



Organization for Security and
Co-operation in Europe
Mission to Bosnia and Herzegovina

TRAINING MANUAL

HUMAN RIGHTS

FOR SOCIAL WORKERS

in THEORY and PRACTICE

Everyone has the right to life, liberty and security of person.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Everyone has the right to recognition everywhere as a person before the law.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

No one shall be subjected to arbitrary arrest, detention or exile.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary.

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FOREWORD

Social Welfare Centers¹ play a crucial role in providing social protection to vulnerable individuals and groups. They are the competent body at the municipal level for implementation of social protection legislation, the first instance body for receiving individual claims for social assistance, as well as the providers of a range of additional social services. In spite of the obligations placed on these centers, various gaps have been identified with respect to Bosnia and Herzegovina's international and European human rights legal obligations in the field of social protection and domestic law and practice. Many of these gaps have been addressed through advocacy activities conducted by the OSCE Mission to Bosnia and Herzegovina.

It is essential that Social Welfare Centres understand their human rights obligations and duly deliver social services to their constituents -- rights-holders -- in an effective and timely manner. Amongst other duties, this entails the evaluation of claims and the delivery of services in a non-discriminatory manner according to objective criteria that should be based exclusively on demonstration of need. Additionally, Social Welfare Centres must begin to engage in strategic planning and greater advocacy activities with municipal, cantonal and entity level authorities for legal and policy reforms that will allow for the improved availability of human, financial and material resources. In turn, this will enable Social Welfare Centres to respond effectively to a growing number of rights-holders and a corresponding demand for increased services.

In consideration of the above, and with a view to further supporting the professional capacity development of Social Welfare Centre staff, the OSCE Mission to Bosnia and Herzegovina has developed a training manual on "Human Rights for Social Workers in Theory and Practice", compiled in cooperation with local experts. More specifically, Chapters I and II were developed in collaboration with *Ms. Jasminka Džumhur*, BiH Ombudsman, and Chapters III - V with *Dr. Žarko Papić*, Director of the Independent Bureau for Humanitarian Issues; *Ms. Ranka Ninković-Papić*, Assistant Director of the Independent Bureau for Humanitarian Issues; and *Ms. Mira Ćuk*, Director of the Social Welfare Centre, Trebinje.

The purpose of this training manual is to introduce and explain the concept of international and European human rights instruments to which Bosnia and Herzegovina is a party, with a particular focus on the progressive realization of social rights and their relevance in the day-to-day activities of social workers. The manual should also assist Social Welfare Centre staff not only in identifying but also in preventing instances of direct and indirect discrimination. Additionally, the practical elements of this manual should provide social workers with the basic tools and skills necessary to prepare strategic plans, to conduct outreach and needs-assessments of vulnerable individuals and groups, and to engage in advocacy activities with social protection authorities at all levels of government.

The OSCE Mission to Bosnia and Herzegovina is confident that this manual will serve as a useful tool allowing for the implementation of practical training on those issues under consideration, as well as a resource for social workers that will contribute to the improved realization of their human rights obligations in the field of social protection in Bosnia and Herzegovina.

Gary D. Robbins
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¹ For the purposes and convenience of this document, the use of the term 'Social Welfare Centre(s)' shall also reflect municipal sub-departments engaged in social protection issues.

Message of Support by the Ministry for Health and Social Welfare of Republika Srpska and the Ministry for Labour and Social Policy of the Federation of Bosnia and Herzegovina

The Ministry for Labour and Social Policy of the Federation of Bosnia and Herzegovina and the Ministry for Health and Social Welfare of Republika Srpska welcome the publication of the Training Manual on “*Human Rights for Social Workers in Theory and Practice*” as designed by the OSCE Mission to Bosnia and Herzegovina in cooperation with the BiH Ombudsman for Human Rights and the Independent Bureau for Humanitarian Issues.

In combination with the training sessions as organized by the OSCE Mission throughout 2009 and 2010, the present Training Manual represents a useful tool for supporting the professional development of social workers in Bosnia and Herzegovina. The Manual and training sessions will enhance the capacities of professional staff of Social Welfare Centres and increase their ability to adequately respond to the needs of vulnerable individuals.

Ensuring the respect, protection and fulfilment of human rights is a responsibility shared by all levels of government. Particularly at a time where segments of BiH society are exposed to poverty and social exclusion, the provision of support to vulnerable individuals is of crucial importance. Thus, Social Welfare Centre staff is faced with significant challenges as it plays a crucial role regarding the realization of the right to social assistance and the provision of social services to vulnerable individuals.

We appreciate the support of the OSCE Mission to Bosnia and Herzegovina provided to Social Welfare Centres and wish the users of this Training Manual success in their challenging work to protect the human rights of the most vulnerable individuals of Bosnia and Herzegovina.

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GLOSSARY OF TERMS

CAT	Convention against Torture and Other Criminal, Inhumane or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
ECPT	European Convention for the Protection from Torture and Inhuman Treatment or Punishment
ESC	European Social Charter
FCNM	Framework Convention for the Protection of National Minorities
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
OPCAT	Optional Protocol to the Convention against Torture
SWC	Social Welfare Centre
UDHR	Universal Declaration of Human Rights

CHAPTER 1 INTRODUCTION TO HUMAN RIGHTS

1.1 The Concept of Human Rights

⇒ What are Human rights?

Human rights are understood to be equal and inalienable rights to which people are entitled simply because they are human beings, regardless of their nationality, race, ethnicity, gender, religion or any other status

Human rights are based on the fundamental principle that all human beings possess inherent dignity and that everyone is entitled to enjoy all human rights without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

It is important to note that the term “right” signifies that human rights do not simply represent abstract principles or values, but that they are obligatory in nature and represent clear entitlements for all persons.

⇒ International Human Rights Law

Human rights are formally expressed and codified in international human rights law, which consists of international human rights treaties and customary law. The latter refers to practices which have been followed by numerous states over time and have been accepted by the community of states as legally binding.

Human rights treaties are developed by the United Nations, in addition to regional organizations, such as, for example, the Council of Europe. These instruments represent formal agreements between states, which create legally binding obligations for the States Parties.²

⇒ Categorisation of Human Rights

Human rights are categorized between civil and political rights (first-generation human rights), and economic, social and cultural rights (second-generation human rights). Such distinctions are based on the different elements associated with each, and most particularly as it relates to their respective implementation.³ Nevertheless, this distinction does not imply that one set of rights is more important than the other, but is rather based on the understanding that all human rights are indivisible and interdependent.

Reference should also be made to what is termed third-generation or ‘solidarity’ human rights, which encompass, for example, the right to development, to self-determination, to peace and to a healthy environment. It is assumed that these rights should not only benefit individuals but also groups and peoples and that their realization requires global cooperation and solidarity.

⇒ Example:

Bosnia and Herzegovina has ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter.*

* See Annex 1 for a full list of those international human rights treaties Bosnia and Herzegovina has ratified.

² States Parties refers to countries that have signed and ratified an international agreement.

³ Please refer to Chapter 1.2 for further details in this respect.

1.1.1 General Characteristics of Human Rights

The Universal Declaration of Human Rights (UDHR)⁴ underlines that all human rights, political, civil, economic, social and cultural, have equal validity and importance, which was re-affirmed on the occasion of the World Conference on Human Rights in Vienna in 1993, where representatives from 171 countries adopted the Vienna Declaration and Programme of Action, stating:

*"All human rights are **universal, indivisible and interdependent and interrelated**. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."*⁵

In the context of this statement, it should be understood that:

- Universality** refers to that fact that human rights apply to all human beings equally and without discrimination on any grounds. The principle of universality is established, for example, in Article 1 of the UDHR, which states : "All human beings are born free and equal in dignity and rights."
- Indivisibility and Interdependence** refers to the fact that all human rights have equal validity and importance; are to be considered collectively; and cannot be divided. The principle of interdependence in particular underlines the understanding that all human rights are inter-related and that the non-realization of one right may obstruct or deny the realization of others.
- Inalienability** means that human rights belong to everyone; cannot be taken away from anyone; and that no individual can renounce these rights by him/herself.

1.1.2 Responsibility to Respect, Protect and Fulfil Human Rights

A state party becomes bound by a human rights treaty upon signing and ratifying the said treaty. In this regard, a **signature** represents a preparatory step in the process of ratification and indicates a state's intention to take all necessary steps to fully respect and comply with the terms of a treaty upon ratification.

Therefore, it is not until such time as a state **ratifies** a treaty, that the state party then becomes legally bound by it. It should be noted that some states may be required to seek prior approval domestically for adoption of a treaty; to adopt the treaty in their national parliament; or to enact legislation to fulfill the ratification process.

The obligations of States Parties to a treaty may be expanded upon through the addition of a **Protocol**. This represents a separate document, and all States Parties are required to undertake a separate signing and ratification.

The subject or contracting party to a human rights treaty, or effectively, the guarantor of any treaty, is the **state**, and not the government of the time that has signed the treaty, as a government only represents a state, and indeed its people, within a certain time period. Therefore, states possess the primary responsibility to ensure the respect, protection and fulfillment of

Example for protocols:

The prohibition of discrimination as enshrined under Article 14 of the ECHR, refers only to the rights enshrined in that Convention. However, Protocol No. 12 to the ECHR extends the scope of the prohibition of discrimination of Article 14 to the enjoyment of any right set forth by law.

⁴ See Chapter 1.3.1. for details regarding the UDHR.

⁵ See Vienna Declaration and Programme of Action, A/CONF.157/23, 12 July 1993, para 5.

human rights within their territory. This responsibility extends to all state organs, agencies and officials. Within the context of Bosnia and Herzegovina, this responsibility extends from the state to the entity, cantonal and municipal level.

Moreover, the state also bears responsibility for all **private persons and private organizations** that act legitimately on behalf of the state and exercise governmental authority. For example, this responsibility would apply if a state outsources the provision of day-care for disabled children to a private company, or local security to a private security company.

Whereas the classic concept of human rights does not foresee a horizontal effect, which means that human rights are also applicable in relations between private parties, certain aspects of a horizontal application have been integrated over the years in international human rights law. As an example, the UN CEDAW Committee has stated in relation to violence against women that the state party has the obligation “to take all appropriate measures to eliminate discrimination of women by any person, organization or enterprise”.⁶

1.1.3 Permissible Interferences in Human Rights

Only very few rights, which include the prohibition of torture, slavery and the application of retroactive criminal laws, can be considered **absolute human rights**, i.e. under no circumstances can these rights be contravened or interfered with.

Aside from these, international and European human rights treaties determine under what conditions interferences, such as **limitations**, to a human right are permissible. The decisive criterion for the permissibility of limitations is the principle of proportionality.

Specifically, limitations to human rights are permitted provided they comply with the following standards or criteria:

- Legality** – the limitation must be based on or prescribed by an existing law.
- Legitimate aim** – the limitation must be reasonably and objectively justified in a democratic society. This means it cannot be justified for reasons not contained in the human rights treaty or for purposes alien to the protection of human rights.
A legitimate aim of a state to interfere in human rights could be for example the protection of national security, territorial integrity or public safety, the prevention of disorders or crime or the protection of health.
- Proportionality** - the restrictive measures applied must be proportionate to the aim to be achieved, and should be assessed on a case by case basis.
- Necessity** – there must be a pressing social need for the restrictive measure applied, while its application should be necessary in order to achieve a legitimate aim.

⁶ CEDAW Committee General Recommendation No. 19 (1992) Violence against Women, Para. 9



Case box I

Police dissolve a public assembly of persons who protest against the adoption of a new law, which would see to the reduction of their social benefits. Suddenly, demonstrators start throwing tomatoes and light objects towards the politicians who have come to listen to the demonstrators. Furthermore, some demonstrators attempt to tear down barriers which separate them from the politicians, who stand on a platform. Via megaphone, the police ask the demonstrators to end the demonstration, disband immediately, and leave the public place.

To assess whether police interference on the freedom of assembly and association was permitted in this situation, (Article 11 of the ECHR and Art 21 of the ICCPR), the following factors need to be considered:

1. Is the restrictive measure prescribed by law? YES

According to national law, the state, through its police force, has the legal competence to dissolve public assemblies in cases where specific conditions are met.

2. Is there a legitimate aim to the measures applied? YES

Police dissolve the assembly to prevent a violent outbreak, to preserve public safety, and to prevent public disorder.

3. Is the measure proportional to the aim which needs to be achieved? YES

The measures employed, using a megaphone and requesting persons to leave the public place, is proportionate to the aim, i.e. the prevention of public disorder. As demonstrators start throwing objects toward the politicians, and others attempt to remove barriers, it can be assumed that the so far peaceful demonstration may soon get out of control and turn violent.

4. Is the measure necessary to achieve the legitimate aim, and is there a pressing social need? YES

In order to prevent a violent outbreak, there is a pressing need to employ measures to end the demonstration and dissolve the public assembly.

Changed circumstances

If police had used force (e.g. batons) to dissolve the so far peaceful assembly, the measures employed would have been disproportionate to the aim achieved. However, as the assembly had yet to turn violent, coercive action by the police was unnecessary.

1.1.4 Human Rights Monitoring Mechanisms

⇒ Treaty bodies

To ensure the enforcement of human rights obligations, various mechanisms exist at the international and regional level. The majority of these mechanisms are defined through human rights treaties establishing specific bodies, more commonly referred to as **Committees**. These Committees are comprised of experts appointed by States Parties, and have the obligation to monitor states implementation of human rights treaties. In some instances, they may also receive complaints on behalf of States Parties against other States Parties, or by individuals or groups of individuals against States Parties.

