

Key features of a reasonable policy/program

Source	Right	Key Features	Citation
CESCR	Education/Health/ Water/IP/Work	<p>-Some combination of the following (each always to include Availability and Accessibility)</p> <ul style="list-style-type: none"> • Availability • Accessibility (non-discrimination, physical accessibility, economic accessibility, information accessibility) • Acceptability • Adaptability • Quality of protection • (cultural) Appropriateness 	<p>Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 13, The right to education</i> (Twenty-first session, 1998), UN Doc E/C.12/1999/10 at 6 OR Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 14, The right to the highest attainable standard of health</i> (Twenty-second session, 2000), UN Doc E/C.12/2000/4 at 12 OR Committee on Economic, Social and Cultural Rights (CESCR), <i>Comment No. 15, The right to water</i> (Twenty-ninth session, 2002), UN Doc E/C.12/2002/11 at 11 OR Committee on Economic, Social and Cultural Rights (CESCR), <i>Comment No. 17, The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author</i> (Thirty-fifth session, 2005), UN Doc E/C.12/GC/17 at 18</p>
	All rights	<p>- a reasonable policy must be non-discriminatory on its face or in its application (states should take steps to ensure that traditionally disadvantaged groups are not denied access/negatively affected by the program)</p> <p>“Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced</p>	<p>Committee on Economic, Social and Cultural Rights (CESCR), <i>Comment No. 15, The right to water</i> (Twenty-ninth session, 2002), UN Doc E/C.12/2002/11 at 16</p>

		difficulties in exercising this right”	
		“Indirect discrimination occurs when a law, policy or programme does not appear to be discriminatory, but has a discriminatory effect when implemented”	Committee on Economic, Social and Cultural Rights (CESCR), <i>Comment No. 16, The equal right of men and women to the enjoyment of all economic, social and cultural rights</i> (Thirty-fourth session, 2005), UN Doc E/C.12/2005/4 at 13
HRC		-to be reasonable a policy/decision must be consistent with the purpose of the Covenant read as a whole	Sandra Lovelace v. Canada, Comm. R.6/24, U.N. Doc. A/36/40 (1981) at para. 16 available at http://www.iilj.org/courses/documents/Lovelacev.Canada.pdf
CRC		-to be a reasonable (appropriate) policy must go beyond a list of good intentions and must set specific, attainable goals with implementation measures and resource allocation. Monitoring and review procedures must be established	Committee on the Rights of the Child (CRC), <i>Comment No. 5 General measures of implementation of the Convention on the Rights of the Child</i> (Thirty-fourth session, 2003), UN Doc CRC/GC/2003/5 at 32-33
CERD		-the reasonableness of a policy can be in part determined by comparing that policy to practices adopted in different countries “The reasonableness of such a system is also demonstrated by the extent to which similar practices are adopted by other States parties to the Convention, such as the United Kingdom, Canada, the United States and New Zealand”	<i>B.M.S. v. Australia</i> , Comm. 8/1996, U.N. Doc. A/54/38, (1999) at para 7.8 available at http://www.worldcourts.com/cerd/eng/decisions/1999.03.12_BMS_v_Australia.htm
Constitutional Court of South Africa	Minimum core rights	-the minimum core obligations can not always be fully implemented however they do provide a benchmark in determining what is reasonable “Minimum core was thus treated as possibly being relevant to reasonableness under section 26(2) and not as a self-standing right conferred on everyone under section 26(1).”	<i>Minister of Health and Others v Treatment Action Campaign and Others</i> , [2002] ZACC 16 at para 34, (2002) 10 BCLR 1075, (CC), available at http://www.saflii.org/za/cases/ZACC/2002/16.html
European Court of	discrimination	In the context of discrimination and distribution of benefits/social services,	<i>Case “Relating to Certain Aspects of the Laws on the</i>

HR		<p>the legal test for reasonableness is “a reasonable relationship of proportionality between means and aims”</p> <p>-this test could be similarly applied to what constitutes a reasonable state policy/program: a reasonable allocation of resources to a program/policy should be proportional to the severity and extent of the problem/rights violation ex. if a country is severely lacking in its provision of basic health care services, it would be reasonable that a larger proportion of resources be dedicated to health programming</p>	<p><i>Use of Languages in Education in Belgium” v Belgium (Merits)</i> (1968), [1968] ECHR 3, 1 EHRR 252 available at http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695402&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649</p>
Constitutional Court of South Africa		<p>A reasonable policy will provide some level of support for the most vulnerable/adversely affected populations</p> <p>“it is clear that a measure will be unreasonable if it makes no provision for those most desperately in need” (affirming <i>Grootboom</i>)</p>	<p><i>Lindiwe Mazibuko & Others v City of Johannesburg & Others</i>, [2009] ZACC 28 at para 67, (CC) available at http://www.escri-net.org/caselaw/caselaw_show.htm?doc_id=1110326&focus=13958</p>
Constitutional Court of South Africa	Context	<p>“The concept of reasonableness places context at the centre of the enquiry and permits an assessment of context to determine whether a government programme is indeed reasonable.”</p>	<p><i>Lindiwe Mazibuko & Others v City of Johannesburg & Others</i>, [2009] ZACC 28 at para 60, (CC) available at http://www.escri-net.org/caselaw/caselaw_show.htm?doc_id=1110326&focus=13958</p>
Constitutional Court of South Africa		<p>A reasonable policy must be continually reviewed and refined to help ensure the rights of the people</p> <p>“If the City had not continued to review and refine its Free Basic Water policy after it was introduced in 2001, and had taken no steps to ensure that the poorest households were able to obtain an additional allocation, it may well have been concluded that the policy was inflexible and therefore unreasonable... Instead, it has engaged in considerable research and continually refined its policies in the light of the findings of its research”</p>	<p><i>Lindiwe Mazibuko & Others v City of Johannesburg & Others</i>, [2009] ZACC 28 at para 95, (CC) available at http://www.escri-net.org/caselaw/caselaw_show.htm?doc_id=1110326&focus=13958</p>

