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# Women's Advisory Board Policy Agenda

## Include Women in Change Processes Initiative 2019

# IMPRESSUM

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Today we are one of the world's leading women's rights organisations, working directly in areas affected by war and conflict to strengthen women's influence and power. We work closely together with over 100 local partner organisations across 20 countries to end violence against women and reach lasting peace.

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# Abbreviations

BiH	Bosnia and Herzegovina
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CSOs	Civil society organisations
ECtHR	European Court of Human Rights
EU	European Union
EUD	European Union Delegation
EUSR	European Union Special Representative
FBiH	Federation of Bosnia and Herzegovina
GBV	Gender-based violence
ICT	Information and communications technology
ICESCR	International Convention on Economic, Social and Cultural Rights
IFI	International financial institution
RS	Republika Sprska
WAB	Women's Advisory Board
WCO	Women's civil society organisation
WPS	Women, peace and security

# 1. Introduction

The complex system of governing structures, legal competencies and unharmonised legislation throughout Bosnia and Herzegovina (BiH) functions magnificently to impede the effective application of the rule of law and meaningful implementation of legislation across a range of fields, including women's rights. The lack of legal harmonisation ensures the discriminatory application of the law, impedes access to rights in some jurisdictions and results in differing levels of protection.

The Gender Equality Law and the Law on the Prohibition of Discrimination have brought formal progress, but de facto discrimination is prevalent in all fields. Gender equality remains marginalised within political discourse, and initiatives relating to women's rights and equal participation are fail to gain political traction.

Derived from a Constitution imposed as part of the Dayton Peace Accords, the continued focus on constituent peoples and the institutional division of competencies 24 years after the war thwarts progress in addressing other pressing issues related to citizens needs and concerns. Both the fragmented governing structure, and its manipulation by political leaders to consolidate power, function to alienate citizens from the exercise of their rights and their access to a transparent democratic system. Ongoing political deadlock, as reflected in the lack of a formation of a Council of Ministers a year after the October 2018 elections, augurs poorly for future prospects for change.

The *Women's Advisory Board Policy Agenda* provides a periodic progress report summarizing the key messages detailed in a series of situational analyses drafted by members of the Women's Advisory Board (WAB) of the Women in Change Processes Initiative. The Initiative, supported by the EU Delegation Office, Kvinna till Kvinna, and the Swedish International Development Agency (Sida), continues to build upon its pilot phase in 2017-2018, which involved consultations with women from diverse sectors across BiH. The WAB emerged from the pilot phase into a potential model platform for ensuring the inclusion of women's voices and perspectives on issues of relevance in BiH to the work of the Office of the Delegation of the European Union to Bosnia and Herzegovina and European Union Special Representative (EUD/EUSR). As a platform for consultation, the WAB creates an alternative opening for dialogue, otherwise restricted due to weak and ineffectual democratic systems in BiH. The role of the WAB, as envisaged in the second phase of the Women in Change Processes Initiative, is two-fold:

- To advocate on behalf of women to the EUD/EUSR by compiling relevant and up-to-date situation analyses and recommendations (in total, 10 up-to-date situation analysis have been developed to date) on specific themes;
- To provide advisory services to the EUD/EUSR in their programmes and political cooperation with BiH authorities within the ongoing EU accession process, through input on women's perspectives and on the impact that programmes and policies have on women in BiH.

The *Women's Advisory Board Policy Agenda* reflects upon the implications of the current political and legal situation in BiH across several fields as they relate to gender equality and women's rights. It details current challenges in peace, security and transitional justice, women's access to justice, labour and employment and health and social protection. At the same time, it highlights promising initiatives and platforms for change, signaling needed support for advancement on specific issues and for overall systemic change. It also contains a series of recommendations to prompt necessary advocacy. The authors of the series include: Lejla Gačanica, Nada Golubović, Diana Šehić and Radmila Žigić (Sustainable Peace, Constitution for All), Duška Andrić-Ružičić and Adrijana Hanušić Bećirović (Access to Justice), Mersiha Beširović (Access to Work), Indira Bajramović, Vera Bošković and Selma Hadžihalilović (Health and Social Protection).



## 2. Sustainable Peace: Constitution for All

### A. A BiH Constitution for All

Twenty-four years after the end of the war, the institutional framework put into place to ensure an end to the hostilities remains, locking into place a governance framework that has impeded transitional justice and the reforms necessary to ensure lasting peace, equality and democracy. Attempts to alter the normative and institutional framework to move beyond the issue of "constituent peoples", the source of the conflict, have been continually stymied by national political "leaders". Breaking away from this deadlocked discourse requires forging links with and between a broad spectrum of potential constituencies drawn from the full diversity of Bosnian society, of which women's groups constitute an essential force.

Grounded in the division between "constituent peoples," the Constitution imposes on the citizens of BiH a conflict between individual and collective rights. The European Court of Human Rights (ECtHR) has issued several decisions finding constitutional discrimination in BiH.<sup>1</sup> The European Commission continually emphasises the need for constitutional reform, while political discussions remain limited to ethnic discrimination and the state structure. As a consequence, numerous other issues related to citizens' demands are effectively marginalized from the political discourse, limiting citizens' relationship with their Constitution and the state to a narrow range of concerns.

Making necessary amendments to the Constitution would not violate the General Framework Agreement for Peace, nor should the inclusion of civil demands endanger peace. Dialogues on constitutional reform must occur within transparent institutional frameworks with the participation of a broader range of actors than those currently engaged, and move beyond the issue of entities and constituent peoples, which continue to hijack the political discourse. Reform is needed to establish a constitution that fulfils the role prescribed for it in a democratic state, and proposed reforms should strengthen both civil and gender dimensions.

The need to engender the Constitution rests on substantive recommendations derived from three key sources, international human rights bodies, state agencies and civil society organisations (CSOs), namely: the state's international human rights obligations, such as under CEDAW,<sup>2</sup> proposals issued by the state-level Agency for Gender Equality,<sup>3</sup> and proposals emphasising gender mainstreaming by the platform Women Citizens for Constitutional Reform. The latter is a coalition of 35 CSOs and activists working on issues related to gender, peace and human rights. Its Amendments to the Constitution of BiH from a Gender Perspective proposes the introduction of affirmative measures, as well as an extension of the existing catalogue of rights related to uniform health, social and family care and judicial and legal protection. It also proposes that direct democracy be applied to the constitutional reform process.<sup>4</sup>

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<sup>1</sup> See, *Sejdić-Finci v. BiH*, *Pilav v. BiH*, *Šlaku v. BiH*, *Baralija v. BiH* and *Zornić v. BiH*. Another case, *Pudarić v. BiH*, is currently before the Court related to discrimination in the electoral process arising from the Constitution.

<sup>2</sup> In its most recent Concluding Observations for Bosnia and Herzegovina, the CEDAW Committee recommended that the Constitution should include a provision ensuring equality between men and women, as well as a prohibition of direct and indirect discrimination against women in the private and public sphere. CEDAW, Concluding observations on the combined fourth and fifth periodic reports of Bosnia and Herzegovina, CEDAW/C/BIH/CO/4-5, 2013, para 14.

