

# The Incorporation of a Human Rights-based Approach in Kosovo's Regulatory Framework for Higher Education and its application in Higher Education Institutions





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## Executive summary

This study was carried out within the framework of the HERAS project, an Austrian Development Agency (ADA) project supporting Kosovo in the field of higher education and research. The study aims to familiarize educational stakeholders with relevant policies and regulations in the field of higher education in Kosovo from a human rights perspective. The study looked into human rights dimensions and principles inherent to a human rights-based approach vis-à-vis Kosovo's higher education policy and legal framework and its application in higher education institutions. For this purpose, the relevant legal framework was analysed, starting with the Constitution of the Republic of Kosovo, the basic laws regulating education, administrative instructions regulating operations and accreditation of Kosovo's higher education institutions, programmes and university statutes. At the same time, strategic plans of six public universities were analysed and a survey was carried out with the management and staff of public universities in order to assess the level of application of legal provisions at universities from a human rights perspective.

On the part of legal framework, legal documents can be divided in two groups - depending on the way human rights dimensions and principles are reflected and incorporated: Firstly, there are legal documents that provide for *affirmative action with the ultimate aim to achieve equity*. This includes the Kosovo Constitution as well as the Accreditation Manual of the Kosovo Accreditation Agency. These two documents foresee the possibility of affirmative action in order to ensure equality based on the needs of individuals or specific vulnerable groups. Secondly, there are legal documents that do not explicitly provide for affirmative action, but rather include and refer to certain human rights principles and dimensions, including the Law on Higher Education (2011) and administrative instructions of the MEST regulating higher education. These documents aim at ensuring equality for all but follow a "one-size-fit-all" approach. This group of documents apply a thematic approach towards human rights, addressing issues and dimensions such as gender equality, scholarships and equal participation in higher education.

In the latter group, there appears to be a relatively restricted approach where certain human rights principles and dimensions are being addressed, but a systematic and genuine human rights-based approach is missing. This refers in particular to addressing specific needs of vulnerable groups including through affirmative action, instead of the current "one-size-fits-all" approach.

Overall, human rights are not consistently and systematically mainstreamed throughout all legal documents. Instead, human rights - as well presented as they may be in some documents - are in practice restricted to some aspects rather than providing an overall pro-active and dynamic framework reflected and applied coherently throughout the Law.

This study concluded that there is a need for a more systematic human rights-based approach, providing also for affirmative action in higher education where/as needed. This approach should be based on the spirit and principles of the Kosovo Constitution and the above-mentioned Accreditation Manual. At the same time, the Human Rights Centre in the University of Pristina and the Institute of Rule of Law and Human Rights Studies in the University of Peja could serve as resource centres and focal points to further strengthen educational research, promotion and capacity building in the field of human rights at universities and beyond.

## I) Introduction

The idea for this review came from the HERAS workshop on applying a human rights-based approach in higher education, held in April 2019. The main objectives of the workshop were as following:

- To **understand how HERAS aims a.) to mainstream human rights into different aspects of higher education** and b.) to **foster the Social Dimension of Higher Education** of the Bologna Process in Kosovo; and c.) to review the **progress made** so far in these fields within HERAS;
- To **understand main challenges in implementing a HRBA** in the higher education sector in Kosovo and **identify possible solutions**;
- To **be able to identify possible roles of Higher Education Institutions to promote human rights in society**.

MEST representatives delivered a presentation on human rights dimensions in the legal framework of Kosovo's higher education system, providing a brief description and overview of the main documents. The organisers saw the presentation as an excellent basis to further expand on in order to obtain a fuller picture on the presence (or lack) of a human rights-based approach in the legal framework regulating higher education in Kosovo. For that purpose, HERAS organised a desk review of the legal framework regulating higher education in Kosovo. The current report presents the main findings of this research.

The main goal of this review was to explore human rights dimensions and aspects reflecting a human rights-based approach in the higher education policy and legal framework in Kosovo and their application in higher education institutions. Furthermore, this review aimed at familiarizing relevant stakeholders with relevant policies and regulations in the field of higher education in Kosovo from a human rights perspective.

The key objectives of this review were to:

- Analyse key documents of the legal framework regulating higher education in Kosovo in order to assess the extent to which a human rights-based approach is applied in them.
- Compare the approach applied in various legal and sub-legal documents in regulating higher education issues and the possible application of a human rights-based approach and the Social Dimension of Higher Education in line with the Bologna process.
- Identify the best ways to make up for possible gaps in the current legal framework in order to strengthen a human rights-based approach in Kosovo's higher education system.

In line with the above objectives, the review tried to find answers to the question if the legal framework regulating Kosovo higher education reflect the basic values and principles of human rights and if a human rights based approach is applied in regulating the academic life in the given institutions.

## Background

The current analysis is not the first study related to the application of a human rights-based approach in Kosovo's higher education system:

The HigherKos<sup>1</sup> project carried out a research<sup>2</sup> in 2014-2015 on the level of implementation of the principles of the Social Dimension of Higher Education in line with the Bologna Process in Kosovo. The research included a desk study of the national policies and practices and carried out in-depth focus groups on topics inherent to the Social Dimension with higher education authorities, institutions, teaching staff, students, and CSOs active in higher education and community issues. The research found significant efforts and a number of good practices by Kosovo education authorities and higher education institutions. However, it was found that **there is a need for a more systematic and coherent approach in Kosovo's higher education system to better meet the needs of underrepresented groups, including by developing a strategic plan** to foster the implementation of the Social Dimension of Higher Education of the Bologna system in Kosovo (HigherKos, 2015).

Another research using an **online survey** was carried out by the HERAS team, exploring different aspects of the application of a human rights based approach at higher education institutions in Kosovo, addressing teaching staff, administrative/management staff as well as students of public universities (small sample, May 2018). The survey found that human rights aspects in teaching, research, management/administration are not systematically addressed and don't fall under the responsibility of a specific department in most of the cases. The majority of respondents also believe that students of all disciplines should have the opportunity to attend an introductory course on human rights. 72,97% of respondents stated that there are some capacities for mainstreaming human rights into teaching, curricula and research. 21% of respondents indicated that there may be a legal framework in place providing for human rights, but they are not personally aware of it. Available courses with human rights as main contents include courses on international human rights law (Gjilan, Peja) and humanitarian law (Gjilan).

HERAS also commissioned and supported a study on "Mainstreaming human rights in curriculum Development"<sup>3</sup> at the University of Pristina.

The research has shown that human rights are not reflected coherently and systematically in all study programs offered by the academic units of the University of Pristina. As evidenced by the facts, the study programs of technical and natural science faculties do not address human rights aspects overall, but instead incorporate ethics as a component or parameter as defined in this research. Whereas, in social science programs, medicine, agriculture and veterinary and education, human rights issues are addressed to some extent but also not in a systematic and coherent way.

Within social science studies, human rights are addressed in two different ways – either as main subject/content or as a cross-cutting issue. For illustration, at the Faculty of Law, human rights are dealt as main content and include human rights instruments foreseen by the legal framework in Kosovo (for instance for ensuring equality), whereas in the programs of the Faculty of Philosophy and Education, aspects of human rights are dealt, for example, at the level of advocacy, prevention and awareness raising (Loxha, 2018).

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<sup>1</sup> A project in support of higher education and research in Kosovo, supported by the Austrian Development Agency that preceded the HERAS project.

<sup>2</sup> <http://www.wus-austria.org/files/docs/Report%20Social%20Dimension%20Kosovo%20final%2014072015.pdf>

<sup>3</sup> The study was authored by Mr. Besnik Loxha, Director of Office for Academic Development at the UP.



## Methodology

This review is based on a desk research and a tailor-made survey, addressing management and staff in public universities to assess the level of application of a human rights-based approach in the legal documents regulating the higher education sector in Kosovo (see Annex 3). The review aimed to identify human rights related content in the overall legal framework guiding higher education in Kosovo on the one side, and for the application of a human rights-based approach (i.e. human rights principles) in regulating various academic/artistic and scientific issues in the higher education system and institutions in Kosovo, on the other side. Another aspect dealt with during the review was directed towards the nature of the legal interventions: namely, to find out if the legal provisions provide for affirmative action that would make up for existing gaps between different target groups in order to finally achieve *equity*, or solutions that aim for *equal* measures for all regardless of their current situation. To illustrate this, the Kosovo Constitution (Art. 22) provides for “*positive measures that ensure equity before the law for groups that are underrepresented or in unequal position,*” unlike some administrative instructions that do not provide for such positive measures for specific target groups based on their current situation and needs (as is the case with the Administrative Instruction on student assistance (AI 14/2017).

For the purpose of the review of **the legal framework**, the following documents were reviewed:

- The Constitution of the Republic of Kosovo
- The Law on Higher Education and the Law on Promoting the Rights of Community Members in Kosovo
- Twenty-one MEST Administrative Instructions regulating the sub-sector of higher education
- The Accreditation Manual of the Kosovo Accreditation Agency
- Three strategies in the field of education, communities, and repatriation of returnees
- University statutes and individual regulations of six public universities.

The review was followed by an assessment **of the application of legal provisions** guiding higher education institutions. For this purpose, strategic development plans of six public universities were scanned to see the presence of human rights based approach in the foreseen strategic measures and activities; regulations and procedures of the six universities were analysed to assess the level of application of the human rights based approach in them.

Finally, interviews were carried out with members of management and teaching staff (focusing on those being more active in the field of human rights) in these universities aiming to look into the presence or lack of practices and examples illustrating the application of a human-rights based approach at these universities. A survey was designed for this purpose (based on the initial online survey administered by HERAS in 2017) referring to human rights aspects in curriculum development, teaching practices, research and the institutional set-up of universities. The survey was distributed to three persons in every public university: one vice-rector, one member of staff and to the coordinator of the quality assurance office in every university. Thirteen respondents sent their answers back to the HERAS office. With three of the respondents, follow-up interviews were carried out to obtain additional information on the aspects provided.

## II) Theory and key concepts

“A human rights-based approach is about **empowering people to know and claim their rights** and increasing the **ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling rights**”. According to the Finnish UNICEF Committee guidelines for NGO-s, HRBA “*is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.*” (Unicef Finland, 2015)

A human rights-based approach is based on the following principles (acronym **PANEL**<sup>4</sup>):

- **P**articipation
- **A**ccountability
- **N**on-discrimination and equality
- **E**mpowerment and
- **L**egality.

A Human Rights Based Approach

- Emphasizes **processes** and **outcomes**
- Draws attention to **marginalized populations**
- Works towards **equitable service delivery**
- Extends and **deepens participation**
- **Ensures local ownership** of development processes
- **Strengthens accountability** of all actors

According to the UNESCO/UNICEF “*The right to education has long been recognized as encompassing not only access to educational provision, but also the obligation to eliminate discrimination at all levels of the educational system, to set minimum standards and to improve quality.*” (UNICEF, 2007) The authors of the document also point out the importance of education for the fulfilment of any other civil, political, economic or social right.

Closely related to the more global term of a human rights-based approach is the concept of the Social Dimension of Higher Education of the Bologna Process. The current understanding of the Social Dimension of the Bologna Process was formulated in 2007 in the London Communique of the Ministers<sup>5</sup> (EHEA, 2007):

*“We share the societal aspiration that the student body entering, participating in and completing higher education at all levels should reflect the diversity of our populations. We reaffirm the importance of students being able to complete their studies without obstacles related to their social and economic background. We therefore continue our efforts to provide adequate student services, create more flexible learning pathways into and within higher education, and to widen participation at all levels on the basis of equal opportunity.”*

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<sup>4</sup> For more information on the human rights-based approach and its principles, see for example <http://www.ennhri.org/Applying-a-Human-Rights-Based-Approach>

<sup>5</sup> Ministers of European countries responsible for higher education were meeting in a regular ministerial summit in London as part of the Bologna Process.



