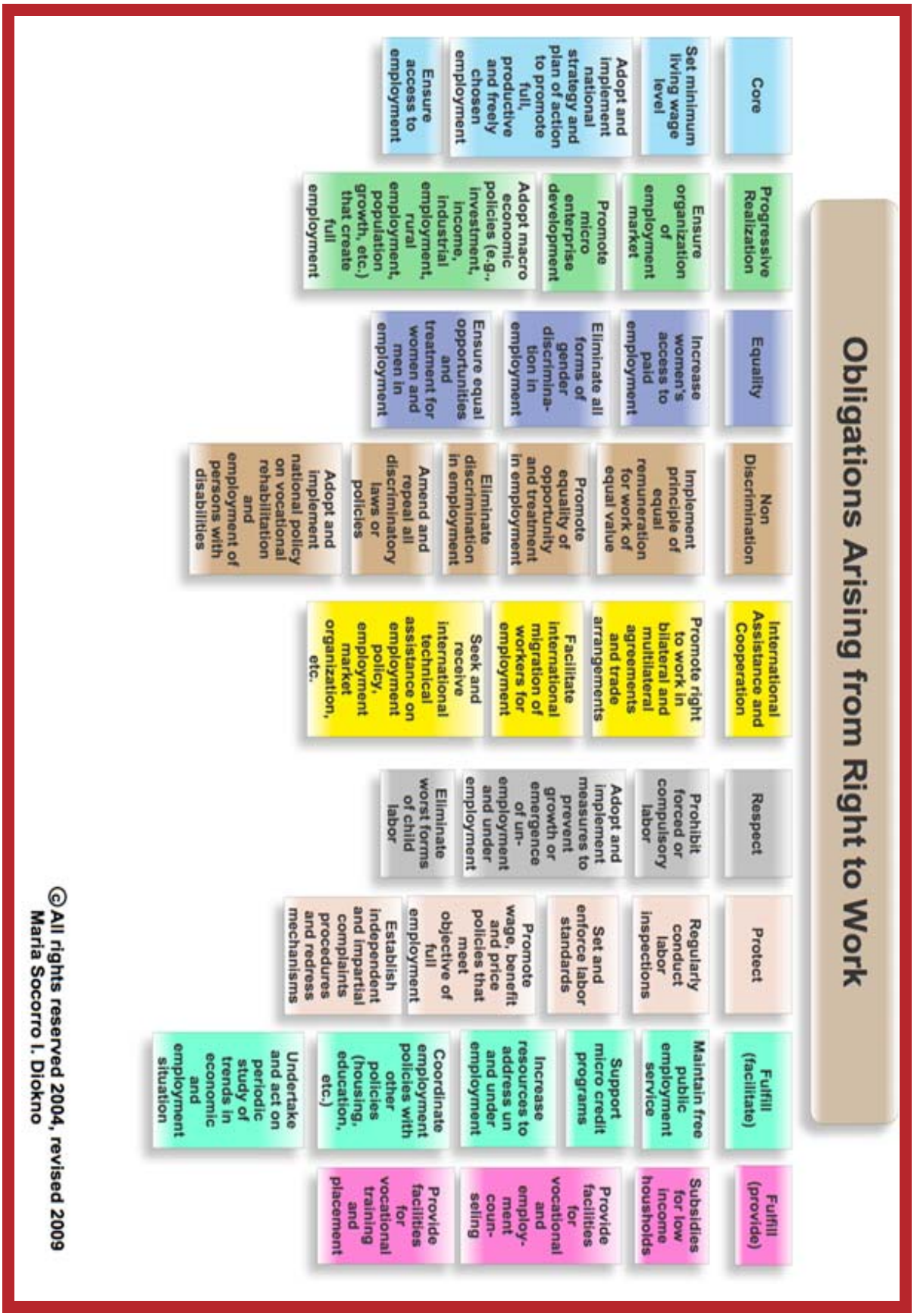
By way of summary and to illustrate concrete obligations, Figures 4 through 10 below provide examples of the different levels of state's human rights obligations arising from the right to adequate food, the right to water, the right to education, the right to the highest attainable standard of health, the right to work, the right to social security, and the right to adequate housing.

