

PROPOSAL OF MEASURES FOR THE EQUALITY OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX (LGBTI) PERSONS in Bosnia and Herzegovina for the period 2017 – 2019

Proposal of measures for the implementation of the Recommendation
CM/Rec(2010)5 of the Committee of Ministers to member states on measures to
combat discrimination on grounds of sexual orientation or gender identity

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GLOSSARY OF KEY TERMS

BISEXUAL PERSON

A person sexually and/or emotionally attracted to persons of both sexes.

COMING OUT

The phrase *coming out of the closet* is in common use to denote public and open expression of one's own sexual orientation (of lesbians, gays and bisexuals), gender identity (of trans persons) and sex characteristics (of intersex persons). It is used in two contexts: as self-revelation and as (more or less) public announcement to others. Coming out is very important to LGBTI persons because by doing so they publicly affirm their identity – which is of great significance for the psychological health and quality of life of this minority group.

DISCRIMINATION

Discrimination is any difference in treatment, exclusion or any form of placing a person or a group of people in an unfavourable position on a given ground. There are various grounds or characteristics based on which a person or a group of people can be placed in an unfavourable position. Thus lesbians, gays and bisexuals can be discriminated against on the ground of their *sexual orientation*, trans* (inter alia, transgender and transexual persons) on the ground of *gender identity* and gender expression, and intersex persons on the ground of their *sex characteristics*. It is therefore very important that the three grounds (sexual orientation, gender identity and sex characteristics) are recognised by laws as prohibited grounds for discrimination.

GENDER IDENTITY

Gender identity is linked to individual experience and understanding of one's own sex which may or may not match the sex assigned at birth. Gender identity, inter alia, refers to a personal experience of one's body, dress and speech. Persons whose gender identity matched the sex assigned to him/her at birth are called *cisgender persons*, and those whose gender identity does not match the sex assigned at birth are called *trans(gender) persons*. Transexual persons, a sub-group of transgender persons, are persons whose gender identity does not match the sex assigned to them at birth and who have the intention of reassigning their biological sex or are in the process of doing so.

Gender expression

Visual and external presentation of a person manifested in the clothing, dress or bodily symbols, hairstyle, behaviour and body language.

HOMOPHOBIA

Irrational fear, intolerance and prejudice toward gay men and lesbians. It is manifested in the conviction of heterosexual supremacy. The conviction gives birth to violence towards non-heterosexual persons justified by the belief in own superiority (and their inferiority). Violence is manifested in verbal and physical attacks and discrimination.

HOMOSEXUAL PERSON

A person attracted to persons of the same sex.

Lesbian

A woman sexually and/or emotionally attracted to other women.

Gay

A man sexually and/or emotionally attracted to other men. Also used as an adjective (e.g. gay person) when it includes both men and women of same-sex orientation.

HATE CRIME

This term refers to criminal offences motivated by prejudice toward a person or a group of people. Hate crimes include intimidation, threats, property damage, harassment, homicide or any other criminal offence where the victim became the target due to an actual or perceived sexual orientation, gender identity or sex characteristics, or the victim was linked with, belonged to, supported or was a member of an LGBTI group.

HOMOSEXUALISM

An out-dated clinical term used for medical purposes to denote same-sex sexual orientation. It is deemed offensive as it implies that homosexuality is a disease that needs to be cured. Having in mind that the World Health Organisation (WHO) confirmed in 1990 that homosexuality, just like heterosexuality, is a natural variation of human sexuality, this term fell out of use.

INTERSEX PERSONS

Persons whose *sex characteristics*, including chromosomes, gonads and genitalia, depart from the typical, binary categories of male and female bodies. There are different types of intersexuality. Thus people can be divided by sex into male, female and intersex. *Intersex persons*, just like male and female, have their sexual orientation and gender identity. They were often called hermaphrodites in the past, but the term is deemed discriminatory and utterly incorrect in medical terms.

LGBTI

An umbrella term used to denote lesbian, gay, bisexual, trans*(gender) and intersex persons. The term refers to a heterogeneous group represented by the LGBTI acronym in social and political activism.

LGBTTIQ

An acronym for lesbians, gay men, bisexual, transgender, transexual, intersex and queer persons.

QUEER

Queer was used as a pejorative term in the past to denote non-heterosexual persons. The term was taken over by LGBTI persons and they used it to describe themselves. Some persons appreciate this term very much as it carries spite and covers diversity – not just gays and lesbians but bisexual, transgender and intersex persons, as well as heterosexuals who see themselves or live their life outside the hetero-patriarchal norms.

SEXUAL ORIENTATION

Emotional and/or sexual attraction or affection to persons of the same and/or different sex/gender. The usual classification includes *heterosexual persons* (attraction to people of the different sex), *homosexual persons* (attraction to people of the same sex) and *bisexual persons* (attraction to people of the same and of different sex). The law in Bosnia and Herzegovina often uses terms sex orientation, chosen sex/sexual orientation, sexual preference, sex preference, but the recommended term is sexual orientation.

SEX CHARACTERISTICS

Sex characteristics of people, such as chromosomes, gonads and genitalia may depart from the typical binary division into male and female bodies. People can thus be classified as male, female and intersex. Intersex persons may therefore be discriminated against or a target of hate crime due to their sex characteristics.

TRANSGENDER PERSON

A term used for persons whose gender identity does not match the sex assigned to them at birth. Transgender includes those persons who feel, prefer or chose to present themselves differently than in the expected gender roles traditionally given to them based on their sex assigned at birth, either through the way they dress, speak, their mannerism, make-up or bodily modifications. Transgender also refers to persons who do not identify as either male or female, transexual persons, transvestite and cross-dressers. *A transgender man* is a person who was assigned the female sex at birth but his gender identity is male or is somewhere on the spectre of the masculine gender identities. *A transgender woman* is a person who was assigned the male sex at birth but her gender identity is female or is somewhere on the spectre of the feminine gender identities.

Transexual person

A person having a clear desire and intention to change/adjust his/her sex, as well as a person who partially or fully modified his/her body (including physical and/or hormonal therapy and surgeries).

TRANSPHOBIA

Irrational fear, intolerance and prejudice towards transexual and transgender persons.

1. INTRODUCTION

The obligation of Bosnia and Herzegovina and its entities, Republika Srpska and the Federation of Bosnia and Herzegovina to develop a detailed set of measures to improve respect for and protection of human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons stems from the commitments undertaken by signing and ratifying international documents. The obligation arises from its membership in international organisations, especially in the Council of Europe, which makes it bound to enforce the judgments of the European Court of Human Rights in Strasbourg and the recommendations which the Council of Europe refers to its member states.

The most important document in this regard is certainly **Recommendation¹ (2010)5 on measures to combat discrimination on grounds of sexual orientation and gender identity** adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies, recommending that governments of member states:

- examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
- ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
- ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;
- be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;
- ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

This Recommendation is the first legal document that deals with discrimination on these grounds in such a detailed way and provides practical instruments for its elimination, and improvement of the human rights conditions and the situation of LGBTI persons in a society. As a recommendation it is not legally binding, but, as mentioned above, any measure defined in its **Appendix** is firmly based on the existing legally binding international and European documents related to human rights, which Bosnia and Herzegovina is obliged to implement and respect such as the European Convention on Human Rights and Fundamental Freedoms, the European Social Charter, the International Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other. It is thus clear that the State of Bosnia and Herzegovina, its entities Republika Srpska, the Federation of BiH and Brčko District are obliged to implement the main elements defined by this Recommendation and its Appendix. **Appendix** of this Recommendation defines the priority areas, measures and activities to be undertaken in the context of each of the following seven areas in order to eliminate inequality of LGBT persons in BiH society. **The priority areas defined in this Appendix are divided into the following 11 chapters:** I. Right to life, security and protection from violence (Hate crimes and other hate-motivated incidents); II. Freedom of association; III. Freedom

¹ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a

of expression and peaceful assembly; IV. Right to respect for private and family life; V. Employment; VI. Education; VII. Health; VIII. Housing; IX. Sports; X. Right to seek asylum; XI. National human rights structures. The proposed measures and activities are derived from and defined on the basis of the principles contained in the abovementioned and for Bosnia and Herzegovina legally binding European and other international instruments. They are elaborated in detail in order to facilitate adequate implementation and application of the recommendations in the member states.

Proposed measures for equality of LGBTI² persons in BiH were drafted to improve the social and legal equality of LGBTI persons in Bosnia and Herzegovina, ensure the implementation of the measures defined in this Recommendation, as well as consistent implementation of the BiH Gender Equality Law and the BiH Anti-Discrimination Law with respect to elimination of discrimination on grounds of sexual orientation, gender identity and sex characteristics. **Proposed measures were drafted for the period from 2017 to 2019** and they constitute a proposal of the strategic document containing strategic objectives, programs and measures for achieving equality for LGBTI persons in all areas of social life and work, in both public and private spheres. Proposed measures constitute a package of activities to be conducted in accordance with the constitutional responsibilities in Bosnia and Herzegovina at the BiH level i.e. the entity, cantonal and local levels, including Brčko District, while respecting the rights of LGBTI persons, and they clearly define the obligations and responsibilities of relevant stakeholders at all levels of government.

² Some international documents, like the CoE Recommendation CM/Rec(2015)5 don't cover intersex rights and discrimination based on sex characteristics. Nevertheless, as intersex rights are related to LGBT rights, our Proposal of Measures does include intersex rights and sex characteristics.

2. INTERNATIONAL AND DOMESTIC LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS OF LGBTI PERSONS

2.1 The international legal framework

Various international legal documents clearly and consistently oblige Bosnia and Herzegovina to work on improving the human rights of LGBTI persons. Here, we will briefly present the key documents and obligations arising therefrom, emphasizing in particular the documents of the United Nations (UN) and the Council of Europe.

By giving strong support to the protection of individual and political rights, and the principle of non-discrimination, **the UN Universal Declaration of Human Rights**, prohibits, although not directly, discrimination against LGBTI persons in the enjoyment of their personal and political rights, regardless of where these persons are located or whose nationals they are. The Declaration is binding to all countries in the world, regardless of their political systems, form of government or state organisation. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood, as stipulated in Article 1 of the Universal Declaration of Human Rights. The principle of non-discrimination in the enjoyment of rights is established in the second Article, which reads: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The UN International Covenant on Civil and Political Rights is incorporated in Annex I of the Constitution of Bosnia and Herzegovina, and accordingly its provisions are also constitutional provisions, making it all the more important in the legal system of Bosnia and Herzegovina. Along with the International Covenant on Civil and Political Rights, adopted was the first Optional Protocol, which established the Human Rights Committee. The Committee is tasked to receive and consider individual complaints from persons who believe that any of the rights guaranteed under the Covenant have been breached. As in the case of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights in Article 2 introduces the principle of non-discrimination: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Also, the Covenant imposes the following obligation on Member States: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Thus, the Pact not only forbade discrimination at the level of the guaranteed rights and freedoms, but also imposed an obligation on the Member States to adopt national legislation prohibiting discrimination on various grounds, including the discrimination of LGBTI persons. Bearing in mind that Bosnia and Herzegovina is a member of the Covenant, it is obliged to respect the rights and freedoms without discrimination, and to change its legislation in the sense to prohibit discrimination on all grounds.

The UN International Covenant on Economic, Social and Cultural Rights is also integrated in Annex I to the Constitution of Bosnia and Herzegovina, and it is considered a part of constitutional provisions. This Covenant also requires that States Parties to the Covenant undertake to guarantee

that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Covenant does not explicitly prohibit discrimination on grounds of sexual orientation, gender identity or sex characteristics, but these grounds are subsumed under other circumstances or broader interpretation of the word sex (especially when we talk about gender identity). Thus, discrimination is prohibited with respect to enjoyment of the right to work, the right to establishment of and membership in trade unions, certain standard of living, the right to education, medical care, participation in cultural life and the like. In its General Comment No. 20, the UN Committee on Economic, Social and Cultural Rights (CESCR) explained that member states of the Pact should ensure that a person's sexual orientation is not a barrier to realising Covenant rights, and it is recognised as among the prohibited grounds of discrimination.

The Committee on the Elimination of Discrimination against Women in its **General recommendation No. 28 on the core obligations of States parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** has confirmed that the intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in Article 2 of the Convention. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. States parties must legally recognise such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such forms of discrimination. The **Convention on the Elimination of All Forms of Discrimination against Women** is an integral part of the Constitution of Bosnia and Herzegovina, and is applied directly and has priority over national laws.

The Declaration on Human Rights, Sexual Orientation and Gender Identity of the UN General Assembly of 2009, calls on states to condemn acts of violence and human rights violations against persons based on their sexual orientation and gender identity, conduct an investigation and bring to justice the perpetrators, and ensure protection mechanisms for people who work against acts of violence and human rights violations based on sexual orientation and gender identity.

