

HOW TO ENSURE **GENDER EQUALITY** THROUGH THE PROCESS OF EU INTEGRATION?

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Udruženje
"Zemlja djece u BiH"

The purpose of this document is to investigate options and suggest recommendations for improved implementation of gender equality standards and legislation in BiH, better gender mainstreaming within the EU accession processes and improved role of women CSOs in the policy dialogue within the EU integration process.

The methodology applied is based on the focus group discussions of nine expert women CSOs in BiH (Women Advocacy Group) who all combined research, analysis and monitoring for their specific sector of work based either on provision of services (primarily for victims of violence) or advocacy actions for improved legislation and practices combating inequality of women in BiH.

Women Advocacy Group assessed and addressed women discrimination /gender inequality in accessing:

- justice (CSO monitoring court procedures for gender based violence),
- services and protection (safe houses, health protection, maternity benefits);
- political participation and participation in decision making processes including the EU accession process.

Content analysis included EU Country report, EU Gender action plan 2016-2020, the Istanbul Convention, Council of Europe Convention on the Protection of Children, and a number of relevant national legislation.

Women Advocacy Group identified five major issues which prevent full implementation of women's rights in BiH and which contribute to ongoing discrimination of women, based on gender or on the territorial grounds. By addressing these issues in the Country Report 2019 for BiH, the EC (EUD) will contribute to improved accountability of BiH authorities in ensuring women equality in practice.

1. Inadequate harmonisation of national legislation with international standards for women human rights protection excludes women from guaranteed standards and protection measures against domestic violence, sexual exploitation and abuse.

National legislation (e.g. Criminal Law, Law on Protection against Domestic Violence) has been only partially aligned with the **Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)**. New Criminal Code of Republika Srpska¹ introduced a range of new criminal acts to meet the standards of the Istanbul Convention, however the double regulation of domestic violence as criminal and minor offence remains the issue.

The last amendments to the Criminal Code of Federation BiH (September 2017²) diminishes the scope of the prescribed sanction for the criminal act incitement into prostitution. CSOs Proposals for Amendments to the Criminal Code FBiH for harmonization with the provisions of the Istanbul Convention addressing enhancement of protection and stricter penal policy, have still not been discussed by the Parliament FBiH.

Trial monitoring findings confirm that standards from the Istanbul Convention are not applied in the general assistance to victims.

Federation BiH has still not aligned its legislation with the Council of Europe Convention on the Protection of Children from sexual exploitation and sexual abuse, although the initiatives to amend the relevant criminal and family laws were launched back in 2015/2016.

2. Lack of harmonisation of legislation on the national level and lack of implementation of existing legislation (Laws on gender equality BiH, Anti-discrimination law BiH, entity laws against domestic violence, laws on free legal aid, Laws on obligatory health insurance of non-insured persons FBiH) prevents women to seek and access guaranteed protection, continuing discrimination among women.

There is still a lack of accountability of the institutions for implementation of the BiH anti-discrimination legislation, such as BiH Gender Equality Law, Anti-discrimination Law BiH, entity Laws against Domestic Violence. These laws are not fully implemented, monitored, nor reported by official institutions, namely subjects of protection. Statistical and other data collected during the implementation of these laws are not sufficient, adequate nor relevant to determine and evaluate the impact of laws on marginalized groups and women in particular.

There is perpetuating violation of Gender Equality Law BiH and discrimination against women in the field of political participation and decision making³. The Draft Law on Amendments to the Law on the Council of Ministers, which would ensure representation of at least 40% of women in ministerial and other political positions in the Council of Ministers, was discussed at the session of the House of Representatives of the BiH Parliamentary Assembly in May 2016⁴, but was not adopted.

Political parties, failing to harmonize their internal documents, policies and party practices with the legal provision of minimum of 40% of women, contribute to the discrimination of women in running for and participating in executive bodies at all levels of government. Gender Equality Law has been perpetually violated in the process of election of candidates in local elections. In the last local elections held in 2016, out of 417 candidates running for municipal or city mayors, the political parties have nominated only 26 women, or 6.2%. The results of the local elections showed that only 6 female mayors were elected out of a total 142 municipalities/cities, of which one elected female candidate was in fact an independent candidate. Changes to Election Law BiH should foresee appointment of mandates to candidates of the underrepresented gender and provide a system that will result in the selection of a minimum of 40% women in parliaments independently from the layout of votes on the list.