<sup>3</sup> The Agency for Gender Equality issued proposals for amendments to state- and entity-level constitutions, recommending, *inter alia*, provisions foreseeing affirmative measures, reproductive health and rights and guarantees of gender equality.

<sup>4</sup> See, <https://gradjankezaustavnepromjene.wordpress.com/platformu-zenskih-prioriteta/>

At the same time, it is important to note that in addition to the state and entity constitutions, there are ten cantonal constitutions in the Federation and the Statute of Brčko District—all of which would need to be amended to effectively guarantee gender equality. To date, the authorities' approach to gender equality in constitutional reform is reflective of both the treatment of gender equality as a marginalized issue in political discourse generally, and of the deeper more systemic lack of inclusive processes that fail to incorporate the needs and demands from the full scope of citizenry, not only men. In recognition of the significance of the issues, in 2019, the European Parliament's Committee on Gender Equality adopted a Resolution on Women's Rights in the Western Balkans.<sup>5</sup>

## B. Women in Political and Public Life

Women remain under-represented in politics and public life, facing both discrimination and violence, which limit their willingness to engage, their capacity and effectiveness. Barriers to women's effective engagement in turn inhibits the capacity and effectiveness of public institutions and decision-making bodies as not fully representative of the body public. Moreover, discrimination against women in political decision-making effectively excludes their participation and knowledge in reform processes. Women's voices should be heard on issues ranging from European integration, peace, the economy, health and social protection as a critical element of both democracy and development. Yet, the absence of genuine political will continues to impede women's equal participation.

The data on women's political participation is clear. Despite a mandatory 40% quota set forth in the BiH Gender Equality and Election Laws, women have yet to achieve 30% in any representative body at the state or entity levels. A slight increase in women in assembly bodies as compared to the 2014 elections is due to their inclusion through the compensation lists.<sup>6</sup> In a positive trend, four out of the ten cantonal assemblies are comprised of 40% or more women.<sup>7</sup> At the same time, women average only 17% of ministers at all levels of government. Significantly, women have very low participation in the EU integration process. Women comprise only 6.23% of the EU Integration Collegium.

In other words, with respect to the election process, gender equality begins and ends with the candidate lists, evidence of a lack of real intention to ensure women's access to political participation. The leadership of political parties bears responsibility for the current state of affairs, along with the lack of transparent decision-making in general and specifically related to the position of women on electoral and compensation lists. Women's lack of support among colleagues is also tied to the absence of women in legislative and executive positions.

CSOs have contributed significant effort to support the empowerment of women politicians. More engagement with political parties is required regarding women's inclusion in decision-making within parties and in the legislative and executive branches. While CSOs and women's organizations have provided educational and capacity-building programmes, and advocated for greater women's participation, increased engagement and pressure for reform from the international community remains necessary.

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<sup>5</sup> See, Women Citizens for Constitutional Reform, *Adopted Resolution on Women from Western Balkan contains proposal on amending Constitution of BiH from gender perspective*, available at: <https://womencitizensforconstitutionalreform.wordpress.com/2019/02/05/adopted-resolution-on-women-from-western-balkan-contains-proposal-on-amending-constitution-of-bih-from-gender-perspective/>

<sup>6</sup> Compensation lists were established as part of the electoral structure of the state and federation assemblies, the role of which is to compensate for the scattered voices generated by the existence of constituencies, and they cannot be filled by independent candidates, but are to be distributed through political parties and coalitions.

<sup>7</sup> These include: Zenica- Dobo Canton, Central Bosnia Canton, Herzegovina- Neretva Canton and Sarajevo Canton.

One promising approach is the Platform of Priorities for Cooperation of Women from Legislative and Executive Governance, which involves joint action from women and men from the executive and legislative bodies of both entities and Brčko District, the BiH Parliamentary Assembly and CSOs. The Platform successfully formed agreements on minimum joint actions regardless of party affiliation for two election cycles. This Platform has served as a safe space for women politicians to reflect on political issues and activities.

## C. Sustainable Peace: Transitional Justice and the Women, Peace and Security Agenda

In Bosnia and Herzegovina, people tend to live more in the past than in the future. The country is filled with monuments and memories of war. The Dayton Peace Agreement stopped the war, but left BiH in a frozen peace, one that melts and boils before every election. This longstanding situation will continue as long as the conceptualization of the state remains limited to only three ethnic constituencies and not the full citizenry, and can thus be manipulated by a limited cadre of male political elites.

Questions remain about whether lasting peace can be achieved without reforming the BiH Constitution and establishing a gender-just social order. Within the transitional justice process there is a need to move from the first phases of fact-finding and liability for crimes, ensuring restitution and returns, to providing reparations for different categories of persons, the memorialisation of events from the war and embark on institutional reform. Yet, it is important to note that the relief and recovery efforts during the first phase did not link women and girls to the social and economic rights, and failed to effectively enable their participation in political processes. Legislation to ensure gender-equal economic protection, compensation, social protection and labour rights have still not been put into place. Without these basic means of subsistence, women cannot fully engage in political participation and advocacy.

In looking forward, three initiatives are critical to ensuring the structural foundations of a peace. These include:

- restoring transitional justice processes to the public policy agenda
- strengthening long-term "recovery", namely development frameworks and initiatives that address the strategic WPS goals of gender equality and sustainable peace, and
- localizing the National Action Plan on the Implementation of UNSCR 1325.<sup>8</sup>

Since 2012, the transitional justice process has been halted in the absence of the political approval needed to adopt a proposed Transitional Justice Strategy.<sup>9</sup> Adoption of the Strategy is not in the BiH Ministry of Justice's current workplan. Restoring the transitional justice process to the public policy agenda should entail, among other issues, the adoption of an updated version of the proposed Transitional Justice Strategy, plans for the rehabilitation of war trauma survivors and a single history curricula for the purpose of prevention.

Significantly, the current draft version of the Transitional Justice Strategy remains gender neutral, reflecting the involvement, at the time of its drafting, of human rights CSOs that did not include a gender perspective in their work. Since then, CSO involvement has increased, including the establishment of the Women Citizens for Constitutional Reform and the Peace with Woman's Face Initiative, which created the Platform of Women's Priorities in Transitional Justice Policies (Women's Priorities Platform).

<sup>8</sup> Bosnia-Herzegovina has adopted three National Action Plans (NAP) to implement UNSCR 1325 to date, in 2010, 2014, and 2018, the latter to be implemented for the period 2018-2022.

<sup>9</sup> To be distinguished from the National War Crimes Strategy, which addresses the criminal justice process.



Women in BiH are currently more prepared to engage in critical discussions on the content of transitional justice, in particular the gender-neutral, neoliberal characteristics, which neglected the socio-economic rights violations during the war and their disparate impact on women. Moving forward with the WPS agenda in BiH should entail securing women's social and economic rights, such as by integrating gender budgeting into (post-conflict) financing, and transforming reparations and transitional justice processes to address not only sexual violence survivors, but also violations of socio-economic rights, in order to empower women economically. The Women's Priorities Platform has proposed that: women "sit down and talk" across all current divisions, transitional justice encompass social and economic justice, the necessity of documenting women's suffering, and women must be equal participants in public policymaking in the field of transitional justice. The absence of women's meaningful input into the design of transitional justice and economic reform, means that vital forms of assistance and structural investments will not reflect their needs.