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other relevant international documents and principles of non-discrimination and expressing the deep concern of the Council over violence and discrimination based on sexual orientation and gender identity in all parts of the world, **the Resolutions of the United Nations Human Rights on human rights, sexual orientation and gender identity** of 2011 and 2014 requested the High Commissioner to commission a study documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, and how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity.

As for the documents of optional character, we certainly must mention **the Yogyakarta Principles** adopted in 2006 by a group of experts, the goal of which is to affirm the binding international standards concerning the protection of human rights of LGBT persons. These principles propose basic standards for the protection and promotion of the full enjoyment of all human rights, regardless of sexual orientation and gender identity. Some countries, including the Czech Republic, Denmark, Finland, Ireland, Norway, Sweden and Switzerland have confirmed or referred to the principles in their statements before the United Nations Human Rights Council (UNHRC). Other countries have confirmed the Principles at the executive level (Germany, the Netherlands, Spain and the United Kingdom) or as part of their legislation (Belgium).

On 5 November 2014, at the 20th session of the UN Human Rights Council in Geneva **the Universal Periodic Review (UPR)** of human rights situation in Bosnia and Herzegovina was carried out for the second time and on this occasion Bosnia and Herzegovina received 167 recommendations from 62 countries. At the 29th session of the UN Human Rights Council held on 15 June 2015 in Geneva, Bosnia and Herzegovina officially responded to the recommendations proposed at the session of the UPR Working Group in November 2014, accepting 128, i.e. partially accepting 38 and rejecting one of the proposed recommendations. On that occasion, Bosnia and Herzegovina received the following recommendations that are of relevance for the rights of LGBTI persons:

- Develop a plan for human rights in order to systematically regulate the protection and promotion of all human rights and the accompanying action plan for the strategy;
- Draft an anti-discrimination strategy, which will include measures to combat discrimination against marginalised groups such as LGBT persons, Roma and persons with disabilities;
- Harmonize the existing legislation at all levels with the BiH Anti-Discrimination Law;
- Implement measures that ensure equality of rights and non-discrimination, especially on the grounds of gender, sexual orientation or gender identity;
- Investigate, prosecute and combat hate crimes and hate speech, especially in the public sphere, including the hate speech used in political life and education;
- Ensure access to joint and inclusive quality education for members of marginalized groups, with special attention towards the Roma minority, LGBT persons and persons with disabilities;
- Strengthen legislation to combat and sanction incitement to violation, particularly when it comes from public officials;
- Publicly and unequivocally condemn any attack, verbal or physical, against LGBT groups and bring those responsible to justice;
- Develop a communications strategy to raise the awareness of society of the difficulties and obstacles faced by groups of LGBT persons and foster an environment of tolerance;
- Build upon developments in Sarajevo Canton police regarding training, coordination and awareness-raising in tackling discrimination of LGBT persons and implement these practices throughout the judiciary and the police; and
- Develop transparent and inclusive mechanisms of public consultations with civil society organisations on all issues of relevance for human rights (i.e. gender equality, minority rights, redressing wartime crimes, inclusive education, and discrimination against LGBT persons).

The European Convention on Human Rights and Fundamental Freedoms and its additional protocols have a special place in the legal system of Bosnia and Herzegovina. According to Article II, item 2 of the BiH Constitution, the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These instruments have the character of constitutional norms and priority over all other laws. In the process of accession to the Council of Europe, Bosnia and Herzegovina 2002 ratified the European Convention on Human Rights and thus accepted the jurisdiction of the European Court of Human Rights as the authorised interpreter of the Convention and all its protocols, as well as the court with jurisdiction to decide on applications by individuals, group of individuals or other countries claiming to be victims of violations of the rights set forth in the Convention. European Convention provides that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. This Convention protects the following rights and freedoms: the right to life; prohibition of torture,

inhuman and degrading treatment; prohibition of slavery and forced labour; the right to liberty and security; the right to a fair trial; no punishment without law; right to respect for private and family life; freedom of thought, conscience and religion; freedom of expression; freedom of assembly and association; right to marry; the right to an effective remedy; the prohibition of discrimination. Protocol 1 protects the following rights: the right to peaceful enjoyment of property; the right to education; the right to free elections; Protocol 4: prohibition of imprisonment for debt; freedom of movement; prohibition of expulsion of nationals; prohibition of collective expulsion of aliens; Protocol 6: abolition of the death penalty; Protocol 7: procedural safeguards relating to expulsion of aliens; right of appeal in criminal matters; the right to compensation for wrongful conviction; the right not to be tried or punished twice in the same legal matter.

Although the Convention itself does not explicitly define sexual orientation or gender identity as prohibited grounds, prohibition of discrimination is subsumed under other status. This conclusion arises not only from the rules of interpretation, but also from the subsequent recommendations of the Council of Europe, and especially from case law of the European Court of Human Rights. **The European Court of Human Rights** strongly influenced the creation of a framework of legal protection for LGBT persons with its judgments and progressive interpretation of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Over the past thirty years, the case-law of the European Court of Human Rights has imposed important standards not only in relation to the decriminalisation of homosexuality and the abolition of the different age of consent for sexual acts for homosexuals compared to heterosexual relationships, but also in establishing the protection of LGBT persons from violence and harassment, prohibiting discrimination based on sexual orientation and gender identity, and recognising same-sex couples' right to family life. In fact, in its most recent judgements the Court not only confirms that the issue of sexual orientation and sexual identity is protected by the right to private life, and thus any discrimination on these grounds is prohibited, but it also takes the view that same-sex unions are considered family life and that member states are obligated to legally recognise and allow them to enjoy a minimum of those rights recognised to heterosexual common law partners.

In 2010, the Committee of Ministers of the Council of Europe adopted **Recommendation CM/Rec (2010)5 on measures to combat discrimination on grounds of sexual orientation and gender identity** and sent it to the Member States recommending the governments of member states to:

- Examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
- Ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
- Ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;
- Be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;
- Ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

Appendix of this Recommendation defines the priority areas, measures and activities to be undertaken in the context of each of the seven areas in order to eliminate inequality of LGBT persons, which are divided into 11 chapters as follows: I. Right to life, security and protection from violence (Hate crimes and other hate-motivated incidents); II. Freedom of association; III. Freedom of expression and peaceful assembly; IV. Right to respect for private and family life; V. Employment; VI. Education; VII. Health; VIII. Housing; IX. Sports; X. Right to seek asylum; XI. National human rights structures.

In 2009, the Human Rights Commissioner of the Council of Europe in its report titled **Human Rights and Gender Identity** presented a series of recommendations to the Council of Europe member states, saying that, in order to improve the human rights of transgender persons, they should:

- Implement international human rights standards without discrimination, and prohibit explicitly discrimination on the ground of gender identity in national non-discrimination legislation. The Yogyakarta Principles should be used as guidelines for improvement of national legislation in this field;
- Enact hate crime legislation which affords specific protection for transgender persons against transphobic crimes and incidents;
- Develop expeditious and transparent procedures for changing the name and sex of a transgender person on identification and other relevant documents;
- Abolish forced sterilisation and other compulsory medical treatment as a necessary legal requirement to recognise a person's gender identity in laws regulating the process for name and sex change;
- Make gender reassignment procedures, such as hormone treatment, surgery and psychological support, accessible for transgender persons, and ensure that they are reimbursed by public health insurance schemes;
- Remove any restrictions on the right of transgender persons to remain in an existing marriage following a recognised change of gender;
- Prepare and implement policies to combat discrimination and exclusion faced by transgender persons on the labour market, in education and health care;
- Involve and consult transgender persons and their organisations when developing and implementing policy and legal measures which concern them;
- Address the human rights of transgender persons and discrimination based on gender identity through human rights education and training programmes, as well as awareness-raising campaigns;
- Provide training to health service professionals, including psychologists, psychiatrists and general practitioners, with regard to the needs and rights of transgender persons and the requirement to respect their dignity;
- Include the human rights concerns of transgender persons in the scope of activities of equality bodies and national human rights structures;
- Develop research projects to collect and analyse data on the human rights situation of transgender persons including the discrimination and intolerance they encounter with due regard to the right to privacy of the persons concerned.

In 2011, in his report **Discrimination on grounds of sexual orientation and gender identity in Europe**, the Human Rights Commissioner of the Council of Europe proposed a series of recommendations aimed at removing homophobia, transphobia and discrimination in the Council of Europe member states. The report included 47 Council of Europe member states, including

Bosnia and Herzegovina. The report proposed the following activities to the Member States to fight discrimination against LGBT persons:

- Take a strong public position against violations of the human rights of LGBT persons and promote respect on issues related to LGBT persons;
- Take steps to encourage factual, objective and professional reporting by the media on LGBT persons and issues related to sexual orientation and gender identity;
- Implement international human rights obligations without discrimination on grounds of sexual orientation and gender identity;
- Enact comprehensive national legislation on non-discrimination and include sexual orientation and gender identity among the prohibited grounds of discrimination. NGOs representing LGBT persons should be consulted and involved in the legislative process and in the preparation of policy measures for the implementation of the legislation;
- Screen national legislation to detect and correct possible inconsistencies with non-discrimination legislation in force to prevent discrimination on grounds of sexual orientation and gender identity;
- Set up national structures for promoting equality and non-discrimination.
- Monitor the effectiveness of the implementation of national non-discrimination legislation and involve national human rights structures, including national structures for promoting equality, and organisations representing LGBT persons in the monitoring process;
- Include homophobic and transphobic hatred explicitly as possible motives in national legislation on bias-motivated crime and hate speech. Crimes targeting individuals or groups of people because of their perceived or real sexual orientation or gender identity should be punished and the bias motive taken into account as an aggravating circumstance;
- Investigate effectively bias-motivated crimes against LGBT persons and improve systematic data collection on incidents and crimes related to homophobia and transphobia;
- Recognise that persecution or a well-founded fear of persecution on the basis of sexual orientation or gender identity may be valid grounds for granting refugee status and asylum, and provide adequate training to asylum officers and other related professionals in order to ensure that LGBT asylum seekers are met in sensitive way during the asylum procedure;
- Respect the effective right to freedom of assembly of LGBT persons by ensuring that peaceful Pride festivals and other public events organised by LGBT persons or focusing on issues related to sexual orientation and gender identity can take place without being subjected to discriminatory measures by the public authorities;
- Provide effective protection to participants of peaceful Pride demonstrations or public events organised by and for LGBT persons from attacks and violent counter-demonstrations;
- Respect the effective right to freedom of association of LGBT persons by ensuring, in particular, that non-governmental organisations representing LGBT persons or working on issues related to sexual orientation and gender identity can be set up and operate without being subjected to discriminatory measures by the public authorities;
- Respect the effective right to freedom of expression by safeguarding the possibility to receive and impart information on issues related to sexual orientation and gender identity in any form of expression such as the press, publications, oral and written statements, art and other media;
- Grant legal recognition for the preferred gender of transgender persons and develop expeditious and transparent procedures for changing the name and sex of a transgender person on birth certificates, civil registers, identity cards, passports, educational certificates and other similar documents;

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- Abolish sterilisation and other compulsory medical treatment which may seriously impair the autonomy, health or well-being of the individual, as necessary requirements for the legal recognition of a transgender person's preferred gender;
- Remove the requirement of being unmarried, or divorce for already married persons, as a necessary condition for the legal recognition of a transgender person's preferred gender;
- Respect the right of transgender persons to effectively exercise their right to marry in accordance with their legally recognised gender;
- Enact legislation recognising same-sex partnerships by granting such partnerships the same rights and benefits as different-sex partnerships or marriage, for example in the areas of social security, employment and pension benefits, freedom of movement, family reunification, parental rights and inheritance;
- Grant same-sex couples and LGBT individuals, in compliance with the principle of the best interests of the child, similar opportunities as other applicants to be considered without discrimination as adoptive parents for a child;
- Recognise the parental rights of same-sex parents, individually or jointly, including their rights of guardianship and custody without discrimination on grounds of their sexual orientation or gender identity. The parental rights of transgender persons should continue to be respected after the legal recognition of their preferred gender;
- Allow access to assisted reproduction to LGBT persons without discrimination on grounds of their sexual orientation or gender identity;
- Seek to provide adequate support for families with LGBT members in order to foster inclusion, respect and safety;
- Abolish outdated classification systems which portray homosexuality as an illness or disease;
- Review any requirements of a diagnosis of mental disorder for accessing transgender health care in view of eliminating obstacles to the effective enjoyment, by transgender persons, of the rights to self-determination and the highest attainable standard of health;
- Include in the education and training of health care professionals the importance of respecting the dignity of LGBT persons as well as their specific health care needs and choices;
- Make gender reassignment procedures, such as hormone treatment, surgery and psychological support, accessible to transgender persons subject to informed consent and ensure that they are reimbursed by health insurance;
- Promote respect and inclusion of LGBT persons at school and foster objective knowledge on issues concerning sexual orientation and gender identity in schools and other educational settings;
- Combat bullying and harassment of LGBT students and staff. Schools should be a safe environment for LGBT students and staff, and teachers should be provided with tools to respond effectively to bullying and harassment of LGBT students;
- Promote policies and practices aimed at combating discrimination based on sexual orientation or gender identity; also promote policies to foster diversity in the workplace together with initiatives which encourage the full inclusion and respect of LGBT staff in the work environment;
- Respect the right of transgender persons to access the labour market by guaranteeing the respect of their privacy concerning the disclosure of personally sensitive data related to their gender identity and by promoting measures aimed at ending the exclusion and discrimination of transgender persons in the workplace;
- Encourage systematic research and disaggregated data collection concerning discrimination

on grounds of sexual orientation and gender identity in all areas of life. LGBT-related questions should be included in general attitude surveys and public opinion polls, and safeguards protecting the right to respect for private life of LGBT persons in the collection of any sensitive data should apply.

