



# Legal Aspects of Social Protection for Children in Bosnia and Herzegovina

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## 1 INTRODUCTION

### 1.1 *The social protection situation in BiH*

In pre-war Bosnia and Herzegovina, social protection was based on three basic pillars: employment, broad and universal social insurance, and social welfare systems which were tied to membership of centrally defined categories such as single parent headed households, disabled persons and children<sup>1</sup>. The combined effects of the war and the transition to a market economy have eroded the effectiveness of all three pillars. As a result of the war, the number of socially vulnerable people increased which led to the introduction of new categories such as ‘war invalids’ and ‘war orphaned children’. The needs of victims of the war have been set against the needs of displaced, persons, returnees and other socially vulnerable groups and minorities. Indeed, budgeted social protection spending is dominated by pension and entitlement-based benefits for war veterans; payments to war veterans constitute a significantly large proportion of cash social protection benefits.

Post-war BiH continues to face high levels of poverty, unemployment and social exclusion. Given the high levels of unemployment and with much of the employment being in the informal sector, tax revenues to finance the social sector are constrained. In the aftermath of the war, social policy response in BiH was dominated by humanitarian intervention which tended to focus on short term relief operations rather than the longer term process of building a sustainable policy for the social protection of the population. Domestically-generated wealth is insufficient to support a properly functional social protection system. In comparison to other countries in the region, research shows that BiH and particularly the Federation of BiH, spends less on social protection of the vulnerable population than any other country in the region which is difficult to justify given its levels of persons in social need<sup>2</sup>. Donor assistance has significantly reduced, leading to even further resource constraints.

While the present Laws provide a wide range of social protection rights, many of these rights are not being realized due to lack of funding, poor imbalance of responsibility and lack of proper coordination between the relevant actors. There are no social protection responsibilities allocated to the State level institutions. The delegation by the Constitution of BiH of “all government functions and responsibilities which are not strictly given to the institutions of Bosnia and Herzegovina” to the Entities has led to the existence of two parallel legal frameworks for social protection in both entities. This fragmentation has further complicated the inefficiency of the systems. Municipalities in both entities bear the responsibilities for the implementation of social protection and ensuring the effective delivery of services primarily through the Centers for Social Work (CSWs).

Entitlement to social protection in BiH is largely based on the social category such as age, marital or employment status rather than aiming to meet the needs of the most vulnerable population. This has led to inefficiency and inequality in the administration and allocation of those in need of financial support. In addition, the protection of persons with disabilities is regulated by separate laws, giving rise to several categories of beneficiaries and significant differences in the level and scope of rights and protection.

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<sup>1</sup> DfID, Country Strategy Paper 2000, Bosnia and Herzegovina.

<sup>2</sup> *Development Strategy BiH - PRSP Paper*, Draft for Public Discussion, December 2002.

CSWs have remained chronically under-funded and social workers lack appropriate education, training and support. There is lack of proper coordination between the entity-level governments and the CSWs.

Financing of social protection is not clearly regulated by law. Neither entity has the social protection systems financed or supported from the Entity budget. Financing is primarily done by the municipalities and the cantons. Cantons in the Federation are unable to secure funds in their budgets for social protection and the capacity of the Federation in assisting the cantons financially is limited since the sole competence of securing the funds is exclusively assigned to the cantons or the municipal authorities<sup>1</sup>. This is further complicated by the indebtedness between the entities in the social protection system arising from even before the war.

In addition, there is an absence of updated and comprehensive documentation of social protection beneficiaries as well as lack of monitoring for proper identification of the needs of the population and provision of assistance.

## **1.2 Institutional Framework**

Briefly, the direct provision of social protection in the Federation is through the cantons and municipality authorities, specialized agencies and institutions for social protection including centers for social work and institutions for children without parental care. According to the UNICEF report on Children and Institutions, there are 99 centers for social work in BiH<sup>2</sup>. The organization, structure and financing of CSWs and other social protection institutions are regulated by cantonal law; failure to adopt cantonal laws means non-regulation of these institutions. Institutions for the care of children without parental care have been established mainly through the NGO sector and individual local communities as well as 11 daily care centers for mentally handicapped persons<sup>3</sup>.

In the Republika Srpska (RS), the direct provision of social protection is through the municipal authorities and CSWs or social welfare and child care services in municipalities where there are no CSWs. According to the PRSP report, there are 45 CSWs and 11 social welfare and child care services operating within the local administration of the municipal authorities<sup>4</sup>. In addition, there are ten social protection institutions that primarily accommodate elderly persons, children and persons with special needs.

In BiH, CSWs are chronically under-funded, lack adequate and well-trained staff and lack proper office equipment. However, lack of funding is not always the major issue in the provision of social protection by CSWs. According to the UNICEF report on Children and Institutions, although some CSWs did not have adequate funding, the social workers nevertheless worked to the best of their ability and maintained regular contact with their

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<sup>1</sup> This in line with the Constitution of FBiH and the Law on Distribution of Public Revenues in FBiH. The Law on Distribution of Public Revenues in the Federation and the Financing of the Federation (Official Gazette of the Federation, 26/96 and 32/98 respectively) regulates the allocation of public revenues between the Federation and the cantons. The cantonal legislation in turn provides for the type and amount of revenue that they allocate to the municipalities.

<sup>2</sup> UNICEF, *Unaccompanied Children and Children and Children at Risk of Being Institutionalized in Bosnia and Herzegovina*, 2003.

<sup>3</sup> *Development Strategy BiH - PRSP Paper*, Draft for Public Discussion, December 2002.

<sup>4</sup> *Ibid.*

clients, while other well-funded CSWs were not so committed and failed to maintain contact with clients<sup>1</sup>.

### ***1.3 The role of the law in social protection***

The law regulates the relationship between the State and its citizens. The legal regulation of the social sector provides a framework on which the systems of social protection are based. In particular, the legal framework delineates the roles and responsibilities of the State and other actors in the social sector, the entitlements of individuals to social protection in their time of need as well as providing for recourse mechanisms where the State fails to protect the individual.

The legal framework plays an important function in the protection of vulnerable groups. Children, the elderly and disabled persons are vulnerable groups in need of special protection which they are not necessarily able to secure for themselves. As such, the State is responsible in their welfare and it is vital that their rights are well-established legally to ensure the obligation of the State.

In the social sector, certain groups of people may be more socially disadvantaged than others. Such groups of people may be directly or constructively discriminated against on the basis of their status. The law in the social sector plays a fundamental role in ensuring equality in the provision of social protection to all persons regardless of their status; legislation is a necessary, if not indispensable, measure for ensuring equality.

Where the law regulates the budget allocations, regulations are imperative in stipulating the means of collecting and allocating funds for the implementation of social protection.

International human rights law provides an important legal source for the protection of human rights of individuals including the social protection rights. International human rights law embodies the duties of states with respect to the individuals they govern and sets the standards by the human rights of individuals are to be respected. By ratifying human rights treaties, states become legally accountable for the implementation of these rights. Human rights derive from the inherent dignity of the human person, are held equally and universally by all people. Social rights (including social protection) are recognized as human rights in various legally binding international instruments. Social rights are human rights necessary for survival and dignified living. The binding nature of human rights lies in the State's obligations to undertake the realization of these rights for its people.

### ***1.4 UNICEF's concern with legal aspects of social protection***

Outlining the legal framework of social protection for children is important since it defines entitlements, roles and responsibilities by government actors (including the obligations to act to protect children), the relationship between various levels of government, the involvement of and cooperation with non-governmental actors as well as the parameters of intervention. Analysis of the legislation relating to social protection is necessary in determining what the law provides for in terms of protection for children, identifying the gaps and the disparities between the law and the reality. A sustainable child protection framework in BiH depends on, *inter alia*, a better linkage of child protection policy and law, with the policy and legal

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<sup>1</sup> UNICEF, *Unaccompanied Children and Children and Children at Risk of Being Institutionalized in Bosnia and Herzegovina*, 2003.

framework informed by well documented best practice and the practice guided by a policy and legal framework that is exhaustive and well translated into guidelines.