Twenty-four years after the war, there is still no consensus on the nature of the conflict. Conflicting characterizations of the war are used by political parties to "heat up" the situation, impeding advances in transitional justice. While the failure to form the Council of Ministers almost a year after the October 2018 general elections provides little encouragement on the prospects for change, without the participation of women—half of the population—there can be no lasting peace, no meaningful constitutional reform and no effective EU integration.

## RECOMMENDATIONS:

### WOMEN'S POLITICAL PARTICIPATION

- *Amend Law on Gender Equality and the Law on Elections to impose sanctions on political parties that fail to appoint the requisite quota of women elected from the party lists, such as the withdrawal of state financing for failure to comply.*
- *Amend the Law on the Council of Ministers, Law on Government of FBiH, Law on Government of the Republika Srpska as well as cantonal laws to preclude the formation of government without a minimum of 40% women ministers*
- *Encourage the establishment of a complaint mechanism within state and entity parliaments to address harassment, discrimination and violence against female politicians, to provide support and services to complainants and to collect data on the phenomenon<sup>10</sup>*
- *Ensure that female politicians who are victims/survivors of harassment, discrimination and violence are recognised as a category for the receipt of free legal aid*

<sup>10</sup> Several countries, including Spain, have established internal complaint mechanisms for women politicians, judges and other civil servants.

## STRENGTHENING WCSO ENGAGEMENT

- *The EUD/EUSR should continue to strengthen dialogue with WCSOs, especially related to the accession process, and ensure their participation in formal European integration processes*
- *Constitutional reform processes should be transparent and ensure the inclusion of WCSOs and platforms*
- *Involve women's CSOs and women's human rights defenders in consultations aimed at updating the draft Transitional Justice Strategy*
- *Strengthen CSO initiatives to include a gender perspective in the documentation of the experiences of women and their priorities during and after the armed conflict*
- *Ensure that WCSOs are meaningfully included and are able to influence all IFI consultations on loans and development grants*

## BOLSTERING THE WPSAGENDA

- *Reinsert transitional justice into the public policy agenda and discourse by rehabilitating the draft law on the rights of victims of torture and civilian war victims and the draft Transitional Justice Strategy*
- *Develop targeted programmes to localise the implementation of the NAP to implement UNSCR 1325, increasing the accountability of local governments*
- *Foster the inclusion of social infrastructure in future iterations of the NAP to implement UNSCR 1325*
- *Foster the legal recognition of unpaid care and domestic work and the need to reduce and redistribute this work in transition periods and beyond, reversing depletion for conflict-affected women and communities.*



### 3. Access to Justice

The complex and unharmonised legal framework and poor coordination among institutions in BiH constitutes a barrier to effectively protecting women from gender-based violence (GBV) and discrimination. Specifically, it impedes the implementation of state-level strategic instruments, such as the BiH Framework Strategy for the Implementation of the Istanbul Convention 2015-2018, and its international obligations, namely the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Despite a relatively complete legislative and institutional framework at the state and entity level, little progress has been made in ensuring systemic, gender-sensitive assistance and protection to GBV victims/survivors.

This section addresses several issues related to women's access to justice, focusing on victims/survivors of gender-based violence (GBV). Specifically, it addresses access to free legal aid, institutional responses to GBV, discriminatory provisions related to family law, barriers to access to non-pecuniary damages and reparations for war crimes victims.

#### A. Institutional responses to gender-based violence

As an overarching concern, the current legislative framework does not explicitly recognise domestic violence as a form of violence against women, as prescribed by the Istanbul Convention, but rather uses largely gender-neutral terms. The failure to correctly define and frame the issue has the adverse effect of rendering the gendered dimensions, and nature of the offence, invisible to those stakeholders charged with implementing the law.

Victims often face discrimination and a lack of gender sensitivity in their contact with professional service providers. Exchanges with first responders, such as police and social welfare services, reveal a lack of gender sensitivity and understanding of the nature of the crime, as well as victim-blaming and a refusal to assist. Victims have received messages such as: "you must have done something wrong," "you must have provoked him somehow," "you should solve your problems yourself" and "make peace with him; where will you go without money?" Response by duty bearers includes fostering reconciliation with the perpetrator, exposing the victim/survivor to further violence. Exceptions to this type of response occurs if the victims bears visible signs of injuries or if someone intercedes on her behalf.<sup>11</sup> In addition to violating international and national law, such attitudes undermine women's trust in institutions and in the rule of law and discourage women from reporting violence.

Although domestic violence is a crime, in the Federation it continues to be treated as a violation of public peace and order, resulting in victims being sanctioned as well as the perpetrators.<sup>12</sup> Furthermore, protection measures are not issued in all cases in which they are required, and are considered as "unenforceable" where the perpetrator and victim co-habitate. These practices reveal a lack of understanding of the nature of domestic violence and of the law. As aptly described by the Council of Europe, the concept of protection orders requires a "paradigm shift":

Rather than asking victims to seek a place of safety from violence. It shifts that burden to the perpetrator, who is ordered to leave the residence of the victim or person at risk and not to contact her or him.<sup>13</sup>

<sup>11</sup> The European Court of Human Rights (ECtHR) has repeatedly rejected requirements of a minimum threshold of physical injury to trigger domestic violence response. *Volodina v. Russia*, Application No. 41261/17, 2019, para 81.

<sup>12</sup> If first responders only focus on re-establishing the "peace and quiet", the victim may be in danger of being exposed to new criminal cases within a short time. See, Council of Europe, *Preventing and Combating Domestic Violence against Women: A learning resource for training law enforcement and justice officers*, 2016, p. 36.

<sup>13</sup> Council of Europe, *Emergency Barring Orders in Situations of Domestic Violence: Article 52 of the Istanbul Convention*, 2017, p. 43.

Victims' access to protection, services and redress depend upon the sensitivity and understanding of the law by first responders and duty bearers throughout the justice chain. Finally, threats communicated through information and communications technology are not recognised as a criminal offence in BiH, and thus go unsanctioned as a violation of a protection order.

BiH has not yet established a national coordination and monitoring body as required by the Istanbul Convention. Article 10 requires states to establish one or more official bodies responsible for the coordination, implementation, monitoring and evaluation of policies to combat the forms of violence covered by the Convention. As indicated by the Agency for Gender Equality, the key obstacle in the establishment of a national coordinating body has been the failure of the RS to recognise the state-level Framework Strategy for the Implementation of the Istanbul Convention 2015-2018.

Notably, both entities have adopted strategies for combating domestic violence, neither of which address other forms of violence against women, as required by the Istanbul Convention.<sup>14</sup> Furthermore, rape is not defined in terms of consent as the sole constituent element of the offence in either of the entity and Brčko District criminal codes, all of which continue to require the threat or use of force. Coordination protocols also differ between the diverse competencies, and the relevant laws and strategies do not distinguish between general and specialised services for victims. Many of the state's obligations, including the provision of free legal aid and safe houses, are assumed by women's organizations.