In May 2015, the Human Rights Commissioner of the Council of Europe published the report titled **Human Rights and Intersex People**. This report aims to encourage Member States to eliminate medically unnecessary “normalising” treatment of intersex persons, when it is enforced or administered without the free and fully informed consent of the person concerned. It also presents possible steps to be taken to protect intersex people from discrimination, and adequately recognise their sex in official documents and provide them access to justice. In this report, the Council of Europe Commissioner for Human Rights presented the following recommendations:

- Member states should end medically unnecessary “normalising” treatment of intersex persons, including irreversible genital surgery and sterilisation, when it is enforced or administered without the free and fully informed consent of the person concerned. Sex assignment treatment should be available to intersex individuals at an age when they can express their free and fully informed consent. Intersex persons’ right not to undergo sex assignment treatment must be respected.
- Intersex persons and their families should be offered interdisciplinary counselling and support, including peer support. Intersex persons’ access to medical records should be ensured.
- National and international medical classifications which pathologise variations in sex characteristics should be reviewed with a view to eliminating obstacles to the effective enjoyment, by intersex persons, of human rights, including the right to the highest attainable standard of health.
- Member states should facilitate the recognition of intersex individuals before the law through the expeditious provision of birth certificates, civil registration documents, identity papers, passports and other official personal documentation while respecting intersex persons’ right to self-determination. Flexible procedures should be observed in assigning and reassigning sex/gender in official documents while also providing for the possibility of not choosing a specified male or female gender marker. Member states should consider the proportionality of requiring gender markers in official documents.
- National equal treatment and hate crime legislation should be reviewed to ensure that it protects intersex people. Sex characteristics should be included as a specific ground in equal treatment and hate crime legislation or, at least, the ground of sex/gender should be authoritatively interpreted to include sex characteristics as prohibited grounds of discrimination.
- National human rights structures such as ombudspersons, equality bodies, human rights commissions and children’s ombudspersons should be active in their outreach towards intersex people, including children. They should be clearly mandated to work on issues related to intersex people and to provide victim-support services to them. There is a need to facilitate intersex persons’ access to justice.
- Member states should carry out research into the situation and human rights protection needs of intersex people in different settings. There is an urgent need to improve public awareness and professional training about the problems encountered by intersex persons. Intersex people and organisations representing them should be enabled to participate actively in research concerning them and in the development of measures improving their enjoyment of human rights.

- The human rights violations intersex people have suffered in the past should be investigated, publicly acknowledged and remedied. Ethical and professional standards, legal safeguards and judicial control should be reinforced to ensure future human rights compliance.

Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) in Article 4, paragraph 3 (Fundamental rights, equality and non-discrimination) stipulates that the implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.

2.2 The domestic legal framework

The Constitution of Bosnia and Herzegovina is the supreme law of the country, and all state and lower levels of government are required to comply with it. The European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto and 15 international conventions are constituent parts of the Constitution of Bosnia and Herzegovina. Annex I of the Constitution lists the following conventions of universal character: 1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide; 2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto; 3. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto; 4. 1957 Convention on the Nationality of Married Women; 5. 1961 Convention on the Reduction of Statelessness; 6. 1965 International Convention on the Elimination of All Forms of Racial Discrimination; 7. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto; 8. 1966 Covenant on Economic, Social and Cultural Rights; 9. 1979 Convention on the Elimination of All Forms of Discrimination against Women; 10. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 11. 1989 Convention on the Rights of the Child; 12. 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; 13. 1994 Framework Convention for the Protection of National Minorities.

The other three conventions are regional in character: 1. The European Convention for the Protection of Human Rights and Fundamental Freedoms and additional protocols thereto, which directly apply in Bosnia and Herzegovina; 2. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and 3. 1992 European Charter for Regional or Minority Languages. They can all be considered as part of the Constitution and are directly applied in legislative drafting, decision-making and judgments.

Human rights and freedoms are regulated by Article II of the Constitution. To this end, Bosnia and Herzegovina and both its entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms. All persons within the territory of Bosnia and Herzegovina shall enjoy human rights, which include the right to life; the right not to be subjected to torture or to inhuman or degrading treatment or punishment; the right not to be held in slavery or servitude or to perform forced or compulsory labour; the right to liberty and security; the right to a fair hearing in civil and criminal matters and other rights relating to criminal proceedings; the right to private and family life, home and correspondence; freedom of thought, conscience and religion; freedom of expression; freedom of peaceful assembly and freedom of association with others; the right to marry and found a family; the right to property; the right to education; the right to liberty of movement and residence. The list of rights contained in the catalogue of human rights in the Constitution of Bosnia and Herzegovina is not exhaustive, and added to it are the rights guaranteed under the European Convention, 13 protocols and 15 international documents listed in Annex I of the Constitution of Bosnia and Herzegovina.

The Constitution of Bosnia and Herzegovina introduces the principle of non-discrimination in Section 4, which states that the enjoyment of the rights and freedoms provided for in Article II of the Constitution of Bosnia and Herzegovina or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Sexual orientation, gender identity and sex characteristics are not explicitly listed as a prohibited grounds of discrimination, but subsuming them under "other status", it can be regarded that discrimination on ground of sexual

orientation, gender identity and sex characteristics is prohibited. In support of this speak legal provisions of the Gender Equality Law, which explicitly prohibit discrimination based on sex/gender and sexual orientation, as well as provisions of the Anti-Discrimination Law, which also explicitly stated sex, sexual orientation, and sexual expression as prohibited grounds of discrimination.

Basic human rights and freedoms are also guaranteed by **the Constitution of the Federation of Bosnia and Herzegovina**. Human rights and freedoms are additionally protected by 21 international instruments contained in Annex I to the Constitution of the Federation of Bosnia and Herzegovina: 1948 Convention on the Prevention and Punishment of the Crime of Genocide; 1948 Universal Declaration of Human Rights; 1949 Geneva Conventions I-IV on the Protection of the Victims of War and the 1977 Geneva Protocols I-II thereto; 1950 European Convention for the protection of Human Rights and Fundamental Freedoms, and the Protocols thereto; 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto; 1957 Convention on the Nationality of Married Women; 1961 Convention on the Reduction of Statelessness; 1961 European Social Charter and the Protocol 1 thereto; 1965 International Convention on the Elimination of All Forms of Racial Discrimination; 1966 International Covenant on Civil and Political Rights and its 1966 and 1989 Optional Protocols thereto; 1966 International Covenant on Economic, Social and Cultural Rights; 1979 International Convention on the Elimination of All Forms of Discrimination against Women; 1981 United Nations Declaration on the Elimination of all kinds of intolerance and discrimination based on religion or belief; 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; 1989 Convention on the Rights of the Child; Convention on the rights of migrant workers and members of their families and other instruments are part of the Constitution and can be directly applied in the territory of the Federation of Bosnia and Herzegovina.

In Section II, Article 2 of the Constitution of the Federation of Bosnia and Herzegovina provides a list of rights guaranteed to individuals and the citizens of the Federation. All persons within the territory of the Federation shall enjoy the following rights: right to life; right to liberty, with arrest and detention authorised only by law; right to equality before the law; freedom from discrimination based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin; right to a fair criminal proceedings; prohibition of torture, cruel or inhuman treatment or punishment; right to privacy; freedom of movement; asylum; protection of the family and of children; right to property; right to fundamental freedoms: freedom of speech and press; freedom of thought, conscience and belief; freedom of religion, including private and public worship; freedom of assembly; freedom of association, including the freedom to form and belong to trade unions and the freedom not to associate; freedom to work; education; social protection; health care; nutrition; shelter and protection of minorities and vulnerable groups. The rights reserved for citizens of the Federation of Bosnia and Herzegovina only include the right to form and belong to political parties, the right to participate in public affairs, the right to equal access to public services, and the right to vote and stand for election.

The Constitution of the Federation of Bosnia and Herzegovina provides that all persons on the territory of the Federation enjoy the right to protection from discrimination on grounds of race, colour, sex, language, religion or belief, political or other opinion, national or social origin, however, sexual orientation, gender identity and sex characteristics are not included and cannot be subsumed under any of the indicated grounds. However, Article 2 of Section II of the Federation Constitution imposes an obligation on this Entity to ensure protection of minorities and vulnerable groups, which can be interpreted in the context of human rights of LGBTI persons.

Constitution of Republika Srpska, in Special section II lists basic human rights and freedoms protected under this Constitution. Article 10 states the general prohibition of discrimination: Citizens of Republika Srpska shall be guaranteed equal freedoms, rights and duties; they shall be equal before the law and they shall enjoy equal legal protection before the state and other authorities irrespective of their race, sex, language, national or social origin, religion, education, material standing, political or other conviction, social status or any other personal attributes. There is a possibility of subsuming sexual orientation and gender identity under “other personal attributes” when it comes to enjoyment of rights and freedoms set forth in the Constitution. The other articles of the Constitution list the protected rights and freedoms, such as: the right to life, the right to security, human dignity, physical and spiritual integrity, privacy, personal and family life; prohibition of torture, cruel, inhuman or degrading treatment or punishment; prohibition of unlawful deprivation of liberty; equality before the court; the right to a fair trial and the right to defence; the principle of *nulla poena sine lege, nullum crimen sine lege*; freedom of movement; confidentiality of personal data; inviolability of the home; freedom of thought and affiliation, conscience and conviction, as well as the public expression of opinion; freedom of the press and other media; freedom of scientific, cultural and artistic endeavour; freedom of religion; the right to vote and stand for elections; freedom of peaceful assembly and public protest; freedom of political organisation; the right to participate in the management of public affairs; freedom to express affiliation with his/her nation and culture and the right to use the language and script; the right to a healthy environment; right to marry; the right to health care; the right to education under equal conditions; right to work and freedom of work; freedom to organise, operate and join a trade union; the right to strike; the right to social security and social insurance.

Statute of Brčko District of Bosnia and Herzegovina, as the supreme legal act of the District, in Article 13 introduces the principle of non-discrimination in the enjoyment of rights: everyone is entitled to the enjoyment of all rights and freedoms guaranteed under the Constitution and laws of Bosnia and Herzegovina, this Statute and the laws of the District, without discrimination of any kind, including discrimination on the basis of gender, race, sexual orientation, colour, language, religion, national or social origin, political or other opinion, membership of a national minority, property, birth or other status. Thus, the Statute of Brčko District, as the supreme legal document of a very specific local government unit, is the only such document that specifically states sexual orientation (in the Statute: sexual orientation) as a prohibited ground of discrimination. As for gender identity, there is nothing else but to subsume it under “other status”. This position was further supported by the fact that the laws of Bosnia and Herzegovina directly apply in the District, and accordingly the Anti-Discrimination Law, which explicitly states gender identity (In the Act referred to as: sexual expression) as a prohibited ground of discrimination. The Statute also provides that all persons within the territory of the District shall be entitled to all the rights and freedoms accorded to them by the European Convention on Human Rights and Fundamental Freedoms. Within the District, those rights and freedoms shall prevail over all conflicting laws. Since the Constitution of Bosnia and Herzegovina directly applies in the territory of the District, the Statute does not contain excessive list of rights and freedoms, but instead lists only some, such as: the right to liberty and security, the right to respect for private and family life, home and correspondence; freedom of association; the right to education; the right to legal representation and the right to public information.