⇒ State reports

States Parties to human rights treaties are obliged to **report periodically** (in general, every two to five years) to the respective Committee concerning implementation of the rights enshrined in the respective treaty. The treaty bodies, upon consideration of a state report, then issue **observations, comments and recommendations** to the States Parties on their level of compliance. It should be noted that civil society can also contribute to this monitoring process by submitting information in the form of a parallel or shadow report on state performance to the treaty bodies.

⇒ Individual complaints

The Committees of the ICCPR, ICESCR, CERD, CAT, CEDAW and the CRPD may consider **individual complaints**. Such complaints can be filed when specific conditions are fulfilled. Namely, the state concerned must be a party to the treaty in question and have recognized the competence of the Committee. Additionally, prior to submission of a complaint, the applicant must have exhausted all domestic remedies.

⇒ General Comments

A treaty body may adopt **General Comments** on thematic issues or methods of work. Reflective of official statements adopted by a Committee upon interpretation of a human rights provision, comments are not legally binding for the States Parties, but represent a useful tool for the correct application of certain provisions. General Comments help to determine the content of human rights, the obligations of all levels of government, violations of rights and how the right should be implemented at national level.

⇒ Universal Periodic Review

The Universal Periodic Review (UPR) was created through the UN General Assembly in March 2006, and represents a unique process requiring a review of the human rights records of all 192 UN Member States once every four years. The process provides an opportunity for each state to outline the measures it has undertaken to improve its human rights standards, and to fulfill its human rights obligations.

⇒ Example for treaty bodies:

The Committee on Economic, Social and Cultural Rights is a body of independent experts that monitors the implementation of the ICESCR by its States Parties.

⇒ Example for state reports:

Bosnia and Herzegovina submitted its latest report on the implementation of the ICESCR to the Committee on Economic, Social and Cultural Rights in 2005, upon which the Committee issued its concluding observations and made recommendations for the improvement of the realization of economic, social and cultural rights in the country, while also defining specific recommendations regarding the work of SWCs.*

* See chapter 1.3.2

⇒ Example for individual complaints:

The most recent individual complaints mechanism was established through adoption of the Optional Protocol to the ICESCR on 10 December 2008. As of September 2009, the Protocol is open for signatures by states.

⇒ Example for general comments:

General Comments of the Committee on Economic, Social and Cultural Rights, which are relevant for the work of SWCs would include, for example, the General Comment on the right to social security; on non-discrimination in economic; social and cultural rights; and on the right to adequate housing.

⇒ Example for universal periodic review:

Bosnia and Herzegovina will undergo the Universal Periodic Review in February 2010. The deadline for the government to submit its report was in September 2009. Other stakeholders, including NGOs, international organizations and the Ombudsman institution, were invited to provide parallel submissions.

1.1.5 Human Rights in the Constitution of Bosnia and Herzegovina

Human rights, as enshrined in international and regional instruments, are embedded in the Constitution of Bosnia and Herzegovina.

The BiH Constitution, as well as the Constitutions of both Entities, enumerate specific civil and political rights, as well as economic, social and cultural rights. In addition, the BiH Constitution provides for the direct applicability of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, which has priority over all other law in Bosnia and Herzegovina.

Annex 1 of the State Constitution also enumerates those international and European human rights treaties⁷ to which Bosnia and Herzegovina is a party to, while providing that the enjoyment of such rights and freedoms shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.



Questions and exercises:

- (1.1) What are human rights?
- (1.2) What are the main characteristics of human rights?
- (1.3) Under which circumstances are limitations to a human right permissible?
- (1.4) What is the role of the state in the protection of human rights?
- (1.5) What mechanisms exist within the international and European human rights system to redress a human rights violation?

⇒ Example for progressive realization:

Progressive realization in the context of the work of the SWC would mean that the SWC develops a strategic plan of action and works towards fulfilling it. The strategic plan should outline precisely formulated measures on how to improve, for example, the realization of the right to social security over a specific period of time, including the financial, human and material resources necessary to achieve this specific goal. To measure whether progress was made, the municipality or SWC monitors the situation in accordance with predetermined indicators*, such as, for example, the percentage of vulnerable population without assistance, the type of social services available, the amount of financial assistance provided, etc.

* Indicators are measurements that signal whether activities are on target to reach a predetermined benchmark or goal. Benchmarks are predetermined milestones used as "check-in" points to monitor progress towards achieving a big goal. Indicators and benchmarks are tools to monitor progress.

1.2 Economic, Social and Cultural Rights in International Human Rights Law

1.2.1 State Obligations under Economic, Social and Cultural Rights

As outlined above,⁸ human rights are usually categorized in civil and political rights and economic, social and cultural rights. The distinction is based on the different nature of these two groups of human rights, particularly as it regards their implementation. While civil and political rights can generally be said to be implementable by the state immediately, economic, social and cultural

⁷ See regarding details to these human rights treaties in chapter 1.3. and 1.4.

⁸ See chapter 1.1.

rights often require financial and material resources that are not necessarily readily available, and can therefore only be realized gradually or progressively.

However, such distinctions cannot be applied in an absolute manner to either category of rights, as a closer examination of both illustrates that the realization of civil and political rights undoubtedly requires financial resources, for example, in the establishment and maintenance of a judicial system, or the successful implementation of general elections. Similarly, there are several economic, social and cultural rights that a state should be capable of realizing without any significant burden on resources such as, for example, equal pay for equal work, the right to form trade unions, and the prohibition of child labor.

⇒ Progressive realization

Nonetheless, the principal obligation of States Parties pertaining to economic, social and cultural rights under international human rights law is to achieve the full realization of these rights **progressively**. Accordingly, states have a duty:

- ❑ **To undertake all appropriate measures** towards the full realization of economic, social and cultural rights through, *inter alia*, the adoption of legislation; administrative, economic, financial, educational or social reforms; or the development and implementation of programmes of action.
- ❑ **To do so to the maximum extent of their available resources, including resources available through international cooperation and assistance.** In this regard, States Parties hold the burden of proof in illustrating that all possible resources have been exhausted. It should be noted that the concept of progressive realization does not justify inaction on the grounds that a state has not reached a certain level of economic development.

⇒ Immediate obligations

As previously mentioned states also have various immediate obligations in the sphere of economic, social and cultural rights that are not dependent on available resources. Such obligations include:

- ❑ The **prohibition of discrimination**. Accordingly, States Parties are obliged to take immediate measures to ensure the realisation of all rights equally for everyone, irrespective of the standard to which they are capable of realising such rights.
- ❑ The obligation **to take immediate deliberate, concrete and targeted steps** within a reasonably short period of time upon ratification of a treaty to realise those rights contained therein.⁹

⇒ Minimum Core Obligations

The minimum core obligations of a right means that States Parties have to:

- ❑ Ensure the satisfaction of a **minimum essential level** for each of the economic, social and cultural rights enshrined in a human rights treaty; and that this is to be realised
- ❑ **irrespective of the available resources**, or any other factors and difficulties.

⁹ See Committee on Economic, Social and Cultural Rights, General Comment 3 (1990), Para. 2.

⇒ Example for immediate obligations:

- ✓ The obligation of social protection authorities to adopt legislation regulating access to social assistance;
- ✓ The obligation of the SWC to not discriminate against any person on any ground when granting the right to social assistance;
- ✓ The obligation of the SWC to not obstruct access to social assistance.

⇒ Example for minimum core obligations:

States Parties in which any significant number of individuals are deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education, at first sight, fails to meet its obligations.*

* See the Committee on Economic, Social and Cultural Rights, General Comment 3 (1990), Para. 10.

⇒ Example for the obligation to respect:

The state has to abstain from acting in any way that would increase the vulnerability of socially disadvantaged individuals. It should not prevent vulnerable people from organizing themselves to claim their social rights and it should refrain from interfering in the right to housing by not engaging in arbitrary evictions. In the context of the work of the SWCs this would mean that the SWC is obliged to record each claim for assistance and may not refuse a claim without due consideration or for reasons of insufficient financial means.

⇒ **Example for the obligation to protect:**

The state has to ensure that private health services respect health protection standards and that private employers respect basic labour standards. It should further provide for the protection of families against domestic violence or other human rights abuses, which are of specific relevance for the work of SWCs.

⇒ **Example for the obligation to fulfil:**

States have to provide a minimum level of social protection as well as primary health care services for all. In the context of Bosnia and Herzegovina this means that governmental institutions responsible for social protection at all levels, including the SWCs, need to ensure that sufficient financial means are allocated to guarantee every person the enjoyment of a minimum level of social protection and to increase this level of protection progressively according to the capacities and budgetary resources of the state.

The imposition of minimum core obligations is essential so as not to deprive a treaty of its reason and purpose. However, any assessment as to whether individual States Parties have respected their minimum core obligations must factor into account the resource constraints of the country concerned. In this regard, to assess whether a state party has failed to meet the minimum core obligations due to a lack of available resources, the state party must be able to prove that every effort has been exhausted, and that it has taken all necessary steps “to the maximum of its available resources”.

⇒ **Obligation to Respect, Protect and Fulfil**

Economic, social and cultural rights impose three obligations on States Parties, which include the:¹⁰

- **Obligation to Respect:** This is an *immediate* obligation, requiring the state to refrain from interference in the exercise of a right in a manner that negatively effects the realization of this right.
- **Obligation to Protect:** This *immediate* obligation requires states to ensure that there is no interference in the realisation of human rights by non-state actors such as, for example, private individuals, actors in the commercial sector, or non-governmental organizations. States are therefore obliged to ensure that adequate mechanisms are in place to regulate (for example, through legislation) such activities, and to ensure the continual enjoyment of human rights in such instances.
- **Obligation to Fulfil:** This is an obligation which may be realized *progressively*. Nevertheless, states are required to implement appropriate legislative, administrative, budgetary, and judicial measures, amongst others, to ensure the full realization of rights. Furthermore, states must undertake such steps within a reasonable time period. i.e. the obligation to start using all available resources and undertaking all possible action in view of full realization of rights is an immediate obligation.

1.2.2 Violations of Economic, Social and Cultural Rights

The failure to respect any of those obligations outlined in the previous section constitutes a violation of economic social and cultural rights.¹¹ However, states do enjoy a **margin of discretion** in choosing the means for realizing their respective obligations dependent on, for example, their particular political, economic, social and cultural circumstances.

Regardless, the application of legal norms to violations of note by international treaty monitoring bodies and domestic courts has contributed to the development of **universal minimum standards** and the development of a **common understanding as to the scope, nature and limitations** of economic, social and cultural rights. This entails that although most economic, social and cultural rights can only be realized progressively, this does not absolve the legal obligation of States Parties to realize such rights, and indeed requires them to take certain steps immediately, while others at the earliest possible opportunity.¹²

¹⁰ See Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, 22-26 January 1997. The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights were drawn up on the 10th anniversary of the Limburg Principles by a group of experts who met in 1997.

¹¹ See the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights and Maastricht Guidelines on Violations of Economic, Social and Cultural Rights. The Limburg Principles were drafted by a group of distinguished experts in international law, convened by the International Commission of Jurists, the Faculty of Law of the University of Limburg (Maastricht, the Netherlands) in 1986. The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights were drawn up on the 10th anniversary of the Limburg Principles by a group of experts who met in 1997. The objective of this meeting was to elaborate on the Limburg Principles as regards the nature and scope of violations of economic, social and cultural rights and appropriate responses and remedies.

¹² See above regarding progressive realization and immediate obligations.

The burden is therefore on the state to demonstrate that it is making measurable progress towards the full realization of rights, while the standard of “progressive realization” cannot be used as a pretext for non-compliance, nor can the state justify interferences in rights simply because of different social, religious and cultural backgrounds.¹³

A State Party will consequently be in violation of the ICESCR in cases where it:¹⁴

- Fails to **remove promptly obstacles** it is under a duty to remove to permit the immediate fulfilment of a right;
- Fails to **implement without delay** a right it is required by the Covenant to provide immediately;
- Wilfully fails to meet a generally accepted international **minimum standard** of achievement, which is within its powers to meet;
- Applies a **limitation to a right** recognized in the Covenant that is not in accordance with the Covenant;
- Deliberately delays or **stalls the progressive realization** of a right, which can only be excused if, for example it is acting within a limitation permitted by the Covenant; due to a lack of available resources; or as a consequence of a *force majeure*;¹⁵
- Discriminates** on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights.

⇒ **Example of violations:**

A violation of the minimum core obligation could be the general lack of primary health care services for children; the deprivation of a significant number of individuals of essential foodstuffs; the lack of access to the most basic forms of housing and education for a number of individuals.

1.3 International Human Rights Instruments Relevant to Economic, Social and Cultural Rights

1.3.1 Universal Declaration of Human Rights (1948)

The UDHR, a Resolution of the UN General Assembly, arose directly from the experiences of the Second World War and represents the first global expression of rights to which every individual is entitled to. It enshrines civil, political, as well as economical, social and culture rights, while emphasizing the importance of equality and non-discrimination.

The Declaration has been of fundamental importance for the subsequent development of international human rights treaties, regional human rights instruments, as well as national constitutions and laws. Despite the fact that the UDHR is not an international treaty, and thus not legally binding, it is in general considered as customary international law,¹⁶ and as such forms a powerful tool in applying diplomatic and moral pressure to governments.

To ensure the establishment of legally binding human rights norms, two International Covenants on human rights were created – the ICCPR, its two Optional Protocols and the ICESCR, which together with the UDHR form the so called **International Bill of Human Rights**.

¹³ See Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, 22-26 January 1997, para 8.

¹⁴ See Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, 22-26 January 1997, para 14 and 15.

¹⁵ *Force majeure* refers to extraordinary events or circumstances beyond the control of the parties, such as a war, strike, riots, floodings, earth, earthquakes, etc.

¹⁶ See chapter 1.1.