## Human Rights Framework in Kosovo

The rights contained in the UDHR and other international human rights instruments including the right to education are made directly applicable in Kosovo by Art 22 of the Constitution. These are the ECHR and its Protocols, the ICCPR, the CoE Framework Convention for the Protection of National Minorities, the ICERD, CEDAW, CRC and UN CAT. This article is related to Article 47 (on the right to education) and 59 (on the community rights to education), which lay the grounds for the full application of a human rights based approach in Kosovo education in general, and in the higher education system in particular. The Kosovo Constitution provisions go beyond a mere presence and application of human rights in the Kosovo education system, since they provide for: *equal opportunities to education for everyone in accordance with their specific abilities and needs* (2008, p. Art. 47). The same spirit is found in provisions regulating academic freedom, scientific research, and artistic work (Art. 48) and Art. 59 on community rights in education. This approach to providing for equal opportunities and positive measures / affirmative action based on individual needs instead of collective measures confirmed in Article 24 [Equality Before the Law], which foresees the possibility of positive measures that ensure equity before the law for groups that are underrepresented or in unequal position: *“Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.”* (2008, p. Art. 24)

This approach by the Kosovo Constitution laid the grounds for a full application of the spirit and concrete provisions of the international instruments on human rights in specific levels and segments of education in Kosovo. This report aims to show the level to which the Kosovo’s legal framework in higher education has met this ambitious requirement stipulated in the Kosovo Constitution. The methodology section above shows the policies/documents reviewed in the process of this research that constitute the legal basis of the higher education sector and institutions in Kosovo.

### III) Presentation and discussion of results

This section summarizes the results of the review of the legal framework of Kosovo in the field of higher education. It focuses on the analysis of human rights related provisions and principles in the key documents regulating the higher education system and institutions in Kosovo. For this purpose, the key legal documents and a number of strategic documents were reviewed.

#### Constitution of the Republic of Kosovo<sup>6</sup>

As outlined in the theory section of this review, entire chapters (2 and 3) of the Constitution of the Republic of Kosovo (The Constitution further in this document) are dedicated to fundamental rights and freedoms. Applicability of international agreements and instruments (Article 22) takes a prominent position among the articles of the Kosovo Constitution, together with the right to education (Article 47) and community rights in the field of education (Article 59, Items 1, 2, 3, 4, 5, and 14).

Below the most relevant constitutional provisions that guarantee equality and rights in the field of education are presented.

Article 22 [Direct Applicability of International Agreements and Instruments] foresees a number of international instruments, including the following instruments applicable and relevant to the education sector such as the (1) Universal Declaration of Human Rights; (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; ... (4) Council of Europe Framework Convention for the Protection of National Minorities; ... (6) Convention on the Elimination of All Forms of Discrimination Against Women; and the (7) Convention on the Rights of the Child.

Looking at the provisions of one of these instruments, namely the European Convention on Human Rights (The Council of Europe, 1950), it can be seen that the Kosovo Constitution applies a very advanced approach in safeguarding human rights in education. While the European Convention on Human Rights refers<sup>7</sup> to the right to education **in general** and for **all persons** and to the right of parents to provide education to **their children**, the Kosovo Constitution refers to **individual abilities and needs** and to **academic freedom and to rights to scientific / artistic work**.

The same spirit of the Kosovo Constitution is reflected in other dimensions. For instance, Article 24 [Equality Before the Law], in Par. 3 provides for **positive measures** that ensure **equity** before the law for **groups that are underrepresented or in unequal position**:

*“3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled (2008, p. Art. 24).”* Although not directly related to education, this provision adds to the affirmative action in an important area of life of the people in Kosovo, but also ensures for equity in treating all issues (including education) before the courts of law in Kosovo.

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<sup>6</sup> <http://kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>

<sup>7</sup> “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

There is number of other articles of the Constitution that directly or indirectly regulate human rights and a human rights-based approach in higher education in Kosovo: Article 47 [Right to Education] states that: *1. Every person enjoys the right to free basic education. Mandatory education is regulated by law and funded by public funds. 2. Public institutions shall ensure equal opportunities to education for everyone in accordance with their specific abilities and needs* (2008, p. Art. 47).” This general provision and its spirit are further extended to include higher education and scientific research / artistic work, in the next Article 48 [Freedom of Art and Science] stating that: *“1. The freedom of artistic and scientific creativity is guaranteed. 2. Academic freedom is guaranteed* (2008, p. Art. 47).”

An important segment of the rights to education, namely the community rights, are addressed specifically in Article 59 [Rights of Communities and their Members], giving a prominent place to education among the community rights in the Kosovo society.

This Article provides that “Members of communities shall have the right, individually or in community, to:

- (1) express, maintain and develop their culture and preserve the essential elements of their identity, namely their religion, language, traditions and culture;
- (2) receive public education in one of the official languages of the Republic of Kosovo of their choice at all levels;
- (3) receive pre-school, primary and secondary public education, in their own language to the extent prescribed by law, with the thresholds for establishing specific classes or schools for this purpose being lower than normally stipulated for educational institutions;
- (4) establish and manage their own private educational and training establishments for which public financial assistance may be granted, in accordance with the law and international standards;
- (5) use their language and alphabet freely in private and in public;
- (14) establish associations for culture, art, science and education as well as scholarly and other associations for the expression, fostering and development of their identity.” Paragraphs 2 and 4 above refer clearly to the need for public institutions to provide higher education to communities at all levels (Par. 2) and the possibility for private community institutions of education and training to be supported by public funds (Par. 4).

The Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo<sup>8</sup> promotes the same approach as the Kosovo Constitution, albeit restricted to the field of ethnic community rights (03/L-047a). In its Article 8.11., the Law foresees special measures that serve to meet special needs of ethnic communities in higher education stating that: “The Government of Kosovo shall ensure equal access of persons belonging to communities to higher education at university level. To this end, it shall establish special measures to ensure the admission of candidates from community schools to higher and university educational institutions” (Government of the Republic of Kosovo, 2008).

### *Critical analysis of the Constitution*

This approach of the Constitution sets a high standard in the field of community rights in general, and of the education of ethnic community members, in particular. Any laws or bylaws regulating the field of education, according to the Constitution, must make sure an affirmative approach and positive measures allowing for equity in addressing issues of any target group in the education sector. This applies not only to compulsory education, but also to the fields of higher education, science and artistic work by dedicating a separate paragraph to them. On the other hand, education of ethnic communities, including higher education, is also given due importance by providing for a range of positive provisions in support of their education. The following section will show if the Constitutional stipulations have been translated adequately into legal and sub-legal provisions to ensure a genuine human rights based approach in higher education in Kosovo.

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<sup>8</sup> <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2531&langid=2>

## The Law on Higher Education in the Republic of Kosovo<sup>9</sup> (No.04/L-037)

The Law on Higher Education (LHE) pays due attention to human rights in a number of its articles. In the introductory section of the Law, human rights are present (as content) in the section on Principles (Article 2), Objectives and Organization of higher education (Article 4), and in Competencies and Responsibilities of the Ministry (Article 6).

For instance, in Article 2 of this Law (MEST, 2011) related to principles, most of the provisions are related to human rights (seen primarily within the dimension of *equality*):

*“1. Provision of higher education in the Republic of Kosovo is based in the following principles:  
1.1. academic freedom, as determined by the Constitution of the Republic of Kosovo and its subsequent interpretation by the judiciary;  
1.2. equality before the law of all bearers of higher education;  
1.3. equal opportunities for all students and staff in higher education institutions without discrimination. 1.4. diversity and quality in programmes of study and in support of learning.”*

The Article (4) on Objectives and organization of Higher Education, gives a clear account of the interpretation of the constitutional provision on the right to higher education in this Law:

*“1. The objectives of higher education are: ... 1.3. providing opportunities for all inhabitants of Kosovo who are able to benefit from such education and to contribute to their society and country, throughout their lives.”*

The wording of this paragraph is partially in line with the interpretation of the right to education in Kosovo’s Constitution, since it starts from the interests and abilities of the beneficiaries.

Article 6 of the Law on Competencies and Responsibilities of the Ministry in providing Higher Education, treats community rights related to education as a cross-cutting issue amongst all competencies and responsibilities of the MEST, stating that *“2. In exercising powers and duties under this Law, the Ministry shall respect and promote the rights of Communities and their members, established in the Law for Protection and Promotion of the Rights of Communities<sup>10</sup> and their Members in Kosovo (Law No. 03/L-047, March 2008)<sup>11</sup>”*

This Law (on Communities) in its Article 1.2 states that: *“The Republic of Kosovo shall take special measures to ensure the full and effective equality of communities and their members, taking into consideration their specific needs. Such measures shall not be considered an act of discrimination (The Assembly of the*

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<sup>9</sup> <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2761>

<sup>10</sup> 1.4 For the purposes of this law, communities are defined as national, ethnic, cultural, linguistic or religious groups traditionally present in the Republic of Kosovo that are not in the majority. <http://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2531>

<sup>11</sup> [http://www.assembly-kosova.org/common/docs/ligjet/2008\\_03-L047\\_en.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L047_en.pdf)

Republic of Kosovo, 2008).” Its wording and spirit, in this and in other articles, is much more in line with the affirmative approach of the Kosovo Constitution, then as we will see below, the formulations of the Law on Higher Education. The analysis has shown that the wording of the Law on Higher Education aims for providing *equality for all members* of the academic community in Kosovo, but based on their individual and specific needs in order to allow for full development of their potential – as prescribed in the Kosovo Constitution . Following are a number of illustrations of the rather restricted approach of the Law on Higher Education that provide for the integration of certain human rights principles, but do not build on a systematic human rights-based *approach* in higher education.

The provisions regulating student admission, student fees, and student rights and obligations do not genuinely embed the dimension of human rights or the Social Dimension of the Bologna Process. In addressing the respective aspects (financing, fees, rights and obligations etc.), these provisions apply a rather academic and technical approach disregarding a coherent *human rights-based approach* or the social dimension.

For illustration, in the entire Article 29, on Admission of students, there are no clear references to important issues such as human rights, equality, inclusion, participation, representation, special needs and so on:

*“1. Any student who passes the graduation test, has the right to continue studies at institutions of higher education according to the legislation into force.*

*2. Through an administrative instruction, the Ministry drafts regulations as are necessary and useful, regarding the timing and conduct of examinations set by the receiving higher education institutions to facilitate enrolment in higher education of students who have not entered the graduation test or have not passed it.*

*3. For specific areas of study, public providers of higher education can provide additional tests for some subjects for admission of students, which must be approved by the Ministry. The detailed entry requirements shall be prescribed in rules made under the Statute of the institutions.*

*4. Students admitted to Master studies on the basis of competition, according to results of preliminary studies of their equivalence, as defined in this law.*

*5. When the number of successful applicants exceeds the number of publicly-funded places available of a program, provider may accept, always on the basis of merit, students that pay fees in those countries that are not financed with public funds, but by the number specified in the license holder.*

*6. Rules made by a public provider of higher education may prescribe circumstances in which students that paying the school and who achieve excellent results in learning can be allocated to a study of publicly funded in the second year or subsequent year of study.*

*7. Private providers of higher education may admit any applicant to their programs, provided that they can justify their decisions to the KAA.”*

Similarly, Article 30 on Tuition and other Fees Payable by Local and Non-Local Students provides for a purely technical approach with, which addresses an otherwise sensitive issue without taking into account human rights principles:

*“1. The Ministry shall prescribe in an administrative instruction, which is reviewed annually, the maximum tuition fees which shall be payable by students admitted to places at providers of higher education funded by the Ministry.*

*2. The tuition fees referred to in paragraph 1. of this Article may be set at different levels:*

*2.1. depending on whether the student lives in Kosovo or elsewhere;*

*2.2. for different programs according to cost that have. ...”*

Article 31, on Student Rights and Obligations, does not provide an exception in this regard:

1. *Students who are admitted to and enrolled in a provider of higher education enter into a legal relationship with that provider.*
2. *Students are entitled to the following rights, which may be elaborated further in the Statute of the provider:*
  - 2.1. *to attend all lectures, seminars and other educational activities organized in their courses, according to their level and following, if any country other organized processes of teaching;*
  - 2.2. *to use the facilities of libraries and other services for students located at the provider premises; and*
  - 2.3. *to participate in elections for student positions in bodies established under the provider's Statute.*

The examples above prove that human rights included in the introductory articles of the Law are not integrated in the spirit and outlook of the articles regulating various aspects of the higher education in Kosovo (such as financing, student issues, student financial support, staff promotion and so on). So, human rights are reflected only indirectly in the *content* in this Law, instead of serving as a *comprehensive framework which is mainstreamed and embedded in every provision*.

