



# BOSNIA AND HERZEGOVINA

## BEING LGBTI IN EASTERN EUROPE:

Reducing inequalities and exclusion, and combating homophobia and transphobia experienced by LGBTI people in Bosnia and Herzegovina

BOSNIA AND HERZEGOVINA

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NATIONAL LGBTI REPORT



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## Impressum

This report is part of a sub-regional project “Being LGBTI in Eastern Europe” which is implemented by UNDP and financed by USAID. It has been developed based on several events with institutional stakeholders and civil society organizations in Bosnia and Herzegovina in 2016, conversations with representatives of civil society organizations and relevant institutions, researches and desk reviews of published literature.

The report covers the developments and activities until 31 December 2016.

All changes and activities after this date are not covered by the report.

The report is available in English and languages of people of Bosnia and Herzegovina (Bosnian, Croatian, Serbian).

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## List of acronyms

BD	Brčko District of Bosnia and Herzegovina (federal unit in Bosnia and Herzegovina)
BiH	Bosnia and Herzegovina
BH/bh.	Bosnian and Herzegovinian
EC	European Commission (body of the European Union)
EU	European Union
FBiH	Federation of Bosnia and Herzegovina (federal unit in Bosnia and Herzegovina)
LGBT	Lesbian, gay, bisexual and trans people
LGBTI	Lesbian, gay, bisexual, trans and intersex people
LGBTIQ	Lesbian, gay, bisexual, trans, intersex and queer people
MP	Member of Parliament
NDI	National Democratic Institute
OBN	Open Broadcast Network
OSCE	Organization for Security and Cooperation in Europe
RS	Republika Srpska (federal unit in Bosnia and Herzegovina)
UN	United Nations
UNDP	United Nations Development Programme
USA	United States of America
USAID	United States Agency for International Development
WHO	World Health Organisation

# 1. Executive summary

## 1.1 Overview of the main findings

This report provides an extensive overview of the current status of the human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI<sup>1</sup>) people and the LGBTI activist movement in BiH. The key conclusions of this report are summarized below.

### *Overview of the situation of LGBTI people in BiH society*

**LGBTI history in BiH from World War II to the present day:** The LGBTI activist movement in BiH began its development in 2004 and as such is the youngest activist movement in the Balkans. The past 15 years have been marked by violence and attacks on events related to LGBTI people, but also by the growing visibility of LGBTI issues in BiH society. LGBTI activism over the past few years has resulted in significant improvements in the institutional, legal and public policy framework for the protection of human rights of LGBTI people. Nevertheless, LGBTI people and their lives remain on the margins of the political, institutional and social mainstream.

**Social and political environment:** Public opinion polls have shown that LGBTI people, along with Roma people, are the least-accepted minority group in BiH. The vast majority of the citizens of BiH continue to see homosexuality as a disease and support criminal prosecution and punishment of LGBTI people. The vast majority of families would not accept an LGBTI family member and would reject and exclude them solely by reason of their different identity and personal characteristics.

**Media and (in)visibility of LGBTI people:** Media outlets have undergone significant transition in reporting on the issues of LGBTI people. Although the situation is not yet satisfactory, it is encouraging that open inflammatory reporting has been stopped in all major print, electronic and online media. However, news about LGBTI people in BiH remain rare compared with stories on LGBTI people from abroad.

**Legal and public policy framework:** The criminalisation of hate crimes under the criminal codes of the Republika Srpska (RS), the Federation of BiH (FBiH) and the Brčko District of BiH (BD)<sup>2</sup> and the adoption of amendments to the BiH (country-wide) Law on Prohibition of Discrimination have created a strong legal basis for combating violence and discrimination against LGBTI people. However, to date there are an extremely low number of reported cases of human rights violations of LGBTI people, suggesting that under-reporting is widespread. This confirms the need for the development and implementation of LGBTI-inclusive public policies. Among other issues, important legal and public policy challenges include discrimination against same-sex couples in the context of family and private life, and insufficient support to trans people in the gender reassignment process. The protection of intersex people against unnecessary surgeries is yet to become subject of professional debate.

**Institutions for the protection and promotion of human rights:** Over the past two years, attitudes to LGBTI issues have changed significantly within institutions such as the Institution of the Human Rights Ombudsman of BiH, the Ministry of Human Rights and Refugees of BiH, the state- and entity-level gender equality institutional mechanisms and certain parliamentary committees (predominantly the state-level Human Rights and Gender Equality committees). Once ignored, issues related to LGBTI people are now being actively discussed within these institutions. At the level of cantonal (local) government, however, there are very few actors or institutions with responsibility for the rights of LGBTI people. We can expect to see the results of these institutional changes over the next few years.

### *Problems and needs of LGBTI people in key areas of life<sup>3</sup>*

**Right to safe life and protection against violence:** Attacks on LGBTI people and LGBTI-related events take place on a regular basis in BiH. Particularly brutal attacks took place during the Queer Sarajevo Festival (2008) and Merlinka Festival (2014). Since 2010, activists have made continual efforts to criminalize hate crimes based on sexual orientation and gender identity. As a result, today, such hate crimes are punishable under the criminal laws of all three federal units. Nevertheless, it is worrying that most reported cases are never prosecuted, which indicates prosecutors across BiH lack sufficient ability to recognize this problem. Currently no criminal law recognizes hate crimes based on sex characteristics, which means that explicit protection is not provided to intersex people.

**Hate speech:** Whilst it is decreasing, hate speech against LGBTI people remains widespread in the BiH media. It is often perpetrated by senior government officials, both men and women, and by other influential people in BiH society, such as religious leaders. Following warnings over many years from civil society activists, the European Union recognized this as a problem and the European Commission's Progress Report called on BiH to criminalise hate speech against LGBTI people.

**Freedom of assembly:** Numerous attempts to organize significantly visible events related to human rights and LGBTI identities were forcibly disrupted by attacks. Police has not always provided protection to such events in a proper and responsible manner, and prosecutor's offices have not prosecuted the attacks. The events so far have not demonstrated readiness on the part of BiH law enforcement agencies to provide security to pride events, if activists decide to organize a pride parade or a similar event. The vast majority of BiH citizens do not favor the idea of organizing pride parade.

**Family and private life:** Same-sex partnerships remain unrecognized in the legal system of BiH. Rights and obligations based on the shared life and stable emotional unions of same sex couples are not accessible to them. A gay man or a lesbian woman cannot visit his/her partner in an intensive care unit of a hospital. Same-sex couples can't adopt children or use assisted reproductive technologies. The same is true of transgender persons who receive no public assistance for the medical gender reassignment, and for whom legal gender recognition is not available in a timely, transparent and dignified manner. Instead, trans people are often left in a legal vacuum.

**Employment and labour relations:** Due to stigma and discrimination, the vast majority of LGBTI people are silent about their private life at workplace. Working in an such non-inclusive or discriminatory environment can result in psychological and other problems for LGBTI people. Labour laws in BiH don't explicitly prohibit discrimination against LGBTI people.

**Education:** The needs and problems of LGBTI people are not adequately recognized within the education system in BiH. There is no affirmative education about sexual and gender diversity at any level in the educational system (from primary to higher education). Moreover, LGBTI people and their lives are often presented as a disorder or a socially pathological phenomenon. Young LGBTI people are often targets of peer violence, while teachers and other school staff are not trained to tackle this problem.

**Health and physical integrity:** The health system does not recognize the specific needs of LGBTI people. Many doctors ignore or even discriminate against the LGBTI community members. People in a same-sex relationship continue to be excluded from the blood donation system in some regions of BiH. Persons undergoing sex reassignment process are denied specialist treatments in BiH, and the costs of medical procedures abroad are not covered by health funds in BiH. Many professionals at healthcare institutions treat medical intersex issues in a stigmatising manner, leaving intersex people reluctant to seek medical advice or care.

**Sports:** Matters related to homosexuality remain taboo at sports clubs. People and groups associated with ultra-devoted sport clubs' supporter groups have been identified as perpetrators of attacks during events related to LGBTI people. Homophobic discriminatory and exclusionary messages against LGBTI people are often sent from soccer fields, particularly by supporters' groups.

### *Civil society and human rights of LGBTI people*

**Development of LGBTI activism:** LGBTI activism began to operate in a structured manner with the creation of the Q Association in 2004. The Q Association achieved its greatest visibility in 2008. In that same year there was an attack on the Queer Sarajevo Festival arts festival and the association eventually closed. With the closure of the Q Association a second generation of BiH activists - led by the Sarajevo Open Centre - emerged and continues to carry out activities today.

**Existing organizations and informal groups:** Although significant progress has been achieved within a short albeit dynamic period of time, it is worrying that only three organizations are currently implementing multi-annual programmes focusing on LGBTI rights. Of those organizations, only one has received regular media coverage. The same organization is the only one which maintains cooperation with public institutions on different levels of governance. LGBTI activism and improvement of human rights of LGBTI people in BiH depend on a small number of individuals. This poses a high risk for the future development of the civil society and progress in human rights of LGBTI people.

**Capacities and needs:** With some exceptions, most organizations focused on LGBTI people and other organisations dealing with issues of LGBTI people are small, not very experienced, facing structural challenges – and are therefore vulnerable. They lack capacities, particularly in advocacy and cooperation with institutions. Donor-driven policies have not fully responded to this challenge, which has affected the results of the LGBTI activist movement.

## 1.2 Key recommendations

Based on the research findings, the report makes a series of key recommendations for legal, policy, and institutional changes that would improve human rights and non-discrimination for LGBTI people in Bosnia and Herzegovina.

**Laws are not sufficient, real changes in the field are necessary:** Although BiH has adequate and very progressive laws criminalizing hate crimes and prohibiting discrimination, everyday lives of LGBTI people can be extremely challenging. The LGBTI community faces significant challenges in terms of social acceptance in comparison with other social groups. LGBTI people and their lives remain largely invisible within wider BiH society, and violence against LGBTI people is rarely reported and remains largely unprosecuted. Legislation is extremely important, but not sufficient for tackling these challenges. All levels of governance, from central government to the local level, must approve and implement LGBTI-inclusive public policies (programmes, strategies, and action plans) with clear and visible activities. This would contribute to change within government institutions and broader society with a view to accepting LGBTI people as equal citizens and improving their human rights.

**Social change is not possible without visible institutional and political party support:** Progress has been made over the last 25 as the legal system has shifted from decriminalization of same-sex sexual acts to the legal protection of LGBTI people against violence and discrimination. However, change in the attitudes and views of citizens more broadly has been very slow. Over the last 10 years, statements from politicians and other representatives of government institutions have often contributed to this lack of progress in wider public thinking. Institutions and political parties must change their narrative and should provide open and unreserved support to efforts to improve the human rights of LGBTI people. This is the only way to increase social acceptance, a precondition for the equal participation of LGBTI people in social life and their enjoyment of human rights.

**The LGBTI activist movement requires donors to adopt targeted approaches:** Although several civil society organizations have emerged over the last 15 years, only one has managed to build a sustainable organizational structure and develop programmatic activities and institutional cooperation. Other organizations have not received sufficient financial or other donor support. Within the existing institutional framework, LGBTI organizations cannot expect support from government institutions. As such there is an important role for other types of funder to support the LGBTI movement in BiH. Donor policies need to be adapted to recognize specific features of the LGBTI community and LGBTI activism. The **creation of a special multi-annual, potentially multi-donor support program** should also be considered. This would include: **a)** financial support to several LGBTI organizations active in different regions of BiH; **b)** activities of continued capacity building and development of organizational structures of the supported organizations; and **c)** gradual strengthening of the links between those organizations and government institutions.

## Definitions of key terms<sup>4</sup>

### LGBTI

LGBTI stands for “lesbian, gay, bisexual, transgender and intersex people”. While these terms have increasing global resonance, in different cultures other terms may be used to describe people who form same-sex relationships and those who exhibit non-binary gender identities.

### Sexual orientation

Sexual orientation refers to a person’s physical, romantic and/or emotional attraction towards other people. Everyone has a sexual orientation, which is integral to a person’s identity. Gay men and lesbian women are attracted to individuals of the same sex as themselves. Heterosexual people (sometimes known as “straight”) are attracted to individuals of a different sex from themselves. Bisexual people may be attracted to individuals of the same or different sex. Sexual orientation is not related to gender identity.

### Gender identity

Gender identity reflects a deeply felt and experienced sense of one’s own gender. A person’s gender identity is typically consistent with the sex assigned to them at birth. For transgender people, there is an inconsistency between their sense of their own gender and the sex they were assigned at birth. In some cases, their appearance and mannerisms and other outwards characteristics may conflict with society’s expectations of gender-normative behaviour.

### Transgender

Transgender (sometimes shortened to “trans”) is an umbrella term used to describe a wide range of identities including transexual people, cross-dressers (sometimes referred to as “transvestites”), people who identify as third gender, and others whose appearance and characteristics are perceived as gender-atypical. **Transwomen** identify as women but were classified as males when they were born. **Transmen** identify as men but were classified female when they were born. Some transgender people seek surgery or take hormones to bring their body into alignment with their gender identity; others do not.

### Intersex

An intersex person is born with sexual anatomy, reproductive organs, and/or chromosome patterns that do not fit the typical definition of male or female. This may be apparent at birth or become so later in life. An intersex person may identify as male or female or as neither. Intersex status is not about sexual orientation or gender identity: intersex people experience the same range of sexual orientations and gender identities as non-intersex people.

### Homophobia and transphobia

Homophobia is an irrational fear of, hatred or aversion towards lesbian, gay or bisexual people; transphobia denotes an irrational fear, hatred or aversion towards transgender people. Because the term homophobia is widely understood, it is often used in an all-encompassing way to refer to fear, hatred and aversion towards LGBT people in general.

