



**Bosnia and Herzegovina's Compliance with CEDAW  
Suggested List of Issues Relating to Domestic Violence**

**Submitted by The Advocates for Human Rights**

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1. **The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates' Women's Human Rights Program has published more than 25 reports on violence against women as a human rights issue, frequently provides consultation and commentary on drafting laws on domestic violence, and trains lawyers, police, prosecutors, and judges to effectively implement new and existing laws on domestic violence. The Women's Human Rights Program also created training modules on access to justice and drafting legislation on violence against women in all its forms for UN Women's Virtual Knowledge Centre.

## EXECUTIVE SUMMARY

1. Bosnia and Herzegovina (BiH) is composed of two entities, the Federation of Bosnia and Herzegovina and Republic of Srpska (RS), and one self-governing district, District Brčko. The two entities are highly autonomous. Each has its own constitution, judicial systems, and legislatures. The national legislature has authority over limited issues, and most legislative functions occur at the entity level.
2. Violence against women in BiH is prevalent. The Agency for the Gender Equality (AGE) of BiH in 2014 published data showing that 52.8 percent of women in BiH have experienced some form of violence since the age of 15. Rates in both entities reflect similar levels of prevalence: in FBiH, that rate is 52.8 percent, while in RS, the rate is 52.7 percent.<sup>1</sup> Women from rural areas are also at high risk of domestic violence (49.2 percent) and face economic challenges, as well. Furthermore, AGE's research noted strong patriarchal attitudes across the country. They noted that substance abuse, often alcoholism, and the presence of immobile family members—where women are primary caretakers—can aggravate the risk of domestic violence.<sup>2</sup>
3. BiH has adopted legislation that addresses gender equality and violence against women and girls on both state and entity levels. State-level legislation focus primarily on sex-based discrimination and gender equality, though the state has also adopted a strategy to implement the Istanbul Convention. The Council of Ministers of BiH has adopted the Law on Gender Equality, which provides definitions for and prohibits sex discrimination. The law additionally prohibits harassment generally as well as sexual harassment, the incitement of discrimination, and gender-based violence. The state has also adopted the Gender Action Plan of Bosnia and Herzegovina (2013–2017). The Gender Action Plan has three main strategic goals: (1) to develop, implement, and monitor programs designed to increase gender equality within government bodies; (2) to establish and strengthen gender equality mechanisms; and (3) to establish and strengthen cooperation at international and regional levels as well as among civil society and community organizations. Finally, the state has adopted the Framework Strategy for the Implementation of the Convention on Prevention and Combating Violence against Women and Domestic Violence in Bosnia and Herzegovina for the Period 2015–2018. The Framework Strategy has four main pillars: prevention, multidisciplinary systems, justice for victims of violence and perpetrator sanctions, and the development of integrated and gender-sensitive policies.
4. Republika Srpska (RS) has adopted numerous laws aimed at addressing violence against women. RS adopted its domestic violence law in 2013. Victims of domestic violence can use this law to obtain important court-ordered emergency and long-term protective measures, including eviction and protective orders. Under the law, the Center for Social Work (CSW) has the sole authority to refer victims to safe houses, which are allocated funding from both the republic and local levels. Under Article 21, the CSW is tasked with establishing multidisciplinary teams which create victim assistance plans and coordinate

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<sup>1</sup> "Nasilje nad ženama i nasilje u porodici," Agency for the Gender Equality of Bosnia and Herzegovina. January, 20, 2014.

<sup>2</sup> "Rasprostranjenost i karakteristike nasilja prema ženama u BiH," Agencija za ravnopravnost spolova Bosne i Hercegovine. 2013.

to aid victims of domestic violence at a local level. More broadly, the law establishes other cooperation strategies, including a Coordination Council tasked with monitoring policy implications, making implementation recommendations, adding to domestic violence research, and continued participation in other partners' activities. Further, the law provides perpetrator-focused framework, including the provision of psychosocial treatment, rehabilitation, and fines for acts of domestic violence.

