

Udruženje „Zemlja djece u BiH“

Contribution of the Women Advocacy Group (WAG) for the 2017 EC Progress Report on Bosnia and Herzegovina

General comments:

- In accordance with the adopted EU Gender Action Plan 2016-2020, gender and women human rights should be more considered and mainstreamed throughout the Country Report not only within the traditional sections such as Political criteria and Human rights;
- There is still lack of accountability of the institutions for implementation of the BiH anti-discrimination legislation, such as BiH Gender Equality Law, Law on Prohibiting Discrimination, and Laws on Combating Domestic Violence. These Laws are not fully implemented, monitored, nor reported; Statistical and other data collected during the implementation of these laws are neither sufficient nor adequate nor relevant to determine/evaluate the impact thereof on marginalized groups and women in particular.
- Although provided in the relevant national regulation, the dialog among the citizens, CSOs and the government on policy and legislative development and implementation processes still remains closed what negatively effects on citizens, mostly women, especially socially marginalized women (women in rural areas, single mothers, Roma women, women victims of violence, senior women, women with disabilities, LBT*Q women and other);
- In implementing the reform processes in the area of social, health care, and economic reforms and other rights, the state is introducing austerity measures that mostly affect marginalized groups, particularly women. Prior to introducing austerity measures, state representatives failed to consult women experts in relevant fields, which clearly sends the message that women's voices are not welcome or appreciated. Gender impact assessments of policy and legislative processes are not implemented although regulated; policy makers continuously ignore this obligation thus contributing toward further women inequality in the society;

Political and public participation¹

- It continues women and women's COS exclusion from reforms process, e.g. Reform Agenda, EU Accession Process and related discussions/ negotiations with international financial institutions, etc.; Women and women's CSOs are extremely underrepresented in almost all bodies that make up the so-called „Coordination Mechanism“ established to facilitate the implementation of a number of activities in the European integration process; Consequently, women's needs and priorities are neither recognised nor included in the important country's reform processes;
- There is perpetuating violation of Gender Equality Law in BiH and discrimination against women in the field of political participation and decision making².

¹ Reference to 2.4 Human Rights and Protection of Minorities; and EU Gender Action Plan II (2016-2020), Thematic Priority D: Political and Civil Rights: Voice and Participation (Objective 17 and 18)

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A disconcerting fact is that the Draft Law on Amendments to the *Law on the Council of Ministers*, which was discussed at the session of the House of Representatives of the BiH Parliamentary Assembly in May 2016³, was not adopted. Adoption of these amendments would ensure representation of at least 40% of women in ministerial and other political positions in the Council of Ministers.

- Failing to harmonize their internal documents, policies and party practice with the legal standard of 40% of the less represented gender, political parties in practice largely contribute to the discrimination of women in political and public activities as demonstrated by continuous failure to appoint women to ministerial and other senior managerial positions.

Therefore, Bosnia and Herzegovina should urgently impose a statutory obligation on political parties, when running for executive and other senior management positions at all levels of government, to abide by the principle of 40% of the less represented gender, as required by law. Only in this way one can contribute to establishing gender equality and inclusion of women's perspectives in the decision-making process.

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.

Policy reforms on employment, social and health protection⁴

- The trend of low participation of women in the labour market has continued for ten years in a row. Employment policies have no significant effect on increasing employment and self-employment of women⁵. According to international organizations, BiH is ranked as 113th country of 144 countries according to economic participation and opportunities for women⁶. No progress

2 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

3 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.

4 4. Reference to 4. EU Standards, 4.1.8 Employment, and social policy, public health policy; and EU Gender Action Plan II (2016-2020), Thematic Priority C: Economy, Social and Cultural Rights – Economic and Social Empowerment (Objective 14) & Thematic Priority D: Political and Civil Rights: Voice and Participation (Objective 18)

5 According to the Labour Force Survey, which has been carried out every year from 2007 to 2016, women's employment ranges from 34% to 37%, with a significant drop by 1.4% in 2016 compared to the previous year (37.3% in 2015 compared to 35.9% in 2016); There are less women who are self-employed - 28.2% , but they are significantly represented in the group of unpaid contributing family members - 67.9% in 2016; Source: Labour Force Survey of BiH, available at: http://www.bhas.ba/?option=com_content&view=article&id=113=ba (23.3.2017.)

