

Pursuant to Article IV 4 a II 2 and 4 of the Constitution of B&H;  
In view of international commitments as set by the Constitution of B&H, in particular the commitments arising from the Convention on Elimination of All Forms of Discrimination against Women and commitments arising from the Convention on the Rights of Children;  
With a view to directives and regulations of the European Union and its institutions;  
Including the highest standards of gender equality and human rights, as set by the Constitution of B&H;  
Aimed at eliminating gender discrimination and providing effective protection, at the session of the House of Representatives held on \_\_\_\_\_ and the session of the House of Peoples held on \_\_\_\_\_, the Parliamentary Assembly adopted the following:

## **LAW ON GENDER EQUALITY IN BOSNIA AND HERZEGOVINA**

### **I GENERAL PROVISIONS**

#### Article 1

This Law regulates, promotes and protects substantive gender equality and guarantees equal opportunities to all, in public as well as private life, and eliminates and prevents direct and indirect gender based discrimination, thus particularly improving the position of women.

#### Article 2

Sexes shall be equal.

Full gender equality shall be guaranteed in all spheres of society, particularly in the fields of: economy, education, employment and labor, social and health care, public life and media, irrespective of marital and family status.

Discrimination based on sex and sexual orientation is hereby prohibited.

## II DISCRIMINATION

### Article 3

Gender discrimination is any distinction, exclusion, restriction or preference based on gender, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of human rights and freedoms in all spheres of society under equal terms.

Discrimination may be direct or indirect.

Direct discrimination is any situation wherein an individual has been or is or may be treated less favorably than another individual in a similar situation, on the basis of sex.

Indirect discrimination is any situation wherein an apparently neutral legal norm, criterion or practice, equal for all, puts persons of one sex at a particular disadvantage compared with persons of the other sex.

Prohibited discrimination will not exist if a provision, criterion or practice could be objectively justified by achieving legitimate aim, which is proportionate to undertaken necessary and justified measures.

In accordance to paragraph 4 of this Article, special measures are allowed in order to promote gender equality and to eliminate the existing inequality.

## III DEFINITIONS

### Article 4

For the purpose of this Law, the following definitions shall apply:

- a) **gender based violence:** any act causing physical, mental, sexual or economic damage or suffering, as well as threats of such actions, which interfere with the enjoyment of rights and freedoms based on gender equality, in public and private life, including trafficking in human beings for the purpose of forced labor, and any restriction or arbitrary deprivation of liberty, for persons exposed to such acts;
- b) **harassment:** any situation where an unwanted conduct related to sex occurs, with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or similar situation;
- c) **sexual harassment:** any situation where by any form of verbal, non-verbal, physical or psychological unwanted conduct based on sex occurs, with the purpose or effect of violating the dignity of a person, or creating an intimidating, hostile, degrading, humiliating, offensive or any similar situation, motivated by the fact that the individual is of the opposite sex or of different sexual orientation;

- d) **employer, employee, worker (gender unspecified)**: as defined by Labor and Employment Laws of the Entities.
- e) **gender**: socially constructed roles of man and women in public and private life. In the spirit of this Law, the term gender represents the significance the society affords to the biological determination of gender, as opposed to the term sex, which refers solely to biological differences.

## IV EDUCATION

### Article 5

Everyone shall have equal rights to education, irrespective of sex.

Educational institutions shall not discriminate on the basis of sex in relation to:

- conditions for enrollment;
- refusal of enrollment;
- rendering services and benefits;
- exclusion from education system;
- evaluation of results achieved during education;
- equal conditions of career development and professional guidance, further education and diplomas;
- in all other cases.

### Article 6

Competent authorities, educational institutions and other legal persons shall ensure that syllabi, curricula and methodologies provide for the establishment of an education system which includes guarantees for the elimination of stereotyped curricula which produce discrimination and gender inequality as a consequence.

Materials promoting gender equality shall be an integral part of curricula for all levels of education.

Competent authorities, educational institutions and other legal persons shall provide effective mechanisms of protection against harassment, sexual harassment, discrimination, and shall undertake no disciplinary or other penal measures against any person who complains of sexual harassment or provides testimony about sexual harassment.

