Step 5: Examine Policy Processes

Monitoring[1] the right to education involves not only assessing policy efforts but also analysing the extent to which the process of elaboration, implementation and evaluation of these policies[2] has been undertaken in accordance with cross-cutting human rights principles, such as participation.

This step will help you assess, using a special category of process indicators,[3] the compliance of your country with these procedural human rights principles throughout the policy cycle[4] of the education policies you identified in Step 3.[5]

For a comprehensive and human rights-based monitoring exercise, it is necessary to examine both policy efforts and policy processes. If you have limited resources you may decide to forgo this step but you should make this explicit in your report.

Contents:

Using the *Indicators Selection Tool*

The *Indicators Selection Tool*[6] has an entire criterion devoted to policy processes. Please select the human rights principle you wish to monitor under *Policy Processes and Governance*.

When monitoring policy processes you do not need to make selections for the other criteria as this is a standalone criterion.

This step provides guidance for using policy process indicators. Please refer to the relevant section below for specific guidance on each human rights principle.

5.1 Accountability

In a lot of countries, many of the lasting problems in the delivery of education – unequal access to schools, poor quality, chronic teacher absenteeism, endemic corruption – are related to weak accountability mechanisms.

Rights imply duties, and obligations - to be effective - require accountability mechanisms. Human rights law can be used to hold governments – the primary duty-bearer[7] of human rights – accountable for avoidable deprivations and inequalities of education outcomes.

As part of your monitoring effort, you may want to assess the key accountability mechanisms that affect the full realisation of the right to education, including:

Inspection system within the education sector

Under international law, States are obliged to "establish and maintain a transparent and effective system which monitors whether or not education is, in fact, directed to the educational objectives set out in article 13 (1)" (Committee on Economic, Social and Cultural Rights *General Comment 13*: Para.49). In addition all education provided by private actors must conform to State-approved minimum standards and the State must maintain a transparent and effective system to monitor such minimum standards (CESCR *General Comment 13*: Para.54). For these reasons, most countries have oversight mechanisms within

the education sector, enabling the Ministry of Education to assess the availability, accessibility, acceptability and adaptability[8] of its services, as well as its impact on the population. In evaluating the extent to which this type of system is effective in holding schools, teachers and school principals accountable for their performance, you may look at the following issues:

- Is there a school inspection system?[9]

- Is the school inspection system adequately staffed?

- Do inspectors have adequate training and qualifications?

- Do inspectors receive human rights training?

- Do inspectors spend enough time in each school in order to provide effective evaluation?

- How often do supervisors visit each school?[10]

- Do inspection guidelines meet the aims of education?[11]

- Are private schools subject to inspection by the State?

- Is there a body that monitors private education?[12]

- Has the State set or approved minimum educational standards applicable to private educational institutions?[13]

- Do the findings of monitoring and evaluation have an impact on policy reform and programme implementation?

Complaint mechanisms

Most countries have complaint mechanisms that allow individuals to file complaints if they feel that their right to education has been violated. These complaint mechanisms, typically a human rights commission, an ombudsman or a Parliamentary Committee, provide an institutionalised process through which duty-bearers can be held accountable in relation to their duties, and right-holders[14] can demand a remedy for human rights violations.

To assess the extent to which existing complaint mechanisms in your country serve as an effective means for accountability regarding violations of the right to education, you may want to analyse the following issues, using the *Indicators Selection Tool:*[15]

- The number of administrative complaints on the right to education[16] would indicate the extent to which the complaint mechanisms are being used.

- The percentage of right to education complaints resolved within a given time frame may indicate whether the procedure is efficient and timely.

- A comparison of the number of complaints received by the oversight institution(s), the number investigated, the number substantiated by investigation and the number of sanctions for staff and / or redress for the citizens involved. The proportion of received complaints on the right to education that have been investigated by an administrative body[17] would demonstrate the extent to which the institution has effective enforcement powers.

- The extent to which the public has readily accessible information about the existence and procedures related to complaint mechanisms.

- You could also assess the extent to which the oversight institutions responsible for handling complaints meet certain minimum conditions[18] to be able to hold the government and civil servants accountable for violations of the right to education.

Judicial accountability

In countries where the right to education has been recognised in the constitution or in legislation and is justiciable,[19] courts can play a key role in holding governments to account. (If the right to education is not formally recognised and redress is not possible, then this is evidence of a lack of accountability.)