6 According to *The Global Gender Gap Report 2016* (2016) The World Economic Forum. BiH is ranked as 83rd out of 144 analysed countries. Particularly problematic is the participation of women in access to and economic opportunities, and in particular the participation of women in the labour market (113th out of 144 countries) and earned income (119th out of 144 countries), available at: <http://reports.weforum.org/global-gender-gap-report-2016/economies/#economy=BIH> (23.3.2017.)

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was noted in equalizing the hourly rate for women and man in the same positions⁷. No progress was made in terms of increasing participation of women in the positions of control and management, particularly in public companies. Female entrepreneurship is still underdeveloped. The percentage of firms owned by women is low (27.3%)⁸.

- New Labour law of the FBiH adopted in 2016 provides for parental leave for men. At the same time, after several-month effort of the ministries to develop policies and laws on the protection of families with children, there is still no political agreement on a uniform regulation and funding of the right to maternity leave and maternity benefits⁹. BiH still has a negative birth rate¹⁰, but nevertheless it has no serious approach to the development of natality policy.
- Bosnia and Herzegovina requires an urgent reform of the social protection and pension systems. Yet, although Reform Agenda and action plans provide for, among other things, the reform of the social protection and pension systems, no significant progress was made in adopting relevant laws and policies, and no positive effects of the reforms are visible in practice¹¹. Reforms in these areas are rarely preceded by the assessment of their potential impact on citizens, and especially on women. Failure to regulate existing social rights and services or unselective elimination thereof is primarily focused on austerity measures rather than on better targeting of social assistance to those most in need¹². In this way, the burden of caring for children, the elderly, and persons with disabilities is shifted to the family, which particularly affects women and leads to their further impoverishment¹³.
- Five cantons in the Federation perpetually do not comply with the decision of the Government of the Federation regulating the free compulsory health care for pregnant women and children¹⁴.
- 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 means of different

7 *Bosnia and Herzegovina: Gender Differences in Exercising the Rights and Opportunities offered by Society, Access to Economic Opportunities and Representation (2015) World Bank, Agency for Statistics of Bosnia and Herzegovina, FBiH Statistics Institute and RS Bureau of Statistics*

8 According to: *Bosnia and Herzegovina: Gender Differences in Exercising the Rights and Opportunities offered by Society, Access to Economic Opportunities and Representation (2015) World Bank, Agency for Statistics of Bosnia and Herzegovina, FBiH Statistics Institute and RS Bureau of Statistics*

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

10 BiH is ranked as 210 out of 235 countries worldwide, according to the percentage of population growth of -0.14%, according to: The World Fact book (2016) Central Intelligence Agency, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/bk.html> (23.3.2017.)

11 Arapović, A. Hota, I. i Adžaić, Z. (2016) *independent monitoring of the implementation and effectiveness of the Reform Agenda for Bosnia and Herzegovina for the period 2015-2018: STATE OF NATIONS, REPORT No. 3*, Centri civilnih inicijativa

12 „...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.)

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

14 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)

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methodologies in individual years vary by 2-10%¹⁵. It has been seven years since the Law on prohibition of discrimination 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.

Gender Based Violence (GBV)/ Violence against Women¹⁷

- It is very worrying that national legislation (e.g. Criminal Law, Law on Protection against Domestic Violence) has not yet been aligned with the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). Currently, there is a public debate on the new draft Criminal Code of Republika Srpska, which introduces a range of new criminal acts in an attempt to meet the international standards of the Istanbul Convention.¹⁸
- National legislation is still not aligned 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 2015/2016.¹⁹
- The implementing legislation required for the implementation of the Law on Protection against Domestic Violence in FBiH is still lacking. Entity laws and public policies that regulate the issue of domestic violence have not yet been harmonized with one another (e.g. in the FBiH domestic violence is as a criminal offense, while in RS it is both, a criminal offense and a misdemeanour). This leads to unequal status and protection of the rights of women survivors of violence. Brčko District still does not have a Law on protection against domestic violence nor does it have a safe house.
- In BiH there is no agreed methodology for the collection and processing of data on gender-based violence enabling a comprehensive and continuous analysis and planning of systemic measures of prevention and protection of women victims of violence. The data collected annually by the

