



## **Bosnia and Herzegovina's Compliance with the International Covenant on Civil and Political Rights**

### **Report for the 119<sup>th</sup> Session (06 March 2017 to 29 March 2017) of the Human Rights Committee**

**Submitted by The Advocates for Human Rights,**  
a non-governmental organization in special consultative status with ECOSOC  
and  
**Foundation "Women's Centre" Trebinje,**  
a non-governmental organization

#### **I. Reporting Organizations**

- 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.
- 2. Foundation "Women's Centre" Trebinje** was founded in 2002 as the "Women's Center" Trebinje, Association by a group of 20 men and women to help children and women victims of domestic violence. It re-registered in 2016 as the Foundation "Women's Center" Trebinje. It was established due to the need to speak out about violence against women and children which, until then, was considered a private problem of individual households, and not as a problem that affects the whole society. Deeply rooted stereotypes and patriarchal attitudes about the position and the role of women in society and family have created a certain "taboo" in terms of specific relationships between men and women. Guided by a desire to contribute to solving this global problem, especially in the context of its region, but also at the state level and beyond, the Foundation has conducted its activities in various areas of everyday life and work in order to provide the most appropriate response to this challenge. Although its activities are focused on different areas (for example, social life, health services, social security, economy), and apply different methodologies, there is only one overall aim:

improvement of status of women in society of the Republic of Srpska and Bosnia and Herzegovina, primarily through the development of partnerships between men and women in family and in society.

The Foundation's vision is to improve the status of women in society and family, and a life free of violence. Its mission is to fight for children's and women's rights in all segments, and the economic empowerment of women. The Foundation's work is based on needs assessment so that the results are the product of recognized needs and voluntary contributions to attend to those needs.

## **II. Introduction**

3. Domestic violence is a form of discrimination against women and violates women's human rights. It violates a woman's right to life, bodily security and integrity, equal protection, and freedom from torture, in violation of Articles 2, 3, 6, 7, 9, and 26 of the Covenant.
4. Domestic violence continues to be a widespread problem throughout Bosnia and Herzegovina. In 2013, the State-level Agency for Gender Equality published research on the prevalence of abuse against women. The study found that almost half of the women surveyed experienced psychological or physical abuse from the age of 15 (47.2% across the country and 47.3% in RS).<sup>1</sup> Psychological abuse was the most common form, with a prevalence rate of 41.9 percent. Physical violence was second, with a prevalence rate of 24.3 percent, and sexual violence was third, with a rate of 6 percent.<sup>2</sup> The Agency for Gender Equality also reported that only 17% of women who experienced domestic violence sought help.<sup>3</sup>
5. In paragraph 11 of the List of Issues, the Committee requested “information on the prevalence of violence against women, include domestic violence, and measures to encourage reporting of such cases.”<sup>4</sup> The Committee also requested data on investigations, the types of penalties imposed, and the type of comprehensive victim assistance provided in all jurisdictions in the State party. This report provides information with respect to the Committee's request in paragraph 11, particularly with respect to the Republic of Srpska, and other issues with respect to violence against women in the Republic of Srpska.

## **III. Overview of Legal Framework.**

6. Bosnia and Herzegovina is composed of two entities, the Federation of Bosnia and Herzegovina and Republic of Srpska (RS), and one self-governing district, District Brčko.

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<sup>1</sup> Consideration of reports submitted by States parties under article 40 of the Covenant pursuant to the optional reporting procedure, Third Periodic report of States parties due in 2016, Bosnia and Herzegovina (Bosnia State party report), CCPR/C/BIH/3, 19 May 2016, ¶71; *see also* Executive Summary, p. 15, [http://arsbih.gov.ba/wp-content/uploads/2014/01/studija\\_prevalenca.pdf](http://arsbih.gov.ba/wp-content/uploads/2014/01/studija_prevalenca.pdf), accessed: 11. 10. 2015.

