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## **REVISED EUROPEAN SOCIAL CHARTER**

Comments from the Initiative and Civil Action (ICVA)  
On the  
1<sup>st</sup> National Report on the implementation of  
the Revised European Social Charter

submitted by

**THE GOVERNMENT OF BOSNIA AND HERZEGOVINA**

(Articles 7, 8, 16, 17, 27 and 31  
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**Implementation of the European Social Charter  
through legislation and practice in BiH**

**June 2009**

# **Implementation of the European Social Charter through legislation and practice in BiH**

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and

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Biro za ljudska prava, Tuzla; Caritas BK BiH; Red Cross of the Tuzla Canton; Helsinki Committee for Human Rights in BiH, Sarajevo; Coordinating Board of the Organizations of the Disabled of the Republika Srpska, Banja Luka; Federation of the Paraplegics of FBiH, Sarajevo; Sumero, Sarajevo; Udružene žene, Banjaluka; Association of the Blind Citizens of the Sarajevo Canton; Vive žene, Tuzla; Zdravo da ste, Banja Luka; Zemlja djece, Tuzla; Žena BiH, Mostar; Trade Union of Finances of FBH, Trade Union of Metal Workers of FBiH, Trade Union of Primary Education of Zenica-Doboj Canton, Trade Union of the Police of Zenica-Doboj Canton, Federation of Independent Trade Unions of BiH, Trade Union of Trade of FBiH.

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## **Content:**

Introduction	1
Summary	3
Articles of the Charter ratified by Bosnia and Herzegovina	5
Analysis of implementation of ratified articles in practice	7
Recommendations	57

## Introduction

European Social Charter (Charter) is the most important document that regulates implementation of economic and social rights in European Union. Bosnia and Herzegovina (BiH) ratified the Charter in 2008, thereby undertaking to harmonize national legislation and practice with standards foreseen under this document. Implementation, ensuring realization and protection of rights stipulated in the Charter is one of conditions that are part of process of BiH accession to the European Union.

As the first step in the process of harmonization of the BiH legislation and practice with the standards from the Charter, a group of civil society organization conducted an analysis of national laws and practices with the aim to:

- Introduce to the BiH citizens the international standards and rights, particularly those from the Charter, as a part of the social and economic protection the state of BiH is expected to secure through its institutions;
- Point at the areas where the national legislation or practices should be changed in order to achieve compliance with the Charter's standards and rules;
- Initiate continuous dialogue between civil society organizations, primarily non-governmental organizations and trade unions, and representatives of legislative and executive bodies in BiH in the process of adoption of new laws and policies in the area of social and economic rights that involve a series of discussions and continuous monitoring of implementation of the adopted laws.

The work on this document included, analysis of some 30 BiH laws: 12 cantonal and entity laws in the area of social protection, protection of families with children, entity laws on health care and health insurance, laws on pension and disability insurance, laws on labor, strike, employees' council, professional rehabilitation and employment of the disabled, state level Law on Gender Equality, action plans and policies in the field of disability and protection of minorities, and particularly the Roma, as well as the information gathered through the work of trade unions and non-governmental organizations working to protect vulnerable population throughout BiH.

The following organizations took part in development of this document in the form of work group discussions, supply of data or individual interviews:

Zemlja djece, Tuzla; Žena BiH, Mostar; Coordinating Board of the Association of the Disabled of the Republika Srpska, Banja Luka; Sumero, Sarajevo; Caritas BK BiH; Red Cross of the Tuzla Canton; Zdravo da ste, Banja Luka; Vive žene, Tuzla; Udružene žene, Banjaluka; Association of the Blind Citizens of the Sarajevo Canton; Information Center Lotos, Tuzla; Federation of the Paraplegics of FBiH, Sarajevo; Helsinki Committee for Human Rights, Bureau for Human Rights, Tuzla;

Trade Union of Trade of FBiH, Trade Union of Metal Workers of FBiH, Trade Union of the Police of Zenica Dobož Canton, Trade Union of Primary Education of the Zenica-Dobož Canton, Trade Union of Finances of FBiH, Federation of Independent Trade Unions of BiH, as well as partner organizations in implementation of those activities – Initiative and Civil Action and Rights for All.



## Summary

This analysis of compliance of numerous national laws and practices with standards provided for under the Charter's articles ratified by BiH was approached through consideration of four key areas: work and employment related rights; freedom of association and activities of trade unions; right to social and health protection and right of various specially protected categories, such as women, mothers, children, elderly people and persons with disabilities.

Analysis of rights in the area of labor and rights stemming from labor showed that majority of laws that were under consideration were generally in line with standards set forth in the Charter. However, analysis of practices in implementation of those law suggests two major findings: work of inspections is extremely ineffective, and poor penalty policy leads to many employers, both private and public, concluding that payment of fines is much less of an expenditure than regular fulfillment of legal obligations to register the employees and pay all social and pension benefits. That way, the rights of employees are being violated without any punishment, and according to some estimates made by the International Labor Association, the State is losing 38.4 millions Euros annually because of such practices.

The rights that concern freedom of association and union activities are generally in line with the standards stipulated under the Charter. However, the practice again shows numerous violations and obstacles in implementation of such rights. Many private companies, particularly in trade, services and construction, use various methods to try to stop establishment and operation of trade unions, and workers are being threatened and hindered in their attempts to join trade unions. Workers are denied the right to be informed on economic and financial situation of the company. Employees are not being consulted in the process of making decisions that might have significant effect on interests of the workers, particularly when it comes to decisions to lay off workforce.

In the area of social protection, the situation is different because here not even laws meet social protection standards. Right to social protection is one of responsibilities of entities and canton. Violations of rights under the Charter are the most obvious in the lack of any unified or harmonized legislation in social and health protection system at the state level. Cantons do not adopt the necessary bylaws or they adopt acts that are contrary to the Federation laws. Social benefits and allowances depend on financial strength of the given canton, but also on the readiness of the canton to harmonize their laws with the Federation laws and implement them. In addition, the laws provide for realization of the right to social protection by categories, not by actual needs and levels of individual vulnerability, and this is in direct collision with the provisions of the Charter. Many citizens in need of social protection can not receive it because they do not fall into any of categories protected by law. Such legal solutions have lead to discrimination in provision of social protection in BiH, which is based on territorial grounds and categorization of those in social need.

When talking on protection of rights of various categories of population, such as women (particularly those who are using the right to maternity leave) or children, elderly people, people with disabilities, there have been many violations or barriers in their exercising the rights and standards from the Charter. Women, exposed to various pressures or fear that they would loose their jobs tend to cut short the maternity leave after one or two months, although the national legislation foresees the possibility of maternity leave of up to a year. Many



women tend to go back to work much sooner than that also because of compensations that are insufficient and discouraging, and this is one of the reasons for decreasing birth rate in BiH. There is a significant increase in number of children who are abused to work in street or beg, and such children are completely out of the education or any other system of care. Any effective system of prevention, supervision or education of professional staff is missing, and there are no appropriate institutions for placing juvenile delinquents. The elderly are in a sort of inter-sectoral vacuum and none of the relevant authorities are taking responsibility for them. There is no institution or organization under the executive branch of power that is dealing with issues of aging and the elderly, and there are no programs specifically targeted to this category of population.

## **Articles that have been ratified by Bosnia and Herzegovina:**

**Article 1: The right to work**

**Article 2: The right to just conditions of work**

**Article 4: The right to a fair remuneration**

**Article 5: The right to organize**

**Article 6: The right to bargain collectively**

**Article 7: The right of children and young persons to protection**

**Article 8: The right of employed women to protection of maternity**

**Article 9: The right to vocational guidance**

**Article 11: The right to protection of health**

**Article 12: The right to social security**

**Article 13: The right to social and medical assistance**

**Article 14: The right to benefit from social welfare services**

**Article 16: The right of the family to social, legal and economic protection**

**Article 17: The right of children and young persons to social, legal and economic protection**

**Article 20: The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

**Article 21: The right to information and consultation**

**Article 22: The right to take part in the determination and improvement of the working conditions and working environment**

**Article 23: The right of elderly persons to social protection**

**Article 28: The right of workers' representatives to protection in the undertaking and facilities to be accorded to them**



## **Analysis of implementation of ratified articles in practice**

### **Article 1.**

#### ***The right to work***

*With a view to ensuring the effective exercise of the right to work, the Parties undertake:*

- 1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;*
- 2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;*
- 3. to establish or maintain free employment services for all workers,*
- 4. to provide or promote appropriate vocational guidance, training and rehabilitation.*

#### ***Obligations of BiH pursuant to Article 1.***

*The state is under obligation to adopt a policy that would provide measures and programs for achieving and maintaining the as high and stable level of employment as possible. Such policy must be supported from the budgets. The state is under obligation to take active employment policy measures (creating new jobs, providing training etc.) that are targeted to whole population, as well as the measures that have to do with employment of those groups that are most exposed or affected by unemployment, such as: women, the elderly, long term unemployed, etc. The Charter also foresees the obligation of the State to: establish and maintain free employment services and keep statistics concerning the employment trends in various industries, regions, gender sensitive and age statistics of the (un)employed, etc.*

*The state must have in place legislative and other measures related to elimination of all forms of discrimination at work that is based on gender, social and national background, political opinion, religion, race, color, age or any other status or characteristic, with the aim of effectively promoting equal opportunities in job seeking or selection of vocation. In addition, it must provide for appropriate sanctions and legal remedies for cases of discrimination at work.*

*The State is required to establish methods of cooperation between the labor organizations and employers and other appropriate bodies in promotion of policies of non-discrimination at work and employment, including the use of educational processes for such purpose. The State must prohibit forced labor.*

#### **Exercising the rights from Article 1. by all categories of population**

BiH has a big problem of unemployment, but also the big problem with statistic data, because the last census was made in 1991. A difference between officially registered (un)employment and a large share of workers working in the so-called informal economy has been detected.

The current information of the state level Labor and Employment Agency show that 488,498 individuals were registered as unemployed at the end of January 2009. On the other hand, according to the Labor Force Survey in BiH from the end of 2008, which had been conducted in line with recommendations and definitions of the International Labor Organization (ILO),<sup>1</sup> there were only 272,034 unemployed persons. Such big difference suggests that there is a problem of informal economy in employment (the so-called “grey economy”).

Estimates made by the Trade Union of Trade, Catering and Tourism in FBiH suggest that the largest share of grey economy exists in the area of trade (particularly in the context of sellers in the markets where textile and other goods are sold, the so-called “flea markets”) and agriculture, but also in the area of provision of intellectual services. This trade union estimates that around 25,000 people are employed in this way only in trade industry. Work in informal economy has significant effects on the right to health, social and pension protection of people working in this economy.

Inspections do not have enough people and capacities to continually monitor companies; instead they do that only once a month, and that is not enough to regularly follow this and other issues related to exercising the right to work and in relation to work on regular basis and to be able to take some active measures.

The workers working in grey economy exercise their right to health protection by registering with the employment services. At one point, the State made an attempt to reduce the pressure such workers make on the employment services by introducing fiscal cash registers, boxes on markets and provision of insurance on the basis of voluntary contributions. However, after the shock of recession reached BiH in early 2009, the turnover in such markets has been significantly lower, and such persons tend to register again with the employment services because they are unable to earn enough to pay voluntary contributions for pension and health protection.

Entities and some cantons have taken certain activities to encourage employment, such as provision of incentives to the employers with the aim of employing people who are registered with the employment services, and there are programs for employment of interns. However, there is no unified policy at the state or entity level that is aimed at gradual achievement of the highest possible level of employment that would be implemented throughout the country equally.

In BiH, there are Employment Services at the level of municipalities, cantons, entities, and there is also the Labor and Employment Agency at the level of the State. However, activities of such services and the Agency mostly focus on registration of job seekers and administration of the rights of the unemployed that are related to, for example, use of health insurance. In terms of staff and skills, the services are not adequately equipped, particularly when it comes to employment of vulnerable categories of population.

The issue of retraining and additional training is very important for BiH. Some cantons have special retraining and training programs that aim to reduce unemployment. However, a question is posed whether the employment services, structured as they currently are, may carry out the function of retraining of the employees. There is also a problem with inadequate

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<sup>1</sup> <http://bhas.ba/new/default.asp?Pripadnost=1&mode=dark> – economically active population included 1.162.273 individuals, while the number of inactive people was 1,486,345. There were 890,239 employed people in the workforce.

curricula in schools and other educational institutions that would enable retraining and additional training of the unemployed.

There is a negative link between educational structure of job seekers and the unemployment. According to some studies conducted by NGOs, most unemployed people can not find jobs because of low level of education or lack of relevant qualification. So unqualified or semi-qualified workers make 37% of persons registered with employment services, qualified 36%, and people who have completed secondary education 23 %<sup>2</sup>. Reports of international organizations also mention the big problem that exists in BiH with regards to development of human potentials and expertise of employees in national economy.<sup>3</sup> On the other hand, there has been a change in BiH economy, with large companies leaving the scene, and more and more small and medium size enterprises emerge, and the labor market demand has changed.<sup>4</sup> Unfortunately, the state is not following and it is not providing systematic response to the changes in BiH economy. The State has failed to implement education system reform to better respond to market demands and thus improve employment.

## **Exercising the right to work by vulnerable categories**

### ***Women/Gender aspect of the right to work***

Available information from practice suggest that, in spite of legal obligation to achieve gender equality in access to work, and in spite to the fact that women make 51.7% of total estimated working population, only 35,6 % of total number of employees are women<sup>5</sup>. The State has not provided for measures of positive action that would aim to reduce the existing discrimination of women in order to respond to the issue of gender inequality in employment. There are no special employment programs for women, particularly the young women, and there is a lack of programs of retraining and training that would respond to the issue of gender stereotypes in selection of occupation and work of women.

Council of Ministers of BiH had adopted the Gender Action Plan (GAP)<sup>6</sup> as a state policy for achieving gender equality that includes the area of “Employment and labor market”. Unfortunately, although the GAP was adopted in 2006, no progress has been made in implementation of measures from this document, or the Operational Activity Plan for implementation of the GAP.

The State has failed to provide special programs for entrepreneurship support, including good conditions for provision of loans to women. In theory, women have free access to banking loans, but the 1998 statistics show that women use less than one third of total loans approved in the country<sup>7</sup>. The global crisis from late 2008 also affected banks in BiH causing them to

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<sup>2</sup> According to the data from the Labor and Employment Agency of BiH: Unqualified workers (NKV) 163.499 or 33,47 %, Semi-qualified workers (PKV) 14.313 or 2,93%, qualified workers (KV) 171.409 or 35,09%, highly qualified workers (VKV) 4.071 or 0,83%, with primary education (NSS) 2.211 or 0,45%, with secondary education (SSS) 113.365 or 23,21%, two years post-secondary or „half-degree“ (VŠS) 7.112 or 1,46%, four/five years post-secondary education or full degree (VSS) 12.518 or 2,56%.

<sup>3</sup> Western Balkan Integration and EU – An Agenda for Trade and Growth, World Bank 2008.

