

**DECLARATION OF SARAJEVO OPEN CENTRE
UPR PRE-SESSION ON BOSNIA AND HERZEGOVINA,
GENEVA, OCTOBER 2014**

1. Presentation of the Organisation

This statement is delivered on behalf of the Sarajevo Open Centre, in cooperation with the the Human Rights House Foundation and ILGA Europe – the European Region of the lesbian gay bisexual transgender and intersex association (in special consultative status with the United Nations).

2. National consultations for the drafting of the national report

There was one consultation meeting, held on June 30th 2014 in Sarajevo, coordinated by the BiH state-level Ministry of Human Rights and Refugees. Unfortunately, a very small number of human rights organisations (less than 20) have been invited. It has been clearly stated and few times repeated that the national UPR report is a “political report”. In those areas where there was no compromise among the representatives of different federal units and ethnicities information has been cut or not included at all. That is the reason why highly relevant human rights violation topics, like the ethnic segregation in the school system (the so called “two school under one roof”-problem), are not mentioned at all in the national report. Other politically controversial issues like the rights of lesbian, gay, bisexual and transgender persons are kept short and superficial.

3. Plan of the Statement

This statement addresses the following issues:

- (1) Discrimination of minority groups and the problem with policy and legislation, and
- (2) The state of human rights of lesbian, gay, bisexual and transgender persons.

4. DISCRIMINATION OF MINORITY GROUPS AND THE PROBLEM WITH POLICY AND LEGISLATION

A. Follow-up to the first review

At the first Universal Periodic Review of Bosnia and Herzegovina in 2010, several states raised concerns and put recommendations related to minority rights and discrimination. This statement addresses some of them indirectly.

B. New developments since the first review

Under the pressure from the international community and with the goal of visa liberalization within the European Union, Bosnia and Herzegovina adopted the Law on Prohibition of Discrimination in 2009 (from now on: Anti-discrimination law). A large number of obligations arising from the law that were supposed to happen a few months after the adoption of the law were never fulfilled.

Bosnia and Herzegovina has a large number of documented discrimination cases despite the existence of the Anti-discrimination law. Discrimination is recorded particularly in education (two schools under one roof), employment (i.a on the basis of political affiliation, status of returnees, mobbing and sexual harassment), social and health care (i.a. people with disabilities, Roma). Certain categories of people are exposed to multiple discrimination, such as persons with disabilities, Roma, LGBT people, returnees, etc.

The Anti-discrimination law does not list some characteristics as potential basis for protection from discrimination, such as age and disability.

In regard to the application of the Anti-Discrimination law, there is a very low level of jurisprudence, which significantly affects the efficiency of the application of laws and prevents the Institution of Ombudsman from fully carrying out its legally established responsibilities. Five years after the adoption of this law, only two final court judgments incorporating discrimination were handed. The "two schools under one roof"-case from Mostar is currently before the Supreme Court of the Federation of Bosnia and Herzegovina, which will establish

a precedent for future cases. Insufficient proficiency of the judges in cases of discrimination is notable in practice. The education of judges and prosecutors is largely dependent on international organizations, particularly the OSCE Mission to BiH.

At the practical level public institutions lack institutional policies and rules of procedure for handling cases of discrimination. Neither the institutions nor the courts have mandatory and regular education on the Anti-discrimination law. Therefore a new legal doctrine for Bosnia and Herzegovina, such as transfer of the burden of proof is arising in court processes. Problems are arising in jurisprudence because of ignorance and the failure to apply the test for discrimination as it has been established by the European Court of Human Rights.

The Institution of Human Rights Ombudsman in Bosnia and Herzegovina, as a central institution for the protection against discrimination cited lack of human and financial resources necessary for implementation of the Anti-discrimination law as a serious obstacle to the application of this decree. There are serious problems in equal access to free legal aid for victims of discrimination. The Anti-discrimination law predicted that the obligation to harmonize domestic legislation with its provisions should be carried out within a year from his adoption, however this provision has been carried out only sporadically rather than systematically and methodically.

Citizens are not aware of the Anti-discrimination law and the protection mechanisms. There are no major public campaigns for promoting the existence of these laws and the protection mechanisms. So far, the campaign has only been carried out by the civil society organizations that have further established independent mechanisms for collecting and documenting cases of discrimination, discrimination monitoring and reporting on discrimination.

Although the law guarantees the de-jure prohibition of discrimination, some groups, such as Roma and LGBT people, do not use it due to limited access to institutions and due to homophobia in the institutions. BiH institutions did not make any attempts to thematize these issues, for example, through the adoption of a policy on combating discrimination, which would define the specific proactive measures to be carried out by institutions at all levels. These strategies are a common practice in many countries, neighbouring countries among others (Serbia, Croatia, Montenegro).

Ministry for Human Rights and Refugees of Bosnia and Herzegovina has started preparations for the amendment of the Anti-discrimination law and announced policy development to prevent discrimination in some areas (education and mobbing). Civil society organizations were not invited to participate in this process, but based on their persistence (May 2014) there is a strong possibility that they will be involved in this process. It is necessary to harmonize the law with the *acquis communautaire* of the European Union, as Bosnia was asked to do in Structured Dialogue on Justice for BiH in May 2014.

