**ALTERNATIVE CEDAW REPORT:**

**REPORT OF CIVIL SOCIETY ORGANIZATIONS ON IMPLEMENTATION OF THE CONCLUDING OBSERVATIONS AND RECOMMENDATIONS OF CEDAW COMMITTEE FOR BOSNIA AND HERCEGOVINA**

**2013 - 2017**

**Constitutional and legislative framework**

Prepared by: Inela Hadžić, Lejla Gačanica and Željka Umićević

**Concluding observation number 13:**

*While acknowledging the existing definitions in the gender equality law, the Committee is concerned that the Constitution does not at present include a comprehensive definition of discrimination against women, in line with article 1, or of the principle of equality between women and men, in line with article 2 of the Convention.*

**Concluding observation number 14:**

*In the light of the constitutional review process, the Committee recommends that the State party specifically incorporate into its new Constitution a definition of equality between women and men and a prohibition of direct and indirect discrimination against women in the public and private spheres, in accordance with articles 1 and 2 of the Convention.*

*In July 2015 the Committee adopted the* ***General Recommendation 33*** *in which, among other things, it called upon the State parties to embody the principle of the equality of men and women and the elimination of discrimination against women in all spheres of life (public and private) in their national constitutions, and to take measures to ensure the realization of the principle in all areas of public and private life as well as in all fields of law.*

**INTRODUCTION**

**Although there are two initiatives that advocate for changing the Constitution from a gender perspective[[1]](#footnote-1), Bosnia and Herzegovina has not showed political will to implemented from 2013 until now, there for Bosnia and Herzegovina remains one of few European countries whose Constitution does not contain provisions related to equality between women and men[[2]](#footnote-2).**

The Constitution of Bosnia and Herzegovina, particularly the Annex IV of the Dayton Peace Agreement from November 1995, was aimed at stopping the war in the territory of Bosnia and Herzegovina and the establishment of peace. The Constitution of Bosnia and Herzegovina accepts the universal guarantee of human rights contained in international human rights documents (Annex 1 of the Constitution), which have priority over the provisions of the Constitution. However, the entire text of the Constitution does not say anything on the issue of gender equality or mentions men and women as individuals of different genders or sex. The BiH Constitution does not recognize or use gender-sensitive language in his text and does not contain any affirmative measures to ensure equal participation of women and men in all spheres of socio-political life. Constitution of Bosnia and Herzegovina only bans discrimination on the grounds of gender, along with other enumerated grounds.

Many shortcomings and vagueness of the BiH Constitution implicated the need to amend and modify its particular parts. The first serious attempts to reform the Constitution of BiH began after the judgment of the European Court of Human Rights in Strasbourg in the Sejdic-Finci verdict which determined systemic discrimination against all persons who do not identify themselves as belonging to one of the three constituent nations. However, governing structures in BiH have not been able to reach a compromise over this issue from the notification of the judgment (December 2009) until today. Instead of constitutional changes, Economic and Social Affairs defined by the reform agenda for BiH 2015-2018 were placed in the foreground. Even the media monitoring, done in the period between 1st and 30th of September 2016, confirmed that the issue of constitutional changes is completely marginalized and thrown out of the political agenda[[3]](#footnote-3). Out of 5908 media reports and articles, which were covered by monitoring none mentioned constitutional changes (be it the obligation of the state to change the BiH Constitution in accordance with the judgment of the European Court of Human Rights, or the initiatives of civil society organizations engaged in constitutional reform).

**IMPLEMENTATION OF THE RECOMMENDATIONS OF THE CEDAW COMMITTEE AND THE CONSTITUTIONAL REFORM PROCESS**

In recent years there has been a series of attempts to amend the existing Constitution of BiH, primarily with the aim of eliminating ethnic discrimination, which came from several political parties[[4]](#footnote-4), civil society organizations or have been initiated by international actors and the ruling parties in BiH (April package, Butmir package and Prud Agreement). The proposals of political parties, program platforms or resolution of the same, did not follow the provisions regarding gender equality and affirmative measures to ensure gender equality, and only a handful of proposals contained provisions on the use of gender-aware language.

After an unsuccessful attempt of the agreement of the ruling parties (2012), about three sets of amendments for the implementation of the Sejdic-Finci verdict, the process of constitutional reform was stopped until September of 2015 when the Council of Ministers, on the proposal of the Ministry of Justice, considered and adopted the Action Plan for enforcement of verdicts of the European Court of Human rights in the case “Zornić against Bosnia and Herzegovina“[[5]](#footnote-5) and “Sejdić-Finci vs. Bosnia and Herzegovina“.[[6]](#footnote-6) Also, the suggestion that the deadlines for implementation of the action plan defining the adoption of amendments to the Constitution of Bosnia and Herzegovina and harmonization of electoral legislation with the aim of eliminating human rights violations, will be determined by the working groups when it is formed was adopted, and all in accordance with the European Charter on Human Rights and Freedoms. Up to the date of submission of this report, the Ministry of Justice has failed to make Draft decision on the establishment of the Working Group to prepare a proposal for amendments to the BiH Constitution, which had been pending since September of 2015.