<sup>4</sup> „Adult education“ – Blue Sphere, Banja Luka, and Roda (Stork) from Sarajevo, supported by the Center of Civil Initiatives (CCI) BiH;

<sup>5</sup> Labor force survey 2008 conducted by the National Statistical Institute is available at <http://www.bhas.ba/new/>

<sup>6</sup> <http://www.arsbih.gov.ba/index.aspx?PID=3&RID=70>

<sup>7</sup> <http://genderindex.org/country/bosnia-and-herzegovina> „Gender Equality and Social Institutions in Bosnia and Herzegovina“

set stricter conditions and require more security when approving the loans and this is hard in traditionally patriarchal community such as BiH because real estate and other assets are often owned solely by male heads of families.

### ***People with disabilities and their right to work***

The labor laws do not contain elaborate provisions concerning the work of people with disabilities. On the other hand, persons with disabilities in BiH are often treated as just a social category, whereas the principle of protection of human rights based on achievement of equality, principle of non-discrimination and equal integration of such citizens in BiH society are neglected. BiH entities have adopted laws on rehabilitation, training and employment of persons with disabilities, and a Fund was established in RS to provide professional rehabilitation and employment of the disabled<sup>8</sup>, which is considered to be an important shift in terms of approach to right to work and rights stemming from work for this group of people. The Fund provides money for self-employment or incentives for employers to hire persons with disabilities. However, adoption of the law alone, without simultaneous adoption of practical measures that would provide for retraining of the persons with disabilities, and without reform of educational system that would aim to educate for professions in demand, is not enough to make any significant progress.

The entities are taking steps to increase number of people with disabilities who are employed by providing incentives to employers or by introducing the obligation of progressive employment of this category of people.

In terms of exercising the right to work, the persons with mental retardation are particularly vulnerable. The Rulebook on Assessing Bodily Damage in Persons With Disabilities in the process of exercising the right from the Law on Basics of Social Protection of FBiH, in article 9 that concerns persons with mental disabilities, the stipulation is made that their ability to work should be assessed solely on the basis of intelligence, not taking into consideration other evaluation parameters, such as social behavior, work and functional skills, etc. The existing Rulebook is generally difficult to implement because it mostly refers to a rulebook that is applied on war veterans and treats war related disabilities. Non-governmental organizations are of the opinion that the national legislation should be brought in line with the rulebook of the World Health Organization that defines the working ability of persons with disabilities much more broadly.

#### ***Article 2.***

##### ***The right to just conditions of work***

*With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:*

- 1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;*
- 2. to provide for public holidays with pay;*
- 3. to provide for a minimum of four weeks' annual holiday with pay;*

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<sup>8</sup> Law on rehabilitation, training and employment of the persons with disabilities in RS was adopted in 2004 and amended in 2006. In the Federation, a similar law was adopted as late as in March 2009.

4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;

5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognized by tradition or custom in the country or region concerned as a day of rest;

6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;

7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

### **Obligations of BiH pursuant to Article 2.**

*Under this Article, the State undertakes to regulate by law or other acts such as collective agreements the number of working hours in a day and week that are considered regular working hours, as well as the overtime, and duration of the break during the working hours. Also, it would be necessary for the State to regulate the work in special job categories. This Article obliges the State to regulate daily and weekly periods of rest.*

*It is also necessary to regulate and ensure by law or collective agreement the paid public holidays. In addition, the Charter provides for four weeks of paid holiday, while the State must define the minimum duration of work that gives the workers the right to paid annual leave.*

*Besides, the laws are to provide and stipulate measures and policies concerning the jobs that are considered particularly hazardous or unhealthy, and they are also expected to provide for workers who work at night to implement measures that take account of the special nature of such work, such as medical examinations, breaks, compensatory free time, access to company services, inspections, circumstances under which they can move to work during the day, etc.*

*Paragraph 6 of this Article says that the workers should be informed in writing, not later than two months from the day they start the work, on most important aspects of contract or working relationship.*

### **Exercising the rights under Article 2.**

The Law on Labor of FBiH regulates the issues regarding working hours in a special chapter IV, while Chapter V regulates the issues related to leaves and holidays. However, when one says “reasonable daily and weekly working hours”, in spite of the law defining that 40 hours of work per week are considered regular working hours, there are numerous cases of violation of those provisions in practice. Information supplied by the trade unions suggest that many workers, particularly those employed in trade and services, work beyond the foreseen 8 hours a day, they work 12 hours a day, and to do jobs they are not employed to do, most often on cleaning. Also, they are not paid overtime for working in the trade over the weekend.

The right of the worker to annual leave is often violated, and many workers, particularly in trade and services, have the right to only 10 days of annual leave, where the weekend days are



also counted in, and the workers' right to use their break during the working hours is often restricted.

A special problem is the trend to formally hire workers to work part time, who in fact work full time. There is an increasing number of workers who work under fixed term contract, which, according to law, may not extend beyond 2 years. However, many workers work like that for 5 or 6 years. The employers' goal is to reduce the amount of contribution they have to pay for formally recognized working hours. In such a case, workers have less pension contributions paid and they need twice the time to have the right to full pension. Unfortunately, despite the efforts made by the labor inspections and trade union, workers working on the basis of such contract, due to their fear of losing jobs, do not dare report the employer or complaint against such treatment. Penalty policy is extremely mild; so many employers consider payment of the fine much less of a cost than to pay full contributions for all their employees.

Taking into account the lowest price of labor and contributions, the trade unions came up with an estimate that the state and the workers have lost 46 millions KM due to employers' abuses related to the working hours in 2007. This estimate suggests that the employers' avoidance to pay for real working hours contributes only to enrichment of private employers, while the State and the workers are making enormous losses.

There is no a state level law on public holidays in BiH that would define this in a unified way. Two different entity laws on holidays are applied, and the practice is to celebrate religious holidays, which are different in different entities and parts of the country as public holidays. All employees are entitled to paid leave from work at the time of holidays that they celebrate.

Adjusting the work place to the special needs of persons with disabilities is a separate problem; the programs for encouraging and stimulating the employers and companies to make such adjustments are still missing.

***Article 4.***

***Right to a fair remuneration***

*Paragraph 3: to recognize the right of men and women to equal pay for work of equal value;*

***Obligations of BiH pursuant to Article 4. paragraph 3.***

*The State is obliged to introduce the principle that work of equal value is equally remunerated to all workers, and to report on the progress made in implementation of this principle on all workers, regardless of their sex. The term "remuneration" stands to describe ordinary, basic or minimal wage or salary and any other income that is paid directly or indirectly, whether it is paid in money or in some other way in equal value, by the employer to the employee, for the work performed by the worker. Also the term "equal remuneration for the work of equal value" means the amount of remuneration established without sex based discrimination<sup>9</sup>.*

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<sup>9</sup> IOM Convention No.100, Article 1, paragraph 2

### **Exercising the rights on the basis of Article 4, paragraph 3.**

Law on gender equality in BiH, in its Article 8, point 1, also prohibits gender discrimination in work and work relations that is manifested through failure to provide equal salary or benefits for the same kind of work, i.e. the work of same value. The labor laws also prohibit any discrimination of employees, but they do not contain any provision that specifically guarantee equal remuneration for the work of equal value. In addition, the amount of salary is defined by collective agreement, rulebook on work and labor contracts.

However, the available analysis testifies of a gap in the amount of remuneration payable to men and women. “Most discriminated are the women who had completed primary school and secondary school in processing industry, as well as women with 2 to 3 years of secondary education who work in trade. Their remuneration is by one third lower than the remunerations paid to their male colleagues.<sup>10</sup>“

Women are faced with invisible but ever-present obstacle of “glass ceiling”. Although there are no obvious legal barriers, women are faced with inability of further promotion or inability to be directors, presidents, or even board members in boards of large public companies.

#### **Article 5.**

##### ***The right to organize***

*With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organizations for the protection of their economic and social interests and to join those organizations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.*

### **Exercising the rights on the basis of Article 5:**

The right of workers to get organized to protect their rights has been regulated under the Labor Law of FBiH, Labor Law of RS, and in relation to this issue, also important are the Laws on Strike and Law on Employees’ Council i.e. Law on Workers Council of RS, rulebooks on work of trade unions, collective agreements.

#### ***Trade unions***

The Labor Law of FBiH and the Labor Law of RS provides for the right of employees to be organized in trade unions, to freely join or leave them, and an employee may not be placed in any inferior position for the reason of his being member of trade union. Also according to the laws, activities of trade unions may not be barred permanently or temporarily.

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<sup>10</sup> „Gender gap in income in BiH“ authored by: Samra Filipović-Hadžiabdić, Fahrudin Memić, Lejla Somun-Krupalija, Ana Abdelbasit, Gender Equality Agency of BiH, IBHI, UNDP, 2006;

### ***Employees'/Workers' Council***

Also, according to the Labor Law of FBiH and Labor Law of RS, employees with employer who has more than 15 employees are entitled to form Employees' Council or Workers' Council (the Council) to represent them with the employer to protect their rights and interests. According to provisions of the Labor Law of FBiH, if the Council has not been formed in a company, the Trade Union has obligations and authorities that are otherwise responsibilities/obligations of the Council. The Council shall be formed at request of at least 20% of workers or trade unions. The Employer has to consult with the Council or Trade Unions when adopting the Rulebook on Work. According to the Labor Law of RS, the Rulebook on Work is to be adopted when an employer has more than 15 employees. When drafting the Rulebook on Work, the employer has to send it to the Trade Unions for opinion, and in case that the Trade Union's opinion is not accepted, he has to notify them thereupon in writing.

Therefore, according to provisions of the Labor Law of both entities, employees have the right, not the obligation to form the Council. Establishment of the Council is voluntary based. The Law on Employees' Council (FBiH) as well as the Workers' Council (RS) stipulates that the workers in administrative bodies or services may not establish a council. Employees in all other industries have the right to establish the Council. This applies to, for example, commercial companies, public companies, schools, faculties, institutes, hospitals, health centers and other legal persons in all industries.

### ***Differences between work of the Employees'/Workers' Councils and Trade Unions***

Operation of the Council is regulated by special laws in both entities on almost identical way. Establishment of such bodies depends on the will and interest of the employees and cooperation with the employer. Number of members of such bodies depends on the number of employees of the employer, but it may not be less than three or more than nine members. It is important to emphasize that the employees are free to also join trade union. Trade union may cooperate with such bodies organized with various employees when there is mutual interest and need.

Essential difference between the Council and the trade unions is in the fact that representatives to the Council are elected by the employees in free and direct secret voting, while the trade unions are an interest organization of employees who freely chose to join or not in accordance with the statute or rules of the given trade union. Also, an important difference between those bodies established with the employer and the trade unions is in their status. Namely, the Council is representative body of the employees that represents them in relationship with the employer and it does not have a status of separate legal person, it does not have its Statute, employees do not pay membership fee, and costs of their work are paid by the employer. On the other hand, the trade unions, as employees' organizations to which the employees join freely, has the status of a legal person, has their statute, is registered, and the members to the trade union pay membership fee that makes the primary assets of the trade union and the costs of the union's work and operations are paid by membership fees.

The Council represents the employees with a specific employer to protect their economic or social rights and interests, while the trade union represents and protects rights and interests of all its members. Trade union must be involved in conclusion of collective agreements, while the Councils may not participate in those negotiations. In addition, only the trade unions have the right to call on a strike and to conduct a strike.

In accordance with the mentioned laws, the employer obliged to inform the employees' bodies, consult them and obtain prior consent for making some decisions, while the employer does not have any such obligations with respect to the trade unions. The laws do not specify obligations of the trade unions towards their membership because that is not the subject of regulation. The trade union carries out their obligations towards the members primarily in meetings of the union branch that is made of all members of trade union employed with the specific employer and in other ways, as prescribed in the Statute or rules of the given trade union.

Finally, one may conclude that there is no parallelism in operation of the Council and the trade union, although it might appear differently on the first reading of the law. It is in the interest of the employer to act both through the Council and to become members of the trade union.

### ***Exercising the right to organization and trade union activities in practice:***

So, although there are no *de iure* obstacles for the workers to get organized with the employer or to join trade union activities, this is *de facto* not being put in practice, or is partially being put in practice. The existence of a relatively good legislative framework as it exists in BiH does not automatically guarantee that it is really implemented in practice. Unfortunately, numerous are practical examples of continual and strong pressures being put by the employer to restrict their organized action aimed at protection of workers' interests. This is particularly evident in private companies carrying out various activities (construction, trade, services, etc.) that have been increasing in numbers recently. There are several reasons for that and they should be viewed in the BiH context.

As already mentioned, number of unemployed persons in BiH is 488.498 individuals.<sup>11</sup> This number of the unemployed is actually the number of people who are formally registered with the employment services, but the actual number of unemployed people is assumed to be significantly higher and it continues to increase as a consequence of global crisis. Therefore, on one hand there is obviously a whole "army" of the unemployed, while on the other hand there is no demand for labor force. Due to such difficult economic situation, the workers are in situation to depend on the good will of their employer and they feel coerced to accept any conditions or demands that are put before them, all for the purpose of keeping the job. Knowing the situation, private employers violate many work-related rights of their employees, but also constitutional provisions on freedom of association and all applicable laws in this area without any consequences.

For that reason, workers in all larger private companies in BiH are not organized in Councils or in trade unions. According to the information provided by the trade unions of BiH, among those companies are, for example, Interex, Dalas, Robot Comerc, ASA Holding, Fis, as well as numerous private construction companies.

Of course, employers will publicly say that "their" workers do not want to get organized in any way because all their rights are fully secured and that they are happy with their status, what is not really the truth according to the findings of the trade unions of BiH. Various problems the different industry trade unions have when they want to address workers in large private companies when they want to invite them to get organized to operate in trade unions

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<sup>11</sup> Data from January 2009.

testify to that too. The trade unions have to address the employer first and obtain their consent to approach and talk to the workers. Without such consent of their employer, the employees are not allowed to even talk with representatives of trade unions. Furthermore, as a rule, employers openly threaten their workers that they would be fired if they attempted to join any form of worker organization and replaced by some of many unemployed people. So, even though the employers are formally/publicly willing to support the activities of trade unions in their companies, they send out messages to workers through special channels not to do so.

By such actions and such attitude, the employers directly violate Article 5 of the Charter as well as the national labor related legislation that guarantee freedom of association and organized action. The State also violates the constitutional provisions and international norms in the same way because their failure to intervene enables the employers to continue with such practice, and they are silently give the employers a privileged position above the law.

The State is obliged, in addition to harmonizing national legislation with international norms – in this case with the Charter, to ensure implementation of such provisions in practice, but the authorities in BiH are not doing so. Quite the opposite, by failing to act the State directly aids arbitrary behavior of the private employers and violations of employees' rights.

This is primarily reflected in inefficient work of labor inspections that are responsible primarily for following implementation of the labor related laws. Naturally, there are several reasons for that, including insufficient number of inspectors to respond to the needs and monitor legality of work of all companies, and also their objectivity and integrity are often questioned. Furthermore, union representatives who want to inform them with problems and violations of laws often have problems to get in contact with some inspectors who are simply “unreachable” and very much distanced from the problems of workers they should by law have at their heart. And finally, the sanctions that they can pronounce to employers for violations of the law are so low that it is simply cheaper for the employers to violate the law.

Of course, this is certainly not in the interest of workers, citizens and the state that is held responsible before bodies of international institutions to secure respect of the rights guaranteed by international documents. It seems that this situation only suits different interest groups and private interests of individuals who are given the opportunity to get rich easily and quickly to the detriment of their workers, and of all citizens of this country.