## 2 DEFINITION OF SOCIAL PROTECTION

### 2.1 Overview

There is no single definition of social protection. Differing traditions, cultures and organizational and political structures affect definitions of social protection. The term social protection is generally understood as encompassing the policies and programs aimed at reducing poverty and vulnerability by promoting efficient labor markets, diminishing people's exposure to risks and enhancing their capacity to protect themselves against reduction or loss of income. Social protection is often used interchangeably with the terms "social security" and "social safety nets". Of these two terms, social security is the more established and commonly used term; it is often associated with comprehensive institutional social assistance and social insurance programs in the developed countries<sup>1</sup>. Social safety nets, on the other hand are generally linked with a limited range of interventions or short-term compensatory measures in developing countries. Social protection is a term that is used both in reference to developed countries and developing/underdeveloped countries.

### 2.2 Definitions by International Organizations

#### 2.2.1 The World Bank

According to the World Bank, social protection is traditionally defined by its program components, which consist of labor market interventions (including child labor), social insurances (including pensions) and social safety nets (including social assistance and social funds). However, this conceptualization is regarded as narrow as it fails, *inter alia*, to address important issues such as distribution of risks and resources within the household, gender differences in experiences of poverty and vulnerability and overlooks some of the linkage between social protection and poverty reduction. The World Bank has now adopted a broad definition which centers on the concept of social risk management:

*Social protection consists of human-capital oriented public interventions (i) to assist individuals, households and communities better manage risk, and (ii) to provide support to the incapacitated poor<sup>2</sup>.*

These social protection interventions, according to the World Bank, assist individuals, households, and communities to better manage the income risks that leave people vulnerable. The idea behind the social risk management is that all individuals, household and communities are exposed to multiple risks from different sources, be they natural or manmade. Poor people are more vulnerable than other population groups because they are typically more exposed to risks and have little access to risk management instruments.

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<sup>1</sup> Generally, social insurance is considered to be dependent on the contributions of workers while social assistance is non-contributory.

<sup>2</sup> *A new conceptual framework for social protection and beyond* by Robert Holzman and Steen Jorgensen, February 2000, Social Protection Discussion Paper No.0006.

Women are also additionally subject to socially determined constraints on their ability to manage risks and to escape from poverty<sup>1</sup>.

### ***2.2.2 Secretary General to the United Nations Commission for Social Development***

In the Report of the Secretary General to the UN Commission for Social Development<sup>2</sup>, “social protection is broadly understood as a set of public and private policies and programs undertaken by societies in response to various contingencies to offset the absence or substantial reduction of income from work; to provide assistance for families with children as well as provide people with health care and housing”. In addition

Social protection embodies society’s responses to levels of either risk or deprivation deemed unacceptable and also deals with the deprivation and vulnerabilities of the poor as well as the need of the currently non-poor for security in the face of shocks and life-cycle events.

Social protection is predominantly characterized by *social assistance* which encompasses public actions that are designed to transfer resources to groups deemed eligible owing to deprivation and *social insurance* which is contributory and based on the insurance principle.

The character of the policy response may involve a range of different institutions namely, central or local government, civil society and the private sector.

### ***2.2.3 DfID***

The UK Department for International Development views social protection as the public actions taken in response to levels of vulnerability, risk or deprivation which are deemed socially unacceptable within a given society. This means the protection of those who fall, temporarily or persistently, under a level of livelihood deemed unacceptable and not in the promotion of a general standard of opportunity and livelihood for citizens<sup>3</sup>.

### ***2.2.4 UNICEF***

Although UNICEF does not have a definition of social protection, the welfare of children is within the realms of child protection. An assessment of the social protection system for children determines the framework in which child protection mechanisms can be established. The framework includes the general structure of administration, budget allocation, the overall policy, law and strategy and the different actors, both governmental and nongovernmental, as well as the cooperation between them. This is interlinked with the overall functioning of the social protection system and the social sector reform process taking place in BiH. The reform process includes the World Bank Poverty Reduction Strategy Programme with which UNICEF is involved in highlighting child poverty as an obstacle to realizing children’s rights as well as advocating for the need to include the welfare and protection of children as one of the priorities in the process. Poverty reduction involves, among other measures, promoting and enabling access to social protection. Children, as a vulnerable group, can be disproportionately affected by poverty since they mostly depend on adults to make decisions for them and rarely have the means to challenge these decisions.

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<sup>1</sup> World Bank, Social Protection Strategy Paper, *Social Protection Sector Strategy: From Safety Net to Springboard*.

<sup>2</sup> *Enhancing Social Protection and Reducing Vulnerability in a Globalizing World*, Report of the Secretary General, E/CN.5/2001/2.

<sup>3</sup> *Social Protection Concepts and Approaches: Implications for Policy and Practice in International Development*, Overseas Development Institute Working Paper 143, 2000.

## 2.3 *International Standards*

By article II (7) of the Constitution of BiH, Bosnia and Herzegovina confirmed its being a party to international agreements including the International Covenant on Economic Cultural and Social Rights and the Convention on the Rights of the Child. The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols apply directly in Bosnia and Herzegovina and have priority over all other law<sup>1</sup>. By becoming a party to these international instruments, BiH is legally bound to ensure the protection of the rights therein<sup>2</sup>.

### 2.3.1 *General*

The Universal Declaration of Human Rights, as part of the normative framework for human rights, recognizes basic needs as human rights. In article 25, the right to social security is linked to the right to an adequate standard of living and a lack of livelihood. Article 25 states:

*“(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*

*(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same protection.”*

Although the Universal Declaration is not legally binding, it has acquired tremendous status as an authoritative guide and foundation for the legally binding protection of human rights such as the right to social security.

The International Covenant on Economic, Social & Cultural Rights sets forth in programmatic fashion the obligations of the State in achieving progressively the full realization of economic, social and cultural rights to the maximum of its available resources. Among these rights are social protection rights: the rights to social security including social insurance<sup>3</sup>, the right to an adequate standard of living, including adequate food, clothing and housing<sup>4</sup> and the right to enjoyment of the highest attainable standard of physical and mental health<sup>5</sup>. The Covenant also provides that the widest possible protection should be accorded to the family, it being the natural and fundamental group unit of society; that special protection should be accorded to mothers during a reasonable period before and after childbirth and special measures and assistance should be taken on behalf of children and young persons without any discrimination for reasons of parentage or other conditions.<sup>6</sup> This is important

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<sup>1</sup> Article II(2) Constitution of BiH.

<sup>2</sup> BiH succeeded to the Convention on the Rights of the Child on Sep 01 1993 and initial and second period reports to the Committee on the Rights of the Child (due in 1994 and 1999 respectively) have not been submitted yet.

<sup>3</sup> Article 9.

<sup>4</sup> Article 11

<sup>5</sup> Article 12.

<sup>6</sup> Article 10.

recognition of children as vulnerable people and their need for special protection and assistance.

### **2.3.2 Convention on the Rights of the Child 1989 (CRC)**

#### **Pertaining to social security**

The obligation of States to provide social security and assistance to children to the full extent of their capacity is explicitly recognized in the CRC. Article 26 provides:

*“States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.”*

The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27 further expounds the nature of the responsibilities relating to the right under Article 26. While the primary responsibility of securing the conditions of living necessary for the child’s developmental rests with the parent, the State bears the duty to care for children whose parents or legal guardians cannot or do not provide adequate sustenance for their children. In many states social security and assistance is given through provision of family allowances and child allowances as well as social support services to families with children and the children. Since these rights are realized through the family, the State is placed under an obligation to monitor whether these benefits are used with the child’s best interests in mind. Another crucial element to the realization of social protection rights of children is the proper awareness and dissemination of information on these rights; for these rights cannot be realized if the beneficiaries are not informed on them.

