

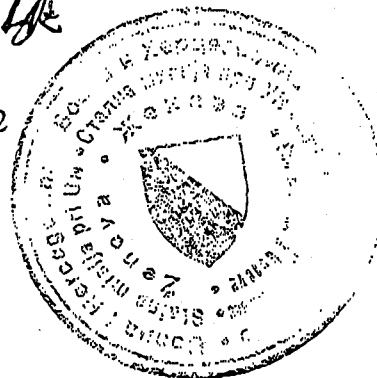
**Permanent Mission of Bosnia and Herzegovina
to the United Nations
in Geneva**

**MIS-UN-GVA
202-03-37- 95/2012**

The Permanent Mission of Bosnia and Herzegovina to the United Nations at Geneva presents its compliments to the United Nations Office of the High Commissioner for Human Rights, and referring to the letter of the Chair-Rapporteur of the Working Group on discrimination against women in law and in practice Mr. Karim Ghezraoui, dated 8 December 2011, has the honor to forward response of Bosnia and Herzegovina.

The Permanent Mission of Bosnia and Herzegovina to the United Nations at Geneva avails itself of this opportunity to renew to the United Nations Office of the High Commissioner for Human Rights the assurances of its highest consideration. *LJE*

Geneva, 7 February 2012



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BOSNA I HERCEGOVINA

Ministarstvo za ljudska prava i izbjeglice

*Agencija za ravnopravnost spolova
Bosne i Hercegovine*



BOSNIA AND HERZEGOVINA

Ministry for Human Rights and Refugees

*Gender Equality Agency of
Bosnia and Herzegovina*

**REPORT OF BOSNIA AND HERZEGOVINA TO THE UNITED
NATIONS OFFICE OF THE HIGH COMMISSIONER FOR
HUMAN RIGHTS**

**DISCRIMINATION AGAINST WOMEN IN LAW AND IN PRACTICE IN
PUBLIC AND POLITICAL LIFE**

**INFORMATION ON PRACTICES AND LEGISLATIVE AND POLICY REFORMS ADOPTED FOR
THE ADVANCEMENT OF WOMEN'S RIGHTS AND GENDER EQUALITY IN TIMES OF
POLITICAL TRANSITION**

Introduction

Pursuant to Human Rights Council resolution 15/23, this Report contains information on practices and legislation to eliminate discrimination against women in public and political life with particular focus on efforts undertaken in times of political transition in Bosnia and Herzegovina (BiH). It will address the BiH approaches to the following issues:

1. Constitutional and other legislative initiatives and reforms put in place to promote women's rights and gender equality, including through the revision and repelling of discriminatory provisions in the legislation;
2. Strengthening the framework of state institutions, machineries and mechanisms to implement actions in order to fight against all forms of discrimination and violence against women;
3. Women's political participation, on equal terms with men, in the transitional and post-transitional process at all level of decision-making, including through the adoption of temporary special measures;
4. Women's access to justice, including transitional justice mechanisms.

1. Constitutional and other legislative initiatives and reforms put in place to promote women's rights and gender equality, including through the revision and repelling of discriminatory provisions in the legislation

1.1. Constitution of Bosnia and Herzegovina and Entity Constitutions

The Constitution of Bosnia and Herzegovina in its Article II, which refers to human rights, under paragraph 4 contains the provision on prohibition of discrimination regarding recognition, enjoyment and protection of human rights. Enjoyment of rights and freedoms envisaged under this Article or international agreements listed in the Annex I of this Constitution¹, shall be guaranteed to all persons in Bosnia and Herzegovina without any form of discrimination such as: gender, race, language, religion, political or other opinion, national or social background, connection to national minority, property, birth or any other status. Pursuant to Article II, paragraph 2: - Rights and freedoms are envisaged in the European Convention for Protection of Human Rights and Fundamental Freedoms and its Protocols that are directly applicable in Bosnia and Herzegovina. These acts also have precedent above all other Laws. The Constitution of BiH also confirms the equality of women and men under its provision on prohibition of discrimination, but also directly through the international instruments related to gender equality (UN CEDAW Convention) that are in force in Bosnia and Herzegovina, and included in Annex I to the Constitution of BiH.

The Constitution of Bosnia and Herzegovina and Entity Constitutions define a fundamental right to protection against discrimination. All citizens of Bosnia and Herzegovina are guaranteed the right of participation in political parties, participation in public affairs, equal access to public services, and the right to vote and to be elected. However, the Constitution of Bosnia and Herzegovina does not

¹ Convention for Protection of Human Rights and Fundamental Freedoms; 1948 Convention on the Prevention and Punishment of the Crime of Genocide; 1949 Geneva Conventions I - IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I - II thereto; 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto; 1957 Convention on the Nationality of Married Women; 1961 Convention on the Reduction of Statelessness; 1965 International Convention on the Elimination of All Forms of Racial Discrimination; 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto; 1966 Covenant on Economic, Social and Cultural Rights; 1979 Convention on the Elimination of All Forms of Discrimination against Women; 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; 1989 Convention on the Rights of the Child; 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; 1992 European Charter for Regional or Minority Languages; 1994 Framework Convention for the Protection of National Minorities

provide for a general obligation to ensure a certain representation of the sexes (quota, proportion, parity, etc.) in public life, nor does it define a special obligation regarding representation in the legislative, executive and judicial branches; on the other hand, it does include provisions prohibiting gender-based discrimination in enjoying the rights and freedoms safeguarded by the Constitution of BiH and international agreements listed in Annex I to the Constitution.