***Article 6.***

***The right to bargain collectively***

*With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:*

- 1. to promote joint consultations between workers and employers;*
- 2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements;*
- 3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labor disputes;*

*And recognize*

4. *the right of workers and employers to collective action in case of conflict of interest, including the right to strike, subject to obligations that might arise out of collective agreement previously entered into.*

### **Obligations of BiH pursuant to Article 6.**

*There is a need to encourage joint consultations between workers and employers by laws and in other ways. Also, it is necessary to promote (or) oblige employers to conduct collective bargaining with workers' organizations. In connection with this, the state is obliged to resolve the issue of recognition of trade unions. Only in a certain extent and under certain conditions the state may intervene in the processes of collective bargaining. The laws and collective agreements need to provide for mechanism for dispute resolution through reconciliation, arbitration, before courts or in some other ways. Similar procedures should be foreseen for resolving disputes between employees in public sector and administration. The law should provide for right of employees to strike or other forms of collective action.*

### **Exercising the rights on the basis of Article 6.**

The Labor Law of FBiH assigns an important role to trade unions in adoption of collective agreements because one or several trade union may negotiate on the side of employees (Article 112). According to the Labor Law of RS too, a party to collective bargaining is the association of trade unions at the level of the entity that gathers the largest number of workers, i.e. majority trade union, on which they need to submit consent of all trade unions that gather at least 10% of members. The same law provides for procedure of reconciliation and arbitration in case of any dispute stemming from collective contract.

A strike may be organized only in accordance with the Law on Strike, union rules on strike and collective agreement. In addition, the strike may not be started before the reconciliation procedure foreseen under the Labor Law has been completed, or before implementation of the second procedure of peaceful dispute resolution as agreed between parties. According to Article 128 of the same law, the trade union is entitled to call on strike and implement the strike with the goal of protecting economic and social rights and interests of their members.

Supervision of implementation of provisions of this law is done by Federation or cantonal labor inspector, and if the company or institution were of interest of the Federation, they are supervised by the Federation labor inspector.

Provisions under Article 129 of the Labor Law of FBiH guarantee protection of employees from being put in worse position because of their organization or participation in strike.

Strike is a legitimate and democratic method the employees and their organizations use to fight for their social and economic interest and to put pressure on the employer to accept their demands concerning disputed issues with respect to protection of such interests. Therefore, the strike is an integral part of collective bargaining process, and in some broader sense it may be seen as a form or a part of collective bargaining.

Still, since the strike almost always entails harmful consequences for the employers, there is a tendency to restrict the use of strike as a method of exercising the rights of employees. The right to strike has been regulated by special laws. So in the Law on Strike of the Federation of BiH, any strike in military or in law enforcement, administrative agencies and

administrative services are defined by special law. According to the Law on Strike of RS, when it comes to activities of special public and social interest, which are enumerated under article 8 of the Law, the strike may be organized, but minimal work processes must be continued. What is included in this minimal work process is to be defined by the founder or employer in accordance with law, where they are obliged to take into consideration opinions, proposals and comments of the unions.

From this follows that the right to strike is not an absolute one because it is restricted by special laws that very precisely regulate the methods of exercising this right, and it may even be prohibited in certain circumstances. Although international standards allow prohibition and restriction of the right of strike to certain categories of employees, as is the case with law enforcement officers and members of armed forces under both Laws on Strike of FBiH and RS, it must be underlined that prohibition of strike in this case must not be interpreted to the detriment of association and active combat for protection of rights of workers and this category of workers. Therefore, it is important to say that the employees deprived of the right to strike must be provided with other legal mechanisms to protect their interests, such as emergency and effective arbitrage that goes into effect immediately for both parties to the dispute. This is of extreme importance because according to the information provided by trade unions of law enforcement, there are numerous violations of labor related rights. This primarily concerns the working hours, paid overtime, regular leaves, regular medical examinations, performance-based promotion, etc.

Having analyzed laws on strike of both entities, one may reasonably ask the question whether the employers or founders would at all be interested to conduct negotiations on problems in exercising basic labor related rights of employees who can not threaten with strike. This is particularly important in the context of BiH where there is no social dialog or culture and tradition of bargaining and where the trade unions are still passive and not ready to take their new, more active role.

Analysis of compliance of relevant national legislation with articles 5 and 6 of the Charter suggests that standards are formally respected to a satisfactory degree. But the question is to what extent they are actually implemented in practice. Actually, the information from practice points at important problems in work and operation of workers' organizations and trade unions. This is particularly true with respect to possibility of free action of workers' organizations through unions or employees' council i.e. workers council in private companies that are more and more in BiH recently, which employ more and more workers, as it had been discussed before. The mere fact that there are no workers' organizations in such companies suggests that the environment for their operation is not very supportive.

In addition, although both entity laws foresee collective bargaining and conclusion of collective agreements where the trade unions have an active role, problems are seen with their practical implementation. In recent times, the Government has been one-sidedly violating provisions of different collective agreements or simply ignoring them thus continuing the practice of non-implementation of what had been agreed. In this way, rights of workers continue to be violated and they have no other recourse but to seek protection of their rights before courts, what may take several years.

In this situation, the workers fighting for their rights are often forced to use the ultimate method – i.e. the strike.

## **Article 7.**

### ***The right of children and young persons to protection***

*With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:*

- 1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;*
- 2. to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;*
- 3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;*
- 4. to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;*
- 5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;*
- 6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;*
- 7. to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;*
- 8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;*
- 9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;*
- 10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.*

### ***Obligations of Bosnia and Herzegovina pursuant to Article 7.***

*The Law should provide for a minimal age for hiring which would apply on all categories of work, including the work in agriculture, household and family business. In addition, a list of dangerous or unhealthy jobs should be made. The law should define maximum duration of work for children of age when they have to attend mandatory education which has to be organized after school, on weekends and during school holidays (for instance, define the age for mandatory education) and restrict the work at night. Also, the law and regulations should provide for right to salary and other appropriate remuneration of young workers, apprentices, interns, and minimum four weeks of paid annual leave for workers below 18 years of age.*

*A system of regular medical examinations should be set up for persons under 18 who are employed. The law should also stipulate measures for the case when young employed persons*



*develop mental disorders during their work, including termination of work, transfer, job counseling, etc.*

*There has to be a system of controls by responsible agencies, as well as measures for practical implementation of relevant laws and regulations. When drafting their reports, the States have to state what measures they apply to implement laws and regulations.*

### **Exercising the rights on the basis of Article 7.**

According to applicable national legislation, the work of children and young people under 18<sup>12</sup> has been regulated in a way that is generally in accordance with the provisions of the Charter. However, the work in agriculture, household and family business has not been specifically regulated, and the young people are affected with the problem of inexistence of a list of particularly dangerous jobs for all workers. Other standards from this article of the Charter are being violated in practice in a variety of ways.

Widely spread is abuse of children to “work in streets” i.e. beg, wash car windows, sell cigarettes etc., and this is in continued increase. Such work of children is prohibited under national law and it is very harmful for children. Such abuse of children is gaining in size and is mostly done by family, and in addition, children often fall victims of organized crime, particularly of sexual exploitation.

The data from a survey conducted by non-governmental organization “Zemlja djece” (“Land of Children”) from Tuzla reveal that 100-200 hundreds of children aged between 1 and 16 are exposed to commercial exploitation in urban environments on daily basis. Of interviewed children aged 7-16, 75% do not attend school, and 25% have never attended school and they do not to read or write. Those children live in very hard conditions. They live in deserted and demolished buildings, improvised shelters. Almost 90% of those children have no health insurance and because of that 50% of them feel sick or ill. Around 30% of children are suffering from malnutrition or anemia. In most cases, neither they nor their families are covered by social protection system.

In most cases, children are forced to do this kind of work by their parents, and they find justification for this in the necessity to secure existence of the family. Children spend whole days in streets, mostly in their parents’ arms or, when they get to the primary school age, their parents do not send them to school but to beg. In rural areas children are forced to work on farms. Such children are fully neglected in terms of their upbringing, hygiene, health or education. That way of life in some cases brings even the lives of the children into jeopardy.

There is no effective system of protection of children in BiH that would take them off the street and pronounce some drastic sanctions to family members who abuse and mistreat children in this way. There are no adequate and sufficient institutions for protection, placement and education of such children. This fully violates the right of the children and young persons enshrined under the Charter, and the State is doing nothing to resolve this growing problem in a systematic way. Since this problem has been ignored by the state, there has been a surge in juvenile delinquency in recent years and there were many cases of repeated perpetration of criminal offenses by juveniles.

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<sup>12</sup> Law on Labor of RS, articles 14 and 69, Law on Labor, Articles 7, 15, 51.

## **Article 8.**

### **The right of employed women to protection of maternity**

*With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:*

- 1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;*
- 2. to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;*
- 3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;*
- 4. to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;*
- 5. to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.*

### **Obligations of BiH pursuant to Article 8.**

*This Article provides for the right to maternity leave and paid leave or other forms of compensations and benefits in the form of paid leave or compensations in the social protection system or from public funds for women before and after giving birth for at least 14 weeks.*

*The charter explicitly forbids firing female employees from the moment when she notifies her employer she was pregnant, including the duration of maternity leave. The notice period must not expire during that period. The state must foresee sanctions for employers who are found non-compliant with the provisions on maternity leave and sanctions for firing done in contravention of this provision, as well as return to the job in case of firing made in contravention to those provisions.*

*The Charter foresees clear responsibility of state to protect and implement standards from this document, regardless of whether the violations were committed by public or private employer.*

*The Charter provide for breastfeeding mothers to have enough free time to continue doing that. National legislation should regulate the night work of pregnant women, young mothers and breastfeeding women.*

## **Exercising the rights on the basis of Article 8.**

Labor laws on the entity level foresee the right to maternity leave. The labor law of FBiH in Chapter VI: Protection of Employees, articles 52 through 63, regulates the issue of protection of women and motherhood. According to law, women are entitled to maternity leave of one year without interruption. However, in spite of this right to maternity protection provided under the law and political proclamation of measures against the “white plague”, public rhetoric on protection of families, mothers and children as ultimate values of one society, the rights to maternity protection are in practice being violated all the time in many different ways.

Changes and amendments to the Law on Labor of FBiH<sup>13</sup> stipulate that women have the right to use maternity leave of at least 6 weeks<sup>14</sup>, or in RS 8 weeks since giving birth. From this we can conclude that, formally, women may use minimal maternity leave, and the employer there finds the legal grounds to call her back to work even before the expiration of the maternity leave, thus clearly violating international standards from the Charter that foresee that women have the right to maternity leave of at least 14 weeks.

At employment of particularly young women, employers ask about their plans as to whether they want to have children, their family situation and their “serious relationships”. A trend has been observed, particularly in trade or services industries, that women are hired for a defined period of time, and then they lose their jobs when they go to maternity leave. In this way the employers avoid to employ women who might use their right to maternity leave and thus violate laws in the harshest possible way for which they remain unpunished.

Available information speaks about termination of contracts of pregnant women or those women who have just given birth by private employers. Women are exposed to various pressures to go back to work after not more than 60 days.<sup>15</sup> Trade unions confirm that women do go back to work because of various pressures or for fear of losing their jobs after 1-2 months. Many women go back to work much before expiration of the maternity leave also because of the remunerations that are inadequate and un-stimulating<sup>16</sup>.

The laws foresee the right to salary remuneration during the use of maternity leave. In RS, this remuneration equals average salary received by the employed women in the previous three months increased by the growth of average salaries in the RS from the Public Fund for Child Protection. There is no such fund in FBiH; instead, the remunerations are paid on the basis of cantonal laws on social protection, while the amount and payment vary according to the address and are paid in a certain percentage of average salary in the given canton.

So remuneration for maternity leave in the Sarajevo canton that is paid to young mothers amounts to around 400 KM or 60% of the average net salary in the canton during the last six months of previous year.<sup>17</sup> Employers are not under obligation to pay the remaining part to

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<sup>13</sup> Official Gazette of FBiH 32/00

<sup>14</sup> Changes and amendments to the Law on Labor of FBiH, article 26: „A woman may use shorter maternity leave, but not shorter than 42 days from giving birth“. The law on labor of RS, Article 74: „A woman may, at her request, start working even before the expiration of maternity leave... but not sooner than 60 days from giving birth.“

<sup>15</sup> <http://www.slobodnaevropa.org/Content/Article/1331314.html>

<sup>16</sup> Ibid.

<sup>17</sup> Law on social protection, protection of civilian victims of war and protection of families with children of the Sarajevo Canton.

the full salary, what poses an additional restriction in realization of the right to maternity leave.

One should mention a huge problem of inexistence of good quality and accessible public or private services, kindergartens, which would help working mothers. Compensations and problems with payments of salaries restrict the women in terms of paying private, but also public kindergartens or day care centers. This indirectly reduces the number of working women who tend to withdraw from the labor market in order to take care of their children, and later they have harder times finding jobs because of lack of work experience or long term unemployment. This encourages the discrimination and marginalization of women in society because a huge number of women get excluded from economic, political and public life and participation in society.

**Article 9.**

***The right to vocational guidance***

*With a view to ensuring the effective exercise of the right to vocational guidance, the Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including schoolchildren, and to adults.*

***Obligations of BiH pursuant to Article 9.***

*The Charter obliges the state to set up a service that would help all persons, including those with disabilities, to resolve their problems related to selection of vocation and carrier development. Such services should be free of charge, whether they have been formed as public institutions or private services. In addition, such services must deliver appropriate information pertaining to choice of profession.*

*The State is obliged to ensure close link between professional guidance and training on one hand, and demand for labor on the other.*

**Exercising the rights on the basis of Article 9.**

As already mentioned in the section on the right to work (Article 1, in connection with Paragraph 3), a negative link was observed between educational structure of job seekers and unemployment. Unfortunately, the state has failed to carry out necessary reforms that would connect provision of guidance in choice of profession and labor market demands, and no measures have been taken that would help the young in choosing their profession, education and training in the way that would ensure their employability after completion of education. In addition, the state has not yet resolved the issue of adult education in a systematic way.

There are no specialized professional guidance and carrier development services in FBiH, particularly in the context of employment. As it has already been said, there are employment services in BiH that are not adequately equipped in terms of skills and staff to provide

professional guidance and assistance in selection of professions, particularly when it comes to especially vulnerable categories of population.

In RS, a Development and Employment Fund of RS has been established with the aim to provide financing for prequalification of unemployed workforce through provision of counseling, job seeking services, retraining, and other commercial services. The Fund has their own target groups that are identified as vulnerable categories. Such fund does not exist in FBiH.

### **Exercising the rights on the basis of Article 9 with respect to vulnerable categories**

There are no programs of professional guidance specifically tailored for women, especially young women who are yet to choose the kind of education and profession they will learn to do, and that would be of great use for women and it would respond to the observed gender stereotypes in selection of professions and labor and further progress of BiH.

“The Law on professional rehabilitation, training and employment of the disabled” was adopted in RS in 2004. This Law stipulates the rights, conditions and procedures of professional rehabilitation, training and employing persons with disabilities or reduced working capacity, as well as establishment of organizations and institutions that are carrying out professional rehabilitation and employment of persons with disabilities. Unfortunately, no significant progress has been made in this area.

This Law establishes in RS a Fund for vocational guidance and retraining of persons with disabilities. However, a lot has yet to be done in terms of retraining and vocational guidance of persons with disabilities. In FBiH, such fund has not yet been established.

