**Call for Inputs**

**Deadline 31 May 2019**

**Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**

6 May 2019

In accordance with my mandate as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolution 32/2, I intend to present a thematic report at the 74th session of the General Assembly, which will focus on marginalisation and exclusion from socio-cultural environments. The report will examine how inclusion protects people from violence and discrimination, and the key role of the State in promoting and nurturing that inclusion in the social, cultural, political and other fields. Finally, it will formulate recommendations to States and other relevant stakeholders.

My report will examine these issues in relation to the themes of education, health, housing, employment/economic empowerment and an adequate standard of living. I will also consider the following sub-themes/actors (among others): culture, family, faith, migration, urban/rural, older persons, youths, political participation, social security/benefits, business sector, and media.

**Background**

Discriminatory laws and socio-cultural norms continue to marginalize and exclude lesbian, gay, bisexual, trans and gender diverse persons from education, health care, housing, employment and occupation, and other sectors. The marginalization and peripheralization are part of a vicious cycle that give rise to a host of other problems; in a context where access to economic, social and cultural rights is hampered, a series of negative impacts on individuals, their families, groups and communities can be observed, resulting in poverty and exclusion, lower socioeconomic status, and limiting access to assets that are essential to enjoy the full range of human rights. The excluding environment inevitably lends themselves to violence and discrimination, as it hampers access to their rights, creates inequality of opportunity and access to resources.

A [joint statement](https://www.ohchr.org/EN/Issues/Discrimination/Pages/JointLGBTIstatement.aspx) released by 12 UN entities in 2015 expressed concern about these issues:

“Children face bullying, discrimination or expulsion from schools on the basis of their actual or perceived sexual orientation or gender identity, or that of their parents. [...] Discrimination and violence contribute to the marginalization of LGBTI people and their vulnerability to ill health including HIV infection, yet they face denial of care, discriminatory attitudes and pathologization in medical and other settings. [...] The exclusion of LGBTI people from the design, implementation and monitoring of laws and policies that affect them perpetuates their social and economic marginalization.”

Some important steps are already being taken at the international, regional and national levels to address these issues. For example, UNESCO convened an international [consultation on homophobic bullying in educational institutions](https://unesdoc.unesco.org/ark:/48223/pf0000216493) in 2011, bringing together education ministries, UN agencies, NGOs and academia from more than 25 countries around the world. The World Bank is managing a [project](https://www.worldbank.org/en/topic/sexual-orientation-and-gender-identity#3) aimed at filling the LGBT data gap, focused on inclusion in markets, services, and other spaces. UNDP is leading and partnering in the development of the LGBTI Inclusion Index, which will measure inclusion of LGBTI people in health, civic and political participation, personal safety and security, education, and economic empowerment. Together with the World Bank, civil society, governments and academics UNDP has developed a proposed set of [51 indicators for the LGBTI Inclusion Index](https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.undp.org%2Fcontent%2Fundp%2Fen%2Fhome%2Flibrarypage%2Fhiv-aids%2Flgbti-index.html&data=02%7C01%7Cboyan.konstantinov%40undp.org%7C481ab2dfe96a4b9e807008d6ccb98799%7Cb3e5db5e2944483799f57488ace54319%7C0%7C0%7C636921494552244721&sdata=6NY65rZdCmz13%2BnFO6vPax3EZDoQV%2Bd%2BNsm4IZYMVe8%3D&reserved=0), aligned with the framework of the SDG with a view to identifying who is “left behind” and why. Trade unions and employers’ organisations have worked to promote the meaningful inclusion of LGBT people in the workplace, and around 240 businesses have expressed support to the [Standards of Conduct for Business](https://www.unfe.org/standards/) in tackling discrimination based on sexual orientation and gender identity. States have passed legislation explicitly protecting LGBT people from discrimination in housing and access to social security.

A glance at these issues quickly affirms the interdependence and inter-relatedness of all human rights. Addressing the social and economic rights of LGBT people is critical to any efforts to address violence and discrimination on the basis of sexual orientation and gender identity. Under the 2030 Agenda for Sustainable Development, the international community committed to leaving no-one behind. In order to lift LGBT people from cycles of exclusion and abuse, we must critically examine these issues as well as emerging good practices. With my report I further seek to highlight the unique role of leaders in different fields, which will allow to break the cycle of exclusion and which can have a positive impact on misconceptions, fears and prejudices that fuel violence and discrimination.

**Call for input**

To inform my report, I am seeking inputs from relevant stakeholders (Member States, National Human Rights Institutions, civil society organizations, United Nations agencies, regional institutions, corporate entities, etc.) on the basis of the following topics:

1. **Key areas in which people (in your country, region or worldwide) suffer socio-cultural and economic exclusion as a result of violence and discrimination on the basis of sexual orientation and/or gender identity; in particular,**
2. **What knowledge, including data, exists in the State planning bases in relation to socio-cultural and economic exclusion based on sexual orientation and gender identity, including levels of poverty, homelessness, education, employment, health, political participation and any other relevant social indicator?**

Knowledge and data relating to cultural and economic exclusion based on sexual orientation and gender identity, including levels of poverty, homelessness, education, employment, health, political participation and any other relevant social indicators, are not part of institutional (official) systems for collecting data and databases (both sectoral and general official statistics) in Bosnia and Herzegovina, i.e. its entities Republika Srpska and the Federation of BiH.

