**Response to the Questionnaire on deprivation of liberty of women and girls**

**I. Justice system**

**1. What are the main causes for women coming into conflict with the law and facing the associated deprivation of liberty, including pre-trial detention? Which are the groups of women who are most vulnerable and why? Please list the types of offenses for which women, or any particular group of women, are typically charged with, including administrative offenses.**

Most of the women convicts are charged with crimes with elements of violence. The criminal acts of murder are related to long-term exposure to certain types of violence - most often by the spouses. Second most common are drug-related offenses (more specifically, “unauthorized production and marketing of narcotic drugs”).

In the past few years, number of the criminal offenses by women in the field of economic crime has increased. The most common causes are financial vulnerability and an attempt to resolve the existential situation in an incriminating way, because of inability to find acceptable solutions in accordance with social and legal norms.

In general, number of punishable offenses committed by women is significantly lower than by men. Of the total number of criminal reports pertaining to known adult perpetrators in Bosnia and Herzegovina in 2016, eight per cent perpetrators are women.

**2. Please indicate if there are cases of women facing detention in relation to civil law suits and identify the particular groups of women mostly affected.**

There have been no cases of women facing detention in connection with civil law suits. According to the law, detention can be used only in criminal proceedings.

**3. What are the main challenges for women’s access to justice, including, for example, the availability and quality of legal representation, the ability to pay for bail, and the existence of gender stereotyping and bias in judicial proceedings?**

There are no obstacles to women's access to justice, either in the BH legislation, nor in the practice of the prosecutor's offices and courts, given the fact that men and women have absolutely equal legally prescribed rights. However, in practice there are numerous challenges to women’s access to justice and findings of several studies show that gender does indeed influence the administration of justice, routine courthouse operations, and professional relations. A 2011 OSCE report[[1]](#footnote-1) found that BiH sentencing practices in domestic violence cases were at or below the minimum penalty prescribed by BiH law; this included an overuse of suspended sentences. A 2014 study by Atlantic Initiative[[2]](#footnote-2) revealed that while in the interviews judges asserted that they apply sentences exclusively on the basis of facts and their relationship to the written law; the on-line questionnaire results revealed a tendency to also consider non-legal social factors when determining a sentence. For example, 81% of respondents (out of 96) indicated that whether the defendant is apologetic is relevant to sentencing. In addition, 35% of respondents indicated that whether the victim is argumentative or difficult is relevant. When asked in which types of domestic violence cases jail time should be avoided, 38% of questionnaire respondents selected ‘when the defendant is the primary breadwinner.’ The same research suggests also that gender plays an important role in how witness credibility is determined – and what kinds of questions witnesses are asked.

**4. What have been the main drivers for the increasing or decreasing of the female prison population in your country in the past decade? To what extent are non- custodial measures used, in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)?**

Female prison population in the past decade has not increased nor decreased, but has been more and less steady.

Non-custodial measures for women in BiH include home detention with electronic control. This measure is only available in one part of BiH (in the Federation of BiH).

**II. Other institutions**

**1. What other institutions outside the justice system exist in your country wherein women and girls are institutionalized on grounds such as care, correction, protection and prevention against potential harms, etc.? Please list the groups of women and girls who are most concerned in each situation.**

An adequate post-penal acceptance of a former convict, such as positive family situation or employment opportunities, reduces significantly probability of recidivism. Post-penal treatment is managed by the municipal Centre for Social Work in the municipality where person resides.

**2. Please explain the decision-making process for the institutionalization of women and girls in each situation, including the role of women and girls themselves in the decision on institutionalization. Please highlight any good practices in terms of enabling women to exercise agency within institutional systems, with due respect to their rights?**

Convicted women belong to a group of vulnerable categories of prisoners, due to deprivation of family relationships. That is why there is a continuous effort on behalf of the detention institutions to maintain or strengthen family relations, in accordance with the law and applicable regulations, in order to successfully conduct penological treatment.

One of the specificities of female convicts is that among them there may be pregnant women who give birth during the detention. The prison provides funds and undertakes all necessary measures to provide care and conditions for both mother and new-born child. The child remains with the mother in the institution, until three years of age.

In Bosnia and Herzegovina, women are sent to the two detention institutions: East-Sarajevo Penitentiary and the Penitentiary Institute of Tuzla. According to the Institution of Ombudspersons for Human Rights of Bosnia and Herzegovina, conditions for the enforcement of criminal sanctions against women have been significantly improved in recent years, since the newly-built facility for women was opened at the Penitentiary Institute East Sarajevo, which was built in accordance with standards that ensure the full enjoyment of the rights of women deprived of liberty in accordance with the European Prison Rules, with a specially designed space for women with babies and young children.