➤ **Examples of minimum core obligations of the right to social security:**

- ✓ To ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education;
- ✓ To ensure that the right of access to social security is provided on a non-discriminatory basis, and particularly for disadvantaged and marginalized individuals and groups;
- ✓ To adopt and implements a national social security strategy and plan of action;
- ✓ To take targeted steps to implement social security schemes, and in particular schemes that protect disadvantaged and marginalized individuals and groups;
- ✓ To monitor the extent of the realization of this right.

1.3.2 International Covenant on Economic, Social and Cultural Rights (1966)

The ICESCR was created as one of the central pillars of international human rights law and is the only universal human rights instrument which deals exclusively with the entire range of economic, social and cultural rights.

The ICESCR obliges States Parties to take appropriate steps for the full realization of, *inter alia*, the right to work, the right to just and favourable conditions of work, the right to form trade unions, the right to social security including social insurance, the right to an adequate standard of living, the right to the highest attainable standard of physical and mental health, the right to education, and the right to take part in cultural life.

Article 2(1) of the ICESCR obliges States Parties to:

- to take steps individually and through international economic and technical assistance and co-operation;
- to the maximum of their available resources;
- with a view to achieving progressively the full realization of rights recognized in the Convention.

⇒ **Equal Enjoyment of Economic, Social and Cultural Rights**

Article 2(2) and Article 3 of the ICESCR are of particular importance, providing for the prohibition of discrimination on any grounds, while specifically expressing the equal right of men and women to the enjoyment of the rights specified within the Covenant. Indeed, the most recent General Comment adopted by the Committee on Economic, Social and Cultural Rights (June 2009) concerned *Non-Discrimination in Economic, Social and Cultural Rights*. It proceeded to define the scope and criteria, as well as various forms of discrimination prohibited by the Covenant, as well as the obligations of all States Parties to respect, protect and fulfill economic, social and cultural rights through policies and performance that combat discrimination.¹⁷

⇒ **The right to social security**

An article that is of particular relevance to the work of SWC's is Article 9 of the ICESCR, which establishes the right of everyone to social security. And while the elements of the right to social security may vary according to differing conditions within any given country, a number of essential factors apply in all circumstances:

- Availability:** The right to social security requires that a system of social security is in place that ensures that benefits are provided for relevant social risks and contingencies, for example, health care, sickness, old age, unemployment, employment injury, family and child support, maternity, disability and orphans;
- Adequacy:** Social benefits must be adequate to allow for an adequate standard of living, and should be regularly monitored to assess whether benefits continue to meet beneficiaries needs, i.e. that they can afford the goods and services they require to realize their rights as ensured by the Covenant;
- Accessibility:** All persons should be protected by the social security system without discrimination, and most particularly those individuals belonging to the most disadvantaged and marginalized groups. The criteria to access the right to social security must be reasonable, transparent and proportionate. Benefits should be provided in a timely manner, while beneficiaries

¹⁷ General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2) E/C.12/GC/20

should have physical access to the social security services so that they may receive benefits and information, and make contributions where relevant. Particular attention should be paid to persons with disabilities, migrants, persons living in remote or disaster-prone areas, as well as those experiencing armed conflict.

- Affordability:** If a social security scheme requires contributions, those contributions should be stipulated in advance. The direct and indirect costs associated with such contributions must be affordable for all.

Minimum core obligations of the right to social security: The minimum core obligation of the right to social security implies that states must at least ensure that the most disadvantaged and vulnerable groups are provided with basic levels of social security. Such groups can include, for example, the elderly, people with disability or chronic illness, and impoverished children. If a state party cannot provide this minimum level of support for all risks and contingencies within its maximum available resources, the Committee on Economic, Social and Cultural Rights recommends that the state party selects a core group of beneficiaries, which is done upon completion of a comprehensive consultation process.

Violations of the right to social security: States Parties must illustrate that they have taken the necessary steps towards the realization of the right to social security within their maximum available resources, and have guaranteed that this right is enjoyed without discrimination. Violations of the right to social security can occur through acts of **commission** or **omission**.¹⁸

⇒ Recommendations of the Committee on Economic, Social and Cultural Rights to Bosnia and Herzegovina

In 2005, Bosnia and Herzegovina submitted its initial Report to the Committee on Economic, Social and Cultural Rights. Upon consideration of the report, the Committee adopted, *inter alia*, the following concluding observations, which are of particular relevance to the work of SWC's.¹⁹ In this regard, the Committee expressed its deep concern over the situation in the field of social protection, with particular emphasis on:

- The lack of funds and qualified personnel in SWC's;
- The extent of the discrepancy between the significant budget allocations financing the pensions of military victims of war, and the comparatively low resources allocated to social protection;
- The extent of poverty in the state party, particularly in rural areas and amongst the most vulnerable groups.

The Committee therefore recommended Bosnia and Herzegovina to:

- Ensure that adequate funds from the entities, cantons and municipalities are allocated to SWC's, and increase the number of social workers, psychologists and other qualified personnel of these centres so that they can better respond to the specific needs of children without parental care, female heads of households, persons with disabilities, and victims of trafficking in persons;
- Ensure a more equitable allocation of existing funds to social protection, in particular, of civilian war victims, with a view to reducing the discrepancy between, *inter alia*, the budgets for civilian and military victims of war.
- In addressing the problem of poverty, to ensure, on a priority basis, that adequate social assistance be provided to individuals and groups living below the poverty line; that the impact of any laws and policies on the economic, social and cultural rights of such individuals and groups be assessed on the basis of regularly updated data, disaggregated by gender, age, ethnic background, social status and other relevant criteria; and that effective monitoring mechanisms be adopted and implemented to that effect.

¹⁸ Commission is performing an act with a certain result, while omission entails not performing an act.

¹⁹ E/C.12/BIH/CO/1, Concluding observations of the Committee on Economic, Social and Cultural Rights, Thirty-fifth session, 7-25 November 2005.

⇒ Examples of violations through acts of commission:

- ✓ The adoption of deliberately retrogressive measures incompatible with core obligations, e.g. for a number of individuals, the municipality does not provide access to any assistance in its municipal social security plan;
- ✓ The formal repeal or suspension of legislation necessary for the continued enjoyment of the right to social security, e.g. the adoption of legislation which enables access to the right to social assistance only for persons with disabilities with 100 or 90 % impairment, while excluding those with lesser impairment from any support;
- ✓ The establishment of different eligibility conditions for social assistance benefits for disadvantaged and marginalized individuals depending on their place of residence;
- ✓ The refusal of a SWC to record a claim for social assistance owing to insufficient financial resources.

⇒ **Examples of violations through acts of omission:**

- ✓ A state party fails to enforce relevant laws or put into effect policies designed to implement the right to social security, e.g. a Canton fails to enact the necessary by-laws which determine and specify access to the right to social assistance, or the conditions to exercise compulsory health insurance for children and elderly persons;
- ✓ The two entities fail to reach an agreement that will enable the financial sustainability of the state pension scheme;
- ✓ The omission of the state to regulate activities of NGOs who provide assistance to victims of domestic violence, and to monitor whether their work adheres to given standards.

⇒ **Example:**

In the so-called “Dutch social security cases”, this interpretation was practically applied by the Human Rights Committee. The cases concerned Dutch unemployment insurance legislation that applied discriminatory conditions to married women. Accordingly, a married woman had to submit evidence proving that she was a breadwinner in order to qualify for unemployment benefits, which is a social right. A similar condition did not apply to married men. The committee held that this legislation was discriminating on the grounds of sex. It emphasized that the non-discrimination clause does not “require any State to enact legislation to provide for social security. However, when such legislation is adopted in the exercise of a State’s sovereign power, then such legislation must comply with the clause”.*

* See Human Rights Committee *Zwaan-de Vries v. the Netherlands* (communication No. 182/1984); *Broeks v. the Netherlands* (communication No. 172/1984).

⇒ **Individual Complaints Mechanism**

It should be noted that on 10 December 2008, an **individual complaints mechanism** was established through adoption of an Optional Protocol to the ICESCR, which has been open for signature by States Parties since September 2009.²⁰



Questions and exercises:

- (1.6) How would you define the minimum core obligations of Bosnia and Herzegovina as regards the right to social security?
- (1.7) How can SWC’s contribute, through their daily work, towards fulfilling the recommendations of the Committee on Economic, Social and Cultural Rights?

1.3.3 International Covenant on Civil and Political Rights (1966)

Forming part of the International Bill of Rights, implementation of the rights enumerated in the ICCPR is monitored by the **Human Rights Committee**.²¹ Rights protected under this Covenant include: the right to life, the prohibition of torture and cruel, inhumane or degrading treatment, the right to liberty and security of person, the freedom of movement and choice of residence, equality before the law, the right to privacy in family, home and correspondence, the freedom of expression, the right to peaceful assembly, and the right to association.

It should be noted that the Human Rights Committee has established that the non-discrimination clause²² of the ICCPR is also applicable to the protection of economic, social and cultural rights. This means that the scope of the non-discrimination clause protects also economic, social and cultural rights, as demonstrated in the example.

The Covenant contains **two Optional Protocols**. The First Optional Protocol creates an individual complaints mechanism, while the Second Optional Protocol abolishes the death penalty. In comparison to the establishment of an individual complaints mechanism to the ICESCR,²³ the Optional Protocol to the ICCPR was already established in 1966.²⁴ This demonstrates the different speed of development of the justiciability of economic, social and cultural rights in comparison to civil and political rights.

20 See Chapter 1.1.4.

21 Article 28 ICCPR.

22 Article 26 ICCPR.

23 Which was only adopted in December 2008.

24 See above chapter 1.1.4.

1.3.4 Convention on the Rights of the Child (1989)

The CRC sets out the civil, political, economic, social and cultural rights of children.²⁵ It acknowledges that every child has certain basic rights, including the right to life, the right to preserve his or her own name and identity, the right to be raised by his or her parents within a family or cultural grouping, and to have a relationship with both parents, even if they are separated.

In the context of the work of the SWC, it is important to note that the CRC obliges States Parties to recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. In those instances where parents are unable to fulfill their responsibilities in this regard, the state, through its responsible institutions, has to provide material assistance, particularly with regard to nutrition, clothing and housing. Further, the state party is obliged to protect children from all forms of sexual exploitation and abuse, and take national, bilateral and multilateral measures against child prostitution and child pornography.

The fundamental principles of the ICRC are:

- The rights of children should be respected and ensured without discrimination of any kind;
- The best interests of the child shall be a primary consideration;
- The survival and development of the child must be ensured to the maximum extent possible;
- The views of the child in all matters affecting him or her should be given due weight.

⇒ **Recommendations of the Committee on the Rights of the Child to Bosnia and Herzegovina**²⁶

- Take all necessary measures to provide support and material assistance to economically disadvantaged families, including targeted programmes with regard to the neediest groups of families, in order to guarantee the right of all children to an adequate standard of living;
- Use the institutionalization of children without parental care only as a measure of last resort, meaning that in cases it is applied to, it has been professionally recommended and considered to be in the best interests of the child; systematically conduct periodic reviews of the placement of children;
- Develop quality standards for foster care and significantly decrease the time spent in institutions by children without parental care. Further to this, allocate adequate resources for the proper functioning and monitoring of institutions of care, as well as children in foster care.



Questions and exercises:

- (1.8) In which areas of work of SWC's would the CRC be applicable?
- (1.9) How can SWC's, through their daily work, contribute towards fulfilling the recommendations of the Committee on the Rights of the Child?

²⁵ A "child" is defined as a human being under the age of 18, if by domestic law acquisition of majority is not provided at a younger age.

²⁶ CRC/C/15/Add.260, Concluding Observations of the Committee on the Rights of the Child.

1.3.5 Convention on the Elimination of All Forms of Discrimination against Women (1979)

As women are often particularly affected by conditions of poverty in comparison to men, entailing less access to food, health care and education, the international community recognized the need to establish a human rights treaty that would address such issues directly and protect the full range of human rights for women, resulting in the adoption of the CEDAW.²⁷

This treaty defines what constitutes discrimination against women and sets standards by which governments must protect the rights of women through legislation and policy building. It lists the various areas in which states must take appropriate measures to eliminate gender discrimination, including political and public life, before the law, in employment, in economic and social life, as well as in the fields of education and health care. In this regard, States Parties are not only obliged to undertake measures for the elimination of discrimination through legal means and to enshrine gender equality within their domestic legislation, but they are also required to take economic, social political and cultural measures to ensure the effective and full development of women.

⇒ **Recommendations of the Committee on the Elimination of Discrimination against Women to Bosnia and Herzegovina²⁸**

- Undertake concrete measures to empower women to report incidences of domestic violence and ensure, through training programmes, that public officials, especially law enforcement personnel, the judiciary, health-care providers, social workers and teachers, are fully aware of the applicable legal provisions; are sensitized to all forms of violence against women; and are skilled to respond to such violence in an adequate manner;
- Collect data on incidences of domestic violence against women and, based on such data, continue to develop sustainable strategies to combat this human rights violation;
- Prioritize data collection and include comprehensive sex-disaggregated statistical data in its next report to the Committee, so as to provide a comprehensive overview of the practical ability of women to enjoy their human rights.



Questions and exercises:

[1.10] How can SWC's, through their daily work, contribute towards the fulfillment of the rights of women as enshrined in the CEDAW?

[1.11] How can SWC's, through their daily work, contribute towards the implementation of the recommendations of the Committee on the Elimination of Discrimination against Women?

²⁷ See also chapter II.

²⁸ CEDAW/C/BIH/CO/3, Concluding Comments of the Committee on the Elimination of Discrimination against Women, Para. 34

1.3.6 International Convention on the Elimination of All Forms of Racial Discrimination (1965)

The ICERD was adopted in the light of the Second World War and connected unprecedented cruelties against persons with a particular racial, ethnic or national origin as well as in the context of the struggle of so called Third World Countries against racial discrimination and colonialism.