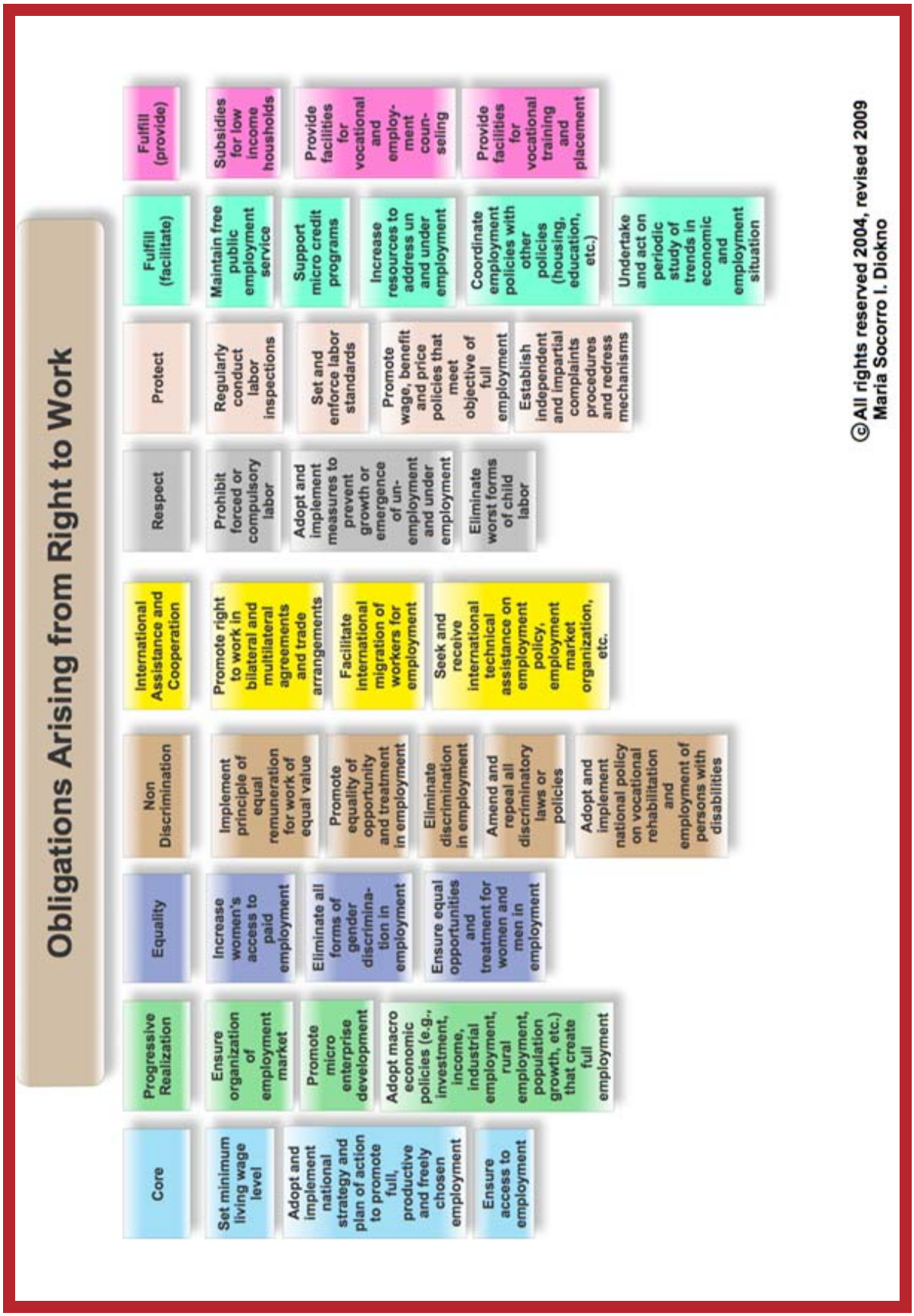

Obligations Arising from Right to Adequate Food
Core
Progressive Realization
Equality
Non Discrimination
International Assistance and Cooperation
Respect
Protect
Fulfill (facilitate)
Fulfill (provide)
Keep food prices affordable
Set minimum wages at levels to support food and other costs
Establish, fully implement and maintain school feeding programs
Design, adopt and implement national food strategy
Establish and fully implement inclusive, inter-sectoral and genuine agrarian reform
Conduct periodic growth and nutritional monitoring
Extend support facilities, infrastructure technology and credit to farmers, fishers, food producers
Conserve and rehabilitate natural resources
Apply gender sensitive and gender responsive criteria when formulating policies, plans and programs
Require active participation of women in all food bodies
Set participation ratios for women to access technology transfer, support and other facilities
Set quotas for women in grant of land titles, leasehold agreements, credit
Require all food information programs to be targeted at women
Not deny access to food to any individual or groups of individuals
Protect indigenous peoples traditional resource base for food (including plant genetic resources)
Ensure equitable participation of indigenous peoples in benefits from use of plant genetic resources for food and agriculture
Grant food discounts to elderly, persons with disabilities, persons with HIV/AIDS
Provide safe and culturally acceptable food aid
Extend disaster relief and humanitarian aid
Not impose food embargoes or use food as instrument of political or economic pressure
Not export or dump expired, adulterated or unsafe food
Create effective legal remedies for violations of right to food
Not set up food blockades
Not destroy agricultural fields, crops, livestock, drinking water, irrigation infrastructure
Impose price ceilings on basic foods
Regulate production, manufacture, processing, sale and distribution of food
Set and enforce standards in grading, sampling, tests, analysis, code of practice, advertising and packaging of food
Regularly conduct hygienic and sanitary inspections of all food producers and sellers
Investigate and prosecute food hoarders, food cartels, food profiteers
Monitor food prices and study impact on family income
Include consumer education in schools
Support appropriate technology and research into agriculture, aquaculture and fisheries
Invest in agriculture
Food distribu-tion to typhoon, earthquake and fire victims
Culturally acceptable food aid to internal refugees
© All rights reserved 2004, revised 2008
Maria Socorro I. Diokno

