

On the Road to the EU

Monitoring
Equal Opportunities
for Women and Men
in South Eastern Europe

2006

ALBANIA
BOSNIA AND
HERZEGOVINA
CROATIA
KOSOVO
MACEDONIA
MONTENEGRO
SERBIA

On the Road to the EU

Monitoring Equal Opportunities
for Women and Men in

Bosnia and Herzegovina

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2006

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Preface

This monitoring report – “On the Road to the EU” – was prepared as part of the Open Society Institute’s Network Women’s Program (NWP) “Bringing the EU Home” Project. It is a three-year project (2004–2006) that aims to promote awareness, advocacy, and enforcement of equal opportunity legislation at the national level and to build the capacity of national actors in civil society to use EU-level gender equality mechanisms effectively. The project further aims to help increase the importance of equal opportunities on the European agenda.

The “Bringing the EU Home” Project stemmed from OSI’s EU Monitoring and Advocacy Program’s efforts to monitor the progress of candidate countries as they prepared themselves for integration into the European Union and to ensure that they met the Copenhagen political criteria, particularly in relation to the independence of the judiciary, minorities’ rights, and anticorruption. This independent project was developed to evaluate the status of accession countries from the perspective of the *acquis communautaire* in the field of equal opportunities for women and men, which accession countries are required to adopt and comply with.

In 2005, a new phase of the project – “On the Road to the EU” – was started. After concentrating on new member states of and acceding countries to the EU,¹ we started to focus on the candidate and potential candidate countries from South Eastern Europe. Albania, Bosnia and Herzegovina, Serbia and Montenegro, including Kosovo, are potential candidate countries to the EU, while Croatia and Macedonia are already candidates. To use their preparation period for EU membership effectively, NWP invited seven South Eastern European nongovernmental organizations to join the “Bringing the EU Home” Project. With this phase, the project aims to help raise the significance of equal opportunities within the process of new and future accession negotiations, creating a unique platform for candidate and potential candidate countries.

An assessment of the status of equal opportunities between women and men, *de jure* and *de facto*, was carried out in the above seven entities. The EU directives on equal opportunities provided the framework for monitoring and analyzing corresponding legislation, institutions, and practices. The project focused on the directives related to the principle of equal pay for work of equal value; equal treatment as regards employment;

¹ See the publications of the previous monitoring phases: *Monitoring the EU Accession Process: Equal Opportunities for Women and Men*, Budapest: OSI, 2002; and *Equal Opportunities for Women and Men: Monitoring law and practice in new member states and accession countries of the European Union*, Budapest: OSI, 2005.

protection of pregnant women, breastfeeding women, and women who have recently given birth; and the situation of self-employed workers.

As a result of the assessment, seven monitoring reports were prepared. In this publication you can find the summary of the results, while the full reports themselves are available online.² To provide effective tools for advocacy at national and EU levels, the reports outline specific areas of concern and issue clear recommendations to governments on legislation, institutional mechanisms, policies, programs, and research initiatives. The recommendations focus on how laws and their implementation in participating countries should be in line with EU standards, to ensure that gender equality becomes a reality in the countries monitored.

The Network Women's Program worked in cooperation with the relevant members of the International Gender Policy Network (IGPN) in this new phase of the project.

We would like to thank all individuals and partner organizations who were involved in this monitoring project and whose invaluable contributions and support made the publication of these reports possible.

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These national experts prepared full monitoring reports on equal opportunities for women and men on the basis of a detailed methodology prepared under the project “Bringing the EU Home.”

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INTRODUCTION

Ending Bosnia's war, the 1995 Dayton Peace Accords (DPA) retained Bosnia and Herzegovina's international boundaries and created two territorial component "entities" within the Bosnia and Herzegovina state: the Bosniac/Croat Federation of Bosnia and Herzegovina and the Bosnian Serb-led Republika Srpska. Bosnia and Herzegovina comprises the two aforementioned entities, the Federation of Bosnia and Herzegovina and the Republika Srpska, as well as the self-governing district of Brčko, under the sovereignty of the central state government. Bosnia and Herzegovina is a parliamentary democracy with a constitution established by the DPA that is still in force. The DPA granted limited powers to B&H state-level government. Progressively, this government is taking up more responsibilities.

In Bosnia and Herzegovina, the legal framework with respect to equal opportunities for women and men comprises legislative instruments at state, entity (Federation of Bosnia and Herzegovina and Republika Srpska), and cantonal level (in Federation of Bosnia and Herzegovina), as well as provisions for the district of Brčko. The constitution provided for by the DPA transferred all authority to the entities of the State of Bosnia and Herzegovina.¹ Each entity has its own constitution and respective laws that establish a general legal framework for implementing equal opportunities for women and men in the territory of Bosnia and Herzegovina.

The Constitution of Bosnia and Herzegovina sets very high general standards for respecting human rights and enumerated a catalogue thereof. International standards, rights and freedoms set forth by the *European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols* are directly applied in Bosnia and Herzegovina. These have primacy over all other law.

Bosnia and Herzegovina is currently undergoing integration into the international legal order, in compliance with international and European requirements to establish a general nondiscriminatory framework and adopt gender specific legislation and measures. In this process, Bosnia and Herzegovina was one of the first states in the

¹ The *Constitution of Bosnia and Herzegovina*, established by the Dayton Peace Accords (DPA). Article II/2 (Annex IV, DPA), initiated on November 21, 1995, and signed on December 14, 1995. in Paris, stipulate "The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms modified and amended by Protocols 3, 5, and 8 and amended by Protocol 2, and Protocols 1, 4, 6, 7, 9, and 11, published in the *Official Gazette of B&H*, Special Issue, International Treaties," No.56/96.

region to adopt a Gender Equality Act² as *lex specialis*. The act “governs, promotes and protects gender equality and guarantees equal opportunities for all in both public and private domain, and prohibits direct and indirect discrimination on grounds of sex.”³

The act stipulates that “The sexes shall have equal rights. Full gender equality shall be guaranteed in all sectors of society, particularly in the fields of education, economy, employment, and labor, social welfare, health care, sport, culture, public life and the media, regardless of marital or family status. Discrimination on grounds of gender and sexual orientation shall be prohibited.”⁴

The formal legal framework for improving legislation on equal opportunities for women and men was completed when Bosnia and Herzegovina adopted the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW),⁵ and its optional protocol into its constitution in 1993 and 2000. Bosnia and Herzegovina is also a signatory to the Beijing Declaration and Platform for Action (signed in 1995), and the Universal Declaration of Human Rights (1948), as well as most international labor conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers. By adopting CEDAW, incorporating it directly into B&H constitutions, and enacting the Gender Equality Act, Bosnia and Herzegovina implicitly recognized the specific character of systematic discrimination against women and explicitly defined the concept of discrimination itself. Thus, the conditions for building a legal, but also socio-cultural framework for the elimination of discrimination against women and for a change in the traditional roles of men and women in the society have been set in place.

This legal framework is a positive step toward possible *de facto* implementation of equal opportunities for women and men, but their impact is extremely limited in every day practices. Although the B&H government has made significant efforts with regard to “gender mainstreaming,” there is a wide gap between *de jure* and *de facto* situations. Although most of the relevant laws have incorporated the principle of equal

² The *Gender Equality Act* of Bosnia and Herzegovina was adopted by the Parliamentary Assembly of B&H April 22, 2003 and in the session of the House of Peoples of May 21, 2003. The act was published in the *Official Gazette of B&H* June 16, 2003, and entered into force eight days thereafter.

³ Article 1, the *Gender Equality Act of B&H*.

⁴ Article 2, the *Gender Equality Act*.

⁵ The *International Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) was adopted and open for signing and ratification or accession by the UN General Assembly’s resolution 34/180 of December 18, 1979. It entered into force September 3, 1981, pursuant to Article 27, the *Official Gazette of SFRY*, No.11/1981. B&H adopted CEDAW September 1, 1993, and the CEDAW Optional Protocol February 7, 2000.

opportunities for women and men, in practice women usually cannot realize those opportunities in either the private or public sectors. A truly gender-sensitive policy and practice has almost completely failed to materialize in the fields of economy, employment, education, social security, health care, and women's participation in decision making bodies in public and political life.

The absence of political and socio-cultural forces to prioritize the gender issue in Bosnia and Herzegovina is a crucial obstacle to ensuring equal opportunities for women and men and to implementing laws against discrimination.

EQUAL PAY

Council Directive 75/117/EEC of February 10, 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.

SECTION 1 – National Legal Framework Concerning the Principle of Equal Pay for Work of Equal Value

1.1 General provisions

The principle of equal pay for work of equal value is incorporated into the annexes to the constitutions of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska, which incorporate the instruments for the protection of human rights with the legal force of constitutional provisions. The legal status of employed women, unemployed women, and employers in Bosnia and Herzegovina is regulated by the provisions of labor and social legislation. The B&H labor code embraces all acts of law and statutory measures governing labor relations, that is, all human rights related to labor issues.