## 1. Introduction

Despite improvements in the recent past, the situation of lesbian, gay, bisexual, transgender and intersex (LGBTI) people<sup>5</sup> in Bosnia and Herzegovina (BiH) remains problematic. Due to stigma, discrimination and violence, as well as insufficient enabling regulatory frameworks, the rights of LGBTI people are not fully respected and protected. The civil society organizations working to foster rights of LGBTI people in BiH face capacity and funding constraints; insufficient opportunities for dialogue with decision-making authorities at all levels of governance; and shrinking legal, policy and participatory space for civil society engagement.

Advancing lesbian, gay, bisexual, transgender, and intersex equality and inclusion is an integral part of UNDP's mandate for the promotion of rule of law and human rights. This should be understood in relation to the emphasis on "leave no-one behind" within the Sustainable Development Goals.

UNDP has developed a project entitled "Being LGBTI in Eastern Europe: Reducing Inequalities and Exclusion, and Combating Homophobia and Transphobia Experienced by LGBTI People". This project builds on the knowledge, experience and expertise gained through a similar UNDP project: "Being LGBT in Asia". The project examines the experience of LGBTI people in four selected countries: Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, and Serbia. Supported by USAID, the activities in BiH were implemented by UNDP in partnership with the Sarajevo Open Centre and Action Against Aids in Banja Luka, and in collaboration with the regional LGBTI Equal Rights Association (ERA). The project aimed to strengthen the evidence base relating to LGBTI rights in BiH, develop advocacy approaches and instruments in national languages, and convene dialogues that bring together BiH decision makers from the executive, legislative and judiciary branches with civil society organizations focused on LGBTI people, their allies and other stakeholders.

The project considered LGBTI issues in each of the countries from a human rights and development perspective, contextualizing these against the backdrop of civil society capacity development, community mobilization and government competence. This includes but is not limited to, the right to health and well-being, within the context of development. This country report for BiH is intended to voice LGBTI communities' concerns; identify gaps in legislation and practice; and provide recommendations to relevant stakeholders.

This country report provides an overview of the human rights situation of LGBTI people in BiH. It presents a participatory review and analysis of the impacts of the legal, institutional, policy, social, cultural and economic environment on LGBTI people. The focus is on documenting human rights violations, the lack of enabling legislation, and insufficient implementation of existing legislation and policies when it comes to the protection of human rights of LGBTI people in BiH.

The report is based on data from several sources, discussions and events that were held in the second part of 2016 in BiH. The most important events for the input of the report were the following.

\* A national roundtable was held on 22 June 2016 in Sarajevo brought together 34 LGBTI and human rights community members and activists, civil society representatives, government representatives, UN agencies, USAID and other international development partners. The aims of the roundtable were to present and discuss the priority issues related to human rights of LGBTI people in BiH; and to foster a dialogue including BiH decision makers, civil society organizations focused on human rights of LGBTI people and human rights in general, their allies and other stakeholders as well to identify the way forward. The event adopted a participatory methodology, enabling organizations focused on LGBTI people and individuals to voice their concerns and needs, share experience and propose constructive and realistic solutions. The event resulted in the articulation of a clear set of recommendations for the way forward. The fact that government representatives and international organizations/embassies were also present at the event facilitated an important exchange of ideas, concerns and information. Representatives from the government were involved in the discussion together with civil society representatives.

\* Verification meetings were held on 20 December 2016<sup>6</sup> in Sarajevo, providing stakeholders with the opportunity to comment directly on the draft country report. The meetings brought together 25 LGBTI and human rights community members and activists, civil society representatives and government representatives. The first meeting was held with civil society representatives working on human rights issues of LGBTI people. The second meeting was held with LGBTI and human rights civil society representatives and representatives of institutions from different levels of government in BiH.

\* These discussions contributed to the final content of the country report. Additional information was gained from a desk review of published literature. A series of mapping exercises were also conducted as part of the project: a) mapping of needs and capacities of civil society organizations working on the promotion and protection of human rights of LGBTI people and b) mapping of individual cases and experiences of the LGBTI people in BiH. This report includes some of the testimonies given by participants of these mapping exercises (see Chapter 3). The mapping exercises also provided an opportunity to deepen the broader interest and involvement of LGBTI community and civil society organizations in this project.

As a result, the report presents a set of recommendations related to social and legal improvements of the human rights of LGBTI people and to the strengthening of the advocacy capacity of LGBTI organizations in BiH. We hope that it will help national institutions, political parties, civil society organizations, international partners and UNDP itself for further programming of LGBTI-inclusive activities.



Photo © UNDP: National Round Table, June 2016

## 2. Overview of the situation of LGBTI people in BiH society

### 2.1 LGBTI people in Bosnia and Herzegovina from World War II to the present day

In West European countries activists began the fight for recognition of the human rights of LGBTI people after World War II and stepped up their struggle in the 1970s or 1980s. In the Socialist Federal Republic of **Yugoslavia**, however, issues relating to LGBTI people were taboo or viewed negatively. As the Croatian historian and activist Franko Dota said in an interview, “In the socialist Yugoslavia, homosexuality was associated with the decadent bourgeoisie and 'insatiable capitalism' and it was believed that only 'spoilors of healthy working youth' had homosexual propensity. Same-sex partnership and intercourse was regarded as an 'unnatural and lascivious act' punishable by prison. Around 500 men were found guilty of this offence and sentenced to prison in the former Yugoslavia” (crol.hr, 15.02.2016). Homosexuality was on the World Health Organisation list of mental disorders until 1990, and WHO standards were applied in Yugoslavia.

The Yugoslav Communist Party discussed the issue of homosexuality during its meetings at least three times. The final discussion took place in 1976 when all Yugoslav republics were ordered to decriminalize same-sex sexual acts, although warnings were made that the building of socialism required “new and healthy man”, an ideological category from which every form of non-heterosexual life was excluded a priori (crol.hr, 15.02.2016). Although same-sex sexual acts were decriminalized in most former Yugoslav republics, BiH did not decriminalize same-sex sexual acts until 1991.

Unlike Ljubljana, Zagreb and Belgrade, where LGBTI activism began in the 1980s and early 1990s, activism began much later in BiH. As early as 1984, Ljubljana became the first city in Europe to host a gay and lesbian film festival (Kuhar 2012: 126).

The 1992-1995 war in BiH resulted in mass killings, ethnic cleansing and expulsions of the major portion of the population. A rise of nationalism and conservative religious teachings within the three majority communities – Bosniaks, Serbs and Croats alike - led to increasingly rigid views about the nature of male-female relations. Any departure from the norm, such as being homosexual or transgender, became – and continues to be – extremely socially unacceptable.

Under such circumstances, **it was only in the 2000s that LGBTI activism began to develop in BiH.** The first queer activist group was formed in 2002 and grew into the **Q Association** in 2004, the first civil society organization with a primary mission to protect and promote human rights of LGBTIQ people. The Q Association implemented activities focused on needs of the LGBTIQ community.

These included: conducting surveys aimed at understanding more about the needs and health of the LGBTIQ community; socialising; self-empowerment workshops; legal assistance; developing publications, etc. The Association expanded its activities to include lobbying with BiH and international stakeholders (for example, for the adoption of a state-wide Law on Prohibition of Discrimination in 2009) and HIV issues. The Q Association engaged in legal activities supporting LGBTIQ community members. The Association became the coordinator of various LGBTIQ groups and organizations in south-eastern Europe, and established cooperation with activists in Croatia in particular (Gavrić 2012: 113).

The **Queer Sarajevo Festival in 2008**, organised by the Association Q, became central to LGBTIQ activism in BiH. There were inflammatory campaigns run by some media outlets, politicians and religious communities (amnesty.org, 18.09.2008), and the festival ultimately became the target of attacks by right wing and religious groups. The experience signalled that **violence was going to become an integral part of the development of LGBTI activism.** Alongside hate speech on the internet, in other media outlets and the streets, a number of attacks were perpetrated on LGBTI people, on places where they gather or events that they had organized. The attacks have ranged from small to large, and include both spontaneous and pre-planned attacks. The most recent large-scale attack was the **attack on the Merlinka Festival in 2014**, for which the **perpetrators** have never been prosecuted. Chapter 3.3 gives more information about attacks on LGBTIQ people in BiH.

After 2009, a series of new associations and informal groups working on LGBTI issues were formed throughout BiH. Unfortunately, most of these initiatives have been short-living. Today, the Sarajevo Open Centre is the biggest organization working towards improving the human rights of women and LGBTI people in BiH. The centre is the leading proponent of cooperation with government institutions, successfully advocating for them to work with the LGBTI community. The Sarajevo Open Centre also leads work on media reporting and the general visibility of topics related to LGBTI people in the public in BiH. Advocacy efforts and interactions between civil society organizations are discussed in greater detail in Chapter 4.

## 2.2 Social and political environment

The fact that homosexuality was treated by the World Health Organization (WHO) as a disease until 1990; that gender dysphoria continues to be qualified as a disorder<sup>7</sup> (Banović 2015: 19); and that same-sex sexual activity was not decriminalized until 1991, has had a profoundly negative impact on the views and positions of BiH citizens in relation to LGBTI issues.

**Nearly all public opinion polls show that LGBTI people are the least-accepted minority group in BiH.** The latest relevant survey conducted in 2015 by the National Democratic Institute (NDI 2015) illustrates this. The survey was conducted in several countries but the data here relates only to BiH.<sup>8</sup>

The survey found that **the most of the respondents do not recognize LGBTI people as a vulnerable group.** Only 32 per cent of respondents believe that LGBTI people are exposed to psychological and verbal violence. In contrast, as many as 72 per cent of LGBTI people claim they have been directly exposed to psychological and verbal violence. Survey respondents were more likely to recognize that LGBTI people might be the victims of physical violence. Perceptions on the violence level of the survey participants and LGBTI people are more similar (29 per cent vs. 15 per cent). The survey conducted among LGBTI people shows that they have been subject to physical violence from certain groups of people such as schoolmates, football supporters and unknown individuals.

Many people in BiH appear not to recognize violence and **discrimination against LGBTI people.** Only 23 per cent of the respondents think that it exists, compared to 51 per cent of LGBTI people who said they had personally experienced discrimination. LGBTI people responded that they had experienced discrimination primarily in employment (36 per cent), police protection (19 per cent) and social protection (13 per cent). **Negative attitudes towards LGBTI people in society are noticeable in both public and private spheres of life.** Asked what they would do if they found out that their child was an LGBTI person, the vast majority (44 per cent) of respondents said that they would try to cure the child. Only 18 per cent of LGBTI people in BiH said that they could rely on family support. In contrast, 36 per cent of LGBTI respondents said they could rely on support from their neighbors and friends. In the broader survey, 30 per cent of respondents said that they would sever relations with an LGBTI person if they would find out about their identity.

As many as **59 per cent of the respondents believe that LGBTI people suffer from a disease**. Fifty-one per cent believed that LGBTI people do not exist in “normal families” and 48 per cent thought that being LGBTI “is something just imposed by the West”. The idea that LGBTI people are suffering from an illness and need to be “punished” because of their private lives applies very specifically to LGBTI people, and not to other marginalized groups in BiH.

**The survey suggests that one source of such negative attitudes towards LGBTI people is a lack of knowledge and understanding.** Only one in ten respondents in BiH knowingly have personal contact with LGBTI people. Where respondents did have contact with LGBTI people, this significantly changed their positions.

We can draw similar conclusions from the part of the survey which refers to **(non)acceptance of same-sex marriages**. Seventy per cent of respondents thought that same-sex marriages are completely unacceptable. However, Bosnians and Herzegovinians are in favour of giving same-sex couples access to certain legal and social rights which are currently only available to heterosexual married couples. These include: allowing visits of partners in hospitals and prisons; dividing property after separation; offering health insurance access based on a partner's employment; inheritance following the death of a partner. Respondents were less likely to be in favour of allowing LGBTI people to adopt children. Respondents were more likely to be in favour of giving these rights to same-sex couples when they have had personal contact with LGBTI people, compared with respondents who did not know any LGBTI people. For example, when asked whether LGBTI people should be allowed to adopt of children, the percentage who said this should be allowed grew from nine percent among respondents who did not know any LGBTI people to 30 percent among those who did.

**The survey showed that Bosnians and Herzegovinians generally have a negative attitude towards pride parades and festivals.** The vast majority of the respondents did not recognize a pride parade as a protest march or a form of public assembly. Eighty-two percent of the respondents overall did not support pride parades. However, pride parades were supported by 37 percent of those who know LGBTI people and only 10 percent of those who do not know any LGBTI people.

**Religious communities contribute to a large part to the negative perceptions of LGBTI people in BiH society.** After the Queer Sarajevo Festival in 2008, representatives of all three major religious communities (Roman Catholic Church, Serbian Orthodox Church and Islamic Community) in BiH jointly condemned the holding of the cultural festival. Their positions were confirmed in a series of official statements and decisions issued by all three major religious communities. For example, the BiH Islamic Community's Council of Muftis passed a conclusion in 2015 condemning violence against persons of same-sex orientation but also clearly condemning same-sex marriages, calling “homosexuality” “a great sin” (klix.ba, 13.04.2016). Such actions by the religious communities pass entirely without comment from executive or legislative authorities.