In defining racial discrimination, the ICERD requires States Parties to condemn it in all of its forms, whether based on race, colour, descent, or national or ethnic origin, and to pursue a policy of eliminating such discrimination. States Parties are therefore obliged to guarantee to everyone within their territory the right to equality before the law, as well as the full range of human rights as contained in the international bill of rights.²⁹

⇒ Recommendations of the Committee on the Elimination of Racial Discrimination to Bosnia and Herzegovina³⁰

- Collect disaggregated statistical data on the ethnic composition of the population and establish adequate mechanisms for monitoring acts of ethnically motivated discrimination and violence amongst the different ethnic groups;
- Facilitate the return of all people of different ethnic origin, particularly members of the Roma community, to their pre-war homes, and ensure their ability to occupy and reside legally and safely there. Where necessary, provide adequate alternative housing or compensation for displaced Roma, including to pre-war tenants who have been evicted from their settlements or whose homes have been destroyed;
- Take immediate steps through, for example, the removal of administrative obstacles, to ensure that all Roma have access to personal documents that are necessary for them to enjoy, inter alia, their economic, social and cultural rights, including access to employment, housing, health care, social security and education.
- Ensure that pension and health care benefits are provided on a non-discriminatory basis without regard to ethnicity, and most particularly where minority returnees are concerned.



Questions and exercises:

[1.12] How can SWC's, through their daily work, contribute towards the fulfillment of the recommendations of the Committee on the Elimination of Racial Discrimination?

²⁹ See for details Chapter II.

³⁰ CERD/C/BIH/CO/6, Concluding observations do the Committee on the Elimination of Racial Discrimination.

1.3.7 Convention on the Rights of Persons with Disabilities (2006)

The CRPD marks a “paradigm shift” in attitudes and approaches to persons with disabilities through a dispelling of the notion that persons with disabilities are “objects” of charity, medical treatment and social protection. They are, rather, “subjects” with rights, who are entitled to claim those rights, to make free and informed decisions for their lives, and to be active members of society.

The Convention promotes, protects and ensures the full and equal enjoyment of all human rights and fundamental freedoms for all persons with disabilities, and promotes respect for their inherent dignity, while containing an explicit social development dimension.

The Convention is based on the following guiding principles:

- Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- Non-discrimination;
- Full and effective participation and inclusion in society;
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- Equality of opportunity;
- Accessibility;
- Equality between men and women;
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.



Questions and exercises:

[1.13] How can SWC’s, through their daily work, enhance the protection of persons with disabilities and ensure their equal access to social rights?

[1.14] What measures can SWC’s undertake to promote equality of persons with disabilities?

[1.15] What measures should be undertaken as a priority to implement the Convention on the Rights of Persons with Disabilities in Bosnia and Herzegovina?

1.3.8 Further International Human Rights Instruments

- International Convention relating to the Status of Refugees (1951)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- International Convention against Torture and Other Criminal, Inhumane or Degrading Treatment or Punishment (1984)

1.4 European Human Rights Standards Relevant to Economic, Social and Cultural Rights

1.4.1 European Social Charter Revised (1961/1996)

The ESC, which guarantees economic and social human rights, is the natural complement to the ECHR, which contains civil and political human rights.³¹ The ESC was adopted under the auspices of the Council of Europe in 1961 and revised in 1996.³²

The ESC enshrines *inter alia*, the right to work, the right to housing, the right to health, the right to education, the right to social security, the right to social and medical assistance, and the prohibition of discrimination. With regards to rights related to the work of SWCs, Articles 12, 13 and 14 ESC, which specify the rights to social security, to social and medical assistance and to benefit from social welfare services, are most relevant.

⇒ The right to social security

According to Article 12 of the ESC, which essentially refers to those same principles outlined under Article 9 of the ICESCR,³³ State Parties are obliged to establish or maintain a system of social security; to maintain that system at a satisfactory level; and to endeavor to progressively improve the social security system.

⇒ The right to social and medical assistance

Article 13 of the ESC obliges States Parties to ensure that any individual who is without adequate resources, and who is unable to secure such resources by him or herself or through other means, is provided with adequate assistance and, in case of sickness, the care required by his or her condition.

Specifically,

- Article 13 distinguishes social assistance as an individual's right, as well as a State obligation to be complied with at all levels of government;
- Social assistance should be granted solely on demonstration of need. It should not be conditioned by other factors such as having worked or paid contributions, one's duration of residence in a certain area, or indeed limited to nationals of a state.

³¹ See chapter 1.4.2.

³² BiH ratified the ESC in 2008, and has not yet submitted a report to the European Committee of Social Rights.

³³ See chapter 1.3.2.

Article 13 explicitly requires that non-nationals residing lawfully in the territory of the state should receive the same social assistance benefits as nationals, based again on demonstration of need;

- Persons who are in medical need, and have no other possibilities to meet such needs, are also entitled to benefit from health care.

⇒ **The right to benefit from social welfare services**

Article 14 of the ESC requires States Parties to promote or provide services that will contribute to the welfare and development of individuals and groups in the community, and to their successful adjustment to their social environment. Social welfare services should be available and accessible to any individual in need of support and most particularly, vulnerable groups. Social welfare services should also be client-based, i.e. they should be pursued with the advance agreement of the client, with the client assuming the primary role in all decisions to the highest possible degree (client-based approach).



Questions and exercises:

[1.16] Discuss to what extent legislation and practice regulating access to social assistance in Bosnia and Herzegovina is in compliance with Article 13 of the ESC?

[1.17] How can social workers respect, through their daily work, the principles of Article 13 of the ESC?

1.4.2 European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

Under the auspices of the Council of Europe, the ECHR was adopted in 1950 to protect human rights and fundamental freedoms. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity.

The ECHR guarantees a wide range of civil and political rights including, *inter alia*, the right to life, the prohibition of torture, the freedom of expression, the right to a fair trial, the right to private life, the right to peaceful assembly, and the right to an effective remedy.

The Convention was adopted in order to take first steps to provide for the collective enforcement of civil and political rights as they were enshrined in the UDHR.

⇒ The principle of non-discrimination

The ECHR has fourteen **Protocols**³⁴ with the general prohibition of discrimination outlined under Protocol No. 12. This Protocol significantly broadens the scope of protection from discrimination and emphasizes that this clause is not only applicable to rights specifically mentioned in the Convention, but to any right set forth by law, thereby including economic, social and cultural rights.

⇒ The European Court of Human Rights

The ECtHR was established in 1959 to protect those rights enshrined in the ECHR. States Parties to the ECHR, or individuals claiming to be a victim of a violation of a right set out in the ECHR, may file a complaint directly with the Court. However, to file a complaint, individuals must have exhausted all local remedies within their domestic jurisdiction, and thereafter submit their complaint to the ECHR within six months on issuance of a final decision within that domestic jurisdiction.

The outlined example demonstrates that all levels of government, including SWCs, can be held accountable for violations of the rights set forth by the ECHR, and that social workers are also bound to adhere to the Convention when exercising their daily duties.

1.4.3 Further European Human Rights Instruments

- Framework Convention for the Protection of National Minorities (1995)
- European Convention for the Protection from Torture and Inhuman Treatment or Punishment (1987)

³⁴ Prot. 1, Art.1 – property; Prot. 1, Art.2 – education; Prot. 1, Art.3 – election; Prot. 4 - civil imprisonment, free movement, expulsion; Prot. 6 - restriction of death penalty; Prot. 7 - crime and family; Prot. 12 – discrimination; Prot. 13 - complete abolition of death penalty; Protocol 11 (Protocols 2, 3, 5, 8, 9 and 10 have now been superseded by Protocol 11); Protocol 14 follows on from Protocol 11 in further improving the efficiency of the operation of the Court.

⇒ Example:

In the case of *Sobota-Gajić vs. Bosnia and Herzegovina*, the ECHR held the State responsible for a violation of the right to private and family life. The applicant claimed that the authorities had demonstrated incompetence and an alarming lack of conscientiousness over a period of six years, during which she had attempted to be reunited with her son, who had remained with his father after she had left due to abuse and after the couple had divorced. After the exhaustion of domestic remedies, the applicant filed a complaint to the ECHR. The Court found the State responsible for interfering with the applicant's family life, as the local SWC and the Court of First Instance failed repeatedly to enforce decisions in the applicant's favour, resulting in excessive delays, which could not be justified. The ECHR found that the national authorities had failed to take all reasonable measures to facilitate her reunion with her son, regardless of domestic decisions in her favour, and awarded the applicant compensation for non-pecuniary damage and restitution of her costs and expenses.*

* Case: *Sobota-Gajić vs. Bosnia and Herzegovina*, ECHR, Application no. 27966/06.



Questions and exercises:

- [1.18] Discuss and consider the situation of displaced persons and returnees in Bosnia and Herzegovina. What needs to be done to improve their situation? What can social workers do to facilitate return and ensure that return is sustainable?
- [1.19] What measures should social workers undertake to protect children and their specific needs? What international standards can be used as a legal basis for the promotion of the protection of children, and particularly from discrimination?
- [1.20] What can social workers do to ensure that applicants seeking assistance are not discriminated against?

CHAPTER 2 EQUALITY AND NON-DISCRIMINATION

2.1 Introduction

The principle expressed by the UDHR that all persons are born free and equal in dignity and rights is fundamental to human rights protection and promotion.³⁵ As outlined in the previous chapter, the concepts of equality and non-discrimination are found in all major international and European human rights treaties, which together guarantee protection from discrimination.

Within the Constitution of Bosnia and Herzegovina, the principles of equality and non-discrimination can be found explicitly under **Article 2(4)**, which provides that:

“The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Such principles are further reinforced in the Constitution through the direct application of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, and specifically the application of Protocol 12 to the ECHR, as was discussed in Chapter 1.4.2..

Additionally, in 2009, Bosnia and Herzegovina reinforced protection from discrimination by adopting the *Law on the Prohibition of Discrimination*, which is applicable throughout the country and prohibits discrimination in public and private spheres of life.

⇒ **Statuses protected from discrimination**

Statuses upon which persons are protected from discrimination include, but are not limited to:

Race, colour, sex, gender, descent, age, language, religion, political or other opinion, citizenship, national or social origin, property, disability, family status, birth or association, **and other real or assumed statuses**.

The notion of “other real or assumed statuses” in an international human rights treaty means that although a certain protected status might not be explicitly mentioned, the person can nevertheless claim protection from discrimination based on any status, even if this status is only assumed.³⁶

⇒ **Fields of life in which discrimination is prohibited**

Protection from discrimination is guaranteed in all **fields of public and private life** including the civil, political, economic, social and cultural sphere, such as rights to security of person, social protection, health, education and employment amongst others.

³⁵ UDHR Article 1

³⁶ It is therefore prohibited to discriminate against a person based on a status or characteristic it is assumed that he or she has. For example, persons are protected from discrimination in cases where it is believed they may be infected with a certain virus because they belong to a community who is in general heavily affected by this disease.

2.2 Principles of Equality and Non-Discrimination

2.2.1 Equality

Since, as all persons are born equal, as says the UDHR, it stands to reason then that they should be treated equally and without discrimination. The principles of equality and discrimination are closely related. To understand discrimination, it helps to first examine what constitutes equality.

⇒ Formal equality

Formal equality is based on the idea that individuals or groups in *like* situations should be treated in an *identical* manner.

Formal equality may still however practically result in inequalities for certain groups, who may continue to fall behind the rest of society due to their already disadvantaged position. Therefore, simply treating everybody in a way that is recognized to be formally equal, without taking into account differences and similarities in society, is often inadequate for ensuring real (substantive) equality.

For example, even if women formally have the right to stand for elections, they may not be able to realize that right owing to traditional discrimination, stereotypes or prejudice.

⇒ Substantive equality

Substantive equality is based on the idea that individuals in *different* situations should in fact be treated *differently*; it recognises that entitlements, opportunities and access are not equally distributed throughout society and there may be barriers resulting in unequal outcomes and unequal opportunities for particular groups.

Substantive equality incorporates two distinct concepts: **equality of outcomes** and **equality of opportunity**.

Equality of outcomes requires that the results of a measure should be equal. It recognizes that the identical treatment of persons in dissimilar circumstances may have a different effect on already disadvantaged groups and can therefore reinforce inequality because of historical or continuing discrimination. Under this concept, the effects, i.e. the outcomes, as well as the purpose of a measure must be considered.

Equality of opportunity entails that, although individuals may come from different positions of advantage or disadvantage, regardless of this, each individual should have equal opportunity to access the benefits they wish to acquire or pursue.

⇒ Example for formal equality:

Legally providing for identical rights to men and women to stand for elections irrespective of historical social disadvantage in representation.

⇒ Example for equality of outcomes:

Ensuring that temporary quotas are in place to provide for greater representation of women in political parties, and, thus, progressively increasing opportunities for women to participate in political life and to redress systematic under-representation of women.

⇒ Example for equality of opportunity:

Equipping all polling stations with ramps so that persons in wheelchairs have equal opportunities to access polling station in order to exercise the same rights to vote as others.

2.2.2 Non- Discrimination

As outlined in the previous chapter, two international human rights treaties in particular are dedicated to the principle of equality and non-discrimination, namely, the CERD and the CEDAW³⁷. Generically, they state that discrimination shall mean:

“any distinction, exclusion or restriction made on the basis of one or more of the protected statuses, including sex or race, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other fields of life.”

Furthermore, representing a violation of the principle of equal treatment, discrimination can manifest itself in two forms:

- Direct discrimination:** Direct discrimination occurs when a person (or group of persons) is treated less favourably compared to another person (or group of persons). Legal provisions, criteria or practices that result in the different treatment of individuals in similar situations can be said to be direct discrimination.
- Indirect discrimination:** Indirect discrimination occurs when an apparently neutral provision, criterion or practice has a disproportionate effect on a person (or group of persons) based on their belonging to a protected status.