1.2 The Labor Act

The Labor Act of the Federation of Bosnia and Herzegovina, the Labor Act of the Republika Srpska, and the Labor Act of the Brčko District⁶ incorporate extracts from ILO Convention No.100 on Equal Remuneration, 1951, which directly refer to the principle of equal pay for work of equal value, irrespective of the worker's sex. The extracts are integral part of the acts mentioned above and explicitly stipulate equal pay for men and women workers for work of equal value.

⁶ The *Labor Act* of the B&H Federation, the *Official Gazette of FB&H*, Nos. 43/99, 32/00, 29/03; The *Labor Act* of the Republika Srpska, the *Official Herald of RS*, No.38/00; The *Labor Act* of the Brčko District, the *Official Herald of the Brčko District*, No.7/00.

1.3 The Collective Bargaining Agreement

The Collective Bargaining Agreement⁷ stipulates that the employer is obliged to pay equal pay for work of equal value to employees regardless of their nationality, religion, sex, political or trade union membership.

1.4 The Gender Equality Act

The Gender Equality Act explicitly introduces the principle of equal pay for work of equal value for women and men which expressly stipulates that “Failure to provide equal pay and other benefits for the same work or work of equal value shall constitute prohibited discrimination on the ground of sex at work and in employment.”⁸

1.5 International provisions

The Universal Declaration of Human Rights stipulates: “Everyone, without discrimination, has the right to equal pay for equal work” and is fully incorporated into the constitutional and legal order of Bosnia and Herzegovina.⁹ Article 11 (a)(i) of the International Covenant on Economic, Social, and Cultural Rights¹⁰ provides that: “(a) Remuneration which provides all workers, as a minimum, with: (i) Fair pay and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.” CEDAW sets forth “the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.”¹¹

Prohibition and elimination of discrimination, as well as promotion of equal opportunity at work are legally provided for by the following ILO Conventions ratified

⁷ Article 6, the *Collective Bargaining Agreement of FB&H*, (Adopted in August 2005, entered into force a day after promulgation).

⁸ Article 8, Chapter V, the *Gender Equality Act*.

⁹ Article 23, item 2, *The Universal Declaration of Human Rights* adopted and promulgated by the UN General Assembly's resolution 217 A(III) of December 10, 1948.

¹⁰ *The International Covenant on Economic, Social and Cultural Rights* was adopted and available for signing and ratification or accession by *UN General Assembly Resolution 2200A(XXI)* of December 16, 1966. The Covenant entered into force January 3, 1976 pursuant to Article 27, the *Official Gazette of SFRY*, No.7/1971. It was adopted by succession September 1, 1993, the *Official Gazette of the Republic B&H* 25/93.

¹¹ Article 11(d), CEDAW.

by Bosnia and Herzegovina in 1993: ILO Convention No.111 on Discrimination (Employment and Occupation); ILO Convention No.100 on Equal Remuneration, 1951; ILO Convention No.156 Concerning Workers with Family Responsibilities; ILO Convention No.159 on Professional Training and Employment; ILO Convention No.175 on Working Hours; ILO Convention No.177 on Home Work; ILO Convention No.122 on Employment Policy; ILO Convention No.140 on Paid Leave in Purpose of Education; and ILO Convention No.158 on Seizure of Employment Contract.

Finally, the legal definition of the principle of equal pay set forth in the Gender Equality Act is in full compliance with the definition of the principle in Council Directive No.75/117/EEC. The act prohibits any discrimination on grounds of sex at work and employment, such as nonapplication of equal pay and other benefits for work of equal value.

Relevant B&H legislation, especially the Gender Equality Act, clearly demonstrates that Bosnia and Herzegovina has embraced the principle of equal pay for work of equal value as a cornerstone of the principle of equal opportunities for women and men.

SECTION 2 – Implementation of the Principle of Equal Pay for Work of Equal Value: Legal Foundations and Institutional Structures

2.1 General presentation

In the B&H legal order there are no discriminatory legal provisions against women and men in contravention of the principle of equal pay.

The principle of equal pay for equal work for women and men as defined by B&H labor acts and the Gender Equality Act, as well as other relevant legislation, applies to both public and private sectors. The Ministry for Human Rights and Refugees of Bosnia and Herzegovina is in charge of implementing the Gender Equality Act, in both the public and private sectors.¹²

To monitor compliance with the act, the Agency for Gender Equality was set up within the human rights ministry.¹³ The agency's duties include development of a state action plan for the promotion of gender equality and monitoring of its implementation; preparation of annual reports for the Council of Ministers on the status of gender issues in Bosnia and Herzegovina; evaluation of laws, provisions and bylaws adopted by the Council of Ministers; development of methodology for

¹² Competencies of this Ministry are set forth in Article 22, the *Gender Equality Act*.

¹³ Establishment of the Agency is governed by Article 22, the *Gender Equality Act*.

evaluation of the effects of state policy and programs on gender equality, and other activities related to the promotion of gender equality and fulfillment of the act's mission.¹⁴

The Gender Centre of the Federation of Bosnia and Herzegovina and the Gender Centre of the Republika Srpska are responsible, under the Gender Equality Act for monitoring and overseeing implementation of the principle of equal pay, that is, compliance with the act and all the norms thereof.¹⁵

2.2 Job classification system

There is no unified system of job classification in Bosnia and Herzegovina. A job classification system used to determine rates of pay exists only in the public sector in judicial institutions and for administrative authorities and their services. Setting rates of pay is subject to applicable labor legislation, the Collective Bargaining Agreement on Conditions of Employment,¹⁶ and wage and salary regulations in a particular firm. The main determining criteria involve: educational qualifications; required knowledge in a particular scientific or vocational field acquired through vocational training; prior experience in the same or comparable jobs in a particular profession; previous official work titles; indication of skills and qualifications necessary for exercising authority and fulfilling the responsibilities of managing an organizational unit, job, or workplace; and qualifications necessary for performing job-related duties associated with certain professional titles or positions.

For instance, for employees of administrative authorities and cantons, and in city or municipal administrative services in the Bosnia and Herzegovina Federation, the Republika Srpska, the Brčko District, rates of pay are determined in accordance with the Act on Employees in Administrative Authorities and Administrative Services, and the Act on Government Administration. Fundamental rights, obligations and responsibilities, pay and other benefits based on work performed by employees in

¹⁴ Article 23, the *Gender Equality Act*.

¹⁵ *Ibid.*

¹⁶ Article 6, the *Collective Bargaining Agreement on Conditions of Employment of FB&H* published in the *Official Gazette of FB&H*, No.54/05, stipulates: "The employer shall pay employees equal pay for work of equal value, irrespective of their national origin, religion, regional location, sex, political opinion, and trade union membership."

B&H institutions and judicial organizations at the B&H state level¹⁷ are also regulated by these institutions.

Legislation on job classification and salaries does not incorporate gender-based discriminatory provisions, and complies with international conventions signed and ratified by Bosnia and Herzegovina. It must be noted here that the language of legislative documents on job classification (and of other issues as well) is not gender neutral, and any person who performs a certain job, particularly a job of high value, is solely referred to in the masculine gender.

2.3 Available legal procedures in cases involving the violation of the principle of equal pay for work of equal value

The B&H constitution guarantees the right to legal protection to all citizens of Bosnia and Herzegovina. The Charter of Basic Rights and Freedom further provides that everybody have the right to turn to an independent and impartial court of law – or in some cases to another body – to enforce their rights via due process. There are no special courts to resolve disputes arising from an employment relationship. Such disputes are subject to ordinary civil procedure.¹⁸

In the event that the principle of equal pay for work of equal value is violated, applicable labor legislation and the Gender Equality Act set forth legal procedures to resolve the issue before the employer, or before court of law. When an employee institutes proceedings before the employer alleging violation of the principle of equal pay for equal work, that is, for infringement of the right stipulated by act of law, and the employer refuses to grant the claim, the employee then has the right to bring legal action to protect his/her rights under the act on civil procedure¹⁹ and file suit with a competent court of law.

¹⁷ The *Employees in Administrative Authorities and Administrative Services Acts* in the B&H Federation, the Republika Srpska, the Brčko District, and the *Government Administration Act*, “Fundamental Rights, Obligations, and Responsibilities,” published in the *Official Gazette of FB&H*, No.53/03, the *Official Herald of RS*, No.58/03, and the *Official Herald of the Brčko District*, No.5/00.

¹⁸ The proceedings are based on the set of statutory measures governing civil procedures and litigation.

¹⁹ Article 19, Chapter XIII, the *Act on Civil Procedure*, «Court Protection:» “Everyone whose rights as set out in this Act are violated may institute appropriate proceedings in a competent court of law. A claim may be pursued through judicial process in a competent court before the termination of proceedings for redress from or without instituting such proceedings with an employer.”

