



METHODOLOGY AND TOOLS FOR HUMAN RIGHTS-BASED ASSESSMENT & ANALYSIS 2004

**Rights-based Municipal
Assessment and Planning Project
(RMAP)**

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LIST OF ACRONYMS

BiH	Bosnia and Herzegovina
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CAT	Committee against Torture
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CERD	Committee on the Elimination of all Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CHR	Commission on Human Rights
CRC	Convention on the Rights of the Child
CSO	Civil Society Organisation
CSR	Convention Relating to the Status of Refugees
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
ESC	European Social Charter
FCNM	Framework Convention for the Protection of National Minorities
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
IHRL	International Human Rights Law
OHCHR	Office of the United Nations High Commissioner for Human Rights
RESC	Revised European Social Charter
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme

PREFACE

The Rights-Based Municipal Assessment and Planning Project (RMAP) is a joint OHCHR/UNDP project in Bosnia and Herzegovina that aims to improve the enjoyment of human rights at the municipal level, by ensuring that local planning is based on accurate human rights-based assessments. One important objective of the RMAP Project is to develop and test methodologies for human rights-based analysis and development planning. This Package focuses solely on the methodology used for human rights-based assessment and analysis. A tentative methodology for planning is currently being developed and tested.

From the outset the development of tools was clearly essential to assist assessment teams in taking and applying a human rights-based approach and to ensure consistency and thoroughness of assessments and analyses amongst the teams. Through the continuous development and testing of various tools during project implementation from October 2002 until present, a methodology for human rights-based assessment and analysis has assumed form and coherence. Based on an earlier evaluation of all tools developed and tested, RMAP is now able to collate and systematise this methodology. This Package contributes to its overall consolidation.

The main purposes of this Package are:

- ❖ To aid assessment teams with a toolkit for human rights-based assessment and analysis, which explains the overall methodology and provides guidance as to how tools complement each other and have to be used.
- ❖ To share a tested and systematic methodology and the tools for human rights-based assessment and analysis with other organisations wishing to implement such approach.

On this last point, while the Package is primarily targeted at and immediately useful for RMAP assessment teams, it is hoped that it will also contribute to the sharing of good practices with other organisations, development agencies or governmental institutions interested in applying a human rights-based approach to their work. In a context where human rights-based approaches to development are diverse in both concept and implementation and demand diversified inputs, there can be no ‘one size fits all’ model. In that respect, it is evident that the RMAP methodology, developed under a specific set of circumstances, might not fully apply elsewhere. Yet this Package gives an illustration of one possible methodology and set of tools for its operationalisation¹ and it is hoped that it can nonetheless serve as a starting point for tool development in other organisations, adapted to their specific context and programmatic objectives.

A final note of caution needs to be expressed: The RMAP methodology makes explicit reference to international human rights standards and principles. As a result, the tools described in this Package do require knowledge of human rights. Therefore, this tool package needs to be reinforced by training on the tools and specific elements of human rights; otherwise it will appear complex and discouraging for potential users. In order to facilitate the use of the Package, key human rights concepts are clarified in a Human Rights Glossary, while concepts specific to a human rights-based approach are explained in the tools themselves. However, those explanations

¹ It needs to be stressed that RMAP methodology is described here as a “*human rights*-based approach” (HRBA) rather than a “*rights*-based approach” (RBA). As human rights standards and principles are at the core of the methodology, it seemed logical to have the description actually reflect the methodological content. In addition, using ‘HRBA’ leaves no room for confusion with other RBAs that interpret ‘rights’ differently – some defining rights as a ‘sense of justice and moral values’ linked to social movements, which are broader and differ from recognised and justiciable human rights, or other interpretations which understand rights as being enshrined in national law, and/or including business law, property rights, or contractual rights.

are not exhaustive and are based upon the assumption that potential users already have a basic knowledge of both human rights-based approaches and human rights.

This Package starts with a short description of the RMAP Project and the human rights glossary already mentioned. It then consists of two main parts: (a) An overview of the methodology and steps to be taken to conduct a human rights-based assessment and analysis, followed by a 'Tools Synergy Table' highlighting the major elements of each step and corresponding tools to be used. Here tools are summarised but are not elaborated upon in detail. (b) The actual tools developed by RMAP, each preceded by a description of the tool's key concepts and objectives, as well as guidance as to how to use each of them.

WHAT IS THE RIGHTS-BASED MUNICIPAL ASSESSMENT AND PLANNING PROJECT?

The Rights-based Municipal Assessment and Planning Project (RMAP) is a pilot project that is carried out in selected municipalities in Bosnia and Herzegovina in two phases: human rights-based assessments and participatory development planning. The UN Development Programme (UNDP) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) implement the assessment phase jointly, whilst UNDP implements the planning phase. The Ministry for Human Rights and Refugees is a key partner in both phases of the Project. The RMAP Project originated from a concern that grassroots human rights information was either undocumented or not made public, thereby inhibiting action to effectively overcome problems facing vulnerable groups.

The overall objective of the Project is the improvement in the enjoyment of human rights for the local population through municipal development programming. Although initially RMAP only planned to conduct human rights-based assessments, additional energies were geared later on towards development planning. This was driven by several factors, namely: (a) the positive reaction of municipal authorities that exceeded initial expectations; (b) a shared understanding that human rights-based assessment reports are not ends in themselves, but rather tools for raising human rights awareness and building capacity of duty bearers and claim holders to realise their rights and obligations; and (c) proper support to municipal authorities and civil society was needed to ensure that findings of the assessments will result in improving the enjoyment of human rights in the municipalities assessed. Thus RMAP is not a monitoring exercise, but a process of enhancing human rights-based development at local level. By the end of 2005, 25 municipalities will have been assessed and will have gone through strategic planning.

The RMAP Project is being implemented through a sequential process: first, teams conduct a human rights-based assessment with the participation of all actors in the municipality, in particular local authorities and civil society. In doing so, the assessment phase raises awareness of human rights, identifies and analyses key issues and human rights priorities, especially those affecting the most vulnerable groups. In municipalities already assessed, the RMAP teams then facilitate the dialogue between local authorities, the business sector and civil society, who all jointly develop a five-year municipal 'rights-based development planning' identifying priority projects.

In practical terms, the municipal assessments are conducted by up to six research teams (each composed of one Senior National Assessment Officer and one to four National Assessment Officers), each residing in a municipality for a period of 3-4 months. During the whole assessment phase, international and national experts from UNDP and OHCHR provide technical assistance to teams.

SHORT HUMAN RIGHTS GLOSSARY

SHORT HUMAN RIGHTS GLOSSARY: KEY HUMAN RIGHTS CONCEPTS AND TREATIES

What are Human Rights Characteristics?

- ❖ *Universality*: All people everywhere in the world are entitled to human rights.
- ❖ *Inalienability*: Human Rights cannot be given up or taken away.
- ❖ *Indivisibility*: All human rights have equal status as rights and cannot be ranked, a priori, in a hierarchical order. Whether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human being.
- ❖ *Inter-Dependence and Inter-Relatedness*: The realisation of one right often depends, wholly or in part, upon the realisation of others. For instance, realisation of the right to health may depend, in certain circumstances, on realisation of the right to education or of the right to information.

What are Human Rights Principles?²

- ❖ *Non-Discrimination and Equality*: All human beings are entitled to their human rights without discrimination of any kind, on the grounds of race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.
- ❖ *Participation and Inclusion*: Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realised.
- ❖ *Accountability and Rule of Law*: States and other duty bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.

What are the Core Human Rights Treaties and their corresponding Monitoring Bodies?

Note: International Agreements such as Treaties or Conventions enter into force when an agreed minimum number of countries sign and ratify them.

Human Rights Treaties	Corresponding Treaty Bodies
Universal Declaration of Human Rights (UDHR) <i>Adopted by the General Assembly on 10 December 1948.</i>	The UDHR has no monitoring body or mechanism. Originally intended as a ‘common standard of achievement for all peoples and all nations’, the UDHR became the basis for the development of many legally binding international treaties. In addition, most of its provisions have now acquired the status of international customary law. The UDHR, along with the ICCPR and the ICESCR, form what is known as <i>The International Bill of Rights</i> .
International Covenant on Economic, Social and Cultural Rights (ICESCR) <i>Adopted in 1966, entered into force in 1976</i>	Committee on Economic, Social and Cultural Rights (CESCR)
International Covenant on Civil and Political Rights (ICCPR) <i>Adopted in 1966, entered into force in 1976</i>	Human Rights Committee (HRC)

² Extracted/summarised from *The Human Rights-Based Approach: Towards a Common Understanding Among the UN Agencies*, 7 May 2003.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) <i>Adopted in 1965, entered into force in 1969</i>	Committee on the Elimination of Racial Discrimination (CERD)
Convention on the Elimination of all forms of Discrimination against Women (CEDAW) <i>Adopted in 1979, entered into force in 1981</i>	Committee on the Elimination of Discrimination Against Women (CEDAW)
Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) <i>Adopted in 1984, entered into force in 1987</i>	Committee against Torture (CAT)
Convention on the Rights of the Child (CRC) <i>Adopted in 1989, entered into force in 1990</i>	Committee on the Rights of the Child (CRC)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) <i>Adopted in 1990, entered into force in 2003</i>	Committee on Migrant Workers (CMW)

Who are Claim Holders and Duty Bearers?

- ❖ Individuals, whose human rights are recognised in international instruments and customary law, have valid claims against another individual, group or institution vested with State authority (and thus agents or representatives of the State) to enjoy and exercise their rights. Accordingly, the former are called Claim Holders, while the latter, that have a duty to respect, protect and fulfil these rights, are called Duty Bearers.
- ❖ Corresponding to each human right are *Entitlements* (exercisable by claim holders) and *Duties or Obligations* (to be performed by duty bearers).
- ❖ Under international human rights law, *the Duty Bearer is first and foremost the State*, at all levels of authority.
- ❖ The obligation on the State is to act with ‘due diligence’ to prevent violation of rights by *non-State actors* or to investigate and punish such violations. To fulfil this obligation, there must be a domestic legal framework in place and proper implementation of it. Each individual or group has a responsibility and an obligation to comply with this legal framework, and failure to do so must lead to either criminal or civil consequences.

In addition, some non-State actors have duties outlined in international instruments that go beyond the mere respect of the rights of others. For example, parents are considered as duty bearers under the Convention on the Rights of the Child. Finally, one can note the progressive expansion of the scope of human rights responsibilities for other non-State actors, such as Transnational Corporations³.

Note: The Conventions and relevant general comments of the Treaty Bodies elaborate into more details which actors have duties in addition to the State.

What are the Obligations of Duty Bearers?

The identification of duty bearers and the extent to which they are accountable is crucial to a human rights-based approach to development. Human Rights obligations for States party to a Convention are of three kinds: to respect, protect, and fulfil. The duties described below should be equally applied to all duty bearers:

- ❖ The *Obligation to Respect* requires the duty bearer to acknowledge the right and to refrain from interfering directly or indirectly with the enjoyment of the right.
- ❖ The *Obligation to Protect* requires the duty bearer to take steps to prevent third parties from interfering with the enjoyment of the right.

³ See the set of *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, adopted by the Sub-Commission on the Promotion and Protection of Human Rights in August 2003.

- ❖ The *Obligation to Fulfil* means to complete all aspects of the obligations associated with the right in question. This obligation can be subdivided into obligations to facilitate and provide:
 - A** – To *facilitate* requires duty bearers to proactively engage in appropriate legislative, administrative, budgetary, judicial, promotional, and other activities towards the full realisation of the right.
 - B** – To *provide* requires duty bearers to directly provide assistance or services.

What does ‘Immediate Obligation’ mean?

The notion of ‘immediate obligation’ applies to all civil and political rights. It is contained in article 2 of the International Covenant on Civil and Political Rights (ICCPR)⁴, which embodies an immediate obligation to respect and ensure all relevant rights. The Human Rights Committee stresses that: “The requirement under article 2, paragraph 2, to take steps to give effect to the rights under the Covenant is *unqualified and of immediate effect*. A failure to comply with this obligation cannot be justified by reference to political, social, cultural or economic considerations within the State.”⁵

As explained below, social, economic and cultural rights also contain some obligations of immediate effect.

What does ‘Progressive Realisation of Rights’ mean?

The notion of ‘progressive realisation’ applies to the realisation of economic, social and cultural rights. It acknowledges that the realisation of all these rights will not be achieved, generally, in a short period of time because of resource constraints. Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) thus provides for the progressive realisation of the rights recognised in the Covenant, “to the maximum of [the State’s] available resources”⁶. As the Committee on Economic, Social and Cultural Rights puts it in its General Comment No.3, progressive realisation is “a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realisation of economic, social and cultural rights”⁷.

However, as further noted by the Committee, even though the progressive realisation test permits a time dimension in the strategy for fulfilment of human rights, the notion also implies an obligation to move as expeditiously and effectively as possible towards the goal of full realisation of those rights.

‘Progressive realisation,’ likewise, does not detract from a number of *obligations of immediate effect*:

- ❖ The *Obligation not to discriminate* between different groups of people in the realisation of the rights in question.
- ❖ The *Obligation to take steps* (including devising specific strategies and programmes) targeted deliberately towards the full realisation of the rights.
- ❖ The *Obligation of non-regression of rights* stipulates that no right can be permitted deliberately to suffer an absolute decline in its level of realisation, unless this can be justified by the relevant

⁴ “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant; (...)” Article 2(2) ICCPR.

⁵ Human Rights Committee, General Comment on Article 2 (2004), paragraph 14.

⁶ ICESCR, Article 2 (1): “Each State Party to the present Covenant undertakes to take steps (...), to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

⁷ Committee on Economic Social and Cultural Rights (CESCR), General Comment no. 3 (1990), paragraph 9.

duty bearer(s) by reference to the totality of the rights in force in the given situation, and in the context of the full use of the maximum available resources.

- ❖ The *Obligation to monitor* progress in the realisation of human rights.
- ❖ And finally, a '*minimum core obligation*⁸' to ensure the satisfaction of, at the very least, *minimum essential levels* of each of the rights. These minimum essential levels are elaborated further in various General Comments of the Committee on Economic, Social and Cultural Rights.

What is the 'Normative' or 'Core' Content of a Human Right?

While human rights standards codified in treaties or conventions are often written in general terms, courts and similar bodies at national and international levels (such as the Human Rights Treaty Bodies) flesh out the content of the obligations under these standards. Honouring these obligations helps shape national policies, values and practices, and is in that sense 'normative'. The term 'core' or 'normative' content of human rights standards, therefore, refers to the substantive human rights obligations that the State is legally bound to implement at the national level.

The core content of human rights sets out specific entitlements of claim holders and obligations of duty bearers in relation to a particular right. For instance, the CESCR in its General Comment No.13 on the Right to Education elaborates upon the 'normative content' of the right to education by identifying four main 'essential features' (availability, accessibility, acceptability, adaptability), defining more specifically the aims of education, and explaining what are the standards and entitlements related to each major type of education (primary, secondary, higher and fundamental education)⁹.

⁸ CESCR, General Comment no. 3 (1990), paragraph 10.

⁹ See below the Human Rights Checklist on Education for more details on the normative content of the right to education.

