

How to Make Local Development Work for All – A Human Rights-Based Approach to Local Development Planning

(BIM Tool 3)

DRAFT



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Österreichische
= Entwicklungszusammenarbeit

Abbreviations

BiH	Bosnia and Herzegovina
BIM	Ludwig Boltzmann Institute of Human Rights
CIS	Commonwealth of Independent States
GOM	Government of Macedonia
HRBA	Human Rights-Based Approach
LDP	Local Development Plan
HR	Human Rights
MDGs	Millennium Development Goals
NDP	National Development Plan
PRS	Poverty Reduction Strategies
RMAP Project	Rights-Based Municipal Assessment and Planning
SWOT (Analysis) (Analysis)	Strengths, Weaknesses, Opportunities, Threats
TOT	Training of Trainers
OHCHR	Office of the High Commissioner for Human Rights
UNDP	United Nations Development Programme
WHO	World Health Organization

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1 Introduction

1.1 Why is a Human Rights-Based Approach (HRBA) to local development planning useful?

The implementation of a local development plan works best if all stakeholders are included and work together in the process. The poor and vulnerable who are generally the last to benefit from development efforts, usually tend to be excluded from processes of planning and implementing development strategies. However, development strategies must be as inclusive as possible to benefit all. A HRBA focuses on the poor and vulnerable groups to ensure their inclusion and empowerment. To make clearer what government authorities have to do and what the citizens have the right to claim in the process, the local development plan will be based on the national and international human rights framework. Human Rights obligations are not imposed by the outside; "they have been voluntarily incurred by States with a view to upholding the dignity and freedom of their people."¹ To ensure that the planning and implementation process works in an inclusive and equitable way, the HRBA also advises on monitoring and accountability mechanisms. Details on each step will follow in the section on the draft local development tool.

For Macedonia, the integration into the European Union (EU) is one of the key strategic interests and a priority objective². Therefore, Macedonia tries to harmonize the poverty reduction and social inclusion strategies in the context of EU accession by linking the Millennium Development Goals with the Laeken indicators of social inclusion in the field of poverty reduction.³ For this aim, the governmental (central and local), private and civil society sectors are called upon to act in a concerted manner.

The development of Local Development Plans regarding the fulfilment of the MDGs, by using a Human Rights Based Approach, will lead to sustainable, locally owned plans for development by respecting diversity and thus overcoming social exclusion and discrimination.

1.2 The Millennium Development Goals and the HRBA

Poverty eradication is a primary goal of the new millennium. Governments have committed themselves to taking action through strategies and programmes which aim to reduce poverty.⁴ The denial of human rights is inherent in poverty, something which is powerfully recorded in recent studies, such as *Voices of the Poor*.⁵ Poverty cannot be banished without the realization of human rights. In the words of the Human Development Report 2000: "A decent standard of living, adequate nutrition, health care, education and decent work and protection against calamities are not just development goals – they are also human rights".⁶

¹ Guidelines on a Human Rights Approach to Poverty Reduction Strategies (hereinafter The Guidelines), p. 8.

² Macedonia signed a Stabilization and Association Agreement with the European Community and the Member States on 9th of April 2001. It entered into force on 1st of April 2004, and Macedonia applied for EU membership in March 2004.

³ Amsterdam Treaty, EU social policy articles 136 and 137; European Social Agenda 2001-2005, etc. P.11 18 Laeken indicators for social inclusion were elaborated at the Laeken European Council.

⁴ The Guidelines, preface.

⁵ Deepa Narayan (Dir.), *Voices of the Poor*, vol. I, II, III, World Bank, 2001 and 2002.

⁶ UNDP, Human Development Report, *Human Rights and Development*, 2000 p. 8.

2 Main elements of A Human Rights-based Approach

The main features of a human rights approach to poverty reduction for Macedonia are the following:

- Identification of the poor
- Recognition of the relevant normative national and international human rights framework
- Equality and non-discrimination
- Progressive realisation of human rights
- Participation and empowerment
- Monitoring and Accountability

To ensure this, it is important that (1) all vulnerable groups are identified during the data collection and situation and problem analysis; (2) initiatives are established to ensure social mobilization and participation with focused actions targeting those groups which are usually excluded and not actively participating in policy development processes; (3) establish a specific set of targets and indicators concerning the realization of human rights throughout the process, with short-term, mid-term and long-term objectives; (4) create effective monitoring and accountability mechanisms to ensure that duty-bearers can be held accountable, especially in case of misuse of allocation of resources.⁷ Every local development plan should have these elements firmly embedded in the planning and implementation stage. Although it may seem a difficult endeavour to include these criteria thoroughly, an inclusive local development plan will not be possible without them.

The principles as listed above help to guarantee access to the development process, institutions and information, and the incorporation of mechanisms of redress and accountability. At the core of this concept is the principle of non-retrogression,⁸ which requires that the existing level of human rights protection has to be maintained and the realization of the rights progressively improved. With view of economic development plans, the government authorities on all levels have the obligation to safeguard the existing level of protection, not to permit any trade-offs and to ensure with immediate effect a certain minimum level of enjoyment of various human rights.

In the Macedonian context, the criteria of a HRBA can be applied as follows:⁹

2.1 Identification of the poor

The Government of Macedonia has, to a considerable extent, identified the poor in its MDGs report.¹⁰ One group of persons that UNDP projects and the National Development Plan (NDP) should particularly focus on are *persons who experience multiple discrimination or vulnerabilities*, such as Roma women or children with

⁷ See also Renate Frech, A Human Rights-Based Approach to Regional Development, p. 5.

⁸ Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies, Guideline 4: Progressive Realization of Human Rights; Indicators and Benchmarks, par. 73-74.

⁹ A more detailed analysis has been done in the BIM assessment report "Applying the Human Rights-Based Approach to Poverty Reduction by supporting the elaboration of a MDG-Based National Development Programme 2005-2015".

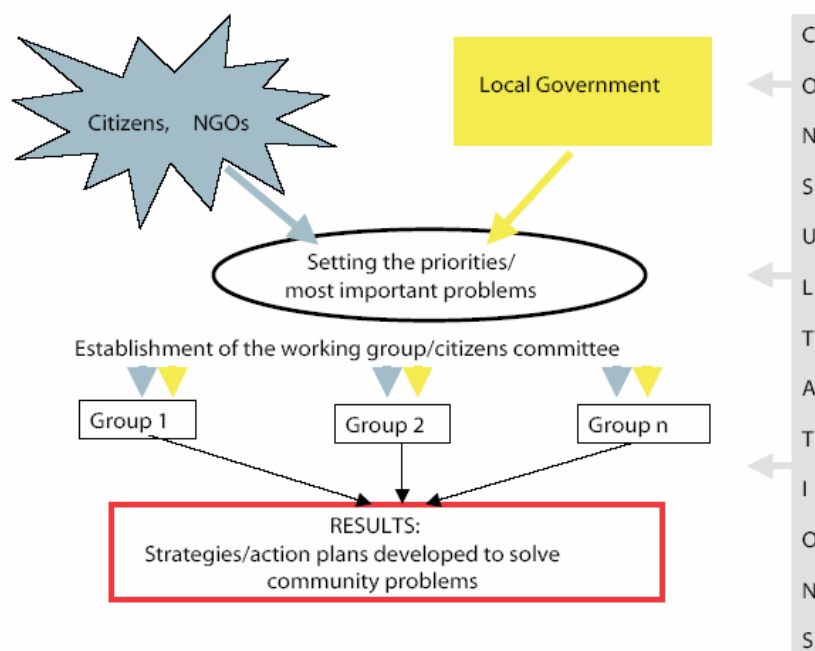
¹⁰ Government of the Republic of Macedonia, Report on Millennium Development Goals, Skopje 2005.

disabilities. For the three MDG pilot municipalities that will draw a Human Rights-Based Local Development Plan, a tool to identify the poor and vulnerable is being developed by BIM (see below).

2.2 Recognition of the relevant normative national and international human rights framework

OHCHR has prepared a country profile of Macedonia and the International Human Rights System that gives an elaborate overview of the status quo of Macedonia's human rights treaty ratifications and HR gaps identified by the Committees. The findings of the Committees should be considered in the planning phase for the NDP. Concrete recommendations include for example that concerted action needs to be taken by all public authorities to reduce domestic violence; that HR programmes should be included in school curricula to promote the prevention of racial discrimination; and that community services should be strengthened for poor families and families caring for children with disabilities. A complete picture of those recommendations can be found in the Country Profile prepared by OHCHR. BIM and a Macedonian consultant will develop a tool to assess the international and national legal framework relevant for Macedonia as a reference guide for local, regional and national development planning. However, the actual priorities setting must be done by the local stakeholders reflecting their local needs and interests.

Model of building the relationship for local problem solving.



Source: UNDP LD Policy Paper, p. 25

2.3 Equality, non-discrimination and progressive realisation of human rights

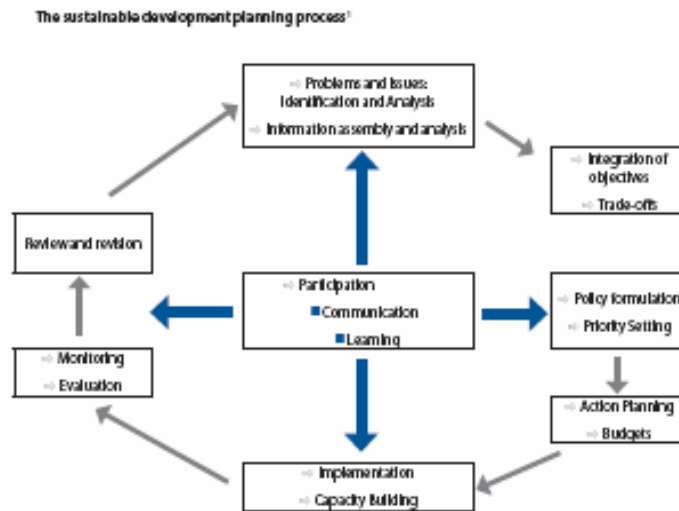
The BIM assessment report of September 2005 gives more detailed information about non-discrimination issues such as gender equality (MDG Goal Nr. 3) and

poverty reduction and social exclusion of particular social groups (MDG Goal Nr. 1) in Macedonia. Besides these two goals that should be addressed from a HRBA to feed into the National Development Plan, BIM suggests to focus on two relevant rights which are also MDG Goals: *the right to health* and *the right to education*. Both rights have been spelled out by the UN Draft Guidelines on Poverty Reduction Strategies (hereinafter The Guidelines) and would have a great impact on the Government of Macedonia's fulfilment of the MDG goals. These rights must be linked to targets and benchmarks that ensure continuous progressive realisation of those rights (more details can be found below under the indicators' sections).

To assist in the implementation of a HRBA, BIM is developing the following instruments:

- **Tool 1:** BIM is working on a specific tool which consists of qualitative and quantitative methods of empirical research methods to identify the poor and vulnerable in the municipalities. Data of the surveys will be used to do a Baseline Study regarding the poor and vulnerable (Baseline Study), in order to establish indicators of the status quo, and to be able to measure their participation in local development processes (Mid-term und Post-Evaluation), as well as the impact of programming activities. A local consultant will be trained in the methods to do a training of trainers (TOT) with the local surveyors. BIM will elaborate a linear analysis of the empirical data and the Baseline Study in cooperation with UNDP.
- **Tool 2:** BIM develops an International Human Rights Legal Framework checklist for Macedonia that serves as a reference guide to determine the relevant accountability mechanisms of duty bearers and rights holders. The national Human Rights Legal Framework is provided by a UNDP local consultant. The tool assists UNDP field staff and local stakeholders to identify and include the HR relevant topics in the process, and can be used as a reference list.
- **Tool 3:** To implement a HRBA in UNDP's support of local development planning and implementation to fulfil the MDGs in Macedonia, BIM has developed a step- by-step guide for local development planners and implementers that outline which questions need to be asked and which activities and mechanisms should be installed to set up a Human Rights-Based Approach to Local Development. This draft tool will be presented in the following sections. The outlined steps are based on the UNDP Policy Paper "How to make Local Development Work. Selected Practices from the Europe and the CIS".
- **Tool 4:** Following a bottom-up approach – from the local communities up to regional and national level – a tool regarding the implementation of the HRBA to regional development planning has been developed.

3 A human rights-based approach to local development planning



Source: UNDP LD Policy Paper, p. 29

In the following section, steps of a HRBA are integrated into the UNDP Macedonia local development planning process as shown in the above diagram.

3.1 The Local Development Planning Phase

3.1.1 Situation Assessment

3.1.1.1 Identify the poor and vulnerable

Identification and representation of the poor and vulnerable is an essential condition in the local development planning process. Certain groups, especially those that are socially vulnerable in more than one way, such as women with disabilities, need to be identified proactively to be included in the process. As mentioned in the previous section, BIM will develop such an identification tool – BIM tool 1 – for Macedonia which will be available by January 2006.

The RMAP project has created a vulnerable groups reference checklist to assist in the identification of “potentially vulnerable groups and the types of issues that they might face”. The checklist contains questions by categories of persons. For persons with disabilities, for example, the following questions need to be answered:¹¹

- Are persons with disabilities viewed as “objects” of protection, treatment and assistance rather than subjects of rights? Are they excluded from mainstream society, and provided with special schools, sheltered workshops and separate

¹¹ RMAP, p. 76.

housing and transportation on the assumption that that they were incapable of coping, either with society at large, or all or most major life activities?

- Is the general system of society, such as the physical and cultural environment, housing and transportation, social and health services, education and work opportunities, cultural and social life, including sports and recreational facilities, accessible to all? If not, what is the State doing to tackle socially created obstacles in order to ensure full respect for the dignity and the human rights of persons with disabilities?
- Do women with disabilities face additional obstacles, stigma or exclusion?

The complete checklist can be found in Annex 1 of this document.

3.1.1.2 Identify the relevant national and international human rights framework

A local development plan must be consistent with and informed by the State's national and international human rights commitments because this will enhance the plan's effectiveness and prevent that elements of the plan will be unlawful. The following standards provide such a framework:¹²

- National human rights law and practice, for example human rights provisions from the constitution, bill of rights, anti-discrimination laws, freedom of information legislation as well as the main human rights case law;
- Other important international human rights instruments such as the Universal Declaration of Human Rights;
- Commitments entered into at recent world conferences insofar as they bear upon human rights, including the United Nations Millennium Declaration (2000).