#### ***Article 11.***

##### ***The right to protection of health***

*With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed inter alia:*

- 1. to remove as far as possible the causes of ill-health;*
- 2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;*
- 3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.*

#### ***Obligations of Bosnia and Herzegovina pursuant to Article 11***

*The State is obliged to introduce measures that would ensure in practice universal access to health protection on the whole area and develop a system of public health services that would include disease prevention through regular annual examinations of different groups of people and system of regular examinations for whole population.*

*In addition, the State is obliged to do an analysis and identify the diseases that represent the major public health problems in the country. For special groups: pregnant*

women/mothers/babies/children/adolescents, the elderly, vulnerable groups (the homeless, the addicts, the unemployed), some special measures should be provided.

*Public awareness on importance and methods of preserving health should be raised through counseling and educational measures, information campaigns and advisory services in schools or through means of public information, and in every other way.*

*The State is required to take special measures to prevent epidemics, endemic and other diseases through mandatory or optional immunization, disinfection and epidemiology policy.*

*In the field of public health, the state is required to develop a system of measures for prevention of pollution of air, water, soil, of radioactive communication, noise, ensure food inspections, establish minimal housing standards, measures against smoking, addictions, and sexually transmitted diseases.*

### **Exercising the rights on the basis of Article 11.**

BiH has 13 ministries of health, 13 health funds and numerous institutes. In the Federation of BiH, each canton has their own ministry of health and health insurance fund; there is also a ministry of health on the entity level and health solidarity fund. Republika Srpska also has their ministry of health and health insurance fund that cover the whole territory of RS. Brcko District has had their separate health insurance since 2002.

Entity laws regulate exercising of the rights to health protection and health insurance.<sup>18</sup>

Such fragmented health care system restricts fair access to health care services for all citizens. The health care services are not transferable from one entity to another. Also, health benefits are unevenly distributed between rural and urban communities, where the people who live in remote rural areas that are not well connected by means of public transportation have less access to health care. Persons insured in different cantons have different rights and different access to health care, particularly in terms of tertiary health care, what is a result of varying amounts of revenues collected in health insurance funds.

A comprehensive overview show that total revenues and expenditures in health sector are significant (7.4% of the budget allocation<sup>19</sup>); however, the sustainability is far from being ensured.

There are groups in society that are not covered with health insurance. Most numerous among them are the unemployed who are not registered with employment services, or those who had omitted the deadline to register with employment services, as well as those who are employed, but their health contributions are not being paid regularly by their employers (workers “on hold”, workers in privatized companies or companies undergoing bankruptcy). There are also the Roma who are generally excluded from the system, partly because they do

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<sup>18</sup> Law on health protection of FBiH (Official Gazette FBiH 29/97);  
Law on health insurance (Official Gazette FBiH 30/97, 7/02, 70/08);  
Law on health protection RS (Official Gazette RS 18/99, 62/02);  
Law on health insurance of RS (Official Gazette RS 18/99, 51/01, 51/03).

<sup>19</sup> BiH: Addressing fiscal challenges and institutional review, World Bank, 2006

not have personal identification documents (birth certificates, ID cards), and partly because high unemployment among them. Many citizens, including children, are not covered due to fact that parents are not informed of the rights they have in terms of health care and on the ways how they could exercise their rights.

According to information of the Health Insurance Fund of RS for 2008, 19.18% of population (around 235.000) were unable to have their "health book" stamped and use their rights from health insurance. In the Federation of BiH, according to information provided by the Health Insurance and Reinsurance Fund of FBiH for 2007<sup>20</sup>, 16.35% of population were excluded from the health insurance system (around 380,000 people).

At the entity level, the process of harmonization of laws and regulations with international standards of health care has partially started; however, those changes are happening too slowly, with a special problem of implementation of such laws in practice. The state level is not conducting any activities to harmonize entity laws or establish a unified approach to health care for all citizens.

Special measures of protection for special groups of population: pregnant women/mothers/babies/children, adolescents, the elderly, vulnerable groups like the homeless, the addicts, and the unemployed exist to an extent, but more in terms of allowances from health care. Such measures are generally insufficient for those groups of population, but what is even more concerning is that a large portion of population lives in state of social need and uncovered by universal health care.

Health care of persons with disabilities is characterized by discrimination by the cause of disability and various scopes of rights from health care/insurance for persons who became disabled during the war or irrespective of war developments. The people with disabilities do not have universal accessibility of health institutions, particularly when it comes to ambulancas, health centers, etc. primarily because of physical accessibility. There are no lower counters for persons in wheel chairs, there are no sound signals for blind peoples, written directions for the deaf, equipment for gynecological examination of women in wheel chairs, etc. Also, the medical and paramedical staff is inadequately trained and skilled to provide help to persons with disabilities. Persons with more serious disabilities who are not employed still fail to exercise the rights in the field of health protection as direct insurees; instead, they get such rights indirectly, through a family member, who are not always insured themselves.

The law on health care of FBiH stipulates the principle of comprehensive access to primary health care, what is, according to law, to be ensured through free choice of doctors of medicine and dentists. However, implementation of this principle in practice has not been secured in terms of free choice of a doctor, particularly to population of returnees. The right to health care is acquired through registration of new address, and it can be exercised only there. But the returnee population often lacks confidence in local community, particularly in those places where serious crimes had been committed, and the returnees are not given freedom to choose who would treat them.

The right to health care is also denied to a number of citizens that are particularly vulnerable. This is caused by insufficient, inadequate and unavailable information by relevant institutions.

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<sup>20</sup> Data for 2008 are expected in June 2009.

The obligation to inform is not adequately regulated by law and institutions tend to avoid even minimum of obligation to provide necessary information to the citizens. The State is not implementing counseling or educational campaigns aimed to promote health and individual responsibility in health-related issues, as provided by the Charter. Patients, being uninformed of their rights and procedures, omit deadlines for appeals. General public is informed by media only on occurrence of influenza or other dangerous contagious diseases, such as, for instance, brucellosis, and this is done when the diseases are already there.

The laws on patients' rights have not been adopted in RS or in FBiH.

There are no measures in place that would contain information on health risks caused by harmful influences of environment, no systematic and free examination of population who are especially exposed to environmental influences, such as, for example, communities located in proximity of factories, thermal power plants, etc.

**Article 12.**

***The right to social security***

*With a view to ensuring the effective exercise of the right to social security, the Parties undertake:*

- 1. to establish or maintain a system of social security;*
- 2. to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;*

***Obligations of Bosnia and Herzegovina pursuant to Article 12.***

*The State is obliged to establish a clear system of social protection and foresee the necessary financing to make it sustainable. A system of social protection needs to be established that would be at least the same as the system described in the European Code of Social Protection that regulates the rights to:*

- 1. Health care*
- 2. Allowance for illness*
- 3. Unemployment benefit*
- 4. Allowance for old age*
- 5. Benefits for injuries at work*
- 6. Family allowances*
- 7. Maternity benefit*
- 8. Disability benefit*
- 9. Allowance for family members in case of death of their bread winner.*

*Further on, the Code defines clear standards for calculating financial benefits that are related to "social insurance" and it establishes criteria for exercising the right to the foreseen allowances. In terms of practices of the European Committee of Social Rights, in order to be effective, the right to social assistance must be:*

- 1. Clearly defined by law;*
- 2. Based on objective criteria;*
- 3. Feasible;*



4. *Must not be subject to any other conditions except the need of beneficiary to receive social aid.*

### **Exercising the rights on the basis of Article 12.**

None of the above stated four conditions defined under the Code for exercising the rights have not been complied with in BiH legislation and practice.

Social protection, in the broader meaning of the word, as interpreted in the Charter, is regulated by 20 laws<sup>21</sup>, some on entity and some on cantonal level. System of social care encompasses over 30 ministries and institutions in FBiH<sup>22</sup>. RS has a more centralized and more effective system of social care and harmonized protection at entity level under four ministries<sup>23</sup>.

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<sup>21</sup> Law on Health Protection of FBiH (Official Gazette FBiH 29/97);  
Law on Health Protection of RS (Official Gazette RS 18/99, 62/02);  
Law on Health Insurance of FBiH (Official Gazette FBiH 30/97, 7/02, 70/08);  
Law on Health Insurance of RS (Official Gazette RS 18/99, 51/01, 51/03);  
Law on basics of social protection, protection of civilian victims of war and protection of families with children of FBiH FBiH (Official Gazette FBiH 36/99, 54/04, 42/06);  
Law on basics of social protection, protection of civilian victims of war and protection of families with children of the Sarajevo Canton (Official Gazette 16/02);  
Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children of the Zenica-Doboj Canton (Official Gazette 13/07);  
Law on Social Care, Herzegovina-Neretva Canton (Official Gazette 3/05);  
Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children of the, West Herzegovina Canton (Official Gazette 16/01, 11/02, 4/04, 9/05);  
Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children, Tuzla Canton (Official Gazette 12/00, 05/02, 13/03 and 08/06);  
Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children, Una-Sana Canton (Official Gazette 5/00, 7/01);  
Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children, Bosnia Podrinje Canton (Official Gazette 10/00, /03);  
Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children, Livno Canton (Official Gazette 5/98);  
Law on Social Protection, protection of Civilian Victims of War and Protection of Families with Children (Official Gazette 10/05, 2/06);  
Law on Social Protection, Posavina Canton (Official Gazette 5/04);  
Law on Social Protection of RS (Official Gazette RS 5/93, 15/96, 110/03);  
Law on Civilian Victims of War of RS (Official Gazette RS 25/93, 32/94, 37/07, 60/07);  
Law on Child Protection of RS (Official Gazette RS 4/02);  
Law on Family Protection of RS (Official Gazette RS 54/02);  
Law on Pension and Disability Insurance of FBiH (Official Gazette FBiH 29/98, 49/00, 32/01);  
Law on Pension and Disability Insurance of RS (Official Gazette RS 32/00, 40/00, 37/01, 32/02, 40/02, 47/02, 110/03 and 67/05).

<sup>22</sup> Ministry of Labor and Social Policy of FBiH and 10 cantonal ministries  
Ministry for war veterans and invalids of the defensive-liberation war of FBiH  
Ministry for displaced persons and refugees FBiH  
Ministry of Health of FBiH and 10 cantonal ministries of health  
Health Insurance and Reinsurance Institute FBiH and 10 cantonal institutes/funds  
Institute for Pension and Disability Insurance FBiH  
Federation Employment Institute and 10 cantonal Employment Institutes  
Centers for social work – two at canton level (Sarajevo and Bosnian Podrinje (Gorazde) canton and 71 municipal center

<sup>23</sup> Ministry of labor and veteran-invalid protection of RS

In addition, the state level has almost no responsibilities or obligations to secure harmonized and sustainable system of social protection at the level of BiH as a whole, so one can not even talk on indications of harmonization of the social protection system at the level of BiH.

No Article from the Federation Law stipulates any other obligation of the Ministry of Labor and Social Policy to implement this Law on the whole territory of FBiH. Besides, the Law does not provide for penalties for cantons who fail to harmonize their laws with the Federation laws, and the Federation Ministry of Labor and Social Policy is taking no measures against cantons who had failed to harmonize their laws with the Federation laws.

The entity legislation regulates the social protection related issues in a variety of ways. Particularly complicated system exists in FBiH, with a lot of overlaps and frequent avoidance of responsibilities between 10 cantons and FBiH to establish a functional social protection system through provision of enjoyment of rights under social protection and securing the funds for exercising the rights of the beneficiaries. Each canton has their own ministries that are responsible for the area of social and health protection, protection of war invalids and their families, displaced persons, refugees, work and employment. Cantons pass and adopt their own laws in the area of social protection that are not always harmonized with the Federation Law on Health Protection. For example, lack of legal framework for civilian victims of war in the Neretva-Herzegovina canton has resulted with their exclusion from any form of protection in that canton.

The rights under European Social Charter are regulated by some 20 laws in BiH:

*Right to health care* is provided under entity laws on health care and health insurance.

*Sick allowance* is regulated under entity laws on health insurance and social protection.

*Unemployment benefit* is regulated under entity and cantonal laws on social protection.

*Old age allowance* is regulated only in the context of old age pension under entity laws on pension and disability insurance.

*Allowance for injuries at work* is regulated under the entity laws on pension and disability insurance in terms of disability pension (FBiH), whereas in the Republika Srpska, there is also a stipulation of training or retraining, right to monetary benefit, or employment on a different job.

*Family allowance and maternity allowance* in terms of payment of monthly financial benefit for the young mothers and one-time financial assistance is foreseen under the law on social protection, protection of families with children and civilian victims of war (10 cantonal and 1 entity laws in FBiH) and under the Law on Child Protection in RS.

*Disability benefit* is foreseen under the entity laws on social protection or in the form of disability pension under the law on pension and disability insurance.

*Allowance to family members in case of death of their bread-winner* in the form of family pension has been foreseen under the entity laws on pension and disability insurance.

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Ministry of health and social protection of RS

Ministry for family, youth and sports RS

Public Fund for Child Protection of RS

Health Insurance Fund of RS

Pension and Disability Insurance Fund of RS

Employment Institute of RS with 6 regional institutes and municipal employment bureaus.