Preliminary results of the last general elections in BiH held in October 2018 again reflect underrepresentation of women.

At the level of Parliamentary Assembly of BiH, out of a total of 42 representatives, there are only 7 women (16.6%); at the level of the House of Representatives of the Parliamentary Assembly of the FBiH, out of a total of 98

1 Criminal Code of the Republika Srpska, Official Gazette of RS no. 64/17 on 13 July 2017. Available on local language at: <https://advokat-prnjavorac.com/zakoni/Krivicni-zakonik-Republike-Srpske-2017.pdf>

2 http://www.tuzilastvobih.gov.ba/files/docs/Krivicni_zakon_izmjene_75_17.pdf; https://www.pravosudje.ba/vstv/faces/pdfServlet?p_id_doc=6779

3 After the last general elections in 2014 the gender ratio was the following: BiH Parliamentary Assembly 19% women /81% men; Parliament of the Federation and RS National Assembly respectively 22% women/78% men; Government of the Federation of BiH 6% women/94% men; RS Government 35% women/65% men; cumulative gender ration in the cantonal assemblies 22% women/78% men, and finally cumulative gender ratio in the governments of cantons 14% women/ 86% men.

http://ssst.edu.ba/upload/Departments/ECON/Policy_Brief_02_final.pdf

4 At the 30th session of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, held on May 24, 2016, the Draft Law on Amendments to the Law on the Council of Ministers of BiH, which was proposed by the Gender Equality Commission, although adopted in the first reading at the 28th Session of the House of Representatives of the Parliamentary Assembly of BiH was not adopted.

representatives, there are only 25 women (25.5%); at the level of the National Assembly of the RS, out of 83 representatives, there are only 14 women (16.8%), and finally in the largest Canton of Sarajevo, the Assembly consists of 35 representatives, out of which only 10 (28.5%) are women.

These percentages are not even close to the legal obligation of 40% representation of the less represented sex on the political position. In this way, women are again excluded from the decision making processes and therefore from all reform processes within the EU integration.

The legislation regulating maternity leave and maternity benefits is still not harmonised on the entity and/or cantonal level. There is still no political agreement on a uniform regulation and funding of the right to maternity leave and maternity benefits within entity and cantonal **laws on the social protection and protection of families with children**⁵ what continues discrimination of women based on territorial grounds.

By-laws for the implementation of the **Law on Protection against Domestic Violence FBiH** are still lacking, five years from the adoption of the Law, including the Rule on establishment, functioning and financing of safe houses. Entity laws on protection against domestic violence have not yet been harmonized with one another (e.g. in the FBiH domestic violence is a criminal offense, while in RS is both, a criminal offense and a misdemeanour). Entity laws differently treat establishment and operation of safe houses. According to the currently applicable laws, funds to finance temporary care and accommodation are being allocated according to the following principle: 70% from the entity budget and 30% from the local community budget. These provisions are not being respected. RS is missing vertical coordination between the entity governments and local communities when it comes to financing of safe houses⁶.

In the Federation, the entity budget earmarked no funds for the financing of safe houses. The funds are allocated on a one-time basis, and very few cantons/municipalities plan for and allocate funds for this purpose. The exception is the

Canton of Sarajevo, where the Ministry of Labor, Social Affairs and Refugees finances 60% of all costs of functioning of the Safe House and the City of Sarajevo allocates about 3% of the total cost. Brčko District adopted the Law on Protection against Domestic Violence in March 2018, however the services of assistance and support for women and children survivors of violence are still missing, including the Safe House. All this leads to unequal status and protection of the rights of women survivors of violence.

Monitoring of the criminal proceedings in the field of gender-based violence⁷ has shown that procedures for crimes of domestic violence last up to 4 months, although the entity laws on protection against domestic violence requires urgent actions. Through CSO monitoring activities it has been observed that in the process of classification of the offence and sentencing, the severity of the act, the number of persons damaged by the act and re-offending are not taken into account, consequently leading to lenient sanctions for criminal offenses of domestic violence, most often suspended sentences. In addition, many other breaches of the procedure were observed⁸. Additional problem is that children are not recognised as injured parties in domestic violence cases in the Federation BiH.

