Number: Oi – K – SA – 08/22

Date: 18 January 2022

**QUESTIONNAIRE**

**“Violence and its impact on the right to health”**

I have the honour to address you in my capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolution 42/16.

I would like to invite you to respond to the questionnaire below. Submissions received will inform my next thematic report on “Violence and its impact on the right to health”, which will be presented to the Human Rights Council in June 2022.

The questionnaire on the report is available at OHCHR website in English (original language) as well as in French, and Spanish: (<https://www.ohchr.org/EN/Issues/health/pages/srrighthealthindex.aspx>).

All submissions received will be published in the aforementioned website, unless it is indicated that the submission should be kept confidential.

There is a word limit of 750 words per question. Please submit the completed questionnaire to ohchr-[srhealth@un.org](mailto:srhealth@un.org).. The deadline for submissions is: **18 January 2022**.

Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

**Contact Details**

Please provide your contact details in case we need to contact you in connection with this survey. Note that this is optional.

|  |  |
| --- | --- |
| Type of Stakeholder (please select one) | Member State  Observer State  Other (please specify) |
| Name of State  Name of Survey Respondent | Bosnia and Herzegovina  Institution of Human Rights Ombudsman of Bosnia and Herzegovina |

# Background

# Within the framework of Human Rights Council resolution 42/16, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has identified sexuality, gender based violence and femicide as one of her priorities during her tenure (See [A/HRC/47/28](https://undocs.org/A/HRC/47/28) paras 50-64). In compliance with her mandate and in line with this priority she has decided to devote her next thematic report to the 50th session of the Human Rights Council in June 2022 to the theme of “Violence and its impact on the right to health.”

# Objectives of the report

# The Special Rapporteur intends to shed light on who is seen as victims of violence, and who is affected by what type of violence, with emphasis on the violence experienced by women, children, LGBTI persons and conflict related gender based violence. She will also explore the role of men as perpetrators and their experience as victims of violence. Her analysis will look into the responses that survivors of violence receive with a focus on good practices, as well as the obligations, responsibilities, and protections that arise under the right to health framework and other relevant human rights in this connection. She will also report on emerging trends related to the impact of COVID-19 on all forms of violence and related responses.

# In her report, the Special Rapporteur will address, inter alia, issues related to gender based violence, (including inter-personal and intimate violence), as well as structural violence. She will also assess the impact on violence and the right to health of the criminalization of sex work, same sex relations, transgender persons, abortion, drug use etc. The Special Rapporteur would like to identify good practices and examples of comprehensive health responses to survivors of violence, and to identify lessons learned at the community, national, regional and international levels.

# Key questions

*You can choose to answer all or some of the questions below.*

*(750 words limit per question).*

When responding to the questions below, please use the glossary with definitions at the end of the questionnaire, and refer to all or some of the forms of violence in focus for this study as applicable in your country, countries or region in focus:

1. **Please describe, share data and information on the characteristics, number of cases, and the profile of victims and perpetrators in your country/ies or region(s) regarding:**
   1. **gender based violence against women**
   2. **gender based violence and other forms of violence against children:**
   3. **gender based violence against LGBTI or other persons based on real or imputed sexual orientation, sex characteristics, and gender identity:**
   4. **violence against persons with disabilities, including GBV.**
   5. **gender based violence against men**
   6. **conflict gender based violence, including sexual violence**
   7. **Please share analysis and available evidence on the impact of COVID on the above**

According to the data obtained from the electronic database of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina (hereinafter referred to as “IHROBiH”) on the number of complaints filed with IHROBiH, there were 14 complaints concerning violence that were received in 2021, with six of them concerning domestic violence. IHROBiH does not keep records of the other parameters requested.

