

Universal Periodic Review of Bosnia and Herzegovina “Stakeholder’s submission”

Preliminary remarks

1. Bosnia and Herzegovina (BiH) has firmly pledged that the attainment of full respect for human rights is an unconditional goal for the sustenance of peace. These pledges are reflected, for example, in its OSCE Human Dimension Commitments as well as the solid human rights framework incorporated in the BiH Constitution. However, significant numbers of individuals belonging to National Minorities (especially Roma), women in socially vulnerable conditions, returnees, refugees and displaced persons do not yet enjoy full protection of their human rights. The often reported *Sejdic and Finci vs BiH* ECtHR¹ case might just represent the tip of the iceberg.

Equality and non-discrimination

2. A comprehensive and in several aspects progressive Law on the Prohibition of Discrimination (LPD) entered into effect in August 2009. However, the implementation of this law has been rather limited and discrimination continues to be institutionalized in BiH. The problem of BiH’s weak response to eliminating discrimination has a number of dimensions. At the institutional level, the Ombudsman Institution - as the Central Institution under the LPD - lacks technical capacity to draft effective recommendations and capacity to ensure that its recommendations are implemented. There are deficiencies in the technical capacity, competency and active engagement of Judges and other legal professionals. The capacity to effectively address discrimination is also undermined by lack of adequate data, which is essential for rendering discrimination visible. Presently there is no comprehensive or official data to demonstrate the experience of discrimination in BiH. On a positive note, the BiH Ministry for Human Rights and Refugees adopted the Rulebook on collection of data in April 2013 (three years after the deadline under the LPD). It now remains to be implemented. Once the substantive provisions of the Rulebook are implemented, representatives within each public institution at all levels of government will be required to appoint a local focal point charged with the co-ordination of data on anti-discrimination matters. This tool represents an opportunity to tackle discrimination at the heart of the public sector. Finally, the low level of awareness among citizens as well as the lack of a comprehensive free legal aid system (which particularly affects the most vulnerable) contribute to the weak implementation of the LPD.
3. Institutional efforts to promote gender equality have continued since the establishment of entity Gender Centers and state level BiH Gender Equality Agency within the Ministry of Human Rights and Refugees in 1999 and 2004 respectively. Further support to the implementation of gender equality standards has been provided through parliamentary working bodies at state and entity level, including establishing a Gender Equality

¹ The European Court of Human Rights found (December, 2009) that two applicants' (a Roma citizen and a Jewish citizen) ineligibility to stand for election to the House of Peoples violates Article 14 of the European Convention of Human Rights and Fundamental Freedoms (ban of discrimination in the field of Convention rights) taken in conjunction with Article 3 of Protocol No. 1 (free elections), and that their ineligibility to stand for election to the Presidency violates Article 1 of Protocol No. 12 (general ban of discrimination).

Commission in Brčko District Assembly in 2013. In terms of the legislative framework, provisions on prohibition of gender discrimination envisaged in the BiH Law on Gender Equality (2003) were reinforced in 2009 with the adoption of the LPD which includes discrimination based on sex, sexual orientation and sexual identity as prohibited grounds. Additional legislative changes were introduced in 2013 in the BiH Election Law which increased from 33% to 40% the quota for the less represented sex on candidates' lists. Due to need for further systematic approach to gender equality, authorities initiated the development on the second Gender Action Plan 2013-2017 (GAP) which was adopted by the BiH Parliamentary Assembly in 2013. The second GAP outlines strategic goals, programs and measures to achieving gender equality in all spheres of life indicating development of operational annual plans as well as to ensure more effective implementation of GAP's goals. In 2010 BiH became the first country in the region in adopting an Action Plan for the Implementation of UNSCR 1325 for a three year period which will be continued with a new document for the period of 2014-2016. Combating domestic violence remains one of the priorities for BiH. These efforts have been articulated through strategies at state and entity levels as well as BiH's ratification of the Convention on Preventing and Combating Violence against Women and Domestic Violence in 2013.

4. Finally, it should be noted that Roma continue to face serious obstacles limiting their access to employment, health or education, despite the efforts made by BiH (especially on housing)².

