BOSNIA and HERZEGOVINA

1. Discriminatory family code

Bosnia and Herzegovina consists of two entities – the Republika Srpska and the Federation of Bosnia and Herzegovina – and one district – the Brčko District of Bosnia and Herzegovina. Each has its own executive, legislative, and judicial bodies, including three different Family Codes. According to the three different family codes, the legal age for marriage across Bosnia and Herzegovina is 18 for women and men. However, courts can grant permission for a person aged 16 or over to marry, if she or he is deemed physically and mentally able to fulfil the rights and duties of matrimonial life, and if the marriage is in the person's interest. In addition, in all three Criminal Codes, an adult can be prosecuted for cohabiting with someone under the age of 16; however, criminal prosecution can be avoided if the couple gets married.

The official Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) report for 2013 notes an increase in the number of unregistered, common-law marriages, based on data from the national Agency of Statistics.

Early marriage has been noted with in the Roma ethnic minority. According to research by United Nations Population Fund (UNFPA), the majority of marriages within the Roma ethnic minority are customary. Roma customary law is not codified, and these marriages have no legal basis. Among Roma, few marriages are registered, and many Roma (male and female, although Roma girls are more likely to marry early) marry and begin cohabiting before they have reached the age of 18. This reflects a wider practice of not registering births and deaths, meaning that few Roma have official registration documents. This impedes their access to certain government services and state support, including health care and education, helping to reinforce the social exclusion and poverty that many Roma face.
Under the three Family Codes, women and men share parental authority over their children during marriage, and the law provides that both women and men can be head of the household.

Women and men also have equal decision-making authority over children following divorce. Parental authority is governed solely by civil law, i.e., the three Family Laws operating in Bosnia and Herzegovina.

A shadow reports prepared for the CEDAW committee for submission in 2011 notes that popular beliefs that men should be the head of the family and should be responsible for all decision-making are starting to change with younger people looking for greater equality in their relationships.

Women enjoy equal inheritance rights as wives and as daughters in Bosnia and Herzegovina. In practice, according to the 2005 CEDAW report, women often surrender their inheritance rights in favour of male relatives, as a result of customary practices that see land and property as a male prerogative. A more recent shadow report to the CEDAW committee notes that as a result of such views, most land is owned by men.

No information was found suggesting that divorce laws and practices discriminate against women. According to the CEDAW report from 2011, women typically obtain custody of children in cases of divorce.

More

Article 32 of the Family Code established the right of both spouses to initiate divorce.

One of the shadow reports prepared for submission to the CEDAW Committee in 2011 draws attention to the plight of women whose husbands or male partners disappeared during the Bosnian conflict (1992-5). Many such women have been unable to access state pensions and other social allowances to which they should be entitled, because they have no death certificate to prove that their spouse is dead.

2. Restricted physical integrity

In 2013, Bosnia and Herzegovina had signed but not yet ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence.

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10 CEDAW (2005), p. 80-1
12 CEDAW (2005), p. 80-1
13 CEDAW (2005), p. 81
14 Rights for All and Helsinki Citizens Assembly (2010), p. 27-8
16 CEDAW (2005), p. 79
17 Rights for All and Helsinki Citizens Assembly (2010), p. 27
18 CEDAW (2011), p. 78
19 CEDAW (2011)
20 TRIAL (2013), p. 37
21 Council of Europe Treaty Office (2013)
Domestic violence is a criminal offence under all three criminal codes in Bosnia and Herzegovina.\textsuperscript{22, 23, 24} Both the Federation of Bosnia and Herzegovina and the Republika Srpska enacted laws ‘On protection from domestic violence’ in 2005.\textsuperscript{25} These were superseded by new laws ‘On Protection from domestic violence’ in both entities in 2012.\textsuperscript{26}

The three criminal codes all include definitions of domestic violence that encompass physical violence, the threat of physical violence, and psychological violence.\textsuperscript{27} The two 2005 laws ‘On protection from domestic violence’ both include comprehensive definitions of domestic violence.\textsuperscript{28, 29} According to the 2013 official response to questions raised by the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) Committee, the new laws ‘On protection from domestic violence’ include further expanded definitions of domestic violence.\textsuperscript{30}