Also, there is no adequate system of records to the competent institutions (police, prosecutors' offices and courts) of reported and prosecuted criminal acts committed out of hate towards LGBTI persons. There is no system for official data collecting on cases of violence in schools that address discrimination and violence in schools due to sexual orientation, gender identity and sexual characteristics.

According to the administrative laws and sub-legal regulations in Bosnia and Herzegovina, there is no obligation to the public institutions to collect, in any occasion, personal data referring to sexual orientation or gender identity. Questions on sexual orientation and gender identity have not been included in any of surveys conducted by the Agency for Statistics of Bosnia and Herzegovina (i.e. census, labour force survey, household budget survey etc.). According to the Agency for Statistics, the LGBTI persons have not been included as a category in any of the forms for regular administrative collection of data (education, criminal, social protection etc.).

Due to lack of official disaggregated data, the Agency is undertaking efforts to establish a system for collecting information on violations of the law on gender equality in BiH inter alia, enable the classification of information based on gender, motives and profiles of the perpetrator and victim, including LGBTI a person, which is currently not the case, which is why we currently do not have systematized official information about the violation of LGBTI rights in Bosnia and Herzegovina. In the absence of such information, the Agency has so far used the information collected by the non-governmental organization Sarajevski otvoreni centar (SOC), and in accordance with the competencies of the Agency prescribed by Article 26 of the Law on Gender Equality in BiH on cooperation with non-governmental organizations. The above information is updated annually and published regularly in the SOC publication "Rozi Report", which is also available in English ([http://soc.ba/site/wp-content/uploads/2018/05/Pink-Report- 2018.pdf](http://soc.ba/site/wp-content/uploads/2018/05/Pink-Report-%202018.pdf)).

In spite of the very limited data on the status of human rights of the LGBTI population, it is important to emphasize that several non-governmental organizations dealing with this marginalized social group are active in BiH. Among them, the most active is the "Sarajevo Open Center", which since 2012 has been collecting information, data and making various reports, analyses and surveys on the situation and rights of LGBTI people ("Pink Report" made for: 2012, 2013, 2014, 2015, 2016, 2017 and 2018, "Report on the Legal Status of Transgender Persons in BiH", "Report on Homophobia in Schools in BiH", "Homophobic and Transphobic Incidents and Hate Crimes in Bosnia and Herzegovina in the Period from March to November 2013"; "Report on Hate Speech Based on Sexual Orientation and Gender Identity in BiH - cases from 2012 and 2013"; "Rights of LGBT persons in Bosnia and Herzegovina: Health", "Rights of LGBT persons in Bosnia and Herzegovina: Political Parties", Rights of LGBT persons in Bosnia and Herzegovina: Internal Affairs"; "Rights of LGBT persons in Bosnia and Herzegovina: Education"; "Rights of LGBT persons in Bosnia and Herzegovina: Judiciary"; “LGBT Persons in the Workplace in Bosnia and Herzegovina"; "Political Parties and Human Rights of LGBT people: Monitoring of the 2014 General Elections"; "Numbers that Mean Equality - Analysis of the Results of the Research of the Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017", etc.). Information, data, analysis, research and reports of the "Sarajevo Open Center" for the time being represent the most comprehensive source of data that can serve to plan and work institutions on these issues.

In Republika Srpska, in 2017, the Gender Center of Republika Srpska, in cooperation with the "Sarajevo Open Center", compiled the Report on the Status of Human Rights of LGBTI persons, which also identified measures for elimination of discrimination and the promotion of the recognition and protection of the rights of these persons. The above report serves to plan and implement measures and activities to improve the position and protection of human rights of LGBTI persons, but it should be emphasized that this process is still slow and with limited scope and range, and is aimed at improving and harmonizing legislation and educational measures for raising awareness and knowledge. The mentioned measures and activities are implemented by the Gender Center of Republika Srpska within its mandate and competences, including initiatives towards other competent institutions.

1. **How are individuals, groups or communities differently affected, based on their sexual orientation and/or gender identity?**

The European Commission has published its interim report on BiH. The report finds a lack of breakthroughs on LGBTI rights, that the prosecution of hate crimes and hate speech remains insufficient, there is still no legal recognition of same-sex couples, freedom of assembly legislation has to be aligned with international standards, and trans people continue being marginalised.

Useful Link:

[https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417- bosnia-and-herzegovina-report.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-%20bosnia-and-herzegovina-report.pdf)

Regarding the legal regulation of same-sex partnerships in Bosnia and Herzegovina not a single administrative unit in BiH (family laws of RS, FBiH and BD) engages in regulating the relationships of same-sex couples. In this way, LGBTI persons are unable to claim their constitutionally guaranteed rights to freedom and security, private and family life and home, to starting a family, protection of property, or freedom of movement and residence, which are necessary to ensure the respect and protection for same-sex unions.

Regarding the procedure of changing the gender marker in official documents that would allow the change of these documents without having to complete full gender reassignment treatment (which is still not covered by health insurance), transgender people in BiH can only change the sex marker in their official documents and the Unique Master Citizen Number after a “complete” medical transition.

The right of a legally recognized transgender person to marry the person of the opposite sex to their reassigned sex is not regulated in law. In principle, a person that has legally recognised as the reassigned sex have no obstacles to marry a person of the opposite sex. However, since there are no legal provisions in the family law recognizing the right of legally recognised transgender persons to marry, one cannot exclude the possibility of discrimination occurring in this situation by the administrative bodies.

