

ORANGE REPORT 5

Report on the State of the Human Rights
of Women in Bosnia and Herzegovina
for the period 2016-2019

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and Herzegovina for the period 2016-2019

Sarajevo, November 2019

Sarajevo Open Centre's Human Rights series
Publication number 71

Title: Orange report 5. Report on the State of the Human Rights of Women in Bosnia and Herzegovina for the period 2016-2019

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Publisher: Sarajevo open centre, www.soc.ba

For publisher: Emina Bošnjak

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ISSN 2490-2160



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CONTENTS

FOREWORD	8
REPORT METHODOLOGY	10
PRIORITY MEASURES TO BE UNDERTAKEN	12
Demonstrate dedication to implement Istanbul Convention and combat all forms of gender-based violence	12
Ensure unhindered access to sexual and reproductive health services for women	13
Improve legal and institutional framework for harmonization of private and work life	13
Improve legislative framework for equality between men and women in executive and legislative bodies	14
LEGAL AND INSTITUTIONAL FRAMEWORK FOR GENDER EQUALITY	16
Legal and normative framework	16
Institutional framework and activities	17
Guidelines for action 28	
EDUCATION AND PARTICIPATION IN THE LABOUR MARKET	29
Legal and normative framework	29
Participation in the labour market	34
Family life and labour market	42
Guidelines for action	48
SEXUAL AND REPRODUCTIVE HEALTH	51
Legal and normative framework	51
Access to sexual and reproductive health services	53
Infertility treatment with medically assisted fertilisation	56
Right to abortion	62
Prenatal and postnatal care	66
Guidelines for action	70
POLITICAL LIFE AND DECISION-MAKING	73
Legal and normative framework	73

Women in political party bodies	75
Women in legislative and executive authority	77
Women in judiciary, army, police and diplomacy	79
Guidelines for action	82
GENDER BASED SEXUAL VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE	84
Legal and normative framework	84
Institutional mechanisms for combating domestic violence	85
Position and work of safe houses	86
Misogynistic violence	89
Guidelines for action	92
CONFLICT-RELATED SEXUAL VIOLENCE	93
Legal and normative framework	93
Institutional framework	96
Position of victims of conflict-related sexual violence	101
Guidelines for action	103
SPORT	105
Legal and normative framework	107
Institutional framework	107
Guidelines for action	109
HARMONIZING PRIVATE AND WORK LIFE	110
Legal and normative framework	110
Institutional framework	113
Guidelines for action	119
EDITORS	121
AUTHORS	121

FOREWORD

After a three-year break we are publishing Orange report, a report on the state of human rights of women in Bosnia and Herzegovina. The report covers issues related to violence against women, conflict-related sexual violence, sexual and reproductive health rights, harmonizing private and work life and participation of women in politics, as well as position of women and gender equality in education, workforce and sports.

I am proud and grateful for the fact that this report, based on methodology and efforts authors used in previous reports, is composed of meticulous research, analyses and writing of members of Sarajevo open centre team: Delila Hasanbegović, Amina Dizdar and Nejra Agić. I would also like to express my thanks to the co-author, Vladana Vasić, who *fine-tuned* and improved previously used methodology, and edited copyrighted articles together with me.

I would also like to thank all the people from civil society organisations and institutions who gave us data and enabled putting this report together, and all others who, in various ways, contributed to the technical design of this publication. Special thanks goes to Adriana Hanušić Beširović based on whose previous contributions as an author of works in the scope of conflict-related and sexual violence, it was possible to present these areas in this report as well.

Unfortunately, if we refer to the previous report which covered 2015, we can see that changes which have occurred in the meantime have not significantly influenced the quality of life of women in Bosnia and Herzegovina in the areas and issues discussed. This is so largely thanks to the fact that, in spite of being one of the first countries in the region to improve legal and regulatory framework related to gender equality, Bosnia and Herzegovina has not been successful in making gender equality truly present as a value and principle in political and public life. Certain progress has been made, however, it is hard to measure it due to the lack of gender-sensitive

data collection, nonstrategic approach to efforts on gender equality and human rights of women, and lack of clearly defined set of indicators based on which social, legislative and institutional progress of BiH in this regard could be monitored.

Therefore, I hope that data which my colleagues have collected, analysed and presented will be a useful tool to all those who work on the women's human rights and gender equality and that provide guidelines for the institutions on how to improve their practices and efforts in presented areas through targeted, concrete and measurable activities.

Due to the time limitations related to compiling the report, it had not gone through the process of verification by activists, women's organisations and institutions which deal with human rights of women and gender equality in Bosnia and Herzegovina. Thus, we are looking forward to getting your feedback, critics and comments in the hope that this report, as a result of our internal learning process and your constructive criticism and suggestions, will be even better in its next edition.

Emina Bošnjak
Executive director
Sarajevo Open Centre

REPORT METHODOLOGY

Orange report 5. Report on the state of human rights of women in Bosnia and Herzegovina in the period 2016-2019 is a result of Sarajevo open centre's team members' work on human rights of women and gender equality. The report provides insight into legal and institutional framework created to ensure gender equality in bh. society and how its lacks lead to violation of human rights of women. Furthermore, the report provides concrete recommendations for its improvement. Special focus is put on the areas of education and participation in the workforce; sexual and reproductive health; political life and decision-making; gender-based violence against women ad conflict-related sexual violence and harmonization of work and private life.

Since the report is a three-year overview of developments and changes in the area of human rights of women and gender equality, the selected topics were covered in the previous editions of the Orange report as well, with the aim of maintaining continuity in reporting and monitoring changes which occurred during the reporting period.

Sarajevo open centre decided on this kind of reporting in order to point out small number of changes and a very slow progress in selected areas. Due to the large number of collected data and information, we have not used unified methodology throughout the report, so each chapter is treated as a separate unit with a methodology developed according to the specific features of the area covered within the chapter.

In 2019, the researchers and authors collected information and data needed for analyses, presentation of current situation and making conclusions and recommendations. The information was primarily collected directly from the relevant institutions, both those competent for gender equality and those competent for the area of labour, social politics, human rights, healthcare and sports, as well as

individual offices, agencies and commissions. Information was gathered through secondary sources as well – following the media and official announcements and reports of other state bodies and institutions and their annual and thematic reports.

Civil society organisations have provided a significant contribution by directly delivering the necessary reports or thanks to their annual and thematic reports covering topics discussed in this report.

Orange report 5 is primarily a report on human rights of women and girls in Bosnia and Herzegovina and as such is focused on existing legal, institutional and social factors which lead to their unequal position and common violations of their human rights. Since gender equality is one of the preconditions for improving human rights of women, the largest part of the report deals with this matter. However, the report does not neglect the consequences gender inequality has on men and boys in Bosnia and Herzegovina.

As already emphasized, the report provides insight into the human rights of women in Bosnia and Herzegovina for the period of the last three years, recognizes former and present initiatives and efforts in this field taken by various actors, and provides guidelines and recommendations for further work.

PRIORITY MEASURES TO BE UNDERTAKEN

Demonstrate a dedication to implement the Istanbul Convention and combat all forms of gender-based violence

All levels of government in BiH have a long way to go to successfully combat gender-based violence, and enhance the legislative and institutional framework for a more intensive fight against domestic violence and violence against women.

The adoption of the Criminal Code of Republika Srpska in 2017, presented the first step towards the harmonization of the BiH legislation with the Istanbul Convention. In the near future, it is necessary to harmonize the criminal codes of the Federation of Bosnia and Herzegovina and Brčko District, and harmonize the laws on protection against domestic violence with the Istanbul Convention. Also, it is necessary to regulate and criminalize sexist and misogynistic hate speech as well as incitement to violence against women and gender-based violence by all criminal codes of BiH.

Additional efforts are needed to ensure both the legislative basis and funds necessary for the functioning of secure houses and providing adequate protection services to the victims of violence. Appropriate addressing of the issue of gender-based violence requires awareness-raising activities through education and the media aimed at demonstrating the harmfulness of such behaviour, and eradicating gender-based stereotypes and prejudices.

*Ensure unhindered access to sexual and reproductive healthcare services
for women*

At the entity, cantonal and District of Brčko level, it is necessary to develop and implement programs to undertake measures and activities aimed at achieving equal rights and access to health care, including strengthening professional capacities of health care institutions to apply national and international sexual and reproductive health standards.

Health care institutions must conduct gender equality trainings for the health care employees in order to ensure the provision of healthcare services which take into consideration the needs and interests of women that are different to those of men.

More attention should be paid to raising awareness on adequate sexual and reproductive healthcare, ensuring accessible contraception for women and men, as well as the access to health care services for marginalized groups of women, especially disabled women. Additional activities concerning the implementation of the entity laws and the establishment of uniform termination of pregnancy procedure in the entire BiH are necessary.

It is also necessary to amend the Law on Infertility Treatment by Bio-Medically Assisted Fertilization (BMAF) in the FBiH and to enact the equivalent law in Republika Srpska, in order to uniformly regulate BMAF in both BiH entities and ensure personalized approach for each couple.

*Improve legal and institutional framework for the harmonization of
personal and professional life*

To ensure the conditions necessary to harmonize personal and work life, it is important to amend laws and policies, and design family support measures with respect to the adequate regulation of the issues pertaining to maternity leave allowance including its timely

payment (both employed and unemployed new mothers); ensuring equal access to preschool childcare institutions for all; cantons need to consider subsidies/additional incentives to improve access to kindergartens for the children from underprivileged and low-income families.

Furthermore, it is necessary to promote gender-sensitive parenthood and family life models, encourage men to take parental leave and sick leave to participate in the care for a sick family member, etc.

When designing policies and measures, it is necessary to consider and make provision for ensuring and subsidizing access to preschool institutions, daily centres for children with disabilities, elderly care institutions, etc., which would reduce the workload that is traditionally carried by the women within a family, and which present an obstacle to harmonizing personal and work life.

Improve legislative framework for equality between men and women in executive and legislative bodies

Even though the Election Law has been harmonized with the Law on Gender Equality in BiH, and even though it is mandatory for political parties to include at least 40% of the underrepresented gender on the candidate lists, this measure has not achieved its goal, and consequently the percentage of women in parliaments is usually around 23%. Bearing in mind that this is an affirmative measure aimed at ensuring equal representation of women and men, to ensure its implementation it is necessary to introduce mechanisms such as those used to ensure the parity of the constitutional peoples in those bodies. Also, since the share of women in the BiH population is 51%, the existing quota of 40% needs to be raised to 50% to reflect the reality of BiH society as well as to reflect the interests of the female and male population.

In order to ensure equal representation of women in the executive bodies, the Law on the Council of Ministers needs to be amended as well as the laws on governments and the appointments of ministers at the entity and cantonal level, in a way that would ensure 40% participation of women in these bodies, as was done to ensure the participation of the constitutional peoples.

LEGAL AND INSTITUTIONAL FRAMEWORK FOR GENDER EQUALITY

Achieving gender equality represents one of the prerequisites that a modern society should strive to achieve, if it aims to attain economic development, reduction of poverty rate and raised standards of living. Gender equality includes equal visibility, empowerment and participation of women and men in all spheres of public and personal life, and represents one of the fundamental principles of human rights and freedoms. As a signatory to numerous conventions such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Beijing Declaration, Bosnia and Herzegovina assumed the responsibility of undertaking all adequate measures to eliminate discrimination against women, and to introduce the equality principle in its constitutions and laws.

Normative framework

Gender equality is guaranteed by the Constitution of Bosnia and Herzegovina and the conventions that have been incorporated therein. The Constitutions of BiH also includes an unequivocal provision providing for the direct application of the European Convention for the Protection of Human Rights and its protocols, with those acts having a priority over other laws.¹ In addition to the Constitution and conventions, the Law on Gender Equality from 2003² (LGE) and the Law on the Prohibition of Discrimination from

¹Constitution of Bosnia and Herzegovina, Article II, paragraph 2.

²Law on Gender Equality of BiH, Article II

2009³ (LPD) both guarantee the prohibition of gender-based discrimination. The said laws include provisions stipulating that all other laws and bylaws be harmonized with them.

However, **some laws have not yet been harmonized with the Law on Gender Equality** such as, for example, the Law on the Council of Ministers as well as the laws on governments of entities and cantons, which do not stipulate mandatory gender parity (a minimum of 40% representation of the underrepresented gender) required by the Law on Gender Equality. The provisions of the Law on Gender Equality have been further elaborated in the BiH Gender Action Plan, especially those relating to education, health care, social protection, protection from violence, employment, media, etc.

A poor implementation of the Gender Action Plan and the respective operational plans at both state and entity level, as well as the insufficiency and inconsistency of the local policy development (cantonal, city and municipal level) that would contribute to its implementation cause further problems.

Institutional Framework and Activities

The Law on Gender Equality in BiH defines institutional mechanisms for all levels of government in BiH that have the competence to enforce this law and international standards relating to gender equality, and the coordination and implementation of programmatic objectives from the BiH Gender Action Plan. Their role is to monitor and oversee the enforcement of the Gender Equality Law, while all bodies of the executive power are responsible for its enforcement. The law also requires the establishment of the institutional mechanisms at the cantonal and municipal level in order secure adequate implementation of international standards relating to gender equality.

³Law on Gender Equality of BiH, Article II

The network of institutional mechanisms of the parliaments in BiH comprises the Gender Equality Commission of the Parliamentary Assembly of BiH, the Gender Equality Commissions of the House of Peoples and the House of Representatives of the Parliament of the Federation of BiH, the Equal Opportunities Committee of the National Assembly of Republika Srpska, and the Commission for Gender Issues of the Assembly of Brčko District. At the cantonal level, gender equality commissions have been also established, and at the local level, respective commissions operate within municipal councils.

In comparison to the information from the last Orange Report⁴, more municipalities have responded to the information requests we have sent (41); out of which 37 municipalities have either established gender equality commissions or have other commissions which cover the questions of gender equality. **Commission sessions have been held in 17 municipalities, and the average number of sessions held during the period 2016-2019 is 9.** The rest of municipalities, which either have commissions covering exclusively gender equality issues or commissions which cover gender equality in addition to covering other topics, have informed us that no respective commissions' sessions have been held during the stated period or that commissions convene as necessary, which was not sufficient for us to arrive at a precise conclusion. Out of 41 municipalities that have responded to our inquiries, 6 municipalities have adopted Local Gender Action Plans (LGAP) for the upcoming period, and the LGAPs in 6 other municipalities have expired but the adoption of new LGAPs is planned for.

⁴http://soc.ba/site/wp-content/uploads/2016/02/NARAN.IZVJESTAJ_02_20.02.2014_FINAL_web.pdf

Commissions	Number of sessions held 2016-2019
Novo Sarajevo (Commission for Human Rights and Freedoms)	30
Novi Grad	16
Banovići	4
Berkovići	Has not convened at all
Gradiška	Several times annually
BosanskaKrupa	No information received
BosanskiPetrovac	No information received
Busovača	Twice a year
Doboj-Jug	Has not convened at all
Foča	Twice a year
Glamoč	Has not convened
Ilijaš	1
Jajce	Has not convened
Kalesija	6
Ključ (Commission for Human Rights and Refugees)	Has not convened to discuss gender equality issues
KrupanaUni	Has not convened
Kupres	Once a year
Laktaši	No information received
Ljubinje	No information received
Novi Travnik	Has not convened at all
Orašje	Convenes as necessary

Ribnik	Convenes as necessary
Sapna	Convenes as necessary
Srbac	Has not convened at all
Srebrenica	1
Travnik	9 (during the period 2018-2019)
Ugljevik	Convenes as necessary
Zavidovići	30
Brčko District	9 regular and 3 online sessions
Goražde (Commission for the Protections of Human Rights and Freedoms, Gender Equality and Petitions and Complaints)	13
Gornji Vakuf-Uskoplje	Has not convened at all
Rudo	Has not convened at all
Tešanj (Commission for Youth and Gender Equality)	22
Kakanj	Once monthly
Oštra Luka	Has not convened at all
Petrovo	Has not convened at all
Zenica	6

Table 1: Overview of the number of sessions of the commissions responsible for gender equality at the local level⁵

⁵ Data received upon sending inquiries to all municipalities and towns in BiH regarding the numbers of sessions held during the period 2016-2019. The Analysis did not cover the session agendas, but only the number of sessions held by each commission. It does not provide the results of commissions' work, but whether and how active they were during that period.

As demonstrated in the above table, the **most active commissions were the ones in Novo Sarajevo and Zavidovići**. However, bearing in mind that the Municipality of Novo Sarajevo does not have a gender equality commission, and that gender equality issues are being treated by the Commission for Human Rights and Freedoms, we cannot establish with certainty how many of the sessions held actually treated questions related to gender equality. Although the municipalities of: Berkovići, Doboj-Jug, Glamoč, Jajce, Ključ, Krupa na Uni, Novi Travnik, Srbac, Gornji Vakuf-Uskoplje, Rudo, Oštra Luka i Petrovo, have gender equality commissions established as independent bodies, no commission session have been held, which renders them non-functional.⁶

⁶ The municipalities that have not been listed have failed to provide the requested information thus making the information necessary to include them in this report unavailable.

Commission	Number of sessions held during the period 2016-2019.
Una-Sana Canton	No information available
Posavina Canton	No information available
Tuzla Canton	12
Zenica-Doboj Canton	8
Bosnian-Podrinje Canton (Commission for the Protection of Human Rights and Freedoms, Gender Equality, and Petitions and Complaints)	13
Central Bosnia Canton	No information available
Herzegovina-Neretva Canton	No information available
West Herzegovina Canton (Committee for Justice, Administration, Human Rights and Freedoms, and Gender Equality)	4
Sarajevo Canton	No information available
Canton 10	No information available

Table 2: Overview of the sessions of the commissions responsible for gender equality issues at the cantonal level⁷

⁷ The data provided in the table were found on the official webpages of the Assemblies of all municipalities in the FBiH for the period 2016-2019

The **gender equality commissions at the state and entity level are more active**, as demonstrated by the number of 9 sessions held by the Gender Equality Commission of the Parliamentary Assembly of BiH during the period 2016-2018. It is also important to emphasize that this Commission was the sponsor of laws such as the Framework Law on Infertility Treatment by the Bio-Medically Assisted Fertilization that, unfortunately, has not been adopted. The Commission also has a very good cooperation with civil society organizations as well as the Gender Equality Agency BiH, and launches initiatives that are of great importance for the advancement of the position of the underrepresented sex.

Commission	Number of sessions held in the period 2016-2019.
Gender Equality Commission FBiH	12
Equal Opportunities Committee RS	We were unable to access the information ⁸

Table 3: Overview of the number of sessions held by the commissions responsible for gender equality at the entity level⁹

When it comes to the **executive branch, there are Gender Equality Agency (GEA BiH) as a part of the Ministry for Human Rights and Refugees, FBiH Gender Centre (FBiH GC) and RS Gender Centre (RS GC). The BiH Gender Equality Agency** currently works on the implementation of the Gender Action Plan BiH 2018-2022, which includes strategic objectives, programs as well as measures to achieve gender equality. Among the

⁸ The web database on the activities of the Equal Opportunities Committees was not operational between November 11 and 18, 2019

⁹ The data provided was found on the official webpages of HR PFBiH (the House of Representatives of the FBiH Parliament) and NARS (National Assembly of RS), accessed in November, 2019

priority areas are preventing and combating gender-based violence, including domestic violence and human trafficking, labour, employment and access to economic resources, public life and decision-making as well as further strengthening of the regional and international cooperation. Furthermore, GEA BiH has coordinated the development of the Third Action Plan for the Implementation of the UN Resolution 1325 for the period 2018-2022, with the consultations with relevant institutions and NGOs represented in the Coordination Committee responsible for monitoring the Action Plan.¹⁰ The implementation of activities and achievement of gender equality goals depend to a great extent on the funds received, which represent 0.05% of the BiH annual budget. The share of 0,05% is allocated for the Ministry of Human Rights and Refugees, Gender Equality Agency as well as the grants for civil society organizations striving for gender equality. The same share of the budget of the Federation of BiH is allocated for the FBiH Gender Centre, while the RS Gender Centre receives 0.018% of the RS budget. The Law on Gender Equality stipulates the competences of the GEA BiH and the entity gender centres, which include giving opinions on whether law proposals and draft laws, bylaws and other normative documents have been harmonized.¹¹

According to the information from the Agency, the number of documents that have been submitted requesting an opinion has slightly increased in 2018 compared to previous years.

During 2018, 48 documents have been submitted requesting an opinion on the harmonization with the LGE, while, during 2017, 44 requests have been submitted¹², and in 2016 the number of requests for an opinion was 40. Draft laws, proposals of laws, rulebooks and decisions, reports, information, strategies, action plans, agreements, etc. are submitted to the Agency.