#### **Pertaining to child protection**

Child protection means addressing and preventing violence, abuse and neglect, exploitation and discrimination affecting children. The obligations of the state with regard to child protections arises from the CRC provisions relating to:

- Children without primary caregivers (Articles 9, 20 & 25)
- Children with disabilities (articles 2 & 23)
- Child trafficking/sexual exploitation (Articles 11, 21, 32, 33, 34, 35, 36, 38 & 39)
- Juvenile Justice (Articles 37 & 40)
- Child labour (Article 32)
- Violence (Articles 19, 28(2), 38 & 39)
- Discrimination (Article 2)

These provisions provide a normative framework for the creation of a protective environment for children in general and in particular for vulnerable children.

In addition, Article 3 of the CRC states that in all actions concerning the child, whether undertaken by public or private bodies, the best interests of the child shall be a primary consideration.

## **Article 9 (separation from parents) and reservation**

The single reservation of BiH with respect to the CRC is regarding Article 9 (1), which states that:

*“States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents or one where the parents are living separately and a decision must be made as to the child’s place of residence.”*

The reservation reads that:

“Bosnia and Herzegovina reserves the right not to apply paragraph 1 of article 9 of the Convention since the internal legislation of the Republic of Bosnia and Herzegovina provides for the right of competent authorities (guardianship authorities) to determine on separation of a child from his/her parents without a previous judicial review.”

### **2.4 BiH**

Countries vary in the formulation of their social protection systems. In BiH, the concept of social protection is generally understood to be the organized activity aimed at providing social security for all citizens and their families<sup>1</sup> or organized activity aimed at alleviating and eliminating the consequences caused by unsettled social circumstances in all areas of social life, giving assistance to citizens and their families<sup>2</sup>. Therefore, social protection is provided to those families who are in a state of social need where social need is defined as the state of permanent or temporary character, in which individuals or families find themselves, due to war, natural catastrophes, general economic crisis, the psycho-social state of an individual or other causes, which cannot be alleviated without assistance from the social community.

#### ***2.4.1 Focus on cash benefits***

The provision of social protection in many States is primarily understood as the social security provided by the state in terms of cash benefits. Children are not usually directly entitled to these cash benefits; rather they realize them through their parents or families in benefits such as child allowance and financial allowance to families. Cash benefits do not necessarily take into account the particular needs of children and are not an adequate form of social protection for children; they are usually aimed at alleviating the social circumstances of persons or families who are unable to financial secure their basic living needs.

#### ***2.4.2 Focus on social work/assistance***

Social protection for children, aside from financial assistance, includes social assistance which involves the provision of social work services to children and their families. These services include alternative care for children without primary care, protection from abuse,

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<sup>1</sup> Definition in the Federation Law.

<sup>2</sup> Definition in the Republika Law.

neglect and exploitation, support for children with special needs and other services. Social assistance is usually not means-tested and is aimed at providing a supporting a protective environment for the optimal development of the child.

Both social security and social assistance are regulated and implemented by the same framework in BiH, that is, the social protection system which defines the governmental role in child protection.

### **2.5 Operational definition of social protection for children**

Children are identified as a vulnerable population group who may be exposed to social risks who have little access to means of risk management and escape from poverty. As a result, children are in need of special protection which can be provided by the State through the social protection system. The social needs of children go beyond the need for financial support; they also require social work services aimed at supporting and providing a protective environment for the optimal development of the child.

Therefore, social protection for children can here be summarized as “social security (financial assistance and benefits) and social assistance which involves the provision of preventive and protective social work as well as child protection measures aimed at providing a suitable environment for the optimal development of the child.” Social protection is realized through the family of the child as well as according to the specific needs of the child.

## **3 SOCIAL PROTECTION LAW REFORM IN BIH**

### **3.1 Constitutional Competency**

There is no express provision dealing with social protection in the Constitution of Bosnia and Herzegovina. However, all governmental functions and powers fall under the competency of the two Entities, i.e. the Federation of Bosnia and Herzegovina and the Republika Srpska (the RS), and their subdivisions. The RS has a highly centralized political system while that of the Federation is decentralized. In the RS Constitution, the family, mothers and children are guaranteed special protection and in particular, minors who are parentally neglected and unable to look after themselves are entitled to special protection of their rights and interests<sup>1</sup>. The Constitution also guarantees social security and assistance for citizens who are incapable of work and whose sustenance is not provided for<sup>2</sup>. The Republika is thus responsible for regulating and ensuring social insurance and other forms of social care<sup>3</sup> while the municipalities are responsible for meeting the specific social protection needs of the citizens<sup>4</sup>.

In the Federation, the responsibility for regulating and ensuring social protection is shared between the Federation and the ten Cantons of which it is composed<sup>5</sup>. The Constitution guarantees the right protection of the family and of children as well as the right to social

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<sup>1</sup> Art. 36 RS Constitution.

<sup>2</sup> Art. 43.

<sup>3</sup> Art. 68 (12).

<sup>4</sup> Art. 102 (5).

<sup>5</sup> Art. III (2) (e), FBiH Constitution.

protection<sup>1</sup>. The Cantons have the specific responsibility for implementing social welfare policy and providing social welfare services<sup>2</sup>. The Cantonal Constitutions also have provisions which generally state that the responsibility for the implementation of social policy and establishment of social protection services is within the competence of the Cantonal authorities.

Brcko District has a legal framework distinct from that of the Republika and the Federation<sup>3</sup>. The District bears responsibility for social welfare for the citizens in its territory.<sup>4</sup>

## **3.2 Reform in BiH**

### **3.2.1 Past reform measures**

Post-Dayton BiH lost the social role of the state as the responsibility was delegated to entities and cantons in the Federation. Legal reform begun with the enactment of framework legislation for social welfare in both entities, with sharp cuts in pension and disability insurance entitlements compared to pre-war levels. The Federation adopted new social protection legislation in 1999 which was to be followed by enactment of Cantonal laws on the same. In 1998, a World Social Policy Task Force was formed in April 1998 to draw attention to the needs of the poor and to equity and social justice<sup>5</sup>.

### **3.2.2 Present and future reform process**

As part of the social protection reform process in BiH, there have been calls for harmonization of social policy and legislation in both Entities with minimum joint standards of services throughout BiH. Another reform aspect has been the need for establishment of a mixed social protection system with the involvement of local communities, the civil society, and the private as well as public sectors. There is a DfID pilot project of social welfare reform in four municipalities: Banja Luka, Gornji Vakuf, Zenica and Trebinje which has demonstrated that the involvement of local actors in social welfare reform is not only feasible but more easily implemented than commonly believed<sup>6</sup>.

A major part of the social sector reform has been poverty reduction.

### **Poverty Reduction Strategy Program (PRSP)**

The reform of the social sector is being carried out mainly as part of the World Bank's Poverty Reduction Strategy Program.

A number of reform measures have been proposed:

Harmonization of the laws between the entities by adoption of uniform law on social protection which will regulate the rights to social protection, beneficiaries, financing, roles

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<sup>1</sup> Art. II (2)(j) and (n) respectively.

<sup>2</sup> Art. III (3)(j). Each Canton may confer its responsibilities to a municipality or city in its territory, or to the federal authority.

<sup>3</sup> Brcko District was established by the Decision of the High Representative on 8 March 2000 as a single administrative unit beyond the control of the Entities and under the sovereignty of Bosnia and Herzegovina.

<sup>4</sup> Article 9, Statute of the Brcko District of Bosnia and Herzegovina.

