

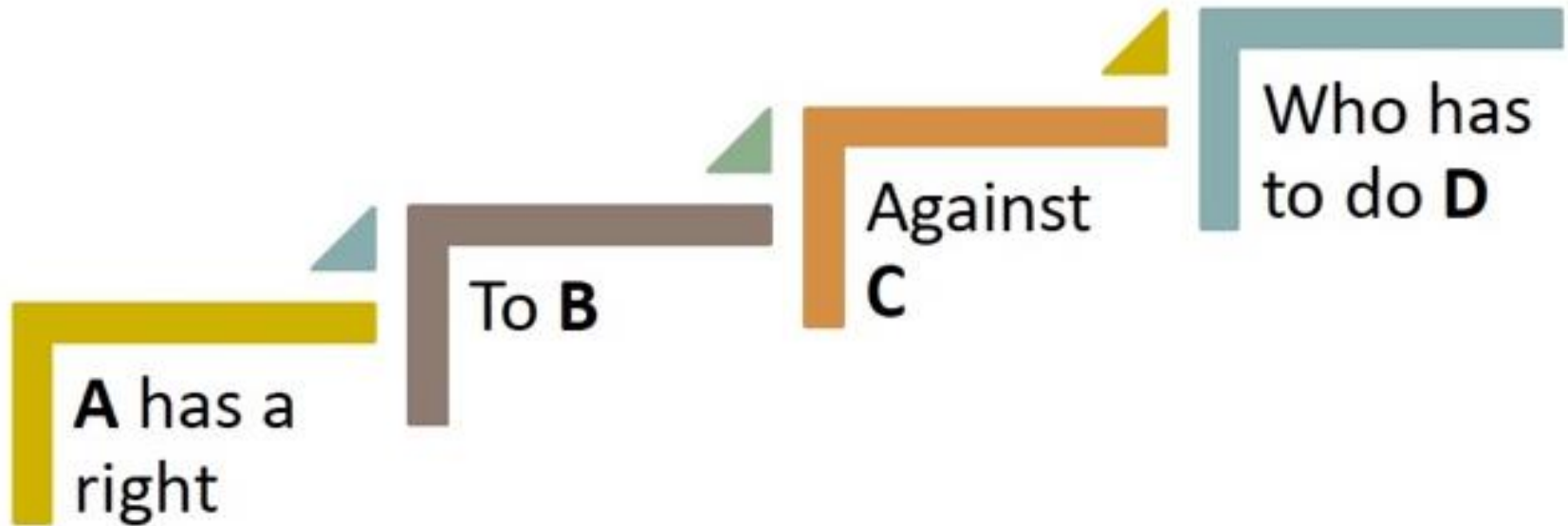


ECONOMIC AND SOCIAL RIGHTS: BASIC PRINCIPLES



**CENTER FOR ECONOMIC
AND SOCIAL RIGHTS**

THE CAUSALITY CHALLENGE



A = Rights Holder
B = Right
C = Duty Bearer
D = Obligation

THE NORMATIVE CHALLENGE

Article 2(1) Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, 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.

TRIPARTITE FORMULATION OF OBLIGATIONS

RESPECT

- Refrain from interfering with the enjoyment of economic, social and cultural rights.
 - E.g. Forced evictions carried out by the state.

PROTECT

- Prevent violations of such rights by third parties.
 - E.g. Failing to regulate business enterprises that pollute rivers.

FULFILL

- Take appropriate legislative, administrative, budgetary, judicial and other measures to:
 - *Facilitate*: access to right (e.g. through infrastructure, goods, and services)
 - *Promote*: rights and how to claim them.
 - *Provide*: when people, for reasons beyond their control, are unable to necessary to realize rights, the state may be obligated to provide it (e.g. through infrastructure, goods, and services).

OBLIGATIONS OF CONDUCT AND RESULT

Conduct

- **Action reasonably calculated to realise** the enjoyment of a right.
- E.g. Adopting and implementing a plan of action to reduce unemployment.

Result

- Requires States to **achieve specific targets** to satisfy a detailed substantive standard.
- E.g. Reducing unemployment to agreed levels

In relation to the obligation to fulfil, *results* can generally be achieved progressively, but *conduct* is an immediate duty.

MINIMUM CORE OBLIGATIONS

- A duty on states to ensure the satisfaction of “**minimum essential levels**” of each right, regardless of their level of economic development.
- Failure to do so amounts to a *prima facie* **presumption** that a state is in **violation of** the Covenant.
- **Unless** it can demonstrate that “**every effort has been made** to use all resources that are at its disposition” to prioritize reaching those minimum levels.
- Concept used in context of austerity-driven roll backs to rights protections (e.g. Spain).