In 2007 a process of constitutional reforms initiated by international community has commenced in BiH. The process involved presidents of parliamentary political parties. There were no women amongst politicians working on constitutional reforms.

The Agency, in cooperation with representatives of national minorities, persons with disabilities and women NGOs, has organised a Regional Conference on Gender equality and equal opportunities as a segment of human rights in the light of constitutional changes in BiH. The presenters at the conference were leading regional experts in the area of constitutional reforms and political processes. This was followed by a comparative analysis of constitutional systems in five countries with recommendations to integrate international standards for gender equality into the constitutions. The Agency has established a working group, which has developed constitutional amendments, in accordance with the said recommendations. The amendments were widely distributed to all parliamentarians and political parties. Considering that the constitutional reform process has not taken place, the said amendments have not been incorporated into the Constitution.

The Gender Centre of the Federation of BiH, in cooperation with the Gender Equality Agency of BiH and the Gender Centre of Republika Srpska has continued the process of including the principle of gender equality into constitutional reforms. Meetings with women parliamentarians and representatives of the national minorities and vulnerable groups were held. The aim of the meetings was to clearly and comprehensively define guidelines for constitutional reforms and their inclusion into entity constitutions.

1.2. Law on Gender Equality in Bosnia and Herzegovina

The Gender Equality Law (GEL) was adopted in 2003 and is the most important instrument for gender equality as it introduces a gender perspective in public policies and legislation. The Law was created to follow CEDAW in all aspects and has been an important tool for gender equality over the last eight years. The Law promotes gender equality in private and public sphere and prohibits discrimination based on sex. The Law was amended in 2009. **The Amendments to the Law on Gender Equality in BiH (Official Gazette of BiH, 102/09)**, redefined the provisions and definitions of the Law on Gender Equality in BiH (Official Gazette of BiH, 16/03), which are now even better harmonised with international standards and directives in this field for the purpose of its simpler practical application. The Amendments specifically emphasise and more precisely set obligations of the authorities at all levels of government in the process of achieving principle of gender equality. The obligation to establish body, and/or appoint persons, which would within their capacity, consider all issues regarding implementation of the Law on Gender Equality in BiH and the GAP BiH have been provided. The Law defines both direct and indirect discrimination and the definition of the gender based violence is harmonised with the definition contained in the General Recommendation No. 19 of the UN Committee for Elimination of All Forms of Violence against Women, as well as with the Council of Europe Recommendation Rec (2002)5.

Law on Gender Equality in BiH allows introduction of special provisional measures aimed at achieving gender equality in practice, and they must be proportionate, appropriate and necessary. In addition, Article 24 emphasises the obligation of all relevant state, entity, cantonal authorities and local self-governments to adopt special measures in laws and other regulations, other documents, policies,

strategies and plans that regulate specific areas of social life. All authorities need to evaluate in their areas of responsibilities whether men and women are equal and if not they need to adopt special measures in order to achieve gender equality.

Positive action measures in favour of the under-represented sex may be taken for ensuring a balance in the participation of men and women where they are not present in at least of 40%, but they are also allowed in other areas. However, it is necessary to invest additional efforts in order to apply this provision in practice.

A number of activities have been implemented to harmonize relevant laws with the Law on Gender Equality in BiH. Gender institutional mechanisms have prepared or provided expert support in the harmonization process of laws, strategies and programs in the field of labor, employment, pension-disability protection, media, and other areas at all levels of government with the Law on Gender Equality and international gender equality standards.

1.3. Law Prohibiting Discrimination in Bosnia and Herzegovina

The Law on Prohibition of Discrimination of Bosnia and Herzegovina, adopted in 2009, sets a framework for achieving equal rights and possibilities to all persons in BiH and regulates the system of protection from discrimination. It aims to include a wider spectrum of stakeholders and tackle discrimination cases putting a special emphasis on municipal courts. As a result, cases of direct and indirect discrimination, harassment, sexual harassment, etc. can now be taken in front of the municipal courts where the applicant will be able to initiate a civil procedure. In cases of discrimination a lower standard of proof was introduced to facilitate the law suit and there is a role for the Ombudsman for Human Rights of Bosnia and Herzegovina (as the National Human Rights Institution) in these proceedings. Collective complaints procedure allows civil society organizations to file law suits if there are issues of potential discrimination of groups.

Article 5 of the Law on Prevention of Discrimination in BiH defines exceptions to the principle of equal treatment, as a measure of positive action, so that the legislative measures and actions will not be considered discriminatory if they accomplish a legitimate aim and if there is a reasonable proportionality between the means employed and the aim to be realised.

Article 4 of the Law on Prohibition of Discrimination of Bosnia and Herzegovina defines forms of discrimination which are not contained in the Law on Gender Equality in BiH, such as: mobbing, segregation, as well as instruction to discriminate and assistance to others in discrimination, which are also considered as forms of discrimination.