<sup>2</sup> Bosnia State party report, ¶71; *see also* Executive Summary, p. 15. [http://arsbih.gov.ba/wp-content/uploads/2014/01/studija\\_prevalenca.pdf](http://arsbih.gov.ba/wp-content/uploads/2014/01/studija_prevalenca.pdf).

<sup>3</sup> US. Dep't of State, Country Reports on Human Rights Practices for 2015, Bosnia and Herzegovina, available at <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (2015 Human Rights Report).

<sup>4</sup> Human Rights Committee, List of issues prior to the submission of the third periodic report of Bosnia and Herzegovina, CCPR/C/BIH/QPR/3, 24 November 2015, ¶11.

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.

7. Although RS has enacted several laws, challenges still exist in their implementation to effectively protect victims and hold perpetrators of domestic violence accountable.

#### **IV. Analysis of Compliance with the ICCPR in Response to Paragraph 11 of the List of Issues.**

##### **A. Data on domestic violence is not consistently collected, leading to confusion on the extent of violence.**

8. Article 34 of the Law on Protection from Domestic Violence (LPDV) of RS results in a significant improvement in collecting data on domestic violence. The article requires all parties and other bodies authorized to act under the law to keep records of their actions, directs the Ministry of Family, Youth and Sports to collect, process, and record information on domestic violence, and regulates the content of the records and reports of domestic violence. As a result, data for 2014, 2015, and the first half of 2016 are in a merged register of cases of domestic violence recorded by all security and protection organs. However, this data does not include reports from NGOs, who provide direct services to victims of domestic violence. In addition, the different forms of reporting lead to confusion and a lack of clarity on the situation throughout RS. Analyzing and comparing the statistics published by the Ministry of Family, Youth and Sports by each of the protection organs for the aforementioned period (January 2014-June 2016), yields the following results:
9. The Ministry of Internal Affairs RS reported a total of 2,839 cases of domestic violence, out of which men were the perpetrators in 95% of cases. The police submitted 1,098 reports on committed criminal offenses to prosecutors, out of which 293 persons were detained. The police filed a total of 45 requests for the imposition of emergency protective measures to misdemeanor courts, and the courts issued orders in at least 18 cases. There were 291 protective measures proposed (most of which were protective measures for the prohibition of harassment or stalking). The police implemented 173 different protective measures. Perpetrators possessed legal or illegal weapons in 106 cases, and perpetrators used weapons in 18 cases.<sup>5</sup>
10. During the same period (January 2014 – June 2016), primary courts in RS reported a total of 1,855 requests for misdemeanor proceedings, for which there were 22 proposals for emergency protective measures. During this period, the courts issued 33 emergency protective measures. There were 1,684 accused persons, out of which 1,488 were men (88.3%) and 196 were women. Based on the imposed sanctions and protective measures in cases of domestic violence, there appears to be a trend in imposing fines for domestic violence or issuing suspended sentences. The courts ordered fines in 537 cases, and suspended sentences in 337 cases. Fines directly affect women and children because the perpetrator pays the fine with household funds, which are in fact deducted from the victims

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<sup>5</sup> Data for January 2014 to June 2016 available through reports on the Ministry of Family, Youth and Sports' website at <http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpos/oPorodica/Pages/Splash.aspx#collapsible0>.

who share households and funds with the perpetrator. Thus, courts also punish victims when they fine perpetrators. In addition, victims may become reluctant to report violence out of fear that the court will order fines and they will lose household funds.<sup>6</sup>

11. Primary courts also reported that in total, there were 171 protection measures imposed during this period and 163 executed protective measures. There were 826 perpetrators convicted of domestic violence, out of which 732 were men (88.6%) and 94 (11.4%) were women. In this reporting period, at least 50 proceedings were terminated.<sup>7</sup>

**B. The number of femicides is increasing and accurate data is not available.**

12. The number of cases where domestic violence ends with a fatal outcome is an important issue in the Republic of Srpska. Prosecutors qualify these femicides as murder and not as domestic violence resulting in death, although the Criminal Code provides the same sanction for both crimes.<sup>8</sup> This classification creates the incorrect illusion that the RS does not have cases of murder as a result of domestic violence. The only information on this issue comes from the media, and there are no clear statistics on this issue.