The number of legal cases that have been brought under these provisions is one indicator of their effectiveness, as is the number of court cases on educational rights.[20] However, it is important to bear in mind that these numbers are not always due to the effectiveness of courts at holding governments to account. They could be due to: better investigative techniques, increased confidence in the judicial system that has led more people to report abuses, an increase in cases that have been brought against certain political opponents, or other factors. At the same time, a major factor influencing judicial accountability is the degree of judicial independence.[21] Therefore, beyond looking at the number of cases brought to courts under provisions related to the right to education, it is also necessary to examine the proportion of court cases on the right to education that have been adjudicated against the State.[22] You may also want to look at how and if court judgements are effectively enforced.

5.2 Transparency

Access to information is essential to enable people to exercise their human rights. Without relevant, timely and accurate information, right-holders[23] cannot know which services they are entitled to, what the costs are (if any), which complaint mechanisms exist to seek redress when their right to education is violated, etc. For instance, without clear and easily accessible information about a school scholarship programme, parents may not know whether their children are eligible for a programme that may be their only means to afford to send their children to school.

Transparency is also the backbone of accountability. The efforts of civil society organisations and the media to hold governments accountable for the provision of quality education can be significantly undermined without regular access to government documents, data and

records. For instance, lack of access to adequate budget data[24] makes it harder to hold a government accountable for policies that are supposed to address inequalities in education.

In order to evaluate whether the education policy / programmes you are monitoring are adequately transparent, you may examine the following indicators, amongst others:

- Public availability of information on education produced by the State: Is the education data gathered by the State publicly available?[25] Does the State body responsible for monitoring the education system produce regular and publicly available reports on the state of education?[26]

- Service provision: Are there transparent procedures for the hiring process of teachers and for contracts / tenders for education services?[27]

- Criteria for targeted programmes: Are the criteria used to select the schools or children that benefit from targeted programmes publicly available?[28]

- Budgetary information: Is there public access to key public financial documents related to education?[29]

- Legislation on access to information: Is there a freedom of information law? Are the provisions of this law adequate to comply with the human rights principle of transparency?[30]

5.3 Participation

Public participation in the design, implementation and monitoring of education policies is a fundamental human right. Underlying this principle is the basic idea that rights-holders[31] should be active agents, rather than passive recipients. Public participation also helps to strengthen the acceptability and adaptability[32] of education, allowing the government to know more about the concerns, needs and preferences of different groups.

As part of your monitoring effort, you may assess the extent to which the public is encouraged to participate at all stages of the education policy cycle.[33]

The *Indicators Selection Tool*[34] includes a number of indicators designed to analyse the extent to which a wide range of education policies adopted by the government are adequately participatory. These include:

- Are there any established mechanisms that enable parents, children and / or community leaders to work with the school staff in carrying out school self-assessments and developing school improvement plans?

- Are there any established mechanisms that enable parents, children and / or community leaders to contribute to defining school curricula and other parts of the learning process, and to making decisions on the school environment?[35]

- Are there established mechanisms to enable parents, children and community leaders to contribute to the formulation and / or implementation of strategies to identify out-of-school children, to encourage school attendance and to reduce drop-out rates?[36]

- Are there established mechanisms to enable parents, children and community leaders belonging to minorities to contribute to ensuring that education takes their needs into account?[37]

- Are measures taken to enhance parents' understanding of the importance of their children's early education?[38]

- Are there effective mechanisms to ensure that civil society organisations are consulted when national educational policies and legislations are agreed upon and multilateral or bilateral agreements that have an effect on the right to education are negotiated?[39]

- Do civil society organisations face obstacles set by the State when monitoring the right to education?[40]

Furthermore, in order to evaluate whether the various participatory mechanisms set up by the government regarding these education policy / programmes are adequately participative, you may examine the following:

- **Inclusiveness:** To what extent were the mechanisms set up by the government for participation in the formulation of the policy / plan inclusive, allowing different groups of the population - especially traditionally excluded or marginalised groups – to actively participate in the various stages of the policy cycle?

- **Informed participation**: Did the government provide the necessary information to the public -through means that they can actually access[41] - about key aspects of the education policy / programme (eg the scope of the problem it's trying to address, its objectives and time-bound goals, intended beneficiaries, the resources available, etc) to enable informed participation?