The Law on Gender Equality in BiH and the Law on Preventing Discrimination in BiH are mutually harmonised in part regarding referring victims of discrimination to use available legal remedies for protection of rights provided for in the said laws (lawsuits, competencies, deadlines, burden of proof, victimisation, and other). In accordance with the Recommendation No. 34 CEDAW/C/BiH/CO/38 (Annex V) this meant establishing of a mechanism for protection of rights guaranteed by the Law on Gender Equality in BiH before competent courts.

1.4. Election Law of Bosnia and Herzegovina

There is still in BiH a traditional approach to the position of women and socially established patterns of behaviour which is, in relation to the lack of legislation, generally causing the under-representation and under-participation of women in politics and public life. The legislation at all levels of government, which regulates the area of equal participation of women and men in decision-making positions, is not fully compliant with the Law on Gender Equality in BiH. This is evident from the example of the Election Law of BiH. This Law does not include any provisions that would directly discriminate against either women or men in their candidacy and election into authorities. The Law retained the

provision that refers to the order of the less represented gender on candidate lists. Article 4.19 requires political parties or coalitions, during the making of their candidates list, to ensure the inclusion of at least 1/3 members of the less represented gender (a defined quota) in prescribed places, but it does not provide for a time limit regarding the application of this provision. The Law also includes an obligations of the Central Election Commission to disaggregate by gender all statistical data on individual election stages, as well as an obligation to ensure that municipal election commissions and election boards include at least 1/3 members of the less represented gender. However, this provision does not apply to the composition of the Central Election Commission, which carries the greatest responsibility for lawful implementation of all election activities.

On the proposal of the Gender Equality Committee of the Parliamentary Assembly of BiH there were **Amendments to the Election Law of BiH** proposing the closure of the candidate lists. The Agency has developed for the needs of Committee a comparative analysis of electoral systems that have different approaches to ensuring women's representation in legislative bodies, with models and estimates of the impact to the electoral system in BiH. This analysis showed that the solution proposed by the Committee would ensure the participation of the less represented gender in the percentage of at least 35%. Although twice considered in the House of Representatives of the Parliamentary Assembly of BiH these amendments were not accepted.

1.5. Law Amending the Law on the Financing Political Parties

As one of the measures to increase the number of women in legislative bodies in accordance with Recommendation (2003) 3 of the Committee of Ministers of the Council of Europe, the Parliamentary Assembly of BiH, upon proposal of the Agency, has adopted the **Law Amending the Law on the Financing Political Parties**² which now in Article 10 provides: "The financing of parliamentary groups represented in the Parliamentary Assembly of Bosnia and Herzegovina shall be distributed in the manner that 30% of the funds is distributed equally to all parliamentary groups, 60% of the total amount shall be distributed equivalent to the number of seats each parliamentary group holds at the time of distribution, while 10% of the total amount is distributed to parliamentary groups proportional to the number of seats belonging to the less represented gender. The Central Election Commission shall determine which gender is under-represented according to the official elections results."

1.6. Regulations defining composition of executive authorities at all levels of government, and regulations defining governmental, ministerial and other appointments from local to state levels

Review of regulations on the composition of executive authorities in Bosnia and Herzegovina has shown that these regulations do not include provisions guaranteeing equal representation of men and women in executive authorities. State and entity-level regulations³ on governmental, ministerial and other appointments define that there can be no gender-based discrimination while defining standards and implementing such standards in the procedure of electing a candidate for a certain function. However, the principles that must be respected at final appointment (legality, quality, independent assessment, openness and transparency) do not include the principles of equal representation of the sexes in public functions. Gender institutional mainstreaming mechanisms in BiH have launched initiatives to amend regulations that define the composition of executive authorities, as well as regulations on governmental, ministerial and other appointments to harmonize them with international standards that require equal representation of men and women in decision making processes in all

² (Official Gazette of BiH, 102/09).

³ The Law on Ministerial Appointments, Appointment of Members of the Council of Ministers and Other Appointments of Bosnia and Herzegovina ("Official Gazette of BiH", No. 37/03), the Law on Ministerial, Governmental and Other Appointments of the Republika Srpska ("Official Gazette of the RS", No. 41/03) and the Law on Ministerial, Governmental and Other Appointments of the Federation of Bosnia and Herzegovina ("Official Gazette of F BiH", No. 34/03).

spheres of society. However, these initiatives have not been accepted. Nonetheless, it must be noted that during the drafting of regulations that define relations in certain areas and which establish appropriate bodies (committees, boards, etc.), competent state and entity level authorities have accepted suggestions made by gender institutional mechanisms concerning the need to define an obligation to ensure equal representation of the sexes in those bodies.

1.7. Labour laws in Bosnia and Herzegovina

The applicable laws of labour and employment⁴ in BiH prohibit any discrimination on the basis of the right to work and employment. BiH is a party to 81 International Labour Organisations' Conventions in the field of labour (ILO), and 77 of them are in force. Legislation in the field of labour and employment is, to a large extent, harmonized with the BiH Law on Gender Equality. Thus, there are no in formal/direct forms of discrimination of women in the field of employment, labour and access to all forms of resources. However, practice shows various forms of gender based discrimination, harassment, and sexual harassment by colleagues, supervisors or the employer. Women, particularly younger female employees, usually do not speak out about that nor initiate processing of such cases, because of the fear of losing job. What is important to emphasise that there are new mechanisms in place, which allow redress in cases when a person or a group feels discriminated, harassed or sexually harassed, but there is still a need to promote these mechanisms.