Centers for Social Work (45 municipal centers)

## Comparison of beneficiaries and rights in the laws regulating social protection in BiH

Beneficiaries of social protection:

<b>Federation BiH</b>		<b>Republika Srpska</b>	
<ol style="list-style-type: none"> <li>1. Children deprived of parental care;</li> <li>2. Educationally neglected children;</li> <li>3. Children whose development has been inhibited by their family circumstances;</li> <li>4. Individuals with disabilities and persons with disturbed physical or mental development;</li> <li>5. Materially insecure persons and persons unable to work.</li> <li>6. Old people without family care.</li> <li>7. Persons with socially undesirable behavior.</li> <li>8. Individuals and families in situation of social need who, due to special circumstances, require an appropriate form of social protection.</li> </ol>		Persons in situation of social need, in particular: <ol style="list-style-type: none"> <li>1. Juveniles deprived of parental care;</li> <li>2. Juveniles with disturbed physical and mental development;</li> <li>3. Juveniles whose development has been inhibited by their family circumstances;</li> <li>4. Educationally neglected juveniles</li> <li>5. Materially insecure persons and persons unable to work;</li> <li>6. Old persons without family care:</li> <li>7. Persons with disabilities:</li> <li>8. Persons with socially undesirable behavior;</li> <li>9. Persons who need social protection due to their special circumstances.</li> </ol>	
<b>Hercegovačko-neretvanski canton (Law on Social Care)</b> The same beneficiaries as under the Law of FBiH	<b>West Herzegovina canton</b> The same beneficiaries as under the Law of FBiH	<b>Tuzla canton</b> Extended circle of beneficiaries of social protection compared to the Law of FBiH to include: <ol style="list-style-type: none"> <li>1. victims of abuse and domestic violence.</li> </ol>	
<b>Una-Sana canton</b> Extended circle of beneficiaries of social protection compared to the Law of FBiH to include: <ol style="list-style-type: none"> <li>1. disfunctional families;</li> <li>2. persons and families that do not have sufficient income to meet their basic needs</li> </ol>	<b>Canton Sarajevo</b> Extended circle of beneficiaries of social protection compared to the Law of FBiH to include: <ol style="list-style-type: none"> <li>1. persons and families that do not have sufficient income to meet their basic needs;</li> <li>2. individuals exposed to abuse and domestic violence.</li> </ol>	<b>Zenica-Doboj canton</b> Extended circle of beneficiaries of social protection compared to the Law of FBiH to include: <ol style="list-style-type: none"> <li>1. persons addicted to psychoactive substances</li> </ol>	
<b>Bosansko-podrinjski/Goražde canton</b> The same beneficiaries as in the Law of FBiH	<b>Central Bosnia canton</b> The same beneficiaries as in the Law of FBiH		
<b>Posavina canton (Law on Social Protection)</b> A single person or a family who do not have enough funds to meet their basic needs, and who are not able to earn them by their work or from revenues from their property or from other sources, and: <ol style="list-style-type: none"> <li>1. Physically or mentally damaged or mentally ill child, and a child to whom has been or should have been implemented a measure of family or penalty protection;</li> <li>2. Physically or mentally damaged adult person, elderly, ill or other persons who due to permanent changes in their health status may not meet their basic needs;</li> <li>3. Other persons in distress due to disturbed family relations, alcohol, drugs or other addictions, or because of other forms of socially unacceptable behavior or other causes.</li> </ol>			

## Rights under social protection

<b>Federation BiH</b>		<b>Republika Srpska</b>	
<ol style="list-style-type: none"> <li>1. Financial or other material assistance</li> <li>2. Provisions of skills needed for living and working;</li> <li>3. Placement in another family;</li> <li>4. Placement in social protection institutions;</li> <li>5. Services of social and other work;</li> <li>6. House care and help in the household.</li> </ol>		<ol style="list-style-type: none"> <li>1. Material provision,</li> <li>2. Allowance for assistance and care by another person;</li> <li>3. Provision to children and young people of skills needed for living and working;</li> <li>4. Placement in a social protection institution or placement in another family;</li> <li>5. Social work services.</li> </ol>	
<b>Herzegovina-Neretva canton</b> The same rights as under the Law of FBiH	<b>West Herzegovina canton</b> The same rights as under the Law of FBiH	<b>Tuzla canton</b> The same rights as under the Law of FBiH	
<b>Una-Sana canton</b> In addition to the rights from Law of FBiH:  1. other forms of social protection prescribed by the municipality or canton (subsidized rent, heating, electricity, burial services to the poorest categories)	<b>Canton Sarajevo</b> In addition to the rights from Law of FBiH:  1. monetary benefit for assistance and care provided by other person	<b>Zenica-Doboj canton</b> In addition to the rights from Law of FBiH:  1. guardianship and supervision	
<b>Bosansko-podrinjski/Goražde canton</b> The same rights as under the Law of FBiH	<b>Central Bosnia canton</b> In addition to the rights from Law of FBiH: 1. other forms of social work		
<b>Posavina canton</b> <ol style="list-style-type: none"> <li>1. counseling</li> <li>2. provision of help to overcome special difficulties</li> <li>3. sustenance support</li> <li>4. one-time assistance</li> <li>5. allowance for care and assistance</li> <li>6. personal disability allowance</li> <li>7. provision of training for independent life and work</li> <li>8. care outside of own family</li> <li>9. other forms of assistance</li> </ol>			

## Rights of the civilian victims of war

<b>Federation of BiH</b> (rights 1-5 defined under the Federation Law, rights 6-8 defined under cantonal laws)		<b>Republika Srpska</b> (allocations from budget of RS on the basis of requests of municipalities)
<ol style="list-style-type: none"> <li>1. Personal disability allowance</li> <li>2. Allowance for care and assistance by another person</li> <li>3. Allowance for orthopedic aid</li> <li>4. Family disability allowance</li> <li>5. Sharing the costs of medical treatment and procurement of orthopedic aids</li> <li>6. Provision of work training (professional rehabilitation, retraining and additional training)</li> <li>7. Priority employment;</li> <li>8. Priority resolution of housing issue;</li> <li>9. Psychological help and legal aid</li> </ol>		<ol style="list-style-type: none"> <li>1. Civilian disability allowance, or family disability allowance</li> <li>2. Allowance for provision of care and assistance by another;</li> <li>3. Allowance for a family member who is unable to work;</li> <li>4. Additional financial assistance;</li> <li>5. Allowance for single parents;</li> <li>6. Health care;</li> <li>7. Professional rehabilitation</li> </ol>
<b>West Herzegovina Canton</b> <ol style="list-style-type: none"> <li>1. personal disability allowance</li> <li>2. allowance for care and support by another</li> <li>3. allowance for orthopedic aid</li> <li>4. family disability allowance</li> <li>5. child allowance</li> <li>6. health care</li> <li>7. priority employment</li> </ol>	<b>Canton Sarajevo</b> <ol style="list-style-type: none"> <li>1. help with costs of treatment and procurement of orthopedic aids</li> <li>2. provision of work training, professional rehabilitation, training and retraining,</li> <li>3. priority employment;</li> <li>4. health care and conditions to get the rights of a civilian victim of war</li> </ol>	<b>Zenica-Doboj canton</b> <ol style="list-style-type: none"> <li>1. personal disability allowance</li> <li>2. allowance for care and support by another</li> <li>3. allowance for orthopedic aid</li> <li>4. family disability allowance</li> <li>5. health care</li> <li>6. help with costs of treatment and procurement of orthopedic aids</li> </ol>
<b>Una-Sana canton</b> In addition to the Law of FBiH: <ol style="list-style-type: none"> <li>1. health care</li> </ol>	<b>Tuzla canton</b> The same rights as under the Law of FBiH	<b>Bosansko-podrinjski/Goražde canton</b> Of the rights from the Federation Law, this law does not provide for child allowance, but it does provide for psychological and legal aid
<b>Posavina Canton</b> <b>(there is no law of their own)</b>	<b>Central Bosnia canton</b> The same rights as under the Law of FBiH	<b>Herzegovina-Neretva canton</b> <b>(there is no a law of their own)</b>

## Rights under pension/disability insurance

<b>Federation BiH</b> <ol style="list-style-type: none"> <li>1. Old age pension</li> <li>2. Disability pension</li> <li>3. Family pension</li> <li>4. Right of ensurees with changed working ability</li> </ol>	<b>Republika Srpska</b> <ol style="list-style-type: none"> <li>1. In case of old age – old age pension;</li> <li>2. In case of disability – disability pension, retraining or additional training, right to financial allowance, employment on a different job;</li> <li>3. In case of death of the insuree – family pension</li> </ol>
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### **Article 13.**

#### ***The right to social and medical assistance***

*With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:*

- 1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;*
- 2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;*
- 3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want.*

#### ***Obligations of BiH pursuant to Article 13.***

*The State is obliged to establish a system of public social and medical aid that would include:*

- monetary allowances or other allowances;*
- clearly defined categories and number of persons covered;*
- conditions for approving help, criteria for needs assessment, procedures for determining whether a person is deprived of needed financial resources, and defined bodies that approve the aid;*
- amount of allowance that is adequate for the costs of living;*
- clear and functional method to ensure right to assistance and established an independent body through which the individuals may seek protection of their rights.*

#### **Exercising the rights on the basis of Article 13.**

Social assistance in BiH is status-based, not needs based, with at the same time insufficient funds for the large number and extensive needs of socially vulnerable and poor population. It has been estimated that 350,000 citizens who live under the poverty line do not receive social assistance. One of the reasons for that is the legislative framework that uses the inability to work as the main criteria for provision of assistance. Formally, those 350,000 poor people are able to work, but due to their inability to find employment, they fall into situation of social need, and at the same time, the system does not recognize them as beneficiaries of social assistance. In general, the system of social assistance is inadequate, insufficient, and ineffective in providing service to people in situation of social need. On the other hand, economy, employment and education, as engines of development of a country and society, are not linked into a system that would lead to reduced number of socially vulnerable persons.

According to the World Bank data, social assistance reaches only one fourth of all poor people in need for such assistance.<sup>24</sup>

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<sup>24</sup> BiH Fiscal Challenges and Strengthening Perspectives for Growth, Review of Public Expenditures and Institutions, September 2006

Financing the social assistance system in BiH is based on collection of funds from social insurance through contributions on salaries of the employees (pension, health insurance, unemployment) and on the budgetary grants from municipalities, cantons and entities (social assistance, allowances for care by another and social care services).

Although the value added taxation has been introduced in BiH as of January 2006, a state level strategy that would provide for use of part of those funds for development of social welfare programs in the area of social security and protection has not yet been made. One of most important arguments used by domestic politicians when introducing this single tax rate was the promise that a comprehensive reform of social rights would be implemented that was expected to significantly improve and increase government's allowances to those in need. Although the revenues to the state budget have increased, no programs that would move into direction of establishing a sustainable social assistance system were adopted. Payment of additional 10 KM to already identified beneficiaries of social programs and partly to pensioners, without previously developed mechanisms for identification of most vulnerable categories of population, may not be called programs that lead to establishment of a sustainable system. Besides, this assistance was terminated in 2008 as it was found ineffective and not sustainable.

With respect to the obligation to secure even territorial distribution of services and harmonization of levels of help, this standard is not complied with in BiH. As a rule, the largest and the most developed municipalities, cities and cantons give more money from their budgets for social protection, while small and underdeveloped municipalities and cantons, where the needs for this type of assistance is larger, can not meet the needs of the beneficiaries even in terms of the most basic forms of social protection and assistance.

Comparison of annual allocations for social assistance at the level of cantons in FBiH (2006) gives an overview of differences in availability of funds for social assistance and availability of assistance and services:

**Percentage of the total revenues of the canton that is used for provision of social assistance and social services<sup>25</sup>**

Sarajevo Canton	12,9%
Bosansko-podrinjski canton	9,52%
Tuzla canton	6,57%
Central Bosnia canton	6 %
West Herzegovina	4,83%
Zenica-Doboj canton	4,56%
Una-Sana canton	3,45%
Posavina canton	2,72%
Livno canton	2,45%

In RS, funds for financing rights under social protection are provided from budgets of municipalities<sup>26</sup> and budget of RS.<sup>27</sup> All municipalities have the obligation to use at least 10% of their budget for social allowances. Municipalities that for justified reasons are unable

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<sup>25</sup> Source: Audit report of the Office for Auditing Public Institutions in FBiH, [www.saifbih.ba](http://www.saifbih.ba)

<sup>26</sup> Material security, allowance for assistance and care by another, placement in a social protection institution, placement in a different family, household help.

<sup>27</sup> For operation of social protection institution, training to work with children with physical or mental disturbances.

to realize the planned allocations from their budgets for those purposes are entitled to additional funds for social protection from the budget of RS. Protection of children and families with children is regulated under a special law in RS, Law on Child Protection, under which RS is responsible for majority of rights, while the municipality is responsible only for some of the rights.<sup>28</sup>

Financial benefits foreseen under the Charter do exist, but without clear indication of sources of financing, without clear criteria and without system of precise records on the number of persons covered. Monetary assistance takes forms of:

- continual financial assistance;
- financial assistance for help and care by another person;
- other material assistances (temporary or one-time help for people in situation of social need as a result of special circumstances.

Allowances for civilian victims of war are partly financed from the Federation budget in line with the Federation criteria and regulations<sup>29</sup>, while the criteria and methods of allowances for other rights<sup>30</sup> are defined by cantons. Cantonal level fully defines conditions, methods of realization and amount of allowances in the area of protection of families with children, and in the area of social protection.

Criteria for awarding allowances are uneven from one canton or entity to other, they are not clearly defined in the law, particularly with respect to financial help. Cantons even define by their own regulations the procedures for evaluation of abilities, classification and registration of children with disturbed physical or mental development, and also the criteria for placing persons in social protection institutions.

Discrimination is, therefore, manifested in:

- determination of criteria for awarding social assistance;
- process of decision making on awarding the social assistance;
- categorization of the poor and identification of the most vulnerable.

In the area of protection of persons with disabilities, the most striking is on laws based discrimination between persons with disabilities that have resulted from war and in connection with war (even within this same category there is a big difference between civilians and military victims of war) and persons with disabilities acquired on other basis. According to the current law in FBiH, civilian victims of war receive 70% of the benefits paid to military war disabled, while the persons with disabilities caused irrespective of war events receive much lower benefits. The range of benefits for persons with first category of disability goes from 41 KM to 1800 KM.

There are non-transparent and uneven criteria for approving the rights and payment of benefits to population of war disabled (particularly on the grounds of unemployment). Number of registered military war invalids has significantly increased after the war contrary to any logics, and it puts an enormous pressure on budgets, especially the budget of the Federation of BiH. As a major part of the budgets of FBiH and RS goes for benefits for various war disabled and demobilized soldiers, insufficient funds remain for financing social

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<sup>28</sup> From pre-primary education and stay in children leisure centers..

<sup>29</sup> Personal disability allowance, allowance for care and support by other person, allowance for orthopedic aid, family disability pension, child allowance.

<sup>30</sup> Help with costs of treatment, training for work, priority employment.



assistance and social services (2% of total gross domestic product of BiH is used for payment of benefits to the military war disabled).

Social chart has not been done at the level of BiH, so there are no relevant data on social needs of population and it is impossible to earmark funds from the budget on the basis of needs on annual level. The last census was done in 1991.

The current system of social protection is not able to register, follow and assess the situation in social sector mostly because of fragmentation of system of health and lack of coordination and information sharing on beneficiaries and benefits, which particularly applies to FBiH. This kind of a system on one hand opens the doors for dual payments to some categories and beneficiaries, while on the other hand, it misses a large part of population in social need who are outside the current system of protection. There is no system of monitoring the effects of the law and policies on economic and social rights of citizens and there is no regular updating of information at any level of government in BiH.

The amount of social assistance is generally determined on the basis of consumer basket that is considered to be a minimum amount needed for normal life. In BiH, the amount for consumer basket is determined by the Government and as a rule, it is only half of the amount determined by the trade unions. The amount of social assistance given in BiH does not meet the needs of beneficiaries also because it has not been clearly defined by law and therefore it is not linked to the value of consumer basket. Other kinds of social allowances, such as child allowance or allowance for help and care by another are at minimal level and are more symbolic than anything else since they range from 20 to 60 KM, and as such they can not really be considered minimal social assistance. An additional problem is that the Cantons also determine the level of social assistance and those amounts may differ.

Quite often even the allowances stipulated under law are not being paid, what is justified with lack of money in the budget. So for instance, child allowances and maternity allowances for unemployed mothers that are provided under the law are not being paid in most cantons in FBiH.

Out of 370,000 registered unemployed persons in FBiH, financial benefit was received by only 5800 or 1.5% people in 2007. In the Republika Srpska, of 135,000 registered unemployed, 2980 persons or 2.2% received the unemployment benefits.

From all described above follows that there is a general confusion in this area, and lack of understanding and distinguishing between basic notions of social protection, social insurance and social assistance. This is also aided by a pile of unclear and discriminatory laws adopted at various levels of government. In this way the government bodies at all levels contribute to continued violation of rights of citizens and to their discrimination.

Centers for social work are unevenly distributed throughout the country, and there are towns to be found without any, such as, for example, Neum. The level of equipment and quality of work and provision of services by centers for social work is uneven on the territory of BiH resulting with insufficient quality and territory-dependant provision of care to the beneficiaries. The Law defines two main roles for the centers: a) needs assessment, receiving applications for help and payment of allowances, for example in money, as subsidies for utility bills, non-material aid; and b) placement of persons in institutions, their monitoring and

counseling for the elderly, persons with disabilities, children with special needs, divorced parents, juvenile delinquents.