Constitutional Court of South Africa		“When challenged as to its policies relating to social and economic rights, the government agency must explain why the policy is reasonable. Government must disclose what it has done to formulate the policy: its investigation and research, the alternatives considered, and the reasons why the option underlying the policy was selected.”	<i>Lindiwe Mazibuko & Others v City of Johannesburg & Others</i> , [2009] ZACC 28 at para 161, (CC) available at http://www.escri-net.org/caselaw/caselaw_show.htm?doc_id=1110326&focus=13958
Constitutional Court of South Africa	Public provision of rights	It is unreasonable to rely on a private entity to provide the rights that should be provided by the state “It is unreasonable for a private entity such as Modderklip to be forced to bear the burden which should be borne by the state of providing the occupiers with accommodation”	<i>President of the Republic of South Africa v Modderklip Boerdery (Pty) Ltd.</i> , [2005] ZACC 5 at para 44, 2005 (5) SA 3 (CC) available at http://www.worldlii.org/za/cases/ZACC/2005/5.html
European Committee of Social Rights	Reasonableness criteria for situations of exceptionally complex/expensive programs/policies	(i) a reasonable timeframe (ii) a measurable progress (iii) a financing consistent with the maximum use of available resources (para 39)	<i>MDAC v Bulgaria</i> , (3 June 2008), Complaint No. 41/2007, online: European Committee of Social Rights < http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Complaints/CC41Merits_en.pdf >

What types of plans are required - ie. types of targets, monitoring, indicators, complaints procedures, stakeholder involvement, remedies.

Source	Plan Required	Statement	Citation
CESCR	-legislative measures (not always sufficient)	“The committee recognizes that in many instances legislation is highly desirable and in some cases may even be indispensable” (para. 3) “...adoption of legislative measures, as specifically foreseen by the Covenant, is by no means exhaustive of the obligations of States parties” (para 4)	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 3, The nature of States parties obligations (Art. 2, par.1)</i> (Fifth session, 1990), UN Doc E/1991/23 at 3-4

CESCR	-Judicial remedies	“The Committee notes, for example, that the enjoyment of the rights recognized, without discrimination, will often be appropriately promoted, in part, through the provision of judicial or other effective remedies” (para 5)	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 3, The nature of States parties obligations (Art. 2, par.1)</i> (Fifth session, 1990), UN Doc E/1991/23 at 5
		“a Covenant right cannot be made fully effective without some role for the judiciary, judicial remedies are necessary”	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 9, The domestic application of the covenant</i> (Nineteenth session, 1998), UN Doc E/C.12/1998/24 at 9
	-Types of judicial remedies	-legal appeals -legal procedures for seeking compensation -complaints against illegal activity -complaints re. discrimination -civil suits	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 4, The right to adequate housing (Art.11(1))</i> (Sixth session, 1991), UN Doc E/1992/23 at 17
CESCR	Administrative remedies (with right of judicial appeal)	“The right to an effective remedy need not be interpreted as always requiring a judicial remedy. Administrative remedies will, in many cases, be adequate... Any such administrative remedies should be accessible, affordable, timely and effective. An ultimate right of judicial appeal from administrative procedures of this type would also often be appropriate.”	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 9, The domestic application of the covenant</i> (Nineteenth session, 1998), UN Doc E/C.12/1998/24 at 9
CESCR	-Administrative -Financial -Educational -Social measures	“Other measures which may also be considered "appropriate" for the purposes of article 2 (1) include, but are not limited to, administrative, financial, educational and social measures” (para. 7)	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 3, The nature of States parties obligations (Art. 2, par.1)</i> (Fifth session, 1990), UN Doc E/1991/23 at 7
CEDAW	-political will	Even when a comprehensive system is established (including for example: legislation, criminal and civil law remedies, awareness-raising, education and training, shelters, counseling for victims of violence, social programs for perpetrators) there must also exist political will to engage the system. “the political will that is expressed in the	<i>Goekce v. Austria</i> , Comm. 5/2005, U.N. Doc. A/62/38, (2007) at para 12.1.2 available at http://www.worldcourts.com/cedaw/eng/decisions/2007.08.06_Goekce_v_Austria.htm