¹⁰ Action Plan for the Implementation of UNSCR 1325 'Women, peace and security' in Bosnia and Herzegovina for the period 2018-2022.

¹¹ Law on Gender Equality, Article 26

¹² http://www.mhrr.gov.ba/ministarstvo/Programi_rada/IZVJESTAJ%20O%20RADU%20MLJPI%20ZA%202018.pdf

The Gender Equality Agency and the genders centres receive and process requests as well as appeals addressing various breaches of the rights defined by the LGE. Based on the appeals received, the Gender Equality Agency, Ministry of Human Rights and Refugees (MHRR) BiH and gender centres provide recommendations on the harmonization to be carried out based on the given recommendations. During the period 2016 to 2019, **GEA, MHRR BiH has deliberated 19 requests to consider violations of the LGE BiH.** The most numerous are the requests based on the violations of the labour-related rights (five cases), which refer to the irregularities in the recruitment vacancy announcement procedures as well as unequal treatment. The second most frequent requests relate to the stereotypes in the media (four cases), and violations in the education sector (three cases). Furthermore, two cases of harassment – misogynistic speech, two cases of unequal representation in the public bodies, two cases of gender-based violence, and one case relating to family relations have been processed. In the most of processed cases, special examination procedures have been conducted along with the provision of legal aid and advice in both written and oral form. Also, several cases have been forwarded to the entity gender centres as they were within their competence.

In accordance with the Law and its mandate and competence, the **Gender Centre of Republika Srpska** participates in the implementation of the Gender Action Plan and FIGAP II Program (Fund for the Implementation of Gender Action Plan in BiH) by developing, adopting and implementing the annual operational plans for gender equality in Republika Srpska. Republika Srpska has nominated the Coordination Committee to monitor the implementation of the Gender Action Plan, whose members, apart from the Gender Centre's representatives, include representatives

from all the ministries of the Government of Republika Srpska.¹³ The Gender Centre has also participated in the implementation of the BiH Action Plan for the Implementation of the UN Security Council Resolution 1325: Women, peace and security, and - in cooperation with local communities and NGOs - works on public campaigns throughout the entire RS aimed at raising women's awareness on their rights and available legal remedies.¹⁴ According to the research on gender inequalities from a life cycle perspective, which was in 2016 conducted by the RS Gender Centre, when it comes to stereotypical views, larger changes have been detected in education, transition into marriage and parenthood, followed by value orientations related to gender roles and relations. The spheres that resist change are employment and access to economic resources, family planning, domestic work and children care. Based on the findings of this research, the Gender Centre has developed 'Special Report on Findings and Recommendations of the Research on Socio-Economic Gender Inequalities in Republika Srpska', which contains recommendations on the elimination of the registered gender inequalities, and was adopted by the RS Government in December 2016.¹⁵ The Government of RS has tasked the Gender Centre, as a coordination body, with the implementation, monitoring of implementation and reporting to the RS Government on programs and measures according the Council of Europe Convention on Prevention and Combating Violence against Women. Since September 2016, in cooperation with UN Women, the RS Gender Centre has been implementing the project aimed at preventing and combating violence against women in ten local government units in RS. When it comes to the harmonization of laws with the Article 20 of the Law on Gender Equality, the RS GC

¹³ Republika Srpska's responses to the additional questions related to the Sixth. Periodic Report of Bosnia and Herzegovina on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), May 2019

¹⁴ Report on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Republika Srpska, for the needs of the Sixth Periodic Report of Bosnia and Herzegovina

¹⁵ Ibid

launched an initiative aimed the harmonization of the Law on Civil Service and the Amendments to the Law on the Government of Republika Srpska, however the legislative procedures for these laws are still underway. At the proposal and initiative of the RS Gender Centre in 2017, amendments to the Criminal Code have been adopted, resulting in the sexual orientation, gender identity and sex being added as prohibited grounds for causing and inciting violence. During 2016, the **RS Gender Centre has considered 7 cases of the violation of rights based on gender**, out of which two cases referred to gender-based violence; two cases of labour-related discrimination, two cases related to social protection, and one case related to public life.¹⁶

The FBiH Gender Centre monitors and gives opinions on the harmonization of other legal documents with the gender equality national and international standards, monitors and analyses the situation with respect to gender equality, cooperates with other institutional mechanisms set up to achieve gender equality and NGOs involved in human rights issues, and receives and process requests, appeals and petitions submitted by individuals or groups of individuals indicating violations of the rights defined in the Law on Gender Equality. Moreover, the FBiH Gender Centre has assumed the management of an online database of domestic violence, which connects police institutions, safe houses, social work centres and help lines. **Most appeals that were received during the period 2106-2019 referred to labour-related discrimination.** During this period, the **FBiH Centre received nine requests to consider violations of the Law on Gender Equality in BiH**, whereby the applicants pointed out at unequal representation in the governing boards, gender-based violence and online harassment, unequal access to sport activities, media statements, discrimination in the language used when awarding academic, scientific and professional titles, as well as the provisions of the Rulebook on dressing code. In

¹⁶ Upon our inquiry, the RS Gender Centre responded by sending information on its activities for the period 2006-2016

one case, a review of a court decision was requested, which does not fall within the FBiH Gender Centre competence.

Guidelines for action

- The Council of Ministers of BiH and entity governments should strengthen the counselling role of the Gender Equality Agency and entity gender centres, and establish a clear and mandatory structure to ensure these mechanisms are consulted in the development of legislations and policies.
- Cantons, cities and municipalities should adopt cantonal and local gender action plans in accordance with the BiH Gender Action Plan and its corresponding operational plans.
- When developing policies, programs and measures, cantons, cities and municipalities must include the gender perspective and implement the Law on Gender Equality and BiH Gender Action Plan.
- The local government units, which do not have established commissions for gender equality, should work on their establishment or task the existing human rights commissions with treating gender equality issues.
- Cantons and local government units of both entities must establish mechanisms for gender equality in their executive bodies, which would improve the cooperation with the existing entity gender centres and the Gender Equality Agency as well as the implementation of the Law on Gender Equality and Gender Equality Action Plan BiH.
- The Council of Ministers and entity governments are obliged to procure funds necessary for the effective functioning of the existing mechanisms, and the implementation of necessary policies, programs and gender equality measures.
- Institutional mechanisms for gender equality must strengthen the cooperation with civil society organizations.

EDUCATION AND PARTICIPATION IN THE LABOUR MARKET

The domains of labour, employment and access to resources - equal opportunities in the labour market and economic life in its entirety, are very complex and important for the realization of gender equality as they presuppose the free market economy and the care economy related to education and multi-dimensional access to various economic and social resources which stem from labour. The relation between the social role of a woman, her education, profession and position on the labour market is strong.

Legal and Normative Framework

The most relevant international legal documents relating to the protection and promotion of women's rights in the labour domain, which were adopted by BiH are:

- Convention of the International Labour Organization no. 100 – on equal remuneration for work of equal value for men and women (1951), 111 – concerning discrimination in respect of employment and occupation (1958), 156 – concerning the equality of opportunity and treatment for women and men workers with family responsibilities (1981), 89 – concerning the rights of women night workers in industrial undertakings (1948), 183 – Convention concerning maternity protection (2000)
- UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁷

¹⁷ Some of the key **standards** that became obligatory for BiH by the adoption of these instruments and by incorporating them into the national legislation prescribe: the prohibition of different treatment based on pregnancy; childbirth; breastfeeding or exercising the right to maternity leave; prohibition of different treatment of women and men regarding making decision on parental leave, and any unfavourable treatment of

Of special significance for these areas are the documents of the European Union and the Council of Europe:

- Gender Equality Strategy 2016-2019 of the European Commission¹⁸
- EU Resolution on the Protection of the Dignity of Men and Women at Work (1990)¹⁹
- EC Recommendation on the Protection of the Dignity of Men and Women at Work (1991)²⁰ – includes combating sexual harassment
- Council of Europe Directive 86/378/EEC (2006) on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Women and Men in Matters of Employment and Occupation.
- European Social Charter - revised (2004)
- Recommendation of the Parliamentary Assembly of the Council of Europe 1700 (2005) on Combating Discrimination of women in the workforce and at workplace.
- Directive of the European Commission 79/7/EEC the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security
- Recommendation of the Council of Europe CM/Rec(2007)13 on the Gender Mainstreaming in Education.

parents or guardians when it comes to harmonizing personal and professional life; equal pay and benefits for the work of equal value; equal conditions for career advancement; education, professional training; the same status in the organization of work, tasks distribution or establishing work conditions in other ways and employment termination regardless of the sex or marital status; state's obligation to formulate and plan policies aimed at improving employment and vocation domains in order to eliminate potential discrimination.

¹⁸ Strategy available at: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy_en

¹⁹ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31990Y0627%2805%29>

²⁰ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Ac10917a>

The Law on Gender Equality in BiH regulates employment, labour and access to resources. It guarantees equality on the grounds of gender in the recruitment process. The law **prohibits discrimination on the grounds of gender in labour and in labour relations**, in the process of recruitment competition, vacancy announcement, filling existing vacancies and employment termination. It is prohibited to pay different salaries for the work of equal value on the grounds of sex, hinder career advancement under the same conditions, preclude conditions necessary for education, unequal suitability of work and auxiliary spaces for the needs of both genders, different treatment due to pregnancy, childbirth or exercising the right to maternity leave, any unfavourable treatment of parents or guardians in the harmonization of their personal and professional life or any other action representing some form of direct or indirect discrimination, defined by the same law.

With respect to the protection from direct and indirect discrimination, this law directs involved parties to use the anti-discrimination protection mechanisms defined by the Law on the Prohibition of Discrimination. **Sexual harassment and gender-based harassment** present criminal offences, while the Criminal Code of Republika Srpska from 2017 defines a criminal offense – *sexual harassment* with special qualifying elements of subordination that is vulnerability.

These laws also require employers **to ensure all effective measures aimed at preventing harassment, sexual harassment and gender-based discrimination in labour and labour relations**. BiH has also committed to harmonizing all general contracts and collective agreements with the provisions of this law, and an important role of trade unions and employers' associations in securing the protection **of equal right to work regardless of gender** is emphasized.

The entity labour laws define **pay equality**, specifying the obligation of employer to ensure equal pay for the work of the same value

regardless of workers' ethnicity, religion, gender, political or trade union affiliation as well as other grounds for discrimination. The Law on Gender Equality defines the failure to ensure equal pay as a form of discrimination.

The amendments to the entity labour laws²¹ have normatively improved the position of women in the labour market. The improvements, amongst other things, refer to regulating the **prohibition of discrimination**, which used to be regulated by a single article with a possibility of requesting **judicial protection**. The amended law **specifies precisely the grounds for and types of discrimination**; harassment or sexual harassment, gender-based violence, as well as systematic harassment at work or relating to work (mobbing) of the employees or those seeking employment. Even though this represented a significant improvement compared to the previous legal solutions relating to discrimination in the Federation of BiH, it is probable that problems will appear in the enforcement of these provisions when it comes to requesting protection from discrimination, as the deadlines for requesting protection are shorter than those defined by the Law of the Prohibition of Discrimination BiH.

When it comes strategic documents, the Gender Action Plan BiH 2018-2022 offers an analysis of the situation in this area, specifies measures to eliminate gender-based discrimination at work, recruitment process, and in the labour market, which are all aimed at ensuring **equal opportunities for women and men with respect to the access to economic resources**, including poverty reduction through microeconomic and development strategies.

²¹ Labour Law of the Federation of BiH, the Official Gazette of the Federation of BiH, no. 26/16, 89/18; Labour Law of Republika Srpska, the Official Gazette of Republika Srpska, no. 1/16, 66/18

According to the last published report on the implementation of GAP (for 2015 and 2016)²² an **improvement has been achieved with respect to amending existing legal solutions relating to maternity protection and specifying the prohibition of the termination of employment contract**. Furthermore, according to the report, programs and measures for equal access to employment opportunities, self-employment and economic resources are being implemented at all government levels. However, this report does not provide clear and precise indicators demonstrating how these conclusions have been reached.

As stated by the BiH Gender Equality Agency in the Report on the Progress of BiH in the Implementation of the Beijing Declaration and the Platform for Action (2019)²³, **socially isolated women** (women living in remote areas, mothers of children with disabilities, women missing out on just few years' worth of pension insurance, women with disabilities, single mothers living in rural areas, elderly women) need **greater support in job searching**, and therefore should be **addressed in the strategic documents**. Another notable problem is that of the lack of official data on mobbing at workplace, overtime work and difference in salaries between public and private sector. Numerous programs of economic empowerment of women developed in the past aiming at the promotion of women's *entrepreneurship, occupational retraining and training necessary for employment and self-employment in accordance with the labour market demand, which were* implemented by NGOs, have been recognized in the report.

²² Report available at: <https://arsbih.gov.ba/project/izvjestaj-o-realizaciji-gender-akcionog-plana-bih/>

²³ BiH Gender Equality Agency 'Report on the Progress of BiH in the Implementation of the Beijing Declaration and the Platform for Action in BiH within the Beijing +25 Process, April 2019, available at: <https://arsbih.gov.ba/project/izvjestaj-o-napretku-u-primjeni-pekinske-deklaracije-i-platforme-za-djelovanje-u-bih-u-okviru-procesa-peking-25/, str. 22>

In its Employment Strategy 2016-2020, Republika Srpska has identified women as a vulnerable group in the labour market, and the **principle of non-discrimination on the grounds of gender has been introduced in the employment programs and measures**. However, the question of how many and what kind of special programs have aimed at women, especially vulnerable women, remains unanswered. Currently in force in Republika Srpska is the Strategy for the Development of Small and Medium-Size Enterprises 2016-2020, and the Draft Strategy for the Development of Women's *Entrepreneurship in RS for the period 2018-2022 was adopted in February 2019*.

Based on the above, we can conclude that the normative and public policy framework regulated labour relations with respect to the protection of women's rights in a satisfactory manner. However, the realization of rights and the implementation of those provisions remains a problem, which will be elaborated on in some of the following chapters.

Labour Market Participation

As evaluated by the Gender Equality Agency, in the new Gender Action Plan 2018-2022, women in BiH face **multiple obstacles in the labour market**, such as longer waiting period for the first job, long employment disruptions due to maternity leave or the care they provide for an elderly family member, inability of middle-aged women to successfully re-enter the labour market due to the market shifts and discontinuation of some types of work.

In spite of numerous, repeated recommendations of the international institutions to establish regular statistical reporting on the position of women, **we still do not have adequate, reliable and timely collected annual data on the (un)employment of women, differences in salaries, temporary work or shorter**

working hours, the number of women in decision-making and company management positions, etc.²⁴

(Un)employment rates

In BiH, the opportunity for employment is shown by (in)activity and (un)employment rates.²⁵ According to the last available data from the Agency for Statistics of BiH for **2018**, regarding the *indicators of workforce disaggregated by age and gender*, the **employment rate of women in BiH** is 25%, and is 19,1% lower than that of men, (lower in comparison to 2017 rate which was 24,75% lower than the employment rate for men. The **unemployment rate of women** is 20,3%, and is higher for 3.1% than the unemployment rate of men (higher in comparison to the last year rate when it was 4,2% higher than men's unemployment rate).²⁶ Data on the population **inactive in the labour market** in BiH show that the percentage of inactive women was much higher in 2018(841 women, 547 men).²⁷

According to the Survey on Workforce in **2019**²⁸, the **activity rate** was 42,1%, and has not changed since 2018. The activity rate was

²⁴Petrić, Aleksandra; Vidović, Gordana et al. 'Alternative CEDAW Report: Report of the Civil Society Organizations on the Implementation of Concluding Observations and Recommendations for BiH by the CEDAW Committee 2013-2017', Helsinki Citizens' Assembly, Banja Luka, Rights for all, Sarajevo, 2016, p. 86

²⁵ As shown in the reports of the Agency for Statistic of Bosnia and Herzegovina, **working-age population** includes all persons of 15 years of age and above. It is classified in two main categories: workforce (economically active) and economically inactive population. **Workforce or active population** includes all employed and unemployed people. **Inactive population** includes all persons the age of 15 and above, who did not work during the reference week, and who, did not undertake any job-searching actions during the period of 4 weeks (the reference week and 3 preceding weeks), and the persons who are not ready to start working in the next two weeks if offered a job.

²⁶ Agency for Statistic of Bosnia and Herzegovina 'Bosnia and Herzegovina in numbers 2018', BHAS, 2019, p. 41

²⁷ Agency for Statistic of Bosnia and Herzegovina 'Bosnia and Herzegovina in numbers 2018', Ibid, p. 33

²⁸ Mid-April 2019, the 14th Survey on workforce in Bosnia and Herzegovina was conducted, using a sample of 10,789 households, out of which 5,969 households in the

significantly higher for men (51,7%) than women (32,9%). The **inactivity rate** in 2019 was 57,9%, and has not changed since 2018. The inactivity rate for men was 48,3%, and for women 67,1%.²⁹

Grafikon 1. Struktura radno sposobnog stanovništva prema aktivnosti i spolu
Graph 1. Structure of working age population by activity and sex

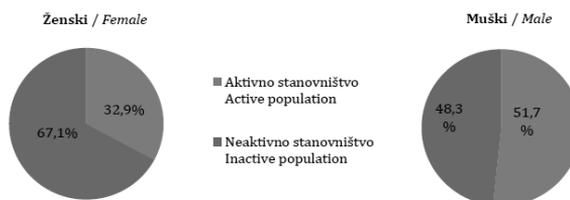


Chart 1: Structure of the working-age population disaggregated by activity and sex

In **2019, the unemployment rate** was 15,7% (13,6% for men and 18,8% for women). The unemployment rate was the highest among young people - 15 to 24 years of age, and represented 33,8% (31,3% for men and 37,9% for women).³⁰

Therefore, it is obvious that the employment and activity rates remain low, with little changes compared to the previous years, which especially unfavourably affects women.

Federation of BiH, 3,750 in Republika Srpska, and 1,070 in District of Brčko. The survey covered all the persons from the sampled households that agreed to it.

²⁹ Agency for Statistic of Bosnia and Herzegovina 'Survey on the workforce of BiH 2019', Statement - previous data, BHAS, 15 July 2019, p 1

³⁰ Agency for Statistic of Bosnia and Herzegovina 'Survey on the Workforce of BiH 2019', Ibid, p 2

These data are worrisome as they demonstrate the difficulties women face when it comes to finding job, and consequently transit into the inactive segment of population. The reasons may include abandoning job search or impossibility to work in spite of having a desire to, with the most common reason for women's unavailability for work being the care they provide to their families.

When it comes to the *gender data disaggregated by sectors/industries*, the largest portion of the employed population in 2018 was in the **service industries** – 52,1% (out of which 66,2% women and 43,8% men), followed by **non-agricultural** industries - 32,1% (17,8% women and 40,7% men), and **agriculture** -15,7% (16% women and 15,5% men)³¹, which did not change significantly in 2019 (according to the available data from the Survey on the Workforce of BiH in 2019). Data on the participation of women in the highly profitable industries/economic sectors are not available in the used reports of the Agency for Statistics of BiH. According to the data of the *She Figures 2018* Report of the European Commission, women are underrepresented in STEM (science, technology, engineering, mathematics) disciplines, in both education sector and in the labour market.³²

Education

Apart from other social functions it has, education should be a key factor of women's participation in the labour market by ensuring better employment opportunities for men and women.

As emphasized by the BiH Gender Equality Agency in the Report on the Realization of Gender Action Plan 2013-2017, even though the

³¹ Agency for Statistic of Bosnia and Herzegovina 'Survey on the Workforce of BiH 2018', BHAS, p 49

³² See European Commission Directorate General for Research and Innovation. „She Figures Handbook 2018“, Luxembourg: Publications Office of the European Union, 2019

percentage of women who earn academic titles including master's and doctoral degrees is higher than that of men, the percentage of women in the senior lecturer and research positions (full professors), and management staff is significantly lower than that of men. Therefore, we can note the glass ceiling roof phenomenon in the BiH education.

In April 2016, the National Assembly of Republika Srpska has adopted the Education Development Strategy for the period 2016-2020, which did not address either gender equality or the elimination of gender stereotypes. Nor were these questions addressed by the Strategic Directions of Education Development in the Federation of BiH 2012-2022 adopted by the Federal Ministry of Education and Science.