Due to lack of implementation of the envisaged safety measures, women and children as predominant victims of gender-based violence throughout BiH remain without (access to) assistance and support prior, during, and after the trials, namely legal and psychosocial assistance, and are continuously facing security threats when testifying. This leads to situations that they refuse to testify, and prosecutors withdrawing the indictments due to lack of evidence, which seriously violates access to justice for victims, and encourages continuous repetition of violence by abusers.

The courts in criminal proceedings generally do not decide on claims of victims of violence, and only sometimes they instruct the injured party of this legal option. Prosecutors rarely show initiative to collect additional evidence to demonstrate the damage, but the courts usually refer the injured party to civil litigation. No single case of deciding on damages in criminal proceedings was noted. This approach

⁵ Petrić, A. et al. (2016) Alternative CEDAW report for the period 2013 - 2017, Helsinški parlament građana Banjaluka and Prava za sve, Sarajevo

⁶ Although under the RS law the victim of violence has the right to seek shelter in a safe house, the competent centres for social work decide to place victims in such accommodation only when they have no family or friends to take refuge with, and often they refuse to issue a decision to place the victim in a safe house in order to avoid paying for the cost of their accommodation.

⁷ Analytical report: Analysis of monitoring of criminal and misdemeanour proceedings in the field of protection against gender-based violence in BiH, available at: <http://unitedwomenbi.org/wp-content/uploads/2017/03/Analiticki-izvjestaj-Petric-Radonic-2017.pdf>; <http://cenppz.org.ba/wp-content/uploads/2017/07/ANALYTICAL-REPORT-2017-CLAW.pdf>

⁸ Ibid. Such as perpetuating and unjustified adjournment of the hearing, frequent change of prosecutors, suggesting minors to testify without the presence of professionals who are legally obliged to provide assistance during their testimony, failure of prosecutors to classify the criminal offense of violence in the indictment in its qualified form for which a more severe punishment is envisaged, inconsistency in the application of the principles of urgency when imposing protective measures, and a relatively low number of measures imposing the treatment and rehabilitation of the offender (despite the fact that requirements for such measures are met); Inadequate sanctions for breach of protective measures; Inappropriate usage of aggravating and mitigating factors, poor penal policy reflected in a very high number of suspended sentences and frequent, unjustifiable sentences that are lower than the legally prescribed minimum, as well as the difficult position of the injured party during the proceedings; The aims of special and general prevention of GBV are threatened by inadequate and mild sanctioning of the perpetrators of GBV acts.

neglects the overall reality of life of the injured party who, due to poor financial situation and lack of funds to pay for the costs of lawyers, rarely take civil actions⁹.

Law on Victims of Torture has not yet been adopted. Women victims of war do not have the same status in both entities.

Law on Free Legal Aid BiH was adopted in November 2016¹⁰. At the same time, free legal aid is partly regulated by law at other levels as well¹¹. Discrepancies or lack of laws in some cantons in the FBiH lead to unequal access to justice, particularly for vulnerable groups. Certain laws do not provide for legal assistance on the basis of status for victims of trafficking and victims of domestic violence. Many categories of women, especially women who have survived violence, have no access to free legal aid due to inability to prove their poor financial status, or due to inability to reach providers of free legal aid services (economic dependence, living in remote areas, unavailability of services). Civil society organisations (Fondacija lokalne demokratije, Sarajevo and Centar ženskih prava, Zenica) are still the only providers of free legal assistance to women survivors of violence, whether or not they can prove their poor financial circumstances.

Although the **Law on obligatory health insurance of non-insured persons FBiH** provides unconditional health protection to pregnant women, lack of its implementation in five cantons in FBiH¹², leaves uninsured pregnant women (primarily Roma and women from socially vulnerable families) without access to health protection, directly violating legislative provisions and international standards.

3. Lack of constructive dialogue between women CSOs and authorities, combined with inefficient government mechanisms for gender equality to affect discriminatory policies and practices contributes to ongoing lack of political decision to adequately address women discrimination in BiH.