The Gender Equality Act does not provide for a time frame within which court proceedings have to be instituted, but its provisions do stipulate judicial protection²⁰ in cases when the principle of equal pay for work of equal value has been violated. In such situations, the labor acts of the Federation of Bosnia and Herzegovina, the Republika Srpska, and the Brčko District all set the following deadlines for instituting a court proceeding: one year from the date the decision violating the employee's right was delivered to the employee, or from the day the employee learned about the fact of such violation of the right, respectively.

In summary, the legal framework in Bosnia and Herzegovina provides for the requisite measures that women employees, who believe they are discriminated against through noncompliance with the principle of equal pay, can use to claim their rights.

Burden of proof

According to the amendments and modifications to the FB&H Labor Act²¹, the person whose rights have been violated may file suit in court of law on grounds of discrimination. In the event of an allegation of gender-based discrimination, the defendant is ordered to submit proof that the difference in treatment had not been discriminatory, that is, the burden of proof lies with the employer. As a consequence, the defendant (employer) must prove that there was no breach of the principle of equal treatment of women and men. The same statutory provision specifies the basis on which the court can order the defendant, provided the complaint proves to be founded, to reinstate the complainant to her prior position, with full employment rights. This provision is also applicable to possible complaints filed on the basis of employment discrimination.

Statutory provision also sets forth penalty clauses to ensure compliance.²² The employer – either a natural or legal person – will be subject to a fine ranging from KM 1,000 to KM 10,000 (EUR 500 to EUR 5,000) in the event that they:

- place the job applicant or the person they employ in an unfavorable position (Article 5, Subparagraph 2, Gender Discrimination);
- require that the employee work beyond full-time working hours (overtime) in contravention of the provisions of Article 32 (Subparagraph 13);
- fail to comply with the cantonal labor inspector's ban on overtime work (Subparagraph 15);

²⁰ Article 28, the *Civil Procedure Act*.

²¹ Article 3, the *Labor Act of FB&H*, the *Official Herald*, No.32/00.

²² Article 40(1), the *Labor Act of FB&H*.

- order a woman employed in industry to work night-shifts in contravention of the provisions of Article 35 (Subparagraph 18).

Additionally to the aforementioned fines, the penalty clauses also stipulate that in the event that the employer perpetrates any of the 58 violations enumerated in statutory provisions, they will also be subject to a fine from KM 500 to KM 2,500 (EUR 250 to EUR 1,250). The person in charge, employed by the employer will also be punishable for breach of the said provisions and subject to a fine of KM 200 to KM 1,000 (EUR 100 to EUR 500).

It must be noted that the same penalty clauses apply to the legal provisions hereunder *vis-à-vis* pregnant women and women who have recently given birth.

Penalties have also been set forth in statutory provision for violation of the equal pay principle in the event of sex based discrimination. As the Gender Equality Act stipulates: “A legal entity shall be fined for violation by KM 1,000 to KM 30,000 (EUR 500 to EUR 15,000) in the event that it fails to institute adequate measures to eliminate and prevent prohibited discrimination on grounds of sex in employment and labor relations as set forth in Articles 7 and 8 of the Gender Equality Act.”²³

The penal codes of the Federation of Bosnia and Herzegovina and the Republika Srpska make punishable the deprivation or limiting of a person’s freedoms or rights enshrined by the constitution, acts of law, or international covenants on grounds of race, color of skin, religion, gender, language, political or other beliefs, sexual orientation, nationality or ethnicity, income scale, birth or social origin.

Despite laws on the books, the following practical obstacles render unworkable the complaint process *vis-à-vis* discrimination at work and in pay: the prohibitive cost of such proceedings; high legal fees; pronounced risk of dismissal in the event that the employee institutes proceedings against the employer; low awareness, especially among women, about employee rights to redress and court proceedings within a larger society generally permeated by gender bias.

2.4 Out-of-court alternatives

Ombudsman offices in Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska have, within their sphere of authority, the right to intervene in resolving problems generally related to human rights violations upon the initiative of an individual or legal entity, as well as *vis-à-vis* pay-related

²³ The *Penal Code* of FB&H, the *Official Gazette FB&H*, No.50/03, October 10, 2003. The penalty set forth for discrimination constituting a criminal offense under Article 177, the *Penal Codes of FB&H*, and Article 162, the *Penal Code* of the Republika Srpska.

discrimination. However, the Ombudsman's authority is confined to proposing the solution, but lacks power to enforce it.²⁴

2.5 Means of informing employees of their right to equal pay for work of equal value

The employer is legally obliged to inform employees about the rules of labor relations and statutory provisions regarding work protection within 30 days from the date of the commencement of the employment contract.²⁵

Prior to an employee taking up his/her job, the employer must acquaint him/her with regulations governing labor relations, organization of work, and safety at work. The employer must make appropriately available to all employees regulations governing work safety, collective agreements, and labor rules.²⁶

Presently, no statutory provisions require the employer to inform employees specifically about the principle of equal pay for work of equal value, or about currently available complaint mechanisms in the event it is violated.

The work inspection authority is in charge of educating and informing employees *vis-à-vis* their rights at workplace, but in actual fact employees are mostly deprived of information and the means to protect their rights.

2.6 Role of trade unions

The role of trade unions is regulated by the Labor Act,²⁷ and recently in greater detail by the FB&H Collective Bargaining Agreement.²⁸ According to the appropriate labor legislation and this agreement, trade unions could play an important role in all cases of violation of employee rights and of the equal pay principle, whether in a judicial proceeding (acting on behalf of their members) or out of court (negotiation, mediation, settlement of dispute, arbitration).

²⁴ *The Ombudsman Act FB&H*, published in: the *Official Gazette FB&H*, No.32/00, and the *Ombudsman Act RS*, the *Official Gazette RS*, 49/04.

²⁵ Article 48, Chapter VI, "Protection of Workers," the *Labor Act FB&H*.

²⁶ Articles 4 and 7, the *Collective Bargaining Agreement FB&H*.

²⁷ Article 9, the *Labor Act FB&H* governs the rights of trade union association and membership.

²⁸ The *Collective Bargaining Agreement FB&H*.

Trade unions could institute court proceedings on behalf of employees if the latter are union members.

The Gender Equality Act stipulates that “trade unions and employer associations shall play a special role in ensuring equal protection in respect of the right to work and equal conditions of recruitment, and shall ensure that there is no discrimination, either direct or indirect, on grounds of gender among their members.”²⁹

SECTION 3 – Factual Background with Regard to the Principle of Equal Pay for Work of Equal Value: Related Research and Statistics

In terms of pay, women formally enjoy the same rights as men. All requisite legal provisions are in place to guarantee women equal pay for work of equal value. In reality, however, a huge rift prevails between men and woman in terms of remuneration. The STAR Network Research 2000³⁰ project found that men earn 2.3 times more than women. All available statistics indicate that there are discriminatory practices preventing women from equal participation in the labor market.³¹ The result is a striking discrepancy in women’s and men’s labor market presence in which women find themselves at a disadvantage with lower income than men despite egalitarian “women friendly” legislation. At 40 percent, Bosnia and Herzegovina’s unemployment rate is one of the highest in the world,³² pushing women out of the labor market. Inadequate education, unsatisfactory employment choices, low pay, and a dearth of affordable child care services force women to stay at home, and are some of the factors affecting women's average earnings. Women are at particular risk not so much because of their high percentage of unemployment, which is comparable with men’s at 47.7 percent for women versus 34.7 percent for men,³³ but owing to their low percentage of labor market participation.³⁴

²⁹ Article 9, the *Gender Equality Act*.

³⁰ Ler Sofronić, Nada, Bakšić Muftić, Jasna, et al, *Zato što smo žene – Socio-ekonomski status žena u BiH* (Socio-Economic Status of Women in B&H – Because We Are Women) 2002. Sarajevo: STAR World Learning, 75.

³¹ *Izvršaj u sjeni, Shadowing Government, Report on the Implementation of CEDAW and Women’s Human Rights in Bosnia and Herzegovina*, 2004. In accord with the UNDP Human Development Report in B&H 2001, Global Rights in Cooperation with NGOs in B&H.

³² Ler Sofronić, Nada, Bakšić Muftić, Jasna, et al, *Zato što smo žene – Socio-ekonomski status žena u BiH* (Socio-Economic Status of Women in B&H – Because We Are Women) 79.

³³ *Ibid.*, 76.

³⁴ According to the World Bank only 28 percent of women are in formal employment in the visible labor market. *Labor Market in Post-war Bosnia and Herzegovina: How to Encourage Businesses to Create Jobs and Increase Worker Mobility*. 2002. World Bank.