The family laws of Federation BiH, of Republic of Srpska and Brčko District confer rights and obligations on unmarried couples, but no steps have been taken to ensure that these rights and obligations apply to same sex couples. The legislation does not recognize registered same-sex partnerships. Ministry of Justice of Bosnia and Herzegovina mentioned no possibility of implementing legal or other means to address the practical problems arising from the lack of recognition of rights and obligations of the same-sex couples. When it comes to adoption of a child, the family laws of the Federation of BiH, of Republic of Srpska and of Brcko District do not allow single individuals to adopt children, regardless of their sexual orientation and gender identity, so all single individuals are discriminated.

An increasing number of same-sex couples had registered their relationship abroad and asked for legal recognition in BiH. Upon this request the Federal Ministry of Interior acknowledged the need to legally regulate the issue. The Government of the Federation of Bosnia and Herzegovina is currently setting up an inter-ministerial group to identify necessary legislative changes.

In relation to data available to the Gender Center of Republika Srpska, it can be concluded that LGBTI persons in Republika Srpska, in a certain sense, and most often in situations when they seek recognition, promotion and protection of their LGBT rights, face various forms of discrimination, violence, marginalization and exclusion in the private and public sphere. LGBTI persons are most often exposed to domestic violence, peer violence, hate speech and physical hate-based violence, and discrimination in the areas of health, labour and employment, and education[[1]](#footnote-1). One example is a questionnaire for voluntary blood donors of the Institute for Transfusion Medicine of Republika Srpska, in which discrimination was noticed, so that certain individuals as potential blood donors would be excluded on the grounds of their sexual orientation. In 2014, at the initiative of the BiH Ombudsman Institution for Human Rights and civil society organizations, the questionnaire was partially changed and adjusted. However, although re-formulated, discriminatory question which, positively answered, leads to forbidding homosexuals to donate blood is still contained in the questionnaire.

1. **What are the main barriers in ensuring equal access to education, health care, employment and occupation, housing and other relevant sectors?**

Law on Prohibition of Discrimination in BiH specifically prohibits to unlawfully deny the right to education to persons on the basis of their sexual orientation, gender identity and sexual characteristic.

Framework Law on Higher Education in BiH, explicitly lists gender and sexual orientation as a prohibited basis of discrimination. Law on Higher Education of the Republika Srpska explicitly prohibits discrimination based on sexual orientation, while other laws on education do not address the rights of LGBTI people and discrimination against them.

The Law on Higher Education in Sarajevo Canton also states that higher education institutions cannot restrict a person's access to higher education, directly or indirectly, on the basis of her sexual orientation or gender identity. This prohibition is also in the Ethical Code of the University.

However, in a situation where in Bosnia and Herzegovina there is no single law at the state level, there is a greater possibility of discrimination. Secondary and higher education in BiH is divided: one part of Bosnia and Herzegovina, the Republika Srpska, has its own education system, as well as the Brčko District of Bosnia and Herzegovina, while in the Federation of Bosnia and Herzegovina there are ten Cantonal educational systems. The Law on Higher Education of Sarajevo Canton explicitly prohibits discrimination based on sexual orientation, but does not include gender identity. The same provision is also contained in the Laws on Higher Education of the Zenica-Doboj, Bosanski-Podrinje and Tuzla Cantons, while the laws on higher education in the remaining five cantons do not mention sexual orientation or gender identity as the basis for banning discrimination.

Most cases of discrimination occur in educational institutions (up to 41.2 percent in schools and 19.1 percent in universities), followed by service facilities / shops with 34.6 percent.[[2]](#footnote-2) In 2017, eight cases of homophobia (6) and transphobia were recorded (2) peer violence. In one high school in Sarajevo, the person was a victim physical and verbal violence of their peers, and the school has suspended the perpetrator and obliged to attend sessions with a school pedagogue, and advised the victim to attend support sessions. Unfortunately, this example is an exception, because in most other cases, the staff does not react appropriately, even if join the ridicule of the victim.

Regarding health, transgender persons in BiH cannot access medical gender reassignment because no health care institution or expert is neither trained nor authorized for such medical procedures. Additionally, a survey conducted in 2013 by the Sarajevo Open Centre has shown that every third LGBTI person who, feeling the effects of homophobia and transphobia, feels depression, fear, anxiety, depression or some other symptoms, fails to seek professional psychological, psychiatric or therapeutic support, due to the alleged incompetence of the persons to be addressed or to the fear that their sexuality will be revealed.

Transgender people in BiH can only change the sex marker in their official documents and the National ID number after a “complete” medical transition. Both the endocrine therapy and the surgical procedures have to be undergone abroad, since they cannot be performed in BiH, thecost is covered by transgender persons, instead of the state-funded health insurance. The Law on the Unique Registration Number of BiH recognizes the sex change as the basis for changing the unique ID number of the person, and the Law on Registers of Republika Srpska also envisages the sex change as the basis for the change of personal documents. Procedures for changing the unique ID number and other documents are in place in Republika Srpska, but they are not clearly prescribed and there is no by-law that would clearly describe the procedure for collecting and verifying the medical records of the person submitting the application.