RMAP METHODOLOGY: MAJOR STEPS & TOOLS SYNERGY TABLE

RMAP METHODOLOGY AND MAJOR STEPS

Below is an attempt to crystallise the essential elements required to conduct a human rights-based assessment and analysis, and highlight how the tools developed and used by RMAP support the methodology at each step of the process and how they complement each other. The methodology is summarised in six major steps, indicating which tools support each step. Although this process seems linear, it should not be followed mechanically as the steps overlap in parts and are clearly interlinked. In addition, a few factors are flagged as crosscutting and need to be taken into account at all stages of the assessment and analysis process.

The description of the methodology is further presented in a *Tools Synergy Table*, which allows the user to see at once all steps to be followed and tools to be used.

Tools Developed by RMAP

- ❖ *Human Rights Checklists*: A compilation of human rights standards, principles, normative contents¹⁰ of rights, obligations of duty bearers, entitlements of claim holders and relevant case law from the European Court of Human Rights. It provides an essential reference guide on international human rights standards underlying all assessment and analysis.
- ❖ *Domestic Legal Framework Checklists (hereafter, DLF Checklists)*: A compilation of relevant national laws according to sectors and human rights assessed in RMAP, formatted in similar manner as the Human Rights Checklists.
- ❖ *Vulnerable Groups List*: This is a list of pertinent indicators and questions anchored in a human rights framework to identify potentially vulnerable groups, and assess likely human rights issues affecting them in the country context.
- ❖ *Civil Society Organisations List (hereafter, CSOs List)*: This list of questions guides the assessment in extracting human rights-based information relevant to civil society organisations, and their role in promoting and protecting human rights.
- ❖ *Gender Baseline List*: This list of baseline indicators helps to assess gender equity and equality and women's rights, and to conduct a gender analysis.
- ❖ *Brainstorming Grid and Human Rights-Based Analysis Chart (Tools of Analysis)*: These two tools summarise the main concepts of RMAP Tools of Analysis, most of which are based on the *Human Rights Centred Development: Theory and Practice* manual¹¹ by Maria Socorro I. Diokno. These tools provide a strong framework to conduct human rights-based analysis.
- ❖ *Human Rights-based Quality Assurance Checklist*: This checklist guides teams as to how to present the human rights-based analysis in the report, and summarises all main elements of what a human rights-based analysis, as implemented in RMAP, entails.

¹⁰ See Human Rights Glossary for an explanation of that term.

¹¹ Maria Socorro I. Diokno, *Human Rights Centred Development: Theory and Practice*, in particular Chapter 6, 'Human centred Development Tools of Analysis', 2002 version.

Methodology in Steps

STEP ONE: Identify issues/problems and human rights affected

Step One entails two main components – identification of issues/problems and of the human rights affected. Each component has an impact on the other and thus both need to be implemented with this in mind.

Identify issues and/or problems¹²

Prior to starting the assessment and identifying the issues, as a preliminary action required for any research, a desk review of available relevant base line information, published documents from various organisations, institutions (national, international, governmental and non-governmental) is necessary. This preliminary desk review of information is important for understanding the overall political, economic, social, legal, cultural, historical, and development situation.

Once deployed to the municipality, the assessment teams gather general information, building up direct contacts with all stakeholders, including local authorities, civil society and vulnerable groups. This will provide an overview of the situation in the municipality, and identify the pressing issues and problems that have an impact on people's lives. In later steps, priorities will emerge from this general overview allowing teams eventually to identify the root and underlying causes of the issues and problems to be analysed.

It is important to note here that the identification of issues/problems has to be anchored in a human rights framework so that information relevant to draw human rights conclusions can be gathered and so that teams are attentive to potential human rights issues and vulnerable groups at the earliest stage of assessment. This means concretely that teams need to have knowledge about human rights standards and principles, know which major human rights are (as well as their normative content), in order to be able to identify human rights and relate them to issues raised by stakeholders during interviews, and to be aware of who the most vulnerable groups could potentially be¹³. This is not to say, however, that teams have to identify *in detail* which human rights are affected at this stage.

Essential elements

- ❖ What are the prevailing problems/issues that have impact on people's lives and on the enjoyment of their human rights?

Identify affected human rights

Once the most pressing issues are identified bearing in mind the human rights framework, assess more specifically which human rights¹⁴ are affected, denied or violated by such issues/problems.

¹² As RMAP identifies both positive and negative examples of human rights protection and promotion, it was decided to use both terms together ('issue' and 'problem') to reflect this thinking, rather than using 'problem' by itself, which implies only negative examples.

¹³ Based on this logic, RMAP has put much emphasis on teams' own capacity to understand human rights and human rights-based approaches to development and apply them in the process. As a result, much training on those topics should be conducted (particularly on the seven major international treaties, the European Convention on Human Rights, on human rights concepts, characteristics, and on the essential elements of major rights) not only prior to the start of research and data collection but also regularly, so as to evolve teams' knowledge. In the same vein, RMAP developed tools that would enable assessment teams to link their research and assessment with human rights standards, from the earliest stage of assessment.

¹⁴ It is essential to define the scope of human rights under such assessment. RMAP assessments cover the full array of international, regional and national human rights obligations to which the State of Bosnia and Herzegovina is Party.

In addition, identify what are the entitlements of claim holders under each of the rights affected, and what are the duty bearers' obligations to respect, protect, and fulfil those rights. In doing so it is also important to assess whether and how the rights affected are protected or not under the domestic legal framework, in other words, whether this is a problem of lack of protection in domestic law or of implementation.

It is worth stressing that RMAP assessments also involve the identification of *good* examples of human rights protection and promotion. Assessment teams are not compiling a list of problems only, but rather gathering a comprehensive picture of the level of enjoyment of human rights in a municipality – hence the use of the term 'issue' in addition to 'problem' (the latter implying only negative examples). Indeed, as the objective of RMAP is the furtherance of human rights through municipal planning, it is important to stress the positive points of one given municipality that could be taken as examples for other issues or municipalities.

Essential elements

- ❖ Identify which human rights are affected or denied by such problems/issues
- ❖ Assess how the rights are protected in the domestic legal framework
- ❖ Assess whether the problem is one of implementation of the legal framework
- ❖ Map out entitlements of claim holders and obligations of duty bearers
- ❖ Identify also good examples of human rights protection or promotion

Tools to use

- 🚦 Human Rights Checklists
- 🚦 Vulnerable Groups List
- 🚦 CSOs List
- 🚦 Gender Baseline List
- 🚦 DLF Checklists
- 🚦 Participatory Approaches (interviews and focus group discussions)

The use of the Human Rights Checklists and of the Vulnerable Groups List (and, to a lesser extent, of the CSOs List and Gender Baseline List) facilitates the process of identification of problems and rights affected and crystallise them with a focus on vulnerable groups and human rights within the country context. These are the tools that bring a human rights-based approach to a development assessment from the earliest stage.

The DLF Checklists allow for early identification of problems that are in the legal framework themselves, and for assessment of the protection of human rights in the BiH context.

Using participatory approaches helps further to include problems and concerns of all inhabitants of the municipality, as stakeholders from different age groups, sex, ethnic, political, religious groups, rural and urban background, as well as vulnerable groups, are contacted. It needs to be noted, however, that the assessment and analysis themselves remain within the control of the RMAP teams, so as to ensure objectivity and independence of the analyses, and prevent dominant or powerful groups from exerting influence over the process and outcomes.

Yet priority is given to the major seven international human rights treaties, the European Convention on Human Rights and the rights guaranteed under the BiH Constitution.

STEP TWO: Set the priorities

After an overview of the main issues and rights affected is done, the next step is to set priorities for further investigation and analysis. In the preliminary stage of issue identification, a considerable number of issues will be detected requiring prioritisation according to the effect and importance of each issue to the population – with particular attention to vulnerable groups and duty bearers. Priorities are to be set by looking for the answers to questions such as: what is the problem; why is this a problem; who is affected by it and how; which rights and whose rights are affected by the issue/problem; who are the most affected among them; for whom it is a priority and why; for whom is the issue most important? In order to incorporate the concerns of all claim holders and duty bearers, further verification and cross checking of priorities need to be undertaken through a participatory approach guided by international human rights standards and principles and the normative content of the affected rights.


This process helps to keep the focus of the assessment on the most serious issues, and on the human rights and groups of people most affected. Most importantly, the process is essential to ensure that all issues are considered to the extent possible and that, in particular, concerns of vulnerable groups are at the forefront of the assessment. Indeed, RMAP must be careful to avoid reflecting only the view of a dominant majority, ensuring that no group is able to capture the assessment process for its own interests.

Once issues are prioritised, assessment teams present and discuss them with the local authorities to reach a consensus that those issues are the most pressing ones and are equally important for both claim holders and duty bearers. This cross checking and consensus building helps to keep ownership of the assessment at the local level, reflecting the real issues identified by people themselves to be analysed and ultimately addressed. If the assessment is to become a tool for change in local development planning, such action is crucial.

Essential elements

- ❖ Whose priority is it, i.e. for whom is the issue important?
- ❖ For whom is it most important?
- ❖ Why is it a priority?

Tools to use

-  Human Rights Checklists
-  Brainstorming Grid
-  Vulnerable Groups List
-  Participatory Approaches

In setting the priorities, these four tools have to be used in conjunction with each other.

Participatory approaches, in combination with the Vulnerable Groups List and with reference to Human Rights Checklists, facilitate the early identification of vulnerable groups and help to ensure that the assessment of issues is directly linked to specific human rights entitlements. Utilisation of the Vulnerable Groups List further enables assessments to identify potential vulnerable groups, the types of issues such groups may face, and ensures that the concerns of vulnerable groups are not overlooked. The list also helps to track those categories of people who are not readily visible or are typically marginalised, ensuring that their concerns are included in the issues prioritised for analysis.

The Brainstorming Grid guides the process of priority setting by tracing the 'bigger picture' linked with the issues selected, identifying the factors that influence the human rights situation and development process. It facilitates a fuller appreciation of the issues from different angles, and allows for a quicker brainstorming in order to crystallise the issues to be analysed.

STEP THREE: Identify Actors

Having prioritised issues, the next step is to identify all the actors involved and those who are affected and/or are having an impact on problems/issues. Here, the focus should be on the following three main actors.

Identify Claim Holders

Based on the prioritised issues and their impact on people's lives, it is important to identify who is most affected by the issue(s). It is equally important to establish what the person/group affected is entitled to. In this process particular attention should be on identifying the most vulnerable groups, and the following questions should be asked: who is marginalised; why are they most affected and how; do they belong to a specific religious, ethnic, or cultural group; do they have specific political affiliation or belief; are they situated in a specific geographic area; what are their economic status; from which age group are they - are children particularly affected by the issue? In addition, a gender analysis should be done at that stage.

Essential elements

- ❖ Who are the claim holders?
- ❖ What are they entitled to?
- ❖ Who are the most vulnerable? Do they belong to a specific group (men, women, particular ethnic, religious or political group, disabled, certain age groups, those living in a specific geographic area)?

Tools to use

- 📌 Human Rights-Based Analysis Chart (hereafter, Analysis Chart)
- 📌 Vulnerable Groups List
- 📌 Human Rights Checklists

The Analysis Chart allows for mapping out in one place all actors related to one specific problem - claim holders, including vulnerable groups; duty bearers; and others who exert an influence on the selected issues and on claim holders and duty bearers (forces at work).

The combination of the Vulnerable Groups List and Human Rights Checklists further facilitates the process of tracking those groups of people who are not easily visible or are typically marginalised. As for entitlements of claim holders, they can be found in the Human Rights Checklists.

Identify Duty Bearers

Determine who has the responsibility for taking the necessary steps to respect and protect human rights, for setting up redress mechanisms, and for fulfilling obligations relating to the issues and rights identified. Duty bearers have to be identified at all levels of authority, assessing the division of responsibilities between different layers and branches of government. For example, under the right to education, there are various duty bearers with specific obligations; from teachers to educational institutions to entity Ministries of Education and Parliament. In addition, non-State

actors with specific duties also need to be identified – in the example of education, these would be parents¹⁵.

Such obligations have to be assessed in the context of international human rights standards and the national legal framework, including whether the identified human rights obligations are of an *immediate* or *progressive* kind¹⁶.

Essential elements

- ❖ Which duty bearer, and at which level of authority, has the responsibility to take necessary steps and to set up redress mechanisms to respect, protect, and fulfil rights affected?
- ❖ What obligation do each identified duty bearers have under international standards and the national legal framework?
- ❖ Are those obligations under IHRL immediate or progressive in nature?

Tools to use

-  Analysis Chart
-  Human Rights Checklists

The Analysis Chart enables assessment teams to brainstorm and put in writing who are the duty bearers, i.e. who has the responsibility to respect, protect, and fulfil human rights in relation to one specific problem. The Human Rights Checklists complement the process by specifying the nature and content of obligations under international human rights law and their relationship with the issues identified in the assessment. Once the duty bearers and their specific obligations to respect, protect, and fulfil human rights are identified, it is also important to pinpoint situations where municipal authorities are themselves ‘claim holders’ vis-à-vis higher authorities. This has to be analysed together with municipal authorities’ capacities to fulfil their own obligations, as will be further elaborated under Step Five.

Identify ‘Forces at Work’

As the third and final component of Step Three, one needs to identify those actors who have a positive or negative influence on the problems, as well as on claim holders’ and duty bearers’ capacities. Such actors are known as ‘Forces at work’ and are typically non-State actors; they can be economic, social, and political interest groups or power blocks, such as religious leaders, business entities, non-governmental organisations, media, neighbouring countries, or international agencies. Such forces have the power to influence the claim holders and duty bearers and have a fundamental duty to exercise their rights responsibly, even though they do not have binding obligations under international human rights standards¹⁷. It is important to assess power relations between ‘forces and work’, claim holders and duty bearers because the misuse of such power can have serious human rights consequences.

In addition, the identification of ‘forces at work’ requires careful assessment against each of the problems being assessed, because a single actor could conceivably fall within multiple categories of forces at work when the problem is assessed from different angles. For example, a particular government institution can be viewed not only as a cause of an identified problem, but also as part of the solution, plus as duty bearer and as claim holder towards higher level of authority.

¹⁵ See Human Rights Glossary for more on State obligations and duties of non-State actors.

¹⁶ See Human Rights Glossary for an explanation of obligations of ‘immediate’ and ‘progressive’ kind.

¹⁷ See Human Rights Glossary for more on duties of non-State actors.




Therefore, it is important to have a comprehensive view of all the forces behind claim holders and duty bearers - their relationship with each other and their interests and demands.

Finally, forces at work - even more than duty bearers and claim holders - need to be kept in mind throughout the whole assessment phase as they can influence the identification of prevailing issues due to their various roles and interests (economic, political, religious, etc.).

Essential elements

- ❖ Which are the negative and positive forces behind issues identified?
- ❖ Do they have a negative and/or positive impact on claim holders and duty bearers?

Tools to use

-  Analysis Chart
-  Brainstorming Grid
-  CSOs List

The Analysis Chart together with the Brainstorming Grid and CSOs List are to be used for identifying forces at work. These tools help to ensure that the process takes into account all interests groups and their competing interests, demands, motivations, and their relationships with claim holders and duty bearers. The Brainstorming Grid further helps to extract the 'bigger picture' and identify external factors that influence the human rights situation linked to identified causes and effects, ensuring that no issue is left out in the process.