<sup>5</sup> The Task Force was set up following a conference in Sarajevo on "Social Policy, Protection & Practice"

<sup>6</sup> UNDP Bosnia and Herzegovina, *Human Development Report/ Millennium Development Goals*, 2003

and responsibilities of various state and non-state actors, intervention measures, etc. this should also include the harmonization of levels and categories of assistance across BiH to avoid overlaps and disparities in the provision of social protection.

The provision of social protection should be based on the needs of the vulnerable population rather than being status-based, so that all persons in social need are catered for. In line with this, measures for the mitigation and elimination of poverty should be adopted.

Establishment of a new database for monitoring the beneficiaries of social protection with a view to ascertaining the real extent of social vulnerability of the population and the establishment of new socio-economic statistics in the State and entities for the purpose of compatibility of the information system to identify and review the socially disadvantaged.

Introduction of social identification cards which will be used to identify the beneficiaries of certain types of social protection. It would be necessary to link this to the databases of social protection providers.

Development of the local community and the non-governmental sector in the social protection system and timely adoption of legislation for this development. This should also entail inter-sector cooperation for all stakeholders.

Legislative reforms in the financing of social protection, which should include provision for funding from the entity budgets.

Development of the labor market and its institutions. This should also include reforms to eradicate ethnic based employment discrimination.

Adoption of a uniform law on social protection for persons with disabilities irrespective of the cause of disability.

Reform of social assistance cash transfer programs, by rationalizing complex benefit structures, overhauling financing mechanisms and improving targeting

Social sector reform should lead to the empowerment of the population and the reduction in the number of vulnerable persons, their reintegration and integration into normal employment activities.

## 4 OVERVIEW ON THE CURRENT LEGAL FRAMEWORK

### 4.1 Republika Srpska

#### 4.1.1 Overall Scope

In the RS, social protection is regulated by the *Law on Social Welfare* (the Law)<sup>1</sup>. This law was adopted during the war and subsequently amended in 1996. The *RS Law on Child Protection 2002* is also applicable.

The RS Constitution guarantees assistance and social security to citizens who are incapable of work and not provided for<sup>2</sup>; this includes a minimum level of social security and the provision of functioning public services by the Republika<sup>3</sup>. Article 36 of the RS Constitution guarantees special protection of the family, mother and children.

The Law regulates the rights and regulations applied to social welfare, its organization and financing as well as other activities relating to the realization of social welfare. Social welfare is provided to citizens who due to their specific circumstances have insufficient means or resources to satisfy their daily needs.

#### 4.1.2 Beneficiaries

Child beneficiaries covered under the RS Law are children:

- without parental care
- who are physically and mentally disabled
- whose development is disturbed by family circumstances
- with neglected upbringing and demeanor.<sup>4</sup>

The Law defines these specific categories of child beneficiaries<sup>5</sup>.

#### 4.1.3 Rights

Children are entitled to the following rights:

- *Material assistance*

The right to material assistance for children can only be realized through the family since income must be assessed to see whether the family falls below the minimum

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<sup>1</sup> RS Official Gazette, No. 5/93 and its amendments in RS Official Gazette No. 15/96.

<sup>2</sup> Article 43.

<sup>3</sup> Article 61.

<sup>4</sup> Article 10.

<sup>5</sup> Article 11-14.

level of social security. The Law stipulates how the level of assistance is to be calculated<sup>1</sup>.

- *Vocational education*

This right is provided for children and young persons who are mentally and physically impaired and who can be trained for professional orientation according to their psychophysical capabilities. Assessment of disability and psychophysical capabilities is done according to defined special regulations and by expert medical or professional commissions formed by municipalities. This right is realized through material assistance and reimbursement of professional orientation, accommodation and transport costs.

- *Accommodation in a social protection institution or with another family*

Accommodation in a social protection institution or with another family (placement or foster family) is provided for children without parental care, children whose development is hindered due to family circumstances, neglected children as well as disabled children<sup>2</sup>. Article 39 lists the categories of families in which a child may not be placed; these are essentially families which would not provide a suitable environment for the development of the child. Placement in another family is regulated by means of a written agreement concluded between the placement family and the CSW. In determining the placement family, special regard is given to the personal characteristics of the child, the family members as well as the capability of the family in meeting the needs of the child.

- *Accommodation social work services*

The right to social work services is available to all citizens without payment and include preventive, diagnostic, therapeutic and counseling services.

#### **4.1.4 Conditions for realization**

As far as eligibility is concerned, the Law only specifically deals with eligibility for material assistance. Generally, permanent residence or temporary accommodation in the territory of the relevant municipality is a key requirement<sup>3</sup>.

#### **4.1.5 Procedure and recourse**

The procedure for realization of the rights under the Law is conducted according to the Law on General Administrative Procedure. The local CSW or the relevant institution in the municipality of permanent residence or temporary accommodation of the applicant is responsible for the determination of eligibility for social protection rights. The procedure is initiated upon request of a person in need, his/her legal representative or *ex officio*. The CSW makes the first instance decisions while the Ministry in charge of social protection acts as the second instance body.

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<sup>1</sup> Article 26(2) CRC makes social security contingent on the caregiver's lack of resources but emphasizes the fact that while it is important to ensure that those with legal responsibility for children entitled to claim benefits on their behalf, it is important to ensure that children are directly eligible in their own right where necessary.

<sup>2</sup> Accommodation in an institution is also provided for pregnant women and mothers with a child of up to nine months of life who are unable to provide for themselves.

<sup>3</sup> The Law was amended in 1996 to include the "temporary accommodation" provision.

Where there is need for assessment of disability and incapability of work, this is determined by expert medical or professional commissions formed by municipalities.

#### ***4.1.6 Institutions for Children***

Social institutions for children include:

- Homes for children without parental care and children whose development is hindered by family circumstances
- Homes for children who are physically or mentally disabled including children suffering from autism
- Reception units/shelter for children who are found begging or who are vagrant

#### ***4.1.7 Financing***

Funds for social welfare are drawn from the budget of the RS as well as municipal budgets. Article 79 stipulates the division of financial responsibility between the RS entity authorities and the municipalities<sup>1</sup>. The CSWs are in turn responsible for forwarding these funds to social protection institutions and beneficiaries.

#### ***4.1.8 Supervision and monitoring***

Supervision and monitoring of professional work is done by the Ministry of Health and Social Welfare.

#### ***4.1.9 Child Protection Fund (CPF)***

The CPF was established under the RS Law on Child Protection in order to meet the financial obligations under the same Law<sup>2</sup>. It is based on tax contributions as well as non-contributory sources. The CPF has certain operating guidelines which require it to preferentially allocate funds to the municipalities with regard to their financial needs and capabilities. The management board is appointed by the Government of the RS. Supervision of the work of the CPF is done by the Ministry responsible for Child Protection i.e. Ministry for Health and Social Welfare<sup>3</sup>.

## ***4.2 Federation***

### ***4.2.1 Overall Scope***

Article 2 of the Constitution of FBiH guarantees the enjoyment of human rights and fundamental freedoms including the right to social protection and the right to protection of the family and of children<sup>4</sup>. Social protection in the Federation is governed by the *Law on the Basis of Social Welfare, Protection of Civil Victims of War and Protection of Families with*

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<sup>1</sup> In practice, municipalities are responsible for securing the funding. Municipalities may exceptionally be subsidized by the Republika where they are unable to secure sufficient funds.

<sup>2</sup> Article 66. The CPF is a legal entity.

<sup>3</sup> Article 67.

<sup>4</sup> Article II(2) (n) and (j) respectively, Constitution of FBiH.