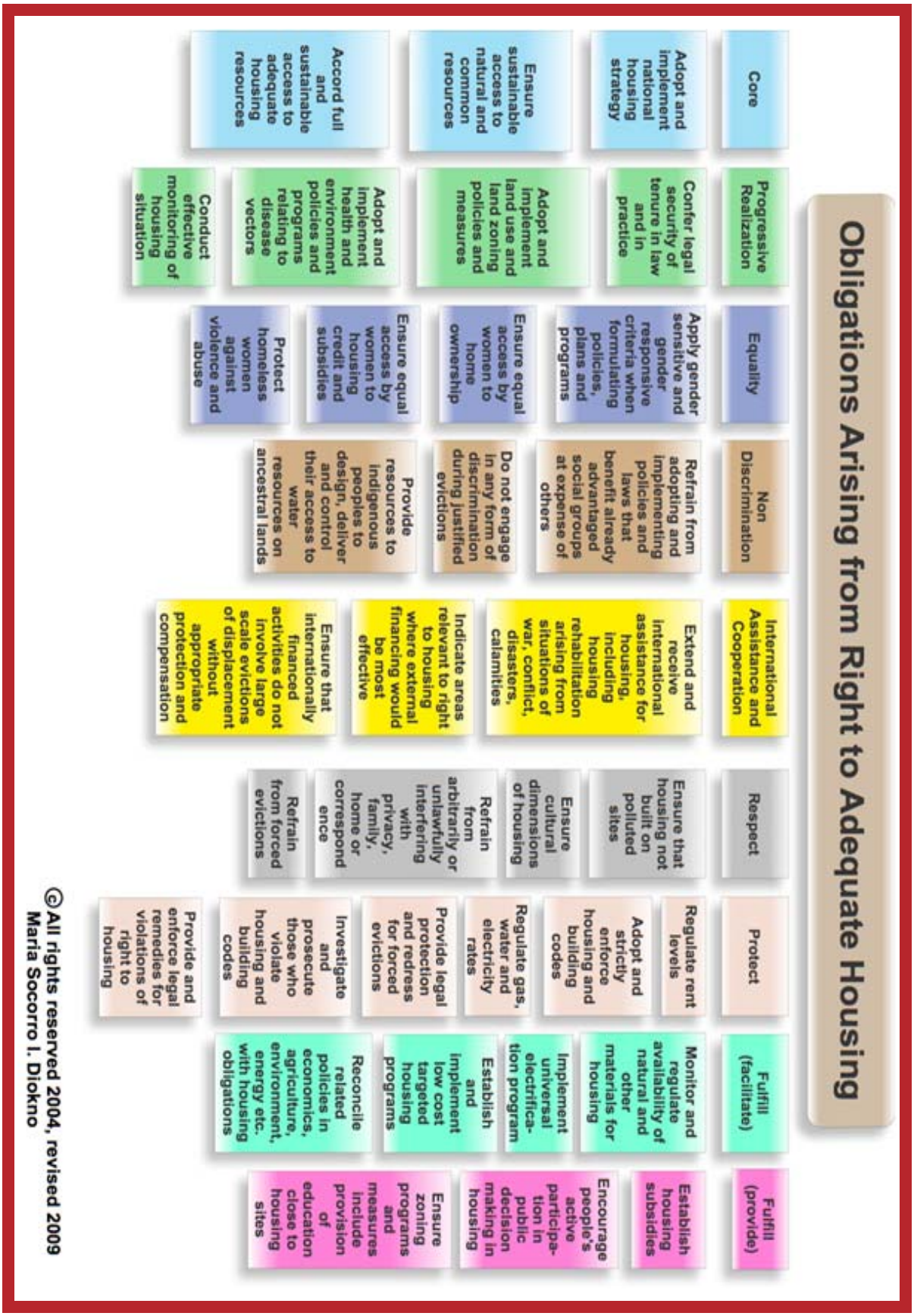

Obligations Arising from Right to Water
Core
Progressive Realization
Equality
Non Discrimination
International Assistance and Cooperation
Respect
Protect
Fulfill (facilitate)
Fulfill (provide)
Set minimum essential level of water required for personal and domestic use
Adopt and implement integrated water resource management programs and water efficiency plans
Apply gender sensitive and gender responsive criteria when formulating policies, plans and programs
No disproportion-ate investment favoring expensive water supply services and facilities
Extend and receive disaster relief and humanitarian aid
Provide effective remedies for violations of right to water
Adopt appropriate water pricing policies including flexible payment schemes and cross subsidies
Undertake appropriate education on hygienic uses of water, reducing water wastage, etc.
Subsidies for low income housholds
Give priority in all water policies, plans and programs to persons without any basic access through low cost services
Eliminate depletion of water resources due to un-sustainable extraction, diversion and damming
Require active participation of women in all water bodies
Invest in water services and facilities that benefit larger population
Not use water as instrument of political or economic pressure
Refrain from unlawfully diminishing or polluting water resources (waste disposal from state-run enterprises)
Reduce water wastage in distribution
Keep water prices affordable for all
Provide safe and sufficient water to elderly, persons with disabilities victims of natural disasters, persons living in disaster prone areas
Provide water and sanitation in schools, hospitals, detention centers, refugee centers, informal settlements etc.
Conserve and rehabilitate natural resources
Address dis-proportion-ate burden of women in water collection
Protect access to traditional water sources in rural areas from unlawful encroachment and pollution
Include right to water in international agreements and trade arrangements
Not destroy or limit access to water services and infra-structure
Set and enforce water quality standards based on WHO guidelines
Offer low-cost technology options for low-income households
Eliminate contamina-tion of watersheds
Adopt and implement water strategy and plan of action
Require all water information programs to be targeted at women
Provide resources to indigenous peoples to design, deliver and control their access to water resources on ancestral lands