STEP FOUR: Information collection

In general, information collection and the review of available and collected information is a continuous process starting from the preparatory phase to the report-writing phase. For the purpose of analysis, once the issues are prioritised and actors are identified, more relevant and specific information will be required and will then need to be gathered in relation to the prioritised issues. At this stage, the information collection process becomes more specific and focused on the issues, rights affected and their impact.

Information collection is to be done by developing human rights-based indicators and identifying sources of information.

Set Human rights-based indicators

In order to gather specific, relevant and accurate information for human rights-based analysis of the issues, a set of human rights-based indicators has to be developed. These indicators need to be based on human rights principles¹⁸ and derived from human rights standards and the normative content of human rights implicated. To illustrate, assessment teams ask questions which will help determine whether human rights are respected, affected or violated. They then turn the question into a indicator: for example, to determine whether there is universal education, ask who, and how many children from which background (ethnic, gender, religious, geographic area, etc.) do not attend school; this will give the percentage and profile of children not receiving formal education. Setting human rights-based indicators is important for collecting human rights-oriented information that is connected with the problems identified and rights affected.

¹⁸ See Human Rights Glossary for an overview of major human rights principles.

Essential elements

- ❖ Human rights principles
- ❖ Normative content of relevant rights as basis for developing indicators

Tools to use

- 📌 Human Rights Checklists
- 📌 Vulnerable Groups List
- 📌 CSOs List
- 📌 Gender Baseline List

The Human Rights Checklists and the Vulnerable Group List are the major tools to use for indicator setting. The latter provides a set of human rights-based questions to ask in order to identify the most vulnerable groups and the issues affecting them. The Human Rights Checklists provide a simple reference to human rights standards, principles, and the normative content of rights, from which human rights-based indicators may be drawn.

In addition, two non-exhaustive lists of questions relating to civil society organisations and gender issues help to assess the impact of existing CSOs from a human rights-based perspective and ensure gender sensitive assessment, respectively.

Except for the three lists mentioned, RMAP has not developed its own set of indicators. It was left to the discretion and creativity of the research teams to link the issues identified and the rights affected according to the unique context of each municipality. Pre-set indicators may unwittingly limit the assessment process, excluding potentially important issues from consideration.

Identify sources of information

Setting human rights-based indicators further facilitates the identification of information sources (both primary and secondary) and key informants for qualitative information collection. Once indicators are set and sources are identified information should be collected using both qualitative and quantitative methods.

All collected information has to be reviewed constantly, crosschecked, and double-sourced in order to ensure accuracy and authenticity eliminating biases and unreliable information to the greatest extent possible. An attempt should also be made to compare government statistics and reports with those of the international community and civil society actors, thus cross-checking for reliability and/or conflicting information or interpretations. In addition, information collection should also look into the possibility of including case studies using qualitative studies to assess the protection mechanisms that are or are not working for particular persons and groups, thereby focusing the analysis more specifically on vulnerable groups.

Essential elements

- ❖ Use primary and secondary sources to substantiate the information.
- ❖ Use qualitative and quantitative methods.

Tools to use

- 📌 Qualitative and quantitative methodology of information collection
- 📌 Brainstorming Grid and Analysis Chart
- 📌 Vulnerable Groups List

For identifying sources of information both quantitative and qualitative methods of information collection are to be used. In addition, the Brainstorming Grid and the Analysis Chart, through which all actors have been identified (at Step Three), help to track the key informants. As for the Vulnerable Groups List it draws attention to specific groups that need to be contacted as sources of information.

STEP FIVE: Analysis

All the information gathered and reviewed for each of the prioritised issues/problems are subject to three main types of analysis¹⁹, namely:

Causal Analysis

The causal analysis focuses on the root and underlying causes of issues/ problems identified looking into the rights deprivation, the impact on the enjoyment of rights, who is affected and why, the interrelatedness of problems and how, differential impacts of the problem(s) on different groups of people, and why the problem exists.

Capacity Analysis

The capacity analysis requires close scrutiny of individuals' and groups' capacities to enjoy and exercise their rights - with a focus on vulnerable groups and causes of their vulnerability - and analysis of duty bearers' capacities to respect and fulfil their human rights obligations.

Capacity analysis for both claim holders and duty bearers is done through a SWOT²⁰ analysis combined with specific themes relevant to each group. Capacity analysis of claim holders should focus on their access to information, ability to organise and participate, ability to advocate for policy change, and ability to claim, seek and obtain redress on rights affected or denied. Whilst duty bearers' capacities include (a) their authority and power to act regarding issues prioritised – this is particularly important in the BiH context where municipal authorities have little power to act on issues such as social protection and health as the ultimate control lies at a higher level of government authority²¹; (b) their responsibility, including understanding and respect for domestic and human rights obligations, and political will; (c) resources - human, financial and organisational; and (d) access to necessary information and knowledge sources.

Gap Analysis, including analysis of Entitlements and Obligations

The 'gap analysis' sums up all analyses done so far. It focuses on what the entitlements of claim holders are in relation to each of the prioritised problems and rights affected as against the actual level of their enjoyment, and on how the compliance or non-compliance of State obligations impact on the lives of claim holders.

Finally, the analysis looks into what steps have already been taken by the duty bearers or other actors in order to fulfil their obligations and solve the problems identified, and underlines what other steps (both immediate and progressive) are still required.

¹⁹ See Section *Tools of Analysis* for more elaboration on all analyses.

²⁰ Strengths, Weaknesses, Opportunities, Threats.

²¹ It has been learned from the assessed municipalities that power and authority to take action on specific issues can have a great impact on people's lives and rights realisation. For instance, on issues related to education, health and social protection, Municipalities as front line duty bearers have little or no 'authority' to take concrete steps due to the complexity of the power division between different levels of government. Therefore, in such a situation, municipalities' capacities need to be analysed from the point of view that they are themselves also 'claim holders' against higher levels of government authority.

Essential elements

- ❖ Causal analysis (root and underlying causes, problems, impacts)
- ❖ Claim holders' capacity analysis, including vulnerability analysis
- ❖ Duty bearers' capacity analysis
- ❖ Gap analysis, including Entitlements and Obligations

Tools to use

- 📊 Analysis Chart
- 📊 HR Checklists
- 📊 Brainstorming Grid
- 📊 DLF Checklists

The Analysis Chart facilitates the process of capacity analysis and mapping of entitlements and obligations, whereas Human Rights Checklists are the core tools to identify obligations and entitlements under international human rights standards, which also helps the gap analysis. The Analysis Chart also helps to do a Swot Analysis of both claim holders' and duty bearers' capacities, and a vulnerability analysis of vulnerable groups. The Brainstorming Grid is particularly useful to ask detailed questions needed for causal analysis. Finally, the DLF Checklists help the analysis to articulate the obligations and existing gaps in the national protection and fulfilment of human rights.

STEP SIX: Draft report

The last step of the methodology is to draft a report that will present findings in a comprehensive manner and include all components of the RMAP human rights-based analysis, namely: a causal analysis for each problem identified; capacity analyses of claim holders and duty bearers; gap analyses; and entitlements, obligations and responsibilities attributed in accordance with international human rights standards and the domestic legal framework.

Essential elements

- ❖ Problems identified are presented
- ❖ Causal analysis clearly presented in report for each problem identified
- ❖ Capacity gaps analysed and presented in report
- ❖ Gap analysis made throughout the text
- ❖ Obligations, entitlements and responsibilities found in IHRL and the domestic legal framework are explained in plain language in the report
- ❖ *Before drafting, check that all the required steps have been followed!*

Tools to use

- 📊 Human Rights-Based Quality Assurance Checklist
- 📊 Analysis Chart and Brainstorming Grid
- 📊 Human Rights Checklists and DLF Checklists

The primary tool to use here is the Human Rights-based Quality Assurance Checklist. Teams can use this checklist as safety net to verify that the report includes all information needed and all analyses, as well as present human rights standards in a coherent and harmonised manner.

The Human Rights Checklists and the DLF Checklists should be used at this stage as reference tools to ensure that entitlements and obligations under international and domestic legal frameworks are presented in a clear and accurate way in the report.

Findings from the Brainstorming Grid and the Analysis Chart should be inserted in the report and teams can go back to those two tools to make sure they have not forgotten any vital analytical data.

Crosscutting Factors

In addition to all above mentioned tools, the RMAP methodology considers a few factors as crosscutting which have to be considered at all the steps and process of assessment and analyses.

- ❖ *Ensure a gender analysis* at all steps. In all problems researched, a gender analysis must be carried out. In discussions and meetings with all actors, gender issues should be raised and analysed in the report. To that end, RMAP has developed a short Gender Baseline List to remind the teams to ask gender-based questions. For more specific indicators related to women, the Vulnerable Groups List focuses on specific categories, such as victims of domestic violence and female heads of households.
- ❖ Throughout the process *use information collection and research methodology* (both qualitative and quantitative), and review, filter, delete irrelevant and non-authentic information, crosscheck and double-source all information collected.
- ❖ Finally, assessment teams/researchers need to pay particular attention to the *role and influence of all actors (claim holders, duty bearers and forces at work)*, on the process and outcomes of the assessment and analysis, and this at all steps. Those actors have various roles and interests related to issues identified and analysed and as such might wish to influence the assessment for their own benefit.

TOOLS SYNERGY TABLE

STEPS	ONE		TWO	THREE			FOUR		FIVE	SIX
	Identify issues/ problems and rights affected		Set the priorities	Identify Actors			Information collection		Analysis	Draft Report
	Identify Issues/ Problems	Identify Human Rights Affected		Identify claim holders (CH)	Identify duty holders (DH)	Identify Forces at work	Set human rights-based indicators	Identify sources of information		
Essential elements	<p>What are the prevailing problems/ issues that impact on people's lives and on human rights?</p>	<p>Identify which rights are affected, denied or violated by issues identified.</p> <p>Assess how the rights are protected in domestic legal framework and/or whether the problem is one of implementation.</p> <p>Map out entitlements and obligations.</p> <p>Identify good examples of human rights protection or promotion.</p>	<p>Whose priority is it?</p> <p>For whom is it most important?</p> <p>Why is it a priority?</p>	<p>Who are the CHs?</p> <p>Who are the most vulnerable (men, women; ethnic or religious differences; which age group; which geographic area etc.)?</p>	<p>Who has the responsibility to take steps, set up mechanisms of redress, to respect, protect, promote and fulfil the rights identified?</p>	<p>What are the negative and positive forces behind issues identified?</p> <p>Do they have a negative and/or positive impact on claim holders and duty bearers?</p>	<p>Reference to Human Rights Principles</p> <p>Essential components of relevant rights as basis for developing indicators</p>	<p>Identify sources of information</p> <p>Use primary and secondary sources to substantiate the information</p> <p>Use qualitative and quantitative methods</p>	<p>Causal analysis (root and underlying causes, problems, impacts)</p> <p>Claim holders' capacity analysis (incl. most vulnerable groups)</p> <p>Duty bearers' capacity analysis</p> <p>Gap analysis, including Entitlements and Obligations</p>	<p>Problems presented</p> <p>Causes analysed</p> <p>Capacities of CH and DB analysed</p> <p>Gaps analysed</p> <p>Obligations, entitlements and responsibilities found in IHRL and DLF presented</p> <p><i>*Before drafting, check all the required steps are followed.</i></p>

STEPS	ONE		TWO	THREE			FOUR		FIVE	SIX
	Identify issues/ problems and rights affected		Set the priorities	Identify Actors			Information collection		Analysis	Draft Report
	Identify Issues/ Problems	Identify Human Rights Affected		Identify claim holders (CH)	Identify duty holders (DH)	Identify Forces at work	Set human rights-based indicators	Identify sources of information		
Tools to use	Human Rights (HR) Checklists Vulnerable Groups List Civil Society Organisations List (CSOs List) Domestic Legal Framework (DLF) Checklists Participatory Approaches Tools (Interviews/ Focus Group Discussions)		HR Checklists Vulnerable Groups List Brainstorming Grid ²² Participatory Approaches Tools	Human Rights-based Analysis Chart ²³ Vulnerable Groups List CSOs List Human Rights Checklists	Analysis Chart HR Checklists DLF Checklists	Analysis Chart CSOs List Brainstorming Grid	HR Checklists Vulnerable Groups List CSOs List	Use primarily qualitative research methodology to collect info Use quantitative data as required Vulnerable Groups List Brainstorming Grid and Analysis Chart	Analysis Chart Brainstorming Grid HR Checklists Vulnerable Groups List DLF Checklists	Human Rights-based Quality Assurance Checklist HR Checklists DLF Checklists Analysis Chart Brainstorming Grid
Cross cutting:										
❖ Ensure a gender analysis is carried out at all steps (use the Baseline Gender List as starting point).										
❖ Review, filter, clean irrelevant and non-authentic information, crosscheck and double source all information collected at all steps.										
❖ Pay attention to the role and influence of all actors (CH, DB and forces at work) on the process and outcomes of assessment and analysis at all steps.										

²² The Analysis Chart and Brainstorming Grid are summary of the main concepts of the RMAP ‘Tools of Analysis’ and largely reflect concepts from the Chapter 6, ‘Human Rights centred Development Tools of Analysis’ of the manual *Human Rights Centred Development: Theory and Practice*, by Maria Socorro I. Diokno, 2002.

²³ Ibid.

HUMAN RIGHTS CHECKLISTS

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 HR 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

²⁴ RMAP wishes to acknowledge the expertise and support of the International Human Rights Network (www.ihnetwork) 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.

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 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 treaties²⁹. 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 (on ICCPR); Committee on Economic, Social and Cultural Rights (on 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.

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.

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.

²⁹ See Human Rights Glossary for a list of the treaties and their respective Treaty Bodies.

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.

CONTENT OF THE HUMAN RIGHTS CHECKLISTS³⁰

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

³⁰ Table of Contents as of December 2004.

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
- ❖ 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 EDUCATION³¹

Purpose of this Checklist

This Checklist sets out the main international human rights obligations that 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

³¹ All other HR Checklists are available upon request at OHCHR or RMAP HQ/UNDP.

The table below draws on the following:

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) ❖ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) ❖ Convention on the Rights of the Child (CRC) ❖ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) ❖ Framework Convention for the Protection of National Minorities (FCNM) ❖ Convention Relating to the Status of Refugees (CRSR) ❖ Revised European Social Charter (RESC). BiH has signed the treaty indicating its intention to be bound by these standards, and so it is included here (BiH has not yet ratified it) ** 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 (UDHR) ❖ Decisions of the European Court of Human Rights (ECtHR) ❖ Committee on Economic, Social and Cultural Rights (CESCR), General Comments 3 and 13. ❖ General Comment 1 of the Committee on the Rights of the Child (CRC) 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 for 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/ceschr.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)	
<p>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.</p> <p>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:</p> <ul style="list-style-type: none"> (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 	<p>Overview of essential features³²</p> <ul style="list-style-type: none"> ❖ 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: <ul style="list-style-type: none"> <i>Non-discrimination</i> - 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). <i>Physical accessibility</i> - 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). <i>Economic accessibility</i> - 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. <i>relevant, culturally appropriate and of good quality</i>) to

³² ESCR General Comment 13, paragraph 6.