BiH is thus failing to meet many of its obligations under the Istanbul Convention as well as its more general due diligence obligations as detailed by the jurisprudence of the ECtHR in domestic violence response.

## B. Free legal aid

Access to justice requires being informed of the relevant laws, procedures and options in a language one can understand. Numerous international instruments provide for the right to information to victims of crimes, including GBV. In BiH, women are often informed of their rights in formalistic legal language, deterring the filing of claims. For those that do file claims, their lack of a clear understanding of the process prevents their effective monitoring and participation in procedures.

The BiH Law on Free Legal Aid was adopted in 2016, but is limited to state-level proceedings, and does not ensure the harmonisation of legal aid laws throughout the country. It provides free legal aid to crime victims that meet established criteria, which covers persons who are economically disadvantaged (via means testing). It covers additional categories of persons, including, *inter alia*: victims/survivors of domestic and gender-based violence and human trafficking. Republika Srpska also has a Law on Free Legal Aid, and in the Federation separate laws regulate the issue in nine of the ten cantons.<sup>15</sup> Several CSOs supported by international donors also offer free legal aid.

The absence of systematised legal aid provision in BiH has a disparate impact on vulnerable groups, including women and in particular GBV victims/survivors. Significantly, GBV victims/survivors are not recognised as a category entitled to free legal aid in all FBiH cantons and in the RS. Furthermore, access to cantonal and regional centres in the Federation and RS, respectively, where legal aid offices tend to be located, is limited and or inaccessible to women from rural and remote areas, exacerbating other gender-specific barriers, such as lack of awareness, gender stereotypes and taboos.

<sup>14</sup> See, Articles 37-39, Istanbul Convention, covering forced marriage, female genital mutilation and forced abortion and sterilisation, respectively.

<sup>15</sup> Central Bosnia Canton has not yet established regulations on the provision of free legal aid.



## C. Discriminatory family law provisions and practice

Mediation is obligatory in divorce proceedings for spouses with children. Ironically, mediation services are provided free of charge in larger urban centres in the Federation, such as Sarajevo, while it is performed for a fee in smaller, less-developed areas. In the RS, mediation is provided free of charge only for unemployed persons. Where imposed, mediation fees have resulted in domestic violence victims remaining in violent relationships due to their inability to pay.

With respect to mediation in divorce and domestic violence cases, CEDAW's General Recommendation No. 33 observes that while informal disputes processes:

may provide greater flexibility and reduce costs and delays for women seeking justice, they may also lead to further violations of their rights and impunity for perpetrators due to the fact that these often operate with patriarchal values, thereby having a negative impact on women's access to judicial review and remedies.<sup>16</sup>

CEDAW requires states to guarantee that the use of mediation "does not lead to further violation of [victim/survivor] rights," and to "[e]nsure that cases of violence against women, including domestic violence, are under no circumstances referred to any alternative dispute resolution procedures".<sup>17</sup> In this regard, it is important to note that the risks to victims/survivors increase substantially during separation and divorce proceedings.

After divorce many fathers frequently or completely fail to meet their obligations to pay court-ordered child support. The initiation of enforcement proceedings requires the complainant to provide the personal or employer's address of the debtor, which are often unknown. The complainant is also required to indicate the means of enforcement: movable or immovable property, salary or pension. Father-debtors manipulate the system through such means as: agreements with their employers to register a minimum salary, engaging in unregistered work, transferring their ownership rights to other persons and leaving the country, among other tactics. Divorced mothers thus have no means of enforcing the court order. In some cases, the debtor parent ended up in prison, a solution that further impedes payment.

Moreover, in assessing child support obligations, courts tend to focus on the means of the parents rather than the actual needs of the child. Courts often treat the father's unemployment as a mitigating factor to decide on an amount lower than the stipulated minimum, even if the mother is also unemployed and legally and practically obliged to care for the child.

While the failure to pay child support constitutes a criminal offence, women are not always informed of this. Moreover, the number of convictions for failure to pay has been declining, in part due to prosecutorial insistence on the demonstration of proof of intent. This sends a clear signal that the avoidance of child support obligations is justified for fathers in poor financial situations. Obtaining the recognition and enforcement of BiH court judgements in other countries is a lengthy process that can take years, requiring costly official translations.

<sup>16</sup> CEDAW, General Recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 2015, para 57.

<sup>17</sup> CEDAW, General Recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 2015, para 58.



In sum, family law provisions and practices impose a disproportionate burden on women, and compromise, if not violate, their rights and the rights of their children. Mediation requirements expose victim/survivors of domestic violence situations to additional violence in violation of international standards. The legal practice concerning the enforcement of child maintenance orders further compromises the rights and needs of mothers and minor children. The failure of the system to enforce child maintenance payments, the majority of which are required of fathers, and the undue burden it places on the claimants (mothers), perpetuates and exacerbates the underlying economic violence perpetrated by the father. Moreover, no child support fund or social protection provision is envisaged to meet the needs of minors entitled to support by a final court judgment.

## D. Access to non-pecuniary damages in criminal proceedings

Despite the legal possibility under the Criminal Procedure Code, in practice claims for compensation arising from criminal proceedings tend to be referred by judges to separate civil proceedings. Having to initiate subsequent civil proceedings for non-pecuniary damages requires victims to go through a second trial process related to the same facts, often causing further traumatising. The civil proceedings require hiring lawyers and paying high court fees, and fail to protect the victim's identity. Furthermore, increasingly restrictive statutes of limitations have been established in both entities, resulting in the denial of such claims and consequently, a lack of redress for the crime.

This situation is due to prosecutors frequently evading their obligations under criminal procedure to facilitate the process to claim damages by gathering related evidence and inquiring into requests for compensation. With evidence lacking, courts tend to refer the compensation claims to civil courts. Although based on longstanding practice, this occurs almost pro forma without reference to the actual evidence related to damages.

On a positive note, practice is slowly changing. In a 2019 case brought by the Centre for Women's Rights, a human trafficking victim was awarded non-pecuniary damages within the framework of criminal proceedings. Damages have also been awarded in several war crimes cases in the BiH Court. However, the practice remains far from systematic, and the creation of protocols to guide relevant stakeholders should be considered.

## E. Reparations for war crime victims

As recommended in the Include Women in Change Processes Initiative's Final Conference Report 2018, there is a decisive need to adopt a state-level law on victims of torture in order to ensure the rights of all civilian victims of war. As noted above, compensation claims continue to be rejected in civil proceedings due to the application of statutes of limitations, leaving war crime victims without redress, requiring sexual violence victims to undergo a traumatising second trial at additional cost, which constitutes a disproportionate burden for many women.