5. RS has other laws and policies beyond the domestic violence law. Domestic violence is specifically prohibited under the RS Criminal Code under penalty of fine or imprisonment. Of particular importance, Article 208(6) provides criminal penalties for violating an order for protection. Those who violate orders for protection face imprisonment ranging from three months to three years. Furthermore, RS adopted the Strategy to Combat Domestic Violence of the Republic of Srpska (2014–2019) in 2014. The Strategy establishes the Framework Action Plan for Implementation of the Strategy and identifies goals including the prevention of domestic violence, protection and assistance of victims, and legal and policy monitoring. The year prior, RS adopted the 2013 General Protocol on Cases of Domestic Violence in an effort to promote cooperation between the Ministry of Family, Youth and Sport, Ministry of Justice, Ministry of Interior, Ministry of Health, and Ministry of Education and Culture. The General Protocol establishes the groundwork for creating multisectoral municipal teams and identifying who should comprise those teams. The protocol also tasks the Ministry of Family, Youth and Sport with overseeing Domestic Violence Law implementation and tasks the Gender Center RS with overseeing Istanbul Convention implementation. Despite all the work within RS to address domestic violence, it should be noted that the entity does not accept the implementation of the Framework Strategy for the Implementation of the Convention on Prevention and Combating Violence against Women (VAW) and Domestic Violence in Bosnia and Herzegovina for the Period 2015-2018.
6. Federation of BiH (FBiH) has adopted a domestic violence law that provides for eviction and temporary detention, restraining orders, and prohibition of harassment. These remedies—apart from temporary detentions—can be made available to victims within 24 hours of reporting to law enforcement. Unlike RS, both police and CSWs have the authority to refer victims to safe houses, though funding is similarly allocated on both federation and local levels. Under the domestic violence law, healthcare professionals, social workers, educators, judiciary, and other institutions are required to sign a multisectoral protocol. The law provides for psychosocial and addiction treatment for perpetrators, and it penalizes the violation of protection measures through a misdemeanor fine.
7. In addition to the domestic violence law, FBiH has a number of other laws and policies designed to address domestic violence. The FBiH Criminal Code penalizes domestic violence with a fine or prison term. Additionally, FBiH adopted the Strategy for Combating Domestic Violence 2013–2017, which has been reviewed with the purpose of creating the next strategy. Cantonal governments are tasked with developing their own two-year programs aimed at the prevention of domestic violence and protection of victims. The Gender Center FBiH has created guidelines and training for multisectoral frameworks.

8. Gaps remain, however, with regard to implementation of these laws, including victim protection and effective access to services, offender accountability, and divorce proceedings.

### **Bosnia and Herzegovina fails to uphold its obligations under CEDAW**

9. States Parties are obligated to incorporate equality of women and men in their legislation, to adopt appropriate legislative measures, including sanctions, and ensure through courts or other institutions the “effective protection of women against any of discrimination” under Article 2 of CEDAW. CEDAW General Recommendation No. 19 recognizes violence against women as a form of discrimination against women, and General Recommendation No. 35 reiterates that the prohibition of gender-based violence against women is now a part of international customary law.

#### **I. Victim Protection and Services**

10. Both entities offer protective measures under their respective domestic violence laws. **There is no clear legislation or policy, however, that guarantees full faith and credit by both entities to protective measures issued by the other entity.** For example, when a woman secures a protective measure in RS and relocates to or is present within FBiH, it is unclear whether officials in FBiH will enforce that protective measure should her abuser follow her to FBiH and violate the RS order.
11. **There are nine shelters throughout Bosnia and Herzegovina, with a total capacity of 178 persons.** Six of them are in FBiH and three in Republika Srpska. Based on the country’s population and international recommendations, there should be 379 shelter beds available. Many shelters also serve as safe houses for human trafficking victims—putting additional strain on not only resources and staff, but also victims seeking refuge and protective services.
12. **There are six safe houses in FBiH with a capacity of 131 persons.** They provide accommodation for victims and their children, as well as programming for psychological support. Seventy percent of clients are unemployed women who are financially dependent on their partner, with the majority of the women being between the age of 25 and 35 years (38 percent).<sup>3</sup> Shelter capacities vary, placing strain on the smaller safe houses to meet the needs of victims and their children. The NGO-operated safe houses are chronically underfunded by the government. As such, they rely heavily on donations and staff resourcefulness.<sup>4</sup>
13. **The three RS shelters are operated by NGOs and can collectively accommodate 52 people.**<sup>5</sup> According to the three NGOs in RS that run the shelters, there were 107 women and 113 children sheltered during 2013. Data from the Ministry of Family, Youth and Sport of the RS Government only identified 40 women and 46 children.<sup>6</sup>
14. **The location of these shelters and rules on their stay inhibit women’s access to shelter protection.** The three RS shelters are located in in the northern and central part of that entity. If a victim living in southern RS needs shelter, she must travel nearly twice the distance of

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<sup>3</sup> “Sigurne kuće u Bosni i Hercegovini,” Sarajevski Otvoreni Centar. October, 30, 2014.

<sup>4</sup> “Sigurne kuće u BiH: i dalje bez podrške Vlade FBiH,” Diskriminacija. April, 12, 2016.

<sup>5</sup> Bosnia State party report, ¶77.