2003 Gender Equality Law of Bosnia and Herzegovina systemically regulated the issue of non-discrimination in various areas of public and private life on grounds of gender and/or sexual orientation. As a systemic and framework law enacted at the state level, it imposed an obligation

of harmonising other legal documents at the state, entity, cantonal and municipal levels with its provisions, i.e. the introduction of general provisions on the prohibition of discrimination on grounds of sex and sexual orientation. The Gender Equality law is the first systemic law which expressly prohibited discrimination on ground of sexual orientation. Article 2, paragraph 3 bans discrimination based on gender and sexual orientation. The law guarantees full equality in all areas of life, such as education, economy, employment and labour, social and health care, sport, culture, public life and the media, indicating that the protection guaranteed is not strictly limited to specified areas of public or private life, but it can be extended to other areas of life.

In 2009 Bosnia and Herzegovina enacted **the Anti-Discrimination Law**, as the second systemic law regulating the area of non-discrimination, not only on the basis of sex/gender and sexual orientation, but also a wide range of other prohibited grounds such as, for example, race, colour, language, religion, ethnicity and so on. Of particular importance is the fact that this is the first law which, in addition to sex and sexual orientation introduces the notion of sexual expression. This legal standard can be interpreted as the prohibition of discrimination on ground of gender identity. Hence, finally a systematic law has defined a series of prohibited grounds of discrimination which fully includes LGBT persons. Sex characteristics are not covered by this law. This law imposes the obligation of harmonisation of other laws and regulations with its provisions within one year of its entry into force. Discrimination, in terms of this Law, shall be every different treatment including every exclusion, limitation or preference based on real or assumed features towards any person or group of persons, *inter alia*, on grounds of sex, sexual expression or sexual orientation. The prohibition of discrimination applies to all public authorities, all natural and legal persons, both in the public and private sectors in all spheres, especially: employment (access to employment, occupation, self-employment, working conditions, remuneration, career advancement and dismissal), membership in professional organisations, education, science and sport, training, housing, health, social protection (for example, social benefits and social assistance), goods and services designated for public and public places (such as, for example, when buying goods in a shop, when applying for a bank loan, in relation to access to discotheques, bars and restaurants), judiciary and administration, including the police and other law enforcement officers, border control, military and prison staff, and performing economic activities and public services.

In its **annual reports on discrimination in Bosnia and Herzegovina for 2012, 2013 and 2014** the Institution of Ombudsman for Human Rights in Bosnia and Herzegovina emphasised that LGBT persons encounter stereotypes and prejudices in everyday life, even though same-sex sexual relations are allowed by law, whereas unequal treatment of LGBT persons is expressly prohibited. It is also stated that their situation is very difficult because society is not ready to accept them as equal members thereto, but they seldom report the cases of infringement of their rights to the Ombudsman or other relevant bodies due to lack of confidence in institutions and fear of condemnation due to disclosure of their sexual orientation. In 2012 and 2013 the Ombudsman Institution registered four complaints of discrimination based on sexual orientation and gender identity respectively, while in 2014 it recorded 11 complaints of discrimination on these grounds.

In its Annual Report for 2014 the Ombudsman Institution pointed out that the holders of public office should be straightforward in protecting the rights of LGBT persons on the occasion of individual incidents, but also in general, because we still live in a relatively conservative society. It is the obligation of public authorities to ensure the true functioning of associations and political parties, even when they displease or offend people who oppose the legitimate ideas and requirements that an association or party seeks to promote. The manner in which a society treats LGBT persons reflects the way the society treats anything that is different, and it is diversity that mirrors the wealth and prosperity of a society. The Annual reports have not touched upon issued of the rights of intersex persons.

The Constitutional Court of Bosnia and Herzegovina at the 88th plenary session held on 25 September 2014 partially accepted the appeal of the Association Q for promotion and protection of culture, identity and human rights of queer persons, which was filed six years earlier. In the aforementioned session the Constitutional Court made a decision on admissibility and merits, partially accepting the appeal submitted by the Association Q and establishing the violation of rights under Article II/3.i) of the Constitution and Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitutional Court judgment ordered the Federal Government to pay the Association Q a sum of BAM 3,000.00 on the account of non-pecuniary damages for the violation of the constitutional right “within three (3) months from the date of delivery of the judgement.” Furthermore, the same order was imposed on the Sarajevo Canton Government, which was also required to pay the Association Q the same amount of damages within three months from the date of the judgement. Under the same judgement, the Governments of the Federation of Bosnia and Herzegovina and Sarajevo Canton were also ordered to notify the Constitutional Court, “within three months from the date of the judgment delivery”, of the measures taken to enforce the decision pursuant to Article 72, paragraph 5 of the Rules of the Constitutional Court of Bosnia and Herzegovina.”

This was the first judgement in Bosnia and Herzegovina, confirming that the right of LGBT persons to public assembly has been violated, but also the first time that the government was ordered to pay the damages to an LGBTI organisation in Bosnia and Herzegovina.

3. ANALYSIS OF THE STATE OF EQUALITY OF LGBTI PERSONS IN PRIORITY AREAS

Following the priority areas defined in the Appendix to **Recommendation CM/Rec (2010)5 on measures to combat discrimination on grounds of sexual orientation and gender identity**, the analysis of the situation of LGBTI persons focuses on the following issues: the right to life, security and protection from violence (hate crime and hate speech); freedom of association; freedom of expression and peaceful assembly; right to respect for private and family life; employment; education; health care; housing; sport; right to asylum; and structures for the protection of human rights.

3.1 The right to life, security and protection from violence

Chapter I. refers to countering hate crimes and hate speech, and establishing an adequate system of protection against these crimes. This chapter is divided into two parts A. "Hate crimes" and other "hate-motivated incidents" and B. "Hate speech".

Key recommendations provided in Chapter I. Of Appendix include adequate criminalisation of hate crimes, training of police officers, judiciary and prison staff, introduction of independent machinery for investigating hate crimes by law enforcement officers and a series of measures to combat these crimes and hate-motivated incidents on ground of sexual orientation or gender identity. Member states are also called to collect and analyse data on these crimes.

Part B. of Chapter I. of Annex requires the introduction of measures to prevent and combat hate speech on ground of sexual orientation or gender identity, including laws that sanction hate speech, and promote good practices in media organisations and Internet providers. This Part also highlights the need for public condemnation of such speech by government officials, and for raising awareness of civil servants not to use hate speech and to promote tolerance and respect for human rights of LGBT persons

3.1.1 Hate crime

Hate crimes are regulated in Bosnia and Herzegovina in 2010, specifically in the criminal laws of Republika Srpska and Brčko District. These laws define hate motives and prejudice to be an aggravating circumstance of any criminal offence, and they both prohibit criminal offences motivated by sexual orientation. In 2013, amendments to the Criminal Code of Republika Srpska explicitly defined hate crimes motivated by bias and introduced gender identity as prohibited ground for motivation. In the Federation of Bosnia and Herzegovina hate crimes have been discussed since 2010, but amendments were adopted only in April 2016. Sex characteristics as prohibited motive for hate crimes have not been regulated by any of the three criminal laws.

The Ministry of Internal Affairs of the Sarajevo Canton in 2014 included in its permanent training programme for police officers a module dealing with hate-motivated crimes based on sexual orientation and gender identity; however, this training lasted only during 2014.

Following recommendations of the Ombudsman for Human Rights, in 2015 the Ministry of Internal Affairs of Republika Srpska started the training to sensitise its officers to work with LGBT persons. Training sessions are ongoing during 2016.

Despite these developments, training for police officers, judges and prosecutors are taking place sporadically and haphazardly. There is neither developed system of training for combating hate crimes nor for sensitisation of officials to work with LGBTI persons.

Potentially, crimes motivated by sexual orientation, gender identity or sex characteristics are covered under the framework of general training on hate-motivated crimes. In 2015, such training took place in the cantons of the Federation of Bosnia and Herzegovina, under auspice of citizens' association Sarajevo Open Centre and the OSCE Mission to BiH.

In Bosnia and Herzegovina, its entities, Brčko District and cantons there are no special units within the police responsible for investigating crimes and incidents linked to sexual orientation and gender identity, which would be responsible for maintaining contact with local LGBT communities in order to strengthen the confidence and trust. Only the Ministry of Internal Affairs of Sarajevo Canton in 2014 appointed contact persons in four municipalities, who are responsible to deal with infringements of human rights based on sexual orientation and gender identity.

Due to different regulations, the investigation and prosecution of hate crimes motivated by sexual orientation, gender identity and sex characteristics varies depending on the area, and the Ministries of Internal Affairs keep record and statistics on these crimes as a part of their regular crime statistics, classifying them according to type of crime without taking into account the reasons for commission, because police statistics are focused on the crime, not the motive.

According to a survey conducted in 2013 by the Sarajevo Open Centre among LGBT persons in BiH, 23.5% of respondents have experienced violence due to their gender expression or sexual identity.

Nearly every respondent (94.6%) experienced physical and verbal abuse, every third respondent experienced physical violence and almost one in five respondents experienced sexual abuse. 130 respondents have experienced some form of violence, but only 17 had reported the violence. Only 3 cases were prosecuted in court, while 2 cases are still pending. Having in mind that only 3 of 17 reported cases have been prosecuted in court, it really not surprising that LGBT persons have no confidence in the institutions that were supposed to protect them. Only 23.1% of respondents claimed to have confidence in the police, while as many as 73.6% do not have any confidence in the institutions.

However, the regional research involving LGBT community conducted by the National Democratic Institute (NDI) in Bosnia and Herzegovina, Serbia, Macedonia, Montenegro, Albania and Kosovo showed that out of total number of LGBT persons from BiH who took part in the survey, 72% experienced some form violence, while 15% of them had experienced physical violence.

Violence during the 2008 Queer Sarajevo Festival and the attack on the International Queer Film Festival Merlinka in Art Cinema Kriterion in 2014 are disturbing examples of the failure of authorities to protect the participants of the public event, and inactivity in terms of quick and adequate prosecution of perpetrators hate crimes.

It is disturbing that this trend continues. In March 2016, a group of four young men attacked the visitors of Art Cinema Kriterion in Sarajevo, insulting all the present on ground of their sexual orientation. The attack was clearly motivated by homophobia, but police officers, in their records, qualified it as bullying, and after a very short detention the perpetrators were released.

3.1.2 Hate speech

The criminal codes of the entities and Brčko District incitement of national, racial and religious hatred and intolerance is prohibited and punishable by imprisonment. Accordingly, prohibition extends on any harmful hate speech and incitement to violence, but exclusively national, racial and religious grounds. However, this formulation does not prohibit or punish homophobic and transphobic speech or incitement to violence against LGBTI persons.

The current Anti-Discrimination Law (adopted in 2009) also prohibits incitement to discrimination only on national, racial and religious grounds. In parliamentary procedure are the amendments to the

Law, prohibiting incitement to discrimination on any grounds, including sexual orientation, gender identity and sex characteristics. Existing legislation meets the minimum criteria for the protection of human rights, but to fully serve its purpose of preventing and combating hate speech on all grounds, including sexual orientation, gender identity and sex characteristics, and providing comprehensive protection of human rights of all its citizens - which is the way it is done in most European countries, including countries in the region - it needs to be further improved and expanded.

A particular problem in proliferation of hate speech and incitement to violence and discrimination against LGBTI persons, as well as against other social groups, are the Internet, social networks and online portals. Due to inadequate legal regulation of the Internet and very slow response of competent institutions and persons, hate speech and incitement to violence and discrimination not only expanded through the Internet in terms of negative comments and texts, but they are transformed into serious and fundamental threats that encourage or even escalate in hate crimes. Prevention and combat against hate speech motivated by sexual orientation, gender identity or sex characteristics should be properly regulated and carried out systematically, including by promotion of good practices through media organisations and Internet providers.

It is necessary to raise awareness and reinforce the reaction of state institutions and their representatives on hate speech in terms of public condemnation of such speech, refraining from its use and encouraging tolerance and respect for human rights of LGBTI persons.

Hate speech in Bosnia and Herzegovina is also prohibited under the Code on Audio-visual and Radio Media Services of the Communications Regulatory Agency (CRA). This Code provides that the audio-visual media services and radio media services shall respect human dignity and the fundamental rights of others, and will encourage the free formation of opinions. It guarantees that the provider of media services will not provide content which includes any form of discrimination or prejudice based on gender, race, ethnicity, nationality, religion or belief, disability, special needs, age, sexual orientation, social origin, as well as any other content that has the purpose of or consequence to disable or endanger recognition, enjoyment or exercise on an equal basis, of any person's rights and freedoms. However, gender identity and sex characteristics are not included in the list of protected grounds.