IHROBiH points out that the position of women during the COVID-19 pandemic has become more complex because the economic consequences of the pandemic have a disproportionate effect on females given that the transition to doing business using information technologies does not suit equally men and women and especially bearing in mind the fact that women are predominantly employed in the service sector, such as trade. What is also worrisome is the position of women in rural areas, and the competent authorities have failed to take adequate measures to protect them during the pandemic. IHROBiH notes that crisis headquarters have had very limited consultations with the line ministries on the measures planned, in particular the ministries of internal affairs, social and health protection, social welfare centres, and citizen associations, which would be of importance for exercising the rights of members of the most vulnerable groups, including women.

1. **Please describe whether the legal framework prohibits and sanctions these forms of violence and the definitions and forms of violence included in the legal system. Please explain redress options for survivors of violence, (the pathway they go through if they decide to file a complaint), levels of impunity and if access to comprehensive physical and mental care for GBV-survivors is recognized as a form of reparation.**

The legal framework that governs the issue of domestic violence in Bosnia and Herzegovina comprises the following: RS Protection against Domestic Violence Act; FBiH Protection against Domestic Violence Act, BDBiH Protection against Domestic Violence Act, and criminal legislation: RS Criminal Code, FBiH Criminal Code and BDBiH Criminal Code. In case of gender-based violence, the Gender Equality Act of Bosnia and Herzegovina stipulates that it constitutes a criminal offence.

In the Republika Srpska, the Act on Amendments to the Protection against Domestic Violence Act was adopted on 17 September 2019, and it was harmonised with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). It is particularly important to point to the importance of amendments to Article 42, whereby the provision stipulating that the perpetrator of domestic violence shall be penalised for a minor offence is deleted. It thereby ensured that domestic violence acts in the Republika Srpska are treated solely as criminal offences, pursuant to Article 190 of the Republika Srpska Criminal Code.

In the Federation of Bosnia and Herzegovina, amedments to the Act on Amendments to the Protection against Domestic Violence Act were adopted on 29 July 2021, providing for “person of trust”. With a view to further improving the protection of domestic violence victims and harmonising legal solutions in the Federation of Bosnia and Herzegovina with the Istanbul Convention, the Gender Equality Commission in the FBiH Parliament’s House of Representatives proposed the Draft Protection against Domestic Violence Act, which was to be considered at this House's session on 27 July 2021. According to information available on the official website of the Parliament of the Federation of BiH[[1]](#footnote-1), the FBiH Parliament's House of Representatives accepted the Draft Protection against Domestic Violence Act and the proposing authority was put in charge of organising and conducting a public consultation exercise lasting 60 days.

As for the position of domestic violence victims, there is an undeniable need to further harmonise legislation of Bosnia and Herzegovina with the 2012 European Victims’ Rights Directive.

A number of documents have been adopted at the levels of Bosnia and Herzegovina and the entities which implement the principles enshrined in the Prohibition of Discrimination Act of Bosnia and Herzegovina and the Gender Equality Act of Bosnia and Herzegovina as a precondition for preventing violence against women. These two pieces of legislation are the framework for exercising equal rights and realising equal opportunities for everyone in Bosnia and Herzegovina, and they govern the system for protection from discrimination, *inter alia*, from gender-based discrimination. The Gender Equality Act of Bosnia and Herzegovina governs, promotes and protects gender equality, guarantees equal opportunities and equal treatment for everyone, irrespective of their sex, in both the public and private domains of society, and governs the issue of protection from gender-based discrimination. The Prohibition of Discrimination Act of Bosnia and Herzegovina establishes the framework for exercising equal rights and realising equal opportunities for everyone in Bosnia and Herzegovina and governs the system for protection from discrimination. Also, pursuant to the Constitution of Bosnia and Herzegovina and international human rights and fundamental freedoms standards, this law provides for the duties and responsibilities of the legislative, judicial and executive branches of power in Bosnia and Herzegovina, as well as legal entities and individuals exercising public authority (hereinafter referred to as “competent institutions of Bosnia and Herzegovina”), to ensure with their actions the protection, promotion and creation of conditions for equal treatment. Article 24 of the Prohibition of Discrimination Act stipulates that if other laws are not harmonised with this law, this law shall apply in procedures conducted under it, and paragraph 2 of the same article stipulates that all laws and general provisions shall be harmonised with this law within a year from the day it takes effect. The Act on Amendments to the Prohibition of Discrimination Act expands the grounds for discrimination in Article 2 paragraph 1.