The RMAP project has developed checklists for both frameworks. As an example, the international human rights checklist on the right to education can be found in Annex 1 of this document.

3.1.2 *Strategic Plan Development*

3.1.2.1 Problem identification

- Are the poor and vulnerable participating in the problem identification process?
- Are their interests and problems taken into account?

There are several ways to encourage socially marginalized citizens' participation. In Macedonia, the institution of neighbourhood self-government works very closely with the citizens and thus is one likely avenue to initiate an inclusive process. Most citizens think that their Neighbourhood Self-Government is to a considerable extent addressing their everyday problems and that they can influence change at this level. If strengthened, Neighbourhood Self-Government

¹² The Guidelines, p. 12.

can assist newly decentralised municipalities in resolving citizen issues and providing some service delivery.¹³ In addition, the Law on Local Self-Government of Macedonia foresees several mechanisms of citizens' participation in local decision-making processes.

Another example has been documented in the RMAP project¹⁴: In Trebinje (BiH), participation at municipal level works through municipal information which is published in the local media, municipal session handouts are sent a week before to council members for them to be able to include local community representatives in issues of their interest.

3.1.2.2 Situation and problem analysis

→ Include rights and duties analysis in the SWOT analysis

Balancing the strategic measures: applied SWOT analysis (David, 1985)

Internal	Strengths	Weaknesses
External	Strengths of the sector/organisation	Weaknesses of the sector/organisation
Opportunities	Strengths/ opportunities strategies (SO)	Opportunities/ Weaknesses strategies (WO)
Opportunities arising outside of the sector/organisation	How to use the strengths of the sector/organisation in order to take advantage of the available opportunities	How to use the opportunities within the sector/organisation in order to neutralise the effects of the weaknesses
Threats	Strengths/ threats strategies (ST)	Weaknesses/ threats strategies (WT)
Threats arising outside of the sector/organisation	How to use the strengths of the sector/organisation in order to avoid threats	How to improve weaknesses within the sector/organisation

Source: UNDP LD Policy Paper, p. 29

The rights and duties analysis is part of the national and international human rights legal framework analysis. This framework analysis will determine which duties the local and national authorities have and what the human rights are which the citizens at the local and national level can claim. One part of this analysis is the health and education competencies. In Macedonia, for example,

¹³ OSCE, Assessment of Intra-Municipal Relations and the Role of Neighborhood Self Government, 2004.

¹⁴ RMAP - Rights-Based Municipal Assessment and Planning Project. Consolidated Report of the Municipality Assessments in Bosnia and Herzegovina, p.20.

national and local authorities share competencies in both sectors to a different extent: Art. 22 of the Law on Local Self-Government foresees cooperation of local government with central government and the representation of local government on health boards. A rights and duties analysis will demonstrate if the legal requirements are in place to determine the duties of local and central government vis-a-vis the citizens.

3.1.2.3 Policy design and setting of priorities

→ Prioritise policies that ensure the maximum realisation/inclusion of rights of the poor and vulnerable

From a HR-based perspective, the process of prioritization is a strategically important step within the policy development and very closely related to the principles of participation and empowerment. Guideline 5, referring to 'Participation and Empowerment',¹⁵ describes the link between participation and allocation of available resources: "As different patterns of resource allocation will serve the interest of different groups of people differently, a conflict of interest is inherent in any process of policy formulation. In whose favour this conflict is resolved depends very much on who can participate effectively in the process. Traditionally, the poor are left out, as they do not possess enough political or financial power to make their interests count. A human rights approach must take steps to alter this situation, by creating a legal-institutional framework in which the poor can participate effectively in policy formulation."¹⁶

The Guidelines also give guidance on priorities in education, health and other rights.¹⁷ As an example, concerning priorities on the realisation of the right to education, the Guidelines name the following:

- primary education free of charge for most vulnerable groups
- educational institutions for adults, focus on vocational training
- support programmes for vulnerable to reduce drop-out rates (primary and secondary education) e.g. through textbooks, transport, meals free of charge

3.1.2.4 Planning actions

a, Clear Roles and Responsibilities

→ Include results of rights and duties analysis

b, Outcome and Success Indicators

→ The Guidelines include indicators on education, health and other rights

c, Resource Commitments and Allocations

→ Ensure that adequate resources are allocated to realise the objectives of the poor and vulnerable

¹⁵ Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies, p 16.

¹⁶ The Guidelines, p. 16f.

¹⁷ The Guidelines, p. 25f.

3.2 The Local Development Implementation and Revision Phase

3.2.1 Implementation and Revision

3.2.1.1 Inclusion in the implementation and revision process

During monitoring of implementation:

- Are the poor and vulnerable participating in the implementation process?
- Are their objectives taken into account?

During evaluation, indicators must be taken into account, which measure:

- Have the poor and vulnerable been participating in the planning process?
- Have their objectives been taken into account?

3.2.1.2 Priorities check

- Are priorities set that lead to the realisation of relevant rights of the poor and vulnerable? Are they balanced with general economic interests?
- Are adequate resource allocations made to implement these priorities?

The Guidelines give, for example, guidance on implementation priorities to realise the right to health:

- tailor-made services for the various groups of poor people
- resource allocation to poorer areas
- service of quality, gender-sensitive and culturally acceptable; respect by health care personnel
- clean water for all
- reduce user fees, exempt the poor
- other programs that influence health should be pro-poor: food security in agricultural programs, income-generating activities for the poor

3.2.1.3 Indicators

In substance there is not much difference between HR-based indicators and socio-economic indicators but they are derived from the HR norms and used for monitoring HR compliance of duty-bearers. Examples of indicators for the rights to food, health, education and others can be found in the Guidelines.

3.2.1.4 Monitoring and Accountability

- Include independent bodies like parliamentary committees or Ombud institutions
- Create a legal framework and political conditions for NGOs to monitor the implementation process¹⁸

¹⁸ The Guidelines, p. 57f.

→ Include the poor and vulnerable in the monitoring and accountability process

3.3 Additional issues to consider¹⁹

3.3.1 Awareness-Raising, Training and Capacity-Building

The integration of a human rights-based approach into local development planning is to a large extent a new concept in Macedonia. This requires a broad-based education and awareness-raising program which targets all groups and sectors of society, especially vulnerable and marginalized groups, including the poor and less educated.

To reach the goals of

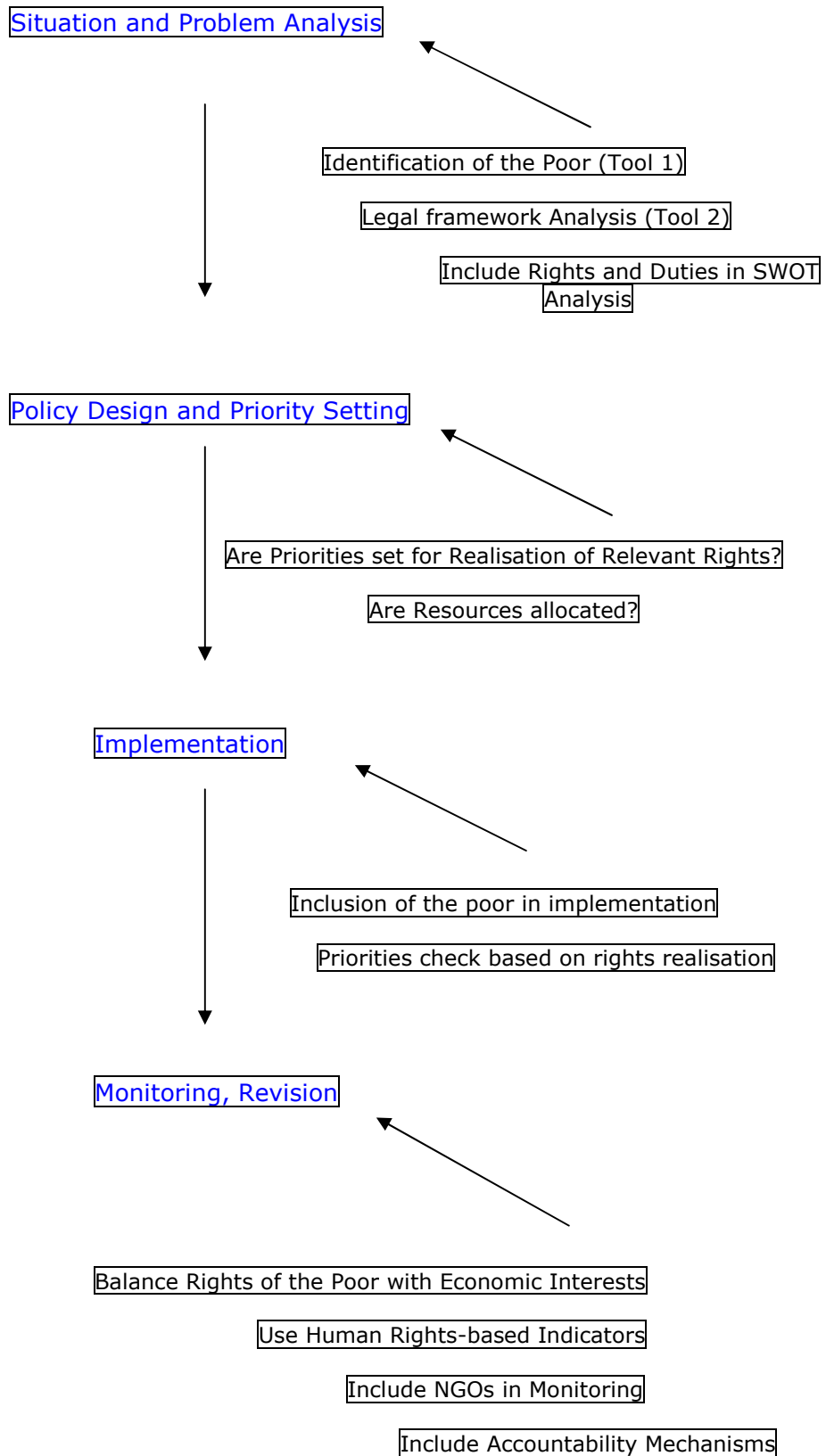
- sustained social mobilization,
- empowerment and ownership of the vulnerable, marginalized and poor

is a long-term process and needs, certainly in the beginning, to be supported from the outside. It is not sufficient to provide training to the political, social and economic leadership to ensure that they are familiar with a human rights-based approach, it is essentially important that the right-holders are aware of their rights and entitlements and also know how to claim them from the duty-bearers. Groups which have been traditionally passive and remained outside of the political sphere, such as disadvantaged, vulnerable and poor people, might not know how to get involved and meaningfully participate in a policy development process, or how to use accountability procedures and which institutions to address in order to claim compensation.

Furthermore, social mobilization and capacity building which is closely related to human resource development, may create and enhance a bottom-up approach with regard to human rights education, as citizens are getting increasingly aware of their rights and of the mechanisms put in place to ensure the fulfillment those rights.

¹⁹ Largely based on Renate Frech, A Human Rights-Based Approach to Regional Development, p. 29f.

Steps of a HRBA to Local Development Planning (BIM Tool 3)



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5 ANNEX

RMAP checklist on vulnerable groups

RMAP human rights checklist: sample on the right to education

The following two checklists are tools developed by OHCHR and UNDP for the Rights-Based Municipal Assessment and Planning Project (RMAP) in Bosnia and Herzegovina. They are illustrative of the questions that should be asked in the planning and implementation process, especially in the situation and problem analysis in the planning phase.

Please note that the RMAP Human Rights Checklist specifically refers to the legal obligations of Bosnia and Herzegovina which are not one-to-one applicable to the legal obligations of Macedonia. The legal framework of Macedonia will be covered by BIM Tool 2 (International and Domestic Legal Framework). However, the RMAP Right to Education checklist provides a good basis for reference and guidance when dealing with situations where the right to education is relevant.

VULNERABLE GROUPS LIST

INTRODUCTION

The Vulnerable Groups List is a record of pertinent questions that can extract human rights-based information. The list converts human rights indicators based on international standards²⁰ into questions for assessment teams/researchers to consider when addressing certain issues or groups. It is a good illustration of how to draw human rights-based questions related to one human rights issue for assessment purposes. In that respect it needs to be noted that the list is not exhaustive and can be modified or expanded according to assessment or organisational needs and context.

The List addresses selected categories of vulnerable groups that exist in Bosnia Herzegovina: women, persons with disabilities, national minorities, Roma, displaced persons/returnees/refugees, children, elderly, trafficked persons, migrant workers and asylum seekers, detainees, HIV positive individuals, homosexuals and very poor/homeless²¹.

Objectives of the Vulnerable Groups List

- ❖ To aid assessment teams/researchers to identify potentially vulnerable groups and the types of issues that these groups may face.
- ❖ To make sure that teams/researchers are not overlooking the concerns of whole categories of people who are not immediately visible on first assessment of the municipality. Indeed, to guarantee a meaningful participatory approach to assessment, it is important to pay attention to those who are typically marginalised and whose issues would not necessarily be voiced either by themselves, or by the State authorities or other residents on their behalf.
- ❖ To ensure that information gathered is relevant to human rights indicators or couched in the human rights framework.

How to use the Vulnerable Groups List

- ❖ Assessment teams/users should use the list as a *quick reference checklist* for the types of questions to be asked in order to identify the most vulnerable groups and who should at least be contacted in the municipality.
- ❖ This List does not claim to be exhaustive and is intended to be a living instrument which teams can adapt according to experience and relevance in the field. As a result, users should *not stick to it too rigidly, but rather use it as a guideline*. Similar questions should also be asked of other groups under each sector depending on what emerges as a priority in the municipality/sector assessed. Assessment teams/researchers are encouraged to add their own questions/comments and, where necessary, go that one step further to ask, 'why?'
- ❖ *When answering the questions in the list*, one needs to explain how such conclusions were reached and assessed (e.g. is this an impression formed during the assessment visit? Was information gathered from NGOs or the general public? Was there any focus group discussion conducted? Etc.). References and sources for answers need to be provided.