- **Impact of participation**: To what extent were the inputs from various stakeholders[42] taken into account? What was actually incorporated into the policy / plan and subsequently implemented?

Endnotes: Step 5: Examine Policy Processes

[1] **Human rights monitoring** is the process of collection and verification of information on human rights problems. For more details on monitoring the right to education, see Right to Education Project's page on *Monitoring*: *http://www.right-to-education.org/page/monitor*

[2] **Education policies** are the set of actions, laws, regulatory measures, and funding priorities on education adopted by a government.

Strictly speaking laws and policies are distinct: laws are a system of rules that regulate behaviour, and are usually enforceable in courts; whilst policies are informal and set out a government's major objectives, defining the government's priorities and strategies to achieve its goals.

Education policies and laws are the primary means by which the right to education is implemented at the national and sub-national level.

[3] **Process indicators** measure the various types of State efforts (such as: education policies, education inputs, budget allocation, and programmes and measures to address specific education issues) undertaken in order to realise and implement the right to education.

[4] **Policy cycle** refers to the different phases of the policy-making process. Typically, these involve:

1. Problem definition (ie the recognition of certain issue as a public problem demanding government attention)
2. Policy-formulation
3. Implementation
4. Evaluation

[5] See Step 3 of the *Monitoring Guide*, available to download here: *http://www.right-to-education.org/monitoring/guide/step-3-analyse-educational-laws-policies-their-implementation*

[6] Access the *Indicators Selection Tool*, here: *www.right-to-education.org/monitoring/tool*

[7] **Duty-bearers** are those actors who have a particular obligation or responsibility to respect, promote and realise human rights and to abstain from human rights violations. The term is most commonly used to refer to State actors, but non-State actors can also be considered duty-bearers. An obvious example is private armed forces or rebel groups, which under international law have a negative obligation to refrain from human rights violations. Depending on the context, individuals (eg parents), local organisations, private companies, aid donors and international institutions can also be duty-bearers.

Source: UNICEF *Gender Equality - UN Coherence and You – Glossary*: p.1: *http://www.unicef.org/gender/training/content/resources/Glossary.pdf*

[8] For further information on the 4As Framework, developed by Katarina Tomaševski, see:

- The Right to Education Project (2001) *Project Primer 3: Human Rights Obligations: Making Education Available, Accessible, Acceptable and Available*: *http://www.right-to-education.org/resource/primer-no-3-human-rights-obligations-making-education-available-accessible-acceptable-and*
- Committee on Economic, Social and Cultural Rights (1999) *General Comment 13: The right to education (Article 13)*: *http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR_General_Comment_13_en.pdf*: Para.6.

[9] For more information on the indicator 'Is there a school inspection system?,' see: *http://www.right-to-education.org/monitoring/content/there-school-inspection-system*

[10] For more information on the indicator 'Frequency of inspection visits,' see: *http://www.right-to-education.org/monitoring/content/frequency-inspection-visits*

[11] Aims of Education – Article 29 of the *Convention on the Rights of the Child* (1989):

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

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;
(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
(e) The development of respect for the natural environment.

For further information, see *Convention on the Rights of the Child*: *http://www.right-to-education.org/resource/convention-rights-child* and Committee on the Rights of the Child (2001) *General Comment 1: Article 29 (1): The Aims Of Education*: *http://www.right-to-education.org/resource/crc-general-comment-1-article-29-1-aims-education*

[12] For more information on the indicator 'Is there a monitoring body controlling whether minimum educational standards are met in private schools?,' see: *http://www.right-to-education.org/monitoring/content/there-monitoring-body-controlling-whether-minimum-educational-standards-are-met-private*

[13] For more information on the indicator 'Are there minimum educational standards applicable to non-government schools?,' see: *http://www.right-to-education.org/monitoring/content/are-there-minimum-educational-standards-applicable-non-government-schools*

[14] **Rights-holders** are individuals or social groups that have particular entitlements in relation to specific duty-bearers. In general terms, all human beings are rights-holders under the Universal Declaration of Human Rights.

In particular contexts, there are often specific social groups whose human rights are not fully realised, respected or protected. More often than not, these groups tend to include women and girls, ethnic minorities, indigenous peoples, and migrants and youth.