Even the provision (Art. 32) on Student Financial Support, refers to measures that provide for **equal access** to higher education, but it does not provide for equity measures for access and for successful performance/graduation of each student in need for such support based on their specific situation:

1. *The Ministry may issue a sub legal act to establish a scheme or schemes of students' financial support based on economic need.*
2. *Such schemes of student financial support may include provision for assisting students with payment of tuition and other fees at public providers and according to the valuation of the ministry, at the providers of the private higher education.*
3. *Public providers of higher education may create financial support schemes for students, with funds not appropriated from public sources.*
4. *Ministry takes steps that it considers useful and necessary to ensure that students enrolled in any institution to have equal access and opportunity to apply the existing scheme or schemes of financial support for students, which are in accordance with this article.*
5. *All organizations funded with public funds, that provide students housing, food, medical and social assistance, are an integral part of the provider and subject to the provisions of this law. The Ministry may instruct such organizations with regard to obligations, self-government and fees.*

There are also exceptions to this general rule, in that the Law sometimes guarantees specific human rights. This type of a more pro-active approach is present in provisions regulating the statutes of the higher education institutions. Article 31.4., for example, states that *"The Statute or equivalent establishment document of every provider of higher education contains provisions, which:*

- 4.1. *guarantee the freedom of students, within the law to present new ideas and controversial opinions without risking losing their student or privileges they may have with the provider;*
- 4.2. *guarantee students' freedom of speech, of association and of assembly according to the legal provisions.*
- 4.3. *protect students against any kind of discrimination;*
- 4.4. *ensure fair and impartial mechanisms for handling disciplinary matters dealing with students."*



This provision guarantees participation, equal representation, the freedom of expression and the right to appeals, albeit offered as a one-size-fit-all solution and not providing for affirmative measures.

The approach limited to providing one-size-fit-all equality is also reflected in Article 17. 5. prescribing the statutory provisions regarding the role of the governing boards. This article determines that their statutes should provide for equal opportunities for employment, further studies and scientific research (Par. 5.1), and that all [managerial] persons and bodies need to act in full accord with highest standards of modesty, integrity, honesty, objectiveness, accountability, transparency, and leadership (5.2).

Other provisions of this law provide for equal opportunities in a restricted manner, as is the case with Article 22.3 on financing of higher education in the case of *'appointment of additional places of study within the limits of the license'*, provided that, it does not:

“3.1. have a negative effect on the quality of education with public funds

3.2. *does not prejudice the duty of the provider to conduct its affairs without discrimination on any ground such as sex, race, sexual orientation, disability, marital status, colour, language, religion, political or other opinion, national, ethnic or social origin, association with a ethnic community, property, birth or that are related to other conditions.*”

It is interesting to see the extent to which these provisions regulating inner functioning of higher education institutions are observed and applied in the statutes of public universities<sup>12</sup> (please see the section on University Statutes below).

### *Critical analysis of the Law on Higher Education*

The Law on Higher Education includes a number of provisions that directly refer to human rights aspects and principles. Such are articles (2, 4, 6) in the introductory part, Articles 17-22 regulating financing of higher education and leadership in higher education institutions, Articles 31-34 on student participation, student fees, student support, and so on) and articles providing for the statutes of higher education institutions.

Human rights are thus relatively well represented in the Law on Higher Education, in particular when taking in consideration the relatively large number of provisions providing for or referring to human rights issues. However, on the quality side, there appears to be a relatively restricted approach in place and fails to build on a systematic and genuine human rights-based approach. The key missing element is the lack of an approach that is based on specific needs of individuals and groups in need; an approach that introduces affirmative action and positive measures making up for the gaps of certain groups and individuals, instead of the current one-size-fits-all approach. Another missing element is the overall human rights approach or spirit spread throughout the legal provisions of this law. Instead, human rights, as well presented as they may be, are there more of a static content than a pro-active, dynamic approach and thinking mainstreamed coherently throughout the Law.

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<sup>12</sup> In another research (Rexhaj, 2018) that focused on transparency and accountability of the Governing Board of the University of Pristina it was found that the relatively advanced provisions of the Law on Higher Education are not implemented duly by the University. For illustration, access to public documents is regulated in the University Statute in a way that leaves a lot at the discretion of the General Secretary of the university. Namely, there is a very elaborate and time-consuming procedure in place if anyone wants to get access to public documents (for more please read section “Critical Analysis of the University Statutes”).

It is worth noting that the Kosovo Law on Higher Education (of 2011) has been going through the Parliament procedure to be replaced by another Law in the last five years. The new draft Law on Higher Education has been reviewed by the HERAS experts regarding its approach towards human rights in its provisions. The Law was reviewed with an eye to providing equal opportunities for all. It is recommended for the new Law to be aligned with the Kosovo Constitution's spirit and provisions in the field of human rights. This may also include and open the doors for positive measures ensuring equity for members of under-represented and groups in unequal position as per rule of the constitutional provision (24.3).

### The Kosovo Education Strategic Plan (KESP) 2017-2021

Nationally, the **KESP** as the main Kosovar national education strategy, as well as related legal and strategic framework already includes issues of participation, accountability and non-discrimination which are also key principles of a HRBA. Out of seven key intervention areas, one is dedicated solely to human rights related issues, such as participation and inclusion.

Already at the outset, a human rights-based approach is given prominent place by being included in the vision statement: Kosovo, a competitive knowledge society, based on European values with equal opportunities for all its citizens to contribute to sustainable economic and social development. A similar rationale is reflected also in the mission statement: Development of an Education System based on quality, all-inclusiveness and accountability, offering education and training of individuals in accordance to best international standards and practices.

The intervention is structured in seven thematic areas that cover all relevant segments of education in Kosovo, including the first thematic area that forms a key element of a human rights-based approach:

1. **Participation and Inclusion,**
2. Management of education system,
3. Quality Assurance,
4. Teacher development,
5. Teaching and Learning,
6. Vocational Education and Training and Adult Education,
7. Higher Education.

KESP has seven strategic objectives, one for each thematic area. Below is a description of the first strategic objective: Participation and Inclusion

*"Increasing participation and providing equal opportunities for the development, training, and education of every individual in pre-university education. (MEST, 2017)."*

As useful as it is and in line with the trends in the field of human rights, it appears that the thinking of this strategic objective is focused primarily on providing equality (as opposed to equity based on specific needs) and foresees measures only for the pre-university level. The KESP is acclaimed as a comprehensive approach<sup>13</sup> to education issues shifting the paradigm from the previous fragmented approaches to a sector-wide approach. As cited above this thematic area aims at *increasing participation and providing equal opportunities in pre-university education* making this a purely pre-university level focused intervention. The key measures of this thematic area are also in line with the strategic objective focusing solely at pre-university level. In light of these findings the desk research focused further on the thematic area of higher education (Strategic Objective 7).

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<sup>13</sup> The idea of KESP is to be a comprehensive strategy for the Education System in Kosovo, in line with recommendations for implementing sector-wide approach in Education (KESP: p.37).

Out of the 47 measures within the higher education thematic area, two measures fall directly in the field of human rights and another one (career development centers) indirectly involve a human rights-based approach:

*7.6.8. Establishment of Career Development Centres in HEIs.*

*Career Development Centres in HEI must develop and implement programmes for career development and support for students.*

*7.9.2. Development of gender sensitive performance indicators in higher education.*

...

*7.9.5. Development of special positive measures and training programmes for the enrolment and retention of students to HEI from socially vulnerable categories and under-represented communities. This measure foresees the development of special training programmes for the enrolment of students of socially vulnerable categories. For this purpose the KESP plans intensive courses for community members for admission exams; a policy of reserved university quotas until equal participation is reached; intensive language courses to enhance knowledge of the language of instruction or tutoring or mentoring programmes, provision of transportation, and provision of dormitories.*

Thus, a human rights-based approach in higher education is only addressed by the KESP by two measures (7.9.2 and 7.9.5) and in a cross-cutting manner by the career development centers (measure 7.6.8.). Further research should serve to ascertain the implementation of any of these affirmative measures for members of communities and vulnerable groups. This or other measures do not foresee any concrete actions providing for equity in higher education, gender balance of entrants and graduates in higher education, equal participation and representation in university bodies and decision-making processes, support of students with special needs, academic support to improve student performance and so on.

## Strategy for Inclusion of Roma and Ashkali Communities in the Kosovo Society 2017-2021<sup>14</sup>

This Strategy (2017, p. 45) is fully in line with the constitutional provision of affirmative action to provide equity for vulnerable groups. Measure 1.1.5. of this Strategy provides for “*Development of specific positive measures and preparatory programs for enrolment and retention of students of Roma and Ashkali communities in HEI.*” This implies that this Strategy applies a more pro-active approach to ensuring not only wider participation, but also to improve student performance during their studies (the latter is also in line with the Bologna Social Dimension Principles). This is foreseen to be achieved through reserved seats for these communities, higher education scholarships for members of these communities and a mentoring programme to improve student performance during their studies (p.42) Even though limited in the number of measures (only measure 1.1.5.), this Strategy applies a more pro-active human rights based approach in higher education.

The Strategy for Inclusion of Roma and Ashkali Communities contains other measures that indirectly serve to implement a human rights based approach to education for the members of these communities, as it is the case with the provision of adult catch up and training courses (Measure 1.1.6). These can serve to foster later access of the beneficiaries to various services of higher education institutions.

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<sup>14</sup> [http://kryeministri-ks.net/wp-content/uploads/docs/ANG-STRATEGJIA\\_P%C3%8BR\\_P%C3%8BRFSHIRJEN\\_E\\_KOMUNITETEVE\\_ROM\\_DHE\\_ASHKALI\\_N%C3%8B\\_SHOQ%C3%8BRIN%C3%8B\\_KOSOVARE\\_2017-2021.pdf](http://kryeministri-ks.net/wp-content/uploads/docs/ANG-STRATEGJIA_P%C3%8BR_P%C3%8BRFSHIRJEN_E_KOMUNITETEVE_ROM_DHE_ASHKALI_N%C3%8B_SHOQ%C3%8BRIN%C3%8B_KOSOVARE_2017-2021.pdf)

This measure is further broken down into concrete activities in the Action Plan of the Strategy. These activities include student registration quota in higher education institutions, a preparation course for 100 students a year for enrolment in Higher Education, scholarships for 50 students every year, and student mentoring for 50 students a year to increase student performance. The measures are foreseen to cost around € 0.5 MN (2017, p. 73).

### The national Strategy for Reintegration of Repatriated Persons

The Kosovo Ministry of Internal Affairs drafted a Strategy for Reintegration (Ministry of Internal Affairs, 2013) of persons repatriated from other countries.<sup>15</sup> This Strategy only tangentially refers to higher education for the repatriated persons: “The education process is of a particular importance in the process of reintegration of repatriated persons. Among the returnees there will be a large number of children and youngsters who have to continue their education. MEST should be ready to admit and systemize all pupils of all communities *in all educational levels*, in harmony with the legislation in power (Ministry of Internal Affairs, 2013).” It does not foresee any special measures for reintegration in higher education, but instead refers to the Strategy for Inclusion of Roma and Ashkali Communities: “*On the other hand, in higher education MEST has established reserved enrolment quota for members of Roma, Ashkali and Egyptian communities* (for more please see Strategy for Integration of Roma and Ashkali Communities above).<sup>16</sup>

### Critical analysis of the approach towards strategic plans

The Kosovo Education Strategic Plan (KESP) 2017-2021 applies a genuine human rights-based approach in the sub-sector of pre-university education dedicating one of the seven thematic areas to inclusion and participation. However, the same approach is not employed for the higher education sub-sector, the object of this review. Only one measure in the higher education thematic area reflects a human rights dimension. However, this single measure focuses on providing support for one segment of vulnerable groups, and misses to foresee comprehensive and systematic efforts that would bring about equality of the student population in higher education. Seen from the perspective of a human right- based approach, the KESP does not function as a comprehensive sector strategy, but rather as a series of fragmented interventions in different levels of education, leaving important sub-sectors of higher education, scientific research and teacher development aside.

