



*Partners for Justice*

*In cooperation with*

**Non-Governmental Organizations  
In Bosnia and Herzegovina**

## **SHADOW REPORT**

# **On the Implementation of CEDAW and Women's Human Rights in Bosnia and Herzegovina**

*Presented to the*

**UNITED NATION'S COMMITTEE ON THE ELIMINATION OF  
DISCRIMINATION AGAINST WOMEN (CEDAW)**

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### ***List of Abbreviations***

BiH – Bosnia and Herzegovina

FBiH – Federation of Bosnia and Herzegovina

RS – Republika Srpska

KZ BiH – Criminal Code of Bosnia and Herzegovina

KZ FBiH – Criminal Code of the Federation of Bosnia and Herzegovina

KZ RS – Criminal Code of Republika Srpska

CEDAW – Convention on the Elimination of all Forms of Discrimination Against Women or  
Committee on the Elimination of Discrimination Against Women

UNMIBH – United Nation Mission to Bosnia and Herzegovina

IPTF – International Police Task Force

EUPM – European Union Police Mission

IOM – International Organization for Migration

NAP – National Action Plan to Combat Trafficking in Human Being

## **Introduction**

### ***Purpose and Goals of the Shadow Report***

This report was produced by a coalition of Bosnian non-governmental organizations with support and coordination from *Global Rights – Partners for Justice* through its BiH support program. The views expressed in this publication represent a synthesis of the combined research and opinions of all participating NGOs. They do not necessarily represent the comprehensive judgment of any one individual organization, nor do they reflect the specific landscape within each different region of the country. Regrettably there are also several areas of substantive research that have been omitted due to practical limitations and the relative scarcity of available data. Nonetheless, this publication is offered as a realistic overview of the rights of women today during an important crossroads in the post-war transition of Bosnia and Herzegovina.

As a human rights text, the report reflects several key understandings. It recognizes the essential right of every individual to exercise and enjoy his or her rights, on the basis of equality and non-discrimination. It emphasizes that the laws and practices of each country must necessarily protect those rights. And each state thus has an obligation to respect and ensure the rights of all persons living within its borders, without limiting the exercise or enjoyment of those rights on discriminatory grounds. Each state must also take affirmative steps to fulfill its binding legal commitments under accepted international or regional human rights instruments.

Gender is, *inter alia*, a prohibited basis of discrimination. And while gender discrimination is prohibited in virtually every modern human rights instrument, the Convention on the Elimination of All Forms of Discrimination Against Women (the Women's Convention) has emerged as the most basic international agreement prohibiting gender-based discrimination in public and private life. Bosnia and Herzegovina is a party to the Women's Convention, and through the BiH Constitution, the Women's Convention is directly incorporated into Bosnian law.

One of the obligations of all states parties to the Women's Convention is to submit periodic reports to the Committee for the Elimination of Discrimination Against Women (CEDAW). Although scheduled to submit its most recent compliance report in January 1998, to date Bosnia and Herzegovina (BiH) has failed to prepare and submit that report. That is why Global Rights initiated and prepared, in collaboration with 16 BiH non-governmental organizations, the first NGO Report on the State of Women's Human Rights in BiH, published in 1999. This second report updates and expands on the findings of the 1999 report, and it is being released as the government of BiH finally appears poised to issue its official report to CEDAW. As such, this report is designed to shadow the findings of the official state report, and is at times referred to as a "Shadow Report." But since the official state report is not yet available, this report has been prepared without reference to it. Nonetheless, the participating NGOs believe that this report will offer a complementary assessment of the current status of women's rights in the country when read in combination with the official government report.

Since 1999 there have been significant changes in the country's institutional framework related to gender equality. State and entity level legislatures have established Gender Equality Committees. Gender Centers have been established in the Federation of Bosnia and Herzegovina (FBiH)<sup>1</sup> and in the Republika Srpska (RS)<sup>2</sup> as autonomous government agencies. And through these Centers, gender focal points have been appointed within state, entity and municipal executive bodies. Gender focal points also have been appointed at state and entity-level statistics institutes, and a BiH Gender Statistics Group was formed to ensure that all data collected by the statistics institutes is sorted and analyzed by gender.

Perhaps the most important development since 1999 was the adoption, in June 2003, after more than three years of intensive advocacy by Global Rights and the Gender Equality Coalition, of a state-wide Gender Equity Law.<sup>3</sup> Its adoption makes Bosnia and Herzegovina the first country in the region to pass such a comprehensive law. However, additional legislative and other efforts are now urgently required to ensure the full implementation of the law and the realization of gender equality in practice.

Given these various developments since 1999, BiH now possesses many of the legal instruments necessary for the fulfillment of its commitments under the Women's Convention. Unfortunately this report demonstrates that discrimination against women remains omnipresent in nearly all spheres of life. This is because words have not been followed by action. Many of the efforts undertaken by authorities have merely created standards or mechanisms to fulfill formal legal obligations. Those steps have not improved women's rights in practice. Instead the information provided by Bosnian NGOs in this report presents an alarming snapshot of the daily struggle of women in BiH to achieve the rights they enjoy on paper.

Even within the framework of human rights, a complex combination of social, economic and political interests, traditions and biases have relegated women to the status of second-class citizens. Women are at times considered "persons of special interest" in human rights, social service or economic surveys. And while the country's laws and statistics may often appear positive, or at least gender neutral, a more detailed analysis leads to the inescapable conclusion that women in BiH face a state of perpetual inequality. Such inequality is reflected in the circumstances and consequences of the human rights violations directed against them, and in the availability and accessibility of legal remedies to address those violations.

All of the concerns raised in the report require particular attention. But the overall goal of the report is to illustrate the common patterns of discrimination that women face in several crucial areas of public and private life. Specifically, through this report, the participating NGOs offer the CEDAW Committee an independent gender analysis and a set of recommendations in the following areas:

1. The economic position of women;
2. The position of women in political and public life;
3. Violence against women and trafficking in women as a special form of violence;
4. Discrimination against women with disabilities; and
5. Health and Reproductive Rights.

### ***Global Rights - Partners for Justice, BiH Program***

Sarajevo, January 2004

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<sup>1</sup> Established in 2000.

<sup>2</sup> Established in 2002.

<sup>3</sup> BiH Gender Equality Law, Official Gazette of BiH, No. 16

## **EXECUTIVE SUMMARY**

Bosnia and Herzegovina (BiH) acceded to the Convention on the Elimination of all Forms of Discrimination Against Women (Women's Convention) in 1992 by succession. Since then, BiH has presented only one report to the CEDAW Committee (in 1993), which was prepared under special circumstances due to the ongoing war and focused almost exclusively on the situation of women in armed conflict.

Clearly the four-year war in Bosnia-Herzegovina devastated the country's population, crippled its institutions, and created an atmosphere of social upheaval and economic instability that fostered escalating human rights abuses. Within that context, the BiH government was unable to address many human rights violations, and women became increasingly vulnerable to abuse and marginalization.

Today, women in BiH are not equal with men in the realization of the right to participate in public and political life. But previous experience indicates that women have never enjoyed major political influence – not even during the Communist period – and that their presence in political bodies during earlier periods never translated into true political force. That legacy continues to produce modern consequences, one of which is that the current political system fails to recognize the importance of meaningful female political participation. In the modern day, political participation by women is limited to formal attendance, with only limited access to the country's closed decision-making processes. Discrimination against women in political and public life is mostly characterized by a gap between the law and the daily reality of most women, by the under-representation of women in elected bodies and state institutions, and by the unequal distribution of social power between men and women.

Discriminatory practices also prevent women from participating equally in the labor market. Professional and business organizations are often exclusively male associations. This impedes women's access to job resources, training, and information. Even in the sectors where women are generally employed – education, health care, and the judiciary – there are virtually no women in decision-making and senior management posts. Another obstacle to women's economic empowerment is that men are traditionally the owners of private property, irrespective of the fact that women have the same inheritance rights. Adding to this problem, most loans require real estate collateral. Since women can seldom establish property ownership, they are frequently unable to access credit, further hindering opportunities for income generation. These discriminatory practices in relation to employment and access to resources have produced an exceptionally difficult economic situation for women in BiH. The poverty gap between women and men is growing, and that, in turn, makes women more vulnerable to a range of human rights violations.

Domestic violence has also emerged as a significant human rights concern. There are no official procedures in BiH for victims of domestic violence to seek or receive assistance. According to recent research, approximately 60 percent of women in BiH are victims of violence. Unfortunately, because these women often lack support from governmental agencies, many of them never seek assistance from any institutions. And because of ineffective court systems, prosecutions of domestic violence cases often involve prolonged investigations, costly trials and inadequate sentences.

Facing such a lack of employment opportunities, difficult economic conditions, domestic violence, and wide-spread discrimination within society, many young women are lured into false job offers that too often lead them to being sold into forced labor or other forms of trafficking. At the same time, due to the heavy presence of foreign troops since the war, the country's inadequate legal framework, and growing corruption and organized criminal activity, BiH has also emerged as a destination country for women and girls who are trafficked into the country from Eastern Europe.

There is also a very significant group of women in BiH who face various forms of double discrimination, particularly women living with disabilities. Although women with disabilities are not legally or formally prevented from enjoying the same rights guaranteed by law to all other women in BiH, in practice they do face many added obstacles. Women with disabilities are the most vulnerable, the most neglected, and the most deprived category of persons within our society. There are no official statistics on the total number of persons living with disabilities in the country, and certainly no disaggregated statistics on the number of women living with disabilities. This reflects the lack of gender-based research or analysis in this area, and the larger failure of the state to promote non-discrimination of persons with disabilities in general, and women with disabilities in particular.

Although BiH has created some necessary instruments for the fulfillment of its formal commitments under the Women's Convention, discrimination of women remains omnipresent in all spheres of life. Words are not followed by action. Measures undertaken are often illusory attempts to fulfill formal obligations. The information provided in this report by Bosnian NGOs creates a different picture, one that begins to reveal the magnitude of the obstacles faced by girls and women on a daily basis in the implementation and protection of their human rights. What also becomes clear in this report is that even within the framework of human rights protection and analysis, the country's social, economic and political interests, coupled with a tradition of bias, combine to cast women to the side as second-class citizens, or persons of 'special interest'. And while many laws and statistics appear positive, or at least gender neutral, a deeper gender analysis leads to the overwhelming conclusion that women in BiH have not yet attained any true measure of equality.

Finally, another important manifestation of this inequality is that at all levels of government in BiH (at the State, Entity, Cantonal, and Municipal levels), economic planning and budgeting have not been conducted with gender sensitivity. Rarely are financial resources included in government budgets for the implementation of CEDAW obligations, or more generally for the advancement of women's rights in BiH. This lack of commitment to gender sensitive financial planning and budgeting reinforces existing inequalities and is penalizing future generations of Bosnian women.



**SOCIAL CONTEXT FOR THE ENJOYMENT OF  
WOMEN'S HUMAN RIGHTS IN BiH**

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## **Social Context for the Realization of Women's Human Rights in BiH**

When analyzing the links between violation of women's human rights in BiH and systematic patterns of gender discrimination, the following contributing factors must be taken into account:

- The influences of a patriarchal cultural heritage;
- The influences of a communist heritage, and
- The influences of the post-war transition process in BiH.

### ***Patriarchal cultural heritage***

The patriarchal heritage of BiH reinforces the dominant cultural position of men in all spheres of life, while confirming their absolute dominance over the political and public life of the nation. This dominance is often viewed as a natural extension of the critical decision-making role of men. Due to harmful stereotypes relating to the inherent capabilities of each gender, many men and women alike accept and perpetuate the view that men possess superior leadership and decision-making skills. This assumption is rarely questioned, and for this same reason, men are also expected to govern within their family and their broader social community. At the same time, the traditional distribution of roles within the family, where household chores are reserved for women and girls, provides men with additional time and energy to engage in public activities. And so it is within such an environment that Bosnian society has created and nurtured the myth that women lack the talent or aspiration to engage in the political or public life of the country.

### ***Communist heritage***

The influence of a communist heritage is sometimes evident in the belief that issues of equality between men and women were resolved long ago under a communist structure of constitutional and legal equality. Such views emphasize legal protections over factual realities, ignoring the well-understood "glass ceiling" phenomenon. The communist era also encouraged women to adopt negative attitudes toward political engagement. During this era, many women came to view required communist political activity as an additional and unnecessary burden. In addition to their regular duties at home and work, they were also assigned political tasks and obligations by the state. It became clear to many that such required political activity was not contributing to any improvement in their status. During this period the state also failed to provide effective public services,<sup>4</sup> assistance that could have provided women with sufficient time and capacity to engage in serious political activity outside of the home. Research indicates that this attitude remains largely unchanged today,<sup>5</sup> and that the views of most women have not changed significantly.

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<sup>4</sup> More on drawbacks of public services for employed women in the part of this report pertaining to the economic status of women.

<sup>5</sup> According to "Because We Are Women - Socio-economic status of Women in BiH" (authors: Ms. Jasna Bakšić-Muftić, PhD, Ms. Nada Ler-Sofronić, PhD, Ms. Jasminka Gradašević-Sijercić, PhD, Ms. Maida Fethagić, M.A.) World Learning Pilot STAR Survey, 2003.

### ***The post-war transition processes***

The situation created following the first free multi-party elections in the early 1990's corroborated several theories on the limits of women's political power in the transition. Women virtually disappeared from political life and state institutions, during and after the war. The war and immediate post-war reconstruction period focused national and international attention on the importance of ethnic, regional and religious equality in the country, sidelining issues of gender equality and relegating women to the margins of public and political interest. In general, all efforts were focused on the institution of ethnic, political, regional, and religious structures, and on the promotion of non-discrimination on these bases. Gender discrimination, particularly in relation to violence against women, has been ignored by the state. Only a handful of non-governmental organizations (NGO's) have addressed these issues in the post-war period.

As a result of patriarchal and communist influences, as well as many of the trends prevalent in the post-war transition period, the following obstacles and misconceptions have undermined the advancement of women's rights:

- Men dominate the political sphere, and this is often justified by stereotypes relating to the inherent capabilities of men, or by social inertia that supports the established distribution of political power;
- Some argue that the interests of women diverge from the superior social objectives of men. Before the war, these divisions related to class-based distinctions, and after the war they often relate to ethnic, religious, entity, regional or other political interests. Following this course of logic, men alone are capable of representing the common interests of all BiH citizens, and they do so with superior knowledge and experience, so that female political participation is not necessary;
- For many women, ethnic divisions, and their corresponding identification with specific ethnic and religious groups, have become more important than gender equality.<sup>6</sup> At the same time, support for feminism or the promotion of women's human rights often elicits severe resistance within these conservative and male-dominated social groups.