Since the sex reassignment surgery, itself is a lengthy procedure, and the body of the transgender person changes, there is a discrepancy between how the person looks and the information about their sex in their official documents. This practice leads to discrimination and inequality of trans individuals, according to the analysis conducted by Sarajevo Open Centre, because it forces them to have to constantly explain their gender identity, reveal personal information and have their medical documentation with them all the time during even the most mundane moments of their life.

In the field of labour and employment, the applicable laws of Republika Srpska (Labour Law, Law on Civil Servants, Law on Mediation in Employment and Rights During Unemployment) contain a general prohibition of discrimination on any ground, however, they do not explicitly specify specifically prohibited discriminatory basis of sexual orientation, gender identity and sex characteristics. Obstacles and discrimination in this area are also commonly faced by transgender people in the process of transition or sex change. There are no systemic measures to ensure respect for the prohibition of discrimination based on sexual orientation, gender identity and sex characteristics in the workplace and in employment, nor to ensure the right of transgender persons to protect their personal data when recruiting or using medical leave due to medical procedures for sex change.

Equal access to education, employment and occupation, housing and other relevant sectors is enshrined in the applicable laws in the mentioned areas, which are applied consistently to all persons, and in that sense there is no discrimination in their application and practice and no cases of any kind of different treatment and the actions of the competent institutions of Republika Srpska towards LGBTI persons have been recorded. Health care is also available to all persons without discrimination on any ground. Therefore, it can be noted that there are no recorded cases that any LGBTI person has been denied any right that belongs to all other persons, related to access to education, health care, employment and occupation, housing and other sectors. However, there are difficulties and barriers which LGBTI persons face in these areas, and they are described (by sectors) in answer 1.b). These barriers mainly refer to the specific needs of LGBTI people, which are not met partly because of the non-compliance of the legislation, and mostly because of unsuitable and inadequate practices that do not meet the specific needs of transgender and other LGBTI people in the use of certain rights, especially as already mentioned, rights of transgender persons in terms of health care.

1. **Root causes and structural factors responsible for marginalisation and socio-cultural and economic exclusion, such as laws, public policies, institutional practices, organizational behaviours, and prevailing ideologies, values and beliefs?**

Article II of the Constitution of Bosnia and Herzegovina guarantees to all persons within the territory of Bosnia and Herzegovina the rights stipulated by the Constitution without discrimination on any ground. Sexual orientation and gender identity are not listed among the grounds stipulated by the Constitution and they are classified under “other status”, whereas the Anti-Discrimination Law stipulates them as prohibited grounds of discrimination. The Anti-Discrimination Law foresees the harmonisation of other laws, rulebooks, statutes and other acts with this Law, however, many laws at the state, entity and cantonal level do not include sexual orientation, gender identity and/or sex characteristics as the grounds protected from discrimination.

Some findings, which could offer answers to this question, are contained in the research of the "Sarajevo Open Center" “Who Are We to Judge?” - Public Opinion on Homosexuality and Transgender in Bosnia and Herzegovina in 2013. According to this research, it can be concluded that generally there is a low level of sensitivity of the general population towards LGBT people - a small number knows the problems this population encounters as well as the legislation related to this area. The research, however, also shows some positive attitudes in terms of tolerance, so that more than 90% of the respondents would not exercise physical or verbal violence against this population, and would not observe it passively, but would help the victim of violence. In the aforementioned Special Report of the Institution of Ombudsman for Human Rights of BiH on the rights of LGBT people in BiH (in answer 1.a), it is stated that the attitude of the public to LGBT people is created by the same factors that influence the formation of public perception of any other social issue. Therefore, the formation of positive or negative attitudes is influenced by: the way in which LGBT topics are reported in the media, the comments related to them, which can sometimes turn into hate speech, the absence of public condemnation of such actions, standing up and attitudes of public figures and representatives of political parties, educational and academic community.

Bearing in mind the above research and report, and the data available to the "Sarajevo Open Center", it can be noted that the general lack of awareness and knowledge of the problems and obstacles faced by LGBTI people in some way also causes marginalization of issues related to LGBTI rights in the institutional action including policies, laws and practices. This further leads to poor or insufficient sensitivity, training and competence of professionals in different sectors. There is no relevant evidence based on representative research and official analyses and data that personal attitudes, values ​​and beliefs shape practices that do not always meet the needs of LGBTI people, however, given the number of cases of reported discrimination, it can be concluded that such practices, however, exist.

1. **State efforts to address socio-cultural and economic exclusion through legislation, policies, data gathering, and other means.**

The BiH Agency for Gender Equality of Bosnia and Herzegovina (AGE BiH) of the BiH Ministry of Human Rights and Refugees (BiH MHRR), Gender Centre of Republika Srpska and Gender Centre of Federation of BIH (BIH gender institutional mechanisms), in cooperation with the non-governmental organisation Sarajevo Open Centre (SOC) and the Office of the Council of Europe in Sarajevo, worked on mapping the needs for implementation of the CM/Rec(2010)5 Recommendation of Council of Europe to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.

A Proposal of Measures for Advancement of Equality of LGBTI persons was prepared as the basis for future additional work on the matter. In April 2016, the Council of Ministers of BIH adopted the Action plan for Implementation of the Proposed Measures to Combat Discrimination in BiH, as proposed by the BiH MHRR. The Action plan comprises a plan of measures to combat discrimination in eight fields, including the field of mitigation of discrimination against LGBTI persons. The implementation of the Action plan provides for legislative activities aimed at improving the position of LGBTI persons, and training of professionals in combating homophobia and prejudice. The Action Plan provides for preparation of an Action Plan for mitigation of discrimination against LGBTI persons.