When to use the Vulnerable Groups List

- ❖ Step One: Identify problems and rights
- ❖ Step Two: Set priorities
- ❖ Step Three: Actors - claim holders
- ❖ Step Four: Information collection
- ❖ Step Five: Analysis

Tools to be used with the Vulnerable Groups List

- ❖ Human Rights Checklists for all steps
- ❖ Analysis Chart and Brainstorming Grid when identifying vulnerable groups (at Step Three) and how they are affected by problems identified

²⁰ For the purposes of this tool, indicators were developed from, *inter alia*, UN treaty body State reporting guidelines; CEDAW list of indicators; UN General Comments; reports of the UN special procedures; other sources of international standards, such as academic writings; and NGO/IGO/INGO reports on vulnerable groups, particularly those focused on BiH.

²¹ The List is as of December 2004. The list is not exhaustive and might be modified by RMAP in the future. Other potentially vulnerable groups could be added to this list, such as Civilian War Victims.

WOMEN

Note: The following indicators should be used to assess whether women are potentially vulnerable or discriminated against, and assess the situation of women from specific vulnerable groups.

Equality and non-discrimination

- ❖ Is there sufficient data to enable the monitoring of different levels of rights protection, realisation and enjoyment between women and men (and also between women in urban and rural areas)?
- ❖ Is there a mechanism in place to gather disaggregated data?
- ❖ Does inequality exist in the municipality? If so, what is the municipality doing to address such inequalities?
- ❖ Have national and sectoral development plans adopted the principle of non-discrimination and equality?
- ❖ Is there any discrimination based on sex and biological differences in any sphere of life?

Participation in public affairs

Voting

- ❖ Do women vote freely in national, regional and local elections and referenda? If not, why not?
- ❖ Is not-voting an informed choice and a form of political expression or is it apathy?

Standing for public office

- ❖ How many women candidates stand for election? If there are a low number of candidates, what are the reasons for this?
- ❖ Is there an affirmative action policy, or quota system, for women candidates?
- ❖ How do political parties nominate women candidates? Do they encourage women members and candidates?
- ❖ Do women face obstacles in nominating themselves as candidates? If yes, what are those? What steps are taken by the authorities to remove/mitigate those obstacles?
- ❖ Do people have trust in women candidates? If not what are the reasons?

Direct Participation

- ❖ Women should constitute at least 30% - 35% of government (critical mass for influential participation). Is this the case in your municipality? How many women hold legislative / executive positions?
- ❖ Are there initiatives to raise women's participation in government to 50%?
- ❖ Are women in public institutions, once elected, promoting women specific issues? Do they feel free to raise issues of particular importance to women? Do they face any obstacles to freely express their opinions as women? And which ones?
- ❖ Do women participate in the formulation and implementation of government policy, development plans, budget, etc.?
- ❖ Can women attend or organize public meetings on matters that they identify as being of concern?
- ❖ Are women able to gain membership of or form political parties? What measures have political parties adopted to increase women's membership?
- ❖ Are women from all communities and ethnic groups ensured similar political rights – paying attention to the equality of rural and urban women?
- ❖ How many women are leading local communities or are involved in their activities?
- ❖ Do women-led NGOs or groups actively participate in government decision-making, passing of legislation or policy setting? What obstacles do they confront?

Access to public service

- ❖ Is information related to public services equally accessible to men and women?
- ❖ Are women represented equally in public services?
- ❖ What are the criteria for selection in the public service? Are the selection criteria for public services transparent and do they provide equal opportunity to women? Is there an affirmative action policy? If so, is it implemented?
- ❖ If there are a disproportionately low number of women in government positions, why is this?
- ❖ Are women holding positions in ministries that are furthest away from real political power or influence (e.g. health and culture)?
- ❖ Do stereotypical attitudes towards women's role in society exist e.g. family and childcare are women's responsibility/ gender stereotypes re: political decision-making is men's domain? Do social customs discourage women from running for political office? (Link to direct participation)

- ❖ Do women hold positions in the judiciary, police and other branches of public service?
- ❖ Do women have equal access and opportunity to participate in national, regional and international forums of governments or political concerns?

Non-Discrimination

- ❖ What support services exist to enable women to participate in public life? To what extent are women's organisations actively involved in policy making? Do positive discrimination methods or other mechanisms exist to ensure such involvement?
- ❖ Are women equally represented in management positions? Are they in a position to participate in important decision making processes and to benefit from the economic transition? If not, why not?
- ❖ How are municipal authorities trying to break the 'glass ceiling' (the de facto barrier to women's career advancement) through the appointment of executive boards and managers of public institutions and public companies and other State institutions? Is attention paid to gender equality? Are women confined to managerial positions in non-profit institutions with relatively little power (e.g. school boards, rather than industry)?

Freedom of expression, Right to information and Civil Society

Freedom of expression

- ❖ Do women have equal access to media and any other mode of information sharing?
- ❖ Do women equally enjoy right to seek, receive and impart information?
- ❖ Are issues that affect women given a balanced media coverage that does not reinforce established stereotypes?
- ❖ Can women express dissent (in public or private) without fear of retribution or denial of rights?

Access to information

- ❖ Do women both in rural and urban areas have access to media/information (both in terms of disseminating and receiving information and on that basis gaining public support for, or promoting, their interests)?
- ❖ Do women have equal access to the internet? If not, why not?
- ❖ Do women (especially from marginalised groups) experience any obstacles in seeking, accessing, receiving and imparting information of their concerns and related to public affairs?

Civil Society

- ❖ Are there appropriate CSOs addressing the full development and advancement of women, and working to promote and ensure their exercise and enjoyment of human rights and fundamental freedoms? If not, why not?
- ❖ Are women meaningfully involved in such organisations? Do women feel free to form or join such organisations or associations?
- ❖ Are women involved in political demonstrations and cultural gatherings? If not why not? Are such forms of assembly able to take place without undue limitations imposed by authorities?

Participatory Development

- ❖ Do self-help groups or co-operatives exist for women in rural areas? If not, what hinders their development? If such groups exist, do they organize to allow women to obtain equal access to economic employment or self-employment? If not, what are their functions?
- ❖ Do rural women have equal access to participate in public affairs?
- ❖ Do rural women participate in developing economic and agricultural policies?
- ❖ Do rural women benefit from rural development to the same extent as men?
- ❖ Do development policies address adequately the specific needs of rural women? Are there specific programmes designed for advancement of rural women?

Justice

- ❖ Do women have equal protection of law and equality before law?
- ❖ Can women equally and freely access legal arenas and procedures?
- ❖ Are there women working in the judiciary and in the police?
- ❖ How many women are working at high levels in the judiciary, police force and other law enforcement agencies? If there is a lack of women in law enforcement, is this due to cultural, social, structural, organisational, policy, attitudinal, access and/or opportunity reasons within society or within the institutions? Is it a result of discrimination?
- ❖ Do women have equal access to courts and legal aid as men? Are women aware of their rights and entitlements in that respect?

During trial rights

- ❖ Do women before the court face discrimination due to the gender make-up of the court? (This is particularly important in violence against women cases or those where the defendant is of ethnic minority)

Gender-based violence

- ❖ Is gender-based violence an issue and how rampant is it?
- ❖ Do programmes/ awareness campaigns exist, which address gender-based violence against women? Do they attempt to change the attitudes of men? Are there public information programmes to educate women about their rights and the legal implications of domestic violence?
- ❖ Are people openly talking about it or is it considered taboo? If so, why?
- ❖ What measures have been taken to sensitise, raise awareness and inform law enforcement officials of the issue of violence against women, particularly within the home? How do police deal with the issue?
- ❖ Do women report cases of spousal abuse/rape (or by other relations) or other forms of gender based violence? If not, why not?
- ❖ Is there a legal framework/mechanism in place to deal with gender-based violence? If not, how can law enforcement officials deal with this issue (e.g. under which law)?
- ❖ Is there a safe place for women to go when faced with violence in the family? Are there other forms of support, such as a telephone help-line, counselling etc? How is the safety of victims ensured? Is there any mechanism for offering rehabilitation to victims?
- ❖ Do sex-workers enjoy their rights to access to court and remedy for crimes perpetrated against them or does their legal status create a barrier to realising their human rights?

Economy

- ❖ Do women have equal employment opportunities as men?
- ❖ Has privatisation affected women disproportionately to men? Do women participate in the progress of economic reform? To what degree do women participate in the informal labour force?
- ❖ Do women have equal rights and access as men regarding bank loans/ mortgages/ other financial credit?
- ❖ Are women and adolescent girls from rural communities at special risk of violence and sexual exploitation when they leave the rural community to seek employment in towns?

Right to work

- ❖ Are wages differentially low in women-dominated fields of work such as teaching, nursing, social welfare and childcare?
- ❖ Are women encouraged to take up apprenticeships in fields not usually pursued by women?
- ❖ How mobile are women? Have appropriate measures/studies been taken to develop a network of child-care facilities?
- ❖ Are there special measures for the protection of pregnancy, maternity, the health and safety of women in the workplace? What are they? Are they effective? Is their effect being monitored?
- ❖ Do rural and urban women have equal access/information/opportunity to small income generation schemes?
- ❖ Are women working in informal sector secured? Are they potentially at high risk of exploitation? How are rights and entitlements of women working in informal economy protected?

Trade unions

- ❖ Do women participate in trade unions? Are there any factors which affect their participation in this sector? Have measures been introduced to encourage their participation?
- ❖ Are the interests of women workers represented through union action such as strikes or collective bargaining? Are there political restrictions on union activities?
- ❖ What percentage of women are member of unions overall?

Forced Labour

- ❖ Does poverty and unemployment force women, including young girls into any form of forced labour? What are those forms of forced labour? Is there any legal mechanism to protect women and men from forced labour? Is there any counselling and legal aid provision to allow those women and men forced into labour to seek legal remedies? Do they have access to and information about such provisions?

Discrimination

- ❖ Do women receive equal remuneration and equal treatment in respect of work of equal value? How are all the tasks they undertake valued?
- ❖ Have there been incidents of gender-specific violence, such as sexual harassment in the workplace (including unwelcome sexually determined behaviour such as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions). Do women have reasonable grounds to believe that their objection to such conduct would disadvantage them in connection with their employment, including recruitment or promotion?
- ❖ Are there any temporary positive discrimination policies in place to promote the advancement of women in the work place?
- ❖ Can women be dismissed on the grounds of pregnancy, maternity leave or marital status? Do women experience any discriminatory treatment on grounds of pregnancy and maternity leave? Is the right to return to work after maternity secured by the law?

Education

- ❖ What is the percentage of girls enrolment/dropout (if any) at all levels of education compared to boys and disaggregated by ethnicity, geographical area etc?
- ❖ Do women and girls have equal access to all levels of education and skills training?
- ❖ Do girls leave primary or secondary school earlier than boys? What are the major causes of girls or women discontinuing their education?
- ❖ Do women have the same access to education as men? Is the curriculum gender sensitive and the same for both sexes? Have active measures been taken to eliminate any stereotyped concept of the roles of men and women at all levels and in all forms of education (e.g. by co-education, revision of textbooks and curricula etc)? Do girls and boys have equal access to available and offered courses?
- ❖ What is the percentage of women graduating in the field of medicine/ engineering/ law/ science/ agriculture? Are women encouraged to study typically 'male' dominated subjects?
- ❖ Do rural girls and women have equal access to all levels of education and all types of education?
- ❖ Is education affordable to girls/women in rural areas?

Social Welfare

- ❖ Do women enjoy the same rights as men to social security (including retirement, unemployment, sickness, invalidity, old age, other incapacity to work)? Are they treated according to their married/spouses' status?
- ❖ Does the social welfare system provide special coverage to women in particularly vulnerable situations, such as female-headed households, gender-based violence, and elderly?
- ❖ Are there special protection for pregnancy and maternity?

Health

- ❖ What is the rate of female mortality? At what ages are they most vulnerable to mortality? To what particular conditions are women most vulnerable, including both physical and mental stresses and illnesses?
- ❖ What control can women exercise over their own fertility and bodies?
- ❖ Do women have to pay additional costs for reproductive health care? If so, is it a municipal policy? Does this prevent women from seeking or receiving appropriate treatment?
- ❖ Is special attention given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women who work in the sex-trade, indigenous women and women with physical or mental disabilities (especially concerning family planning, pregnancy and confinement and during the post-natal period)? Are such services free where necessary?
- ❖ What legal or cultural obstacles are there to women receiving health care services, including family planning? Is there an issue regarding abortion? Do any groups perpetuate practices (e.g. dietary restriction for pregnant women) that might be harmful to women's health? Do any other harmful health practices exist?
- ❖ Is respect for the individual and confidentiality ensured?
- ❖ Do the authorities effectively enforce laws and formulate policies, including health-care protocols and hospital procedures to address violence against women and sexual abuse of girl children and the provision of appropriate health services; and gender-sensitive training to enable health-care workers to detect and manage the health consequences of gender-based violence?
- ❖ Is information on health easily and equally accessible to women and girls?

- ❖ Do health policy/programmes address special health needs of rural women and girls?

Non-discrimination

- ❖ Do women have the same access to health care as men?
- ❖ Do health centres provide, without prejudice or discrimination, sexual health information, education and services for all women and girls, including those who have been trafficked, even if they are not legally resident in the country?

Property

- ❖ Can/do women own, hold, enjoy and transmit the use of property in their own right?

Adequate housing

- ❖ Are adequate living conditions ensured for rural women and urban women (particularly in relation to housing, sanitation, electricity and water supply, transport and communications)?

Culture

- ❖ What roles can women play in the cultural life of society?
- ❖ Does religion or custom impose practices or beliefs that interfere with improving the status of women? What are they?
- ❖ Can women choose their own partners? Can they end their relationships with their partners? Is there an established minimum age for marriage? Is registration of marriage compulsory? What are authorities doing to ensure that registration is carried out? Does failure to register a marriage cause hardships for women and how is it ensured that this does not occur?
- ❖ What is the social and economic status of women, whether they are unmarried, divorced or widowed, young or old?
- ❖ What cultural and traditional practices or ways of life, if any, hamper women's advancement in society?
- ❖ What measures have been taken to change social and cultural patterns that lead to stereotyping or reinforcing the idea of the inferiority of women?

Female Heads of Households

5.1.1.1.1.1.1 Social Security

- ❖ Is the head of the household normally defined as the male? Do women receive equal benefits, in practice, that are intended for families/ households?
- ❖ Do female-headed households receive any additional social assistance?
- ❖ Are there statistics to identify the number of female-headed households? Are authorities aware of the issues related to this situation? If so, what is being done to address specific problems faced by women and families in this situation?
- ❖ Does a widow female head of household have the right to a family pension? How many family members depend on this income?