Also, the Press Council in Bosnia and Herzegovina, an independent, non-governmental, self-regulatory media body for print and online media, in its Press Code in Section 4, states that: "Journalists must avoid prejudicial or insulting references to a person's ethnic group, nationality, race, religion, gender, sexual orientation, physical disability or mental disability. References to a person's ethnic group, nationality, race, religion, gender, sexual orientation, physical disability or mental disability shall be made only when directly relevant to the occurrence being reported." In Article 4a, it stipulates that: "Journalists shall avoid direct or indirect comments which might place individuals in an unequal position or discriminate them based on sex, gender, sexual identity, gender identity, gender expression and/or sexual orientation." The Communications Regulatory Agency of Bosnia and Herzegovina has the power to impose fines on the television and radio broadcasters for using hate speech, which it utilised several times in recent years. Namely, it imposed fines on TV Pink and OBN, where in the context of their regular program, they used and broadcasted hate speech against LGBT persons.

The Press Council does not have the power to impose sanctions, hence the admonitions they addressed to the print media and online portals are not binding and it depends purely on the media concerned whether they will comply with it or not.

Also, the sanctions imposed by the CRA and the Press Council are directed exclusively towards the media broadcasting and publishing hate speech, while not taking into account the responsibility of individuals for spreading hate speech, promoting intolerance and inciting others to hatred, violence and discrimination.

3.2 Freedom of Association

Chapter II of the Annex requires that Member States take appropriate measures to ensure that organisations working on human rights of LGBT persons can register without discrimination according to the procedures that apply to all other citizens' associations and foundations; that they are free to work and be included as partners in designing and implementing public policies that affect LGBT persons; that they have access to public financing earmarked for NGOs without discrimination; but also that the persons and organisations advocating for the human rights of LGBT people enjoy effective protection against intolerance and violence in the society in order to enable them to freely carry out their activities.

The Anti-Discrimination Law prohibits any discrimination by public institutions during the official registration of associations of citizens and foundations promoting and protecting the human rights of LGBTI persons. So far there are few such organisations registered.

However, civil society organisations that advocate for the rights of LGBTI persons are not properly and systematically consulted in the processes of enacting and implementing measures that can have an impact on the rights of these people.

Although some organisations that advocate for the human rights of LGBTI persons, such as Sarajevo Open Centre have achieved adequate cooperation with government institutions in Bosnia and Herzegovina, especially the institutions responsible for protection of human rights such as the Gender Equality Agency, the Gender Centre of Republika Srpska and the Gender Centre of the Federation of Bosnia and Herzegovina, the Institution of Ombudsman for Human Rights, parliamentary commissions/committees for human rights and/or gender equality/equal opportunities, the state institutions should further strengthen consultations and cooperation with non-governmental organisations for human rights of LGBTI persons.

The organisations that advocate for the equality of LGBTI persons do not receive any support from the institutions and funds in Bosnia and Herzegovina, and their work has not been recognised even in a single call for support to non-governmental organisations.

3.3 Freedom of expression and peaceful assembly

Chapter III requires from the Member States to guarantee the freedom of expression and peaceful assembly to LGBT persons without discrimination; to encourage the receipt and transmission of information and ideas relating to sexual orientation and gender identity; to take appropriate measures at state, regional and local levels to ensure full enjoyment of the right to peaceful assembly and protection of participants in peaceful demonstrations organised in favour of the rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order. Member States and their officials are expected to promote pluralism and tolerance in the media, protect lawful assemblies and publically condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression.

Freedom of expression and freedom of assembly are guaranteed in the BiH Constitution, in accordance with applicable international agreements. The constitutional provisions at the state level and in both entities include the protection of freedom of expression and association (Article II/3 of the Constitution, Article 2 of Chapter II of the Constitution of the Federation and Articles 30 and 32 of the Constitution of Republika Srpska). Although freedom of expression and assembly of LGBTI persons is protected by the Constitution and laws, their protection is not effectively implemented in practice.

Namely, violence during the 2008 Queer Sarajevo Festival and the attack on the International Queer Film Festival Merlinka in Art Cinema Kriterion in 2014 are a disturbing example of the failure of authorities to protect the participants of the public event. Although the Cantonal Ministry of Internal Affairs ensured the police presence, it was obvious that the protection they provided was inadequate to the level of seriousness of the violence that occurred at both festivals. In the second festival, the police were not at all present during the attack. Immediately before the festivals, public space and internet portals were flooded with hate speech against LGBTI persons. Some serious threats were articulated on account of the organiser and visitors, which, although reported to the competent institutions, remained without adequate response. There were no other examples in Bosnia and Herzegovina in the past 20 years where arts festivals were target of attacks by right-wing and radical groups, which clearly points to the stereotypes, prejudices and hatred directed against LGBTI persons.

The Constitutional Court of Bosnia and Herzegovina at the 88th plenary session held on 25 September 2014 partially accepted the appeal of the Association Q for promotion and protection of culture, identity and human rights of queer persons, which was filed six years earlier. In the same session the Constitutional Court made a decision on admissibility and merits, partially accepting the appeal submitted by the Association Q and establishing the violation of rights under Article II/3.i) of the Constitution and Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitutional Court judgment ordered the Federal Government to pay the Association Q a sum of BAM 3,000.00 on the account of non-pecuniary damages for the violation of the constitutional right “within three (3) months from the date of delivery of the judgement.” Furthermore, the same order was imposed on the Sarajevo Canton Government, which was also required to pay the Association Q the same amount of damages within three months from the date of the judgement. Under the same judgement, the Governments of the Federation of Bosnia and Herzegovina and Sarajevo Canton were also ordered to notify the Constitutional Court, “within three months from the date of the judgment delivery”, of the measures taken to enforce the decision pursuant to Article 72, paragraph 5 of the Rules of the Constitutional Court of Bosnia and Herzegovina.”

As for the attack during the International Queer Film Festival Merlinka of 2014, the competent Cantonal Prosecutor’s Office of the Sarajevo Canton still conducting preliminary investigation.

3.4 Right to respect for private and family life

Measures contained in Chapter IV of Appendix refer, among other things, to the same-sex sexual relations and elimination of discrimination in the exercise of the right of couples and right to parenting, and legal recognition of gender reassignment in quick, transparent and accessible way. This Chapter requires from the Member States to provide transgender persons with a quick, transparent and easy access to appropriate gender reassignment services; to prevent abuse of their personal data; to remove abusive requirements for legal recognition of gender reassignment; to take appropriate measures to guarantee the full legal recognition of a person’s

gender reassignment in all areas of life; to take all necessary measures to ensure the right of the right of transgender persons to marry a person of the sex opposite to their reassigned sex. Also, where national legislation confers rights and obligations on unmarried couples, Member States should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights. Member States should ensure that decisions on parental care and guardianship are taken without discrimination based on sexual orientation or gender identity, as well as decisions on the adoption by a single individual. Where national law permits assisted reproductive treatment for single women, Member States should seek to ensure access to such treatment to all women without discrimination on grounds of their sexual orientation.

In BiH, an individual may request changes to identification number and markings of sex in all official documents, but only after the complete medical sex reassignment. In both entities and in Brčko District, transgender persons who want to change their identity documents must submit all relevant medical documents signed by a physician or medical team, confirming that the sex reassignment is complete and that the transition period is over.

According to the BiH Law on Personal Identification, sex reassignment is the basis for changes and amendments to personal documents, and the same requirement is imposed by the Registers of the Federation of BiH and Republika Srpska. The Law on Register of Brčko District does not explicitly stipulate sex reassignment as the requirement for the change to personal documents; instead, the change is processed as in the case of erratum.

Procedures for modifying the identification number and other documents exist in Republika Srpska, the Federation of BiH and Brčko District, but they are not clearly defined. There is no ordinance that clearly describes the procedures of collecting and verifying the medical records of the applicant. Such procedure precludes a quick, transparent and easy access to transgender persons, but also ignores their needs and leads to further discrimination and marginalisation.

Medical procedures of sex reassignment take a long time and are very expensive. Due to influence of hormones, the appearance of a person changes and results in a situation where the appearance of the person and his or her sex marking in the documents do not match. The situation where such a person cannot change the identification number and sex marking in the documents, while on the other hand his or her physical appearance does not match information in the documents, brings transgender persons to a series of unpleasant, abusive and discriminatory positions, thus hindering and preventing them to cross borders, find a job, access health services, etc. Transgender persons do not have access to adequate health services for sex reassignment. Moreover, neither health institutions of the Federation of BiH nor those of Republika Srpska cover the cost of sex reassignment treatment. Transgender persons wishing to undergo a sex reassignment treatment are therefore forced to seek such treatment abroad at their own expense.

Although Bosnia and Herzegovina in no way facilitates sex reassignment to its transgender citizens, the procedure for legal change of gender in the documents contains an abusive requirement according to which a person has to completely surgically alter the sex in order to officially change the sex marking in the documents, which constitutes a violation of the right to one's own gender expression.

The right of legally recognised transgender persons to marry a person of the sex opposite to their reassigned sex is not legally guaranteed. Legally speaking, a transgender person who has changed the personal identification number and designation of sex in personal documents has no obstacle to marry a person of the opposite sex, but there are no legal provisions in the Family Law that explicitly recognise this right of transgender persons.

In 2015 the Citizens' Association Sarajevo Open Centre conducted a study on the needs of transgender persons in BiH. Of the total number of respondents, 30% of them reported to have had problems (40% said they never had problems, and another 30% said that they did not know whether they could qualify their experience as problems) related to identification documents (identity card, passport, index, health insurance card, etc.). All respondents reported problems in obtaining identification documents, establishing identity while receiving health care, when crossing the border and leasing an apartment (75%), and in determining the identity in the educational institutions and in connection with employment (50%). When asked "If there was a legal possibility to change the gender marking in their documents, would you do it?" 88% of them responded affirmatively.

Family Laws of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District confer rights and obligations on unmarried couples, but no steps were taken to ensure that these rights and obligations apply to same-sex couples. BiH legislation also fails to recognise registered same-sex partnerships or any form of community life for people of the same sex. Under the Family Laws of the Entities and Brčko District, same-sex couples in BiH are precluded from adoption. Exceptionally, a person who is not married or in common-law partnership cannot fully adopt a child, unless there are particularly good reasons for it. Also family laws of entities and of Brčko District do not regulate the prohibition of discrimination based on sexual orientation, gender identity and sex characteristics in the event of incomplete adoption, deciding on parental care and custody over children after their parents' divorce.

The Gender Equality Committee of the House of Representatives of the BiH Parliamentary Assembly in March 2016 agreed to propose a framework law on biomedical assisted fertilisation treatment. This law would systematically regulate the conditions of the treatment for the couples living out of wedlock, as well as for women who are not married or who do not live in common-law marriage after determining that pregnancy cannot be achieved by other treatment options, as well as taking and keeping the sperm cells of a man or woman eggs in cases where, according to the knowledge and experiences of medical science, there is a danger of infertility.

This law, even though it contains a prohibition of discrimination, does not include sexual orientation, gender identity and sex characteristics as protected grounds. Similar legislations are discussed at the level of Republika Srpska and the Federation of Bosnia and Herzegovina.

3.5 Employment

Chapter V of the Appendix requires that Member States the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

The BiH Anti-Discrimination Law prohibits discrimination in employment in both the public and private sectors. The Labour laws of Brčko District and the Federation of BiH, as well as the Law on the work of BiH institutions prohibit discrimination based on sexual orientation, while the Labour Law of Republika Srpska does not mention sexual orientation as a protected ground. None of these laws include gender identity and sex characteristics.

Even though the law prohibits discrimination on ground of sexual orientation, LGBTI persons are often subjected to social discrimination in practice.

Discrimination in the field of labour and employment particularly affects transgender persons in the process of transition. Unfortunately, there are no systemic measures to ensure compliance with the prohibition of discrimination on grounds of sexual orientation, gender identity and sex characteristics in the workplace and in access to employment, nor transgender persons enjoy the right to protect their personal data when filling in job applications or using leave of absence for the purpose of sex reassignment treatment.

The number of reported discrimination cases on grounds of sexual orientation, gender identity and sex characteristics, both to the Ombudsman for Human Rights in BiH, and those prosecuted in the courts in BiH still remains small. Studies conducted among LGBTI persons in BiH provided different information. The study conducted by Sarajevo Open Centre in 2013 showed that one in three LGBTI persons have experienced some form of discrimination, most frequently in the workplace and in education. The regional survey conducted by the National Democracy Institute in 2015 showed that 36% of LGBT respondents reported to have experienced some kind of discrimination in the workplace or in employment.

These results may not be surprising if we have in mind that the same regional survey found that 30% of general population respondents reported that they would have ceased all communication with a person if they found them to be of a different sexual orientation or gender identity, while 23% said that they would have tried to help their colleague(s) to *cure it*.