		aforementioned comprehensive system of Austria must be supported by State actors...”	
CESCR	-participation and consultation of affected groups	“Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected”	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 4, The right to adequate housing (Art.11(1))</i> (Sixth session, 1991), UN Doc E/1992/23 at 12
		“it has been consistently acknowledged by the international community that policy-making and programme implementation in this area should be undertaken on the basis of close consultation with, and involvement of, representative groups of the persons concerned”	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 5, Persons with disabilities</i> (eleventh session, 1994), UN Doc E/1995/22 at 14
CESCR	-effective monitoring and program development	“Moreover, the obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints”	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 3, The nature of States parties obligations (Art. 2, par.1)</i> (Fifth session, 1990), UN Doc E/1991/23 at 11
		-National strategy (program) is required to progressively realize the rights, elements of national strategy should include <ul style="list-style-type: none"> -benchmarks/goals -timeline -resources available -plan of action (how the goals will be achieved) -budget (most cost-effective use of resources) -intended collaboration with civil society/other government departments -institutional responsibility for the process -mechanisms for monitoring -remedies and recourse 	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 12, The right to adequate food (Art. 11)</i> (Twentieth session, 1999), UN Doc E/C.12/1999/5 at 21 OR Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 14, The right to the highest attainable standard of health</i> (Twenty-second session, 2000), UN Doc E/C.12/2000/4 at 59-62 OR Committee on Economic, Social and Cultural Rights (CESCR), <i>Comment No. 15, The right to water</i> (Twenty-ninth session, 2002), UN Doc E/C.12/2002/11 at 50

		-the strategy should work with various facets of government and civil society due to the interrelated nature of rights “Steps should be taken to ensure there is sufficient coordination between the national ministries, regional and local authorities in order to reconcile water-related policies”	Committee on Economic, Social and Cultural Rights (CESCR), <i>Comment No. 15, The right to water</i> (Twenty-ninth session, 2002), UN Doc E/C.12/2002/11 at 51
		-National strategy should comply to principles of accountability which include: -transparency (para. 23) -peoples’ participation (para. 23) -decentralization (para. 23) -legislative capacity (para. 23) -judicial independence (para. 23) -intended collaboration with various groups (para. 29) -institutional responsibility for process (para. 29) -monitoring procedures (para. 29) -redress procedures (para. 29)	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 12, The right to adequate food (Art. 11)</i> (Twentieth session, 1999), UN Doc E/C.12/1999/5 at 23 and 29
CESCR	-community education/awareness/ social programs	Need for the government to “make efforts to overcome negative stereotyped images”	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 6, The economic, social and cultural rights of older persons</i> (Tenth session, 1995), UN Doc E/1996/22 at 41
		“...need for States to ‘take action to raise awareness in society about persons with disabilities, their rights, their needs, their potential and their contribution’”	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 5, Persons with disabilities</i> (eleventh session, 1994), UN Doc E/1995/22 at 11
CESCR	-national human rights institutions	Potential role of national human rights institutions: -education/awareness programs re. ESCR -scrutinizing of existing laws -technical advice -identification of goals/national benchmarks -research -monitoring compliance	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 10, The role of national institutions in the protection of economic, social and cultural rights</i> (nineteenth session, 1998), UN Doc E/C.12/1998/2 at 3

		-examining complaints of alleged infringements	
Limburg Principles (affirmed by the CESCR)	-special measures to eliminate discrimination	“Special measures taken for the sole purpose of securing adequate advancement of certain groups or individuals requiring such protection as may be necessary in order to ensure to such groups or individuals equal enjoyment of economic, social and cultural rights shall not be deemed discrimination”	The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/CN.4/1987/17, Annex at 39 and <i>Human Rights Quarterly</i> , Vol. 9 (1987), pp. 122–135
CESCR	-interim steps/temporary special measures	<p>“Temporary special measures may sometimes be needed in order to bring disadvantaged or marginalized persons or groups of persons to the same substantive level as others” (para 15)</p> <p>“The adoption of temporary special measures may be necessary to accelerate the equal enjoyment by women of all economic, social and cultural rights and to improve the de facto position of women. Temporary special measures should be distinguished from permanent policies and strategies undertaken to achieve equality of men and women” (para 35)</p>	Committee on Economic, Social and Cultural Rights (CESCR), <i>Comment No. 16, The equal right of men and women to the enjoyment of all economic, social and cultural rights</i> (Thirty-fourth session, 2005), UN Doc E/C.12/2005/4 at 15 and 35
Supreme Court of Justice Venezuela	Preventative programming	“The Court also ordered that a preventive policy be developed, including information, awareness and education programs, as well as full assistance to persons living with HIV/AIDS, and full treatment and medical assistance to the applicants” (case commentary)	<i>Cruz del Valle Bermúdez y otros vs. MSAS s/amparo</i> (May 15 1999) Expediente N° 15.789. Sentencia N° 196, online: Supreme Court of Justice < http://www.eser-net.org/caselaw/caselaw_show.htm?doc_id=406005&focus=13958 >