Indirect discrimination emphasizes the impact, or the effect, of certain measures. It recognises that, although it may not be intended, some actions can unjustifiably disadvantage members of vulnerable groups and perpetuate their disadvantaged position in society. In this regard, the concept of indirect discrimination is useful for tackling institutional and less obvious forms of discrimination.

2.3 Testing for Discrimination

To assess whether discrimination has or could occur, the following two-part test can be applied:

- The first part establishes **differing treatment and/or a disproportionate effect**;
- The second, establishes whether the *differing treatment or disproportionate effect* has an **reasonable and objective justification**

1. Has there been differing treatment or a disproportionate effect?

By definition, differing treatment (direct discrimination) and disproportionate effect (indirect discrimination) are comparative and established in relation to another condition. As such, the main method determining whether different treatment has occurred is through comparison. An appropriate comparison must be established between the situation of the alleged victim of discrimination based on their belonging to a protected status, and that of the situation of a **comparator**. In this context, a comparator is an individual or group in a comparable situation, who, however, does not belong to the same protected status as that of the complainant.

⇒ **Example for direct discrimination:**
Providing by law higher levels of social assistance to persons with disability belonging to ethnicity X compared to other persons with the same disability belonging to ethnicity Y.

⇒ **Example for indirect discrimination:**
Requiring that beneficiaries of disability benefits must present themselves in person, on a quarterly basis, to a medical review board irrespective of their mobility limitations based on disability, e.g. the same requirement applies for bedridden persons as well as for persons with hearing impairment.

⇒ **Example:**
As in the direct discrimination example above, the alleged victims of discrimination are persons with disability from ethnicity Y, who receive a lower level of assistance compared to persons with disabilities from ethnicity X (the comparator). The situations are relevant for comparison because they both have the same disability, but do not belong to the same protected status (ethnicity).

³⁷ Article 1 (1) of the CERD and Article 1 of the CEDAW.

⇒ **Example:**

Reasonable and objective may be for example measures necessary for maintaining national security, public safety, the prevention of disorder, crime and the protection of public health.*

* See the example in the Casebox II and III.

2. Can there be a reasonable and objective justification?

According to the ICCPR's General Comment on Non-Discrimination, "not every differentiation of treatment will constitute discrimination if the criteria for such differentiation are reasonable and objective, and if the aim is to achieve a purpose which is legitimate under the Covenant."³⁸

When a case of differing treatment or disproportionate effect has been established, the burden of proof falls to the respondent, i.e. the individual or group who is being accused of applying discriminatory measures, to prove that discrimination has played no part in the differential treatment or disproportionate effect, or that the differing treatment and disproportionate effect are objectively and reasonably justified.

In this regard, it is necessary to examine the purpose and effect of differing or less favourable treatment, which must have an reasonable and objective justification. This means that the measures applied must pursue a legitimate aim, while there must be a reasonable relationship of proportionality between the aim pursued and the means employed. It is only when all of these conditions are met, that differing treatment can be reasonably and objectively justified.

[2.a] Is the aim of the differing treatment legitimate?

The purpose, or **the aim**, of differing treatment must:

- Correspond to an legitimate need for the action or measure that is rationally, and not arbitrarily associated with the action or measure;
- have sufficient importance to warrant differing treatment or effect;
- have nothing to do with discrimination on the basis of a protected status.

[2.b] Are the measures employed proportionate to achieve the aim?

Even if the aim in treating individuals or groups of individuals differently is legitimate, the measures employed to achieve the legitimate aim also need to be **proportionate**.

In this regard, as per international human rights law, restrictions on the rights of individuals or a group of individuals is only permissible as far as is **necessary** to achieve a legitimate aim.

It should be noted that, in order to be proportionate, measures must:

- Be appropriate and necessary to achieve the aim;
- outweigh the overall effect of the differing treatment or disproportionate effect;
- not be achievable by less harmful means;
- only negatively affect the right to the least extent possible.

³⁸ ICCPR, Human Rights Committee, General Comment No. 18: Non-discrimination, Para. 13.



Case box II: Testing for direct discrimination

Two hospital cleaners were hired in 2009: a Roma and a non-Roma. The Roma hospital cleaner receives less pay than her non-Roma colleague.

1. Is there differing treatment? YES

There is differing treatment in relation to pay, as the Roma hospital cleaner is receiving less pay, and can be distinguished by the protected status of “ethnicity”. A relevant comparison can be made between the Roma employee and a non-Roma cleaner in the same working environment.

2. Can the treatment be reasonably and objectively justified? NO

Based on the information available, the Roma worker is treated less favourably than the non-Roma cleaner, though both cleaners are subject to the same work circumstances i.e. they do the same job. Therefore, it appears to be an obvious case of differing treatment.

Is there direct discrimination? YES

Unless it can be demonstrated that the situation or the workers is not comparable, the treatment is discriminatory and no legitimate aim is acceptable.

Alternatively...

If it was established that the non-Roma cleaner is the supervisor of the Roma cleaner, then there would be legitimate differences between their working circumstances, and the difference in pay might be reasonably and objectively justified.



Case box III: Testing for indirect discrimination

For reasons of health and safety, a pastry factory has an employment criterion that no workers who wear beards may be employed. On the basis of this criterion, a male Muslim job applicant who wears a beard for religious purposes is told that he must shave his beard or he will not be considered for a job as a baker.

1. Is there differing treatment? YES

The individual concerned belongs to a religious minority, and the wearing of a beard is an expression of his religious tradition. Therefore, the apparently neutral criterion, applied to all persons equally, has a particular effect on this individual (based on his belonging to a protected status) and it would disproportionately impact persons belonging to this religious minority. However, this measure does not affect the other factory workers, who are not members of the same religious minority. Therefore, the other factory workers would be relevant **comparators**.

2.a. Can the treatment be reasonably and objectively justified? YES

Factory management has a legitimate aim for the criterion applied, namely for reasons of health and safety.

2.b. Are the measures employed proportionate to achieve the aim? NO

There is a proportionally less restrictive way of fulfilling this aim through, for example, a provision that employee's wear an additional mask to cover their beard.

Is there indirect discrimination? YES

Without taking into account less restrictive means to achieve the aim, there can be no objective justification, with the effect of the measure being indirectly discriminatory.

2.4 Forms of Discrimination

2.4.1 Harassment and sexual harassment

Harassment is a form of direct discrimination, and can be defined as unwanted behaviour based on a protected status, with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Employers who are aware of harassment, but fail to take action against it, may be held liable, while certain forms of harassment, including sexual harassment, are subject to criminal action.

2.4.2 Segregation

Segregation can be defined as actions, measures or failures to act by any public or private institution, natural or legal person, which leads to compulsory separation, differentiation or disassociation of persons from other persons, based on their belonging to a protected status.

2.4.3 Instruction to discriminate

An instruction to discriminate against persons on grounds of racial or ethnic origin is deemed to be a form of discrimination. Both the instructor and the individual carrying out his/her instructions considered equally liable.

2.4.4 Victimization

Victimization can be defined as treating an individual less favourably because they have made a complaint of discrimination, are thought to have made such a complaint, or they have supported another individual who has made a complaint of discrimination.

2.5 Differing Treatment not considered Discriminatory

In accordance with international and European human rights standards, certain forms of differing treatment are permissible and are not considered to be discriminatory. However, such measures must be carefully established so that they do not provide loopholes for unjustifiable treatment.

2.5.1 Positive Measures

Positive measures³⁹ are measures taken with the purpose of preventing, remedying or compensating for the effects of past and present disadvantage based on one's belonging to a protected status.⁴⁰

Positive measures may be seen as "preferential treatment", which runs counter to the notion of formal equality. However, they are applied in order to create conditions for substantive equality, thereby addressing underlying structures of inequality.

³⁹ Also termed positive or affirmative action, or special measures.

⁴⁰ In accordance with CERD positive measures should be undertaken, "for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."

⇒ Example for harassment and sexual harassment:

Unwelcome touching, suggestive comments or jokes, requests for sex or sexually explicit physical contact, intrusive questions about a person's private life or body, insults or taunts based on sex or sexual orientation.

⇒ Example for segregation:

Segregating children according to ethnicity and religion, as in the practice of "two schools under one roof".

⇒ Example for instruction to discriminate:

A housing rental agency manager instructs his/her staff not to rent houses to Roma.

⇒ Example for victimisation:

A woman is exposed to retaliation from her supervisor because she reported to management what she believed to be repeatedly aggressed and intimidated by her supervisor.

⇒ Example for positive measures:

- ✓ Setting of quotas and targets, e.g. the hiring of person with disabilities to increase the percentages of the group in the make-up of the workforce;
- ✓ Providing training and support programmes, e.g. capacity building for underprivileged classes to increase qualifications and enable them to compete for a certain leadership post;
- ✓ Targeted recruitment, e.g. by specifically targeting Roma language publications with job advertisements to increase the number of Roma applicants for a certain job.

➔ **Example for reasonable accommodation:**

- ✓ Accommodating deaf students by providing appropriate sign language interpretation and written materials;
- ✓ Ensuring appropriate standards of maternity leave to pregnant employees;
- ✓ Retrofitting public buildings and public transport with ramped entrances or automatic doors to enable access for wheel chair users;
- ✓ Accessible or alternative transportation systems;
- ✓ Technical training aids such as large print manuals;
- ✓ Providing home medical visits to elderly patients.

Such measures can be found in international human rights treaties such as the CEDAW and the CRPD, which strive for the prevention of discrimination and the creation of equal opportunities for women and persons with disabilities. Both categories have been historically discriminated against, and indeed continue to face discrimination in many societies today. Therefore, in such contexts, it is not enough to simply treat them equally, but it is necessary to address generations of inequality through the implementation of positive measures.

As noted by the CERD, positive measures should be:

- Limited in duration and stopped when the purpose of the measure has been attained;
- Created based on reasonable and objective criteria;
- Restricted to achieving the specific purpose for which they have been created.
- Monitored as to their implementation and impact to ensure their aims are proportionately met.

2.5.2 Reasonable Accommodation

Reasonable accommodation refers to any “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.⁴¹

Similar to positive measures, reasonable accommodation stems from the recognition that formal equality and neutral treatment do not always eliminate discrimination or promote substantive equality. Without such measures, where it is reasonable to do so, certain vulnerable groups could be so disadvantaged as to be unable to fully participate in public life. Indeed, failure to accommodate where there is a duty to do so constitutes discrimination in itself.



Questions and exercises:

- [2.1] Divide into smaller groups. Define the individuals or groups in Bosnia and Herzegovina, who in your opinion, may be most vulnerable to discrimination. Give an example in the field of public and private life in which each may be discriminated against. Determine whether this is direct or indirect discrimination.
- [2.2] During the conflict in Kosovo, a married couple and their two young children came to Bosnia and Herzegovina as refugees. Upon the birth of a third child, the parents addressed the SWC seeking one-time support for the mother of the new-born child, as provided for by cantonal regulations for all mothers up to six months after child-birth. However, employees in the SWC reject the request based on the fact that the mother is not a Bosnian citizen. Dividing into smaller groups, discuss: *Is the law discriminatory in limiting the right to social assistance to citizens of the country?*

⁴¹ UN Convention on Rights of Persons with Disabilities (Article 2).

CHAPTER 3 STRATEGIC PLANNING for SOCIAL WELFARE CENTRES

3.1 A Human Rights-Based Approach

The human rights-based approach uses the conceptual and analytical framework of international human rights standards to analyze and address various forms of vulnerability, poverty, inequality, political, social and economic exclusion. These instances are direct violations of human rights, and not to be simply considered a matter of unmet needs, insufficient resources or lacking development of individuals and groups. The human rights approach does not only identify these instances, but also seeks to address them by actions aiming at respecting, protecting and fulfilling human rights.

An important feature of this approach is that it identifies duty-bearers, meaning those who have the obligation to respect, protect and fulfil human rights; and rights-holders, meaning those individuals who are entitled to such rights. In doing so, the human rights-based approach puts increased emphasis on the accountability of duty bearers, and underlines their responsibility to fulfil core obligations and ensure minimum standards in the realisation of economic, social and cultural rights.

The main principles of the human rights-based approach include:

- Effective application of the international and national human rights framework;
- Equality and non-discrimination;
- Identification and prioritisation of the poor and most vulnerable;
- Setting targets, benchmarks and priorities;
- Meaningful participation and empowerment of right-holders in claiming the fulfilment of their rights;
- Monitoring the actions of duty-bearers and their accountability to rights holders.⁴²

Application of the human rights-based approach to the social welfare system entails moving away from the notion that SWCs simply provide assistance or charity to people in need. Rather, SWCs provide, as duty-bearers, services to rights-holders, and are fulfilling the human rights obligations of the state towards the individual. At the same time, this approach can assist social workers in their effort to legitimately demand greater support from the authorities at the municipal, cantonal and entity level so that they may fulfil their obligations.

In order to respond to these responsibilities, SWC employees have to respect human rights standards, values and principles, which must be at the core of their everyday work. In addition, social workers must respect ethical principles of social work which are based on human rights values.⁴³

⁴² See *Rights Based Approaches to Social Protection*, Laure-Hélène Piron, Overseas Development Institute, DFID, September 2004; and *National Human Development Report 2007- Social Inclusion in Bosnia and Herzegovina*, UNDP/IBHI, Sarajevo, 2007.

⁴³ See Annex 1: Ethics in Social Work, Statement of Principles of the International Federation of Social Workers (<http://www.ifsw.org/p38000324.html>).