In addition, efforts to maintain and nurture harmful myths that cast women as mothers, housewives, pillars of the family, or sex objects also have taken a toll. These stereotyped presentations of women are omnipresent in school textbooks, the media, employment contexts, and in many other public spheres. Women themselves often perpetuate these views, failing perhaps to recognize the harmful consequences of such discrimination.<sup>7</sup>

In the post-war period, BiH witnessed two parallel processes, both of which have had a very complex and extremely profound impact on the status of women. These include: (1) The implementation of a far-reaching peace agreement, and through that agreement the attempted reconstruction of the country; and (2) An economic revival and restructuring as part of a comprehensive transition from a planned socialist economy to a market economy.

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<sup>6</sup> Cynthia Cockburn, Meliha Hubic and Rada Stakie-Domuz, "Living Together, Living Separately", Medica Zenica, 2001.

<sup>7</sup> During an interview with a young woman seeking employment and describing her experiences, it turned out that she did not view as discrimination the fact that she was required to have certain appearance and manner of dressing, and to be ready to stay after working hours in order to 'attend business dinners'. When directly asked "Was this discrimination based on the fact that you are a woman?" she replied: "No, no way... I am not discriminated against here as a woman, they were specifically looking for a female for this position, not for a male... In fact, other girls, not as good looking as myself, may have been discriminated against... This is I guess appearance-based discrimination ..." - STAR Pilot Survey, 2003, p. 64

Today, BiH is in a transition phase in every sense. The transition process has brought with it a number of problems and great economic turbulence. The state is depriving unprofitable companies of the support provided under the socialist economy. This is leading to bankruptcies and massive staff layoffs. Many workers are coping with the problem of re-qualification for new positions, and the labor market is becoming extremely difficult, particularly for women who are often unable to keep up with economic trends. The general economic situation of the population is growing worse.

The modern face of BiH is characterized by an extremely difficult economic situation, poverty and mass unemployment, slow privatization, widespread corruption and organized crime. Insufficiently developed institutions and the lack of the rule of law further deepen the dislocation. And while the international community has invested enormous funds in the reconstruction effort, the economy has yet to rebound. At the same time, the state itself is financially incapable of responding to its international treaty commitments to provide various forms of social protection and assistance during this difficult economic transition, as it too lacks the resources to pay for even the most urgent of interventions.

Although at first sight the state may seem to be undertaking necessary measures to eliminate both *de jure* and *de facto* discrimination, the situation in practice is very different. In spite of the existence of internationally recognized obligations and a constitutional framework that provides an extraordinary basis for legislative and other measures to eliminate discrimination against women in all areas of life, a majority of all laws, measures and policies are introduced without any required sensitivity to the impact they could have on gender-based discrimination. And while not always obvious, this oversight perpetuates discrimination against women and girls in the areas of education, employment, labor relations, economic participation, family status (including domestic violence), political and public life.

### ***International Organizations in BiH***

What remains to be considered within this overall social context is the attitude and influence of international organizations in BiH, as they too frequently choose to ignore issues of gender equality. No woman has served as High Representative for BiH since this influential institution was first created. This is significant because the position is one of paramount importance for the functioning of the state. The High Representative has the mandate to propose and impose laws within the country, to appoint or dismiss state officials or to exert strong influence over political and reform processes in BiH.

Other influential and reputable international institutions in BiH also have ignored this issue, or have considered the adoption of the Law on Gender Equality unrealistic for BiH. Some representatives of the High Judicial and Prosecutorial Council believe that it is particularly impossible to enforce equality for women within the high-level posts of the judiciary, since ethnic representation must be prioritized over gender equity. At all levels, women's equality and women's human rights are being suppressed in favor of supposedly more pressing problems. Thus, while the international community has a decisive influence on the pace of reform, and on the very foundations of the political and economic development of the country, many international institutions continue to ignore or downgrade the importance of gender equality at this stage in the transition.

Taken together, all of these factors create a framework for this NGO analysis of the status of women. They also suggest certain activities or opportunities that could be harnessed to promote equality and ensure the realization of the human rights obligations that have been promised, accepted and incorporated into Bosnian law through CEDAW.

## **ECONOMIC POSITION OF WOMEN (Articles 11, 13, 14 CEDAW)**

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## ***I. Introduction***

The four-year war in BiH changed the social and economic architecture of the country. Of the pre-war population of 4.4 million, 250,000 persons, mainly men, were killed or are considered missing. Approximately 28 percent of the population had to abandon their homes and are either displaced within the country or are refugees abroad. Several generations lost years of education and tens of thousands of people were left with different degrees of disability. There are numerous single-parent families and many children are now orphans. The war destroyed most of the infrastructure in the country as well as its economy. Industrial production fell to just 10 percent of its pre-war level.<sup>8</sup>

The war also led to a total breakdown of authority, interrupted the advancement of science and technology, and limited the development of the country in nearly every other sense. Many highly qualified experts and skilled laborers left the country. And these various factors have all led to the further dissolution of normal living circumstances. The social and material consequences of such a savage war are difficult to appreciate and are still felt today, seven years later.

Many of the human rights violations that have accompanied these social dislocations have been ignored. And within such an environment, the position of women has emerged as a matter of particular concern. Indeed, the experience of other countries in transition demonstrates that in any massive economic transformation, including the transition to a market economy, the social position of women almost always deteriorates, while discrimination against women generally increases. That is exactly what is happening to women in BiH today.

## ***II. Economic Environment As the Cause of Inequality of Women***

The problem of economic inequality of women in BiH is deeply rooted in the country's patriarchal heritage, its socialist and Communist past, and in the disastrous consequences of the war on all sectors of the economy. At the same time, the inequality of women in the political arena, and the near total control by men over all positions of political power, is also directly linked to gender-based discrimination in the economic arena. This is particularly important in a country like BiH, where political power is manipulated to secure economic opportunity. The symbolic participation of women in the country's political parties, and the political marginalization of women from decision-making positions within those parties, contributes to the lack of inclusion of women in the executive.<sup>9</sup> And just as women are rarely appointed to the executive, they are equally underrepresented in state-owned enterprises, particularly within those public enterprises such as the state-owned power supply company, and the postal and telecom services, that generate large incomes through monopolistic operations. Women are also excluded from many other bodies that make strategic economic and financial decisions for the country.

The issue of economic exclusion must be considered against the general stereotypes concerning the roles of men and women in BiH society. Women are expected to be good mothers and housekeepers, and men are expected to work and provide a financial base for the family. In most settings, there is still a clear division of roles and responsibilities between men and women, and these divisions are mirrored within the workplace. These strong stereotypes also contribute to the systematic exclusion of women from the comprehensive economic reform process that is currently under way in BiH.

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<sup>8</sup> PRSP 2003, p.3

<sup>9</sup> See: Women in Politics

There is no state level initiative in BiH to measure discriminatory practices against women in the economic life of the country. Currently at the state level, the implementation of the Poverty Reduction Strategy (PRSP), an initiative that should address the role of women within the economic sector, has ended. The PRSP will provide a BiH-wide comprehensive economic development strategy to reduce the level of poverty and accelerate economic development over a mid-term transition period. Unfortunately, the PRSP only mentions in general terms the problem of discrimination against women and it has not included any provisions for legal or other actions to combat gender-based discrimination and exclusion within the economic sector.

### **III. Women and Poverty**

In the post-war period, significant efforts have been made to secure civil and political rights. Unfortunately, those efforts have at times undermined various economic rights, especially the right to work and other issues arising from it. While recognizing the value and importance of promoting a wide spectrum of civil and political rights in BiH, the neglect of economic rights has contributed at the same time to the further impoverishment of the population. And as compared to men, such poverty affects women differently and disproportionately.

Some poverty assessments indicate that women are more frequently living in poverty than are men. This is significant since women head 25 percent of all households in BiH, with 16 percent of the entire population living in women-headed households.<sup>10</sup> One of the important explanations for this inequality, and for the poverty gap between men and women, is found in the differential between men and women in their ability to access economic resources, or even the labor market itself. Women in the 16–64 year old age group make up just 35 percent of the BiH labor force.<sup>11</sup> Women are also at a disadvantage in accessing information concerning employment related resources, opportunities, or professional training.

The possibility of employment decreases further with age. Women at the age of 45 years old are already commonly considered “old,” although men at that same age are considered to have reached their most productive period. Elderly women are also hit harder by poverty than elderly men. Women make up 58 percent of the population above 65 years of age, often living alone as they become elderly. If they live in rural areas, they generally have no pension or other income, and as a group, elderly women show the highest tendency of falling below the poverty line.<sup>12</sup> Men are traditionally the owners of private property, irrespective of the equal right of women to inherit property and the ability of either spouse to transfer ownership to the other at no cost.<sup>13</sup>

Given all of these concerns, initiatives aimed at increasing the opportunities of women to enter the workforce are clearly emerging as essential efforts in reducing the level of poverty for women, and for the country as a whole.<sup>14</sup>

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<sup>10</sup> MRC 2003, p.14; A specific feature of female heads of households in BiH is that there is no switch between the role of women and men, but rather the women are mainly widows (83 percent), close to retirement (20 percent) or retired (60 percent). Just 1.6 percent of households are headed by women and have able-bodied men. The World Bank (2003), BiH Poverty Assessment, *ibid* Chapter III, para 31–32.

<sup>11</sup> UNDP; 2003 MRC, p.15

<sup>12</sup> UNDP, 2003 MRC p.15

<sup>13</sup> UNDP; 2003 MRC; CEDAW Article 15, Equality before the Law.

<sup>14</sup> World Bank, Poverty Assessment in BiH, 2003, viii.

#### **IV. Women and Education**

Education is perhaps most clearly linked with the issue of poverty. Thus, women in the 18-35 year age group who have no more than a primary education are generally excluded from the labor market. This is alarming as that particular demographic group makes up 42.9 percent of the entire population. In contrast, the percentage of men with only a primary education who are excluded from the labor market represents just 20.4 percent of the population.<sup>15</sup>

The level of education of women is obviously an important indicator of the overall empowerment of women in BiH. A review of legislation creates the impression that the right to education is secured equally for all. Primary education is compulsory and free for all. This is limited, however, by the common patriarchal belief that women do not need a formal education, as their responsibilities should instead remain focused on the home and the family. These traditional views have been exacerbated by the limited number of schools in rural areas. The scarcity forces many students to travel long distances to attend school in rural areas, a factor that further diminishes the value of educating girls in the eyes of some rural families. As a result, in rural areas it has been common for families to send their boys to school while keeping their girls at home.

The poor economic position of women is in many respects directly related to this limitation over access to education. Even when women are able to attend school, common stereotypes direct women to professions in education, health care, and other jobs that have often been undervalued and under-compensated. And it is important to note that as the cost of education grows, families are more likely to invest in the education of boys, rather than investing scarce resources in the education of female family members. These constraints contribute directly to the inferior position of women in the economic sector, and to the diminished social position of women more generally.

#### **V. Participation of Women in the Labor Market**

An analysis of domestic labor legislation highlights that formal equality is guaranteed to all, irrespective of gender. On the surface, women and men have equal rights in employment and in all related social benefits. Formal guarantees also codify equality through rights to equal pay for equal work, education, professional development and training. And the law provides employment protection and paid leave for women during pregnancy, childbirth and a set maternity period. Nonetheless, information collected by NGOs indicates that *de facto* discrimination exists throughout the employment sector, demonstrating that these laws are not being implemented.

Women make up 45 percent of the unemployed in BiH, and according to some estimates, most of these women have received little education. Indeed, half of all unemployed women are designated as unqualified laborers, and only 20 percent of women have a secondary education.<sup>16</sup> These low levels of education and experience certainly contribute to the high unemployment rate for women, but discriminatory practices further prevent women from participating equally in the labor market. As evidence of this, the estimated *per capita* income in BiH is \$1,793 for women and \$4,135 for men, with an average woman earning 43 cents for every dollar earned by a man.<sup>17</sup>

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<sup>15</sup> MRC, 2003 p. 15

<sup>16</sup> UNDP, CCC Development Indicators 2002. Of 420,812 of the monthly overview of the unemployed (including staff on waiting lists) in BiH in 2002.

<sup>17</sup> Source: Human Development Report 2001, UNDP

Some have tried to deflect attention away from such clear *de facto* discrimination by arguing unconvincingly that women increase the overall labor costs in the country when they use their maternity leave, take leave from work to care for sick children, or demonstrate greater inflexibility in working overtime. This unrealistic argument finds particular support among those who note that the state has not yet created the necessary mechanisms for companies to secure payment for costs associated with employee absences during maternity leave. The most frequent excuse for this state oversight is that there simply is not enough money in the state budget to cover those costs.

#### *Employment*

The availability and expense of child care facilities represent additional obstacles to greater employment and opportunity for women. There are an insufficient number of pre-school child care facilities in the country, and the high costs of child care services often force women to stay at home. In some cases, a woman's wages may not cover the costs of these available child care services. This is particularly true in small towns and rural areas. The lack of attention by the state to this problem again reflects general social attitudes, including the belief that a woman belongs at home with her children. In failing to address the issue, the state reinforces unequal opportunities for men and women, both in the ability of some women to choose their profession, and in their ability to remain in the workplace and practice that chosen profession. When faced with such high costs for child care, many families with limited financial means simply find it impossible for women with children to venture out into the workforce. This in turn suffocates the economic independence of women and decreases their influence within society more generally.

#### *Private property*

In BiH, men are the traditional owners of private property. Although spouses acquire the right to joint property ownership during marriage, the title to such property is almost always listed in the name of the husband. In cases of divorce, a separate procedure exists for the division of property acquired during marriage. But due to inefficiencies within the judiciary, the divorce distribution process may take years, and during that time the property is commonly used or even sold by the husband. Indeed, common practice reveals that no meaningful consequences are imposed on a husband who sells such jointly held property before the completion of the divorce distribution proceedings, even when he keeps or diverts all of the profits. This represents a particularly egregious form of economic violence against women. Despite NGO efforts to highlight the issue, the state has failed to take steps to sanction such destructive behavior.