## **V EMPLOYMENT, LABOR AND ACCESS TO ALL FORMS OF RESOURCES**

### Article 7

Men and women shall have equal employment opportunities.

Any gender based discrimination in employment offers, public vacancy notices, job allocations, contracts and termination of contracts, shall be in violation of this Law, save in cases as provided in Article 5, Paras 5 and 6 of this Law.

### Article 8

Prohibited gender discrimination in labor and employment includes:

- failure to provide equal salary and other benefits for the same work or work of the same value;
- prevention of advance in work under equal conditions;
- prevention of equal opportunities in education, training and further professional education;
- uneven suitability of work premises and auxiliary premises and equipment of the employer to biological-physiological needs of employees of both genders as well as disabled employees;
- different treatment due to pregnancy, childbirth or maternity leave, including failure to provide the same or equally paid employment of the same level, upon return from maternity leave, as well as different treatment of men and women in relation to leave following childbirth;
- any unfavorable treatment of parents or guardians in the reconciliation of professional and family obligations;
- organization of work, distribution of tasks or any other form of setting the conditions of work in such a way as to place an employee into an unfavorable position in comparison with other employees on the basis of gender or marital status;
- any other action or activity amounting to any form of direct or indirect discrimination as set by Article 3, Paragraphs 3 and 4 of this Law.

The employer shall undertake effective measures to prevent harassment, sexual harassment or gender based discrimination at work or in contracts, as set by Paragraph 1 of this Article, and shall undertake no measures against an employee who complains against harassment, sexual harassment or gender discrimination.

### Article 9

Collective contracts shall be made or amended in accordance with provisions of this Law and shall provide equal opportunities irrespective of sex.

Trade unions shall play a special role in ensuring equal protection of the right to work and employment conditions and shall ensure that there is no gender-based discrimination among its members, either direct or indirect.

## Article 10

Everyone shall have equal rights of access to economic affairs, irrespective of sex, which includes equal treatment in: access to any economic resources, privatization, access and utilization of loans and other forms of financial assistance and conditions for obtaining them, business permits and registration as well as conditions for obtaining them.

Equal treatment and equal opportunities and elimination of discrimination shall be ensured in the same way for women in rural areas, in order to ensure their economic subsistence as well as subsistence of their families.

## **VI SOCIAL WELFARE**

### Article 11

Everyone shall enjoy equal rights to social welfare, irrespective of sex.

Gender based discrimination in the enjoyment of all forms of social welfare rights as established in this Law is prohibited, and particularly in cases of:

- filing any request for enjoyment of any right in the field of social welfare;
- any procedure of determination and utilization of social rights and benefits as set;
- termination of enjoyment of rights as set.

### Article 12

Competent authorities shall ensure that laws and other acts and mechanisms related to access and utilization of social welfare are not discriminating on the grounds of sex, either directly or indirectly.

## **VII HEALTH CARE**

### Article 13

Everyone shall have the same right to health care, accessibility of health services, including family planning, irrespective of sex.

Health institutions shall undertake all necessary measures to prevent gender discrimination in all forms of health care.

Competent authorities shall undertake special measures aimed at protecting and promoting reproductive health of women.

## **VIII SPORTS AND CULTURE**

### Article 14

Everyone shall have equal rights and possibilities in participating in sports and cultural life, irrespective of sex.

Competent authorities, institutions and organizations shall undertake measures to prevent gender discrimination, aimed at ensuring equal possibilities to:

- any sport or branch of culture;
- development, and support any sport or branch of culture;
- public awards for outstanding achievement in the given sport or branch of culture.

## **IX PUBLIC LIFE**

### Article 15

Bodies of the state and local self-governance, managerial bodies of companies, political parties and other non-profit organizations shall ensure and promote balanced representation of men and women on the process of management and decision-making.

In order to achieve goals set in Paragraph 1 of this Article, competent authorities shall undertake any interim measure to be used to improve gender misbalance in government bodies of all levels, and these measures shall be revised periodically.

