

**Report on Bosnia and Herzegovina
7th Round of the Universal Periodic Review – February 2010**

This report is submitted by the Bosnian and Herzegovinian **Organization Q** and the **Sexual Rights Initiative**¹. It was written by Svetlana Durkovic.² It addresses **cultural norms/beliefs about gender/sexuality that might lead to human rights violations; discrimination based on sex, gender, sexual orientation/preference, gender identity and/or expression; freedom of thought and expression on issues related to LGBTIQ issues and rights of organizations and activists working on LGBTIQ issues**, and includes recommendations.

Cultural norms/beliefs about gender/sexuality that might lead to human rights violations, including discrimination

1. Cultural norms and beliefs that exist in BiH regarding gender and sexuality are reproduced on a daily basis. Sex(uality) education is not taught in schools, and a survey conducted among high school students reveals that a fair number of them does not even know what the words “sex/spol”, “gender”, “sexual orientation” mean.³ School textbooks often either avoid topics of homosexuality, bisexuality, transgenderism, transexuality and intersexuality, or list them via very short definitions or elaborate on issues of deviations or factor of risk groups. Notions and values taught and promoted through Psychology and Sociology textbooks include the gender and sex female-male dichotomy, heterosexual relations (through marriage) as the only acceptable model, and the obligation of each individual to reproduce and thus extend his/her nation.⁴
2. Homosexuality is addressed mostly by the media⁵ as opposed to schools. Media have been known to use hate speech either directly or indirectly, thus contributing to prejudice and lack of understanding about LGBTIQ issues and human rights. Surveys show that for more than 50% of the population it is unacceptable to have LGBT individuals as family members, friends, neighbours or colleagues, while it is acceptable to interpret human rights from the prism of religious laws and not secular laws.⁶

¹ A coalition including Mulabi – Latin American Space for Sexualities and Rights; Action Canada for Population and Development; Creating Resources for Empowerment and Action-India, the Polish Federation for Women and Family Planning, and others).

² Svetlana Durkovic is an LGBTIQ activist and a co-founder and President of the Organization Q, Sarajevo.

³ 16.2% stated not knowing or knowing how to explain the word sex/spol, while 30.4 % stated the same for word gender and 18.9% for sexual orientation. Study about sexuality in high schools, Organization Q, Sarajevo, 2005.

⁴ High school Textbook Analysis in BiH, Organization Q, 2008-2009.

⁵ 51.2% stated learning about homosexuality from media, as opposed to 15.4% who stated learning about it in schools. According to results of a CATI survey in BiH, Sexual and Gender Minorities Project in Bosnia and Herzegovina and Croatia, Helsinki Committee for Human Rights in Republika Srpska, 2006.

⁶ Survey showed that very high percentage of people (67.6% to 71%) believes that LGBT persons are sinful before God for who they are correlation to their attitude of LGBTI persons being a mistake (and wrongful doing) and that LGBTI persons disgust them. Ibid. In addition, newly adopted Law Against Discrimination in Article 5 (h) gives a right to private and public institutions, which operate according to BiH laws and Constitution, to discriminate upon employment or membership if it is in accordance with religious doctrines, convictions and goals.

Sex, gender, sexual orientation/preference, gender identity and/or expression based discrimination

Legal framework

3. The old Penal Codes of BiH sanctioned homosexual acts. In 1998 this article was removed thus decriminalizing homosexual acts among men.
4. The Law on Gender Equality was adopted in early 2003. This law includes prohibition of discrimination on the grounds of sex/gender and sexual orientation. Currently, this law is being amended, and it is not known whether the ground of sexual orientation will remain in this law, given that the governmental Agency of Sex Equality headed a working group which produced a draft purposefully excluding sexual orientation. This law will enter Parliamentary Assembly of BiH in early 2010.
5. In addition, a new draft of the Law Against Discrimination submitted by the Ministry of Human Rights and Refugees of BiH, included grounds of antidiscrimination such as: “sex and feeling of belonging to a sex, sex expression or orientation,”⁷ thereby excluding gender, gender identity and/or expression and sexual orientation. Being in line with Directives of European Union, this law was supposed to include grounds of “gender identity and sexual orientation.” Ignoring amendments submitted by the Organization Q and the state’s own international obligations including under the International Covenant on Civil and Political Rights⁸, the Law Against Discrimination was adopted on July 23, 2008, but only after severe pressure was placed by the international community, thus featuring grounds of “sex expression and/or orientation”. Despite the fact that guests, participants, supporters and organizers of the first Queer Sarajevo Festival (see the section on Freedom of Expression below for more details) were verbally and physically attacked and received death threats, the Law Against Discrimination does not include prohibition of hate speech on the basis of sexual orientation.
6. Information about discrimination on the grounds of gender, sexual orientation, sexual identity, gender identity and gender expression is not collected or tracked. No single legal case exists regarding discrimination on the grounds of sexual orientation or sexual/gender identity and expression, although cases have been reported.⁹
7. Family laws of FBiH and RS define marriage as the union between a man and a woman. This law has not been harmonized with the State Law on Gender Equality in BiH, despite the fact that this provision represents discrimination on the grounds of sexual orientation. Some laws,