<p>material conditions of teaching staff shall be continuously improved.</p> <p>ICESCR Article 14 Each State Party to the present Covenant which, at the time of becoming a 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.</p> <p>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</p>	<p>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 ICECSR art. 13 (3) and (4)).</p> <ul style="list-style-type: none"> ❖ Adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings. <p>When considering the appropriate application of these “interrelated and essential features” the <i>best interests of the student</i> shall be a primary consideration³³.</p> <p>Types of education and corresponding entitlements/obligations</p> <p>The right to compulsory primary education</p> <ul style="list-style-type: none"> ❖ 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. <p>The right to secondary education, including technical and vocational secondary education</p> <ul style="list-style-type: none"> ❖ 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.
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³³ ESCR General Comment 13, paragraph 7.

³⁴ Committee on Economic, Social and Cultural Rights, General Comment 3 of 1990, “The nature of State parties obligations”.

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.

CRC Article 29

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

CRS Refugees Article 22. Public education

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

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 Protocol 1, to restrict access thereto to those students who have attained the academic level required to most benefit from the courses offered.
- ❖ Flexible curricula.

The right to fundamental or basic education for those who have not completed primary education

- ❖ 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.

Overview of State Obligations

- ❖ **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:**
 - 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.

Immediate Obligations³⁴

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 (*see also School System*).

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.

Guiding Principles on Internal Displacement, 1998 (regarded as 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.

Revised European Social Charter (RESC) 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;

Non-retrogression

Not doing anything/standing still – obligation to take steps:

- ❖ Start taking steps for the right to education
- ❖ Take steps to ensure essential features for all forms of education: availability, 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)

General provisions

CESCR General Comment 13, paragraph 1

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

<p>(c) to provide protection and special aid from the State for children and young persons temporarily or definitively deprived of their family's support;</p> <p>2 to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.</p>	<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>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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	<p>community and of individuals [but] must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention.</p> <p>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), <i>Kjeldsen, Busk Madsen and Pedersen v Denmark (1976) 1 EHRR 711</i>.</p> <p>States may:</p> <ul style="list-style-type: none"> ❖ Refuse private bodies permission to run schools where they do not provide education to the required standards (<i>Jorbedo v Sweden (1987) 51 DR 125</i>); ❖ Require parents to co-operate in assessing the educational attainments of their children (<i>Family H v United Kingdom (1984) 37 DR 105</i>). <p>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 (<i>See also National Minorities</i>); and (2) there should be official recognition of any qualifications obtained on the completion of studies.</p> <p>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 (<i>Yanasik v Turkey (1993) 74 DR 14</i>). 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 (<i>Yanasik v Turkey (1993) 74 DR 14</i>).</p> <p>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)</p> <p>Where it is arguable that a disciplinary measure violates an ECHR right, there must be the</p>
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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).

Millennium Development Goals

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.

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>RESC 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>RESC, 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 obligations³⁵</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>

³⁵ ESCR General Comment 13, the right to education, paragraph 25 – 27.

Binding standards	Interpretation
3. RELIGIOUS AND MORAL EDUCATIONAL FREEDOM	
<p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p>Overview³⁶</p> <ul style="list-style-type: none"> ❖ 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. (<i>See also School System</i>). ❖ 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. <p>Public school religious instruction</p> <ul style="list-style-type: none"> ❖ 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 <i>in a particular religion or belief</i> is inconsistent with the right unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians. <p>Schools other than public schools must</p> <ul style="list-style-type: none"> ❖ 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.

³⁶ ESCR General Comment 13, the right to education, paragraph 28 – 29.

<p>national minorities and of the majority.</p> <p>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 of different communities.</p> <p>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> <p>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.</p> <p>2. The exercise of this right shall not entail any financial obligation for the Parties.</p> <p>FCNM Article 14</p> <p>1. The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.</p> <p>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> <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>Clarification of specific terms</p> <p>‘Philosophical Convictions’ (ECHR, <i>Campbell and Cosans v United Kingdom</i> (1982) 4 EHRR 293 at paragraph 36): In order to be relevant under Article 2 of Protocol 1 ECHR ‘philosophical convictions’ must: (1) be not incompatible with human dignity; and (2) not conflict with the fundamental right of the child to education. 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</i> (1982) 4 EHRR 293; <i>Valsamis v Greece</i> (1996) 24 EHRR 294). 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</i> (1984) 37 DR 105). ‘Respect’ is to be interpreted objectively (<i>Valsamis v Greece</i> (1996) 24 EHRR 294).</p> <p>‘Parents’ Legal custody is the defining factor in the meaning of ‘parents’. <i>X v Sweden</i> (1977) 12 DR 192 at 194: 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</i> (1977) 11 DR 160). Where a child is simply taken into care, the convictions of the natural parents are still relevant (<i>Aminoff v Switzerland</i> (1985) 43 DR 120).</p>
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³⁷ 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>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 convictions³⁷. The 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>
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	<p>Council of Europe Explanatory Report to the FCNM</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 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</p> <p>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</p> <p>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</p> <p>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>
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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 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.

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.

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.

Paragraph 3

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.

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.

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, 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>Costello-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>

Binding standards	Interpretations
5. NON-DISCRIMINATION AGAINST WOMEN IN EDUCATION	
<p>See in addition Crosscutting Checklist 1 for general prohibition of discrimination.</p> <p>Women, CEDAW Article 10 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> <p>a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all</p>	<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</p>

<p>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;</p> <p>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;</p> <p>c) The elimination of any stereotyped concept of the roles of men and women at 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> <p>d) The same opportunities to benefit from scholarships and other study grants;</p> <p>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;</p> <p>f) The reduction of female student drop-out rates and the organisation of programmes for girls and women who have left school prematurely;</p> <p>g) The same opportunities to participate actively in sports and physical education;</p> <p>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>	<p>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 home³⁸. Children with HIV/AIDS are also heavily discriminated against in both settings³⁹. 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 General Comment No. 5 (1994) of the Committee on Economic, Social and Cultural Rights on persons with disabilities.

³⁹ 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).

DOMESTIC LEGAL FRAMEWORK CHECKLISTS

DOMESTIC LEGAL FRAMEWORK CHECKLISTS

INTRODUCTION

The Domestic Legal Framework Checklists (hereafter, DLF Checklists) are a compilation of relevant provisions of domestic laws and regulations relevant to the major human rights and issues identified and analysed by assessment teams. The Checklists should not be deemed exhaustive as they are intended to be an overview of the main provisions relating to the sector or right in question.

The DLF Checklists start with a summary of the main international human rights instruments which BiH has undertaken and which are incorporated as annexes in the BiH and Federation's Constitutions⁴⁰. Although the DLF Checklists link domestic regulations with human rights standards, the purpose is not to assess their compliance of domestic law with international human rights law. Rather, this assessment is made on a case-by-case basis and is linked to specific problems identified by assessment teams. A thorough assessment of how domestic law complies with international human rights law is beyond the scope of the RMAP project, especially in the BiH context where the legal framework is complex and being constantly modified.

Those 11 DLF Checklists are formatted according to the following sectors or rights:

- ❖ Freedom of movement
- ❖ Public administration
- ❖ Civil society
- ❖ Administration of justice
- ❖ Right to work
- ❖ Right to education
- ❖ Social protection
- ❖ Right to health
- ❖ Right to property
- ❖ Culture
- ❖ Right to environment

Caveat: It is important to note that the DLF Checklists need to be individually reinforced through trainings, which would ensure that users have a good grasp of all aspects of the rights and legal provisions.

Objectives of the DLF Checklists

The rationale behind the DLF Checklists was that teams needed guidance on how human rights obligations have been incorporated (or not) in the domestic laws. This enables assessment teams to determine what kind of information to collect, how to use this information for human rights-based analysis and how to make the link between national and international human rights standards during the assessment process.

⁴⁰ The RS Constitution does not incorporate international human rights instruments as such but includes provisions that reflect the main international human rights obligations undertaken by BiH.

Hence the Checklists serve the following aims:

- ❖ They serve as a *resource and quick reference guide to relevant rights and domestic legal provisions* in correlation with international human rights standards. The DLF Checklists help assessment teams to put issues and rights in a national legal framework, thus enabling them to determine whether there is a problem with the national legal framework or its implementation.
- ❖ Where gaps are observed in human rights enjoyment at the municipal level, the DLF Checklists *indicate which bodies are responsible and the relevant procedures*, which are either omitted or insufficient to provide the necessary protection or fulfilment of human rights.
- ❖ The DLF Checklists together with the HR Checklists serve as *reference tool to conduct a human rights-based analysis* and establish performance standards against which the reality should be analysed (i.e. ‘gap analysis’⁴¹).

How to use the DLF Checklists

- ❖ The DLF Checklists start with the identification of specific human rights, of claim holders’ entitlements and duty bearers’ obligations. Each checklist covers the legal protection of rights at the Federation of BiH (FBiH) and Republika Srpska (RS) level (the ‘entities’).
- ❖ Checklists outline in the first row the binding standards/international conventions that are incorporated in the BiH and FBiH Constitutions.
- ❖ The first column refers to the FBiH DLF and the second column to the RS DLF. The first row of each column starts with the identification of rights in the relevant entity Constitution⁴². All the other rows refer to individual entity⁴³ laws and the provisions that regulate or refer to a right dealt with by a particular checklist.

Note: Some laws in the DLF Checklists are in local language. Also, the checklists are subject to updates and changes pending the adoption of new laws or amendments.

When to use the DLF Checklists

The DLF Checklists need to be used throughout the whole process of assessment and analysis. They form the basic reference tool to make the link to domestic legal coverage of human rights.

Tools to be used with the DLF Checklists

- ❖ They need to be used in conjunction with the Human Rights Checklists throughout the whole process.
- ❖ As required, they can be used with all other major tools at each step of assessment and analysis.

⁴¹ For further explanation of the gap analysis, see below *Tools of Analysis* and the *Human Rights-based Quality Assurance Checklist*.

⁴² Where necessary, provisions in the BiH Constitution are also identified (e.g. DLF Checklist on Freedom of Movement).

⁴³ In some cases where there is no relevant entity law reference is made to State law.

**SAMPLE OF A DOMESTIC LEGAL FRAMEWORK CHECKLIST:
RIGHT TO HEALTH⁴⁴**

International identification

- ❖ Right to the enjoyment of the highest attainable standard of physical and mental health
- ❖ Non-discrimination and quality in access to health (see also Cross-Cutting Checklist)
- ❖ General legal obligations relating to right to health

Four elements of right to health

- ❖ Affordable
- ❖ Accessible
- ❖ Available
- ❖ Quality of health services and of facilities

Claim holders' entitlements

- ❖ Right to the enjoyment of the highest attainable standard of physical and mental health

Duty bearers' obligations

- ❖ To ensure protection of fundamental human rights and freedoms including right to health care
- ❖ To ensure that information about health care is available

⁴⁴ All other Domestic Legal Framework Checklists are available upon request at OHCHR or RMAP HQ/UNDP.

I. Domestic legal framework

BiH Constitution

- ❖ 1965 International Convention on the Elimination of All Forms of Racial Discrimination
- ❖ 1966 Covenant on Economic, Social and Cultural Rights
- ❖ 1979 Convention on the Elimination of All Forms of Discrimination against Women
- ❖ 1989 Convention on the Rights of the Child
- ❖ 1994 Framework Convention for the Protection of National Minorities

FBiH Constitution: Annex: Instruments for the protection of Human Rights

- ❖ 1961 European Social Charter
- ❖ 1966 International Covenant on Economic, Social and Cultural Rights
- ❖ 1989 Convention on the Rights of the Child
- ❖ 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Protocols thereto
- ❖ 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
- ❖ 1965 International Convention on the Elimination of All Forms of Racial Discrimination
- ❖ 1966 International Covenant on Civil and Political Rights and its 1966 and 1989 Optional Protocols thereto
- ❖ 1979 International Convention on the Elimination of All Forms of Discrimination against Women
- ❖ Framework Convention for the Protection of National Minorities of 1994⁴⁵

Other laws

- ❖ FBiH and RS Law on Health Care
- ❖ FBiH and RS Law on Health Insurance: see Social Welfare Checklist
- ❖ FBiH and RS Law on Pension and Disability Insurance: see the Social Welfare Checklist

Under the Constitution of Bosnia and Herzegovina, health care falls under the competency of the two Entities: the FBiH and RS (Art. III (1) and III (3,a), BiH Constitution).

THE RIGHT TO HEALTH

BiH Gender Equality Law

The 2003 BiH Gender Equality Law provides for non-discrimination in all spheres of life, including labour relations, employment, social welfare services, *health care* and, generally, for equal treatment and opportunities.

Article 13

Everyone shall have the same right to health care and access to health services, including family planning, irrespective of sex. Health institutions shall undertake all necessary measures to prevent gender discrimination in all forms of health care. Competent authorities shall undertake special measures aimed at protecting and promoting reproductive health of women.

However, in general, current laws related to health care in both Entities do not have specific gender sensitive approach to health care. Gender equality in terms of access has not been established as a priority. Nonetheless, international documents and the constitutional framework oblige the State and its administrative units to eliminate discrimination against women in access to health care services throughout their lifecycle, particularly in the areas of family planning, pregnancy and confinement and post-natal period.

Abortion

Abortion is legal in both Entities through the **Law on Abortion of 1963 and 1973** and it may be obtained in primary health care centres until the tenth week of pregnancy. A woman is free to decide whether to have an

⁴⁵ Added by Am. XXIV.

abortion or not. After ten weeks, abortions may be performed if there is a legitimate threat to the life or health of the mother or foetus, but special authorization by an expert commission is required.	
FBiH DLF	RS DLF
<p>FBiH Constitution, Chapter III, Article 2</p> <p>Both the Federation Government and the Cantons are to have responsibilities for insuring protection of fundamental human rights and freedoms including: right to health;</p> <p>In compliance with the rights and obligations defined by the Constitution of the Federation of Bosnia and Herzegovina (hereinafter: Constitution) and by Law, the Federation performs the following:</p> <ul style="list-style-type: none"> ❖ enacts laws within the competence of the Federation ❖ conducts health policy by encouraging and developing healthy life habits amongst the population (Art. 7 Law on Health Care) <p>FBiH Law on Health Care</p> <p>Right of access to health care: Article 3</p> <p>All citizens are to take care of their health. Nobody is to endanger the health of others. The citizen's obligation is to participate in all the preventive- health activities implemented in their place of residence and work that are directed towards the improvement and protection of health, and the prevention of diseases.</p> <p><i>Every citizen is entitled to health care, in accordance with this Law and Law on Health Insurance.</i></p> <p>Every citizen is to give first aid to an injured or sick individual, according to his knowledge and abilities, and to assist his/ her access to the closest health institution.</p> <p>Article 4</p> <p><i>Owners and managers of enterprises and other legal persons are responsible for the implementation of measures concerning health care and the protection of the working environment.</i></p> <p>Duties and responsibilities are imposed on citizens who are self- employed and who perform public activities, and to citizens who, in the course of professional independence, perform artistic, cultural, legal or other professional activity (hereinafter: citizens performing business or other professional activity), as well as organisers of public performances and mass meetings concerning contagious diseases and injuries.</p> <p>The ministry responsible for education, with the agreement of the competent ministry of health, provides 'self-protection' health education to pre- school children and students, through curricula and teaching programmes.</p> <p>Article 6</p> <p><i>Health activity is organised and implemented as primary, specialist-consultative and hospital health care.</i></p> <p>Primary health care comprises: activity of family doctor</p>	<p>RS Constitution, Article 37</p> <p>Article 37 of the RS Constitution guarantees the right to health care to any person, in accordance with the relevant laws and regulations. Children, pregnant women and elderly persons are entitled to health care through public funds. Entitlements of other social categories are determined in accordance with the conditions set out in applicable RS laws.</p> <p>RS Law on Health Care</p> <p>The RS Health Protection Law aims to achieve the highest attainable standard of health of "citizens, individuals, members of their families and the society in general"⁴⁶. The basic element of the health care system is primary health care. Specialist and highly specialist health protection provides professional and specialist support to the primary health care system⁴⁷. The Law also provides for measures of 'particular social interest' and they include activities to:</p> <ul style="list-style-type: none"> ❖ suppress, control and extinguish epidemics of contagious diseases as well as to prevent negative health consequences due to natural and other disasters; ❖ eradicate contagious diseases; ❖ monitor the health condition of the population, particularly hygienic and epidemic situations, and take measures for improvement; ❖ ensure sufficient quantity of blood for both regular and irregular situations; and ❖ ensure basic medication. <p>The Rights and Duties of Citizens in the Realisation of Health Protection</p> <p>Article 9</p> <p>In providing citizens with health care, health care workers are obliged to abide by the principle of equality.</p> <p>Right of Access to health care</p> <p>Article 10</p> <p>Health facilities and health care workers are obliged, to the extent of their abilities, to provide emergency medical assistance. If a particular health facility is</p>

⁴⁶ Article 2.