*Children* (the Federation Law)<sup>1</sup>. On entry into force, the Federation Law required the Cantons to enact their own legislation within three months. This deadline was however not met and so far, only eight cantons have enacted their own legislation<sup>2</sup>. Child protection in the Federation is regulated by *Law on Child Protection*<sup>3</sup>; this is the same law on child protection dating back from the former Yugoslavia and is still applicable in the absence of enactment of new legislation. Notably, the Federation Law contains a chapter on the protection of families with children with the aim of supporting the families with children financially for the purpose of creating a harmonized environment for the development of the child in his/her best interests<sup>4</sup>.

The Federation Law regulates the basis of social protection of citizens and their families, the basic rights of civil victims of war and their family members, the protection of families with children as well as funding and other questions of significance to the realization of the rights provided under the Law.

#### **4.2.2 Beneficiaries**

Child beneficiaries under the Federation Law are:

- Children without parental care
- Uncared for children/”educationally neglected children”
- Children neglected in upbringing
- Children whose development is hindered due to family circumstances
- Disabled children

These categories of children are defined in Article 13<sup>5</sup>.

#### **4.2.3 Rights**

Social protection rights are provided under Article 19. Children are entitled to:

- *Financial and other material assistance*

Children under the age of 15 years (or up to 27 years if in fulltime education) are eligible for financial and other material assistance if they have no one to support them or their families are unable to provide for their sustenance. According to Article 27 disabled children with arrested physical and mental development of permanent nature are accorded favorable requirements for acquiring social protection rights and higher amounts of basic financial assistance and allowance for care and assistance by a third person. The Law however does not stipulate what these favorable conditions are.

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<sup>1</sup> FBiH Official Gazette, No. 36/99. This law entered into force on September 14 1999.

<sup>2</sup> Cantons 4 and 7 have yet to adopt new legislation on social protection.

<sup>3</sup> Official Gazette of Socialist Republic of Bosnia and Herzegovina, No. 39/84.

<sup>4</sup> Federation Law on the Basis of Social Welfare, Part IV.

<sup>5</sup> “Educationally neglected children” are those who transgress acceptable norms of behaviour and commit minor criminal offences while children neglected in upbringing are those who, due to lack of supervision and care from parents and negative influence of the social environment, violate generally accepted norms of behaviour.

- *Vocational education*

This right is provided for children with developmental handicap, regardless of the cause of disability and according to their capabilities. This right includes accommodation, food and travel costs for the purpose of training.

- *Accommodation in social protection institutions*

Placement in a social protection institution is provided for children who are in need of permanent support and assistance which their families are unable to provide. The competent CSW decides upon the placement and is responsible for monitoring the placement, care and treatment of the child<sup>1</sup>.

- *Accommodation in another family*

Placement in another family is provided for children who are in need of permanent assistance and support which their families are unable to provide. The consent of the child, if he/she is older than 15 years, as well as the consent of the parents is required. The placement family may not carry out significant decisions regarding the child's future without the consent of the child's parents or guardians. In particular, the placement family may not transfer the care of the child to another party, terminate his/her education or change the type of school, decide the choice of the child's vocation or conclude an employment contract on behalf of the child. The decision of placement and termination of placement is taken by the CSW in the child's area of residence. The CSW is also responsible for the maintaining contact with the child through regular visits<sup>2</sup>. The placement is regulated by a written agreement concluded between the CSW and the placement family. Similarly to the RS Law, Article 35 of the Law stipulates which families a child may not be placed with.

#### ***4.2.4 Institutions for children***

Social protection institutions for children are:

- Institutions for children without parental care
- Institutions for neglected and uncared for children
- Institutions for disabled children
- Day-care centers

#### ***4.2.5 Financing***

Financing of social protection in the Federation is provided primarily through budgets of the Cantons and municipalities.<sup>3</sup>

##### ***4.2.5.1 Supervision and monitoring***

With regard to supervision and monitoring, there is no specific provision in the Federation Law.

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<sup>1</sup> Article 42.

<sup>2</sup> Article 33.

<sup>3</sup> Article 97. Other sources are investments of institution founders, personal participation of beneficiaries, endowments and wills

#### ***4.2.6 Areas of Cantonal Regulation***

Cantonal legislation regulates the conditions, procedure, funding and responsible organs for the realization and enjoyment of these rights<sup>1</sup>.

Cantonal legislation determines the amounts and level of monetary and material assistance as well as the conditions and procedures for realization of social protection rights<sup>2</sup>.

#### ***4.2.7 Protection of families with children***

Exceptionally from the RS Law on Social Welfare, the Federation Law provides for the special protection of families with children. The protection of families with children refers providing the family with financial and other means, for the purpose of assisting in the upbringing and care of children, as well as enabling them for independent life and work, in the best interests of the child<sup>3</sup>. Article 88 lists the objectives of the protection of families with children which include ensuring for all children equal conditions necessary for healthy and appropriate physical, intellectual and emotional development within the family. This article also provides that children without parental care, families with disabled children and families in which one or both parents disabled are given favorable treatment in the realization and enjoyment of social protection rights. However, the Law does not define what these favorable conditions are.

The rights accorded to families with children include:

child allowance

maternity allowance for employed and unemployed mothers

one-off allowance for equipment for a newborn child

support in feeding a child under the age of 6 months and food provision for nursing mothers

special psychosocial treatment of pregnant mothers

placement of children in pre-school institutions including meals

ensuring one meal in primary schools

school fees and scholarships for students.

The Federation Law provides for the entitlement of the right to child allowance. Article 92 provides that foreign citizens and stateless persons who are permanently residing in the Federation may be entitled to child allowance in accordance with the relevant international agreement. The Federation also provides for “Children’s Week” which is aimed at organizing various educational, cultural, recreational and other events dedicated to children and to promote development of social protection of children<sup>4</sup>.

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<sup>1</sup> Cantonal legislation may also accord other rights to families with children.

<sup>2</sup> Article 19. Cantons may also determine other social protection rights in accordance with the program of development of social protections and their capacities.

<sup>3</sup> Article 87.

<sup>4</sup> Articles 94 – 96.

### 4.3 Cantonal Legislation

#### 4.3.1 Overall scope

As previously mentioned, on entry into force, the Federation Law on the Basis of Social Welfare required the Cantons to enact their own legislation within three months<sup>1</sup>. Regrettably, the cantons did not meet this statutory deadline. So far, only eight cantons have passed legislation on social protection; in the remaining cantons legislation is still in the adoption process.

The following cantons have passed the necessary laws.

- Una Sana / Canton 1 (*available and translated*)
- Posavina / Canton 2 (*not available*)
- Tuzla Canton / Canton 3 (*available but not translated*)
- Bosnia Podrinje / Canton 5 (*available but not translated*)
- Central Bosnia Canton / Canton 6 (*available but not translated*)
- Herzegovina Neretva / Canton 7 (*available but not translated*)
- West Herzegovina Canton / Canton 8 (*available and translated*)
- Sarajevo Canton / Canton 9 (*available and translated*)

The following Cantons have yet to adopt new laws on social protection.

- Zenica-Doboj / Canton 4
- Canton 10

This report examines the Cantonal legislation which was available.

#### 4.3.2 Una Sana Canton/Canton 1

##### 4.3.2.1 Overall scope

Social protection in Una Sana Canton is governed by *Law on Social Welfare, Protection of Civil Victims of War and Protection with Children*<sup>2</sup>. The Cantonal law regulates in detail the following;

- social protection of citizens and their families;
- amounts of pecuniary and other forms of support, conditions and procedures for exercising rights from social protection and users of the rights from social protection;
- foundation and work of social protection institutions and procedures for establishing the Associations of Disabled Persons;
- conditions, ways and procedures for exercising rights of civil victims of war and members of their families;
- conditions, ways, procedures, bodies and financing of the rights of families with children;
- ways of charging pecuniary contributions for "Children's Week" and their allocating;
- financing and other issues relevant for exercising rights from social protection, protection of civil victims of war and protection of families with children.

