**THE ALTERNATIVE REPORT on implementation in Bosnia and Herzegovina**

**of**

**THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILTIES**

**ABBREVIATIONS**

BiH - Bosnia and Herzegovina

DPO - Organisation of persons with disabilities

DRPI – Disability Rights Promotion International

EU - European Union

The Federation - The Federation of Bosnia and Herzegovina

The RS - The Republika Srpska, also known as the Republic of Srpska

SIDA – The Swedish International Development Agency

The UN - The United Nations

UNCRPD – the United Nations Convention on the Rights of Persons with Disabilities

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 **I. THE REPORTING INSTITUTIONS**

*This Alternative Report on Implementation of the UN Convention on the Rights of Persons with Disabilities* has been prepared in line with the recommendations of the Convention itself and the motto of persons with disabilities, “nothing about us, without us.”

It presents the findings of comprehensive monitoring of respect for their rights. Most of the individuals involved in the monitoring project themselves had some form of disability and were members of one or other of 65 DPOs gathered together in five coalitions, based in the same number of regions throughout Bosnia and Herzegovina.

The names of the coalitions that participated in preparing this work are:

• The Sarajevo Canton Coordination Board for Associations of Persons with Disabilities

• The Herzegovina-Neretva Canton Coalition of Organisations of Persons with Disabilities– *Stronger Together*

• The Tuzla Canton Coalition of Organisations of Persons with Disabilities

• The Doboj Region Coalition of Organisations of Persons with Disabilities

• The Bijelina Town Coalition of Organisations of Persons with Disabilities - KOLOSI

The MyRight representative office in Bosnia and Herzegovina coordinated work on the project.

Austrian Development Cooperation, Light for the World, and the Swedish International Development Agency (SIDA) provided financial assistance for preparation of the Alternative Report.

**II. THE CONTEXT**

In considering the status of persons with disabilities in Bosnia and Herzegovina it is particularly important to bear in mind the country’s recent history and complex structure, which has resulted in a highly decentralised and fragmented polity. There is as a result considerable legal inconsistency regarding rights and entitlements, both across the main areas of policy and between the different regions (the entities and cantons). This gives rise to difficulty ensuring that principles are consistently applied and that enacted provisions are actually being implemented or enforced.

The current administrative organisation of Bosnia and Herzegovina represents a compromise imposed under the Dayton Peace Agreement after the war in the early 1990s. Annex IV of the Agreement is the Constitution of Bosnia and Herzegovina and it defines the country as comprising two entities, the Federation of Bosnia and Herzegovina (henceforth the Federation) and the Republika Srpska (henceforth the RS), in which the main responsibilities of government are invested. There is also a District of Brčko, a municipality in the north of the country with a status equivalent to that of a free port. The RS is centralised, while the Federation has an entity-level government many of whose responsibilities, authorities and sources of revenue are shared with a lower, highly autonomous cantonal level. Both entities and all ten cantons have their own constitutions, governments and ministries, all passing relevant legislation and determining criteria for benefits. The territory of the country is relatively evenly split between the entities, but the RS has about half the population of the Federation. The entities reflect the ethnic sectarianism that resulted from the war, with more than 80% of the population of the RS declaring as Serb, while the population of the Federation breaks down as approximately two thirds Bosniak and one third Croat, again generally concentrated in different cantons.

It is important to understand that almost all issues of concern to persons with disabilities are dealt with at the entity and/or cantonal levels. The compromise reached under Dayton did not settle all the questions that had led to war in the first place or were exacerbated during it. The various parts of the country had been rendered relatively ethnically homogeneous during and after the war, thanks to ethnic cleansing and the failure of the refugee return process. As a a result, policy and service provision continue to be determined largely on a sectarian basis, with the minimum possible degree of reference to any state-level framework. The RS thus insists on its autonomy and resists state-level harmonisation of policy and programmes in any area, while, within the Federation, certain cantons are equally protective of their autonomy and resistant to harmonisation at the entity or Federation level. This situation is reflected in the way the social protection system and benefit payments have been used since the war by the political authorities to reward those who fought on the various sides during the conflict and in particular those who were injured or contracted some form of disability. It is these vested interests that make reform of this inbuilt discrimination so hard to accomplish.

Given that Bosnia and Herzegovina wishes to become a member of the European Union, it is obliged to conduct various reform processes to harmonise legislation and practice with EU norms. Disability issues play an important role in this process and this is the main factor behind even the minimal political will that does exist to regulate in this area. Generally speaking, statutes and regulations do not explicitly place persons with disabilities in a subordinate position because of their disabilities. In practice, the situation is very different, however, meaning that there is nonetheless a need for measures to ensure the practical application of equality and non-discrimination. Unfortunately, the sheer bulk of ongoing reform, combined with the lack of institutional and financial resources, the underdevelopment of the underfunded disability movement, and the widespread presence of prejudice mean progress is very slow and persons with disabilities continue to suffer significant disadvantage.

By signing and ratifying international instruments, Bosnia and Herzegovina accepted an obligation to secure the same life opportunities for all its citizens throughout the state without discrimination. The country is obliged to meet the human rights standards enshrined in those instruments and persons with disabilities have the right to demand protection from discrimination and full exercise of all their human rights as provided for in them.

**III. SUMMARY**

1. The Council of Ministers of Bosnia and Herzegovina presented its *Initial Report on Implementation of the United Nations Convention on the Rights of Persons with Disabilities* (henceforth the Convention) in February 2013. Organisations and associations of persons with disabilities (henceforth DPOs) were not adequately involved in the process of preparation and review. Persons with disabilities who were members of the Council of Persons with Disabilities in Bosnia and Herzegovina did participate in the process of creating the initial report, but no serious discussions were held with DPOs.
2. After independent review of the initial report, the DPOs concluded that it was incomplete and did not reflect the situation on the ground in a number of areas, especially regarding implementation of the Convention.
3. The five local coalitions of DPOs active within the framework of the MyRight programme for Bosnia and Herzegovina, together with a number of other DPOs, therefore, prepared an *Alternative Report on Implementation of the Convention in Bosnia and Herzegovina*, with analysis of each article of the Convention, in line with the guidelines of the UN Committee on the Rights of Persons with Disabilities and the DRPI methodology for monitoring implementation of the Convention. Preparation of the draft *Alternative Report* lasted from June 2013 to June 2014 and it was revised during the first half of 2016.
4. Bosnia and Herzegovina signed the Convention on 29 July, 2009 and ratified it and the Optional Protocol on 12 March, 2010. The Convention and Optional Protocol entered into force on 14 April, 2010. Little progress has been achieved since then in changing the paradigm away from the medical towards a social and human rights-based model.
5. Monitoring has shown how sparingly the human rights-based approach is being applied, thanks to poor harmonisation with and ineffectual implementation of the Convention, both in legislation and practice:
	* There is no state-level strategy for raising public awareness or promoting the human rights of persons with disabilities.
	* There has thus been little change in public opinion or the public will of the sort that drives social change.
	* Even where the necessary regulations do exist, and mostly they don’t, there is no budgetary allocation. This is indicative of how the needs and wishes of persons with disabilities continue to go unheeded and is part of a general problem that the needs of the socially excluded are underprioritised in planning budgetary allocations.
	* Where persons with disabilities are included in decision-making processes on issues affecting society as a whole it happens at best sporadically.
	* Generally speaking, the various levels of government and particularly the cantons in the Federation of Bosnia and Herzegovina exclude persons with disabilities entirely from the process.

These are just some of the reasons the desired degree of social progress and development has not been achieved overall.

1. This report covers the following areas:
	* the definition of disability under the Convention,
	* meeting general obligations in implementation of the Convention,
	* women and children with disabilities,
	* accessibility,
	* emergencies,
	* equality before the law,
	* education,
	* healthcare,
	* employment and professional rehabilitation,
	* an adequate standard of living,
	* participation in public and political life, and
	* the role of DPOs.