⁴⁷ Article 6.

of medicine (hereinafter: family doctor), general practice, school health care, hygiene- epidemiological protection, dental protection, emergency aid, occupational health, women and children protection, diagnostic and pharmaceutical activities.

Specialist-consultative health care comprises the system of measures, activities and procedures for the purpose of diagnostics, medical treatment and rehabilitation of sick persons when, due to the nature of disease and other circumstances, hospitalisation is not necessary.

Hospital health care comprises a system of measures undertaken for the purpose of diagnostics, treatment and medical rehabilitation in the appropriate health institutions.

Article 10

Health care for citizens in the Federation is provided on the principles of comprehensiveness, continuity, availability and overall approach in primary care, and specialised approach in the specialist-consultative and hospital health care.

Article 8

The Federation conducts its tasks in the health care field by providing the following:

- ❖ health education and promotion of health culture; health care for invalids of war and civil war victims beyond the level of compulsory health insurance, in compliance with the law;
- ❖ health care for members of the Federation Army, including persons in regular military service, and members to the Federal Ministry of Internal Affairs (hereinafter: Federal Army and members to MoIA) beyond the level of compulsory health insurance, in compliance with law;
- ❖ unified health statistics information system conducting standardised statistical studies in the areas of health of interest to the Federation.

Article 9

The Canton performs its tasks in the field of health care as follows:

- ❖ it provides the hygienic-epidemiological services, health statistics information system, emergency medical aid, and social medical services within its area
- ❖ it ensures the realisation of health insurance, in compliance with the Law on Health Insurance
- ❖ it provides health care to members of the cantonal police beyond the level of compulsory health insurance, in compliance with the law;
- ❖ it provides the means for constructing and equipping health institutions for the implementation of primary, specialist- consultative and hospital health care.

Health Care Measures: Article 16

(Implemented on the basis of the plan and programme of measures for health care, defined by the Federal Minister of Health, upon the proposal of the FBiH Public Health Institute or on the basis of the plan and

incapable of fully treating a medical emergency case, it is obliged to refer such a case, after having provided medical assistance, to a health facility where the necessary treatment can be provided.

Health facilities

Article 17

Health facilities are engaged in the provision of health care as a professional medical vocation. Health facilities are corporations, so defined by being registered with a court.

A health facility may be founded by the Republic, by cities and municipalities, and other corporations, as well as individuals, in accordance with the law.

A plan of the health facility network (hereafter, 'Network Plan') is made by the Government of Republika Srpska on the basis of the Strategy for the Development of Health Protection in the Republic for a set period.

The Network Plan determines the number of health facilities and their types, their capacities, structures and locations, as well as setting forth health facilities of referral.

Article 20

The regulations on labour relations apply with respect to the rights, obligations and accountability of medical staff, while matters pertaining to the health facility's name are covered by legal provisions.

Article 21

Health facilities are obliged to maintain medical records, and make individual, collective and periodic reports to the Health Protection Bureau of Republika Srpska.

The Ministry of Health specifies the nature of the medical records and reports noted in Paragraph 1 of this Article.

Types of Health Facilities

Article 22

The following are health facilities:

1. Ambulanta (art. 23. The family medicine Ambulanta is the basic component of organised primary health care.)
2. Dom Zdravlja (art. 26. the Dom Zdravlja is a health facility providing primary health care by the family medicine system)
3. Pharmacy (The Pharmacy supplies the population and the health facilities with medicines and medical supplies, and provides instructions for their proper use)
4. Pharmaceutical Facility (Pharmaceutical facilities combine the operations of two or more Pharmacies, as set forth in this Law and the Law on medicines)
5. Hospital (art. 36. The Network Plan determines where General Hospitals will be located)
6. RS Bureau for the Protection of Health

<p>programme defined by the cantonal minister of health upon the proposal of the competent Cantonal Institute for Public Health)</p> <ol style="list-style-type: none"> 1. implementation of the health education for the purpose of improving the mental and physical health of citizens; 2. protection against ecological factors hazardous to health, including all measures for the protection, promotion and improvement of health conditions in the living and working environment, and hygienic conditions for human life and work; 3. provision of overall (preventive, curative and rehabilitative) health care to war invalids, civil war victims and families of the killed soldiers; 4. medical treatment and rehabilitation of sick, physically and mentally deficient and injured persons; 5. measures for special medical supervision of those older than 65 years of age; 6. provision of overall (preventive, curative and rehabilitative) health care to children and youth; provision of health care to women with regard to family planning, pregnancy, delivery and maternity etc. <p>Article 17 The health care measures with regard to work and working environment (specific health care for workers) which are to be provided by enterprises, other legal and physical persons (hereinafter: employers) are as follows:</p> <ul style="list-style-type: none"> ❖ timely reporting on health hazards at work; health, security and work hygiene advice ❖ measures for the prevention and detection of occupational diseases, prevention of injuries at work and provision of adequate first aid ❖ measures for the health management of workers who are exposed to specific health hazards at work <p>Article 20 <i>Primary health care institutions particularly implement the following:</i></p> <ol style="list-style-type: none"> 1. health care measures for children of the pre- school age group, care for their health condition and improvement of health; participation in the improvement of their psycho-physical abilities; 2. health care protection for women during ante-natal and post-natal period; care for other health needs of women; 3. measures for promotion of the natural nutrition of the new- born babies- breast-feeding; 4. health care measures for persons with disorders in their development; 5. research into the negative environmental impacts on the health condition and working abilities of workers and other citizens; 6. emergency aid; 7. treatment in the surgery or at insurant ' s home; 8. curative and rehabilitation measures etc. <p>Article 22 Specific health care for workers, as part of the primary</p>	<ol style="list-style-type: none"> 7. Specialised Bureau 8. Institute 9. Clinic 10. Clinical Centre 11. Policlinic <p><i>Note: Ambulanta engage in the following: organising health education, monitoring the health of the population and undertaking steps to prevent and combat contagious disease, detecting and combating non-contagious disease, diagnosing and treating conditions not requiring complicated testing and treatment, home treatment for those not needing hospital care, extended care and rehabilitation following release from hospital.</i></p> <p>RS Bureau of Health Protection</p> <p>Article 37 The Republika Srpska Bureau of Health Protection is a highly specialised medical institution, which monitors the health of the population and the epidemiological and hygienic conditions, and proposes and undertakes measures to prevent the spread of contagious disease at the source, with the aim of eliminating risk factors in the environment and improving the health of the population. The Bureau systematically monitors the quality of drinking water and surface waters, food and air, and conducts public education.</p> <p>Article 38 Regional Bureaus of Health Protection are organisationally part of the Bureau, which cover a territory defined by the network plan. Regional Bureaus of Health Protection have departments of epidemiology, hygiene and social medicine, and services for microbiological and hygienic analysis. The Network Plan determines the number of Regional Bureaus of Health Protection, their locations and the territories they cover.</p> <p>Article 45 Pharmaceutical Facilities, the Republika Srpska Bureau of Health Protection, and Institutes and Bureaus for Blood Transfusion can only be founded by the Republic.</p> <p>Registry of Health Facilities</p> <p>Article 46 Health facilities founded by individuals are to be recorded in a court registry or with the Facilities Registry of the Ministry of Health.</p> <p>Working Hours</p> <p>Article 50 Health facilities are obliged to organise the provision of health care 24 hours a day, by way of regular working hours, shift work, over-time, permanent on call, and</p>
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<p>health care, is primarily comprised of preventive activities with regard to creating and maintaining a safe and healthy working environment, which provides for optimal physical and mental health at work and adaptation of the working conditions to workers' abilities.</p> <p>The Minister of Health and Federal Minister for Social Policy, Displaced Persons and Refugees will define the type and range of medical examinations for the purpose of estimating the health condition of the worker, by passing more detailed regulation.</p> <p>(The provision of specific health care does not include any specific measures relating to women, but very general provisions mostly in relation to working conditions.)</p> <p>Article 24</p> <p>Specific health care is realized by the workers on the basis of the contract between the employer and the Dom Zdravlja (Health Centre) or other health institution. The system includes occupational medicine, possibly provided by occupational medicine specialist who performs private practice.</p> <p>For the purposes of monitoring, researching and promoting the provision of specific health care, the cantonal institute for occupational medicine can be founded i.e. a health institution catering for specific health care for the workers.</p> <p>The cost of specific health care for the workers is paid by the employer.</p> <p>Article 26</p> <p><i>Every citizen has a right to the following:</i></p> <ol style="list-style-type: none"> 1. access to a health service of a standard quality on an equal basis, defined by the health insurance rules; 2. compensation for damage caused by an inappropriate health service, where there is a proven omission on behalf of the expert; 3. free choice of family doctor, doctor of medicine and doctor of dentistry in accordance with legal provisions and health insurance rules; 4. urgent, immediate medical aid as and when it is required; 5. correct information and knowledge on all issues related to health; 6. refusal to be the object of the scientific research, or any other examination or medical treatment without his own agreement; 7. choice of the form of medical intervention from those on offer by the doctor of medicine or doctor of dentistry, except when the intervention cannot be delayed, and where non-performance could endanger the life and health of citizens and cause permanent damage; 8. confidentiality of all data related to the patient's health condition; 9. reject examinations and treatments by the doctor of medicine, or doctor of dentistry, due to lack of confidence; 10. reject surgical or other medical intervention, if conscious and capable of deliberation, and if informed by the doctor of any harmful consequence likely to occur due to rejection. For persons 	<p>otherwise.</p> <p>Over-time is work performed by an employee after his regular working hours.</p> <p>Permanent on call refers to an employee's obligation to be at all times available for the provision of health care in emergencies.</p> <p>Right to Strike</p> <p>Article 52</p> <p>Health staff employed by a health facility have the right to strike, in accordance with the law.</p> <p>Financing Health Facilities</p> <p>Article 53</p> <p>Health facilities derive operating funds from:</p> <ul style="list-style-type: none"> ❖ health insurance funds, ❖ the State budget, ❖ patients, ❖ scientific and educational activity, ❖ other sources. <p>Article 56</p> <p>Citizens of States, which do not have a treaty with the Republic, shall pay for health care costs according to a set fee schedule.</p> <p>Health Staff and Health Associates</p> <p>Health care, as a professional medical vocation, can only be provided by those possessing the requisite professional qualifications.</p> <p>Health professionals are those possessing secondary, post-secondary and higher medical education.</p> <p>Health associates are those possessing secondary, post-secondary and higher education in other fields, performing specific health-related tasks within health facilities.</p> <p>Professional Supervision</p> <p>Article 83</p> <p>The operations of health facilities and health staff are subject to professional internal and external supervision.</p> <p>The purpose of professional supervision is to determine whether health facilities, health professionals and health associates are practicing medicine in accordance with modern medical practice, and that of other sciences, and whether appropriate conditions exist for such practice.</p> <p>Health Inspection</p> <p>Article 88</p> <p>Health inspection monitors the application of the law, other regulations, and general acts, as well as oversees the application of health care measures pertaining to:</p> <ul style="list-style-type: none"> ❖ the organisation and operation of health facilities,
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<p>unconscious and unable to deliberate, consent is given by parents, tutors, spouse or other close relative, except where the patient's life is in danger or where an emergency does not allow for the timely provision of consent;</p> <p>11. nutrition, in accordance with ethnic demands and prescribed medical diet, during a sojourn in a health institution;</p> <p>12. perform religious rites during a sojourn in a health institution, in a room allocated for the said purpose, including the right to be properly prepared in the mortuary in the case of death, with the performance of religious rites (...).</p> <p>Article 28 The right of the citizen to a health service of a standard quality on an equal basis, implies observance of modern medical achievements, technology and standards, in compliance with the health insurance rules. The quality of the health service depends on technologically acceptable methods of provision and the safety of the service provided to the citizen.</p> <p><i>For the purpose of the maintaining consistent quality of services, quality is to be constantly controlled through the following measures: internal expert control, inspections, recognition of the citizen's right to complain about the quality and his/her right to initiate the procedure for consulting doctors in compliance with the provisions of this law. This includes the right to compensation for damages caused by inappropriate service, in cases where the expert's omission is proved.</i> The cost of the health consultation is paid for by the citizen (if the request for the consultation of the doctors is not justified), or by the doctor of medicine who has treated the citizen (if the request is justified). The Minister of Health will determine the procedure and the method of work of the doctors' consultation in a Book of Rules.</p> <p>Establishment and organisation of health institutions</p> <p>Article 35 The health service is provided by the health institutions founded by the Federation, canton, municipality, local and foreign physical or legal persons, based on the agreement from the Article 37 of this law. The Federation is the founder of the institutes from Articles 80, 83 and 86 of this law.</p> <p>Two or more cantons and the Federation can found the following: clinics, as independent health institutions, clinical hospitals, clinical-hospital centre, clinical centre, cantonal hospital and institute. The canton can found the following: polyclinic, general hospital, special hospital, cantonal hospital, sanatorium and institute, cantonal institute for public health, health centre (Dom Zdravlja) and institutions for home-care. The municipality can found the following: health centre (Dom Zdravlja), outpatient clinic (ambulanta), institutions for home - health care, pharmacies,</p>	<p>and other forms of medical practice, in accordance with this Law;</p> <ul style="list-style-type: none"> ❖ the realisation of health care at health facilities, and via other forms of medical practice; ❖ the implementation of decisions resulting from professional practice supervision; ❖ other supervisory matters, in accordance with this Law. <p>Inspection is done by health inspectors. Health inspection may be conducted by medical doctors, dentists, pharmacists, as well as those with law degrees, with completed State exams.</p> <p>Article 100 The Minister of Health shall within 90 days of the Law coming into force specify the following:</p> <ol style="list-style-type: none"> 1. the requirements for founding health facilities (art. 18); 2. the requirements of the registry of licenses to operate Ambulanta and Pharmacies (Paragraph 3 of art. 46); 3. the conditions for working past full time working hours (Paragraph 3 of art. 51); 4. a plan and programme for internship, the record-keeping forms, and the manner of taking exams (Article 66); 5. the manner of assessing the knowledge of other health staff (art. 66); 6. a plan and programme for specialisation and sub-specialisation (art. 79); and 7. the particular requirements for attaining to <i>primarius</i> (Paragraph 3 of art. 82). <p>Health Care for Displaced Persons, Returnees & Repatriates</p> <p>Article 6 of the RS <i>Law on Displaced Persons, Refugees and Returnees</i> regulates Health Care assistance for displaced persons.</p> <p>Article 50 of the RS <i>Law on Health Insurance</i> also confirms that DPs are covered by compulsory health insurance as insured persons.</p> <p>Health care assistance for Returnees is regulated by the BiH <i>Law on Refugees from BiH and Displaced Persons in BiH</i> and the RS law on Displaced Persons and Repatriates. According to the BiH Law (Article 18) returnees are guaranteed access to 'primary' (basic) health care treatment, although the relevant RS Law does not similarly guarantee these entitlements.</p> <p>The RS <i>Law on Displaced Persons, Refugees and Returnees</i> does not include Health Care as a right to which returnees are automatically entitled, although Articles 6 and 9 of this Law confirm the entitlement to this right of DPs and Refugees.</p>
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sanatoriums, general and special hospitals.