5.1.1.1.1.1.2 Economy

- ❖ Are there special provisions made by employers or the municipality, such as crèches and flexible working hours, to enable women with children to enter the labour force? Are such provisions economically viable?
- ❖ Is remuneration provided equal and adequate for a decent living?
- ❖ Are there affirmative actions to promote/ encourage participation of these categories of women in public affairs?

5.1.1.1.1.1.3 Housing

- ❖ Do female-headed households have security of tenure in their housing?

PERSONS WITH DISABILITIES

Equality and non-discrimination

- ❖ Are people with disabilities viewed as “objects” of protection, treatment and assistance rather than subjects of rights? Are they excluded from mainstream society, and provided with special schools, sheltered workshops and separate housing and transportation on the assumption that they were incapable of coping, either with society at large, or all or most major life activities?
- ❖ Is the general system of society, such as the physical and cultural environment, housing and transportation, social and health services, educational and work opportunities, cultural and social life,

including sports and recreational facilities, accessible to all²²? If not, what is the State doing to tackle socially created obstacles in order to ensure full respect for the dignity and the human rights of persons with disabilities?

- ❖ Do women with disabilities face additional obstacle, stigma or exclusion?

Public participation

Elections

- ❖ Is the right to stand for election and the right to vote guaranteed for persons with disabilities? Is it facilitated in practice through accessible polling stations, material (for example in Braille), campaign literature, transportation to and from polling stations and postal voting?

Direct participation

- ❖ Are persons with disabilities represented in political decision making processes either directly or indirectly? Are their interests recognised and promoted?
- ❖ What policies / efforts are implemented at the municipal level to ensure their participation?
- ❖ Are there factors that serve to reinforce stereotypes, compounding and perpetuating the invisibility of persons with disabilities?

Justice

Pre-trial rights

- ❖ Is the right to liberty respected throughout the process of institutionalisation, also in the case of civil commitment of the mentally ill? Are individuals in this situation informed that their liberty has been taken away?
- ❖ Are mainstream facilities designed on an inclusive basis to solve the problems of inaccessible transport, an inaccessible built environment and an inaccessible communications environment (factors that detract to such an extent from the value of liberty that they call into question its existence for people with disabilities)?
- ❖ Are the persons with disabilities able or assisted through legal aid and counselling to challenge the legality of their institutionalisation?

Rights during trial

- ❖ Are 'due process' requirements enjoyed in cases of civil commitment of the mentally disabled?
- ❖ Do the norms applied to criminal trials of the mentally disabled contrast with the structures of 'due process' used in 'normal' criminal trials?
- ❖ Is it evident that people with mental disabilities are viewed as 'different', justifying radically different levels of legal protection for their rights and interests?

Economy

- ❖ Are people with disabilities active in the open labour market, rather than channelled into segregated (and expensive) work environments?
- ❖ Are people with disabilities excluded from most employment prospects due to unnecessarily low levels of educational attainment and/or unwillingness to ensure that labour markets respond appropriately and positively to the difference of disability?
- ❖ Is access to working places facilitated for disabled people?

Education

- ❖ Is the 'invisibility factor' discernible in the exclusion of children with disabilities from the ordinary education system and the benefits of vocational education and guidance?
- ❖ Is there an effective and reliable system for assessing the special needs of disabled children in regular schools or special schools?
- ❖ Are teachers training on their special needs and necessary equipment and support available to enable disabled children to enjoy the same level of education as non-disabled peers?
- ❖ Where disabled children are admitted to the mainstream, are the resources appropriated to these children sufficient to ensure meaningful enjoyment of the right to education?

Social Welfare

- ❖ Do disabled people continue to receive assistance for medical and social services when employed?
- ❖ Are disabled people properly covered/protected by social welfare laws? Who is and who is not?

²² World Programme of Action concerning Disabled Persons endorsed by United Nations General Assembly resolution 37/52 of 18 February 1982, para. 12.

- ❖ Are families of disabled people supported by the State if needed?
- ❖ Do torture victims have access to social welfare and health care, including psychotherapy? Is there an official programme for the rehabilitation of torture victims?

Health

- ❖ Are institutions well regulated to ensure that persons with mental disabilities or multiple or profound physical disabilities who are institutionalised for any reason, including convicted criminals, are free from torture and from inhuman and degrading treatment?
- ❖ Are there incidences where the right to life may have been violated through abortion on the basis of disability? Does euthanasia and the phenomenon of selective medical non-treatment exist/present an issue in the municipality?
- ❖ Are people with disabilities enjoying the same level of medical care as other members of society? Are they provided with rehabilitation services which would enable them to reach and sustain their optimum level of independence and functioning?
- ❖ Are women with disabilities and in confinement treated equally? Are their specific needs attended?

NATIONAL MINORITIES

Note: In Bosnia and Herzegovina (BiH), the following national minorities are recognised under domestic law: Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks, and Ukrainians. The BiH Law on Protection of National Minorities provides that others who meet the prerequisites regulated by the law and who do not belong to one of the three constituent peoples of BiH can be recognised as national minorities.

Freedom of movement – status

- ❖ For displaced persons or refugees who are national minorities, are they registered as “Displaced Persons” or “refugees”? Do they have documentation to evidence that status? Do they have identity documents?
- ❖ Are minorities able to establish and maintain relations with people across borders, both inter-entity and inter-state?

Public Participation

- ❖ Is a lower priority given to the interests of national minorities than the interests of constituent peoples?
- ❖ Are the State authorities providing conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them?
- ❖ Are authorities aware of their human rights obligations such as promoting awareness among the public and relevant authorities about the Framework Convention on National Minorities?

Access to information

- ❖ Do national minorities have equal access to the media? Is licensing issued on a non-discriminatory basis? Can minority groups establish and use print media freely?

Economy

Trade unions

- ❖ Are the interests of national minorities represented through unions?
- ❖ Are there any restrictions to establishing unions or restrictions on membership? What are the ethnic, religious and cultural compositions of unions?

Right to work

- ❖ Do people belonging to or associating with national minorities face dismissal or barriers to employment?
- ❖ Is there a policy of affirmative action in recruitment policies in the public and private sectors? If so, how is it implemented?
- ❖ Are the cultural holidays of national minorities respected within the scope of the worker’s right to rest and vacation?

Education

- ❖ Is education used as a means to encourage tolerance and intercultural dialogue to promote mutual respect, understanding and co-operation among all persons in the municipality regardless of their identity?
- ❖ Do teachers have the opportunity for training and access to textbooks regarding the culture, history, language and religion of national minorities? Does the municipality facilitate contacts among teachers and students of different communities?
- ❖ In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, are the authorities making efforts, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language?
- ❖ Are the authorities promoting equal opportunities for access to education at all levels for persons belonging to national minorities?

Culture

- ❖ Can minorities maintain and develop their culture and preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage?
- ❖ Do authorities promote the awareness and the enjoyment of the cultural heritage of all national ethnic groups and minorities?
- ❖ Are minorities able to use their minority language in private and in public, orally and in writing? Are translators made available when necessary e.g. in the process of criminal arrest?

ROMA

Note: Also see National Minorities.

Marginalisation / Discrimination

- ❖ Is there political, social and/or economical discrimination against Roma communities?
- ❖ Have the authorities taken measures to improve the relations between Roma communities and non-Roma communities, with a view to promoting tolerance and overcoming prejudices and negative stereotypes on both sides?

Status/identity

- ❖ Are Roma people registered as “Displaced Persons” or “refugees”? Do they have evidence of that status?
- ❖ Do the authorities respect the wishes of Roma as to the designation they want to be given and the group to which they want to belong? Is there any disadvantage resulting from the choice Roma make in that respect? Do Roma feel free to identify themselves or register as Roma for different services, without fear of reprisals or discrimination, if they want to?
- ❖ Do Roma have birth certificates? Do they have evidence of BiH citizenship?
- ❖ Do they face problems in obtaining official personal documents?

Public participation

Elections

- ❖ Do Roma face barriers concerning voting rights (e.g. inability to validate citizenship claims)?
- ❖ Are there any Roma political parties?

Direct participation in public affairs

- ❖ Have the authorities developed appropriate modalities of communication and dialogue between them and Roma communities and encouraged their active participation?
- ❖ In particular, are there modalities and structures of consultation with Roma political parties, associations and representatives in place, when considering issues and adopting decisions on matters of concern to Roma communities?

Civil Society

- ❖ Are there any Roma organisations or associations? What are they focusing on? Is there any organisation dealing with advocacy for the rights of Roma?
- ❖ Is the ability of Roma organisations to address the concerns of the Roma population as a whole frustrated through lack of co-operation between communities? If so, are there efforts to increase co-operation?

- ❖ Are there any Roma women's associations? If so, what does their work involve?

Justice

- ❖ Are crimes perpetrated against Roma investigated and punished appropriately? Do Roma perceive they have equal legal protection of the authorities?
- ❖ Are Roma in conflict with law treated with dignity and the principle of equality before law and equal protection of law are implemented for them also? Is there any incident recorded on discrimination against Roma in equal protection of law?

Pre-trial rights

- ❖ Are translators made available when the individual does not speak one of the constituent languages?

During trial rights

- ❖ Are attacks against Roma dealt with appropriately by the courts (i.e. are complaints listened to seriously and appropriate remedies issued)?

Economy

Right to work

- ❖ Are there any statistics available on Roma in employment?
- ❖ Are Roma enjoying opportunities related to employment e.g. access to education, vocational training, information etc? If not, are Roma confined to certain types of employment, such as manual labour? Are there vocational training programmes specifically targeted to Roma in order to provide more work opportunities?
- ❖ Is there discrimination against Roma in recruitment or dismissal practices of employers? If so, what is the municipality doing to eradicate such discrimination? Are Roma workers aware of their rights and legal measures that can be resorted to when discrimination occurs?
- ❖ Does the registration process create barriers to entry to the employment market for Roma?
- ❖ Does the municipality support self-employment initiatives (e.g. development of agricultural co-operatives/ small businesses) amongst Roma population?

Education

- ❖ Are there statistics regarding the school attendance of Roma children? If so, is attendance of this minority group considerably lower than for other ethnic groups in the municipality? How many Roma children go on to secondary or further education? Of these, what percentage are girls?
- ❖ Do Roma children in urban areas enjoy their right to education more than those living in rural areas? Are there programmes in place to facilitate the inclusion of Roma children into mainstream schools, e.g. the establishment of preparatory classes?
- ❖ Do Roma children face problems of access to education based on lack of financial resources for clothing, supplies, books and tuition, transport, or registration problems due to lack of birth certificates, language etc? If so, are there any initiatives (national/local authorities, NGOs or international organisations etc) to solve this problem?
- ❖ Are Roma children relied upon by their families for income generated through work carried out during school time?
- ❖ Is early marriage an issue in terms of cutting short the school careers of Roma children?
- ❖ Are there alternatives available to Roma children as to their religious or moral education in mainstream schools (if they/ their parents do not wish them to receive instruction in the religion dictated by the curriculum)?
- ❖ Do Roma children face discrimination/prejudice from fellow pupils or teachers? Does this deter enrolment or attendance?
- ❖ Are there attempts by State authorities (at local or central level) responsible for education to block the attendance of Roma children in schools?
- ❖ Are there attempts by State authorities to encourage the attendance of Roma children in schools and reduce dropout rates, in particular among Roma girls?

Social Welfare

- ❖ Are Roma excluded from social services benefits due to complicated processes of registration (e.g. requires official documentation, payment of fee, stable address, action to be taken within a certain time limit)?
- ❖ Have attempts by Roma to register been frustrated by authorities?
- ❖ Are there statistics available on the number of Roma receiving social security/benefits and what this includes (i.e. is any financial assistance sufficient to cover basic living requirements)?

- ❖ Are Roma aware of their entitlements to social welfare?

Health

- ❖ Have there been reports of increased health problems linked to poverty that disproportionately affect the Roma population? Is infant mortality amongst Roma unduly high in comparison with national average?
- ❖ Are Roma covered by a valid health insurance policy? If not, can they afford health care, or is access restricted?
- ❖ Do Roma face discrimination from health care workers?
- ❖ Do Roma women in particular receive adequate health care according to their needs? If not, why not?

Adequate housing

- ❖ Do Roma enjoy all aspects of the right to adequate housing, including the right to security of tenancy (e.g. in Roma settlements)?
- ❖ Are there local measures of denying of residence to Roma or unlawful expulsion of Roma? What has been done to give redress to Roma in these cases?
- ❖ Is the accommodation where Roma reside habitable?
- ❖ Are sanitation/waste collection services provided to Roma communities – in promotion of adequate housing, health and healthy environment?
- ❖ Do Roma households have access to potable water?
- ❖ Has the adequacy of sanitation of Roma settlements suffered due to increased numbers of returnees relying on the facilities?
- ❖ Do Roma benefit from alternative accommodation or alternative housing arrangements that are of an adequate standard?

Property

- ❖ Do Roma possess clear property titles in order to benefit from current property laws? Is there enjoyment of the right to property frustrated through lack of documentation?
- ❖ Is the problem of destroyed property an issue for Roma in the municipality?
- ❖ Do Roma benefit equally from any reconstruction projects in the municipality?

Culture

- ❖ Do Roma suffer from discrimination based on stereotypes of Roma culture?
- ❖ Is the municipality undertaking any efforts to dispel misconceptions e.g. education of the local population as to Roma culture and the situation of Roma in society?
- ❖ Are the media aware of their particular responsibility to not disseminate prejudices about Roma?
- ❖ Are the media educating the public about Roma life, society and culture, in the aim of building an inclusive society while respecting the human rights and identity of Roma?

DISPLACED PERSONS / RETURNEES / REFUGEES

Note: Particular attention needs to be paid to the situation of returnees belonging to an ethnic group that is a 'numerical minority' in the place of return. These individuals belonging to one of the constituent peoples cannot be considered 'national minorities', yet they can be in a vulnerable situation.

Status

- ❖ Are “refugees”, “displaced persons²³” and “returnees” registered as such under the law? Do they have evidence of that official status? If so, did they experience any difficulties in getting registration?
- ❖ Some “refugees” in BiH were granted BiH citizenship. Do they still call themselves “refugees”? Are they still registered as “refugees”?