Under the criminal codes of the Federation of Bosnia and Herzegovina and of the Brčko District, the penalty for domestic violence is a fine or between one and three years’ imprisonment. The criminal code of the Republika Srpska includes a penalty of up to two years imprisonment for domestic violence.\textsuperscript{31} Under the 2005 laws ‘On Protection from Domestic Violence’, victims of domestic violence can apply for protection orders.\textsuperscript{32} These protection orders have been strengthened under the 2012 revised laws ‘On Protection from Domestic Violence’.\textsuperscript{33}

Following her first mission to Bosnia and Herzegovina in 2012, the Special Rapporteur on violence against women, Rashida Manjoo, expressed her concern at the high levels of fragmentation in legislative standards across Bosnia and Herzegovina, and a lack of coherence among implementing authorities.\textsuperscript{34}

A comprehensive report into the implementation of criminal laws on domestic violence in Bosnia and Herzegovina by the Organization for Security and Cooperation in Europe (OSCE) found the following: charges were often not brought in cases of domestic violence, and there was a reluctance on the part of the police to combine domestic violence with other charges; in cases where prosecutions were made, sentences were often given at or below the minimum penalties prescribed by the laws, and; there was a failure to revoke suspended sentences when the perpetrator had violated the terms of his or her probation.\textsuperscript{35} The Special Rapporteur and the Women Against Violence in Europe (WAVE) network also draw attention to the fact that protective orders are often ordered in domestic violence cases in lieu of, rather than in addition to, criminal sanctions.\textsuperscript{36, 37}

\begin{itemize}
  \item \textsuperscript{22} Federation of Bosnia and Herzegovina Criminal Code, 2003, Article 222
  \item \textsuperscript{23} Republika Srpska Criminal Code, 2000, Article 198
  \item \textsuperscript{24} Brčko District of Bosnia and Herzegovina Criminal Code, Article 218
  \item \textsuperscript{25} OSCE (2011), p. 17
  \item \textsuperscript{26} CEDAW (2013), p. 13
  \item \textsuperscript{27} OSCE (2011) p. 16
  \item \textsuperscript{28} Federation of Bosnia and Herzegovina Law on Protection from Domestic Violence, Official Gazette No.01-109/05, Article 6
  \item \textsuperscript{29} Republika Srpska Law on Protection from Domestic Violence, Official Gazette No.118/05, Article 6
  \item \textsuperscript{30} CEDAW (2013), p. 13
  \item \textsuperscript{31} OSCE (2011), p. 16
  \item \textsuperscript{32} OSCE (2011), p. 17
  \item \textsuperscript{33} CEDAW (2013), p. 13
  \item \textsuperscript{34} United Nations Human Rights Office of the High Commissioner (2012)
  \item \textsuperscript{35} OSCE (2011), p. 8
  \item \textsuperscript{36} United Nations Human Rights Office of the High Commissioner (2012)
\end{itemize}
A report by the OSCE on the implementation of domestic violence legislation in Bosnia and Herzegovina states that domestic violence is underreported.\(^{38}\) According to one of the shadow reports prepared for submission to the CEDAW Committee, domestic violence is still widely tolerated and seen as socially acceptable, justified by support for traditional gender roles in Bosnia and Herzegovina society. This is despite the work of advocacy groups raising awareness of women’s rights and campaigning against gender-based violence.\(^{39}\) Activists working in women’s rights organisations who were interviewed for a 2010 United Nations Population Fund (UNFPA) report also saw a clear link between high levels – and acceptance – of domestic violence, and the gender-based violence that was so prevalent during the war.\(^{40}\)

WAVE reports that according to official National Criminal Justice Statistics, in the period 2006 – 2010, there were 1275 cases of domestic violence;\(^{41}\) it is not clear how many of these resulted in a conviction. Analysis by the OSCE found that of 286 recorded convictions between 2004 and 2010, 77.2% resulted in suspended sentences.\(^{42}\)

Following her mission to Bosnia and Herzegovina, the Special Rapporteur expressed concern that police officers involved in domestic violence cases were often focused on reconciling the two parties, rather than acting in the best interests of the victim and her children. This meant that in some cases, victims of domestic violence did not have access to justice or to support services.\(^{43}\) The US Department of State notes that NGOs reported that, despite receiving specialised training, the attitude among many police officers was against ‘breaking up families’.\(^{44}\)