However, as a law on victims of torture has not been adopted, nor submitted to Parliament, other options need to be explored in the interim. In particular, a subsidiary payment should be offered by the state in cases in which the perpetrators fail to pay. The establishment of a state reparations fund is thus recommended. Furthermore, victims should be exempted from the payment of court fees, and provided with psycho-social assistance and health care, as well as better access to jobs. Yet, to date, no reparations fund has been established, nor has a mechanism been introduced for subsidiary payments to be paid by the state or entity in cases in which victims were granted compensation by the court in criminal proceedings but have been unable to collect it.

On a positive note, the Law on Victims of Wartime Torture of the Republika Srpska entered into force in 2018, paving the way for access to justice for wartime victims of sexual violence. However, concerns remain regarding the requirements of proof of being a sexual violence victim under the Law. The RS Law on Free Legal Aid should also be amended in order to ensure free legal aid to victims for the purpose of compensation claims. At the state level, the BiH Ministry of Justice has applied the state-level Law on Free Legal Aid to compensation claims in criminal proceedings. However, high staff turnover and the failure to establish a free legal aid office under the Ministry as stipulated constitute ongoing obstacles to ensuring de facto access to this right, with a disproportionate effect on vulnerable categories of persons, such as women war crimes victims.

As described above, court-ordered compensation in criminal proceedings in state-level wartime sexual violence cases marks an important advance. Thirteen of the fifteen such cases were issued by the BiH Court; one by the District Court in Dobo, and one by the Cantonal Court in Novi Travnik. At the same time, greater engagement is required by prosecutors in determining the suspect's means during the investigation phase.

Finally, it is important to underscore the essential role of the international community in pushing for opportunities for discussion to address the barriers to access to justice for victims of war and other forms of GBV. It was in large part the pressure brought to bear by the international community that called attention to gender and women's access to transitional justice. The sustained attention of the international community keeps these issues, which would otherwise be deprioritised, on the national political agenda. International donors could also allocate more funds to provide legal aid for women in this category.



## RECOMMENDATIONS:

### COMBATING VIOLENCE AGAINST WOMEN

- *Establish specialised coordination and referral networks of services for GBV victims in line with the UN Essential Services Package for women and girls subject to violence<sup>18</sup>*
- *Support the development of specialised protocols for stakeholder implementation of best-practice standards, including for particularly vulnerable categories of victims (migrants, disabled women, elderly women, etc).*
- *Establish a national body for the coordination, implementation and monitoring of laws and policies to combat domestic violence and violence against women as required by Article 10 of the Istanbul Convention, involving both governmental authorities and CSOs, as required by Article 9*
- *Establish legislation to collect charges from perpetrators to channel into victim support organizations<sup>19</sup>*
- *Amend the state- and entity-level criminal codes to criminalise threats communicated through ICT as a violation of protection orders*
- *Amend all criminal codes to define rape in terms of one constituent element: consent, in line with the Istanbul Convention*
- *Amend the criminal code to create a separate crime for femicide or gender-based killing, and ensure data collection on the relationship between the victim and the perpetrator in all homicides for reporting to the Special Rapporteur on violence against women and girls*
- *Increase mandatory trainings for police officers and social welfare centre staff on working with victims of domestic violence*
- *Support the use of a social impact bond to support livelihood opportunities for victims/survivors of gender-based violence, including conflict-affected victims/survivors<sup>20</sup>*
- *Support the amendment of labour legislation at all levels to provide leave for victims/survivors of gender-based violence, in order to foster their ability to maintain employment<sup>21</sup>*

### FREE LEGAL AID

- *CSOs, including women's organisations, providing free legal aid should receive financing from state and entity budgets for fulfilling what are state obligations under international law*
- *Amend entity and cantonal laws on free legal aid to ensure victims of gender-based violence qualify as a category of recipients for criminal and all related civil issues (custody, divorce, damages, etc.)*

<sup>18</sup> Available at:

<https://www.unwomen.org/en/digital-library/publications/2015/12/essential-services-package-for-women-and-girls-subject-to-violence>.

<sup>19</sup> Following the model of Finland's Act on Victim Surcharge 2016.

<sup>20</sup> Austria recently developed a three-year project to reintegrate violence-affected women into the labour market using the country's first social impact bond.

<sup>21</sup> Italy recently established a three-month leave for victims/survivors of gender-based violence to support their recovery and return to work.

## DISCRIMINATORY FAMILY LAW PROVISIONS

- *Cantonal and entity-level laws on social welfare laws<sup>22</sup> should be amended to abolish the requirement of mediation in all divorce cases, or to explicitly exclude victims of gender-based violence from the requirement*
- *The entity-level laws on changes and amendments to Family Law<sup>23</sup> should be amended to abolish payment for mediation services in divorce cases*
- *Establish a child maintenance fund to be administered through social welfare services or the Ministry of Justice that provides a maintenance guarantee for single parents not receiving child support<sup>24</sup>*



## COMPENSATION WAR CRIMES VICTIMS

- *The criminal procedure codes and war crimes statutes should be amended to preclude victims of war crimes from paying court fees in civil proceedings*
- *Support the adoption of protocols or regulations to ensure the de facto possibility of receiving damages in the context of criminal proceedings, in line with the EU Victims' Directive<sup>25</sup>*
- *Adopt a statewide mechanism to ensure access to reparations war crimes victims that ensures access to psycho-social and health services as well as job placement*
- *Establish a state reparations fund to ensure compensation, access to health and other services and livelihood assistance, in line with the recent adoption of such laws in the RS and Croatia*
- *Continuous monitoring of the implementation of the RS Law on Victims of Wartime Torture should be undertaken by CSOs, government bodies and international organizations*
- *The international community should initiate a broad event or series of events on access to justice and reparations for victims to provide opportunities for women to share their experiences in order to inform donor strategies*
- *Support WCSO platforms to incorporate social infrastructure components into the national WPS agenda as well as to articulate claims of violations of economic and social rights.*



<sup>22</sup> Law on Health Protection RS - <https://www.paragraf.ba/propisi/republika-srpska/zakon-o-socijalnoj-zastiti.html>;  
Law on Social Protection of Civil Victims of War and Protection of Families with Children – including amendments – Federation of BiH - <http://fmrsp.gov.ba/?wpdmpo=zakon-o-osnovama-socijalne-zastite-zastite-civilnih-zrtava-rata-i-zasite-porodice-sa-djecom-sa-izmjenama-i-dopunama&wpdmdl=4414>;

<sup>23</sup> Law on changes and amendments to the Family Law of Federation of BiH - [https://advokat-prnjavorac.com/zakoni/porodicni\\_zakon\\_Federacije\\_BiH.pdf](https://advokat-prnjavorac.com/zakoni/porodicni_zakon_Federacije_BiH.pdf);  
Family Law RS - [https://advokat-prnjavorac.com/zakoni/porodicni\\_zakon\\_Federacije\\_BiH.pdf](https://advokat-prnjavorac.com/zakoni/porodicni_zakon_Federacije_BiH.pdf)

<sup>24</sup> See, for example, Latvia's Maintenance Guarantee Fund.

<sup>25</sup> See, e.g., Articles 4(1)(e), 9(1)(a), and 16, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, addressing the right to information on compensation and the right to compensation within the context of criminal proceedings.