Women usually work in the informal economy (black/grey market), where the aforesaid legislation does not apply, and even when properly hired, they mainly work in the tertiary sector where pay is much lower than in other sectors.

And last but not least, the number of women in management is negligible, even in sectors where they comprise the majority of the labor force (education, culture, health care). Women are especially absent in the centers of political and financial power.

Although legislation incorporating the equal pay principle applies equally to the public and private sectors, women are seldom owners of private property or companies, which results, from the outset, in a pay gap in this sector despite gender-sensitive legislation. Management of privatization funds is overwhelmingly in men's hands at over 90 percent of cases.³⁵

Poverty has emerged as a major constraint for both men and women in postwar Bosnia and Herzegovina. According to the Living Standard Measurement Survey (LSMS), 19 percent of the population is living below the poverty line.³⁶ The United Nations Development Program's (UNDP) Early Warning System has found that 30 percent of the population view themselves as ranking among the poorest or well below average in European-style definitions of poverty³⁷ According to the UNDP Millennium Development Report (MDR), a large segment of the population is barely above the poverty line and is striving to cope, resorting to various unsustainable survival strategies.³⁸

In the context of general poverty, women are poor not only because they earn very little, but also because an absence of choices in their lives. This group – women who have few to no choices in their lives – comprises all unemployed women; women who dropped out of school; women in jobs entered in extreme financial desperation; women who are employed but have no social or health insurance; women who want to, but are unable to retrain and upgrade their qualifications; women who would like to start their own business, but are unable to obtain loans because they lack property, have no collateral, and are thus deemed unbankable.

A good example is that despite massive privatization (in Bosnia and Herzegovina almost all publicly-owned housing and companies have been privatized), less than 10 percent of women are owners of commercial or residential property, or businesses.

³⁵ *Izveštaj u sjeni, Shadowing Government, Report on the Implementation of CEDAW and Women's Human Rights in Bosnia and Herzegovina*. 2004, 15.

³⁶ *UNDP Millennium Development Report*. 2003, 15.

³⁷ *UNDP Millennium Development Goals Update Report for Bosnia and Herzegovina*, 2004, 19.

³⁸ *UNDP Millennium Development Report*. 2003, 16.

SECTION 4 – Conclusions, Areas of Concern, and Recommendations

4.1 Conclusion

According to legislation screened for the purposes of this report, there is no gender based monopoly on privileged and better paid work. Women employees have the same rights as their male counterparts. Legislation in Bosnia and Herzegovina mostly complies with international labor standards on equal opportunity and treatment.

4.2 Areas of concern

- The problem is a general lack of compliance with laws on the books. The Gender Equality Act, a pivotal piece of legislation in this regard, is usually ignored by authorities and employers alike. Enforcement of the act is rendered still more difficult by the fact that it has not been harmonized with other laws, even as acts of law and other relevant regulations were supposed to have been brought into conformity with the provisions of the Gender Equality Act, within a deadline of six months at the latest.³⁹ As of the writing of this report, the authors are not aware of a single case before a court of law based on the rights guaranteed under the Gender Equality Act, nor have serious initiatives been taken at the state level to harmonize the act with other legislation.
- The governments of Bosnia and Herzegovina have not submitted obligatory annual reports on compliance with ILO conventions to competent ILO bodies since 1989.
- There are practical obstacles that render complaint processes about discrimination at work and in pay difficult: a pronounced risk that the complaining employee will lose her/his job if they institute proceedings against the employer; the prohibitive costs of such proceedings; time consuming procedures; high lawyer fees; and lack of access to state-provided pro bono legal aid (except in rare instances in certain communities, which means that in the event of litigation the sole option is to engage a lawyer. The only places offering pro bono legal aid are mainly nongovernmental organizations and entities funded by international aid).
- There is a low level of awareness, particularly on the part of women, about their own rights and the availability of legal redress via court proceedings.

³⁹ Article 30, the *Gender Equality Act of B&H*, Chapter XVIII, “Transitional and Concluding Provisions.”

- In Bosnia and Herzegovina, there is general lack of political will among policymakers and a strong gender-bias in the larger society.
- Complaints about discrimination in pay are hindered by statutory confidentiality provisions in labor legislation or internal rules at the workplace that shield pay scales and data.

4.3 Recommendations

- Although the laws on the books in support of the principle of equal pay for women and men are satisfactory in principle, it is necessary to improve the mechanisms for ensuring compliance in practice.
- Women should receive stronger support directly from the state and nongovernmental bodies when bringing violations of the equal pay principle to courts of law.
- Women should receive stronger support directly from the state and nongovernmental bodies in calling for fairer gender balance in better paid and more profitable positions.
- Women should be educated in relevant labor legislation, gender specific statutory provisions, and on how they can ensure proper compliance with this legislation
- Women workers should be informed about their rights in writing and in an accessible manner.
- Institutional gender mechanisms, agencies, and commissions must act to improve women's more appropriate inclusion in the labor market.
- Institutional gender mechanisms, agencies, and commissions must play a more active role in demanding compliance with the Gender Equality Act.

EQUAL TREATMENT AT THE WORKPLACE: EMPLOYMENT, TRAINING, AND WORKING CONDITIONS

Council Directive 76/207/EEC of February 1976 on the implementation of the principle of equal treatment for women and men as regards access to employment, vocational training and promotion and working conditions. Amended on September 23, 2002 through **Directive 2002/73/EEC** of the European Parliament and of the Council.

SECTION 1 – National Legal Framework Concerning the Principle of Equal Treatment for Women and Men

1.1 General provisions

Bosnia and Herzegovina's national legislation does not include any overtly discriminatory provisions *vis-à-vis* access to employment, vocational training and promotion, and working conditions. The right of free access to employment and equal working conditions are guaranteed in annexes to the constitutions of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska, all of which incorporate extracts from key international antidiscrimination documents, particularly from the Convention for the Protection of Human Rights and Fundamental Freedoms, and all of which serve as instruments for the protection of human rights with the legal force of constitutional provisions. They directly or indirectly affect the principle of equal treatment for men and women. Excerpts from ILO Convention No.111 concerning discrimination in employment and occupation, in referring to the principle of employment, professional training, working conditions, and promotion, also constitute an integral part of labor acts in Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska, and the Brčko District. Article 1 thereof, which refers to the elimination of discrimination, aims to prevent different treatment, exclusion, or giving a priority based on race, color, sex, religion, political beliefs, national or social origin.⁴⁰ The International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is

⁴⁰ The extract quoted from Article 1 clearly defines discrimination, also establishing sex discrimination as a pivotal factor impairing equal opportunities: "The term discrimination shall mean: a. any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction, or social origin, which has the effect of nullifying or impairing equality of opportunities or treatment in employment or occupation."

likewise an integral part of the B&H legal framework and it strictly prohibits discrimination in employment, working conditions, promotion and choice of profession.⁴¹ The Gender Equality Act is the only law that explicitly prohibits sex-based discrimination in employment, professional training, working conditions and promotion in a career: “Prohibited discrimination on the grounds of gender at work and in employment [can be indicated by a] failure to provide equal opportunities for education, training and professional qualifications.”⁴²

The provisions of the Act provide a legal basis for the prevention of discrimination against women where it exists, and for the establishment of practice based on the principle of equality of women and men, that is, equal opportunities for women and men in all the fields of the public and private domain.

With regard to employment, work and access to all types of resources, the act also expressly and specifically prohibits discrimination on the basis of sex in employment.⁴³

1.2 The Concept of discrimination on the grounds of sex: definitions and legal sanctions

The concept of sex-based discrimination is explicitly defined within the B&H legal framework in the Gender Equality Act, and this is the first act of law in B&H legislation setting forth the following definition:

For the purposes of the Act, discrimination on grounds of gender shall be defined as all juridical or effective, direct or indirect distinction, privilege, exclusion or restriction on grounds of gender as a result of which the recognition, exercise or enjoyment of a person’s human rights and freedoms in the political, educational, economic, social, cultural, sports, civil and all other domains of public life are denied or curtailed.⁴⁴

The Act also sets forth measures against sex-based discrimination. Accordingly, an individual or legal person who fails to take appropriate steps and use effective

⁴¹ Article 11 of the *Convention* stipulates: “State parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality between men and women, the same rights, in particular: (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training, and recurrent training.”

⁴² Article 8, the *Gender Equality Act*.

⁴³ Article 10, the *Gender Equality Act*.

⁴⁴ Article 3, Chapter 2, the *Gender Equality Act*.

protective mechanisms against discrimination on the grounds of gender will be subject to a fine ranging from KM 1,000 to KM 30,000 (from EUR 500 to EUR 15,000)⁴⁵

Enforcement of this provision of the act is, however, almost impossible. Owing to strong societal and institutional traditions thereof, it is extremely hard to prove gender-based discrimination, and especially to obtain redress therefor. As of the writing of this report, there are no known cases or complaints based on the act with regard to gender-based discrimination, despite widespread public awareness in Bosnia and Herzegovina of labor market discrimination against women, and even though the Gender Equality Act was adopted over two years ago.