Recommendations:

- (a) It is imperative that the executive and judicial branches embrace the full potential of the LPD for addressing general human rights concerns.
- (b) Increase the financial and human resources of the Ombudsman and the BiH Ministry for Human Rights and Refugees to implement the LPD.
- (c) Raise citizens' awareness of the LPD.
- (d) Bridge the existing gap between vulnerable citizens, legal aid providers, Ombudsman and Judiciary.
- (e) Ensure adequate funds for implementation of the second Gender Action Plan.
- (f) Provide support to gender institutional mechanisms for implementation of gender equality strategic documents by improving gender mainstreaming in legislative, executive and judicial authorities.
- (g) Design measures to increase a number of women in decision-making positions and ensure implementation of the BiH Law on Gender Equality.
- (h) Responsible State and Entity level ministries, in conjunction with the units of self-government should ensure the sustained implementation of the four Roma Action plans on housing, health, education and employment.

Social protection

5. Inadequate social and living conditions are salient features in BiH, affecting several distinct groups of society. The current social protection system in BiH does not ensure equitable allocation of existing funds. According to the World Bank, BiH spends 4 per cent of its annual GDP on non-contributory assistance schemes. In GDP percentage terms, this makes BiH second only to Croatia in social assistance expenditure when compared to other countries in Eastern Europe, Central Asia and the average spending of the OECD

² Special Report on the Status of Roma in BiH (Ombudsman Institution, December 2013).

countries. These excessive budgetary allocations are so poorly targeted that a higher share of social benefits reaches the richer segment of the population, while the poorest 20 per cent of the population receives only about 17 per cent of total social transfers. As a result, international actors in BiH, such as the World Bank, have repeatedly highlighted the lack of financial sustainability of the current system and the burden it creates for entity budgets without achieving protection for the most vulnerable³.

6. This disproportionate system is supported by a legal framework which establishes a social protection system that focuses on the *status* rather than on the *need* of its beneficiaries. Therefore, some groups such as war veterans, families of fallen soldiers or of civilians who died or disappeared during the war are *de facto* privileged categories when it comes to receiving social assistance. However, the discrepancy in afforded social protection appears to be unjustifiable from a human rights perspective in terms of legitimacy, proportionality and effect⁴. While BiH has adopted new laws to equate the rights of social assistance of civilian war victims to those of military victims of war, in line with the 2006 Concluding Observations of the UN CESCR, differential treatment is still evident within the system. Differential treatment based on social status is particularly evident when it comes to the assistance provided to persons with disabilities. The Social Welfare Centres (SWCs) are still the most important field public institution (at the municipal level) for the implementation of social protection legislation. SWCs often lack the necessary operational and financial means, which has a negative impact on their capacity to assist the needs of vulnerable groups. The majority of SWCs remain understaffed, especially in the FBiH, and are often without qualified personnel such as social workers, psychologists, lawyers and pedagogues. The entity governments have failed to adopt new rules to properly define the conditions for SWCs and their employees. They have also failed to develop adequate training programmes to ensure that employees adhere to modern professional methodologies⁵.

Recommendations:

- (i) Entity governments should work in conjunction and consultation with each other and the Council of Ministers towards a social protection system that is entirely needs-based and blind to assistance seekers' social status and residence.
- (j) SWCs should have adequate resources to enable the progressive realization of social rights for the most vulnerable.

Displacement

7. Since the adoption of the *Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex 7 of the Dayton Peace Agreement in 2010* (2010 Revised Strategy) no significant activities have been undertaken by BiH authorities to address the issue of sustainable return, especially in the field of social protection and health care. Authorities failed to harmonize legislation that regulates access rights to healthcare of civilian victims of war, war military invalids and families of fallen soldiers. Lack of employment remains the main impediment for sustainable return and there is a risk that

³ See World Bank Policy Note, *Social Transfers in Bosnia and Herzegovina: Moving towards a more sustainable and better targeted safety net*, April 2009, and World Bank, *Protecting the Poor during the Global Crisis: 2009 Bosnia and Herzegovina Poverty Update*, December 2009.

⁴ See "The Right to Social Protection in BiH: Concerns on Adequacy and Equality" (OSCE Mission to Bosnia and Herzegovina, 2012).