In practice, the work of the centers is more focused on financial and administrative assistance, and less on counseling, monitoring the situation of the vulnerable, provision of adequate psycho-social assistance. Also the level of expertise of people working in the centers is often inadequate. The structure of employees in the centers for social work does not comply with standards of quality provision of social work services and may not respond to social needs of citizens or act appropriately in direction of reducing the sociopathic occurrences and provide help to families in carrying out their functions.

The Child Protection Fund of RS is conducting a review of all decisions related to the rights and complaints of the beneficiaries. The appeals of other beneficiaries of social protection are in the first instance resolved by the commissions that operate under the municipal centers for social work, while in the second instance, the appeals concerning the problems in realization of their rights are resolved by the Ministry of Social Protection.

In FBiH, the appeals concerning protection of rights of civilian war victims and protection of families with children are decided in the first instance by a municipal commission. In the second instance, the decision is made by the cantonal ministry. In both entities applied is the Law on Administrative Proceedings, i.e. within the institutions that both approve and may violate the rights. Independent bodies are cantonal courts (FBiH) and municipal courts in RS, but damaged parties rarely initiate suits because court procedures require money, and institution of free legal aid does not exist in the case of filing appeals.

Cantonal laws in FBiH (Zenica-Doboj canton, Sarajevo Canton, Una-Sana canton) define as the obligation of cantonal ministry to monitor implementation of the Law on Social Protection, Protection of Families with Children and Civilian Victims of War. In addition, fines are foreseen for institutions that in contravention to the law deny or restrict the rights granted to the beneficiary. Those fines are minimal and they vary (Zenica-Doboj Canton and Tuzla Canton foresee the penalties of 500-1000 KM, Herzegovina-Neretva Canton 300-1000 KM, West Herzegovina Canton 500-5000 KM), while the Law in Sarajevo Canton does not stipulate any fines at all for failure to implement the law. The law of the Una-Sana canton foresees penalties that range from 1000 to 5000 KM for institutions that deny or restrict the rights granted to the beneficiaries.

**Article 14.**

***The right to benefit from social welfare services***

*With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:*

- 1. to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;*
- 2. to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.*

### ***Obligations of BiH pursuant to Article 14.***

*It is necessary to establish such social services that would have appropriate organization, administration and financial and professional resources that will respond to the needs of the society. It is important to provide for the right to appeal against decisions made by centers for social work that concern award of such rights.*

*The State needs to take measures to ensure or encourage involvement of individuals and charity organizations and other appropriate organizations in establishing and maintaining such services.*

### **Exercising the rights on the basis of Article 14.**

The modern concepts of social protection are not yet adopted by public services, such as active participation of beneficiaries, comprehensive approach, multi-disciplinary work, cooperation with non-governmental organizations and other government agencies that have a role in protection of vulnerable categories. Communication between centers for social work and non-governmental organizations is very limited and non conductive for exchange of professional experiences and development of single policy approach.

Non-governmental organizations are generally not recognized as partners to the government in meeting social needs of population. Legislative prerequisites are not in place for promotion of voluntary work- a law on voluntarism has not yet been adopted in FBiH, while it has been so in RS. On the other hand, the incentives to national commercial companies to direct part of their funds to humanitarian purposes or give to non-governmental organizations are not provided by law. Non-governmental organizations providing social care to population and protecting socially vulnerable population, although they have been securing funds from international donors and taking upon themselves some of the obligations of the state for many years now are not appropriately recognized in the process of policy making by the authorities. The law does not provide for tenders for provision of specific forms of social care to different groups of people, particularly in those cases when the centers for social work can not provide such assistance.

BiH has not used in a sufficient degree the knowledge, experience and resources that exist in non-governmental organizations in the area of social work and work with vulnerable categories of population. A partnership needs to be established with non-governmental organizations in provision of services of social work and the conditions and methods of providing services in the area of social and child protection should be legislated and financing for such programs secured.

### ***Article 16.***

#### ***The right of the family to social, legal and economic protection***

*With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.*

### ***Obligations of BiH pursuant to Article 16.***

*The State needs to regulate by law the legal protection of the family with special consideration of equality of spouses before the law, of family relationships and marital conflicts, and also all special measures used to help resolve such conflict and thus avoid the divorce.*

*Also, the state needs to establish economic measures to protect the family and/or single parents through:*

- *Provision of financial benefit (allowance) that provide financial compensation for family burdens on permanent basis;*
- *Occasional financial benefits given in specific special circumstances;*
- *Alleviation of certain burdens (for example, tax exemption/subsidies for families with children);*
- *Provision of help to young married couples;*
- *Provision of financial and medical assistance to women who are not covered by the system of social protection during certain time before and after childbirth;*

*Child care services and institutions need to be established, such as kindergartens for infants and small children and post-school educational institutions.*

*Through its laws and institutions, the state is obliged to provide protection and rehabilitation to victims of domestic violence.*

### **Exercising the rights on the basis of Article 16.**

The area of family protection is regulated by different laws in two entities.

In FBiH, this is the Law on Basics of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children, on the basis of which the cantons have adopted their own laws, with the exception of the Herzegovina-Neretva and Posavina cantons, who had adopted laws on social protection that do not include protection of families with children. Exercising the right and payment of benefits in the area of protection of families with children are carried out exclusively on cantonal level.

In the Republika Srpska, the field of protection of families with children is regulated by the Law on Child Protection<sup>31</sup> and it provides for more rights than the laws in FBiH.

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<sup>31</sup> Official Gazette RS 4/02

## Rights of families with children under the laws in BiH:

<p><b>Federation BiH</b> Law on Basics of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children</p>	<p><b>Republika Srpska</b> Law on Child Protection (Official Gazette of RS 4/02)</p>	
<ol style="list-style-type: none"> <li>1. Child Allowance</li> <li>2. Salary remuneration for women – mothers in working relationship during the pregnancy, childbirth and care to the infant;</li> <li>3. Financial aid during pregnancy and childbirth to women-mother, i.e. other person who is unemployed;</li> <li>4. Help in food for children up to six months of age or additional food for breastfeeding mothers;</li> <li>5. Special psycho-social treatment of spouses who want children and of pregnant women;</li> <li>6. Placement of children with secured food in pre-primary education institutions;</li> <li>7. Provision of one meal during the education in primary schools;</li> <li>8. Scholarships and stipends for secondary school or university students.</li> </ol>	<ol style="list-style-type: none"> <li>1. Salary remuneration while using maternity leave</li> <li>2. Maternity allowance</li> <li>3. Assistance for equipment for the newborn;</li> <li>4. Child allowance;</li> <li>5. Meeting developmental needs of children;</li> <li>6. Pre-primary education for children without parental care, children with disturbed development and children at longer hospital treatment;</li> <li>7. Educational programs for preparation of children for school;</li> <li>8. Stay, pre-primary education and preventive health care provision to children of pre-primary age and stay of primary school children of up to ten years</li> <li>9. Rest and recreation of children of up to 15 years of age in a leisure center for children</li> <li>10. In subsidizing costs of children's' stay in pre-primary institution, or their rest or recreation</li> </ol>	
<p><b>West Herzegovina Canton</b></p> <ol style="list-style-type: none"> <li>1. Child allowance</li> <li>2. Remuneration for women-mothers in working relationship during the pregnancy, childbirth and care of the newborn</li> <li>3. Financial help during pregnancy and childbirth of women-mother that is not in working relationship</li> <li>4. One-time assistance for equipment for the newborn child;</li> <li>5. Special psycho social treatment to spouses who want children and to pregnant women</li> <li>6. Placement of children in pre-primary institutions with secured food</li> <li>7. Provision of scholarships and stipends to secondary school and university students. (no meal in primary schools)</li> </ol>	<p><b>Canton Sarajevo</b></p> <ol style="list-style-type: none"> <li>1. Child allowance</li> <li>2. Remuneration for women-mothers in working relationship during the pregnancy, childbirth and care of the newborn;</li> <li>3. Financial assistance during pregnancy and childbirth of unemployed mothers</li> <li>4. One-time aid for equipment of the newborn</li> <li>5. Assistance in food for children of up to six months and additional food for breastfeeding mothers;</li> <li>6. Placement of children in pre-primary institutions with secured food;</li> <li>7. Provision of scholarships and stipends to secondary school and university students.</li> </ol>	<p><b>Zenica-Doboj Canton</b></p> <ol style="list-style-type: none"> <li>1. Child allowance</li> <li>2. Remuneration for women-mothers in working relationship during the pregnancy, childbirth and care of the newborn;</li> <li>3. Financial assistance during pregnancy and childbirth of unemployed mothers</li> <li>4. One-time aid for equipment of the newborn</li> <li>5. assistance in food for children up to six months and additional food for breastfeeding mothers</li> <li>6. special psycho-social treatment of spouses who want to have children and of pregnant women</li> <li>7. Placement of children in pre-primary education institution with secured food</li> <li>8. Securing a meal during school in primary schools</li> <li>9. Provision of scholarships and stipends to secondary school and university students.</li> </ol>

<p><b>Una-Sana canton</b> The same as FBiH, with addition of: 1. financial assistance during pregnancy and childbirth of women-mothers who are not in working relationship</p>	<p><b>Tuzla canton:</b> The same as in the law of FBiH, but in 2008 only the following rights were established: 1. Rights of mothers after childbirth who are in working relationship in the form of refund of compensation in the place of salary; 2. One-time assistance to women-mothers who are not employed in the amount of 150,00 KM 3. Assistance to mothers in food for children up to six months in the amount of 90,00 KM per beneficiary, 4. Right to child allowance for children of unemployed parents in the amount of 30.00 KM per child.</p>	<p><b>Bosansko-podrinjski/Goražde canton</b> In addition to Federation law: 1. assistance in food for infants up to six months of age and additional food for breastfeeding mother 2. provision of one meal during school hours in primary education</p>
<p><b>Herzegovina-Neretva Canton</b> Does not have their own law on protection of families with children</p>		

### *Maternity benefits*

In RS, the maternity benefit is paid in the amount of average of three last salaries to working women, and if she is not working, in the amount of average salary in RS. The benefit is paid by the employer, and it is refunded through the Child Protection Fund of RS.

The Federation law on social protection states that the benefit is determined on the basis of average salary during the last six months, but the cantons are setting the percentage of salary. The Federation law does not say whether the obligation to pay the remuneration lays on the employer or cantonal services and that was left up to the cantons, and they adopted different solutions.

- Legislation in the Sarajevo Canton sets the maternity benefit at 60% of average salary in Sarajevo Canton. However, the Sarajevo Canton has passed a decree (Gazette of the Sarajevo Canton 13/08) whereby the actual average salary of the canton is reduced by certain percentage (coefficient) in order to get a modified “average net salary that is used for calculation of financial and other material benefits, and which is by 28.23% less than actual net salary in the Canton. Practically this means that maternity benefits amount to 43% of actual average salary in the Sarajevo Canton. We do not know of any other cantons passing “decrees” to reduce the amounts of average salaries for the purpose of calculating social benefits.
- Legislation of the Zenica-Doboj Canton sets the benefits at 80% of average of last six salaries of employed mothers (obligation to pay lays on the Canton).

- West Herzegovina canton sets the benefit at 70% of average monthly salary of last six months. Contributions for health and pension-disability insurance are to be paid by the employer, and in that this is an exception among all other cantons.
- In Tuzla canton, a new law entered force in 2006 according to which maternity benefit is paid at the level of 90% of personal income earned over 6 months before the childbirth, but it may not be less than 30% of average salary in the canton in the same period. The obligation to pay the benefit lays on the Employer, but the canton refunds the costs.
- Una-Sana canton foresees the benefit in the amount of 50% of average salary the employed women has received in the last six months. The amount of the remuneration is specifically defined for each particular woman, providing that the amount may not be less than 50% of the average monthly salary in the Canton during the same period. (The employer pays the remuneration, but he receives the refund from the Center for Social Work after the funds have been transferred by the line ministry).

Mothers who are unemployed exercise their rights defined under the law on social protection in only a limited extent. Although the law stipulates that the right to this kind of benefit extends during one year after the childbirth, this right is only partially exercised depending on the economic strength of the given canton or municipality. In the Tuzla Canton in 2008, mothers who were not employed received just a one-time financial assistance in the amount of only 150.00 KM. The situation is very similar with regards to other rights in the area of protection of families with children.

So for instance, the one-time help for equipment for the newborn child, assistance in food of children up to 6 months and additional food for breastfeeding mothers, placement of children in pre-primary educational institutions with provided food, provision of one meal during school hours in primary schools, are not being realized and they depend on economic situation in the given canton or municipality.

### ***Child allowance***

Even with the right to child allowance being provided by law, many families or categories of children in BiH do not exercise this right, or exercise it in a varying extent. According to the law, the right to child allowance has every family that lives in situation of social need (i.e. the families whose income per capita does not exceed 15-20% of average salary). However, in most parts of the country only some categories of children exercise this right, like the children without both or one parent, and children with disturbed physical or mental development.

Exercising of the rights is restricted by economic situation of the area where the family lives, by very restrictive property census for exercising the right, very low amount, irregular payment with sometimes months of delays. So for instance in Tuzla canton, by May 2007, only an increased child allowance for ill children was paid in the amount of 45.00 Km, and from May 2007, a new right was introduced by special decision of the Ministry of Labor and Social Policy to provide child allowance to children of unemployed parents in the amount of 30.00 KM. Unfortunately, in September 2008, due to non-liquidity of the budget, all payments of child allowances in Tuzla canton stopped. Also, in the cantons where child allowance is being paid, the amount of the allowance varies and may range from 9.6 KM to 42 KM depending on the canton.

## *Domestic violence*

The issue of domestic violence is covered in a whole series of laws in BiH.<sup>32</sup> Government of BiH adopted on November 13, 2008, the Strategic Plan for Prevention of Domestic Violence for period 2009-2010, and an inter-sectoral working group was formed as a part of implementation of the plan whose primary task is to act preventively and to develop unified training programs for professionals in the area of child protection, health, education and security who are working directly with victims of violence, but also with perpetrators of violence. On initiative of non-governmental organizations, SOS phone line was established in RS in 2008 for women and children who are victims of violence – the number is 1264. In FBiH a unified SOS phone line was opened as late as towards the end of 2008 with a single code for FBiH – 1265.

According to information provided by non-governmental organizations that support the SOS line (four in RS and six in FBiH), during the two-months period from December 4, 2008 to January 31, 2009, 188 victims of violence asked for help.

But the state is still lacking a systematic solution for continued battle against domestic violence and for resolving the rights of the victims of violence. Non-governmental organizations took over the care of victims of violence using limited help provided by governmental institutions, while the survival of such services greatly depends on international funds and donors. In 2008, FBiH gave through the Ministry of Labor and Social Policy the amount of 200.000 KM as support to non-governmental organizations that are leading the “safe house”.<sup>33</sup>

Women’s non-governmental organizations in BiH demanded that the Law on Basics in Social Protection, Protection of Civilian Victims of War and protection of Families with Children of FBiH, as well as the laws that regulate this field in cantonal level, are supplemented to include victims of violence in family or family union, and that the ‘safe houses’ are recognized under the law as institutions of social protection and to receive continual financial support. This would show the readiness of FBiH institution to, besides the declarative recognition of the right without domestic violence, enable the victims and persons who had experienced this kind of violence to enjoy the rights from social protection in practice.