In spite of proposal to amend the Constitution of BiH, whose goal was to remove ethnic discrimination, only a handful of other proposals that have been formulated mainly by civil society organizations[[7]](#footnote-7) and the Agency for Gender Equality were related to the issues of gender equality and the elimination of gender discrimination. The Agency for Gender Equality has produced a set of amendments to the Constitution of BiH and the Constitution of the entities which would guarantee the equality, promote equal opportunities, guarantee the right to decide on reproductive health, and implement affirmative measures. These proposals were not part of legal procedures until now.

Initiative “Women Citizens for Constitutional Changes“ is one of the few active initiatives committed to changing the Constitution from a gender perspective. In 2013 The initiative has, through the Commission for Gender Equality of the Parliamentary Assembly, sent the proposal of gender-sensitive amendments to the Constitution of BiH (use of gender-sensitive language, introduction of affirmative measures and defining gender equality as a constitutional value)[[8]](#footnote-8) to the Council of Ministers and the House of Representatives, whose adoption would eliminate discrimination against women in the Constitution. However, until 2016 the proposed gender amendments created by the Initiative, have not been a session topic of the Parliamentary Assembly of Bosnia and Herzegovina. The fact that the proposals of the Initiative were only 'noticed' by the relevant individuals indicates the lack of will to deal with the issue of gender equality to which they pledged by the Convention and shows complete negligence of those in power towards the proposals coming from civil society organizations.

The lack of precise regulation of issues, such as the policies of equal opportunities to participate in political life, decision-making about reproductive rights and health, prescription of affirmative measures and the like at the level of the Constitution, in fact leaves open many issues concerning women's rights, which are being manipulated differently (on entity levels) at their expense.

In BiH, the lack of political will and willingness to recognize gender equality as a prerequisite for participative democracy, human and economic development, peace and stability is evident. It is essential that the Constitution reflects gender equality in its rights and duties, as well as parity democracy, which is based on the equal representation of women and men in decision-making bodies.

**RECOMMENDATIONS**

1. Expand the General Recommendation No. 14 so that it includes the introduction of affirmative measures in the BiH Constitution, so that it states:

“In the light of the constitutional review process, the Committee recommends that the State party specifically incorporate into its new Constitution a definition of equality between women and men and a prohibition of direct and indirect discrimination against women in the public and private spheres, in accordance with articles 1 and 2 and 15 of the Convention as well as to incorporate affirmative measures in the Constitution.”

1. Conduct dialogue on constitutional reforms solely in the institutional framework, transparently and with the participation of a wider range of actors, and develop high-quality and continuous public debate with the aim of sensitizing the public on fundamental issues of realization of gender equality in the context of the Constitution.

1. It is a set of gender-sensitive amendments made by the Agency for Gender Equality and the initiative Women Citizents of the constitutional reform [↑](#footnote-ref-1)
2. In the report “Gender equality law in Europe: How are EU rules transposed into national law in 2015?” is stated: “…a large number of countries (Austria, Bulgaria, Croatia, Finland, France, Germany, Greece, Hungary, Italy, Liechtenstein, Lithuania, the FYR of Macedonia, Malta, Montenegro, Poland,Portugal, Romania, Serbia, Slovenia, Spain and Turkey) have also adopted provisions pertaining toequality between men and women in their Constitution”. The report provides a general overview of the transposition of EU gender equality law in the 28 Member States of the European Union, as well as Iceland, Liechtenstein and Norway (the EEA countries) and four candidate countries (the Former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey).The report i s available on: <http://ec.europa.eu/justice/gender-equality/files/your_rights/gender_equality_law_in_europe_2015_en.pdf> [↑](#footnote-ref-2)
3. The monitoring covered 6 media in BiH (two on-line portals, two TV stations and two daily newspapers), and was organized by the Initiative "Women citizens for constitutional reform". [↑](#footnote-ref-3)
4. The proposal of the SPD in 2004 and 2009, the proposal of the HDZ BiH from 2010, the proposal of Our Party in 2012, the SDA Program Declaration of 2009, the Platform of HNS in 2013, Resolution on starting constitutional grounds of the SNSD from 2013. [↑](#footnote-ref-4)
5. Zornić against Bosnia and Herzegovina (Case No. 3681/06) - The European Court of Human Rights [↑](#footnote-ref-5)
6. Sejdić and Finci v. Bosnia and Herzegovina (27996/06 and 34836/06) – European Court for Human Rights [↑](#footnote-ref-6)
7. The proposal of the Centre for Human Rights, University of Sarajevo in 2006, the proposal of the Association of Alumni Center for Interdisciplinary Studies (ACIPS) in 2007 and 2009, the proposed amendments of Tuzla Civic Forum and Law Institute Sarajevo, and proposal from dr Goran Markovic from Law Faculty east Sarajevo, etc. [↑](#footnote-ref-7)
8. Platform of women priorities for constitutional changes with the amendments to the BiH Constitution from a gender perspective, the document is available at: <https://gradjankezaustavnepromjene.wordpress.com/platformu-zenskih-prioriteta/> [↑](#footnote-ref-8)