To implement the specific measures for promotion and protection of LGBTI persons, the gender institutional mechanisms in BiH have integrated this issue into their annual operational plans for the implementation of the BiH Gender Action Plan (GAP). The operational plans include the following specific activities related to the review of the existing legal framework related to LGBTI persons:

* Harmonisation of legislative and other acts with the legal standards of prevention and combat against all forms of discrimination and violence against LGBTI persons, and
* Harmonisation of criminal legislation, including regulation of the criminal law protection with reference to criminal offences inciting hate and violence including sex, sexual orientation, and gender identity. Implementation of the stated activities is underway.

When it comes to policies, i.e. programs of measures and activities, the Government of Republika Srpska in the period 2016-2017 adopted two annual operational plans for the implementation of the Gender Action Plan (GAP), which, among other things, included concrete measures for the promotion and protection of the rights of LGBTI people. This is the first time that a government in BiH has included lesbian, gay, bisexual and transgender people in its plans. Based on and within the framework of the above planning documents, activities were undertaken to develop a special analysis of the rights and position of this marginalized group, with specific recommendations for improving de jure and de facto position and rights of LGBTI persons in accordance with international legal acts.

Beginning of 2017, the Agency for Gender Equality of BiH formed a working group tasked with producing an Action Plan to Enhance the Equality of LGBTI Persons, as foreseen in the Action Plan for Implementing the Proposed Anti-Discrimination Measures in Bosnia and Herzegovina produced by the Ministry of Human Rights and Refugees of BiH. The working group consists of the representatives of the Agency for Gender Equality, Gender Centre of Federation, Gender Centre of the Republika Srpska, representatives of the Government of Brčko District of Bosnia and Herzegovina and the representatives of the Sarajevski otvoreni centar, the leading Bosnian civil society organization for protection and development of the rights of the LGBTI persons. In 2017 the working group produced a Draft of the Action Plan for Equality of LGBTI Persons in Bosnia and Herzegovina for the 2018-2020 period, which is pending adoption by the Council of Ministers. Aim of the Action Plan is to eliminate any direct or indirect discrimination based on sexual orientation or gender identity, mitigating homophobia and transphobia in the society, and enhancing the quality of life of LGBTI persons. The Action plan includes the Proposal of measures for advancement of the equality of LGBTI persons. The Action plan was drafted and its adoption is pending before the Council of Ministers of BIH.

In 2018, the Judicial and Prosecutorial Training Centre and police bodies in the Federation of BiH continued their educational activities on hate crimes and LGBTI issues. The Federal Ministry of Internal Affairs gave positive signals towards implementing hate crime modules in the Police Academy of FBiH.

Useful Link:

<https://www.undp.org/content/dam/bosnia_and_herzegovina/docs/Publications/Being_LGBTI_in_Bosni_and_Herzegovina.pdf>

Working on the issues of improving the rights of LGBTI persons in Republika Srpska includes several main directions: improvement of the normative - legal framework, respectively laws and other acts of Republika Srpska, in order to harmonize them with the international standards for recognition, exercise and protection of the rights of LGBTI persons; analysis of the situation and inclusion of measures and activities related to the human rights of LGBTI persons in the work of ministries and other administrative bodies of the Government of Republika Srpska, including special plans and programs aimed at improving the human rights of LGBTI persons; raising awareness about the rights of LGBTI people to reduce their marginalization and discrimination in society; training of professionals on LGBTI rights, primarily employees in the institutions of the Government of Republika Srpska; establishment of cooperation and partnership for the promotion of the rights of LGBTI persons in Republika Srpska and BiH and exchange of experiences and good practices at the regional and international level.

The Gender Center of Republika Srpska in 2016 initiated the harmonization of criminal justice provisions of Republika Srpska with international legal standards governing the recognition, exercise and protection of the rights of LGBTI people. This process, which began in 2016 and continued in the following year, was carried out in cooperation with the Ministry of Justice of Republika Srpska (including the Working Group, which was in the meantime formed by the Ministry for drafting the new Criminal Code). The main non-institutional partner of the Gender Center of Republika Srpska in these activities was the "Sarajevo Open Center". This initiative was accepted and the new Criminal Code of Republika Srpska has been harmonized in all required aspects (in July 2017, the National Assembly of Republika Srpska adopted the new Criminal Code of Republika Srpska[[3]](#footnote-3)). Among other things, the Criminal Code of Republika Srpska regulates the criminal offense of "public incitement and encouraging violence and hatred", which makes Republika Srpska the first in BiH to sanction incitement to hatred, hate speech and violence against LGBTI people as well as other marginalized groups. Public incitement and encouraging violence and hatred is thus prohibited on the grounds of "national, racial, religious or ethnic affiliation, colour of skin, sex, sexual orientation, disability, gender identity, origin or other qualities". Criminal offense "violation of citizens' equality" includes, as a prohibited basis for violation, sex, gender, gender identity and sexual orientation, and the persecution of persons or organizations for their efforts to promote equality of people is also incriminated. In regulating general rules on sentencing, it is prescribed that hatred as a motive will be taken as an aggravating circumstance unless it presents the qualifying circumstance of the criminal offense.