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<sup>32</sup> BiH

- Law on Gender Equality of BIH (2003) in its Article 17 prohibits any form of violence in private and public life on the basis of sex, and such issues are processed ex officio.

In the Federation of BiH:

- Law on Protection from Domestic Violence of FBiH (2005), provides definition of a family, notion of domestic violence, protection from domestic violence and kind and purpose of sanctions for the perpetrators of violence.
- Criminal Code of FBiH (2003) prescribes criminal offenses to protect the women, juvenile children and families from various forms of violence.
- Family law of FBiH (2005), complete with current rulebooks adopted by line ministries.

In the Republika Srpska:

- Criminal Code of RS (2003), treats domestic violence as a criminal offense, and describes it as „Violence in family or family union“.
- Law on protection from domestic violence of RS (2005) gave a clearer definition of the term: family, as well as a definition of violence (as serious violation of human rights of women and children's rights), while the changes to the law from 2008 provided for additional obligations of the entity and municipal authorities to secure funding for financing „safe houses“ (shelters).

<sup>33</sup> Fondacija lokalne demokratije Sarajevo, Medica Zenica, Viva žene Tuzla, Žene sa Une Bihać, Mirjam Mostar and Žena BIH Mostar). In their safe houses, 244 victims of violence spent up to three months and 50 victims of violence spent over three months.



## **Article 17.**

### ***The right of children and young persons to social, legal and economic protection***

*With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:*

1. *a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;  
b) to protect children and young persons against negligence, violence or exploitation;  
c) to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;*
2. *to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.*

### ***Obligations of BiH pursuant to Article 17.***

1. *Among other things, the State is obliged to regulate by law the protection of children born out of wedlock, adopted children, protection and representation of children in case of conflict with or between parents.*

*The issue of juvenile delinquents needs to be regulated through establishment of special courts, provision of education, treatment, prevention, and alternatives to prison sentence. Compensatory measures need to be introduced for protection of children and young people with special needs or disabilities, for example, social assistance, recreational, etc., as well as early interventions that enable such people to integrate with the society once they come of age.*

*The Law need to stipulate measures for protection of children and young people from physical and moral dangers, physical punishment, neglect, exploitation, violence and sexual abuse, and to establish appropriate psycho-social services and shelters, SOS phones for children-victims. Criteria need to be elaborated for when children may be taken away from their parents and given to the care of third parties*

*Under the law, special attention should be paid to state inspection in this area.*

2. *Universal free primary and secondary education should be provided, and it should also be made accessible for children and young people with disabilities. Encouraging regular attendance of school also includes measures for regular attendance, particularly for children and young people from ethnic or language minorities, children with disabilities, or children from vulnerable environments, as well as sanctions for non-attendance.*

### **Exercising the rights on the basis of Article 17.**

Children remain one of the most vulnerable groups in BiH, particularly the children from socially vulnerable families. Rights of the children continue to be violated through failure to adopt laws or implement the laws that already exist, or establish appropriate institutions for protection. In BiH, there is no state ombudsperson for children yet. There is an

ombudsperson for the rights of the child in RS, while similar institution does not exist in FBiH since the office for the rights of the child stopped working in 2007.

Right to education of children from socially vulnerable families is exercised in various ways in different parts of BiH. As a part of recent changes to the Law on Health Insurance, children got the right to direct health insurance that does not depend any more on work status of their parents, and this is explained in more details in the section of this document that elaborates the exercise of right to health protection.

A child protection fund has not yet been established in FBiH, although the Mid Term Development Strategy had stipulated its adoption in 2004. Such Fund has existed for some longer time in RS.

### *Juvenile delinquency*

In 2008, as a consequence of juvenile delinquency that had culminated with murders, the lack of readiness and ability of the government to cope with this problems became fully apparent. Although a Strategy for Combating Juvenile Delinquency was adopted providing for, among other things, inter-sectoral cooperation at the level of entities, cantons and municipalities and close cooperation of experts and institutions as well as for establishment of operational teams for prevention of juvenile delinquency, nothing has been done yet, from the national to local levels. Only in May 2008 a State Coordination Body for monitoring implementation of this strategy was set up.

In BiH, in the entities or at the state level, there are still no unified laws that would fully regulate the area of juvenile delinquency in a comprehensive way, although a draft law has been developed as early in January 2005 that complies with international standards. Instead, implemented are special provisions of general legislation that are provided under entity codes of criminal procedures, criminal codes, laws on execution of criminal sanctions, laws on social protection, as well as laws on internal affairs. Reform of judiciary has failed to result in specialization of judges to decide only in cases involving juveniles in conflict with law and there is a frequent practice in courts of internal designation of a special judge to rule in cases of juvenile crime.

Although the law foresees emergency in dealing with juvenile crime, practice greatly varies from one court to another. Of a wide range of measures foreseen for cases of juvenile crime, some are never pronounced because of inexistence of appropriate infrastructure, and this includes measures of committal to educational-corrective facilities. Because of this, in case of more serious crimes or repeat crimes judges typically pronounce measures of increased supervision by parents or increased supervision by body of guardianship. Unfortunately, such measures produce very limited results.

In the conditions of poor equipment, insufficient financing and insufficient number of employees with relevant education in the centers for social work, monitoring the degree of resocialization of the juveniles under the measure of strengthened supervision by parents or guardianship bodies where the centers for social work are actively involved represents a weak point of the centers for social work.

Institutions for implementation of institutional educational measures foreseen under the law include educational home, educational-correctional facility, institutions for training juveniles

with medical or special needs, and penalty-corrective institutes i.e. prison facilities. In practice, what exists is the Educational Institute “Hum” in Sarajevo that also accepts children in conflict with law, but it does not operate as solely educational institutions. As a part of the Penalty-correctional Institute in Banja Luka, a separate department of educational-corrective institution has been made, but conditions for its operation in practice have not been provided. In practice, juveniles who were pronounced a measure of committal to an educational-corrective facilities, which do not exist or do not operate, are not under supervision or care of any service, team or program, their rehabilitation or reintegration are left up to their families in full, and those families are frequently unable to provide adequate parental care and protection.

Besides, basic and essential problem is also serving the sentence of juvenile imprisonment together with adult convicts. Present position of juveniles in prisons is loaded with problems related to adequate diet, insufficient medical protection, poor assistance to drug addicts, etc.

Because of all above listed shortcomings and problems, the current legislative and institutional solutions need to be better harmonized or replaced by new ones as foreseen in international standards.

### ***Violence against children***

State level strategy for combating violence against children 2007-2010 was adopted by the Council of Ministers in June 2007, but there is a whole range of laws regulating social and criminal protection and rights of the children that are still waiting to be changed and adopted, such as, for instance, Law on Changes and Amendments to the Criminal Code of FBiH and the Law on Criminal Procedure Code of FBiH.

When analyzing Article 7 concerning the rights of the children and young people to protection, we have already discussed at length the frequent abuse of children to “work in streets”, what in a broader meaning does represent one form of violence against children.

Most activities that have to do with prevention of violence against children, provision of assistance and support to children – victims of violence, and increasing problem of violence among children still continue to be implemented by non-governmental organizations and international organizations in BiH. There is no single data base on the number of children-victims of violence, abuse and neglect, there are no shelters for children-victims of violence. Development of framework curricula for students, teachers and parents for prevention of violence that involves children is only in its initial stage. All institutions and organizations point at an increased number of reported cases of violence against children and among children, or violence involving children.

In both entities, SOS phone lines for provision of help to children have been registered, but there is only one phone that has a single number in the whole BiH, and that is the Mali Telefon (“*The Small Phone*”), a SOS phone for children number 1302. This telephone line, same as all other SOS phones, is operated by non-governmental organizations, in this case the Association “Zena BiH” from Mostar. This is a phone that provides help and support to children-victims of all forms of violence, and calls to the number 1302 are free. The Mali Telefon receives support from many institutions including the Ministry of Human Rights and Refugees through the Council for Children. The number of calls to the Mali Telefon increased last year, and a 10% increase in reported peer violence has been seen.

***Exercising the right to universal free of charge primary and secondary education, including accessibility of such education to children and young people with disabilities***

The entity laws approach provision of assistance to children of pre-primary and primary age in different ways. For example, the Federation Law and laws in most cantons in FBiH foresee placement of children in pre-primary education institutions with provision of food and provision of one meal during the school hours in primary schools, while the West Herzegovina Canton does not provide for this kind of protection. Only 6% of children in urban areas are covered by pre-primary education, while in rural areas the pre-primary institutions are almost non-existent.

No appropriate mechanisms or conditions for implementation of legal provisions concerning inclusion of children with special needs in educational system adjusted to individual needs have been put in place because introduction of inclusive education has not been accompanied with appropriate preparation of teachers and adjustment of the curricula, and there are no mechanisms for involvement of local community in provision of support. The issue of education of children with physical disabilities is not even close to being systematically resolved. Hundreds of children are denied access to schools throughout BiH because of their inability to physically access schools and school premises, and inability to have an accessible and appropriate transportation.

Children with more serious and serious disabilities, particularly those who live in rural areas, are completely excluded from primary education, and there are no legal solutions or mechanisms that would ensure school accessibility and implementation of the right to education and accessibility of school facilities. The attitude of the authorities towards education of children with disabilities is very passive considering the fact that the schools are mostly architecturally unadjusted.<sup>34</sup> Such children attend school with the help of their parents and they do not receive any assistance from the associations of persons with disabilities, centers for social work, or they attend school on the basis of a sort of “arrangement” with the school to study at home and take exams in each subject. Many children are also deprived of this small possibility and they do not receive any education whatsoever.

According to BiH legislation, primary education is compulsory and free for all. Unfortunately, situation in practice is completely different, so it is neither free nor it covers all those who should be covered. The right to primary education is not used by all children in BiH (94% of children are covered, and 99% of those who enroll first grade get to the fifth grade of primary school)<sup>35</sup>. Particularly vulnerable are the members of Roma minority (some sources suggest that only 15% of Roma children are covered by primary education<sup>36</sup>, whereas others claim that not even 10% are covered<sup>37</sup>). The adopted action plan on educational needs of the Roma and other minorities had not produced great effects in practice because it had failed to define mechanisms for implementation of the plan and mechanisms to monitor the implementation.

It has been estimated that 15% of primary school students in BiH live more than 3 km away from the school, and the parents tend to keep children at home, especially when no transport

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<sup>34</sup> Inappropriate school infrastructure – access roads, stairs, toilets.

<sup>35</sup> Report of the Helsinki Committee for Human Rights for 2004

<sup>36</sup> Democracy Development Assessment in BiH, FOD BiH 2006

<sup>37</sup> Human Development Report 2007, UNDP

to the school has been provided. Parents are rarely sanctioned for their decision not to enroll the child to the primary school or to take them out after the fourth grade.

A trend has been observed in recent years that parents tend not to enroll girls in schools. Unfortunately, responsible government authorities and institutions are doing nothing to reverse such trends. In addition, there are no action plans of the responsible authorities or institutions to raise awareness of this problem and inform the parents of their obligations according to law. This practice excludes girls from all segments of having a socially useful and active life, preventing their economic progress and placing them in position of dependency of their family.

So, although the primary education is compulsory for all, and although the sanctions have been foreseen for children whose children do not go to school, the government has failed to make an effort to neutralize the causes for non-attendance of primary school, such as:

- Lack of transportation to school of children from remote areas;
- Existence of architectural barriers in schools themselves;
- Lack of a systematic solution for provision of free textbooks and free transport for children from poor families;
- Sanctions are not being pronounced to parents who fail to enroll their children in schools.

Although the Law says that the education in primary schools is free, buying the textbooks, clothes, food and transport is on the shoulder of their parents, and this burden is hard to bear for close to 30% of population who live on the verge of poverty.

Law on primary education in FBiH provides for possibility of taking exams for primary school grades. Unfortunately, in most cantons in FBiH, such examination is not free as required under the Charter. Price of taking exams range from 200 to 400 KM depending on the canton, and they are paid by the applicant. This is in full contradiction with main principles of “compulsory” and “free” primary education that are established under the Law. Thanks to initiative by NGOs, only in Tuzla canton the funds for those purposes are provided from the budget of this canton, and through the mediation of NGOs, around 100 beneficiaries complete two grades of primary school each.

Secondary education is not compulsory and it is not free in terms of free textbooks or transport to school. There is no political consent in BiH with regards to introduction of compulsory and free secondary education. In 2008, the non-governmental organizations started discussions and initiative to make secondary education compulsory.

### **Article 20.**

#### ***The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex***

*With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:*

- a) access to employment, protection against dismissal and occupational reintegration;*
- b) vocational guidance, training, retraining and rehabilitation;*
- c) terms of employment and working conditions, including remuneration;*
- d) career development, including promotion.*

### **Obligations of BiH pursuant to Article 20.**

*The State must secure legislative and other measures to provide and protect the right to equal opportunity and equal treatment of all without discrimination on the basis of health, including conditions for employment and work, remunerations for work, protection from unlawful firing and professional reintegration, professional guidance, training, retraining, and when necessary, rehabilitation. In addition, the State is expected to take measures aimed at carrier development and promotion without gender-based discrimination.*

*The State must introduce active policy measures that would lead to achievement of equal treatment and equal opportunities in work, as well as practical measures for implementation of such measures.*

*On top of that, the State must introduce measures for prevention of gender-based discrimination through effective court proceedings, protection from retaliation of persons who started procedure of protection after having been subjected to discrimination, as well as persons who were witnesses in the procedure against gender discrimination. Generally accepted European standards of protection against discrimination in court proceedings shift the burden of proof to the defendant (the employer). Also, measures of positive discrimination need to be introduced with the purpose of remedying actual inequality.*

### **Exercising the rights on the basis of Article 20.**

Most violations and inability to implement this article in practice in BiH have already been covered in sections on right to work and employment, as well as introduction of special measures of positive action and active policy measures aiming to remedy the consequences of gender based discrimination (Article 1, Article 2 and Article 4).

The State does not provide for special measures of effective protection from gender based discrimination. All those whose rights to work or from work have been violated may turn directly to regular courts. Although mechanisms of protection formally exist in regular courts, there are significant problems in exercising and protecting the rights of women. Regular courts are burdened with large number of pending cases and their inefficiency. Also, there are no special departments attached to courts that would specialize in labor legislation and labor-related rights.

The judges do not possess adequate knowledge to directly apply international norms that recognize and interpret discrimination, particularly the gender based discrimination, and the rights of women. The judges have not been sensitized and they do not know enough about the rights of women. On the other hands, women who want to initiate procedure against discrimination receive no free legal aid because services for provision of free legal aid do not exist in all parts of the country. Capacities of a limited number of non-governmental organizations and trade unions who do provide free legal aid are not enough for large number of cases of violations of the right to work and stemming from work. So rare are the women who turn to courts to protect their rights.

According to law, there is no possibility of protection against victimization in cases of gender-based discrimination, and there is no shift of burden of proof to the defendant i.e. the employer in the legislation as foreseen under European standards. This makes the position of women who were exposed to discrimination very difficult, and it makes proofing such cases before court very hard.

Women with disabilities in BiH are subject to double discrimination. The State has no special programs for employment, retraining or rehabilitation specifically tailored for women with disabilities. In addition, there are no relevant statistics, data or necessary measures of protection of women with disabilities in the area of labor and employment.