A positive example of promoting a wider engagement of women in the university processes is a project that is, with several European universities, implemented by the International University Sarajevo, and titled SAGE - Systemic Action for Gender Equality, which is designing a Gender Equality in Higher Education Plan. The objectives established are: Elimination of employment barriers, stagnating and hindering women - researchers' career advancement; Response to gender inequalities in decision-making processes; Enhancing gender dimension in research programs. The results of the analyses conducted on women's representation in rectorates, dean's offices and in scientific research lead to a conclusion that the academic trajectory of men and women is similar or same until the master's level. However, when it comes to doctoral degrees and all the way to the professorship, the number of women abruptly declines. The same plan has been adopted by the University of Belgrade.

Moreover, several universities in BiH are introducing gender equality subjects/courses for students to upgrade their knowledge by studying this interdisciplinary area, and be ready to apply gender equality standards in their future professional activities.

When it comes to gender equality in the procedure of issuing public documents—degrees in the higher education institutions in BiH, gender-sensitive language is still not used for academic, scientific and professional titles. In May 2019, the F BiH Gender Equality Centre, at the request of Sarajevo Open Centre (SOC), issued a Recommendation to the ministries of education and science of Sarajevo Canton and the Federation of BiH to harmonize rulebooks on the contents of public documents, so that the titles/professions are written equally in both grammatical genders.

The RS Gender Centre, in its document titled ‘Responses of Republika Srpska to the additional questions with respect to the Sixth Periodic Report of BiH on the Implementation of the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)’ dated May 2019, in the *Education* segment, emphasizes that traditional gender differences in education such as traditionally lower education degree of women disappeared, meaning that the **general educational level of women has risen**. Furthermore, according to the responses, inequalities are demonstrated when **disaggregated by different disciplines**, men are concentrated in technical, natural and mathematical sciences, while women tend towards medical and social sciences, humanities, language science and arts.

As evaluated by the BiH Gender Equality Agency, in the Gender Action Plan 2018-2022, even though the number of boys and girls, women and men involved in education processes in BiH is equal, there are **limited advancement opportunities for women, and limited access to the positions requiring higher education**, above all due to the stereotypes relating to male/female professions and the question of harmonizing personal and professional life. In the GAP, the Agency paid a special attention to the **education of vulnerable groups members**: ethnic minorities (especially Roma), persons from rural areas, persons with disabilities and displaced persons and refugees, due to numerous obstacles they face. There is

an **education gap** between women in urban, suburban and rural areas. Roma are, as an ethnic minority, inadequately included in education. Roma women continue to have a low level of education compared to men, and generally women in BiH. A high illiteracy rate is present among Roma population as well as low rates of those attaining primary, secondary and higher education. Also, as stated, the BiH textbooks still contain gender stereotypes of men, women and their social role.³³

Roma girls and young women are almost entirely excluded from the education system. According to the data provided by the Agency for Statistics of BiH, the literacy rate of the Roma girls between 15 and 24 years of age is 68,9% in comparison to almost 99% rate among BH women in general. In 2015/2016 school year, only 44% of Roma girls were included in primary education, with almost 80% of them not completing primary education, and as low as 4,5% completing secondary school. These data demonstrate the existence of institutional inequalities in access to education, which are the cause of such (il)literacy level and the exclusion of Roma girls from the education system.

Gender gap, gender differences in the labour market and education

The Survey on workforce conducted annually by the Agency for Statistics for BiH demonstrates the gender differences in this area in BiH. Data for 2018 regarding economically active population disaggregated by educational level is as follows: the largest share of **working-age women** registered in 2018 is with **secondary or lower level of education** (62,2%), men also (73%).³⁴ The *largest share of employees with respect to educational level* is made up of persons with the secondary level of education and professional

³³ Gender Equality Agency BiH, Gender Action Plan of Bosnia and Herzegovina for the period 2018-2022, GEA BiH, October 2018, p 22

³⁴ Agency for Statistics of Bosnia and Herzegovina, 'Survey on the Workforce in BiH 2018', Ibid, p 45

specialization (72,8% men and 60,7% women), followed by those with community college, university, master's and doctoral degrees (13,5% men and 22,7% women), and those with primary level of education and lower making up 13,7% (men) and 16,7% (women).³⁵

In BiH, there is a **gender gap between paid and unpaid work**, with the **share of women involved in unpaid work being significantly higher**. According to the Survey on the Workforce in BiH from 2017 conducted by the Agency for Statistics of BiH, the share of women (15-45 years and above) in unpaid work in households, including agricultural work is estimated to be approximately 70%. The reasons of this lie in stereotypical understanding of gender roles, unequal division of family responsibilities, insufficiently developed and distributed childcare and elderly care institutions as well as the existence of the gender-segregated labour market.³⁶

As specified in the Gender Action Plan for BiH 2018-2022, women prevail among the lowest-paid employees in the labour market, with the largest concentration of women in sectors such as: healthcare, education, agriculture, as well as non-formal sector. A large number of women is employed based on employment contracts for a limited period of time, part-time contracts, or are excluded from the formal labour market working as a part of gray economy.

With respect to active employment measures, the RS Gender Centre reported to CEDAW Committee that during the period 2014-2018, through direct financial incentives, 46,26% of women were employed (out of the total number of 13,853 of unemployed persons) as a result of the implementation of the RS Employment Strategy and corresponding employment action plans³⁷With respect

³⁵Ibid, p 55

³⁶BiH Gender Equality Agency, Gender Action Plan for BiH for the period 2018-2022, GEA BiH, October 2018, p 20

³⁷ Gender Centre – Centre for Gender Equality of Republika Srpska. Responses of Republika Srpska to the additional questions relating to the Sixth Periodic Report of BiH

to the development of women's entrepreneurship, the RS Gender Centre states that women in RS own about 30% of businesses, and women's participation in the total number of employees is approximately 40%.³⁸ More exact data, which would include the Federation of BiH are not available in the BiH CEDAW Report (2013-2016), except for commonplaces such as: active employment policies were aimed at training, professional employment and vocational training, additional vocational training and retraining, preparing unemployed for the labour market and creating equal opportunities for all regarding the access to the labour market, with support provided to the targeted groups of unemployed population that were identified as more difficult to hire by strategic documents, and especially young people and women. As noted in the CEDAW Report, the incentives for the employment of women and the development of women's entrepreneurship have been increased.

*Family life and the labour market*³⁹

Occupational safety and health

The entity labour laws stipulate **special protection of employees working the night shifts** in terms of looking out for their health, ensuring periodical medical check-ups, etc. Working the nightshifts is prohibited for pregnant women (starting with the sixth month of pregnancy), mothers and adoptive parents, as well as the persons who are entrusted with caring for a child by a competent body. **Working overtime** is prohibited for the employees under the 18 years of age, pregnant women and mothers with children below 3 years of age, and single parents. In the Federation of BiH, the

on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination of Women (CEDAW), GC RS, May 2019, p 13

³⁸ Gender Centre – Centre for Gender Equality of Republika Srpska. Ibid, p. 14

³⁹ See more on different aspects of the relations between family life and labour market in the chapter titled: Harmonizing professional and personal life

employment of women in any underground work is prohibited, except on the managerial positions or in healthcare or social services, training of limited duration or periodic entry to perform activities that do not include physical labour. This provision represents a discrimination on the grounds of gender, which was established by the European Social Committee in 2012, as well as the Institution of Ombudsman BiH to which SOC has submitted an appeal regarding this issue. In June 2017, the Parliamentary Assembly of BiH issued a Decision on Giving Consent for the Denouncement of the Convention no. 45 of the International Labour Organization on the Employment of Women in Underground Work, while the FBiH Labour Law has not yet been harmonized in that sense.

Maternity/parental leave and maternity benefits

The rights relating to the protection of mothers and maternity are regulated by the labour laws and the laws regulating social protection at the entity and cantonal level. The FBiH Law on Principles of Social Protection, Protection of Civil Victims of War, and Families with Children stipulates that the rate amount of maternity allowance will be regulated by cantons, and, in RS, these questions are regulated by the Law on Social Protection, the Law on Child Protection and the Rulebook on the Realization of the Child Protection Rights in RS.

By the amendments to the FBiH Labour Law from 2016, **parental leave** was defined for the first time, and stipulated that an employee – father is entitled to use it 42 days after the delivery should the parents so agree, and is **entitled to work half working hours after the expiration of maternity leave** in the case of twins, third or each following child, if the mother works full time. According to the RS Labour Law from 2018, the parents of a child are entitled to agree on the leave, and the employed father of the child is entitled to continue the leave 60 days after the delivery in

place of the mother. The question remains as to how and how much this is being implemented in practice. According to the data provided by the RS Public Fund for Child Protection, 37 fathers exercised the right to parental leave in 2018, which represents an advancement compared to previous years, while in the Federation of BiH, as stated by the Sector for Social Protection and Family and Child Protection of the FBiH Ministry of Labour and Social Policy, such information has not been registered.⁴⁰

The amount of allowance during the maternity leave or parental leave remains uneven in the Federation of BiH, varying from canton to canton, based on the place of residence, work sector (public or private sector), etc. **Discrimination of new mothers** occurs in terms of: a) obligatory work period before maternity leave as a condition to exercise that right, and b) amount of allowance received instead of salary.⁴¹ In the Special Report of the Institution of Human Rights Ombudsman of BiH on the State of Protection of Mothers and Maternity in FBiH⁴², the Ombudsman notes a worrying fact that the allowance for employed and unemployed persons who exercise rights from the mothers and maternity protection field are not paid regularly in some cantons. This especially affects the persons to whom the allowance represents significant if not the only financial source after the childbirth, but also employers who might face additional financial difficulties due to the late payment of maternity allowance.

In Republika Srpska, the amount of maternity allowance is even and rather regularly paid from the Public Fund for Child Protection, based on the three average salaries received during the last 12 months of the woman's employment. The employers in RS are

⁴⁰ See Zorlak, Aldijana. BiH fathers on parental trip, oslobodjenje.ba, 10.03.2019

⁴¹ Gavrić, Saša; Hadžić, Inela et al. 'Orange Report 2016. Annual Report on the State of Human Rights of Women in Bosnia and Herzegovina', Sarajevo Open Centre, Helsinki Citizens' Assembly, Banja Luka, February 2016, p 21

⁴² Available at: https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2015102111102085bos.pdf

obliged to pay the allowance for the first month of the maternity leave, and the rest is paid from the Fund. The RS Labour Law stipulates that a woman-mother is entitled to start receiving pension earlier (shorter pensionable service) in comparison with the pension-related conditions stipulated in the Law on Pensions-Disability Insurance, with one less pensionable year for each child she delivers. **This legal solution, which was introduced by the amendments to the Labour Law in 2016, is contrary to the intention to harmonize the old-age pension conditions for men and women, and may represent grounds for gender-based discrimination.**

Discrimination in labour relations

In comparison to the earlier legislation, the new entity labour laws stipulate that an **employer must not terminate woman's employment contract while she exercises one of the following rights** during:

- Pregnancy,
- Using maternity leave
- Exercising the right to work half working hours after the expiration of maternity leave
- Working half-time until the child is 3 years of age in case the child requires enhanced care according to the findings of the competent health institution
- While using the leave for breastfeeding

One thing that is missing in both legislation and practice is the development of social services such as child and family care institutions, and the relevant authorities failed to ensure adequate measures aimed at raising awareness in order for the public to better understand the principle of equal opportunities for men and women employees.

Often, problems and obstacle arise in terms of the realization of the rights guaranteed by the law. This is primarily reflected in the

inability to use maternity leave for the period of one year, meaning **the inability to return to one's work position after maternity leave,** while the entitlement to work half-time is almost unheard of. Unsanctioned cases of employment termination for pregnant women and new mothers continue occurring. It needs to be emphasized also that the regulations treating social protection, in accordance with which the employed women-mothers realize their right to allowance, significantly affect the implementation of the said legal provisions in practice. Here, we primarily mean **uneven social benefits in different cantons,** or even **absence of the right to maternity leave in some cantons.** Bearing all of this in mind as well as the socio-economic situation in the society, the cases of women not exercising their rights on the one hand, and employers pressuring women to return from maternity leave as early as possible (not realizing other regulated rights), on the other hand are not infrequent. This puts women in an unfavourable position.

In the context of the state's obligation to establish an **effective system to collect data on discrimination,** we would like to point out that a **database on discrimination cases in which the procedure commenced,** including gender-based discrimination, sexual harassment and other cases of discrimination against women, has not been established yet even though it has been ten years since the adoption of the Law on the Prohibition of Discrimination that stipulates the obligation to do so.⁴³

During 2017, the **Institution of Ombudsman** has processed several cases whereby the allegations in the appeals pointed out the violation of gender equality, namely that pregnant women received notifications on the termination of employment, or were offered to

⁴³ See: OSCE BiH. „Analysis of the Judicial Responses to Discrimination Challenges in Bosnia and Herzegovina“, OSCE Mission to Bosnia and Herzegovina, 22.10.2018, available at: <https://www.osce.org/mission-to-bosnia-and-herzegovina/400544>

sign a fixed-term contract after the expiration of the current one.⁴⁴ In accordance with this, the Ombudsman points out that in 2017 it became obvious that the adoption of the Labour Law in 2016 reflected primarily the interests of employers, as this activity was not followed by ensuring mechanisms for protection of employees, especially vulnerable categories.

Between 2016 and 2019 (at the time of writing this report), **BiH Gender Equality Agency** has processed 19 cases addressing the breaches of the BiH LGE. The most frequent are the violations of rights relating to labour relations (five cases), such as irregularities in the recruitment procedure or unequal treatment in the hiring process. Also, three cases of the violation of gender equality in education have been processed, two cases related to harassment - misogynistic hate speech, and one case concerning family relations.

In the past, the **FBiH Gender Centre** has received, among other cases, a number of requests to examine violations of the BiH LGE concerning labour relations, discrimination in the recruitment process, discrimination at workplace, discrimination in career advancement (cases relating to recruitment procedure – gender discrimination in choosing the candidate; discrimination in the process of scoring candidates in the hiring process; complaints regarding the manner in which the disciplinary procedure against a female employee is conducted, mobbing – psychological harassment at workplace). Even though the number of reported cases of gender-grounded discrimination in the recruitment, labour and access to all forms of resources is not high, the Gender Centre notes that there are indications that various forms of discrimination occur in practice based on gender - harassment, sexual harassment by work colleagues, superiors or the employer.

⁴⁴Institution of Human Rights Ombudsman in Bosnia and Herzegovina. Annual Report on the Activity Results of the of the Institution of Human Rights Ombudsman for 2017, March 2018, p. 104

The research titled ‘Gender-Based Discrimination in the Employment Sector in BiH, which was conducted in 2018⁴⁵, has also demonstrated that **gender-based discrimination in labour relations is present in all segments**: starting with vacancy announcement, job interview (women are asked about their marriage status, family planning, pregnancy), to the gravest labour-related forms of discrimination such as lower salary for the work of equal value in comparison to male colleagues, inability to advance career or mobbing. The research has also shown that a **confidential and secure system for the submission of appeals related to gender-based discrimination and sexual harassment at workplace has not yet been set up in BiH**, that no relevant records are kept, and that there is no case law for discrimination cases. Consequently, there is a low level of both the awareness of discrimination and the trust in relevant institutions that processes such cases. The research has also shown that the **legal framework, which regulates gender-based discrimination relating to job recruitment and labour in BiH, is fragmented and inconsistent in practice**.

*Guidelines for action*⁴⁶

- It is necessary to harmonize the entity labour laws in relation to the grounds for discrimination prohibited by the Law on the Prohibition of Discrimination BiH, so that the labour-related legislation includes the grounds for discrimination prohibited by this law.
- The responsible institutions should define a group of gender-sensitive contextual indicators for the BiH labour market, and regularly monitor the trends such as the gap

⁴⁵ Research available at: <http://hcabl.org/wp-content/uploads/2019/05/Rodno-zasnovana-diskriminacija-na-radu-u-Bosni-i-Hercegovini.pdf>

⁴⁶ More guidelines for action regarding the harmonization of personal and professional life, that is family life and the labour market can be found under the chapter 8 – Harmonization of personal and professional life.

between male and female participation, self-employment rates, etc. BiH has to undertake urgent measures of affirmative actions to increase the employment and self-employment of women, especially those that have been inactive or unemployed for a long while, as well as protection measures for women who are active, assisting members of their family, meaning women who perform housework.

- The state must establish a regular system of statistical data collection on the status of women, especially employment, salary and benefits level in different employment sectors, professional training and career advancement, participation in the management of companies, gray economy, etc.
- In order to intervene in the labour market, it is necessary to conduct gender analyses of activities aimed at economic growth, especially those relating to women's participation in the labour market.
- To advance the *gender mainstreaming* measures in the specialized employment programs and counselling services provided by employment offices in BiH.
- Provide additional employment incentives for marginalized women groups, especially the women with disability percentage above 40%, and increase monitoring of the enforcement of the Law on Professional Rehabilitation, Training and Employment of Persons with Disabilities in both entities.
- Take a step towards the research of gender equality/establishing gender studies at the universities in BiH by introducing adequate subjects or expanding the existing educational-scientific contents, programs and processes.
- BiH has to define the authorities of labour inspections when it comes to monitoring the enforcement of the Law on the Prohibition of Discrimination and the Law on Gender Equality, especially regarding employment, equal pay, leave of absence, career advancement and

participation in the management bodies of companies, as well as establishing a protection system against sexual harassment, and harassment and discrimination on the grounds of gender.

- Labour inspections need to improve the system of recording reports on the violations of the labour-relations rights (including discrimination, mobbing and special forms of discrimination), as well as the system of keeping records of the conducted inspection visits and imposed measures.
- In order to establish a functioning system for the collection of data on discrimination, the BiH courts should expend their CMS database of the cases commenced based on discrimination with new indicators: 'discrimination' and 'grounds for discrimination' regarding discrimination on the grounds of gender, sexual harassment and other cases of gender-based discrimination.
- It is necessary to regulate the rights of new mothers and other rights related to the protection of families with children in the FBiH by a separate legal act – law on the protection of the families with children in the FBiH, which would eliminate established shortcomings and unharmonized cantonal legislation in force, in order to improve the social protection system for the families with children and secure the minimum equal rights, with clearly defined sources of funding for the Federation of BiH. The most effective solution to the current problem of maternity allowance would be to completely transfer the competence from the cantonal level to the Federation of BiH, while setting up a fund for maternity benefits by enacting a new law.

SEXUAL AND REPRODUCTIVE HEALTH

Approach to sexual and reproductive health is grounded in an adequate recognition of, protection and realization of reproductive rights, and includes protection and equality of all people in all aspects of their sexual and reproductive life, the right to information, education, health care services adapted to suit individual needs as well as participation in making decisions relating to own reproduction free of discrimination, coercion and violence and based on the self-determination principle.⁴⁷

Legal and normative framework

Some of the relevant international legal documents that guarantee the recognition, protection and realization of rights to sexual and reproductive health are:

- UN Convention on Elimination of All Forms of Discrimination against Women (1979)
- Beijing Declaration with Platform for Action (1995)
- Resolution of the European Parliament on a backlash in the realization of women's rights and gender equality in the European Union (2019)⁴⁸
- UN Convention on the Rights of Persons with Disabilities (2006)

⁴⁷ The activity program adopted at the International Conference on Population and development (ICPD) in Kairo (1994) defines reproductive health as the state of total physical, mental and social well-being, not only as the absence of disease/weakness, which in all forms relates to the functions and processes of the reproductive system, satisfying and safe sex life, the capability to reproduce as well as the freedom to decide if, when and how to engage in different aspects of reproduction.

⁴⁸ European Parliament, Resolution on experiencing a backlash in women's rights and gender equality in the EU/2018/2684(RSP)), EU Parliament, 13.02.2019, available at: http://www.europarl.europa.eu/doceo/document/TA-8-2019-0111_EN.html

- European Parliament and Council of Europe (2004) Directive 2004/23/EZ on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells

The listed legal documents establish the rights of women to control and freely decide on sexuality, health and reproduction, as *indivisible* part of their human rights without which they cannot enjoy fully other rights, and governments are invited to undertake activities to ensure the highest respect and protection of human rights of women and men, securing the respect for the principle of individual integrity, mutual respect, consent and shared responsibility for sexual behaviour and its consequences. They oblige the signatory states to undertake measures to eliminate discrimination of women in the provision of healthcare services, based on the equality of women and men as well as an adequate access to healthcare services including those relating to family planning (related to pregnancy, childbirth, and postnatal period).