#### *Access to resources*

Not only are women dispossessed of property through common land tenure practices, they are also deprived of the possibility of using that property for economic or employment related purposes. Lacking title to property – in most cases even jointly held property – women are generally prevented from accessing credit, since most loans require some form of real estate collateral. Women are thus excluded from securing loans for private business. And while women may often resort to micro-loans with particularly unfavorable interest rates (at a fixed rate of 1.5 to 2 percent per month), this price of capital is prohibitively expensive, and female micro-entrepreneurs must still generally secure additional loans for their businesses to survive. Such funds are usually inaccessible to those without a credit history.

Micro-credit organizations have placed several thousand loans in amounts varying from 500 KM to 10,000 KM, generally with repayment schedules from six to 12 months (1KM=\$1.52). Although women are prominent users of these micro-credit facilities, with estimates suggesting that 50 percent of all micro-credit loans have gone to women, women almost never secure larger loans in the amount of 100,000 KM or more. The USAID credit line supported women entrepreneurs in particular, but less than 10 percent of the beneficiaries of that program were women. And it is important to recognize that the interest rate for such loans is still somewhere between 7 to 9 percent per annum. In general, it is evident that few women are able to secure large business loans. Most of them have no access to such loans due to lack of collateral, as well as low level of education and lack of entrepreneurial experience in running small or medium-size enterprises.

Organizations such as business or employer associations that remain exclusively male are often important venues for conducting business, exchanging information or accessing training or loans. These closed networks exclude women and limit their access to information and resources. This has been particularly damaging in the area of job training, since women are excluded from the support and training offered by these associations in preparing their members for management level positions. And this is all the more limiting given the gender imbalance in management schools that are mainly attended by men, who then gain additional advantages in seeking and obtaining senior management jobs in BiH. The overall lack of adequate professional training available to women is reflected in part by statistics suggesting that between 1996 and 1999, doctoral degrees were obtained by 114 persons, of whom 91 were men and 23 were women.

The glass ceiling is indeed evident in BiH today. Most women work in education or health related jobs or in various social institutions. But they rarely rise to management levels within those sectors. For example, there are no women heads of hospitals, primary health care centers or clinics. Nor are there any women deans of educational faculties. Women are excluded from economic decision-making posts, and there are no women in senior positions in the judiciary, although the judiciary as a whole is dominated by women. Taken together, these inequalities demonstrate that women are excluded from nearly all influential policy-making jobs or other positions that could influence Bosnian society in broad terms.

#### *The Gray Market*

Finally, the prominence of the gray market in BiH deserves particular attention. According to unofficial estimates, the number of persons employed in this unregulated, underground sector of the economy is very high. And while there is no official data, it is likely that this sector provides economic opportunities for far more women than men. The informal nature of this sector reduces the level of employment protection for all workers, particularly women. Indeed, anecdotal evidence suggests that in cases of pregnancy, women are automatically excluded from the marketplace. To date, the state has not taken sufficient steps to investigate abuses within the gray market, nor has the state sought to extend employment protections to this large sector of the economy. As such, the state has failed to provide women with the protections guaranteed by the Women's Convention and the domestic laws of BiH.

Even within this informal sector dominated by women, it is evident that women are again marginalized. Across BiH women are employed in promoting and selling a wide spectrum of products in the gray market. But despite their dominance within the actual marketplace, women remain at the very bottom of the payment pyramid, as male-dominated management structures soak up most profits. It is evident that here, too, an unfair division of economic power and limited access to economic decision-making inhibits the income and opportunity of women. Nonetheless, such unregistered employment has become the only source of income for many marginalized groups of women, whereas the men who reap more of the profits often rely on these opportunities merely as a supplement to their income.<sup>18</sup>

## **VI. Women and Privatization**

The privatization process, which has become an essential aspect of the country's economic reform program, has at times promoted further discrimination against women. The key roles in the process are dominated by men. The influence of women is largely insignificant, as the process is run by a closed circle of men who prevent women from taking part in the decision-making process. Privatization itself has also provided an opportunity for directors of state-owned companies, where men are in the majority, to acquire state capital through various methods. Today that means that these male directors control most small and medium-sized enterprises in the country. The situation within the banking sector has been very similar, and 90 percent of privatization funds are also managed by men. Those few women who are involved in the privatization process are occasionally appointed to supervisory boards that have very little influence and power over capital management decisions within privatization and investment funds.

The state also plays a more direct role in discriminating against women and marginalizing their role in privatization. The government appoints boards of directors and other supervisory and decision-making bodies for many companies, and women are generally excluded from such appointments. This limits the level of engagement of women in decisions that will continue to shape the future economic development of the country. This also demonstrates that the domination of men within political parties, given their influence over the executive appointment process, has an important impact on economic development.

The widespread discrimination of women within the economic sector of BiH is often ignored by the state. For most officials, it does not make any list of priority issues that must be addressed within the current economic transition. On the contrary, advocates are often told that there are more pressing national problems than issues of equality between men and women. Unfortunately, this has resulted in more entrenched discrimination against women in BiH, even as the political and economic recovery of the country has progressed since the end of the war.

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<sup>18</sup> In the time period 1998- 2002. NGO *Vidra*, Banja Luka, maintained a database on women who were either running businesses or wanted to start their own, and out of 940 women, 95 percent were in trade or wanted to be, of whom almost 50 percent were active in the 'gray economy'.



## **WOMEN IN POLITICAL AND PUBLIC LIFE**

**(Articles 7 and 8 in conjunction with Article 1 of CEDAW;  
General Recommendation No. 23 (Political and Public Life))**

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## **I. Introduction**

Women in BiH have not achieved equality with men in their ability to participate in the public and political life of the country. Previous experience indicates that women have never exerted major political influence, not even during The Communist period, and that their presence in political bodies has often been merely symbolic. This continues to produce lasting consequences, including relatively limited opportunities for female political participation, and a common understanding that female representation within political institutions is limited to pure attendance without political influence.

Discrimination against women in political and public life is characterized by: a gap between the law and reality; the under-representation of women in elected bodies and state institutions; and the unequal distribution of social power between men and women. This discrimination must be understood within a social context that is dominated by a patriarchal cultural heritage, a Communist past and a complicated post-war transition processes.<sup>19</sup>

## **II. Legal Framework for Women's Political Rights in BiH**

The state has taken certain legal and other steps to promote gender equality in various areas, including political and public life. However, these measures have been insufficient and have not led to a meaningful change in the status of women in political life. Women remain on the margins of power, deprived of influence in the articulation and implementation of state policy.

A catalogue of rights contained in the Constitution<sup>20</sup> lists explicitly the rights to freedom of thought, conscience and religion, freedom of expression, and freedom of assembly and association. According to the constitutional principle of non-discrimination, these rights are guaranteed equally for men and women. The Convention on Elimination of All Forms of Discrimination Against Women (the Women's Convention) is also directly incorporated into the BiH Constitution. Accordingly, domestic legislation should contain a particular recognition of women's political rights. And the state is thus obliged to take all necessary steps to eliminate discrimination against women in political and public life, as provided by the Women's Convention.

The Constitutions of the Federation of BiH<sup>21</sup> and of RS<sup>22</sup> provide further for general political rights for all citizens, which include, *inter alia*:

- the right to establish or belong to a political party,
- the right to participate in public affairs;
- the right to equal access to public services;
- the right to elect or be elected.

All men and women are entitled to equal constitutional rights and to participate in political and public life. However, constitutional provisions require more than equal treatment or opportunity; they also require equality in effect or outcome, while simultaneously recognizing and respecting the different needs and situations of men and women. Only then will women in BiH approach equality. The state has failed to secure such equality for women in political and public life, primarily by failing to respond to the specific needs of women in exercising their political rights.

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<sup>19</sup> More on this in part of this Report "Socio-Context for the Exercise of Woman's Human Rights in BiH"

<sup>20</sup> Article II, paragraph 3, of the Constitution of BiH

<sup>21</sup> Constitution of FBiH in Chapter II dealing with human rights and freedoms, Article 2, para. 2.

<sup>22</sup> Articles 29 and 33 of the Constitution of RS

### *BiH Election Law*

When considering the political rights of women, it is important to analyze the BiH Election Law<sup>23</sup> which sets the principles for elections at all levels. This Law outlines rules on the required gender-integration of candidate lists for political parties, creating mandatory election quotas for the "less represented gender."<sup>24</sup> This requirement is designed to promote the political participation of women who remain underrepresented at all levels of government.

The continuation of the state's efforts to secure gender equality in political life by introducing special measures for promoting the participation of women is encouraging. In the 1998 elections, the state introduced a quota system for women, as well as a system of closed electoral lists. The quota system helped elect a small but critical mass of women. However, through the new Election Law, the state subsequently adopted a system of open electoral lists,<sup>25</sup> which has decreased the likelihood that women, even when included on official candidate lists, are actually elected.

### **III. Women in Legislative Bodies**

Election results represent the best indicator of the actual level of political participation of women. Election results also show the effects that changes in election rules may have had on the involvement of women in the country's public and political life. Such an analysis in BiH raises concerns, as women have not achieved satisfactory levels of representation at any legislative level in BiH, and to date, they fail to command significant political influence. In the early period of symbolical representation, women constituted less than 3 percent of all parliamentarians. In a later period, when quotas and a closed list system were used in elections, the participation of women grew to 26 percent within the BiH Parliament. The results of the most recent general election, however, which applied election quotas and open lists, reflects a decrease in representation, with the number of women in the BiH Parliament falling to 14.28percent.<sup>26</sup>

An inequality in the distribution of power also extends to the entity parliaments. Thus, following the most recent elections, the percentage of women in the House of Representatives of the FBiH Parliament stood at 21.42 percent, whereas in the National Assembly of the RS, women only won 16.8 percent of the seats.<sup>27</sup> This shows that the state has not satisfactorily addressed the issue of the right for women to participate on an equal basis in the political system. Women have suffered through various voting experiments through targeted changes in the election laws, including the use of closed and open lists and quotas. Even with these various attempts, women have consistently been excluded, and many women have begun to question whether politics ever represents a suitable or realistic career option for women.

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<sup>23</sup> Election Law of BiH, Official Gazette of BiH 23/01 dated 09/19/2001

<sup>24</sup> Election Law of BiH Article 4<sup>19</sup>: "The candidates of the less represented gender shall be distributed on the list of candidates in the following manner: at least (1) one candidate of the less represented gender out of the first (2) two candidates, (2) two candidates of the less represented gender out of the first (5) five candidates, or (3) three candidates of the less represented gender out of the first (8) eight candidates. The number of candidates of the less represented gender shall be at least equal to the total number of candidates on the list, divided by (3) three, rounded up to the even number which comes first."

<sup>25</sup> The open list model is believed to be unfavorable for women and minorities. The political theory says that when voting on the basis of open election lists, voters are often guided by traditional or verified values. Such a situation is favorable for election of men and representatives of the majority segment of the population, regardless of the criteria taken being race, ethnicity, religion, language, gender, social status or something else. - According to the STAR Pilot Survey, 2003

<sup>26</sup> Parliamentary Assembly of BiH

<sup>27</sup> This is the number of the directly elected women representatives.

### *Women in Political Parties*

These findings must be supplemented by an analysis of the position of women within political parties in BiH, as the parties themselves are actually the most important institutions and decision makers within the entire election process. In addition, they are responsible for appointing positions within the executive and the judiciary following elections.

On the surface, most political parties embrace equality and welcome female membership and activity. Nonetheless, women face a number of obstacles within political parties in BiH. Below the surface, most political parties reflect traditional social attitudes toward women's participation in public and political life. Some political parties cling to a view of women as mothers and housewives, and tend to ignore those few women who stray into politics. Politically active women, including those with political experience, also note a strong institutional party preference for male candidates. And political parties often lack an appreciation of women's issues, while simultaneously denying women the opportunity to speak for or represent the party. Unfortunately, there appears to be little difference between the parties of the so-called left-wing or right-wing in this approach to women politicians.

On a formal basis, the statutes of political parties contain no protective mechanisms or quotas to ensure the participation of women in party bodies, with the exception of one party.<sup>28</sup> Women are mentioned in party statutes only to the extent that the statutes create interest-based branches or organizations of politically marginalized groups such as youth or women. The branches of political parties that are devoted to advancing women generally have no influence within larger party structures, nor do they participate in policy creation forums. They are most often in charge of organizing flower shows, poetry evenings, or round tables on issues such as substance or alcohol abuse, or they may be involved in humanitarian work.<sup>29</sup> The composition of the leadership of each party, which is generally dominated by men, also determines the nature of inter-party relations. This similarly limits the influence of women over the creation of party policies and influences the composition of party election lists.

Women are also disadvantaged by their lack of experience in running or participating in election campaigns. To date, no single party has emphasized the importance of gender equality in an election campaign, and women voters are not treated as a valuable or even specific constituency. They are most often ignored in election campaigns.

The overwhelming conclusion here is that most political parties have no viable strategies for promoting gender equality, addressing women's issues, or advancing the role or influence of those women's branches that already exist within different parties. The large majority of women candidates are added to election lists at the very last moment, just before an election, in order to comply with quota requirements. Little consideration or effort is given by political parties to training these women in elementary political skills before the elections.<sup>30</sup>

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<sup>28</sup> The Statute of the Social Democratic Party of BiH explicitly provides that all the functions in the party are equally accessible to both women and men, provides that on the main board of the party there has to be at least 30 percent of women, as well as that men and women must be equally distributed on the lists of candidates coming from this party.

<sup>29</sup> "Assessment on Women's Branches of Political Parties in BiH" by Tanja Kremenovic, Program Coordinator for the NDI BiH Women's Program.

<sup>30</sup> *Ibid.*

At the same time, some NGOs emphasize that a number of active women politicians are equally insensitive to issues of gender equality or women's rights. They claim that women politicians, like their male counterparts, are generally unfamiliar with women's rights or discrimination issues. They view the status of all women in BiH through the lens of their own elevated success or position, and for women politicians in BiH, that status is generally far removed from the position of the average woman in the country.