## 4. Access to Work: General Challenges

There is a significant gender gap in workforce participation in BiH. For workers between the ages of 15-64, 47% of men are active, in contrast to 29% of women.<sup>26</sup> The difference is as high as 26% for persons aged 45-54, and 25% for those between 35-44 years of age. Despite higher educational attainment, women face unequal employment opportunities and obstacles, including:

more household responsibilities..., less work opportunities, little motivation for women to continue their education, more difficulty in accessing and owning assets, limited enforcement of legal regulations, in addition to traditional social values in BiH. Rural women find the labour market especially difficult as their education levels are lower than their urban peers and because of the limited number of child care services in rural areas.<sup>27</sup>

Traditional beliefs about women's roles in the family also impede their access to employment. Younger women are commonly asked about their marital status and plans to have children during interviews. The lack of adequate child care facilities and other support services generally makes it difficult for most women with children to maintain their careers.<sup>28</sup> Barriers to entry into the labour market are even more pronounced for poor women. Among the poor and those without prior work experience, 43% of women compared to 23% of men are unemployed. Similarly, 36% of women from the bottom 40% of the population who have never worked before are unemployed, compared to 19% of men. Entry in the workforce is thus even more difficult for women of poorer backgrounds than their wealthier counterparts. Moreover, men of poorer backgrounds have a higher chance than women of securing employment.<sup>29</sup>

Self-employed women and single mothers face a particularly difficult situation. The former would have to technically employ themselves in order to obtain maternity benefits; the latter are extremely vulnerable, often unemployed and receive little if any support from the state.<sup>30</sup>

The absence of legal harmonisation constitutes a significant barrier to the implementation of labour legislation and the exercise of labour and employment rights. According to the BiH Constitution, labour and employment fall within the competence of the entities and Brčko District. In the Federation, the cantons have also passed legislation regulating employment rights. This complex array of legislation results in the discriminatory application of the law, one of the most glaring examples of which is the conflicting legislation regulating the right to a maternity allowance across cantons in the Federation. For example, the allowance can differ from 60% to 50% to 20% of the average salary to no maternity allowance at all, depending upon the canton. Questions regarding the failure to invoke umbrella protections, such as the Anti-Discrimination and Gender Equality Laws, to assert such rights remain.

Paternity leave has been recognised in both entities, but is a transferable right, subject to mutual agreement between the parents. Options to reduce women's unpaid care and domestic work burdens to alleviate barriers to entry include, inter alia: fostering parental leave sharing,<sup>31</sup> the creation of tax policies to incentivise women's return to work after maternity leave, childcare allowance to support women's return to work and making paternity leave mandatory.<sup>32</sup>

<sup>26</sup> World Bank, *Bosnia and Herzegovina: Gender Disparities in Endowments, Access to Economic Opportunities and Agency*, 2015, p. 43

<sup>27</sup> Ibid. p. 44.

<sup>28</sup> Ibid. p. 44.

<sup>29</sup> Ibid. p. 50.

<sup>30</sup> Ibid. p. 45.

<sup>31</sup> In the U.K., working parents are able to share up to 50 weeks of leave and 37 weeks of pay in the child's first year.

<sup>32</sup> In 2018, Italy established a five-day mandatory paternity leave. It also provides for 1 day voluntary paternity leave.



Gender inequality in the field of labour and employment remains under-researched as a field. There is an overall lack of both disaggregated data and literature addressing the full range of issues, including, *inter alia*, a gender pay gap,<sup>33</sup> including in public sector employment, other forms of employment discrimination, sexual harassment, glass ceilings and occupational segregation, part-time and informal employment, as well as the unequal burden of unpaid care and domestic work and the situation of rural women.<sup>34</sup> The absence of meaningful data on these issues obscures the reality of women's employment and economic opportunities in BiH, and masks the need for clear policy priorities and action plans. Addressing the needs of women in the labour and employment sector should be a focus area of the EUD/EUSR.

Unions provide little support on women's labour issues, remaining both passive and disinterested. Women are poorly represented in union structures, and their programmes tend to be gender-blind. Concerning gender equality and social dialogue, for example, FBiH legislation requires equal representation in employees' councils, the Economic and Social Council and other bodies. No such provision exists in the RS.

## RECOMMENDATIONS:

- *Foster the collection of data on workforce participation and entrepreneurship, disaggregated by sex, age, location and ethnicity for the purpose of evidence-based policymaking*
- *Support WCSOs, gender equality agencies and/or the Ministry of Human Rights and Refugees to conduct local and regional awareness campaigns to increase men's participation in unpaid household and care work*
- *Support the adoption of an action plan to address the gender pay gap<sup>35</sup>*
- *Support the adoption of wage transparency legislation to reduce the gender pay gap<sup>36</sup>*
- *Harmonise laws on maternity allowance throughout all cantons in the Federation*
- *Provide paternity leave on an equal basis with maternity leave*
- *Support mandatory paternity leave for a minimum number of days*
- *Support the expansion of maternity and paternity leave to self-employed and free-lance workers*
- *Press for the adoption of flexible parental leave legislation that incentivises leave sharing through additional leave time and/or bonuses*
- *Adopt a state-level law on trade unions that is harmonized through the Economic and Social Council*



<sup>33</sup> The current hourly gender wage gap is men (3.9 KM) to women (3.5), or 9%. The gender wage gap exists in all sectors throughout BiH with some variation. See, *World Bank, Bosnia and Herzegovina: Gender Disparities in Endowments, Access to Economic Opportunities and Agency, 2015*, pp.52-54.

<sup>34</sup> See, Bosnia and Herzegovina's recent *Progress report on the implementation of the Beijing Declaration and Platform for Action in BiH within the Beijing +25 process*, 2019 acknowledged: "There is a lack of data about the value of unpaid work conducted by women" p. 26.

<sup>35</sup> Sweden recently adopted a targeted action plan to address the gender wage gap.

<sup>36</sup> Wage transparency legislation has been enacted in Sweden, Ireland, Germany, Austria, Switzerland, Norway, the U.K., Canada and Spain, among other countries.

## 5. Access to health and social protection

Both the health and social protection systems are plagued with the same absence of harmonisation and institutional fragmentation as other sectors in BiH, complicating the effective exercise of these fundamental rights. This section focuses on barriers to access to health care in the Federation, and critical gaps in the field of social protection throughout BiH, including in the definition of categories of beneficiaries.

### A. Access to health care

Over 500,000 persons do not have health insurance in BiH<sup>37</sup>, two-thirds of which reside in the Federation. The health care system in FBiH is challenged by its decentralisation and the uneven economic capacity among cantons, which result in unharmonised policies, a limited scope of rights and barriers in access to care. Restricted registration periods for health care upon leaving education and employment result in permanent loss of the right to health insurance for many, disproportionately affecting persons from marginalised groups and persons residing in rural areas. Even a basic health care package remains unavailable to certain groups of population. Unemployed elderly persons who are not retirees also lack access to health insurance, as municipal determinations calculate family income in assessment determinations in contravention of the law.