A case before the Helsinki Committee for Human Rights in B&H

A female lawyer, identified here as S.N., who has worked at a bank for over 20 years filed a suit before a competent court on the grounds of sex-based discrimination in employment and labor relations and denial of promotion, education, and training and professional development under equal conditions. The suit, filed against the bank's manager, was based on facts and evidence confirming that her male colleagues, engaged in the same tasks as she was, did have access to promotions, training, education, and professional development. The verdict of the court of first instance rejected the plaintiff's claim on the grounds that "there is no evidence for the presented discrimination." Appeal proceedings are underway.

These judicial proceedings did not follow the Gender Equality Act since the act had not yet been adopted at the time, but, rather, appropriate civil and labor code provisions.

The Gender Equality Act also defines the concepts of direct discrimination on the grounds of gender and indirect discrimination on the grounds of gender.

Direct discrimination on the grounds of gender shall occur when a person has been, is, or may be treated less favorably on the grounds of sex than another in the same or a similar situation. Indirect discrimination on the grounds of sex shall occur when apparently neutral legal standards, criteria or practices have the effect of leaving a person of one sex disadvantaged in comparison with a person of the other sex.⁴⁶

The act explicitly defines different treatment due to pregnancy and motherhood as discrimination on grounds of sex:

Sex discrimination can also be rooted in different treatment on the grounds of pregnancy, childbirth, or exercising the right to maternity leave, including failure to enable an employee to return to the same job or another job of the same seniority with equal pay after the expiry of maternity leave, as well as

⁴⁵ Article 28(2), Chapter XXVII, the *Gender Equality Act*.

⁴⁶ Article 3(1-3), the *Gender Equality Act*.

different treatment for men and women in regard to deciding how to take up maternity leave following the birth of a child.⁴⁷

1.3 Legal status of harassment and sexual harassment

The terms harassment and sexual harassment are for the first time set forth in the B&H legal system under the Gender Equality Act. The Act stipulates that harassment is: “is any situation in which inappropriate behavior related to gender arises which has the intent and effect of inflicting injury on the dignity of a person or giving rise to intimidation, hostility, or demeaning, threatening or similar situations.”

The Act goes on to further define sexual harassment as:

Any behavior that in word, action or psychological effect of a sexual nature in intent or effect inflicts injury on the dignity of a person or gives rise to intimidation, hostility, or demeaning, threatening or similar situations and which is motivated by belonging to another gender or different sexual orientation and which to the victim represents inappropriate physical, verbal, suggestive or other behavior.⁴⁸

Harassment and sexual harassment are prohibited by the Gender Equality Act. The act stipulates that such behavior be treated as forms of discrimination on grounds of gender, and as forms of violence respectively on grounds of gender, since sexual harassment and blackmailing come from the employer or superiors in the hierarchy of power.

Violence, harassment or sexual harassment on the grounds of gender is punishable under the Gender Equality Act as a criminal offence and carries a sentence of six months to five years imprisonment. These are *ex-officio* prosecutable criminal offenses. A juristic person who fails to undertake appropriate steps and use effective protective mechanisms against discrimination on the grounds of gender, harassment, and sexual harassment will be liable to a fine ranging from KM 1,000 (about EUR 500) to KM 30,000 (about EUR 15,000).⁴⁹

Although empirical research underscores the widespread nature of sexual harassment (according to one set of recent findings 37.4 percent of female students report that they have experienced some form thereof during their studies and 58 percent of female

⁴⁷ Article 8(5), the *Gender Equality Act*.

⁴⁸ Article 4 c) & d), the *Gender Equality Act*.

⁴⁹ Article 28, Chapter XXVII, the *Gender Equality Act*.

students know someone who has experienced some form of sexual harassment),⁵⁰ legal action is seldom taken. Generally speaking, public opinion regards behavior as an act of discrimination when, for instance, a superior courts a female subordinate, and women often experience all sorts of trouble if they publicly speak out about this issue. Women and girl victims, not the perpetrator, are usually blamed for such situations. Investigations of discrimination and harassment in the work place have found that during job interviews employers very often pay attention to looks, clothes, marital status, age, and willingness to travel and attend business lunches and dinners and so forth.⁵¹

SECTION 2 – Implementation of the Principle of Equal Treatment for Women and Men: Legal Foundations and Institutional Structures

2.1 General presentation

The principle of equal treatment for women and men in employment, professional training, promotion, and working conditions is set forth in the annexes to the constitutions of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the District of Brčko, and the labor acts of the Federation of Bosnia and Herzegovina, the Republika Srpska, and the District of Brčko. The principle is also bolstered by incorporating relevant ILO provisions into all the aforesaid statutory measures.⁵²

This principle is also explicitly set forth in Chapter V of the Gender Equality Act, “Employment, Work and Access to All Types of Resources.”⁵³

2.2 Available legal procedures in cases involving the violation of the principle of equal treatment for women and men

Judicial and administrative procedures in the B&H legal system are available to all people who believe that their rights to equal treatment have been violated. The

⁵⁰ PRISM Research, *Seksualno uznemiravanje na BiH univerzitetima* (Sexual Harassment at B&H Universities) 2005. Sarajevo: PRISM Research www.prismaresearch.ba.

⁵¹ Ler Sofronić, Nada, Bakšić Muftić, Jasna, et al, *Zato što smo žene – Socio-ekonomski status žena u BiH* (Socio-Economic Status of Women in B&H – Because We Are Women) 2002. Sarajevo: STAR World Learning, 19.

⁵² See previous chapter describing in detail relevant provisions for the implementation of this principle.

⁵³ Articles 7, 8, 9, 10, the *Gender Equality Act*.

procedures are held before competent institutions and courts of law on the basis of the antidiscrimination provisions of legislation described in Part I, Section 2, Article 2.3 of the report.⁵⁴

However, even in the case of a final ruling, judgment or decision, it is hardly possible that the injured party will get real and effective compensation for the damage incurred by discrimination. In the B&H legal system there are no legal entities bound by law to provide legal aid to the victim of discrimination in a judicial or administrative procedure arising from the principle of equal treatment of women and men.

2.3 Protective measures with regard to women's participation in the labor market

Under the labor acts of the Federation of Bosnia and Herzegovina, the Republika Srpska, and the District of Brčko, women are entitled to certain protective measures, such as:

[A] woman shall not be employed in jobs under the ground (mines), except in the case she is employed as an executive, which does not demand physical labor, or in health care services, or if she has to spend some time in training under the ground, or has to occasionally enter the part of a mine under the ground in pursuing the profession which does not imply physical labor...[regarding pregnant women] employer[s] shall not refuse to employ a woman on the grounds of pregnancy, or terminate her work contract therefor.⁵⁵

The Gender Equality Act, as has already been stated, explicitly prohibits different treatment on the grounds of pregnancy: "Prohibited discrimination on the grounds of gender at work and in employment is... different treatment on the grounds of pregnancy, childbirth or exercising the right to maternity leave, including failure to enable an employee to return to the same job or another job of the same seniority with equal pay after the expiry of maternity leave, as well as different treatment for men and women in regard to deciding how to take up maternity leave following the birth of a child."⁵⁶

⁵⁴ 6.ff.

⁵⁵ Article 52, the *Labor Act of FB&H*, whose content is identical with provisions of the *Labor Act* of the Republika Srpska, and the *Labor Act* of the Brčko District, in their sections "Woman and Motherhood."

⁵⁶ Article 8(5), the *Gender Equality Act*.

2.4 Prohibition of dismissal

Protection against dismissal of employees who seek to legally enforce their rights is incorporated in Section XI of The Labor Act stating that the employer can fire the employee only in legally defined cases.⁵⁷

According to the Gender Equality Act:

The relevant authorities... and other juristic persons shall provide effective mechanisms for protection against discrimination and sexual harassment and *shall take no disciplinary or other punitive measures against the person by reason that the person has brought proceedings for discrimination, harassment or sexual harassment or has given evidence in relation to discrimination, harassment or sexual harassment* (emphasis added).⁵⁸

In the legal framework of Bosnia and Herzegovina, there are also gender-specific measures protecting female employees against dismissals. “The employer shall not refuse to employ a woman on the grounds of pregnancy, or terminate her work contract therefor.”⁵⁹

The employer cannot initiate termination of an employment contract during sick leave, maternity leave, or if the employee needs time off for breast-feeding, and/or to care of a sick child.⁶⁰

2.5 Women’s and men’s jobs

In the B&H legal framework there are no jobs legally unavailable for women or for men, with the exception of those mentioned in the Protective Measures section with regard to women's participation in the labor market and related to the conditions which are harmful for women's health.