The Strategic Plan for the Inclusion of the Roma and Ashkali Communities provides a slightly more comprehensive and coherent approach in the field of higher education. It foresees a range of measures that are based on the specific needs of the target groups. The key difference between the two strategies in the higher education sub-sector is that the latter strategy (on Inclusion of Roma and Ashkali communities) is more in line with the affirmative and pro-active spirit of the Kosovo Constitution that is based on creating equity instead of levelled measures for all disregarding the different needs of the various groups.

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<sup>15</sup> [http://kryeministri-ks.net/wp-content/uploads/docs/National\\_Strategy\\_for\\_Reintegration\\_of\\_Repatriated\\_Persons.pdf](http://kryeministri-ks.net/wp-content/uploads/docs/National_Strategy_for_Reintegration_of_Repatriated_Persons.pdf)

<sup>16</sup> [http://kryeministri-ks.net/wp-content/uploads/docs/ANG-STRATEGJIA\\_P%C3%8BR\\_P%C3%8BRFSHIRJEN\\_E\\_KOMUNITETEVE\\_ROM\\_DHE\\_ASHKALI\\_N%C3%8B\\_SHOQ%C3%8BRIN%C3%8B\\_KOSOVARE\\_2017-2021.pdf](http://kryeministri-ks.net/wp-content/uploads/docs/ANG-STRATEGJIA_P%C3%8BR_P%C3%8BRFSHIRJEN_E_KOMUNITETEVE_ROM_DHE_ASHKALI_N%C3%8B_SHOQ%C3%8BRIN%C3%8B_KOSOVARE_2017-2021.pdf)

## MEST bylaws

For the purpose of this analysis, human rights aspects and principles were reviewed in twenty MEST administrative instructions (AI) that regulate higher education. Each of these administrative instructions regulate one segment of the Law on Higher Education or an aspect of the higher education system. The research looked into the (i) incorporation of human rights-related content in individual administrative instructions, or (ii) the application of a human rights-based approach in addressing various higher education issues in the reviewed legal documents. Thus for instance, the AI 12/2018 on Recognition of Degrees is reviewed to find out if it addresses issues of the Kosovo ethnic communities who graduated in the neighbouring countries (*content/dimension*), but also if it takes a human rights perspective in considering all issues, such as equal gender representation in various recognition committees (*approach/principles*).

As stated in the methodology section, when considering a human rights approach/principles, the review looked to distinguish between provisions of the administrative instructions that tend to address issues on a one-size-fit-all *equal basis* (without discrimination based on individual needs) and provisions designed to bring about *equity*, based on concrete needs of specific target groups.

The above-mentioned AI 12/2018 **on Recognition of Higher Education Degrees** obtained in foreign HE institutions does not provide for the recognition of degrees obtained in higher education institutions of the former Yugoslavia before 1992 (Art. 3.16). This leaves open numerous issues for further education or for employment of the non-majority community members in Kosovo. On the other hand, when providing for the membership of the State Council for Recognition, the AI (Article 5.2) regulates only the study fields represented on the council but leaves out ethnic or gender composition of the Council. This arrangement does not support an even-handed approach to ethnic or gender considerations during the process of recognition.

It is known that Kosovo non-Albanian communities in Kosovo are negatively affected by the recognition arrangements of their degrees from the pre-war and post-war period (obtained from the parallel higher education institutions with instruction in Serbian), resulting in their inability to continue studies or to get employment. This issue is partially addressed by the MEST administrative instruction (AI) No. 09/2015 on **Recognition of Degrees obtained in the Republic of Serbia**. Article 1 determines that in Kosovo, higher education institutions will decide on the acceptance of these degrees for the purpose of further education. Article 3, on the other hand, provides that degrees issued by Serbian higher education institutions for the purpose of employment will be recognised by Kosovo authorities. The key solution presented in this article is that the Serbian degrees will be accepted, through an intermediary that is recognised by the European University Association (EUA). However, this AI leaves aside the acceptance of degrees obtained in Kosovo institutions working under the Serbian legal framework.

Article 4 of the AI 14/2017 **on awarding scholarships to higher education students in Kosovo** determines groups that are given priority in awarding of scholarships. Most of the groups included here are those affected by the last war in Kosovo and the socially deprived persons. Female students, underrepresented groups, persons with special needs, and ethnic community members are not included in the priority groups. Practically, this could mean that an excellent female Roma student could not be selected to be awarded a scholarship, despite their extremely low participation in higher education and the difficult position they find themselves in the Kosovo society.

A similar instance is encountered in the AI on **Student Election in the University of Applied Sciences in Ferizaj** which does not in any instance refer to principles for elections, transparency, participation, equal treatment, or fairness. As a legal provision providing for another regulation of the UAS, this AI should have made a clear reference to the relevant legal provisions to be applied in the case of drafting the internal regulation for student elections at the UAS Ferizaj. In Articles 2.4 and 3.1.4., the AI provides for any unexpected situations and the way to address them by the Governing Board. However, the authors did not consider to advise university leadership on human rights related aspects in addressing student elections in Ferizaj. Issues like gender equality and participation to elect and be elected, participation of ethnic communities, wide participation of the student body, equal representation of all student cohorts and so on would be some of the important issues that could be addressed in the given administrative instruction. The same provisions and principles are applied when regulating student elections in all five new public universities (see AI 02/2015 and so on).

AI 16/2015 on **Establishment and Functioning of the Students Union in the Republic of Kosovo** is again stating facts and procedures but does not provide for a comprehensive inclusive approach. It refers to participation issues in two instances: in Article 5 when referring to General Assembly membership and in Article 9.1.2 on the gender composition of the two vice-presidents (providing for equal male and female representation). In the first instance, it provides for at least one third of the Assembly members to be female. This gender quota is a reflection of the quota reserved for representation of female members of various political and administrative bodies in Kosovo, namely the Kosovo Assembly. However, the quota of 33 % in political bodies could be seen as a fair representation in a situation when women are underrepresented as political activists. At the other hand, a quota of 33 % in student representative body may be considered too low taking in consideration the fact the female students represent roughly 50 % of the student body.

Furthermore, this administrative instruction addresses gender issues, while leaving aside critical aspects such as ethnic communities, vulnerable groups, students with special needs and so on. Lack of these provisions may have had already a negative impact on the nature of engagement and level of inclusiveness of the Kosovo Students Union. In this context, it becomes important to look at the initiatives and decisions of the KSU, participation in their main events, the presence of activities targeting vulnerable groups and so on. Apart from a missing approach regarding various groups and communities, the AI lacks the themes and activities that the KSU will engage by incorporating a human rights-based approach to KSU actions.

AI 15/2014, on the **student centre (dormitories)** foresees incentives for living in the student center for various categories. It gives priority to categories related to the recent war, as well as for SNE students and socially and economically deprived students. This AI, however, does not provide any incentives for female students, members of ethnic communities and members of vulnerable groups (such as returnee students).

AI No. 09/2016 provides for the application of **affirmative measures and reserved quota** for registration of candidates of non-majority communities in public institutions of higher education.<sup>17</sup> This AI foresees a quota for non-majority community students reaching 12 % of the total number of enrolled students in academic units. The same quota of reserved places is foreseen also for the residents in the Students' Centers as well as for financial support for members of these communities. This administrative instruction

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<sup>17</sup> <http://masht.rks-gov.net/uploads/2016/06/ua-masht-09-2016-aplikimi-i-masave-afirmative-dhevendeve-te-rez-al.pdf>



suffers from the same weakness as the other legal documents in the higher education legal framework: it provides for one-size-fit-all support that does not take in consideration specific needs of various communities. For instance, Roma students cannot attend higher education in their language in Kosovo or in any other country, as is the case with the students of Serb, Bosnian and Turkish communities.<sup>18</sup> There are provisions in this AI that safeguard against cases of misrepresentation when members of majority community abuse this regulation – and the reserved quota – to win study places in study programmes in high demand.

More examples can be presented from among the twenty analysed administrative instructions of the MEST that illustrate the pure technical and academic approach, to the detriment of a human rights-based approach. The Administrative Instruction 28/2016 **on short-term mobility grants and participation in international scientific conferences** only addresses technical and academic aspects of mobilities and international conferences, neglecting the need to provide for any affirmative measures for members of various under-represented groups based on their specific needs. The authors of this administrative instruction appear to have been focused on ways to avoid various abuses with funds but have missed to warrant an enabling environment for persons and groups in need, looking at gender, ethnic or individual considerations.

### *The Accreditation Manual of the Kosovo Accreditation Agency<sup>19</sup>*

The KAA Accreditation Manual (Kosovo Accreditation Agency, 2018) is an important document for any dimension of higher education since apart from its regulating character, it foresees also monitoring and safeguarding the implementation of the foreseen standards. It also provides for specific indicators that make it easier for the institutions to understand what is required of them in meeting the standards. The Manual is a must for all institutions to observe when applying for of both institutional and programme accreditation with the KAA. The Manual contains a number of standards and indicators that support application of human rights in Kosovo's higher education institutions and programmes. An entire section both in the institutional and in the programme accreditation component is dedicated to regulating student issues and support.

Besides the Kosovo Constitution, the KAA Accreditation Manual is the key document that provides for a stronger human rights based approach in Kosovo's higher education (See Annex 2 for an outline of the standards and indicators dedicated to a human rights based approach regarding student rights as well as teaching and learning practices in Kosovo HEIs).

The Manual is structured in two main evaluation components: Institutional evaluation and programme evaluation. Each of the components is organized in (a) standards and (b) performance indicators.

The manual contains a number of standards and performance indicators that feature a human rights-based approach through affirmative student support practices in teaching, learning and research in HEIs. The human rights are initially reflected in the principles' section of the Manual: "4. Quality assurance takes into account the needs and expectations of students, all other stakeholders and society ( Accreditation Manual, p. 7). Apart from principles, individual standards and indicators foresee a human rights-based approach. For illustration, Standard 2.9. (Governance and administration) covers student representation

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<sup>18</sup> It is known that there are occasions that members of Albanian majority enroll studies within this quota in programmes that are in high demand in Kosovo higher education institutions.

<sup>19</sup> <http://www.akreditimi-ks.org/new/index.php/sq/accreditation-alb/standardet-e-akreditimit>

in decision making and other bodies by providing that *“Student representatives are members of all decisional, executive and consultative bodies. The mechanism for electing student representatives is clearly explained in internal regulations. There is a democratic, transparent and non-discriminatory election procedure that does not limit students’ right to represent and to be represented. The institution is not involved in the process of electing student representatives.*

Furthermore, performance indicator 1.5. in Programme mission and objectives, provides that *“The concepts of gender justice and the promotion of equal opportunities for students in special situations such as, for example, students with health-related impairments, students with children, foreign students, students with an immigrant background and/or students from educationally disadvantaged families are put into practice at the level of the study program.”* This is the most advanced provision of the Manual and in its spirit resembles the approach of the Kosovo Constitution.

### *Critical analysis of the bylaws*

In general, bylaws regulating the higher education level do not provide for positive measures and affirmative action for individuals or groups of persons in unequal position as per constitutional provision and spirit. The administrative instructions are mainly focused on technical and academic aspects and, with few exceptions (the Accreditation Manual), they do not take into consideration the specific needs of vulnerable groups or gender issues. Most out of the twenty analysed administrative instructions do not address human rights aspects at all, unless an aspect of human rights is the main theme or the object of the bylaw (as is the case with student assistance and scholarships schemes, allocation of placement in dormitories, reserved quotas for minorities and so on). Even when this is the case, the approach is almost purely technical and considerations such as inclusion, equity, participation and so on are often neglected. The most common approach in dealing with human rights is a one-size-fit-all arrangement in terms of ensuring equality for all. This situation is but a reflection of the way that the Law on Higher Education treats human rights – as a separate theme detached from other legal content addressed by the Law.