3.6 Education

Chapter VI of the Appendix requires that the Member States ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right to education in an environment free from violence, bullying, social exclusion, the equality and safety policies, code of ethics and adequate anti-discrimination training for staff, and measures to improve mutual tolerance and respect by providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials and special information and support for LGBT students.

The system of primary, secondary and higher education in Bosnia and Herzegovina is very complex: Republika Srpska has its own system, Brčko District as well, while in the Federation of BiH there are ten systems. All of this requires coordination in monitoring discrimination against marginalised groups.

Although the Anti-Discrimination Law requires that all other laws be accordingly harmonised with it, discrimination based on sexual orientation is prescribed only sporadically and in a small number of other laws, while gender identity and sex characteristics are not at all mentioned. The Framework Law on Higher Education in BiH, which does prohibit discrimination, explicitly states gender and sexual orientation as prohibited grounds of discrimination.

For example, the Law on Higher Education in Sarajevo Canton also states that higher education institutions cannot restrict the access to higher education, directly or indirectly, on the basis of person's sexual orientation or gender identity. In Republika Srpska, only the law on higher education explicitly prohibits discrimination on grounds of sexual orientation, while other laws in education fail to address the rights and discrimination of LGBTI persons.

When it comes to school curricula and information available to students about sexual orientation, gender identity and sex characteristics, the analysis of textbooks published by Association Q in 2010 showed that stereotypes and prejudice are deeply rooted in the BiH educational system. Sixty two textbooks have been analysed of the three curricula and from various subjects, such as biology, psychology, sociology, democracy and human rights, philosophy and ethics and it was concluded that there is insufficient information about these topics, that the information is of poor quality and that gender stereotypes are used and heteronormativity promoted. In some cases, the terminology has been incorrectly defined, even mixing terms of gender and sex, and homosexuality is often defined as a disease and categorised together with paedophilia and drug addiction.

There is no official data collection on cases of violence in schools due to discrimination on grounds of sexual orientation, gender identity and sex characteristics, and there are no systemic trainings to sensitise and train the teaching staff to promote tolerant environment and prevent violence. Such training for teaching staff and collection of data about cases of peer violence with the aim of its prevention have proven to be extremely necessary after the suicide of a fourteen year old boy in Sarajevo after an alleged long-term xenophobic and homophobic harassment and abuse by his peers.

3.7 Health

Chapter VII of the Appendix requires that member states to ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of sexual orientation or gender identity. The measures should: they should take into account the specific needs of LGBT persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses, allowing patients to identify their „context person in case of emergency“ without discrimination, withdrawal of medical textbooks and other documentation that treats homosexuality as a sickness and making sure that no person is forced to undergo any medical treatment due to their sexual orientation or gender identity, take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment or sterilisation procedures without his or her consent. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

Republika Srpska, Federation of BiH and Brčko District BiH use the International Classification of Diseases that does not list homosexuality as a disease. Prohibition of discrimination regulated in the Anti-Discrimination Law of BiH applies also to health, as health care is available to all persons equally without discrimination on grounds of sexual orientation or gender identity. Healthcare related laws do not cover sex characteristics.

But practice still shows that health workers discriminate against LGBTI persons. One such example is the 2012 annual blood donation organised by the Federal Institute for Transfusion Medicine at the Faculty of Philosophy in Sarajevo. A number of LGBTI students reacted because the questionnaire given out to blood donors stated that any person who has ever had sexual contact with homosexuals is prohibited from donating blood; the students wanted to meet the person in charge of the donation program, but they failed in doing so. A health technician and a person employed in the Faculty library offended and ridiculed the students who tried to warn

about discrimination. After this incident, with the efforts of civil society and the Human Rights Ombudsman, the questionnaire for blood donors has been changed and it no longer contains the discriminatory question. The questionnaire was also changed in Republika Srpska, but even though it has been reformulated, the discriminatory question is still in the questionnaire and it prohibits homosexual persons to donate blood.

No training programs have been organised for medical staff to make them more sensitive and qualified to work with LGBTI persons.

Transgender people in BiH cannot access medical sex reassignment because there are no health institutions or experts trained or licensed for such medical procedures. Even though the International Classification of Diseases clearly define gender dysphoria as a health condition that can be treated by medical sex reassignment, medical institutions are not sufficiently capacitated for psychological and psychiatric counselling or diagnosing transgender condition. Transgender persons are thus forced to perform sex reassignment abroad and have to pay for the costs of this long and expensive process themselves without any support from BiH as health insurance in BiH, its entities, Brčko District and cantons does not cover the costs of therapies and interventions necessary for sex reassignment.

According to data publicly available, three intersex children have been born in Bosnia and Herzegovina in the last 20 years. According to statements of experts, these children are assigned a sex using the cardiogram (layout and number of chromosomes) and then it is confirmed by imaging techniques what internal sex organs exist, i.e. what gonads exist. All decision that influence the child are finally made by the parents; it is the duty of health workers to professionally, precisely and in details inform the parents on all the facts in an understandable manner. No systemic measures have been taken to prevent the complicated surgeries on intersex children; they are not informed about those surgeries even later in life, therefore many of them do not even know they are intersex and have never been given the option to decide whether they want assignment of male or female sex themselves.

A research conducted by Sarajevo Open Centre in 2013 showed that every third LGBTI person who, suffering the consequences of homophobia and transphobia, feels depression, fear, anxiety, despondency or some other symptoms, does not decide to seek expert psychological, psychiatric or therapeutic help most often because of either the assumed lack of competence of people they would address or the fear that their sexuality might be revealed.

3.8 Housing

Chapter VIII of the Appendix requires that access to adequate housing can be enjoyed without discrimination on grounds of sexual orientation or gender identity through measures such as prohibition of discrimination in sale or rental of housing space, provision of housing loans, recognition of tenancy rights of partners, and to provide protection against discriminatory evictions and guarantee equal rights to acquisition and possession of land and other property, and that appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided without discrimination.

The Law on Housing Relations of BiH and the Law on Housing of Republika Srpska do not deal with discrimination on grounds of sexual orientation, gender identity or sex characteristics. The Anti-Discrimination Law of BiH prohibits discrimination in housing, including in access to housing, housing conditions and lease agreements.

There is a clear need to act in order to prevent LGBTI persons from facing discrimination when they want to exercise their housing rights, such as sale or rental of housing space, provision of housing loans, recognition of tenancy rights of partners or eviction.

There are no support programs to solve problems of LGBTI persons in cases of forced homelessness that are growing in number because their families reject them.

3.9 Sports

Chapter IX of the Appendix requires from member states to combat discrimination on grounds of sexual orientation or gender identity in sports, through measures to prevent, counteract and punish the use of discriminatory insults, codes of conduct of sports associations, to promote partnership between LGBT organisations and sports clubs, to judge and sanction hate speech at sports events, promote anti-discrimination campaigns and through preventing exclusion of LGBT persons from sports activities.

Laws on prevention of violence and misbehaviour at sports events in BiH do not define homophobic or transphobic cheering at sports events as separate criminal offences, but the Law on Sports of Republika Srpska prohibits violence between spectators and any offensive actions, particularly those that provoke racial, national, political and other intolerance. This is confirmed also in the Law on Prevention of Violence at Sports Events of Republika Srpska that states that bringing and displaying banners, flags or other items with statements, images, markings or other symbols that express or incite to hatred or violence on grounds of race, national or religious belonging or any other characteristic shall be considered violence or misbehaviour. However, sexual orientation, gender identity and sex characteristics are not mentioned in this Law.

The Law on Sports in BiH stipulates that organisation of all sports events and competitions must be in compliance with the recommendations of the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular the Football Matches, and appropriate laws and other regulations in Bosnia and Herzegovina. This Law also states that Bosnia and Herzegovina and the Entities shall, with the aim of preventing and combating violence and misbehaviour at sports events, undertake all necessary measures in line with the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular the Football Matches.

The Anti-Discrimination Law of BiH prohibits discrimination on grounds of sexual orientation, gender identity and sex characteristics in sports, but there are no special measures applied in BiH that would prevent the risk of exclusion from sports on grounds of sexual orientation and gender identity. Therefore, for instance in 2014 and 2015 there have been displays of homophobic banners – in 2014 at the match between Radnički and Sloboda, and in 2015 between Sarajevo and Željo. Both banners have been reported to the Football Association of BiH and in 2015 Football against Racism in Europe network reacted as well demanding condemnation and sanctioning of the responsible persons. However, on both these occasion the Football Association of BiH failed to respond.

3.10 Right to seek asylum

Chapter X of the Appendix requires from member states, which have international obligations in this respect, to recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and to ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity. It is also requested that asylum seekers should be protected from any discriminatory policies or practices on these grounds and any type of violence and harassment, and to provide to staff responsible for asylum applications training on problems that LGBT asylum seekers face.

The laws in Bosnia and Herzegovina do not explicitly mention sexual orientation, gender identity and sex characteristics in the context of asylum. The Law on Asylum of BiH does not define fear from persecution on grounds of sexual orientation, gender identity and sex characteristics as valid grounds for refugee status and asylum. In 2015, upon adoption of the new Law on Asylum of BiH, the House of Representatives and the House of Peoples of the Parliamentary Assembly adopted different versions of this Law; namely, the House of Representatives subsequently adopted amendments that, inter alia, explicitly regulated sexual orientation and gender identity as characteristics that might lead to persecution and by that as grounds for asylum in BiH. After the meeting of the Joint Committee of both Houses and harmonisation of the Law, these amendments have been left out from the final text.

Also, in accordance with the Law on Asylum and Law on Movement and Stay of Aliens, same-sex partner of the asylum seeker is not considered family and therefore does not have the right to family reunion or approval to enter BiH based on the same-sex partner status; foreigners who are same-sex partners of BiH citizens cannot be granted rights to residence or citizenship in BiH on the ground of partnership concluded abroad.

3.11 Human rights structures

Chapter XI of the Appendix requires from the member states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

Authorisation of the Human Rights Ombudsman Institution in BiH include also the protection in cases of violations of human rights on grounds of sexual orientation, gender identity and sex characteristics, and it does, as much as the resources allow, implement some of the activities proposed in the Recommendation.

Human Rights Ombudsman Institution in BiH has not conducted comprehensive campaigns to promote prohibition of discrimination on grounds of sexual orientation, gender identity and sex characteristics, but it applied its authorizations in this regard by providing recommendations to amend legislation, regulation and implement trainings for the staff of the Ministry of Interior of Republika Srpska, by adopting recommendation based on complaints and by public support to the rights of LGBTI persons in BiH.

The Joint Committee for Human Rights of the Parliamentary Assembly of BiH held a thematic session on May 19, 2015 to mark May 17 – the International Day against Homophobia and Transphobia. This session was the first of its kind organised by a legislative body in BiH. In addition to committee members, it hosted civil society representatives who actively discussed the state of human rights of LGBT persons in BiH. The session ended with a conclusion of the committee that the Ministry of Human Rights and Refugees of BiH shall draft amendments to the Anti-Discrimination Law of BiH to improve the protection of LGBT persons from discrimination and define more clearly sexual orientation and gender identity as prohibited grounds for discrimination and that the Human Rights Ombudsman Institution must draft a special report on the state of human rights of LGBT persons in BiH and disseminate it to all competent institutions, including the Parliamentary Assembly of BiH. The Human Rights Ombudsman Institution of BiH started drafting this special report only in February 2016.

3.12 Discrimination on multiple grounds

In chapter XII Member States are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

In the research conducted by Sarajevo Open Centre in 2013, there was a question whether the respondents experienced any type of discrimination for being an LGBTI person and 35.8% of respondents said yes, which means that approximately every third person experiences discrimination. Discrimination is not reported in 93.8% cases. Only three discrimination cases have been prosecuted, 1 case ended successfully and 23 of the reported cases have never been prosecuted.

The regional research conducted by the National Democratic Institute in 2015 showed that 51% of LGBT persons in BiH have experienced discrimination on grounds of sexual orientation or gender identity.

In December 2015, the Council of Ministers of BiH adopted the draft law on amendments to the Anti-Discrimination Law of BiH. By these amendments, sexual orientation and gender identity are explicitly stated as prohibited grounds of discrimination, and in addition, the draft stipulates also sex characteristics prohibited ground of discrimination enabling protection from discrimination for intersex persons. If this draft is adopted in the parliamentary procedure, it would greatly contribute to the adequate protection of human rights of LGBTI persons.

The Government of Republika Srpska adopted in December 2015 the annual operating plan for the implementation of the Gender Action Plan in 2016 which, inter alia, contains specific measures for the promotion and protection of human rights of LGBT persons. The operating plan in the Federation of BiH was adopted in March 2016, and the operating plan to the BiH state level will be drafted during 2016.