SECTION 3 – Gender Equality Bodies

In line with Directive 2002/73/EEC and with the Gender Equality Act, Bosnia and Herzegovina established a number of state bodies to ensure promotion, analysis, and monitoring of the implementation of the principle of equal opportunities for women and men, with the aim of eliminating all types of discrimination on grounds of gender.

⁵⁷ Article 86, Section XI of the *Labor Act of FB&H*.

⁵⁸ Article 6(3), the *Gender Equality Act*.

⁵⁹ Article 53, the *Labor Act of B&H*.

⁶⁰ According to the appropriate ILO Conventions.

The obligation of the B&H Council of Ministers⁶¹ is to take at all levels all appropriate and necessary steps to enforce the provisions set forth by the Gender Equality Act, including but not restricted to:

- adoption of planned measures designed to achieve equality of the sexes in all fields and at all levels;
- enactment of new legislation or amendment of existing legislation to bring it into conformity with the provisions of the Gender Equality Act;
- ensuring both civil and criminal court protection in all cases of breaches of the provisions of the act;
- ensuring that statistical data is gender-disaggregated in all economic entities, private and state enterprises, state and public institutions and organizations, and that such data is accessible to the general public;
- performing all other tasks related to the promotion of equal treatment for both sexes and the implementation of the purposes of this Law.

3.1 Institutional mechanisms for gender issues at state level

The Commission on Gender Equality within the Parliamentary Assembly of Bosnia and Herzegovina⁶² – The Commission was established in December 2002 and, pursuant to its rules of procedure, must perform the following functions:⁶³

- a) discuss the issues of exercising equal opportunities for women and men in Bosnia and Herzegovina, particularly with regard to the promotion of women's status;
- b) encourage activities in B&H institutions to facilitate implementation of the Platform for Action of the Beijing Declaration (The Fourth World Conference on Women, Beijing, 1995) in the twelve critical spheres described by the platform;
- c) encourage and coordinate activities in B&H parliaments to promote women's status and the implementation of the Platform for Action of the Beijing Declaration;
- d) discuss the proposed draft laws and other regulations from the point of view of gender equality and prevention of discrimination against women;

⁶¹ Article 21, the *Gender Equality Act*.

⁶² Established by Decision of the Parliamentary Assembly B&H.

⁶³ Excerpts from *Poslovnik o radu Parlamentarne skupštine BiH* (The Operational Procedure of Parliamentary Assembly B&H) the *Official Gazette B&H*, No.20/00.

- e) discuss draft documents and draft reports from B&H institutions related to the exercise of gender equality and implementation of the Platform for Action of the Beijing Declaration as a whole, or in particular areas respectively;
- f) discuss preparations for B&H delegation's participation in examining the implementation of the Beijing Declaration (UN, Stability Pact, etc.).

The Gender Equality Agency of Bosnia and Herzegovina – The Gender Equality Agency was established on February 19, 2004 at the B&H Ministry for Human Rights and Refugees under a decision by the Council of Ministers.

In addition to monitoring the working of the Gender Equality Act, the agency is charged, specifically with performing the following functions:

- periodically drafting a State Action Plan to promote equality of treatment for both sexes based on proposals from all state-level ministries, the plan of the FB&H Gender Centre to be presented annually by the Ministry to the Council of Ministers of Bosnia and Herzegovina for adoption;
- monitoring implementation and coordinate activities with all relevant entities in the process of implementation of the State Action Plan;
- drafting annual reports to the Council of Ministers of Bosnia and Herzegovina on the status of the sexes in B&H, based on Gender Center reports;
- assessing the laws, acts and bylaws adopted by the Council of Ministers of Bosnia and Herzegovina so as to keep under review their impact on equal treatment and equal gender representation;
- designing a methodology for assessing the impact of state policy and programs relating to equality of treatment for both sexes;
- performing other tasks related to the promotion of the equal treatment for both sexes and the implementation of the purposes of the act.

3.2 Institutional mechanisms for gender issues at entity level

The Commission on Gender Equality – The Commission on Gender Equality operates in affiliation with the House of Representatives of the FB&H Parliament, in association with the House of Peoples of the FB&H Parliament, and the Committee on Equal Opportunities of the People's Assembly of the Republika Srpska. The scope of their work is almost identical to the Commission on Gender Equality at B&H state level.

Besides these Commissions, Gender Centers were set up in affiliation with the governments of the Federation of Bosnia and Herzegovina and the Republika Srpska.

The Gender Centers of the Federation of Bosnia and Herzegovina and the Republika Srpska – The Gender Center in the Federation of Bosnia and Herzegovina was set up at the end of 2000, followed by the establishment of the Gender Center in Republika Srpska at the end of 2001. Both centers are mandated with:

- monitoring the status of women and the implementation of their guaranteed rights;
- coordinating activities with the Committee on the Social Status of Women and Equality for Both Sexes;
- contributing to drafting laws, other regulations, and bylaws for the purpose of achieving equal rights and obligations in the development process;
- gathering and overseeing initiatives for the modification of legislation from the aspect of gender;
- informing the general public on essential women’s human rights issues;
- cooperating with the government and acting as representative bodies in areas related to gender issues.

A system of institutional mechanisms has been set up at the cantonal, municipality, and local community level; there are also committees and commissions on gender issues as working bodies at senior municipality administrators’ offices.

As all these bodies are related to the government and are financed from the State Treasury, it is hard to talk about their independence. However, a more important question is why the appropriate bodies, which would be responsible for providing direct support, protection, and representation of victims of gender-based discrimination, have not yet been established. In point of fact, the bodies described above have not understood their role in that respect, and, generally speaking, are not responsive to concrete violations of the Gender Equality Act. The role, authority, structure, and performance of these various bodies are not yet up to the demands of the struggle against sex-based discrimination, or, more precisely, discrimination against women; there are already serious objections from nongovernmental organizations that these bodies are irrationally multiple and bureaucratic, and that they are not *de facto* focused on discrimination against women in Bosnia and Herzegovina.

SECTION 4 – Factual Background with Regard to the Principle of Equal Treatment for Women and Men: Related Research and Statistics

Empirical investigation of women’s perception of chances for employment shows that about 63 percent see women’s employment opportunities as weaker than those of men. Over half (54 percent) of examinees believe that the possibilities of career development

are weaker for women than for men. As for employed women, 35 percent of them report that they have been victims of discrimination at work. Most women who have had this experience say that it is easier for men to be promoted to managerial positions, that women are placed in lower paid positions, that men are more often sent for professional training, and that women are more often laid off. During crises and economic downturns more than half the respondents report that during job interviews they had the feeling that the employers cared the most about their looks and clothes, their age and marital status, and whether they were going to have children and were willing to work overtime, travel, and attend business lunches and dinners.⁶⁴

- Major obstacles to women's increased labor market participation are general unemployment and the fact that women – with less political and social clout – are easier to push out of competition.
- There is no official gender disaggregated data about the number of women included in the grey and black labor market, but according to estimates actually only a very small number of working women, who sometimes even support their whole family, are formally employed for an indefinite period of time and receive social, health and disability-retirement insurance alongside other employment-based benefits.
- Authorities do not have forward-looking planning and strategic measures for broader and better quality inclusion of women into the labor market.

SECTION 5 – Conclusions, Areas of Concern, and Recommendations

5.1 Conclusions

The concept of gender based discrimination, both direct and indirect, is legally defined within the Gender Equality Act, as is the concept of harassment and sexual harassment. The legal tools for combating gender-based discrimination and harassment are available to all citizens.

5.2 Areas of concern

Despite the rush to reform legislation and to create a legal and institutional framework to prevent gender-based discrimination, *de facto* status is far from satisfactory for the simple reason that the Gender Equality Act is not being implemented.

⁶⁴ Ler Sofronić, Nada, Bakšić Muftić, Jasna, et al, *Zato što smo žene – Socio-ekonomski status žena u BiH* (Socio-Economic Status of Women in B&H – Because We Are Women) 2002. Sarajevo: STAR World Learning, 77.

It is often impossible to implement the act because of the following factors:

- it is not harmonized with other relevant laws;
- it is not precise enough regarding legal retribution for noncompliance;
- it suffers from a lack of government level public policies to enforce it;
- it lacks the necessary political will and support to prioritize gender issues within current legislative and social reforms.

5.3 Recommendations

- Authorities should revise and approximate the overall legal framework so that it would work well in tandem with the Gender Equality Act.
- A revision of the legal framework should include independent experts on gender in the working bodies along with nongovernmental organizations whose mission is the promotion of women's human rights.
- An independent monitoring body should be formed to critically evaluate implementation of the Gender Equality Act and related laws and provisions.
- An independent body should be formed to evaluate the effects of gender mainstreaming and institutional mechanisms for gender equality.