However, an interesting exception is the Accreditation Manual of the KAA which foresees a number of standards and performance indicators that could serve as the basis of a more coherent human rights-based approach in higher education. This manual gains in importance given the fact that the external evaluators for accreditation (usually international experts) are expected to carefully review applications to make sure that the standards and indicators are adequately addressed. Their approval in 2018 should be seen as an important development in the field of ensuring a more coherent human rights-based approach in Kosovo’s higher education. **One potential way how HERAS could potentially support the application of a human rights based approach in Kosovo’s higher education would be by assisting higher education institutions in meeting the requirements of the accreditation manual.** Although a new instrument, due to its mandatory nature, it is expected that the KAA Accreditation Manual will have a positive impact on the processes and practices in Kosovo’s higher education system and its provisions will be reflected ever more often in the future modifications of the regulatory instruments in Kosovo’s higher education institutions. In conclusion, higher education institutions, education authorities, NGOs and donor interventions interested in supporting higher education in Kosovo, need to pay close attention to the Accreditation Manual since it outlines important aspects that will affect the trends and development in Kosovo’s higher education in the years to come. The same applies to all parties interested in supporting the implementation of a more coherent human rights-based approach in Kosovo’s higher education system.

## University statutes

*The review focused mainly on the Statute of the University of Pristina primarily because all new public universities (and even private colleges) drafted their statutes based on the Statute of the University of Pristina effective at the time of their establishment (between 2010 and 2015).*

*The University of Pristina Statute<sup>20</sup> (Statute further in this report) applies a solid human rights approach at the outset including three specific articles (7, 8, and 9) related to human rights issues and approaches.*

*However, when one considers the application of the principles of the introductory part in concrete provisions regulating the functioning of the university, these principles are missing partly or totally. For illustration, provisions of Article 18 on the membership and functions of the Governing Board miss to address issues of gender equality or equal opportunities for all potential candidates, focusing instead solely on academic aspects and qualifications of the members. Yet, on the brighter side, Paragraph 9 of the same Article foresees participation of student representatives, albeit in a non-voting capacity, in the work of the Board. Thus, this article is missing the dimension of inclusion, but gains positive points in the dimension of participation. The same spirit characterises duties and responsibilities of the main bodies of the University (Governing Board and the Senate), nomination and approval of vice-rectors (Article 36), provisions related to the General Secretary of the University and so on. Only in the case of the Governing Board responsibilities, there is a brief mention of the implementation of the general provisions of the Statute, which can refer back to provisions of the Articles 7, 8, and 9.*

*The spirit of these articles appears to remain detached from the following provisions since human rights aspects such as equality, participation, equity, non-discrimination and so on do not appear anywhere else in the remaining sections of the Statute. Even typical situations that would call for providing equal gender representation, such as election of the members of the Governing Board, the Senate, Faculty Councils, rectors, vice-rectors, deans, vice-deans and so on, do not foresee any measure to safeguard against discrimination. As it happens, there is a significant lack of gender balance in the membership of all these bodies. Student admission provisions, foreseen in Articles 103-106, deal solely with technical aspects of admission, but do not foresee any measures that would create equal conditions (including physical infrastructure and testing) for all applicants based on specific needs and situations.*

*The same spirit is reflected in the articles (108-116) providing for student assessment and examination. It is clear that these two sections should be reviewed to provide a more permissive environment for students with special educational needs and students from linguistic minorities. These two sections are very meticulous to determine technical aspects (such as failing students, repeating of the year, complaints and so on), but do not foresee any measures (in the form of counselling, academic or technological support) to improve student performance, ensure equal testing conditions for all, provide for timely information and feedback, and so on. Article 141, dealing with the language of instruction again deals purely with academic aspects and fails to acknowledge the need for a human rights based dimension and approach. It provides that the Senate can decide to organise studies in any other but Albanian language, but it does not foresee any support for students from other linguistic groups during lectures or student assessment. Even student rights, foreseen in Article 147, are again purely academic and administrative, missing a human rights approach to various student needs. This article too, recognises the right of students to*

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<sup>20</sup> <https://uni-pr.edu/inc/doc/statuti1.pdf>

*complain in a relatively superficial manner, since it does not provide for fair treatment and representation of the parties to the dispute. Articles 156 – 162 foreseeing student organization contain but one provision (156.2) on equal opportunities and non-discrimination when referring to the statutes of student organizations. Interestingly, this is the only brief provision that provides for a more coherent human rights based approach after Articles 7, 8, and 9 at the outset of the Statute.*

*The same logic is embedded in the articles providing for staff (recruitment, promotion and development), management and financing issues, student fees, administration, database and reporting. Somehow, the three 'human rights articles' (7, 8, and 9) do not seem to have the needed weight to ensure a coherent human rights based approach at the University of Pristina. Considering the importance of the University Statute in regulating affairs at any university, one could conclude that this Statute may not provide consistently for equal opportunities, participation and representation of all in the University of Pristina.*

*For the purpose of this review, the Statutes of other public universities were analysed to assess the presence of human rights and a human rights-based approach in these institutions and to compare it with the University of Pristina approach. The analysis showed that, with some minor exceptions, the other statutes were almost completely identical with the Statute of the University of Pristina. This is proven by the three human rights articles – formulated in the same way as the ones of the UP, by the total number of articles that is similar to that of the UP (three statutes have around 240 articles and three have 220 articles), by the wording of articles and by the approach and spirit of these statutes. Human rights and values are present in these statutes only as content in four or five articles, but are not integrated and mainstreamed across the provisions as an overall approach and a value of the key documents in the legal framework of these institutions.*

### **Critical analysis of the University Statutes**

The statute of the University of Pristina is written in a way that completely divides human rights from academic, scientific and administrative affairs. The approach applied in the UP Statute does not reflect a coherent human rights based approach since it does not make connections between key functional aspects of university life and relevant human rights aspects/principles. The spirit of articles 7, 8, and 9 is not reflected further in any of the following statutory provisions, but for the right to complain. Clearly, the right to complain should be coupled with other provisions that serve to prevent situations of discrimination before they occur. A more detailed research focused on practical implications of this approach is needed to identify consequences of this approach in staff recruitment, student admissions, student assessment, equal representation in management and elsewhere, fair treatment of complaints and so on.

The approach applied in the analysed university statutes to university issues is a purely academic one, with human rights issues seen as detached from other issues. So, human rights are mainly focused in separate sections and articles, which does not allow for an integrated approach or mainstreaming of human rights throughout the document. Similar to administrative instructions, even articles providing for student fees or student elections maintain a technical approach that aims to safeguard against abuses or mismanagement. Another characteristic of the university statutes is that apart from the University of Pristina Statute, the others are more or less similar with only minor modifications to reflect on their specific situation.

## IV. Application of HRBA in public universities

### Application of HRBA principles in planning documents and rules and procedures

#### *Strategic plan of the University of Pristina*<sup>21</sup>

For the purpose of this study, the strategic planning documents were analysed of the seven public universities. The Strategic Plan 2017 – 2019 (Universiteti i Prishtines "Hasan Prishtina", 2017) of the University of Pristina does not provide any concrete measures that would specifically support a human rights based approach in its academic processes. It appears to be designed to address issues of efficiency and effectiveness of management and instruction rather than providing equal opportunities and learning experiences for all students, including underrepresented groups. The mission statement does not call for any component of its activities to address human rights aspects or the Social Dimension of Higher Education of the Bologna Process. In a section called "Core strategies and strategic initiatives" there is a strategy that calls for "*Learning for a diverse world. Implement new strategies to improve diversity. Foster a supportive and inclusive climate for all.*" However, this strategy which seems to imply a cross cutting approach, does not appear to be translated into concrete activities in the implementation plan attached to the Strategic Plan.

The UP strategic plan addresses several important aspects of a human rights-based approach in higher education, such as student participation (in both decision-making and accreditation), addressing the special educational needs of students in need, ensuring diversity and equity in teaching and learning processes. It is interesting that these dimensions are only encountered at the level of action planning level, without much (or any) mention at the level of strategic goals and priorities. Nevertheless, it still indicates the UP commitment to provide for more diverse services to the students. Further research will show the level of their implementation<sup>22</sup>.

In a study of the decisions of the Governing Board of the University of Pristina, carried out during 2017 and 2018, over 100 decisions of the Board were scrutinized to assess the quality of decisions-making at this university. The desk research part of the study found that the vast majority (over 80 %) of the decisions referred to requests of the academic staff for unpaid leave, around 10 % referred to programme and administrative decisions (including waiving the student fees) and three decisions referred to strategic planning and governance (Rexhaj, 2018). Apart from decisions that referred to waiving students' fees, there was a regulation on student scholarships that decided on the categories of students whose study fees can be waived and the students who can be granted scholarships. Apart from these, there were no cases (decisions of the UP Governing Board) that would indicate either partially or completely the application of a human rights-based approach.

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<sup>21</sup> <https://www.uni-pr.edu/inc/doc/PLANI-STRATEGJIK1.pdf>

<sup>22</sup> University of Pristina has carried out an evaluation of the level of implementation of its strategic plan measures. Unfortunately, despite repeated attempts, the research team could not get hold of the results of that evaluation.



### *Strategic Plan of the University "Ukshin Hoti" Prizren<sup>23</sup>*

The Strategic Plan 2018-2022 (Universiteti "Ukshin Hoti" Prizren, 2018) applies a similar logic and structure as the strategic plan of the University of Pristina<sup>24</sup> – which is in fact a rather uncommon approach in strategic planning processes applied today.<sup>25</sup> There are strategic priorities first, followed by strategic goals and then strategic fields and initiatives. The strategic fields and initiatives are further broken down into strategic objectives and sometimes as measures. The strategy is approved at the university level, and academic units are required to further elaborate it in developing their operational and periodic plans.

These documents seem to miss the intervention fields and strategic objectives (they are sometimes called strategic priorities and sometimes goals) and there is lack of coherence between priorities, goals, and measures. For instance, linguistic diversity is included among the Strategic Priorities, but it is not reflected further in the strategic 'initiatives'. Only one activity of the Faculty of Education addresses student learning needs, whereas other faculties are focused on academic, management, staff development, curricular and infrastructure issues. Even in cases when strategic measures and activities focus on students, it is rather done with the purpose of increasing participation or improving methodology of teaching and not directly providing equity or support to improve learning.

University in Prizren is a regional university catering higher education services in a region inhabited by over 80 % of Kosovo non/Albanian and non-Serb ethnic communities. With this in mind, it would be essential for the University of Prizren to be attentive to ethnic community and human rights issues and to dedicate separate strategic objectives and policies related to human rights considerations and to provide for a *human rights based approach* that touches on all main functions of the university. This does not appear to be the case with strategic and other documents analysed during this review.

### *The Strategic Plan 2017-2022<sup>26</sup> of the University "Kadri Zeka" in Gjilan*

This Strategic Plan (Universiteti "Kadri Zeka" Gjilan, 2017) sets out development priorities and goals of the University for the period of six years. It also outlines the key challenges it is facing in its efforts to accomplish the set vision and mission. One of the key priorities of the UKZ is the relation with the industry and society. The same priority sees the main support to students as preparing them for employment in the labour market. This is the overall approach towards students throughout this strategic plan. The part of the strategy that is available online does not give any indication of a systematic effort towards a human rights based approach. Any consideration of student issues is tackled tangentially and from an academic or labour market perspective.

Notwithstanding the lack of a more systematic and human rights-based approach, the strategic plan of the UKZ still appears to have students among the focal points of its strategic thinking. For illustration, the first priority on linkages with industry and society, pays due importance to providing students with

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<sup>23</sup> <https://uni-prizren.com/sq/planet-strategjiike-upz>

<sup>24</sup> Parts are in fact copied from the UP strategy (see the eight strategic fields and the Monitoring section for illustration).