As in other Western Balkan countries, **political parties in BiH** play a predominant role in public life. The BiH constitutional framework following the Dayton Peace Agreement prioritizes political representation and rights on the basis of ethnicity. This, combined with nationalistic rhetoric, virtually results in a constant majority of conservative, centre-right parties. These parties have not demonstrated any interest in developing party policies for the improvement of minority rights or of human rights in general. Most political parties and their representatives avoid dealing with rights of LGBTI people, which has been shown by surveys of civil society organisations (Pandurević/Bošnjak/Kučukalić, 2015). The reasons for this are numerous. They range from a real lack of knowledge and fear to a pragmatic calculus that it is not popular to support a social group still considered by most citizens as sick and socially unacceptable. The NDI survey shows that most citizens would not vote for the parties that promote rights of LGBTI people. The survey also shows that support to LGBTI rights is not a primary factor influencing voter choice.

**The general elections in 2014, resulted in the election of new, more progressive MPs. Following this, cooperation between political parties and civil society organizations has begun to change.** Particular support to issues related to LGBTI people was provided by the members of the **Joint Human Rights Committee of the BiH Parliamentary Assembly** who in May 2015 organized the first parliamentary session ever to be devoted to the rights of LGBTI people. There is a growing number of members of the federal and cantonal parliaments in BiH who publicly and affirmatively talk about human rights of LGBTI people. In 2015, the Social Democratic Party (SDP BiH) developed a **policy to promote equality of LGBTI people**, although this has not yet been approved by the party's leadership. Other parties have not yet developed party policies to include human rights of LGBTI people or policies focusing solely on this vulnerable group, even though civil society organizations (predominantly the Sarajevo Open Centre) have reached out to them.

## 2.3 Media and the (in)visibility of LGBTI people

**Over the past ten years, the media has undergone a significant transition** in terms of reporting on LGBTI people and their rights. The media are shifting from negative and superficial reporting to professional reporting, albeit despite the continued presence of radical right-wing in online and print media.

**Reporting on the Queer Sarajevo Festival in 2008 offered a striking example of unethical journalism.** The *Dnevni Avaz* daily newspaper and the radical right-wing *Saff* magazine ran a brutal campaign against the festival. Manipulating the readership by referring to the festival as a parade and purposefully selecting interlocutors opposing to the idea over several weeks, these two media outlets contributed an already problematic atmosphere which ultimately resulted in an attack on the festival itself. While the *Saff* stories were full of hate speech, the coverage in *Dnevni Avaz* used numerous interviewees to express negative views about the festival. With such headlines as “Who Foists a Gay Assembly on Bosniaks during Ramadan?” and “Gays in Sarajevo during Laylat al-Qadr Night!”, it attempted to incite anger amongst the broader community. (Durkalic 2012: 144-161).

The local partner organization in this project, the Sarajevo Open Centre, has been conducting research and publishing reports on media reporting at least once a year since 2011. Reports include print media, television, radio stations and web portals, and the findings from 2016<sup>9</sup> show that most of reporting and stories about LGBTI people are neutral, followed by positive reports, while the number of negative journalistic stories is the smallest. Various programmes to sensitize the media on the rights of LGBTI people have been implemented by civil society organizations (Foundation Cure and Sarajevo Open Centre) since 2005. Media outlets like *radiosarajevo.ba*, *BH Dani* and *Oslobođenje*, continue to report on these issues professionally, while such media outlets as *Dnevni Avaz*, the Federation Television, and *klix.ba* portal have shifted towards professional reporting. A whole series of web portals, like *6yka.com*, *bljesak.info* and *etrafika.net*, Radio Free Europe, and also some new electronic media outlets, like N1, gained prominence in affirmative reporting. BiH's only specialised non-profit LGBTI online media outlet, web portal *lgbti.ba*, has been active since 2012.

The presence of regional media outlets in BiH combined with an appetite for sensational news has resulted in a situation in which **most reports, year after year, focus on pride parades taking place in the capitals of the neighbouring countries.** The media in BiH still do not approach issues of LGBTI people through a human rights lens. Stories related to the cultural, societal, legal and political rights and challenges for LGBTI people in BiH remain underrepresented. Increased visibility of activist organizations, activists and LGBTI people is a prerequisite for an increased visibility of topics related to LGBTI people in the media. This is an additional responsibility in terms of journalistic ethics and professionalism. Responsible reporting might in turn encourage more LGBTI people to speak publicly about their experiences.

## 2.4 The legal and public policy framework

The European integration of BiH and EU's conditionality policy<sup>10</sup> have resulted in improved legal frameworks for the protection of human rights of LGBTI people. The BiH Constitution contains in its Annex I all major international conventions of the United Nations and the Council of Europe, which are supposed to be applied directly (see Banović/Gavrić 2011). In BiH, **over the last 25 years, the legal discourse on rights of LGBTI people has completely changed**, beginning with the ending of criminal prosecution for same-sex intercourse in 1991, through to the increased legal protections for LGBTI people through the adoption of non-discrimination provisions and legal provisions relating to hate crimes, including those based on sexual orientation and gender identity.

### *International legal instruments*

BiH is a state party to the core international human rights instruments. Some of them are part of the constitution, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the European Convention on Human Rights.

Within the Council of Europe level, of major importance is the case law, which stems from the rulings of the **European Court of Human Rights** in Strasbourg!<sup>11</sup> Over the past several decades, the European Court has reached a number of progressive rulings, among them those which provide important protection to transgender people (i.e. *L vs. Lithuania*) and make it incumbent upon state parties to the European Convention on Human Rights to introduce legal recognition for same-sex couples (i.e. *Oliari vs. Italy*).

The **Recommendation CM/Rec (2010)5** of the Committee of Ministers of the Council of Europe to member states on measures to combat discrimination on grounds of sexual orientation or gender identity from 2010 continues to be among the most important documents. The recommendation gives a comprehensive summary of all obligations of BiH regarding rights of LGBTI people arising from the UN and Council of Europe Conventions as well as from the rulings of the European Court of Human Rights. BiH submitted a report on the implementation of this recommendation in 2013,<sup>12</sup> showing that there was almost no government engagement on issues of LGBTI people until then. The Recommendation CM/Rec (2010)5 should serve as a basis for the development of a special public policy for equality of LGBTI people in BiH.

#### *The BiH legal framework<sup>13</sup>*

Discrimination is prohibited under Article II of the **Constitution of BiH**. Unfortunately, sexual orientation, gender identity and sexual characteristics, which constitute important grounds for discrimination against LGBTI people, are not among the prohibited grounds of discrimination specified on the exhaustive list. Nevertheless, bearing in mind that Article II.2 provides for the **direct application of the European Convention for the Protection of Human Rights and Fundamental Freedoms** and that the Convention takes precedence over all other law in BiH, it can be concluded that the Constitution provides the full scope of direct protection to LGBTI people.

The first enacted law, which proscribes discrimination on the grounds of sex and sexual orientation, is the BiH **Gender Equality Law** from 2003. This law does not systemically define actions to be taken against discrimination on grounds of sexual orientation; this particular ground is mentioned only once in the entire law. The law has been only of limited importance for the protection of LGBTI people; it was the first law to introduce adequate legal terminology relating to LGBTI issues (the term “sexual orientation”) but was never used in concrete cases by LGBTI people.

Comprehensive protection against discrimination was provided in the state-wide BiH **Law on the Prohibition of Discrimination<sup>14</sup>** (Anti-Discrimination Law) which was enacted in 2009 within the EU “visa liberalisation” set of laws. The law prohibited discrimination on the grounds of “sexual expression and/or orientation” in all areas of public life, including education, employment, health, social protection, housing, access to services and goods, etc. (Šimonović-Einwalter/Selanec 2015; Hadžić et.al. 2015). The legislative process laid bare significant resistance of the major religious communities, which lobbied actively and intensively against the bill and against the protection of LGBTI people from discrimination in particular ([www.slobodnaevropa.org](http://www.slobodnaevropa.org), 9 June 2009). It is important to mention that no case of discrimination on the grounds of sexual orientation, gender identity or sex characteristics has yet come before a court in BiH. This may indicate a high level of invisibility of LGBTI people and their fears. This issue is further discussed in Chapter 3 of this report.

As a result of intensive pressure from various international organizations and civil society organizations (EC Report 2015: 22), in 2015 the BiH Ministry of Human Rights and Refugees drafted **a law for amending the Law on Prohibition of Discrimination of BiH**. Although the amendments were not in full harmony with the EU acquis, especially regarding anti-discrimination exemptions (Article 5 of the law, see legal analysis in Šimonović-Einwalter/Selanec 2015), the law did include an amended list of the prohibited grounds of discrimination. The amendments, passed into law in the summer of 2016, explicitly includes **sexual orientation, gender identity and sex characteristics as prohibited grounds of discrimination, making BiH one of the few European countries that now provides comprehensive legal protection against discrimination not only to LGBT people but also to intersex people.<sup>15</sup>**

Although all laws must be harmonized with the Law on Prohibition of Discrimination (Article 24), numerous **laws at the state, entity and cantonal levels still do not include** sexual orientation, gender identity and/or sex characteristics as the prohibited grounds of discrimination. **Examples of bad practice include the Labour Laws of FBiH and RS enacted in 2015** as part of a EU initiated reform agenda. The FBiH Labour Law contains only “sexual orientation”, while the RS Labour Law does not provide any protection to LGBTI people against discrimination in areas of employment and labour relations. Civil society organizations, criticized this omission (Initiative for Monitoring the EU Integration of BiH, 2016). In the event of lawsuits based on the two labour laws, the omissions mean that rulings might not be possible on some grounds of discrimination against LGBTI people.

In addition to prohibition of discrimination, **criminal legislation was also changed in BiH after the Dayton Agreement**. **The decriminalization of same-sex sexual acts** from 1991 was confirmed in the new criminal legislation of FBiH (1998), RS (1996) and BD (2001). Furthermore, the BiH Ministry of Security and the OSCE Mission to BiH called on FBiH, RS and BD to change the criminal legislation by adding provisions proscribing hate crimes (OSCE 2012:17). The RS and BD did it in 2010, and FBiH followed in 2016 (see Chapter 3.1).

There has been progress in terms of securing the **rights of transgender people**, although more changes are needed. The personal name laws in the Federation of BiH, the Republika Srpska and the Brčko District, the BiH Personal Identification Number Law and the civil registration laws of the Republika Srpska and the Federation of BiH provide for an unconditional change of name. Where a person undertakes a full medical transition, i.e. sex reassignment surgery, it is also possible to change their sex marker and a personal identification number. These provisions are not in harmony with international human rights recommendations, because they require a full medical transition before gender can be fully reassigned (see Commissioner for Human Rights 2009: 6), while services related to medical sex reassignment are not provided in BiH. The present health protection legislation does not provide for coverage of any medical costs by the state (Banović et al. 2015; for details, see Chapters 3.4 and 3.7).

Finally, domestic legislation does not recognise **same-sex couples** or related rights, responsibilities and obligations. The family laws of the Federation of BiH, the Republika Srpska and the Brčko District define marriage and extramarital unions as the union between one man and one woman, thereby ruling out the possibility for same-sex couples to marry legally. No alternative law has been enacted yet in the form of a same-sex partnership law, such as the law enacted in neighbouring Croatia, for example. Apart from discriminating against same-sex couples, this situation creates legal insecurity for affected citizens (Krešić 2015; see Chapter 3.4 of this report).

#### *Public policies*

Before 2015, issues related to human rights, discrimination and equality of LGBTI people were not included in the public policies of government institutions at any level of governance in BiH. These issues were missing from their strategies, action plans, operational plans and work plans. International commitments related to LGBTI people and their needs were not part of public policies, and neither were specialized public policies developed to promote equality of LGBTI people. This was why all efforts towards achieving equality of LGBTI people depended solely on the interests and goodwill of individuals within the relevant government institutions (see Chapter 2.5). Success in putting these issues on government agendas depended on the advocacy and persistence of civil society organizations, primarily the Sarajevo Open Centre, which initiated cooperation with government on specific topics.

That situation changed significantly in 2015. The BiH Gender Equality Agency, the Republika Srpska Gender Centre and the Federation BiH Gender Centre provided significant support to equality of LGBTI people when they included concrete measures relating to rights of LGBTI people in the 2016 **annual operational plans developed under the state-wide Gender Action Plan**.<sup>16</sup> Annual operational plans of the Republika Srpska and the BiH Federation were approved in December 2015 and March 2016 respectively. These three institutions have been mapping what still needs to be done for the purpose of implementation of the Recommendation CM/Rec (2010)5 of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity. The mapping has resulted in measures to be proposed to the governments at the state and entity levels to be implemented from 2017 onwards (Vasić, Gavrić, Bošnjak 2016: 11). The Republika Srpska operational plan for 2017 has been adopted as well and it contains also some measures related to LGBTI people.

The first annual **action plan<sup>17</sup> to suppress discrimination** was approved in the spring of 2016. The BiH Council of Ministers approved a report on forms of discrimination and 36 measures to be taken. Of 36 measures, 6 are related to LGBTI people (www.lgbt.ba, 06.05.2016). Unfortunately, the majority of activities have not yet been implemented. Follow-up activities of the parliamentary Human Rights Committee will be of great importance in order to increase government accountability in this respect.

Successful advocacy by civil society organizations resulted in the BiH Ministry of Human Rights and Refugees committing itself in 2016 to develop a **human rights strategy and anti-discrimination strategies**. Both strategies should include issues related to rights of LGBTI people, and the Sarajevo Open Centre representatives are involved in the development process. Both strategies should have been approved in 2016. This was not achieved as the draft strategies were only available at the end of 2016. The development of a specialized **action plan to improve equality of LGBTI people in BiH** is expected in 2017.

These developments indicate that the BiH Ministry of Human Rights and Refugees and other named institutions at the state and entity levels have finally taken a more active role in including issues related to the rights of LGBTI people in their work. This is a positive change. Nevertheless, delays in developing and implementing public policy documents are of serious concern. Without intensive implementation of measures it will not be possible to ensure that change really takes place on the ground for LGBTI people.