With the aim of harmonising rights across the Federation, the FBiH Parliament passed a Decision on the determination of the basic package of health rights, which covers: students under 26, children until the age of 18 and pregnant women, among other categories of persons. The Decision also set the maximum contribution by individuals to obtain services and listed the categories of persons exempted from payment.<sup>38</sup>

However, the Decision is not applied in practice as the cantonal governments failed to secure the necessary funds, and the Federation Ministry of Health has not adopted implementing regulations. The failure to implement the Decision affects women from marginalized groups, in particular: Roma women, women from rural areas, displaced and returnee women, women with disabilities, victims of domestic violence and women during pregnancy and pre- and post-natal periods. As acknowledged in its recent *Progress report on the implementation of the Beijing Declaration and Platform for Action in BiH within the Beijing +25 process*:

Quality and accessibility of health care are particularly problematic in rural areas or areas where there are no major health centres. As a result, in some areas, emergency medical assistance is as far as 60 km away. This is a particular problem for poor women and women from rural areas where the cost of participation or transport to a health centre [hampers access] to these rights and services.<sup>39</sup>

Women with disabilities do not have access to gynaecological care due to "an insufficient number of gynecological examination tables [and] non-qualified healthcare workers".<sup>40</sup>

<sup>37</sup> Do univerzalne zdravstvene zaštite u Bosni i Hercegovini pregled stanja i preporuke za djelovanje, ICVA, May 2009, p. 4

<sup>38</sup> Decision on Determination of Basic Package of Health Rights and Decision on the Maximum Amount of Direct Participation of Insured Persons in the Costs in Using Specific Forms of Health Care in the Basic Package of Health Rights (Official Gazette of Federation of BiH, 21/09).

<sup>39</sup> See, *Progress report on the implementation of the Beijing Declaration and Platform for Action in BiH within the Beijing +25 process*, 2019 acknowledged: "There is a lack of data about the value of unpaid work conducted by women" p. 31.

<sup>40</sup> Id.

Moreover, many women cannot afford to pay the contribution and thus seek health care only in an emergency. Strikingly, breast and cervical cancer screenings are not covered.<sup>41</sup> The inability to select one's healthcare provider also constitutes a barrier for many women who are assigned male doctors, whom they refuse in light of their religious beliefs, "reducing the number of women turning to health care institutions or going for preventive check-ups."<sup>42</sup>

Importantly, despite legal guarantees to access to reproductive services, "most women have to pay for these services through employment health insurance, which adds pressure on women who are unemployed or are working informally".<sup>43</sup> The low contraception prevalence rate is attributed to economic and educational factors, (i.e., education and wealth increases women's access). Contraceptives are not subsidised by the government.

Significantly, there are currently no state or entity level policies on reproductive health, family planning, or reproductive health commodity security. Notably, the absence of a reproductive health commodity security mechanism in the country leads to limited access to contraceptives and other similar services for women and couples.<sup>44</sup>

## B. Access to Social Protection

The most fundamental characteristics of the social protection system in BiH are the lack of harmonization and its inadequate response to social need. The situation is particularly acute in FBiH, where cantonal laws apply despite entity-level legislation. No sanctions exist for cantons that do not harmonize their laws with entity-level legislation, and many cantons lack implementing regulations, impeding the application of existing laws in practice. Furthermore, social protection institutions do not receive sufficient funds to implement the protection measures stipulated by law.

BiH spends 4% of its GDP on social protection, and the majority of social allowances is not channelled to those with the greatest need. Twenty percent of the poorest population receive only 17% of the assistance allocated. The largest portion of allocated assistance benefits war veterans. In the Federation, disabled war veterans receive up to five times the allocation of all other categories beneficiaries in what constitutes clear discrimination based on social status. As war veterans are primarily men, the social protection available to address issues that primarily affect women are substantially reduced. Differences exist not only in the amount of the allowance, but also in the scope of rights, and the degree of disability required as a basis for the right. Indeed, according to a 2013 population census, half of population with disabilities are older than 65 years, of which 65% are women.<sup>45</sup> War veterans should thus be separated from the social welfare system, and the conditioning of rights and allowances by status (the origin of the need) rather than the actual need should be abolished.

It is the poorest and most marginalized, especially those affected by multiple forms of discrimination, who suffer the most, such as older women, Roma women, women with disabilities and women returnees. These groups experience high levels of poverty and social exclusion, and lack access to health care, social protection and employment.

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<sup>41</sup> Id., further recognising: "There is no systemic solution for preventive health care, which is particularly a problem in isolated and rural communities."

<sup>42</sup> Id.

<sup>43</sup> World Bank, Bosnia and Herzegovina: *Gender Disparities in Endowments, Access to Economic Opportunities and Agency*, 2019, p. 29.

<sup>44</sup> Ibid. p. 30.

<sup>45</sup> See, Women and Men in Bosnia and Herzegovina, 2018, p. 21, available at:

[http://www.bhas.gov.ba/data/Publikacije/Bilteni/2018/FAM\\_00\\_2017\\_TB\\_0\\_BS.pdf](http://www.bhas.gov.ba/data/Publikacije/Bilteni/2018/FAM_00_2017_TB_0_BS.pdf).

Significantly, the provision of social services in both entities has been transferred to local community budgets, which face limited capacity and gender sensitivity. For example, personal assistance for persons with disabilities is offered in only three communities in the RS and none in FBiH. In a majority of jurisdictions, the system effectively relies on the support provided by individual unpaid carers, primarily women, to provide the necessary assistance, resulting in women's depletion through social reproduction. Without significant change to the social protection system, women's individual health and well-being can be expected to decline, with resultant negative effects on households and in communities.

No long-term care system is in place, care allowances remain meagre and community-based care remains under-developed.<sup>46</sup> Furthermore, social protection needs assessments are not objectively determined based on the individual's need, but rather are based on the category of persons to which the beneficiary belongs. For example, very vulnerable groups, such as female sex workers and drug addicts face a dearth of assistance, including by CSOs.

BiH is thus failing to assume its obligations under the International Convention on Economic Social and Cultural Rights (ICESR), European Social Charter and EU standards, with highly gendered consequences. The enormous gaps left by a system structured on social status, with no long-term care options, limited categories of beneficiaries and inadequate services and support, serve to entrench poverty among vulnerable populations and, in particular, render women poorer and physically and emotionally depleted.

### C. Conceptualising beneficiary categories

When it comes to accessing a range of services, such as health care, social protection, free legal aid and others, the establishment of categories of beneficiaries and the social context in which they attempt to exercise those rights can render them illusory. For example, there is a significant difference in the enjoyment of rights between urban and rural women in BiH, as levels of economic development and patriarchal norms vary. In light of such differences, institutional efforts to disseminate information about citizens' rights among all categories of persons including by making materials available, such as in minority languages and in simplified formats, is essential for ensuring that all persons are aware of the full scope of their rights and entitlements.

The legal definitions for determining vulnerability and access to rights and services lack precision in BiH, opening up avenues for manipulation and arbitrary restrictions. For example, there is no legal category for single parents in BiH, no specialized programmes exist for them in the context of social protection or tax status, and no data is collected on them as a category, rendering them officially invisible. It is significant in this regard to note that most single parents are women.