Regularly monitor water quality in reservoirs and distribution systems
Control pollution of water resources (surveillance, disincentives or pollution penalties etc)
Assess and address impact of climate change, desertifica-tion and increasing soil salinity, deforestation and loss of biodiversity on water availability
© All rights reserved 2004, revised 2009
Maria Socorro I. Diokno


Obligations Arising from Right to Education
Core
Progressive Realization
Equality
Non Discrimination
International Assistance and Cooperation
Respect
Protect
Fulfill (facilitate)
Fulfill (provide)
Reduce indirect costs of education
Improve material benefits of teachers
Adopt and implement temporary measures to ensure de facto equality in education for girls and boys
No discriminatory requirements for education (e.g., birth or marriage certificates etc.)
Seek international assistance and cooperation for education
Ensure international agreements do not adversely affect right to education
No resort to corporal punishment
No tolerance for bullying
Adopt and implement strict policies against sexual harassment in schools
Promote value of education for girls and boys
Education subsidies for low income houshold
Adopt and implement national strategy and plan of action to realize right to education
Adopt and implement educational fellowship system
Periodic review of all teaching materials, textbooks, curricula etc. to remove gender stereotypes
Ensure same standard of quality education for all geographic regions
No disparities in spending policies resulting in differing qualities of education across geographic regions
Adopt and implement strict policies against sexual harassment in schools
Ensure proper lighting in and around schools
Develop system of schools at all levels
Provide class rooms, desks, text books, teachers and other teaching materials
Provide water and sanitation (separate toilet facilities for girls and boys) in all schools
Address child labor
Adopt and implement measures to address girls' household and domestic chores that may interfere with education
Design and implement special or alternative learning modalities for children with disabilities and with special learning needs, indigenous children and the elderly
Hire teachers competent in subjects they teach
Regularly monitor education quality across all geographic regions
Afford education with highest budgetary priority
© All rights reserved 2004, revised 2009
Maria Socorro I. Diokno