**Rape** is a criminal offence under the criminal codes of all three entities in Bosnia and Herzegovina.\(^{45},\, 46,\, 47\)

None of the three criminal codes specifically mention spousal rape.\(^{48},\, 49,\, 50\) However, it appears that cases of spousal rape are prosecuted; the US Department of State human rights report mentions two cases of successful convictions in spousal rape cases in 2012.\(^{51}\)

It is not possible for a rapist to escape persecution by marrying the victim in any of the three entities.\(^{52},\, 53,\, 54\)

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37 WAVE (2011)
38 OSCE (2011), p. 6
39 Rights for All and Helsinki Citizens Assembly (2010), p. 7
40 UNFPA (2010) p. 7-12
41 WAVE (2011)
42 OSCE (2011), p. 18
44 US Department of State (2013)
45 Federation of Bosnia and Herzegovina Criminal Code, 2003, Article 203
46 Republika Srpska Criminal Code, 2000, Article 193
47 Brčko District of Bosnia and Herzegovina Criminal Code, Article 206
48 Federation of Bosnia and Herzegovina Criminal Code, 2003, Article 203
49 Republika Srpska Criminal Code, 2000, Article 193
50 Brčko District of Bosnia and Herzegovina Criminal Code, Article 206
51 US Department of State (2013)
52 Federation of Bosnia and Herzegovina Criminal Code, 2003, Article 203
53 Republika Srpska Criminal Code, 2000, Article 193
In all three entities, the penalties for rape are between one and fifteen years, depending on the nature of the attack. All three criminal codes also contain specific penalties for rape and sexual assault on the basis of ethnic, religious, or linguistic hatred.\textsuperscript{55, 56, 57}

In its 2010 report, Amnesty International noted that since the judicial systems in Bosnia and Herzegovina remain weak, women who have experienced sexual violence are denied access to justice.\textsuperscript{58}

The US Department of State reports that police often fail to take cases of spousal rape seriously.\textsuperscript{59} No other data on police attitudes to rape victims was found.

According to the US Department of State, the stigma attached to rape and sexual violence mean that very few rape cases are reported.\textsuperscript{60} Work by UNFPA with survivors of sexual violence during the Bosnian conflict found that rape carries a high social stigma in Bosnia and Herzegovina, meaning that women are reluctant to admit that they have been victims of sexual violence. Women who speak out about rape are accused of bringing shame on their families.\textsuperscript{61}

**Sexual harassment** is addressed in the 2009 Law on Prohibition of Discrimination\textsuperscript{62} and the 2003 Law on Gender Equality,\textsuperscript{63} including its 2009 amendments.\textsuperscript{64} The 2009 Law on Prohibition of Discrimination includes a comprehensive definition and covers sexual harassment in all areas.\textsuperscript{65} The 2003 Law on Gender Equality also includes a comprehensive definition of sexual violence, and covers all areas, including the workplace.\textsuperscript{66} Under the 2003 Law on Gender Equality, sexual harassment can be punished by a prison term of between six months and five years.\textsuperscript{67}

In 2012, a US Department of State report notes that NGOs have observed that sexual harassment is not widely reported, either because victims do not recognise it as such, or are not aware of their legal rights.\textsuperscript{68}

There is no evidence to suggest that **female genital mutilation** is practised in Bosnia and Herzegovina.

**More**

During the war in Bosnia and Herzegovina (1992 –1995), rape and forced pregnancy were systematically used as a weapon of war and of ethnic cleansing by all sides in the conflict, and tens of thousands of Muslim, Croat, and Serb women and girls are thought to have been affected.\textsuperscript{69}
Amnesty International reports that women who were raped or experienced other forms of sexual violence during the conflict continue to face stigma and discrimination, and are denied access to the health services, and financial and psychological support to which they are entitled.\(^70\) One of the shadow reports to the CEDAW Committee makes the same point, adding that many women who were raped or sexually abused during the conflict were then abandoned by their husbands. In addition, only in the Federation of Bosnia and Herzegovina have women survivors of rape and sexual violence been able to access compensation to which all victims of the conflict are entitled.\(^71\) The official CEDAW report notes that victims of conflict-related sexual violence should be recognised as a special category of civilian war victims.\(^72\)