⁵ See the OSCE Mission to Bosnia and Herzegovina "Submission of Information to the UN Committee on Economic, Social and Cultural Rights" (April, 2013)

BiH places too much emphasis on the reconstruction of houses while projects targeting sustainable return (as well as local integration) are supported on an *ad hoc* basis. More specifically, the failure of the authorities to implement Entity Constitutional provisions that provide employment in line with 1991 census seriously hampered the return process and integration of returnees⁶. The inter-entity agreement on pension rights, signed in 2000, is no longer respected by the parties. The pension system and benefits remain divided and disharmonized between the entities. On a positive note, the Parliament of the FBiH adopted a law in March 2012 allowing returnees from the RS to access pension benefits, and consequently healthcare, within the FBiH. This represents internal implementation of the European Court of Human Rights judgments in the cases of *Karanović v. BiH* and *Šekerović-Pašalić v. BiH*. Moreover, problems related to the lack of infrastructure (especially electricity) and comprehensive de-mining activities (despite the efforts of several donors) continue to limit access to rights of returnees, displaced persons and refugees.

8. Ethnically colored curricula affect larger groups of school-aged children. Children are often separated along ethnic lines since interim measures previously employed to facilitate access for returnee children to education, have become quasi-permanent features of the system. Increasingly, it seems that parents go out of their way to enroll children in schools which cater to their particular ethnic group. Ultimately this lends itself to distrust and ignorance for the child *vis a vis* other ethnic groups and beliefs. This, in turn threatens the cohesion and viability of Bosnia and Herzegovina as a multi-ethnic and multi-religious State.

Recommendations:

- (k) BiH Law on Refugees, Returnees and DPs should be amended to reflect key principles outlined at the 2010 Revised Strategy and ensure equal access to rights of returnees, refugees and displaced persons irrespective of their place of residence in BiH.
- (l) In addition to housing, more resources should be devoted to ensure access to health, social protection or employment by returnees, refugees and displaced persons.
- (m) FBiH and RS Constitutional provisions on access to public employment (mainly targeting returnees) should be implemented, especially in those places with large community of returnees.
- (n) Education authorities need to work on solutions which would change interim measures into long-term durable solutions.

National Human Rights Institutions and Effective Domestic Remedies

9. The FBiH and RS Ombudsman Institutions merged with the BiH Ombudsman Institution in April 2010. Therefore, the country now has one consolidated and unified Ombudsman. From the date of its merger until today, the institution has advanced its consolidation but faces severe limitations which hamper the fulfilment of its mandate. These limitations can be summarized as follows: (i) weak financial situation; (ii) few offices to cover the entire country; (iii) lack of awareness of its existence by the majority of citizens; (iv) poor rate of implementation of its recommendations, and, possibly, (v) limited expertise which results in certain recommendations not being drafted to an appropriate standard. In addition, Ombudsman co-operation with civil society organizations is not yet systematized.

⁶ The Dayton Peace Agreement divided BiH into two entities: the Federation of BiH (FBiH) and the Republika Srpska (RS). In addition, the FBiH is administratively divided into ten cantons.

10. Moreover, there have been several examples of governmental neglect of final judgments of the Constitutional Court, which is the highest judicial body for allegations of violations against the human rights provisions enshrined in the Constitution of BiH. For instance, there is not yet full compliance with the Constitutional Court's order to remove names, flags and symbols of units of self-governance which have been declared as inflammatory due to their religious or ethnical overtones. In this respect, the lack of a tailored legal remedy for non-implementation of those final judgments from the Constitutional Court has been identified as the major obstacle by relevant stakeholders, given that criminal prosecution of those responsible has proven to be an ineffective tool. This shortcoming in the national human rights machinery has led to an increase in the number of complaints lodged before the European Court for Human Rights whereby citizens from BiH seek compensation for non-executed judgments from the Human Rights Chamber of the Constitutional Court.

Recommendations:

- (o) The BiH Ombudsman Institution should have adequate financial resources to implement its mandate and increase citizens' awareness.
- (p) Local authorities should recognize the mandate of the Ombudsman and cooperate with the institution to increase the implement rate of its recommendations.
- (q) Cooperation between the BiH Ombudsman and civil society organizations should increase.
- (r) The Constitutional Court and other concerned stakeholders should consider proposing legislation to ensure the timely and full execution of its judgments.