Obligations Arising from Right to Highest Attainable Standard of Health
Core
Progressive Realization
Equality
Non Discrimination
International Assistance and Cooperation
Respect
Protect
Fulfill (facilitate)
Fulfill (provide)
Set minimum essential level of water required for personal and domestic use
Reduce infant mortality
Integrate gender perspective in all health policies, plans and programs
Eliminate health related discrimination in all aspects of life
Ensure justiciability
Adopt and implement appropriate health goods and services pricing policies including flexible payment schemes and cross subsidies
Subsidies for low income houshold
Adopt and implement national health strategy and plan of action
Promote healthy development of infants and children
Require active participation of women in all water bodies
No inappropriate health resource allocation dis-proportionately favoring expensive curative health services over preventive and primary health care
Extend and receive disaster relief and humanitarian aid
No denial of health care or services to prisoners, detainees, indigenous peoples, persons with disabilities, elderly, persons living in poverty
Adopt and implement strict standards for all health professionals
Keep prices of health goods and services affordable for all
Provide free health goods and services to victims of natural or man-made disasters
Provide water and sanitation in hospitals, health centers and clinics
Provide safe and supportive environment for adolescents
Adopt and implement sexual and reproductive health programs and services
Design and implement culturally appropriate special health measures for indigenous peoples
Facilitate cross border access to health goods, facilities and services
Refrain from prohibiting or impeding traditional preventive care, healing practices and medicines
Set and enforce quality standards for all health goods
Adopt integrative health approach combining elements of primary, preventive, promotive, curative and rehabilitative health services
Offer low-cost options (e.g., generic medicines) for low-income households
Ensure access to contraceptive and other means of maintaining sexual and reproductive health
Provide accurate and timely information on health matters including healthy lifestyles, nutrition, sexual and reproductive health, etc.
Reduce women's health risks
Disaggregate health and other socio economic data by sex
Protect women from all forms of violence
Ensure provision of rehabilitative, curative, promotive health services for persons with disabilities
Include right to health in international agreements, trade arrangements and credit agreements
© All rights reserved 2004, revised 2009
Maria Socorro I. Diokno


Obligations Arising from Right to Work
Core
Progressive Realization
Equality
Non Discrimination
International Assistance and Cooperation
Respect
Protect
Fulfill (facilitate)
Fulfill (provide)
Set minimum living wage level
Ensure organization of employment market
Increase women's access to paid employment
Eliminate all forms of gender discrimina-tion in employment
Implement principle of equal remuneration for work of equal value
Promote equality of opportunity and treatment in employment
Eliminate discrimination in employment
Amend and repeal all discriminatory laws or policies
Adopt and implement national policy on vocational rehabilitation and employment of persons with disabilities
Adopt and implement national strategy and plan of action to promote full, productive and freely chosen employment
Promote micro enterprise development
Ensure equal opportunities and treatment for women and men in employment
Ensure access to employment
Adopt macro economic policies (e.g., investment, income, industrial employment, rural employment, population growth, etc.) that create full employment
Promote right to work in bilateral and multilateral agreements and trade arrangements
Facilitate international migration of workers for employment
Seek and receive international technical assistance on employment policy, employment market organization, etc.
Prohibit forced or compulsory labor
Adopt and implement measures to prevent growth or emergence of un-employment and under employment
Eliminate worst forms of child labor
Regularly conduct labor inspections
Set and enforce labor standards
Promote wage, benefit and price policies that meet objective of full employment
Establish independent and impartial complaints procedures and redress mechanisms
Maintain free public employment service
Support micro credit programs
Increase resources to address un and under employment
Coordinate employment policies with other policies (housing, education, etc.)
Undertake and act on periodic study of trends in economic and employment situation
Subsidies for low income houshold
Provide facilities for vocational training and placement
Provide facilities for vocational and employ-ment coun-seling
©All rights reserved 2004, revised 2009
Maria Socorro I. Diokno


Obligations Arising from Right to Work
Core
Progressive Realization
Equality
Non Discrimination
International Assistance and Cooperation
Respect
Protect
Fulfill (facilitate)
Fulfill (provide)
Set minimum living wage level
Ensure organization of employment market
Increase women's access to paid employment
Implement principle of equal remuneration for work of equal value
Promote right to work in bilateral and multilateral agreements and trade arrangements
Prohibit forced or compulsory labor
Regularly conduct labor inspections
Maintain free public employment service
Subsidies for low income housholds
Adopt and implement national strategy and plan of action to promote full, productive and freely chosen employment
Promote micro enterprise development
Eliminate all forms of gender discrimina-tion in employment
Promote equality of opportunity and treatment in employment
Facilitate international migration of workers for employment
Adopt and implement measures to prevent growth or emergence of un-employment and under employment
Set and enforce labor standards
Support micro credit programs
Provide facilities for vocational and employ-ment coun-seling
Adopt macro economic policies (e.g., investment, income, industrial employment, rural employment, population growth, etc.) that create full employment
Ensure equal opportunities and treatment for women and men in employment
Eliminate discrimination in employment
Seek and receive international technical assistance on employment policy, employment market organization, etc.
Eliminate worst forms of child labor
Promote wage, benefit and price policies that meet objective of full employment
Increase resources to address un and under employment
Provide facilities for vocational training and placement
Ensure access to employment
Adopt and implement national policy on vocational rehabilitation and employment of persons with disabilities
Amend and repeal all discriminatory laws or policies
Establish independent and impartial complaints procedures and redress mechanisms
Coordinate employment policies with other policies (housing, education, etc.)
Undertake and act on periodic study of trends in economic and employment situation
©All rights reserved 2004, revised 2009
Maria Socorro I. Diokno