## 2.5 Institutions for the protection and promotion of human rights

Knowing the complex national structure and decentralization of powers and competencies (Banović/Gavrić 2011, Gavrić/Banović/Barreiro 2013), it is crucial to ensure that efforts to improve equality of LGBTI people are not limited to the work of the state-level institutions. Institutions of the entities, Brčko District and cantons need to be proactive as well. The most active institutional stakeholders in BiH are presented below.

There are parliamentary committees within the **BiH Parliamentary Assembly** – the Joint Human Rights Committee and the Gender Equality Committee – which, by their composition and concrete activities, prove to be supporters and initiators of change, particularly in legislation and public policies.<sup>18</sup> The committees have discussed reports and action plans, organized thematic debates and participated in national and international events. At the 2015 thematic session of the Human Rights Committee, the BiH Institution of the Human Rights Ombudsman was obliged to work on a special report (see below).

The central and the only independent institution for the protection and promotion of human rights in BiH is the state-wide **Institution of the Human Rights Ombudsman**.<sup>19</sup> Despite an apparent insufficiency of human and financial resources, this institution handles a growing number of complaints related to human rights violations on the grounds of sexual orientation and gender identity.

Until recently, the Institution has issued few relevant recommendations to executive institutions in BiH. On the initiative of a group of civil society organizations (Vasić, Gavrić, Bošnjak 2015: 11) in 2013 and based on a decision of the parliamentary Human Rights Committee from May 2015, the Ombudsman Institution has developed a special report on human rights of LGBTI people in BiH. The report was released in the autumn of 2016 and is, the only report on LGBTI issues drafted by any state institution in BiH.<sup>20</sup> Particularly important are the recommendations to the executive, legislative and judicial authorities. The major recommendations are taken into account when preparing the proposal for follow-up activities as part of this report (see Chapter 5).

**The Ministry of Human Rights and Refugees of BiH** plays an important coordinating role. Due to its limited powers at the level of BiH, numerous Ministry activities, particularly those relating to the development and implementation of public policies (i.e. strategies, action plans, working programmes), require close cooperation with the relevant ministries of the entities and Brčko district. Nevertheless, during 2015 and 2016, the Ministry made important legislative and public policy initiatives, including activities to improve rights of LGBTI people. Amendments to the Law on Prohibition of Discrimination and a very clear positioning of the problems facing LGBTI people in the reports (e.g. a report on the forms of discrimination), strategies and action plans (e.g. Human Rights Strategy) indicate an important positive shift within the Ministry. Nevertheless, it is a matter of concern that the Ministry is not implementing equality promotion programmes, which would also include issues related to LGBTI people.

Gender equality institutional mechanisms – **the BiH Agency for Gender Equality, RS Gender Centre and FBiH Gender Centre** – have been carrying out various activities related to rights of LGBTI people since 2016, within their work on improvement of gender equality. These institutions have a domestic and international reputation as having the most openness to tackling issues relating to LGBTI people. Future cooperation with these institutions will be important for civil society and international agencies, in order to ensure that the rights of LGBTI people are further mainstreamed into policies and laws within the entities. It is of concern that, currently, there appears to be insufficient cooperation between the Gender Equality Agency and Centres and other government institutions. This hampers the fostering of gender equality, as well as equality of LGBTI people.

**The entities and cantons do not have specialised government institutions** for the protection and promotion of human rights. This means that there is only limited understanding of, and actions towards improving the equality of LGBTI people within these levels of government. Most public policies and laws are still drafted without including issues related to LGBTI people. To date there have been no surveys investigating the problems and needs of LGBTI people at entity and cantonal level. It will be important to monitor the extent to which the executive authorities of the entities and cantons will be able to respond to requests for protection, upholding and fulfilment of the human rights of minorities and underprivileged groups, including LGBTI people, as the EU integration processes go forward.

Nevertheless, there are some institutions, such as the entity-level Centres for Judicial and Prosecutorial Training of the RS and FBiH, the police academies of the RS and FBiH and the Interior Ministries of the entities and cantons, which have been working in cooperation with civil society organizations, such as the Sarajevo Open Centre or Foundation Cure, through professional development programmes (Vasić, Gavrić and Bošnjak 2016) since 2012.

### 3. Key problems and needs of LGBTI people in Bosnia and Herzegovina

#### 3.1 Right to safe life and protection against violence

*"I sought help from police on a number of occasions. The police have powers when somebody kills you, but when somebody attacks you, and especially threatens you, police will do nothing. Once we reported threats and police made fun of a homophobe's threat to rape me with a cone, and even asked me whether I didn't like it that way." J. now lives in the USA, age 29<sup>21</sup>*

*"The most recent attack happened two months ago. I should be summoned by court because I reported the attack to the police. I want it to be prosecuted as a hate crime and I want a public hearing." B. Prijedor, age 30*

*"Police conduct was not professional. The main problem was the changed sex designation. At one point one police officer asked for a bribe to sort it out for me and I referred him to my lawyer. He has never called again." E. Tuzla, age 27*

##### *Violence as the everyday experience of LGBTI people*

A safe life free from violence and fear of violence is a condition for everybody to live a life with dignity. LGBTI people, as a social group which is vulnerable and faces a lack of acceptance, are frequently exposed to violence. As such, it is extremely important that the criminal offences committed against them are dealt with adequately.

According to a survey conducted with LGBTI people in BiH (Čaušević, 2013), **23.5 percent of the respondents experienced violence based on their gender expression or sexual identity**. Nearly all respondents (94.6 percent) had experienced some form of psychological and verbal violence. Every third respondent had experienced physical violence, and nearly every fifth respondent had experienced sexual violence. Of the 130 respondents who had experienced some form of violence, just 17 had reported that violence to the relevant authorities. Only three of the reported cases ended up in court and two cases were still under investigation. The fact that only three of the 17 reported cases reached the judicial phase illustrates why LGBTI people in BiH traditionally do not trust the institutions (mainly police and judiciary) that should protect them. 23.1 percent of the respondents stated that they trust the police, while as many as 73.6 percent stated that they do not trust the criminal justice institutions in BiH.

The violence during the Queer Sarajevo Festival in 2008, multiple attacks on events and activists from Association Okvir, and the attack on Merlinka Festival at the Art Cinema Kriterion in 2014 are disturbing examples of the failure of the authorities to protect the participants of LGBTI public events.

In 2016, four young men perpetrated an attack on the visitors of the Art Cinema Kriterion in Sarajevo, shouting homophobic abuse. The attack, which was obviously motivated by homophobia, was classified by police officers as violent behaviour and the perpetrators were released after short detention. The case was never prosecuted.

The police and judiciary do not keep proper records of hate crimes, as evidenced by the very limited official contributions to the annual ODIHR hate crimes reports.<sup>22</sup> The only NGO report on this topic documented **a total of 103 cases of hate speech and incitement to hatred and violence and 20 cases of criminal offences and incidents motivated by prejudices** based on sexual orientation and/or gender identity in 2015. Documented cases included blackmail and threats, insulting graffiti, persecution and intimidation, domestic violence and other physical violence. The majority of these cases were never reported to police or the relevant prosecutors' office (Vasić, Gavrić and Bošnjak 2016).

### Legislation

On the initiative of the OSCE Mission to BiH and the BiH Ministry of Security, activities to **proscribe hate crimes** began in 2010. Crimes motivated by hatred or prejudice were proscribed in 2010 by the criminal legislation of the Republika Srpska and the Brčko District and were, moreover, considered as aggravating circumstances. The FBiH Criminal Law was amended in 2016, following continued pressure from the Institution of the Human Rights Ombudsman, civil society and the international community (for more information, see Chapter 2.4). Today, hate crimes are proscribed by all three criminal laws (RS, FBiH and BD). Unfortunately, sex characteristics as a motivation are not mentioned in any of the three criminal laws.

### Raising awareness of institutions and building institutional capacities

Hate crimes are recognized as a problem within the public policies of the entities (Federation of BiH and Republika Srpska). The 2016 and 2017 annual operational plans based on the gender action plan (see Chapter 2.3) of the Republika Srpska and the Federation BiH recognize this issue as a problem and define concrete measures to be implemented jointly by the relevant entity ministries and law enforcement agencies.

Some institutions were implementing awareness raising and capacity building activities even before this particular problem was addressed by public policies. For example, in 2014 **the Ministry of the Interior of the Canton Sarajevo** included a module on hate crimes based on sexual orientation and gender identity in the curriculum of continuous training of police officers. This ground-breaking training, initiated by the Sarajevo Open Centre, was provided only during 2014 and included over 1,300 police officers. In 2015, **the Ministry of the Interior** of the Republika Srpska, in response to a recommendation of the Institution of the Human Rights Ombudsman, began training aimed at sensitising RS police officers to issues related to LGBT people. Training was conducted in 2016 and is planned to continue into 2017. The Centres for Judicial and Prosecutorial Training of the FBiH and the RS have been conducting training on the rights of LGBTI people for many years, on the initiative of civil society organizations, namely the Sarajevo Open Centre, the Foundation Cure and the Heinrich Böll Foundation.

**There are no standard operating procedures to be followed in dealing with hate crimes** at the level of BiH, its entities, the Brčko District of BiH or cantons. Special police units - which would be responsible for investigating crimes and incidents based on sexual orientation, gender identity and/or sex characteristics and for maintaining contacts with local LGBTI communities with a view to enhancing trust and confidence - have not been established yet.

## 3.2 Hate speech

*"I am used to high frequency of untrue media reports on LGBTI issues. In the past, I was deeply affected. Now I no longer take it so emotionally as I am aware that homophobia is omnipresent in our society and that many people are taught to hate those who are different from them. I am looking forward to change it in my community, and it's a challenge." N. Mostar, age 32*

*"When I read in the press something which is not true, that homosexuality is a disease or a disorder, for example, I feel bad about it, but I've decided to keep my distance as it's outside my influence." M. Tuzla, age 25*

### Hate speech against LGBTI people

The Internet, social networks and web portals pose a particular problem in spreading hate speech and incitement to violence and discrimination against LGBTI people and other social groups. The failure of relevant institutions and individuals to respond to this in a timely way means that hate speech and incitement to violence and discrimination spread quickly via the Internet, and then grow into serious threats that cannot be ignored. These in turn incite, or grow into, hate crimes.

Here is just one example of hate speech against LGBTI people. Following the attack on the Art Cinema Kriterion in March 2016, **the chairman of the Students Parliament of the University of Sarajevo** shared discriminatory views about LGBTI people via social networks and then via the media, using hate speech and calling for “curing” and “labelling” of LGBTI people. With his public statements, he violated the Statute of the Students’ Parliament, the Code of Ethics of the University and the BiH Law on Prohibition of Discrimination. He made such statements as, “There were also normal people there and they too were threatened. Why are you discriminating against them? They were there, I’m 100 percent sure, how could those four know who’s gay, who’s not, they don’t have it written on their foreheads. Although, perhaps, they should be labelled, just to recognize them and stay away from them (not to attack them), to run away from them, and not to catch all sorts of diseases, God forbid.” And also, “I am normal, and queerness, rapists, having sex with children, animals – all these are sick people.” He concluded that “queerism is a systemic and communicable disease” and that LGBTI people “need medical and social assistance”. By saying all that, he clearly and publicly expressed his opinion that LGBTI people should be medicalized and segregated from the rest of the society (media.ba, 18 March 2016). Despite media reactions by the civil society, there has been no official response from any institution. Unfortunately, even the BiH Agency for Gender Equality and the BiH Institution of the Human Rights Ombudsman have not reacted to the official complaints of civil society organizations.

#### Legislation

Incitement to ethnic, racial and religious hatred and intolerance is proscribed and punishable by a prison sentence under the criminal laws of both entities and the Brčko District. Every abusive hate speech and incitement to violence solely on the grounds of ethnicity, race and religion are also proscribed. However, this provision **does not directly ban or punish homophobic and transphobic speech and incitement to violence against LGBTI people**. The European Union called on BiH in the European Commission's Report for 2016 to regulate this issue properly (European Commission 2016:25).

The 2016 amendments to the BiH Law on Prohibition of Discrimination **prohibits incitement to discrimination on any ground**, including sexual orientation, gender identity and sex characteristics. This amendment represents major progress since until now only a small number of prohibited grounds for discrimination (race, ethnicity, religion) were covered in the 2009 definition of this article of the Law on Prohibition of Discrimination.

In BiH, ban on hate speech is proscribed also by the Code on Audio-visual Media Services and Radio Media Services of the **Communications Regulatory Agency (CRA)**. Under this code, audio-visual media services and radio media services will respect human dignity and fundamental human rights and must encourage free formation of opinion. The code guarantees that providers of electronic media services will not present any content that includes any form of discrimination or prejudices on various grounds, including sex and sexual orientation or any other content the purpose or consequence of which is to prevent or jeopardise recognition or exercise of any individual right and freedom on an equal footing. It is important to mention that gender identity and sex characteristics are not included in the list of prohibited grounds. The BiH Communications Regulatory Agency (CRA) has the ability to fine television and radio stations for hate speech incidents. It has exercised this ability a number of times over the past several years; fines imposed on Open Broadcast Network and Pink televisions are publicly known, for example.

