



**Abbreviations used in this text:**

**BiH** – Bosnia and Herzegovina

**FBiH** – the Federation of Bosnia and Herzegovina

**RS** – Republika Srpska

**BD** - Brčko District of Bosnia and Herzegovina

**IHROBiH** – Institution of Human Rights Ombudsman of Bosnia and Herzegovina

**OFGBiH** – Official Gazette of Bosnia and Herzegovina

**OFGFBiH** – Official Gazette of the Federation of Bosnia and Herzegovina

**OFGRS** - Official Gazette of the Republika Srpska

**OFGBD** - Official Gazette of the Brčko District of Bosnia and Herzegovina

**SCA GANHRI** - The Subcommittee for Accreditation of the Global Alliance for National Human Rights Institutions

**NPM** – National Preventive Mechanism

**CRC** – UN Convention on the Rights of Persons with Disabilities

# UNIVERSAL PERIODIC REVIEW OF HUMAN RIGHTS SITUATION IN BOSNIA AND HERZEGOVINA

## III cycle

March 2019

This report is based on the insight gained from the complaints of citizens lodged to the Ombudsman and surveys conducted from 2014–2018 published in annual and special reports available on the Ombudsman's web site.<sup>1</sup>

### **IHROBiH**

On 24 November 2017 SCA GANHRI re-accredited IHROBiH in "A" status as a national human rights protection mechanism. There are no human rights action plans in BiH, but IHROBiH adopted its 2016 – 2021 Operational Strategy and works continuously on promotion and protection of human rights.

There are still some limitations in IHROBiH capacity strengthening, primarily of financial nature, which aggravates the functioning and impacts the scope of the activities thus putting in question the principle of independence.

IHROBiH emphasizes necessity to adopt amendments to the Law on Ombudsman with a view of expanding its mandate as NPM, define its role in human rights promotion and ensure greater degree of financial independence. Non-adoption of this Law had negative impact to meeting the international commitments related to the establishment of NPM.

### **EQUALITY AND DISCRIMINATION**

Amendments to Law on Prohibition of Discrimination in BiH adopted in 2016 improved legal framework for protection against discrimination, and increased scope of competencies of IHROBiH and its Department for Elimination of All Forms of Discrimination.

Ombudspersons published their Special report on the rights of LGBT persons in BiH<sup>2</sup> in which they established the factual state, presented human rights approach to the status of LGBT community and drafted recommendations for concrete legal and administrative measures for improvement of their situation.

### **WOMEN'S RIGHTS**

In the area of employment, labor and women's social rights protection of, in period covered by this report, no adequate progress has been made in achieving the real equality of men and women in labor market. Registered are cases that pregnant women were fired and women working in "gray economy" are not integrated into formal labor market. There are indicators that women are not

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<sup>1</sup> <https://www.ombudsmen.gov.ba/>

<sup>2</sup> [https://www.ombudsmen.gov.ba/documents/obudsmen\\_doc2016110413333704bos.pdf](https://www.ombudsmen.gov.ba/documents/obudsmen_doc2016110413333704bos.pdf)

equally paid for the same work, and in the FbiH the system of women's protection during maternity leave and their remuneration is not equal in all cantons.<sup>3</sup>

BiH has not nearly attained degree of women's inclusion into the legislative and executive bodies proportional to their share in population. In legislative bodies (in 14 of such bodies in BiH according to Agency for Gender Equality in BiH women's share ranges between 20 to 30%).

Political representation of women is not satisfactory in local self-government units in BiH as well.

## **THE RIGHT TO LIFE, LIBERTY AND SECURITY OF PERSON**

### **Domestic violence**

In reporting period the Law on Protection from Domestic Violence and criminal legislation were partially harmonized with the CoE Convention on preventing and combating violence against women and domestic violence.

In RS domestic violence can be processed as both misdemeanor and criminal offence. The RS Criminal Code<sup>4</sup> prescribes criminal offences *against sexual integrity* and criminal offence of sexual violence against minors.

Criminal Code of FBiH<sup>5</sup> and Criminal Code of BD<sup>6</sup> do not include criminal offences of sexual harassment and sextortion. Criminal Code of RS recognizes criminal offences of sexual intercourse with child below 15 and sexual abuse of child older than 15 as separate criminal offences. Criminal Code of FBiH recognizes sexual violence against minors as a qualified form of criminal offences against sexual freedom and morals. BD Criminal Code provides for criminal offences *against sexual freedom and morals*.

Family laws of FBiH and RS ban domestic violence.<sup>7</sup> Labor laws of FBiH<sup>8</sup> and RS<sup>9</sup> list forms of discrimination, mobbing, harassment and sexual harassment.

However, women victims of domestic violence are not getting adequate material, psychological or legal assistance.