In addition to these articles, we have, at the suggestion of the IDA, also included brief discussion and questions of the following articles:

* access to justice,
* liberty and security of the person,
* freedom from torture or cruel, inhuman or degrading treatment or punishment,
* freedom from exploitation, violence and abuse,
* living independently and being included in the community,
* freedom of expression and opinion, and access to information,
* respect for home and the family
* statistics and data collection,
* national implementation and monitoring.
1. No official data are kept on persons with disabilities persons with disabilities. This means there are no statistical data on the total number of persons with disabilities, no breakdowns by gender or age to serve as indicators of respect for their rights, and no numbers of children with disabilities attending mainstream education or specialised institutions.
2. The only legal provisions in Bosnia and Herzegovina that focus on persons with disabilities are the entity-level laws on professional rehabilitation and employment, which were passed before ratification. There is a country-level anti-discrimination law, but it does not recognise disability as grounds for discrimination. Discrimination against persons with disabilities must therefore be countered as taking place on grounds of social background, welfare status, or some similar attribute. The new laws on preschool, primary and secondary education do provide for an equal right to education, but the division of responsibilities for education (between cantonal and entity level) and a concomitant lack of respect for and failure to implement the relevant regulations, amongst other reasons, mean that children and young people, particularly those with physical and learning disabilities, continue to be excluded from the mainstream educational process. Comprehensive campaigns are needed at all levels of government bureaucracy to raise public awareness of the rights of and equal opportunities for persons with disabilities, as well as for the inclusion of disability issues in all areas of society.
3. Living conditions for persons with disabilities can differ greatly between urban and rural areas. Social services and other forms of support need to be developed in both urban and rural environments where they do not currently exist.
4. Questions of particular urgency for persons with disabilities in Bosnia and Herzegovina include:
	* There is no single, over-arching legislative definition of “person with disability” applicable at all levels and in all regulatory contexts within the country, its entities and the cantons. Definitions differ from sector to sector and law to law. A single, human rights-based definition must be adopted that is not based solely on the medical model, but takes into consideration the individual abilities of persons with disabilities.
	* Persons with disabilities continue to be divided into three categories, disabled veteran or the war, civilian victim of the war, and person with a non-war related disability. This means that they receive different scales of benefit and entitlement, based not on the nature of their disability and their need for support, but on whether their disability arose during wartime and, if so, whether it was during active service or in civilian life. This is a form of discrimination and must be replaced with a categorisation and allocation of benefits and entitlements based on their impairment and need for support, regardless of when or how the disability arose.
	* The built environment, transport system, public services, and information and communication technology remain largely inaccessible to persons with disabilities throughout the country.
	* There is no early intervention system.
	* The institution of wardship continues to exist and there no intentions or announcement to introduce system of supported decision-making.
	* There is no state-defined minimum income, never mind one that is adjusted to take into account disability-related costs for persons with disabilities.
	* The right to appropriate aids and the support services required to live independently in the community is not guaranteed.
	* Systematic support is not provided to include DPOs in decision-making processes on questions of general relevance to public life in Bosnia and Herzegovina or on implementation and monitoring of the Convention.

**IV. COMMENTARY ON SPECIFIC ARTICLES OF THE CONVENTION**

**1) Article 1. Purpose**

In 2008, Bosnia and Herzegovina adopted a *Policy on the Area of Disability in Bosnia and Herzegovina* [henceforth the *BiH disability policy*]. On the basis of this policy, the RS developed its *Strategy to improve the social status of persons with disabilities* and the Federation its *Strategy for equalising opportunities for persons with disabilities*. Both envisage the adoption of a single (universal, human-rights based) definition of disability, in line with *Article 1, Clause 2, of the Convention*. Bosnia and Herzegovina has neither adopted such a definition or taken any action in the direction of doing so.

NB: Even recent regulations, adopted during the reporting period, retain the medical approach to defining persons with disabilities. This approach unfortunately does not even ensure that categories of persons with disabilities are defined by and so treated equally on the basis of their impairment-type and need for support, rather than on whether their disability or impairment came about as a result of injury during war time and/or military service, or in some non-war-related way. Thus certain categories continue to be placed at a disadvantage and it is even more difficult for them to enjoy their rights or find support in society.

**List of proposed questions:**

* What has the state done to establish a single or universal definition of persons with disabilities, based on the human rights model of disability, in line with the Convention?
* How will the state ensure that this universal definition is applied at all levels of government, in all laws and policies, and with regard to all groups of persons with disabilities, regardless of the circumstances under which their impairment arose?
* How does the state plan to ensure that DPOs can and do participate in the process of adopting said universal definition?

**2) Article 4. General obligations**

The *BiH disability policy* is the framework political document for equalising opportunities for persons with disabilities based on the human rights model of disability. It was adopted by the Council of Ministers in 2008, before Bosnia and Herzegovina ratified the Convention. The policy sets out principles, guidelines and priorities for creation of an enabling environment countriwide in which the rights of persons with disabilities will be consistently respected and their active inclusion and participation on equal terms in society secured. Legislation and regulation have not, however, been brought into line with the policy’s and the Convention’s fundamental principles. Moreover, official correspondence, communication with public bodies and officials and regulations all deploy terminology that is inconsistent with the Convention. The concepts of disability used in law and regulations derive from the medical model, which only really covers impairments. The focus in most of the legal documents and rulebooks covering assessment within the various systems (social protection, education, social and health insurance, et cetera) continues to be on physical issues, while qualification for entitlements is linked exclusively to the existence of “physical damage” and its “severity”. There is no evidence whatsoever of an individualised approach that might take into account other capabilities or the types of support actually required in a given case. Overall, it is very concerning that, in spite of the many objections and recommendations expressed by DPOs, public bodies and officials responsible for making regulations continue to rely so heavily on the medical model of disability.

As a rule, members from DPOs are not involved in the processes of creating and implementing regulations that directly affect persons with disabilities’ entitlements and quality-of-life. Where DPOs have been included, it is only in the final stages and generally under formal procedures for public debate and discussion with interested parties (usually with inappropriately short deadlines for comment or objection). This lack of active and meaningful participation by DPOs results in regulations that are discriminatory or inapplicable in practice, thanks, amongst other things, to a general ignorance of the realities under which persons with disabilities live. Progress has been made, especially in the area of social welfare where the entity ministries have included DPO representatives in working groups to draft regulations, but even in these cases their objections and recommendations have carried little weight. Such behaviour is in direct violation of *Article 4, Clause 3, of the Convention*, insofar as persons with disabilities have not been actively included (by means of associations representing them) in the process of passing and adopting policies and regulations that affect them.

In recent years a number of projects financed by the European Union or European countries[[1]](#footnote-1) have produced recommendations to bring domestic legislation into line with the Convention. This has not involved a general revision of all existing laws and policies to ensure that they are aligned with the Convention, however.

**List of proposed questions:**

* What systematic measures is the state taking or has it taken to review existing legal regulations, policies and programmes and ensure they are in line with the provisions of the Convention? Specify by level of government (municipality, town/city, canton, entity, state).
* What measures is the state taking or has it taken to educate policy makers, professionals and the public in general and raise their awareness of the rights of persons with disabilities, based on the Convention and Optional Protocol?
* What measures is the state taking to adopt a consultative mechanism for systematic participation by and consultation with persons with disabilities, through their representative organizations, on policies, programmes and legislation that affect them or their interests or relating to implementation of the Convention?
* How is adequate budgetary and other support being secured for implementation of the measures set out in the draft strategies for equalising opportunities for persons with disabilities, in order to ensure better *on-the-ground* realisation of planned measures than under the strategies just expired?

**3) Article 5. Equality and non-discrimination**

**The constitutions of Bosnia and Herzegovina and its entities do not explicitly ban discrimination on the basis of disability.** Current bans are derived in practice from other social and personal characteristics. The constitutions guarantee the highest level of internationally recognised rights and fundamental freedoms and require respect for the principles of equality and non-discrimination, from which one may conclude that everybody is formally equal before and under the law and enjoys rights to equal protection and equal advantage under the law.

For example, the European Convention on the Protection of Human Rights and Fundamental Freedoms and its protocols apply directly in Bosnia and Herzegovina and have priority over all other law (*Constitution of Bosnia and Herzegovina, Article 2, Clause 2*).

The constitutions do not explicitly recognise or mandate affirmative measures by government to equalize opportunities to enjoy fundamental rights and freedoms and prevent all forms of discrimination on the grounds of disability.

In 2009, Bosnia and Herzegovina passed a law banning discrimination, Article 2 of which contains a definition of discrimination but **does not directly recognise disability as possible grounds of discrimination.** Article 5 does state explicitly that the law does not consider positive measures to equalise opportunities for persons with disabilities to be discrimination, but nowhere in the law is it stated that the provision of reasonable accommodation is mandatory or that failure to do so constitutes discrimination.

As a further example, the entity-level laws on the professional rehabilitation, training and employment of persons with disabilities both stipulate quota systems as one of the measures to stimulate employment on the open labour market. There is no system to monitor and supervise implementation of the measures and sanctions proposed, however.

The laws do provide for incentives for reasonable accommodation of the workplace and working environment, but the most appropriate mechanisms for implementing legal norms still await legal definition and considerable further work is required.

Our monitoring has determined that **no specific regulation exists at state or entity level expressing a comprehensive ban of discrimination on the grounds of disability**. Most DPO representatives consider this a lack. The DPOs have proposed amendments to the state-level anti-discrimination law that would introduce disability as grounds for forbidding discrimination, but they are still in procedure.