1. **Destitution and poverty;**
2. **Current efforts by States to address bullying and exclusion of LGBT people from education, including in education curricula teacher training, measures to promote continuing education or reinsertion in education settings and vocational training;**

The Action Plan for Children of BiH was adopted by the Council for Children of BiH, a consultative body the Council of Ministers of BiH, and is valid for the period 2015-2018. In addition to other issues, the Action Plan also addresses the issue of violence against children, sexual exploitation and abuse. The plan proposes a series of measures and actions for combating and preventing violence, and one of them is the creation of a "curriculum on violence against and among children in undergraduate and postgraduate studies at some faculties". It is envisaged that this initiative is implemented jointly by the Council for Children of BiH and the academic community (not specified by the faculties) during 2015 and 2016

Annual reports on the implementation of the Action Plan, as well as the work of the Council for Children, are drafted by the Ministry of Human Rights and Refugees. The report for 2016 states that the Council has initiated initiatives to amend relevant laws in the area of ​​criminal law, social and child protection, family law, education, and the like. However, the report does not show that the Council, at least during this period, dealt with the issue of peer violence, although this problem was then public in the meantime.

In addition to the Children's Action Plan, 2013, the "Guidelines for the Treatment of Violence Against Children in BiH", which form an integral part of the Strategy for the Fight against Violence against Children in BiH (2012-2015) were adopted by the Council of Ministers BiH in 2012. Guidelines are designed to help the professional community and the general public to identify and report cases of violence against children. With regard to their practical application, the most important is the map of the concrete steps that schools should take in cases of peer violence, or violence against children.

In 2008 in the part of Bosnia and Herzegovina, the Republika Srpska, a "Protocol on the Treatment of Peer Violence among Children and Youth in the Educational System of the Republika Srpska (RS)" was adopted. The Protocol defines the rules and procedures for the treatment of relevant institutions in all cases of violence in the education system, including the recording of cases of violence in school, prevention, and cooperation with other institutions and parents in case of school violence. A year after the adoption of the Protocol, the Ombudsman for Children of the RS conducted a survey in 105 primary and secondary schools in the RS aimed at presenting the scope of the problem on the ground, as well as the measures that schools take in cases of peer violence. The results of the survey showed that schools were insufficiently addressed in the existence of the Protocol, despite the fact that there were cases of violence in half of the schools involved. One of the biggest problems is the lack of a clear definition of peer violence, and different perceptions of professionals in the school in relation to the definition given in the Protocol itself. The record of cases of peer violence in schools is, therefore, poorly developed and inefficient.

Also, at the cantonal level of the government in the part of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, there are protocols for dealing with peer violence, but there are no strategies for their concrete application. There is also cooperation with local non-governmental organizations in violence prevention programs, including parents' councils, and relevant ministries of the interior.

1. **Homelessness among LGBT people, particularly youth, and inclusion in shelter programs;**
2. **Coverage by social security and benefits, as well as public and private health insurance (Taking into account survivor’s pensions for same-sex couples, insurance coverage for gender affirming care, social housing for LGBT youth and older persons etc.);**
3. **Equal access to health (including through training and sensitisation of health care personnel), regardless of sexual orientation, gender identity or expression;**

The prohibition of discrimination prescribed by the BiH Law on the Prohibition of Discrimination also applies to the field of health care, and in principle health care is available to everyone equally without any discrimination based on sexual orientation, gender identity and sex characteristics. Ministries of health-care of the entities in BiH inform that homosexuality is no longer considered a disease and that it has been removed from all textbooks and educational material for medicine studies and affirm that health and social workers are encouraged to create an open and encouraging environment for young LGBT individuals, however, training programs for health and social workers related to sensitisation and skill development for work with LGBTI persons are yet to be instituted.

1. **Complaints mechanisms available and accessible to LGBT people facing discrimination.**

Human Rights Ombudsman Institution and its Department for the Elimination of All forms of discrimination work in all cases of discrimination based on sexual orientation and gender identity. Law on the Prohibition of Discrimination in the Article 7, paragraph 1, prescribes that the Ombudsman Institution is the central authority to protect against discrimination.

As an independent body for protection of human rights in Bosnia and Herzegovina, the Institution of Ombudsman for Human Rights reviews cases that pertain to poor functioning or violations of human rights and freedoms, including of the LGBT people, committed by any authorities in BiH. Ombudsman can act on individual complaints or *ex officio*. After conducting an investigation, he can propose adequate individual and/or general measures. The Ombudsman may forward cases on alleged violations of human rights to the highest judicial authorities in BiH responsible for human rights issues, in accordance with the rules stipulating the filing of complaints to such bodies, wherever he finds this to be necessary for effective performance of his duty.

The Ombudsman has also special powers and responsibilities under the Law on the Prohibition of Discrimination, and within such responsibility he receives complaints from natural and legal entities for discrimination, gives required information on their rights, on the options for judicial and other protection, decides on initiating the proceedings upon complaints, proposes mediation, collects and analyses statistical data, submits annual reports on the instances of discrimination, gives opinions and recommendations to the end of combating and preventing discrimination, monitors legislation, improves the practice in order to ensure equal treatment.

The Ombudsman may conduct general investigations and may recommend appropriate individual and/or general measures. When the Ombudsman decides that a complaint or a case initiated *ex officio* indicates that there is a potential violation of the rights of the complainant, he initiates the investigative procedure by collecting required documentation, seeking statements from the responsible party, examining appropriate files, considering mediation aimed at peaceful and efficient resolution of the case presented in the complaint, etc.