Although regulations at the State level provide for the dialog between government and CSOs (and citizens), the dialogue

on government's policies, legislation and and implementation of legislation still remains closed what negatively effects on citizens, especially socially marginalized women (women in rural areas, single mothers, Roma women, women victims of violence, senior women, women with disabilities, LBQT women) whose voices are not heard and needs and priorities are neither recognised nor included in the important country's reform processes.

Women's CSO exclusion from reforms processes continues, e.g. Reform Agenda, EU Accession Process. Women and women's CSOs are extremely underrepresented in almost all bodies that make up the Coordination Mechanism within the European integration process. In particularly, in the political bodies that make the most important political decisions in the integration process, decisions on issues that could not be negotiated at the lower level of government have only 6.23% of women (the EU Integration Collegium) and 17% of women (the Ministerial conferences).

Exclusion of women from policy dialogue leads to unselective reduction of their rights and contributes to their further discrimination. In implementing reforms in the area of social, health care, and pension system, the state is introducing austerity measures that mostly affect marginalized groups, particularly women, without prior assessment on their potential impact or prior consultations with women experts in relevant fields. Focusing on austerity measures in the implementation of the social reform, rather than on better targeting of social assistance to those most in need¹³ resulted with shifting the burden of caring for children, the elderly, and persons with disabilities from the State to the family, what particularly affected women in the family and lead to their further impoverishment and exclusion¹⁴.

9 Ibid.

10 Official Gazette no. 83 of 04 November 2016

11 Laws were enacted in the Brčko District, Republika Srpska and in the seven cantons of the Federation of Bosnia and Herzegovina (Canton Sarajevo, Zenica-Doboj, Tuzla, Posavina, West Herzegovina, Una-Sana and Bosnia-Podrinje Canton). In Middle-Bosnia canton, Herzegovina-Neretva canton and Canton 10 this area is not legally regulated.

12 Decision on maximum amounts of direct participation of insured persons in the costs of using certain forms of health care in the basic healthcare package ("Official Gazette of the Federation of BiH" 21/09)

13 „...improve the targeting of social assistance through a set of measures that would make social protection policies more effective, efficient and equitable. Social protection needs to work for those who really need it—or who pay for it...” Reform Agenda for BiH 2015-2018, paragraph 11, available at: <http://europa.ba/wp-content/uploads/2015/09/Reform-Agenda-BiH.pdf> (24.3.2017.)

14 More in Petrić, A. et al. (2016) Alternative CEDAW report 2013 - 2017, Helsinki parlament građana Banjaluka and Prava za sve, Sarajevo

4. Lack of data collection required for revising gender policies and practices provides justification for political bodies and institutions to adequately, systematically and efficiently address women discrimination issues (and allocate needed funding).

There are still no adequate, reliable, comparable and regularly collected data on an annual basis about the (un)employment of women, the differences in pay between women and men, fixed-term and part-time work, the number of women in decision-making and management positions in the public and private enterprises and companies, etc. Data collected by applying different methodologies in individual years vary by 2-10%¹⁵. It has been nine years since the Anti-discrimination law was enacted, but a database on committed acts of discrimination, including gender-base violence, sexual harassment, and other forms of discrimination against women has not yet been established, despite the fact that the Law explicitly imposed this obligation¹⁶.

There is no agreed methodology on the BiH level for the collection and processing of data on gender-based violence enabling a comprehensive and continuous analysis and planning of systemic measures for prevention and protection of women victims of violence. The data collected annually by the Agency for Gender Equality, the Gender Centre of the FBiH and RS Gender Centre cannot be considered representative data for the whole country¹⁷.

Additionally, data collection lacks harmonization by different institutions in chain of protection from discrimination and violence, and are insufficiently transparent to the public, what leads to development of public policies and laws based on assumptions, rather than augmented facts from the practice.

5. Shrinking space for women CSOs in BiH directly affects the level of realisation of women's rights in BiH, while established gender mechanisms for protection continue to fail to affect women's equality in practice.