**C. Investigations and penalties imposed - Domestic violence is prosecuted as a misdemeanor or not at all.**

13. In RS, 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>9</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>10</sup>
14. Many of the sentences for gender-based violence, lenient as some of them may be, are often suspended or thrown out altogether. Courts typically sentence perpetrators of gender-based violence, especially perpetrators of domestic violence, to fines and, rarely, very short prison sentences, even in cases of repeat offenders. And even though the crime was committed

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<sup>6</sup> Data for January 2014 to June 2016 available through reports on the Ministry of Family, Youth and Sports' website at <http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpos/oPorodica/Pages/Splash.aspx#collapsible0>.

<sup>7</sup> Data for January 2014 to June 2016 available through reports on the Ministry of Family, Youth and Sports' website at <http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpos/oPorodica/Pages/Splash.aspx#collapsible0>.

<sup>8</sup> Criminal Code of RS, Article 208, and Article 149 and 198.

<sup>9</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>10</sup> Special Rapporteur Report, ¶83.

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>11</sup>

#### **D. Investigations – Police are not correctly responding to domestic violence.**

15. Even though police reportedly received specialized training in handling cases of domestic violence, NGOs reported a widespread reluctance by police to arrest offenders because this would break up families.<sup>12</sup> In addition, although police are authorized to temporarily remove domestic violence perpetrators from their homes, they rarely use this provision because they incorrectly include consideration of where the perpetrator would live as part of their analysis.<sup>13</sup> Instead, the non-violent victims are forced to leave their homes to seek safety.
16. Findings from a 2013 report demonstrate that there is much work to do to standardize and improve police responses to domestic violence. In 4.4% of cases, the police did not respond to the call, in 2.9% of cases the police took the victim to the police station; in 30.9% of cases the police warned the perpetrator and calmed him down; in 41.2% of cases the police arrived, talked to the perpetrator and then left with no follow-up or further consequences; and in less than 17.6% of reported cases, the police filed criminal or misdemeanor reports against the perpetrator.<sup>14</sup> The lack of police response or further consequences allows perpetrators to act with impunity and reduces the likelihood that victims will contact police if she is subjected to more violence.
17. Problems also arise if the police do not communicate with the prosecutors and the courts regarding cases where they file both criminal and misdemeanor reports for the same act of domestic violence. As indicated above, both the Criminal Code and the LPDV can be used with respect to acts of domestic violence. Misdemeanor proceedings are typically faster than criminal proceedings. If the police do not inform the prosecutor and the Magistrates Court that other proceedings are pending, the misdemeanor court is likely to reach a conclusion first. Because a defendant cannot be tried twice for the same incident, the criminal proceedings are withdrawn.<sup>15</sup> As a result, perpetrators of domestic violence are able to escape more severe sanctions.

#### **E. Serious problems with adequate funding and availability for victim shelters compromise women’s rights.**

18. There are nine shelters throughout Bosnia and Herzegovina, with a total capacity of 173 persons.<sup>16</sup> Based on the country’s population and international recommendations, there should be 379 shelter beds available.<sup>17</sup> Many shelters also serve as safe houses for human

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<sup>11</sup> A. Petric, Absence of Systemic Protection and Secured Access to Justice, 2016, p.7.

<sup>12</sup> 2015 Human Rights Report.

<sup>13</sup> 2015 Human Rights Report.

<sup>14</sup> Agency for Gender Equality of Bosnia and Herzegovina, Prevalence and Characteristics of Violence Against Women in BiH, p. 100, 2013, available at [http://arsbih.gov.ba/wp-content/uploads/2014/01/studija\\_prevalenca.pdf](http://arsbih.gov.ba/wp-content/uploads/2014/01/studija_prevalenca.pdf).

<sup>15</sup> Information from Foundation “Women’s Center” Trebinje.

<sup>16</sup> 2015 Human Rights Report.