3.2 A Human Rights-Based Approach to Strategic Planning for SWCs

Considering the extent of the social problems in evidence in Bosnia and Herzegovina today, combined with limitations in resources faced by most authorities, it is crucial that SWCs establish priorities and ensure that all available resources are utilised in the best possible manner. A human rights-based approach to strategic planning therefore represents a useful tool to begin to address such issues, providing a process through which the SWC defines its capacities, determines its own priorities based on need, the goals it seeks to achieve, and the steps and activities that it can realistically undertake within a given time period. In this regard, a strategic plan may be developed for a short-term (e.g. 6 months to one year), mid-term (e.g. two to three years), or longer-term period (five years or more).

Using the framework of human rights in this process means that the goals set in the strategic plan should always seek to attain the progressive realization of rights. Strategic planning should underline the obligations of the SWC as a duty-bearer with regards to realization of human rights and allow the SWC to plan activities which directly address specific instances of non-realisation of human rights.

However, SWCs should not attempt to develop strategic plans in isolation, but do so in cooperation with their respective municipalities. Indeed, an integral part of the strategic planning process is coherence with other development strategies or plans, whether it be at the cantonal, entity or state level. In that sense, the strategic plan of the SWC should take into account existing municipal and/or other relevant development plans.

In the process of human rights-based strategic planning, the role of the SWC is primarily to:

- Initiate the strategic planning process in the area of social protection within the municipality;
- Assume a lead role as an expert social service provider and, as one of the main stakeholders, work together with other partners;
- Monitor and assess the level of realization of social rights, with a focus on vulnerable groups;
- Establish and maintain contacts with vulnerable and socially excluded persons;
- Encourage and support civil society partnerships for the promotion of the equal realization of rights;
- Play a key role in the process of data collection, i.e. outreach and needs-assessment activities;
- Create strategic goals for the progressive realization of social rights of vulnerable individuals and groups.

3.2.1 Steps in the Strategic Planning Process

STEP 1: Preparation

Before developing a strategic plan, the SWC should clarify the following:

- Methodology:** How will the strategic plan be developed? What does the SWC expect the plan to contain? What is the specific goal and what is the time frame of the plan?

- Responsible persons:** What are the roles and responsibilities of each staff member for the development of the plan? There must be a clear understanding of the tasks, and of each staff member's role in the execution of such tasks.
- Timeframe:** How much time can the SWC dedicate to the plan, and within what timeframe should it be completed?
- Budgetary requirements:** Will the SWC require additional financial means to develop the plan? How much, and how will this budget be secured?

STEP 2: Internal analysis of the SWC

An internal analysis of the SWC will typically consist of the following elements:

- Mandate:** Considering its mandate and corresponding legal and human rights obligations, the SWC should examine whether its focus remains relevant in consideration of existing circumstances, i.e. do priorities need to be adjusted to changing circumstances. In this regard, it may be beneficial to ensure that SWC staff is familiar with Bosnia and Herzegovina's international and regional human rights obligations, as well as with domestic legislation pertaining to the obligations of SWCs.
- Management and organizational structure:** An assessment of the SWC's human resources, competencies, internal procedures, reporting lines and monitoring tools.
- Budget resources:** Available financial resources need to be identified.
- Identification of partners:** Consideration of other municipal departments, authorities, civil society organisations, international partners, community groups, etc. that could be involved and provide support in the implementation of activities.
- SWOT analysis:** The SWC should engage in a SWOT analysis, which is a useful technique that assists in highlighting the strengths, weaknesses, opportunities and threats. Strengths and weaknesses will be identified within the existing capacities of the SWC, while opportunities and threats refer to external influences. This analysis should pay particular attention to the human resources of the SWC and should demonstrate whether current staffing levels are adequate to meet the needs of the SWC and its beneficiaries.

STEP 3: Systematic examination of the needs of vulnerable individuals

When applying a human rights-based approach, needs must be identified in terms of rights that are not being fulfilled or are being violated. In this regard, it is necessary to define whose rights are to be examined, namely: those of existing or potential individual beneficiaries of the services of the SWC; or the rights of existing vulnerable groups within the area of responsibility of the SWC.

A needs assessment represents a valuable resource for the development of strategic plans, as it will have substantial influence on the formulation of goals and the design of SWC activities to achieve such goals. Indeed, in those circumstances where a SWC has yet to undertake a needs assessment, this exercise may represent one of those activities to be pursued within its strategic plan.

It should be noted at this stage that various tools can be used in conducting a needs assessment, which will be discussed in detail under Chapter 4.

➔ Example of a SWOT analysis:

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> ✓ Staff members with significant experience ✓ Good cooperation with police and health institutions ✓ Good cooperation with local communities 	<ul style="list-style-type: none"> ✓ Not enough outreach to population, partly due to limited resources ✓ The public has a negative view of the SWC ✓ No significant contact with NGOs
OPPORTUNITIES	THREATS
<ul style="list-style-type: none"> ✓ Mayor supportive of social issues ✓ Cantonal Ministry open to cooperation and support ✓ NGOs active in the area are willing to cooperate 	<ul style="list-style-type: none"> ✓ Implementation of amendments to the law on social protection will increase administrative tasks ✓ Municipality with difficult economic situation

⇒ Example

NON SMART GOAL

“Improve the situation of the Roma population”

- ✓ **not specific** - too general and broad, could include any number of issues
- ✓ **not measurable** - too general to establish realistic indicators that the SWC can monitor
- ✓ **not realistic** - is it within the capacity of SWC to improve the general situation of the Roma population?
- ✓ **not tangible** - too broad to allow planning of specific activities that can have concrete outcomes

SMART GOAL

“Identify potential beneficiaries of social assistance within the local Roma community”

- ✓ **specific** - addresses only a section of the population, focusing on the most vulnerable
- ✓ **measurable** – according to a specific indicator, e.g. the number of beneficiaries for social assistance, progress can be monitored
- ✓ **realistic** - seeks to address one portion of the issues affecting the Roma community, not tackle all problems
- ✓ **tangible** - allows specific activities to be planned (e.g. contact Roma NGOs, visit Roma communities, conduct needs assessment, evaluate vulnerable cases, register each claim for assistance)

STEP 4: Formulation of strategic goals and definition of concrete activities to achieve such goals

An assessment of internal capacities, external partners and existing needs will allow the SWC to determine goals that should correspond to the human rights obligations of the SWC, and help to address the gaps in the realisation of such obligations.

⇒ **Goals should be SMART**

Specific: Goals developed should be focused, reasonably specific, and should clearly illustrate what the SWC intends to achieve.

Measureable: Goals must be measurable; specific indicators and benchmarks⁴⁴ should be developed, so as to clearly assess successes and failures.

Attainable and Realistic: Goals must be realistic and in line with the existing human, material and financial resources of the SWC.

Tangible: On achievement of a goal, there should be a real and demonstrable outcome.

⇒ **Activities**

Planned activities should clearly contribute to the realisation of goals. Adopting such an approach will lead to the development of well considered activities that are reasonable and justified and not arbitrarily chosen. This approach can also play a critical role in ensuring acceptance of activities by the funding authorities, potential partners, and beneficiaries themselves.

In the pursuit of activities, the roles and responsibilities of social workers and all other participants should be clearly defined, with an identified specific time line for implementation. However, the time frame should also be realistic and correspond with identified needs and resources.

⇒ **Resources**

On establishment of goals and activities, the strategic plan must also provide an estimation of the resources (including financial, material and human) that will be required for their effective implementation, taking into account the means by which resources can be attained, whether through municipal or Ministerial funding, or shared costs and tasks with partners.

STEP 5: Establishment of mechanisms for monitoring and evaluation

The final step in the process of strategic planning entails a continual assessment of completed tasks and an evaluation of implemented activities compared to the stated plan. Such continuous evaluation requires measuring the quality and quantity of changes that have occurred, and should be based on established indicators, benchmarks, procedures and methodologies.

And aside from a final overall evaluation, a mid-term review should also be conducted so that the SWC can identify its successes and failures, and thereby revise or adjust on-going activities, thus improving the strategic plan and indeed all future strategic plans.

⁴⁴ Indicators and benchmarks are tools to monitor progress made. Indicators are measurements that signal whether activities are on target to reach a pre-determined benchmark or goal. Benchmarks are pre-determined milestones used as check points to monitor progress towards achieving a goal.

A Sample Social Welfare Centre Strategic Plan:

I INTRODUCTION

Brief summary of the plan, including its purpose and pertinent background information;
Overview of the development process of the plan

II SWC MANDATE & VALUES

Mandate of the SWC;
Values the SWC is applying throughout its work: e.g. professionalism, equality and non-discrimination, human right principles, prioritization of vulnerable groups & individuals

III SITUATION ANALYSIS

Internal analysis of the SWC (structure, human, material and financial resources, SWOT);
External analysis (short description of the area of responsibility (AoR), socio-economic situation, identified vulnerable groups, existing and potential partners)

IV GOALS, ACTIVITIES AND INDICATORS

General Aims;
Specific Goals (SMART);
Corresponding activities (outlined for each specific goal);
Indicators to measure achievements (for each activity and goal);
Identification of partners to be engaged in the implementation of activities

V MONITORING AND EVALUATION

Monitoring procedures and mechanisms;
Establishment of benchmarks and indicators;
Reporting procedures and time lines;
Pre-determined periods for review and possible adjustment of the strategic plan

VI CRITICAL ASSUMPTIONS

Possible risks;
Possible ways to overcome any risks identified

3.2.2 Benefits of strategic planning

- ❑ **Reflection and self-examination:** The strategic planning process should enable SWCs to examine their capacities as well as deficiencies, and to recognize and prepare for obstacles and opportunities. It also provides an opportunity to consult on the most effective utilisation of human resources within the SWC, while allowing it to identify the required funds that will permit implementation of planned activities.
- ❑ **Internal communication and motivation:** The planning process keeps the SWC staff informed of challenges the institution is facing. Further, it should create a sense of ownership through effective participation in the planning process, and should assist staff in understanding, adjusting to and accepting the strategic goals of the SWC.
- ❑ **Management mechanism:** In the planning process, management decides on the direction and strategic goals of the SWC, in addition to establishing priorities and optimal activities to be implemented in the short, medium and long-term. Management also identifies specific means for the co-ordination of policies and activities, while the framework developed provides justification for funds to be allocated according to prioritized activities.
- ❑ **Examination of the environment:** Planning will require a systematic examination of the environment in which the SWC is operating, and can represent an opportunity for dialogue with interested partners, other public service departments and institutions, donors, policy makers, etc.
- ❑ **Participation and empowerment:** The planning process should not only involve the management and staff of the SWC, but also rights-holders, donors, volunteers and partners. It requires the mutual responsibility of all participants in taking ownership of the process and realizing those activities that have been agreed upon.
- ❑ **Basis for advocacy with other authorities:** A strategic plan can play a crucial role for the SWC when requesting support, whether financial or otherwise, from municipal, cantonal or entity authorities. A well-developed and participatory strategic plan can provide the SWC with the clear and viable justifications it needs, including an objective examination of the limitations and capacities of the SWC and a clear presentation of its needs.



Questions and exercises:

- [3.1] What challenges might SWC's face in the process of implementing human rights-based strategic planning, taking into consideration the social protection system in Bosnia and Herzegovina, limited resources, and existing management structures and monitoring mechanisms?
- [3.2] What experiences do you have in overcoming such challenges? Where do you see the benefits in applying this approach?
- [3.3] How can a SWC best be included in the development of a municipal plan for social protection?
- [3.4] How would you define the mutual relationship between activities and goals?
- [3.5] What do you believe should be SWC-specific strategic development directions? What could be a common strategic direction that all SWCs could take in their development?
- [3.6] Prepare a SWOT analysis based on the experiences of your SWC (to be conducted in small groups).
- [3.7] Prepare an example of SMART goals that you could establish for your SWC (to be conducted in small groups).
- [3.8] Discuss the effects that strategic planning may have on budgetary planning.

CHAPTER 4 OUTREACH AND NEEDS ASSESSMENT

4.1. The Role of the SWC in Monitoring and Assessing Social Needs

In fulfilling its mandate as a provider of social services, one of the basic duties of the SWC is to monitor and assess the degree to which social rights are being realised within its area of responsibility. Monitoring and assessing the social needs of vulnerable individuals and groups within its area of responsibility will enable the SWC to:

- Clearly identify areas where social human rights are not being fulfilled;
- Provide comprehensive data in a systematic way that can support policy formulation;
- Ensure the competent planning of programmes and activities, and the effective targeting of vulnerable individuals and groups;
- Prioritise the most vulnerable individuals and groups in consideration of the limited resources of SWCs;
- Enhance communication between the SWC and other relevant stakeholders within the social protection system, and strengthen the SWC's position in requesting additional resources;

Activities in outreach, monitoring and needs assessment target two inter-related categories:

- a. **vulnerable individuals**, for whom activities aim to identify the root causes for their needs and to specify the methods by which to provide assistance to them;
- b. **vulnerable groups**, who have specific needs and characteristics, for example, returnees, internally displaced persons, families with children, the elderly, national minorities and persons with disabilities.

4.1.1 Assessment of Individual Needs

STEP 1: Identification of potential rights-holders

The SWC may identify potential rights-holders in the following ways:

- Upon requests and statements made by individuals in need;
- Upon requests made by family members, friends, neighbours, representatives of an organization, local community representatives, a volunteer, or indeed any citizen who can recognize an existing need;
- Ex-officio* through self-initiated outreach activities.