PREGNANCY AND MOTHERHOOD PROTECTIONS

Council Directive 92/85/EEC of October 19, 1992 on the introduction of measures to encourage improvements in the occupational safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

SECTION 1 – Legal and Conceptual Framework

In the B&H legal order, annexes to the constitutions of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska incorporating the instruments for the protection of human rights with the force of constitutional provisions set forth the measures to promote occupational health and safety for working pregnant women, for women who have recently given birth and/or those who are breastfeeding.

The labor acts of the Federation of Bosnia and Herzegovina, the Republika Srpska, and the District of Brčko all incorporate extracts from the ILO Maternity Protection Convention related to the protection of motherhood. These laws have special chapters on the protection of women and motherhood.⁶⁵

The FB&H Labor Act stipulates that women should have a special right to protection as pregnant workers and workers who have recently given birth.⁶⁶ A woman during pregnancy or breastfeeding may be transferred to another job if this is in the interest of her health condition as determined by the appropriate physician. If the employer is unable to transfer the woman to another job pursuant to paragraph 1 of Article 7 of the Labor Act, the woman is entitled to paid leave in accordance with the Company Labor Relations Bylaws. Also under paragraph 1 of Article 7, the employer may transfer a woman to another job only with her written consent.

Pregnancy, childbirth, and breastfeeding are regarded as factors affecting the exercise of specific rights derived from employment. Labor acts in the Federation of Bosnia and Herzegovina, the Republika Srpska, and the District of Brčko expressly stipulate that the employer may not refuse to employ a woman because of pregnancy, or terminate her work contract due to her condition:⁶⁷ “A pregnant woman, a mother with a child

⁶⁵ The *ILO Maternity Protection Convention* (No.103) in 1952 ratified by B&H 1993 and incorporated in appropriate articles of the various labor acts, particularly in Article 7,53 and 54,of the *Labor Act FB&H*, Article 48 of the *Labor Act of the Republika Srpska*, and Article 49 of the *Brčko District Labor Act*.

⁶⁶ Article 7, the *Labor Act of FB&H*.

⁶⁷ Article 53, the *Labor Act FB&H*.

of up to three years old... can work overtime only if she declares her voluntarily acceptance of such work in writing.”⁶⁸

The Gender Equality Act includes a general provision that the competent bodies must take all necessary steps to protect and advance the reproductive health of women.⁶⁹

As noted earlier, the Gender Equality Act also expressly prohibits discrimination on the grounds of gender at work and in employment, and prohibits different treatment based on pregnancy, childbirth, and the exercise of rights to maternity leave and return to former job or employment of the same seniority and pay level after the birth of a child.⁷⁰

SECTION 2 – Assessing the Risk to the Safety or Health of a Pregnant Worker and the Employer’s Obligations

2.1 Assessing the risk to the safety or health of a pregnant worker

In addition to general provisions for protection at work, the B&H legal system also incorporates specific provisions concerning the conditions to which pregnant women must not be exposed.

The Gender Equality Act contains a general provision: “The relevant bodies shall take all necessary steps to protect and advance the reproductive health of women.” The act prohibits gender-related discrimination at work and employment and, consequently, “failure by an employer to provide work premises, ancillary facilities and equipment appropriate to the biological and physical needs of employees of both sexes is prohibited”.⁷¹

Pursuant to Annex 1 to Directive 92/85/EEC, the FB&H Labor Act stipulates that “an employee has the right to refuse to do a job if there is an immediate risk threatening his/her life and health resulting from failure to implement the required measures of safety at work, and s/he shall advise the labor inspection thereon.”⁷²

Compliance with legal regulations governing health and safety at work is supervised by the competent labor inspectorates. Inspection by a labor inspector is to detailed

⁶⁸ Article 32, the *Labor Act of FB&H*.

⁶⁹ Article 13(3), the *Gender Equality Act*.

⁷⁰ Article 8, the *Gender Equality Act of B&H*.

⁷¹ Article 8(4), the *Gender Equality Act*.

⁷² The *Labor Act of FB&H*.

statutory provision set forth under the Act on Safety at Work,⁷³ which stipulates that the employer has the right to transfer a pregnant or breastfeeding woman to another job if this is in the interest of her health, but if he is unable to provide such a transfer, then he is legally obliged to grant her paid leave, the amount of which is determined pursuant to the Company Labor Relations Bylaws.⁷⁴

2.2 Employer's obligations

Labor acts do not oblige employers to make an assessment of the workplace and the work of pregnant or breastfeeding women and women who have recently given birth to identify and evaluate the nature, extent, and level of these women's exposure to agents, processes and working conditions detrimental to their reproductive health as set forth in Annex 1 to Directive 92/85/EEC, which contains a list of agents to which pregnant and breastfeeding women must not be exposed. The Gender Equality Act prohibits discrimination in employment on grounds of sex. Accordingly, "failure by an employer to provide work premises, ancillary facilities and equipment appropriate to the biological and physical needs of employees of both sexes is prohibited."⁷⁵

SECTION 3 – Cases in Which Exposure Is Prohibited for Pregnant Workers Who Have Recently Given Birth

Apart from general provisions protecting the reproductive rights of workers and regarding the prohibition of exposure for pregnant workers, workers who have recently given birth, and those who are breastfeeding, there is no special provision regarding risk to particular agents and working conditions.

SECTION 4 – Night Work

Provisions of the Labor Act do not expressly prohibit night work for pregnant and breastfeeding women. There is, rather, a general prohibition of night work for all women, pregnant or otherwise. Night work is prohibited for women in industry. The prohibition does not apply to women in executive and technical jobs, to women employed in health and social services, or employers who employ only members of their families. A woman employee can be instructed to work night shifts in industry in

⁷³ Article 53, the *Safety at Work Act of FB&H*.

⁷⁴ Article 54, the *Labor Act of B&H*.

⁷⁵ Article 8(4), the *Gender Equality Act*.

the event that such work is to protect the interests of the Federation of Bosnia and Herzegovina. Prior consent must, however, be obtained from the Federal Minister responsible for labor (hereinafter referred to as: Federal Minister). The Federal Minister confers with the trade union, the employer, or several employers, that is, the Association of Employers, before granting or denying a request for consent. Additionally, a woman can be instructed to work night shifts without prior consent if such work is necessitated by *force majeure*, or to prevent decaying of raw materials. The competent authority of the canton and the Cantonal Labor Inspectorate must be notified about night work within 24 hours from the commencement of such work. If the Cantonal Labor Inspectorate deems that night work is not necessary, that is, there is no *force majeure*, or threat of decay of the raw materials, then night work will be prohibited.⁷⁶

All issues not explicitly addressed in B&H labor legislation regarding the protection of pregnant women, women who have recently given birth, and breastfeeding women are subject to the provisions of extracts from the appropriate ILO conventions signed by Bosnia and Herzegovina. As regards night work, Bosnia and Herzegovina has ratified the revised ILO Convention 89 on night work and this convention has force of law.⁷⁷

SECTION 5 – Maternity Leave and Time Off for Prenatal Examinations

The Labor Act stipulates that during the time of pregnancy, childbirth, and child care, a woman is entitled to continuous maternity leave of one year, based on a competent physician's opinion. A woman may start her maternity leave 45 days prior to her due date, and must go on obligatory leave 28 days prior to the expected date of childbirth.⁷⁸

Fathers are only eligible for maternity leave in the event that the mother has died, has abandoned the child, or if she has justified reasons not to use her right to maternity leave.⁷⁹

Work contracts do not include provisions for the right to maternity leave. However, the Labor Act stipulates that during maternity leave an employee has the right to salary compensation /maternity benefit.⁸⁰

⁷⁶ Article 58, the *Labor Act of FB&H*.

⁷⁷ *ILO Convention No.89*, ratified by B&H, 1993.

⁷⁸ Article 55, the *Labor Act of FB&H*.

⁷⁹ Article 56, the *Labor Act of FB&H*.

⁸⁰ Article 62, the *Labor Act of FB&H*.

The Act on Family and Child Welfare stipulates that maternity benefits are paid over a period of six months from the date of birth, depending on the duration of maternity leave stipulated by law.⁸¹

The Act on Basic Social Welfare, Welfare of Civilian War Victims and Welfare of Families with Children stipulates that a maternity benefit be paid to a woman/mother during maternity leave from the date of childbirth under the provisions of the Labor Act. Paid maternity leave is granted to pregnant women, breast feeding women, and women who have given birth within 14 weeks before or after childbirth.⁸²

The act stipulates a compulsory minimum paid maternity leave of two weeks before, and/or after childbirth.⁸³

In the event of her employer's failure to pay her the salary that she is entitled to during her maternity leave, a woman has the right to institute regular court proceedings, to sue the employer for failure to comply with his/her legal responsibilities under the Labor Act.