<sup>6</sup> Written Contribution to the EU Progress Report on Bosnia and Herzegovina 2014, Foundation United Women Banja Luka, BiH, p.2, available at <http://eu-monitoring.ba/site/wp-content/uploads/2014/06/Contribution-to-the-EU-Progress-Report-on-BiH-2014-UWBL-1.pdf>.

the nearest shelter in FBiH to reach an RS shelter, where she can be admitted. For example, the Foundation “Women’s Center” Trebinje has lobbied for years for a shelter in the Eastern Herzegovina part of RS. Because there are no shelters in this area, victims must be transferred to shelters in the northern or central part of RS. Victims from RS are not able to stay in shelters in the Federation of Bosnia and Herzegovina because of the specific way that shelters are funded. Thus, a victim from Trebinje would need to travel six hours to reach the shelter in Banja Luka. For many victims, this is an insurmountable obstacle, and they have been forced to stay in a violent household. A positive development is that the Ministry of Family, Youth and Sports has decided to help build a safe house in Trebinje.<sup>7</sup>

15. **Access to shelters is further restricted by the policies of the Centers for Social Work (CSW), which control access, and because of the way shelters are funded.** Under the LPDV, up to 70 percent of funds for shelters are paid from the budget of RS and 30 percent are paid by the local governments. However, the funds from the local government are transferred to the CSW, not directly to the NGO operating the shelter.<sup>8</sup> CSWs only provide referrals to shelters if they have established that the victim has no family member or friend who could accommodate her and if there is no danger of repeated violence in such accommodation.<sup>9</sup> CSWs also habitually refuse to recognize psychological violence as a form of domestic violence, and therefore deny shelter for victims of psychological violence.<sup>10</sup> NGOs reported that women who call the SOS telephone number are referred to the CSWs, who refuse to issue referrals to avoid paying the associated costs, and that CSWs usually plan in advance the number of victims to be placed in safe houses during the year and do not want to increase it.<sup>11</sup>

16. **CSWs determine whether a victim receives a referral to a shelter and also decide the number of days she may stay there.** In practice, issuing decisions for a 15-day or a one-month stay, instead of allowing longer periods of time that would allow for psycho-social treatment and trauma recovery, reduces the effect that shelters can have, and approximately 80 percent of women victims of domestic violence return to violent households. Recovering from a violent relationship is a painful and arduous, and certainly impossible in such a short period of time, because it is a process that requires more than 15 days or a month.<sup>12</sup>

17. **Suggested questions** relating to victim protection and services:

- Explain what measures the entities of FBiH and Republika Srpska are undertaking, if any, to ensure that victims of domestic violence who obtain a protective order in one entity, can enjoy its full protection and enforcement in the other entity.
- Describe what measures the entities of FBiH and Republika Srpska are undertaking to ensure a victim of domestic violence, who is a resident of one

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<sup>7</sup> Information from Foundation “Women’s Center” Trebinje.

<sup>8</sup> Information from Foundation “Women’s Center” Trebinje.

<sup>9</sup> A. Petric, *Absence of Systemic Protection and Secured Access to Justice*, p. 9 and n. 15, 2016 (citing Experiences from the safe house managed by Fonacija Udružene žene Banja Luka and Fondacija Lara Bijeljina).

<sup>10</sup> Written Contribution to the EU Progress Report on Bosnia and Herzegovina 2014, Foundation United Women Banja Luka, BiH, p.2 (citing evidence provided by the Women's Organization "Lara" Bijeljina).

<sup>11</sup> A. Petric, *Absence of Systemic Protection and Secured Access to Justice*, p. 9, 2016.

<sup>12</sup> Information from Foundation “Women’s Center” Trebinje.

entity, can access shelter in the other entity, in cases where she has relocated or the vicinity of her home to the nearest shelter.

- Describe what steps, if any, the government is taking to remove the referral requirement to enter shelters. If no steps are being undertaken, please describe what measures the government is undertaking to minimize the barriers that victims face to accessing shelters under the referral requirement.
- Explain what training, by whom, and how often, CSW staff undergo training on the dynamics of domestic violence and shelter referral policies.
- Explain what measures, if any, are undertaken and by whom to promote the safety of a victim after she leaves a shelter.