In Bosnia and Herzegovina, there is no single law, program or strategy relating to sexual and reproductive health. In the Federation of BiH, Strategy for the Enhancement of Sexual and Reproductive Health and Rights (2010 - 2019) was adopted. The main priorities set therein are: Ensuring quality and accessible prenatal protection, safe child delivery and comprehensive postnatal protection; Pregnancy termination focusing on eradication of illegal terminations of pregnancy and improvement of the access to healthcare services; Prevention of sexually transmitted diseases including HIV; Malignant diseases of the reproductive organs; Promoting sexual health and rights; Promoting reproductive rights; Continuous education as well as the role of the NGO sector. In May 2109, the National Assembly of Republika Srpska discussed the Draft Strategy for the Enhancement of Sexual and Reproductive Health in RS for the Period 2019-2029.

protection are especially present in rural areas or areas without larger healthcare centres. This problem is particularly present among women living in poverty and women from rural areas who face the problem of financial participation in covering medical bills or transport costs to a medical centre, and impedes access to these entitlements and services. Another present problem represents an **absence of systematic solution to the question of preventive healthcare in isolated and rural communities.** In this report, the Gender Equality Agency emphasizes the problem faced by local communities reflected in the quotas – the number of women inhabiting an area required in order for a clinic to be established in the area, or periodic field visits by the specialist gynaecologist provided. The Agency also noted the problem of insufficient number of gynaecological exam and intervention tables, healthcare workers unsensitized to treat women with disabilities.

Furthermore, legal conditioning for the realization of the right to healthcare for the unemployed persons via employment offices, by setting deadlines to register at the employment office upon the completion of education or employment termination, especially affects vulnerable categories of women and women from rural areas, who, due to a lack of financial means, information of patriarchal upbringing fail to officially register as unemployed within the deadlines defined by the law, thus losing health insurance.⁵¹

Most of the healthcare institutions in BiH failed to ensure the **principle of accessibility for the person with disabilities** (PWD). We will use the example of the Canton of Sarajevo to illustrate this. As stated in the Analysis of the Action Plan for the Improvement of the Rights and Status of the Persons with

⁵¹Petrić, Aleksandra; Vidović, Gordana et al. 'Alternative CEDAW Report: Report of the Civil Society Organizations on the Implementation of Concluding Observations and Recommendations of the CEDAW Committee for Bosnia and Herzegovina 2013-2017', Helsinki Citizens' Assembly, Banja Luka, Rights for All, Sarajevo, 2016, p. 94

Disabilities in the Canton of Sarajevo (2018-2021)⁵², none of the health centres or family medicine clinics have adequately adapted access; persons using wheelchairs have no access to the diagnostic and therapeutic services, rehabilitation; gynaecological clinics are not adequately equipped and adapted to suit the needs of women with disabilities, etc. Therefore, it has been concluded that Sarajevo Canton fails to respect the norms and standards of accessibility, which directly breaches the rights of the persons with disabilities to a rapid and high-quality healthcare and independence in the use of healthcare services.

Associations of women with disabilities point out to the **problems concerning the access to gynaecological healthcare and healthcare for pregnant women**. In BiH, only several gynaecological clinics in large towns have gynaecological exam tables suitable for the pregnant women in wheelchairs. Healthcare workers are not trained for the examination and child delivery of the women with disability and their unprofessional treatment of such women contribute to the fact that these women miss regular examinations, or, due to the traumatic experiences suffered, decide not to have more than one child.⁵³

In the Alternative CEDAW Report, it is emphasized that, in the entire BiH, there are only four gynaecological tables that can be adapted to transfer women in wheelchairs, in Banja Luka, Sarajevo, Tuzla and Bijeljina. In such cases, according to the accounts of those women, healthcare workers demonstrated poor ability to handle the equipment, hesitated, and do not know how to help a woman with disabilities. As a consequence, women with disabilities avoid using healthcare services, visit a doctor only when in serious pain and almost entirely avoid preventive exams. Even at the medical centres

⁵²Ministry for Labour, Social Policy, Displaced Persons and Refugees of the Canton of Sarajevo. Action Plan for the Improvement of the Rights and Status of the Persons with Disabilities in the Canton of Sarajevo (2018-2021), available at: https://mrsri.ks.gov.ba/sites/mrsri.ks.gov.ba/files/akcioni_plan.pdf

⁵³Petrić, Aleksandra; Vidović, Gordana et al, *ibid*, p. 95

with the adequate equipment (usually a donation), it is not the result of the systematic efforts to ensure that the services are adapted to suit all, and relevant medical institutions fail to raise awareness on the possibility to use some services. The information that there is a possibility for medical exam is not available to women with disabilities, often resulting in the equipment not being used.⁵⁴

In their responses to the inquiries made by the SOC for the needs of this research regarding the number and availability of necessary gynaecological equipment, those public medical institutions that responded to the inquiries stated that it is harmonized with the health protection standards and norms in terms of accessibility and compliance with the requirements of the persons with disabilities.⁵⁵

Treatment of infertility with medically assisted fertilization

After several attempts to regulate this area in the Federation of BiH, and harmonize the practice of bio-medically assisted fertilization (BMAF) in all cantons, the **Law on Infertility Treatment by Bio-Medically Assisted Fertilization** in the FBiH was adopted in in July 2018.⁵⁶ For the women from the FBiH, this law ensures co-financing of the bio-medically assisted fertilization by the Health Insurance Institute (HII), which enabled their equal treatment with that of the women in Republika Srpska. The law regulates conditions for the health institutions and infertility treatment procedures in accordance with the regulations in terms of health protection standards, health insurance, rights, obligations and responsibilities

⁵⁴ Ibid. p. 104

⁵⁵ Out of 25 clinics/hospitals which were sent inquiries, 6 has responded, and all 6 of them stated that the reproductive health services are complete and available to the persons with disabilities, with the professional treatment of patients. Out of the 10 cantonal medical centres which received the inquiry, 4 responded affirmatively stating that the services are equally available to the persons with disabilities in accordance with the FBiH health protection norms and standards for the number of inhabitants covered by different medical centres.

⁵⁶ The Official Gazette of the Federation of BiH, no. 58/19/July 27 2018

of patients. The adoption of this law **lays the foundation for enabling all couples regardless of their marital status, creditworthiness or the canton they reside in to have access to the BMAF procedures.**⁵⁷

The implementation of the adopted law lies ahead as well as the adoption of bylaws announced by the Government of the Federation of BiH in its Work Program for the fourth quarter of 2019, which will further specify guidelines and conditions to be followed by the healthcare institutions regarding BMAF procedures, methods of cost formation of individual cases at the proposal of the relevant commission and the FBiH HII, in cooperation with the cantonal HHIs, etc.

Presently, the FBiH citizens do not have adequate access to BMAF procedures, and even when they do, the costs of such procedures are not fully covered by the mandatory health insurance, and **the share of costs of these procedures covered by the Institute is defined differently in each canton.**⁵⁸The procedures of assisted fertilization are expensive and challenge the very existence of the couples trying to conceive in this way. Currently, these procedures are available to the patients in BiH at the privately-owned clinics and are highly expensive. The public sector is not in position to compete

⁵⁷ Non-adoption of this law was often justified by a lack of financial resources necessary to finance such treatments which is unfounded bearing in mind that the BiH entity – Republika Srpska has been enabling its citizens to have two BMAP procedures covered by the mandatory health insurance.

⁵⁸ For example, the patients in the Canton of Sarajevo may be refunded two procedures: first in the amount of 4,000 KM, and second in the amount of 2,000 KM; In Tuzla Canton two procedures, first in the amount of 3,000 KM, and second in the amount of 2,000 KM; In Una-Sana Canton one procedure in the amount of 3,000 KM; In Zenica-Doboj Canton one procedure – 2,000 KM; the Central Bosnia Canton refunds one procedure in the amount of 3,000 KM; while Canton 10 covers three procedures attempts of intrauterine insemination and five attempts of in vitro fertilization, covering the full amounts of procedure costs for each attempt.

with the private sector in terms of the necessary equipment but also successfully conducted procedures that resulted in pregnancies.⁵⁹

Cantons in the Federation of BiH have the authority to issue decisions on financing two attempts of bio-medically assisted fertilization. However, these are decisions that any cantonal health insurance institute may choose to issue and implement or not. Also, these decisions are issued to (co)finance BMAF procedures for the women below the age of 37, which is considered a discriminatory provision. In the countries of this region, if a woman is proven to have health and legal capacity, this age limit is set to be even above 43. In the Federation of BiH, as a part of the program titled *Humane Reproduction of the Persons with Disabilities*, only one attempt of in vitro fertilization for persons with disabilities is financed, from the FBiH Solidarity Fund.⁶⁰

The current practice of submitting appeals to the Institution of Human Rights Ombudsman in BiH with respect to the realization of the right to healthcare, namely the **discrimination in the access to BMAF based on the woman's age**. In one of the examples, which is described in the Annual Report on the Activity Results of the Institution of Ombudsman for 2018 – a case commenced at the initiative of The Centre of Women's Rights Zenica based on the conclusions made while providing legal assistance to the women from different FBiH cantons - this Centre informs the Ombudsman on the different practices regarding refunding of the provided medically assisted fertilization services. The different practices are reflected in the existence of **different conditions established for the participation in the medically assisted fertilization program**, especially the conditions related to **the age limit of a**

⁵⁹Husić Šabanović, Indiana. 'Comparative Analysis of the law proposals on bio-medically assisted fertilization: How the proposals of the Government of FBiH and SDP contribute to improvement of infertility treatments by bio-medically assisted fertilization', Sarajevo Open Centre, January 2018, p. 5

⁶⁰BiH Gender Equality Agency. 'Sixth Periodic Report of Bosnia and Herzegovina on the implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women (2013-2016)] Ibid, p. 41

woman. The Centre points out at practice in different cantons being uneven and discriminatory. In some cantons no age limit for women or couples has been set, such as the practice of the health insurance institutes in Zenica-Doboj and Tuzla Cantons, in contrast to other cantons. Whether a woman or a couple will be entitled to the refunding of the BMAF costs and the amount of costs covered both depend on the woman's/(un) married couple's place of residence.⁶¹

In Republika Srpska, BMAF is not regulated by the law. However, this area is regulated by the Rulebook on contents, scope and modes of the realization of the right to health protection, which allows the citizens three free of charge procedures which are provided at privately owned clinic Medico-S, with which the Health Insurance Fund(HIF) has signed a contract.⁶² Since 2018, the RS Health Insurance Institute refunds three attempts of in vitro insemination for married couples with the woman being the age of 40 and below (before 2018 the Institute refunded only two attempts). The women between 41 and 42 years of age receive the refund in the amount of 50% of the total cost, while the women above the age of 42 who already have a child through in vitro fertilization receive a refund for the full amount of expenses incurred. Furthermore, the RS HIF commenced covering a new service in 2017 – **storing embryos** for two years, the costs of which were not covered by the RS HIF prior to 2017. Presently, the couples do not have to undergo the entire process of in vitro fertilization, and, thanks to embryo storing, do not have to undergo hormonal therapy. The procedure itself takes less time, and consequently the costs incurred are lower.

In Brčko District, the Health Insurance Fund also allocated funds for the financing of BMAF, for two attempts for married and unmarried couples, with women being 42 years of age and below. The maximum amounts of the share of costs of the assisted reproduction covered

⁶¹Institution of Human Rights Ombudsman in Bosnia and Herzegovina. Annual Report on the Activity Results of the Institution of Ombudsman for 2018, March 2019, p.58

⁶² Each procedure costs about 5,500 KM including diagnosis, therapy and the procedure itself

by the HIF in 2019 is as follows: for the first attempt – 6,000 KM, for the second – 5,000 KM. At the end of 2018, the Fund commenced covering the third attempt of the assisted reproduction, with the funds being provided by the Government of District of Brčko in the amount of 5,000 KM.

The table below shows the numbers of the granted requests to finance BMAF procedures as well as the amounts allocated for this procedure, which we have received from the cantonal and entity institutes/funds as well as District Brčko Health Insurance Fund (for the period from 2016 to the first half of 2019).

Health Insurance Institute/Fund – administrative unit	Number of adopted requested for financing	Allocated funds
Sarajevo Canton	226 requests in 2017 (data not received for 2016, 2018, and first half of 2019)	776.794 KM in 2017
Tuzla Canton	248	814.688 KM
Zenica-Doboj Canton	316	632.000
Una-Sana Canton	40 requests in 2017 (data not received for 2016, 2018, and first half of 2019)	120.000 in 2017
Central Bosnia Canton	175	Data not received

Hercegovina-Neretva Canton	it does not cover the costs yet as the implementation documents based on the Law on Medically Assisted Fertilization (2018) have not been adopted yet	
West Herzegovina Canton	22	26.400
Bosna-Podrinje Canton	20	20.000
Canton 10	45	Data not received
Posavina Canton	3	6.000
Federation of BiH	finances the costs of BMAF procedure only for persons with disabilities	
Republika Srpska	1.352	2,5 million KM (annual expenditure)
Brčko District	111	431.000 KM

Table 4: Numbers of granted requests for the financing of BMAF procedures and amounts allocated for this procedure (for the period from 2016 to the first half of 2019)

Apart from sporadic information, the health insurance institutes do not possess data on the successfulness of BMAF procedures nor do they keep records of the procedures that resulted in successful pregnancy or childbirth. The RS Health Insurance Institute has provided the information according to which, 1,115 babies were born as a result of in vitro fertilization so far in RS (during 2018, 214 pregnancies were realized, and in 2017 155 pregnancies with 115 babies). According to the information received from the Medico S Clinic, annually approximately 400 BMAF procedures are provided. In 2017, the percentage of successfulness was 38,7%, and in 2016, 39,4%.

The right to pregnancy termination

In Bosnia and Herzegovina, legislation regulating pregnancy termination has been enacted at the entity level. The Law on Conditions and Pregnancy Termination Procedure dating from 1977⁶³ is in force in the Federation of Bosnia and Herzegovina, which was copied from the Former Yugoslavia, and regulates the procedure and obligations of the healthcare institutions almost identically to the way it is regulated in Republika Srpska (the Law on Conditions and Pregnancy Termination Procedure of **Republika Srpska, 2008**). According to this law, **each woman has the right to decide on pregnancy termination up to the tenth week of pregnancy.** At the level of BiH, **there is neither reliable statistical information nor a systematic and consolidated method of data collection on pregnancy terminations.** According to entity laws on record keeping in the healthcare institutions, **all public and private healthcare institutions that are registered for the health protection of women and maternity, and perform pregnancy termination procedures are obliged to keep records - collect statistical information**

⁶³The Official Gazette SR BiH, no. 29/77 and 12/87

on the number of pregnancy terminations. Entity health insurance institutes collect and publish information on pregnancy terminations. In the Health Statistics 2017 Yearbook by the Federal Healthcare Institute, under the chapter titled *On Health Protection of Women*, there is an available report on pregnancy terminations in the FBiH, disaggregated by cantons.⁶⁴ This data is shown in the table below. The FBiH Public Healthcare Institute (PHI) emphasizes that they do not receive information from the private health sector, even though they are obliged to provide this type of information to the public healthcare institutes.

PREGNANCY TERMINATION TYPE	2017.	2018.
Intentional/ at the woman's request	900	751 (36,6%)
Spontaneous		677 (33%)
Medically indicated	587	623 (30,4%)
METHOD		
Surgery	2.213	/
Drug-induced	43	/

Table 5: Data on pregnancy terminations in the FBiH for the period 2017-2018

⁶⁴ Information for 2019 will be available on June 30, 2020

Upon the inquiry regarding the number of pregnancy terminations in the past, the Healthcare Institute of Republika Srpska provided the following information: In the public healthcare institutions, 1,966 pregnancy terminations were performed in 2016, and 1,846 in 2017, with all terminations being diagnosed based on medical indications for pregnancy termination. In the privately-owned health institutions, 72 pregnancy termination were registered in 2016, and 96 in 2017.

Cantonal health insurance institutes in the FBiH as well as the RS Health Insurance Fund cover the costs of pregnancy termination for the medically indicated cases by the mandatory health insurance funds, while the pregnancy terminations at the request of a woman are not covered by the health insurance (the pregnancy termination service is fully financed by the woman patient).

The **pregnancy termination** performed at the request of a woman until the law-regulated age of the embryo limit is paid for, and **performed in public healthcare institutions as well as privately owned ones. The costs vary in different health institutions, and the information regarding the costs is not easily obtained, as institution demonstrated were rather unwilling to provide it. For the needs of writing this report, SOC has sent inquiries to public and privately-owned health institutions in BiH, and not all of them replied.**⁶⁵

Out of 25 clinics/hospitals providing the secondary and tertiary healthcare in BiH to which access to information requests have been sent, we received required information from only 9 of them.

⁶⁵ According to the information available on the Plava Poliklinika health institution's webpage, the cost of a pregnancy termination including a general anaesthesia is 400 KM, while the cost of abortion pill including medical tests an examination is 250 KM. According to Sara Vita polyclinic's medical price list, the cost of pregnancy termination with manual aspiration with local anaesthesia is 200 KM.

Privately owned clinics failed to provide information on the number of performed abortions or the costs of this procedure.

Some institutions, such as the University Clinical Hospital Mostar (UCH Mostar), Cantonal Hospital 'Dr Fra Mihovil Sučić', Cantonal Hospital Orašje, General Hospital Bugojno stated that they do not perform abortions at all. UCH Mostar performs only those pregnancy terminations that jeopardize the lives of pregnant women, the pregnancy terminations performed for medical reasons (exclusively drug-induced). The extent of non-uniformity in this area is demonstrated by the fact that the HII of the Bosna-Podrinje Canton do not cover costs of even medically indicated abortions, while the General Hospital Prim. Dr Abdulah Nakaš performs only medically indicated abortions.

For example, the cost of pregnancy termination at the request of a woman charged by the General Hospital Konjic is 100 KM; The Cantonal Hospital Dr Irfan Ljubijankić Bihać charges 307 KM (general anaesthesia) and 201 (local anaesthesia). The University Clinical Center of Republika Srpska charges 300 KM for the abortion with the anaesthesia, and 160 KM without anaesthesia.

Out of 10 healthcare centres in the Federation of BiH to which access to information requests were sent, information was received from four centres. **Three health centres (Tuzla, Gorazde, Travnik) stated that they do not perform pregnancy termination procedures,** and one of the 4 centres (Zenica) responded that they perform both types, at the request and medically indicated. The abortion at the request is performed on the commercial basis, and costs 100 KM.

The current practice in BiH is such that, **despite the existence of the legal grounds requiring the provision of free of charge and safe pregnancy termination, the provision of this healthcare service is not available under the same conditions in the entire territory of BiH.** Reasons are numerous: failing to

perform abortion at the woman's request, unequal abortion costs in different cantons, inadequately equipped public health institutions, nonexistence or insufficient number of such institutions providing the service of pregnancy termination in small towns, incomplete procedure of informing patients on the abortion process, etc.

Prenatal and postnatal care

According to the last Research of Multiple Indicators in Bosnia and Herzegovina, **only 12% of the women of reproductive age use modern contraceptive methods**, with the highest share among the women with the higher education and income level (20%). Additionally, the **contraceptive needs of the 9% of all women of reproductive age are not satisfied**. Prejudices, wrong perceptions and insufficient knowledge regarding the importance of contraception coupled up with the high prices of contraceptives represent key factors responsible for such a low rate of contraceptive use.

The FBiH Healthcare Institute, referring to the information from the Multiple Indicators Cluster Survey 4 (MICS4) for BiH, from 2012⁶⁶, notes that contraception (any method) is used by 43,3% of married women or women in unmarried partnerships, with preference given to traditional methods (33,3%) in comparison to 10% of women who use modern methods of contraception. The most frequent method of contraception is **coitus interruptus**, used by 29,2% of married women, followed by **male condom** used by 5,9%. With respect to other contraceptive methods, 2,2% of women use **intrauterine device**, 3,9% practice **family abstinence**, and 1,6% use **contraceptive pills**. In total, 56,7% of women between 15 and 49 years of age, who are married or in unmarried partnerships

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Available

at:

[:http://ba.one.un.org/content/unct/bosnia_and_herzegovina/bs/home/publications/istra_ivanje_vi_estrukih_pokazatelja--mics--bih-2011----2012--.html](http://ba.one.un.org/content/unct/bosnia_and_herzegovina/bs/home/publications/istra_ivanje_vi_estrukih_pokazatelja--mics--bih-2011----2012--.html)

do not use any contraceptive method. The share of women who use any of the existing contraceptive methods, or whose partners use a contraceptive, is estimated to be approximately 49%, which is considered low in comparison to the OECD average of 73%.⁶⁷

As stated by the FBiH Healthcare Institute, according to the *Report on the Work of the Healthcare Departments Responsible for Women's Healthcare*, the most frequent method of contraception is oral contraception. In its response to the inquiry regarding the frequency of the use of different contraception methods, the RS Public Healthcare Institute stated that it does not possess such information.