For fifteen years now, the established gender mechanisms (2003/2004) keep failing to impact on government's gender policies and practices in BiH. Women CSOs remain the sole voice of women exposed to discrimination and violence when seeking protection of their rights (resulting from non-harmonised, not implemented legislation, in-sufficient gender sensitive budgets for safe houses, employment programmes). Women CSOs remain the only women advocates in realising their social, political and economic rights in practice (requesting harmonisation and realisation of maternity benefits, consequent implementation of relevant legislation in practice, gender balanced budgets and policies, representation in the political /development/EU processes). However the space for women CSO activities is seriously shrinking due to lack of interest and funding from international donors where advocacy for realisation of women's rights is not the priority, with funds are shifting to international/UN agencies programmes. Besides the adopted anti-discrimination legal framework and established gender mechanisms, women in BiH are far from achieving gender equality in practice.

European Commission within its Country reports and within the EU Accession processes should keep addressing the need for gender equality exercised in practice in BiH and include women CSOs/women issues in its dialogues and processes.

¹⁵ An illustrative example is 2013, where the census results can be included. Thus, women's employment was 37% (surveyed), or 41.3% (registered), and 39% according to the 2013 Census of population, households and dwellings in BiH. Census results (Agency for Statistics (June 2016)); In 2013 women's unemployment was 40.2% (surveyed), or 50.5% (registered), and 42% (according to population census).

¹⁶ Article 8 of the Law on Prohibition of Discrimination („Official Gazette“ nos. 52/09, 66/16).

¹⁷ A Brochure: Protecting Women and Children Victims of Domestic Violence at Local Level - From Law to Actual Implementation, Foundation Udružene žene, Banja Luka 2016. Available at: <http://unitedwomenbi.org/wp-content/uploads/2016/01/Brosura-Od-zakona-do-stvarne-implementacije-2016.pdf>

RECOMMENDATIONS – TARGETED AT THE EUD AND OR EC IN BRUSSELS:

1. In assessing the BiH accession progress the EU, The EU Delegation in BiH should pay equal attention to implementation of relevant legislation and its actual impact on women and address it adequately in the recommendations of the Country Progress Report;

More specifically:

- Ensure implementation of the Gender Equality Law by increasing inspections for permanent monitoring/affecting the implementation of the Law by public and private companies, monitoring realisation of women's rights to maternity leave, contracting, possibilities to report discrimination at work;
- Change the BiH Election Law by ensuring the assignment of a mandate to a less represented gender (eg through the allocation of mandates from the compensation lists), thus ensuring a system that will result in the election of at least 40% of women in parliaments.
- Harmonize the Law on Council of Ministers, the Law on the Government of FBiH and Law on the government of RS with GEL so that the validation of the composition of the Government is not possible without a minimum of 40% of women in ministerial positions;
- Insure implementation of provisions within the Anti-discrimination law that obliges state institutions for development and operational data base on discrimination cases relevant for addressing reported discrimination of women;
- Introduce accountability measures for cantonal government that don't apply entity laws that directly discriminate women and/or prevent access to compulsory health protection for pregnant women who are not in the health insurance system (primarily Roma);
- Ensure harmonisation of national legislation (Criminal Law, Law on Protection against Domestic Violence) with the adopted Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention);
- Ensure that Federation BiH harmonises its criminal and family laws with the Council of Europe Convention on the Protection of Children from sexual exploitation and sexual abuse;
- Develop by-laws for the implementation of the Law on Protection against Domestic Violence FBiH and regulate establishment, functioning and financing of safe houses.

2. The EU should consider increasing funding for WCSOs supporting women in accessing their rights as existing mechanisms for gender equality at all levels of government continuously fail to impact on gender equality policies and the implementation of policies and legislation in practice;

3. The EUD should improve its dialogue with WCSOs within the EU accession processes and influence the BIH authorities to do the same, ensuring that the processes and policies have gender perspective ;

4. In accordance with the adopted EU Gender Action Plan 2016-2020, EU Delegation should consider development of gender mainstreamed Country Reports and expand the gender equality mainstreaming throughout the document/sections rather than on focusing exclusively on the sections such as Political criteria and Human rights sections.



PRAVA ZA SVE

PRAVA ZA SVE is a BiH civil society organisation active in the field of human rights protection and advocacy aimed at creating a fair and democratic society based on human rights principles. PRAVA ZA SVE seeks public responsibility for respect, protection and exercise of human rights for all; seeks justice for victims of human rights violations; promotes equal opportunities for all, irrespective of sex or gender, disability, race or minority status, sexual or gender orientation or any other difference; supports development and empowerment of excluded groups and communities.

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