In the Penitentiary Institution Tuzla, following the recommendations of the Ombudsperson, measures were implemented for improvement of conditions for serving the sentence and the improvement of attitude of staff towards women deprived of their liberty. Women detainees in this institution formerly complained of a lack of understanding of their specific needs, which they have in their biological determination, that is, they do not receive sufficient quantities of hygienic necessities. In this regard, the Ombudspersons issued a recommendation to the Correctional Institution of Tuzla to immediately improve the supply of hygienic necessities to women deprived of their liberty, specific to their biological determination. This recommendation has been implemented and women deprived of their liberty serving the prison sentence in this institution no longer emphasized this ground of appeal.

In these detention institutions, however, women are exclusively engaged in traditional women's jobs, such as sewing and handicrafts, or performing help in the kitchen and maintaining hygiene.

According to the Ombudsperson, in Bosnia and Herzegovina there is still a problem related to the maintenance of placing the minors (girls aged 14 to 18 at the moment of commission of the criminal offense) to the correctional facility, because of lack of adequate conditions.

In early 2018, a Department for execution of juvenile imprisonment and the correctional home, for both female and male detainees, was established within the Penitentiary-correctional facility of the semi-open type Orašje. On the occasion of the visit of the Ombudsperson to this institution, in June 2018, a female juvenile was found to be in daily contact with male juveniles, because the facilities for male and female juveniles are physically separated, but are within the same complex and are not separated by any physical obstacles.

Additionally, within the Department for Women in the Penitentiary Institute East Sarajevo a Department of the correctional centre for women and juveniles has been established.

The Justice Sector Reform Strategy in Bosnia and Herzegovina 2014 – 2018, was adopted in 2014 and places a significant focus on improving the efficiency of the prison system throughout BiH. "Pillar II" of the Strategy is dedicated to enforcement of criminal sanctions and envisages a series of concrete activities for development of a more harmonized system of criminal sanctions that are in line with human rights standards. Such activities are divided into three strategic areas, which are related to: management of the system for the enforcement of criminal sanctions, overcrowding of prison and greater application of international standards in prisons in BiH.

Strategic programs of the Strategy include: Improving the treatment system for certain categories of prisoners (minors, women and persons who are subject to mandatory treatment); improving the health care system for all prisoners, establishment of an independent prison labour inspection system in Bosnia and Herzegovina and development and implementation of a coherent system of education and training of prison staff in Bosnia and Herzegovina, and the development of a legally defined and harmonized system of amnesty and pardon, in accordance with international standards.

In order to implement the mentioned strategy, the Council of Ministers of BiH, at the proposal of the Ministry of Justice of Bosnia and Herzegovina, adopted the Action Plan for the implementation of the Strategy for Justice Sector Reform in Bosnia and Herzegovina 2014 - 2018. The Action Plan defines a set of reform measures that the competent institutions are implementing in the areas of justice, enforcement of criminal sanctions, access to justice, support to economic development, as well as issues related to coordination, good governance and responsibility of the justice sector in BiH. These measures are aimed, inter alia, at improving the efficiency and openness of the work of judicial institutions and better application of international standards in the justice sector.

As an independent body of the Parliamentary Assembly of Bosnia and Herzegovina, an Independent Commission was created, for monitoring of the living conditions in the detention institutions, acting and respecting the human rights of persons subject to criminal sanctions, and other measures pronounced in the criminal procedure by the Court of Bosnia and Herzegovina, the foreign courts for the acts stipulated by the criminal law of Bosnia and Herzegovina or an international agreement signed by Bosnia and Herzegovina, or another court in accordance with the law of Bosnia and Herzegovina.

The independent commission monitors work of the institutions, independently or together with the inspectors or other supervisory bodies, as well as in cooperation with international and other institutions responsible for monitoring and exercising human rights and fundamental freedoms in accordance with the law and relevant international documents. The Commission submits the Annual Work Report to the Parliamentary Assembly of BiH and the Ministry of Justice of BiH, with the aim of undertaking appropriate actions or measures in accordance with the law.

In the recommendations of the Independent Commission Report submitted to the Parliamentary Assembly of BiH for 2017[[3]](#footnote-3), it is stated, inter alia, that the competent authorities of the Federation of BiH, the Republika Srpska and the Brčko District of BiH should harmonize their legal and other regulations in this area with the BiH Law of Execution of Criminal Sanctions, with aim to ensure equal treatment of prisoners and detainees throughout the territory of Bosnia and Herzegovina. Another recommendation called for the competent authorities of the Federation of BiH and Republika Srpska to solve the problem of lack of staff in penitentiary institutions in BiH.