1. **Please share examples of the types of structural and institutional violence with origins within the State, (perpetrated or condoned by the State) or perpetrated by those not representing or affiliated to the state in your country/ies of region, and who is affected. In particular, describe structural/institutional violence in medical settings against women and girls, LGBTI persons and persons with disabilities or any other individuals or groups relevant in your country/ies or regions.**

We would like to point out that in Bosnia and Herzegovina domestic violence (especially violence against women) is one of the major forms of human rights violations, but that at the same time it constitutes a criminal offence.

Cases registered with IHROBiH indicate there are certain problems in connection with the application of legislation, which include the unwillingness of victims to testify in cases against suspects/defendants, but also the still present understanding that domestic violence is a private matter.

1. **Please also share information on the impact of criminalization of sex work, same sex relations, transgender persons, abortion, drug abuse, harmful practices in obstetric care, female genital mutilation on the violence experienced by the affected individuals and their enjoyment of the right to health.**

IHROBiH, with the technical support from the United Nations Population Fund (UNFPA) and proMENTE social research, drafted a report entitled ‘Sexual and Reproductive Health and Rights in Bosnia and Herzegovina’[[2]](#footnote-2). This document is a short overview and analysis of the respect of human rights in the domain of sexual and reproductive health, drafted based on the research conducted in the course of 2019 and 2020.

1. **Please share information on the health and other type of responses provided by the State and/or other actors in your country/ies or regions in focus to survivors of each/some of the aforementioned forms of violence. Please assess what works well and not so well, and whether COVID-19 impacted the response and how.**

IHROBiH notes that crisis headquarters have provided very limited consultations with the line ministries on the measures planned, in particular the ministries of internal affairs, social and health protection, social welfare centres and citizen associations, which would be of importance for exercising the rights of members of the most vulnerable groups, including women.

1. **Please specify the budget allocated in your country/ies in focus, to health related response to survivors of all/some forms of violence mentioned above. Please indicate the percentage of the national budget devoted to this; the percentage of the international aid provided or received for this. Please explain the impact of Covid 19 to the funding of responses to all/some forms of violence in your State/institution.**

IHROBiH does not have the data requested.

1. **Please describe the needs of survivors of the abovementioned forms of violence as identified by your State/institution. Please share survivor-self identified needs and those of their families, with a focus on health emergency and long-term needs.**

IHROBiH is of the position that persons working in the police, judiciary and social welfare centres need to be continuously trained on how to act in domestic violence cases (especially in cases of violence against women), in order to be able to act and respond as adequately as possible in such cases. All citizens who have experienced some form of violence are encouraged by IHROBiH when they contact and approach it to file with the competent authorities reports against perpetrators. On the other hand, IHROBiH also invites the competent auhorities to process these cases of violence as a matter of priority and with special sensibility.

This is the very reason why IHROBiH on 7 April 2020, during the special measures enforced at the time of the COVID-19 pandemic, sent recommendations to civil protection centres at all levels of government, instructing them to work on raising awareness on the impact of social distancing and prohibition of movement on women who experience violence, but also to establish special services for everyone at risk by creating additional telephone lines and possibilities to file violence reports online.

1. **Please share examples of good practices and examples of comprehensive health responses to survivors of violence and indicate efficient multi-sectorial efforts at the community, national, regional and international levels by State or non-State actors.**

IHROBiH does not have the data requested.

1. **Please describe State and other actors initiatives and measures to prevent these forms of violence, specific budget allocated to prevention, and good practices in this regard.**

IHROBiH does not have the data requested.