In order to ensure equal representation of genders, percentage of women in government bodies shall not be lower than 50%, including the judiciary and the executive, as well as all other public offices, including participation in bodies representing the state internationally.

## **X THE MEDIA**

### Article 16

Everyone shall have equal right of access to the media, irrespective of sex.

No person irrespective of sex shall be publicly presented in an offensive, humiliating or degrading way.

Through their programming, the media shall develop gender equality awareness.

## **XI PREVENTION OF VIOLENCE**

### **Article 17**

All forms of gender based violence in private and public life is prohibited.

Competent authorities shall undertake all appropriate measures in order to eliminate and prevent gender based violence in public and private life, and shall provide instruments of protection, assistance and compensation to the victims.

Competent authorities shall also develop measures of protection of gender based violence, especially in education, in order to eliminate bias, customs and all other practices based on the idea of inferiority or superiority of either sex, as well as stereotype roles of men and women. This includes but is not limited to education and raising awareness among civil servants, the public, etc.

## **XII STATISTICAL RECORDS**

### **Article 18**

All statistical data and information collected, recorded and processed by state bodies on all levels, in public offices and institutions, state and private companies and other subjects, shall be gender-disaggregated.

Statistical data and information collected, recorded and processed pursuant to Paragraph 1 of this article shall be part of statistical records and shall be available to the public.

## **XIII JUDICIAL PROTECTION**

### **Article 19**

Everyone whose right set by this law has been violated shall have the right to initiate criminal or civil proceedings before courts of general jurisdiction, in accordance with relevant laws.

Charges may be brought before a court prior to or without initiating proceedings for protection with the employer.

## Article 20

Unless the respondent party proves otherwise, a ruling of discrimination shall be made if a plaintiff claiming to have suffered damages due to a violation of the right to gender equality, as guaranteed by this Law, provides arguments in support of facts that lead to a conclusion that he or she has been a victim of direct or indirect discrimination.

## **XIV COMPENSATION OF DAMAGES**

### Article 21

Gender based discrimination, harassment and sexual harassment, as defined by this Law, may serve as basis for compensation of damages. In such an event, provisions of the Law on Obligations and provisions of relevant Laws on Civil Proceedings and Laws on Enforcement shall be duly applied.

All decisions issued by competent judicial bodies in relation to a violation of any provision of this Law shall be submitted to the Ministry for Refugees and Human Rights of B&H, the Gender Center of the Federation and the Gender Commission of RS.

## **XV RESPONSIBILITIES OF THE AUTHORITIES**

### Article 22

Competent authorities shall undertake appropriate measures on all levels in order to implement provisions of this Law in areas of, but not limited to:

- adopting sets of measures aimed at achieving gender equality in all areas and on all levels of government;
- adopting new or amending existing laws in order to harmonize them with provisions of this Law;
- ensuring judicial protection, both civil and criminal, in all cases of violations of provisions of this Law;
- ensure maintenance of gender-disaggregated statistics in all companies and enterprises, state owned and public, all state and public bodies and institutions, as well as access to such information.

## **XVI MONITORING THE IMPLEMENTATION OF THE LAW**

### **NGO alternative**

#### Article 23

The Ministry of Human Rights and Refugees of Bosnia and Herzegovina shall supervise implementation of this Law.

Gender Center of the Federation and Gender Commission of RS shall also monitor and supervise implementation of the Law and shall report on it to the Ministry for Human Rights and Refugees no less than once a year.

In the preparation of the report referred to in Paragraph 2 of this Article, they shall cooperate with and consult the non-governmental sector, particularly organizations dealing with protection of human rights and women's human rights.

Gender Center of the Federation and Gender Commission of RS shall ensure that all levels of government have a balanced gender equality policy, and shall cooperate with non-governmental organizations and unions in this area.

Gender Center of the Federation and Gender Commission of RS may, at any time, present special reports to the Ministry for Human Rights and Refugees.

All reports of the Gender Center of the Federation and the Gender Commission of RS shall be public.