4. OBJECTIVES AND PROPOSAL OF MEASURES FOR THE EQUALITY OF LGBTI PERSONS

4.1 Objectives

STRATEGIC/LONG-TERM OBJECTIVE Improve the social and legal equality of LGBTI persons		
EQUAL OPPORTUNITIES AND PROHIBITION OF DISCRIMINATION	ACCESS TO RIGHTS IN ALL SPHERES OF LIFE	SOCIETY OF TOLERANCE
MEDIUM-TERM OBJECTIVE 1 <i>Ensure efficient mechanisms to achieve equal rights of LGBTI persons</i>	MEDIUM-TERM OBJECTIVE 2 <i>Improve the application of protection of human rights of LGBTI persons</i>	MEDIUM-TERM OBJECTIVE 3 <i>Increase social inclusion and acceptance of LGBTI persons</i>
ACTIVITIES Research and analysis Drafting and proposing new regulations Drafting and proposing amendments to existing regulations	ACTIVITIES Research and analyses Educational/additional qualification programs Legal and psychosocial support Development of standard operating procedures Data collection and reporting	ACTIVITIES Research and analyses Media and other campaigns Cultural and artistic activities
IMPLEMENTATION, MONITORING AND REPORTING		
MEDIUM-TERM OBJECTIVE 4 <i>Improve the framework and conditions for the implementation of proposed measures</i>		
ACTIVITIES Coordination of implementation, monitoring and evaluation Continuous reporting on implementation Including the activities in public policies		

4.2 Proposal of measure – table overview

MEDIUM-TERM OBJECTIVE 1_ ENSURE EFFICIENT MECHANISM TO ACHIEVE EQUAL RIGHTS OF LGBTI PERSONS			
Priority Area	Measures	Government Level	Time Limit
General Measures	<i>Activity: Draft amendments to the Anti-Discrimination Law of BiH and submit them to the parliamentary procedure.</i> Result: Adequately defined discriminatory grounds: sexual orientation, gender identity and sex characteristics; exemptions from discrimination and other legal provisions harmonized with the European <i>acquis communautaire</i> .	BiH	2017
	<i>Activity: Draft amendments to the Gender Equality Law of BiH and submit them to the parliamentary procedure.</i> Result: Adequately defined discriminatory grounds: sexual orientation, gender identity and sex characteristics; the Law harmonized with the European <i>acquis communautaire</i> .	BiH	2017
	<i>Activity: Recognise the needs and rights of LGBTI persons and include them in all public policies.</i> Result: Strategies, action plans and work programs include clear measures that refer to LGBTI persons and their needs.	BiH Republika Srpska Federation BiH	Continuous
	<i>Activity: By drafting new regulations and amending the existing ones, explicitly include sexual orientation, gender identity and sex characteristics as prohibited grounds of discrimination and hate speech, and recognise in other ways the needs and rights of LGBTI persons.</i> Result: The laws stipulate clear provisions that refer to LGBTI persons and their needs.	BiH Republika Srpska Federation BiH	Continuous
Hate crime and hate speech	<i>Activity: Analyse the criminal law protection of LGBTI persons from violence, prejudice and hatred as well as the implementation of existing provisions and based on that draft amendments to criminal codes in BiH.</i> Result: Existing legislation at the levels of BiH, Republika Srpska and the Federation of BiH critically assessed and bases for its improvement created.	BiH Republika Srpska Federation BiH Brčko District BiH	2017

PROPOSAL OF MEASURES FOR THE EQUALITY OF LESBIAN, GAY, BISEXUAL,
TRANSGENDER AND INTERSEX (LGBTI) PERSONS

	<p><i>Activity: Draft amendments to the Criminal Code of FBiH and submit them to the parliamentary procedure.</i></p> <p>Result: The Law clearly defines hate crime based on sexual orientation, gender identity and sex characteristics; incitement to hatred as a criminal offence does cover sexual orientation, gender identity and sex characteristics.</p>	Federation BiH	2017
	<p><i>Activity: Draft amendments to the Criminal Code of Republika Srpska and submit them to the parliamentary procedure.</i></p> <p>Result: Legal provisions that define hate crime are upgraded to include grounds of sexual orientation, gender identity and sex characteristics; incitement to hatred as a criminal offence does cover sexual orientation, gender identity and sex characteristics.</p>	Republika Srpska	2017
	<p><i>Activity: Draft amendments to the Criminal Code of Brčko District BiH and submit them to the parliamentary procedure.</i></p> <p>Result: Legal provisions that define hate crime are upgraded to include grounds of sexual orientation, gender identity and sex characteristics; incitement to hatred as a criminal offence does cover sexual orientation, gender identity and sex characteristics.</p>	Brčko District BiH	2017
	<p><i>Activity: Adopt amendments to the Code on Audio-Visual and Radio Media Services of the Communications Regulatory Agency of BiH</i></p> <p>Result: Communications Regulatory Agency (RAK) developed and adopted amendments to the Code; definition of hate speech includes sexual orientation, gender identity, and sex characteristics.</p>	BiH	2017
Freedom of association	<p><i>Activity: By drafting new regulations and amending the existing ones, explicitly include sexual orientation, gender identity and sex characteristics as prohibited grounds of discrimination in cases of association.</i></p> <p>Result: Activities of organisations working to improve the position of LGBTI persons acquire systemic legal protection.</p>	BiH Republika Srpska Federation BiH Brčko District BiH	Continuous
Freedom of expression and peaceful assembly	<p><i>Activity: By drafting new regulations and amending the existing ones, explicitly include sexual orientation, gender identity and sex characteristics as prohibited grounds of discrimination in cases of peaceful protest.</i></p> <p>Result: Activities of organisations working to improve the position of LGBTI persons acquire systemic legal protection.</p>	BiH Republika Srpska Federation BiH Brčko District BiH	Continuous

PROPOSAL OF MEASURES FOR THE EQUALITY OF LESBIAN, GAY, BISEXUAL,
TRANSGENDER AND INTERSEX (LGBTI) PERSONS

<p>Right to respect for private and family life</p>	<p><i>Activity: In compliance with the case law of the European Court of Human Rights, research the needs and obligations stemming from the joint life of two persons of the same sex, as well as the different forms of legal solutions.</i> Result: The entities and Brčko District BiH recognised the need to regulate same-sex life unions and examined various regulation models.</p>	<p>Republika Srpska Federation BiH Brčko District BiH</p>	<p>2017</p>
	<p><i>Activity: In compliance with the case law of the European Court of Human Rights, draft amendments to the existing legislation or draft new regulations to regulate rights and duties stemming from family life union of two persons of the same sex.</i> Result: The entities and Brčko District BiH regulate the rights and duties stemming from family life union of two persons of the same sex.</p>	<p>Republika Srpska Federation BiH Brčko District BiH</p>	<p>2017</p>
	<p><i>Activity: Draft amendments to the Laws on Protection from Violence submit them to the parliamentary procedure.</i> Result: Violence in same-sex partnerships is recognised as domestic violence and there are legal provisions stipulating actions in these cases.</p>	<p>Republika Srpska Federation BiH Brčko District BiH</p>	<p>2018</p>
	<p><i>Activity: Draft amendments to the Law on Registers of Brčko District BiH and submit them to the parliamentary procedure.</i> Result: (Biological) sex reassignment is clearly defined as a basis for the request to change sex in public registers.</p>	<p>Brčko District BiH</p>	<p>2017</p>
	<p><i>Activity: Study the needs and problems transexual persons face in terms of recognition of sex reassignment.</i> Result: The entities and Brčko District BiH recognised the need to improve the legal and systemic framework for the legal recognition of sex reassignment.</p>	<p>Republika Srpska Federation BiH Brčko District BiH</p>	<p>2018</p>
	<p><i>Activity: In compliance with the case law of the European Court of Human Rights, draft amendments to the existing legislation or draft new regulations to regulate the legal recognition of sex reassignment in a fast, transparent and accessible manner.</i> Result: The entities and Brčko District BiH advance the rights and duties stemming from sex reassignment in their regulations.</p>	<p>Republika Srpska Federation BiH Brčko District BiH</p>	<p>2018</p>

PROPOSAL OF MEASURES FOR THE EQUALITY OF LESBIAN, GAY, BISEXUAL,
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Employment	<p><i>Activity: Draft amendments to the to the Labour Law of the Federation BiH and submit them to the parliamentary procedure.</i></p> <p>Result: Adequately defined discriminatory grounds: sexual orientation, gender identity and sex characteristics.</p>	Federation BiH	2018
	<p><i>Activity: Draft amendments to the Labour Law of Republika Srpska and submit them to the parliamentary procedure.</i></p> <p>Result: Adequately defined discriminatory grounds: sexual orientation, gender identity and sex characteristics.</p>	Republika Srpska	2018
Education	<p><i>Activity: By drafting new regulations and amending the existing ones, explicitly include sexual orientation, gender identity and sex characteristics as prohibited grounds of discrimination in education, and recognise the needs and rights of LGBTI persons in laws and public policies.</i></p> <p>Result: Improved legal protection and a more inclusive education system in place.</p>	BiH Republika Srpska Federation BiH Brčko District BiH	Continuous
Health	<p><i>Activity: By drafting new regulations and amending the existing ones, explicitly include sexual orientation, gender identity and sex characteristics as prohibited grounds of discrimination in the area of health, and recognise the needs and rights of LGBTI persons in laws and public policies.</i></p> <p>Result: Improved legal protection and a health system in place which recognises LGBTI persons.</p>	Republika Srpska Federation BiH Brčko District BiH	Continuous
	<p><i>Activity: Legally regulate medical and legal procedures in intersex cases.</i></p> <p>Result: Improved protection of intersex persons from unnecessary medical interventions.</p>	Republika Srpska Federation BiH Brčko District BiH	2019
Housing	<p><i>Activity: By drafting new regulations and amending the existing ones, explicitly include sexual orientation, gender identity and sex characteristics as prohibited grounds of discrimination in the area of housing.</i></p> <p>Result: Improved legal protection of LGBTI persons in relation to housing.</p>	Republika Srpska Federation BiH Brčko District BiH	Continuous
Sports	<p><i>Activity: Draft amendments to the Law on Sports of BiH and submit them to the parliamentary procedure.</i></p> <p>Result: Improved legal protection of LGBTI persons from discrimination and hate speech/incitement to hatred in sports fields.</p>	BiH	2019

PROPOSAL OF MEASURES FOR THE EQUALITY OF LESBIAN, GAY, BISEXUAL,
TRANSGENDER AND INTERSEX (LGBTI) PERSONS

	<p><i>Activity: Draft amendments to laws in the area of sports and submit them to the parliamentary procedure.</i></p> <p>Result: Improved legal protection of LGBTI persons from discrimination and hate speech/incitement to hatred in sports fields.</p>	<p>Republika Srpska Federation BiH Brčko District</p>	<p>2019</p>
<p>Right to seek asylum</p>	<p><i>Activity: Analyse the regulations in BiH and, if needed, draft amendments of the Law on Asylum of BiH and submit them to the parliamentary procedure.</i></p> <p>Result: The Law and the procedures clearly recognise sexual orientation, gender identity and sex characteristics as reasons for persecution based on which asylum is granted.</p>	<p>BiH</p>	<p>2018</p>
<p>National structures for human rights protection</p>	<p><i>Activity: Draft amendments to the Law on Human Rights Ombudsman in BiH and submit them to the parliamentary procedure.</i></p> <p>Result: The Law clearly recognises LGBTI persons as a minority group, in addition to other minority groups, whose rights the Ombudsman institution deals with extensively.</p>	<p>BiH</p>	<p>2018</p>
<p>Discrimination on multiple grounds</p>	<p><i>Activity: By drafting new regulations and amending the existing ones, explicitly include sexual orientation, gender identity and sex characteristics as prohibited grounds of discrimination, and recognise the needs and rights of LGBTI persons in laws and public policies.</i></p> <p>Result: improved legal protection.</p>	<p>BiH Republika Srpska Federation BiH Brčko District BiH</p>	<p>Continuous</p>