The powers of the Ombudsman are expanded onto the private sector, pursuant to Law on the Prohibition of Discrimination in BIH, and the Ombudsman considers cases of discrimination regarding the actions of public authorities at all levels of government in BiH as well as legal entities with public powers, as well as actions of all legal and natural entities in all spheres of life.

In addition, in accordance with the Law on Ministries of BIH, Sector of Human Rights of the Ministry of Human Rights and Refugees of Bosnia and Herzegovina the sector receives and processes claims, complaints and petitions of individuals, groups and collectives in order to protect their rights and the Ministry adopted sub-legal regulation on receipt and process the complaints. According to the provisions of the Law on Prohibition of Discrimination Ministry has established a database for monitoring and reporting on cases on discrimination in BiH.

The Agency for Gender Equality of Bosnia and Herzegovina, Gender Center of the Federation of Bosnia and Herzegovina and Gender Center of the Republika Srpska consider depositions and complaints of citizens that point to violation of rights from Gender Equality Law of BiH. The Agency adopted the Unified Rules for Consideration of Depositions and Complaints of Citizens on violations of the Gender Equality Law of BiH.

Protection of rights of LGBTI persons may also be exercised in court proceedings. The Law on the Prohibition of Discrimination stipulates that any person or group of persons who considers that it is discriminated may seek protection of their rights through existing judicial and administrative procedures.

In cases where the violation of the right to equal treatment arises from an administrative act, an appeal in the administrative procedure and eventual initiation of an administrative dispute based on protection against discrimination, requiring the annulment of such an administrative act, shall not prevent a person from initiating court proceedings for the protection against discrimination.

The court and other authorities apply the principle of urgency in all proceedings in which allegations of discrimination are examined. Special lawsuits for protection against discrimination allow a person or group of persons exposed to any form of discrimination to file a lawsuit and request:

a) to determine that the defendant has violated the prosecutor's right to equal treatment, that the act one has undertaken or missed can directly lead to a violation of the right to equal treatment (a lawsuit for the determination of discrimination);

b) the prohibition of taking actions that violate or may violate the plaintiff's right to equal treatment, that is, to conduct actions that eliminate discrimination or its consequences (a lawsuit for the prohibition or elimination of discrimination);

c) to compensate for material and non-pecuniary damage caused by violation of the rights protected by this Law (lawsuit for compensation of damages);

d) the judgment finding the violation of the right to equal treatment at the expense of the defendant is published in the media.

Requests may be made in conjunction with the requirements for the protection of other rights that are decided in civil proceedings if all the requests are in a relationship, regardless of whether those requests are regulated in a regular or special civil procedure, except for disputes about property interference. In this case, the relevant rules for the type of dispute in question shall apply, unless otherwise provided by the Law.

The lawsuit shall be decided by the competent court applying the provisions of the law on civil procedure. The court will adopt a request for the publication of a verdict if it determines: (a) that the violation of the right to equal treatment has occurred through the media; or (b) that information on proceedings that violates the right to equal treatment has been published in the media, and the publication of a verdict is necessary for full compensation for damage done or protection against unequal treatment in future cases. If it adopts a request for the publication of a verdict, the court will order the verdict to be published in its entirety. Exceptionally, the court may order the verdict to be published in parts or to remove certain personal data from the text of the verdict, if this is necessary for the protection of the privacy of parties and other persons, and does not question the purpose of the legal protection provided. A verdict requiring publication in the media is binding on the media publisher, regardless of whether they were a party to the proceedings.

In all proceedings envisaged by the Law on Prohibition of Discrimination, when a person or group of persons, on the basis of available evidence, makes it probable that there has been discrimination, the burden of proof that there has been no discrimination lies on the opposite side.

If it is a violation of the rights of a LGBTI person which constitutes a criminal offense, this offense shall be reported to the police and / or the prosecution. If we are talking about reporting to the police, this usually involves reporting to a police station in the victim's place of residence, but that does not necessarily have to be the case. Registration is also performed at the nearest police station to the place where the criminal offense was committed. A criminal offense can be reported by telephone, in writing or in person.

1. **Actions to ensure socio-cultural and economic inclusion based on sexual orientation and gender identity in measures undertaken to ensure implementation of the Sustainable Development Goals at the national and regional levels.**

There has been some progress in the past year in terms of the cooperation of organisations working on the rights of LGBTI people with the competent institutions, which, through the broader CSO coalitions, were involved in important processes, such as work on amendments to the Criminal Code and the anti-discrimination legislative framework.

Amendments to the Law on Prohibition of Discrimination entered into force in mid-2016, which have improved the legal framework for protection against discrimination. The list of grounds prohibiting discrimination has been harmonised and expanded, which now includes age, disability and sexual characteristics. Also, harassment and sexual harassment are more clearly defined. Novelties in the procedural aspect of the law (situational testing) have been introduced, andprovisions have been improved concerning collective lawsuits, redistribution of burden of proof, participation of third parties, security measures, special lawsuits, jurisdiction of courts, deadlines, and urgency of proceedings

Measures for the protection of LGBTI human rights were included in the implementation plans of the Gender Action Plan at the state and entity levels in late 2017. In early 2018, the Gender Equality Agency of BiH started preparations for drafting an Action Plan for Equality of LGBTI people.