C. Recommendations

We therefore urge that the fight against discrimination is raised during the upcoming UPR, and that the following recommendations are made, To:

- establish a regular practice of reporting by BiH government about the various forms of discrimination, which would include a proposal of measures to eliminate and prevent discrimination trends;
- draft and adopt a countrywide anti-discrimination policy/strategy, which defines concrete and realistic measures on all governance levels to challenge discrimination on different grounds, and promotes tolerance and equality on state, entity, cantonal and local level. This should happen in close cooperation with civil society;
- amend BiH Law on Ombudsman for Human Rights in order to give the Institution of the Ombudsman a clearer and more efficient role as well as an improved internal structure, also strengthen financial stability and staffing of the Department to eliminate all forms of discrimination;
- amend the Anti-discrimination Law, based on learnings from the ongoing implementation of the law and include new grounds, like disability and age;

5. THE STATE OF HUMAN RIGHTS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER PERSONS

A. Follow-up to the first review

At the first Universal Periodic Review of Bosnia and Herzegovina in 2010, several states raised concerns and put recommendations. BiH Government accepted recommendations by France, the Netherlands, Norway, Switzerland and reports in two general sentences on their implementation in its National report.

B. New developments since the last review

Social acceptance: Social acceptance is very slow. 56.5% of BiH citizens think, “homosexuality must be cured”, whereas having a sex change is considered repulsive by 59.5%¹. Only every seventh LGBT person² is out to his parents and family, confirming the low level of social and family support of LGBT persons. There is not a single state measure on any level to work towards social inclusion and equality and against violence and bullying of LGBT youth in the education sector.

Discrimination: The BiH Anti-discrimination Law from 2009 covers de-jure prohibition of discrimination on the grounds of “sex expression and/or orientation”³. And beside the fact that the law uses wrong terms (sex expression and/or orientation, instead of sexual orientation and gender identity), there is not a single court case related to discrimination based on sexual orientation and gender identity. On the other hand, research showed that every third LGBT person experienced discrimination. There are no strategies and/or action plans that tackle discrimination of LGBT people and the BiH Ombudsmen Institution did not agree to produce a Special Report on the state of human rights of LGBT people, making clear that this topic is not relevant enough. Same sex relationships, and the rights and duties based on those, are not legally recognized in any way, leaving them in legal vacuum. Transexual people can’t get medical support for their gender reassignment and costs are not covered by the social security system.

Hate crime: Even though hate crime provisions, incl. sexual orientation and gender identity, have been included into the criminal laws of two of three federal units (Republika Srpska and Brcko District), there are almost no cases on courts. Research showed, that every fourth person has experienced violence. Data is not systematically collected or tracked. Police and judiciary are not trained at all.

Freedom of Assembly: After the attack on the Queer Sarajevo Festival in September 2008, when 8 persons have been hurt, nobody was prosecuted. The case has been submitted to the BiH Constitutional Court 2011. The BiH Constitutional Court has stated at the very beginning that this case has no priority, indirectly saying that the freedom of assembly for LGBT persons is not a priority for the highest judiciary authority in BiH. Just recently, six years after the attack, the BiH Constitutional Court partially adopted the appeal made in this case, stating that the right to freedom of assembly of LGBT persons in BiH has been violated. The latest violation of the freedom of assembly has been on February 1st 2014, when the participants of the LGBT film festival Merlinka were attacked by a hooligan group in Sarajevo. Even though the event was registered to the police 16 days in advance the police was 50 min. late at the festival location and was not present when the attack happened. Nobody has been prosecuted until now. So far in BiH here have been no attempts to

¹ Sarajevo Open Centre Report on the 2013 Public Opinion Pool on Homosexuality: <http://soc.ba/en/56-5-of-bih-citizens-still-think-homosexuality-must-be-cured/>

² 2013 LGBT community research report: <http://soc.ba/en/numbers-of-life-2/>

³ In local language, terminology that is used is: “(s)polnog izražavanja i/ili orijentacije”, which literally means «sex expression and/or orientation». Sex in this case refers to “(s)pol”, i.e. biological sex. Local translation for gender is «rod», gender identity is «rodni/spolni identitet», and sexual orientation is «seksualna/(s)polna orijentacija».

organize a pride march.

Conclusion: Since the first UPR of Bosnia and Herzegovina, there was no significant progress. Lesbian, gay, bisexual and transgender people continue to be one of the most marginalized and invisible groups in Bosnia and Herzegovina. BiH authorities, on any governance level, did not implement proactively a single measure to advance the human rights situation of LGBT people in BiH. The state of human rights of LGBT people was never on the agenda of any government or parliament session, which is symbolic.

C. Recommendations

We therefore urge that the continued practice of violation of human rights of LGBT people is raised during the upcoming UPR, and that the following recommendations are made, To:

- Amend the BiH Anti-discrimination law, and clearly define the grounds on which discrimination is prohibited, so that it explicitly covers the grounds sexual orientation, gender identity, gender expression and intersex status, and implement the law;
- draft and adopt a countrywide anti-discrimination policy/strategy, which defines concrete and realistic measures on all governance levels to challenge discrimination on i.a. the grounds of sexual orientation and gender identity, and promotes tolerance and equality on state, entity, cantonal and local level. This should happen in close cooperation with civil society;
- Amend the Criminal law of the Federation of Bosnia and Herzegovina to include hate crime provisions on i.a. the grounds of sexual orientation and gender identity;
- Amend the criminal laws of all three governance units (Republika Srpska, Federation BiH, Brcko District) to include a hate speech provisions on i.a. the grounds of sexual orientation and gender identity;
- Provide medical support for gender reassignment to transexual people, cover its costs through the official social security systems and define clear procedures for legal recognition of gender reassignment;
- Mainstream social acceptance and inclusion of marginalized groups, i.a. of LGBT people, through media, institutions and the education system, preventing in that way discrimination and hate related incidents that might appear in the future;
- Adopt and implement laws in all three governance units (Republika Srpska, Federation BiH, Brcko District) that would legally recognize same sex relationships, and define duties and rights based on the common life of two persons living in a same sex union (focusing on social and economic rights).