Certain individual laws do include bans on discrimination on the grounds of disability in their area, e.g. the laws on labour, education and healthcare. But even those laws contain no effective sanctions against those who commit discrimination, so that discrimination against persons with disabilities remains an everyday affair.

Some laws even contain provisions that are themselves directly discriminatory against persons with disabilities, e.g. the law on notaryship in the Federation, articles 88 and 95 of which stipulate additional conditions to access notary services for persons with sensory disabilities (those with auditory or visual impairments), conditions which differ from those set out for other citizens and entail hiring additional persons and increased costs.

Another very common form of legal discrimination is that between different constituencies of persons with disabilities. This relates to the rules for qualifying for entitlements, which determines their level and content. Qualification is based upon how and when the impairments arose (during wartime military service, as a wartime civilian injury, otherwise), place of residence (which entity or canton), and age, rather than what the individual needs to secure adequate living conditions and equality of opportunity. This exists in both Bosnian and Herzegovinian entities where the threshold of impairment or organic damage at which veterans with disabilities qualify for disability entitlements is 20%, but for civilian victims of the war it is 60% and for other persons with disabilities in the Federation 90% or higher. There are also unacceptably large differences in the level of entitlements in favour of veterans and civilian victims of the war over other persons with disabilities. This has a major real impact on general living conditions and ability to function. In our opinion, impairments should be assessed in the same way and by the same procedures regardless of how or when they arose. Rights and entitlements should be determined according to real needs and in line with the Convention. If it so desires, the state may allocate an additional specific allowance for veterans with disabilities and civilian victims of the war on the basis of their status *as such*, but it should not be related to their disabilities *per se*.

Persons with disabilities show low levels of awareness of their own rights or of discrimination, while mechanisms for preventing and sanctioning discrimination are ineffective and DPO capacity underdeveloped. As a result, very few anti-discrimination cases ever get to court.

Formally speaking, no legal regulation in Bosnia and Herzegovina, from the Constitution down, places persons with disabilities in a subordinate position because of their disabilities, but in practice the situation is quite different. There is a clear need to set out and implement a series of measures to ensure that equality and non-discrimination are being applied in practice.

**List of proposed questions:**

* What concrete measures is the state taking to change legislation and ensure different groups of persons with disabilities are not treated differently on the basis of the circumstances under which their impairment came about? Is the state planning to introduce a separate law banning discrimination against persons with disabilities or to include protection against disability-based discrimination and an obligation to provide reasonable accommodation in all spheres of life and not only the workplace, as well as defining its denial as discrimination, in its anti-discrimination law?
* What measures is the state taking to eliminate discrimination against persons with disabilities on territorial grounds (between cantons and entities)?
* What measures is the state taking to eliminate discrimination against persons with disabilities by the legal and judicial systems?
* Is the state planning to establish the institution of an Ombudsman for persons with disabilities, with a view to protecting them more effectively against discrimination?

**4) Article 6. Women with disabilities**

Equality of the sexes is written into the Constitution and laws of Bosnia and Herzegovina and it was a condition for Bosnia and Herzegovina on its path towards the European Union that a Law on gender equality be enacted,[[2]](#footnote-2) which has been met.

**The Law on gender equality**, which is the only regulation under which the authorities at any level regulate the issue of equality between women and men, **makes no mention of women with disabilities**. At the level of Bosnia and Herzegovina, there is a Gender Action Plan, adopted to assist implementation of the law, and a special institutional mechanism for implementing and monitoring gender inequality, the Agency for Gender Equality. Gender centres have been established at entity level. This is all with a view to ensuring the inclusion of gender equality issues in legislation and policies in all walks of life.

The *Gender Action Plan (GAP) for 2013-2017* is the strategy setting out the goals, programmes and measures for ensuring gender equality. There is a financial mechanism for implementation of the GAP supported by several international donors. GAP recognises the importance of issue of inequality and of the multiple forms of discrimination affecting women with disabilities, but the remedial measures only refer to marginalised groups, with no explicit reference to women with disabilities. Children or girls with disabilities are not mentioned at all. In practice, therefore, nothing has changed for the better beyond a formal statement of the need for action.

Women and girls with disabilities continue to face multiple forms of discrimination, isolation and exclusion, including in DPO activities, reflected in unequal participation in their governing bodies or inclusion in their informal training programmes.

There is a clear need for more projects focusing on providing support and increasing the social inclusion of women with disabilities.

The *BiH disability policy* and the entity strategies do recognise that women and girls with disabilities face multiple forms of discrimination and social exclusion and propose measures to affirm their rights and freedoms. Since ratification of the Convention, however, there has been no change in formal or practical attitudes in society towards women and girls with disabilities.

**List of proposed questions:**

* What measures is the state taking to ensure women and girls with disabilities are appropriately included in drafting legislation and in drafting, implementing and monitoring properly budgeted policies and programmes of relevance to them and to eradicating multiple and intersectional discrimination in all areas of life?
* What measures is the state taking to gather data on women and girls with disabilities systematically, disaggregated by type of disability, age, place of residence, belonging to other minority groups, et cetera?
* What measures is the state taking to ensure consultation with women and girls with disabilities, through their representative organizations, on the design, implementation and evaluation of programmes and measures in all matters that affect them directly?

**5) Article 7. Children with disabilities**

In spite of the formal guarantee of the highest possible standard of rights and fundamental freedoms and the relatively good formal treatment of children and young people’s right to education without discrimination under equal conditions for all, there is no legal framework in Bosnia and Herzegovina for the relevant authorities to provide systematic support to children with disabilities and their families and to help them live in the community and up to their full potential. The different approaches taken by the entities (the RS and the Federation) to regulating for this issue, particularly given the significant authorities of the cantons within the Federation, result in discrimination against children with disabilities and their families on a territorial basis (depending on where they live).

In the Federation, child protection is governed in principle by the *Law on social protection, protection of civilian victims of war and the protection of families with children* (36/99, 54/04, 39/06,14/09), though other relevant laws and regulations also apply in the cantons, which are responsible for and have control over the practical provision of the various forms of child protection. In the RS, child protection is regulated by the *Law on child protection* (4/02,17/08,1/09) and there is a child protection fund. To illustrate, we may consider the example of children’s allowance, which exists in the RS and is provided for in principle at entity-level in the Federation, even favouring children with disabilities to some degree. Implementation of the entitlement in the Federation, however, is left up to the 10 cantons, most of which have failed to introduce the regulations required to provide children with disabilities any actual children’s allowance. The entity (Federation) authorities have no instruments under which to require the cantonal level to implement the federal provision.

Nor are there any measures set out in law for early detection and provision of services.

Lack of appropriate forms of support or regulation of standards and methods to assure the quality of work mean that children with “very severe” or “multiple” disabilities are in most cases, as users of the services of day centres, excluded from mandatory formal education. In this way, the state “amnesties” itself of its obligation to implement both international and domestic regulations, while children with disabilities are excluded from the community over the longer term.

The lack of programmes to support the families of children with disabilities places them in a materially disadvantaged situation, resulting in discrimination against them and preventing them from fulfilling their familial function.

The conditions are not in place for the inclusion of children with disabilities in the education system, as the relevant support services are not available to them or their families. As a result, they will continue to be exposed to various forms of discrimination over the longer term and excluded from social processes of importance for their development, while their dignity is disrespected, their right to difference dishonoured and their rights routinely violated.

**List of proposed questions:**

* What measures is the state taking to provide the support children and young people with disabilities require to ensure their social inclusion and to live in the community with their families?
* What measures is the state taking to ensure that children and young people with disabilities are included in decision-making that affects them and how is their right to express their own opinions, in accordance with *Article 7, Clause 3, of the Convention*, being secured and what type of support is being offered to them?

**6) Article 9. Accessibility**

Even after legal regulation[[3]](#footnote-3) and the adoption of international standards for **architectural accessibility**, the situation in Bosnia and Herzegovina is that only a very few public buildings and other properly-appointed urban-architectural complexes and spaces are entirely or even partially physically accessible. A particular problem in ensuring architectural accessibility is the inconsistent application of legal standards and regulations.

For example: even after the regulations regarding accessibility came into force in both entities (the Federation and the RS), public buildings (schools, public offices, and cultural, sporting, or recreational facilities) have continued to be built or adapted without applying the standards for accessibility in full or any sanction for violating them.

The institutions responsible for enforcing regulations do not sanction those in violation. This leads to further limitation of persons with disabilities’ access to both public and private buildings and spaces and is reflected in long-term exclusion from a range of social processes.

The institutions responsible for teaching design and construction have no programmatic course content on applying accessibility standards. Awareness of the importance of accessibility standards is underdeveloped throughout the system, from design through construction to supervision, so that standards are applied only partially. Access to buildings tends consequently to be only partial (e.g. a ramp at the entrance does not mean a wheelchair user can move around inside, or a mobile platform not always be available for use).