1. **Actions taken to raise public awareness and sensitisation on issues of sexual orientation and gender identity, in order to promote the meaningful socio-cultural and economic inclusion of LGBT people.**

Bosnia and Herzegovina continuously makes efforts, within its competences, to improve the rights of the LGBTI population in Bosnia and Herzegovina, among which are the following :

* Introduction of a gender perspective into the training program of police academies and other police training agencies in order to increase knowledge about gender equality in the security sector, hate crime and violence against LGBTI people and the concept of human security;
* Awareness raising activities, such as the celebration of the International Day Against Homophobia and Transphobia (May 17th), which has been included in the Program of Marking Significant Human Rights Date in Bosnia and Herzegovina since 2017;
* Active participation of the representatives of the Agency for Gender Equality of Bosnia and Herzegovina, Ministry for Human Rights and Refugees of Bosnia and Herzegovina in the work of the European Governmental LGBTI Focal Points Network;
* Organizing trainings, such as: training of the Coordination Board for monitoring the implementation of the Gender Action Plan of BiH on the rights and needs of the LGBTI community, training of the institutional mechanisms for gender equality on the rights of intersex persons, training of the Ministry of Security of Bosnia and Herzegovina on the rights of LGBTI persons with an emphasis on transgender persons;
* We are especially highlighting the last in a series of trainings – the one dedicated to protecting the rights of transgender and intersex people, organized in partnership of the Agency and the Sexual Orientation and Gender Identity Unit of the Council of Europe ("SOGI Unit"). The workshop, among other, was attended by representatives of the Institution of Ombudsman for Human Rights, the Entity ministries of internal affairs and health, clinical centres, health institutes, academic communities and civil society.
* Most of the above mentioned events were publicized in media to inform the public about the goals and importance of the issues discussed.

The awareness and knowledge of the necessity of respecting human rights in general, and therefore the rights of LGBTI population, are key preconditions for involving the wider community in the prevention and combating discrimination and violence against LGBTI people. The Gender Center of Republika Srpska has implemented various types of activities in this regard, such as marking the International Day Against Homophobia and Transphobia, support to activities and events of the non-governmental sector, etc. The most important activity was certainly the preparation and organization of the first regional conference on this topic. A regional conference titled "Public Policy for the Equality of LGBTI People in BiH" was realized in the joint organization of Gender Center and "Sarajevo Open Center", and it was held at the Administrative Center of the Government of Republika Srpska, with the attendance of a large number of participants, representatives of institutions from all levels of government of BiH and Republika Srpska, representatives of institutional mechanisms for human rights and gender equality, experts and guests from the region and representatives of international and non-governmental organizations. The conference enabled the exchange of experiences from the region on the issues of rights and needs of LGBTI people.

1. **Services provided by civil society to excluded and marginalised LGBT people.**

Services to excluded and marginalised LGBT people are provided by the following civil society organisations:

|  |  |  |
| --- | --- | --- |
| 1 | Sarajevo open centre | [www.soc.ba](http://www.soc.ba/) |
| 2 | Tuzla Open Centre | [www.toc.ba](http://www.toc.ba/) |
| 3 | Foundation CURE (GIRLS) | [www.fondacijacure.org](http://www.fondacijacure.org/) |
| 4 | Centar za mlade KVART | <https://centarzamladekvartprijedor.blogspot.com/> |

The Sarajevo Open Centre was founded in 2007 in order to promote and advocate for human rights and social inclusion of LGBTI persons and women. In that respect, Sarajevo Open Centre among other things has actively worked on: awareness raising about LGBTI rights and problems plaguing this community through various forms of media campaigns and thematic public events; empowerment of the community and building of an activist movement through various forms of trainings, counselling, informing and actively helping activists, activist groups and organisations to organise themselves and supporting them in their work; and on advocating for concrete public policies towards decision makers, legal protection and institutional cooperation with relevant government institutions.46 In that regard, activism of the Sarajevo Open Centre is deeply involved in the needs and problems of the community and it tries to maintain the community’s interests to the largest extent possible through its activities, while respecting all differences between different categories. NGO SOC held the trainings for social workers, psychologists, psychiatrists and civil servants in public institutions. Useful Link:

<http://soc.ba/en/pink-report-2018-annual-report-on-the-state-of-human-rights-of-lgbti-people-in-bosnia-and-herzegovina/>

In addition, organizations working on human rights promotion in general, such as the Helsinki Committee for Human Rights of Republika Srpska (Bijeljina), the Helsinki Citizens' Parliament (Banja Luka), and Oštra Nula (Banja Luka), carry out activities dedicated to the LGBTI community and / or the promotion of the human rights of LGBTI people.

1. The information given in this answer (1.b) is contained in the Report of the Gender Center of Republika Srpska on the Status of Human Rights of LGBTI Persons in Republika Srpska from 2017, made in cooperation with the "Sarajevo Open Center". [↑](#footnote-ref-1)
2. According to the Sarajevo Open Center publication "Numbers that mean equality - Analysis of the results of the research on the problems and needs of LGBTI people in Bosnia and Herzegovina in 2017" [↑](#footnote-ref-2)
3. Criminal Code of Republika Srpska („Official Gazette of Republika Srpska“ No: 64/17). Available at: <http://www.narodnaskupstinars.net/?q=la/akti/usvojeni-zakoni/krivi%C4%8Dni-zakonik-republike-srpske> [↑](#footnote-ref-3)