Obligations Arising from Right to Adequate Housing
Core
Progressive Realization
Equality
Non Discrimination
International Assistance and Cooperation
Respect
Protect
Fulfill (facilitate)
Fulfill (provide)
Adopt and implement national housing strategy
Confer legal security of tenure in law and in practice
Apply gender sensitive and gender responsive criteria when formulating policies, plans and programs
Refrain from adopting and implementing policies and laws that benefit already advantaged social groups at expense of others
Extend and receive international assistance for housing, including housing rehabilitation arising from situations of war, conflict, disasters, calamities
Ensure that housing not built on polluted sites
Ensure cultural dimensions of housing
Refrain from arbitrarily or unlawfully interfering with privacy, family, home or correspondence
Refrain from forced evictions
Regulate rent levels
Adopt and strictly enforce housing and building codes
Regulate gas, water and electricity rates
Provide legal protection and redress for forced evictions
Investigate and prosecute those who violate housing and building codes
Provide and enforce legal remedies for violations of right to housing
Monitor and regulate availability of natural and other materials for housing
Implement universal electrification program
Establish and implement low cost targeted housing programs
Reconcile related policies in economics, agriculture, environment, energy etc. with housing obligations
Establish housing subsidies
Encourage people's active participation in public decision making in housing
Ensure zoning programs and measures include provision of education close to housing sites
Ensure sustainable access to natural and common resources
Adopt and implement land use and land zoning policies and measures
Ensure equal access by women to home ownership
Ensure equal access by women to housing credit and subsidies
Protect homeless women against violence and abuse
Provide resources to indigenous peoples to design, deliver and control their access to water resources on ancestral lands
Do not engage in any form of discrimination during justified evictions
Indicate areas relevant to right to housing where external financing would be most effective
Ensure that internationally financed activities do not involve large scale evictions of displacement without appropriate protection and compensation
Accord full and sustainable access to adequate housing resources
Adopt and implement health and environment policies and programs relating to disease vectors
Conduct effective monitoring of housing situation
©All rights reserved 2004, revised 2009
Maria Socorro I. Diokno

Violations of Human Rights

As a general rule, when a state fails to comply with its obligations of *conduct,* such failure constitutes a human rights violation.[43] In practice, this means that when a state engages in, supports or encourages, or fails to investigate and prosecute incidents of torture, enforced disappearances, extrajudicial killings, or violence against women, children or persons with disabilities, or fails to enact a law it is required to enact (for example, punishing child labor as required by Article 10 of the ICESCR), or repeal a law it is required to repeal (for example, laws that discriminate against women as required by Article 2(g) of the CEDAW), the state is in violation of human rights.

On the other hand, when a state fails to achieve a *result* it is under an obligation to achieve, the state would need to show that it was unable to achieve that result *for reasons reasonably beyond its control.* The **Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights** and the **Maastricht Guidelines on Violations of Economic, Social and Cultural Rights** better explain this general rule.

The **Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights**[44] define a violation of an economic, social and cultural right as a failure to comply with an obligation contained in the ICESCR.[45] The Limburg Principles, however, qualify such failure to comply with treaty obligations by according states a "margin of discretion in selecting the means for carrying out its objectives" and by recognizing that factors beyond a state's "reasonable control" affect the state's ability or inability to comply with an obligation.[46] The Limburg Principles list the following acts as violations:[47]

1. Failure by a state party to take a step it is required to take;

2. Failure by a state party to promptly remove obstacles which it is under a duty to remove;

3. Failure by a state party to implement a right without delay which it is required to implement immediately;

4. Willful failure by a state party to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;

5. Application by a state party of a limitation to a right other than in accord with the covenant;

[43] *See Sixth Report on State Responsibility by Mr. Roberto Ago, Special Rapporteur – the internationally wrongful act of the Sate, source of international responsibility (continued)*, UN Doc. A/CN.4/302 and ADD.1, 2 & 3, in Yearbook of the International Law Commission, 1977, vol. II(1).