In BiH, contraceptives can be found on the lists of essential medicines⁶⁸ only in Republika Srpska (Legravan medicine, generic name - levonorgestrel+etinil estradiol) **and in Canton 10** (hormonal contraceptive Microgynon), while **in other parts of the country users must pay the full price of all contraceptives**. In Republika Srpska, The Health Insurance Fund may fully or partially cover the costs of contraceptives from the essential medicines list, while in Canton 10, the Health Insurance Institute covers 50% of the full price of the above contraceptive.

While the last Model List of Essential Medicines of the World Health Organization from 2017, contains 14 different contraceptives including condoms, contraceptive diaphragms, and intra-vaginal rings, BiH, on its lists of essential medicines namely in one canton and RS, currently has only contraceptive pills, the price of which varies from 3 to 11 KM, depending on the producer.⁶⁹

⁶⁷BiH Gender Equality Agency. 'Sixth. Periodic Report of Bosnia and Herzegovina on the implementation of the UN Convention on the Elimination of All Forms of Discrimination Against Women (2012-2016)', Ibid, p. 40

⁶⁸ The lists of medicines which are fully or partially charged to the funds of the Health Insurance Institute

⁶⁹ Unkić, Hilma. Essential lists of medicines in BiH dominantly without contraceptives, diskriminacija.ba, October 2, 2017

While there is a single list of essential medicines in Republika Srpska, cantons in the FBiH often fail to harmonize their lists with the list of essential medicines of the FBiH. Due to a lack of harmonization, **citizens in different parts of the Federation of BiH pay different price for the same medicine**, which applies to contraceptives as well. Even though the FBiH list of essential medicines, which simultaneously represents a form of recommendation to the cantons, includes a contraceptive the generic name of which is drospirenon+etinilestradiol, cantons opt not to put this medicine on their list of essential medicines, as the B list is not obligatory, and is decided upon exclusively at the cantonal level.

Insufficient supply does not apply only to contraceptives from the list of essential medicines, but the supply of contraceptives is also limited for those who must or wish to pay the full price of a contraceptive. In total, 15 contraceptives have been registered at the BiH market – 11 belonging to the hormonal group of contraceptives for systematic use, one intrauterine device, two medicines for emergency contraception, and one intra-vaginal contraceptive.

One of factors that cause a low percentage of contraceptive use is the **price** of some contraceptives, which are so high that many BiH women cannot afford them. Hormonal pills that must be bought on monthly basis may reach the price of 26 KM, while intrauterine device costs 315 KM. **A lack of information on all possible options**, but also the **stigma** still prevailing in our region with respect to sexual and reproductive health, contribute to condoms and coitus interruptus remaining the most dominant methods of contraception in BiH.⁷⁰

A positive development is that the RS Health Insurance Fund in May 2019 commenced covering Utrogestan medicine for all pregnant women who need it - in cases of high-risk pregnancies, risk of

⁷⁰ Unkić, Hilma. Ibid.

miscarriage or premature delivery, it is available to pregnant women as a prescription medicine.

In its report, the Agency mentions the information from the TransMonEE for BiH⁷¹, according to which **the number of women who die from the complications related to pregnancy and childbirth has halved in the last 20 years**, demonstrating the advancement of the health system and services. The maternal mortality rate is significantly lower than the EU average. Almost all childbirths are performed by the professional staff (in 2015, 99,96%). One in seven women in BiH delivers baby by the caesarean section (14%). The caesarean delivery rate is increasing, with the trend continuing in 2015, and is higher than the rate recommended by the PHI.⁷² However, the fact that BiH **does not have data on the causes of women's death during childbirth** represents a problem, instead the mortality is currently shown exclusively disaggregated by the current diseases codes.

Another problem faced by the women in BiH is **participation/co-payment**. The Decision on Maximum Amounts of Direct Participation of the Insured Persons in the Expenses of Individual Forms of Medical Protection in the Basic Package of Health Care Rights (based on which cantonal decisions are issued) defines the categories of insured persons exempted from participating in the medical costs. Among other categories, this **decision exempts women from the participation in the medical expenses that are related to pregnancy o maternity**, healthcare services related to prevention of breast and uterus cancer, persons above 65 years of age who are not entitled to pension, pensioners receiving the minimal pension, unemployed persons, persons with a degree of disabilities and other vulnerable groups. This decision is not implemented since the cantons have not harmonized their regulations on participation with this decision. There are no consequences for cantons' refusal to implement this decision.

⁷¹ Available at: <http://transmonee.org/country/bosnia-and-herzegovina/>

⁷² Gender Equality Agency of Bosnia and Herzegovina. Ibid

Consequently, **women miss preventive medical exams**, as these exams mainly incur costs that have not been foreseen in the family budget. This especially affects the women victims of violence, unemployed women, women working as a part of grey economy, etc.⁷³ Therefore, it is evident that there is an unequal distribution of rights as well as unequal access to the health services packages.

The RS Health Insurance Fund finances all the services related to family planning: enables direct check-up visits to the gynaecologist with who the Fund has signed a contract – public or privately owned institutions, without having to be referred beforehand to the specialist by their family doctor; the Funds fully covers the health protection for pregnant women and mothers during the maternity leave (categories exempted from paying participation), for all health services covered by the mandatory health insurance.

Guidelines for action

- Competent institutions should regularly collect, analyse and publish data disaggregated based on sex, access and use of health services in related to sexual and reproductive health.
- It is necessary to design and implement measures and activity programs aimed at achieving equal rights regarding access to health protection, including strengthening professional capacities of the health institutions to apply national and international standards in their area, and introducing gender-responsive budget and financial plans of the healthcare institutions, as well as establishing adequate institutional mechanisms for the coordination of the implementation of these measures.
- Educational institutions should implement campaigns aimed at raising awareness of the public on the

⁷³ Petrić, Aleksandra; Vidović, Gordana et al, *ibid*, str. 96

importance of sexual and reproductive health in all life phases. This should be conducted by the dissemination of exclusively evidence-based information and findings, and these questions should be incorporated in the formal system of primary and secondary education.

- Implementation of the entity laws on the procedure and conditions of pregnancy termination must be rendered more adequate meaning that this right should be exercised in the entire territory under the same conditions, and be equally accessible to all women, with clearly stipulated procedures regarding the ability of a woman to make decision concerning her body, health and life.
- Harmonize the costs of abortion at request procedure in the different parts of BiH.
- More stringently oblige health institutions to keep records and provide data on the abortions performed.
- Conduct trainings on gender equality for the medical workers in order to ensure healthcare services that would take into consideration the different interests of women and men.
- Include contraceptives in the lists of essential medicines of all administrative units in BiH, especially the cantons in the FBiH. Broaden the supply of contraceptives available in the BiH market.
- Necessary improvement of the Law on Infertility Treatment by Bio-Medically Assisted Fertilization in the FBiH in terms of enabling patients to have treatments outside of BiH, due to the nonexistence of a stem cell bank (heterologous insemination). It is necessary to enact the identical law in Republika Srpska, in order for the BMAF to be regulated in a uniformed way in both entities.
- Laws on Infertility Treatment by Bio-Medically Assisted Fertilization should include women who were diagnosed with infertility and have legal and economic

capacity, but who do not live in a married or unmarried partnership. Both married/unmarried couples and single women diagnosed with infertility should be enabled to have children.

- It is necessary to ensure that public and privately-owned health institutions approach each couple individually and equally, especially women when it comes to establishing the woman's age limit for the boil-medically assisted infertility treatment.
- Ensure actual access to healthcare services for the women with disabilities, especially in primary healthcare in terms of the suitability of medical equipment, internal space, accessibility to information for the blind or deaf persons as well as trainings for the medical staff to provide adequate care for the persons with disabilities (sign language interpreter, instructions for blind persons, adequate physical accessibility to the buildings, beds, gynaecological exam tables, toilets, etc.).

POLITICAL LIFE AND DECISION-MAKING

Equal participation of women and men in public and political life is one of the foundations of democratic society. UN Convention on the Elimination of All Forms of Discrimination Against Women defines discrimination against women as any distinction, restriction or exclusion made on the basis of sex which has the effect or purpose of impairing or nullifying enjoyment of human rights in all fields, including political life. As one of the signatories of the Convention which is integrated into its Constitution, Bosnia and Herzegovina is obliged to take all appropriate measures in order to implement the Convention. However, BiH has not seriously committed to implementation of the Convention, the evidence of which can be found in the conclusions of the UN Committee for Elimination of All Forms of Discrimination Against Women published in November 2019. The Committee expressed concerns with regard to underrepresentation of women in legislative and executive power on all levels and emphasized the need for amending Election law in which the existing quota of 40% would be increased to the mandatory 50% of women candidates in the lists, as well as amending Law on the Council of Ministers of BiH according to which minimal representation of women in this body should be 40%.

Legal and normative framework

The Law on Gender Equality of BiH guarantees equality of genders in all spheres of life, including public life. Therefore, state and local authority bodies, as well as political parties, are obliged to ensure and promote equal representation (at least 40% of less represented gender) of genders in governance, decision-making and representation.⁷⁴ This means that the aforementioned bodies shall draw up measures in the form of laws, policies, strategies and plans to achieve gender equality.⁷⁵ Unfortunately, the

⁷⁴ The Law on Gender Equality of BiH, Article 20.

⁷⁵ The Law on Gender Equality of BiH, Article 8.

aforementioned legislation is not in compliance with the Article 8 of the Law on gender equality. Neither the law on the CoM of BiH, nor laws on governments on all levels have provisions which would ensure 40% representation of less represented gender.

In 2013, the Election Law of BiH was harmonized with the Law on Gender Equality which obliges political parties to have equally represented male and female candidates.⁷⁶ This rule requires at least one candidate of less represented gender among the first two candidates, at least two candidates of less represented gender among the first five candidates and three candidates of less represented gender among the first eight candidates, etc. The minimum threshold determined by the Election Law of BiH is mandatory, so the Central Election Committee (CEC BiH) shall reject any list of a political party unless it is composed in line with the quota rule.⁷⁷

Aside from the state legislation, there are numerous international documents obliging states to ensure equal representation of women in decision-making processes. **United Nations Security Council Resolution** invites member states to ensure higher representation of women on all decision-making levels in state, regional and international institutions and mechanisms.⁷⁸ On 151th session held on 1 August 2018, The Council of Ministers of BiH adopted an Action plan for the Implementation of the UN Resolution 1325 „Women, peace and security” in Bosnia and Herzegovina for the period 2018 – 2022 in order to ensure consistent, good quality and efficient implementation of the Resolution in competent institutions on all authority levels. The Action plan has three strategic goals: increased participation of women in military, police and peace missions, including participation in decision-making, increased level of human security through the prism of gender

⁷⁶ The Election law, Article 4.19, Paragraph 3.

⁷⁷ Sixth Periodic Report of Bosnia and Herzegovina on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (2013-2016)

⁷⁸ UN Security Council Resolution 1325 „Women, Peace and Security “

equality and improved conditions and approach for the implementation of the UNSCR 1325 Action Plan.⁷⁹

The Committee of Ministers of the Council of Europe adopted **Recommendation to Member States on Balanced Participation of Women and Men in Political and Public Decision-Making in 2003**.⁸⁰ In terms of this recommendation, equal participation of women and men means that representation of any gender in any decision-making body in political and public life should not be less than 40%. Gender equality is one of the fundamental values of the European Union and driver of economic growth, so in 2010 the **Commission for Equality of Women and Men adopted the Strategy for Gender Equality** which defines five priority action areas, one of which is equality in decision-making. These five key areas are segments of the Strategy 2016-2019.⁸¹ The Recommendation and the Strategy are not obligatory for member states and thus do not oblige Bosnia and Herzegovina either. However, they are something BiH should seriously consider and take all necessary measures to achieve goals from the Recommendation and the Strategy in order to ensure equal representation of women and men in decision-making processes if it wants to get nearer its goal of joining the European Union.

Women in party bodies

Talking about political parties and political representation of women in main bodies of political parties, current situation is better if compared with the data from the last Orange report. However, even now, not a single political party has 40% women in its management

⁷⁹ The Action plan for the Implementation of the UNSCR 1325 “Women, Peace and Security” in Bosnia and Herzegovina for the period 2018-2022

⁸⁰ Recommendation Rec (2003)3 of the Committee of Ministers of the Council of Europe to Member States on Balanced Participation of Women and Men in Political and Public Decision-Making

⁸¹ The strategic engagement for gender equality 2016-2019

structures and there is not a single woman as a party leader in parliamentary parties on entity and state level.

The Main Board of Demokratska fronta has 90 newly elected members, out of which 35 are women, which confirms that women are represented by 38.8%. One of the policies of Demokratska fronta is to increase and activate the highest possible number of women party members which will consequently increase the number of women in political life and social sphere in general. Naša stranka also pays a lot of attention to gender equality – in the recent congress of the party, 34% of women were elected into the Main Board, although the number will have to be adjusted with respect to the Statute which foresees equal representation of both genders in the party bodies. On behalf of Naša stranka, 44% of women were elected into legislative bodies on all authority levels in BiH.

According to the official webpage of Stranka demokratske akcije (SDA), there are 13 women in the Main Board of the party, out of 104 members which amounts to 12,1% which is 2,5% higher when compared to the data from 2016. The presidency of Savez za bolju buducnost (SBB) has 25 members, out of which 28% are women. The vice-president of HDZ BiH is a woman while there are only 7 women in the Central board of the party out of 30 members, making up 23,3%.

Stranka nezavisnih socijaldemokrata (SNSD) has four male vice-presidents and one female vice-president. The presidency of the party has 43 members out of which 9 are women, which means that women are represented in the percentage of 20,9%, while in the Main Board they make up 27,7%. Within SNSD, there is an Active women group composed exclusively of women (120) and it deals with gender equality which again represents unequal representation of the other gender since the matter of women's rights should not be of interest for the female gender only.

Women in legislative and executive power

The Local elections were held in October 2016. Out of 418 candidates for mayors and town heads, only 26 were women. If we compare the percentage from these and the elections held in 2012, we will notice a small decline in the number of women candidates since women made up 6,22% in the elections in 2016 while in 2012 the percentage was 7,1%.

Although the percentage was lower, women achieved higher success in 2016, as six of them were elected as town heads (neither was elected a city mayor), while in 2013 only five were elected. Five women town heads were elected in Republika Srpska (7.9%) and only one, who was an independent candidate, in the Federation of BiH, (4,2%).

The average percentage of mandates won, that is participation of women in municipal/city councils is 18,34%, which is a bit higher than in the elections in 2012.⁸²

On General elections in 2018 the total number of candidates was 7497 out of which 3119 were women (41,60%) and 4378 men (58,39%), and only 14,67% of women were listed as first on the lists. Seven women were elected into the House of Representatives of the Parliamentary Assembly of BiH out of 42 MPs which amounts to 16,66%.⁸³ The National Assembly of Republika Srpska has 14 women, six less than in the previous assembly mandate. Number of women in the House of Representatives of BiH Parliament is also decreasing, so out of 98 mandates women got 24, which is four mandates less than in 2014-2018 period. Out of 223 mandates directly elected by citizens into entity and state executive bodies, in general elections held in 2018 women got 44 (20%) which is 6% less than in 2014 – 2018 mandate period.⁸⁴

⁸² <http://soc.ba/ako-nastavimo-ovim-tempom-i-intenzitetom-do-2060-godine-bismo-mogli-imati-minimalno-40-zena-u-vlasti-u-bosni-i-hercegovini/>

⁸³ Participation, representation and visibility of women candidates during the General elections 2018 pre-election campaign

⁸⁴ <https://istinomjer.ba/porazavajuci-broj-izabranih-zena-u-entitetske-i-drzavni-parlament/>

After 2018 General elections, new Council of Ministers' session has not been formed yet (the previously elected is still acting) and only two ministries are led by women: Minister for Human Rights and Refugees and Minister of Defence. In the Council of Ministers of BiH there are no women deputy ministers.⁸⁵ The Government of the Federation of BiH has not been formed either, so the data from the Orange report 2016 are still valid which means that the Government of Federation still has four women ministers: Minister of Finance and Deputy Prime Minister, Minister of Education and Science, Minister of Culture and Sports and Minister of Environment and Tourism.⁸⁶ The Government of Republika Srpska has 16 ministers out of which six are women which is a progress compared to the previous mandate when only three women were ministers (head of RS Government was a woman as well).

Cantonal governments have made progress in comparison to the last reporting period. The Prime-Minister of Bosna-Podrinje Canton is a woman (the first time in history) and the government has two more women, out of the total of eight members: Minister of Justice, Governance and Labour and Minister of Interior. There are no women ministers in the government of Herzegovina-Neretva Canton. Representation of women in all cantonal governments varies between 0% and 25% - the highest representation is in Sarajevo and Bosna-Podrinje cantonal governments and amounts to 25%. **The average representation of women in cantonal governments is 14,49% which is 3% less than in the previous mandate period.** Aside from Bosna-Podrinje canton, women mostly occupy positions which have been traditionally reserved for women, such as education, healthcare, ecology, family, labour and social politics.

⁸⁵ Orange Report 2016

⁸⁶ *ibid*

Women in judiciary, police and diplomacy

The High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC) takes into consideration equal representation of genders on the occasion of appointment on all levels. The Supreme court of Bosnia and Herzegovina has eight judges: three are women (37,5) and 62,5% are men. The President of the Supreme court is a man while out of three vice-presidents one is a woman. According to the data from 2016, there were 53,4% women and 46,6% men in HJPC. The president is a man and two women are vice-presidents. In 2016, representation of women in courts was 63,6% and in prosecutor's offices 50,9%.

In higher positions, such as presidents of courts and chief prosecutors, women were represented by 44,2%. Women presidents of courts dominate in cantonal courts with 80%.⁸⁷ In spite of the HJPC's report from 2018 showing that women constitute 60%, a man is still the president of HJPC, but deputies are women. Number of women in courts and prosecutor's offices has remained unchanged: 63,96% women in courts and 50,92% women in prosecutor's offices. In 2018 the number of women in chairing positions in courts and prosecutor's offices has increased to 47,9%, mostly due to the fact that women still dominate as presidents of cantonal courts (88%) and the number of women as presidents in municipal courts has increased as well: in 2016 it was 51,61%, and in 2018 56,25%.⁸⁸ The report for 2019 is not available yet. From the data presented we can conclude that **it is difficult for women to get highly ranked positions although the ratio of their representation in judiciary is higher than men's.**

Interest and involvement of women in military, police and peace operations is increasing. Certain progress has been made over the

⁸⁷ 2016 Annual Report of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC BiH)

⁸⁸ 2018 Annual Report of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC BiH)

last five years. There is 7% of women in Armed forces of BiH but it is likely that systematic approach and institutional preconditions will lead to bigger progress and more sustainable gender balance.

Participation of women in police on all authority levels in BiH is around 8%. In some police agencies, such as the State Investigative and Protection Agency (SIPA) this number is as high as 15% while in others it is only 5%.

Data shows insignificant rise in the number of women in police forces on all levels in BiH which is, in the reporting period, 1.5% on average. **Women are still underrepresented in all leading positions on higher levels (around 1.3%).** The Ministry of Security and the Ministry of Defence of BiH make efforts to increase number of women in police agencies and military forces of BiH which will be allocated together with BiH contingents in peace-keeping operations (based on the most recent available data, 30% of women from police and 7% of women from BiH army).⁸⁹

Statistics from the Ministry of Security of BiH on participation of women in leading positions in the institutions of security sector shows that **women are mostly represented at the level of middle management**, e.g. chief of department, while they are underrepresented in leading positions, e.g. assistant minister/director (only three women).

Out of the total number of employees in the Ministry of Security of BiH, agencies for law enforcement, entity and cantonal ministries and police of the Brcko District, women are represented by 50,5% on average.⁹⁰

⁸⁹ Ibid

⁹⁰ The Action Plan for the Implementation of the UN Security Council Resolution 1325 „Women, Peace and Security “in Bosnia and Herzegovina for the period 2018-2022

The Ministry of Defence/Armed forces of BiH	% women
Employees in the Ministry of Defence BiH	38
Representation of women in armed forces	6,8
Civilians in Armed forces	24
Servicewomen in Armed forces	5,5
Participants in peace-keeping missions	6,7

*Table 6: Representation of women in defence sector*⁹¹

The Ministry of security of BiH/SIPA	% women
Employees in the Ministry of security of BiH	50,5
Police forces (police officers, junior and senior inspectors)	7,5
Independent inspectors	3,3
Chief inspectors	0,3
Employees in SIPA	14,64
Deployed to peace-keeping missions	30

*Table 7: Representation of women in the Ministry of security of BiH/SIPA*⁹²

Women participate in different trainings and courses but the number of men in specialised-professional trainings intended for professional improvement in police and military forces is much higher.