The Labour Law in the Institutions of BiH⁵ regulates the rights, obligations, responsibilities, salaries and other remuneration in the institutions of BiH. Article 6 of the Law prohibits any form of discrimination against a person seeking employment and also against a person already employed, including gender-based and sexual discrimination. The criteria for defining the structure of employees have no reference to gender representation. It is specifically prohibited to request a pregnancy test for women applying to a publicly advertised vacancy or for women already employed. The Law defines a special protection for pregnant and breastfeeding women, the right of father to parental leave and other rights related to parenting, and rights of single parents, especially those with children with disabilities.

Law on Civil Service in the Institutions of BiH⁶ regulates the legal status of civil servants. The has provisions which relate to achieving equal gender representation in commissions for appointing civil servants, misdemeanour liability of civil servants in the case of discrimination, gender based violence or violence based on sexual orientation, gender based harassment or sexual harassment, and the incorporation of gender sensitive language.

In addition, BiH legislation related to the labour and employment regulate protection of women and motherhood, and provide that during pregnancy, childbirth and child care, women are entitled to maternity leave for a period of twelve (12) continuous months, and the same applies to the employees of common institutions in BiH. The rights to remunerations paid during maternity leave to women working in the institutions of BiH depends on the permanent residence of a mother, and/or the entity/canton where payment of contributions is conducted. Thus, Agency has initiated amendments to the Law on Salaries and Allowances in the Institutions of BiH with the aim to equalise the rights for all persons, regardless of the place of residence and resolve this issue in a systematic manner. The issue of realisation of remunerations during maternity leave failed to get enough (entity) support in the Parliamentary Assembly of BiH, therefore appellate proceedings before the Constitutional Court of BiH was initiated by the chair of the Gender Equality Committee of the House of Representatives of the Parliamentary Assembly of BiH. The Constitutional Court of BiH has issued

⁴ The Law on Civil Service, the Labour Law and the Law on Salaries in the Institutions of BiH, the Labour Laws of Entities and Brčko District

⁵ "Official Gazette of BiH", 26/04, 07/05, 48/05, and 50/08

a decision finding Article 35 of the Law on Salaries and Allowances in the Institutions of BiH **discriminatory and contrary to Article II/4 of the Constitution of BiH**. It is of great importance for realisation of gender equality in BiH the fact that the Constitutional Court of BiH has reiterated that **"maternity leave in particular relate to women's rights not to be discriminated against and to enjoy adequate conditions of work."** This Decision represents a great progress in realising the principle of gender equality in BiH. Having found discrimination in exercising right to maternity leave in the institutions of BiH the Constitutional Court of BiH has sent a clear message that **"maternity leave must be equal for all employees, regardless of place of residence"**, and that any deviation from this principle **"represents departure from the common European standards."** The Constitutional Court of BiH has in this Decision reiterated the importance of the UN Convention on the Elimination of All Forms of Discrimination against Women in the legal system of BiH. In its Decision the Court also cites a part of the Concluding Comments and Recommendations of the UN CEDAW Committee for BiH, which require **"harmonisation of the existing legislation with the Law on Gender Equality in BiH"**. The decision of the Constitutional Court is applied in practice since September 2010.

1.8. Laws on Protection against Domestic Violence

The Law on Gender Equality in BiH recognises domestic violence as a form of gender based violence, and in Article 6 explicitly states that gender-based violence includes violence that occurs within the family or household. In accordance with the General Recommendation No. 19 of the UN CEDAW Committee and the Council of Europe Recommendation (2002)5, the Law defines "sexual violence" as "any activity which causes or may inflict physical, psychological, sexual or economic harm or suffering, as well as threats of such actions that impede a person or group of persons to enjoy their human rights and freedoms in the public and private life".

Entity laws on protection from domestic violence: the Law on Protection from Domestic Violence of the Federation of BiH⁷ and the Law on Protection from Domestic Violence of Republika Srpska⁸ define the measures and mechanisms of protection in cases of domestic violence.

2. Strengthening the framework of state institutions, machineries and mechanisms to implement actions in order to fight against all forms of discrimination and violence against women

2.1. Institutional gender mainstreaming mechanisms (IGMM)

The Institutional gender mainstreaming mechanisms (IGMM) were established as a part of an overall endeavour for the improvement of the equality of women and men in Bosnia and Herzegovina. This action took place at a time when gender issues were not easily recognized as a development priority. Despite the complex and multilayered levels of Government in Bosnia and Herzegovina, the institutional gender mainstreaming mechanisms were established, trained and are functioning as a network of legislative and executive mechanisms that has been recognized as one of the most advanced in the region and even in comparison to some EU countries.

Pursuant to the General Recommendation No. 6 of the UN CEDAW Committee, the network of institutional mechanisms for gender issues in BiH entails all levels of legislative and executive powers. The committees on gender equality have been established within legislative powers at all levels of

⁶ Official Gazette of BiH, 19/02, 35/03, 04/04, 17/04, 25/04, 37/04, 48/05, 02/06, 32/07, and 43/09

⁷ Official Gazette of FBiH, 22/05 and 51/06

⁸ Official Gazette of RS, 118/05 and 17/08

government. At the state level there is a **Commission for Gender Equality of the Parliamentary Assembly of BiH**, and at the entity level there are **Commissions for Gender Equality of the House of Peoples and the House of Representatives of the Parliament of the Federation of BiH**, and the **Equal Opportunities Committee of the National Assembly of Republika Srpska**. The **Cantonal Assemblies in the Federation of BiH** have established **Committees for Gender Equality**. At the local level there are committees within municipal assemblies in almost all municipalities across BiH. Some commissions at the cantonal and municipal level are not functioning; therefore it is necessary to strengthen their capacities for conducting activities foreseen by their mandate.