## II. Offender Accountability

18. **In Republika Srpska, an act of domestic violence can be treated as a misdemeanor under the Law on Protection of Domestic Violence (LPDV) or a crime under the Criminal Code.** In practice, however, most domestic violence cases are filed as misdemeanors, which results in lower sanctions, increased recidivism, and only the most serious cases being identified as criminal offenses. The reasons cited are that the misdemeanor procedure is easier to use and easier to prove and cases will be processed more quickly.<sup>13</sup> There were reports that higher levels of sanctions would only be imposed in cases resulting in serious bodily injury or death of the victim.<sup>14</sup>

19. **In Federation of BiH, legislation classifies domestic violence as a crime.** Article 222 of the Criminal Code punishes anyone “Whosoever, by use of violence, threatening behavior or mental cruelty violates the peace, life, physical or mental health of any member of his family” by a fine or prison sentence.<sup>15</sup> Although domestic violence is a criminal offense in FBiH, in practice it is still often treated as misdemeanor offense in FBiH. Under the legal framework, police are required to inform the prosecutor in cases that are treated as a criminal offense. When domestic violence is reported as misdemeanor, effective collaboration between the prosecutor and the police is not established and domestic violence cases are prosecuted as the lighter offense of breach of public order and peace. Often, instead of following through with prosecution, the matter is settled with police intervention that generally fails to protect victims.<sup>16</sup>

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<sup>13</sup> This does not appear to be the case, however. Activists reported to the Special Rapporteur on violence against women, its causes and consequences, that protection measures still take up to six months to be processed, even though these are urgent measures. Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Addendum, Mission to Bosnia and Herzegovina, A/HRC/23/49/Add. 3, 4 June 2013, ¶¶ 82-83, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-49-Add3\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-49-Add3_en.pdf) (Special Rapporteur Report); information also from Foundation “Women’s Center” Trebinje.

<sup>14</sup> Special Rapporteur Report, ¶83.

<sup>15</sup> Criminal Code of the Federation of Bosnia and Herzegovina, OG FBiH 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14, 76/14 and 46/1 (2016).

<sup>16</sup> “Zapažanja o promjeni Zakona o zaštiti od nasilja u obitelji u praksi nadležnih institucija,” Organization for Security and Cooperation in Europe, Mission to Bosnia and Herzegovina. July 2009.

20. **In BiH, any of the penal sentences for gender-based violence against women, lenient as some of them may be, are often suspended or thrown out altogether.** Courts typically sentence perpetrators of gender-based violence against women, especially perpetrators of domestic violence, to fines and, rarely, very short prison sentences, even in cases of repeat offenders. Even though the crime was committed against family members, judges often use family status and the need to provide for minor children as a reason to mitigate the sanctions in a domestic violence offense.<sup>17</sup>
21. **Best practices dictate that the violation of an order for protection should be a crime.** The FBiH domestic violence law punishes breach of a protective measure with a misdemeanor fine. The RS domestic violence law punishes breach of a protective measure with a criminal penalty of prison time.
22. **Both RS and FBiH domestic violence laws provide for batterer intervention programs (BIPs) under the order for protection.** These perpetrator treatment programs, however, do not have clear mandates for the use of risk assessments to increase victim safety. Moreover, the BIPs lack formalized connections with the criminal justice sector and NGOs that serve domestic violence victims. In addition, there are no uniform formal certification standards that would ensure compliance with best practice standards.
23. **Suggested questions** relating to offender accountability:
- What steps is the government undertaking to train police, prosecutors, and judges to ensure the use of the Criminal Code to prosecute qualifying acts of domestic violence, rather than the LPDV's lower misdemeanor sanctions? Where trainings are happening, to what extent is the government involving or consulting with NGOs that serve victims of domestic violence and best know their needs?
  - What steps is the FBiH government undertaking to form laws to ensure that violation of a protective measure is a crime, instead of a misdemeanor?
  - What data does the RS government have on incidences of recidivism for cases of domestic violence that are prosecuted under the misdemeanor law, instead of the criminal law?
  - What steps are the relevant ministries undertaking to develop a specific protocol on BIPs that would promote consistency and compliance with best practice standards across RS and all FBiH cantons, including risk assessment?
  - How will the government ensure that BIPs are connected to and work closely with the criminal justice system and organizations that provide services to victims?

### III. Mediation in Divorce

24. **Mediation is a mandatory part of divorce proceedings where spouses have a child, even in cases of severe forms of domestic violence** or where this procedure is redundant and only prolongs divorce proceedings. As indicated in the Handbook for Legislation on Violence

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<sup>17</sup> A. Petric, *Absence of Systemic Protection and Secured Access to Justice*, 2016, p.7.

Against Women, legislation should prohibit mediation in all cases of violence against women because mediation can be problematic and dangerous where there is domestic violence, as the parties may not have equal negotiating power.<sup>18</sup>

25. Suggestions questions relating to mediation in divorce:

- What steps is the government taking to amend legislation to prohibit the use of mediation in divorce proceedings that involve victims of domestic violence?
- Describe what steps the Ministry of Justice is undertaking, if any, to ensure that judges are trained to screen and recognize domestic violence in family law cases.

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<sup>18</sup> Economic & Social Affairs, Division for the Advancement of Women, Handbook for Legislation on Violence Against Women 3.9, (2010).