Freedom of movement

- ❖ Is the process of return inhibited by the official status of DP/refugees in the municipality?

²³ 'Displaced Persons' or 'DPs' in BiH are what is termed internationally 'Internally Displaced Persons' (IDPs). The term used in BiH is specific but the same rights apply.

- ❖ To what extent does the status of “displaced person”, “refugee” or “returnee” limit or enhance access to work, health care, pension, education, social welfare or property? What entitlements arise from registration? Are they being enjoyed?
- ❖ Do political problems, economic or property issues create barriers to return for Roma/displaced persons?
- ❖ What is the security climate like in the municipality? Does it discourage return? Have there been any return-related security incidents this year?
- ❖ Is membership of a certain ethnicity and/or political party necessary to gain benefits, property, or employment in place of displacement or return?

Public participation

Elections

- ❖ Do displaced persons vote in their pre-war environments? Are they encouraged to vote by relevant authorities?
- ❖ Are they afraid to vote freely for fear of reprisals by majority populations based on their political affiliation? Are optimum safeguards provided for those who wish to vote?

Note: citizens from other countries having refugee status in a given country do not have the right to vote.

Justice

Prosecution of war crimes – missing persons

- ❖ Have the prosecutions of war crimes been hampered due to political interference and/or lack of witness protection schemes?
- ❖ What is being done by the State authorities at all levels to identify and find missing persons, thereby fulfilling the right to know of family members of missing persons?

During trial rights

- ❖ Despite the elimination of discriminatory provisions from legislation, do these groups still face discrimination in claiming their legal entitlements? Are their claims before the court taken seriously and acted upon appropriately?
- ❖ Do people before the court face discrimination due to the ethnic make-up of the court (particularly important where the defendant is of an ethnic background in a minority in the place of return)?
- ❖ Is the judiciary influenced by dominant political parties and by the executive branch? Does this lead to biased decision making? Is judicial responsibility clearly defined with reformed procedures, making the administration of justice less vulnerable to manipulation?
- ❖ Can DPs claim their rights, particularly those regarding property or occupancy rights, before a court in the area where they temporarily reside on an equal basis as permanent residents?
- ❖ Are the decisions affecting minority or returnees enforced within a reasonable time? Do political priorities prevent local authorities carrying out decisions?
- ❖ Do women DPs face additional problems or obstacles?

Economy

- ❖ Do people belonging to one of the constituent peoples in numerical minority in a particular residence face dismissal or barriers to employment?
- ❖ Is there a policy of affirmative action in recruitment policies in the public and private sectors? If so, how is it implemented?
- ❖ Are the interests of all ethnic groups represented through unions?

Property

- ❖ Are there legal obstacles to DPs claiming their rights regarding private property or occupancy rights? Did occupancy rights holders miss the deadlines for application?
- ❖ Is there social welfare housing available to displaced persons, refugees or returnees on the basis of their vulnerable situation? Is there any plan to ensure housing for all?
- ❖ Are there adequate reconstruction programmes for the housing needs of people in the municipality? Is there international support for such programmes?
- ❖ Do all returnees and DPs in the municipality possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment and other threats?

Non-discrimination

- ❖ Are land plots allocated by municipal authorities on a discriminatory basis? If so, why - in order to alter pre-war demographics or to intimidate returnees?

- ❖ Are court decisions on property rights, eviction orders, etc enforced by the authorities? If not, why not?

Education

- ❖ Are children and teachers of different ethnicity segregated in schools?
- ❖ Is education used as a means to encourage tolerance and intercultural dialogue to promote mutual respect, understanding and co-operation among all persons in the municipality regardless of their identity?
- ❖ Do teachers have the opportunity for training and access to textbooks regarding the culture, history, language and religion of the other ethnic, religious groups?
- ❖ Does the municipality facilitate contacts among teachers and students of different communities?
- ❖ Do options exist in practice for all religious groups in the municipality regarding religious education?
- ❖ Are religious symbols present in schools? If so, does this influence attendance or acceptability of education? Does this influence the perception of (potential) returnees of feeling welcome in a municipality?
- ❖ Is education provided for children of all ethnic backgrounds on an equal basis? Do children belonging to returnee families or numerical minorities face discrimination in any aspect of education (availability, accessibility, acceptability, etc.)?
- ❖ Is academic freedom constrained by ethnic favouritism and politicisation of faculty appointments?

Religion

- ❖ Are there incidences of attacks on religious facilities/buildings/artefacts? Can reconstruction take place unhindered by attacks?
- ❖ Are religious holidays or particular events celebrated and enjoyed without provocation or violence by either religious group? Can people hold religious based meetings or found organisations without fear of attack?
- ❖ Are there any religious institutions, organisations or associations that enjoy financial or other forms of direct or indirect support from local authorities?
- ❖ Is the right to manifest one's religion abused in order to provoke other religious groups? E.g. placing of religious symbols in sensitive areas, singing religious songs in provocative arenas, etc.
- ❖ Do people identified as religious leaders or members of religious groups face human rights violations on grounds of their religion?
- ❖ Is adequate legal action taken against the perpetrators of religious-based violence? If not, why not?
- ❖ Do leaders of religious communities get involved in politics? Does this lead to incitement of religious-ethnic and ideological intolerance? Or does it help tolerance and reconciliation?

Culture

- ❖ Are funds available and accessible on a non-discriminatory basis for the promotion of culture and people's participation in cultural life?
- ❖ Is the cultural identity of the municipality promoted as a factor of mutual appreciation among individuals, groups and communities?
- ❖ Do the governmental institutions promote awareness and enjoyment of the cultural heritage of national ethnic groups and minorities?
- ❖ Are cultural and sports events used as occasions to intimidate numerical minority/returnee groups?

CHILDREN

Education

- ❖ Is there any indication that some children do not attend primary school? If so, which children? Is there a mechanism to address this problem?
- ❖ What are the attendance statistics and school retention rates- segregated by sex, ethnicity, religion etc? Is there a difference between boys and girls? Which children are not attending school regularly? How reliable is the tracking system/data?
- ❖ Do school names or symbols etc actually lead to the obstruction of any children enjoying access to education? What effect does it have on their right to education? Is it perceived as excluding children of certain communities?
- ❖ What are the authorities doing to ensure all children are attending school?
- ❖ Are children with special needs catered for adequately within the education system? What is the assessment mechanism and is it effective? If it is deemed necessary, are their facilities to children with special needs to be educated outside the regular classroom?

- ❖ Are teachers trained to deal with children with special needs? Are special equipment and materials available?

Health

- ❖ Are primary health care, post-natal care and immunisation equally available for all children?
- ❖ Do female and male adolescents receive sexual and reproductive health education by properly trained personnel in specially designed programmes? Have appropriate measures been taken to reduce the number of teenage pregnancies?
- ❖ What are infant mortality rates in rural and urban areas? Is any difference due to poorer standard of living/ health treatment? Is there a difference in male and female infant mortality rate?
- ❖ Do children from marginalised groups face discriminatory treatment from health care services?
- ❖ Is child marriage a matter of custom in particular areas or among particular groups? Do health officials address this issue?
- ❖ Do parents have access to information related to child health care? Is there a mechanism to inform parents on child health related issues?

Justice

- ❖ Are there any special procedures to deal with the physical or mental abuse of children?
- ❖ Do children receive appropriate treatment within the justice system? Are those accused of crimes given appropriate legal representation? What detention facilities exist for children? Are they separated from adults?

ELDERLY

Social Welfare

- ❖ Do the elderly realise their rights to pensions and other social welfare benefits? If not, why not? What is this dependent upon? What are the relevant authorities doing to address any problems in this area?
- ❖ Are there elderly people who do not receive any pension at all?
- ❖ Is the retirement age flexible based on ability to work?
- ❖ Are their difficulties accessing survivor benefits on the death of the breadwinner?

Health

- ❖ Do elderly people receive adequate health care? Is it affordable?
- ❖ What obstacles are there to elderly people gaining access to health care? Is there adequate transport to facilitate their access to health?
- ❖ Do older women in particular, due to longer life expectancy (do women have longer life expectancy than men?), receive adequate health care throughout old age?
- ❖ Is the health of elderly people affected by poverty, particularly in rural areas? Do the elderly have adequate housing, preferably in their own homes or in adequate institutions?

Economy

- ❖ Are the rights of elderly workers respected?
- ❖ Are there incidences of discrimination in recruitment based on age? Are there mandatory retirement ages set?
- ❖ Do people reaching the age of retirement receive information about: their rights and obligations as pensioners; the opportunities and conditions for continuing an occupational activity or undertaking voluntary work; means of combating detrimental effects of ageing; facilities for adult education and cultural activities, and the use of leisure time?
- ❖ Has any restructuring of the economy (especially privatisation) disproportionately affected the elder work force or unemployed?
- ❖ Can elderly people still gain access to tertiary education or vocational training which will enable them to participate actively in the employment market?
- ❖ Are older women who have spent all or part of their lives caring for their families without engaging in a remunerated activity entitled to an old-age pension, or to a widow's pension? Can they receive non-contributory old-age benefits or other assistance?

TRAFFICKED PERSONS

General

- ❖ To what extent do victims of trafficking enjoy their right to liberty and security of the person; the right to freedom from torture, violence, cruelty or degrading treatment; the right to freedom of movement; the right to protection of the family; the rights to education, health and education? Is there any information on this within the municipality?
- ❖ What are the authorities doing to eliminate trafficking? If the municipality has a State Border Service, are they implementing any initiatives to manage irregular migration?
- ❖ Are there any obstacles to eliminating the exploitation of prostitution and traffic in women? If so, what are they?
- ❖ What are the authorities or civil society doing to address this problem?
- ❖ Are there any statistics on reported cases of trafficking to NGOs / authorities? If not, why not?
- ❖ Do trafficked women have support or protection offered by authorities? What is being done to address the rights of the victim e.g. shelters, safe houses, medical attention, counselling, assistance in repatriation?

Children

- ❖ Are there incidences of trafficking for forced labour/adoption/organs (e.g. begging)? If so, are there special legal regimes, protections and treatment for trafficked children?
- ❖ Is trafficking of younger children seen mostly as a Roma minority problem?
- ❖ From which population group are children trafficked and where to?

Justice

- ❖ Are victims of cross-border trafficking criminalised and prosecuted as illegal aliens, undocumented workers, prostitutes or irregular migrants rather than as victims of a crime?
- ❖ Is there sufficient witness protection and victim protection offered by authorities in the municipality to encourage reporting of incidents of trafficking?
- ❖ Are reported cases of trafficking treated seriously by local police, prosecutors and judges?

MIGRANT WORKERS AND ASYLUM SEEKERS

Migrant workers

- ❖ What access do migrant workers and their families have to social, medical and legal services?
- ❖ Do children of migrant workers have equal access to education?
- ❖ Do migrant workers enjoy the same level of employment protection and conditions of work as national employees? If not, how do they differ? Do they have equal access to vocational training, guidance and employment schemes?
- ❖ Are migrant workers members of trade unions?
- ❖ Do migrant workers or their family members face difficulties in obtaining residence permits or extending their working visas? If so, on what grounds?
- ❖ What are the authorities doing to prevent illegal migration of workers?
- ❖ Is there information in the municipality of possible exploitation of illegal migrant workers who do not receive the protection of the State? If so, are the authorities aware and what are they doing to combat such activities?

Asylum seekers

- ❖ If there are asylum seekers in the municipality, do they enjoy rights such as the right to work, health and education while their application for refugee status is being determined?

DETAINEES

Justice

Pre-trial rights

- ❖ Are all detainees registered (recording information concerning identity; reasons for commitment and under which authority; day and hour of admission and release)?
- ❖ Do detainees have access to a lawyer, to a doctor, and are they able to contact their families since the moment of arrest?
- ❖ Are detainees kept in conditions that are compliant with international standards?
- ❖ Do inspectors or international observers have unrestricted access to detention facilities?
- ❖ Are mentally disabled people kept in mental institutions rather than prisons?

- ❖ Do they experience torture or inhuman or degrading treatment at the hands of the authorities, particularly during interrogation periods?
- ❖ Are human rights abuses perpetrated by police reported and punished?

Post-trial rights

- ❖ Are different categories of prisoners kept separately? (Those who should be separated include: men and women; untried prisoners and convicted prisoners; civil prisoners and those convicted of criminal offences; youngsters and adults). Are women prisoners only supervised by women officers? Is there segregation of prisoners of different ethnicities?
- ❖ Are prisoners accommodated in individual cells or in dormitories with others who are suitable to associate with one another in those conditions?
- ❖ Are all prisoners on admission provided with information on the regulations governing the treatment of prisoners and allowed to make a request or complaint? Are prisoners' complaints noted and acted on appropriately? Have there been incidents of strikes or demonstration by prisoners?
- ❖ Are corporal punishment and other forms of cruel, inhuman or degrading punishment completely prohibited? Are disciplinary procedures against government officials committing acts of cruel, inhuman or degrading punishment in place? Are there safeguards in place to prevent the maltreatment of prisoners by other prisoners?
- ❖ Are prisoners facing punishment informed of the offence alleged against them and given opportunity to adequately defend themselves?
- ❖ Are prisoners allowed to communicate with family and other outside contacts through correspondence and visits? Are family members immediately informed of death, illness or transfer of a prisoner?
- ❖ Are foreign prisoners allowed to communicate with diplomatic representatives? Do they have access to information e.g. important news items?
- ❖ Are detention centres regularly inspected by qualified and experienced inspectors? Are those inspectors able to exercise their work in total independence? Who employs the inspectors (e.g. are they from another Ministry or working from the same Ministry in charge of the detention centres?)?

Right to work

- ❖ Do prisoners receive education, vocational guidance and training (especially young prisoners), social casework and employment counselling in order to improve their prospects after release?
- ❖ Is the work required of prisoners harmful to their physical and mental fitness? Is there equitable remuneration for work done by prisoners?

Education

- ❖ Is the education of illiterates and young prisoners compulsory? Does the administration pay special attention to this issue?