In the executive power, within the Ministry of Human Rights and Refugees of BiH there is the **Gender Equality Agency of Bosnia and Herzegovina**, and at the entity level there are previously established **Gender Centre of the Federation of Bosnia and Herzegovina** and **Gender Centre- Gender Equality Centre of the Government of Republika Srpska** (hereinafter: **Gender Centre of Republika Srpska**). There are cantonal committees for gender equality established at the cantonal level in the Federation of BiH. There are committees for gender equality also established at the municipal mayor's offices.¹ Unfortunately, not all established committees work properly and continuously.

All institutional mechanisms have precisely defined mandate², which shows governments' commitment to achieve gender equality and inclusion of gender issue in all segments of social life. Yet, the Agency and the entity Gender Centres represent the real drivers of the initiatives and measures, and the key implementers and monitors of the gender mainstreaming in BiH. These three institutional mechanisms for gender equality are crucial instrument in initiating and implementing activities in the area of gender equality. They have the prominent place considering their activities, projects and measures which they have undertaken to strengthen and ensure sustainability of institutional mechanisms for gender equality, as well as to initiate establishment of such mechanisms at the local level.

Coordination between the gender institutional mechanisms is at satisfactory level and constantly improving, particularly between the state Gender agency and entity gender centres as well as between them and state and entity parliamentary Gender commissions. This partnership has been proved through permanent coordination in preparation of annual working plans and budgets, regular meetings and exchange of information on activities on daily basis. This is further enriched by establishment of the B&H Gender Coordination Board (GCB) composed of directors of the state Gender Agency and two entity gender centres. GCB is tasked to coordinate all activities related to the BiH Gender Equality Law and Gender Action Plan implementation as well as all BiH commitments towards international documents, and joint projects with international, regional and local partners. GCB has been recognized by the BiH Government as the best practice of coordination at state and entity level.

2.2. Gender Action Plan in BiH and Financial Mechanism for Implementation of the Gender Action Plan of BiH (FIGAP Programme)

In June 2006 the UN CEDAW Committee has sent its **Concluding Comments and Recommendations CEDAW/C/BIH/CO/3** to Bosnia and Herzegovina for future implementation of the CEDAW Convention in BiH. Gender institutional mechanisms submitted CEDAW Concluding Comments and Recommendations to all bodies, institutions and organisations responsible for implementation of the Convention (Council of Ministers of BiH, governments of entities and cantons, ministries at all levels of government, parliamentary committees at all levels of government, courts,

¹ See Annex II- Institutional Mechanisms for Gender Equality in BiH
² *Ibid*

prosecutor's offices, directorates, agencies, administrations at all levels of government, local authorities...). Pursuant to the CEDAW Concluding Comments and Recommendations to BiH, the BiH Council of Ministers in 2006, adopted the **Gender Action Plan of Bosnia and Herzegovina** as a strategic document in the area of gender equality in BiH, which is periodically drafted in accordance with the obligations stemming from the Law on Gender Equality in BiH, and it is developed by the Agency and entity Gender Centres. The GAP BiH is harmonised with the obligations and international standards stemming from the UN, European Union and Council of Europe documents. The core aim of the GAP BiH is to achieve the principle of gender equality in BiH in 15 areas of public and private life. The activities for each area are identified, as well as responsible institutions and partners pursuant to the levels of government and constitutional system of BiH and its entities. The specific obligations pursuant to the GAP BiH have been submitted to all competent institutions. Also, at the regular training on gender equality for civil servants conducted by the gender institutional mechanisms, the representatives of competent institutions and judicial bodies are introduced to their obligations stemming from the Concluding Comments and Recommendations of the UN CEDAW Committee, as well as from the GAP BiH.

Following adoption of the GAP BiH, the Agency, in cooperation with the entity Gender Centres, has drafted a project proposal to ensure funds for implementation of the GAP BiH. A group of donors in BiH (development agencies of: Sweden, Austria, Switzerland and United Kingdom) have expressed readiness to financially support this project proposal. By signing of the **Agreement on the Joint Funding** between the Council of Ministers of BiH and a group of donors in November 2009, a **Financial Mechanism for Implementation of the Gender Action Plan of BiH (FIGAP Programme)** has been established. In this way, in addition to regular budgets of the gender institutional mechanisms, significant funds for implementation of the GAP BiH are secured for the period of 5 years. The key goal of the FIGAP Programme is further strengthening of capacities of the gender institutional mechanisms and responsible institutions for including GAP activities into regular plans and programmes, which ensures both gender mainstreaming and gender budgeting. The gender institutional mechanisms have taken a multisectoral approach to cooperation and development of a partnership with key partners, but recognising specific responsibilities of the institutions at all levels of executive and legislative government, and involving civil society and academy in the activities of gender mainstreaming. Large part of the FIGAP budget have been allocated for institutional and NGOs' programs and projects. Agency and gender centres have provided continuous expertise and support to all interested institutional partners in developing their gender projects and programs which mainly contribute to implementation of respective state/entity public policies, strategies and laws. This approach to joint result-based planning, management, monitoring and evaluation of the gender mainstreaming process is of particular importance in collaboration with institutional partners. Qualitative progress on this collaboration and ownership of the process can be noted, as the institutional partners have increasingly initiated mutual co-operation and incorporated gender equality standards within the scope of their activities.