[44] Adopted by a group of distinguished experts in international law, convened by the International Commission of Jurists (Geneva, Switzerland), the Faculty of Law of the University of Limburg (Maastricht, the Netherlands) and the Urban Morgan Institute for Human Rights (Cincinnati, Ohio, USA) from June 2-6, 1985 at Maastricht, the Netherlands, to consider the nature and scope of obligations of state parties to the International Covenant on Economic, Social and Cultural Rights.

[45] Principle 70, Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights.

[46] Principle 71, Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights.

[47] Principle 72, Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights.

6. Deliberate retardation or halting by a state party of the progressive realization of a right, unless it is acting within a permissible limitation or it does so because of lack of available resources or *force majeure*; and

7. Failure by a state party to submit reports as required by the covenant.

The Limburg Principles were further clarified by the **Maastricht Guidelines on Violations of Economic, Social and Cultural Rights**.[48] According to the Maastricht Guidelines, a violation of an economic, social and cultural right occurs when a state pursues, by action or omission, a policy or practice which deliberately contravenes or ignores human rights obligations, or fails to achieve the required standard of conduct or result. Furthermore, any discrimination on any ground with the purpose or effect of nullifying or impairing the equal enjoyment of human rights constitutes a violation.[49]

It is important to note that not all instances of a state's failure to comply with obligations are violations. Violations occur where the deprivation is directly caused by state policy or action in the absence of any accompanying compensatory measures. One must distinguish the inability of a state from the state's unwillingness to comply with treaty obligations. A state claiming that it is unable to carry out its obligations for reasons beyond its control has the burden of proving that this is the case.[50] A state not capable of proving inability due to forces reasonably beyond its control would be in violation of economic, social and cultural rights.[51]

Leckie (1998) cautions against labeling all "displeasing situations" as human rights violations, noting that situations which may not be ideal may not be violations in themselves. Leckie emphasizes: "Violations language should only be utilized when there exists a legal basis to do so and where an identifiable corresponding legal obligation exists."[52]

The Maastricht Guidelines state that violations may occur through acts of commission or acts of omission, which deliberately contravene obligations or fail to achieve the required standards of conduct or result or nullify or impair the equal enjoyment of human rights.

Acts of commission are direct actions of States or other entities not sufficiently regulated by states, and include the following:[53]

1. The repeal or suspension of any legislation that is necessary and indispensable for the continued enjoyment of a right;

[48] Adopted ten years after the adoption of the Limburg Principles by a group of experts who were convened from January 22-26, 1997 by the International Commission of Jurists (Geneva, Switzerland), the Urban Morgan Institute on Human Rights (Cincinnati, Ohio, USA) and the Centre for Human Rights of the Faculty of Law of Maastricht University (the Netherlands) precisely to elaborate the Limburg Principles.

[49] Paragraph 11, Part II, Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.

[50] Paragraph 13, Part II, Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.

[51] Victor Dankwa, Cees Flinterman and Scott Leckie, *"Commentary on the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights,"* in Theo C. van Boven, Cees Flinterman and Ingrid Westendorp (eds.), The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, SIM Special No. 20, SIM, Utrecht 1998, at 25.

[52] Scott Leckie, "*Violation of Economic, Social and Cultural Rights,"* in Theo C. van Boven, Cees Flinterman and Ingrid Westendorp (eds.), The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, SIM Special No. 20, SIM, Utrecht 1998, at 7.

[53] Paragraph 14, Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.

2. The active denial of a right to particular individuals or groups, whether through legislated or enforced discrimination;

3. The active support for measures adopted by third parties that are inconsistent with human rights;

4. The adoption of legislation or policies that are manifestly incompatible with preexisting legal obligations, unless these are done with the purpose and effect of increasing equality and improving the realization of human rights for those most vulnerable;

5. The adoption of any deliberately retrogressive measures that reduce the extent to which a right is guaranteed;

6. The calculated obstruction of, or halt to, the progressive realization of a right, unless the state is acting within permissible limitations or does so because of a lack of available resources or *force majeure*;

7. The reduction or diversion of specific public expenditures, when such diversion or reduction results in the non-enjoyment of human rights and is not accompanied by adequate measures to ensure minimum subsistence rights for all.

Acts of omission are committed through the failure or omission of a state to take all necessary measures it is legally required to take; these include:[54]

1. The failure to take appropriate steps towards the full realization of human rights;

2. The failure to reform or repeal legislation or put into effect policies designed to implement the provisions of the covenant;

3. The failure to enforce legislation designed to implement the provisions of the covenant;

4. The failure to regulate the activities or individuals or group to prevent them from violating the rights of others;

5. The failure to use the maximum of available resources towards the full realization of human rights, or the inequitable and ineffective use of, and access to, available resources without giving due priority to the realization of human rights;

6. The failure to monitor the realization of human rights, including the development of criteria and indicators for assessing compliance;

7. The failure to promptly remove obstacles which it is under a duty to remove;

[54] Paragraph 15, Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.