<sup>17</sup> Women Against Violence Europe, Report on the Role of Specialist Women’s Support Services in Europe, p. 24-25 and Table 13, 2015 [http://files.wave-network.org/researchreports/WAVE\\_Report\\_2015.pdf](http://files.wave-network.org/researchreports/WAVE_Report_2015.pdf).

trafficking victims—putting additional strain on not only resources and staff, but also victims seeking refuge and protective services.<sup>18</sup>

19. Three of the shelters are located in RS. They are all operated by NGOs, and they can collectively accommodate 52 people.<sup>19</sup> All three shelter locations are in the northern and central part of RS. 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>20</sup>
20. Access to shelters is controlled by the centers for social work (CSW) because of the way shelters are funded. Under the LPDV, up to 70% of funds for shelters are paid from the budget of RS and 30% 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>21</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>22</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>23</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>24</sup>
21. 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% 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>25</sup>
22. Official authorities perceive sheltering survivors of domestic violence in the safe houses as a service, and not measure of social support and protection guaranteed by the laws. According to the Ministry of Family, Youth and Sport in the period from January 2014 to June 2016 the CSWs reported 3,094 cases of domestic violence, out of which only 103 of them were accommodated in safe houses.<sup>26</sup>

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<sup>18</sup> 2015 Human Rights Report.

<sup>19</sup> Bosnia State party report, ¶77.

<sup>20</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>.

<sup>21</sup> Information from Foundation “Women’s Center” Trebinje.

<sup>22</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 zene Banja Luka and Fondacija Lara Bijeljina).

<sup>23</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>24</sup> A. Petric, Absence of Systemic Protection and Secured Access to Justice, p. 9, 2016.

<sup>25</sup> Information from Foundation “Women’s Center” Trebinje.

<sup>26</sup> Information from Foundation “Women’s Center” Trebinje.

23. The Foundation “Women’s Center” Trebinje has lobbied for years for a shelter in the Eastern Herzegovina part of RS. There currently are no shelters in this area, so 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 have to travel to Banja Luka, which is a six hour drive in one direction. 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>27</sup>
24. In addition to the lack of domestic violence shelters in BiH (and RS, specifically), there are no crisis centers for victims of rape or other forms of sexual violence. There is also no legislation that criminalizes stalking, forced marriage, or genital mutilation.<sup>28</sup>

## **V. Analysis of Compliance with the ICCPR regarding other issues.**

### **A. RS Family Law allows parents who sexually abuse their children to have their parental rights restored.**

25. Inconsistencies in legal provisions mean that parents who have sexually exploited their children may be able to restore their parental rights. Articles 195 and 196 of the Criminal Code of RS provide that any person who commits a sexual act with a child and who is a guardian or adoptive parent of such child will be punished by imprisonment for a term between five and fifteen years. Article 106(2) of the Family Law also allows the courts to deprive parental rights because of the sexual exploitation of a child. However, Article 106(4) of the Family Law of RS provides that the court can restore the parental rights of those who sexually exploited a child, if the reason for which the parent was denied their parental rights no longer exists. NGOs have advocated amending Article 106 of the Family Law of RS<sup>29</sup> to add the words "except in cases of sexual exploitation of a child," but this amendment has not been adopted.

### **B. Economic issues create barriers for victims to leave violent situations.**

26. About 80 percent of domestic violence victims who reside in safe houses return to a violent household. The main reason for this behavior is economic dependence and a lack of opportunities to find employment or start a business. For these reasons, it is necessary to provide financial support or employment to women victims of domestic violence so that they can achieve their independence from the abuser and therefore leave an abusive situation.<sup>30</sup> Also, due to the lack of economic support, a large number of women do not report violence.
27. Women victims of domestic violence usually are forced to stay in a violent household because of economic dependence on their perpetrators. Perpetrators usually do not allow their wives to work because economic dependence contributes to their control and keeps the

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<sup>27</sup> Information from Foundation “Women’s Center” Trebinje.