Few perpetrators of sexual violence during the conflict have faced prosecution.\(^73\) At present, the definition of sexual violence included in the Criminal Code requires that the victim be subjected to force or threat of immediate attack to her or his life or body. This has made it difficult to prosecute cases of sexual violence that took place during the Bosnian conflict. Amnesty International reports that various human rights bodies have been calling on the Bosnia and Herzegovina authorities to amend the Criminal Code to include a definition of sexual violence in line with international standards and jurisprudence; i.e. that takes into account the circumstances of armed conflict, which could create a coercive context in regard to assumed consent to sexual intercourse. A draft Law on the Rights of Victims of Torture and Civilian War Victims, the strategy on Transitional Justice, and the Programme for Victims of Sexual Violence in Conflict failed to be adopted. These measures were intended to increase the right to reparation by survivors of wartime sexual violence.\(^74\)

According to Amnesty International, between its establishment in 2005 and the end of 2012, the State Court of Bosnia and Herzegovina issued 29 final decisions involving crimes of sexual violence committed during the conflict; two more cases were pending appeal. No reliable figures were available of the total number of allegations of rape and other forms of wartime sexual violence currently under investigation.\(^75\)

Abortion is available on demand in Bosnia and Herzegovina.\(^76\)

In the last decade, the Federation of Bosnia and Herzegovina is experiencing a trend of decreased birth-rate and fertility, while at the same time a slight increased mortality rate. In addition, due to inadequate support for expecting mothers, there is a growing negative trend of births at older age, as data from clinics in the country point to a growing number of women who are having their first pregnancy after the age of thirty. Another consequence of institutional discrimination in terms of maternity allowances is the fact that unemployed pregnant women, there are mass migrations of pregnant women to deliver

\(^69\) Amnesty International (2009), p. 15
\(^70\) Amnesty International (2013), p. 43
\(^71\) Rights for All and Helsinki Citizens Assembly (2010) p. 99
\(^72\) CEDAW (2011), p. 65
\(^73\) Amnesty International (2009), p. 15
\(^74\) Amnesty International (2009), p. 42-3
\(^75\) Amnesty International (2013), p. 43
\(^76\) United Nations Department of Economic and Social Affairs, Population Division (2013)
their babies in other administrative units of the country, or even in neighbouring Croatia, for women with Croatian citizenship.  

3. Son bias

The male-to-female sex ratio at birth in 2013 is 1.07 and for the working age population (15-64 years old) is 1.02.  

There is no evidence to suggest that Bosnia and Herzegovina is a country of concern in relation to missing women.

4. Restricted resources and assets

Regarding secure access to land and non-land assets, Women and men have the same rights to own, access, and manage land and property other than land in Bosnia and Herzegovina.  

Land and property ownership is governed solely by civil law in Bosnia and Herzegovina (laws not specified in source).

Marital status does not affect a woman’s rights to property; unmarried women and men have the same property rights as married women and men. Assets acquired by either spouse prior to marriage remain in their ownership during the marriage. Joint titling in marriage is legal, but it is not the default property regime for married couples.

According to the 2011 Convention on the Elimination of all forms of Discrimination against Women (CEDAW) report, analysis of recent registrations of land ownership at the national Land Registry indicate that 28% of registered land owners were female, and 72% were male.  

Data from 2003 included in a 2008 report by Mi-Bosco and the International Finance Corporation indicates that around 12% of women owned property in their own names, while just under 40% owned property jointly with a spouse.

In practice, it appears that women’s rights to land and other forms of property are limited due to a combination of social and legal factors. In rural areas in particular, land and other assets are usually controlled by male family members, and there is a lack of awareness among women as to their right to own and manage property.  

For instance, one of the shadow reports submitted to the CEDAW Committee in 2011 notes that in some cases, married women do not have access to land and property

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77 VESTA (2011)
79 CEDAW (2005), p. 81
81 CEDAW (2005), p. 79
84 CEDAW (2011), p. 79
85 MiBospo / International Finance Corporation (2008), p. 20
86 CEDAW (2005), p. 77
acquired jointly with their husbands, because this is in fact registered in the names of his parents or other close relatives.  

Women and men have the same legal rights to access financial services, including to obtain credit and bank loans.  

According to the official CEDAW report and one of the shadow reports, women often have difficulty securing credit, because they do not own property to serve as security for loans.  