To illustrate, we conducted a monitoring exercise of the **accessibility of healthcare institutions** between 15 December 2014 and 15 February 2015 in all five of the regions in Bosnia and Herzegovina where the coalitions of DPOs presenting this report are active:

* Monitoring teams visited a total of 64 healthcare facilities.
* Not one was fully accessible to persons with disabilities.
* The monitoring questionnaire included 50 questions covering every form of accessibility, in line with *Article 9 of the Convention*, from external, environmental and physical aspects to internal accessibility and accessability of information, communication and other services. This included the physical entrance, parking, wheelchair ramps installed in accordance with building code, lifts or platforms to provide access to upper storeys, toilets adapted for use by persons with disabilities, and the use of universal or inclusive design within the facility, public signage in Braille and in easy-to-read-and-understand forms, as well as the provision of live assistance and intermediaries.
* Monitoring revealed that, while as many as 76% of institutions have access ramps for wheelchair users, 55% of those ramps fail to meet basic accessibility regulations (e.g. an inappropriate gradient, insufficiently wide, insufficient space for turning around). Therefore, only 42% (and not 76%) of facilities actually had an adequate ramp suitable for use by a wheelchair user who might need to access the facility.
* 76% of facilities provide no vertical access within the building, so that wheelchair-users cannot access many specialist services. This is a direct violation of the basic human rights and dignity of all persons with disabilities.
* 72% had no toilet or bathroom facility accessible to persons with disabilities.
* The information on the services provided by public health facilities was not made available in a form accessible to visually impaired people (Braille or large print).
* Information was provided in Braille at only one facility, in city of Bijeljina, RS. Two further institutions in Bijeljina also offered positive examples of accessible information, as nurses had attended sign language training and could communicate in a basic fashion with hearing impaired persons.

The general conclusion after monitoring was that a great deal needs to be done to remedy the situation and ensure that persons with disabilities enjoy equality of opportunity with other members of the public, particularly with regard to access, in accordance with *Article 9*.

**Public transport** is another particularly important aspect of access in suburban and urban areas and between towns. The regulations governing this area do not clearly define service providers’ obligations to ensure accessible forms of transport, facilities or information for persons with disabilities, resulting in significant *de facto* limitations to their freedom of movement, particularly for those with “more severe” disabilities.

It is indicative of the incomplete provision that although accessible vehicles have been purchased for public transport in a number of towns and cities in Bosnia and Herzegovina (Banja Luka, Tuzla, Sarajevo), their introduction has not had the desired impact because stops and stations remain unadapted and there has been no sensitivity training or awareness raising for drivers and other transport-users. Nor does it help that the number of such vehicles is still relatively insignificant.

Alternative programmes of transport for persons with disabilities have not been developed in local communities.

**Accessibility of information** for persons with disability is only partly regulated at the level of Bosnia and Herzegovina. A state-level law has been passed on the use of sign language.[[4]](#footnote-4) This law recognizes the right to use the sign language as an official language of deaf people in Bosnia and Herzegovina but does not contain any provisions to sanction failure to implement its provisions. As a result, the necessary regulations for implementation are not in place at either entity or cantonal level nor is there a budget.

The right to use Braille, large print, audio recordings, information in electronic format (which the visually impaired can use), or easy-read information for persons with intellectual disabilities - none of this is guaranteed by law or other regulation, as it should be under the Convention, nor are the responsible institutions obliged to develop programmes or allocate resources to ensure its availability in these or other formats.

From the above, one may easily conclude that persons with disabilities have not generally been provided an adequate level of access to their environment, information or services, which represents a considerable limitation upon their personal mobility, resulting in exclusion, discrimination, inequality of opportunity and unequal enjoyment of their human rights.

**List of proposed questions:**

* What measures is the state taking to prepare a plan, with a budget, to dismantle barriers and facilitate physical, transport, informational and communicational access within a reasonable timeframe?
* What measures is the state taking to make buildings fully accessible to persons with disabilities throughout Bosnia and Herzegovina?
* **What measures is the state taking to introduce a monitoring mechanism and effective sanctions for non-compliance with accessibility standards in all areas covered by the Convention, and ensure the participation of representative DPOs in monitoring?**
* What measures is the state taking to make public transport and the associated infrastructure accessible to persons with disabilities?
* What measures is the state taking to ensure that services intended for the public generally are also accessible to persons with disabilities?
* What measures is the state taking to make the webpages of public institutions and facilities accessible to persons with disabilities?

 **7) Article 11. Situations of risk and humanitarian emergencies**

The laws governing the protection of people and property[[5]](#footnote-5) under emergency situations afford priority in evacuation and care to certain categories of the population, including persons with disabilities. The laws do not, however, give any precise definition of the conditions or manner of evacuation or of the care or support to be provided to persons with disabilities in the areas to which they are evacuated.

One cannot claim categorically that the dignity, human rights or equality of opportunity of persons with disabilities are being secured under such circumstances. For example, during the floods which covered Bosnia and Herzegovina in 2014, the rescue and assistance system did not ensure in appropriate fashion the evacuation of all persons with disabilities, as is evident from examples where such individuals were abandoned without support in their homes for several days or in the areas to which they were evacuated and consequently did not receive appropriate aids or other forms of required support.

**List of proposed questions:**

* What measures is the state taking to develop an effective system of emergency protection, rescue and support accessible to and inclusive of persons with disabilities (in floods, fires, earthquakes, et cetera)?
* What measures is the state taking to ensure of persons with disabilities are given accessible information on the forms of support provided during emergencies?

**8) Article 12. Equal recognition before the law**

The Constitution of Bosnia and Herzegovina states clearly that all individuals are equal before the law. Nonetheless, **persons with intellectual and psychosocial disabilities are frequently deprived of their legal capacity to run their own affairs and placed in wardship,** whereby somebody else makes decisions for them rather than offering them support in making decisions for themselves.[[6]](#footnote-6) Those whose legal capacity is denied or diminished are not themselves involved in the process in an appropriate fashion, so that they are not informed that by being stripped of their legal capacity and placed under wardship, amongst other things, they lose the ability to choose where they will live, the right to privacy, or the right to participate in public and political life, the right to employment, to manage their own property, or to contract marriage. **Most people whose capacity has been legally diminished in this way end up in residential institutions of some sort.**

Of the 1680 individuals housed in the five residential institutions in the Federation, 1101 have had their legal capacity removed, with a further 24 having had it diminished. Between 2010 and 2014, only 17 individuals had their legal capacity restored to them in the Federation[[7]](#footnote-7), indicating that neither the bodies in which wardship is invested nor family members make much use of the legal possibility for initiating such a restorative process. Individuals whose capacity has been removed are not themselves in a position to seek its restoration without appropriate support and there no obligation on the courts or guardians to review such cases, so that individuals whose legal capacity has been denied normally remain permanently deprived of this right.

**List of proposed questions:**

What measures is the state taking to repeal the provisions of the RS and Federation laws which permit legal capacity to be stripped and guardianship established and to replace it by a system of supported decision-making?

What steps are being taken to ensure persons under guardianship can have their legal capacity restored and access measures of support?

**9) Article 13. Access to justice**

Persons with disabilities are not formally denied the opportunity to fully realize their legal capacity or access to justice, but statutes do not provide adequate support and they can face difficulty accessing the support they need to equalize opportunities. There are no training programmes or similar activities to educate civil servants in the judicial, police or penitentiary systems on their rights.

* Is the state planning any form of training for civil servants in the judicial, police or penitentiary systems on the rights of persons with disabilities?

**10) Article 14. Liberty and security of the person**

The constitutions of Bosnia and Herzegovina and both entities guarantee persons with disabilities their right to liberty and security on an equal footing with other citizens. Laws prohibit restriction of personal freedom and movement or illegal detention and guarantee the safety of every citizen.

### **11) Article 15. Freedom from torture or cruel, inhuman or degrading treatment or punishment and article 16. Freedom from exploitation, violence and abuse**

The constitution of Bosnia and Herzegovina and both entities prohibit all forms of the abuse, violence and exploitation of all citizens. Some laws, such as the law on patients' rights and the law on the welfare of mental patients,[[8]](#footnote-8) directly prohibit all forms of medical experiments and research without the prior consent of the person with disabilities or persons empowered, by law, to make decisions in their name. Monitoring of laws and regulations and reporting on how they are applied in practice has not been regular, so there are no solid records on the occurrence or frequency of violations of their human rights on these grounds.

* What, if any, measures is the state planning to prepare persons with disabilities and their families to recognize cases of violence and abuse?
* Is the state planning any legal changes to ensure that regulations banning violence and abuse include provisions related to issues of importance to persons with disabilities?