8. The failure to speedily implement a right which it is required to implement immediately;

9. The failure to meet a generally accepted international minimum standard of achievement which is within its powers to meet; and

10. The failure to take into account its international legal human rights obligations when it enters into bilateral or multilateral agreements with other states, international organizations and multinational corporations.

The standards set forth by the Limburg Principles and the Maastricht Guidelines, which now form part of customary human rights law, may assist development planners as they arrive at planning decisions or formulate, review, monitor or evaluate targets, strategies, programs or projects that affect economic, social and cultural rights. *Table 6* describes strategies, programs, projects or actions that comply with human rights and those that may be considered violations of human rights, based on the Limburg Principles and the Maastricht Guidelines.

Table 6. Examples of Human Rights Compliant and Non- Human Rights Compliant Strategies, Programs Projects or Actions	
Human Rights Compliant	Non-Human Rights Compliant Planners are advised to rethink and re-calibrate strategies, programs, projects or actions
Strategies, programs, projects or actions that constitute a step the Philippines is required to take	Strategies, programs, projects or actions that represent a deliberate retardation or limitation of a right that is not within permissible limits, or is not due to lack of available resources or force majeure
Strategies, programs, projects or actions that remove obstacles the Philippines is required to remove	Strategies, programs, projects or actions that discriminate against anyone or any group
Strategies, programs, projects or actions that represent a deliberate retardation or limitation of a right that is within permissible limits, or is due to lack of available resources or force majeure	Strategies, programs, projects or actions that reduce or divert specific public expenditures that result in non-enjoyment of human rights when not accompanied by adequate measures to ensure minimum subsistence rights for all
Strategies, programs, projects or actions that promote the equal right of women and men	Strategies, programs, projects or actions that represent inequitable and ineffective use of available resources without giving due priority to the realization of human rights
Strategies, programs, projects or actions that reduce or divert specific public expenditures which result in non-enjoyment of human rights when accompanied by adequate measures to ensure minimum subsistence rights for all	
Strategies, programs, projects or actions that implement a right	
Strategies, programs, projects or actions that regulate activities or individuals or groups to prevent them from violating the rights of others	
Strategies, programs, projects or actions that use maximum available resources towards full realization of human rights	
Strategies, programs, projects or actions that include criteria and indicators to measure compliance with human rights	
Strategies, programs, projects or actions that take human rights into account when entering into bilateral or multilateral agreements with other states, international organizations and multinational corporations	

EXECUTIVE SUMMARY

Chapter 3, Human Rights Obligations in Development Planning, describes obligations of conduct and of result and the nature and levels of human rights obligations (obligation of progressive realization, core obligations, obligation of equality, obligation of nondiscrimination, obligations of international cooperation and assistance, obligations to respect human rights, obligations to protect human rights, and obligations to fulfill (facilitate and provide) human rights, emphasizing their procedural, policy, substantive and resource implications on development planning, and discusses human rights violations or the consequences of non-compliance with human rights obligations. Chapter 3 presents Human Rights Recapitulative Tables 4 (*Examples of Obligations of Conduct and of Result*), 5 (*Examples of Core Obligations*), and 6 (*Examples of Human Rights Compliant and Non-Human Rights Compliant Strategies, Programs, Projects or Actions*), Human Rights Checklists 1 (*Compliance with Human Rights Obligation of Progressive Realization*), 2 (*Compliance with Human Rights Core Obligations*), 3 (*Compliance with Human Rights Obligation of Equality*), 4 (*Compliance with Human Rights Obligation of Nondiscrimination*), 5 (*Compliance with Human Rights Obligation of International Cooperation and Assistance*), 6 (*Compliance with Human Rights Respect-Bound Obligations*), 7 (*Compliance with Human Rights Protection-Bound Obligations*), and 8 (*Compliance with Human Rights Fulfillment-Bound Obligations*), and Human Rights Figures 4 (*Obligations Arising from the Right to Adequate Food*), 5 (*Obligations Arising from the Right to Water*), 6 (*Obligations Arising from the Right to Education*), 7 (*Obligations Arising from the Right to the Highest Attainable Standard of Health*), 8 (*Obligations Arising from the Right to Work*), 9 (*Obligations Arising from the Right to Social Security*), and 10 (*Obligations Arising from the Right to Adequate Housing*).