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Committee on the Elimination of Discrimination against Women (CEDAW)

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Dear Sir/Madam,

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina (IHROBiH) was requested to provide information concerning the implementation of the priority recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW), halfway through the reporting period.

IHROBiH is hereby providing the following information within the set deadline:

Legislative framework and definition of discrimination

The Constitution of Bosnia and Herzegovina (BiH) does not contain the definition of equality between women and men and prohibition of direct and indirect discrimination against women in the public and private spheres pursuant to Article 1 of the Convention. The definition of non-discrimination referred to in Article 2 of the Constitution of Bosnia and Herzegovina does not explicitly cover discrimination against women under Article 1 of the Convention.

The prohibition of discrimination based on sex is defined in two pieces of legislation in BiH: BiH Gender Equality Act and BiH Prohibition of Discrimination Act.

IHROBiH applies the BiH Prohibition of Discrimination Act in keeping with the improved 2016 legal framework for the protection against discrimination, which includes an expanded scope of IHROBiH competence. This is particularly reflected in expanding the list of prohibited grounds of discrimination. Through these amendments to the PDA, sexual orientation and gender identity are terminologically correctly named as prohibited grounds of discrimination. In addition, sex characteristics, age and disability are listed as prohibited grounds of discrimination. The improved legal framework is still reflected in prescribing serious forms of discrimination,¹ improving procedural aspects of the PDA² and defining the legal force of IHROBiH recommendations in the

¹ Multiple discrimination (Article 4, paragraph (4)), repeated discrimination (Article 4, paragraph (5)) and prolonged discrimination (Article 4, paragraph (6)).

² Regarding the provisions on the urgency of the procedure (Article 11), special lawsuits (Article 12), court competences and deadlines (Article 13), prescribing security measures (Article 14), shifting the burden of proof (Article 15), participation of third parties (Article 16), possibility to file class-action lawsuits (Article 17).

evidentiary procedures before courts.³ Also, a considerably bigger role has been envisaged for IHROBiH in activities on the promotion of protection against discrimination, which is reflected in public information, awareness raising, conducting campaigns and other forms of discrimination prevention.

For the purpose of this Act, discrimination shall be deemed to be any differential treatment, including any exclusion, restriction or preference based on actual or perceived grounds applied to any person or group of persons and those related to them by consanguinity or by affinity based on their race, skin colour, language, religion, ethnicity, disability, age, national or social background, affiliation with a national minority, political or other conviction, financial status, membership of trade union or another association, education, social status and sex, sexual orientation, gender identity, sex characteristics, and any other circumstance which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise of the rights and freedoms of any person, on an equal footing, in all aspects of life.

Prohibition of discrimination shall apply to all public bodies and all natural persons or legal entities, both in the public and private sectors, in all areas and in particular: employment, membership in professional organisations, education, training, housing, healthcare, social protection, goods and services designated for the public and public places, and the performance of economic activities and public services.

Thus, the legal framework, especially through amendments to the PDA fully defines discrimination in line with international standards, including the definitions of direct and indirect discrimination, and special forms of discrimination.

A number of documents have been adopted at entity level, implementing the principles enshrined in the BiH Prohibition of Discrimination Act and the BiH Gender Equality Act. Ensuring gender equality and its integration in the regulations also indirectly affects a more active inclusion of women in the social, economic and political spheres of life. In addition to the said Acts, prohibition of discrimination in the fields of labour and employment is provided for in the entity labour acts and the BDBiH Labour Act.

The provisions referring to equal representation of sexes⁴, defining discrimination, including the type and forms of discrimination⁵, as well as protection of women and motherhood⁶ are all integrated in the FBiH Labour Act⁷. The FBiH Labour Act also prescribes that in the course of recruitment, future male and female employees are not required to provide information not related to employment.

The RS Labour Act⁸ prohibits discrimination bases on sex in the employment procedure, during the employment and termination of the employment contract. Also, this Act defines discrimination, types and forms of discrimination⁹, in particular in the provisions dealing with protection of women and motherhood¹⁰ stipulates that the employer shall not refuse to recruit a woman if she is pregnant, nor shall the employer terminate her employment contract for pregnancy or because the woman wishes to use maternity leave.

³ Article 15, paragraph (9);

⁴ Article 3, FBiH Labour Act

⁵ Art. 8 – 13, FBiH Labour Act

⁶ Article 59, FBiH Labour Act

⁷ *FBiH OG*, no 26/2016, 89/2018, 23/2020 – Constitutional Court decision, 49/2021 and 44/22

⁸ *RS OG*, no 1/2016, 66/2018, 91/2021 – CC decision and 119/2021

⁹ Item 5, Prohibition of discrimination, Art. 19-25, RS Labour Act

¹⁰ Item 4, Special protection of women and motherhood, Art. 105-114, RS Labour Act

BD BiH Labour Act¹¹ governs prohibition of discrimination in the same way, IT prescribes types of discrimination, other forms of discrimination, nullity of discriminatory provisions of employment contracts, protection in discrimination cases¹² and protection of women and accompanying rights¹³.