Health

- ❖ Is there medical assistance for persons during police custody and in detention, and if so, who is responsible for it?
- ❖ Can doctors exercise their work in total independence or are they subject to pressures, for example from the police?
- ❖ Is there an appropriate place in police stations and in detention centres to conduct medical examinations?
- ❖ Do prisoners have access to the health services available in the country without discrimination on the grounds of their legal situation?
- ❖ Is there at least one qualified and available medical officer with some knowledge of psychiatry in every institution?
- ❖ Is there special accommodation for all necessary pre-natal and post-natal care and treatment in women's institutions? Are nurseries provided with qualified staff where necessary?
- ❖ Are prisoners suspected of infectious or contagious conditions segregated from other detainees?
- ❖ Does accommodation meet requirements of health, e.g. space, light, sanitation, fresh air, warmth?
- ❖ Are prisoners able to maintain personal hygiene, provided with clean and appropriate clothing and bedding, given sufficient food of nutritional value, and able to get drinking water whenever needed?

Religion

- ❖ Are prisoners' rights concerning religion respected whilst in detention?
- ❖ Do prisoners have access to a qualified representative of their religion?

- ❖ Are prisoners allowed to attend religious services provided in the institution (where practicable) and have in their possession the books of religious observance and instruction of their denomination? If not, why not?

HIV POSITIVE INDIVIDUALS

Health

- ❖ What measures have been introduced in the municipality to increase public awareness of the risks and effects of sexually transmitted diseases, particularly HIV/AIDS? Have any programmes been introduced to combat such diseases?
- ❖ Does stigmatisation and discrimination, based on presumed or known HIV status, obstruct people's access to treatment and affect their employment, housing and other rights?
- ❖ Are others vulnerable to infection, since HIV-related stigma and discrimination discourages individuals infected with and affected by HIV from contacting health and social services? Do they have access to information, education and counselling where such services are available?
- ❖ Are women, and particularly young women, more vulnerable to HIV infection due to lack of access to information, education and services necessary to ensure sexual and reproductive health and prevention of infection?
- ❖ Does poverty inhibit access to HIV care and treatment, including antiretroviral and other medications for opportunistic infections?
- ❖ Have gender inequalities added to the spread of the epidemic and its disproportionate impact on women?

HOMOSEXUALS

Equality and non-discrimination

- ❖ Do lesbians and gay men enjoy the same human rights as heterosexuals?
- ❖ Do they face discrimination in the public or private sphere that inhibits the realisation of entitlements?
- ❖ Are there social/economic/legal/cultural reasons why gay men or lesbians do not identify themselves as such?

VERY POOR / HOMELESS

Adequate housing

- ❖ Are efforts been pursued to: empower the poor and the homeless; advocate for security of tenure, particularly for women and vulnerable groups; eliminate forced evictions and discrimination in the housing sector; and promote equal access to housing and to reparation in cases of housing rights violations?

HUMAN RIGHTS CHECKLISTS

INTRODUCTION²⁴

The Human Rights Checklists (hereafter, HR Checklists) provide a comprehensive reference to international human rights standards covering the areas and problems analysed by assessment teams. They set out the main international human rights obligations, which BiH has undertaken, and the leading sources of interpretation as to what those obligations entail. The Checklists are a compilation of relevant extracts of international human rights law and accompanying interpretation, as well as other sources of international human rights standards and case law from the European Court of Human Rights.

The 15 HR Checklists are formatted according to the following main sectors or rights that are covered by assessment teams in the BiH context: freedom of movement, public administration, civil society, administration of justice, trafficking and migration, right to work, right to education, social protection, right to health, right to housing, freedom of religion, culture, right to environment, and enforced disappearances and missing persons; in addition, several rights have been designated as ‘cross-cutting’: non-discrimination, equality, the right to an effective remedy and the right to family life.

The HR Checklists should not be deemed exhaustive, as they are intended as an overview of the main human rights relating to the sector or right in question. There is no substitute for considering the full text of the instrument outlined throughout these HR Checklists.

Caveat: It is important to note that the HR Checklists require basic to intermediate knowledge of human rights and the nature of State obligations to be used effectively. Thus assessment teams are trained in human rights and on the HR Checklists themselves before using them.

Objectives of the Human Rights Checklists

The rationale behind the Human Rights Checklists was that teams needed guidance as to what kind of information relates to each specific right in a given sector, how to use this information for human rights-based analysis and how to make the link to international human rights standards at each step of the process. Hence the Checklists serve the following aims:

- ❖ The basic purpose of the HR Checklists is to serve *as a resource and as a quick reference guide to relevant rights*, by compiling in one place relevant international human rights standards and elaborating upon the normative content of specific human rights²⁵. Since assessment teams/researchers often do not have extensive knowledge of human rights standards, trawling through legal texts can be laborious and seemingly impossible when short of time. In order that they may place issues in a human rights context, the HR Checklists simplify necessary reference to human rights.
- ❖ Specifically, the HR Checklists serve as a starting point to direct assessment teams/users towards *identifying the rights affected* by the problems and to *develop specific questions or human rights-based indicators* to ask stakeholders during the assessment.
- ❖ By elaborating in detail on each aspect of a specific right (including duty bearers’ obligations and claim holders’ entitlements) interrelated with existing problems having impact on people’s lives and thereby on the enjoyment of human rights, the Human Rights Checklists serve as a *reference tool to conduct a human rights-based analysis* and set up performance standards against which the reality should be analysed (what is termed under RMAP as doing a ‘gap analysis’²⁶).

How to use the Human Rights Checklists²⁷

The Human Rights Checklists divide sources of human rights into two columns. Each Checklist outlines in the first column “binding standards” to which BiH is legally bound and the main provisions under

²⁴ RMAP wishes to acknowledge the expertise and support of the International Human Rights Network (www.ihrnetwork) as part of its advisory input with University of Nottingham Human Rights Law Centre ([www.http://www.nottingham.ac.uk/law/hrlc](http://www.nottingham.ac.uk/law/hrlc)) to RMAP in the design and development of these HR Checklists.

²⁵ See Human Rights Glossary for explanation on the normative content of the right.

²⁶ For more explanation on the gap analysis, see below *Tools of Analysis* and the *Human Rights-based Quality Assurance Checklist*.

²⁷ Please note that the following section will be modified accordingly when RMAP revises the format and content of the HR Checklists.

international human rights law that guarantee a specific right. The second column interprets the treaty standards in more detail than the treaty text provides and gives the interpretation as well as the minimum content of the right (when available)²⁸.

In this second “interpretation” column, there is a hierarchy of sources. For simplicity here, two main types are used. The first sources are *authoritative* interpretations of what BiH must do to comply with its obligations. Although not legally binding, these sources carry a great deal of weight. The second sources are used to *persuade* BiH as to how its treaty commitments should be interpreted, even though these sources are not strictly legally binding on States.

First Type - authoritative sources

- ❖ *Decisions of the European Court of Human Rights (ECtHR)*. Although judgements only strictly bind the State Party to the actual case, they provide strong guidance to other State Parties to the ECHR regarding the meaning of the obligations they have undertaken and should be complying with.
- ❖ *Recommendations, conclusions and General Comments of Treaty Bodies* set up under the seven major international human rights treaties. These Committees of independent experts review State performance in practice and provide guidance for States’ compliance. Compliance with treaty body interpretations is not strictly binding on State Parties, but a State should observe such interpretations in respect of the spirit of the treaty. Examples: General Comments of the Human Rights Committee (ICCPR); Committee on Economic, Social and Cultural Rights (ICESCR), etc.
- ❖ *Universal Declaration of Human Rights (UDHR)*: although the UDHR is not itself a binding treaty, it has been the aspiration for all major international treaties and has thus gained wide acceptance. In addition, most of its provisions have now the character of customary international law.

Second Type - persuasive documents

- ❖ *Resolutions or Declarations (such as in the General Assembly), Principles and Guidelines*. Generally these are not legally binding, but they can be persuasive as to States’ understanding of their obligations. This is particularly so if BiH voted in favour of the resolution, or if a high number of States agreed to it, or if it has been repeated over time, etc.
- ❖ *International Conferences and Commitments* (such as the Beijing Declaration and Platform for Action, and Millennium Development Goals).

When to use the Human Rights Checklists

The HR Checklists need to be used at each step of the process of the assessment and analysis. They form the basic reference tool to make the link to human rights all along the way.

Tools to be used with the Human Rights Checklists

- ❖ The HR Checklists need to be used in conjunction with all major tools used for each step of the assessment and analysis.
- ❖ The HR Checklists better serve their objectives when used in parallel with and combined support of the Tools of Analysis in carrying out causal and capacity analyses.

²⁸ For example on the right to education, one finds in the second column the content of the right in relation to each type of education (primary, secondary, higher education, right to basic education) and the essential features of the right to education, namely accessibility, availability, acceptability, and adaptability, with relevant case law and extracts from recommendations of treaty bodies.

CONTENT OF THE HUMAN RIGHTS CHECKLISTS²⁹

1. Crosscutting rights

- ❖ Non-discrimination
- ❖ Equality
- ❖ Minorities
- ❖ Right to an effective remedy
- ❖ Protection of family life

2. Freedom of movement, residence - displacement

- ❖ Liberty of movement and freedom to choose residence
- ❖ Freedom to leave any country, including one's own
- ❖ Right to enter one's own country
- ❖ Prohibition on expulsion of nationals

3. Public administration

- ❖ Right to free elections, to vote and to stand for election
- ❖ Political participation – direct and indirect
- ❖ Access to public service on equal terms
- ❖ Powers of local self-government
- ❖ Elimination of discrimination against women in political and public life
- ❖ Elimination of racial discrimination in political rights
- ❖ Promotion of tolerance among racial or ethnic groups
- ❖ Prohibition of racial propaganda and hate speech

4. Civil society

- ❖ Freedom of expression
- ❖ Freedom of assembly and association
- ❖ Right to form trades unions
- ❖ Right to participatory development
- ❖ Access to information

5. Administration of justice

A. Prevention and investigation

- ❖ Duty to prevent a crime
- ❖ Duty to investigate
- ❖ Right to confidentiality
- ❖ Freedom from torture during investigation

B. Pre-trial rights

- ❖ The right to liberty, prohibition of arbitrary arrest and detention and reasonable suspicion of an offence justifying arrest
- ❖ The right to know the reasons for arrest
- ❖ The right to a prompt appearance before a judge to challenge the lawfulness of arrest and detention
- ❖ The right to compensation if detained in contravention of international law

C. Rights during trial

- ❖ Equal access to and equality before the courts
- ❖ Right to a fair hearing
- ❖ Right to a public hearing
- ❖ Trials shall be conducted by a competent, independent and impartial tribunal that is established by law
- ❖ Right to be presumed innocent until proven guilty according to law

²⁹ Table of Contents as of December 2004. This Table of Contents will be modified accordingly once a full revision of the Human Rights Checklists is made.

- ❖ Right to be informed promptly and in detail of the nature and cause of any charges in a language which he or she understands
- ❖ Right to adequate time and facilities for the preparation of a defence
- ❖ Right to communicate directly and in private with counsel of his or her own choosing
- ❖ Right to defend yourself in person or through legal assistance of your own choosing; including the right to have access to a lawyer in the pre-trial stage
- ❖ Right to be assigned legal assistance
- ❖ Right to examine the witnesses against you, and to examine the witness on your behalf under the same conditions
- ❖ Right to have the free assistance of an interpreter
- ❖ Right not to be compelled to testify against yourself or to confess guilt
- ❖ Right to be tried without undue delay
- ❖ Right to be tried in his or her own presence
- ❖ No one shall be liable to be tried or punished again for an offence for which he or she has already been convicted or acquitted in accordance with the law and penal procedure of that country
- ❖ No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time it was committed
- ❖ A penalty heavier than the one that was applicable at the time when the criminal offence was committed shall not be imposed
- ❖ If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby
- ❖ No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation

D. Post-trial rights

- ❖ Everyone convicted of a crime shall have the right to have the conviction decision and sentence reviewed by a higher tribunal according to law
- ❖ Right to compensation for wrongful conviction
- ❖ Non-discrimination in the enjoyment of the above rights
- ❖ Provision for juveniles in treaty law

E. Rights of victims

- ❖ Rights to compensation and remedy

6. Trafficking and migration

- ❖ Prohibition on human trafficking
- ❖ Protection of victims of human trafficking
- ❖ Protection and rights of asylum seekers and refugees
- ❖ Protection of other persons of international concern
- ❖ Protection of migrant workers
- ❖ Rights of aliens lawfully on the territory
- ❖ Prohibition on collective expulsion of aliens
- ❖ Procedural safeguards in expulsion or deportation aliens
- ❖ Prohibition from arbitrary detention of aliens and special rights of children
- ❖ Minimum standards for treatment of detainees
- ❖ Non-discrimination and aliens

7. The right to work

- ❖ Right to work
- ❖ Right to just and fair conditions of work
- ❖ Right to organise (collective bargaining)
- ❖ Prohibition on forced labour and slavery
- ❖ Non-discrimination in work

8. The right to education

- ❖ Right to education
- ❖ A school system; adequate fellowship system; material conditions of teaching staff
- ❖ Religious and moral educational freedom
- ❖ Prohibition of torture or inhuman or degrading treatment or punishment
- ❖ Non-discrimination and women in education

9. Social protection

- ❖ The right to social security
- ❖ Right of women to social security and family benefit

10. The right to health

- ❖ The right to the highest attainable standard of physical and mental health
- ❖ Environmental and occupational health
- ❖ Right to information, policies and participation in health
- ❖ Non-discrimination and quality in access to health

11. The right to housing

- ❖ Right to peaceful enjoyment of property
- ❖ Right to adequate housing
- ❖ Migrants and refugees' right to property
- ❖ Non-discrimination against women
- ❖ Non-discrimination

12. Freedom of religion

- ❖ Freedom of thought, conscience and religion
- ❖ The right to have or adopt a religion or belief
- ❖ The right to manifest one's religion or belief
- ❖ The right to be free from discrimination on the grounds of religion or belief
- ❖ Religious rights of minorities
- ❖ Conscientious objection
- ❖ Religious education

13. Culture

- ❖ Right to cultural life
- ❖ Right of minorities to enjoy their own culture
- ❖ Language and culture
- ❖ Education and culture
- ❖ Non-discrimination and culture

14. The right to environment

- ❖ Right to adequate housing
- ❖ Right to health
- ❖ Right to water
- ❖ Right to life
- ❖ Right to respect for private and family life (pollution)
- ❖ Right to receive and impart information
- ❖ Rights of minorities/indigenous people

15. Enforced disappearances and missing persons

- ❖ Obligations at the end of hostilities to search and transmit information on reports of missing persons
- ❖ Prohibition of enforced disappearances
- ❖ Right to a remedy for enforced disappearance
- ❖ Right of family members to know the fate and whereabouts of the missing
- ❖ Consequences for the families of the missing while their fate and whereabouts is unknown

SAMPLE OF A HUMAN RIGHTS CHECKLIST: RIGHT TO EDUCATION³⁰

Purpose of this Checklist

This Checklist sets out the main international human rights obligations which BiH has undertaken regarding education, and the leading sources of interpretation as to what those obligations entail. This tool should *not* be deemed exhaustive, as it is intended as an overview of the main human rights relating to the sector. There is no substitute for considering the full text of instruments outlined throughout this Checklist.