#### Article 24

Every two years, the Ministry for Human Rights and Refugees shall present to the Parliament a National Action Plan for promotion of gender equality, based on proposals from all the ministries, the Gender Center of the Federation and the Gender Commission of RS and non-governmental organizations.

Prior to the submission of the National Action Plan referred to in Paragraph 1 of this Article, the Ministry for Human Rights and Refugees shall conduct consultations with the non-governmental sector, particularly organizations dealing with protection of human rights and women's human rights.

Every year, the Ministry for Human Rights and Refugees shall submit to the Parliament a report on the status of men and women in B&H society, and implementation report of the National Action Plan referred to in Paragraph 1 of this Article in all areas included in this Law.

*Explanation*

*(In our opinion, the proposal is, in its current form, quite effective, without any implications as to any significant financial implications from the budget. Since the Ministry for Human Rights and Refugees appears only as the body that monitors the implementation of this Law, and that it is the only body competent to present the National Action Plan pursuant to this Law, in both proposals, it is logical to conclude that a department should be established within the Ministry, dedicated to these activities. Naturally, this cannot be subject of this Law, but rather of a reorganization plan and internal regulations of the Ministry. Establishment of the Gender Equality Agency as a shared body of the Ministries for Human Rights and European Integration, requires new recruitment of staff, equipment, accommodation, etc., which only leads to an augmentation of the bureaucratic apparatus and considerable expenditure.)*

**Ministry s alternative**

Article 23

The Ministry for Human Rights and Refugees of B&H shall conduct supervision of implementation of this Law.

In order to ensure the supervision of implementation of this Law, there shall be a joint Gender Equality Agency of Bosnia and Herzegovina (hereinafter the Agency), within the Ministry for Human Rights and Refugees and the Ministry for European Integration.

The Agency shall be organized and shall work pursuant to a separate Decision to be passed by the Council of Ministers of Bosnia and Herzegovina, at the proposal of the Ministry as referred to in paragraph 1 of this Article.

Article 24

Gender Equality Agency of Bosnia and Herzegovina shall perform the following functions

1. preparation of periodical State Action Plan for promotion of gender equality based on proposals from all state level ministries, the plan of the Gender Center of the Federation of B&H (hereinafter Gender FBiH) and the plan of the Gender Commission of RS (hereinafter Gender RS), to be submitted by the Ministry for Human Rights and Refugees to the Council of Ministers for adoption, once a year every year;
2. monitoring of implementation and coordination of activities with all the relevant subjects in the implementation of the State Plan referred to in paragraph 1 of this Article;
3. preparation of an annual report for the Council of Ministers of B&H, on the gender status in B&H, based on reports from Gender FB&H and Gender RS;
4. evaluation of laws, acts and bylaws adopted by the Council of Ministers, in order to monitor the effectiveness of equality and equal gender representation, and proposals

- to the Ministry for Human Rights and Refugees to initiate procedures for changes and amendments of existing legislation in B&H in accordance with international agreements and regulations of the European Union;
5. development of methodology for evaluation of effectiveness of state policy and programs related to gender equality;
  6. other tasks and duties related to promotion of gender equality and realization of the purpose of this Law.

#### Article 25

At the level of the entities, Gender Center of the Federation and Gender Commission of RS shall monitor and supervise the implementation of the Law and shall report on it to the Ministry for Human Rights and Refugees no less than once a year.

When drafting the report referred to in paragraph 1 of this Article, they shall cooperate with and consult the non-governmental sector, in particular organizations dealing with protection of human rights and women's human rights.

Gender Center of the Federation and Gender Commission of RS shall ensure that all levels of government follow a balanced political equality of genders, and shall cooperate with non-governmental organizations and unions in that respect.

Gender Center of the Federation and Gender Commission of RS may present special reports to the Ministry for Refugees and Human Rights at any time.

All reports of Gender Center of the Federation and Gender Commission of RS shall be published.

#### Article 25

Gender Center of the Federation and Gender Commission of RS shall have the right to examine any alleged violation of this Law at the request of the Ministry, citizens, non-governmental organizations, or at their own initiative.