Often the positions of women politicians are limited by peer pressure to those "generally accepted" and thus "permitted" women's topics, such as maternity related issues. Indeed, many women politicians see maternity legislation and maternity rights as the most important women's issue. The reasons for such an approach may be explained by internal political structures that generally downplay women's human rights. This means that women politicians who take a "pro-male" or traditionalist approach are often rewarded with promotion or re-election support.<sup>31</sup>

In this case, too, the state has failed to undertake sufficient measures to modify prejudices and cultural stereotypes, change traditional social patterns, or promote gender equality. The passivity of the state in this area represents an additional obstacle to women in the full exercise of their right to participate in political and public life. The state must also ensure full participation and representation by women within party structures, ensure access for women to party leadership positions, promote the nomination of women as candidates for direct election or for high-level posts in executive bodies, and encourage training in basic political skills to female candidates.

#### ***IV. Women in Executive Bodies in BiH***

The previous analysis has shown the effect of political party attitudes and the influence that elections rules may have on the level of political participation by women in legislative bodies in BiH. But the actual extension of political rights to women requires that they must secure access to all branches of political power. Since most political power in the country is actually vested with strong executive bodies, a gender-based analysis of executive political structures is equally important. Unfortunately, such an analysis reveals a nearly absolute domination by men in the executive branch of government.

BiH has never had a female member of the tripartite presidency, which serves as the country's head of state. Nor has a woman ever served as a prime minister, and to date, only one woman has served as a government minister. Such a trend extends at lower levels of power as well. Neither of the entities has ever had a female prime minister, nor has a woman ever served as a deputy of a president or prime minister at the entity level.<sup>32</sup> There are generally one or perhaps two women ministers in entity governments at any given time, out of a total of 16 (in the RS) or 17 (in the FBiH) ministries. Further down the state structure, men have dominated as presidents in all of the 10 cantons in FBiH, and among 100 cantonal ministers, there have only been eight women. Still, those women have served in the stereotypical "women's ministries" that cover residential and housing issues, social welfare and health, and labor and education.<sup>33</sup>

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<sup>31</sup> The most recent example of this is support by the woman minister of justice for the amendments to the Criminal Code of FBiH proposing introduction of the crime of adultery, which would have meant, according to the law, prison sentence of up to one year. After strong protests by members of the Parliament against this amendment, the woman minister apologized to the parliament by saying that 'she had reacted as a woman'.

<sup>32</sup> Ms. Biljana Plavšić was the only woman which has ever been appointed as the Entity President (in RS).

<sup>33</sup> June, 2002

The status of women in the executive is limited by evident discrimination in political appointments at all levels. Similarly, gender-based discrimination is present in all public administrative structures throughout the country. This discrimination is extended, deepened and maintained by the appointment of men to top management posts in state-owned companies and management boards that represent executive bodies within the economic sector.<sup>34</sup>

Such evident discriminatory attitudes against women in political and public life are reinforced by discrimination against women within their own political parties, as well as traditional public attitudes perpetuating a view that there are no capable women who are willing or capable of performing essential tasks within key government posts. Unlike their male colleagues, women in high-level posts in executive bodies also generally lack entitlements or sufficiently independent space to make their own independent decisions. They are often limited to serving as executors of their party's policies.

## **V. Women in Judicial Bodies in BiH**

Within the distribution of power, women in BiH are represented in greater numbers in the judiciary than in any of the other branches of government. Nonetheless, there is a gap between the total number of women working in the judiciary, and the number of women found in higher-level posts in judicial bodies or in courts of higher instance. In posts involving significant power and decision-making, women continue to face a glass ceiling, even within the judiciary.

The data here is instructive. At the Court of BiH, which was established this year, there are only three appointed women judges out of a total of 15. The Supreme Court of RS has only three appointed women out of 13 judges. The Constitutional Court of FBiH has only two women. The FBiH Supreme Court has a gender balance among appointed judges according to available data, but this court had more than 9,000 pending cases at the end of 2001 and more than 8,000 of the cases involved disputes of an administrative nature (mostly property issues). Again, it seems that women in the judiciary, even when in higher levels, toil under heavy workloads and without much influence.

It is evident throughout the system that the number of women judges increases as we go down at the lower levels of the judiciary, where there is a basic numerical equality. However, looking at appointed presidents of courts throughout the country, there is a significant disproportion between men and women. The increase in the number of women serving in the judiciary at lower levels must be analyzed within the context of the higher caseload, the longer hours, and the diminished salaries associated with lower level posts.

The High Judicial and Prosecutorial Council in BiH serves a particularly important role in the judicial appointment process. In its reports, the Council emphasizes "fair representation" of the country's constituent ethnic groups within the judiciary. Unfortunately, it does not consider equal gender representation as an additional diversity factor, although women represent more than 50 percent of the population. And the gender structure of this Council is itself a cause for concern, with only eight women out of 25 Council members.

These are only several indicators of the extent of discrimination that exists within the judiciary, which mirrors the level of discrimination against women in BiH society more generally. The state has failed to undertake any efficient measures to ensure actual equality for women in accessing high-level posts within the judiciary.

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<sup>34</sup> More on this in the segment of this report pertaining to discrimination against women in economy.

## ***VI. Participation of Women in BiH Diplomacy***

Data detailing the participation of women in bodies representing BiH at the international level demonstrates a similar level of under-representation, reflecting patterns observed in other areas of public and political life. According to recent data, of the 39 ambassadors representing BiH internationally, 30 are men and only nine are women. Only two women have been appointed Consuls General out of seven available posts. And even within lower-level diplomatic or consular postings, as well as within administrative and technical postings, out of a total of 261 world-wide postings, only 31 percent are held by women. This under-representation of women in the diplomatic services reflects the general discrimination against women in BiH.



## **VIOLENCE AGAINST WOMEN**

**(Articles 1 and 2 in conjunction with Articles 5 and 10 (c) of the CEDAW;  
General Recommendation No. 19 of the Committee (Violence Against Women))**

**and**

### ***Trafficking in Women***

**(Article 6 of the CEDAW and  
General Recommendations No. 15 and 19)**

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## **I. Introduction**

In Bosnia and Herzegovina, violence against women, and particularly domestic violence,<sup>35</sup> is a deeply rooted and widespread social problem. Behind a facade of civility and modern living, BiH remains a deeply traditional and patriarchal society. And domestic violence is a prevalent part of that reality. On the surface, society does not approve of such violence, but at the same time society has failed to recognize the widespread prevalence of domestic violence as a significant issue. This problem is generally ignored and remains largely misunderstood.

The issue of domestic violence must be considered against the larger background of the severe militarization of BiH society as a consequence of the recent war. And the position of women has deteriorated further through a post-war transition process that has been managed and controlled by men. In the transition men have assumed the roles of soldiers, protectors and leaders, with full power and control over public and political life. In contrast, the position of women during the transition has been set back by a century, with women's roles largely limited to reproduction and care for the home, household and family.<sup>36</sup> There is also a widespread misconception that BiH must put first issues relating to the immediate post-war transition, ignoring other needs, including the basic right of women to live free of violence or discrimination.

Research has shown a general lack of social support or understanding for women victims of domestic violence. Traditional biases perpetuate a view of domestic violence as a private, family matter that should remain outside the realm or influence of the state. The problem is minimized at all levels, with many officials clinging to the social misconception that women victims of violence are troublemakers, and deserving of the violence that they themselves must have instigated. Under these views a woman is expected to remain silent about domestic violence, since it is perceived to reflect her own shame and failure. She is also expected to remain in an abusive relationship, since under these views family obligations must be prioritized over a woman's individual rights. Such extreme beliefs usually manifest themselves in the belief in the need to remain in abusive relationships for the sake of the children.

Other factors may also influence a woman's willingness to suffer silently through a violent relationship. Women victims of violence are often economically dependent on their abusive partners or their families.<sup>37</sup> They may be concerned for their children, perhaps living in fear of escalating the situation by reporting any violent incidents, or fearing that the violator may become even more violent after the police leave. The state has established no system to support victims or help them seek and receive adequate assistance. Women victims of violence are offered little hope of surviving outside of violent family structures, and they may feel helpless and hopeless, or even under the control of their partners, the oppressive environment and the state.

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<sup>35</sup> Domestic violence includes any use of physical force or psychological pressure, or any other action by a family member that may cause or contribute to the danger of physical or mental pain, fear or a sense of personal vulnerability or a violation of dignity, damage to property, or any serious threat of such damage to another family member. Family is defined as: husband and wife; married or common-law spouses; next of kin in direct line with no restriction; relatives related horizontally up to four lines; in-laws up to two lines; adopted parents and children; legal guardians and wards; and persons who share parental rights over their children. Domestic violence includes in particular: physical assault of any form; assault against physical integrity of a family member or member of household, irrespective of whether it caused physical injury or not; verbal assault in the form of threats of any form or content, insults, curses, derogatory names; all types of sexual harassment with no consent of the victim; threats, stalking, or telephone communication for the purpose of abuse or other forms of harassment; isolation; or restriction of movement and communication with third parties.

<sup>36</sup> According to: UNDP Human Development Report – Millennium Development Goals: Gender, Sarajevo, May 2003. - [www.undp.ba](http://www.undp.ba)

<sup>37</sup> For more on economic discrimination of women see 'Economic Discrimination of Women' in this report.

## **II Facts on violence against women**

Despite the fact that society continues to ignore domestic violence, reports produced by non-governmental organizations (NGO)<sup>38</sup> indicate a disturbing increase in the number of victims. Alarming, the state itself has not collected adequate data on domestic violence. There are no official state or entity-level statistics on the scope of the problem, nor has there been adequate professional research or contextual analysis on the nature of the problem.

State bodies that usually act as the first point of contact with victims of violence, including the police, social welfare centers and courts, do not collect data or report on their work in this area. And quite often there are no statistics because these bodies fail to respond to such cases altogether. To the extent that any official data on domestic violence is collected, it generally remains unprocessed and inaccessible.

Informal data on the numbers of women victims of violence are often collected in NGO records, including statistics on clients who seek NGO assistance or in data gathered through NGO research on domestic violence or violence against women in various regions of BiH.<sup>39</sup> But NGOs are missing data on the number of victims of violence at the level of the entities or the state, as they have not been able to conduct research over such a broad area.

Still, the information available indicates that domestic violence is generally characterized by mental, physical and sexual abuse,<sup>40</sup> and the public is unaware of the scope of such abuse. Public images of domestic violence are framed by stereotypes and misunderstandings. Perpetrators are believed to come from marginalized social groups, including the uneducated, the mentally incapacitated, or those who are addicted to alcohol or drugs. Such perceptions diverge from reality. Research has shown that an average perpetrator in BiH is either a husband or male partner, that he generally has a secondary education, and that he is between 31 and 50 years of age. Very few are alcoholics, drug abusers or mentally incapacitated.<sup>41</sup>

There have been some interesting reports on the sparks that may trigger acts of domestic violence. Such acts are often triggered by mundane domestic problems that may include a broken vacuum-cleaner, a poorly washed pan, lunch that was not served to the perpetrator's liking, a woman's statement that the relationship or marriage should end, requests that drunk friends should leave the family home, or extended and unannounced shopping or family visits.<sup>42</sup> Within this context, domestic violence is still the primary social mechanism of control over women. It produces, reproduces and reinforces the submission, discrimination and inequality of women in society.<sup>43</sup> The state has not responded adequately to this social problem.

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<sup>38</sup> Among other things, BiH NGOs provide different services for women victims of domestic violence: SOS telephones; legal counseling; psycho-social assistance and support; shelters and temporary accommodation; as well as education and research of violence against women; particularly domestic violence; and legislative advocacy.

<sup>39</sup> For example, the 2000 report of the BiH Helsinki Human Rights Committee indicates that domestic violence is present in 30 percent of BiH families, which is supported by other NGO research.

<sup>40</sup> *Nasilje nad ženama* [Violence against women] – research by three NGOs: *Žene ženama* (Sarajevo), *Udružene žene* (Banja Luka) and *Medica Infoteka* (Zenica), published by 'Informacioni centar za osobe sa onesposobljenjem – Lotos' (Tuzla, Banja Luka, Zenica, Sarajevo), June 2000.

<sup>41</sup> According to the draft document titled 'Violence Against Women in BiH' by: Assistant Professor Jasna Bakšić-Muftić, Ph.D., and Assistant Lecturer Džamna Duman, for the SEELINE project, [www.seeline-project.net](http://www.seeline-project.net)

<sup>42</sup> *Nasilje nad ženama* [Violence against women] – NGO research, June 2000.

<sup>43</sup> STAR Pilot Survey, Sarajevo 2003.

### **III. Legal Aspect**

The state has not provided effective legal, preventive or protective measures to allow women, as well as men, to enjoy their fundamental right to live without violence. Despite alarming data on the increased number of cases of domestic violence, and pressure from the NGO sector, a comprehensive law on protection from domestic violence has not yet been adopted at the level of the state or the entities.

The new BiH Criminal Law<sup>44</sup> does not contain provisions related to the protection of women and girls from domestic violence.<sup>45</sup> It should be noted, however, that the recently adopted BiH Gender Equality Law does provide a good basis for the adoption of such a national law on the prohibition of domestic violence.<sup>46</sup> And entity laws define domestic violence as a criminal offence, sanctioning it as such. However, examples taken from around the country indicate that these provisions have not delivered meaningful protection from domestic violence, nor have they been consistently enacted.

The Criminal Code of Republika Srpska defines domestic violence as a criminal offence.<sup>47</sup> If the incident causes no serious consequence, or if the act is not particularly cruel, the offence is sanctioned by a fine, or by no more than two years in prison.<sup>48</sup> There have been some efforts to regulate domestic violence as a criminal offence using the law. However, NGOs maintain that these efforts have had little impact on the larger struggle to reduce the level of domestic violence in the Republika Srpska. Actual examples are instructive. In many cases, courts levy very low fines or issue suspended sentences;<sup>49</sup> the number of actual prison sentences remains incidental. According to the data available from the Ministry of Justice of the RS, in 2002, only two cases ended with a prison sentence.<sup>50</sup> Data from the same Ministry also indicates a significant increase in domestic violence cases. In comparison with 2001, there has been a 150 percent increase in such cases. NGOs are concerned with the practice of long investigations or trials in these cases.<sup>51</sup> Recognizing that by their very nature, acts of domestic violence require urgent and effective action by competent state bodies, the effectiveness of the legal protection the state offers to victims of domestic violence is immediately called into question.