 **12)** **Article 19. Living independently and being included in the community**

There is no legislation at any level dedicated uniquely to the issue of the social inclusion of people with disabilities and their right to live independently in the community or regulates the issue of social housing for them. A few NGOs provide some support to a limited number of persons with disabilities and their families to educate them and increasing their capacity for independent living. There is also very limited cooperation between the NGOs and the local authorities over provision of the funds required to cover the costs associated with living in the community rather than in specialised institutions. Support services such as personal assistance are provided through funds earmarked to cover the costs of carers and attendance allowances for some categories of persons with disabilities.

* Is the state planning to legally regulate the service provision in the community as well as independent life in the community for persons with disabilities?
* What budgetary resources have been earmarked or allocated to finance the process of transition for persons with disabilities from living in institutions to living in the community, including funds to be used to develop services in the community?

**13) Article 20. Personal mobility**

The constitutions of Bosnia and Herzegovina and its entities, the RS and the Federation, guarantee personal mobility for all citizens, including in principle those with disabilities.

There are also laws that ensure and facilitate the personal mobility of persons with disabilities, in particular laws on social protection, laws governing the rights and entitlements of veterans with disabilities (financial payments for attendance and care by other, the orthopaedic aid and personal disability allowance), laws on healthcare (the question of aids and medical rehabilitation) and laws and regulations on town planning and construction (which set forth the standards for designing and building free of architectural barriers).

A number of regulations provide for orthopaedic aids to mobility, equipment, assistive technology, and forms of personal assistance for persons with disabilities. Generally speaking, persons with disabilities in both entities face significant restrictions in accessing these entitlements, since not all the required regulations are in place and those which are are often highly restrictive or not implemented. In the Federation, the question of providing orthopaedic and other aids is dealt with under cantonal regulation, so that persons with disabilities often find themselves in an unacceptable situation that results in high levels of discrimination.

There are no systematic arrangements to provide the necessary training and skills required by persons with disabilities to allow them to attain independence of mobility with the help of suitable aids and assistance.

The existing but inadequate system of support to their enjoyment of the right to personal mobility is not geared towards individual needs, as may be seen particularly poorly reflected in the personal mobility of those with the most “severe degree” of disability. The current practice in Bosnia and Herzegovina means that individuals who are blind or visually impaired, for example, cannot get Braille typing machines, screen readers, aids to ease communication, et cetera, as they have not been medically indicated.

From this one may easily conclude that persons with disabilities are generally not afforded adequate access to their environment, information or services, with a significant impact on limiting their personal mobility and leading in turn to exclusion, discrimination, inequality of opportunity, and inequality in the enjoyment of their human rights.

**List of proposed questions:**

* What measures is the state taking to ensure that appropriate aids are available to support the personal mobility and social inclusion of persons with disabilities?
* What is the state doing to eliminate the discrimination that arises in the differential provision of aids to different groups of persons with disabilities, where when and how the impairment came about are the main criteria, rather than the real needs of the persons with the impairments themselves?
* What measures is the state taking to ensure that persons with disabilities receive the aids they need regardless of where they live?
* What measures is the state taking to ensure that persons with disabilities have access to appropriate aids, in line with the Convention. i.e. to meet individual needs of persons with disability and not only to be led by medical indications? What percentage of the budget is currently being allocated to the purchase of orthopaedic and other assistive devices in Bosnia and Herzegovina?
* In making purchase decisions is the state ensuring that all orthopaedic and other assistive devices are of high quality, fully accessible, and simple for use, thereby ensuring the potential for their independent use and equalisation of opportunities for persons with disabilities?

**14) Article 21. Freedom of expression and opinion, and access to information**

There is no single regulation setting out the state-level institutions' obligations to ensure persons with disabilities' right to information in accessible formats and techniques. That their right to timely information, presented in appropriate techniques and formats, at no additional cost, is unregulated represents a violation of their dignity and integrity, hinders their social inclusion, disrespects diversity, and prevents equalisation of opportunity, with additional exposure to various forms of discrimination.

* What is the state doing to ensure that public information is available in accessible formats to persons with disabilities?

**15) Article 23. Respect for home and the family**

The constitutions of Bosnia and Herzegovina and the entities guarantee the rights to a home and family life for all on equal terms, including implicitly persons with disabilities. There are no special regulations governing the family, marriage, parenthood, or sexual relations of persons with disabilities, so that in principle they are free to enjoy these rights on an equal basis to other citizens. In reality, they are often prevented from getting married, founding their own families, having children, or receiving support to allow them to raise their own children. In the absence of a legally defined programme of social or assisted housing and other forms of support in the community, persons with disabilities are denied their right to their own home and family more often than not.

Their right to preserve their fertility and to access to age-appropriate information, to reproductive education, and family planning are secured only in principle, with major limitations, under the same laws as provide for these rights for all citizens.

* What is the state planning to ensure that persons with disabilities enjoy the conditions required to form and maintain their own families and have the necessary support in meeting their responsibilities in raising their children?

**16) Article 24. Education**

The constitution of Bosnia and Herzegovina and the entity constitutions guarantee the universal right to education for all citizens under equal conditions, with free mandatory primary schooling and equal access to secondary and tertiary education to all under equal conditions, a right which it is claimed is also afforded to persons with disabilities.

State-level legislation governing the area of education includes framework laws on preschool care and education, primary and secondary education, and tertiary education, which set out the basic principles and standards for education in the country. The laws do not oblige institutions at the level of the state to set aside resources in their budgets for implementation of the laws governing education, other than some funds for monitoring and coordinating certain activities.

Education is formally available in Bosnia and Herzegovina to all citizens on equal terms, but there is no clear formal statement as to what forms of support are to be given to persons with disabilities in order to allow them to take advantage of this equal opportunity for equal participation in educational processes.

The framework law on primary and secondary education stipulates equality of opportunity in education for all, free of any form of discrimination, but it does not recognise disability as a possible basis of discrimination. Article 18 of the law includes an obligation to develop individualised educational programs in line with the psychological and physical capacities of children and young people with disabilities. Generally speaking, the law does stipulate in favour of inclusive education, but article 19 also allows for the possibility of education in special schools for children with developmental difficulties and in cases where education in regular educational institutions is not an option. This provision undermines the principle of equal and inclusive education for all. Given the lack in funding to support inclusive education and an underdeveloped awareness of the need for persons with disabilities to be included in regular education, the authorities often take refuge in providing education for them in special schools.

Laws have been passed at entity level in the RS and at the cantonal level in the Federation on preschool, primary and secondary school care and education and on tertiary education. They are in line with the framework laws. All forms of discrimination are formally banned, including on the basis of disability, which is explicitly mentioned.

The most obvious examples of drastic discrimination and exclusion from the educational process involve children and individuals with “severe” disabilities, but architectural barriers have not been removed in most mainstream schools either. Please see Annex.

Children and young people with intellectual disabilities and in the autistic spectrum are excluded from inclusive classes and condemned to segregation from kindergarten up to the end of their school days. Irrespective of political orientation and the legal stipulation of equal rights to education and of inclusive education for children or persons with disabilities, the system in Bosnia and Herzegovina is still one of educating children with disabilities in both mainstream and special schools.

No practical application of inclusive education is truly possible, because of the lack of regulations. The conditions have not yet been created in practice for the legal provisions to be implemented, as an accessible environment has not been provided for through regulations, any more than appropriate orthopaedics, typhlo-technical and other aids, teaching aids and textbooks, teaching assistants, et cetera, have been, nor have earmarked resources been allocated in budgets for these purposes. On the other hand, resources are earmarked specially in the budgets of the RS and of the cantons in the Federation to finance the work of special schools for people with disabilities, which speaks very plainly to the authorities’ approach towards inclusive education.

Nonetheless, even where legal stipulations do exist, they are incomplete, not least because they fail to cite sanctions for failing to respect the measures set out in the law.

While the *Initial Report of Bosnia and Herzegovina on Implementation of the Convention on the Rights of Persons with disabilities* stated that “children with special needs” (sic) enjoy the right to individualised programs within a framework of inclusive education, there are no institutions with the expert personnel required to offer such services. It is only in larger towns that personnel with a sufficient degree of expertise in certain forms of disability are even available to participate in assessing the capabilities of children with disabilities and of preparing and developing individualised programmes for them. In rural areas, no such services exist. Even in towns, when children are provided with individualised programmes, sufficient capacity does not exist to monitor their work or the realisation of the individualised programmes. Most of the work continues to be done by DPOs. The *Initial Report* also mentions that a start has been made in offering (support) services to persons with disabilities attending university and the example is cited of a centre for persons with disabilities that actually already exists at one of the Bosnian and Herzegovinian universities, which allegedly led to an increase in the number of students with disabilities there. A look at the statistics related to this alleged progress reveals, however, that of 17,000 students, only four are persons with disabilities, which is a demoralising 0.02% of the total number at that University.