### **Trafficking in persons**

In 2015 the BiH the Council of Ministers adopted Action Plan to Combat Trafficking in persons in BiH for period 2016 to 2019. Amendments of BiH Criminal Code adopted in 2015<sup>10</sup> provide for criminal offences of international trafficking in persons, organized trafficking in persons and international incitement to prostitution.

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<sup>3</sup> Special report on situation of mothers and motherhood protection in FBiH

<sup>4</sup> OFGRS 64/17 i 66/18

<sup>5</sup> OFGFBiH 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14i 76/14

<sup>6</sup> OFGBD 33/13

<sup>7</sup> Provisions of FBiH and RS laws on protection from domestic violence provide protection measures and mechanisms in cases of domestic violence. Assembly of BD at its session held on 28 February 2018 adopted Law on Protection from Domestic Violence in BD which is commended by Ombudspersons

<sup>8</sup> OFGFBiH 26/16

<sup>9</sup> OFGRS 1/16 and 66/18

<sup>10</sup> OFGBiH,;3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15 i 40/15

Amendments to the Criminal Code of FBiH<sup>11</sup> introduce criminal offence of trafficking in persons, organized trafficking in persons and incitement to prostitution. RS Criminal Code<sup>12</sup> provides for criminal offences of trafficking in persons, association for commitment of criminal offences trafficking in persons and children and incitement to prostitution, while BD Criminal Code<sup>13</sup> includes criminal offences of trafficking in persons and incitement to prostitution. In RS trafficking in children is a separate criminal offence.

Progress was made by the adoption of Law on Aliens<sup>14</sup> important for the status of a victim of trafficking. It governs temporary residence of an alien who does not meet the general conditions for granting the approval for residence for victims of trafficking.

### **Migrants and asylum-seekers**

Migration processes which encompassed Bosnia and Herzegovina in 2018 set certain requirements to the authorities including IHROBiH.

Special report on situation of migrations in BiH<sup>15</sup> published in 2018 is a result of monitoring of migration processes in BiH, including visits to places where groups of migrants were located, conversations and interviews with them and the staff members in institutions and places where foreign nationals were accommodated.

It indicated to necessity of securing and protecting the rights of foreign nationals in BiH, raising awareness of the problem and underlined obligations of the authorities to secure rights of both foreign nationals, and domiciled population.

Majority of foreign nationals currently present in BiH are irregular migrants since they mostly entered into BiH without any identification document in places not foreseen to serve as state border crossing points while moving from a country to another in violation of legislation applicable in these countries (here: relevant legislation of BiH). Most of migrants have expressed intention to seek asylum although BiH for them is a transit country as a rule. More of 80% are economic migrants (from Pakistan, Iran, Iraq, Morocco, Algeria, Libya, Syria, Afghanistan), and only a small number of persons are seeking asylum/ enjoying international legal protection (Syria).

Ombudspersons drafted recommendations to BiH Council of Ministers and will follow-up their implementation.<sup>16</sup>

### **Displaced persons**

Agreement on Refugees and Displaced Persons provides for the obligation of the state and its entities to create political, economic and social conditions conducive to voluntary return. Rights of returnees related to education, employment, property rights, health and social protection, cases of hate speech and inefficiency of public administration, all affecting the viability of return, are still in the focus of interest.

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<sup>11</sup> OFGFBiH: 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/13, 76/14, 46/16 and 75/17

<sup>12</sup> OFGRS 64/17 i 66/18

<sup>13</sup> OFGBD: 33/13 i 26/16

<sup>14</sup> OFGBiH 88/15

<sup>15</sup> [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2019010713545979bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019010713545979bos.pdf)

<sup>16</sup> [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2019010713545979bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019010713545979bos.pdf)

Ombudspersons pointed to duty of enabling equal access to education and use of language and script especially in areas with significant returnee population in both entities.<sup>17</sup>

Returnees realize their rights in accordance with entity and cantonal regulations which are often not harmonized, so they sometimes have to undergo whole process from the beginning whenever they change place of residence although they were entitled to certain benefits in previous residence.<sup>18</sup>

## **JUDICIARY AND RULE OF LAW**

### **Right to fair trial**

Trend of increase in number of complaints for human rights violations by courts is registered, mainly due to length of court proceedings, ineffective enforcement of court decisions, violation of right to fair trial and failure to enforce final court decisions involving payment from public budgets.

### **Anticorruption policy**

At the state level Anti-Corruption Strategy for 2015 – 2019 and Action Plan for its implementation was adopted<sup>19</sup>, but implementation is not satisfactory.

Law on Combating Corruption and Organized Crime<sup>20</sup> was adopted in FBiH, Law on Combating Corruption, Organized and Gravest Forms of Economy Crime<sup>21</sup> in RS, and Law on Protection of Whistleblowers in BiH Institutions<sup>22</sup>.