***Article 21.***

***The right to information and consultation***

*With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:*

- a) to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and*
- b) to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.*

***Obligations of BiH pursuant to Article 21.***

*The state is obliged to define the rules in the laws, collective agreements or through establishment of different other mechanisms to secure the rights of the workers to be informed and consulted in the company, whether directly or through workers' representatives. A very important condition in connection with realization of this right include provisions on free election of workers' representatives through whom the workers are informed and consulted, as well as the kinds of information that are given to the workers on economic and financial situation of the company and how often such information should be provided.*

*The Charter foresees the right of workers to be consulted in appropriate time in connection with decision that may affect interests of the workers. The State undertakes to provide legal remedies to workers and their representatives to protect them from violation of those rights, as well as sanctions in case of non-compliance.*

### **Exercising the rights on the basis of Article 21.**

At present, this right can only be exercised in BiH through the workers' councils. According to the labor legislation, the workers'/employers' councils are established in companies employing at least 15 full time employees. As already discussed in the part concerning implementation of Article 5 of the Charter: Right to Organization, many employers are trying to restrict the establishment and operation of the council in many different ways, even where the conditions for their establishment exist.

In the context of global economic crisis and recession and situation in the country where many companies are laying off workers or reducing their salaries, this is a big problem as many councils are the only, albeit limited possibility that workers have at their disposal when it comes to information or consultation in the process of making decisions of interest for economic and social position of employees.

In BiH practice, employers are not obliged to inform their workers or to consult them when the Council had not been established. This becomes particularly problematic in case of small companies and private firms who are most prominent in terms of their numbers. In this way, many workers remain deprived of their right to be informed and consulted on issues that affect their status.

A special problem concerns information of workers with disabilities. The employer is not obliged to disseminate information generally to all employees or in a special format, such as in Braille code or otherwise make it accessible to blind and poor sighted people or deaf or people with hearing problems, thus violating Article 21.

### **Article 22.**

#### ***The right to take part in the determination and improvement of the working conditions and working environment***

*With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:*

- a) to the determination and the improvement of the working conditions, work organisation and working environment;*
- b) to the protection of health and safety within the undertaking;*
- c) to the organisation of social and socio-cultural services and facilities within the undertaking;*
- d) to the supervision of the observance of regulations on these matters.*



### ***Obligations of BiH pursuant to Article 22.***

*This Article concerns the right of workers to participate in decision making that includes information and consultations with the workers on conditions of work and their working environment, and their improvement in the company, particularly in the areas that concern, among other things, determination and improvement of working conditions, organization of work and work environment, protection of health and safety in the company, and monitoring of compliance with regulations concerning those issues.*

### **Exercising the rights on the basis of Article 22.**

Both entity labor laws contain provisions concerning protection at work. They provide for obligation of informing and training the workers for work in a way that provides for protection of life and health of employees and prevents accidents, and for securing the necessary conditions for protection at work. No special training tailored for people with disabilities has been foreseen.

Unfortunately, national legislation does not foresee a broader concept of information, consultations and participation of workers in decision making in the area of health and safety at work, improvement of conditions of work, organization of work, or in monitoring compliance with such legislation, except through the already mentioned workers' councils.

A particular problem is the inexistence of a list of especially dangerous professions, what adds to difficulty of protecting the workers.

### ***Article 23.***

#### ***The right of elderly persons to social protection***

*With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:*

- *to enable elderly persons to remain full members of society for as long as possible, by means of:*
  - a) *adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;*
  - b) *provision of information about services and facilities available for elderly persons and their opportunities to make use of them;*
- *to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:*
  - a) *provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;*
  - b) *the health care and the services necessitated by their state;*
- *to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.*

### ***Obligations of Bosnia and Herzegovina pursuant to Article 23.***

*The state is obliged to establish measures of social protection and such social services, including sufficient financial and other resources, that would enable the elderly to remain equal members of the society for as long as possible. The state is under obligation to report on total public allocations for social protection and social services to the elderly. The State is to develop a system of information and dissemination of information on services and benefits that are offered to the elderly, such as, for example, possibilities of finding housing that meets their needs. Appropriate legislation need to be adopted with respect to institutions for the elderly, including the placement procedures, methods for checking their work, as well as the participation of the elderly in making decisions on conditions of life in such institutions.*

*Considering the situation of the elderly, there is a need to organize provision of health care and other services in their homes.*

*Private and public services should cooperate in all areas covered by this provision.*

### **Exercising the rights on the basis of Article 23.**

BiH is the only country in the region that is still lacking a Strategy, and naturally the Action Plan on Aging, although as a member of the United Nations, even if it were obliged to do so under the Madrid International Plan of Action on Aging from 2002. BiH is under obligation to appoint a responsible person at the state level to coordinate regional and global initiatives, including implementation of the International Plan of Action on Aging through implementation of a regional strategy.

BiH has done nothing with regards to national practice and laws to protect the elderly. There are no joint or comprehensive policy that would tackle problems of the elderly population in order to provide them a better quality of life in health, social, economic, educational and all other levels. The elderly found themselves in a sort of inter-sectoral vacuum, with none of relevant authorities taking responsibility for them. There is no institution or organization under the executive power to deal with the issues of aging and problems of the elderly, let alone conduct scientific research or implement programs based on data and analysis.

Generally, the state is not providing adequate assistance and protection to the elderly. This is seen in undefined status and very low pensions that do not provide minimum funds that would be enough for decent living, in poor social protection, high costs of medical treatment and medicines, etc.

Coordination between state social institutions that are responsible for taking care of the elderly is either inexistent or very limited, so almost all problems of the elderly are thrown directly in the responsibility of social services and institutions. In this way, the elderly remain very much marginalized in social as well as any other respect. The aging is identified with poor health, and the rights to social and economic benefits are identified with social assistance provided by people in power, the pension rights are considered to be an economic burden for the society, while in the context of political or any other engagement in the community aging is seen as cognitive and physical restriction of contribution or decision making on policies, as well as for social and cultural development as a whole.

The burden to provide for social protection and security is transferred from the state onto the family. In this way, the state transfers some of its obligations and responsibilities onto the citizens, while those who have not got any family to offer them help and protection are completely stripped of their rights. Most beneficiaries of aid received through the NGO Caritas BK are in this group, with prominent share of women without children.

Very low pensions and poverty of the elderly is an acute problem. Pensioners with minimal or even average pensions are barely surviving. According to the data provided by entity Pension and Disability Insurance Funds, average pension paid in 2008 amounted to 347 KM in FBiH and 301 KM in RS. At the same time, monthly costs of living amounted to 509 KM, and 500 in FBiH and RS respectively. This clearly shows that almost two thirds of pensioners can barely survive, and are far from having a decent life.

A survey<sup>38</sup> conducted in 2008 that has covered 321 older persons in four local communities in BiH<sup>39</sup> showed the following:

- Of the total number of 321 older people, 11.5% had less than 150 KM of income, and 11.8% had income ranging from 600 to 1.500 KM. Majority of them, 45.5%, have income of between 150 and 320 KM, while 15.3% had income ranging from 320 to 600 KM. If we made a comparison of those data, we may conclude that more than 67.8% of the elderly persons have income that is below average income in the country. If we also take into consideration the costs of living, which are 509 KM in the Federation and 500 KM in RS, it becomes clear that two thirds of the elderly can not even survive, let alone have a decent life. Provision of social assistance is based on status of a person, not on the assessment of their needs, and generally, the elderly have no status of socially vulnerable groups under the national legislation.
- Sources of income for the elderly are the following: 10.6% receive pensions, while 0.3% live off family pensions, 0.6% receive social assistance, 8.1% live off their salaries, and 17.1% receive financial support from their family members, 16.5% have some other source of income, whereas 35.5% have no income whatsoever. Based on the source of income one may conclude that more than one third of the elderly are poor, and one more third is at risk of impoverishment.
- Women are particularly vulnerable: almost twice as many women (13.4%) as men (8.2%) have revenues below 150 KM. Also, 37.3% of women and 32.1% of men have no revenues whatsoever.
- Almost one fourth of the respondents can not afford the medicines that have been prescribed to them.
- The study shows that the elderly people feel lonely (40.8%), isolated (29.3%), excluded (28.3%), and depressed (39.9%) since they have no money to spend on socialization and decent life.

Most of the budgets do not provide financing to social services for the elderly. For example, the budget of the Federation Ministry of Labor and Social Policy for 2008 does not provide for allocations for the elderly that had been foreseen (the allocations are made for people with disabilities, civilian victims of war, concentration camp survivors, treatment of addiction, economic and social council). Budget of the Sarajevo Canton, which is the wealthiest canton of all, does not allocate any funds for protection of the elderly, whether in the form of

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<sup>38</sup> Socio-economic and health-economic conditions of life of elderly people in BiH, 2008 – „Osmijeh“ Gračanica, with support of the Help The Aged London

<sup>39</sup> Gračanica, Zavidovići, Livno, Nevesinje.

monetary assistance or in the form of covering/subsidizing costs of stay in institutions for the elderly.

**Article 28.**

***The right of workers' representatives to protection in the undertaking and facilities to be accorded to them***

*With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:*

- a) they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;*
- b) they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.*

***Obligations of BiH pursuant to Article 28.***

*The State is expected to stipulate by laws general and special legal provisions that would provide an effective protection of workers' representatives in the company from any actions that may harm them because of their activities in workers' organizations. Also, adequate legal remedies need to be made available to the workers' representatives.*

**Exercising the rights on the basis of Article 28.**

According to the applicable labor laws in both entities, the free and uninhibited activities of trade union representatives is formally provided for, however, information from practice suggest that this is not always the case. As we have already said above, there is a powerful trend, particularly with private employers, to disable activities of the trade unions and union's representatives. The workers who have intention to work as union representatives are threatened with contract termination, or various different attempts are made to discourage them in doing so. So, when it comes to implementation of this set of rights enshrined under the Charter, one may conclude that there is a wide gap between what is on the paper and what is actually going on, as is the case with many other legislative provisions. Undoubtedly, a lot more efforts should be made to implement the law in practice, because as the union representative say, implementation of already existing legislative provisions would greatly contribute to better protection of workers' rights in the broadest sense.

The changes and amendments to the Labor Law of the Federation, which are being drafted at this time, introduce a whole new chapter that more closely defines the union operations. Position of the Trade Unions with respect to this issue is that this area needs to be defined in a better and clearer way and all open questions concerning the method of registration and determination of representativeness of trade unions need to be answered. Since the changes are presently still at drafting stage, and since the representatives of trade unions take active part in the drafting process, it is very difficult to speak now on the effects of the proposed measures.



## **Recommendations**

Reform of social protection system in BiH is urgently required due to obviously expensive, bureaucratized, and at the same time ineffective and discriminatory protection system, which is not harmonised with international standards. Reform of the social protection system must be accompanied with active employment policy measures that would aim to achieve maximal possible level of employment of all, but especially of socially vulnerable categories of population.

The Law on Basics of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children FBiH needs to be conceptually changed and split into a number of new laws for each separate field. The new Law on Social Protection FBiH needs to clearly define a list of basic rights in the area of social protection and clear and precise criteria must be provided that would be based on needs, thus securing the rights of all vulnerable citizens without any discrimination.

New Law on Protection of Families with Children FBiH should envisage establishment of the Fund for Child Protection in FBiH regulating the methods for collecting funds and identify the rights that would be paid from this Fund, particularly the maternity benefits. Additionally this would impact the discriminatory children and maternity protection in BiH by harmonizing protection on the entity level, as Republika Srpska has an operational Fund for children protection.

A Law on Financial Social Assistance should be adopted that would define a financial social minimum and provide detailed criteria for monetary benefits for persons who are not able to realize the minimum needed for living for justified reasons, as well as the methods of proving the needs and identify the financial framework for such benefits.

The changes should be made to the Law on Health Insurance of FBiH and the Law on Employment Mediation FBiH should abolish the deadline of 30 days for registration with the Employment Service, the non-compliance with which leads to permanent loss of right to health insurance through the employment services. This would bring the law of the Federation in line with the laws that exist in the Republika Srpska.

As a part of process of adoption of the new Law on Health Protection in FBiH, a public discussion should be organized on the proposed Draft Law on Health Protection in FBiH that should involve all stakeholders in this field as well as other interested parties in the society.

Changes and amendments to the law on health care need to provide non discriminatory direct health insurance and health care to all persons with serious or multiple disability.

In order to resolve the problem of around 50,000 workers in FBiH who do not have health insurance, the Government of FBiH should comply with the requests of the Trade Union of the Metal Workers and conclusions of the Parliament of FBiH of April 21, 2009, to secure money for payment of unpaid health insurance contributions for workers in companies with majority state owned capital and to propose urgent and realistic solutions for payment of unpaid contributions for other employees.

The entity ministries of health and health insurance institutes need to adopt programs and action plans to inform citizens on their rights under health insurance and health care schemes that would provide timely and up to date information on changes to the existing and adoption of the new laws so that the citizens can exercise their rights under the laws. The information system should include all parties in the process of provision of health care, as well as the means of public information. In this sense, it is necessary to adopt a single law or laws at the entity level on the rights of the patients that would, *inter alia*, regulate the obligation to inform citizens on the procedures in realizing health protection and insurance.

The laws and new institutions need to provide for better protection of children and establish a Public Attorney for Children or Ombudsperson for the rights of the children, as well as adopt appropriate legislation and network of institutional support that would focus on combating juvenile delinquency.

Protection of the elderly should be regulated in line with standards from the Charter and other international obligations of BiH should be secured through adoption of a Strategy and Action Plan on Aging, as well as through adoption of necessary changes and amendments to the laws.

When adopting the new laws, one must clearly identify responsibilities of the cantons for adoption and implementation of cantonal laws that must be in line with the Federation and State laws, and ensure harmonization of entity laws to avoid discrimination of citizens based on their address. It is necessary to strengthen the infrastructure and capacities of institutions that monitor implementation of laws in practice. Cantonal authorities must secure funds from their budgets for implementation of the laws.

It is necessary to urgently strengthen the infrastructure and capacities of labor inspection at all levels in order to enable monitoring and implementation of the law. High fines should be introduced, as well as other measures imposed on employers who violate provisions under the Charter, national laws and rights of workers and avoid payment of benefits to the workers and prevent free organization and operation of the trade unions. It is necessary to introduce an open and transparent process and severely sanction the labor inspector who break the law or fail to act in accordance with law.

Changes and amendments to the labor laws in both entities should be initiated in order to achieve their harmonization with the provisions of the Charter through introduction of obligation of the employer to provide information and to consult with workers on economic and financial situation of the company and the proposed decisions that might affect interests of the workers and employment situation in the company.

It is necessary to immediately approach adoption of a harmonized development policy that would include all measures for achieving the highest sustainable employment rate at the level of the state and the entity. One will have to embark on educational reform that would suit the needs of labor market and that would establish a system of retraining of workers through employment services and introduce life long learning programs. Educational reform must include introduction of measures of positive action, such as stipends, educational quota for women, persons with disabilities and Roma in education for jobs for which there is demand in the labor market.

BiH has not used to a sufficient extent the knowledge, experience and resources that may be found in non-governmental organizations working in the area of social protection and with

vulnerable categories of population. A partnership should be established with non-governmental organizations to provide social services and conditions and methods of providing social and child protection services should be regulated by law and financing for such programs should be secured.