There is also a so-called child allowance which is paid monthly in an amount that varies from canton to canton, and is mainly symbolic.⁸⁴

The B&H Labor Act does not specifically stipulate pregnant women's right to unpaid absence from work for examinations. Breastfeeding women, however, do have the right to leave work at least twice during working hours to breastfeed their baby for one hour. The time thus spent is accounted for as full time work.⁸⁵

Labor legislation provides for one parent's absence from work until the child is three years old. Such a decision is to be made between the parents exclusively. One parent may be absent from work to care for the child until he/she is three years old. During child care leave, employment rights and obligations are suspended. This leave is not paid.⁸⁶

To date, only rare instances have been recorded of men, that is, fathers choosing this option. Yet some fathers to avail themselves of this opportunity, especially when a woman has a relatively good job and contributes significantly to the family budget.

⁸¹ Article 93, the *Basics of Social Welfare, Welfare of Civilian War Victims, and Welfare of the Families with Children Act*.

⁸² Articles 53 to 64, the *Labor Act of FB&H*.

⁸³ Article 89, the *Basics of Social Welfare, Welfare of Civilian War Victims and Welfare of the Families with Children Act*.

⁸⁴ Article 89, the *Basics of Social Welfare, Welfare of Civilian War Victims and Welfare of the Families with Children Act*.

⁸⁵ Article 59, the *Labor Act*.

⁸⁶ Article 61, the *Labor Act of FB&H*.

B&H legislation does not provide for or prohibit time off without loss of pay for a pregnant woman to attend prenatal examinations that must take place during work hours. Generally speaking, medical visits are to be agreed upon between employer and employee on a case-by-case basis.

SECTION 6 – Prohibition of Dismissal and Defense Rights

The FB&H Labor Act expressly prohibits dismissal of women workers during pregnancy. An employer may not refuse to hire a woman because she is pregnant, or terminate her work contract on the grounds of such condition.⁸⁷

If a pregnant woman is unlawfully dismissed from work, she can institute court proceedings, file a suit against the employer citing the appropriate provisions of the Labor Act or using Gender Equality Act.

SECTION 7 – Conclusions, Areas of Concern, and Recommendations

7.1 Conclusions

Despite missing definitions of “pregnant worker,” “worker who has recently given birth,” and “worker who is breastfeeding,” the B&H legal framework in place can protect pregnant women and women who have recently given birth in the labor market: the lack of legal definition is remedied by using these terms in reference to their ordinary and customary meaning in B&H.

7.2 Areas of concern

Parents rarely avail themselves of the legal option of unpaid parental leave from work for both mothers and fathers, and in the majority of cases it is women who stay at home. This deepens the segregation of the labor market, since women are considered housekeepers first and foremost, and are perceived as investing less potential and/or commitment into a job. The consequences of this cycle also impact hiring and remuneration.

⁸⁷ Article 53, the *Labor Act of FB&H*.

7.3 Recommendation

- It is necessary to encourage men to take an active part in raising and taking care of their children. Parental leave should be an exclusive matter of agreement between a child's parents.
- A positive approach in terms of programs and campaigns is needed to eliminate the gender-biased environment and motivate both parents to share in the caring for and upbringing of children.

PROTECTION OF SELF-EMPLOYED WOMEN DURING THEIR PREGNANCY AND MOTHERHOOD

Council Directive 86/613/EEC of December 11, 1986 on the application of the principle of equal treatment between women and men engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood.

SECTION 1 – National Legal Framework on Self-Employment: General Provisions

According to the appropriate legislation⁸⁸ an entrepreneur is defined as

- a) a person listed in a commercial register;
- b) a person conducting business on the basis of a trade license;
- c) a person with another kind of permit (freelance work, artists, etc., with each field regulated by special statutory provision);
- d) an agricultural producer listed in an official register pursuant to special statutory provision.

According to the Pension and Disability Benefits Act,⁸⁹ a self-employed person is someone who engages in independent profit making activity.

Apart from general nondiscriminatory provisions, there are no clear and precise provisions within the labor and commercial legislative framework specifically relating to self-employed women. Therefore, the mechanisms to enforce equal opportunities for them within that legal framework comply with the enforcement mechanisms of existing equal opportunities protections.

Self employed workers and their co-worker spouses are included in the general social security system on the basis of registration.

Under social security rights exclusively provided to women, they may acquire and benefit from their rights in two ways: as insurers, or as beneficiaries/family members.

Social and health protection provides the special legal status of women *vis-à-vis* motherhood protection, and embraces employed and unemployed women alike, regardless of the type of employment. In the case of unemployed women who are

⁸⁸ Article 2, the *Commercial Code* FB&H, the *Official Gazette of FB&H*, No.64/04.

⁸⁹ Article 11, the *Pension and Disability Benefits Act*, the *Official Gazette of FB&H*, No.29/98.

mothers, this type of protection includes financial aid during pregnancy and at birth, one-time assistance for the needs of the newborn baby, food assistance for children during the first six months, and additional food assistance for breast-feeding mothers.⁹⁰ This protection is, by analogy, extended to self-employed workers.

B&H legislation contains only general provisions *vis-à-vis* the social rights of spouses who perform certain work duties for a business founded by the other spouse.

SECTION 2 – Social Rights of Spouses of Self-Employed Workers

The Commercial Code, which regulates the basic conditions for establishing a business, does not make reference to the marital status of the partners forming company.

SECTION 3 – Related Research and Statistics

There is no available research on the working conditions and remuneration of the spouses of self-employed persons.

3.1 Research on women in agriculture

The Gender Equality Act stipulates that everyone regardless of gender has an equal right to work for gain, which includes equal treatment in access to all economic resources, privatization, access to credit and other forms of financial assistance, licenses and registration of businesses, and the conditions in which they are obtained. The act stipulates that women in rural areas also have the right to equal treatment and equal opportunities, and the elimination of discrimination.⁹¹

SECTION 4 – Conclusions, Areas of Concern, and Recommendations

4.1 Conclusions

There are no clear and precise pregnancy and motherhood protections for self-employed women or spouses of self-employed workers in B&H labor relations, social

⁹⁰ Article 89, the *Basic Social Welfare, Welfare of Civilian War Victims and Families with Children Act of FB&H*, the *Official Gazette of FB&H*, No.36/99.

⁹¹ Article 10, Chapter V, “Employment, Work, and Access to all Types of Resources,” the *Gender Equality Act*.

welfare, and health care legal framework. Therefore compliance with such protections is poor.

4.2 Recommendations

- It is necessary to approximate all labor, social, and health welfare legislation to streamline it with provisions of the Gender Equality Act *vis-à-vis* employment and access to all types of resources, social welfare, and health care for self-employed women and the spouses of self-employed workers.
- It is necessary to ensure via appropriate labor, social welfare, and health care legislation that self-employed women and the spouses of self-employed workers gain proper legal protection during pregnancy and motherhood.

ANNEX

List of Legislation Screened

National Legislation

The Constitution of Bosnia and Herzegovina

The Constitution of the Federation of Bosnia and Herzegovina

The Constitution of the Republika Srpska

The Gender Equality Act of Bosnia and Herzegovina

The Labor Act of the Federation of Bosnia and Herzegovina

The Labor Act of the Republika Srpska

The Labor Act of the Brčko District

The Collective Bargaining Agreement of the Federation of Bosnia and Herzegovina

The Collective Bargaining Agreement on Conditions of Employment of the Federation of Bosnia and Herzegovina

The Employees in Administrative Authorities and Administrative Services Acts in the Federation of Bosnia and Herzegovina, the Republika Srpska, and the Brčko District

The Government Administration Act

The Ombudsman Act in the Federation of Bosnia and Herzegovina

The Civil Procedure Act

The Safety at Work Act of the Federation of Bosnia and Herzegovina

The Basics of Social Welfare, Welfare of Civilian War Victims and Welfare of the Families with Children Act

The Pension and Disability Benefits Act

The Penal Code of the Federation of Bosnia and Herzegovina

The Penal Code of the Republika Srpska

The Penal Code of the Brčko District

The Commercial Code of the Federation of Bosnia and Herzegovina

The Operational Procedure of the Parliamentary Assembly of Bosnia and Herzegovina

International Treaties

The Universal Declaration of Human Rights

The International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The International Covenant on Economic, Social, and Cultural Rights

ILO Maternity Protection Convention (No.103)

ILO Convention No.100 on Equal Remuneration

ILO Convention No.111 on Discrimination (Employment and Occupation)

ILO Convention No.122 on Employment Policy

ILO Convention No.140 on Paid Leave in Purpose of Education

ILO Convention No.156 concerning Workers with Family Responsibilities

ILO Convention No.158 on Seizure of Employment Contract

ILO Convention No.159 on Professional Training and Employment

ILO Convention No.175 on Working Hours

ILO Convention No.177 on Home Work

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