In 2017 Law on Protection of Whistleblowers<sup>23</sup> was adopted in BD representing a step forward in protection of whistleblowers in both public and private sector.

In 2017 Commission for Corruption Prevention and Co-ordination of Combating Corruption Activities in BD was adopted.

At entity and BD level adopted are laws on seizure of property illegally gained by criminal activities.<sup>24</sup>

### **Free legal aid**

Free legal aid system is organized in nine cantons in FBiH, while in RS it is provided by the Free Legal Aid Center. Pursuant to BiH Law on Free Legal Aid it is also provided within BiH Ministry of Justice. The Ombudsman's staff members always inform their complainants of the existence of free legal aid.

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<sup>17</sup> Special report on use of official languages and script in BiH, 2017

[http://ombudsmen.gov.ba/documents/obmudsmen\\_doc2017051211015795cro.pdf](http://ombudsmen.gov.ba/documents/obmudsmen_doc2017051211015795cro.pdf)

<sup>18</sup> [http://static.parlament.ba/doc/103477\\_01,02,03-37-2251\\_17%20-%20Izvje%20c4%20b9%20cb%2087taj%20o%20realizaciji%20Revidirane%20strategije%20Bosne%20i%20Hercegovine%20za%20sprovedbu%20c3%2084%20e2%2080%2098enje%20Aneksa%20VII%20Dejtonskog%20mirovnog%20sporazuma%20za%202016%20g..pdf](http://static.parlament.ba/doc/103477_01,02,03-37-2251_17%20-%20Izvje%20c4%20b9%20cb%2087taj%20o%20realizaciji%20Revidirane%20strategije%20Bosne%20i%20Hercegovine%20za%20sprovedbu%20c3%2084%20e2%2080%2098enje%20Aneksa%20VII%20Dejtonskog%20mirovnog%20sporazuma%20za%202016%20g..pdf)

<sup>19</sup> BiH Council of Ministers on 07 May 2015

<sup>20</sup> OFGFBiH 59/14

<sup>21</sup> OFGRS 39/16 and 91/17

<sup>22</sup> OFGFBiH 100/13

<sup>23</sup> OFGRS 62/17

<sup>24</sup> OFGFBiH 71/14, OFGBD 29/16, OFGRS 65/18

## **FREEDOM OF EXPRESSIN, ACCESS TO INFORMATION, SITUATION OF JOURNALISTS**

Number of complaints relating to free access to information is increasing. It could be because of either more frequent violations of the right to free access to information or increased awareness of citizens about mechanisms protecting this right linked also to the role of media.

Process of drafting amendments to Law on Freedom of Access to Information commenced in 2016 and is slow. Since 2015 Ombudspersons emphasize the need to regulate decision-making in two instances and foresee penal provisions in entity legislation.

In 2017 IHROBiH made a Special report on Status and Cases of Threats against Journalists in BiH<sup>25</sup> to highlight increasing physical and verbal attacks against journalists and drafted relevant recommendations to responsible authorities.

Official records on number and types of threats to journalists are non-existent in BiH, so it is difficult to draft a situation analysis and prevention plan for their protection. In the area of printed and online media in BiH appropriate legislation on media should be adopted.

### **Hate speech**

Hate crimes require special treatment because they cause a sense of insecurity and distrust within different communities in BiH. Adoption of amendments to criminal legislation in RS, FBiH and BD created legal preconditions throughout the territory for efficient prosecution of hate crimes.

In its work IHROBiH dealt with hate speech. It is mainly about using inadequate language for members of certain vulnerable groups, inappropriate public statements by physical and legal persons about personal and moral characteristics of individuals in public functions, publishing texts accompanied by offensive publicly available images and comments, posts on blogs of some politicians with fake, insulting, disparaging, or compromising contents which make targeted persons feel the fear for themselves and their families and nationalistic statements that spread hatred between constituent peoples.

### **Transitional justice**

In 2018 the BiH Council of Ministers adopted a Final reports on implementation of Action plan on implementation of UN Resolution 1325 “Women, Peace and Security” in BiH in period 2014-2017 and mandated all competent institutions to implement recommendations set out in Final report.

Adoption of BiH Law on Free Legal Aid enabled war crimes victims to get the right to paid lawyer and legal aid. Law on Protection of Victims of War Time Torture<sup>26</sup> was adopted in RS which includes a clear definition of the victim of sexual violence, the rights of victims, the right to health care, social protection, free legal aid, spa treatment, monthly cash allowance, and subsidies for employment and self-employment.

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<sup>25</sup> [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2017082415202346bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2017082415202346bos.pdf)

<sup>26</sup> OFGRS 90/18

In BiH Criminal Code<sup>27</sup> definition of a war crime involving sexual violence is harmonized with international standards. The Witness Support Unit is responsible for providing witness support in proceedings conducted before the Court of BiH, in particular the witnesses in Section I – War Crimes. Support is provided before, during and after the testimony. Expert team of psychologists facilitates the process of appearing and giving testimony before the Court, so that testimony would not cause additional trauma to their psychological, physical and health situation, as it provides logistical support when arriving at the Court.