**List of proposed questions:**

* What measures is the state taking to provide the conditions at all levels for inclusive education of children and young people with disabilities and to plan budgetary resources for that purpose, and what is the timeline to implement these measures?
* What measures is the state taking to ensure that the requirement to provide inclusive education for children with developmental difficulties is recognised and enshrined in law?
* What measures is the state taking to ensure mandatory training for all people working in the education system on the support and inclusive education tools of children and young people with disabilities?
* State how inclusive education is included in the mandatory curriculum as a constituent element of basic teacher training at faculty level, to ensure that the values and principles of inclusive education are absorbed by future educators in their training from the very beginning.
* What measures is the state taking to put in place a process of certification for teaching and other staff involved in assessing the support needs of children with disabilities.
* State what measures the state is taking to do away with the policies and guidelines that limit the freedom of choice of persons with disabilities in choosing their vocational and secondary school education and training and to eliminate discriminatory practice in education and vocational training.
* How is access being secured to aids and to support in the classroom and to educational materials in adapted forms and formats accessible to persons with disabilities?
* What measures is the state taking to ensure that persons with disabilities have access to teaching assistants in class?

**17) Article 25. Health**

Healthcare and health insurance are not the responsibility of central institutions in Bosnia and Herzegovina, as jurisdiction resides in the entities. In the Federation, indeed, it is shared between the entity and the cantons. Entity laws on healthcare[[9]](#footnote-9) do explicitly ban discrimination on the basis of disability and contain a statement of principle declaring the highest standard and equality of opportunity in availing of healthcare.

Current laws do not secure, however, equal choice or access for persons with disabilities, any more than equal quality and standards of healthcare services, whether sexual and reproductive health services or public health programmes intended for the public at large. This is reflected in:

* poor physical accessibility to most primary healthcare facilities in both urban and rural environments;
* a lack of diagnostic and other instruments and equipment,[[10]](#footnote-10) or failure to adapt them for use particularly by persons with more “severe” disabilities;
* poor use made of specific, less-well known drugs to prevent either the incidence or the progress of disability and a lack of specialised nutritional programmes aimed at the same;
* lack of access to services specially intended for women with disabilities (gynaecological services associated with maternity or reproductive health counselling or adapted dental and other health services for children and adults with intellectual disabilities, etc.);
* a lack of training programmes for medical and paramedical staff in working with persons with disabilities;
* insufficient access to medical rehabilitation programmes for all persons with disabilities who need them;
* an absence of programmes to properly assess needs for orthopaedic and other aids, tailored to the individual needs of persons with disabilities, or of programmes providing hygienic and sanitary materials.

We may note, for example, that article 33 of the Law on health insurance in the Federation envisages an entitlement to orthopaedic and other aids but that it is dependent upon medical indicators, as is the entitlement to medicines, the list of which is approved by the cantonal health insurance institutes. Making exercise of this right dependent upon medical indicators considerably limits the scope for providing appropriate individually-adjusted aids of the sort actually required by persons with disabilities in their day-to-day lives. An additional problem is that it is the cantonal ministries of health that determine the entitlement to such aids and medicines, resulting in uneven coverage, with very different entitlements provided for in different cantons, and placing persons with disabilities in a highly disadvantaged position.

The budgets of the health ministries and the health insurance institutes do not include any clear allocation of resources for purchasing orthopaedic or other aids, in particular those whose use would increase the level of inclusion for individuals with “more severe degrees of” disability, nor are resources earmarked for the adaptation of facilities and medical equipment to render them more accessible to persons with “severe” disabilities. For examples see the section related to accessibility.

The entity laws on healthcare do not provide for a right to health insurance for persons with disabilities on the basis of their disability, deriving it instead from other bases (through another insuree, welfare beneficiary status, et cetera), the not infrequent result being that persons with disabilities actually have no health insurance, leading to them being excluded from the use of healthcare services.

Certain local authorities (for example Sarajevo Canton) do provide for health insurance on the basis of disability in their regulations. This, however, results in discrimination between persons with disabilities on the basis of territory. From an overall perspective, the possibility that a person with disabilities might end up without health insurance coverage and consequently without the right to access healthcare services brings into question the constitutionally declared right to healthcare.

**List of proposed questions:**

* What is the state doing or does it intend to do to ensure that healthcare facilities are fully accessible to all persons with disabilities (both in terms of physical access and in terms of the accessibility of services, communication and information, et cetera) and that free and informed consent for any treatment is guaranteed?
* What is the state planning to do to abolish discrimination in its approach to the allocation of aids and to secure access to them on equal terms for all persons with disabilities throughout the country?
* State what measures are in place to ensure access to healthcare services, including services for sexual and reproductive health and maternity hospitals and paediatric facilities, particularly in rural and remote places.
* What measures are being taken to educate healthcare staff on the rights of persons with disabilities and the accessible ways to communicate with them (e.g., by sign language)?
* What measures has the state taken to provide health insurance to persons with disabilities especially in cases when it is not being provided on some other basis?

**18) Article 26. Habilitation and rehabilitation**

One may state that the constitutional grounding of the right to habilitation and rehabilitation for persons with disabilities derives from the universal right of all citizens to education, healthcare, work and employment and that it is dealt with in more detail in the various laws governing education, healthcare, and employment, at entity and canton level.

The question of early habilitation and rehabilitation is not dealt with in any detail, however, under any particular law, nor is the need recognised for access to preschool education particularly for children with multiple and “severe” disabilities or those in rural areas. Not even a majority of children with disabilities from urban areas is involved in mainstream preschool care and education, even though the laws in this area stipulate that it should be available to all children on equal terms.

Certain forms of rehabilitation, most often professional ones, are dealt with in special schools, both primary and secondary, and therefore are of relevance only to children and young people with disabilities attending those schools.

The issue of the rehabilitation of persons whose impairment arose during the course of their life is not regulated by law at all, beyond primary medical rehabilitation. The right of persons with disabilities to preparation for living and employment is dealt with in principle in the Federation by the law on the bases of social protection, the protection of civilian victims of the war, and the protection of families with children, under articles 18a, 29, and 30. This may be considered a form of habilitation and rehabilitation, but the federal-level legislation is not carried through in an adequate fashion into the cantonal-level regulation.

With the passage of laws on the physical rehabilitation, training, and employment of persons with disabilities in both entities, the matter of professional rehabilitation has been formally dealt with, but the necessary instruments for establishing facilities to carry out rehabilitation in have not been provided.

Establishment of centres for the professional rehabilitation and training of persons with disabilities is provided for in the laws on professional rehabilitation and employment in both entities, but even several years since those laws were passed no centres have been set up in the Federation and only one in the RS, which is not, however, operational. Because of this lack, persons with disabilities continue to be excluded from the labour market.

Regardless of the progress made, it is fair to say that persons with disabilities are not in a position to fully meet their needs for habilitation and rehabilitation, which has a negative impact on their quality-of-life, potential for employment, active inclusion in the community, and the meeting of their various needs.

**List of proposed questions:**

* Are all centres for physical rehabilitation fully accessible to persons with disabilities?
* Are the staff at centres for physical rehabilitation and for mental health required to undergo training with regard to the rights of persons with disabilities and how to prevent discrimination against them?
* What is the state doing to ensure a multidisciplinary approach to assessing the needs for programmes in rehabilitation and habilitation and support services for persons with disabilities, particularly in rural areas?
* What is the state doing to create an effective system of professional rehabilitation and training for persons with disabilities that makes use of current technologies and assistive and other aids intended for use by persons with disabilities? What funds have been allocated for such programmes? Have the people implementing such programmes had training on the rights and entitlements of persons with disabilities?
* What data does the state have regarding the economic cost of investing in early and multidisciplinary rehabilitation, compared to the costs that arise as a result of a lack of rehabilitation?

**19) Article 27. Work and employment**

There is a constitutionally guaranteed right to work and employment in the entity constitutions of both the Federation and the RS. It applies equally to all citizens and is to be enjoyed in accordance with the laws. Discrimination on the basis of disability was explicitly forbidden by the previous labour and employment laws in both entities, **but the new laws passed in 2015 no longer contain such provision**. The laws governing mediation in employment do however envisage measures to stimulate the active employment of persons with disabilities. The labour laws in neither entity consider such special measures or activities taken to facilitate the hiring or continued employment of persons with disabilities discrimination which is a positive side of these laws. Regardless of the positions taken in principle as defined through various laws and other regulations, however, in practice persons with disabilities, and particularly those with “more severe” disabilities, are rarely in a position to find work on the open labour market.

As an example we may cite the fact that blind persons can no longer find work on the open labour market, even in jobs where they have traditionally been employed, e.g., as telephone operators and physiotherapists, etcetera.