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<sup>44</sup> Criminal Law of BiH, Office of the High Representative for BiH, available on-line: [www.ohr.int](http://www.ohr.int)

<sup>45</sup> Women are the most frequent victims of domestic violence. Data from several parts of BiH illustrate this: In RS, according to the Ministry of the Interior in the area covered by the Banja Luka Police Center, in the first nine months of 2002, there were 51 reported cases of domestic violence. Victims in these cases were mainly women (41), and children (10). Data from the Federation of BiH indicates the same situation. Thus, according to the Ministry of Interior, in the territory covered by the Mostar Police Center, there were a total of 147 registered cases of domestic violence, of which more than two thirds were different forms of violence against women (December 2002).

<sup>46</sup> Gender based violence is defined in Article 4 of the Law. All of Section XI is devoted to prohibition of violence.

Violence is prohibited irrespective of its form, and irrespective of whether it was committed in private or public life.

Also, the state is obliged to take measures aimed at eliminating and preventing all forms of gender based violence. All state and entity level laws, as well as other relevant regulations are to be harmonized with this law in no longer than six months.

<sup>47</sup> Criminal Code of Republika Srpska, Official Gazette of RS, No. 22, Banja Luka 2002, Article 198.

<sup>48</sup> NB: The subsequent paragraphs of this Article provide that a more serious qualification of this offence (serious bodily harm, death or a particularly cruel method) implies a stricter sanction.

<sup>49</sup> For example, in 2001, the Basic Court in Banja Luka received seven charges for criminal offences of domestic violence, of which three were dismissed and the remaining are either still pending or ended in very mild, mainly suspended sentences. In comparison, in the first nine months of 2002, the same court received eight charges, of which five are still under investigation, the case proceeded in just two, and in one case the sentence was compulsory psychiatric treatment in a closed-type institution (Natalija Petric: 'Domestic Violence' – presentation held at the 1<sup>st</sup> Conference of the BiH Women's Initiative Foundation, Sarajevo, December 8-9, 2002)

<sup>50</sup> According to 'Response of the RS Ministry of Justice to the Doboj Office of the RS Ombudsmen', court cases took on average five months, up to 1.5 years in one case in 2001 (Basic Court in Derventa). The same document gives an overview of fines pronounced, which varied from 50 KM (\$US 25) to 1000 KM (\$US 500), and prison sentences were mainly suspended.

<sup>51</sup> Ibid.

The legal situation in the Federation of BiH (FBiH) is similar. Until recently, the law sanctioned only those acts of violent behaviour inflicting light or serious physical injury on a spouse or partner, or on the parent of a child with whom the perpetrator did not share a home.<sup>52</sup> The amended Criminal Law of FBiH recently came into force. In addition to these categories, the newly amended law also introduced a specific offence of domestic violence, which includes a sentence of no more than one year for violence committed against a family member,<sup>53</sup> or a fine or sentence of no more than three years if the offence was committed against a family member “with whom the perpetrator lives in a shared household.” And if the offence involved the use of firearms, dangerous weapons or other devices suitable for inflicting serious physical injury or other injury to health, the law establishes a sentence ranging from three months to five years.<sup>54</sup>

NGOs are pleased that domestic violence is finally being treated as a criminal offence at the FBiH level, and that the definition of violence includes those actions “threatening the mental health of a family member.” This is particularly relevant in view of the generally accepted perception of domestic violence as a purely physical act, while neglecting the mental and other related manifestations of domestic violence. Although this new FBiH Criminal Law provides extensive protection, NGOs are concerned with the future qualification of offences under the law. For example, it is evident that in many cases of domestic violence, prosecutors will generally opt for a qualification pursuant to Article 222, which relates only to domestic violence, ignoring provisions for light or serious bodily harm that provide for harsher sanctions. This means that a perpetrator who inflicts light injury could now receive a very mild judgement.

If an offence is prosecuted successfully under Article 173, paragraph 2 (as one involving light bodily harm), a prison sentence of up to one year is called for under the law. If the same offence is prosecuted instead under Article 222, paragraphs 1 and 2 (as domestic violence), the law provides either for a fine or a sentence of one to three years, depending on whether the offence was committed against a family member with whom the perpetrator does, or does not, share a home. In view of the case law in the RS, where fines have been the preferred judicial sanction, NGOs are concerned that under the new FBiH Criminal Law, fines will also become the common sanction. Unfortunately, it seems that the introduction of a section on domestic violence into the Criminal Law of FBiH may make it easier on perpetrators, who may now be fined instead of facing imprisonment for inflicting light injury. This concern is even more significant in view of the fact that light injuries (slapping, light concussions and other similar injuries that cannot be defined as serious under the law) are, in fact, the most common injuries suffered in domestic violence cases. Practice has shown that there are few – though some – cases involving such serious injury.

The recent BiH Gender Equality Law also provides an extensive definition of gender based violence<sup>55</sup> and provides equal treatment for violence committed in private and public spheres of life. NGOs note this in particular, given the common opinion that domestic violence should be treated as a private matter, immune from outside interference by anyone – especially the state.

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<sup>52</sup> Criminal Law of the Federation of BiH, Official Gazette of FBiH No 36, Art. 172, para 2, and Art. 173, para. 2

<sup>53</sup> Criminal Law of the Federation of BiH, Official Gazette of FBiH No 36, of 27 July 2003.

<sup>54</sup> Id., Art. 222, paras 3, 4, 5, and 6.

<sup>55</sup> BiH Gender Equality Law, Official Gazette of BiH, No. 16, Art. 4.

The BiH Gender Equity Law defines gender-based violence as a criminal offence with a prison sentence of six months to five years.<sup>56</sup> And it is particularly important that this offence is prosecuted *ex officio*. This is indeed a useful new approach. Until now, *ex officio* prosecutions of domestic violence were only possible in cases involving serious bodily harm. Cases involving light injuries were subject instead to private charges, and very few such cases ever found their way to court. This was usually because the victim, as a rule, was often forced by her financial dependence and the lack of available domestic violence shelters to stay and live with the offender. This change in the law represents a positive development in view of past practice. However, assuming there could now be an increase in the number of prosecutions, the state must now make additional commitments to the victims of domestic violence. At the moment, there are not enough shelters for victims of domestic violence (only two in BiH), and no legal possibility of removing perpetrators from a family. This is significant, as NGO research indicates that 43 percent of all BiH women are exposed to psychological violence, 33 percent have been exposed to physical violence, and 24 percent to sexual violence.<sup>57</sup>

It appears, then, through a superficial analysis, that BiH has taken some steps to decrease and prosecute domestic violence. A detailed analysis shows that these steps have been largely cosmetic, and that the state has not demonstrated its commitment to a more effective, long-term solution to the growing crisis of domestic violence. Indeed, this conclusion is supported by ongoing confusion over the jurisdiction of courts to act on the basis of the BiH Gender Equality Law.

The devastating field data on domestic violence demands a much more serious response. All aspects of domestic violence must be considered if perpetrators are to be sanctioned appropriately, if perpetrators are to be removed from their victims and if protective orders are to be ordered and enforced. Another immediate concern is that the laws in the two entities do not provide for emergency protection measures, nor do they provide any interim measures such as restraining orders or removal orders that are common in other legal systems. The state must provide shelter when necessary. And the introduction of fines for domestic violence, while permitting different sanctions for almost identical cases of infliction of physical injury, may in fact reflect a lack of state interest in confronting the problem.

For quite some time, NGOs have been calling for the adoption of a uniform BiH Law on the Prohibition of Domestic Violence, with all of the above mentioned protection categories, as a more comprehensive approach to domestic violence. Additionally, NGOs emphasize that public advocacy campaigns should be launched to raise public awareness over the impact and consequences of domestic violence on society as a whole. Training must be provided to judges in adjudicating and delivering adequate sanctions in domestic violence cases. All of these steps would provide an enormous contribution to current efforts to decrease domestic violence.

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<sup>56</sup> Id., Art. 27.

<sup>57</sup> *Nasilje nad ženama* [Violence against women] – NGO research, June 2000.

#### **IV. Preventive Measures**

In both levels of government there is a gap between the reported number of cases of domestic violence and the number of cases that actually reach the courts. The reasons for this are explained largely by tradition and the patriarchal values that have been explored in earlier sections. However, research also indicates that responses by the police and other state bodies to domestic violence cases are often inadequate, even when the lives of victims are in immediate danger.

There is some interesting research on police action in cases of domestic violence.<sup>58</sup> During the period of one study, out of a total of 94 reported cases of domestic violence, the police filed criminal charges in just 21 cases. At the same time, they filed misdemeanor charges in 15 cases, thereby triggering more lenient treatment and lighter sanctions. Such action was unjustified, as the analyzed cases could all be classified as criminal offences under the Criminal Law of the RS. Thus, the police alone determined the existence of a criminal offence, along with the appropriate level of criminal liability, an analysis that should rest within the exclusive domain of a court. In many other cases it has been clear that the police often simply warn an offender,<sup>59</sup> a practice that is also unacceptable since the judiciary should determine the level or appropriateness of a sanction.

NGOs have often intervened in cases raising potentially unacceptable or even unlawful police action. The police, however, generally maintain that they are vested with significant flexibility to decide whether to file criminal charges in domestic violence cases, as “the fact that the act was reported and that there is a perpetrator does not automatically mean that there is a criminal offence.”<sup>60</sup>

NGOs have observed that a very high number of clients do not contact the police or any other state body for help in addressing abusive situations. As a result, many cases of domestic violence never make it into the legal system in any way. According to research, approximately 60 percent of women victims of violence have never sought any outside assistance.<sup>61</sup>

When they seek outside assistance, the victims of domestic violence also describe inappropriate reactions by the police<sup>62</sup> and by officials within other public services.<sup>63</sup> As such, government officials at all levels may deepen the victim’s trauma, while acting as obstacles to effective solutions to the problem of violence against women.

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<sup>58</sup> Special Report on the Presence of Domestic Violence in the Municipalities of Teslic, Doboj, Petrovo, Derventa, Srpski Brod, Modrica, Šamac, Pelagicevo, Vukosavlje, and Srpsko Orašje, RS Ombudsman, Doboj Office, No. 909-1/02, Doboj, December 2002.

<sup>59</sup> Ibid.

<sup>60</sup> An example of police response was taken from an official response of the RS Ministry of the Interior, Police Center Crime Force, Banja Luka, at the request for more effective police interventions in cases of domestic violence, sent by *Udružene žene* Banja Luka. Case No. 10-02/4.1-230-776/02, Banja Luka, May 27, 2002.

<sup>61</sup> *Ne-živjeti sa nasiljem* [No to living with violence]- Medica Infoteka, May 1999.

<sup>62</sup> *Nasilje nad ženama* [Violence against women] – NGO research, June 2000- ‘They asked me why I had the second child with such a (violent) husband...’ or ‘I went to the police when I found a grenade under my husband’s bed and they told me that the procedure was very long and that I better return it to where I found it. They wrote nothing...’ ‘I called them when I left him because he was threatening me. They never came, they never protected me, but they kept calling me on the phone and asking me out for coffee...’ ‘They did nothing, the police commander even insulted me and said that it was my fault because I provoked my husband...’

<sup>63</sup> Ibid. – From the explanation why women are displeased with the work of the social welfare centers: ‘I got what I wanted but I felt despised and humiliated.’ ‘I had a feeling that they believed nothing I said.’ ‘They sent me home to settle our differences.’ ‘He threatened to kill me in front of the social worker, but she did not react at all.’ Etc.

In BiH, there is no government-organized public awareness program. Again, this void is filled by NGOs. Over the past five years, NGOs have conducted public information campaigns on the existence and the scope of the problem within society,<sup>64</sup> while also developing training programs for civil servants. However, these programs are insufficient and they do not cover the entire territory of the state or the entities. And since these NGOs are financed by foreign donations, there is also a very justified fear for their sustainability.

The state has failed to fulfill its commitment to undertake preventive measures, which should include, *inter alia*, public information and education programs to raise awareness and change traditional views of the role and status of women. The state has completely ignored the importance of providing training for courts, prosecutors, the police, social welfare centers and other state institutions to sensitize them to the general problem of violence against women and domestic violence in particular. By failing to provide adequate assistance or support services to victims of violence, and by failing to secure effective human rights protections for all victims of domestic violence, the state has exacerbated the position of many victims of violence.

## **V. Protective Measures**

NGOs also point to the lack of social services to victims of domestic violence, including accommodation, counseling and rehabilitation. Unfortunately, no shelter has been fully organized, financed or supported by the state. In cases of serious violence threatening the life and health of women and children, perpetrators often end up evicting women and children from the home, and those women and children often find themselves on the street, with no safe shelter, either long-term or short-term.

NGOs are trying to provide their own services short-term to victims of domestic violence. However, in the entire territory of BiH, there is only one shelter for victims of domestic violence, again provided by an NGO.<sup>65</sup> Several other NGOs<sup>66</sup> provide shelter for women and children who are victims of domestic violence, though unfortunately the shelters are of limited capacity and only offer temporary residence. They are insufficient to meet current needs.

There is a similar problem with other services for women victims of violence, such as “SOS” telephone hot-lines, legal aid and psychological therapy. Existing services in these areas are provided by NGOs and funded by international donors, but they are insufficient given growing needs. Here again the state demonstrates no interest in assuming responsibility for accommodation and care of victims of violence, nor any interest in assuming the financing of services necessary for effective action against domestic violence.

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<sup>64</sup> ‘16 days of activism against violence against women’, radio and TV shows, poster campaigns, round tables, lobbying to change legislation, press conferences.

<sup>65</sup> “ADL Barcelona”, Sarajevo, “Buducnost” Modrica, “Žena BiH” Mostar and several other NGOs.

<sup>66</sup> “Medica” Zenica, “Udružena žena” Banja Luka and some other NGOs.