<sup>25</sup> It is not clear if there has been an analysis of the situation (SWOT). One of the measures of the academic units is the plan to establish a doctoral programme (PhD) in one of the departments with significant lack of qualified academic staff! There does not seem to be any considerations of a logical framework approach. Also, there is no indication of any specific collection of data for this exercise!

<sup>26</sup> <https://www.uni-gjilan.net/wp-content/uploads/2017/05/Strategjia-e-UKZ.pdf>



relevant skills for the labour market; the strategic priority dedicated to students deals with creating conditions for increasing enrolment and improving conditions for student mobility. Even though this approach falls short of a typical human rights based approach (focusing on equality, gender issues, support for special needs and so on), it nevertheless tries to address some student issues, such as provision of library services, literature, working conditions and so on. In conclusion, the University Kadri Zeka in Gjilan may wish to invest additional time and efforts for incorporating a systematic human rights based approach if it aims to improve the quality of its provision of academic, research and community services. A lot needs to be done to accomplish this objective. In the short term, just as the other public universities, UKZ will need to review its strategy to make it more student friendly and to provide a more enabling learning and research environment for all.

In the case of the University of Gjilan the research team analysed all regulations and decisions published on the university webpage. The University administration has published<sup>27</sup> the main documents issued by the management, including Board decisions, regulations, action plans of academic units and so on since the beginning of its functioning. Out of 28 regulations and decisions published on the webpage, 13 regulate academic issues and 15 regulate administrative and financial issues.

The institutional decisions show a rather academic approach to human rights issues since they address mainly academic aspects of staff and students at the university. These are mainly decisions regulating curricula, studies, working bodies, student and staff elections and so on. They do not address human rights either as the main content (for instance a regulation to ensure inclusion of persons with special needs) or as a cross-cutting issue of regulations dealing with purely academic issues (for instance provisions foreseeing equal representation in various commissions and panels).

To better assess the status quo, the Rules and Procedures for Elections at the UKZ (of April 2016) was analysed in more detail.<sup>28</sup> Most of the provisions determine rules and procedures in a neutral language. An exception is made in Article 10, which foresees that in cases of equal candidates for the same positions, female candidates will have priority. The same arrangement is repeated regarding election of candidates with the same number of votes. However, no other provisions are made to ensure equal gender, community or student participation in different panels, commissions, working bodies in charge of a given aspect of the elections or even as a means of emphasizing the equal right to being elected.

The Regulation on Quality Assurance<sup>29</sup> applies the same approach to human rights: they are not at the focus of its provisions and are mainstreamed only to a limited extent. Article 8, providing for membership of the University Commission for Quality Assurance foresees inclusion of the key classes (academic staff, administration and students), but falls short of addressing gender representation, persons with special needs and ethnic communities, if applicable.

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<sup>27</sup> <https://www.uni-gjilan.net/universiteti/dokumentet-e-rendesishme/>

<sup>28</sup> This regulation was selected because it is a typical document that can address sensitive issues such as gender, equality and communities. <https://www.uni-gjilan.net/wp-content/uploads/2019/04/RREGULLAT-DHE-PROCEDURAT-PER-ZGJEDHJET-E-PERJITHSHME-NE-UKZ.pdf>

<sup>29</sup> Regulation on Quality Assurance Procedures, Ref. 01/380 of May 2016. <https://www.uni-gjilan.net/wp-content/uploads/2016/05/Rregullore-p%C3%ABr-procedurat-e-sigurimit-t%C3%AB-cil%C3%ABsis%C3%AB.pdf>

### *The Strategic Plan 2015– 2020 of the University of Gjakova*<sup>30</sup>

The Strategic Plan (Universiteti i Gjakoves "Fehmi Agani", 2015) of the University of Gjakova is developed based on a participative process and on the logical framework approach. Therefore, it includes five intervention fields, five strategic objectives, over 50 strategic measures and activities that serve to accomplish the set objectives. Similar to other universities, the Plan does not provide for a comprehensive and systematic human rights based approach, but it does provide a number of strategic measures that reflect certain human rights principles. For illustration, the Plan provides for a student Career Counselling Center (Measure 2.3.), a Lifelong Learning Center (M 2.4.), a portal to facilitate communication with the students (M 3.2.), and a series of student support activities to improve student performance (M 3.4.).

However, this strategic plan too, falls short of a more systematic approach that would specifically address community, gender, special needs and other issues faced by students during their studies. It does not provide for specific measures targeting marginalized groups either, which makes it similar to other plans analysed for other universities. It becomes relevant to find out if the measures foreseen in this plan are implemented as stated in the implementation plan. In this regard, a brief scan of the decisions of the UGj management made public on the institution's webpage<sup>31</sup> show a rather academic and a social assistance approach to student issues. Out of 38 decisions of the Governing Board during 2019, only three address human rights related issues: one of setting up a career Counselling and Alumni Center, another one to waive study fees of certain categories of students and a decision on student scholarships. There are no decisions (that would focus entirely on human rights) to enable a more systematic and institutional approach to human rights aspects such as equality, equity, gender, special needs education and so on. The approach of the other decisions is purely administrative and/or academic and does not reflect on human rights or social dimension aspects. The two decisions by the rector published on the webpage are administrative by nature, whereas out of the 19 published decisions of the University Senate only one addresses issues of student scholarships (lowering the average grade threshold). Even the latter does not contain a legal reasoning that could state the (potentially inclusive) motives behind such a decision.

### *The Strategic Plan 2018-2021 of the University of Mitrovica "Isa Boletini"*

This strategic plan (Universiteti i Mitrovices "Isa Boletini", 2018) employs a similar planning approach to that of the University of Pristina. It starts with strategic priorities, to continue with strategic goals and further strategic initiatives. However, unlike other universities and to some extent, similarly to the University of Gjakova, this strategy is more focused on student issues. It dedicates an entire strategic initiative (2. Learning resources and student support services) to student issues. In this and other strategic measures the Plan foresees measures that focus on improving student support services, in improving student performance and their participation in learning and decision-making activities. However, like the other plans analysed so far, it too fails to apply a more systematic approach based on the concept of human rights. Thus, gender, special needs, community issues, marginalized groups and so on remain of little relevance in this strategy as well. In conclusion, this Plan could be commended for its focus on student issues but suffers in the respect of a more comprehensive human rights based approach in

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<sup>30</sup> [https://uni-gjk.org/upload/dokumentet/Plani\\_strategjik\\_per\\_web.pdf](https://uni-gjk.org/upload/dokumentet/Plani_strategjik_per_web.pdf)

<sup>31</sup> <https://uni-gjk.org/dokumentet/kd>

providing equity and excellence to all. It remains to be seen if the foreseen activities in the second strategic priority have been implemented as foreseen or not.

It is worth noting in the concluding remarks of this section that the University of Peja is in the process of drafting its new strategic plan 2020-2024 and that the human rights-based approach and the Bologna Social Dimension are given due importance at the drafting phase.

### Critical analysis of the application of HRBA in strategic plans and regulations

It is a common denominator of the strategic plans that they foresee measures that would fall in the field of human rights only at the level of concrete activities. There is a significant lack of providing for human rights at the more general level of vision, mission or strategic objectives. So, anyone looking into human rights practices in the strategic plans of Kosovo public universities, should assess the annual action plans of academic units rather than the section of more strategic considerations. This lack of a more comprehensive approach is translated in a limited number of *concrete activities* in the field of human rights, but also in the lack of a human rights-based *approach in strategic plans and in higher education institutions*. As a result, interventions that would deal with gender promotion, equality of provision, and providing support for persons with special needs only take place on an ad-hoc basis rather than as part of a more systematic approach. Universities should think seriously about a more pro-active approach in this respect if they aim to improve student performance, to improve the learning environment, and to better meet the societal expectations from them as institutions of education and learning.

### Interviews with university staff: Presentation of findings

The HERAS team working on this study also interviewed members of management and staff in the public universities. The key issues discussed were the presence of human rights and the implementation of a human rights based approach in: teaching, curricula, teaching materials, institutional anchoring of human rights, cooperation with NGOs in the field of human rights, policy level and existence of capacity building efforts (or programmes) in the field of human rights.

Overall, the interviews with the staff indicate to fragmented approaches to human rights in the public universities in Kosovo. Human rights are commonly addressed unsystematically, through individual courses, by individual professors, using few useful teaching materials and lacking an institutional approach. For various reasons (including the longer experience and significant international support), the University of Pristina appears to be in a better position also regarding the application of a human rights-based approach in academic, research and administrative processes in the University. One of the key advantages of the University of Pristina is the existence of the Human Rights Centre within the Faculty of Law of the University of Pristina (more details below).

Further in this section, the key findings are presented from the interviews with the university staff.

**Teaching:** When discussing teaching, respondents gave mixed answers, with some stating the lack of a human rights-based approach in teaching and aspects referring to a student-centred approach in their teaching. Nevertheless, no regulations are referred to that would support the claims for student centred teaching. Even if student-centredness is recognized as an important element of a human rights-based approach in teaching, it still does not suffice to cover teacher – student communication, student assessment, student support dimension, giving feedback and responding to student evaluations. The

accounts from various universities lack hard evidence of any sustainable or systematic efforts to apply a human rights-based approach in teaching. For illustration, *“Teaching in our institution is sensitive to human rights aspects, willing to promote equality – equity, gender balance with all the sensibility and ingenuity by organizing activities and programs related to human rights issues.”* However, this is not supported with evidence in the form of concrete policies and practices. Usually, in efforts to illustrate the application of a human rights-based approach in teaching, respondents refer to the aspect of gender equality, members of two institutions (UP and UMIB) refer to equity and equality, and two other institutions refer to student centred instruction. However, closer to the reality appears to be the critical opinion of one of the respondents: *“However, it should be underlined that lectures very often fail to give special attention to human rights. For illustration, they do not pay attention to issues that involve gender equality, discrimination, ethics, freedom of speech, fair trial, privacy rights and so on and as a result there is a lot of stereotypes, sexism etc. Instead, teaching should aim at facilitating understanding among students as to what constitutes human rights violations in both public and private sectors, accountability of public administration, freedom of speech, rights to privacy, right to development and so on.”*

### **Curricula**

Curricula, according to teachers and staff responding to the HERAS survey, address human rights issues only partially. The approach to human rights in the public universities’ curricula is fragmented, in that only some faculties include **human rights courses or contents** in their curricula. Or as stated by a respondent from the University of Gjilan: *“We do not offer a full degree on human rights education, but we have foreseen human rights as part of the curriculum, for example linked with topics of human rights like history, politics and citizenship, development, society, sociology, local development, election, rule of law, etc..”* Typically, human rights are included in the curricula of the faculties of education, law, and sometimes economy and social studies programmes. Similar to the findings of an earlier study by HERAS (Loxha, 2018), typically faculties of law feature a prescriptive approach to human rights, whereas education faculties lean towards a more instructive approach to applying human rights in the various sectors of life in Kosovo. In most cases, the human rights courses offered in these faculties are not available to students from other faculties of the same university either as elective or optional courses. This implies that human rights courses and contents is available only to a limited number of students in the universities.

According to a respondent from one of the new universities, human rights content and courses in the faculties of education and social sciences include courses such as: Human rights, Minority rights, Sociology of the family and legal rights, Conflicts and their resolution, Civil education, Family and preschool education. Other respondents state that law faculties feature courses such as: The International Law on the Protection of Human Rights, International Organizations, with focus on UN role and Council of Europe role’s in HR, Public International Law, where all the treaties and conventions of human rights are covered, European Law and the Convention for Basic Human Rights in EU, Practice of the European Court of Human Rights, and also the International Humanitarian Law. In the fields of business and economy there are mainly courses dealing with business Ethics and Law.

Similar to the curricula, teaching materials consist mainly of university course-books covering international human rights law, gender and family rights. The literature on human rights in these universities include a considerable list of university textbooks by both local and international authors

(including Zejnullah Gruda, Jordan Daci and others). Topics covered by these books include the position of women in Kosovo (with a special look at customary law), European human rights law, feminine writing, women rights, international protection of human rights, human rights education in Kosovo, the Universal Declaration of Human Rights and others. The human rights literature list does not include any brochures, leaflets, posters, or publications referring to implementation of human rights in the university processes and practices.