EQUALITY & NON-DISCRIMINATION

- Differential treatment based on a 'prohibited ground' is discrimination unless the justification for it is **reasonable** and **objective**.
- Treaties lists prohibited grounds (inc. sex, race, language), but these are **not exhaustive**.
- CESCR also has a specific article on the equal right of men and women to the enjoyment of ESCR.
- The state has an immediate obligation to eliminate **de jure** discrimination by abolishing '**without delay**' any discriminatory laws, regulations and practices.
- **De facto** discrimination, occurring as a result of the unequal enjoyment of rights, should be ended '**as speedily as possible**'. 'Substantive equality' is the end goal.
- Affirmative action or 'temporary special measures' may be needed to end de facto discrimination.

PROGRESSIVE REALIZATION AND NON-RETROGRESSION

- States shall move as **efficiently and expeditiously as possible** towards the full realization of economic, social and cultural rights.
- Conversely, states must not take **deliberately retrogressive** measures (obligation of conduct).
- States must “fully” justify the adoption of policies that decrease people’s enjoyment of a right. Must be:
 - ❑ Temporary
 - ❑ Necessary and proportionate (other options more detrimental)
 - ❑ Not discriminatory and mitigate inequalities
 - ❑ Ensure the protection of minimum core content of rights
 - ❑ Considers all other options, including financial alternatives

OBLIGATION TO TAKE STEPS

Steps can be:

- legislative,
- judicial,
- administrative,
- financial,
- educational, and
- social

STEPS TAKEN SHOULD INCREASE...



MAXIMUM AVAILABLE RESOURCES

- **Important qualification** of the obligation to take steps.
- States frequently attribute failures to fulfil economic, social and cultural rights to lack of resources. However, it is necessary to interrogate such a claim.
- In doing so, attention should be paid to whether:
 - **existing resources** are use effectively and without discrimination.
 - efforts to generate **additional resources** are adequate and equitable.
- Resources are not only financial, but also human, natural, technological, etc.

PROCESS PRINCIPLES

- Steps should be taken in such a way that facilitates the **active participation** of rights holders.
- ‘Steps taken’ should respect the principles of **transparency** and accountability.
- The state also has an obligation to provide **effective remedies**, including administrative and judicial ones.

SUMMARY OF NORMS

Obligations of Result

- **Minimum core obligations:** immediate duty to prioritize achieving minimum essential levels of rights enjoyment universally
- **Progressive realization:** move swiftly towards increased levels of rights enjoyment, with **no deliberate retrogression**

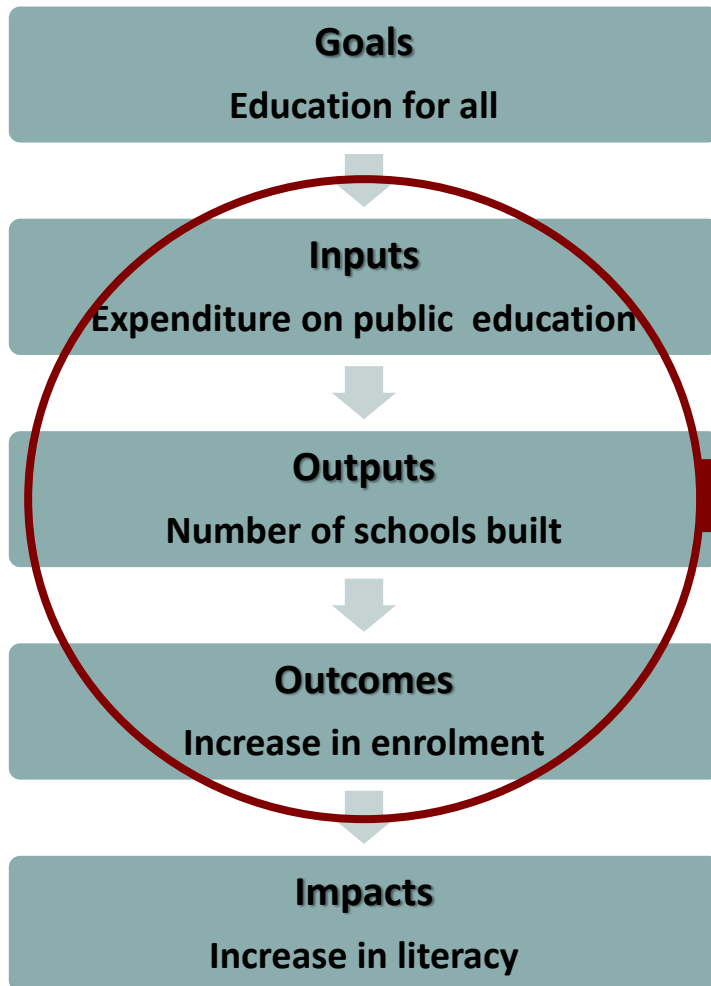
- To ensure relevant infrastructure, goods and services are increasingly **available**, **accessible** to all, **acceptable** and of **adequate quality**
- **Non-discrimination:** duty to ensure substantive equality