How to use this Checklist

This tool divides sources of human rights into two columns. The first column contains “*binding standards*” to which BiH is legally bound. The second column interprets the treaty standards in more detail. There is a distinction in law among sources of interpretation, and for simplicity here, two main types are distinguished: ‘*A*’ type are *authoritative interpretations* of what BiH must do to comply with its obligations. *Type ‘P’ sources are used to persuade* BiH as to how its treaty commitments should be interpreted, even though these sources are not strictly binding on States. For guidance, a summary of type ‘A’ or ‘P’ are listed in summary below.

Note: Sources of interpretation should be used in a mutually reinforcing way to pursue the highest standards of human rights protection.

Human rights issues outlined in the table below

1. Right to education (general provisions)
2. A school system, adequate fellowship system, material conditions of teaching staff
3. Religious and moral educational freedom
4. Prohibition of torture or inhuman or degrading treatment or punishment
5. Non-discrimination against women in education (see also cross-cutting checklist)

Close links to other rights

Right to health

Right to participation

Privacy and family life

Freedom of expression/opinion

Prohibition of child labour

See Crosscutting Rights such as equality and non-discrimination

The table below draws on the following:

³⁰ All other HR Checklists are available upon request at OHCHR or RMAP HQ/UNDP.

Binding Standards on BiH	Sources of interpretation	Useful resources
<ul style="list-style-type: none"> ❖ European Convention on the Protection of Human Rights and Fundamental Freedoms (ECtHR) ❖ International Covenant on Civil and Political Rights (ICCPR) ❖ International Covenant on Economic, Social and Cultural Rights (ICESCR) ❖ Convention on the Elimination of All Forms of Racial Discrimination (CERD) ❖ Convention on the Rights of the Child (CRC) ❖ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) ❖ Framework Convention on the Protection of National Minorities ❖ Convention Relating to the Status of Refugees (CRSR) ❖ European Social Charter (revised), ESC. BiH has signed the treaty indicating its intention to be bound by these standards, and so it is included here (it has not yet ratified) ** see right to vocational training/disability, article 10. 	<p>Type A – authoritative interpretations</p> <ul style="list-style-type: none"> ❖ Universal Declaration of Human Rights ❖ Decisions of the European Court of Human Rights (ECtHR). ❖ Committee on Economic, Social and Cultural Rights (CESCR) General Comment 3 and 13. ❖ General Comment 1 of the Committee on the rights of the child on the aims of education <p>Type P – persuasive interpretations</p> <ul style="list-style-type: none"> ❖ Reports of the UN Special Rapporteur on the Right to Education, Katarina Tomaševski, to the Commission on Human Rights; ❖ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights; ❖ The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Document E/CN.4/1987/17. ❖ Guiding Principles on Internal Displacement, /CN.4/1998/53/Add.2, dated 11 February 1998 (codifying existing treaty standards) ❖ Millennium Development Goals: http://www.developmentgoals.org ❖ Council of Europe Explanatory Report to the Framework Convention on the Protection of National Minorities ❖ Declaration on the Right to Development, GA Resolution 41/128 	<ul style="list-style-type: none"> ❖ D. Wilson, <i>Minority Rights in Education, Lessons for the European Union from Estonia, Latvia, Romania and the Former Yugoslav Republic of Macedonia</i>, available at: http://www.right-to-education.org/content/index_4.html. ❖ K. Tomaševski, “Education: From Lottery Back to Rights” (2001) 14/3 <i>International Children’s Rights Monitor</i>, published by Defence for Children International, available at: http://www.right-to-education.org/content/index_4.html. ❖ The right to education, UN Special Rapporteur on the right to education: http://www.right-to-education.org ❖ Independent expert of the Commission on Human Rights on human rights and extreme poverty: http://www.unhchr.ch/html/menu2/7/b/mpov.htm ❖ OSCE Mission in Bosnia: Education reform: http://www.oscebih.org/education/homeedu.asp ❖ OSCE Mission in Bosnia: Education resource directory: http://www.oscebih.org/education/edirectory.asp ❖ Committee on Economic, Social and Cultural Rights: http://www.unhchr.ch/html/menu2/6/cescr.htm ❖ Human Rights Committee: http://www.unhchr.ch/html/menu2/6/hrc.htm ❖ European Court of Human Rights: http://www.echr.coe.int ❖ UN Division for the Advancement of Women: http://www.un.org/womenwatch/daw/index.html ❖ Committee on the Rights of the Child: http://www.unhchr.ch/html/menu2/6/crc/ ❖ UNICEF United Nations Children’s Fund: http://www.unicef.org ❖ UNESCO http://www.unesco.org
Binding standards	Interpretation	
RIGHT TO EDUCATION (General provisions)		

ECHR Protocol 1, Article 2

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

ICESCR Article 13

1. The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

The States Parties to the present Covenant recognise that, with a view to achieving the full realisation of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

ICESCR Article 14

Each State Party to the present Covenant which, at the time of becoming a

Overview of essential features³¹

- ❖ **Availability** - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology.
- ❖ **Accessibility** - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:
 - Non-discrimination* - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds (see paragraph 31-37 on non-discrimination).
 - Physical accessibility* - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a “distance learning” programme).
 - Economic accessibility* - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available “free to all”, States parties are required to progressively introduce free secondary and higher education.
- ❖ **Acceptability** - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. *relevant, culturally appropriate and of good quality*) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) ICESCR and such minimum educational standards as may be approved by the State (see ICESCR art. 13 (3) and (4)).
- ❖ **Adaptability** - education has to be flexible so it can adapt to the needs of changing

³¹ ESCR General Comment 13, paragraph 6.

Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

CRC Article 28

1. State Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. State Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child human dignity and in conformity with the present Convention.
3. State Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

societies and communities and respond to the needs of students within their diverse social and cultural settings.

When considering the appropriate application of these “interrelated and essential features” the *best interests of the student* shall be a primary consideration³².

Types of education and corresponding entitlements/obligations

The right to compulsory primary education

- ❖ Includes the elements of availability, accessibility, acceptability and adaptability.
- ❖ Neither parents nor State can treat primary education as optional.
- ❖ Compulsory primary must meet the essential features.
- ❖ Non-discrimination.
- ❖ Primary education without charge to the child, parents or guardians.
- ❖ Primary education ensures that the basic learning needs of all children are satisfied, and take into account the culture, needs and opportunities of the community.

The right to secondary education, including technical and vocational secondary education

- ❖ Includes the elements of availability, accessibility, acceptability and adaptability.
- ❖ Secondary education may take different forms of training but demands flexible curricula and varied delivery systems to respond to the needs of students in different social and cultural.
- ❖ Secondary education is not dependent on a student’s apparent capacity or ability.

The right to higher education

- ❖ Includes the elements of availability, accessibility, acceptability and adaptability.
- ❖ Accessible on the basis of capacity:
See X v United Kingdom (1980) 23 DR 228 at 229: where certain, limited, higher education facilities are provided by a State, in principle it is not incompatible with Article 2 of

³² ESCR General Comment 13, paragraph 7.

³³ Committee on Economic, Social and Cultural Rights, General Comment 3 of 1990, “The nature of State parties obligations”.

<p>CRC Article 29</p> <p>1. States Parties agree that the education of the child shall be directed to:</p> <ol style="list-style-type: none"> a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own; d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; e) The development of respect for the natural environment. <p>2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.</p> <p>CRS Refugees Article 22. Public education</p> <ol style="list-style-type: none"> 1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education. 2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships. <p>Guiding Principles on Internal Displacement, 1998 (regarded as</p>	<p>Protocol 1, to restrict access thereto to those students who have attained the academic level required to most benefit from the courses offered.</p> <ul style="list-style-type: none"> ❖ Flexible curricula. <p>The right to fundamental or basic education for those who have not completed primary education</p> <ul style="list-style-type: none"> ❖ Fundamental education is not limited by age or gender; it extends to children, youth and adults, including older persons. ❖ Fundamental education, therefore, is an integral component of adult education and life-long learning. <p>Overview of State Obligations</p> <ul style="list-style-type: none"> ❖ Obligation to respect - State must avoid measures that hinder or prevent the enjoyment of the right to education. ❖ Obligation to protect - Requires State Parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. ❖ Obligation to fulfil: <ul style="list-style-type: none"> Facilitate requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education; Provide the right to education. <p>Immediate Obligations³³</p> <p>Non-discrimination Eliminate discrimination including discrimination against women. The adoption of temporary special measures intended to bring about de facto equality for men and women and for disadvantaged groups is not a violation of the right to non-discrimination with regard to education (<i>see also School System</i>).</p> <p>Non-retrogression</p> <p>Not doing anything/standing still – obligation to takes steps:</p> <ul style="list-style-type: none"> ❖ Start taking steps for the right to education ❖ Take steps to ensure essential features for all forms of education: availability,
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codifying existing human rights standards), Principle 23

1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

European Social Charter Article 17

The right of children and young persons to social, legal and economic protection.

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

- 1 (a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
 - (b) to protect children and young persons against negligence, violence or exploitation;
 - (c) to provide protection and special aid from the State for children and young persons temporarily or definitively deprived of their family's support;
- 2 to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

acceptability, accessibility and adaptability.

Monitor the right to education

Monitor education, including all relevant policies, institutions, programmes, spending patterns and other practices, so as to identify and take measures to redress any de facto discrimination.

To meet minimum requirements (core obligations)

- ❖ Ensure the right to compulsory primary school free of charge
- ❖ **Develop a detailed plan of action for the progressive implementation of the right to compulsory and free primary schooling, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.**
- ❖ Adopt and implement a national educational strategy which includes the provision of secondary, higher and fundamental education in accordance with the Covenant.
- ❖ Include mechanisms, such as indicators and benchmarks on the right to education, by which progress can be closely monitored.
- ❖ Take steps to ensure secondary education distributed throughout the State in such a way that it is available on the same basis to all. (*See also School system*).
- ❖ Take steps to ensure higher education responds to the needs of students in different social and cultural settings, it must have flexible curricula and varied delivery systems, such as distance learning; in practice, therefore, both secondary and higher education
- ❖ Take steps to ensure fundamental education is available. Curricula and delivery systems must be devised which are suitable for students of all ages
- ❖ Educational data should be disaggregated by the prohibited grounds of discrimination.

Note: States may punish parents who refuse to comply with any attendant obligations (ECtHR Family H v UK (1984) 37 DR 105)

5.1.1.1.2 General provisions

5.1.1.1.2.1.1.1 Committee ESCR General Comment 13, paragraph 1

Education is both a human right in itself and an indispensable means of realising other

	<p>human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognised as one of the best financial investments States can make.</p> <p>UDHR Article 26</p> <ol style="list-style-type: none"> 1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. 2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. 3. Parents have a prior right to choose the kind of education that shall be given to their children. <p>Declaration on the Right to Development, GA Resolution 41/128, annex, 41 UN GAOR Supp. (No. 53) at 186, UN Doc. A/41/53 (1986), Article 8</p> <ol style="list-style-type: none"> 1. States should undertake, at the national level, all necessary measures for the realisation of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices. <p>5.1.1.1.3 Additional specific provisions</p> <p>Belgian Linguistics Case (No. 2) (1968) 1 EHRR 252 at paragraph 5: The right to education guaranteed by the first sentence of Article 2 of the [First] Protocol by its very nature calls for regulation by the State.</p> <p>[Restrictions] may vary in time and place according to the needs and resources of the</p>
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community and of individuals [but] must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention.

Private schools

Private schools are not incompatible with the ECHR. However, the State remains responsible for ensuring that Convention rights are respected in private schools (e.g. corporal punishment, religious and philosophical convictions), *Kjeldsen, Busk Madsen and Pedersen v Denmark (1976) 1 EHRR 711*.

States may:

- ❖ Refuse private bodies permission to run schools where they do not provide education to the required standards (*Jorbedo v Sweden (1987) 51 DR 125*);
- ❖ Require parents to co-operate in assessing the educational attainments of their children (*Family H v United Kingdom (1984) 37 DR 105*).

ECtHR Belgian Linguistics Case (No. 2) (1968) 1 EHRR 252

ECHR Protocol 1 Article 2 bestows on individuals a ‘right of access’ to education facilities that already exist. The right to education is to be construed so that it is ‘practical and effective’. Individuals must have an opportunity to draw benefit from the education they receive. This means at the very least that: (1) there is a right to be taught in the national language, or one of the national languages (*See also National Minorities*); and (2) there should be official recognition of any qualifications obtained on the completion of studies.

Suspension/expulsion

Suspension or expulsion of a pupil from a school or college is not the determination of a ‘criminal charge’ within the meaning of Article 6 ECHR (*Yanasik v Turkey (1993) 74 DR 14*). Suspension or expulsion is generally not a breach of the right of access to education under Article 2 of Protocol 1 ECHR. However, suspension or expulsion which prevents enrolment at another school or college is subject to close scrutiny (*Yanasik v Turkey (1993) 74 DR 14*).

Suspension or expulsion must not breach other ECHR rights, including non-discrimination. For example, it would be unacceptable to treat pregnancy as a disciplinary offence. (See Right to Respect for Private and Family Life)

Where it is arguable that a disciplinary measure violates an ECHR right, there must be the right to an effective remedy in domestic law, according to Article 13 ECHR (*Valsamis v Greece* (1996) 24 EHRR 294; *Warwick v United Kingdom* (1986) 60 DR 5).