⁷ In local language, terminology that is used is: «spolno izražavanje i/ili orijentacija», which literally means «expression and/or orientation of sex». Sex in this case refers to spol, i.e. biological gender. Local translation for gender is «rod», gender identity is «rodni identitet», and sexual orientation is «seksualna orijentacija».

⁸ In 1994 the Human Rights Committee understood that penalizing consensual same-sex practices between adults/sexual orientation constituted discrimination based on sex and thus violated Article 2 of the Covenant on Civil and Political Rights (*Toonen v. Australia*).

⁹ Please see *The Status of Lesbian, Gay, Bisexual and Transgender Rights in Bosnia and Herzegovina: A Shadow Report*, Global Rights (http://www.queer.ba/GR_LGBT_Shadow_Report_Bosnia.pdf) and *The Invisible Q?: Human Rights Issues and Concerns of LGBTIQ Persons in Bosnia and Herzegovina*, Svetlana Đurković, Organization Q, Sarajevo, 2008 (<http://www.queer.ba/udruzenjeq/TheInvisibleQ.pdf>).

such as Penal Codes, have included sexual orientation within their antidiscrimination clauses, but have not, for example, included it in regard to hate crimes.

8. Transsexual individuals are not able to have sex surgeries or treatment in BiH. They are, however, able to legally change their name, documents and ID number once the transition is complete. Most of the time, this procedure is initiated from abroad by BiH citizens who either live abroad or have gone abroad for their surgeries.
9. There is also no legal provision regarding intersex children and decisions being made about their sex and sexual/gender identity, although such surgeries are practiced in BiH.
10. Considering the fact that same-sex marriage is illegal, same sex couples cannot be granted other rights which would be a result of such legal union. Among other things, they cannot access reproductive technologies or adopt a child as such rights are limited only to married couples.
11. Individuals who identify as homosexuals or have had close relations with homosexuals are not allowed to donate blood. They are asked to step away without a comment, hence not being able to sign a donor disclaimer form and proceed to voluntary blood donation.¹⁰ Despite the fact that the term “risk group” has been modified into “risk behaviour” even in BiH, gay and bisexual men are still treated as a risk group when it comes to HIV/AIDS and blood donations.¹¹ There is no legal regulation supporting this practice in BiH.

Freedom of thought and expression on issues related to LGBTIQ Issues

12. Freedom of thought and expression on LGBTIQ issues has been seriously violated in the public domain. A primary example of this is the organizing of the first Queer Sarajevo Festival (QSF), September 24-28, 2008. Leading toward the opening of QSF, public figures, political parties’ members, governmental officials, and doctors gave statements regarding homosexuality in the light of its being a disease, disorder, deviation, disorientation and disgrace. In addition, two newspapers, *SAFF* and daily *Dnevni Avaz* further propagated hate speech, thus jointly creating hate speech discourse and giving moral support to hooligans and religious groups members that ended attacking guests of QSF, leaving a minimum of 8 persons physically injured. Although police authorities categorized this event as a high risk event and violence occurred, there were only two raised indictments, despite the numerous evidences and reports filed by the Organization Q.¹² Due to security issues, Queer Sarajevo Festival was cancelled by organizers on September 26th, 2008.
13. On the other hand, those who address LGBTIQ issues from the perspective of disease, God’s abomination, abnormality, deviation, HIV, paedophilia and inferiority, have been granted and guaranteed the full exercise of their right to freedom of expression. In 2006, a local NGO called “Svjetlost-Menar” organized a public lecture under the name of “Road of Salvation

¹⁰ Still practiced at the Blood Transfusion Institute of FBiH in Sarajevo, <http://www.ztmfbih.ba/>.