2.3. Sectoral strategies and action plans

In the previous period, victims of domestic violence became the focus of attention due to changes and adoption of new legislation, training and improvement of work of responsible institutions, which resulted in enforcing their capacities for efficient implementation of the laws and improvement in cooperation between institutions and NGOs. The victims of domestic violence are increasingly encouraged to report violence to the competent institutions that provide protection, and to address NGOs dealing with domestic violence. **The National Strategy for Prevention and Combating Domestic Violence in BiH for the period from 2009-2011** was adopted. The Strategy included implementation of activities at the state level, as well as coordination of implementation of the entity strategic and action plans namely: the **Action Plan for Combating Domestic Violence in Republika**

Srpska, 2007-2009. and Strategic Plan for the Prevention of Domestic Violence of the Federation of BiH - 2009-2010. Besides promotional and educational activities, one of the key activities at the state level is the establishment of unified methodology for collecting statistical data on domestic violence, having in mind the fragmentation and lack of compilation of the existing data in BiH. Action plan of Republica Srpska and Strategy of the Federation BiH have been successfully implemented, including following activities: amendments to existing and adoption of the new legislation and other document related to domestic violence, trainings of responsible institutions-service providers (police officers, employees of the social welfare and health care centres, primary and secondary schools, judges and prosecutors). Several referral mechanisms for protection of the domestic violence have been established. Capacities, practices and coordination of institutions-service providers have been improved and strengthened for the efficient implementation of the laws. There are **nine safe houses** (shelters) for victims of domestic violence in BiH, with 173 available places. They operate within the framework of non-governmental organisations. The entity laws on protection from domestic violence regulate the manner of financing the safe houses. Part of funds is provided from the entity budget and part from the budget of the local communities. **Two SOS phone lines** were established for help to victims of domestic violence.

The **Action Plan for Implementation of the UNSCR 1325 "Women, peace and security" in BiH (2010.-2013.)** was adopted in 2010¹⁰. The Action Plan, being the first in the region, identifies eight goals, according to context of BiH and its transitional process: 1) participation of women in politics; 2) participation of women in the police and army; 3) participation of women in peace missions and gender sensitive training; 4) anti-trafficking; 5) demining; 6) assistance to women civil victims of war; 7) training of civil servants, and 8) cooperation of institutions, international and non-governmental organisations. The responsible partners, deadlines and indicators for implementation have been set. A Coordination Body for Monitoring Enforcement of the Action Plan has been established. The implementation of the UNSCR 1325 in BiH is recognised as one of the priorities for the responsible institutions. To date, there were number of projects implemented in cooperation amongst institutions in BiH, NGOs and international organisations such as UNIFEM, OSCE, EUPM, NATO and others..

3. Improving women's political participation, on equal terms with men, in the transitional and post-transitional process at all level of decision-making, including through the adoption of temporary special measures

Article 20 of the Gender Equality Law of Bosnia and Herzegovina defines an obligation of political parties, authorities, civil society and corporate management structures to promote the principle of gender equality in decision making processes (adopting plans to improve gender equality, ensuring equal representation of the sexes in decision making processes, etc.). **Chapter 5 – Political Life and Decision Making** – of the **BiH Gender Action Plan** includes goals and activities required to improve gender equality in this area. **UN CEDAW Concluding Comments for BiH** include recommendations to harmonize its Election Law with the Law on Gender Equality and to strengthen and implement measures to achieve a greater representation of women in elected and appointed bodies and in decision-making processes in government administration, judiciary and functions in state-owned companies. The above mentioned **Action Plan for implementation of the UNSCR 1325 in BiH**, has also placed particular emphasis on the implementation of activities aimed at women's participation in political and public life. This would be achieved, among other things, by applying provisional special measures in accordance with Article 4(1) of the CEDAW Convention. Based on these obligations, a large number of activities were undertaken in order to increase the number of women in decision

¹⁰ Official Gazette of BiH, 92/10.

making processes¹¹, however with no significant results in practice: the composition of different bodies of legislative and executive branches of power does not meet the international standard (not less than 40% representatives of one gender in each body). In addition, in BiH there is still a traditional approach to the position of women and socially established patterns of behaviour which is, in relation to the lack of legislation, generally causing the under-representation and under-participation of women in politics and public life.