Obligations of Conduct

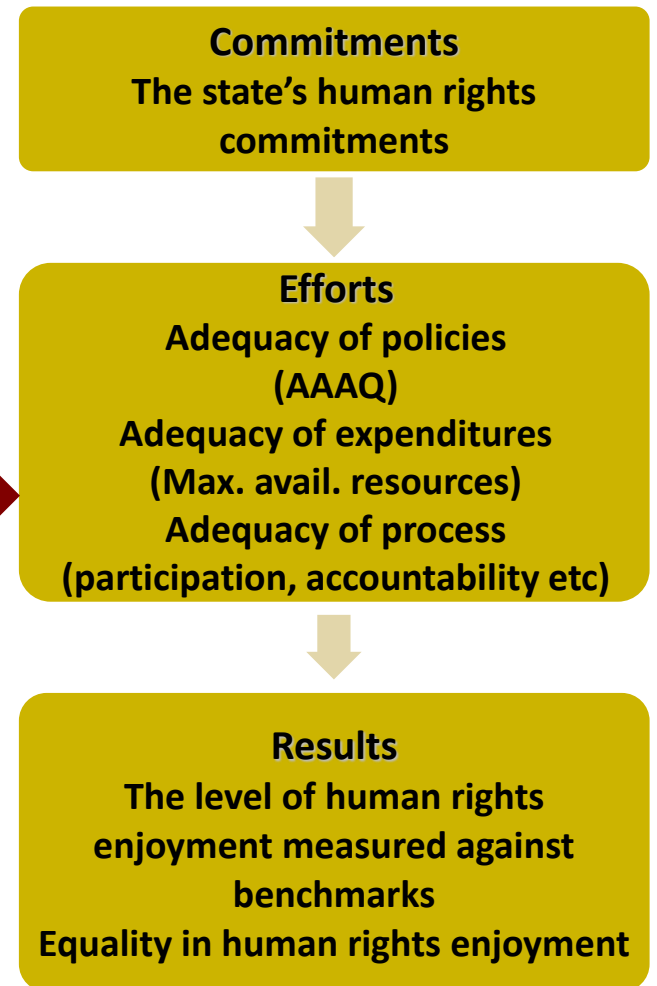
- To **take steps** (legislative, judicial, budgetary, administrative and other) to fulfill ESCR
 - To use **maximum available resources** to ensure progressive realization, including resources provided through international cooperation
- To ensure **participation, accountability and transparency** in the policy-making process

THE 'MISSING MIDDLE' IN HUMAN RIGHTS ANALYSIS

Standard Policy Analysis



Human Rights Analysis





HUMAN RIGHTS AND THE SDGs



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**LINKS BETWEEN THE
SDGs AND ESCR
THE ROLE OF NHRIS**

THE SUSTAINABLE DEVELOPMENT GOALS

Sustainable Development Goals



LINKS BETWEEN THE SDGs AND HUMAN RIGHTS

- Goals related to ESCR
 - Many of the goals (1, 2, 3, 4, 6 and others) have to do explicitly with development issues – housing, water and sanitation, health, education, poverty – that have a direct bearing on ESCR.
- Goals related to CPR - access to justice, protecting fundamental freedoms and accountability (Goal 16)
- Environmental goals
- Emphasizing the principles of equality, non-discrimination and access for all
 - Goal 10 on tackling inequalities; Goal 5 on gender equality
 - Commitment to Leave No One Behind; - focus on people who are marginalized & discriminated against
 - Need for disaggregated data

LINKS BETWEEN THE SDGs AND HUMAN RIGHTS

- Political not legal commitments – but explicitly anchored in **international human rights law**
- Will produce new **data** to use and analyze for HR monitoring
- May be changing development plans, policies and \$\$\$ allocated

...BUT WHAT ABOUT THE DIFFERENCES?





LINKS BETWEEN THE
SDGS AND ESCR
THE ROLE OF NHRIS

IMPACTS OF THE SDGs ON THE DEVELOPMENT LANDSCAPE

Just as with the MDGs, Agenda 2030 will result in many significant changes to the global development landscape, including:

- Governments realigning their national development plans to incorporate the SDGs
 - 4 years in, but many plans still vague, progress slow and few accountability frameworks in place
- Influencing programming priorities of donors and development agencies
- Calls for a "data revolution" and support to national statistical offices

How can NHRIs take advantage or make use of these changes to advance ESCR?

THE ROLE OF NHRIs

- Promoting human rights in national implementation plans
 - In a position to ensure national “tailoring” process ensures participation and non-discrimination.
- Advising governments on rights-centered implementation
 - Assessing plans, laws and policies against human rights norms and ensuring fair and human-rights compliant financing.
- Monitoring and holding governments to account for poor or uneven progress
 - Having an established role in the monitoring process.
- Uncovering patterns of inequality or discrimination
 - Using various functions to discover and/or highlight inequality.
- Securing redress for victims of development-related rights violations
 - Exercising quasi-judicial components of the mandate for accountability.