Similarly, there is no legal category for elderly women. Only contributory pensions exist for retired persons. Significantly, no information is available on the gender pension gap. Furthermore, no non-contributory pension exists for the elderly, nor are there more basic policies to support elderly persons based on their age alone, such as healthy aging programmes, or reduced cost transportation cards.

Women returnees constitute a vulnerable category of persons. Their entitlements under the social protection system are very low, and they fail to access benefits to which they are entitled. Existing measures provided for them have not produced the desired results. Most are engaged in informal work.

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<sup>46</sup> See, European Commission, Employment Social Affairs and Inclusion, Recent Social Policy Developments in Bosnia and Herzegovina, July 2019, available at: <https://ec.europa.eu/social/main.jsp?langId=en&catId=1135&newsId=9421&furtherNews=yes>.

Without adequate legal definitions and recognition of specific categories of beneficiaries, social protection schemes cannot be designed to meet their needs. As a result of this gap, categories of vulnerable persons remain invisible with their specific needs going unmet and no formal acknowledgement of their social protection rights and entitlements pursuant to international standards.

The gender gap in labour participation and women's unpaid care and domestic work constitute another significant issue. In 2017, women's labour participation was 37.6%, and 334,000 women indicated that being a housewife was the reason for their economic inactivity. Women's unpaid care and domestic work is not measured as economic contribution, though it serves as a pillar of social support and care throughout the country on which others' active economic participation depends. Indeed, most working age women with school age children rely on the "grandma service," rather than on government supported care options and kindergartens.

The failure to identify and measure women's economic contribution through their unpaid care and domestic work renders it officially invisible, perpetuating the absence of social services that should be available by right. The reliance on women's unpaid care a social work is further buttressed by deeply embedded patriarchal social norms, which for example, fail to see an elderly woman as anything but a caregiver and a single mother as pitiable or even shameful.

## RECOMMENDATIONS:

### HEALTHCARE

- *Implement the Decision<sup>47</sup> on the exemption of payment of contribution of certain categories of the population, and for certain diseases.*
- *Expand the basic health services package to ensure free cervical and breast cancer screenings, and all maternity-related care*
- *Subsidise or provide access free of charge to contraceptives and ensure their availability in rural areas*
- *A specific health service package should be available for women with disabilities*
- *Expand mandatory health insurance to cover the following categories of persons:*
  - *Children not attending primary or secondary school*
  - *Elderly persons who are not retired and not covered by other forms of mandatory health insurance*
  - *Full-time care givers of children, disabled, elderly and family members with illnesses, including hospice*
- *Support an expansion of the list of essential medicines<sup>48</sup>*
- *Ensure physical access to health services for women with disabilities*
- *Increase the scope and quality of reproductive health services provided in rural areas*



<sup>47</sup> Decision on establishing basic package of health rights, Federation of BiH Parliament, available at: <https://mz.ks.gov.ba/sites/mz.ks.gov.ba/files/Odluka%20o%20utvrdjivanju%20Osnovnog%20paketa%20sInFBiH21-09.pdf>.

<sup>48</sup> Decision on the list of medication issued through the fund of the Institute for health insurance of Sarajevo Canton, <https://mz.ks.gov.ba/sites/mz.ks.gov.ba/files/LISTA%20LIJEKOVA%20SA%20ODLUKOM%202009.pdf>; all data available on the web portal of the Health Insurance Fund of Republika of Srpska: <https://www.zdravstvo-srpske.org/cjenovnici-i-sifarnici.html> - <https://www.zdravstvo-srpske.org/files/cjenovnici/lijekovi.pdf>



## RECOMMENDATIONS:

### *Social protection*

- *Support collection of data on the gender pension gap and social welfare needs of single parents*
- *Press for the establishment of a caregiver's allowance for persons caring for family members (children, elderly, disabled and persons with serious illnesses) on a full-time basis*
- *Press for the creation of non-contributory social welfare support for elderly persons*
- *Support the creation of pension-sharing schemes to ensure adequate support for elderly women whose labour force participation was interrupted due to caregiving responsibilities*
- *Support the establishment of economic support for victims of domestic violence during the receipt of services decrease their economic vulnerability in the process of escaping violence*
- *Benefits provided to war veterans based on their military service should not be channelled through the social protection system as it consumes the bulk of available assistance that should be provided to society's most vulnerable*
- *Social protection should be determined based on individual need rather than on status or categories of beneficiaries*
- *Support the monitoring and evaluation of social protection programmes as a means of determining their effectiveness and guiding evidence-based policy-making in this field*



<sup>47</sup> Decision on establishing basic package of health rights, Federation of BiH Parliament, available at: <https://mz.ks.gov.ba/sites/mz.ks.gov.ba/files/Odluka%20o%20utvrdjivanju%20Osnovnog%20paketa%20slnFBiH21-09.pdf>.

<sup>48</sup> Decision on the list of medication issued through the fund of the Institute for health insurance of Sarajevo Canton, <https://mz.ks.gov.ba/sites/mz.ks.gov.ba/files/LISTA%20LIJEKOVA%20SA%20ODLUKOM%202009.pdf>; all data available on the web portal of the Health Insurance Fund of Republika of Srpska: <https://www.zdravstvo-srpske.org/cjenovnici-i-sifarnici.html> - <https://www.zdravstvo-srpske.org/files/cjenovnici/lijekovi.pdf>

## 6. Conclusion

Women's full realisation of their rights in BiH remain hampered by the ongoing dysfunctions of the democratic, political, economic and social structures and processes established at the conclusion of the war. These structures were established at the end of the hostilities, 24 years ago, when gender was not taken into consideration. While sector-specific initiatives should be undertaken and supported, tackling the root causes of these rights violations would have a more structural and lasting impact. The inadequate social infrastructure and gender-responsive macro-economic policies, as well as violence against women and the ongoing capture of the political system and institutional framework by constituent peoples, are issues that can be incorporated into the broader framework of transitional justice.

Women's low political participation can be attributed in part to their experience of violence during the conflict, in the home and in the political arena, as well as to their limited livelihood and economic opportunities coupled with their unpaid work and domestic care burdens, which impede engagement in the public sphere. Women also face both de jure and de facto discrimination in labour, health care, social protection, legal procedures to exercise their rights and in elections. Women are thus excluded from, and their interests are marginalised within, larger national processes, such as constitutional reform and EU accession.

The Women's Advisory Board, and its platform for providing situational analyses on women's concerns to the EUD/EUSR, has the potential to amplify women's voices and their potential contribution to addressing the issues that affect them—half of the population—in the face of a political system that relegates them to the sidelines. Moving beyond the current and ongoing political impasse will require an outlet for these and the voices of other constituencies to be heard and channelled into meaningful constitutional and democratic change. Through its engagement with WAB, the EUD/EUSR can demonstrate the ways in which fostering alternative democratic space can lead most surely to systemic political reform for meaningful democratic structures and governance that has both the capacity and the political will to address the issues of concerns of all citizens, beyond the interests of the male political elite.