### **Institutional anchoring of human rights**

There are two ways in which human rights are anchored at the institutional setting of Kosovo's public universities: policies / strategic plans and institutional mechanisms.

The policies / strategic planning aspect is addressed in more detail above showing a relatively incoherent and unsystematic approach to human rights, in that it is barely included in strategic objectives and goals, but does appear at the level of measures and activities to some extent, and then more or less disappears again in the phase of implementation.

Regarding institutional mechanisms, there are two institutions directly dealing with human rights issues in two of the public universities in Kosovo: Firstly the University of Pristina's Human Rights Centre, operating withing the Faculty of Law since 2002. Secondly the Institute for Research of Rule of Law and Human Rights Studies established in 2017 within the University Haxhi Zeka, in Peja.

**The Human Rights Centre of the University of Pristina** provides human rights activities and services. The Human Rights Centre of the University of Pristina has been the focal point with a rich portfolio in the field of human rights not only in the University of Pristina. It has been engaged in designing and publishing materials, publications, and research results in the field of human rights. Besides, their portfolio is rich in organizing events in the field of human rights, marking important dates related to human rights, providing lectures and training by various local and international experts and so on. The HRC web page shows a significant number of activities organized only during 2019. It is clear that with more adequate support from the University and Kosovo's education authorities, the HRC could play an even more important role in advancing human rights not only in the University of Pristina but also beyond.

According to respondents from the UP, "This institution's main goal is organizing activities directly dealing with the human rights issues. *The Centre for Human Rights since 2002 has organized and continues to organize to this day different activities such as conferences, workshops, debates, courses and many other activities in cooperation with different internal and international NGOs and universities.*" The Faculty of Law of the University of Pristina features another institution, namely the Transitional Justice Resource Centre, that serves to address very important legal aspects of human rights (gender issues, property rights, post-conflict justice, etc). In a situation when there is significant lack of any institutional mechanisms in the field of human rights in Kosovo public (or even private) higher education institutions, it seems viable to expect for the Human Rights Center and other facilities in the University of Pristina to outreach to students and staff in other universities with materials, events and capacity building activities in the field of human rights.

**The Institute for Rule of Law and Human Rights Studies (IRLHRS)** was established in 2017 within the University Haxhi Zeka in Peja. According to its mission statement<sup>32</sup>, IRLHRS is a research pathfinder in the region that critically engages in contemporary discourses on theory and jurisprudence of human rights, rule of law and peace studies. The Institute focuses on following key areas: analysing the theory and practice of rule of law principles, exploring the intersection between human rights scholarship and practice, analysing transitional justice dimensions, and exploring peace-building strategies. The institute appears to focus on an educational and research role related to human rights, rule of law and transitional justice.

Regarding institutional anchoring of human rights, an interesting idea came from the respondent from the University of Peja stating that it is needed to establish the institution of University Ombudsperson that would deal directly with the promotion and protection of student and staff human rights. This initiative in the new universities could be well aligned with the existing mechanism of Human Rights Centre at the University of Pristina regarding promotion, protection and capacity building in the field of human rights.

### **Human rights processes and initiatives in the universities**

As stated in the heading of this paragraph, this section deals with initiatives falling under the remit of human rights within the universities. Respondents from universities report on various initiatives in this respect. These are usually individual and non-systematic efforts indicating certain aspects related to a human rights-based approach. One respondent from the University of Mitrovica illustrates this as follows: *“There are lot of planned and ongoing initiatives that promote and facilitate learning and performance of various vulnerable groups (gender, community, special needs). For example, our university campus facilitates the access of people with disabilities at all University premises. There are new barriers for people with disabilities on the new university campus, there are special wheelchair platforms, platforms for faculty and rectorate amenities, special toilets, elevator and reserved parking.”* Other universities report waiving of study fees for socially deprived students and those coming from vulnerable groups and ethnic communities (such as Roma, Ashkali and Egyptian communities). These practices are usually of an institutional character with few individual initiatives. The University of Gjakova refers to the Law on Gender Equality, Administrative Instructions and the Statute of UGFA as documents observed by those institutions in its practices and processes. At the same time, they refer to student participation in decision-making by stating that *“Students are represented in all decision-making processes, including in the Governing Board, the Senate, the Central Commission for Quality Assurance and the Faculty Councils.”* Other examples are also brought up by the respondents, but they remain short of more systematic efforts and do not comprise a full-fledged human rights-based approach in higher education.

### **Cooperation with other non-university partners engaged in human rights**

Cooperation initiatives with non-university and NGO partners makes it possible for the universities not only to address human rights of staff and students in the universities, but also to give their contribution to the improvement of the human rights situation in the society. Most respondents from the public universities included in the study reported a number of activities in the field of human rights with other

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<sup>32</sup> The mission statement was made available by the respondents of the University Haxhi Zeka in Peja.



non-university partners. The University in Mitrovica respondents reported that “Our Institution cooperates with many NGOs and other institutions that promote human rights; more recently, in the beginning of December 2019 we had a collaboration meeting with the NGO “Little People of Kosovo”; besides, we are a member of the LSEE Research Network on Social Cohesion in SEE. In this network through research we address equality and gender issues, Roma inclusion etc.” Similar initiatives are reported from other universities as well. For illustration, University of Gjakova reports a number of activities, such as “Cooperation projects as with Medica Kosova in supporting vulnerable groups, with the NGO “Rrjeti Qeliza” in a project aimed to empower women” with the Network of Roma, Ashkali, and Egyptian communities. With Kosovo Women's Organizations "RROGRAEK" we had a few information sessions with active participation on the theme of "Gender Based Violence". University of Pristina respondents reported of initiatives organized with international NGOs such as “Community Building Mitrovica (CBM)”, “Youth Initiative for Human Rights (YIHR), “Humanitarian Law Centre – Kosovo”, “GIZ”, “UNDP” etc. In conclusion, it is worth noting that despite ongoing efforts and initiatives, the number of activities is not yet at the level needed to respond to the needs of the society and the potential for cooperation between university and non-university sector in the field of human rights. This is confirmed by one respondent from the University of Pristina who thinks that: *“There are a number of initiatives and projects ongoing with other non-university entities, but given the size of our university (of Pristina), the number of public universities in Kosovo and the needs of the universities and of the society in the field of human rights, it is necessary for more systematic efforts and more cooperation to take place.”*

Regarding the presence or lack of any capacity building programmes in the field of human rights in Kosovo’s public universities, most of the respondents mentioned a lack of such efforts in their respective universities. Apart from the Human Rights Center and the Transitional Justice Resource Centre of the University of Pristina that provide a limited number of training events in the field of human rights, the other universities do not offer similar capacity building measures . There is clearly a lack of such capacity building measures in the new universities. It may be the best option, in the short term at least, to have the two Centres of the University of Pristina serve as training resources catering for all other universities in the respective fields of human rights.

In conclusion from the brief survey with the management and staff of the public universities, one could say that: (i) there is a confined viewing of a human rights based approach solely referring to gender issues or scholarships for minority communities and vulnerable groups; (ii) there are some initiatives both within the universities and with other non-university stakeholders but they remain short of systematic efforts and the implementation of a full-fledged human rights based approach; (iii) there is significantly more potential and for stronger role for the Human Rights Centers of the University of Pristina and University of Peja in building capacity and promoting human rights at the University and beyond; and (iv) other creative solutions should be taken in consideration (such as a University Ombudsperson) to foster the implementation of human rights in the universities and in the Kosovo society.

## V. Conclusions and recommendations

### Conclusions

This review looked at the incorporation of a human rights-based approach in the legal and policy framework of higher education in Kosovo and its application by higher education institutions. Most of the conclusions are presented in the critical analysis sections in the section of results. The results of the review showed that the Kosovo Constitution is the most advanced document in this regard providing for a tailor-made human rights-based approach in education, in general, and in higher education in particular. Referring back to the main objectives and methodology of this review, and using the Kosovo Constitution's provisions as a point of reference, it is concluded that it addresses human rights issues **in content and that it provides for equal/non-discriminatory solutions and aims to address individual situations of targeted populations**. The following table depicts the way how different legal and policy documents in Kosovo address human rights: do they address specific **human rights** aspects in content (human rights as content); do they provide **equality** provisions for various target groups; or do they foresee active measures (affirmative action) to reach **equity** - by addressing specific needs of different individuals or groups.

Legal framework Document	Presence and nature of human rights based approach		
	Content	Equality	Equity
Constitution of the Republic of Kosovo	X	X	X
The Law on Higher education	X	X – one size fit all	-
Administrative Instructions	X	X – partially	-
Strategic Plan (KESP)	X	X	- Not in HEd
University strategic plans	-	X	-
University / Institutional Statutes	X – detached	X- partial	-
Accreditation Manual	X	X	X

On the other hand, apart from the Kosovo Constitution, the legal framework regulating the Kosovo higher education applies a restricted and fragmented approach to human rights issues, thus remaining short of a consistent and systematic human rights-based approach in higher education. Usually, documents and regulations do not specifically refer to human rights or the Social Dimension of Higher Education (apart from regulations addressing directly waiving the student fees for a category of socially deprived students).

At the same time, institutional regulations and procedures of the seven public universities deal even less systematically with the human rights and the Social Dimension. Most commonly, these regulations address the Social Dimension by regulations waiving study fees and providing scholarships for various categories of students (such as those affected by the recent war), but they will typically fail to apply a systematic human rights approach (regarding gender, community, under-represented groups, or persons with special educational needs) or in providing more support to improve the performance of individual students irrespective of their background and social status.

## Recommendations

### ➤ *The Law on Higher Education*

*The legal provisions of the current higher education Law do not provide for a sound framework for issuing bylaws that would further determine equal opportunities in higher education and a comprehensive application of a human rights-based approach. As has been stated above, the LHE is being rewritten and in the parliamentary procedure to be replaced by another Law on Higher Education. However, the higher education sector should take advantage of the opportunity provided in the spirit and provisions of the constitution to provide for affirmative action and positive measures based on specific needs of individuals and groups.*

### ➤ *Regarding MEST Administrative Instructions, two options could be taken in consideration:*

- *To develop a policy on the integration of a human rights-based approach in any legal and sub-legal act to be developed and approved in the future, with transitional provisions section stipulating the application of the same principles in the current administrative instructions and regulations, or*
- *To develop an administrative instruction determining a human rights-based approach for the implementation of any provision of the current bylaws regulating higher education.*

### ➤ *University statutes*

*As a result of the desk research, it can be assumed that the University of Pristina (including students and staff) and the regional universities could improve their human rights portfolio, but also academic performance through a better embedded human rights based approach in the provisions of the University Statute. Improved information and transparency, tailoring testing conditions to the individual student needs, foreseeing timely and accurate feedback from student assessment, providing linguistic and technology support to students, regulating the conditions of the physical infrastructure, setting clearer provisions on filing and treating student complaints, and other similar provisions, could serve to improve not only equal and non-discriminatory treatment of various groups of students, but also their academic performance, which is in the very mission of any university.*

### ➤ *KAA Guidelines*

Separate efforts should be made to train university management, teaching and academic staff in implementing the KAA Accreditation Guidelines and its standards and indicators. The universities should review their regulations and procedures, but also their strategic plans, to ensure full implementation of its standards and indicators as a means to meeting the accreditation criteria.

### ➤ *National education strategies*

*The Kosovo Education Strategic Plan 2017-2021 should be reviewed to replicate its human rights approach of the pre-university level to higher education and scientific research. This review should take in consideration the needs and specific nature of higher education and research.*

➤ Institutional strategic plans

The current strategic plans should be reviewed to allow for a more coherent and systematic planning approach (in lieu of improvised planning and ad-hoc measures) and to mainstream human rights systematically in their institutions. The strategic plans should also check their objectives and measures against the standards and indicators of performance in line with the KAA Accreditation Guidelines.