Yours faithfully,

**INSTITUTION OF HUMAN RIGHTS OMBUDSMAN OF BOSNIA AND HERZEGOVINA**

**Glossary of definitions for the purpose of this questionnaire**

* Gender based-violence, is violence directed toward, or disproportionately affecting someone because of their gender or sex. Such violence takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering, threats of such acts, harassment, coercion and arbitrary deprivation of liberty. Examples include, sexual violence, trafficking, domestic violence, battery, dowry related violence, coerced or forced use of contraceptives, violence against LGBTI people, femicide, female infanticide, harmful practices and certain forms of slavery and servitude. Gender-based violence may be perpetrated against women, girls, men, boys, and non-binary persons. Gender-based violence, including sexual violence, may linked to a conflict.
* Gender based violence against women (including girls) refers to violence that is directed against a woman because she is a woman or that affects women disproportionately. (CEDAW, [General recommendation 19](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/GEC/3731&Lang=en), 1992). It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender based violence affect women to different degrees depending on their experience of varying or intersecting forms of discrimination including on the basis of ethnicity/race, socioeconomic status, age, disability, being lesbian, bisexual, transgender or intersex, etc. [(CEDAW, General recommendation 35, 2017).](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=enhttps://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en)
* Violence against children refers to all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse against children. (CRC, [[General Comment no 13](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en)](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en), 2011). Violence experienced by boys and girls may also be a form of gender-based violence.
* Gender based violence perpetrated against LGBTI or other persons based on real or imputed sexual orientation, gender identity, and /or sex characteristics includes killings, imposition of death penalty for homosexuality, death threats, beatings, corporal punishment imposed as a penalty for same-sex conduct, and/or transgender persons, arbitrary arrest and detention, abduction, incommunicado detention, rape and sexual assault, humiliation, verbal abuse, harassment, bullying, hate speech and forced medical examinations, including anal examinations, and instances of so-called “conversion therapy” and forced/coerced medically unnecessary procedures on intersex children and adults. (Report of the Independent Expert on protection against sexual orientation and gender identity, ([A/HRC/38/43](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/43), 2018, [OHCHR, Born Free and equal](https://www.ohchr.org/Documents/Publications/Born_Free_and_Equal_WEB.pdf), OHCHR, [Background note on human rights violations against intersex people).](https://www.ohchr.org/Documents/Issues/Discrimination/LGBT/BackgroundNoteHumanRightsViolationsagainstIntersexPeople.pdf)
* Conflict related gender-based violence: Conflict can result in higher levels of gender-based violence against women and girls, including arbitrary killings, torture, sexual violence and forced marriage. Women and girls are primarily and increasingly targeted by the use of sexual violence, including as a tactic of war. Men and boys have also been victims of sexual violence, especially in contexts of detention. Conflict related sexual violence refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict. That link may be evident in the profile of the perpetrator, (often affiliated with a State or non-State armed group, which includes terrorist entities); the profile of the victim, ( frequently an actual or perceived member of a political, ethnic or religious minority group or targeted on the basis of actual or perceived sexual orientation or gender identity); the climate of impunity, (generally associated with State collapse, cross-border consequences such as displacement or trafficking, and/or violations of a ceasefire agreement). The term also encompasses trafficking in persons for the purpose of sexual violence or exploitation, when committed in situations of conflict”. (Report of the Secretary General [S/2019/280](https://undocs.org/en/S/2019/280), 2019.)
* Systemic or institutional violence refers to institutional practices, laws or procedures that adversely affect groups or individuals psychologically, mentally, culturally, economically, spiritually, or physically. This violence has its origins within or outside the state, and is a major obstacle for the realization of the right to health, a right which is interconnected with rights to the underlying determinants of health.

1. <https://predstavnickidom-pfbih.gov.ba/bs/page.php?id=2993> [↑](#footnote-ref-1)
2. <https://ombudsmen.gov.ba/documents/obmudsmen_doc2021041420064931ser.pdf> [↑](#footnote-ref-2)