For the purposes of implementation of the Law the following regulations were passed:

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<sup>1</sup> Article 103 also required municipal bodies to adopt appropriate regulations within their competence for the implementation of this Law, within two months of its coming into force.

<sup>2</sup> Official Gazette of Una Sana Canton No. 05/00.

- *Instructions on the level of financial amounts to be paid under the Law on Social Welfare*<sup>1</sup>.
- *Decision on the means and procedure for exercising the right to compulsory health insurance*<sup>2</sup>. This covers beneficiaries of permanent financial support and persons accommodated in social protection institutions provided they are not insured on any other basis.

#### **4.3.2.2 Beneficiaries**

Child beneficiaries under this Law are identical to those under the Federation Law.

#### **4.3.2.3 Rights**

The rights listed in Article 4 of the Cantonal Law are identical to those in the Federation Law with an additional provision of other forms of social protection prescribed by the Municipality and the Canton. As required by the Federal Law, the Cantonal Law defines in detail the amounts and level of monetary and material assistance.

#### **4.3.2.4 Conditions for realization**

Social protection rights can be realized by persons who have permanent or temporary residence in the Canton for at least six months. For those persons who are not resident in the Canton, CSWs in the Canton can provide the necessary form of social protection, the costs of which can be recovered from the Canton or municipality responsible for his/welfare. Persons whose residence cannot be established may be provided with the “most favorable” needed form of social protection<sup>3</sup>.

#### **4.3.2.5 Procedure and recourse**

The procedure for realizing social protection is initiated upon the submission of a request or *ex officio*. The relevant CSW, based on the residence of the applicant, makes the first instance decision. The Cantonal Ministry for Health and Social Policy (the Ministry) acts as the appeal body; appeals do not delay execution of the first instance decision. The CSWs are responsible for financial payments to beneficiaries.

Commissions for identification and categorization of children disturbed in their physical and mental development are established by the Ministry and also by the Canton at the proposal of the ministry. The Cantonal Law does not however specify whether each municipality has to establish its own commission or whether joint commissions may be formed.

#### **4.3.2.6 Institutions for children**

Article 38 lists the institutions for children which are identical to those listed under the Federation Law. These institutions may be founded by the Cantonal Assembly or the Municipal Council. The Law specifies the conditions which have to be met for establishment and management of institutions.

Institutions for children can be organized into discipline centers, shelters, diagnostic and observation centers, rehabilitation centers and daily care centers.

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<sup>1</sup> No. 13-35-13810-2/01, 16 November 2001.

<sup>2</sup> No. 03-017-682/2000, 17 April 2001.

<sup>3</sup> Article 134.

#### **4.3.2.7 Financing**

Article 135 lists the sources from which funds for financing social protection which include the cantonal and municipal budgets. The Law defines which aspects of social protection are to be financed by the Cantonal budget and which are to be financed by the municipal budgets. Funding may be drawn from the budget of the Federation if funds are available.

#### **4.3.2.8 Supervision and monitoring**

Supervision of professional work is carried out by expert officials approved by the Ministry<sup>1</sup>. The Cantonal Ministry is responsible for ensuring that any irregularities are rectified by the social protection institutions. The inspection of the supervision of the enforcement of the Law is carried out by the Cantonal Inspector for social protection and humanitarian activities.

#### **4.3.2.9 Protection of families with children**

Article 100 states the elementary rights which can be exercised by families with children resident in the area of the Canton. Municipalities may by their own decisions establish additional rights. The Cantonal Law details the entitlements under these rights. The rights are identical to those provided under the Federation Law.

The Cantonal Law also provides in brief for “Children’s Week” in accordance with the Federation Law.

### **4.3.3 West Herzegovina Canton / Canton 8**

#### **4.3.3.1 Overall scope**

Social protection in West Herzegovina Canton (WH Canton) is governed by the *Law on Social Welfare, Protection of Civil Victims of War and Protection with Children*<sup>2</sup>. For the purpose of implementation of this Law, the following regulations and decisions were passed:

The Rulebook on finding, evaluating, categorizing and recording children and the youth hindered in their physical or mental development (OG WH Canton No. 9/02)

The Rulebook on procedure, composition and modes of work of expert commissions for evaluation of working ability with regard to realization of rights and forms of social welfare (OG WH Canton 9/02)

Decision on formation of the second-degree expert commission for evaluation, categorization and recording of mentally and physically handicapped children and the youth.

Instruction on application of the Law on Social Welfare, welfare of civil victims of war and welfare of family with children (No. 08-437/02)

Decree on procedure for adopting status of IDPs and refugees and entitlement of AA (OG WH Canton No. 2/02)

Decision on determination of basic amount for calculation of the amounts for permanent social support, disability payment for civil victims of war, unemployed women-mothers and one-time financial support for every newborn child (OG WH Canton No. 13/02)

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<sup>1</sup> Article 79.

<sup>2</sup> WH Canton Official Gazette No. 16/01. Adopted on 18 December 2001.

#### **4.3.3.2 Beneficiaries**

Child beneficiaries listed under Article 12 of the WH Canton law are identical to those listed in the Federation Law; the definitions are also taken from the Federation Law.

#### **4.3.3.3 Rights**

Article 19 lists the social protection rights provided which are also identical to those in the Federal Law. Although under the Federation law Cantons are entitled to extend the scope of beneficiaries and social protection rights according to their capacities, the WH Cantonal Law does not provide major additions.

#### **4.3.3.4 Conditions for realization**

Social protection can only be realized by persons who are citizens of BiH and who have permanent residency in the WH Canton. Exceptionally from the Federal and other Cantonal laws, Article 7 of the Cantonal law provides that displaced persons and refugees who are registered in the area of the Canton are eligible for social protection. Persons who do not meet these requirements may temporarily realize these rights under the conditions provided by the law if their living circumstances so necessitate<sup>1</sup>.

#### **4.3.3.5 Procedure and recourse**

The procedure is initiated by submission of a request by an individual, a spouse, parent, guardian or foster parent. The procedure may also be initiated *ex officio* if the CSW considers it is necessary to do so in order to protect a party in social need. The CSWs act as the first instance body dealing with requests for social protection<sup>2</sup>. The CSW with jurisdiction in the area where the party in question (permanently) resides is responsible for making the decisions<sup>3</sup>. If a child without parental care is found outside his/her area of residence, the CSW with jurisdiction in the area where the child is found is responsible for protecting the child<sup>4</sup>. The Ministry of Labor & Social Welfare acts as the second instance body and decides on the appeals<sup>5</sup>.

#### **4.3.3.6 Institutions for children**

Article 80 of the Law lists institutions for children which are similar to those under the Federation Law. Institutions are obliged to keep records and documentation on beneficiaries as well as services and operations of the institutions<sup>6</sup>.

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<sup>1</sup> Article 7. Additionally, these rights may be realized by foreign citizens with permanent residency in the Canton under the Federal and international agreements to that effect.

<sup>2</sup> The full scope of CSW duties is provided in Article 90.

<sup>3</sup> Article 119. For persons without permanent residence, the decision is taken by the CSW with jurisdiction in area where the party has either habitual or temporary residence.

<sup>4</sup> Article 121. In the case of one-time financial assistance, the CSW approves the decision but obtain the Ministry's consent if the assistance is three times larger than the basic amount.

<sup>5</sup> An appeal does not postpone the execution of a decision. Cf this with the Federation Law which provides that a decision cannot be executed while there is an appeal on its basis.

<sup>6</sup> Article 86.

#### **4.3.3.7 Financing**

The Cantonal Law is very vague in defining the financial responsibilities of the Canton and municipalities towards social protection. The relevant provision states in very general manner that financing of social welfare should be provided by municipal and cantonal budgets as well as founders of social institutions, donations and other sources<sup>1</sup>.