<sup>28</sup> A. Petric, *Absence of Systemic Protection and Secured Access to Justice*, 2016, p. 11.

<sup>29</sup> Foundation "Women's Center" Trebinje has repeatedly been the proponent of the Amendment to Article 106 of the Family Law RS.

<sup>30</sup> Information from Foundation “Women’s Center” Trebinje.

victim dependant on him and without the possibility of leaving the household.<sup>31</sup> The LPDV of RS does not include any provisions for protective measures that provide economic support when a victim leaves a perpetrator.

28. Even if the victim is empowered to leave the abuser, private sector employers are reluctant to employ victims of domestic violence out of fear that her abuser will show up at the workplace and threaten not only her, but others as well, or because victims may have higher rates of absence because they are caring for their children as single mothers. As a result, there are reduced employment opportunities, and a victim is unable to establish her economic independence.
29. Moreover, a woman may not be able to obtain a loan to establish her economic independence. The banks that provide loans with reasonable interest rates require clients to grant a security interest in or mortgage assets adequate to secure the loan amount. Such conditions discriminate against women because women often give up property they inherited under customary law to their brothers. In addition, a woman's acquired assets are usually registered in her father's, husband's or son's name, not in her name. As a result, women are not listed as the owners of real estate, and banks may deem them not to be credit-worthy.<sup>32</sup>
30. A positive development has been including victims of domestic violence for the first time as a vulnerable category in the "Employment Strategy of the Republic of Srpska for 2016 to 2020" and in the "Action plan for employment of the RS for 2017."<sup>33</sup> In particular, the Ministry of Labour and Veteran Protection RS; RS Ministry of Internal Affairs' the Ministry of Family, Youth and Sports; and Republic of Srpska Employment Bureau have made efforts in this area. Unfortunately, the RS Gender Centre and the Gender Equality Agency of Bosnia and Herzegovina have reduced their activities, with no substantial efforts to amend laws and other regulations in order to improve the situation of vulnerable women.

### **C. Mediation in Divorce**

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 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>34</sup>

## **VI. Suggested Recommendations**

- Continue to improve collection procedures with respect to data on domestic violence and work with NGOs to identify deficiencies in data collection and work to remove those deficiencies.

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<sup>31</sup> Information from Foundation "Women's Center" Trebinje.

<sup>32</sup> Information from Foundation "Women's Center" Trebinje.

<sup>33</sup> Foundation Women's Center "Trebinje, Foundation" Lara "Bijeljina, and Association" Helsinki Citizens' Assembly "Banja Luka submitted a package of economic measures for women victims of domestic violence.

<sup>34</sup> Economic & Social Affairs, Division for the Advancement of Women, Handbook for Legislation on Violence Against Women 3.9, (2010).

- 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.
- Train prosecutors on the importance and use of search warrants and confiscation of weapons in situations of domestic violence.
- Track femicide information at the entity and national level so that clear data is available to identify which murders result from domestic violence or other causes.
- Ensure that prosecutors are trained and able to conduct and continue criminal proceedings in the absence of victim testimony.
- Establish clear procedures and sentencing tools for judges in cases of domestic violence and ensure that they are implemented.
- Improve police training with respect to responses to domestic violence, including arrests, the use of the emergency barring order, and inter-agency communication, especially when filing criminal and misdemeanor proceedings.
- Increase the number of shelters and the funding available to them.
- Remove the CSW referral requirement for shelters and remove the CSWs' authority to set the length of a shelter stay.
- Amend legislation to prohibit the use of mediation in divorce proceedings that involve victims of domestic violence.
- Ensure that Gender Centers and the Agency for Gender Equality fulfill their roles.
- Ensure that the Law on Gender Equality of BiH is implemented in practice.
- Commission and ensure funding for research with respect to the connection and impact among social status, education, family history, and current violence; the benefits of measures of economic empowerment; the number of women who would benefit from such measures, and its impact on violence prevention.
- Amend Article 106, paragraph (4) of the Family Law of RS to add the words "except in cases of sexual exploitation of a child."