## **TRAFFICKING IN WOMEN**

### ***I. Situation in BiH***

During the war in BiH, thousands of women and girls were exposed to rape and other forms of sexual violence. The violence did not stop with the end of the war in 1995. Slavery and other forms of sexual violence continued in the form of trafficking in women and girls for the purpose of forced prostitution, which has become a major problem. The first instances of trafficking in women and girls were observed toward the end of the war in BiH. Following the end of the armed conflict and the arrival of large numbers of foreign troops as part of the UN peace mission, the number of night clubs and foreign nationals “working” there grew suddenly. Most of the bars were opened in the vicinity of military bases, indicating that foreign troops, if not the most frequent visitors, were at least the best clients.<sup>67</sup>

Trafficking in persons has a very pronounced gender aspect. In almost all transition countries, including BiH, the feminization of poverty and discrimination of women in all segments of society represent the key reasons for the existence of a “vulnerable” female population. Women and girls in these environments are lured into chains of trafficking that are difficult to escape, and even if escape is possible, such violence inflicts grave and lasting harm to a victim’s physical and mental health. All victims of trafficking identified in BiH by local police, international police forces (IPTF until early 2003 and now the EUPM) or non-governmental organizations have been women. Those offenders who have been prosecuted for trafficking, pimping or enslaving women until now have all been men, although some victims have indicated that they had been recruited by women. Still, data shows that some of those female recruiters were usually themselves victims of trafficking.

### ***II. Causes of trafficking in persons in BiH***

Causes for the sudden boom of both domestic and international trafficking in women in Bosnia and Herzegovina are as follows:

- The deployment of foreign peace troops without prior gender-sensitization, which opened a profitable new “market” in BiH;
- The immunity of SFOR and IPTF members from criminal prosecution in BiH and the failure to prosecute or sanction them in their countries of origin;
- The pervasive discrimination against women in all segments of society, especially of women found in prostitution;
- The lack of appropriate laws and the existence of inappropriate penal provisions, along with the failure to harmonize inconsistent entity and state laws;
- The porous nature of the state border;
- The general lack of the rule of law, which creates greater possibilities for illegal business activity, including activities involving sexual violence against women, and in the absence of any significant likelihood that anyone would ever be adequately punished for such criminal activity;

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<sup>67</sup> Some local NGOs report that as many as 50 percent of the clients are foreigners, mainly SFOR soldiers. According to IPTF, the percentage is somewhat lower, around 30 percent. Still, 70 percent of the profits are estimated to be from foreigners, who pay higher prices for the ‘services’ and spend more money in bars than local clients.. *Trafficking in Human Beings in Southeastern Europe: Current Situation and Responses to Trafficking in Human Beings in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, The Federal Republic of Yugoslavia, The Former Yugoslav Republic of Macedonia, Moldova, Romania; Report by Barbara Limanowska, supported and published by UNICEF/UNOHCHR/OSCE-ODIHR, 2002; pp. 64, 65.*

- The strength of organized criminal networks and the lack of a clear strategy for combating organized crime;
- The widespread corruption in BiH; and
- The large number of displaced families, particularly women who are the primary economic providers for their families, within a very difficult post-war economy.

BiH is located on the key international Balkan route for trafficking in persons. Although it appeared as a consequence of the deployment of foreign military and police forces, trafficking in persons was quickly recognized as a very profitable business by local traffickers, who quickly established links with international crime circuits. According to information provided by the UN Mission in BiH (UNMIBH), as of October 2002, there were indications of more than 227 night clubs and bars involved in trafficking across Bosnia and Herzegovina. Data provided by non-governmental organizations (NGO's) indicate that there are some 2000 women and girls from the former Soviet Union and Eastern Europe in forced employment in BiH brothels. The International Organization for Migration (IOM), which organized temporary shelter and voluntary repatriation for 498 victims of trafficking from BiH over the period from August 1999 to October 2002, registered victims as young as 13 years of age.<sup>68</sup>

### ***III. Trafficking in Women from BiH and within BiH***

Even eight years after the war ended, the economic situation in BiH remains bleak. The consequences of the weak economy affect women disproportionately. The 2003 UNDP Human Development Report – Millennium Development Goals indicates that although women make up 50.4 percent of the total population, and 60 percent of the able-bodied working age population, their participation in the labor market stands at a mere 37 percent, lower than any other country in Southeast Europe. In such a situation, poverty affects women with disproportionate intensity, and gender is the primary indicator for one of the four high-risk groups that are most likely to fall below the poverty line.<sup>69</sup>

Young persons similarly lack employment choices or opportunities. The 2002 UNDP Human Development Report – Youth indicates that 62 percent of young people in the country would leave BiH and move to a developed country if given an opportunity.<sup>70</sup> Given the existence of trafficking networks, this then identifies a potentially high risk group.

Because of the difficult economic situation, the lack of employment opportunities affecting women in particular, the large number of displaced persons, the pronounced level of domestic violence in the post-war environment, and the level of general discrimination facing women in all spheres of life, Bosnia and Herzegovina has also become a country of origin for trafficking. Data indicates that women and girls in BiH have become victims of trafficking, often lured by false job offers and sold into slavery within BiH, but also in Greece, Turkey, Italy, Albania and Israel. NGO's have been identifying an increasing number of cases of domestic trafficking, which generally involve minors.<sup>71</sup>

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<sup>68</sup>“Hopes Betrayed – Trafficking in Women and Girls for the Purpose of Prostitution in Bosnia and Herzegovina”, Human Rights Watch Report, November 2002, Vol. 14, No.9 (D) (short summary in Bosnian), available on-line: [www.hrw.org](http://www.hrw.org)

<sup>69</sup> Other three categories are: rural population, displaced persons and educationally deprived persons. See: “World Bank, Poverty Assessment in BiH 2003, ii”.

<sup>70</sup> “Human Development Report BiH – Youth, p. 35. The survey showed that 39 percent of the women would migrate due to low standards of living, 21 percent due to lack of any perspective, 17 percent due to unemployment, and 14 percent for further education.

<sup>71</sup> J.N. is a fourteen year old girl who was taken from her home in a village in western Bosnia by deceit. She was incarcerated in a small town in Herzegovina and was forced to work as a prostitute from 4 p.m. to 4 a.m. When she asked to get in touch with her father, she was abused by the woman who had kidnapped her. She came to the La Strada shelter starved and exhausted and she stayed there for 4 months. She spent the first ten days in the shelter sleeping, waking only

To date, NGOs have led the response to internal trafficking in persons in BiH. These NGOs are raising alarm over the increasing number of domestic victims and the collapse of the system that is supposed to provide likely victims with necessary assistance, including social work centers. Although the assistance of the international community has been very important in responding to domestic trafficking, over the longer term, trafficking-related assistance and victim service delivery should be provided and owned by domestic authorities and the local NGO community. International organizations and agencies have an important role to play in supporting such domestic efforts, but they should not control all of the programs or collect all donor funds earmarked for direct services, as internationally-led programs remain a short-term investment. Instead, the state should cooperate with the NGO sector to develop programs of assistance for victims of trafficking, emphasizing the importance of a long-term plan for rooting out the causes of internal trafficking and providing adequate assistance to the victims. The international community should be invited to support a comprehensive program of action.

#### **IV. Legal Situation**

State and entity level legislation in Bosnia and Herzegovina contains provisions prohibiting trafficking in persons, although the remedies provided differ within the different jurisdictions.

Article 2, paragraph 1, of the 1995 Constitution of BiH creates an obligation of BiH and both its entities to “ensure the highest level of internationally recognized human rights and fundamental freedoms,” and Article 3, paragraph 3b, emphasizes that “general principles of international law shall be an integral part of laws of BiH and its Entities.” Further, Article 2, paragraphs 3b and 3c, of the BiH Constitution also recognizes that all persons in the territory of Bosnia and Herzegovina have “the right not to be subjected to torture or inhuman or degrading treatment and punishment” and “the right not to be held in slavery or servitude or to do forced labor.”<sup>72</sup>

In BiH, there is no single or separate law criminalizing trafficking in persons. Provisions prohibiting trafficking in persons are, instead, incorporated into the new Criminal Law of BiH. Chapter XVII of this Law, entitled *Crimes Against Humanity and Values Protected by International Law*, defines the following criminal offences: slavery and transport of persons in servitude (Article 185), trafficking in persons (Article 186), international recruitment for the purpose of prostitution (Article 187), unlawful deprivation of personal documents (Article 188) and smuggling of persons (Article 189). These criminal offences are prosecuted *ex officio*.<sup>73</sup> Trafficking in persons is defined pursuant to the UN Protocol on Suppression, Prevention and Punishment of Trafficking in Persons, Particularly Women and Children (the UN Protocol) which BiH ratified on March 27, 2002, along with the UN Convention Against Transnational Organized Crime.

Criminal Law of the FBiH does not define trafficking in persons as a separate criminal offence, but it does contain provisions related to the consequences of trafficking, namely: kidnapping (Article 180); duress (Article 185); unlawful detention (Article 179); forced sex (Article 206); and forced prostitution (Article 210).<sup>74</sup>

to eat. La Strada staff communicated with the Ministry for Human Rights, UNICEF, UN Human Rights Department and the Social Welfare Center of the canton the girl was from. None of the institutions were able to provide any concrete assistance to the girl. She was returned home, to a patriarchal community which will condemn and despise her, since it is perceived that she bears part of the blame for what others do to her.

<sup>72</sup> Constitution of BiH, Annex IV, Dayton Peace Agreement, December 14, 1995.

<sup>73</sup> Criminal Law of BiH was imposed by the Office of the High Representative for BiH in January 2003. Available online: [www.ohr.int](http://www.ohr.int)

<sup>74</sup> Criminal Law of the FBiH, Official Gazette of FBiH, No. 36, Sarajevo, 2003 (Bosnian version).

The current Criminal Code of the RS includes Chapter XIX, *Crimes Against Gender Integrity*, which defines trafficking in persons for the purpose of prostitution (Article 198). This criminal offence is prosecuted *ex officio*, and depending on the actual qualification of the offence, the possible sentence ranges from six months to 12 years in prison. The maximum sentence is for offences against persons younger than 21 years of age.<sup>75</sup> However, the definition of this criminal offence contravenes the definition contained in the BiH Criminal Law, and the definition contained in the UN Protocol.

Though not satisfactory, the Entity laws contain provisions that allow all perpetrators of criminal offences related to trafficking in persons to be prosecuted and sanctioned adequately. Unfortunately, criminal charges have been brought on prostitution-related grounds, usually leading to minimal sanctions. Moreover, the lack of harmonization between entity and state level legislation complicates the situation further, as it causes “problems of competence of different institutions and unclear mechanisms for bringing charges for trafficking in persons.”<sup>76</sup>

On the other hand, there have not yet been adequate prosecutions of officials whose acts, and indifference, may assist traffickers<sup>77</sup> and yield benefits for particularly corrupt functionaries. In a November 2002 report, Human Rights Watch stated that this kind of corruption was present in the local BiH police, stating that:

In return for protection, some police officers were taking money or enjoying free sexual services from traffickers and bar/brothel owners. As stated earlier, others supplied bar/brothel owners with information on raids, allowing them to hide all minors and women with no documents. Few police officers took part in trafficking in persons directly, as owners or staff of bars and brothels. Finally, some victims of trafficking in persons stated that officers in aliens departments of police stations were involved in forging documents, thus facilitating trafficking. Testimonies that Human Rights Watch obtained from UNMIBH and NGOs demonstrate that local police officers who were involved in criminal offences related to trafficking rarely face any disciplinary or criminal charges.<sup>78</sup>

There have been similar reports from a UN Special Rapporteur in a report submitted at the 59<sup>th</sup> session of the UN Commission on Human Rights in Geneva in April 2003.<sup>79</sup> The Rapporteur stated that the problem of corruption within the police was very serious and that “too often the Bosnian government ignores corruption among the police and the local authorities, and very rarely investigates or institutes disciplinary or criminal proceedings against civil servants for taking part in trafficking in persons.”

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<sup>75</sup> Criminal Code of RS, Official Gazette of RS, No 49, Banja Luka, 2003.

<sup>76</sup> Report from the round table: 'Prevention of Trafficking in Bosnia and Herzegovina – Possibilities of Collaboration between NGOs and Official Institutions', Banja Luka, April 17 and 18, 2003, organized by 'Udružene žene' NGO, Banja Luka.

<sup>77</sup> “Chief and deputy chief of police (in Bijeljina) receive money and girls when they want and for as long as they want. Head of uniformed police knows this and is involved himself. He decides on patrols – where they go and what they see. Thirteen girls, victims of trafficking in persons, identified 18 local police officers from photos, from two clubs only. This was in February 2001.” - IPTF internal affairs investigator in an interview to HRW, see HRW report, supra note 68, p.28. “The local police are among the top clients – this we proved in interviews (with victims of trafficking). There are close ties between bar owners and traffickers. Women have no one to address, and the police are their top clients. The local police do not pay, they look the other way instead. This is very serious. I do not know about a single case of a police officer convicted because of this.” - Celhia de Lavarene, former director of the former IPTF STOP team in an interview to HRW, supra 68.

“I came to the police station (after the raid). Bar owners and their staff stood in the hallway, talking to the police. I told the head of vice that women did not feel safe with bar owners and their staff socializing with the police in the hallway. The women had to go past them. There was no awareness and no safety. Women were totally unprotected.” Janet Biley, deputy commander of the former IPTF Banja Luka in an interview to HRW, supra 68, p. 29.

<sup>78</sup> Supra 68, pp. 26-27

<sup>79</sup> Report by Radhika Coomaraswamy, UN Special Rapporteur on Violence Against Women, No. E/CN.4/2003/75/Add.1, February 2003.

## **V. National Action Plan and Collaboration between the Authorities and the NGO Sector**

Unfortunately, although BiH adopted its National Action Plan Against Trafficking in Persons (NAP) in December 2001, which provides for comprehensive measures for prosecution of traffickers, protection of victims and preventive activities, including legislation, to date this plan has not been implemented in full.

The BiH Anti-Trafficking Strike Force was established with the assistance of the international community. It includes the State Border Services, Ministries of the Interior of the entities and the Brcko District, Financial Police and offices of the prosecutors. The primary task of the Strike Force is to investigate and prosecute organized criminal groups.

As for the legal framework, a definition of this offence has been introduced into the BiH Criminal Law,<sup>80</sup> but it's not fully in compliance with the UN Protocol. This is to be followed by harmonization of entity criminal laws. However, the laws still do not provide adequate protections for victims of trafficking. In particular, they fail to provide for effective witness protection, and they lack procedures for the confiscation of the property of traffickers, assets that could be used to provide victims with compensation, damages or the social services they require.