### 3.3 Freedom of assembly

*“I regret that the people fail to see the point of the Pride Parade, they fail to see that LGBT people are struggling for health insurance, inheritance rights, the right to marry...for their own rights. They are not on the streets to kiss each other or walk naked. I am seeking the rights that the wife and the husband are entitled to. I too request the right to leave something behind.” A. Zenica, age 37*

*“Only gay people can unite all three Bosnian ethnic groups. During those two hours of the pride parade they will be like brothers. The citizens of Bosnia are easily united by hatred towards just anything.” E. Sarajevo, age 22*

Although freedom of assembly is guaranteed by the state-level and entity constitutions<sup>23</sup> unfortunately, its protection is not effectively enforced when it comes to LGBTI people. **Violence during the Queer Sarajevo Festival in 2008 and the attack on the Film Festival Merlinka in 2014 are disturbing examples of the failure of the authorities to protect the participants of those public events.** Although the Sarajevo cantonal Ministry of the Interior provided police presence, the level of protection they provided was not adequate given the seriousness of the incidents at both festivals. During the 2014 festival, police were not present during the attack. Prior to both festivals, public space and web portals were teeming with hate speech against LGBTI people, and serious threats were made against organizers and visitors. These were reported to the relevant institutions, but there was no appropriate response.

It is important to mention that no other art festival in BiH has been the target of attacks by right wing and/or radical groups over the past 20 years. This suggests that these particular attacks are the result of stereotypes, prejudice and hatred towards members of the LGBTI community. No criminal cases about the attacks on both festivals seem to have reached the judiciary.

On 25 September 2014 the BiH Constitutional Court, sitting in its 88th plenary session, approved parts of an appeal filed by the Q Association six years before, regarding the attack at the Queer Sarajevo Festival. The BiH Constitutional Court passed a decision on admissibility and merits, partly accepting the Q Association's appeal and finding a violation of the right from Article II/3.i) of the BiH Constitution and Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The BiH Constitutional Court ordered the FBiH Government and the Government of the Canton Sarajevo to pay the Q Association BAM 3,000 each in non-pecuniary damages resulting from the violation of the constitutional right.

The Prosecutor's Office of the Sarajevo Canton is still conducting a preliminary investigation into the attack on the Film Festival Merlinka in 2014. Sarajevo Open Centre has filed an appeal to the BiH Constitutional Court at the end of 2016 regarding this event and the fact that there was no prosecution.

Other attacks have also been registered, for example, an attack during a press conference of the Okvir Association in Sarajevo (2013) and the failure of police to provide security despite the timely announcement of an event related to LGBTI people (Merlinka Festival in Tuzla in 2016). Sexual orientation is also used to discredit public gatherings which are not related to the rights of LGBTI people. For example, the former mayor of Prijedor Marko Pavić called a rally in memory of victims of the war a "gay parade" (nezavisne.com, 25 December 2016).

Attacks like these discourage the LGBTI community and LGBTI human rights defenders from organizing a pride parade – an annual protest march which has taken place in various cities in all of BiH's neighboring states for many years. Nevertheless, there are regular smaller public protests or marches taking place in Sarajevo and sometimes also in other towns.

### 3.4 Family and private life

*"I think that an association which would bring together parents of LGBTI children in BiH would be extremely useful as it would help parents to understand that they are not the only ones with that 'problem' and that they can exchange experiences and advice with other parents." N. Mostar, age 32*

*"I lived for a very long time with a young woman and her child. The three of us were a family. He grew up with me. He did not see his father for many years. I was thinking – if something happens to me, what will happen with the child, he should be entitled to health insurance, at least, and have something from me. Or, what if something happens to her, his mother, will he be allowed to stay with me? These are everyday issues, and the state is doing nothing about it." A. Zenica, age 37*

#### *Same-sex partnerships*

The family laws of FBiH, RS and BD define marriage and extra-marital unions as the union between a man and a woman. There are no laws in BiH which recognize a **same-sex stable and emotional union within the notion of family life**. Specifically, same-sex couples cannot use their constitutional right to respect for private and family life, the right to form a family, the right to the protection of acquired property or the right to freedom of movement and freedom to choose a residence solely on the ground of their sexual orientation. BiH discriminates against its citizens of same-sex orientation by violating equality guaranteed under Paragraph 4 of Article 2 of the BiH Constitution, thereby violating the commitment made in Paragraph 1 of Article 2 of the Constitution that BiH and both entities will ensure the highest level of internationally recognized human rights and fundamental freedoms.

The family laws of the entities and the BD **prevent same-sex couples in BiH also from adopting children**. These laws do not explicitly ban discrimination on the grounds of sexual orientation, gender identity and sex characteristics when deciding on a child's custody arrangement following a divorce (in case of a heterosexual marriage). The legislation on infertility treatment by assisted reproductive technology excludes same-sex couples.

Same-sex couples with children (for example, couples with children from a previous heterosexual marriage), are left to their own resources. There are no public support programs for such families, and no efforts have been made to raise awareness within public institutions (such as schools) about the problems and needs of such families.

Under the present BiH Asylum Law and the BiH Law on Movement and Stay of Aliens, a same-sex partner is not considered to be a family member and thereby has no right to family reunion or permission to enter BiH. The European Court of Human Rights ruled (e.g. the case of Pajić vs. Croatia) that such situations amount to discrimination and that the state does not have legitimate reasons for refusing to grant a residence permit to same-sex partners.

BiH does not recognize violence in same-sex partnerships as domestic violence in the legislation in either of the entities.

As a member of the Council of Europe, BiH will have to change its legal framework and legally recognize the rights of same-sex couples. This obligation arises especially from the rulings of the European Court of Human Rights. A number of the Council of Europe recommendations require that the member states respect private and family life of every person. They advocate for a ban of discrimination based on the grounds of sexual orientation and gender identity. Whilst not explicitly supportive of same-sex marriages they nevertheless imply the right to same-sex civil unions and equate their status with that of heterosexual extramarital unions at the very last.

The European Court of Human Rights confirmed in a number of its rulings, and particularly in the 2016 ruling in the case of Oliari vs. Italy, that the relationship of a cohabitating same-sex couple living in a partnership falls within the notion of family life and that in order to remove violations of the right to respect for family life guaranteed under the European Convention for the Protection of Human Rights and Fundamental Freedoms, the states must legally recognize same-sex couples and give them, at the minimum, the same scope of rights and obligations as those accorded to extramarital unions. Bearing in mind that the BiH Constitution stipulates that the European Convention on Human Rights and Fundamental Freedoms applies directly and has priority over all other law, this requirement refers also to its entities. The Sarajevo Open Centre plans to work on a strategic court case related to same sex partnership in 2017.

Although it was previously commonly believed that the majority of citizens of BiH are against the legalization of same-sex unions, a recent survey conducted by the National Democratic Institute shows that 30 percent of the general population in BiH are in favor of same-sex couples enjoying the same economic, social and other rights of marriage or domestic partnership awarded to heterosexual couples, with the exception of the right to adopt a child (NDI 2015).

Every year, same-sex partnerships of BiH citizens are registered abroad, something which has been widely reported in the media (bljesak.info, 18.09.2016).

### *Transgender and transexual people*

*"I was in various situations in which I felt uncomfortable, first of all when somebody addressed me as a woman - I felt as if he or she had spoken to a different person. There were unpleasant situations in my family, when they asked my mum 'Is this your son?' and then she would start explaining, and I felt even worse. When you have to explain your identity every day, it's very difficult." L. Sarajevo, age 22*

*"I began my transition three years ago. I am not taking hormones because they are not available on the market. My family did not accept it, they never will." E. Tuzla, age 27*

Transgender and transexual people are one of the least visible minority groups in BiH. Legally, **trans people can request a different personal identification number and sex designation** on all official documents, but **only following full gender reassignment surgery and therapy**. Gender reassignment is explicitly mentioned in the state-level BiH Law on Personal Identification Number as well as in the civil registry laws of the FBiH and RS. The BD Law on Civil Registries does not define gender reassignment as grounds for changing the information on identity documents, which is why such cases are treated like administrative corrections in the civil register entries.

Although in theory procedures exist for changing a personal identification number and other information on identity documents, these are not clearly defined. There is no secondary legislation in place, which sets forth clearly the procedure for the collection and verification of the applicant's medical documentation. The current practice does not give timely, transparent and simple access to gender reassignment for transgender people.

Medical gender reassignment procedures take a long time. The process can take up to ten years and is very expensive. Costs vary but can be thousands of Euros. The hormonal changes in the process often affect the appearance of the person undergoing gender reassignment during the process. This means that **the physical appearance of a person and the sex designation on their documents may not match**. Situations in which someone's gender presentation and physical characteristics do not match the information on the identity documents, places transgender people in numerous unpleasant, humiliating and discriminating situations and makes it difficult or even impossible for them to cross national borders, find jobs, have access to healthcare services, etc.

It is important to mention that **transgender people have no access to the appropriate healthcare institutions for gender reassignment** purposes, and health funds typically do not cover the medical costs of a gender reassignment surgery. As a result, many transgender people undergo gender reassignment surgeries abroad and pay for this themselves. Although BiH does not facilitate the medical transition process for its transgender citizens, the domestic gender reassignment procedures require that the surgical process be completed before a person can obtain sex designation changes in personal documents.

The right of a legally recognized transgender person to marry the person of the opposite sex to his or her post-transition sex is not explicitly regulated by law. In legal terms, there are no obstacles for transgender people which have their personal identification number and sex designation changed on identity documents to marry a person of the opposite legal sex.

The only survey undertaken to date on the needs of transgender people in BiH was conducted in 2015 (Banović et al. 2015). The survey included 17 transgender people. There is no exact data on the actual number of transgender people in BiH, something which should be taken into consideration when interpreting the survey results. Of the total number of transgender respondents, 30 percent had experienced problems related to identity documents (personal ID card, passport, matriculation book, medical care card, etc.) and respondents had experienced difficulties while obtaining identity documents, during gender matching in healthcare institutions, at border crossings and when renting an apartment (75 percent) and during identification in educational institutions and in relation to employment (50 percent). When asked if they would change the sex designation on their documents if it was legally possible to do so, 88 percent of transgender people said they would.

#### Housing

*"I know guys who are 16 and their parents kicked them out of home because they are gay. A house or a shelter in Prijedor would be useful for such individuals." H. Prijedor, age 19*

The FBiH Law on Housing Relations and the RS Housing Law do not explicitly prohibit discrimination on the grounds of sexual orientation, gender identity and sex characteristics. However, discrimination in housing - including access to housing, housing conditions and rental agreements - is prohibited under the state-level BiH Law on Prohibition of Discrimination.

There is a clear need for action in order to prevent LGBTI people from facing discrimination when they want to exercise their right to housing such as sale or rent of homes, getting a mortgage, recognition of a partner's tenancy right or moving out.

There are no support programs for LGBTI people to address their involuntary homelessness, when this arises. To date, no focused research has been conducted on this topic and no data is documented through other channels.

### 3.5 Employment and labour relations

*"I work in bookkeeping services. I have a degree in economics. Nobody at work knows of my sexual orientation, I go stealth with them. In some situations, all of them were against LGBT, and I was trying to defend LGBT people, not myself, but in general. I realised that the environment was not friendly at all and I tried to change it a bit, but I had no success." M. Tuzla, age 25*

*"I work at a coffee shop visited by 90% of the gay community in Zenica. The owner is great. There is an aura there. People are relaxed. Two football fans come to my coffee shop but they are changing slowly... they are careful when they talk about gay people. I am out to them and we talk openly." L. Zenica, age 30*

The BiH Law on Prohibition of Discrimination prohibits discrimination in employment in public and private sectors. The BD and FBiH labor laws and the state-level Law on Labor in BiH Institutions prohibit discrimination on the grounds of sexual orientation, while the RS Labor Law does not mention sexual orientation as a prohibited ground. None of these laws includes gender identity and sex characteristics.

Although discrimination is prohibited on the grounds of sexual orientation, in practice, LGBTI people are often exposed to social discrimination. Discrimination in labor and employment affects in particular **transgender people going through the medical transition process**.

The number of reported cases of discrimination on the grounds of sexual orientation, gender identity and sex characteristics remains low. This includes the cases reported to the BiH Institution of the Human Rights Ombudsman and the cases before courts in BiH. Surveys conducted among LGBTI citizens in BiH reveal different picture, however. A survey conducted in 2013 shows that every third LGBTI person had experienced some form of discrimination, most often discrimination in the workplace or in education (Čaušević 2013).

It is worrying that even the NGOs working with LGBTI people do not have broad information on discrimination in employment. This situation shows that the vast majority of LGBTI people, if they have a job at all, are not out with their colleagues and employer. LGBTI people do not feel free to speak about their family and private life when socializing with their co-workers. If LGBTI people start to speak more openly about their status in the workplace, this may in turn lead to an increased number of discrimination cases arising.

In a regional survey conducted in 2015 by the National Democratic Institute, 36 percent of LGBTI respondents confirmed that they had experienced some form of discrimination at workplace or in employment. The same survey showed that 30 percent of respondents from the general population would no longer be on speaking terms with their fellow workers if they knew they were of different sexual orientation or gender identity, while 23 percent would help their fellow-worker to "get cured" (NDI 2015).

### 3.6 Education

*"We did not talk about it in school." L. Sarajevo, age 29*

*"The period I spent in my secondary school was horrible. An electrical engineering school, I was surrounded by men. Horrible. They were extreme homophobes." I. Banja Luka, age 20*

*"At the university, clinical psychology treats it as paraphilia or a psychological disorder. This is what we are taught. Then, I say that it is not true, and my professor says, 'What shall I do now? You have to accept it, and write it in your exam answer.'" B. Sarajevo, age 28*

Although the BiH Law on Prohibition of Discrimination requires that all other laws should be harmonized with it, discrimination on the grounds of sexual orientation is prohibited only sporadically in a small number of other laws. Moreover, these laws are silent about gender identity and sex characteristics. The BiH Framework Law on Higher Education specifically mentions gender and sexual orientation as prohibited grounds of discrimination. For example, the Higher Education Law of the Canton Sarajevo defines that providers of higher education may not restrict a person's access to higher education, directly or indirectly, on the ground of sexual orientation or gender identity. In the RS, only the Higher Education Law explicitly prohibits discrimination on the ground of sexual orientation, while other laws related to education are silent about rights of LGBTI people and discrimination against LGBTI people.