Generally speaking the percentage of women participating in legislative and executive bodies at all levels is not satisfactory¹². As aforementioned, the legislation which regulates the area of equal participation of women and men in decision-making positions is not fully harmonised with the Law on Gender Equality in BiH. However, the situation significantly improved compared to 1996, when the percentage of women in the Parliamentary Assembly of Bosnia and Herzegovina was 2%. As a mechanism to ensure balanced participation of man and women in the legislative power, the election system of Bosnia and Herzegovina has introduced in 1998 a special measure in the form of candidates list quotas with a zipper system. This mechanism imposes to all political parties to create list which include at least 1/3 of female candidates including at least one candidate of less represented gender among the first two candidates, two candidates of less represented gender among the first five candidates, and three candidates of less represented gender among the first eight candidates, etc. This secured that at **General 1998 Elections** higher number of women were nominated at all levels of authorities. Closed lists used for general elections in 1998 enabled for more women to be elected to legislative bodies at all levels of government. For example, 30.2% women were elected to the House of representatives of the Parliamentary Assembly of BiH. The quota was also applied at the **Elections in 2000**. However, the open lists election system was introduced, and this quota mechanism provided no guarantees for balanced participation of man and women. Open lists practically mean that the voters could vote both for the party and individual candidates on the lists. After Elections in 2000, there was a dramatic decrease in number of women-representatives at the state level legislative power, in comparison to 1998 (3 women and 39 men were elected to the House of Representatives of the Parliamentary Assembly BiH).

Analysis of the **General 2006 Elections in BiH** showed that there were more women than men in the electorate, but more men than women voted. Out of 7,245 registered candidates there were 2,625 women or 36.2%, and out of 517 elected officials, 89 were women or 17.21%. After elections in 2006 women's representation in the Parliamentary Assembly of BiH was 9.5%. In early 2010 following staffing changes, women's representation in the Parliamentary Assembly of BiH was 17%. The representation of women in the bodies of executive power after the General 2006 Elections is represented in the following parameters:

- The Presidency, which consists of three members, there are no women.
- No women are represented in any of the nine ministers in the Council of Ministers of BiH, moreover two women Deputy Ministers were appointed at the Ministry of Defence of BiH and the Ministry of Foreign Affairs of BiH.
- The President of the Federation of BiH is a woman and the Deputy Presidents of the Federation of BiH are a woman and a man.
- The President and the Deputy Presidents of Republika Srpska are men.
- The Federal Government Prime Minister and his two Deputies are men.
- The Government of Republika Srpska Prime Minister is a man, and out of two Deputy Prime Ministers one is a woman.

¹¹1. Material titled "Findings and Recommendations" developed for a quicker implementation of Article 20 of the Law;

2. The Election Law was partially harmonized with the Law on Gender Equality

3. Provisions on equal representation of both sexes incorporated in statutes of political parties

4. Numerous civil society activities to empower women to take part in decision making processes, etc.

¹²The source for all statistical data in the scope of politics is Central Election Commission of BiH: www.izbori.ba.

- The Government of the Federation of BiH has only one woman minister, and in the Government of Republika Srpska two women ministers out of 16 ministerial seats in each entity.
- Out of the total number of assistant ministers in the FBiH, 32 are men and 68 are women, or 15% and 32% respectively.
- In Republika Srpska, assistant ministers are 34 men (65%) and 18 women (35%).

Analysis of the **Municipal 2008 Elections in BiH**, in comparison to the previous local elections, shows that there have been no positive developments in terms of increased participation of women. This challenges the general view that women are present at the local level of governments in BiH, while their number decreases at the higher levels. From the total of 113 political parties and coalitions that participated in local elections, only 11 political parties in 18 municipalities have proposed more women than men on their candidate lists. The certification was conducted for 28,560 candidates for legislative bodies at the local level, of which 10,189 or 35.91% were women; 469 women or 15% were elected. There were 566 candidates certified for mayor, out of which 36 or 6.36% were women. Out of 140 municipal mayors (including mayor of Banja Luka City) there were 4 women elected, or 2.85%.

These results indicate that quotas for women on open candidate lists do not necessarily lead to an overall increase in the number of women elected¹³. **Amendments to the Election Law, proposed in 2009** by the Gender Equality Commission of the BiH Parliamentary Assembly, related to closing of the candidate lists, which were seen as a temporary special measure, were not accepted by the Parliament.

The candidate lists of political parties for the **General 2010 Elections** contained the largest number of women candidates in relation to the two previous elections cycles in 2006 and 2002. This fact has left indifferent, not only the voters (of which 52% are women, according to the figures of the Central Election Commission of BiH) but also the media that, as the main agent of promoting political agendas and candidates, completely neglected the importance of equal representation of both sexes in public life. The Gender Equality Agency has conducted a study on "**Politicians in Media during Elections Campaign – The Missing Image**". This research on presentation of female politicians in the media during elections campaign for the General 2010 Elections showed that there were still no significant progress in achieving equal participation of women and men in political and public life, and that the possibility of political participation of women and their political influence in the public and the media sphere is still very limited.

The results of the 2010 Elections show:

- The Presidency, out of three members there are still no women.
- Among the elected representatives in the House of Representatives of the Parliamentary Assembly of BiH 19% are women.
- The National Assembly of RS has 22% of women, 18 women compared to 65 men.
- In the House of Representatives of the Federation of BiH there are 17.3% of women, or 17 women compared to 81 men.
- The President of Republika Srpska is a man, and two Deputy President are also men.
- The Premier of Republika Srpska is a man, and two Deputy Premiers are also men.
- The great progress is reflected in the fact that Republika Srpska has appointed 5 women ministers out of 16 ministerial positions

¹³ for more information on results see "Bosnia and Herzegovina General Elections, October 2006" OSCE/ODIHR Election Observation Mission Final Report.