The process of identification can therefore be facilitated through enhanced outreach activities and more specifically through continuous communication between social workers and different actors within the local community. Therefore, municipal officials, police, health care officials, education professionals, MZs, non-governmental organizations and citizen's associations can alert the SWC to identified cases. Furthermore, the dissemination of adequate and accessible information within the community is crucial to ensure that potential rights-holders are well informed of their rights and the available services through the SWC. Due

consideration should however be given to dissemination of this information; the characteristics and capacities of the targeted groups should be taken into account. For example, while posting information on a municipal website may be a positive step, it will not be helpful for those potential beneficiaries that are not computer literate or do not have internet access. Similarly, posting information on municipal notice boards may not benefit those living in remote rural areas.

STEP 2: First contact and registration

⇒ Registration of each claim

Each claim must be registered by the SWC, even in those cases where, due to limited capacities, the SWC may not be able to immediately fulfil a positively assessed claim. The registration of such cases will ensure that there is a record of persons whose rights are not fulfilled by the SWC, which can be used for future planning of activities, as well as for appropriate forecasting and requests for additional budget allocations. However, even in those cases where further assessment illustrates that claimants are not eligible for assistance, registration will nonetheless be of use as it can provide information regarding public understanding of the role of SWCs, as well as alert the SWC to possible abuses of the social protection system.

⇒ Disclosure of full information

On initial contact, a beneficiary should be fully informed of his/her rights, the institution and its work, the person assigned to his/her case, as well as any other individuals or institutions a party to the process.

It is also important that a social worker establish good rapport with a beneficiary, allowing for the clarification of roles and responsibilities for all sides, the achievement of mutual agreement and understanding on the best course of action, the setting of realistic goals, and the possibility to adjust or change an arrangement. A main consideration throughout this process should be the empowerment of the beneficiary; no solutions should be imposed on them, but they should rather be supported towards gradually taking on responsibility and realising their own potential to improve their condition.

In cases where a claim is not submitted by the potential beneficiaries themselves, it is the duty of the SWC to inform them immediately of the information received and to include them, as outlined above, in all stages of the assessment process. In this regard, the beneficiary's consent must be manifest, clear and uninfluenced. However, should he or she refuse the assistance offered by the SWC, it is necessary to inform them of any consequences that this may have, as well as of any possible alternatives.

STEP 3: Compilation of information and intervention planning

Aside from examining all relevant aspects of an individual's background, an important goal of any needs assessment is to empower the rights-holder to use his/her potential, as well as any suitable community resources. Therefore, social workers need to obtain as complete information as possible in the following areas:

- The nature of the social problem;
- The role of the beneficiary and other relevant persons in his/her environment in creating or continuing the problem;

- Additional factors in the beneficiary's environment that have contributed to the creation of the problem and its continuance;
- The beneficiary's capacities, resources and strengths, which he/she may use in solving particular difficulties and improving his/her situation;

Based on this analysis, the SWC should prepare an individual assistance plan, which contains the following:

- Activities to be undertaken by the SWC (social services, interventions, etc.);
- Tasks and activities to be undertaken by the beneficiary;
- The inclusion of other suitable actors and duty-bearers (for example, specialist support for the physical or mental health of the beneficiary, social protection institutions, education professionals, etc.);
- Specific time-frame for the realization of activities;
- Specific indicators for monitoring the implementation of the plan and activities;
- A time-frame for revision.

The aim of an individual assistance plan is to ensure that the rights-holder ultimately becomes self-sufficient and does not remain dependent on social assistance, but uses the assistance received to assert his/her independence over time. The SWC must therefore identify the capacities of the person and of their environment and social network, and work towards empowering the individual to take control of his/her own progress and life.

4.1.2 Assessment of Social Needs of Vulnerable Groups

SWCs are required to monitor and assess the situation of vulnerable groups, such as single headed households, the elderly, the disabled, children with special needs, families with a history of violence, national minorities, refugees, displaced persons and returnees, amongst others. And as these groups face common limitations in the fulfilment of their social rights, comprehensive policies are required to address their specific needs.

The methodology to be applied in the process of monitoring and assessing the fulfilment of social rights within a local community depends on several factors, not least the size of the municipality, the number of residents, the scale of development of its institutional system, and available community resources, amongst other things. It will generally be easier to conduct a needs assessment and build mechanisms for continuous monitoring within smaller communities, while particular attention may be required for remote and isolated communities. Additionally, it is important to define and establish procedures that ensure the effective flow of information and co-ordination amongst all stakeholders.

In larger municipalities, it is recommended to form a team within the SWC (a commission or a group), which would have the specific responsibility to define, coordinate and implement the process to be undertaken.

STEP 1: The preparation phase

As the needs assessment of vulnerable groups is a rather complex activity, it is of particular importance that the process is adequately planned and takes into account the following factors:

- ❑ **Select personnel within the SWC:** Suitable personnel within the SWC should be selected and a team or a group established with specific tasks and responsibilities regarding the needs assessment. Specialised training of SWC staff and other partners who will conduct the needs assessment may also need to be considered.
- ❑ **Utilise human rights standards in establishing targets:** The staff involved should have a clear understanding of Bosnia and Herzegovina's human rights commitments, how these translate into specific obligations at the national level, and most particularly as it concerns the work of the SWC. In addition they must consider the national legal framework and the human rights standards and protection that it establishes. This can help clarify the specific aspects to be examined in the needs assessment and provide a basis against which the fulfilment of rights can be measured.
- ❑ **Ensure adequate background information:** Social workers need to be made aware of any historical or other factors that have, or have had, an influence on the social and economic status of a local population. This could include demographics, migration developments, economy, culture, the self-identification of communities (for example, Roma or other minority), amongst other factors.
- ❑ **Specify the target groups for the needs assessment:** It is important that SWCs have a clear understanding and/or awareness of socially excluded groups within their area of responsibility. And in preparation of a needs assessment, the SWC must decide whether a particular vulnerable group is to be targeted, or a defined section of the general population. This will depend on the established priorities of the SWC, its capacities, as well as the specific objectives of the needs assessment to be undertaken.
- ❑ **Setting goals and objectives:** The SWC must define the objectives of the exercise, taking into account available human and material resources, and the identification of a specific timeframe.
- ❑ **Communicating goals and objectives:** The SWC should inform those communities to be consulted as comprehensively as possible as to the objectives of the needs assessment. In addition, all partners participating in the exercise, other relevant stakeholders, local government and decision-makers, must be informed in detail of the activities to be pursued. The latter are particularly important should it be necessary to secure additional funds or adopt specifically tailored programmes on completion of the needs assessment.

STEP 2: The implementation phase

Prior to conducting a needs assessment, it must be established what specific data is to be collected, how it is to be stored, and what post-analysis will be required. In this regard, a data-base represents perhaps the most useful tool, allowing the cross referencing of information based on specific criteria.

Useful tools for conducting needs assessments include:

- ❑ **Surveys or questionnaires:** Representing perhaps the most straight forward tool for gathering information, they are particularly suited for conducting needs assessments in small communities. Within larger communities, such surveys will typically have to be conducted with a representative sample of the population. However, the SWC may also choose to conduct surveys within specific groups, such as Roma, female-headed households, or returnee communities, to assess their particular situation.
- ❑ **Mail-in surveys:** Sent to home addresses, these are relatively inexpensive, though SWCs should be aware that they

may be less reliable than face-to-face interviews. Their obvious advantage is that they can address a large section of the population in a relatively short period of time.

- Interviews:** These provide direct contact and an interactive exchange of questions and answers. However, beyond personal meetings, interviews can also be conducted by phone and within a specific target group.
- Formation of focus groups:** Focus groups can be composed of representatives of particular groups to discuss their specific needs, establish priorities and facilitate communication.
- Citizen public forums:** These have the benefit of gathering all citizens of a local community together to discuss their needs, express opinions, make suggestions and define their priorities in terms of required services.

In preparing a needs assessment, it is important to be aware of the advantages and disadvantages of the above-mentioned tools, as well as in how far they are appropriate for specific target groups. For example, mail-in surveys may be inappropriate for a target group that may include a number of illiterate persons. Therefore, in many cases, it may be required to use a combination of tools, dependent on the characteristics of the target group.

STEP 3: Analysis and update of collected data

⇒ Analysis and disaggregation of data

To analyse collected data, a unique classification system of social needs, problems and social protection rights needs to be developed beforehand. This classification system should be applied in a standardized manner by all stakeholders including SWCs, statistical departments, competent ministries and other institutions monitoring the status and possible developments in the field of social protection. Furthermore, data should be stored in a unified database accessible to all participating stakeholders.

Although the development of a centralised database will not be possible in every instance, this should not deter SWCs from collecting and disaggregating information, and thereafter storing it by the most appropriate means possible. For this purpose simpler programming may be used, that will not require high technical skills.

However, regardless of how information is to be stored, it is essential that it is disaggregated based on relevant categories such as, for example, gender, age, ethnicity, and social status, so that it can thereafter be easily assessed for particular vulnerabilities of specific groups and targeted activities/interventions can be identified.

⇒ Data protection

It is important to create and apply standardised rules regarding access to collected information to guarantee confidentiality, including identification of those individuals and authorities who should have access, as well as the establishment of varying levels of access for different users.

⇒ Continuous monitoring and updating of data

To ensure that a SWC is regularly updated on the socio-economic situation within its area of responsibility, it is necessary to undertake needs assessment activities on a consistent basis to allow for the update of collected data and to verify whether activities of the SWC are having the desired impact. It will also help to identify for the SWC where further intervention is required.



Case box I:

SWC “A” undertook the project “Social-Economic Map” under the Local Economic Development Program of the municipality. The project used a standardized questionnaire and collected information on household income, employment, displacement, health and housing, amongst other things. The SWC established a partnership with a local NGO that assisted in the realization of field visits, while support was also provided by the municipality and the competent Ministry. The project represented part of a bigger municipal project, which helped ensure the support of the municipality. It also involved local community representatives, while information was provided to the public through local radio, websites and a brochure. The assessment resulted in the identification of approximately 670 new beneficiaries who, as a consequence of this exercise, were able to receive various types of assistance from the SWC. It also resulted in the establishment of new standard procedures, based on which local community representatives will provide regularly updated information to the SWC. Additionally, the exercise resulted in the establishment of a municipal coordination body, involving various public institutions, so as to ensure a regular exchange of information.



Case box II:

The cantonal Ministry for Social Protection initiated a basic needs assessment exercise, which included all municipalities within the canton and was conducted by the SWC staff in cooperation with community representatives, religious communities, schools, police and NGOs. The SWCs used their professional staff in addition to interns for this exercise. SWC staff visited individuals and households thought to possibly be in need, as well as all local MZs. Further to this, they consulted all relevant sources of information, including local police, schools, medical institutions and religious communities regarding individuals in need, and those known to not be receiving any form of social assistance. The primary guiding document used to establish criteria in the identification of vulnerable individuals was the Cantonal Law on Social Protection and Protection of Families with Children. All interviewed persons were informed of the process, the potential social benefits they may have been eligible for, and how their information would be further utilised. By the activities end, more than 2,000 new beneficiaries were identified in thirteen municipalities.

4.2 Important Considerations when Conducting Monitoring, Outreach and Needs Assessment

⇒ **The significance of social networks in the needs assessment process**

For any needs assessment, social networks⁴⁵ are of paramount importance as they can provide important 'localised' information, while verifying already gathered information. Indeed, they take on an added significance for SWCs of limited resources, where it is not possible to personally interview each individual case of concern. In such situations, social networks, including local community or neighbourhood representatives and local associations, can provide much of the information required. Furthermore, social networks can play a very significant role in alerting the SWC to the non-fulfilment of social rights of vulnerable individuals or groups. It is therefore very important for the SWC to maintain regular and productive communication with as many actors within a respective social network as possible.

⇒ **Development of partnerships within the local community and among different stakeholders, sectors and levels of government**

The SWC should present the social needs of vulnerable individuals and groups with the intention of motivating and persuading responsible stakeholders to participate in social interventions and influence policy planning and implementation. Social workers can, for example, initiate and establish different self-help groups or associations to address common concerns. They can also offer specific expertise and empower other stakeholders to assume responsibilities regarding the development of social services. SWCs should also co-ordinate activities with other relevant stakeholders to avoid duplication of effort, and to increase the access to, and scope of, social services available. The adoption of these approaches, amongst others, will assist the SWC in developing into a more relevant and multi-functional institution in the area of social protection.

Working in partnership with local communities, NGOs and other interested institutions brings many advantages, and most particularly to communities of limited resources. Such advantages can include:

- Rational use of existing resources;
- Facilitation of information exchange;
- Creation and development of new services;
- Strengthening the ownership of civil society and local communities of activities in the field of social protection;
- Increased number of individuals securing access to social protection services;
- Creation of pre-conditions for the development of an exclusively needs-based social protection system.

⇒ **Development of a mixed model of social protection**

The development of mixed model of social protection should be considered by all social welfare authorities, as it envisages close cooperation and shared responsibilities between public authorities, civil society and the private sector in the development of initiatives for the benefit of vulnerable individuals and groups.

⁴⁵ It should be noted that two forms of social networks have been identified. The first refers to the micro-social network, which includes an individual's social environment, incorporating the people and relationships within his/her immediate family, neighbourhood and friends. The surrounding school, work and social institutions environment then represents an individual's macro-social network.

If well-planned and coordinated, such an approach can help to create increased resources and opportunities for the development and delivery of social services. However, certain pre-conditions would need to exist for this to function effectively, including community awareness of existing social challenges, an active civil society, and an interested private sector. The mixed model also requires that mechanisms exist within a community to enable effective participation of all citizens, that there is suitable access to funds, and that there is a continuous promotion of good practices in this field.