Regarding curricula and information on sexual orientation, gender identity and sex characteristics available to pupils, the analysis of textbooks undertaken by the Q Association in 2010 shows that stereotypes and prejudices are deeply rooted in the education system in BiH. This research analyzed sixty-two textbooks from three different curricula and covering a range of school subjects including biology, psychology, sociology, democracy and human rights, philosophy and ethics. The research found that the information in the textbooks was not sufficient, was of a very poor quality, that gender stereotypes were used and that they promoted heteronormativity. In some cases, terminology was wrongly defined and the terms gender and sex were confused. Homosexuality was frequently defined as a disease and grouped in a classification of disorders alongside pedophilia and drug addiction. A separate analysis by Lamija Begagić reached quite similar conclusions (2016).

No official data is collected on discrimination, bullying and violence in schools on the grounds of sexual orientation, gender identity and sex characteristics. Nor is there systemic sensitization training for educators aimed at promoting a tolerant environment and preventing violence. An initiative of the Sarajevo Open Centre to promote systematic training and awareness raising campaigns in schools was rejected by the cantonal and RS ministries of education.<sup>24</sup>

However, cases such as the suicide of a 14-year old boy in Sarajevo in 2016 following xenophobic and homophobic harassment and abuse by his peers over a longer period of time show that training of school staff and collection of data on peer violence are essential for preventing this kind of tragedy.<sup>25</sup>

### 3.7 Health and physical integrity

*"A psychiatrist told me that my mother wanted to cure me of being homosexual. But he told me straight off that all that was OK, that it wasn't exactly a disease and that he would try to soften my mother as there was nothing to be cured. But he did not succeed." M. Tuzla, age 20*

*"I experienced discrimination when I wanted to donate blood in 2008. The reason was a discriminatory questionnaire in the RS. The question of sexual orientation has never been raised again." B. Prijedor, age 30*

The International Classification of Diseases is in use in the RS, FBiH and BD. The classification previously contained diagnoses that defined homosexuality as a mental disorder, which were removed in 1990. Non-discrimination under the BiH Law on Prohibition of Discrimination refers to health: in principle, health protection is equally available to all without any discrimination.

However, the practice in this area shows continued presence of **discriminatory attitudes among healthcare workers towards LGBTI people**. An example is the case of an annual blood donation program implemented by the FBiH Institute for Transfusion Medicine at the Faculty of Philosophy in Sarajevo. In 2012, a few LGBTI students reacted to the questionnaire instructing blood donors that anyone who had ever had sexual contact with someone of the same sex was not eligible to become blood donor. They wanted, but failed, to meet with the person responsible for the blood donation program. A medical technologist and a person from the Faculty's library abused and mocked the students as they were trying to draw attention to discrimination. Following this incident, in response to concerns raised by civil society organizations and the BiH Institution of the Human Rights Ombudsman, the FBiH Institute for Transfusion Medicine changed the blood donor history questionnaire so that it no longer contains the discriminatory question. The blood donor history questionnaire was also changed in the RS. However, whilst it has been rewritten the questionnaire still contains a discriminatory questions which can result in a blood donation refusal for gay people. The Sarajevo Open Centre has raised this issue with the Ombudsman Institution again. **To date, there have been no training programs to sensitize and train medical staff** in working with LGBTI people in BiH.

**Transgender people in BiH cannot undergo gender reassignment surgery** as no medical institution or experts has been trained or licensed to perform gender reassignment surgeries in the country. Medical institutions lack capacities for psychological and psychiatric counselling and for diagnosing transgender identities. Transgender people are forced to go abroad for gender reassignment surgeries and pay the full cost of the long and expensive process without any support in BiH. Public health insurance in the entities, BD and cantons does not cover gender reassignment therapy and surgery costs.

In BiH there is no data available on the exact number of children born with intersex conditions. According to some media reports, **three intersex children were born over the last 20 years** (radiosarajevo.ba, 16.09.2015). This is highly unlikely, and does not correlate with information gathered by non-governmental organizations (Pandurević 2017). According to the Pandurević report, the only report on intersex issues in BiH, most intersex new-borns are referred to major hospitals in the country and abroad for treatment. All decisions affecting the child are taken by its parents. No systemic measures have been taken to prevent unnecessary complicated surgeries on intersex children.

A survey conducted by the Sarajevo Open Centre in 2013 shows that **every third LGBTI person suffering depression, fear, anxiety, dejection or other symptoms as a result of homophobia or transphobia**, chooses not to seek professional psychological, psychiatric or therapeutic assistance. The reasons they give for this include either assumed incompetence of medical professional, or fears that their sexuality might come out as a result of seeking help (Čaušević 2013).

### 3.8 Sports

*"Ultras are terrible. A few years ago we tried to organise a gay party in Zenica and we invited about fifty people, but we got a tip that ultras had gathered in front [of the building] and that there was going to be a mess, although we were provided with security." L. Zenica, age 29*

*"I've been playing volleyball for the past 14 years, and I'm a referee and I coach children. They know nothing about me, although once there was an incident, it was my birthday and I brought a bag with rainbow colours on it, and my coach asked me later whether I was "THAT"; 'what's that?', 'are you gay?' I said I was not, and he said OK, and if I were, he said, it would be a problem because I share the same locker room with other girls. Then I left the team. My new team does not know." M. Tuzla, age 20*

The laws on the prevention of violence and misbehavior at sport events in BiH do not treat homophobic and transphobic chanting at sports events as a crime, although the RS Sports Law prohibits spectator violence and insulting actions, particularly those which provoke racial, ethnic, political or other intolerance. This is confirmed in the RS Law on the Prevention of Violence at Sports Events under which bringing or displaying banners, flags or other items containing words, pictures, symbols or other signs demonstrating or inciting hatred or violence on the grounds of race, ethnicity or religion at sporting event amount to acts of violence and misbehavior. However, sexual orientation, gender identity and sexual characteristics are not mentioned explicitly in this law.

Under the BiH Sports Law, the organization of sports competitions and events must be harmonized with the recommendations of the European Convention on Spectator Violence and Misbehavior at Sports Events and in particular at Football Matches, as well as with relevant laws and regulations applicable in BiH.

The BiH Law on Prohibition of Discrimination prohibits discrimination in sports, but no special actions have been taken in BiH to prevent occurrences of exclusion from sport on the grounds of sexual orientation, gender identity and sex characteristics. For example, in 2014 and 2015, **homophobic banners** were displayed: in 2014, during the soccer match between Radnički and Sloboda teams; in 2015, during the soccer match between Sarajevo and Željezničar. Both incidents were reported to the BiH Football Association. In 2015, the Football against Racism in Europe Network reacted and requested that the incidents be condemned and the perpetrators punished. However, **the BiH Football Association did not respond in either case.**

## 4. Civil society and human rights of LGBTI people

### 4.1 Development of LGBTI activism and social movement

There was no organized LGBTI movement in BiH during the Yugoslav period. Expression of same-sex orientation was not socially acceptable in public or in private, and same-sex sexual acts were punishable by law. Under the Criminal Code of the Yugoslav Socialist Republic of BiH from 1977, sexual intercourse between two men was treated as unnatural and lascivious behavior. A man having a relationship and sexual intercourse with another man could be sent to prison for up to one year, even if the intercourse took place in private at his home. The number of individuals found guilty under the criminal code remains unknown. During that time, the legal and social context was the basis for profound stigmatization of gay men in particular. This affected the situation of LGBTI people after the war in the 1990s.

In 2001, a group of enthusiasts in Sarajevo drafted a **declaration of the BiH gay-lesbian association**, planning to form an organization. The declaration offered a historical overview, naming communism, the war, nationalism, the economy and numerous scandals involving police, political parties and governments as obstacles preventing lesbian, bisexual and gay people from organizing themselves (Đurković 2007: 22).

In September 2002, another initiative related to human rights of LGBTIQ people was launched in BiH. The Bosnia 14 September initiative was launched by just two people, Istok Bratić and Svetlana Đurković, but grew quickly. Together, they created the first educational and information web portal for LGBTIQ people in BiH, focusing on issues related to LGBTIQ people and their human rights.

In February 2004, the **Q Association** was officially registered as the first LGBTIQ association of BiH. Accordingly, BiH became the last state of the former Yugoslavia to get an LGBT association (Gavrić 2012).

In 2005, a civic association – International Initiative for Visibility of Queer Muslims - was formed. The next year, in 2006, it was registered as Logos. The aim of **Logos** was to combine the issues of religion and topics related to LGBT/queer people. This made them the target of attacks in the print media. The Logos association organized some events and a research project but has been inactive since 2008.

The **Queer Sarajevo Festival in 2008** was a defining event for LGBTIQ activism in BiH. This was the first large public LGBTIQ event to show the high levels of homophobia present in BiH. The festival, planned as a five-day cultural event, was the subject of attacks by radical groups. As a result, the festival was forcibly discontinued immediately after the opening night. Eight people were physically attacked, for which nobody has ever been prosecuted. These events were a turning point for the Q Association, with its activists placed under high levels of stress. Whilst the Association continued to implement community-based projects and other activities in 2009, by 2010 it had closed its office and activities.

The **Equilibrium** Association, formed in Banja Luka in 2009, was the first organization to be registered outside of Sarajevo and in the Republika Srpska. Following a short period of time and the implementation of a number of small projects, the organization closed.

At the end of 2010 the **Sarajevo Open Centre** launched its Human Rights Programme, dealing with issues and rights of the LGBTI community. Since October 2010 the Centre has grown into the largest and most influential organization working to improve the rights of LGBTI people in BiH.

Another two initiatives were launched in Sarajevo in 2011, the **Okvir** Association and an informal group called **Simposyon**. The Okvir Association focuses on LGBTIQ community empowerment activities and is still operational. Simposyon stopped existing after few weeks. An informal lesbian initiative named **Victoria** was active for a short period in 2011 in Sarajevo and there were a number of small short-lived initiatives in Tuzla, among them **TANKA**.

In 2014, the Association **BUKA** (Banja Luka) was created and in 2015 **LibertaMo** (Mostar) was formed. In 2016, the **Tuzla Open Centre** was created. An informal group **qSport** has been continually active since 2013. Over the last several years, the feminist **Foundation Cure** in Sarajevo gained prominence as a civil society organisation working on issues related to LGBTIQ people, focusing particularly on LBT women. Significant support is also provided by mainstream human rights organisations **Kvart** (Prijedor) and **Oštra nula** (Banja Luka), but also health-focused organisations like **Action Against Aids** (Banja Luka) and **XY** (Sarajevo).

Only the Sarajevo Open Centre, the Foundation Cure, the Tuzla Open Centre and LibertaMo are part of regional networks like ILGA Europe and the Equal Rights Association (ERA). ERA is a regional initiative for the rights of LGBTI people involving organizations from Western Balkans countries and Turkey. Until now it brought only limited benefit for the organizations from Bosnia and Herzegovina and it did not successfully mobilize new membership. The growth of associations and organizations since 2010 has resulted in the rapid development of the LGBTI movement through the activities of civil society organizations and individual activists in Prijedor, Banja Luka, Tuzla, Zenica, Mostar and Sarajevo.

## 4.2 Existing organisations and informal groups

Today, different (registered) civil society organizations and (non-registered) informal groups operate in BiH and, as such, they contribute to strengthening the LGBTI community and improving human rights of LGBTI people. The key organizations and groups, classified into a number of sub-groups, are presented below.

### *LGBTI organizations and organizations with a focus on LGBTI issues*

**The Sarajevo Open Centre**, (SOC) is recognized as a leading organization working towards improving human rights of LGBTI people. Although formed in 2007, this feminist organization has only been professionally active since 2011. It has two work programs: a) human rights of LGBTI people, and b) human rights of women and gender equality, and uses EU integration as a transversal theme for the purpose of improving institutional and public policy frameworks for the protection of human rights in BiH in general. The SOC offers activities related to psychosocial empowerment, legal counselling and representation, institutional capacity building, development and advocacy of public policies and legislation and raising awareness of citizens through the media, cultural and artistic interventions. For more information, please visit [www.soc.ba](http://www.soc.ba).

**CURE foundation**, Sarajevo, is a feminist activist organization, which works for gender equality, advocating positive social changes through its educational, artistic, cultural and research programs. Since its formation in 2005, the organization carries out activities related to LGBTI people every year, and has implemented annual community-based and/or advocacy projects over the past several years. For more information, please visit [www.fondacijacure.org](http://www.fondacijacure.org).

**Okvir Association** was registered in Sarajevo in 2011. It is dedicated to the promotion and protection of culture, identity and human rights of LGBTIQ people. Although not focused on public activism, this association has continually been operating over the past years, offering activities focusing on the LGBTI community empowerment. For more information, please visit [www.okvir.org](http://www.okvir.org).

**LibertaMo**, Mostar is an activist organization, which works towards strengthening the LGBTI community in Mostar and the Herzegovina region. The Sarajevo Open Centre facilitated its foundation (2015) and it began to carry out its first regular activities at the beginning of 2016, focusing on community-based activities. The organization does not have a web page, but can be contacted at [lgbtmo@gmail.com](mailto:lgbtmo@gmail.com).

**Tuzla Open Centre**, was formed in 2016 for the purpose of promoting human rights and democratic principles, focusing on the work for and with LGBTI people and women. Although it has not received any donor support, it has carried out the numerous activities and has had important media appearances. Although it is institutionally independent, the organization continuously receives financial and other support from the Sarajevo Open Centre. For more information, please visit [www.toc.ba](http://www.toc.ba).