A human rights-based approach not only recognises that the entitlements of rights-holders need to be respected, protected and fulfilled, it also considers rights-holders as active agents in the realisation of human rights and development – both directly and through organisations representing their interests.

Source: UNICEF *Gender Equality - UN Coherence and You – Glossary*: p.5.

[15] *Idem* 6

[16] For more information on the indicator 'Number of administrative complaints on the right to education,' see: *http://www.right-to-education.org/monitoring/content/number-administrative-complaints-right-education*

[17] For more information on the indicator 'Proportion of received complaints on the right to education that have been investigated by an administrative body,' see: *http://www.right-to-education.org/monitoring/content/proportion-received-complaints-right-education-have-been-investigated-administrative-body*

[18] In order to function effectively, oversight institutions such as human rights commissions, ombudspersons and parliamentary committees, should adhere to the following minimum conditions:

- Be completely independent of the government.
- Possess wide-ranging investigative powers.
- Be properly resourced and provide cost-free service to complainants.
- Be accessible both geographically, through local offices, and electronically.
- Be accountable and report to parliament.

Source: Beetham, D (2006) *Parliament and democracy in the twenty-first century: A guide to good practice*. Geneva: Inter- Parliamentary Union: *http://www.ipu.org/PDF/publications/democracy_en.pdf*: p.76.

[19] For further information, see the Right to Education Project's page on the *Justiciability of the Right to Education*: *http://www.right-to-education.org/issue-page/justiciability*

[20] For more information on the indicator 'Number of court cases on the right to education,' see: *http://www.right-to-education.org/monitoring/content/number-court-cases-right-education*

[21] To find data on level of judicial independence in your country, see CIRI *Human Rights Data Project:* *http://www.humanrightsdata.com/p/data-documentation.html*

[22] For more information on the indicator 'Proportion of court cases where it has been determined that there has been a violation of the right to education,' see: *http://www.right-to-education.org/monitoring/content/proportion-court-cases-where-it-has-been-determined-there-has-been-violation-right-education*

[23] *Idem* 14

[24] A study on the education budget in Bangladesh found that allocations to different sub-districts were not published despite being relatively easy to generate from government accounting systems. This made it impossible to correlate this data with other information about the sub-districts in order to assess the equity of public spending.

Source: A-Samarrai, S (2008) *Governance and education inequality in Bangladesh*, UNESCO (2009/ED/EFA/MRT/PI/34): *http://unesdoc.unesco.org/images/0018/001800/180086e.pdf*

[25] For more information on the indicator 'Is the education data gathered by the State publicly available?,' see: *http://www.right-to-education.org/monitoring/content/education-data-gathered-state-publicly-available*

[26] For more information on the indicator 'Does the State body responsible for monitoring the education system produce regular and publicly available reports on the state of education?,' see: *http://www.right-to-education.org/monitoring/content/does-state-body-responsible-monitoring-education-system-produce-regular-and-publicly*

[27] For more information on the indicator 'Are there transparent procedures for the hiring process of teachers and for contracts / tenders for education services?,' see: *http://www.right-to-education.org/monitoring/content/are-there-transparent-procedures-hiring-process-teachers-and-contractstenders-education*

[28] For more information on the indicator 'Are the criteria used to select the schools or children that benefit from targeted programmes publicly available?,' see: *http://www.right-to-education.org/monitoring/content/are-criteria-used-select-schools-or-children-benefit-targeted-programmes-publicly-available*

[29] For more information on the indicator 'Is there public access to key public financial documents related to education?,' see: *http://www.right-to-education.org/monitoring/content/there-public-access-key-public-financial-documents-related-education*

[30] As a yardstick to assess the extent to which the existing legislation on freedom of information in your country is adequate for complying with the human rights principle of transparency, you can use the 'Principles on Freedom of Information Legislation', drafted by ARTICLE 19, an international human rights organisation with a specific mandate and focus on the defence and promotion of freedom of expression and freedom of information worldwide.