## **RIGHTS OF MINORITIES**

With support of OSCE in 2013 IHROBiH conducted a comprehensive survey on situation of Roma in BiH.<sup>28</sup> In 2014<sup>29</sup> and 2017 a new survey was conducted in order to establish a degree of implementation of recommendations issued by IHROBiH in the mentioned 2013 report.

A major problem in the area of Roma rights is their lack of awareness of these rights and methods to achieve them. There is an urgent need to tackle prejudices and stereotypes about Roma. Progress is made regarding registration of Roma children in birth registers.

It was established that number of Roma children attending primary school is increased, but is still unsatisfactory in high and higher education. Establishment of drop-in or day care centers is a positive example. It is necessary to organize training for teachers on how to tackle prejudices of Roma children and how to ensure their equal treatment.<sup>30</sup>

## **RIGHTS OF THE CHILD**

Legislation in health area is not harmonized with Convention on the Rights of the Child in respect of definition of a child<sup>31</sup> which creates a problem in enjoyment of the right to health care for children from 15 to 18.

An explicit ban on corporal punishment of children in all environments needs to be introduced. This issue is not governed by law in FBiH and BD. RS Family Law includes ban on corporal punishment of children in domestic environment.<sup>32</sup>

IHROBiH thinks that efficient measures need to be taken to ensure implementation of legal provisions which are in place in family legislation related to the right to protection of all forms of violence, abuse, harassment and neglect of the child.

Abuse of children and their exploitation for begging is still present in BiH.

In 2018 the Guidelines for the Establishment of the Best Interest of the Child were prepared as an important instrument in the practice of IHROBiH in the area of co-ordination of work of different authorities.

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<sup>27</sup> OFGBiH 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15 and 40/15

<sup>28</sup> [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2013121011144464bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2013121011144464bos.pdf)

<sup>29</sup> [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2017070515172836bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2017070515172836bos.pdf)

<sup>30</sup> [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2018072014053046bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2018072014053046bos.pdf)

<sup>31</sup> [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2019011713251340bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019011713251340bos.pdf)

<sup>32</sup> Article 97 of RS Family Law, OFGRS 54/02, 41/08 and 63/14

In health care children from the entities and BD do not have equal access and possibilities since additional measures for the inclusion of children with psycho-physical difficulties, or children from marginalized groups, such as Roma, are not taken.

In 2016 IHROBiH staff visited all the institutions in which the minors in conflict with law serve their institutional sanctions on the territory of the FBiH and RS which resulted in a document titled *”Analysis of situation in the institutions accommodating the minors in conflict with law in Bosnia and Herzegovina”*<sup>33</sup>. In 2018 another report was prepared, namely: *Report on implementation of recommendations issued in a document titled „Analysis of situation in the institutions accommodating the minors in conflict with law in Bosnia and Herzegovina“ along with the assessment of the current situation*<sup>34</sup>

Both Entities adopted laws that tightened conditions for employment of minors and limited working hours, not to be longer than 35 hours a week, while overtime and night work for minors are prohibited.<sup>35</sup>

RS Law on Citizenship<sup>36</sup> created more favourable circumstances for the acquisition of citizenship for persons without it, including those with refugee status.

## **RIGHTS OF PERSONS WITH DISABILITIES**

There is no universal definition of persons with disabilities in BiH and consistent implementation of CRC is not ensured. Unique standards and rules regarding accessibility of public institutions and private objects earmarked for public use are not established<sup>37</sup>.

Relevant authorities should pay more attention to problems, requirements and challenges of inclusive education.

Problems of children and families of children with special needs should be highlighted as well as the need to undertake measures to standardize instruments and procedures of observation and assessment of the child's abilities during the categorization - multidisciplinary approach, full health care and other rights guaranteed by CRC. Legislative framework related to the care of persons with intellectual and mental disabilities in BiH is still not at a satisfactory level.<sup>38</sup>

Categorization/classification of institutionalized persons with intellectual difficulties and persons without legal capacity has not been done and there is no database about them.

Institutions for accommodation of these persons are under-capacitated.

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<sup>33</sup> [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2016100610154998bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2016100610154998bos.pdf)

<sup>34</sup> [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2018111912083431bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2018111912083431bos.pdf)

<sup>35</sup> FBiH Labor Law, OFGFBiH 26/16, RS Labor Law, OFGRS 1/16 )

<sup>36</sup> RS Law on Citizenship, RSOFG 59/14

<sup>37</sup> [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2016021011073606bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2016021011073606bos.pdf)

<sup>38</sup> [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2018051809032286bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2018051809032286bos.pdf)