Local and foreign physical or legal persons can found the following: polyclinics, general hospitals, specialised hospitals, sanatoriums, pharmacies, institutions for home-health care and the institute, as a specialised health institution in all forms of property.

Article 36

The Parliament of the Federation of Bosnia and Herzegovina is the founder of the health institutions, which are the property of the Federation (hereafter, Federation Parliament).

The legislative body of the canton is the founder of the health institutions, which are the property of the canton. The municipal council is the founder of the health institutions, which are the property of the municipality.

Article 37

Health institutions for hospital health care are founded in compliance with the health activities network, which dictates the type and capacity of the health institutions necessary for the protection of health of the citizens within the Federation.

Primary health care institutions are founded in compliance with the health activity network, which dictates the type and capacity of the health institutions necessary for the protection of health of the citizens within the cantonal territory.

The health activities network from paragraph 1 of this article is established by the Federation Parliament - upon the proposal of the Minister of Health. The health activities network from para.2 of this article is established by the cantonal legislative body - upon the proposal of the cantonal minister.

Health institutions can also be founded outside the health activities network, in compliance with the provisions of this law.

Article 38

Criteria for establishing the health activities network from Article 37 of this law are defined by the health care plans of the Federation and the cantons, taking into account the following:

- ❖ health condition, number, age, sex and social structure of the population;
- ❖ equal conditions i.e. possibilities to use health services;
- ❖ necessary terms of reference for certain levels of health care from Article 20, 21, 22, 23, 24 and 25 of this law (primary, specialist-consultative and hospital);
- ❖ the level of organisation in certain areas, traffic connections and population characteristics; level of accessibility to poorly populated areas;
- ❖ economic abilities

Article 48: Resources

The resources for financing health institutions to ensure the realisation of the rights in conducting health policy and article 8 of this law, are provided:

- ❖ from the Federation budget resources
- ❖ from donations, aid and other sources.

The Federation provides the following in the field of health care: prevention and eradication of contagious diseases subject to obligatory reporting; prevention and measures for eradication and treatment of quarantine diseases; provision and protection of the hygienic-epidemiological minimum in all living conditions, provision and organisation of compulsory immunisation against children's contagious diseases; prevention of malignant diseases, especially AIDS; treatment of persons with tuberculosis who are not insured under some other basis; health education and promotion of health culture; health care for invalids of war and civil war victims beyond compulsory health insurance, in compliance with the law; health care for members of the Federation Army, including persons in regular military service, and members of Federal Army and members of MoIA beyond the level of compulsory health insurance, in compliance with law; unified health statistics information system conducting standardised statistical studies in the areas of health of interest to the Federation.

Health institutions acts: Article 57

The statute and the other general acts are the health institutions' acts. The statute is the basic general act of the health institution which determines the following:

- ❖ health institution organisation;
- ❖ method of the director's and the managing board decisions;
- ❖ method of director's decisions on the health institution business;
- ❖ other rights and obligations of the director and the managing board;
- ❖ other issues with regard to the health activity performance, and the health institution work in compliance with the statute.

Types of health institutions: Chapter IX

1. Primary health care:

- ❖ Health Centre (art. 59. Organised for the area for which it has been founded)
- ❖ Regional outpatient clinic (art. 60. Can be organised as a part of the health centre (Dom Zdravlja) or a private practice)
- ❖ Institution for home health care

2. Pharmacy (art. 64. The pharmacy is an institution which provides drugs to population, health institutions and private practitioners).

3. Specialist-consultative and hospital health institutions

- ❖ Policlinic (art. 69. By rule, the policlinic is

founded as a part of the clinical- hospital health institution, and it can also be founded as a part of the health centre, or as an independent health institution.)

- ❖ Hospital (art. 70. By their purpose, the hospitals can be general, specialised and cantonal.)
- ❖ Sanatorium (art. 72)
- ❖ Institute (art. 73)
- ❖ Educational Health institutions (art. 74)

4. Federal and Cantonal Health Institutes

- ❖ Public HI of the F BiH (art. 80. A health institution performing public health activity across the Federation. i.e. implementation of measures for ensuring the provision of potable water, healthy food and air, immunisation, sanitation, health statistics and health education.)
- ❖ Drugs Control Institute of the F BiH
- ❖ Transfusion medicine institute
- ❖ Transfusion medicine institute of F BiH
- ❖ Cantonal Transfusion medicine institute
- ❖ Cantonal Public Health Institute
- ❖ The cantonal occupational medicine institute (art.90. A health institution which can be founded for performing the specific health care of the employees in the canton area Cantonal occupational medicine institute.)
- ❖ Cantonal sport medicine institute

Federal health institutes are health institutions performing expert and scientific research health functions from the framework of rights and obligations of the Federation, in the field of public health, transfusion medicine, control of drugs and immunobiological medicaments. Cantonal health institutes are health institutions performing the expert functions from the framework of rights and obligations of cantons, in the field of public health, transfusion medicine, occupational and sport medicine. The establishment and operation of cantonal and other institutions will be regulated by the cantonal regulations in the field of health, unless prescribed otherwise by this law.

Article 81

The Federal Health Institute is to perform the following:

- ❖ statistical research in the field of health
- ❖ maintenance of the public health registries
- ❖ monitoring, studying and assessment of the hygienic condition of potable water, surface and waste waters, water supply conditions on the ground, food and objects for general use, etc.

Article 88

The Cantonal HI performs the following:

- ❖ collection of the statistical reports from the field of health for the canton area
- ❖ implementation of health education activity for the cantonal area
- ❖ supervision, monitoring and analysis of the

epidemiological situation across the canton; proposition of and implementation, where necessary, of the anti-epidemiological measures; supervision of the compulsory immunisation implementation

- ❖ control of hygienic condition of potable water, surface and waste waters, water supply condition, condition of food and objects for general use, objects intended for international trade inclusive
- ❖ monitoring, analysis and assessment of environmental (air, ground, noise) impact on the health condition of the population etc.

5. Referral Centre

The referral centre can be a health institution or a part of the health institution which meets the criteria for providing the most complex forms of health care.

Working hours, Article 96

The health institutions are obliged to provide continuous health care, working in one, two or more shifts, two-term working hours, sliding working hours, by “readiness” or “being on duty”, according to the needs of citizens and forms of health care services they provide.

The start, end and working time schedule are determined by the cantonal ministry, except for the health institutions founded by the Federation.

Health workers, Article 101

Health workers are individuals properly educated in the field of health care and directly involved in the provision of health care to the population. They must recognise the moral and ethical principles of health care.

Chambers, Article 152

In order to protect the interests of their profession; meet their expert and personal needs; provide conditions for an organised approach of health workers from the same professional groups towards State bodies, associations, health institutions, manufacturers and suppliers of the medical equipment; and in order to protect the health of citizens, the health workers (depending on their profession) shall found the chamber of doctors, the chamber of pharmacists, the chamber of medical biochemists and the chamber of medical technicians (hereinafter, chamber), as professional associations.

Article 153

Chambers, as professional associations, are founded for the territory of one or more cantons with the possibility of merging up to the federal level.

The cantonal ministry monitors the work of the chamber with regard to the implementation of the law and determined policy in the health field, proposing the appropriate measures for improving its work.

Authorisations for passing the applicable regulations

Article 162

<p>The Minister of Health is authorised to pass the applicable regulations on the following:</p> <ol style="list-style-type: none"> 1. kind and scope of the medical examinations for the purpose of establishing the worker's health ability (article 22, paragraph 2) 2. conditions with regard to premises, staff and – technical medical equipment (article 44, paragraph 3 and article 65, paragraph 4) 3. procedure and method of work of medical consultation (article 28, paragraph 5) 4. organisation, conditions and method of work of an institution providing health care at home 5. criteria for awarding the title of the referral centre (article 93, paragraph 6) 6. conditions for work of health workers beyond the full working time (article 98, paragraph 1) 7. contents and implementation method of the internship served by health workers with university degree <ul style="list-style-type: none"> ❖ conditions to be met by health institutions and private practitioners where a health worker with university degree serves his/ her internship ❖ method of vocational exam ❖ contents and form of certificate on the vocational exam passed ❖ contents and form of license for independent work <p>Health Care for Displaced Persons, Returnees & Repatriates</p> <p>The Federation <i>Law on Displaced-Expelled Persons and Repatriates</i> contains a general provision granting DPs the right to Health Care, although this is still to be regulated more precisely by Cantonal legislation (Article. 11). Under art. 19 (2) implementation is to be regulated at the Cantonal level in case such persons are uninsured. Although this legislation has not been adopted in all Cantons, in practise DPs are being provided with Health Care assistance throughout the Federation.</p> <p>Health care assistance for Returnees is regulated by the BiH <i>Law on Refugees from BiH and Displaced Persons in BiH</i> and the Entity law on Displaced Persons and Repatriates. According to Article 18 of this Law, returnees are guaranteed access to 'primary' (basic) health care treatment. The Federation <i>Law on Displaced-Expelled Persons and Repatriates</i> further derogates this issue to Cantonal legislation (art. 19 in conjunction with art. 11).</p> <p>Health care for prisoners</p> <p>The <i>Law on the Execution of Criminal Sanctions</i> of the Federation (art. 45) entitles prisoners to medical care and hospital treatment.</p>	
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Note: For details on health insurance as a part of the right to health in FBiH and RS refer to the Social Welfare DLF Checklist.

VULNERABLE GROUPS LIST

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 standards⁴⁸ 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/homeless⁴⁹.

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 or sector assessed. Users are encouraged to add their own questions or 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

⁴⁸ 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.

⁴⁹ 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.

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

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?
- ❖ 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 and 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 or 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, and 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 and 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 marital 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 policies or 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

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?

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?

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 all⁵⁰? 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?

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?

⁵⁰ World Programme of Action concerning Disabled Persons endorsed by United Nations General Assembly resolution 37/52 of 18 February 1982, para. 12.

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?
- ❖ Are people with disabilities able to access all public facilities, through accessible transport systems, town and building planning, and thereby participate in public life on an inclusive basis? If not, are there complaint mechanisms and remedies available to them?

Justice

- ❖ Are judicial facilities accessible to and inclusive of persons with disabilities, in terms of transport systems, building planning, infrastructure and equipment?
- ❖ 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 persons with disabilities able or assisted through legal aid and counselling to challenge the legality of their institutionalisation?
- ❖ 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?
- ❖ Are people with mental disabilities 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?
- ❖ 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 persons⁵¹” 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?
- ❖ 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?

⁵¹ ‘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.

- ❖ 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 (e.g. 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?

CIVIL SOCIETY ORGANISATIONS LIST

CIVIL SOCIETY ORGANISATIONS LIST

INTRODUCTION

The Civil Society Organisations List is a record of questions and baseline indicators that guide the assessment teams/researchers in extracting human rights-based information related to civil society issues, in particular to Civil Society Organisations (CSOs) and their role in the promotion of human rights.

This tool was specifically developed to:

- ❖ Help the assessment teams/researchers understand what the core functions of civil society organisations are from a human rights-based perspective.
- ❖ Enable the assessment teams/researchers to identify the core human rights-based problems related to civil society organisations, gather human rights-based data on them, and assess their capacity and their impact on both claim holders and duty bearers.

How to use the Civil Society Organisations List

- ❖ The List should be used as *basis for developing indicators and starting point to assess* from a human rights-based perspective the role, functions and activities of CSOs and potential problems therein in civil society.
- ❖ As the list is not exhaustive and explicitly focuses on CSOs, it needs to be used *in conjunction with Human Rights Checklists on Public Administration, Civil Society and Cross-Cutting Rights* which give more guidance on other actors within civil society and the main human rights attached to this sector (right to participate in public affairs, right to information, freedom of assembly and association, freedom of expression, right to form trade unions).

When to use the Civil Society Organisations List

- ❖ Step One: Identify problems and rights
- ❖ Step Three: Actors – claim holders and forces at work
- ❖ Step Four: Information collection

Tools to be used with the Civil Society Organisations List

- ❖ Human Rights Checklists on Public Administration, Civil Society and Cross-Cutting Rights
- ❖ Analysis Chart (for Step Three)

CIVIL SOCIETY ORGANISATIONS LIST

The degree to which people participate in public affairs is greatly affected by their understanding of the role of civil society and their confidence in its various elements, such as NGOs, informal associations, the media, trade unions and other professional bodies. Hence, a human rights-based assessment to civil society requires the identification and analysis of the role of all main actors in civil society.

This List focuses mostly on the role of Civil Society Organisations (CSOs)⁵² through the following themes: (1) Structure and membership; (2) Objectives and mandate; (3) Activities; (4) Relations between CSOs and the State; (5) Capacity; (6) Media.

Structure and membership

- ❖ How are civil society organisations (CSOs) structured and organised? Specifically, look at: are CSOs organised by a political party or do they have any political affiliation, are they organised by independent individuals or specific groups (such as returnees, civil victims of war, women, etc.)?
- ❖ Who are their members? Disaggregate data on the basis of age, gender, ethnicity, and political affiliation, if possible.
- ❖ Is there accountability within the CSO, or is the CSO controlled by one or two individuals with no accountability towards its other members?
- ❖ What is the process of membership and nomination for positions within the CSO? Are those processes regulated by the CSO's statute, and are they open and transparent?
- ❖ Are CSOs registered? If yes, where and under which law/regulations?

Objectives and mandate

- ❖ What are CSOs' objectives and mandate?
- ❖ Do they have a formal Statute of the organisation?
Note: under BiH law, a Statute is required to become formally registered.
- ❖ Whom do they represent?
- ❖ Who are CSOs' main beneficiaries? Any specific group of population?
- ❖ How large is the group/population that benefit from CSOs activities?
- ❖ Who sets the CSOs' agenda, objectives and mandate? Are CSOs independent enough to set their own agenda or are they reliant on conditional funding from outside sources?
- ❖ Is their work sustainable?
- ❖ At which level are they working - grass root, national, regional or international?