The only labour and employment-related area in which specific laws have been passed in both entities has to do with issues of the professional rehabilitation, training and employment of persons with disabilities and stimulus measures for employers who take them on, including providing funds for them to do so.

Under these laws, persons with disabilities can be employed on the open labour market either under general conditions or under special conditions in enterprises founded specifically for that purpose.

A quota system for employing persons with disabilities on the open labour market is envisaged in both entities, though there are certain differences in coverage: in the RS, quota system obligations relate only to public institutions and publicly-owned companies, while in the Federation they apply to all entreprises with more than 16 employees, including those in the private sector. It is also envisaged that failure to comply with them requires the employer to pay a fine into the funds for professional rehabilitation to support incentives for the rehabilitation and employment of persons with disabilities. There is no monitoring mechanism as yet, however, to allow compliance to be gauged.

There is a number of problems with implementation of these measures, particularly given the lack of a clear definition of persons with disabilities, precise record-keeping on their employment, and the lack of clear obligations making particular state institutions responsible for supervising compliance with the quotas or payment of obligations.

The laws envisage incentives for employers who employ persons with disabilities, but the treatment differs by entity, even if the goal of increasing the employment of persons with disabilities remains the same.

Companies established especially for the employment of persons with a specific impairment (the hearing or visually impaired) have achieved some degree of success in employing persons with disabilities. There are still too few such companies, however, and most of them are located in larger urban centres, so that employment opportunities for persons with disabilities from smaller or rural places are correspondingly lower. Because the opportunities that exist for taking advantage of incentives are poorly promoted, relatively few employers have made the decision to set up such companies.

Another form of employment envisaged is self-employment, but the regulatory framework under which persons with disabilities might avail of it has not been sufficiently worked out.

Funds for professional rehabilitation and employment have been established in both entities as part of the measures targeting employment for persons with disabilities, their function being to collect resources and provide support to employment programmes and for incentives to the employment of persons with disabilities.

The mandatory confirmation of fitness-to-work as a precondition to entering into a relationship of employment, which allows medical staff and employers considerable room for interpretation, can present difficulties in hiring persons with disabilities in the Federation.

While there are statements of principle in the legislation in both entities governing the professional rehabilitation and employment of persons with disabilities that give priority in employment to persons with more “severe levels” of disability but which require a more detailed treatment in the regulations, this has not led to any significant increase in the employment of persons with “more severe forms” of disability.

The purpose of these laws is to stimulate employment of persons with disabilities, principally on the open labour market and especially in the public sector, with a view to greater integration into the social mainstream, but because of employers’ low level of awareness of persons with disabilities’ capacities and capabilities and the lack of any scheme for refunding their tax and contributions, particularly in the Federation, the desired impact is not being achieved.

During the reporting period, significant changes have been made, as new labour laws[[11]](#footnote-11) were passed in both entities. The laws are reforming in intent and aim at settling the employer-employee relationship, with a view to improving the efficiency with which the labour market functions. Passage of these laws has not improved the position of persons with disabilities, however, and in some areas has even made it worse.

In such a complex country it is difficult to talk about the social security of citizens in general, and especially on security and equal opportunities of people with disabilities. The laws of social protection, which were adopted at the entity level are not guaranteed social minimum, even for people with disabilities.

**List of proposed questions**:

* How many persons with disabilities are employed in Bosnia and Herzegovina altogether in the mainstream sector? Are the available data available in a breakdown by gender, age and type of disability, with numbers of each type of person employed in the public and in the private sector?
* Do employees of the employment agencies, bureaus and services undergo training on the rights of persons with disabilities and the prevention of discrimination against them?

What measures is the state taking to get persons with high support needs into employment?

What steps are being taken to ensure increased support for inclusion of persons with disabilities in the open labour market?

**20) Article 28. An adequate standard of living and social protection**

**Territorial discrimination**

Under the Constitution of Bosnia and Herzegovina, the areas of social security and social welfare come under the jurisdiction of the entities.

As a result, they are governed by different laws with different provisions. In the Federation, the relevant law is the Law on the bases of social protection, the protection of civilian victims of the war, and the protection of families with children, passed in 1999 and amended several times since. In the RS, it is the Law on social protection, passed in 2012.

Moreover, in the Federation, responsibility for social security is shared between the entity and the cantons, with basic principles determined at entity level and concrete entitlements and qualification for them at cantonal level, again resulting in different treatment by canton.

This means that although the entity laws that regulate social welfare entitlements forbid discrimination based on disability, various practical forms of discrimination still exist in qualifying for disability benefits and their scope and scale depending on the entity or canton in which a person is resident.

**War-related discrimination**

A second form of discrimination is based on how the disability or impairment arose: veterans with disabilities and civilian victims of the war and persons whose disabilities came about under other circumstances enjoy different levels of disability benefits based upon their status and not their disability.

This is because there are separate laws governing veterans with disabilities’ entitlements in both entities, while in the RS there is also a special law regulating the rights of civilian victims of the war. As a result, in both entities, veterans with disabilities qualify for benefit when the degree of bodily damage is 20% above, while civilian victims of the war only qualify at 60% above, and in the Federation other persons with disabilities at 90% or above. There are also drastic differences in the cash amounts awarded and the scale and scope of support given to each of the above-mentioned groups of persons with disabilities.

**Minimum income**

**There is no legally guaranteed minimum income, not even for persons with disabilities.**

The Federation law (cited above) does stipulate that persons with disabilities should qualify for social welfare benefits and entitlements under more favourable conditions and receive more money, but the cantons have proved resistant to enshrining this statement of principle in their own regulations or implementing it in practice.

The entity laws governing social protection and regulating veterans with disabilities’ entitlements define the cash benefits to support persons with disabilities’ ability to function and for equalisation of opportunity. These are primarily personal disability allowance, financial payments for attendance and care by others, and the orthopaedic aid.

Even the responsible institutions tend to treat these entitlements as a means for covering basic living costs. Inadequate welfare provision means this is all too often in practice the case. On the positive side, there is no disincentive to work, as disability benefits are not means-tested.

**Housing**

There is no legal requirement on the responsible state institutions to develop appropriate programmes of social housing or supported living. This means many persons with disabilities are unable to provide themselves with adequate living conditions or form their own families.

From the above, it is clear that the social welfare and protection laws do not provide adequately for measures to secure respect for the dignity and integrity of persons with disabilities, equalisation of opportunity and exercise of their right to difference and to equal social inclusion.

**List of proposed questions:**

* What is the state doing to ensure a minimum income for persons with disabilities, so that they do not have to spend their entitlements for support and functioning on maintenance?
* What is the state doing to establish sustainable programmes of social housing that are accessible to persons with disabilities?
* What is the state doing to eliminate discrimination against persons with disabilities on the basis of how or when their impairment arose and of place of residence?

**21) Article 29. Participation in political and public life**

Since all citizens have an equal right to participate in public and political life under the state and entity constitutions, to be enjoyed in accordance with the laws, persons with disabilities enjoy formal equality with others in this regard. No appropriate mechanisms or support are however envisaged to allow them actually to take advantage of these opportunities they share with their fellow citizens, so that they are not really in a position to exercise their rights or, at best, must do so under segregated circumstances.

On example is the exercise of their right to participate in the electoral process. Instead of operating under the presumption that persons with disabilities should vote in the same places and on equal terms as everybody else, current legal arrangements have them doing so at home through the deployment of mobile teams.

Most persons with disabilities do thus formally have the right to vote and can be elected to all public offices, at all levels of government, and so participate equally in the activities of political parties. The exception is **individuals deprived of their legal capacity, who cannot vote or be elected to public duties.** Other factors due to the general environment in which persons with disabilities live in Bosnia and Herzegovina also restrict their capacity to exercise a dignified and equal degree of participation in public and political life: inadequate education, an inaccessible environment, lack of or inappropriate provision of aids, an underdeveloped system for rehabilitation, lack of access to relevant information in accessible formats, the absence of other forms of assistance, and the existence of prejudices.

It is generally accepted that the best way for persons with disabilities to be included in social activities is through their organisations and with their support. Bosnia and Herzegovina does not recognise the significant role such organisations and associations play and it does not guarantee them even the most basic conditions for their work and operations. As a result of the approach taken by the state, the capacity of such organisations and associations remains very weak and they are not normally in a position to participate actively in processes of interest to their members.

It is indicative that the entity-level government in the Federation allocates only an annual total of €20,000 to support alliances of organisations of persons with disabilities. Sarajevo is the only canton to offer such support. The situation is similar in the RS, where the practice is for individual DPOs to be granted the status of “organisations of general interest,” in a bid to secure greater support for their operations, but this has not proven a particularly successful strategy to date.