There is no comprehensive, state provided legal aid system that supports victims of trafficking. NGOs provide some legal aid and information for the victims of trafficking, as the state legal aid system is only applied in criminal cases for *ex officio* defense counsel. There is no corresponding legal aid system for civil cases. In this way, ironically, traffickers are provided with legal aid in criminal proceedings, whereas women victims of trafficking receive no such legal aid for claims they may have in relation to these same traffickers, such as compensation for damages, lost earnings, or acts of violence. The UN Special Rapporteur has warned that victims "are not encouraged to file civil suits against traffickers."<sup>81</sup> Although such civil suits may be difficult to bring, they are possible.

Furthermore, BiH has failed to undertake appropriate measures aimed at preventing trafficking or protecting victims, although there are measures within the National Action Plan, such as plans for accommodation and medical services, that would respond to some of these basic obligations. For now it is only IOM and some NGOs that comprehensively provide all needed services to trafficking victims through shelters and support programs. While the NAP itself provides for the construction of shelters, where victims would find shelter and medical care, this aspect of the NAP has not been implemented. It must be recognized, however, that the state developed a project for shelters, but has not succeed in securing funding for the initiative.

In 2000, local NGOs established the RING network for combating trafficking in persons.<sup>82</sup> The network is active in providing shelter, public advocacy, legal aid, medical assistance, prevention, and education campaigns to address trafficking. The network includes 15 organizations, three of which are implementing support and temporary shelter programs for women victims of trafficking (Lara Bijeljina, La Strada Mostar and Forum Solidarnosti Tuzla).

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<sup>80</sup> Criminal Law of BiH was imposed by the High Representative in BiH, Paddy Ashdown, by his decision of January 2003.

<sup>81</sup> Supra 79.

<sup>82</sup> Members of the RING network are the following organizations: La Strada Mostar, Lara Bijeljina, Centar za žene Žar Sarajevo, Buducnost Modrica, Udružene Žene Banja Luka, Žena BiH Mostar, Biro za ljudska prava Tuzla, Medica/Infoteka Zenica, Klub mladih Sunce Zvornik, Forum Solidarnosti Tuzla, Anima Goražde, Žene sa Une BiHac, Most Višegrad, Oaza Trebinje, Žene Ženama Sarajevo.

The establishment of a single State Border Service along almost the entire border of BiH and the training of its officers has significantly improved border crossing controls. All major cities and towns also have STOP-teams as part of the local police effort to prevent trafficking in persons. In collaboration with UNMIBH, these teams conducted frequent raids of night clubs. However, instead of building cases for the prosecution of traffickers or providing opportunities for delivering assistance to the victims of trafficking, in many cases the victims discovered in these raids have, instead, been prosecuted, mainly on the grounds of prostitution, which is a misdemeanor in both entities of BiH.<sup>83</sup> These victims have been re-victimized through the raids.

In collaboration with the international community and NGOs, the Ministry for Human Rights and Refugees of Bosnia and Herzegovina issued a Provisional Instruction on Treatment of Women Victims of Trafficking.<sup>84</sup> This Instruction provides for rules on the treatment of victims of trafficking to ensure full protection of their rights, and treatment that respects their basic dignity. Implementation of this Instruction has been frustrated by unresolved issues of competence among different government bodies in BiH. Moreover, the Instruction only refers to victims of international trafficking, and not to victims of domestic trafficking.

Representatives of eight NGOs from BiH<sup>85</sup> signed a Protocol of Understanding on the Treatment of Women Victims of Trafficking with the Ministry for Human Rights and Refugees of BiH.<sup>86</sup> This Protocol established a partnership to assist victims, including education and public awareness programs to address the problem of trafficking in persons in BiH.

Although the NPA provides that “The Ministry for Human Rights and Refugees and the Ministry for European Integration shall initiate projects aimed at prevention, education and public awareness” related to trafficking in persons, no such projects have been initiated. There are, however, many important projects that could rapidly assist in preventing trafficking. In particular, public awareness programs should be developed to highlight the crime, with care taken to ensure that such campaigns do not intimidate people, including women and those who may wish to migrate, but instead provide information giving all residents of BiH information to make free and well informed life choices, thereby reducing the risks of becoming victims of trafficking. These projects could also include policies, programs and measures to tackle the causes of trafficking, such as poverty, underdevelopment, discrimination, corruption, etc.

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<sup>83</sup> The ‘Macro’ operation conducted in March 2001 by Ministries of the Interior of FBiH and RS, supervised by UNMIBH, found 177 foreign nationals, and only 13 were handed over to IOM for repatriation. Of them, just four had personal documents. The result of this operation was that 34 foreign nationals and 8 Bosnian nationals were prosecuted for prostitution (14 women were sentenced to 15 days in prison and depuration from the canton, 19 were fined with 400 KM and sentenced to deportation). According to local sources, most of the women, including the ones who were tried, returned to the places where they had been found. See Barbara Limanowska, *supra*, p. 66.

<sup>84</sup> Provisional Instruction for Treatment of Victims of Trafficking, Ministry for Human Rights and Refugees of BiH, No. 01-6341/02, Sarajevo, September 6, 2002.

<sup>85</sup> NGOs that signed the Protocol are: WDC La Strada BiH Mostar, Lara Bijeljina, Žene BiH Mostar, Buducnost Modrica, MFS EMAUS Tuzla, Udružene Žene Banja Luka, Žene sa Une BiHac and Unija ŽAR Sarajevo.

<sup>86</sup> Protocol of Understanding with NGOs on the Application of the Provisional Instruction for Treatment of Victims of Trafficking, September 9, 2002.

**WOMEN WITH DISABILITIES**  
**(Articles 1, 2, 5, 10, 11 and 12 of the CEDAW)**

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***Lotosice (Tuzla)***

***Centar za samopouzdanje (Sarajevo)***

***Ufruženje distroficara (Doboj)***

***Savez paraplegicara i oboljelih od dječije paralize (Sarajevo)***

## ***I. Introduction***

Persons with disabilities, irrespective of gender, face numerous obstacles in realizing their human rights and in dealing with widespread discrimination in all spheres of life in BiH.

BiH is, unfortunately, still dominated by old prejudices that view a person with a disability as “a patient” who needs help and who cannot become an active member of society. Persons with disabilities usually spend their time locked up at home or in hospitals. They are thus isolated from the world, protected, as it were, in their own ghettos. But society is also protected from them, and this segregation allows the community and the state to avoid its responsibility to provide adequate care and to protect the human rights of all persons with disabilities. Today, the human rights of persons with disabilities are not discussed. And to the extent that such issues are considered at all, discrimination against persons with disabilities is often regarded as a problem for individual families – certainly not a matter for the state.

## ***II. Situation of Women with Disabilities***

The consequences of such discrimination are particularly alarming in relation to women. Although women with disabilities are entitled, both legally and formally, to all of the rights and protections guaranteed by law to all other citizens of BiH, the actual situation in the country raises serious concerns. Unfortunately women with disabilities are currently the most vulnerable, the most neglected and the most deprived segment of the population.

In BiH, women with disabilities have been neglected for decades. There is no available data on the total number of persons with disabilities, and there is, accordingly, no data on the specific number of women with disabilities. No gender-based research or analysis has been conducted in this area. But while the data is missing, it is clear that the numbers here are not insignificant. This is particularly true given the injuries attributed to the recent war in BiH, where women suffered enormously as civilian victims of violence.

Many girls and women with disabilities are often dependent on others, usually family members. This may lead to living arrangements that expose them to different forms of violence, including psychological, verbal and sexual violence.

### **III. Violence against Women with Disabilities**

The already difficult position of women with disabilities in BiH is further complicated by traditional and conservative views on the position of women in society and the family in general. A woman is expected to be a mother first and foremost, giving birth to and providing for her children, maintaining a home, and working to support the family. If a woman is, for whatever reason, unable to fulfill these duties, she is often considered incomplete. Prejudices against her arise if she is born with or develops any form of disability, even if it is from a car accident or other injury. It is also alarming that as a consequence of her perceived inability to fulfill her social role as mother or housewife, women are often exposed to psychological or physical abuse. Unfortunately, specific data on such cases is difficult to obtain.

At the same time, conservative social views of a woman's role in society often produce feelings of guilty on the part of those women who are disabled. They may be reluctant to discuss their disability, as they themselves often believe that they are not deserving of even basic rights, and that they must suffer their fate in silence. In many cases, these women are unable to generate income and remain financially dependent on their husbands or other family members. And if a woman's domestic living environment becomes difficult, the lack of safe houses or shelters and the general absence of information about social assistance facilities in such situations may produce a sense of hopelessness among women with disabilities.<sup>87</sup>

Recently, there has been some opening and willingness within society to discuss all forms of violence against women. Unfortunately, there has not been any discussion of the problem of abuse and violence against women with disabilities. And while there are various associations of persons living with disabilities, these associations have not had the services of dedicated persons who are capable of providing psychological support for disabled women victims of domestic violence. At the same time, disabled women are not themselves generally involved in any of the projects organized by other NGOs for the purpose of protecting and promoting women's rights. And there is no dedicated section within any state institution, not even within the health sector, to address violence against disabled women. These women simply have no one to turn to for help, and it appears at times that their right to live in dignity has not yet taken root in BiH. The sad reality is that women with disabilities face double discrimination as both disabled persons and women, and that the needs of disabled women who are victims of violence have been neglected at all levels.

When discussing the rights of women with disabilities, reference is usually made to physical disability, while disregarding mental disabilities, including mental incapacity or retardation. Such attitudes make this group of disabled women even more vulnerable and susceptible to all forms of violence. As a rule, these disabled women live with their families and are fully dependent on them for care and support.<sup>88</sup>

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<sup>87</sup> A woman who developed a disability after childbirth spoke about her life with a violent husband. The deterioration happened after she had received her diagnosis. He always blamed his wife for all failures and bad decisions. Over time, he started drinking and abusing her psychologically and physically, to such an extent that she could only speak when spoken to. She suffered all this on behalf of the children and because of her economic dependence on him. When she sought assistance from the family, she was told to endure and feel lucky to have someone to take care of her, for if she picked up some courage to leave her husband, her family refused all contacts with her as 'she caused them great shame'.

<sup>88</sup> All the newspapers recently reported on a 30-year-old girl with a mental illness. For years she lived in a locked room with walled-up windows, with no heating and with no electricity. This girl did not leave that room and the lack of movement caused muscular atrophy on her legs, so that she can barely stand. When asked about the living conditions, the mother said that it was for the girl's personal safety.

Women with any form of mental incapacity or retardation may be exposed to sexual abuse, even within their own family. Unfortunately the public does not generally acknowledge cases involving actual or attempted rape against disabled women, and there are no records tracking the number of such cases. That does not mean that there is no problem in this area. To the extent that the issue of sexual abuse against persons with disabilities goes unrecognized, it may be because families usually do not report those cases to the police out of a sense of personal shame. And because of their disability, some of these women may themselves be unable to understand or report the violence they suffer. When such cases are reported, the official response is often limited by the lack of competent staff trained to respond to the needs of the disabled. There really is no public awareness of the specific situation of disabled women victims of rape or any other form of sexual violence, and there are no training or sensitization programs for police officers or health care professionals.

#### ***IV. Health Care for Women with Disabilities***

Women with disabilities face great difficulties in accessing health institutions as well as information related to their health. This is primarily related to the physical inaccessibility of health care facilities, including hospitals, public health care centers, and out-patient facilities. The facilities themselves also lack adequate equipment, especially for gynecological care. At the same time, it also should be noted that disabled women face the same health and reproductive health problems as all other women, albeit with some specific features. The failure of the medical profession to address the reproductive health of women with disabilities can ultimately lead to infertility among many disabled women.

Due to limited or irregular examinations, the early detection of common forms of cancer in women with disabilities is not generally possible, which means that breast cancer is rarely discovered while it is still in an operable stage, when the prognosis can be excellent. All mammograms in the country are located in rooms that are inaccessible to the disabled. Unfortunately, there are no records that may indicate the cancer rate for women with disabilities.

It is particularly alarming that disabled women must also confront the prejudices of doctors and other care givers. Doctors often demonstrate a level of fear and discomfort when caring for the disabled, especially in smaller communities.

Similarly, many people, including health care professionals, do not perceive disabled women as sexually active women who may decide to have children. There are no pregnancy or reproductive health counseling services for women with disabilities in BiH today. Women mainly rely on the experiences of other women who have had children, or they use information obtained from abroad. Likewise, there are no special services to provide assistance to mothers with disabilities. Mothers with disabilities are often forced to rely on their families, or employ someone whose engagement they must pay for themselves, to care for their children. The position of disabled mothers in rural communities is even worse.

There are no strategies or activities by state bodies or health care institutions that take into account the specific health needs of young girls and women with disabilities. Unfortunately, because of this, women do not receive even the basic primary health care services that are necessary for all children and young women.

## **V. *Economic Situation of Women with Disabilities***

Disabled women often have very little if any formal education, and this may be reflected in their economic weakness or dependence on others. This is mainly explained by the near total inaccessibility of most schools, leaving children with physical disabilities unable to enter or attend school.<sup>89</sup> However, even here the situation of girls with disabilities is more difficult.

The traditional and conservative attitudes in BiH contribute, particularly in rural areas, to the likelihood that families with several children may decide to keep the girls at home to help with housework while their brothers attend school. As for girls with any physical disability, in comparison with boys with the same disability, a family will, as a rule, support the boy and not the girl.

The situation is almost identical in employment. Even when women with disabilities are able to enter the formal employment sector, they often suffer double discrimination, as is common in other areas of public life. This explains why women with disabilities remain within the poorest group in society.

This means that disabled women must generally depend on someone else's support and assistance, often from their family or husband. And that explains why women with disabilities may tolerate violent living situations in order to secure a minimum level of survival. Unfortunately in this area sufficient data is also missing, which may confirm the negligent position the government has taken in response to disability issues.

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<sup>89</sup>There is a well-known example of a girl whose father was killed in the war and she herself was wounded and wheelchair-bound as a consequence. At the same time, her intellect, speech, hearing and sight were intact. When she completed her primary education, the only choice was the secondary school for blind and children with impaired vision. Why? Because the girl lived in a part of town where there was no school with adequate access, and this school had wheelchair access and transportation to and from home. This case is one of the good ones, since the girl at least completed her primary education, whereas many children who were wounded during the war, had their education suspended at the level where they were before they were wounded. In order to continue their education, the problem should be resolved by their children, and they are so great that many of them give up the idea of further education.