The World Bank financial inclusion data notes that 48% of women had bank accounts in 2011, compared to 67% of men. In the same year, 13% of adults took out a loan with a financial institution (defined as a bank, credit union, microfinance institution, or another financial institution such as a cooperative); these data were not disaggregated by gender.  

According to the Microfinance Information Exchange, women made up 40.91% of recipients of microfinance loans in 2012.  

5. Restricted civil liberties  

There are no legal restrictions on women’s access to public space and freedom of movement in Bosnia and Herzegovina. Women have the same right to apply for a passport as men, and to travel within and outside the country.  

Women and men have the same rights to choose where they live in Bosnia and Herzegovina. However, it is common practice for women to move to their husband’s place of residence when they marry.  

In 2009, Amnesty International reported that some women who suffered sexual violence during the 1992 – 1995 conflict and who were subsequently displaced still feel unable to return to their former place of residence, because the men who raped them are still living there, and often occupy positions of authority within the community.  

In the lower House of Representatives, a 1/3 quota is in place on candidate lists for the ‘underrepresented sex’. No quota is in place for the upper House of Peoples.  

Quotas are in place at sub-national level; again, one third of places on all candidate lists are reserved for the ‘underrepresented sex’.  

According to the Organization for Security and Cooperation in Europe (OSCE), 16.19% of those elected following local elections to the Municipal Councils and Assemblies in 2012 were women.  

87 Rights for All and Helsinki Citizens Assembly (2010), p. 46  
88 Rights for All and Helsinki Citizens Assembly (2010), p. 47  
89 CEDAW (2005), p. 74  
90 CEDAW (2011), p. 70  
91 Rights for All and Helsinki Citizens Assembly (2010), p. 6, 17  
92 World Bank (n.d.)  
93 Microfinance Information Exchange (2013)  
95 CEDAW (2005), p. 79  
96 Amnesty International (2009), p. 83  
97 quotaProject (2013)  
98 quotaProject (2013)  
99 OSCE (2013)
More

According to media monitoring carried out in 2010 by the Global Media Monitoring Project, women make up the majority of television presenters (85%) and reporters (58%). However, women are underrepresented as subjects of television and newspaper reports, and are rarely consulted as experts, particularly for ‘hard news’ items, such as politics and the economy. One of the shadow reports submitted to the CEDAW Committee in 2011 notes that the portrayal of women in most media outlets reinforces restrictive gender stereotypes.

Discrimination on the basis of gender in employment is outlawed under the Labour Law of the Federation of Bosnia and Herzegovina and under the Labour Law of the Republika Srpska. According to the 2011 official CEDAW report, at that point, the Labour Law of the Federation of Bosnia and Herzegovina was being revised to ensure that it was fully in line with the existing Law on Gender Equality; this process had already taken place in relation to the Labour Law of the Republika Srpska.

Women are entitled to paid maternity leave in Bosnia and Herzegovina. In the Federation of Bosnia and Herzegovina and the Republika Srpska, pregnant women are entitled to 365 days of paid maternity leave. In the Brčko District, the entitlement is 12 consecutive months.

In the Federation of Bosnia and Herzegovina, women on maternity leave are entitled to between 50% and 80% of the ‘reference wage’. In the Republika Srpska and Brčko District, women on maternity leave receive 100% of their salary.

According to the NGO Vesta, there is no uniform regulation protecting women’s rights to pregnancy, delivery and care for a new born child: while the Federation of Bosnia and Herzegovina is responsible for the legislative framework, cantons are responsible for its implementation and effecting of payments. The maternity leave allowance for employed mothers amounts to 60 to 90% of the average salary, while the allowance for unemployed mothers is between 80 and 160 KM (convertible marks), depending on the financial ability of the canton.

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100 Global Media Monitoring Project (2010), p. 67
101 Rights for All and Helsinki Citizens Assembly (2010), p. 38
102 Labour Law of the Federation of Bosnia and Herzegovina, 1999 (revised 2000, 2003), Article 5
103 Labour Law of the Republika Srpska, 2000, Article 5
104 CEDAW (2011), p. 54
105 ILO (2011)
106 Labour Code of the Federation of Bosnia and Herzegovina, Article 55
107 Law on Labour of the Republika of Srpska, Article 73
108 Labour Code of the District of Brčko, Article 45
109 ILO (2011)
110 VESTA (2011)
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