According to the data from the Ministry of Foreign Affairs of BiH from 2016, in diplomatic-consular network of BiH there

⁹¹ Data from the Action Plan for the Implementation of the UN Security Council Resolution 1325 „Women, Peace and Security “in Bosnia and Herzegovina for the period 2018-2022

⁹² Ibid

were 11 (23%) women ambassadors, one general consul (17%) and two women chiefs of permanent missions (40%).

However, according to the partial data available for 2017 the number of women ambassadors has dropped to seven. The number of women public servants with diplomatic status is higher than the number of male public servants with the same status.⁹³

Guidelines for action

- Political parties shall ensure equal participation of women in management, decision-making and representation processes and bodies;
- Although the Election Law has been harmonized with the Law on Gender Equality and the parties are obliged to include at least 40% of less represented gender into the candidate lists, the measure has not resulted in its foreseen goal as the participation of women in the parliaments is around 23%. Having in mind that this is an affirmative measure whose aim is to ensure equal representation of women and men, it is necessary to introduce mechanisms equal to those related to participation of the constituent peoples in these bodies in order to ensure its implementation. Also, 51% of BiH population are women, so the existing quota of 40% must be increased to 50% in order to reflect social reality and mirror interests of male and female citizens;
- Change the Law on the Council of Ministers, laws on governments and appointment of entity and cantonal ministers in a way which ensures participation of 40% of women in these bodies, similar to the way it ensures participation of constituent peoples;

⁹³ Data from the Agency for Gender Equality

- Harmonize policies and other regulations with international and local standards for gender equality in order to increase participation of women in defence and security sector.

GENDER-BASED VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

According to the OSCE Mission Report from 2019, somewhat under half of women (48%) over the age of 15 have experienced some form of violence, which makes it four out of ten women. Two thirds believe that violence against women is common in our society and more than one quarter of women polled believe violence to be very common.⁹⁴

Legal and normative framework

Violent behaviour towards women is prohibited by domestic and international legal instruments. The Criminal Code of FBiH stipulates punishment of fine or imprisonment for perpetrators of domestic violence.⁹⁵

The Criminal Code of Republika Srpska stipulates measures of restraining order and restricted communication with an entity and possibility for the court to issue a measure of mandatory psycho-social treatment and removal from joint household if it finds it necessary.⁹⁶ Aside from the criminal codes, this field is regulated by laws on Protection from Domestic Violence of Federation of BiH and Republika Srpska, as well as entity level Family laws.

The government of FBiH has adopted the **Action Plan for the Implementation of the Strategy for Prevention and Combating Domestic Violence for the Period 2018-2020** which guarantees continuity of strategic and comprehensive actions

⁹⁴ Well-being and Safety of Women, OSCE-led survey on violence against women <https://www.osce.org/bs/secretariat/439070?download=true>

⁹⁵ The Criminal Code of FBiH, Article 222.

⁹⁶ The Criminal Code of RS, Articles 79, 80. i 81.

related to preventing, combating and acting in cases of domestic violence.

Among the most important documents which BiH had ratified in 2013 is certainly **Istanbul convention of the Council of Europe on Preventing and Combating Violence Against Women and Domestic Violence**. The Convention obliges states to integrate definitions all forms of violence covered by the scope of the convention into their domestic laws (psychological violence, physical violence, stalking, sexual violence, forced marriage, female genital mutilation, forced abortion and forced sterilisation) and include all relevant state agencies and services, so the issue of violence against women and domestic violence could be treated appropriately.⁹⁷ **Bosnia and Herzegovina has not yet harmonized all of its criminal laws with the Istanbul convention**, and thus there are no criminal sanctions for psychological violence, unless it is in the form of domestic violence, or sanctions for involuntary sexual acts.

The Criminal Code of Republika Srpska was amended in 2017 in a way that it now contains regulations which criminalise forced sterilisation, female genital mutilation, coercion, stalking, sexual harassment and forced marriage.⁹⁸

Institutional mechanisms for combating domestic violence

During 2014, FBiH Gender Centre in cooperation with the expert team for creating and monitoring implementation of the Strategy for Prevention and Combating Domestic Violence for the Period 2013-2017, police stations, social welfare centres and non-governmental organisations, with the support of OSCE Mission in Bosnia and Herzegovina have set up an online database on reported cases of domestic violence.⁹⁹ However, based on the data we have

⁹⁷ <https://rm.coe.int/1680464e6e>

⁹⁸ <https://rm.coe.int/data-bih/1680968129>

⁹⁹ <http://www.gcfbih.gov.ba/baza-podataka-o-nasilju-u-porodici/>

received from the social welfare centres (28 out of 79), **the database is still in its experimental phase, so many centres do not have access to it.** Those which do, say that having such a database is very important since it makes record-keeping and monitoring of protection measures much easier.

In Republika Srpska, domestic violence cases are recorded in a different manner. The Ministry of Interior has set up a database on all criminal offences, so domestic violence cases are recorded in it as well.¹⁰⁰ **According to the data we received from the RS Gender Centre there is no uniform, comprehensive database on gender-based violence.** Therefore, certain data is available but their collection and record-keeping have not been organised in systematic way.¹⁰¹

Position and work of safe houses

There are nine safe houses with a total of 173 available places in Bosnia and Herzegovina. Six safe houses with 131 available places are located in FBiH and are run by non-governmental organisations: Fondacija lokalne demokratije – Sarajevo, Medica-Zenica, Vive Žene-Tuzla, Žene sa Une-Bihać, Žena BiH-Mostar and Caritas-Mostar. At the same time, there are three active safe houses in Republika Srpska run by NGOs: Budućnost-Modriča, Udružene žene-Banja Luka and Lara-Bijeljina.¹⁰²

¹⁰⁰ <https://rm.coe.int/data-bih/1680968129>

¹⁰¹ Data received from RS Gender Centre, upon request

¹⁰² <https://arsbih.gov.ba/209/>

Safe house name	Capacity	Number of persons accommodated in safe houses in the period 2016-2019
Fondacija Lara, Bijeljina	15	61 persons, 31 women and 30 children
Medica, Zenica	/	153 persons, 71 women and 82 children
Fondacija lokalne demokratije	35	283 persons, 149 women and 134 children
Viva žene, Tuzla	/	236 persons, 131 women and 105 children
Udružene žene Banja Luka	/	106 persons
Žena BiH, Mostar		We have not received an answer
Žene sa Une, Bihać		We have not received an answer
Caritas, Mostar		We have not received an answer
Budućnost, Modriča		We have not received an answer

Table 8: Number of persons accommodated in safe houses in the period 2016-2019

According to the Law on Protection from Domestic Violence, safe houses in Federation of BiH must be financed from the cantonal budget in the amount of 30% and 70% comes from the budget of FBiH.¹⁰³ However, the regulations are rarely fulfilled, so certain safe houses only get one fifth of the total amount needed for the safe house to be fully operational, which is 240.000 KM (an assessment made by the safe houses). In 2015, the FBiH government proposed amendments to the Law on Protection Against Domestic Violence by which safe houses would get the status of public institutions which would further mean that that existing foundations or institutions currently managing safe houses would have to change their legal status into public institutions or else they

¹⁰³ Law on Protection from Domestic Violence, Article 35

would not be eligible to receive financial support from the FBiH government. The proposed amendments have not been adopted but they did provoke furious reactions of the associations managing safe houses since the proposed amendments would endanger already instable status of the safe houses. Instead of imposing inefficient solutions, FBiH should focus on fulfilling legal obligations regarding financing of safe houses in the amount of 70% since current budget foreseen for financing six safe houses in FBiH amounted to 180.000 KM on average.

According to the Law on Protection from Domestic Violence of RS, safe houses in RS receive 70% of its budget from the Ministry of Family, Youth and Sports of RS and 30% from the local self-governance unit a beneficiary comes from. However, **the problem which arises in practice is that most local self-governance units do not foresee the funds when planning their budgets.** The costs of accommodating victims are refunded only after the accommodation services had already been provided, so the biggest financial burden is on the organisations managing the safe houses since they must always have sufficient funds available in order to ensure uninterrupted and continuous work. However, it is worth mentioning that all safe houses in RS, unlike those in FBiH, have the status of associations or foundations whose work is acknowledged by law and sub-laws and are as such registered in the registry of safe houses of RS government.

Speaking about forms of violence, safe houses have recorded cases in which psychological, physical, sexual and economic violence are performed simultaneously. **Certain organisations have recorded increased number of teenage girls who have been victims of sexual violence at home or in their communities.** The majority of victims come from marginalized families in which trans-generational transfer of violence is very common. Over the last two years there have been cases of domestic violence in which victims were middle-aged women who have been married to the perpetrator for 40-50 years who said that they felt safe only after being

accommodated in the safe house. **There has been an increase of cases in which victims were older women who were exposed to violence by their spouses (psychological and economic) or by their children (physical, psychological and economic).**

These cases are less reported than partner violence as majority of women who experience this form of violence consider it to be the result of personal failure in the upbringing of their children, or are afraid of the lack of understanding or judgment from the community. Furthermore, in this period there were two recorded cases of incitement to violent extremism and radicalism.¹⁰⁴

Misogynistic violence

Aside from being victims of domestic violence, women are often victims of gender-based violence outside of their families. Invitation to violence through media and public persons' statements fall into this category. When reporting on this kind of violence, media use sensationalistic headlines and gender stereotypes in order to transfer responsibility to women for the experienced violence and diminish the role and guilt of the perpetrator, which does not contribute to raising awareness on causes and repercussions of violence against women and its devastating effect on the society.¹⁰⁵

In addition to the Law on Gender Equality¹⁰⁶, an important document for improving media reporting on women is the **Resolution of the Parliamentary Assembly of the Council of Europe” Combating Gender Stereotyping and Sexism in the Media”**. The resolution clearly defines sexist stereotypes often used in the media which are an obstacle to gender equality. Sexist stereotypes appear in different forms, from humour and clichés in traditional media to inciting gender-based hatred and violence

¹⁰⁴ Data presented were collected by contacting associations which run safe houses in BiH

¹⁰⁵ <https://www.slobodnaevropa.org/a/medijsko-nasilje-nad-%C5%BEenama/29765964.html>

¹⁰⁶ The Law on Gender Equality, Article 21

online and are very often used under the excuse of freedom of speech. The Resolution contains a clear set of measures which member states shall implement in order to combat sexist stereotypes.

In March 2019 the Parliamentary Assembly of the Council of Europe adopted **Recommendation on Preventing and Combating sexism**.¹⁰⁷ The Recommendation adopts internationally recognized definition of sexism and proposes a set of concrete measures to combat this social phenomenon. The Recommendation calls for member states to prevent emergence of sexism in private and public life and criminalize sexist hate speech.

Below we provide a few examples of sexist stereotypes and public statements in which women are being disrespected and gender-based stereotypes wide spread:

Example 1: In June 2017 portals published an article with a video of a bh. YouTuber Amir Hadžić, entitled „Modern girls.“ In the video, Amir Hadžić portrays women as sexual objects, justifies rape and incites violence against women. He starts his hate speech with the claim that “wrapped” (covered) girls protect their morals and those who are “*ripped, pierced and half-naked*” cannot be called “normal”. After that, the statements in the video are based on insulting female body in order to point out the “message” women send with their bodies, namely with the clothes that accentuate body curves. The message women send to men with their fashion style, according to Amir Hadžić, is “come, take me by the hand, take me wherever you want and do with me whatever you want.” He says that women actually “*advertise their bodies*” and those who, according to him “do”, he describes as “*bad wives, and even worse mothers*” and quite expectedly a husband in such marriage should “*beat her, hit her by the hand or by the foot*” which is an open call to violence against women. Amir Hadžić justifies rape by saying “*and then she says that rape happened*” ...*How could it not? You were provoking boys!*”¹⁰⁸ After an appeal was sent to the Press council, the Council requested the

¹⁰⁷ <https://www.coe.int/en/web/portal/-/new-council-of-europe-action-against-sexism>

¹⁰⁸ Decision of the Complaints Commission of the Press Council 233-02/17

portal to remove the video and sustain from sharing any content which promotes violence, discrimination and disrespect of any group of people on any basis. The portals removed the video which is still available on Amir Hadžić's YouTube channel.

Example 2: The second case happened in December of the same year when an official from the Presidency of BiH on his Facebook account posted a status in which he addressed two female journalists as “slags” along with numerous comments on the account of their physical appearance. The Association “BiH journalists” demanded the Presidency to condemn such a behaviour of its employee.

Example 3: The campaign called “Celebrate responsibly – do not drive if you're planning on drinking” contributed to the spread out of gender-based stereotypes in the media. The aim of the campaign was to raise awareness about dangers of intoxicated driving. However, the campaign was launched with an ad that was broadcasted on Radio Television of Republika Srpska in which a drunk man gets into the vehicle and says „*Who would have thought that a woman would be driving me?*”, to which a child who is also entering the car replies “Dad, even mum is better than brandy.” The commercial puts into focus sexist stereotype about women as less worthy and less capable than men. In addition to that, a little girl in the commercial calmly accepts such a reaction of her father which makes gender-based stereotypes and misogyny acceptable and a part of society and tradition. This behaviour violates Article 21 of the Law on Gender Equality which prohibits public broadcasting and presentation of any individual in an insulting, disrespectful or undermining manner based on their gender. Due to the above, Sarajevo Open Centre, together with other organisations submitted a request to RS Gender Centre, Gender Equality Agency and Communications regulatory agency for examining violations of the Code on audio-visual media services and radio media services to investigate violation of the Law on Gender Equality. The RS Gender centre issued a recommendation in which it invited for implementation of legal and regulatory standards for gender equality and to avoid giving men and women traditional social roles. Regulatory agency issued a measure of written warning to RTRS in which they said that RTRS violated regulations of the Code on audio-

visual media services and radio media services and underlined that repetition of such violation would result in more serious sanctions.

Guidelines for action

- Harmonize laws in Bosnia and Herzegovina, especially laws on protection from domestic violence and criminal codes with Istanbul convention
- Make the database set up in 2014 by FBiH Gender Centre operational in order for all safe houses and social welfare centres to have access to it, which would make record-keeping on cases of domestic violence and punishment measures easier and more meticulous.
- Ensure sufficient funds to safe houses in BiH in order for them to be able to provide adequate protection to victims of violence. Financial means must be paid timely so safe houses would not have to use their own funds to help (not to have reserved financial means).
- Enable establishment and functioning of safe houses in FBiH, in compliance with the Law on Institutions of FBiH and Laws on Associations and Foundations of BiH and FBiH.
- Work on promotion and launching campaigns on awareness raising about the damages of gender-based violence and avoid appointing traditional roles to men and women in media contents.
- Criminalise sexist and misogynistic hate speech and inciting and provoking gender-based violence.
- Remove gender-based stereotypes from textbooks and educational materials¹⁰⁹ and media and promote gender equality in the media.¹¹⁰

¹⁰⁹ Recommendation 20 (a) CEDAW/C/BIH/CO/4-5

¹¹⁰ GAP BiH 2013-2017

CONFLICT-RELATED SEXUAL VIOLENCE

Conflict-related sexual violence refers to sexual violence against women, men, girls and boys which occurs in armed conflicts and includes: rape, forced pregnancy, forced sterilisation, forced abortion, forced prostitution, sexual slavery, forced nakedness and any other form of sexual violence of comparable gravity. This form of violence differs from sexual violence committed outside of the context of war, among other things, in regard to the context in which it occurs, number of persons involved and the degree of organisation of the crime, features of the perpetrator who, in armed conflicts, often acts as a representative of military and police structures which demands specific obligations from the state in the context of providing compensation for the damage caused.

During the war in Bosnia and Herzegovina (1992-1995) wartime rape and other forms of sexual violence were widespread. It has been evaluated that over 20.000 people have been victims of conflict-related sexual violence in BiH. The International Criminal Tribunal for the Former Yugoslavia (ICTY) played a significant role in establishing international practice and qualifying wartime rape as a crime against humanity, war crime, genocide and torture.

Legal and normative framework

According to the Criminal Code of Bosnia and Herzegovina¹¹¹, wartime sexual violence belongs to the group of **crimes against humanity and values protected by international law**, as one of the forms of **war crimes against civilian population**, namely violation of international law on war, armed conflict or occupation. The crime includes the following: “coercing another by force to

¹¹¹ The Official Gazette of BiH, numbers 3/2003, 32/2003, 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 8/2010, 47/2014, 22/2015, 40/2015 and 35/2018

sexual intercourse or an equivalent sexual act (rape) or forcible prostitution, application of measures of intimidation and terror, taking of hostages, imposing collective punishment, unlawful bringing in concentration camps and other illegal arrests and detention, deprivation of rights to fair and impartial trial, forcible service in the armed forces of enemy's army or its intelligence service or administration" (Article. 173, Chapter 1, e.). Perpetrator(s) of the offence shall be punished by imprisonment for a term not less than ten years or long-term imprisonment. The act has been defined as a form of **crimes against humanity** – a criminal act committed as part of a wider or systematic attack against civilian population "Coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity" (Article 172, Chapter 1, g).

With the adoption of Changes and Amendments to the Criminal Code of Bosnia and Herzegovina in 2015¹¹², definition of rape and other forms of sexual violence committed as war crimes has been harmonized with the international standards and juris prudence initially developed by international criminal courts. Contrary to the previous definition which implied that use of **force or threat of use of force** were the only elements for determining rape or another non-consensual sexual act, the international juris prudence developed an approach according to which **coercive circumstances can indicate lack of consent** and the circumstances can be inherent in certain situations, such as armed conflicts when it is quite clear that a person was coerced which thus precluded any possibility for exercising their sexual autonomy. In this way the number of perpetrators who can be prosecuted in the future is widened, because the obstacle of proof of this crime is removed. This example needs to be followed in instances of sexual violence

¹¹² The Official Gazette of BiH, number 40/15

committed during peacetime.¹¹³ The revision of the law is significant in the context of deterrence from committing the crime in the first place, and so it has long-term potential and preventive functions.

Domestic laws criminalize sexual violence committed in peacetime – The Criminal Code of FBiH, in the group Criminal offenses against sexual freedoms and morality. Conflict-related sexual violence differs from the sexual violence committed in peacetime, among other things, in regard to the context in which it occurs, number of persons involved and the degree of organisation of crime, features of the perpetrator who, in armed conflicts, often acts as a representative of military and police structures which demands specific obligations from the state in the context of providing compensation for the damage caused.

Aside from the Criminal Code of FBiH, there are many both domestic and international acts, which BiH implements in order to regulate the field of conflict-related sexual violence.

Beginning with the statute and court practices of the international criminal courts, sexual violence against women, men, girls and boys occurring in armed conflicts includes the following acts: rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilisation or any other form of sexual violence of comparable gravity, which may include human trafficking, inappropriate medical examinations and strip searches”.¹¹⁴

In 2008, the UN Security Council adopted Resolution 1820 which declares rape and other forms of sexual violence as forms of war crimes, crimes against humanity or genocide related crimes. Resolution 1888 (2009) establishes office of The Special Representative of the Secretary-General in order to address the issues of sexual violence in armed conflicts and acknowledge

¹¹³ Gavrić, Saša; Hadžić, Inela et al. „Orange report 2016. Annual Report on the State of Human Rights of Women in Bosnia and Herzegovina “, Sarajevo Open Center, Helsinki citizens parliament, Banja Luka, February 2016, pg. 39

¹¹⁴ UNFPA. „Combating consequences of conflict-related sexual violence”, UNFPA Bosnia and Herzegovina, 17 September 2012, available at: <https://ba.unfpa.org/sites/default/files/pub-pdf/bosanski01.pdf>

damaging effects of sexual violence on communities, efforts in establishing peace, security and transitional justice. Bosnia and Herzegovina is among eight priority states of the Office. The Resolution calls for improvement of the participation of women in all phases of peace processes and urges creation of concrete strategies which would encompass needs and priorities of women – physical security, better social and economic conditions in education, income generation programs, access to fundamental services, implementation of laws based on gender equality and access to justice.