**III. Forced confinement in private contexts**

**1. What forms of forced confinement of women and girls exist in a private or social context sanctioned by family, community or group of individuals such as abduction, servitude, guardianship and “honour” practices, trafficking, home detention, “witch camps”, widowhood rites, etc.?**

**2. Please identify the groups of women and girls who are most affected by these situations.**

**3. What is the role of law and policy (including customary law and authorities) in your country concerning these types of confinement?**

According to the latest Amendments to the Criminal Code of BiH, the criminal offense of Trafficking in Human Beings, which contains elements of exploitation in the country in which the injured party (victim of trafficking) does not have citizenship or residence, has remained in this criminal law, while other criminal offenses of trafficking are covered by the laws of lower tiers of government (two entities and the Brčko District). Victims of the criminal offense referred to in the Criminal Code of BiH are persons without citizenship of BiH or residence in BiH or a BiH citizen abroad.

Criminal Laws of the lower tiers of government (Federation BiH, Republika Srpska and Brčko District) have been harmonized with the BiH Criminal Code. The above-mentioned amendments also sharpen the penalties for the criminal offense, so for the basic form of the offense there is a punishment of at least 5 years in prison (instead of the previous 3 years), while for trafficking of minors the prescribed imprisonment sentence is at least 10 years (instead of the previous 5 years).

A new provision was added in the BiH Criminal Code, which stipulates that a victim of international trafficking, who was forced by a perpetrator of a criminal offense to participate in the commission of another criminal offense, will not be prosecuted if such an act was directly attributable to her/her status as a victim of international trafficking. The organization of international trafficking in human beings is prescribed by a separate article, but the sentence has remained the same (at least 10 years or long-term imprisonment).

In 2015, the Council of Ministers of BiH adopted the Action Plan for Combating of Trafficking of Human Beings in BiH (2016 - 2019). This plan is aimed at improving the system of support to the fight against trafficking of human beings, and effectively prosecuting trafficking of human beings and related crimes, preventing, effectively protecting and assisting victims of trafficking, and strengthening partnerships among actors involved in combating this problem. A multidisciplinary approach to the implementation of the Plan implies the involvement of all relevant institutions at all levels of the BiH government organization. In addition, the Council of Ministers of BiH has adopted the Strategy on Migration and Asylum and the Action Plan (2016 - 2020), which contains measures and activities aimed at reducing human trafficking in BiH.

**IV. Migration and crisis situations**

**1. What are the specific risks of detention and confinement encountered by women on the move in the context of asylum seeking, internal displacement and migratory processes?**

**2. What is the policy relating to the administrative detention of women migrants including pregnant women and women with children?**

The BiH Law on Foreigners was passed in 2015 and its provisions were harmonized with the provisions of the Council of Europe’s Convention on the Action against Trafficking in Persons and Directive 2004/81 EC of the European Parliament on the approval of residence permits issued to third-country nationals who are victims of trafficking in human beings or are being helped to illegally migrate, and who cooperate with the competent authorities. The provisions relate to protection and assistance to victims of human trafficking who have been granted temporary residence in BiH for humanitarian reasons.

Law on Foreigners and the Law on Asylum of BiH have been harmonized with the Law on Gender Equality in BiH. Ministry of Security of BiH provides the individuals, who have status of an international protection seeker, with accommodation, food, access to health care, free legal aid, psychosocial support, access to primary education, and access to the labour market for those who did not solve the request within the legally prescribed deadline. Psychosocial support is provided to all persons under international protection in BiH through specialized counselling (individual or group). The law prohibits discrimination on grounds of sex, and special attention is paid to the vulnerable groups (women victims of trauma, women victims of various forms of violence, etc.) for which there is a danger of abuse and sexual exploitation. Also, in the Migration and Asylum Strategy and the Action Plan (2016-2020) there are activities foreseen related to preparatory actions, construction and equipping the facilities for the accommodation of the vulnerable categories of foreigners.

Additionally, the Institution of Ombudsperson for Human Rights of Bosnia and Herzegovina is currently dealing with the issue of irregular migration in Bosnia and Herzegovina, with special emphasis on the position of women irregular migrants, including pregnant women and women with children, and is planning to include all relevant information and knowledge in the forthcoming Special Report on the situation in the field of migration which is in the final stage of preparation.

1. OSCE Mission to Bosnia and Herzegovina, Ensuring Accountability for Domestic Violence, 32–33. [↑](#footnote-ref-1)
2. http://atlanticinitiative.org/wp-content/uploads/2018/03/Gender\_and\_the\_Judiciary\_engl-1.pdf [↑](#footnote-ref-2)
3. https://www.parlament.ba/committee/read/27 [↑](#footnote-ref-3)