**Banja Luka Association of Queer Activists**, (BUKA) is the association formed in 2014 with the aim to promoting, protecting and strengthening the LGBTIQ community in Banja Luka and RS. In 2014 and 2015, BUKA carried out a number of visible and influential advocacy, but also community-based activities were carried out. The organization is not active since May 2016 and does not have a web page.

#### *Informal LGBTI groups*

**qSport** has been an activist groups since 2013, bringing together LGBTI people and their friends for recreational and sports activities. It can be contacted via Facebook at [www.facebook.com/qsportsarajevo](https://www.facebook.com/qsportsarajevo)

**TANKA**, a Tuzla-based activist group is active in the area of cultural activism. It can be contacted via Facebook at [www.facebook.com/aTkivizam](https://www.facebook.com/aTkivizam).

#### *Organizations that provide services to certain LGBTI sub-groups*

**The foundation Wings of Hope**, Sarajevo, has been cooperating with the Sarajevo Open Centre for many years and provides psychosocial counselling to LGBTI people. The team members have worked intensively to build their own capacities in order to become specialized in dealing with certain issues such as counselling of transgender people. For more information, please visit [www.wings-of-hope.ba](http://www.wings-of-hope.ba).

**Action against aids (AAA), Banja Luka, and the Association XY**, Sarajevo (with a regional office in Banja Luka) are active in the area of sexual and reproductive health. Knowing that gay and bisexual men and transgender people are particularly vulnerable to sexually transmitted infections, these organizations and their services are particularly important for LGBTI people. For more information, please visit [www.aaa.ba](http://www.aaa.ba) and [www.asocijacijaxy.org](http://www.asocijacijaxy.org).

**The Youth Cultural Centre Abrašević, Mostar, and the Art Cinema Kriterion**, Sarajevo, have grown into free, LGBTI-friendly coffee and artistic centres where programs relating to LGBTI people have been implemented for many years (i.e. film festivals, roundtables/discussions, exhibitions, book launches, parties, etc.). For more information, please visit [www.okcabrasevic.org](http://www.okcabrasevic.org) and [www.kriterion.ba](http://www.kriterion.ba)

#### *General human rights organizations*

**The Youth Center KVART** in Prijedor states that its work is based on unyielding respect for universal human values, such as peace, non-violence, democracy, freedom, equality and respect for human rights, anti-fascism and justice. The organization is recognized for activities related to dealing with past historical events. However, in addition to this work it regularly carries out activities to strengthen and bring together LGBTI communities in Prijedor and the Krajina region. For more information, please visit [www.centarzamladekvartprijedor.blogspot.ba](http://www.centarzamladekvartprijedor.blogspot.ba)

**Oštra nula**, Banja Luka, is dedicated to active citizenship and human rights through actions implemented in the area of social justice and cultural memory. As an activist organization, it has provided space to the development of LGBTI activism since its creation in 2010. An informal LGBTI group called Open Centre Banja Luka has been active within the organization since 2016. For more information, please visit [www.ostranula.org](http://www.ostranula.org).

**Mediacentar Sarajevo**, supports the development of independent and professional journalism in BiH. This professional organization has been cooperating with the Sarajevo Open Centre for many years, implementing joint multi-annual projects but also smaller campaigns. This organization is raising awareness about the issues and needs of LGBTI people in BiH via the web portal [www.diskriminacija.ba](http://www.diskriminacija.ba). For more information, please visit [www.media.ba](http://www.media.ba).

**Vaša prava**, Sarajevo, has offices throughout BiH, provides pro bono legal aid. It has established itself as an important partner in legal representation of court cases related to LGBTI people. For more information, please visit [www.vasaprava.org](http://www.vasaprava.org).

**Association for Democratic Initiatives (ADI)**, Sarajevo, works towards improving the rule of law, promoting the protection of human rights and EU integration. It focuses on strengthening participatory democracy and the development of partnership between civil society, government institutions and the private sector. Through its work within the Coalition against Hate Speech and Hate Crimes, this organization contributes to the protection of LGBTI people. For more information, please visit [www.adi.org.ba](http://www.adi.org.ba)

**Youth Initiative for Human Rights (YIHR)**, Sarajevo, establishes links between young people. Its aims include the democratization, implementation of the rule of law, facing the past, and the building of new relationships between communities in post-conflict BiH. Progressive members of this organization have supported various activities relating to LGBTI people over the past years. For more information, please visit [www.yihr.ba](http://www.yihr.ba)

**Helsinki Citizens' Assembly (hCa)**, Banja Luka, was formed in 1996 and has since been working towards strengthening the civil society, gender equality and inclusion of young people in public life. Over the past several years, the hCa has provided significant support to local LGBTI initiatives and expressed interest in working with institutions in RS on improving human rights of LGBTI people. For more information, please visit [www.hcabl.org](http://www.hcabl.org).

**Helsinki Committee for Human Rights in RS**, headquartered in Bijeljina, has been promoting, protecting and monitoring human rights since 1996. It has implemented a number of projects focusing on the human rights of LGBTI people. For more information, please visit [www.helcommrs.org](http://www.helcommrs.org)

**OneWorld – Platform for South East Europe** (owpsee) is a virtual civil society network. The organization has an office in Sarajevo and has been providing support to LGBTI initiatives for many years. For more information, please visit [www.oneworldsee.org/sh](http://www.oneworldsee.org/sh).

**Rights for All**, with its head office in Sarajevo, is an organization which protects and advocates human rights. It has been active since 1996, as a successor to the BiH program of the international organization Global Rights, which in 2006 published its first shadow report on human rights practices regarding LGBTI people in BiH for consideration by the United Nations agencies. For more information, please visit [www.rightsforall.ba](http://www.rightsforall.ba).

## 4.3 Capacities and needs

Work towards improving human rights of LGBTI people is largely left to LGBTI organizations and other organizations which have a significant focus on issues related to LGBTI people. Although human rights organizations often have adequate structures, financial and human resources and advocacy capacities, a number of them prefer to focus on human rights work targeting the general population rather than including LGBTI people in their programmatic areas. Explanations for this usually focus on capacity and funding constraints. Some human rights NGOs acknowledge that they have little or no interaction with the LGBTI community. The current activities of mainstream human rights organizations focus on the development of shadow reports, training of civil servants or media campaigns. This is complementary with the community-based work carried out by LGBTI organizations and organizations with a significant focus on rights of LGBTI people. A continuous coordination of efforts and cooperation is needed.

With the notable exception of the Sarajevo Open Centre, which has well-established operational capacities and diversified sources of financing, most LGBTI organizations and organizations with focus on LGBTI people experience capacity constraints. These include constraints in funding, human resources and consequently the ability to engage continuously in dialogues with the government and thus to achieve sustainable cooperation. There is a critical need to ensure domestic financing, at all levels of government, to organizations working on LGBTI issues, in order to overcome the dependence on foreign donors. To our knowledge this has not happened yet anywhere in BiH.

The Okvir Association and Sarajevo Open Centre are the only organizations that provide psychosocial counselling. Only the Sarajevo Open Centre provides legal representation services in cases of violations of human rights of LGBTI people.

The complexity of human rights work in BiH leads to the existence of (and sometimes external competition between) anti-discrimination projects. Discrimination projects focus variously on national minorities, Roma, displaced people, people with disabilities, and others. Contrary to popular belief (which are sometimes shared even by human rights defenders), LGBTI issues have not been a top priority for donor funding in BiH. Of particular concern is the lack of "seed money" for emerging organizations that still need to build their capacity. This shortcoming may be a factor contributing to several LGBTI civil society initiatives closing or ceasing operations shortly after they have launched.

Current research and discussions with human rights organizations indicate that the following should be priority actions for LGBTI organizations and other supporting organizations:

**To focus activities on LGBTI community support programs and not solely on cooperation with public institutions:**

Although significant progress has been made in influencing government institutions and the development of new legislation and public policies, it is extremely important that the work of organizations focus on LGBTI people. The vast majority of LGBTI people need basic support services, such as psychosocial and legal counselling, community-based activities and legal representation. Without empowerment, LGBTI people will never be able to live in accordance with their identity or to seek protection in case of a violation of their rights. This is one of the reasons why no known case of discrimination on the grounds of sexual orientation, gender identity or sex characteristics has been tried at any BiH court. LGBTI people obviously need basic support from LGBTI organizations. This reality should be recognized by donors who until now have focused their donations mainly on cooperation between civil society organizations and government institutions.

**To sensitize donors about the specific needs of LGBTI activism:** Most LGBTI organizations are unable to fulfil the criteria set by many donors in application forms, such as demonstrating past and present projects, office space, a professional team, internal structure and rules, etc. LGBTI organizations have often been formed by young and inexperienced people who need support for project activities alongside with capacity building. If donors wait for all organizations to develop fully and be properly organized, most organizations will never get support and LGBTI activism will always rely on a small number of civil society organizations, which is a high risk. Donors should put in place **a multiannual, possibly multi-donor, support program** which would include:

- a) financial support to several LGBTI organizations active in different parts of BiH;
- b) continuous capacity building and development of organizational structures as a prerequisite for further funding; and
- c) gradually linking those organizations with government institutions.

**To build and strengthen the sustainability of LGBTI organizations in regional centers:** Over the past 15 years, LGBTI activism has been concentrated in Sarajevo, the capital city. In the last few years, increasingly, local initiatives have been launched in other places such as Mostar, Tuzla, Zenica, Banja Luka and Prijedor. Services and programs based in the capital city are often inaccessible to LGBTI people in other parts of the country. Moreover, LGBTI organizations need to be able to work effectively on legal and human rights issues with institutions at the level of the RS and cantons. As such, it is essential to support the strengthening of LGBTI organizations in regional centres such as Banja Luka, Mostar, Zenica, Prijedor and Tuzla.

**To build capacities and structures relevant to the needs of organizations:** Further strengthening of existing LGBTI organizations is of crucial importance. These efforts should focus on building internal structures, ensuring transparency and accountability in governance, and capacity building for program delivery. The vast majority of LGBTI organizations have limited or none of the knowledge and skills necessary for the delivery of psycho-social assistance for LGBTI people, or advocacy, lobbying or cooperation work with government institutions. Because LGBTI people often suffer from significant psychological problems (e.g. depression) as a result of experiences of discrimination or exclusion, it is very important that they are approached in a professional and responsible manner. Organizations also need special skills to overcome resistance and prejudices within government institutions in order to make them work with and for LGBTI people.

**To build connections between LGBTI organizations and broader human rights organizations:** Work on LGBTI issues must be a two-track process. Experience from other contexts shows that specialized LGBTI organizations communicate best with the LGBTI community and can best represent their needs and rights. This is why they deserve support from public institutions and donors. Nevertheless, it is critical that their activities are networked with those of successful civil society organizations which are already working to improve human rights of minority and de-privileged groups and communities. This will enable LGBTI organizations to benefit from their experiences and networking. LGBTI activism may not come down solely to LGBTI organizations.

**To cooperate continually with institutions at all levels of government:** Although the governance system of BiH is very complex, it is of critical importance that close cooperation is maintained with government institutions at all levels. Without institutional support it will not be possible to develop LGBTI activism nor can we expect LGBTI people to raise their concerns or become more visible in wider society. LGBTI people must feel free to speak about their identity with doctors, in social welfare centres, in school and university, in police stations, or in court, because only then will they be able to live a life with dignity. Changes in institutions require persistent work over many years, and this is why it is necessary to start working with them as early as possible.

## 5. Recommendations for follow-up activities

Work towards the social acceptance of LGBTI people and their legal and institutional protection requires intensive and coordinated actions by public institutions, civil society organizations, and donors working in BiH. Based on the situation analysis and the discussions at the project events we recommend that the following measures should be adopted in the next few years.

### *Improvement of legislation<sup>26</sup>*

- To analyze the existing levels of protection of LGBTI people under criminal law against violence, hate crimes and hate speech and based on this to consider the development of amendments to criminal legislation at the state, entity and BD levels;
- To develop amendments to the existing family laws or to develop new laws (same-sex partnership laws) in order to regulate rights and obligations arising from the common life of same-sex couples;
- To develop amendments to the existing legislation or to develop new laws (gender identity laws) in order to regulate legal recognition of gender reassignment in a timely, transparent, accessible and affordable way;
- To develop amendments to labor laws at all levels of governance in order to protect LGBTI people against discrimination in the workplace;
- To ensure legal regulation of medical and administrative procedures for intersex people according to the best practice globally.

### *Actions for executive authorities at all levels of government*

- To officially designate the BiH Ministry of Human Rights and Refugees, the BiH Agency for Gender Equality and entity-level gender centres as coordinating institutions with the responsibility for improvement of human rights of LGBTI people;
- To develop, approve and begin to implement a multiannual, comprehensive action plan for the improvement of human rights of LGBTI people and their equality in BiH;
- To include issues of improvement of human rights of LGBTI people within public institutions' work programs, action plans, strategies and other public policies at all levels of government;
- To include training on the human rights of LGBTI people within civil service training programs as a regular and mandatory module;
- To develop annual and thematic reports on the human rights of LGBTI people and present them to the central-level, cantonal, entity and BD parliaments;
- To organize specific activities to mark the International Day Against Homophobia and Transphobia (17th May) at all levels of governance;
- To provide financial support to civil society organizations working on improvement of rights of LGBTI people

### *Action by civil society organizations*

- To strengthen continuous cooperation between LGBTI organizations and general human rights organizations in order to utilize existing civil society resources as effectively possible, and mainstream human rights of LGBTI people into broader human rights discourse and activism.