- Principle 1 – *Maximum disclosure:* Freedom of information legislation should be guided by the principle of maximum disclosure.
- Principle 2 – *Obligation to publish:* Public bodies should be under an obligation to publish key information
- Principle 3 – *Promotion of open government:* Public bodies must actively promote open government.
- Principle 4 – *Limited scope of exceptions:* Exceptions should be clearly and narrowly drawn and subject to strict "harm" and "public interest" tests.
- Principle 5 – *Processes to facilitate access:* Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available.
- Principle 6 – *Costs:* Individuals should not be deterred from making requests for information by excessive costs.
- Principle 7 – *Open meetings:* Meetings of public bodies should be open to the public.
- Principle 8 – *Disclosure takes precedence:* Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed.
- Principle 9 – *Protection for whistleblowers*: Individuals who release information on wrongdoing – whistleblowers – must be protected.

Source: ARTICLE 19 (1999) *Principles on Freedom of Information Legislation:* *https://www.article19.org/data/files/pdfs/standards/righttoknow.pdf*

[31] *Idem* 14

[32] *Idem* 8

[33] One may distinguish four stages of participation: preference revelation; policy choice; implementation; and monitoring, assessment and accountability.

1. **Preference revelation**: The initial stage of any policy formulation. Before policies can be formulated, people must be able to express what objectives they want to achieve.

2. **Policy choice**: The stage at which policies are formulated and decisions taken regarding the allocation of resources amongst alternative uses. As different patterns of resource allocation will serve the interests of different groups of people differently, conflicts of interest are inherent in any process of policy formulation. In whose favour a conflict is resolved depends very much on who can participate effectively in the process. Traditionally, people living in poverty and other marginalised groups are left out, as they do not have enough political or financial power to make their interests count. A human rights approach must take steps to alter this situation, by creating a legal-institutional framework in which people living in poverty can participate effectively in policy formulation.

3. **Implementation:** Although the implementation of policies is primarily the responsibility of the executive arm of the State, opportunities must be created to enable persons living in poverty to exercise their right to participate in it as well.

4. **Monitoring and Assessment**: It is an essential feature of the human rights approach that the people who are affected by policies are able to participate in monitoring and assessing their success or failure and then

take part in the procedures for holding the duty-bearers accountable for their human rights obligations. Appropriate institutional arrangements are needed for such participation to be possible.

Source: Adapted from Office of the High Commissioner for Human Rights (2006) *Principles and Guidelines on a Human Rights-based Approach to Poverty Reduction Strategies*: *http://www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf p.15.*

[34] *Idem* 6

[35] For more information on the indicator 'Are there any established mechanisms that enable parents, children and / or community leaders to contribute to defining school curricula and other parts of the learning process, and to making decisions on the school environment?,' see: *http://www.right-to-education.org/monitoring/content/are-there-any-established-mechanisms-enable-parents-children-andor-community-leaders*

[36] For more information on the indicator 'Are there established mechanisms to enable parents, children and community leaders to contribute to the formulation and / or implementation of strategies to identify out-of-school children, to encourage school attendance and to reduce drop-out rates?,' see: *http://www.right-to-education.org/monitoring/content/are-there-established-mechanisms-enable-parents-children-and-community-leaders-contribute*

[37] For more information on the indicator 'Are there established mechanisms to enable parents, children and community leaders belonging to minorities to contribute to ensuring that education takes their needs into account?,' see: *http://www.right-to-education.org/monitoring/content/are-there-established-mechanisms-enable-parents-children-and-community-leaders-belonging*

[38] For more information on the indicator 'Are measures taken to enhance parents' understanding of the importance of their children's early education?,' see: *http://www.right-to-education.org/monitoring/content/are-measures-taken-enhance-parents%E2%80%99-understanding-importance-their-children%E2%80%99s-early*

[39] For more information on the indicator 'Are there effective mechanisms to ensure that civil society organisations are consulted when national educational policies and legislations are agreed upon and multilateral or bilateral agreements that have an effect on the right to education are negotiated?,' see: *http://www.right-to-education.org/monitoring/content/are-measures-taken-enhance-parents%E2%80%99-understanding-importance-their-children%E2%80%99s-early*

[40] For more information on the indicator 'Do civil society organisations face obstacles set by the State when monitoring the right to education?,' see: *http://www.right-to-education.org/monitoring/content/do-civil-society-organisations-face-obstacles-set-state-when-monitoring-right-education*

[41] Uploading information online may help urban literate people, but would be of little use to rural or illiterate parents.

[42] **Stakeholders** are all those who can affect your desired change, as well as those who are affected by it.