➤ Institutional regulations and procedures

For a more efficient approach and instead of reviewing all regulations and procedures, the universities should develop and approve one or more regulations that will provide for systematic mainstreaming of human rights into all functions and operations of the universities. Such a regulation could incorporate human rights principles in their institution, groups of students to be supported, main support activities, respective quotas (whenever applicable), and so on. These could be then applied even during the application of the provisions of the past and future regulations and procedures. It is paramount for these regulations to be monitored strictly for their implementation until the appropriate working routines and *habitus*<sup>33</sup> (Swartz, 2002) are installed in a sustainable manner in the institutions.

Universities should take into consideration to establish the institution of a University Ombudsperson with clearly defined responsibilities and authorizations.

➤ Capacity building

For this purpose, the universities should develop a programme, for instance Programme for Human Rights Education<sup>34</sup> or an Induction Programme for university staff with the overall objective to ensure the effective implementation of human rights standards at the university by providing tools and methodology for teaching, research and training in the field of human rights. This training programme should also work to establish routines among the staff and students that promote and implement human rights not only in universities but also beyond.

The university management should also provide management, academic staff and students with human rights knowledge in their particular area. To illustrate this recommendation, the Faculty of Business Administration should be familiar with the role of business enterprises as specialized organs of society performing specialized functions, and their duty to comply with all applicable laws and to respect human rights. At the same time, in business curricula, students should be trained in a way that their future business enterprises know how to respect human rights throughout their operations.

➤ University of Pristina Human Rights Centre

With the experience and expertise accumulated since its establishment in 2002, the University of Pristina Human Rights Centre could serve as a resource centre for all other higher education institutions, at least in the short-term until they have build their institutional and human capacity in this respect. They could carry out training events and coordinate activities in other universities and HEIs for improving the human rights portfolio and practices in Kosovo's higher education institutions. This Centre could use the significant expertise currently available not only at the University of Pristina in the field of human rights.

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<sup>33</sup> A term coined by the French sociologist Pierre Bourdieu meaning habits and mindset that are created through individual experience in a given community.

<sup>34</sup> This paragraph was adapted from the idea of a respondent from the University of Peja.

➤ Institute for Research of Rule of Law and Human Rights Studies (IRLHRS)

Whereas the Human Rights Centre of the University of Pristina appears to focus primarily on human rights and practical aspects of human rights promotion and application at the UP, the IRLHRS as a more inter-disciplinary institution focuses primarily on research and educational activities in the fields of rule of law, human rights, and social justice. According to this, it is to be expected for the IRLHRS to further focus on research and curriculum design related to human rights from an interdisciplinary perspective. In this regard, the two institutions could work together in a complementary manner, expanding the overall human rights portfolio of Kosovo's higher education system and institutions.

➤ Donors and development partners:

The public universities and other higher education institutions found themselves in a new situation when the KAA Accreditation Guidelines were approved in 2018. Given the critical importance of these Guidelines for obtaining or losing accreditation of the higher education institutions in Kosovo, the international partners, but also local authorities and NGOs could play an important role if they supported universities in improving their institutional and regulatory set-up to better meet these requirements. The same applies in the field of human rights that takes an important place in the Guidelines. HERAS would be potentially in a unique position to make use of the available expertise and experience to support universities to meet the respective guidelines falling in the realm of human rights.

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## Annex 1: Lst of reviewed documents

The Constitution of the Republic of Kosovo

The Law on Higher Education in the Republic of Kosovo

20 administrative instructions of the MEST regulating higher education

The Statute of the University of Pristina

The Statute of the University of Prizren

The Statute of the University of Peja / Pec

The Statute of the University of Mitrovica

The Statute of the University of Applied Sciences, Ferizaj

Kosovo Education Strategic Plan (KESP) 2017-2021

The National Strategy for Inclusion of the Roma and Ashkali Communities in the Kosovo Society

The National Strategy for Reintegration of Repatriated Persons

Strategic plans of the five public universities: University of Pristina, University Haxhi Zeka, University of Gjakova "Fehmi Agani", University of Mitrovica "Isa Boletini", University "Kadri Zeka" in Gjilan, and University "Ukshin Hoti" in Prizren.

Accreditation Manual of the Kosovo Accreditation Agency

## Annex 2: An excerpt of the Accreditation Manual containing HRBA relevant provisions (standards and indicators)

This is an outline of the most important (not all) standards and performance indicators of the KAA Accreditation Manual that provide for a human rights-based approach in HEIs regarding both for the institutional set up and for study programmes. Only two sections are included below that regulate more specifically the field of students and student services. However, there are also individual provisions in other sections that can serve to build a human rights-based approach in Kosovo's higher education institutions (such as the last Performance Indicator in the field of 5. Management below in this excerpt).

### **9. Student administration and support services:**

Standard 9.1. Admissions requirements are clearly specified and appropriate for the institution and its programs; admission requirements are consistently and fairly applied.

Standard 9.2. Complete information about the institution, including the range of programs and courses, program requirements, services, scholarship opportunities, tuition and administrative fees and other relevant information are made publicly available prior to application for admission.

Standard 9.3. A comprehensive orientation program is organised for starting students to ensure thorough understanding of the range of services and facilities available to them, policies and procedures at the institution and of their rights and responsibilities.

Standard 9.4. A range of scholarships and financial support are available to students in order to both stimulate and reward performance, as well as to socially support students with disadvantaged backgrounds. These two categories and their criteria are operated separately; these scholarships and financial support can be cumulated.

Standard 9.5. There are effective processes in place to collect and analyse reliable data referring to the profile of the student population, student progression, success and drop-out rates, students' satisfaction with their programmes, learning resources and student support available, career paths of graduates. The statistical data is used for quality assurance purposes, as well as in supporting decision making.

Standard 9.6. A student handbook is made widely available within the institution, covering all information required for all phases of the student „life cycle” - admission, progression, recognition and certification – including all concerning regulations, the rights and responsibilities of students, actions to be taken for breaches of discipline, responsibilities of relevant officers and committees, and penalties that may be imposed.

Standard 9.7. Student appeal procedure is specified in regulations, published and made widely known within the institution. The regulations make clear the grounds on which academic appeals may be based, the criteria for decisions, and the remedies available. The appeals procedures guarantee impartial consideration by persons or committees independent of the parties involved.

Standard 9.8. Appropriate policies and procedures are in place to deal with academic misconduct, including plagiarism and other forms of cheating.

Standard 9.9. The range of services provided and the resources devoted to students reflect all requirements of the student population. Formal plans are developed for the provision and improvement of student services; the implementation and effectiveness of those plans is being monitored on a regular basis.

Standard 9.10. The effectiveness and relevance of student services is regularly monitored through processes that include satisfaction surveys. Services are modified in response to evaluation and feedback.

Standard 9.11. Academic counselling, career planning and employment advice as well as personal or psychological counselling services are made available with easy access for students from any part of the institution. Standard

9.12. Opportunities are provided through appropriate facilities and organizational arrangements for extracurricular activities for students. Arrangements are made to organize and encourage student participation in extracurricular activities.

**Performance indicator 9.1.** Advisors familiar with details of course requirements are available to provide assistance prior to and during the admission process.

Performance indicator 9.2. Clear rules are established and maintained related to the privacy of information and controlling access to individual student records.

Performance indicator 9.3. Rules governing admission with credit for previous studies are clearly specified; decisions on credit for previous studies are communicated to students by qualified staff before classes commence.

Performance indicator 9.4. Automated procedures are in place for monitoring student progress throughout their programs; timelines for reporting and recording results and updating records are clearly defined and adhered to.

Performance indicator 9.5. A senior staff member is assigned the responsibility for oversight and development of student support services.

Performance indicator 9.6. Student medical services are readily accessible are staffed by people with the necessary qualifications.

## **5. Students:**

Standard 5.1. There is a clear and formally adopted admission procedure at institutional level that the study program respects when organising students' recruitment. Admission requirements are consistently and fairly applied for all students.

Standard 5.2. All students enrolled in the study program possess a high school graduation diploma or other equivalent document of study, according to MEST requirements.

Standard 5.3. The study groups are dimensioned so as to ensure an effective and interactive teaching and learning process.

Standard 5.4. Feedback to students on their performance and results of assessments is given promptly and accompanied by mechanisms for assistance if needed.

Standard 5.5. The results obtained by the students throughout the study cycles are certified by the academic record.

Standard 5.6. Flexible treatment of students in special situations is ensured with respect to deadlines and formal requirements in the program and to all examinations.

Standard 5.7. Records of student completion rates are kept for all courses and for the program as a whole and included among quality indicators.

Standard 5.8. Effective procedures are being used to ensure that work submitted by students is original.

Standard 5.9. Students' rights and obligations are made publicly available, promoted to all those concerned and enforced equitably; these will include the right to academic appeals.

Standard 5.10. The students' transfer between higher education institutions, faculties and study programs is clearly regulated in formal internal documents.

Standard 5.11. Academic staff is available at sufficient scheduled times for consultation and advice to students. Adequate tutorial assistance is provided to ensure understanding and ability to apply learning.

**Performance indicator 5.1.** If necessary, an adequate selection process as well as recognition rules for foreign qualifications pursuant to the Lisbon Recognition Convention as well as qualifications obtained outside higher education institutions are defined.

Performance indicator 5.2. Systems are established for monitoring and coordinating student workload across courses. Systems are in place for monitoring the progress of individual students with assistance and/or counselling is given to those facing difficulties. Year to year progression rates and program completion rates are monitored and analysed to identify and provide assistance to any categories of students who may be having difficulties.

Performance indicator 5.3. Grading of students tests, assignments and projects is assisted by the use of matrices or other means to ensure that the planned range of domains of student learning outcomes are addressed. Arrangements are made within the institution for training of teaching staff in the theory and practice of student assessment.

Performance indicator 5.4. Support services (e.g. regarding the study program, student counselling in case of emotional, financial or family-related problems, career guidance, international matters, legal advice etc.) as well as subject-related and interdisciplinary guidance are provided.

Performance indicator 5.5. Textbooks and reference materials are up to date and incorporate the latest developments in the field of study. Textbooks and other required materials are available in sufficient quantities before classes commence.

Performance indicator 5.6. The academic or professional fields for which students are being prepared are monitored on a continuing basis with necessary adjustments made in the program and in text and reference materials to ensure continuing relevance and quality.

## **2. Management:**

Performance indicator 1.5. The concepts of gender justice and the promotion of equal opportunities for students in special situations such as, for example, students with health-related impairments, students with children, foreign students, students with an immigrant background and/or students from educationally disadvantaged families are put into practice at the level of the study program.

## Annex 3: The survey with the staff and management from public universities

### What characterizes a human rights based approach?

- Emphasizes **processes** and **outcomes**
- Draws attention to **marginalized populations**
- Works towards **equitable service delivery**
- Extends and **deepens participation**
- **Ensures local ownership** of development processes
- **Strengthens accountability** all actors

### Application of HRBA at your institution in:

#### Teaching:

Is teaching organized in a way that takes in consideration needs of all students?

Is teaching sensitive to human rights aspects – such as equality – equity, gender balance and so on?

#### Curricula

Are human rights addressed in the curricula?

Is there a course that addresses human rights specifically?

Are curricula designed in a way that makes them inclusive and sensitive to gender and equality issues?

#### Teaching materials

Are there any teaching and learning materials available on human rights used in existing courses?

Are the teaching and learning materials?

Is there an introductory course on human rights implemented at your university?

#### Institutional anchoring of human rights at HEIs

Are human rights and a human rights based approach foreseen in your institution's strategic plan?

Are relevant measures and activities implemented?

Is a human rights based approach taken into consideration in your policies, procedures and management processes (such as student participation in decision making, equal gender representation, participation and representation of marginalized and ethnic groups, etc)?

Is there a mechanism / unit / department dealing directly or indirectly with human rights?

#### Cooperation with other partners on human rights

Is there any cooperation ongoing with other public institutions or NGOs in the field of HRBA at your institution?

#### Practices

Are practices guided by institutional and system efforts or are these mainly individual initiatives?

Is there institutional support provided to any individual initiatives?

#### Capacity building

Are there any ongoing initiatives or projects to foster a human rights based approach (including concepts, practices etc)?



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## IMPLEMENTING CONSORTIUM