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 Reference to 2.3 Rule of Law and 2.4 Human Rights and Minority Protection; and EU Gender Action Plan II (2016-2020), Thematic Priority B: Physical and Psychological Integrity (Objective 7 and 8) & Thematic Priority D: Political and Civil Rights: Voice and Participation (Objective 18)

¹⁸ Draft Criminal Code of Republika Srpska is available on the website of the RS National Assembly: <http://www.narodnaskupstinars.net/?q=la/akti/zakoni-u-proceduri/nacrt-krivi%C4%8Dnog-zakonika-republike-srpske>

¹⁹ BiH Council for Children, as an advisory and expert body of the Council of Ministers, formed a Working Group to harmonise the laws and promote the rights of child. The members of the Working Group have been formally appointed by the Council for Children and the group includes: representatives of the BiH Ministry of Human Rights and Refugees, the Ministry of Security of BiH, the Ministry of Justice, representatives of Academia and NGO "Snažniji glas za djecu (Zemlja djece u BiH). This Working Body has prepared and the Council has adopted and sent to the competent ministries the following:

1. Initiative to amend the Entity Criminal Codes and Criminal Code of the BD BiH to align them with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (addressed to the Entity and BD Ministries in December 2015); 2. Initiative to amend Criminal Codes and family laws in the Entities and the BD BiH to introduce an explicit ban on physical punishment of children in all settings, including punishment at home. (The initiative made in December 2016 and addressed to the Entity Ministries of Justice and BD).

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Agency for Gender Equality, the Gender Centre of the FBiH and RS Gender Centre cannot be considered representative data for the whole country.²⁰

- Establishment and operation of safe houses is regulated by the entity laws on protection against domestic violence, which differently treat this issue with respect to the establishment, ways of taking care of women and children survivors of violence and ways of financing the 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 of the law are not being respected. RS is missing vertical coordination between the entity governments and local communities when it comes to financing of safe houses.²¹ 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.
- 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 at the state level was adopted in November 2016²². At the same time, free legal aid is partly regulated by law at other levels as well.²³ Discrepancies or lack of laws in some cantons in the FBiH lead to unequal access to justice, particularly for vulnerable groups. It should be noted also that 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 means-testing, i.e. the inability to prove poor financial status. Civil society organisations are still the only providers of free legal assistance to women survivors of violence, whether or not they can prove their poor financial circumstances.
- Bosnia and Herzegovina is still a country of origin, transit and destination for trafficking for labour exploitation, sexual exploitation, begging and forced marriages. In June 2016 the Law on Amendments to the Criminal Code of the Federation of Bosnia and Herzegovina came into force, which is harmonised with international standards.²⁴ Although we are still registering victims of human trafficking, there is a very small number of cases, especially convictions.²⁵ It is worrying that the sentences imposed on traffickers are very low, while the survivors have no adequate

20 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://unitedwomenbl.org/wp-content/uploads/2016/01/Brosura-Od-zakona-do-stvarne-imple-mentacije-2016.pdf>

21 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.

22 Official Gazette no. 83 of 04 November 2016

23 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.

24 Law on Amendments to the FBiH Criminal Code: <https://advokat-prnjavorac.com/zakoni/Zakon-o-izmjenama-i-dopunama-krivicnog-zakona-FBiH.pdf>

25 According to the Human Trafficking National Coordinator's Report on the status of Human Trafficking in BiH in 2016, a total of 48 potential victims of trafficking in human beings and related crimes were identified i.e. assisted. Of the 48 potential victims of trafficking in human beings, 30 were women and 18 men. Last year, the Prosecutions ordered 7 investigations against 33 people, issued a decision to suspend the investigation in 2 cases against 3 persons and filed 5 indictments against 25 persons. The courts have pronounced four convictions against 10 persons, of which 7 were sentenced to prison and 3 were awarded a suspended sentence. Also, one person was acquitted.

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assistance or compensation for pain and suffering nor there is policy and coordinated action to prevent human trafficking.

Judiciary

- Monitoring of the criminal proceedings in the field of gender-based violence²⁶ has shown that procedures for crimes of domestic violence last, on an average, up to 4 months, although the entity laws on protection against domestic violence requires urgent actions. 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, re-offending and the like 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 observed.²⁷ Furthermore, the problem lies in the fact that in the Federation of BiH children are generally not recognised as injured parties in domestic violence cases.
- 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 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 actions.²⁸

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26 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-Radoncic-2017.pdf>

27 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.

28 Ibid.