5.1.1.1.4 Millennium Development Goals

5.1.1.1.4.1.1 MDG 2. Achieve universal primary education

Education is a powerful instrument for reducing poverty and inequality, improving health and social well being, and laying the basis for sustained economic growth. It is essential for building democratic societies and dynamic, globally competitive economies.

Target 3: Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling.

5.1.1.1.4.1.2 MDG 3. Promote gender equality and empower women

In most low-income countries girls are less likely to attend school than boys. And even when girls start school at the same rate as boys, they are more likely to drop out often because parents think boys' schooling is more important or because girls' work at home seems more valuable than schooling.

Concerns about the safety of girls or traditional biases against educating them can mean that they never start school or do not continue beyond the primary stage.

Target 4: Eliminate gender disparity in primary and secondary education, preferably by 2005, and to all levels of education no later than 2015.

Binding standards	Interpretation
2. A SCHOOL SYSTEM, ADEQUATE FELLOWSHIP SYSTEM, MATERIAL CONDITIONS OF TEACHING STAFF	
<p>ICESCR Article 13 The States Parties to the present Covenant recognise that, with a view to achieving the full realisation of this right:</p> <p>(f) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.</p> <p>European Social Charter Article 5 The right to organise With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.</p> <p>European Social Charter, Article 6 The right to bargain collectively With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:</p> <ol style="list-style-type: none"> 1. to promote joint consultation between workers and employers; 2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements; 3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; 4. to recognise the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into. 	<p>Overview: State obligations³⁴</p> <ul style="list-style-type: none"> ❖ Obligation to ensure that an educational fellowship system is in place to assist disadvantaged groups. ❖ Non-discrimination and equality - The fellowship system should enhance equality of educational access for individuals from disadvantaged groups. ❖ Obligation to have an overall developmental strategy for its school system. The strategy must encompass schooling at all levels, but the ICESCR requires States parties to prioritise primary education. ❖ Obligation to establish “minimum educational standards” to which all educational institutions established in accordance and maintain a transparent and effective system to monitor such standards. ❖ Obligation to put in place measures to ensure that all teaching staff enjoys the conditions and status commensurate with their role. <p>Specific provisions ECtHR, <i>Simpson v United Kingdom (1989) 64 DR 188 at 195</i>: there must be a wide measure of discretion left to the appropriate authorities as to how to make the best use possible of the resources available to them in the interests of disabled children generally.</p> <p>There is <i>no obligation</i> to provide or subsidise any particular type of education. However, where the State funds some schools and not others, it must not infringe the prohibition of discrimination set out in Article 14 ECHR (<i>Belgian Linguistics Case; Verein Gemeinsam Lernen v Austria (1995) 82-A DR 41</i>).</p>

Binding standards	Interpretation
3. RELIGIOUS AND MORAL EDUCATIONAL FREEDOM	

³⁴ ESCR General Comment 13, the right to education, paragraph 25 – 27.

ECHR Protocol 1, Article 2

In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

ICESCR Article 13

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

CRC Article 29

1. States Parties agree that the education of the child shall be directed to:

- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

FCNM Article 12

1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

2. In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers

Overview³⁵

- ❖ Liberty of parents and legal guardians to choose education standards for their children.
- ❖ Ability to choose schools other than public schools provided schools conform to minimum standards. (*See also School System*).
- ❖ Liberty of individuals and bodies to establish and direct educational institutions other than public schools, including non-nationals.
- ❖ The State has duty to respect the liberty of parents to ensure their children's education in conformity with their own religious and philosophical convictions.
- ❖ Disciplinary measures should not be imposed if they conflict with a parent's religious or philosophical convictions.

Public school religious instruction

- ❖ Permits public school instruction in subjects such as the general history of religions and ethics if it is given in an unbiased and objective way, respectful of the freedoms of opinion, conscience and expression.
- ❖ Public education that includes instruction *in a particular religion or belief* is inconsistent with the right unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

Schools other than public schools must

- ❖ Conform to the educational objectives and certain minimum standards.
- ❖ Minimum standards may relate to issues such as admission, curricula and the recognition of certificates. In their turn, these standards must be consistent with the educational objectives.

5.1.1.1.5 Clarification of specific terms

'Philosophical Convictions'

(ECtHR, *Campbell and Cosans v United Kingdom* (1982) 4 EHRR 293 at paragraph 36):

In order to be relevant under Article 2 of Protocol 1 ECHR 'philosophical

³⁵ ESCR General Comment 13, the right to education, paragraph 28 – 29.

<p>of different communities. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.</p> <p>FCNM Article 13</p> <ol style="list-style-type: none"> 1. Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments. 2. The exercise of this right shall not entail any financial obligation for the Parties. <p>FCNM Article 14</p> <ol style="list-style-type: none"> 1. The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language. 2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language. <p>Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.</p>	<p>convictions’ must: (1) be not incompatible with human dignity; and (2) not conflict with the fundamental right of the child to education.</p> <p>The word ‘convictions’ is not synonymous with the word ‘opinions’ or ‘ideas’ used in Article 10 ECHR (freedom of expression). It is more akin to the word ‘beliefs’ in Article 9 (freedom of thought, conscience and religion). As such, it denotes views that attain a certain level of cogency, seriousness, cohesion and importance.</p> <p>‘Respect’ The word ‘respect’ means more than ‘acknowledge’ or ‘take into account’. It implies some positive obligations on the part of the State (<i>Campbell and Cosans v United Kingdom (1982) 4 EHRR 293; Valsamis v Greece (1996) 24 EHRR 294</i>). However, there is no absolute right for parents to have their children educated in accordance with their religious or philosophical convictions, only a right to have such convictions ‘respected’ (<i>Family H v United Kingdom (1984) 37 DR 105</i>). ‘Respect’ is to be interpreted objectively (<i>Valsamis v Greece (1996) 24 EHRR 294</i>).</p> <p>‘Parents’ Legal custody is the defining factor in the meaning of ‘parents’. <i>X v Sweden (1977) 12 DR 192 at 194</i>: the right to determine the mode of a child’s education is an integral part of the right to custody ...Where custody has been transferred to adoptive parents, their convictions prevail over those of the natural parents (<i>X v United Kingdom (1977) 11 DR 160</i>). Where a child is simply taken into care, the convictions of the natural parents are still relevant (<i>Aminoff v Switzerland (1985) 43 DR 120</i>).</p> <p>General provisions</p> <p>CESCR General Comment 13 Article 13 (3) and (4): The right to educational freedom</p> <p>28. Article 13 (3) has two elements, one of which is that States parties undertake to respect the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions³⁶. The</p>
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³⁶ This replicates article 18 (4) of the International Covenant on Civil and Political Rights (ICCPR) and also relates to the freedom to teach a religion or belief as stated in article 18 (1) ICCPR. (See Human Rights Committee General Comment 22 on article 18 ICCPR, forty-eighth session, 1993.) The Human Rights Committee notes that the fundamental character of article 18 ICCPR is reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4 (2) of that Covenant.

	<p>Committee is of the view that this element of article 13 (3) permits public school instruction in subjects such as the general history of religions and ethics if it is given in an unbiased and objective way, respectful of the freedoms of opinion, conscience and expression. It notes that public education that includes instruction in a particular religion or belief is inconsistent with article 13 (3) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.</p> <p>29. The second element of article 13 (3) is the liberty of parents and guardians to choose other than public schools for their children, provided the schools conform to “such minimum educational standards as may be laid down or approved by the State”. This has to be read with the complementary provision, article 13 (4), which affirms “the liberty of individuals and bodies to establish and direct educational institutions”, provided the institutions conform to the educational objectives set out in article 13 (1) and certain minimum standards. These minimum standards may relate to issues such as admission, curricula and the recognition of certificates. In their turn, these standards must be consistent with the educational objectives set out in article 13 (1).</p> <p>30. Under article 13 (4), everyone, including non-nationals, has the liberty to establish and direct educational institutions. The liberty also extends to “bodies”, i.e. legal persons or entities. It includes the right to establish and direct all types of educational institutions, including nurseries, universities and institutions for adult education. Given the principles of non-discrimination, equal opportunity and effective participation in society for all, the State has an obligation to ensure that the liberty set out in article 13 (4) does not lead to extreme disparities of educational opportunity for some groups in society.</p> <p>Council of Europe Explanatory Report to the Framework Convention on the Protection of National Minorities</p> <p>Article 12</p> <p>71. This article seeks to promote knowledge of the culture, history, language and religion of both national minorities and the majority population in an intercultural perspective (see Article 6, paragraph 1). The aim is to create a climate of tolerance and dialogue, as referred to in the preamble to the framework convention and in Appendix II of the Vienna Declaration of the Heads of State and Government. The list in the second paragraph is not exhaustive whilst the words “access to</p>
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	<p>textbooks” are understood as including the publication of textbooks and their purchase in other countries. The obligation to promote equal opportunities for access to education at all levels for persons belonging to national minorities reflects a concern expressed in the Vienna Declaration.</p> <p>Article 13 Paragraph 1 72. The Parties’ obligation to recognise the right of persons belonging to national minorities to set up and manage their own private educational and training establishments is subject to the requirements of their educational system, particularly the regulations relating to compulsory schooling. The establishments covered by this paragraph may be subject to the same forms of supervision as other establishments, particularly with regard to teaching standards. Once the required standards are met, it is important that any qualifications awarded are officially recognised. The relevant national legislation must be based on objective criteria and conform to the principle of non-discrimination.</p> <p>Paragraph 2 73. The exercise of the right referred to in paragraph 1 does not entail any financial obligation for the Party concerned, but neither does it exclude the possibility of such a contribution.</p> <p>Article 14, Paragraph 1 74. The obligation to recognise the right of every person belonging to a national minority to learn his or her minority language concerns one of the principal means by which such individuals can assert and preserve their identity. There can be no exceptions to this. Without prejudice to the principles mentioned in paragraph 2, this paragraph does not imply positive action, notably of a financial nature, on the part of the State.</p> <p>Paragraph 2 75. This provision concerns teaching of and instruction in a minority language. In recognition of the possible financial, administrative and technical difficulties associated with instruction of or in minority languages, this provision has been worded very flexibly, leaving Parties a wide measure of discretion. The obligation to endeavour to ensure instruction of or in minority languages is subject to several conditions; in particular, there must be “sufficient demand” from persons</p>
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	<p>belonging to the relevant national minorities. The wording “as far as possible” indicates that such instruction is dependent on the available resources of the Party concerned.</p> <p>76. The text deliberately refrains from defining “sufficient demand”, a flexible form of wording which allows Parties to take account of their countries’ own particular circumstances. Parties have a choice of means and arrangements in ensuring such instruction, taking their particular educational system into account.</p> <p>77. The alternatives referred to in this paragraph – “opportunities for being taught the minority language or for receiving instruction in this language” - are not mutually exclusive. Even though Article 14, paragraph 2, imposes no obligation upon States to do both, its wording does not prevent the States Parties from implementing the teaching of the minority language as well as the instruction in the minority language. Bilingual instruction may be one of the means of achieving the objective of this provision. The obligation arising from this paragraph could be extended to pre-school education.</p> <p>Paragraph 3</p> <p>78. The opportunities for being taught the minority language or for receiving instruction in this language are without prejudice to the learning of the official language or the teaching in this language. Indeed, knowledge of the official language is a factor of social cohesion and integration.</p> <p>79. It is for States where there is more than one official language to settle the particular questions which the implementation of this provision shall entail.</p>
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Binding standards	Interpretation
4. PROHIBITION OF TORTURE OR INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT	
<p>ICCPR Article 7 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.</p> <p>ECHR Article 3 No one shall be subjected to torture or to inhuman or degrading treatment or punishment.</p>	<p>Overview</p> <p>A <i>disciplinary measure</i> should not be imposed if it breaches the prohibition of inhuman and degrading treatment or punishment.</p> <p>The State’s responsibility will be engaged regardless of whether the corporal punishment is inflicted in State or private schools. <i>Inhuman or degrading punishment is absolutely prohibited</i> under the ECHR. Corporal punishment in schools is more likely than not to constitute inhuman or degrading punishment under the ECHR. Relevant factors for the determination of whether the punishment is inhuman or degrading are whether: (1) physical injury is caused,</p>

	<p>or there is the possibility of psychological harm; (2) punishment is carried out in public or private; (3) it is carried out by a male on a female; (4) the circumstances in which punishment can be carried out are clear and accessible (ECtHR, <i>Castello-Roberts v United Kingdom</i> (1993) 19 EHRR 105).</p> <p>Schools should respect the pupils' right to respect for physical integrity and private and family life.</p> <p>A disciplinary measure should not be imposed if it breaches these rights. For example, it would be unacceptable to treat marriage or pregnancy as a disciplinary offence.</p>
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Binding standards	Interpretations
5. NON-DISCRIMINATION AGAINST WOMEN IN EDUCATION	
<p>See Crosscutting checklist 1 for general prohibition of discrimination. In addition:</p> <p>Women, CEDAW Article 10</p> <p>States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:</p> <ol style="list-style-type: none"> a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in preschool, general, technical, professional and higher technical education, as well as in all types of vocational training; b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality; c) The elimination of any stereotyped concept of the roles of men and women at 	<p>General Comment 1 of the Committee on the rights of the child on the aims of education</p> <p>10. Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. While denying a child's access to educational opportunities is primarily a matter which relates to article 28 of the Convention, there are many ways in which failure to comply with the principles contained in article 29 (1) can have a similar effect. To take an extreme example, gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls' participation. Discrimination against children with disabilities is also pervasive in many formal educational systems and in a great many informal educational settings, including in the home³⁷. Children with HIV/AIDS are also heavily discriminated against in both</p>

³⁷ See General Comment No. 5 (1994) of the Committee on Economic, Social and Cultural Rights on persons with disabilities.

<p>all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;</p> <ul style="list-style-type: none"> d) The same opportunities to benefit from scholarships and other study grants; e) The same opportunities for access to programmes of continuing education including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women; f) The reduction of female student drop-out rates and the organisation of programmes for girls and women who have left school prematurely; g) The same opportunities to participate actively in sports and physical education; h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning. 	<p>settings³⁸. All such discriminatory practices are in direct contradiction with the requirements in article 29 (1) (a) that education be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.</p>
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³⁸ See the recommendations adopted by the Committee on the Rights of the Child after its day of general discussion in 1998 on children living in a world with HIV/AIDS (A/55/41, paragraph 1536).