**List of proposed questions:**

* What measures are being taken to repeal provisions of the Election law which deny persons with disabilities the right to stand for or hold elected office on the basis of restricted legal capacity?
* What measures are being taken to ensure respect for the rights of persons with disabilities to participate in political life, e.g. the publication of electoral materials in accessible formats, and regulatory guidelines to ensure that voting centres are accessible and the electoral participation of individuals with mental health issues and intellectual disabilities?
* What is the state doing to provide systemic and systematic support for the work and operations of the DPOs at all levels?

**22) Article 31. Statistics and data collection**

There is no provision in any legislation at the level of Bosnia and Herzegovina, including the laws on statistics, for the gathering of statistical data on persons with disabilities. The gathering of statistical data and keeping of records is envisaged in certain areas under certain specific legal and sub-legal acts, including data from research into disability-related issues. This data is not handed over to the institutions responsible for gathering and processing statistical data, however, and is used only for the narrow purposes within the area for which it was gathered.

1. Has the state any plans to initiate the systematic collection of data on persons with disabilities in all areas of life, broken down by gender, age, type of disability, ethnicity, rural/urban residence, educational level, health status, legal capacity, business capacity, violence, employment, institutional residence, housing status, participation in political life, etc.?
2. What steps is the state taking on the active inclusion and involvement of persons with disabilities and their organisations in any such activities?

**23) Article 33. National implementation and monitoring**

The Council of Ministers, at the level of Bosnia and Herzegovina, established a Council of Persons with Disabilities, in accordance with article 33 of the Convention, as a permanent expert advisory inter-sectoral coordinating body of the Council of Ministers itself. It is tasked, amongst other things, with monitoring implementation of the Convention. It comprises 10 representatives of government institutions from both entities and 10 from DPOs (only two are currently women with disabilities).

The Federation's Strategy for equalising opportunities for persons with disabilities envisages creation of a federal government office to deal with issues of interest to persons with disabilities, including implementation and monitoring of the Convention. This has not yet been done.

In the RS, there has since 2005 been an intersectoral body dealing with disability issues, comprising representatives of six ministries and one representative from the DPO Coordination Committee. This body is chaired by a representative of the minister of health and social welfare and it is at the level of assistant minister. It meets four times a year or as needed. It has not proved particularly effective to date.

1. When is the state intending to establish focal points in public administration to implement UN CRPD and an independent monitoring mechanism?

**Annex**

For illustration, we append an example from our monitoring of individual experiences.

*INTERVIEWEE: The reason was a lack of acceptance by the Rector and the professors. One professor told my mother “... Just get her out of my sight...”, as if, in his view, it as about a thing. And I was right there, just a few metres away. (*Female, aged 26-40)

*INTERVIEWER: Can you tell me about any other situation over the past five years when you felt that you were excluded, discriminated against, or that your rights were being underserved in any way?*

*INTERVIEWEE: Well I could mention one situation when I was sitting an exam and another student, who also has impaired vision, and I were told to take the written exam and not the oral one. It was the head of the section and she was the only one who ever asked for something like that. So, we were allowed to pass all the other exams orally, just not with her. She was the only one who required us, let's say, to bring another student with us who wasn't studying the same courses so that we could pass the exam.* (Female, aged 18-25).

1. E.g. The Monitoring of the human rights of persons with disabilities in Bosnia and Herzegovina– MyRight; IN - Implementation of the UN Convention on the Rights of Persons with Disabilities in Bosnia and Herzegovina-Helsinki Citizens' Assembly. [↑](#footnote-ref-1)
2. Zakon o ravnopravnosti spolova (Službeni glasnik Bosne i Hercegovine, br. 16/03, 102/09 i 32/10) -Law on Gender Equality (*Official Gazette of Bosnia and Herzegovina*, no. 16/03, 102/09 and 32/10). [↑](#footnote-ref-2)
3. Uredba o prostornim standardima, urbanističko-tehničkim uslovima i normama za sprečavanje stvaranja arhitektonsko-urbanističkih barijera za osobe sa smanjenim fizičkim sposobnostima (Službene novine Federacije Bosne i Hercegovine, br. 5 / 00,48 / 09), Pravilnik o uslovima za planiranje i projektovanje objekata za nesmetano kretanje djece i lica sa smanjenim fizičkim sposobnostima (Službeni glasnik RS, br. 44/11) -Decree on spatial standards, urban-technical conditions and norms to prevent the creation of architectural and urban barriers for persons with reduced physical ability (*Official Gazette of the Federation of Bosnia and Herzegovina*, nos. 5/00,48/09), Regulations on conditions for planning and design of facilities for the smooth movement of children and people with reduced physical abilities (*Official Gazette of the RS*, no. 44/11). [↑](#footnote-ref-3)
4. Zakon o upotrebi znakovnog jezika u Bosni i Hercegovini, (Službeni glasnik Bosne i Hercegovine, No.75 / 09) -Law on the use of sign language in Bosnia and Herzegovina, (*Official Gazette of Bosnia and Herzegovina*, no.75/09). [↑](#footnote-ref-4)
5. Zakon o zaštiti i spašavanju ljudi i materijalnih dobara od prirodnih i drugih nesreća u FBiH (Službene novine FBiH, broj 39/03, 22/06, i 43/10); Zakon o zaštiti i spašavanju u vanrednim situacijama RS (Službeni glasnik RS, br. 112/12) - Law on protection and rescue of people and material goods from natural and other disasters in the FBIH (Official Gazette of the FBiH, no. 39/03, 22/06, and 43/10); Law on protection and rescue in emergency situations RS (Official Gazette of the RS,no. 112/12) [↑](#footnote-ref-5)
6. Porodični zakon Federacije (Službene novine Federacije Bosne i Hercegovine, br 35/05 i 31/14.): Porodični zakon RS (Službeni glasnik RS, br 54/02 i 41/08.) -Family Law of the Federation BiH (*Official Gazette of the Federation of Bosnia and Herzegovina*, no. 35/05 and 31/14): Family Law of the RS (*Official Gazette of the RS*, no. 54/02 and 41/08). The procedures for this process are set out in the legislation governing the rules for civil procedures which, under the Bosnian legal system, do not require litigation: issues of probate, family law, guardianship, etc. As there is no single term in English the laws are given here in Bosnian, rather than translation: Zakon o vanparničnom postupku FBiH Službene novine FBiH br. 2/98, 39/04 i Zakon o vanparničnom postupku RS, Službeni glasnik RS, br. 36/09. [↑](#footnote-ref-6)
7. http://sumero.ba/sumero-publikacije/ [↑](#footnote-ref-7)
8. Zakon o zaštiti osoba s duševnim smetnjama FbiH (Službeni glasnik BiH, broj 37/01, 40/02, 52/11 i 20/13.); Zakon o zaštiti osoba s duševnim smetnjama RS (Službeni glasnik RS, broj 46/04.); Zakon o pravima, obavezama i odgovornostima pacijenata FBiH (Službeni glasnik BiH, broj 40/10.): Zakon o zdravstvenoj zaštiti u RS-u (Službeni glasnik RS, br 18/99, 62/02.).- The Law on the Protection of Persons with Mental Disorders (Official Gazette of BiH, no. 37/01, 40/02, 52/11 and 20/13); The Law on the Protection of Persons with Mental Disorders (Official Gazette of the RS, no. 46 / 04); Law on the rights, obligations and responsibilities of patients FBiH (Official Gazette of BiH, no. 40/10): The Health Care Act of the RS (RS Official Gazette, no. 18/99, 62/02). [↑](#footnote-ref-8)
9. Zakon o zdravstvenoj zaštiti Federacije BiH (Službene novine Federacije Bosne i Hercegovine, broj 46/10.); Zakon o zdravstvenoj zaštiti RS (Službeni glasnik RS, br. 106/09, 44/15).Law on Health Care of the Federation (Official Gazette of the Federation of Bosnia and Herzegovina, no. 46/10); Law on Health Care (Official Gazette of the RS, no. 106/09, 44/15). [↑](#footnote-ref-9)
10. The monitoring questionnaire also contained questions about access to specific services intended for persons with disabilities, such as gynaecological services for women with disabilities or dental services for children with intellectual disabilities. There were nine health centers in Sarajevo with adjustable tables, but six of the tables were on higher storeys of centres without elevators. Dental services for children and persons with disabilities could be provided only in hospitals where surgical procedure could be performed. [↑](#footnote-ref-10)
11. Zakon o radu Federacije BiH, Službene novine Federacije Bosne i Hercegovine, br. 26/16, Zakon o radu Republike Srpske, Službeni glasnik RS, br 1/16 -Labour Law of the Federation, *Official Gazette of the Federation of Bosnia and Herzegovina,* no. 26/16, Labour Law of the Republic of Srpska, *Official Gazette of the RS*, no 1/16. [↑](#footnote-ref-11)