¹¹ According to data in 2006, about 0.1% of BiH population voluntarily got tested for HIV in comparison to 35.5% of LGBTIQ population. In *LGBTIQ and Health*, Organization Q, Sarajevo, 2006.

¹² QSF Narrative Report, Organization Q, 2008-2009.

from Homosexuality.” The lecturer and NGO promoted as the ‘road of salvation’ that homosexuals be thrown off of the highest building in town and stoned to death, along with their supporters. Organization Q filed a petition against this NGO on the grounds of working against BiH Constitution and for promoting discrimination which is against BiH laws.¹³ While the Prosecutor’s office initiated an investigation, no action was taken and no results were made known. In 2007, the Prime Minister of Republika Srpska, Milorad Dodik, stated on public TV that “faggots are not allowed in his cabinet.”

14. Homophobia, biphobia, transphobia, sexism and genderphobia are tolerated and very present in governmental institutions, political parties, police and court offices, as well as laws. All decisions on the level of legislation which promote human rights of LGBTIQ persons are made in order to satisfy minimum requirements and international obligations regarding UN, CoE and EU. For example, during the first reading of the Law Against Discrimination within the House of Peoples, Alma Colo, a member of the House of Peoples and a member of the Joint Commission for Human Rights et al and the Joint Commission for European Integration, and also a member of working group for the Draft of the new Law on Gender Equality publicly stated that sexual orientation should be excluded from the Law because she does not like it nor want it to be visible, therefore, it should be removed and assumed under “other status”.¹⁴ Bakir Izetbegovic, Chair of the BiH representation at the Parliamentary Assembly of the Council of Europe, surrounding the events of the Queer Sarajevo Festival, publicly stated that “homosexual orientation is a disorientation ... they can do what ever they want within their four walls”.¹⁵

Rights of organizations and activists working on sexuality related issues

15. Two LGBTIQ organizations are formally registered in BiH: Organization Q and Logos. Although neither organization had problems in obtaining the status of registered NGO in BiH, neither one has ever received support from the government. Those activists of the Organization Q who are publicly out have in light of QSF faced death threats, termination of the office lease and –in the case of two activists- even of their apartment lease, have been subjected to hate speech, had their vehicle followed, and had to have office and personal space secured and watched by a security agency. Activists from other organizations who were supporters of the Organization Q and the Festival itself also received death threats. Activists of the Organization Q filed approximately 20 reports to the police, both on behalf of the organization and of particular individuals. Activists were not attacked only as queer individuals and activists but also on the basis of their perceived national/religious identity/origin. Three activists were called “chetniks” based on their names (perceived ethnic/religious backgrounds), thus inciting hate on the grounds of ethnicity.¹⁶

¹³ <http://www.queer.ba/udruzenjeq/QreakcijaFINPHS.pdf>

¹⁴ Alma Colo stated: "Under other status we can include everything that is now in the draft and which I do not like, this sex expression and sex orientation. I say it openly. I do not want it to be in the law. I do not like it being in the law. I think that is some other status and that we can include it under that some other status." Audio summary of the House of Peoples meeting dated June 15th, 2008, during first reading of the draft Law Against Discrimination, http://www.parlament.ba/files/admin/audio/dn/30_sjed_DN.mp3

¹⁵ This and other statements can be found in press clipping at: <http://www.queer.ba/QSFPressClipping.html>

¹⁶ A word used for Serbian aggressors during the 1992-1995 war who besieged Sarajevo for almost four years and committed genocide in BiH.

Recommendations:

- Amend the Law Against Discrimination to include gender identity and sexual orientation (as opposed to sex expression and/or orientation)
- Amend the Law Against Discrimination to include hate speech on the grounds of gender identity and sexual orientation.
- Amend the Law Against Discrimination to exclude part of Article 5 (h) giving a right to private and public institutions, which operate according to BiH laws and Constitution, to discriminate upon employment or membership if it is in accordance with religious doctrines, convictions and goals.
- Remove any and all legislative discriminatory provisions which still exist regarding human rights of LGBTI persons (harmonize laws with the Law on Gender Equality and Law Against Discrimination).
- Eliminate derogatory and demeaning language and inaccurate contents from school textbooks and educational system.
- Harmonize BiH laws with International Conventions per its obligations and membership in the United Nations and the Council of Europe.
- Fully investigate attacks that occurred during the Queer Sarajevo Festival.
- Take a proactive role in securing, protecting, promoting and implementing human rights of LGBTIQ persons in BiH