- In the House of Representatives of the Federation of BiH there are 17.35% of women, while in the National Assembly of Republika Srpska there are 21.69% of women.

Women are represented in small percentages also as members of the cantonal governments, directors of important institutions, members of boards and commissions, and supervisory or management boards of public companies.

When all these data are considered, it appears that vertical "movement" of women toward higher ranking positions in management and decision making spheres is hindered (which is also the case in the region and at a global level). The status of women's participation in political and public life is a general reflection of their position in all spheres of society and of the prevailing attitude toward gender equality issues.

Other factor which hinders better results of the elections and equal participation of man and women is relatively large number of political parties and a small number of seats elected from each of 8 election units. There is also lack of support of political parties to women-members in the creation of political agendas and political recognition although the statutes of political parties do not contain provisions which would forbid women to participate in the work of the party bodies. A certain, small number of political parties have defined in their documents their obligations in order to achieve equality and gender equality in practice. One of the measures is aforementioned **Law on Amendments of the Law on Financing of Political Parties**. It ensures that 10% of the available public funds for political parties, which have elected candidates, will be allocated additionally to those parties which have elected candidates of the underrepresented sex, as it is anticipated that political parties will find themselves motivated to promote female candidates.

Although with limitations and with no guarantees BiH election system has great potential to ensure balanced participation once the constituency alters its position on the capacities of female politicians. For now this position is greatly influenced by the general traditional views on the roles of man and women in the society. Considering the position of female candidates and looking at previous election campaigns it is obvious that women do not have enough support to prepare their pre-election campaigns and election programs that could help them to be recognized as serious election candidates. Gender institutional mechanisms will continue to strive for balanced participation of men and women at all levels of political and public life, including at decision-making level, as a requirement of human rights that can ensure the better functioning of a democratic society.

4. Increasing women's access to justice, including transitional justice mechanisms

The analysis of the Law on High Judicial and Prosecutorial Council of BiH (HJPC BiH)¹⁴ indicated that the Law contains provisions that prohibit discrimination based on gender and introduce the obligation of equal gender representation in appointments to all judicial functions at all levels of the judiciary. Generally speaking, women's representation in the courts and the prosecutor's offices has been satisfactory. From 8 judges of the Constitutional Court of BiH 4 are women (50%). The President of the Constitutional Court is a man while the three women are Deputy Presidents. In the period from August 2008 to May 2009 the position of the President of the Constitutional Court of BiH was performed by a woman. Data from the Annual Report of the High Judicial and Prosecutorial Council of BiH for 2009, show that women's representation in the courts is about 64% (563 women and 315 men), and in prosecutor's offices 46% (138 women and 160 men). However, data on gender representation in higher positions, such as presidents and chief prosecutors, showed lower representation of women (35%). The President of the Court of BiH is a woman. Women as presidents were dominant in the cantonal courts. Only two women were appointed as chief prosecutor, one in a

cantonal prosecutor's office (of 9 appointees) in the Federation of BiH and one in the District and the Special Prosecutors Office in Banja Luka (out of 6 appointees) in Republika Srpska.

A significant problem in the judiciary represents insufficient application of international norms in the field of gender equality and the UN CEDAW Convention and the Law on Gender Equality in BiH. Gender institutional mechanisms provide and will continue with regular gender trainings for judges and prosecutors. Pursuant to data of the judicial authorities, it may be conclude that there is a very small number of cases of gender discrimination and gender-based violence both in misdemeanour and criminal proceedings.

Free legal aid is still not systematically arranged in BiH. The free legal aid is available to all citizens of the Federation of BiH in municipal services, but this applies only to the provision of legal aid in cases pending before the municipal authorities. The Government of Republika Srpska has adopted the Law on Free Legal Aid and established the Centre for Free Legal Aid of Republika Srpska, which has regional offices across RS. The free legal aid in RS is provided for all types of cases, and parties have the right to representation in court proceedings. Also, in addition to this Centre and its regional offices, there are offices for legal aid in the municipalities, which have the same function as such in the Federation of BiH.

In BiH there are NGOs that provide free legal aid, including in cases related to violation of the Law on Gender Equality in BiH. In addition, there are some NGOs which provide free legal aid to women and particularly vulnerable groups of women such as women victims of war, trafficking, domestic violence and sexual abuse, and single mothers. The Agency and the entity Gender Centres have supported the project of the Association "Center for Legal Assistance for Women" Zenica, which is focused on providing legal aid to women.

At the state level, the process of developing the **Strategy in the field of transitional justice**, which will also include the issue of women civilian victims of war and victims of torture, has started. The working group is comprised of the representatives of: Ministry of Human Rights and Refugees, Ministry of Justice, the Institute for Missing Persons of Bosnia and Herzegovina, entities' ministries of justice, Ministry of Labour and Social Affairs of the Federation of BiH, Ministry of Labour and Veterans and Disable Protection of Republika Srpska, Brcko District of BiH Government, and nongovernmental organizations.

The Agency has cooperated with the UNDP BiH Transitional Justice Project in the activities related to the assistance to civilian victims of war.

¹⁴ Official Gazette of BiH, 25/04, 32/07, 48/07 and 15/08