### *Actions by donors and international organizations*

- To provide support to build the capacity of government institutions to respond properly to the needs and problems of LGBTI people;
- In addition to advocacy and work with government institutions, to provide support to civil society programs working directly with the LGBTI community;
- To examine the existing civil society support mechanisms and to improve them, taking into account the specific features of activities of LGBTI organizations and fragility of LGBTI activist movement;
- Going beyond the provision of only financial support, to include issues relating to the rights for LGBTI people in all donor programmes and activities.
- To provide support to small, undeveloped LGBTI organizations in the regional centres in BiH.

*Proposed actions within each thematic area*

Area	Suggested
Safe life and to protection against violence and hate speech	LGBTI hate crimes should be included in the curricula of police academies and in professional development programs for police at cantonal, entity, BD and state levels.
	Hate crimes and discrimination against LGBTI people should be included in professional development programs of the entity centres for judicial and prosecutorial training
	Standard operational procedures for police, judiciary and other stakeholders should be developed, approved, and applied in cases of hate crimes, including those committed against LGBTI people.
	Public broadcasters should regularly air programs related to problems, rights and needs of LGBTI people, with a focus on prevention and suppression of discrimination and violence.
Family and private life	To develop a manual for relevant institutions (i.a. health, police, judiciary) explaining best practice in the treatment of transgender people.
	To train civil servants in how to respond to the needs of LGBTI people, with particular focus on legal gender recognition and same-sex union.
Employment and labour relations	Examine situation of LGBTI people in the BiH Armed Forces and propose a set of measures for improving the equality of LGBTI people within the armed forces.
Education	To analyze textbooks and curricula for primary and secondary schools, and to propose measures to remove stereotypes and discriminatory content.
	Teaching content related to inclusion of and discrimination against LGBTI people should be included in the university curricula for future school staff and law faculties
	The rights of LGBTI people, stereotypes, prejudices, (peer) violence and discrimination should be included as topics in professional development programs for primary and secondary school staff.
	To investigate homophobic and transphobic violence and recognize it within programs dealing with peer violence in schools.
	To include teaching content related to LGBTI people, in accordance with modern medical findings and research, in the curricula taught to future medical staff on secondary school and university level.
	To include teaching content related to LGBTI people, in accordance with modern medical findings and research, in the curricula for psychology-related courses.
Health and physical integrity	To carry out research into specific medical needs of gay and bisexual men, lesbian and bisexual women, transgender and intersex people.

## Annex: An Overview of the political system of Bosnia and Herzegovina<sup>27</sup>

BiH's political system is unique in Europe. BiH has been recognized as an independent state in 1992, becoming a UN member state in the same year. With the adoption of the Dayton Peace Agreement 1995, which ended the brutal 1992-1995 war, a federal structure has been created.

Today, **BiH consists of two entities** (Federation of BiH and Republika Srpska) **and one district** (Brčko District of Bosnia and Herzegovina). The BiH Constitution regulates competencies and relations between the state-level, entity and district institutions. BiH as a state and both its entities have their own constitutions. The Brčko District has its own Statute, the District's highest legal act.

BiH is a semi-presidential federal state. **At the state level**, there is a directly elected three-member Presidency (one Bosniak, one Croat, and one Serb), a nine-member Council of Ministers (government), a bicameral Parliamentary Assembly and a Constitutional Court. The state-level responsibilities are limited and include foreign affairs; foreign trade, financial, and monetary policy; immigration, refugees, and asylum; defense; state-level communications. One of the nine ministries is the BiH Human Rights and Refugees Ministry. The BiH Gender Equality Agency forms part of this ministry.

The only independent national human rights institution is the state-level Institution of the Human Rights Ombudsman, which also serves as the national equality body. State-level institutions have only a limited influence on the human rights situation of LGBTI people as all major competencies are at entity level. Legislation and public policy documents in those areas have to be developed and implemented by the entities. It is important to note that the Gender Equality Law and the Law on Prohibition of Discrimination are state-level laws, being applicable in all parts of the country and at all levels of governance.

**The two entities – the Republika Srpska and Federation of BiH – have an asymmetric structure.** The **Republika Srpska** is a unitary federal unit, consisting of 63 municipalities and towns. Serbs make up the majority of the population, living together with Bosniaks and Croats, and a smaller number of citizens, which belong to national minorities or don't self-identify with any ethnic group. All major responsibilities delegated to the entities (e.g. labor relations, health system and social protection policy, education, police, family policy, pension system) are regulated by RS legislation and public policy, implemented by RS entity and local level (municipalities and towns) institutions. The RS has a directly elected President and two Vice-presidents, a sixteen-member Government, a bicameral National Assembly, a Supreme Court and a Constitutional Court. The RS Gender Centre has been coordinating work on LGBTI issues. The RS holds all major responsibilities important for the human rights situation of LGBTI people (e.g. criminal legislation, family law, health protection laws). Issues such as same-sex partnership, medical and legal aspects of gender reassignment for transgender people or protection of intersex people should be regulated on RS level.

The other entity – the **Federation of BiH** is federalist federal unit of BiH. The Federation of BiH is **divided into 10 cantons** – federal units within FBiH. Each canton is divided into municipalities and towns. Bosniaks and Croats make the majority of the population, living together with Serbs, and a smaller number of citizens, which belong to national minorities or don't self-identify with any ethnic group. All major responsibilities delegated to the entities (e.g. labor relations, health system and social protection policy, education, police, family policy, pension system) are divided between FBiH and its cantons. Some responsibilities are shared between FBiH and the cantons. FBiH has an indirectly-elected President and two Vice-presidents, a sixteen-member Government, a bicameral Parliament, a Supreme Court and a Constitutional Court. The 10 cantons have their own constitutions and institutions: 8-12 member governments and unicameral parliaments, adopting their own laws and policies in the areas which fall within their responsibility. The FBiH Gender Centre has been coordinating work on LGBTI issues. The FBiH and its cantons hold responsibility in all key areas important for the human rights situation of LGBTI people (e.g. criminal legislation, family law, health protection laws) and issues like same-sex partnership should be regulated on FBiH level, while changes in the school curricula need to be made at the cantonal level as education is a cantonal responsibility.

The **third federal unit in BiH – the Brčko District of Bosnia and Herzegovina (BD)** – has again a unique political structure. Whilst it is legally a condominium of the two entities (RS and FBiH), in practice it functions as though it is a federal unit in its own right. BD consists of limited territory, a single municipality. Its institutions – the indirectly elected Mayor and his/her deputy, the Government and the Assembly – are responsible both for the duties of a federal unit and also for local governance. BD has the same responsibilities as the RS, since it doesn't share its responsibilities with any subsidiary institutions, unlike in FBiH. The BD Assembly can adopt laws (such as the Family Law or the Criminal Law) and also regulates municipal issues including waste management, water delivery and street lighting. No ethnic group forms a significant majority in BD. BD has responsibilities for all areas important for the human rights situation of LGBTI people (e.g. criminal legislation, family law, health protection laws). Issues such as same-sex partnership, medical and legal aspects of gender reassignment for transgender people, or protection of intersex people must also be regulated at the BD level.

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## List of organizations, informal groups and individuals who were consulted as part of the civil society mapping

Action Against Aids, Banja Luka, Srđan Kukulj  
Association for Democratic Initiatives, Sarajevo, Snježana Ivandić  
Association Okvir, Sarajevo, Belma Šeta and two further individuals  
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Centre for Youth Education and Mobility Element, Sarajevo, Aleksandar Talijan  
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## Endnotes

- <sup>1</sup>Depending on the context, this report uses the abbreviations LGBT, LGBTI and LGBTIQ. The use of the three different terms is important, taking into account that intersex and queer issues were not always taken into consideration in the different activist, institutional or political frameworks.
- <sup>2</sup>The complex political system of Bosnia and Herzegovina is explained in the annex to this report.
- <sup>3</sup>Instead of having special sub-chapters on transgender and intersex rights, this report mainstreams gender identity and sex characteristics issues throughout.
- <sup>4</sup>These key terms are defined as per the UN Free & Equal - United Nations global public education campaign for lesbian, gay, bisexual and transgender (LGBT) equality. For more info see: <https://www.unfe.org/>
- <sup>5</sup>For brevity human rights of LGBTI people are sometimes referred to as "LGBTI rights". It is understood that LGBTI people do not enjoy any "special rights" and what is meant is rather the need to enforce the universally applicable guarantee of non-discrimination in the enjoyment of all rights. See OHCHR 2012: 6.
- <sup>6</sup>This report covers developments regarding the protection of human rights of LGBTI people in BiH until the end of 2016. Any more recent developments relating to the LGBTI activist movement, institutional engagement or policy development in BiH have not been included in this report.
- <sup>7</sup>See more on the WHO webpage: <http://www.who.int/hiv/topics/transgender/en/> The WHO is moving toward declassifying transgender identity as a mental disorder, see also [https://www.nytimes.com/2016/07/27/health/who-transgender-medical-disorder.html?\\_r=0](https://www.nytimes.com/2016/07/27/health/who-transgender-medical-disorder.html?_r=0) (last retrieved on 21 Aug 2016)
- <sup>8</sup>The survey is available at [https://www.ndi.org/LGBTI\\_Balkans\\_poll](https://www.ndi.org/LGBTI_Balkans_poll) (last retrieved on 21 Aug 2016). The survey was conducted in all West Balkan states by using accepted standard public opinion pooling methodologies. It is important to mention that the survey does not include specific questions about the human rights of intersex people.
- <sup>9</sup>All media analyses published between 2011 and 2016 are available at <http://soc.ba/publikacije/edicija-ljudska-prava/>
- <sup>10</sup>Learn more on the EU enlargement policy [https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/bosnia-herzegovina\\_en](https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/bosnia-herzegovina_en)
- <sup>11</sup>Overview of cases related to sexual orientation and gender identity available at [http://www.echr.coe.int/Documents/FS\\_Sexual\\_orientation\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Sexual_orientation_ENG.pdf) and [http://www.echr.coe.int/Documents/FS\\_Gender\\_identity\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Gender_identity_ENG.pdf)
- <sup>12</sup>Government responses available at: [http://www.coe.int/t/dghl/standardsetting/hrpolicy/Others\\_issues/LGBT/Follow\\_up\\_en.asp](http://www.coe.int/t/dghl/standardsetting/hrpolicy/Others_issues/LGBT/Follow_up_en.asp) (last retrieved on 21 Aug 2016)
- <sup>13</sup>This chapter provides a brief overview, while the next chapter provides detailed insights into each area of life (see Chapter 3). We recommend that readers who are not familiar with the organization of the BiH political and institutional system consult the publications Banović/Gavrić 2011 and Gavrić/Banović/Barreiro 2013.
- <sup>14</sup>A consolidated version of the law from 2009, with amendments from 2016, is available at <http://soc.ba/zakon-o-zabrani-diskriminacije-bih-nezvanicni-precisceni-tekst/> (only in the languages of people of BiH - Bosnian, Croatian, Serbian).
- <sup>15</sup>See also official statement of ILGA Europe, the European branch of the international LGBTI organization ILGA: <http://www.ilga-europe.org/resources/news/latest-news/anti-discrimination-law-updated-bosnia-herzegovina>
- <sup>16</sup>The RS operational plan is available at <http://lgbt.ba/po-prvi-put-jedna-vlada-u-bih-u-svoje-planove-ukljucila-prava-lezbejki-gej-biseksualnih-i-transrodnih-osoba/> The FBiH operation plan is not available online.
- <sup>17</sup>The action plan is available at <http://lgbt.ba/site/wp-content/uploads/2016/05/KONA%C4%8CCAN-AKCIONI-PLAN-spre%C4%8Davanje-pojava-diskriminacije.pdf>
- <sup>18</sup>Learn more about their work at [www.parlament.ba](http://www.parlament.ba)
- <sup>19</sup>Learn more about their work at [www.ombudsmen.gov.ba](http://www.ombudsmen.gov.ba)
- <sup>20</sup>The special report is available only in the languages of people of BiH (Bosnian, Croatian, Serbian) [http://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2016110413333704eng.pdf](http://www.ombudsmen.gov.ba/documents/obmudsmen_doc2016110413333704eng.pdf)
- <sup>21</sup>As part of the development of this report a community needs assessment was conducted (see Introduction). All quotes in this chapter are based on the interviews conducted July-August 2016.
- <sup>22</sup>See ODIHR online data base <http://hatecrime.osce.org/bosnia-and-herzegovina>
- <sup>23</sup>Article II/3 of the BiH Constitution, Article 2, Chapter II of the FBiH Constitution, and Articles 30 and 32 of the RS Constitution.
- <sup>24</sup>See <http://lgbti.ba/samoodbrana-ili-samo-plakat/>
- <sup>25</sup>See <http://lgbti.ba/homofobno-nasilje-kao-poseban-vid-vrsnjackog-nasilja/>
- <sup>26</sup>During the legislative drafting process it is necessary to ensure that all three grounds: sexual orientation (important for lesbian, gay and bisexual people), gender identity (important for transgender and transsexual people) and sex characteristics (important for intersex people) are mentioned individually in order for all of these minority groups to be protected against discrimination, incitement to violence/discrimination, hate crimes, hate speech and other human rights violations.
- <sup>27</sup>See also Gavrić, Saša/Banović, Damir/Barreiro, Marina (2013): *The Political System of Bosnia and Herzegovina. Institutions – Actors – Processes*. Sarajevo: Sarajevo Open Centre, available, in English, at: <http://soc.ba/en/the-political-system-of-bosnia-and-herzegovina-institutions-actors-processes-2/>



# BOSNIA AND HERZEGOVINA



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