Questions and exercises:

- [4.1] What specific activities of outreach could the SWCs undertake without having to depend on additional financial resources?
- [4.2] Have you had experience in implementing a needs assessment? What were your experiences in this regard, i.e. positive or negative?
- [4.3] With which partners do you currently co-operate that could also be helpful to you in conducting needs assessment? Would you consider that your SWC is utilizing their full potential?
- [4.4] What are the most common limitations you are faced with in organizing a needs assessment? What ways can you think of to overcome such difficulties?
- [4.5] What type of strategy would you pursue to advocate for (additional) support from higher level authorities to conduct (increased) outreach activities and needs assessment?
- [4.6] How would you advocate for the development of a mixed-social protection system in your area of responsibility? What are the advantages and challenges of a mixed social protection system?

CHAPTER 5 ADVOCACY

5.1 Advocacy

Advocacy can be defined as activities that promote change through the influencing of political, economic and social conditions, and that aim to create a shift in power relations and decision-making processes that will lead to the creation of opportunities and conditions allowing for the meaningful participation of those who are directly affected by the negative condition(s).

In the context of social welfare, advocacy can be understood to be the process of raising and directing local communities' attention to important existing challenges in the area of social protection, and directing decision-makers towards solutions and changes to achieve social justice.

Advocacy activities should take into consideration the following principles:

- Articulation** of the existing problems and issues by those directly affected;
- Meaningful participation and empowerment** of those directly affected. It is useful to create a wide range of allies and supporters who can contribute to achieving advocacy goals;
- Responsibility** to society and the socially marginalized or excluded;
- Visibility and Transparency** of advocacy activities: actions undertaken should be open, communicated to the public, and made accessible to citizens.

5.2 Advocacy in the Context of the Work of the SWC

SWCs should apply the human rights-based approach in their advocacy efforts, ensuring that their efforts are understood to be legitimate demands made to governmental authorities to fulfil their human rights obligations in accordance with their national, European and international human rights commitments.

For example, in advocating for a mixed model of social protection, SWC activities will be primarily aimed at attracting the attention of governmental institutions at the municipal, cantonal and entity level, NGOs, and the private sector, on the need to strengthen the system of social protection, to enhance the development of SWC activities, and to promote the inclusion of socially vulnerable individuals and groups.

More specific examples of SWC advocacy efforts could entail the following:

- Address in writing competent authorities at municipal, cantonal or entity level, perhaps in cooperation with other SWCs, regarding deficiencies in relevant **legislation** and/or problems concerning its implementation, and advocate for specific changes;
- Present verified data, which is based on the result of a needs assessment of vulnerable individuals or groups, to advocate with responsible authorities at local, cantonal or entity level for suitable **funding to adequately respond to identified social needs;**

- Present a fact-based report to municipal authorities regarding inadequate **staffing and material resources**, and advocate for improved resources based on these facts;
- Undertake **continuous follow-up** with authorities on persistent issues of concern. Advocating on any given issue once, whether in writing or otherwise, will typically not be sufficient to promote the desired change. It is therefore necessary to regularly raise such issues with the relevant authorities to ensure that they are well understood and acted upon;
- Lead public campaigns** to raise awareness on poverty, social exclusion and the specific needs of vulnerable individuals and groups so as to change perceptions and allow the public to understand that unmet social needs can only be understood in terms of unfulfilled human rights.

Partnerships in advocacy

The development of partnerships is of key significance in the advocacy process, entailing that a message can be reinforced when advocated for by more than one source or stakeholder, as it then represents a wider section of the community, and can increase pressure on the decision and policy-makers.

Moreover, organizations working in partnership can combine resources and thereby increase the level of collective capital available. Additionally, partnerships can lead to improved access to information, allowing for a more co-operative environment, which in turn decreases the level of risk that may have to be endured by individual organisations. Those within a partnership will also typically have different expertise and will compliment the capacities of others within the cooperative, thereby avoiding an overlap in effort and activities. Furthermore, the partnership approach has the potential to develop responsibility within the community, through increased interaction and cooperation towards common goals, of which all stakeholders take ownership.

Indeed, for advocacy purposes, SWCs should actively seek partnerships with other public institutions, including, for example, other SWCs, cantonal Ministries, schools, health centres, police, as well as civil society organizations and private actors who have an interest in enhancing the social protection sector.

Creating partnerships for the purpose of advocacy, and most particularly with representative associations of vulnerable groups, allows SWCs to take a more pro-active approach towards marginalised communities. This may also help to reduce any possible decrease in confidence vulnerable communities may have toward local authorities, and combat instances of indirect discrimination.



Case box I:

A SWC can work in partnership with a returnee association in advocating for additional funds to meet the social needs of an increasing number of beneficiaries within a local returnee community. The association can support the SWC in providing up-to-date information on the socio-economic status of the returnee population that could in turn save valuable SWC resources, which may have otherwise been necessary to undertake a comprehensive needs assessment. At the same time, the association improves its insight into the specific problems of the returnee community, and can facilitate contact between the community and the SWC. Based on a report concerning the social situation of the community, the SWC and the returnee association could undertake joint advocacy activities to lobby with the municipal authorities for the allocation for increased financial means to fulfill the social rights of the returnee population.



Questions and exercises:

- [5.1] Give examples of particular issues in your AoR where you see the need for advocacy. How would you present the issues and to which authorities? How would you ensure continuous follow-up?
- [5.2] With which authorities or civil society actors within your area of responsibility could you cooperate with regarding advocacy efforts? How would you prioritise advocacy goals?
- [5.3] If you have already undertaken advocacy activities, what challenges did you face in doing so, and how did you overcome them?

ANNEXES

ANNEX 1

Signature and Ratification of International Conventions by Bosnia and Herzegovina		
Convention	Signature	Ratification
International Covenant on Civil and Political Rights (1966)		01.09.1993 (Succession)
Optional Protocol to the International Covenant on Civil and Political Rights (Communications) (1966)	01.03.1995	01.03.1995
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (1989)	07.09.2000	16.03.2001
International Covenant on Economic, Social and Cultural Rights (1966)		01.09.1993 (Succession)
<i>Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)</i>		
Convention on the Rights of the Child (1989)		01.09.1993 (Succession)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)	07.09.2000	10.10.2003
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)	07.09.2000	04.09.2002
Convention on the Elimination of All Forms of Discrimination against Women (1979)		01.09.1993 (Succession)
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)	07.09.2000	04.09.2002
International Convention for the Elimination of all Forms of Racial Discrimination (1965)		16.07.1993 (Succession)
The Convention on the Rights of Persons with Disabilities (2006)	29.07.2009	In process
Optional Protocol to the Convention on the Rights of Persons with Disabilities	29.07.2009	In process
The Convention against Torture and Other Criminal, Inhumane or degrading treatment or punishment (1984)		01.09.1993 (Succession)
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002)	07.12.2007	24.10.2008
International Convention relating to the Status of Refugees (1951)		01.09.1993 (Succession)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)		13.12.1996 (Accession)
European Convention for the Protection of Fundamental Human Rights and Freedoms (1950) and Optional Protocols (14)	24.04.2002	12.07.2002
The European Social Charter Revised (1961/1996)	11.05.2004	07.10.2008
Additional Protocol to the European Social Charter (1988)	no	no
Protocol amending the European Social Charter (1991)	no	no
Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (1995)	no	no
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)	12.07.2002	12.07.2002
Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1993) (not optional)	12.07.2002	12.07.2002
Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1993) (not optional)	12.07.2002	12.07.2002
Framework Convention for the Protection of National Minorities (1995)		24.02.2000 (Accession)

ANNEX 2

Ethics in Social Work, Statement of Principles

International Federation of Social Workers (IFSW), International Association of Schools of Social Work (IASSW)

1. Preface

Ethical awareness is a fundamental part of the professional practice of social workers. Their ability and commitment to act ethically is an essential aspect of the quality of the service offered to those who use social work services. The purpose of the work of IASSW and IFSW on ethics is to promote ethical debate and reflection in the member organisations, among the providers of social work in member countries, as well as in the schools of social work and among social work students. Some ethical challenges and problems facing social workers are specific to particular countries; others are common. By staying at the level of general principles, the joint IASSW and IFSW statement aims to encourage social workers across the world to reflect on the challenges and dilemmas that face them and make ethically informed decisions about how to act in each particular case. Some of these problem areas include:

- The fact that the loyalty of social workers is often in the middle of conflicting interests.
- The fact that social workers function as both helpers and controllers.
- The conflicts between the duty of social workers to protect the interests of the people with whom they work and societal demands for efficiency and utility.
- The fact that resources in society are limited.

This document takes as its starting point the definition of social work adopted separately by the IFSW and IASSW at their respective General Meetings in Montreal, Canada in July 2000 and then agreed jointly in Copenhagen in May 2001 (section 2). This definition stresses principles of human rights and social justice. The next section (3) makes reference to the various declarations and conventions on human rights that are relevant to social work, followed by a statement of general ethical principles under the two broad headings of human rights and dignity and social justice (section 4). The final section introduces some basic guidance on ethical conduct in social work, which it is expected will be elaborated by the ethical guidance and in various codes and guidelines of the member organisations of IFSW and IASSW.

2. Definition of Social Work

The social work profession promotes social change, problem solving in human relationships and the empowerment and liberation of people to enhance well-being. Utilising theories of human behaviour and social systems, social work intervenes at the points where people interact with their environments. Principles of human rights and social justice are fundamental to social work.

3. International Conventions

International human rights declarations and conventions form common standards of achievement, and recognise rights that are accepted by the global community. Documents particularly relevant to social work practice and action are:

- Universal Declaration of Human Rights
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic Social and Cultural Rights

- The Convention on the Elimination of all Forms of Racial Discrimination
- The Convention on the Elimination of All Forms of Discrimination against Women
- The Convention on the Rights of the Child
- Indigenous and Tribal Peoples Convention (ILO convention 169)

4. Principles

4.1. Human Rights and Human Dignity

Social work is based on respect for the inherent worth and dignity of all people, and the rights that follow from this. Social workers should uphold and defend each person's physical, psychological, emotional and spiritual integrity and well-being. This means:

1. Respecting the right to self-determination - Social workers should respect and promote people's right to make their own choices and decisions, irrespective of their values and life choices, provided this does not threaten the rights and legitimate interests of others.
2. Promoting the right to participation - Social workers should promote the full involvement and participation of people using their services in ways that enable them to be empowered in all aspects of decisions and actions affecting their lives.
3. Treating each person as a whole - Social workers should be concerned with the whole person, within the family, community, societal and natural environments, and should seek to recognise all aspects of a person's life.
4. Identifying and developing strengths – Social workers should focus on the strengths of all individuals, groups and communities and thus promote their empowerment.

4.2. Social Justice

Social workers have a responsibility to promote social justice, in relation to society generally, and in relation to the people with whom they work. This means:

1. Challenging negative discrimination* - Social workers have a responsibility to challenge negative discrimination on the basis of characteristics such as ability, age, culture, gender or sex, marital status, socio-economic status, political opinions, skin colour, racial or other physical characteristics, sexual orientation, or spiritual beliefs.

**In some countries the term "discrimination" would be used instead of "negative discrimination". The word negative is used here because in some countries the term "positive discrimination" is also used. Positive discrimination is also known as "affirmative action". Positive discrimination or affirmative action means positive steps taken to redress the effects of historical discrimination against the groups named in clause 4.2.1 above.*

2. Recognising diversity – Social workers should recognise and respect the ethnic and cultural diversity of the societies in which they practise, taking account of individual, family, group and community differences.
3. Distributing resources equitably – Social workers should ensure that resources at their disposal are distributed fairly, according to need.
4. Challenging unjust policies and practices – Social workers have a duty to bring to the attention of their employers, policy makers, politicians and the general public situations where resources are inadequate or where distribution of resources, policies and practices are oppressive, unfair or harmful.
5. Working in solidarity - Social workers have an obligation to challenge social conditions that contribute to social exclusion, stigmatisation or subjugation, and to work towards an inclusive society.

5. Professional conduct

It is the responsibility of the national organisations in membership of IFSW and IASSW to develop and regularly update their own codes of ethics or ethical guidelines, to be consistent with the IFSW/ IASSW statement. It is also the responsibility of national organisations to inform social workers and schools of social work about these codes or guidelines. Social workers should act in accordance with the ethical code or guidelines current in their country. These will generally include more detailed guidance in ethical practice specific to the national context. The following general guidelines on professional conduct apply:

1. Social workers are expected to develop and maintain the required skills and competence to do their job.
2. Social workers should not allow their skills to be used for inhumane purposes, such as torture or terrorism.
3. Social workers should act with integrity. This includes not abusing the relationship of trust with the people using their services, recognising the boundaries between personal and professional life, and not abusing their position for personal benefit or gain.
4. Social workers should act in relation to the people using their services with compassion, empathy and care.
5. Social workers should not subordinate the needs or interests of people who use their services to their own needs or interests.
6. Social workers have a duty to take necessary steps to care for themselves professionally and personally in the workplace and in society, in order to ensure that they are able to provide appropriate services.
7. Social workers should maintain confidentiality regarding information about people who use their services. Exceptions to this may only be justified on the basis of a greater ethical requirement (such as the preservation of life).
8. Social workers need to acknowledge that they are accountable for their actions to the users of their services, the people they work with, their colleagues, their employers, the professional association and to the law, and that these accountabilities may conflict.
9. Social workers should be willing to collaborate with the schools of social work in order to support social work students to get practical training of good quality and up to date practical knowledge
10. Social workers should foster and engage in ethical debate with their colleagues and employers and take responsibility for making ethically informed decisions.
11. Social workers should be prepared to state the reasons for their decisions based on ethical considerations, and be accountable for their choices and actions.
12. Social workers should work to create conditions in employing agencies and in their countries where the principles of this statement and those of their own national code (if applicable) are discussed, evaluated and upheld.

The document “Ethics in Social Work, Statement of Principles” was approved at the General Meetings of the International Federation of Social Workers and the International Association of Schools of Social Work in Adelaide, Australia, October 2004
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