In 2021, the Protection against Harassment at the Workplace Act was enacted in the RS¹⁴, governing workplace harassment and work-related protection, the procedure for exercising the right to protection against workplace harassment and work-related protection and other issues of importance for workplace harassment and in connection with work.

Women, peace and security

Progress has been made in processing war crime cases with the Council of Ministers of Bosnia and Herzegovina adopting the Revised National War Crimes Processing Strategy on 20 September 2020¹⁵. This Strategy envisages developing the criteria for clearly defining and harmonising guidelines for the Prosecutor's Office and Court of BiH in order to adequately distribute war crime cases between the judiciary at the levels of BiH, the entities and the BDBiH, and primarily ensure more efficient processing of the most complex and priority war crime cases within the set deadlines.

Ensuring adequate human and financial resources to gender equality bodies

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina, Gender Equality Agency of Bosnia and Herzegovina and Ministry for Human Rights and Refugees of Bosnia and Herzegovina are established as the mechanisms functioning as equality bodies in Bosnia and Herzegovina.

Three separate mandates are fulfilled within IHROBiH, and they are not involved only in acting on complaints and individual procedures initiated *ex officio*, but also in monitoring and prevention. The Law on Human Rights Ombudsman defines the mandate, competences, powers and code of practice of IHROBiH. The BiH Prohibition of Discrimination Act envisages that IHROBiH is the central institution for the protection against discrimination and that it can treat all natural persons and legal entities¹⁶. The freedom of information acts (for BiH and entity levels of government)¹⁷ prescribe that IHROBiH is responsible for taking adequate measures aimed at adhering to the rules for accessing information. The acts on government, ministerial and other appointments (for BiH and entity levels of government)¹⁸ provides IHROBiH with a special competence for monitoring the implementation of the principles when conducting appointment procedures or when issuing measures to annul decisions, etc.

¹¹ *BDBiH OG*, no 34/2019, 2/2021, 6/2021 and 15/2022

¹² Art. 7-11, BDBiH Labour Act

¹³ Art. 76-82, BDBiH Labour Act

¹⁴ *RS OG*, no 90/2021

¹⁵ <http://www.mpr.gov.ba/aktuelnosti/vijesti/default.aspx?id=10793&langTag=bs-BA>

¹⁶ Article 7, BiH PDA, *BiH OG*, no 59/2009 and 66/2016.

¹⁷ Art. 21 and 22, BiH Freedom of Information Act, *BiH OG*, no 28/2000, 45/2006, 102/2009, 62/2011 and 100/2013; Art. 21 and 22, RS Freedom of Information Act, *RS OG*, no 20/2001; Art. 21 and 22, FBiH Freedom of Information Act, *FBiH OG*, no 32/2001 and 48/2011.

¹⁸ Art. 16 and 17, BiH Law on Ministerial, Council of Ministers and Other Appointments, *BiH OG*, no 7/2003 and 37/2003; Art. 16 and 17, FBiH Law on Ministerial, Government and Other Appointments, *FBiH OG*, no 12/2003, 34/2003 and 65/2013; and Art. 16 and 17, RS Law on Ministerial, Government and Other Appointments, *RS OG*, no 41/2003.

In other countries, these mandates are carried out by special institutions, while IHROBiH carries out these competences with limited resources.

The functioning of IHROBiH is permanently the focus of different organisations and bodies because its functioning, both in terms of protection and in terms of promotion, is the guarantee of protection of citizens' rights, but primarily, it is the indicator of the realised level of the rule of law against which the level of democracy of a society is measured

When the Act on Salaries in the Institutions of BiH¹⁹ was adopted, the specific characteristics of the IHROBiH requirements for hiring employees were not taken into account which, under the LHROBiH, should have the same status as employees at the BiH Constitutional Court. On the contrary, the Act on Salaries rendered provisions of the LHROBiH, as *lex specialis*, ineffective, thus directly challenging IHROBiH independence as one of the fundamental Paris Principles.

In terms of strengthening the capacities of the BiH Gender Equality Agency, IHROBiH is hereby referring you to this Agency for specific data on the implementation of this priority recommendation.

THE HUMAN RIGHTS OMBUDSPERSON INSTITUTION OF BOSNIA AND HERZEGOVINA

¹⁹ *BiH OG*, no 50/08, 35/09, 75/09, 12/09, 32/12, 42/12, 50/12, 32/13, 87/13, 87/13, 75/15, 88/15, 16/16, 94/16, 72/17, 25/18