Activities on which CSOs focus

General

- ❖ What are CSOs working on? What sort of projects are they involved in?
- ❖ Are any of the CSOs working for the furtherance of human rights (HR) either directly or indirectly?

⁵² 'CSOs' is a broad term that refers to organisations, associations and groups operating outside governmental bodies and includes not only non-governmental organisations (NGOs), but also universities, associations and citizens' groups that are not formally registered.

Note: Here, examine the content of CSOs' projects and not only their mandate, as many CSOs in the BiH context say they do HR while in reality they do not.

- ❖ Which area of HR are they focused on?

Protection and Promotion of Human Rights

- ❖ Awareness raising and educating people about their rights.
- ❖ Information sharing and dissemination.
- ❖ Participation in national, regional or international forums.
- ❖ Monitoring HR promotion, protection and realisation, such as:
 - Monitoring respect for HR, compliance or non-compliance with national and international standards of HR.
 - Monitoring measures to protect HR e.g., legislative, administrative, judicial, budgetary and other measures.
- ❖ Treaty body reporting, implementation and follow up of general recommendations by the UN Treaty Bodies.

Note: In many countries CSOs play a vital role in supporting the government in preparing reports to the treaty bodies, preparing shadow reports, providing input to treaty bodies in formulating questions and general recommendations.

Advocacy and Lobbying

- ❖ Advocating against abuses, violation and denial of specific rights.
- ❖ Advocating for specific rights of vulnerable, marginalised, or excluded groups - specify which rights and which groups.
- ❖ Advocating against gaps in rights protection in law and policies.
- ❖ Advocating for setting up effective redress mechanisms.
- ❖ Lobbying for compliance, ratification, incorporation of international human rights standards, and/or recognition of specific rights in the domestic legal framework.

Capacity building of Claim holders

- ❖ Are CSOs working for capacity building of claim holders?
- ❖ If yes, specify how - see following non-exhaustive list of activities:
 - Awareness raising, training, information sharing, legal aid and counselling, rehabilitation of victims.
 - Organising and mobilising claim holders.
 - Leadership and skills development training.
 - Representing and raising a voice for vulnerable, marginalised groups.
 - Creating pressure on government for fulfilling their duty.
 - Advocating actively in tolerance building.
 - Any other way?

Capacity building of Duty bearers

- ❖ Do CSOs work with duty bearers in a bid to build their capacity?
- ❖ If yes, specify how - see for example:
 - Training, sensitisation on HR and helping in understanding the HR issues.
 - Providing expert services in policy and law making.
 - Supporting in setting mechanism and law enforcement.
 - Any other way?

Relations between CSOs and the State - Capacity of CSOs to enhance citizens' participation in public affairs

Freedom of association and assembly⁵³

- ❖ Do people have the freedom and liberty to organise, assemble and form an association?
- ❖ Does the State at any level of authority exercise any control or pressure towards CSOs?
- ❖ Are CSOs adequately secured and protected by law?

Participation in public life

- ❖ Do CSOs have the right to participate in public affairs? How? Are there mechanisms in place to ensure their participation?
- ❖ Do CSOs participate in decision-making and how meaningful is their participation?
- ❖ Do they have access to information at municipal administration related to public interest?
- ❖ Do they have any political affiliation?
- ❖ Do they have equal access to municipal budget allocation for CSOs?
- ❖ Do CSOs collaborate (or have they ever collaborated) with the Municipality (government) in enhancing people's participation, or setting up information dissemination mechanisms?
- ❖ Do CSOs have access to municipality development processes (for example, by participating in the process of setting up development priorities, budget, planning, etc.)?

Partnership with the government

- ❖ Is there any partnership established between CSOs and the government?
- ❖ What is the nature of this partnership (e.g. CSO receives financial support by the government) and what is its objective(s) (e.g. services delivery, increasing people's participation, etc.)?
- ❖ If there is no partnership, have CSOs advocated for such partnership? If yes, what was the government's response to it?
- ❖ Are CSOs partnering in service delivery-humanitarian assistance or assistance to victims (legal aid, rehabilitation, counselling, material supplies, etc.)?
- ❖ Are CSOs supported by the duty bearers (financially or other kind) in providing services?
- ❖ If not, what are the reasons?
- ❖ What are the sources of support of those CSOs doing service delivery?

Note: the State has the primary responsibility to provide minimal conditions and services for the realisation of human rights.

Capacity of CSOs

- ❖ Do CSOs have the knowledge and the skills to undertake their various tasks/projects?
- ❖ In particular, are CSOs aware about human rights? Do they have knowledge about domestic law and know how to use the existing legal remedies?
- ❖ Do they have human, material and organisational resources?
- ❖ What are CSOs' funding sources?
- ❖ Do they have adequate information and access to information to perform their role?

⁵³ See HR Checklists on Public Administration and Civil Society for more indicators on this issue.

- ❖ Are CSOs accountable to their beneficiaries? E.g. do they have available and transparent fiscal reports?
- ❖ Do people have trust in CSOs?
- ❖ Is there any type of perception (against/pro) about CSOs or about any particular CSO (i.e., perception of the population at large, of the authorities, of other CSOs, and of CSOs' beneficiaries about a particular CSO)?
- ❖ What are the causes for such perception?
- ❖ Do CSOs reflect the real needs of the population?
- ❖ Do CSOs have the capacity to network, coordinate and cooperate among themselves? Look in particular at their capacity to:
 - Network for a specific issue - (a) as per demand or (b) in general - for better understanding, information sharing, reaching the targeted population, vulnerable groups, service delivery, empowerment, etc.
 - Network at grass root level, national, regional and international level.
- ❖ Is CSOs' work effective? What are the barriers for successful operations?

The Media

General issues related to the media, as a representative of civil society in and of themselves

- ❖ Is there freedom to report?
- ❖ Are there independent journalists at work? How many are they?
- ❖ What is the range of issues covered by the media?
- ❖ Do they cover human rights issues?
- ❖ Does the media bring a balanced perspective on issues of public importance?
- ❖ Does the media represent all sectors of society?

CSOs and the Media

- ❖ Does the media cover the activities of CSOs?
- ❖ Which activities do they cover and which ones do they not cover? Why?
- ❖ Do CSOs use the media to promote their activities? If not, why?
- ❖ If CSOs are involved in human rights promotion, do they use the media to promote human rights issues? If not, why?
- ❖ What are the difficulties that CSOs encounter while cooperating with media? What are the causes of those difficulties, if any?

GENDER BASELINE LIST FOR ASSESSMENT AND ANALYSIS

GENDER BASELINE LIST FOR ASSESSMENT AND ANALYSIS

INTRODUCTION

The Gender Baseline List for Assessment and Analysis is a record of questions and baseline indicators that guide the assessment teams/researchers in adopting a gender perspective to the assessment and analysis of the municipality as a whole. This list is not exhaustive and should serve as starting point for the assessment teams/researchers to gather data on these issues.

This tool was specifically developed to:

- ❖ Support the assessment teams/researchers in mainstreaming gender throughout the whole process of assessment and analysis so as not to miss any gender-based issue.
- ❖ Enable the assessment teams/researchers to identify the core human rights-based issues related to gender and women's rights.

How to use the Gender Baseline List

- ❖ The List should be used as *starting point to assess* from a gender perspective all sectors and issues in a given municipality.
- ❖ As it is not an exhaustive list, it needs to be used *in conjunction with the Human Rights Checklists*, which at parts include specific attention to women's issues, *and with the Vulnerable Groups List*, which has a whole section on women, including attention to specific vulnerable categories such as female heads of households and victims of domestic violence.

When to use the Gender Baseline List

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

Tools to be used with the Gender Baseline List

- ❖ Human Rights Checklists and Vulnerable Groups List for all steps
- ❖ Analysis Chart (for Steps 3 and 5)

GENDER BASELINE LIST FOR ASSESSMENT AND ANALYSIS

Note: This list is not exhaustive. For more detailed indicators on women, please refer to the Vulnerable Groups List.

Participation and access to public services

- ❖ Do women hold 30% or more of elected and public positions?
- ❖ Is there any affirmative action to raise this to 50%?
- ❖ Do executive and legislative bodies promote women's issues?
- ❖ Do women in elected and public offices promote women specific issues?
- ❖ Do they feel free and are they encouraged to raise such issues?
- ❖ Can women influence decision-making process?
- ❖ If not, why? Are there any obstacles - in terms of trust/capacity/intimidation etc?
- ❖ How many local communities are led by women?
- ❖ How many managerial positions do women hold in public administration?
- ❖ Is information related to public services equally accessible to men and women?
- ❖ Do men and women have equal access to the media or any other mode of information sharing?
- ❖ Is there any support in place by the authorities to encourage women to participate in public affairs?
- ❖ Are NGOs addressing the development and advancement of women?
- ❖ Do women have equal access to the courts and to legal aid?
- ❖ Are there women working in police and judiciary? What type of problems do they handle?
- ❖ Do men and women understand what gender equality means?

Economy

- ❖ Do men and women have equal employment opportunities?
- ❖ Do women register in same way as men do in unemployment bureaux? If not, why?
- ❖ Do men and women have equal right to equal wages for equal work?
- ❖ Has privatisation affected women disproportionately to men?
- ❖ Do rural and urban women have equal access/information/ opportunity of small income generation activities?
- ❖ Are women working in the informal economy more than men? If yes, why is it so?
- ❖ Do women participate in trade unions and their activities as much as men?
- ❖ Do women have equal access to and control of assets? E.g., earnings, credits, inheritance etc.
- ❖ Do women have equal rights regarding property laws? Is property usually registered under the man's name, under the woman's name, or are both possible?

Social welfare

- ❖ Do women enjoy the same rights as men to social security?
- ❖ Does the social security system provide special coverage to women in particularly vulnerable situation? E.g., female-headed households, victims of domestic violence.
- ❖ Are there special protection for pregnancy and maternity? Does domestic law secure maternity leave? Is it implemented in practice? If not, why?

Health

- ❖ Do men and women have equal access to health care services?
- ❖ Is health care equally affordable for both men and women?

- ❖ Is there any special attention provided to specific health needs of women and adolescent girls, in particular coming from vulnerable and disadvantaged groups?
- ❖ Is there any legal or cultural obstacle to women receiving health care services? Is abortion legal? Is it practiced?

Violence Against Women (VAW)

- ❖ Is domestic violence or other forms of violence against women an issue?
- ❖ If yes how many cases are filed in police and the court?
- ❖ How many cases have been decided?
- ❖ What are the causes of such violence?
- ❖ Is there any legal aid and counselling for victims?
- ❖ Who is providing them?
- ❖ Is there any mechanism of rehabilitation?
- ❖ How safety of victims is ensured?
- ❖ Are police and courts sensitised about VAW and how to treat the victims?
- ❖ Is there awareness among society as a whole and amongst women that VAW and trafficking are gender-based discrimination and are crimes?

Education

- ❖ Do men and women have equal access to education, especially for vulnerable groups?
- ❖ Do men and women have equal access to information related to education?
- ❖ Does the education policy support a gender balance in teaching and administrative staff?
- ❖ Is the educational field dominated by women based on the perception that this field of work is 'suitable for women', thus perpetuating stereotypes? If yes, have any efforts/actions been taken to break the stereotypes?

TOOLS OF ANALYSIS

TOOLS OF ANALYSIS

INTRODUCTION

The ‘Tools of Analysis’ derive largely from the training manual *Human Rights Centred Development: Theory and Practice*, by Maria Socorro I. Diokno, 2002 version (in particular Chapter 6, ‘Human Rights centred Development Tools of Analysis’). Key concepts of the Tools developed by Maria S. Diokno have been summarised and modified for the purpose of RMAP. In addition, RMAP has developed two charts, the ‘Human Rights-based Analysis Chart’ and the ‘Brainstorming Grid’, which synthesise further key concepts of the Tools of Analysis and help teams apply them. It needs to be stressed that the following reflects what has now become the *RMAP Tools of Analysis*, as RMAP has expanded on, added to and modified concepts elaborated by Maria S. Diokno.

The key concepts of the RMAP Tools of Analysis are: (A) ‘Causal Analysis’ or ‘Symptom-Cause-Effect Analysis’; (B) Capacity Analysis of Claim Holders and Entitlements Mapping; (C) Vulnerability Analysis; (D) Capacity of Duty Bearers and Obligations Mapping; and (E) ‘Forces at Work’.

(A) Causal Analysis or ‘Symptom-Cause-Effect Analysis’⁵⁴

Identify and analyse the Problem or ‘Symptom’ (in this methodology, the problem is treated as *symptomatic* of the root causes of human rights deprivations, hence the use of the word ‘symptom’ instead of problem).

Ask the following questions:

- ❖ What is the problem all about?
- ❖ Why is it a problem?
- ❖ How important is the problem?
- ❖ Is the problem related to other problems? How?
- ❖ Are various groups affected differently by the problem?

Identify and analyse the Effects or Impact of the problem:

- ❖ On the exercise and enjoyment of human rights by claim holders
- ❖ On duty bearers’ capacity to meet their obligations
- ❖ On the enjoyment of other interrelated rights (e.g. the non-enjoyment of the right to vote negatively impacts on the right to participate in public affairs)

Analyse each effect in the context of the normative content of the affected rights.

Identify the Underlying Causes of the problem - ask the following questions:

- ❖ Does the problem exist due to a lack of enabling environment (poor domestic legal framework, lack of implementation of domestic laws, inequitable distribution of wealth and power in society, lack of transparency, corruption, no accountability of officials, lack of access to information, etc.)?
- ❖ Is it due to a lack of resources?
- ❖ Is it due to factors beyond the control of those affected by the problem?

⁵⁴ ‘Symptom-Cause-Effect Analysis’ is the term used in the methodology developed by Maria Socorro I. Diokno. To simplify, RMAP transformed it into ‘Causal Analysis’. The signification of the two concepts is the same.

- ❖ Is it due to a failure on the part of those affected by the problem to claim and assert their rights?
- ❖ Is it due to a failure by the authorities to comply with their State obligations?
- ❖ Is it due to a lack of authority of duty bearers to act?

B) Capacity Analysis of Claim Holders and Entitlement Mapping

Identify Claim Holders paying particular attention to the most vulnerable groups.

Make a Swot (Strengths, Weaknesses, Threats, and Opportunities) Analysis of the claim holders, including the most vulnerable groups.

When looking at claim holders' capacity, there are minimum elements that assessment teams or researchers need to pay attention to and assess, namely their capacity to:

- ❖ Seek, access and obtain information
- ❖ Organise and participate in public life and in the development process
- ❖ Mobilise resources
- ❖ Advocate for policy change
- ❖ Seek, claim and obtain redress

Identify the rights affected (with the normative content of each right) and the claim holders' entitlements.

C) Vulnerability Analysis

Identify the most vulnerable groups amongst the claim holders, and analyse who is marginalised, how, and the causes of their vulnerability.

How are the most vulnerable excluded and marginalised?