#### **4.3.3.8 Supervision and monitoring**

The supervision of the implementation of the Law and the work of social protection institutions are carried out by the Cantonal Ministry<sup>2</sup>. The Cantonal Ministry keeps records of institutions and other organizations that perform social protection activities<sup>3</sup>. Aside from this general provision, the Law does not otherwise provide for any monitoring, supervision or inspection mechanism.

#### **4.3.4 Protection of families with children**

The rights provided to families with children are similar to those provided under the Federation Law<sup>4</sup>. The rights are realized, in the first instance, through the relevant CSW or the municipal service in charge of social protection where there is no CSW. The Ministry acts as the second instance body. The Law also provides for the “Week of the Child”.

### **4.3.5 Sarajevo Canton/ Canton 9**

#### **4.3.5.1 Overall scope**

The *Law on Social Protection, Protection of Civil Victims of War and Protection of Families with Children*<sup>5</sup> regulates the provision of social protection in the Sarajevo Canton. Where issues have not been regulated or addressed by the Cantonal Law, the Federation is applicable<sup>6</sup>. Social protection activities are carried out primarily by the Sarajevo CSW. The CSW is also the first instance body while the Cantonal Ministry for Labor & Social Welfare functions as the second instance body in the determination of rights and fulfillment of obligations relating to social protection.

#### **4.3.5.2 Beneficiaries**

The categories of child beneficiaries under this Law essentially mirror those outlined in the Federation Law. Additionally, the Cantonal law includes

- persons and families who have insufficient income to fulfill their basic living needs;
- persons exposed to domestic abuse and violence<sup>7</sup>.

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<sup>1</sup> Article 93 simply lists the sources from which the funding for social protection could be derived from.

<sup>2</sup> Articles 9 & 194.

<sup>3</sup> Article 87.

<sup>4</sup> Article 170.

<sup>5</sup> Official Gazette of Sarajevo Canton, No 16/02, 27 June 2002.

<sup>6</sup> Article 2.

<sup>7</sup> The determination of whether an individual has been abused and the rights ensuing are regulated by separate regulation.

#### **4.3.5.3 Rights**

Children are essentially entitled to the same rights as listed in the Federation Law.

#### **4.3.5.4 Conditions for realization**

There are no specific provisions dealing with conditions for realization. Generally social protection can only be realized by persons who are (permanent or temporary) residents of the Canton for at least one year<sup>1</sup>.

#### **4.3.5.5 Procedure and recourse**

The procedure for realization is initiated on submission of a request by a person in social need, a household member or *ex officio* by the CSW<sup>2</sup>. The Cantonal CSW makes the first instance decision on requests while the Ministry acts as the second instance (appeal) body<sup>3</sup>.

#### **4.3.5.6 Institutions for children**

The Cantonal institutions for social protection are public institutions and are established by the Cantonal Assembly<sup>4</sup>. These institutions include homes for children without parental care, safe houses, protected (psychiatric) houses and shelters for male and female children and youth. The Law refers to homes for social and health care of disabled and other persons but with no specific regard to homes for disabled children<sup>5</sup>.

#### **4.3.5.7 Financing**

The sources of funds for social protection as listed in Article 162 of the Cantonal Law mirror those of the Federation Law. The Cantonal Law further lists in two categories which rights or services are to be financed from the cantonal budget and which are to be financed from the municipal budget.

#### **4.3.5.8 Supervision and monitoring**

Monitoring of the professional work of social protection institutions is carried out by persons specially authorized to do so by the Cantonal Ministry and in accordance with the monitoring programme established by the Cantonal Ministry. Supervision of the social workers and other social protection professionals is carried out in accordance with the instructions issued by the Cantonal Ministry and by supervisors approved by the Ministry.

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<sup>1</sup> Article 6. Exceptionally, persons who have been resident in the area of the Canton since 30 April 1992 and who returnee status may qualify to apply for social protection.

<sup>2</sup> First instance decision making for protection of civil victims of war and families with children is done at the municipal level.

<sup>3</sup> Articles 67- 70.

<sup>4</sup> Article 71. Apart from the CSWs, other social protection institutions can be established by individuals and non-governmental bodies or organizations.

<sup>5</sup> Article 87. The Law also defines the conditions under which such institutions are to be established. Institutions are also required to keep records of their services and beneficiaries and submit reports to the Cantonal Ministry, which is also obliged to keep records of the institutions and other organizations dealing with social protection.

#### **4.3.6 Protection of families with children**

The protection of families with children is similar to that in the Federation Law. The Law elaborates on the entitlements and the conditions of enjoyment of these rights. The municipal mayor makes the first instance decisions on the rights of protection of families with children.

## **5 APPLICATION OF LEGAL FRAMEWORK**

### **5.1 Findings during field visits**

#### **5.1.1 Zenica-Doboj Canton/ Canton 4**

The following are findings following a meeting with the Zenica Center for Social Work & the Municipal Department for Refugees and Social Protection.

##### **5.1.1.1 Applicable Law & Organization of Centers for Social Work & Institutions**

The *Law on Social Protection 1984* from the former Socialist Republic is still being applied since the Canton has not adopted new legislation in accordance with the Federal Law requirements. There is draft legislation but the plans to adopt it have not been finalized; it is on the Parliament's agenda for December 2003. In the meantime, social protection is provided on the basis of the 1984 Law and on specific temporary decisions/instructions. However, these decisions do not in any way guarantee realization of the rights.

The Zenica CSW was founded in 1961 jointly by two municipalities. Currently it has 31 employees including 12 social workers, five lawyers, one psychologist, administrative and technical staff. Besides orphanages and the 'Most' shelter, the CSW is the main provider of social protection in the municipality. The CSW carries out a wide range of duties as provided by the Federal Law on social protection including guardianship for children without parental care and disabled children.

##### **5.1.1.2 Realization of rights**

The CSW in Zenica is the only one authorized to categorize disabled children. Disabled children are categorized usually from the age of five years before they attend school. There is an expert commission formed for this purpose in the municipality and it is composed of social workers, lawyers, psychologists and other experts. Up to three years ago, there was only one commission for the whole Canton but currently Zenica Municipality has its own commission. The commission deals with 50 to 60 cases a year. The commission advises on the treatment and care of the child. If the disability is considered to be 'minor', then the child remains with the family which is advised accordingly. If the disability is considered to be 'major', then the child is placed in an institution.

As is the case with other municipalities, the legal conditions for qualifying for financial assistance are strict. In order to qualify for permanent financial support, one must no income at all or any means of supporting themselves. This is the same for one-time financial support. The Law may have been appropriate at the time it was adopted but far too stringent for the current circumstances in BiH. Beneficiaries of financial assistance are currently about 700 in

Zenica and they receive approximately 50 KM per month. For the last few years, monthly payments in Zenica have been received regularly by beneficiaries.

One of the issues raised by the Director of the CSW was the particular social needs of the Roma community. The Roma children are characteristically found vagrant. However, many of them are not homeless and are usually sent out by their parents to go begging and return home at the end of the day. Children are sometimes sent to other municipalities and also from other municipalities into Zenica. This then becomes an issue of which municipality is responsible for their protection since residence in the relevant municipality must be established. This is also the case with displaced persons residing in Zenica.

According to the Director of the CSW, the Canton has plans to abolish child allowance because it is a financial burden to the Canton and the municipalities. In 1996, it was established that around 15,000 children would be eligible for child allowance.

### ***5.1.1.3 Social Protection Problems***

Some of the social problems faced in Zenica were identified as lack of adequate expert staff, funding, lack of understanding between Cantonal authorities and the CSW staff, lack of appropriate laws and regulation and poor working conditions for social work professionals. With regard to working conditions, although the salaries are regularly paid, they have not been reviewed and could be improved. Social workers are overburdened and although they attend seminars and workshops, they do not receive professional support.