UN Resolution 1325 „Women, Peace and Security” (2000)¹¹⁵ is the first UN Security Council resolution which concretely deals with the impact of war on women and girls and their contribution to conflict resolution and sustainable peace. The biggest significance of Resolution 1325 is that it calls for increased representation of women in decision-making processes, conflict prevention, post-conflict processes, peace negotiations and peace-keeping operations. The Resolution points out specific needs of women and girls in times of armed conflicts, repatriation, resettlement, rehabilitation, reintegration and reconstruction, need to protect them and need for prevention and punishment of sexual, as well as any other form of violence against women. The Action Plan for the Implementation of the Resolution 1325 in Bosnia and Herzegovina for the Period 2018-2022¹¹⁶ mentions improved support and assistance to victims of sexual and other forms of conflict-related violence as one of the main goals.

Institutional framework

The Agency for Gender Equality in its report on the progress of Bosnia and Herzegovina in the implementation of the Beijing

¹¹⁵ Available at: <https://arsbih.gov.ba/wp-content/uploads/2016/04/UN-Resolution-1325.pdf>

¹¹⁶ The Official Gazette of BiH, 1/19

Declaration and Action Platform (2019)¹¹⁷, in the chapter which talks about *activities Bosnia and Herzegovina has taken over the last five years in order to improve legal and non-legal responsibility for violation of international humanitarian law and violation of human rights of women and girls in the times of armed and other conflicts or humanitarian actions and crisis response*, states that the Draft Law on the Rights of Victims of Torture has not been adopted due to the fact that it did not get support from one entity. Furthermore, it states that the Wartime Torture Victims Law¹¹⁸ was adopted in Republika Srpska in 2018 with the aim to systematically define status and rights of civil victims of war, including sexual violence victims as a specific category of victims of torture.¹¹⁹ In FBiH, the Law on Changes and Amendments to the Law on Social protection, Civilian victims of War and Protection of Families with Children¹²⁰ foresees establishment of special commission as an independent expert body which would provide expert opinion whether the submitter of the claim is a victim of sexual harassment and rape in order **to determine whether the person was or was not a civil victim of war**. There was no need to introduce this new body since the existing mechanisms could be used – the official Institute for assessment of medical health in FBiH.¹²¹

In compliance with the cantonal regulations on welfare and social protection, persons who have suffered conflict-related sexual violence enjoy the following rights: right to monthly financial aid, right to healthcare, psychological help, assistance with healthcare costs and procurement of orthopaedic aids, professional

¹¹⁷ Gender equality agency of BiH. „Report on the Progress of BiH in the Implementation of the Beijing Declaration and the Platform for Action in BiH within Beijing +25 process“, April 2019, available at: <https://arsbih.gov.ba/project/izvijestaj-o-napretku-u-primjeni-pekinske-deklaracije-i-platforme-za-djelovanje-u-bih-u-okviru-procesa-peking-25/>

¹¹⁸ The Official Gazette of RS, 90/18

¹¹⁹ The law determines right to monthly allowance, health insurance, acquittal from paying co-payment in healthcare facilities, right to spa rehabilitation, employment and self-employment incentives, social welfare rights, free legal aid, acquittal from paying court and administrative taxes.

¹²⁰ The Official Gazette of FBiH, 45/16

¹²¹ Gavrić, Saša; Hadžić, Inela et al. „Orange report 2016. Annual Report on the State of the Human Rights of Women in Bosnia and Herzegovina“, Sarajevo Open Center, Helsinki citizens parliament Banja Luka, February 2016, pg. 41

rehabilitation, vocational retraining and additional vocational training, in some cantons employment priority right, priority housing and legal aid. Court proceedings or court judgement is not needed for the victims to be able to exercise their rights, it is exercised based on the fact that the wartime sexual violence occurred.

In the Sixth Periodical Report for BiH on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (2013-2016)¹²², in the part on *protection of rights of the victims survivors and witnesses of wartime sexual violence*, it is stated that in 2016 the number of closed cases significantly increased compared to the previous years which is the result of the increased number of indictments for war crimes with elements of sexual violence. The Report emphasises significance of **efficient witness protection before, during and after the criminal proceeding** to ensure their testimony to be free and open by implementing the Law on Witness Protection Programme and witness protection measures on cantonal and regional courts and the Law on Witness Protection Programme of BiH¹²³ (implemented in proceedings before the Court of BiH).

Establishment of Department for witness support has created conditions for psychological, social, informative and organisational support and aid to witnesses, including victims of conflict-related sexual violence. Additionally, protocols on cooperation of competent ministries, institutions and non-governmental organisations have been signed with the aim of providing comprehensive and efficient support to victims/witnesses in war crimes, sexual violence and other criminal acts.

In May 2019, the office of the TRIAL International in BiH and the Court of BiH have signed a Memorandum of Understanding for the sake of cooperation with the aim of measuring success indicators –

¹²² Gender Equality Agency of BiH. „Sixth Periodical Report of BiH on the Implementation of the Convention on Elimination of All Forms of Discrimination Against Women (2013 – 2016)“, July 2017, available at: <https://arsbih.gov.ba/vijeceministara-usvojilo-sesti-periodicni-cedaw-izvjestaj-bosne-i-hercegovine/>

¹²³ The Official Gazette of BiH number 36/14

collecting feedback on how the victims/survivors who appear as witnesses in cases of wartime sexual violence experience the trials and to which extent are they satisfied with the trial preparations.¹²⁴

In the scope of court proceedings initiated by war crimes victims, over the last three years the **imbalanced court practices in BiH have continued**, prison time for sentencing for wartime sexual violence is too short and unequal on different levels of authority in BiH and the biggest issue is rejection of **claims for awarding compensation of damage** originated from war crimes by application of statute of limitations.¹²⁵ Previous period was marked by numerous enforcements by which the war crimes victims tried to get a refund of court fees incurred by the Office of Attorney General of RS and Federation of BiH.

Persons with compensation claims (property claims), especially victims of sexual violence are still directed towards civil procedures without witness identity protection ensured. Since 2015 there have been 12 cases in total, mostly before the Court of BiH, in which perpetrators, aside from criminal responsibility, were obliged to pay the financial compensation to the victims for emotional distress due to violation of freedoms and personal rights and emotional stress due to decrease of life activity¹²⁶, which amounted between 15.000 - 60.000 KM.¹²⁷ Please note that neither of the court judgements have

¹²⁴ Court of Bosnia and Herzegovina. *Court of Bosnia and Herzegovina and office of TRIAL International in BiH signed Memorandum of understanding*, 20 May 2019 available at: <http://www.sudbih.gov.ba/vijest/sud-bosne-i-hercegovine-i-trial-international-ured-u-bih-potpisali-memorandum-o-razumijevanju-21105>

¹²⁵ Compensation claims for non-material damage are subject to statute of limitations and can only be addressed towards perpetrators and not the state or entities, which thus eliminates subsidiary responsibility of the state for compensation of damage

¹²⁶ After historic judgements in June 2015 the Court of Bosnia and Herzegovina adopted in two case (against Slavko Savić and Bosiljak and Ostoja Marković) in which it was decided that in addition to jail time for the perpetrators, they were also obligated to pay the two **victims of conflict-related sexual violence awards for the non-material damage they survived as conflict-related rape this practice continues**.

¹²⁷ Hanušić Bećirović, Adrijana; Daguda, Aida et al. "Alternative report on the application of Bosnia and Herzegovina for accession to EU 2019: political criteria", Sarajevo Open Centre on behalf of the Initiative for the Monitoring of the European integration of BiH, February 2019, pg. 29

been executed since the majority of the enforcements are still ongoing.

Although there are a few positive examples of awarding financial compensation for non-material damage suffered¹²⁸, **there has not been any progress in ensuring execution** of the judgements since most perpetrators are unable to fulfil the obligations. Such situation is especially worrisome since it can be a source of **re-victimisation and re-traumatizes victims** of wartime sexual violence and torture. Most victims still demand damage compensation in individual civil procedures in local courts which do not apply the same standards nor have adequate capacities for witness protection. When they request compensation in civil courts, victims carry all the burden since they need to hire lawyers and are responsible for paying court taxes. Due to the aforementioned, it is significant to emphasise the importance of establishing collective administrative mechanism through which **the issue of compensation could be resolved in a systematic manner**. Having in mind that such a mechanism still does not exist, the only way for victims of wartime sexual violence could have access to compensation is through court proceedings.

During 2017 within Ministry of Justice of BiH a person was appointed to represent victims of sexual violence in order to exercise compensation claims in proceedings before the Court of BiH. It is important to underline that allocating financial contributions for non-material damage suffered can significantly contribute to the recovery of the survivors and strengthen their perception of their position within the criminal proceeding (that they are much more than evidence and a witness used for determining criminal responsibility of the accused and that they are actually an active party who can at least partially exercise his/her human rights to compensation and satisfaction).¹²⁹

¹²⁸ See more: Hanušić Bećirović, Adrijana/ editor/. „Compensating for non-material damage and criteria for evaluation of amount of compensation: Example of court practices in criminal and civil proceedings in BiH“, TRIAL International, 2017

¹²⁹ Gavrić, Saša; Hadžić, Inela et al, *ibid*, str. 40

Statute of limitation is still being applied in claims for non-material damage compensation against the entities or the state and the war crimes victims whose lawsuits were abolished and they must pay extremely high court fees to the entities they filed the suit against. In March 2018, the Supreme Court of BiH for the first time ruled that obliging victims of wartime rape to pay court taxes was a huge burden for the victim.¹³⁰ The court emphasized that the decision was based upon concrete facts of a particular case and that it remains undetermined if and how the ruling will affect other cases.¹³¹

Position of wartime sexual violence victims

Civilian victims of war in BiH, including the survivors of wartime sexual violence, do not enjoy enough state provided protection, they are marginalized in the society, are unaware of their rights and how to exercise them, and keep facing discrimination in comparison to other social categories. Positive legal framework does not ensure enough rights to this category and the rights are different for victims from different parts of BiH.

On BiH level there is **a lack of integrated law which regulates enjoyment of rights of the survivors, award of compensation, rehabilitation and access of victims to services regardless of the place of residence.** Furthermore, Program for improving position of women victims of wartime sexual violence, sexual harassment and other forms of torture in BiH for period 2013-2016¹³², jointly initiated by the Ministry for Human Rights and Refugees and UNFPA has not been adopted yet. The aim of the

¹³⁰ TRIAL International. *Strategically important judgment of the Supreme Court of BiH* (press release), TRIAL BiH, 3 April 2018, available at: <https://trial.ba/wp-content/uploads/2018/04/Saopštenje-odluka-Ustavnog-suda-TRIAL-2018.pdf>

¹³¹ Adrijana Hanušić Bećirović, Aida Daguda et al. "Alternative Report on the Application of Bosnia and Herzegovina For Accession to the EU 2019: political criteria ", Sarajevo Open Center on behalf of the Initiative for the Monitoring of the European integration of BiH, February 2019, pg. 29

¹³² Amnesty International. „We need support, not pity: Last chance for justice for wartime rape in BiH“, Amnesty International Bosnia and Herzegovina, 12 September 2017, available at: <https://www.amnesty.org/en/documents/eur63/6679/2017/en/>

program is to ensure **inclusive and systemic** approach which would **improve quality of life of the victims**.¹³³

The issues of victims of torture and civilian victims of war with regard **to enjoyment of equal status and access to rights and protection** are regulated on entity level and Brcko district and their **access to rights depend on the place of residence**.

Reparation funds or other mechanisms of compensation for victims of criminal offences in cases when perpetrators are unable to pay the reparation do not exist in BiH.

The official CEDAW report for BiH states that survivors of wartime sexual violence in both entities continue to face different treatment than war-disabled combatants - significantly lower compensations.¹³⁴ Additionally, the stigma they face impacts efforts to provide support and assistance to survivors.

UN agencies in BiH (IOM, UNDP, UNFPA and UN Women), in cooperation with government institutions at all levels have developed a joint support program entitled „Seeking Care, Support and Justice for Survivors of Conflict Related Sexual Violence in BiH”. Researches were conducted, drafting of laws and by-laws initiated and economic and psychosocial empowerment of women supported. In co-operation between the entity ministries of health and UNFPA, resource packages have been developed to support victims of gender-based violence and victims who survived conflict related sexual violence in the health sector in FBiH and RS and includes victims of wartime rape and sexual violence. In the scope of the program two surveys were conducted “Social and economic rights of survivors of the wartime sexual violence in BiH” and ‘Stigmatisation of survivors of wartime sexual violence in BiH.”

¹³³ The Program included four key segments: 1) legislative framework and its harmonization with international standards, 2) access to free legal aid and adequate protection measures for victims testifying in war crimes trials, 3) strengthening capacities of service, and 4) partnership between government and non-governmental sectors.

¹³⁴ Often in the amount of 70% of the maximum monthly allowance for wartime-disabled combatants

CEDAW official report for BiH further points out the answer to the Recommendation 16 (c) of the CEDAW/C/BiH/CO/4-5 CEDAW Committee which refers to **ensuring equal access to legal aid**, which resulted in adopting the Law on Free Legal Aid in BiH¹³⁵, and RS and in eight of ten cantons in FBiH and establishing institutions for provision of free legal aid.

Although progress has been made with regard to strengthening legislation and institutional capacities, court treatment of victims of wartime sexual violence is still inadequate. TRIAL international has noted that actors in court processes have attitude which leads to marginalisation and re-traumatization of victims, e.g. that victims provoked sexual violence by behaving promiscuously, or that they had agreed to the act since they did not oppose, that they are falsely testifying, and that the victims and not the perpetrators should be ashamed of the sexual violence survived.¹³⁶ In the criminal codes of BiH there is no regulation, as in international criminal codes, which would prohibit exhibiting evidence or asking questions on sexual behaviour of wartime sexual violence survivors after they had been raped in order to portray the survivor as a promiscuous person who can be held accountable for what had happened to her.¹³⁷

Guidelines for action

- Prosecutor's offices and courts in BiH shall continue with the priority processing of the wartime sexual violence while strictly obeying international and domestic standards for

¹³⁵ The Official Gazette of BiH, number 83/16

¹³⁶ See more on myths TRIAL have often noticed in court proceedings: Delbyck, Kyle. „Rape Myths in Wartime Sexual Violence Trials: Transferring the Burden from Survivor to Perpetrator“, TRIAL International, 2017, available at: <https://trial.ba/wp-content/uploads/2018/01/20180112-TRIAL-Rape-Myths-BHS-WEB.pdf>

¹³⁷ Hanušić Bećirović, Adrijana; Daguda, Aida et al. „Alternative Report on the Application of Bosnia and Herzegovina For Accession to the EU 2019: political criteria“, Sarajevo Open Center on behalf of the Initiative for the Monitoring of the European integration of BiH, February 2019, pg. 28

proving specific elements of the criminal acts, including the presence of forceful circumstances as enough proof for non-consensual act. Prosecutor's offices and courts should take care of the adequate punishment, as well as avoidance of conscious and unconscious stereotypes during criminal procedures which negatively impact victims;

- It is necessary to continue with the positive practice related to decision-making on compensation claims of victims of wartime sexual violence victims within criminal proceedings by enforcing legal requirements of the acting prosecutors and judges, including timely collection of evidence and information on assets of the suspects/accused;
- It is necessary to educate and sensitize persons involved in court proceedings on the importance of work on these compensation claims;
- On BiH level it is necessary to regulate the enjoyment of rights of the survivors, reparations, rehabilitation and access to services regardless of the place of residence;
- The state, the entities and the cantons must ensure equal free legal aid to victims – aggrieved parties inside or outside the criminal proceeding;
- Revisions and amendments to the Law on Civil Proceedings can ensure continuous protection of the identity of wartime sexual violence victims – protected witnesses in civil proceedings with the intention of ensuring reparation;
- In a case when the perpetrator of the war crime lacks or has insufficient funds a victim could be allocated reparation from, it is necessary to set up a balanced administrative mechanism for ensuring reparation outside court proceedings – ensure reparation from state/entity funds;
- Courts in BiH shall revise their attitude towards application of statute of limitations on lawsuits by victims of wartime sexual violence victims;
- Republika Srpska and Federation of BiH must free wartime victims of torture from paying court fees arising from their lawsuits for reparation being rejected based of statute of limitations.

SPORT

Although participation of women and girls in sports has lately been in the focus of the public, women and girls still get less opportunities in this field and are often faced with institutional and social obstacles which do not affect male athletes. Gender inequality in sports is reflected in the minimal number of women in leading positions, payment gap between men and women and open favouritism of only-male teams over female teams and male athletes over female ones. The favouritism has direct impact on the public budget fund allocations which are mostly provided to male teams and male athletes. Furthermore, it is reflected in the media space and reporting on successes of male and female athletes but also in private sponsorships which are almost exclusively reserved for male athletes.

Legal and normativ framework

BiH Law on Sports regulates sport activities on the state, FBiH, RS and Brcko district level, while sport activities on cantonal levels are regulated by cantonal laws on sports.

In 2016 Sarajevo Open Centre actively worked on creating Draft changes and Amendments to the **Law on Sports** which would be in compliance with the Law on Prohibition of Discrimination of BiH and the Gender Equality Law of BiH which was adopted in September 2016. The revised and amended Law on Sports in BiH¹³⁸ brought significant changes:

- Introduced obligation to form Sports Council of BiH, an advisory body within the Council of Ministers which can be formed only in cases **when both sexes are represented with at least 40%**;

¹³⁸ Law on Changes and Amendments to the Law on Sports in BiH, The Official Gazette of BiH, number 66/16

- Regulated issues of **equal opportunities to play sports regardless of gender** and **prohibited discrimination on all grounds**, including disability, age, sexual orientation, biological gender and gender characteristics, in compliance with the Law on Prohibition of Discrimination of BiH and the Law on Gender Equality of BiH;
- Prohibited hatred incitement and intolerance based on nation or ethnicity, skin colour, religious, political or any other preferences, gender, sexual orientation, disability, biological identity, language or any other personal feature;
- Sports sector budget drafted based on gender-responsive budgeting as stipulated by the law becomes an obligation of the Ministry of Civil Affairs of BiH.

Gender Action Plan of BiH for the period 2013-2017¹³⁹, as well as current GAP 2018-2022¹⁴⁰, lists measures to be taken in order to ensure gender equality in the fields of education, culture and sports: “Regular collection, analysis and publishing of data divided based on gender on the access and participation of women and men on all levels in educational system, science, culture and sports. Support to research on gender equality in the fields of education, science, culture and sports, as well as programs focused on eliminating discriminatory and stereotypical attitude in educational, cultural, scientific and sport contexts. “

Access and equality in the area of sports in BiH are based on international principles and standards declared in The European Declaration on Sport, The Convention on the Elimination of All Forms of Discrimination Against Women, The European Convention for the Protection of Human Rights and Fundamental Freedoms, UN Convention on the Rights of the Child, International convention against Doping in Sports, Athletes’ Declaration, Rules of international sports associations, Code of Sport Ethics of the Council

¹³⁹ Gender action plan of BiH for the period 2013 – 2017, Agency for Gender Equality of BiH, page. 10, available at: https://arsbih.gov.ba/wp-content/uploads/2014/01/GAP_BIH.pdf

¹⁴⁰ Gender action plan of BiH for the period 2018 – 2022, Agency for Gender Equality of BiH, pg. 24 – 25, available at: https://arsbih.gov.ba/wp-content/uploads/2018/11/GAP-BIH-2018-2022_B.pdf

of Europe, Declaration on Sports, Tolerance and Fair-play and Statement from Lausanne on Organisation of Sports.

Article 1 of the European Sports Charter obliges governments to take all necessary steps to enable each individual to participate in sports, protect the sports and male and female athletes from sexual harassment and misuse, children, youth and women in particular.¹⁴¹

CEDAW – The Convention on the Elimination of All Forms of Discrimination against Women says that all member states “shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”¹⁴²

Institutional framework

Although three years have passed since the Draft Law on the Changes and Amendments to the Law on Sports in BiH was adopted, the **Sports Council has not been established yet**. The Council should act as an advisory body to the Council of Ministers of BiH in the area of sports and its members should be appointed by the Council of Ministers of BiH. The Council has **17 members** that are elected from prominent athletes and workers in the sports sector, and its mandate is four years. Members are being suggested by: The Ministry of Civil Affairs (seven members), BiH Olympic Committee and Paralympic Committee (three members), three members from the entities, in consultations with the entity and cantonal ministries in charge of sports, and Brčko District (one member).