Ask the following questions:

- ❖ Is there direct or indirect discrimination against them in certain spheres of their life (and if so, in which ones)?
- ❖ Are opportunities and access for most vulnerable to participate and be represented in public affairs limited and/or controlled?
- ❖ Are vulnerable groups excluded and/or marginalised from economic, social, cultural and other development opportunities, policies and plans?
- ❖ Are development opportunities captured and controlled by certain groups?
- ❖ Is accessibility to basic rights limited to certain geographic area?
- ❖ Are there equal legislative guarantees and protection of all rights and for all?
- ❖ Are there mechanisms for redress, and are national institutions accountable?
- ❖ Are vulnerable groups aware of such mechanisms and do they have capacity to seek redress?

What are the reasons for their vulnerability?

Look at the following potential reasons:

- ❖ *Economic status*: poor, low income, unemployed.
- ❖ *Social, cultural and religious status*: status of a minority; having practices specific to cultural behaviour(s) and religion(s), which differ from the majority.
- ❖ *Political status*: no representation, under-representation or holding political beliefs viewed negatively by others.
- ❖ *Occupational status*: specific kind of occupation not appreciated by others.
- ❖ *Geographic status*: inhabitants of a specific area.

- ❖ *Educational and literacy status*: lack of literacy and education.
- ❖ *Policy/Policies*: policies that have an adverse impact on vulnerable groups.

D) Capacity Analysis of Duty Bearers and Obligations Mapping

Identify which Duty Bearers, at all levels of authority, have the responsibility to respect, protect and fulfil human rights regarding a specific problem.

Make a Swot Analysis of Duty Bearers, analysing their capacity to meet their obligations, their compliance and non-compliance with obligations and its impact on the lives of claim holders.

The minimum elements assessment teams/researchers should additionally assess while looking at *Duty Bearers' capacity* are:

- ❖ *Authority* – power and legitimacy to act
- ❖ *Responsibility* – understanding of duties and how to conduct them, including understanding and agreeing on human rights
- ❖ *Resources* - in terms of human, financial and organisational
- ❖ *Communication* – access to necessary information for analysis and decision making, and participation in communication systems⁵⁵

Map out the obligations of all duty bearers.

Analyse the relationship between claim holders and duty bearers.

Ask the following questions:

- ❖ What is the level and quality of communication between claim holders and duty bearers?
- ❖ Do they co-operate? How?
- ❖ Is there any power imbalance?
- ❖ Are authorities open and responsive to claim holders' rights?

E) Forces at Work Analysis

Identify and look into the role of 'Forces at Work', i.e. economic, social and political interest groups or power blocs (such as businesses, religious entities, non-governmental organisations, international agencies, or media), which influence or interfere with claim holders and/or duty bearers.

The conduct of non-State actors should be regulated by the domestic legal framework, which each individual or group has a responsibility and an obligation to comply with. Hence actions of non-State actors should be analysed in relation to compliance with the law even if they are not termed duty bearers.

F) Gap Analysis

The 'gap analysis' sums up all analyses done so far as it compares entitlements and obligations in accordance with international human rights standards to the actual enjoyment of human rights in reality (pertaining to, *inter alia*, human rights protection and promotion under domestic law, implementation gaps and capacity gaps of duty bearers and claim holders). This analysis focuses on what are the entitlements of claim holders in relation to each of the prioritised problems and rights affected as against the actual level

⁵⁵ These essential elements of 'capacity' reflect the definition of capacity originally developed by UNICEF and now increasingly used within the UN system.

of their enjoyment, and on how the compliance or non-compliance of State obligations impact on the lives of claim holders.

How to use the Tools of Analysis

- ❖ These Tools of Analysis have been synthesised into two charts, the ‘Analysis Chart’ and the ‘Brainstorming Grid’ (see following pages).
- ❖ It is important that users first understand the key concepts of the Tools of Analysis and apply them using the two charts to brainstorm and conduct the analysis.

When to use the Tools of Analysis

- ❖ Step Two: Priorities
- ❖ Step Three: Actors
- ❖ Step Five: Analysis
- ❖ Step Six: Report

Tools to be used with the Tools of Analysis

- ❖ With the Analysis Chart, the Brainstorming Grid, and the Human Rights Checklists for all steps
- ❖ With the Vulnerable Groups List while identifying claim holders and how they are affected by the problems identified

INTRODUCTION TO THE BRAINSTORMING GRID

The Brainstorming Grid develops concepts of the Tools of Analysis in greater detail, in particular the questions needed to make a causal analysis. It therefore helps to build a more complete picture of the problems existing in a given municipality.

Objectives of the Brainstorming Grid

- ❖ To provoke assessment teams/researchers into thinking of the ‘bigger picture’, that is, to identify factors that influence the human rights situation within the municipality and trace a link between the causes and effects regarding realisation of the entitlements and obligations of claim holders and duty bearers respectively.
- ❖ To facilitate the brainstorming on identifying problems, their causes and effects.
- ❖ To encourage the researcher to illustrate what has so far been done to address problems within the municipality and suggest further steps to be taken in the form of possible solutions – thereby leading into the planning phase of the Project.

How to use the Brainstorming Grid

- ❖ The Brainstorming Grid is best filled in electronically
- ❖ All problems assessed in the municipality will be listed in this one document, thus enabling the assessment teams/researchers to make the links between problems listed (what the Analysis Chart does not provide for).

When to use the Brainstorming Grid

- ❖ Step Two: Priorities
- ❖ Step Three: Actors
- ❖ Step Four: Information collection
- ❖ Step Five: Analysis
- ❖ Step Six: Report

Tools to be used with the Brainstorming Grid

- ❖ With the Analysis Chart and the Human Rights Checklists for all steps
- ❖ With the Vulnerable Groups List while identifying claim holders and how they are affected by the problems identified

INTRODUCTION TO THE HUMAN RIGHTS-BASED ANALYSIS CHART

The 'Human Rights-based Analysis Chart' crystallises the key concepts of the Tools of Analysis into one single chart, thereby allowing assessment teams/users to see at once the link between actors (claim holders, duty bearers, forces at work) and one specific problem identified.

Using the Analysis Chart you can:

- ❖ Identify one specific problem, its main causes and effects.
- ❖ Identify for each specific problem all actors involved, i.e. a) claim holders, including vulnerable groups; b) duty bearers; c) the relationship between claim holders and duty bearers; d) "forces at work", and their influence or interference with claim holders and duty bearers.
- ❖ Make a Swot analysis of both claim holders and duty bearers and a vulnerability analysis of vulnerable groups.

How to use the Analysis Chart

- ❖ The Analysis Chart is a brainstorming tool, best used on a flipchart. It facilitates brainstorming on one problem at the time.

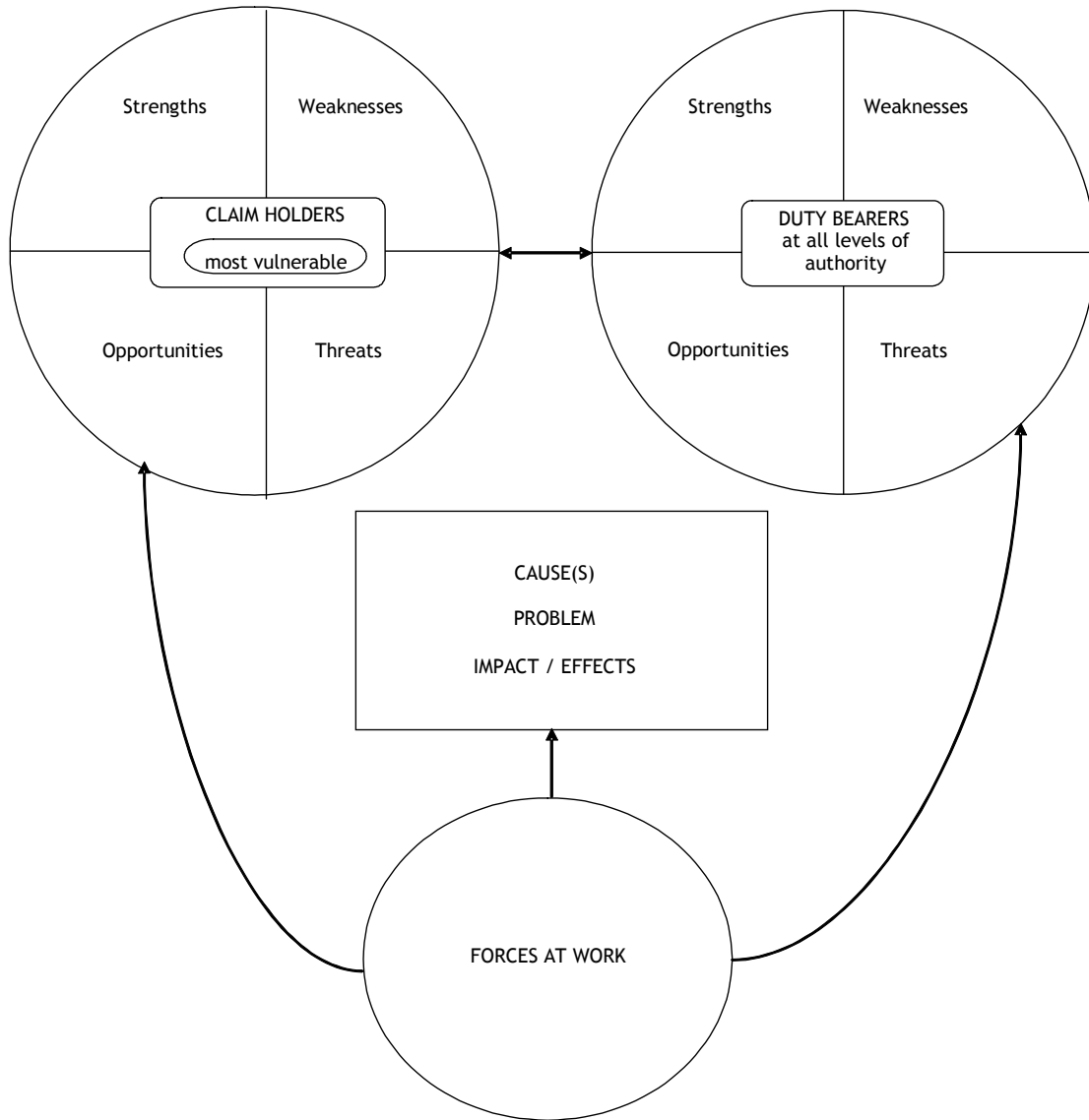
When to use the Analysis Chart

- ❖ Step Three: Actors
- ❖ Step Five: Analysis
- ❖ Step Six: Report

Tools to be used with the Analysis Chart

- ❖ Brainstorming Grid and the Human Rights Checklists for all steps
- ❖ Use the Vulnerable Groups List while identifying claim holders and how they are affected by the problems identified

HUMAN RIGHTS-BASED ANALYSIS CHART



HUMAN RIGHTS-BASED QUALITY ASSURANCE CHECKLIST

HUMAN RIGHTS-BASED QUALITY ASSURANCE CHECKLIST

INTRODUCTION

The Human Rights-based Quality Assurance Checklist (hereafter, Quality Assurance Checklist) provides a list of questions to be answered while writing the report and at the end of the drafting process. It highlights the minimum elements of the various analyses previously done (causal analysis, capacity analysis, gap analysis) that should be included in the report. The Quality Assurance Checklist does not guide the user as to how to actually draft the report, but it stresses what kind of information a human rights-based assessment report should include at the very least.

The objective behind the Quality Assurance Checklist is to ensure the inclusion of human rights throughout the report, through:

- ❖ A clear and straightforward explanation of the specific content of the rights affected in the text of the report
- ❖ A comprehensive and coherent presentation of the human rights-based analyses conducted.

How to use the Quality Assurance Checklist

- ❖ The Quality Assurance Checklist should be used mainly as a *safety net, a quick reference during and after the drafting process* to check whether information is presented in a manner that clearly shows the findings of the human rights-based assessment and analysis.
- ❖ In addition, the Quality Assurance Checklist can be consulted while *collecting information*, to make sure that attention is paid to all elements that need to be included in the future assessment report.

When to use the Quality Assurance Checklist

- ❖ Step Six: Report
- ❖ Useful to consult at Step Four: Information collection

Tools to be used with the Quality Assurance Checklist

- ❖ In close conjunction with the Human Rights Checklists
- ❖ To a lesser extent, with the Analysis Chart, Brainstorming Grid and compilations of the relevant domestic legal framework

HUMAN RIGHTS-BASED QUALITY ASSURANCE CHECKLIST

ASSESSMENT PROCESS

- Has the assessment team encouraged the participation - in a meaningful way - of stakeholders in the assessment of problematic issues and prioritisation of issues to be analysed? Has there been any discussions, forums, round tables organised by the assessment teams/researchers?
- In particular, have the vulnerable, excluded, disadvantaged groups been involved in the process of identifying problems and prioritising issues?

ANALYSIS

Causal Analysis

- Has the report identified the most common root and underlying causes of the problems assessed, i.e. ‘the bigger picture’? Is this ‘bigger picture’ clearly presented at the beginning of the report?
- Does the report outline how the enjoyment of specific human rights affects the enjoyment of other rights (e.g. the lack of access to justice negatively impacts the enjoyment of social and economic rights)?
- Does the report make the link between problems analysed and ‘the bigger picture’ (root causes) set out earlier in the report?

Gap Analysis⁵⁶

- Is a gap analysis included in all major problems analysed?
- Are gaps flagged throughout the text and the gap analyses summarised at the end of each section?
- Has the link between the problem analysed and the relevant international human rights standards been made?
- Has the report outlined whether the human rights obligations attached to a specific problem are protected or not in domestic law – in other words, whether this is a problem of a gap in the domestic legal framework or a question of implementation (it can be both)?
- Is the normative content of the right (and its particular dimension at stake here) set out in plain language so that the obligations of the duty bearers and the entitlements of the claim holders are clear?
- Is there a correct citation/reference for the right affected in the footnote?
- As the European Convention of Human Rights supersedes national law in BiH, is it referred to first, and other international human rights standards second?
- Is there sufficient evidence in the report to support an assertion that the obligation was *not* fulfilled or an entitlement *not* enjoyed?
- When the obligation of the duty bearer is assessed, is it clearly stated whether the obligation is an *immediate* one or a *progressive* one?

Duty Bearers, Claim Holders, Forces at Work

- Does the report identify duty bearers and assess their capacity to fulfil their obligations?
- Does the report identify claim holders and assess their capacity to claim a specific right?
- Have vulnerable groups been identified and the reasons and causes for their vulnerability explained?
- Has the relationship between duty bearers and claim holders, as well as amongst distinct groups of claim holders (e.g. men and women, Roma and non-Roma), been assessed?
- Does the report identify ‘forces at work’, such as aid donors, media, and how they positively or negatively impact the enjoyment of specific rights or the capacity of duty bearers and claim holders in relation to a specific aspect of a right?
- Does the report outline attempts by the State (at all levels), the international community, CSOs, and other non-State actors to address problems identified?
- Does the report assess whether these attempts are indeed addressing the problem within a human rights framework?

⁵⁶ A ‘Gap Analysis’ is defined here as the analysis of the existing gap between what international human rights standards prescribe and the reality, pertaining to, *inter alia*, the domestic legal framework and the capacity of duty bearers to fulfil their obligations and of claim holders to claim their entitlements.



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