Gender Center of the Federation and Gender Commission of RS shall cooperate in undertaking initiatives, drafting laws, other regulations and general acts, and in enacting measures aimed at ensuring gender equality.

Gender Center of the Federation and Gender Commission of RS shall prepare reports on their findings and their recommendations and submit them to competent bodies and individuals concerned.

Should the Gender Center of the Federation and the Gender Commission of RS find a violation of gender equality due to a lack of harmony between any law or an act and this Law, they will initiate proceedings for changes and amendments to any such law or act.

A detailed procedure referred to in the preceding Paragraph shall be elaborated in Rules of Procedure of the Gender Center of the Federation and the Gender Commission of RS.

#### Article 26

Competent authorities and other state institutions, employers and other natural or legal persons shall provide all the necessary information and allow access to any documents at the request of the Gender Center of the Federation and the Gender Commission of RS no later than 15 days upon request.

### **XVII PENAL PROVISIONS**

#### Article 27

A legal person shall be sentenced with a fine of 1,000 KM to 30,000 KM in cases of:

1. failure to undertake appropriate and effective measures against gender discrimination, harassment and sexual harassment;
2. failure to undertake appropriate measures to eliminate and prevent unlawful gender discrimination in labor and employment, as defined by Article 8 of this Law;
3. failure to provide curricula, syllabi and methodology in educational institutions which guarantee the elimination of stereotyped curricula which produce discrimination and gender inequality as a consequence;
4. failure to maintain gender-disaggregated statistical data and information collected, recorded and processed;
5. failure to provide public access to statistical data held, pursuant to this Law;
6. public presentation of any person in an offensive, humiliating or degrading way, irrespective of sex.

An offence set forth in Paragraph 1 of this Article shall entail a fine of 100 KM to 1,000 KM against a responsible person within the legal person as well as against any individual in charge of an independent private business.

No provision of this law can be interpreted as a limitation or restriction of the right to initiate criminal or civil proceedings, under the conditions set by this Law.

Fines shall be collected in favor of the budget of joint institutions of Bosnia and Herzegovina.

#### **Ministry s alternative**

Until the Law on Minor Offences of Bosnia and Herzegovina has been adopted, within competent entity ministries, the Brcko District, as the case may be, competent inspections shall pass decisions on the amount of fines for violations as defined by this Law.

Decisions are enforced pursuant to current laws of the respective entity or the Brcko District, as the case may be.

Revenue from fines shall be paid in the following way: one half in favor of the budget of the respective entity or the Brcko District, as the case may be, and the second half in favor of the budget of joint institutions of Bosnia and Herzegovina.

Funds collected in this way shall be allocated for funding of activities of the Gender Equality Agency of B&H, and at the entity level for funding activities of the Gender Center of the Federation of B&H and the Gender Commission of RS, or relevant services of the Brcko District, as the case may be.

*NGO coalition has not agreed to these provisions. The Coalition thinks that these provisions might raise some serious human rights issues, such as access to justice, in particular in case if a competent inspection imposes a fine. Also, it is not for this Law to decide how the revenues would be distributed among different levels of the government. The NGO coalition supports the expedited legislative procedure in order to pass the BiH Law on Minor Offences, as well as creation of appropriate authorities to implement that Law, i.e. the BiH Court of Minor Offences.*

#### Article 28

Any person who commits gender based violence, harassment or sexual harassment as described in Article 4 of this Law shall be punished for a criminal offence and sentenced to 6 months to 5 years of imprisonment.

Prosecution shall be *ex officio*, pursuant to the Law on Criminal Proceedings of B&H.

#### Article 29

Proceedings and rulings on criminal and other offences defined by this Law shall be of urgent nature and dealt with in an expedited manner, and shall take priority in the work of competent bodies.

### **XVIII INTERIM AND FINAL PROVISIONS**

#### Article 30

All laws of the State and its Entities as well as other relevant regulations shall be harmonized with provisions of this Law no later than in one year.

#### Article 31

This Law shall come into force 8 days following its publication in the Official Gazette of B&H.