¹⁴¹ European Sports Charter, Article 1, available at: <http://www.cok.me/wp-content/uploads/2018/04/EVROPSKA-SPORTSKA-POVELJA.pdf>

¹⁴² Convention on the Elimination of All Forms of Discrimination Against Women, RS Gender center, Article 3, available at: http://www.vladars.net/sr-SP-Cyrl/Vlada/centri/gendercentarrs/Documents/CEDAW_308094062.pdf

Non-existence of the Sports Council resulted in not having a Strategy for sports development – a document which provides strategic guidelines and action plan for sports development on state level. The last strategy for sports development for the period 2010-2014 was adopted in 2010.

Sport activities in BiH are financed from the state budget – financing sport events, from budgets of RS, FBiH and Brcko district. The Ministry of Civil Affairs awards annual grant for financing sport events which amount to more than four million KM over the last three years. The criteria for allocation of grants include number of participants, results achieved and many other excluding criteria related to equal gender representation or any other condition which would provide support to female sports.¹⁴³

In the FBiH budget report for 2016¹⁴⁴, it is said that sports teams and federations got 364.000KM provided by the Ministry of Culture and Sports.

Out of ten teams and federations, nine have both female and male athletes, one team is male only and the funds were not allocated to any women-only team. Budget for 2018¹⁴⁵ allocated 300.000 KM for 16 clubs and federations – 11 have both male and female athletes, five all-men and no all-women clubs or federations.

Speaking of equal representation of genders in leading positions in sports organisations, it is nowhere close to the mandatory threshold of 40%. The Olympic Committee (roof sports organisation in BiH, thee organisational bodies (the presidency, an executive committee and an assembly) currently has 68 employees and only 6 of them are women (8%), while there are no women as chairman in any of the

¹⁴³ Decision on allocation of the current grant funds "Co-financing of sports events" for 2016, The Official Gazette of BiH,18/16; Decision on allocation of funds foreseen for the current grant "Co-financing of sport events" for 2017, The Official Gazette of BiH, 53/17; Decision on allocation of the current grant funds "Co-financing of sport events" for 2018, The Official Gazette of BiH, 53/18

¹⁴⁴ FBiH Budget Report for 2016, general part, form 6, page 3, available at: <http://www.fbihvlada.gov.ba/bosanski/budzet/izvjestaj2016/3.pdf>

¹⁴⁵ FBiH Budget Report for 2018, general part, form 6, str. 3, available at: http://www.fbihvlada.gov.ba/bosanski/budzet/2019_budzet/02.pdf

organisations members of the Olympic Committee – 30 federations of Olympic sports and seven for non-Olympic sports.¹⁴⁶

According to the last available data of the Agency for Statistics of FBiH from 2015¹⁴⁷, there were 396 active sports organisations with 23.209 active members out of which 5.366 (23%) were women.

Guidelines for action

- The Law on Sports of BiH requires formation of the Sports Council which is going to respect equal representation of genders at the threshold of at least 40% of the under-represented gender;
- Apply gender-responsible budgeting on the occasion of budget planning for sports on all levels in order to ensure equal financial support to male and female clubs and federations;
- Create a state-level strategy for sports development which will include development of female sports, encourage establishment of women clubs/federations and female team in already existing sports clubs;
- Respect equal representation of genders in organisational structures of the Olympic Committee, sport federations and clubs.

¹⁴⁶ Olympic Committee of Bosnia and Herzegovina, available at: <http://www.okbih.ba/new/index.php>

¹⁴⁷ Press Release: Sport in Federation of BiH in 2014, Federal Agency for Statistics, available at: <http://fzs.ba/wp-content/uploads/2016/06/15.2.pdf>

HARMONIZING PRIVATE AND WORK LIFE

Achieving work-life balance means that both family and work life function effectively and that they are based, among other things, on the principles of gender-equality and that state policies dealing with this area create environment which enables work to be adjusted to family duties and vice versa. Family policy measures should be focused on an important segment – protection of motherhood/fatherhood/parenthood, consider and use instruments such as compensations, various social contributions, appropriate measures of care for children and the elderly, as well as exercising rights based on contract on employment – different forms of leave and flexible working hours and other measures which enable employees to balance life and work.

Legal and normative framework

The Law on Gender Equality of BiH regulates employment, labour and access to all educational and economic resources. The Law **prohibits any gender-based discrimination at work**. It prohibits different treatment due to pregnancy, labour or maternity leave, any unfavourable treatment of parents or caregivers in balancing professional and family life.

The Agency for Gender Equality of BiH in “Report on the Progress of BiH in the Implementation of the Beijing Declaration and the Platform for Action in BiH within Beijing +25 process” lists *steps BiH has taken over the last five years in order to recognise, reduce and/or redistribute unpaid care and household work and promote life-work balance.* “

Progress since the last Orange Report was published is adoption of new laws on labour in FBiH and RS in 2016 (amended in 2018) and the Law on Labour of Brcko District which foresee that mothers are

entitled to **maternity leave** during pregnancy, labour and child care for the period of one year in continuity (which can commence 28 days prior to the expected data of child-birth, if that is necessary based on the doctor's findings and justified medical reasons) and eighteen months leave in continuity for twins, third and any subsequent child.

Legal framework which contributes to **strengthening the role and promotion of fatherhood** as a step in developing gender equality in work-related and economic relations was completed. In this way, **post child-birth leave can be divided into two parts:** the first part can only be taken by the mother (since mother and child need protection in that period) and the second part can be used by each of the parents, based on their mutual agreement. Parents can agree that leave, 60 days after the child was born in RS and 42 days after in F BiH, can be used by the employed father instead of the mother.

Therefore, there are regulations for maternity leave as an exclusive right of a mother and paternity leave as the right of both parents.¹⁴⁸

The employment of additional domestic workers is determined by special regulations.

This type of employment requires signing a contract which defines rights and duties of both parties.

International standards recognize the need to ensure **protection of women during pregnancy, immediately before and after childbirth**, as well as **harmonizing private and professional life**

¹⁴⁸ Such limiting conditions for taking leave was considered discriminatory since they disabled father to enjoy his parenting right independently which means that parents were not given the right to independently decide which one of them was going to use paternity leave and thus chose how they would like to divide their parenting duties. The old Labour Law of F BiH provided that the father of the child, except for up to 7 days of leave due to wife's childbirth can exercise the right to parental leave only in case of death of the mother, if the mother leaves the child or if she is prevented from exercising the right for justified reasons. Thus, restricted requirements for the father's leave have been subject to criticism as they are deemed discriminatory for making it impossible for fathers to independently enjoy their parental right, i.e. for not allowing the parents to decide themselves who will take the leave once their child is born

in the first years of child's life. Some of the relevant documents dealing with this are:

- The International Covenant on Economic, Social and Cultural Rights obliges signatories to provide particular protection measures to mothers for reasonable time before and after giving birth, while employed mothers should be entitled to enjoy paid leave along with social security compensations during this period;
- UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) obliges signatories to partake all necessary measures to prohibit and prevent any discrimination due to the fact that persons got married or became mothers, in order to ensure their right to labour;
- Recommendation 34 (g) of the UN CEDAW/C/BiH/CO/4-5 explicitly requests harmonisation of protection of pregnant women and mothers for the sake of guaranteeing paid maternity leave for all women. In the final recommendations of the CEDAW Committee for the monitoring of the implementation of the Convention, among other things, it is requested that BH ensures that implementation of the framework law which regulates social sector leads to harmonisation of protection of pregnant women and mothers for the sake of guaranteeing paid maternity leave for all women. Additionally, it demands the state to carefully monitor working conditions of women in non-formal sectors and those employed on fixed-term contracts by strengthening capacities of labour inspection and ensuring them access to social services and social security, as well as to consider ratification of the ILO Convention number 189 (2011) on dignified work of domestic workers.
- European Social Charter (revised) determines rights of employed women to maternity protection and obliges signatories to ensure leave prior and after giving birth, treat as illegal termination of employment contract by the employer upon learning that a female employee is pregnant, by the end of

maternity leave, to ensure that breastfeeding mothers have enough free time for breastfeeding, etc.

- Directive of the EU Council 92/85/EEZ on introducing measures for strengthening protection measures of security and health in the working place for employees who are pregnant, recently became mother or breastfeed their children;
- Resolution of the EU Council of Ministers on employment and social politics (2000) – balanced participation of women and men in family and work life
- Parental leave directive 2010/18/EU prescribes minimal standards aiming at making it easier for working parents to harmonize their professional and private duties, taking into consideration growing diversity of family structures and respecting domestic legislative, collective contracts and/o practices.

Institutional framework

Right to maternity/paternal leave and maternity benefits

Before this report was drafted, the question of maternity compensation was still not resolved systematically. Women in FBiH still do not enjoy the same rights in terms of compensation during maternity leave. Due to **divided jurisdiction for social protection between entity and the cantons**, it is quite challenging to determine basic minimum for exercising and calculation of minimum allowance to be used during maternity and/or paternity leave.

Conditions for exercising and financing these rights are regulated by cantonal regulations which led to **unequal benefits depending on the canton of residence**, since certain cantons are not able to ensure necessary funds in their budgets (minimum standard of 66% of the salary) while in most cantons allowances are not timely paid. Also, unequal rights of new mothers in FBiH are obvious in the labour sector a woman is employed in (public or private) – **in public sector** the obligation of paying maternity allowance is defined by a

specific collective contract, it is paid from the budget and the amount is not reduced during the entire duration of maternity leave, while in **private sector** paying the different percentage of the salary depends on the will of the employer. Inequal position is further noticeable in different **legal arrangements regarding mandatory working time prior to maternity leave** as a precondition for exercising the right: in most cantons it is six months (as is prescribed by the Law on Principles of Basic Social Protection, Protection of Civil Victims of War and Protection of Families with Children of FBiH) and in some it is 12 months, one month and the amounts of allowance varies as well.^{149 150}

The Ministry of Labour and Social policy of FBiH drafted three proposals for ensuring compensation to new mothers within internal competent working group. Three options have been proposed as potential solutions of the problem:

- 1) Keeping current state of affairs which means administration and payment of allowance to employed new mothers from the social protection system. Possible changes to the legal solution would be directed towards **determining uniform amount for the entire FBiH**, meaning determining a uniformed percentage for calculation of the compensation (66% of the average salary of the new mother).
- 2) Reintegration of right to compensation for employed new mother into the system of rights emerging from the employment contract and health insurance, which implies **linking the right to paid benefits within health insurance**.

¹⁴⁹ See the overview of compensations for new mothers in cantons: Agić, Nejra. *Pregled prava porodilja u Bosni i Hercegovini: Kolike su razlike među kantonima?*/*The Overview of the rights of new mothers in Bosnia and Herzegovina: Differences in cantons (unofficial translation)*, Sarajevo open center, 26 February 2019, available at: <http://soc.ba/pregled-prava-porodilja-u-bih-koliko-su-razlike-medu-kantonima/>

¹⁵⁰ In RS, maternity allowance is awarded in the amount of the average salary the new mother had over the last 12 months prior to the delivery of the child

- 3) **Financing the right to allowance for employed new mothers from the entity level or directly from the FBiH budget or through the Fund for Child Protection** which is not in compliance with the existing reform activities directed at reduction of contribution rates from mandatory insurance and unburdening the economy, as recommended by IMF and integrated in the FBiH government agenda.¹⁵¹

Discussion in the FBiH Parliament on amendment to the federal budget from February 2018 according to which means for salary rise of the employees in public administration of 4.5% would be diverted into cantonal budgets to be used for co-financing compensations for new mothers and pregnant women, brought into the light inadequately resolved question of rights of new mothers in BiH. Although redirecting would only be an intervention and not a long-term measure, non-adoption of the amendment showed lack of strong political will to adopt unified solution for the entire FBiH which would mean **equal rights for all women-mothers in FBiH**.

The possibility for fathers to use parental leave, introduced by the new Labour Law of FBiH in 2016, is definitely a step forward but much more needs to be done in order to achieve the final effect of encouraging fathers to use this right in practice. Recommendations provided in the publication by Sarajevo Open Centre entitled “Proposal of Amendments to the Labour Law of FBiH – To Improve the Protection of Gender Equality, Rights Related to Maternity, Paternity and the Rights of Children¹⁵²” are as follows:

1. Terminologically speaking, replace the term “maternity leave” with more gender-neutral term “parental leave”, in compliance

¹⁵¹ Herenda, Tarik. *Prava porodilja na naknadu plate: Postojeći problemi i potencijalna rješenja*,/The Rights of New Mothers to Salary Compensation: Existing Problems and Potential Solutions (Unofficial translation) , Initiative for the Monitoring of the EU Integration of Bosnia and Herzegovina, available at: <http://eu-monitoring.ba/prava-porodilja-na-naknadu-plate-postojeći-problemi-i-potencijalna-rjesenja/>

¹⁵² Hanušić, Adrijana. Proposal of Amendments to the Labour Law in FBiH - To Improve the Protection of Gender Equality, Rights Related to Maternity and Paternity and the Rights of Children “, Sarajevo Open Centre, 2016, pages. 8-10

with the recommendation by The Institution of Ombudsman in BiH.¹⁵³

2. Write a more precise formulation of the Labour Law of FBiH¹⁵⁴ which foresees more flexible possibilities for parents to share parental leave, so a father can use part of the maternity leave as proposed by legal formulation in the Law on BiH institutions where there is a possibility for the child's parents to mutually agree whether a father would use the leave or at least part of it. The author of the policy paper believes that such provisions would enable parents to create different arrangements based on their professional needs and the needs of the child and personal needs and wishes of the parents.
3. Enable each parent to use fragmented parental leave which means in multiple time periods, with certain limitations such as that leave can be used up to twice a year. This would enable parents to use leave interchangeably and go back to work once the other parent goes on leave.
4. Introduce additional yet crucial stimuli for the take of parental leave for fathers following the standards stipulated by the EU laws: **foresee a privilege of extending the parental leave for parents (and children) for a month as a response to the take of parental leave by fathers in the duration of at least one month.**

Economy of care

As far as unpaid care and domestic work are concerned, the Agency for Gender Equality in its "Report on the Progress of BiH in the Implementation of the Beijing Declaration and the Platform for Action in BiH within Beijing +25 process" says that awareness

¹⁵³ For parental leave to be considered the right of both parents like in the majority of the EU member states

⁸¹ Article. 62, Paragraph 4: „ After 42 days from the delivery, an employee – father of a child may also exercise the right to paternity leave, if the parents so agree.”

raising campaign and actions have been conducted in BiH in order to encourage participation of men and boys in unpaid care and household chores.

In order to raise public awareness **on recognising unpaid domestic work and care giving,**

the Gender centre of RS included these questions into the survey on gender inequality during life cycle. Data shows explicitly **patriarchal patterns of division of chores and family care in RS,** where most of these activities are performed by women. Women and men do not share their parenting duties equally – most are done by mothers, especially while the children are still small. Almost half men (44,3%) do not perform any duties related to small kids. On the other hand, 9 out of 10 mothers are involved in all activities. In families with small children, women do the chores on average 33,89 hours more than men on a weekly basis (which is almost an additional full working week). In order to harmonize their family and work obligations, mothers of small children are generally exposed to stress and are overtired.¹⁵⁵ The Agency notices how **there is still lack of data on how much unpaid work done by women actually costs.** We were not able to find similar data or surveys for FBiH.

The special report on findings and recommendations of this survey, adopted by the RS government in 2016, defines recommendations **for measures aiming at changing approach to and division of responsibilities within a family.**¹⁵⁶

¹⁵⁵ For more details, see: Babović, Marija; Stanojević Dragan et al. „Gender inequalities in Republika Srpska from the perspective of life courses“, Gender centre – Gender Centre – Centre for gender equity and equality of the Government of the Republic of Srpska 2016, available at: <https://www.secons.net/files/publications/53-Rodne%20nejednakosti%20u%20Republici%20Srpskoj%20iz%20perspektive%20%C5%B Eivotnih%20tokova.pdf>

¹⁵⁶ Measures such as encouraging fathers to take parental leave in order to share childcaring duties with mothers from the early age; implementing campaigns for division of unpaid domestic work, encouraging higher participation in domestic chores and family caring; e.g. calculating the price of such work and organizing activities which change such practices (e.g. organizing a day in a year when a woman needs to be paid for this type of work according to the amounts determined by the current labor market price); make family support services(preschool facilities, daycare centers for children

An important precondition for harmonisation of professional and private life is existence of **adequate services for care of preschool children**. As stated in the GAP 2018-2022 of the Agency for Gender Equality, due to the lack of preschool facilities in BiH only every sixth child gets preschool education which, among other things, negatively impacts economic potential of women who, due to the lack of preschool education, traditionally take care of the children.¹⁵⁷ BiH has almost the lowest rate of officially preschool educated children in Europe. According to UNICEF (2016), it is estimated that 6-13% of children **have access to preschool education**, which is the lowest rate among the countries in the region. With regard to this, relevant is the number of preschool facilities in BiH - 321 in 2017-2018 school year, which is less than year before (332), with 25.889 children enrolled (12.453 girls), more than last year when 24.918 children were enrolled.¹⁵⁸

Another limiting factor for households is the cost of day-care and preschool facilities: prices vary based on the type of service provider and the location of the facility (there are significant differences among public preschool facilities – in the context of co-financing of services provided). In Sarajevo Canton, a place in a kindergarten for a month costs 82 euro per month, while in Mostar (Herzegovina-Neretva Canton) it costs 87 euro and nursery costs 102 euro. These amount to 15% of an average salary in 2017 in Sarajevo canton and 18% and 21% of an average salary in HNK.

Having in mind the number of people with below-average income, it can be concluded that costs of care for children in public nurseries and preschool facilities calls for a significant chunk of household

with disabilities, the elderly, etc. more accessible (in terms of space, time and price)and thus unburden women, especially the employed women.

¹⁵⁷ Available estimates suggest that the gross enrolment ratio of children aged 3 and older in pre-primary education in BiH is only 14.9%, as opposed to 93.9% in the EU. For more, see: Obradović, Nikolina; Jusić, Mirna; Oruč, Nermin. In-work poverty in Bosnia and Herzegovina, European Commission - European Social Policy Network (ESPN), 2019

¹⁵⁸ Agency for Statistics of Bosnia and Herzegovina. „Bosnia and Herzegovina in numbers 2018“, BHAS, 2019, page. 26, available at: http://bhas.gov.ba/data/Publikacije/Bilteni/2019/NUM_00_2018_TB_0_BS.pdf

income and as such can prevent parents for using the services – which will result (is already resulting) in them taking care of children and economic inactivity.¹⁵⁹

GAP 2018-2022 refers to an analysis of the Federal Agency for Statistics which shows that during 2013-2017 the number of preschool facilities in FBiH increased from 156 to 197. The number of children enrolled increased from 1,808 to 14,405 (47% were girls). However, in the same period the number of children who were rejected due to the lack of capacities increased from 232 to 860, which confirms the fact on **the lack of necessary services for child care and the need to increase the capacities** in order to better coordinate work and private life and use economic potential of women.¹⁶⁰

Guidelines for action

- The rights of new mothers, as well as other rights from the area of protection of families with children in FBiH need to be regulated by special regulation – the Law on Protection of Families with Children in FBiH, which will try to remove obvious obstacles in order to improve social protection system for families with children and ensure minimum equal rights, with clearly defined sources of financing in FBiH;
- FBiH and cantonal governments need to investigate the justification of solution according to which payment of maternity allowances is done from the cantonal budgets, since the right to contributions instead of salary for the duration of maternity leave is regulated by the contract of employment and should not depend on budget means inflow;

¹⁵⁹ Obradović, Nikolina; Jusić, Mirna; Oruč, Nermin. In-work poverty in Bosnia and Herzegovina, European Commission - European Social Policy Network (ESPN), 2019, str. 12 (Unofficial translation from English)

¹⁶⁰ Agency for Gender Equality of BiH. Gender action plan of Bosnia and Herzegovina for the period 2018 -2022, ARS BiH, October 2018, page. 23

- The most efficient solution in regard to maternity allowances would be a complete transfer of jurisdiction from cantonal to federal level and setting up a fund for maternity allowances by adopting a new law (based on solutions in RS);
- It is necessary to regulate maternity rights for unemployed women;
- In the entire BiH it is necessary to ensure efficient protection of female employees on maternity leave from discrimination and other violations of rights through the engagement of labour inspections and imposing strict punishment policies for violators. Better monitoring of the law needs to be done;
- Support to family's services need to be made more available (in terms of space, time and price) preschool facilities, day-care centres with children with impediments, centres for the elderly, etc. in order to reduce the workload that is traditionally carried by the women, especially employed women;
- In order to provide equal availability of preschool facilities, cantons need to consider providing subsidies/incentives to children from socially vulnerable families and low-income families (or using the "reserved spot" in "model in private kindergartens).

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