PROPOSAL OF MEASURES FOR THE EQUALITY OF LESBIAN, GAY, BISEXUAL,
TRANSGENDER AND INTERSEX (LGBTI) PERSONS

MEDIUM-TERM OBJECTIVE 2_IMPROVE THE APPLICATION OF PROTECTION OF HUMAN
RIGHTS OF LGBTI PERSONS

Priority Area	Measures	Government Level	Time Limit
General Measures	<i>Activity: Include the training on the rights of LGBTI persons, as a regular and mandatory module, into civil service training programs.</i> Result: The understanding of rights and needs of LGBTI is improved and the prerequisites are set to include LGBTI topics into laws and public policies.	BiH Republika Srpska Federation BiH Brčko District BiH	Continuous
	<i>Activity: Implement research in all priority areas with the aim of protecting the rights of LGBTI persons.</i> Result: Rights and needs of LGBTI persons are improved, and the prerequisites are set to include LGBTI topics into laws and public policies.	BiH Republika Srpska Federation BiH Brčko District BiH	Continuous
	<i>Activity: Prepare annual reports on the state of human rights of LGBTI persons and submit them to the parliamentary procedure.</i> Result: Rights of LGBTI persons are a subject of concern of the executive and legislative branches, and the annual report serves as basis to set priorities for next year.	BiH Republika Srpska Federation BiH Brčko District BiH	Continuous
Hate crime and hate speech	<i>Activity: Include hate crime and discrimination against LGBTI persons into curricula of police academies.</i> Result: Improved level of knowledge for the prosecution of hate crime and cases of discrimination on grounds of sexual orientation, gender identity and sex characteristics.	Republika Srpska Federation BiH	2017
	<i>Activity: Include hate crime and discrimination against LGBTI persons into professional development programs of the police.</i> Result: Improved level of knowledge for the prosecution of hate crime and cases of discrimination on grounds of sexual orientation, gender identity and sex characteristics.	Republika Srpska Federation BiH Brčko District BiH	Continuous

PROPOSAL OF MEASURES FOR THE EQUALITY OF LESBIAN, GAY, BISEXUAL,
TRANSGENDER AND INTERSEX (LGBTI) PERSONS

	<p><i>Activity: Permanently include hate crime and discrimination against LGBTI persons into professional development programs of Judicial Training Centres.</i></p> <p>Result: Improved level of knowledge for the prosecution of hate crime and cases of discrimination on grounds of sexual orientation, gender identity and sex characteristics.</p>	Republika Srpska Federation BiH	Continuous
	<p><i>Activity: Draft and adopt standard operating procedures for the police and judiciary in case of hate crime, including against LGBTI persons.</i></p> <p>Result: Improved prosecution with better coordination of competent bodies.</p>	Republika Srpska Federation BiH Brčko District BiH	2018
	<p><i>Activity: Include the topics of violence against LGBTI persons and protection of their human rights into professional development programs of prison staff.</i></p> <p>Result: Improved level of knowledge about the rights of LGBTI persons in prisons.</p>	Republika Srpska Federation BiH Brčko District BiH	2019
Freedom of association	<p><i>Activity: Work of civil society organisations on the improvement of rights of LGBTI persons is recognised and supported by competent institutions.</i></p> <p>Result: Improvement of LGBTI rights does not depend on international donors.</p>	BiH Republika Srpska Federation BiH Brčko District BiH	Continuous
Freedom of expression and peaceful assembly	<p><i>Activity: Competent police institutions will recognise public assemblies for the rights of LGBTI persons as risky and will provide adequate protection.</i></p> <p>Result: Public assemblies with LGBTI topics will be not subject to attacks by radical groups.</p>	Republika Srpska Federation BiH Brčko District BiH	Continuous
	<p><i>Activity: Include the protection of public assemblies of LGBTI persons into police qualification programs.</i></p> <p>Result: Improved level of knowledge for adequate protection of risky public assemblies.</p>	Republika Srpska Federation BiH Brčko District BiH	Continuous
Right to respect for private and family life	<p><i>Activity: Draft a manual for competent institutions (health, police, judiciary) about the best ways to treat transgender persons.</i></p> <p>Result: Institutional representatives have a better understanding of the problems and needs of transgender persons.</p>	Republika Srpska Federation BiH Brčko District BiH	2018

PROPOSAL OF MEASURES FOR THE EQUALITY OF LESBIAN, GAY, BISEXUAL,
TRANSGENDER AND INTERSEX (LGBTI) PERSONS

Employment	<p><i>Activity: Research the position of LGBTI persons in the Armed Forces of BiH and proposed based on that a set of measures for improvement of equality of LGBTI persons on these functions.</i></p> <p>Result: Improved level of protection of LGBTI persons working in the army.</p>	BiH	2018
Education	<p><i>Activity: Draft an analysis of textbooks and curricula for primary and secondary schools about stereotypes and prejudice about LGBTI persons, with proposal of measures to eliminate stereotypical and discriminatory content.</i></p> <p>Result: LGBTI persons are presented in a contemporary manner in compliance with scientific findings.</p>	Republika Srpska Federation BiH Brčko District BiH	2018
	<p><i>Activity: Include teaching units related to inclusion and discrimination of LGBTI persons into curricula and educational programs for future teaching staff, judges and prosecutors.</i></p> <p>Result: New generations of teaching staff and civil servants have adequate knowledge for the work on the rights of LGBTI persons and to work with LGBTI persons.</p>	Republika Srpska Federation BiH Brčko District BiH	2018
	<p><i>Activity: Include topics related to rights of LGBTI persons, stereotypes, prejudice (peer) violence and discrimination into professional development programs of teaching staff in high schools (teachers, directors, pedagogues, etc.).</i></p> <p>Result: Teaching staff has better understanding of the needs and problems of LGBTI youth.</p>	Republika Srpska Federation BiH Brčko District BiH	Continuous
	<p><i>Activity: Research and recognise homophobic and transphobic content as a problem and a topic within programs addressing peer violence in schools.</i></p> <p>Result: By treating the problem adequately, the potential for future violence is reduced.</p>	Republika Srpska Federation BiH Brčko District BiH	Continuous
	<p><i>Activity: Include teaching units about LGBTI persons, based on contemporary medical findings and research, into the curricula for the education of future medical workers.</i></p> <p>Result: New generations of medical workers have adequate knowledge to work with LGBTI persons.</p>	Republika Srpska Federation BiH Brčko District BiH	2017
	<p><i>Activity: Include teaching units about LGBTI persons, based on contemporary medical findings and research, into the curricula for the education of future psychologists.</i></p> <p>Result: New generations of psychologists have adequate knowledge to work with LGBTI persons.</p>	Republika Srpska Federation BiH Brčko District BiH	2018

PROPOSAL OF MEASURES FOR THE EQUALITY OF LESBIAN, GAY, BISEXUAL,
TRANSGENDER AND INTERSEX (LGBTI) PERSONS

Health	<i>Activity: Conduct research on the specific medical needs of gay and bisexual men, lesbians and bisexual women, transgender and intersex persons.</i> Result: Specific LGBTI needs are analysed and as such can be included in public policies.	Republika Srpska Federation BiH Brčko District BiH	2017-2019
Right to seek asylum	<i>Activity: Inform the staff in competent institutions about the specific issues with regard to LGBTI asylum seekers.</i> Result: Staff working on asylum matters adequately recognises the needs of LGBTI asylum seekers.	BiH	2019
	<i>Activity: Develop and adopt clear operating procedures in cases when the asylum applicant is an LGBTI person.</i> Result: Operating procedures adequately recognise LGBTI persons.	BiH	2019

MEDIUM-TERM OBJECTIVE 3_INCREASE SOCIAL INCLUSION AND ACCEPTANCE OF LGBTI PERSONS

Priority Area	Measures	Government Level	Time Limit
<i>General Measures</i>	<i>Activity: Legislative and executive institutions at all levels mark May 17 – International Day against Homophobia and Transphobia.</i> Result: Awareness raised of institutional representatives and citizens on the needs and rights of LGBTI persons.	BiH Republika Srpska Federation BiH Brčko District BiH	Continuous
	<i>Activity: Legislative and executive institutions at all levels mark dates important for the rights of LGBTI persons by issuing press releases or through other media actions.</i> Result: Awareness raised of institutional representatives and citizens on the needs and rights of LGBTI persons.	BiH Republika Srpska Federation BiH Brčko District BiH	Continuous
	<i>Activity: Provide support to civil society organisations in implementing media, billboards, cultural, and artistic campaigns (e.g. festivals) related to LGBTI persons.</i> Result: Awareness raised of institutional representatives and citizens on the needs and rights of LGBTI persons.	BiH Republika Srpska Federation BiH Brčko District BiH	Continuous

PROPOSAL OF MEASURES FOR THE EQUALITY OF LESBIAN, GAY, BISEXUAL,
TRANSGENDER AND INTERSEX (LGBTI) PERSONS

	<p><i>Activity: Public broadcasters (TV and radio) regularly produce content in relation to problems, rights and needs of LGBTI persons, with the focus on preventing and combating discrimination and violence, promoting the peaceful assembly, private and family life, employment, education, health and sports.</i></p> <p>Result: Awareness raised of institutional representatives and citizens on the needs and rights of LGBTI persons.</p>	<p>BiH Republika Srpska Federation BiH Brčko District BiH</p>	<p>Continuous</p>
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MEDIUM-TERM OBJECTIVE 4_ Improve the framework and conditions for the implementation of proposed measures

	Measures	Government Level	Time Limit
<p>Coordination of implementation, monitoring and evaluation</p>	<p><i>Activity: Designate the Gender Equality Agency of BiH of the Ministry of Human Rights and Refugees of BiH, Gender Centre of Republika Srpska and Gender Centre of the Federation BiH as coordinating institutions at the levels of BiH, Brčko District BiH, Republika Srpska and the Federation BiH</i></p> <p>Result: By clear designation of competent institutions the preconditions are created for the implementation of the proposal of measures.</p>	<p>BiH Republika Srpska Federation BiH Brčko District BiH</p>	<p>At the end of 2016 or beginning of 2017</p>
	<p><i>Activity: Include measures from this proposal into annual operating plans of the Gender Action Plan of BiH.</i></p> <p>Result: The proposed measures are implemented through the existing coordinating and implementing mechanism without having to establish a new mechanism.</p>	<p>BiH Republika Srpska Federation BiH Brčko District BiH</p>	<p>Annually</p>
<p>Continuous reporting on implementation</p>	<p><i>Activity: Draft annual reports on the implementation of proposal of measures at every government level.</i></p> <p>Result: Implementation is continuously monitored and reports can be used to make decisions on further implementation.</p>	<p>BiH Republika Srpska Federation BiH Brčko District BiH</p>	<p>Annually</p>

5. IMPLEMENTING MECHANISM MONITORING, EVALUATION

Having in mind the political set-up of Bosnia and Herzegovina but also the experiences of implementing other public policies, such as strategies, action plans and work programs, and that this proposal of measures does not constitute a special public policy but rather a needs mapping for actions to improve legal protection and position of LGBTI persons, the proposed measures should be implemented using the existing gender equality institutional mechanisms.

Therefore, the competent institutions for the measures and activities in this plan and their coordination would be:

- Gender Equality Agency for the BiH and Brčko District of BiH levels,
- Gender Centre of Republika Srpska for Republika Srpska,
- Gender Centre of the Federation BiH for the Federation BiH.

The competent coordinating body for the implementation should be the Steering Board in charge of coordination and monitoring of implementation of the BiH Gender Action Plan, and the implementation itself should go through the coordination boards at the level of BiH, Republika Srpska and the Federation of BiH in line with their respective competences and by including the proposed measures into the annual operational plans.

When the 2013-2017 Gender Action Plan expires, the mapped measures from this proposal of measures should directly be included into the new Gender Action Plan or any other public policy that succeeds the Gender Action Plan after 2017.

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About the Sarajevo Open Centre

Sarajevo Open Centre is an independent feminist civil society organization that strives to empower lesbian, gay, bisexual, trans* and intersex (LGBTI) people and women through community empowerment and activist movement building. SOC also promotes the human rights of LGBTI people and women publically and advocates on national, European and international level for improved legislation and policies in Bosnia and Herzegovina. By working on European integration issues, SOC is improving human rights in general and encouraging further the development of civil society.

Here, we will only mention some of the achievements made in terms of equality of LGBTI people. In addition to psychosocial and legal counseling we also continued running the only LGBTI media outlet in the state – a web portal www.lgbt.ba. We organized trainings for the police, the prosecutor's offices and the courts and we worked intensely with journalists and young lawyers. Our advocacy focuses i.a. on: a) changes to the Law on Prohibition of Discrimination BiH, b) changes to the Criminal Code FBiH, and c) passing LGBTI-inclusive annual operational plans for gender equality at entity and state-level. During 2015 we had media campaigns that have reached over a million of BiH citizens and we organized the LGBTI film festival – Merlinka. A detailed overview of

all of our activities and achievements is available in our Annual Report for 2015 at: www.soc.ba -> About us -> Reports. Learn more about LGBTI rights in Bosnia and Herzegovina in our Pink Report for 2015 available at

www.soc.ba -> Publications -> Series Human Rights

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