## **HEALTH AND REPRODUCTIVE RIGHTS**

**(Article 12 of the CEDAW and  
General Recommendation No. 24)**

***Author: Global Rights***

## **I. Introduction**

Reproductive health and family planning services are covered by a primary and secondary health care system. Primary health care covers also access to contraception; pre-natal care; and services to prevent or treat sexually transmitted diseases. Secondary health care covers more serious conditions, including care in special needs pregnancies, communicable diseases such as HIV/AIDS, treatment for malignant diseases such as cancer, and other malignant diseases.

As in other sectors, the war has had a severe impact on the capacity of the state medical system to respond to the needs of the population. The system is especially strained at the level of primary service delivery,<sup>90</sup> and this deterioration is having a direct impact on the human rights of women by limiting their access to health care. A report commissioned by the International Labor Organization (ILO) found a noticeable decline in the health of women, stemming from generally poor living conditions during the war, the disruption in provision of regular health care services and an increase in nutritional deficiencies.<sup>91</sup> “Among pregnant women, overall poor health reportedly has been related to increases in maternal mortality and a 25-30 percent rate of infant mortality. Women’s poor health also has been cited as the cause of permanent disabilities and premature births. Women in remote areas are said to be showing signs of premature aging, the result of stress, inadequate health care and poor nutrition.”<sup>92</sup> These same estimates suggest that approximately 29 percent of the population has experienced some gynecological complication.<sup>93</sup>

Through surveys, Prism Research has found that 30 percent of women depend on their husband’s employer to pay for their family’s social and health benefits. Slightly fewer women have these benefits paid by their own employer. Health insurance for the unemployed is paid by the Employment Bureau, provided the unemployed person registers with the Bureau. Approximately six percent of respondents pay their own social and health benefits. That leaves an estimated 17 percent of all women who are not covered by any form of social or health insurance. The figure rises to 25 percent for specific demographic groups, including women over 50 years of age, those with only a primary level of education, and rural women.<sup>94</sup>

Domestic violence represents another significant health issue for women. An International Rescue Committee (IRC) Gorazde study reported that domestic violence is a “serious public health problem ... that may be very difficult to combat due to the taboo surrounding it and the level of acceptance (or perhaps resignation to it) among ... women.”<sup>95</sup>

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<sup>90</sup> A report by the European Commission and World Bank notes that 35-50 percent of the health care infrastructure was damaged or destroyed, and there has been a 40-50 percent decrease in the number of active health personnel. *Bosnia and Herzegovina, The Priority Reconstruction Program: Achievements and 1998 Needs* (April 1998), p. 33.

<sup>91</sup> *Post-conflict Bosnia and Herzegovina: Integrating women’s special situation and gender perspective in skills training and employment promotion programmes*, Martha Walsh (International Labour Organisation, June 1997), p. 19-20.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> *Women in the BiH Economy: Current Status and Future Strategies, The Socio-Economic Status of Women in BiH – Final Report of Survey Findings*, Prism Research (December 1998), p. 17.

<sup>95</sup> *Reproductive Health Assessment and Health Education Project Gorazde, Bosnia and Herzegovina*, July-December 1997, International Rescue Committee, Gorazde, Dana Tilson, Reproductive Health Educator and Dr Carmen Maroto Camino, Health Coordinator, (survey of 249 women aged 15-50 from Gorazde town and 13 other towns and villages in Gorazde Canton), p. 5.

## **II Legislation**

Existing laws in the two entities do not reflect a particularly gender sensitive approach to health care. Current health legislation is based on the principles of universality, continuity, and accessibility to primary health care, with specialized access to specialist-consultative and hospital treatment.<sup>96</sup> Gender equality is not recognized as one of these core principles. Nonetheless, the country's international obligations and constitutional framework oblige the state and its administrative units to eliminate all forms of discrimination against women that may limit their access to health care services throughout their lifecycle, particularly in the areas of family planning, pregnancy and post-natal care.

Existing laws extend health protection to all citizens by guaranteeing universal coverage for primary health care. In practice, however, coverage is only guaranteed to those who are legally employed, are registered with competent authorities as official employees, and have employers who are actually contributing to their health insurance. This creates additional obstacles for women whose employers fail to register them.

Prior to the war, primary health care was available free of charge. Since the war, the health care system has been reorganized in both entities, so that services are provided and payments are established at the level of cantons (in the FBiH) and municipalities (in the RS). Costs and services now vary depending on the resources or priorities of a particular locality. And women now are required to pay in part for diagnostic and preventive exams that are unrelated to pregnancy, including for Pap tests and colposcopies (cervical cancer screening) that are essential for the early detection of cervical and uterine cancer.<sup>97</sup>

## **III. Abortion and preventive health care**

A woman in BiH is free to decide to have an abortion. Abortion is legal in both entities through the Law on Abortion of 1963 and 1973, and it may be obtained in primary health care centers until the tenth week of pregnancy. After ten weeks, abortions may be performed if there is a legitimate threat to the life or health of the mother or fetus, but special authorization by an expert commission is required. State clinics have now started to charge for abortions, and these charges are having a serious impact on women. This is particularly true in smaller towns and rural areas, where contraception is not widely promoted and abortion remains a primary means of birth control.<sup>98</sup>

Before the war, the leading cause of death for women was from breast cancer.<sup>99</sup> Cervical cancer is now a serious problem, as evident in a recent study of displaced women. Prior to the war, Pap tests were conducted regularly. This has changed dramatically, especially in smaller cities, where health centers are not equipped with adequate personnel or equipment to perform such services. According to the IRC Gorazde, the cantonal hospital there does not possess equipment for Pap tests or colposcopies, nor do they have staff to conduct those tests. Women patients in Gorazde provide tissue samples, which are then sent to Sarajevo for analysis. But this is done only for those patients with a risk of malignancy, and then only at their personal expense.<sup>100</sup>

Special services for treating women in menopause are virtually nonexistent in BiH. And the poor post-war level of preventive health care, combined with the general lack of attention to the unique health needs of women, place older women at a significantly elevated risk for cases of breast or cervical cancer that will not be detected in their earlier stages.<sup>101</sup>

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<sup>96</sup> Article 10 of the FBiH Health Care Law

<sup>97</sup> For more on this see: "NGO Report on Women's Human Rights in BiH, IHRLG and Group of BiH NGOs," 1999

<sup>98</sup> *id.*

<sup>99</sup> *id.*

<sup>100</sup> IRC Gorazde, *supra* note 96, p. 3. With canton based payment, it can be difficult for women from one canton to have services in another canton paid for. The hospital was supposed to be renovated this year with international assistance, and cancer detection equipment was expected to be installed.

<sup>101</sup> *id.*

#### **IV. HIV/AIDS and Sexually Transmitted Diseases**

The first case of AIDS was registered in BiH in 1986, and the first HIV-positive person was identified in 1989. By late 2002, the total number of registered AIDS-infected persons in BiH was recorded at 51 persons, 42 of them dead.

Persons living with HIV/AIDS in BiH do not have access to adequate medical care, they have no access to quality diagnostics, nor is there access to treatments such as HAART therapy. No specific legislation related to HIV/AIDS has been adopted in BiH, although the country adopted the 2000 UN Declaration of Commitment on HIV/AIDS, and the 2003 South-Eastern Europe Declaration on HIV/AIDS Prevention and Care. The state has not engaged in any significant activities to implement those declarations.

Women face different obstacles in preventing HIV and other STDs. Women are more physically exposed and often are less able to control the conditions of sexual intercourse. Social stigma or conditioning makes some women more reluctant to initiate discussions relating to contraceptive protection. And prevention campaigns addressing safe sex and the risks of HIV/AIDS or other STDs have been limited at a time when STDs are on the rise and economically-induced prostitution is increasing. Trafficking in women and girls for forced prostitution also contributes to the growing infection rate.<sup>102</sup>

In conclusion, the laws and health systems in both entities do not provide effective, safe protections for women in accessing health services, as required under the provisions of the Women's Convention. In particular:

- These laws do not provide special attention to the health needs and rights of women who belong to vulnerable and disadvantaged groups, such as: refugee and internally displaced women; girl children; older women; women with physical or mental disabilities; trafficked women; or women in prostitution.
- There are no detailed efforts or initiatives, nor is there adequate sexual health information, addressing the higher risks of girls and women for contracting HIV/AIDS and other sexually transmitted diseases.<sup>103</sup>
- Existing laws do not address the higher risks women face from exposure to sexually transmitted diseases;
- Existing laws do not address the specific needs of women within the health sector, nor do they address discrimination and other socio-economic factors that negatively affect the health of women, including violence against women, sexual abuse, or unwanted early pregnancy.
- There are no provisions to ensure gender sensitive training for health workers to help them detect and manage the health consequences of gender-based violence.
- Health services provided by the state are insufficient in the areas of trauma treatment and counseling for women survivors of sexual crimes during the war in BiH, as the only services of these kinds are provided by NGOs;
- Existing laws do not provide for the right of patients to be fully informed, by properly trained personnel, of their options when agreeing to certain forms of treatment or medical research, including the likely benefits or potential adverse effects of any proposed procedures or available alternatives.

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<sup>102</sup> More about trafficking in women in girls can be found in the section "Violence against women and Trafficking in Women" of this Shadow Report.

<sup>103</sup> The FBiH Health Care Law has a very general provision for the prevention of: malignant diseases, AIDS and tuberculosis; infectious diseases that must be reported. The Law also includes provisions for health education and improvement of health culture (Article 8).



## **RECOMMENDATIONS**

In order to make the BiH Government more responsive to the responsibilities as set forth in the CEDAW Convention, Global Rights and partner NGOs from BiH suggest that the Committee for the Elimination of all Forms of Discrimination against Women recommends the following:

### **General Recommendation**

To meet its obligations and comply with the recommendations of the Committee, Bosnia and Herzegovina (BiH) shall ensure that budgets at all levels of the Government are developed in a gender-sensitive manner and that adequate resources are allocated for the advancement of women's rights and the elimination of discrimination against women in all spheres of life, as provided for in the CEDAW Convention.

### **Economic Life**

Bosnia and Herzegovina shall take appropriate legislative and other measures to ensure that women have the benefit of equal rights and treatment in economic life, including access to employment, resources, credit, vocational training, professional advancement and information. The measures would include, but are not limited to, appropriate reform of the legal framework, development of gender sensitive economic policies, employment policies, training programs, adequate remedies and legal protections against violations by state and non-state actors and, whenever appropriate and possible, measures of positive action to promote *de facto* equality between men and women.

### **Political and Public Life**

Bosnia and Herzegovina shall take appropriate legislative and other measures to ensure that political parties, governmental bodies at all levels, and agencies and instrumentalities develop gender sensitive action plans to promote balanced representation of women at all levels and, in particular, at the level of decision-making, as well as at international levels. These measures would include, but are not limited to, appropriate changes in the BiH Election Law; development of gender sensitive education programs for political parties and government officials at all levels on women's human rights and non-discrimination; awareness raising, development of adequate monitoring and referral systems; and legal protections and remedies.

### **Violence Against Women**

Bosnia and Herzegovina shall take appropriate legislative and other measures to end and prevent all forms of gender-based violence including rape, abuse, sexual assault and sexual harassment in the work place, whether by public or private actors; and to effectively protect victims of such violence.

With a specific view to domestic violence, legislative measures must include, but are not limited to: State-level legislation that would provide for equal protection in the whole territory of BiH; adequate criminal penalties and civil remedies including compensation for victims; protective measures including restraining orders, counseling, shelter and rehabilitation services for victims of domestic violence or those at risk of violence; and preventive measures including public information and education programs to change attitudes concerning the roles and status of men and women, including for judiciary and law enforcement, but also for other public officials. Other measures should include, but are not limited to, adequate compilation of statistics for domestic violence and other forms of gender-based violence; awareness raising campaigns in order to eliminate stereotypes in the presentation of women in the media and in the public in general; and co-operation with the non-governmental sector.

## **Trafficking in Women**

Bosnia and Herzegovina shall take appropriate legislative and other measures to effectively investigate, prosecute and sanction the crime of trafficking in persons; protect victims of trafficking and prevent trafficking in human beings, in particular, women and girls. To this end, BiH shall consider enacting a State-level anti-trafficking legislation that would include the elements of an effective anti-trafficking action plan, and to bring its legal framework into full compliance with international human rights standards and, in particular, with the UN Protocol on Suppression, Prevention and Punishment of Trafficking in Persons, Particularly Women and Children. Other measures should include, but are not limited to, development of operative action plans in order to implement the National Action Plan; co-operation with the non-governmental sector in training, education and awareness raising; and development of action plans to combat the root causes of trafficking such as poverty, violence against women, and all other forms of discrimination against women, while also addressing factors such as the growth in organized crime and corruption that create a foundation for trafficking activities.

## **Women with Disabilities**

Bosnia and Herzegovina shall take appropriate steps to compile information on disabled women, consult with the leaders of disability rights groups, and include the status of women with disabilities in its periodic reports to the Committee. The State must also make all efforts and take all appropriate measures, in coordination with members of the disabled community, to ensure that disabled women have equal access to education and employment; health services and social security; and to ensure that they are able to participate in the nation's political, public, economic, social and cultural life without discrimination.

## **Health and Reproductive Rights**

Bosnia and Herzegovina shall take appropriate steps to ensure that health legislation within the State is reformed in order to include a gender perspective. These should include, but are not limited to, the removal of all barriers to accessing women's health and reproductive services; promoting access to health and reproductive education and information; and the elimination of discrimination against women within the health sector, taking into account the special needs and perspectives of refugee and displaced women, trafficked women, women-survivors of sexual abuse during the war, elderly women and women with disabilities. BiH also shall take all appropriate measures to promote women's health. This includes, but is not limited to, measures to prevent and treat diseases and conditions specifically affecting women; ensure that health services are delivered with respect for women's human rights; and ensure that the training curricula of health workers includes comprehensive, mandatory, and gender-sensitive courses on women's health and human rights, with a particular overview of the causes, consequences and treatment options in cases of gender-based violence.

— END —