### ***5.1.1.4 Projects and Initiatives***

The CSW is currently involved in a project on the reform of the social protection system in Zenica. This is a pilot project funded by DfID UK and it is aimed at separating the different aspects of social protections and allocating them to the responsibility of separate institutions<sup>1</sup>. For instance, the social protection for children and the youth should be the responsibility of an agency specifically established for this purpose. Both the Canton and municipalities are involved in this project. The municipalities have the administrative role in the implementation of the project. One of the results so far has been the formulation of a three-year development plan on social protection. This is the first time that the provision of social protection has been planned and there will be assessments at the end of each of the three years. Another idea in the DfID-funded project is to harmonize and increase the amounts of financial assistance to around 90 KM per month.

The CSW has twice been involved in anti-begging project but these were not successful. The project was carried out together with the Municipal Department of Social Protection, the Roma Association and the Ministry of Interior. Law enforcement was done by the Ministry of Interior who manned the streets, removed any persons who were begging and brought them to the CSW instead of taking them to court. In any event, the minor offences court does not deal with juveniles. The CSW would try to identify the root problems and provide resolution together with the Roma Association. This was successful for a while until the Ministry of Interior realized that they were dealing with the same persons time and time again and eventually stopped manning the streets. The persons found begging in Zenica were displaced persons, persons from other municipalities or persons, mostly children, domiciled in Zenica. The number of people found begging in Zenica has been increasing.

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<sup>1</sup> This project is being done in four municipalities: Banja Luka, Gornji Vakuf, Zenica and Trebinje.

The CSW is also involved in project with (65) local communities. Around 200 from the local communities were given training on how to recognize 'social protection cases' and to refer them to the CSW. In the first three months of the project, 150 cases were referred to the CSW of which 80% were valid cases for social protection. A small commission was established by the municipal authorities to assist the local communities. Feedback on the cases is given back to the local communities through the commission which renders credibility to the project. The volunteers are currently not encouraged to report on those persons who are no longer eligible for social protection so as not to endanger the success of the project. The implementation of the project cost 30,000KM and was also funded by DfID.

The Zenica CSW has established excellent cooperation with municipal authorities, NGOs and social protection institutions.

### **5.1.2 Central Bosnia Canton /Canton 6**

The following are findings following a meeting with the Centers for Social Work for Bugojno and Gornji Vakuf.

#### **5.1.2.1 Organization of Centers for Social Work**

There are 12 municipalities in Canton 6. All the municipalities have Centers for Social Work except for Kiseljak, Fojnica, Kresevo and Dobretici.

##### **Bugojno & Gornji Vakuf**

The CSW in Gornji Vakuf has 5 employees: a director, three assistants who are social workers and administrative worker. The social workers deal with the different rights provided by the legislation such as protection of families, financial support, home care and assistance, protection of civil victims of war, etc. The CSW in Bugojno was established in 1979 and was active during the war. There are nine workers in total including four social workers, a lawyer, a director and an accountant. The social workers deal with social protection in different parts of the municipality. The strengthening of the CSW has been visualized, particularly through employing additional staff. The need for a fulltime psychologist has also been identified.

##### **Vitez**

There are two CSWs in Vitez Municipality: Vitez CSW and Stari Vitez CSW. The CSWs were separated during the war. The CSWs work together officially but are based in different premises; they are headed by the same director. Stari Vitez CSW has 7 workers: one director, two social workers, a lawyer, a typist, a cashier, a cleaning lady and an administrator. The Vitez CSW has 3 employees: a social worker, a lawyer and a typist. Psychologists are hired on a temporary basis when needed.

#### **5.1.2.2 Realization of Rights**

##### **Bugojno & Gornji Vakuf**

Since the Cantonal Law on social protection was passed in August 2002, the CSWs have been able to provide permanent financial allowance, maternity leave and one-time support.

The CSWs in Bugojno and Gornji Vakuf deal with children without parental care, mentally and physically disabled children. Provision of social assistance to disabled children is means tested and is based on stringent criteria. As far as expert commissions for identification and categorization of disabled persons are concerned, it is visualized that three new regional commissions will be established following an amendment to the Cantonal Law. Although the

Centers try to place children in families, they are mostly placed in institutions in BiH. These institutions do not necessarily have to be in Bugojno and in fact, in Gornji Vakuf, there is a case of a child who was placed in an institution in Croatia. The Law on Social Protection does not regulate placements in institutions outside BiH. Rather, the placements are based on ad hoc decisions and instructions.

### Vitez

The CSWs are financed by Canton 6. They only deal with issues if people come to their office to seek assistance or on the basis of information received. The CSW give financial support to those who qualify for this right and also place children without parental care and disabled children in institutions. However, they are instructed to place children in institutions only where the placement costs are not expensive. Placement of children without parental care in institutions is unduly elongated due to the numerous documents the CSW must have before the child can be placed. Approval of the placement by the Ministry is required and the Canton must also agree to provide the necessary funding.

Children who are victims of abuse are placed in 'Most' shelter in Zenica which provides different services including daily care. The social workers gave an example of a Roma girl aged around 6 years who had been abused by his parents (mother and stepfather). Following the abuse, the child was hospitalized and this is how the CSW was informed about the case. The girl was removed from the family and taken to 'Most'. She also received psychiatric treatment in Sarajevo. This story illustrates the dangers in which children remain in since the CSW is reactive rather than proactive. Some of the children placed in institutions/shelters stay there until they attain the age of majority. Disabled children are taken to the two centers for disabled persons in Novi Travnik and Sarajevo. Identification and categorization of disabilities is done by an ad hoc commission of experts as there is no commission established in the municipality. The commission is usually composed of a paediatrician, psychologist, disability experts and a lawyer.

With regard to the Roma community, the social workers pointed out that it is difficult to provide the Roma with social protection since they are not usually registered in the municipality. However, the CSW tries to assist them with registration since it is a prerequisite to provision of social protection.

Provision of social protection in Vitez is primarily support for equipment for newborns since the eligibility conditions for this right are not too stringent and therefore many mothers qualify. Financial support is not realized by many because of the stringent conditions imposed by the law and for those qualify, they are supposed to receive 50 KM per month. However, this is always delayed and the beneficiaries receive 59 KM three times a year.

### **5.1.2.3 Social Protection Problems**

#### Bugojno & Gornji Vakuf

The CSW authorities expressed dissatisfaction with the Law, since it provides for a social protection system which cannot be implemented effectively given the insufficient funds. They proposed that the law should be amended to provide for rights and benefits which were feasible to realize. The criteria for realizing social protection is stringent and the financial assistance has also been reduced, meaning that also the number of beneficiaries who actually realize their rights have also been reduced.

## Vitez

The major social problem as identified by the social workers in Vitez is unemployment especially for the youth.

## **5.2 Findings from research**

### **5.2.1 West Herzegovina Canton/Canton 8**

#### **5.2.1.1 Organisation of Centers for Social Work & Institutions**

WH Canton has four municipalities: Posusje, Grude, Siroki Brijeg & Ljubuski. CSWs are established in Siroki Brijeg, Ljubuski and Posusje. Grude has a department of the social service which is supposed to act in the same jurisdiction as a CSW. All CSWs have re-registered and had their statutes and internal regulations amended to bring them in line with the Cantonal Law<sup>1</sup>. The CSWs were required to revise their status of permanent beneficiaries according by 1 January 2002. This revision was completed in Grude, Ljubuski and Posusje but until now, Siroki Brijeg has not complied. There are no other institutions for social protection in the WH Canton other than the CSWs that are established and run by the cantonal or municipal authorities. Social welfare beneficiaries residing in the territory of the Canton have been placed in institutions function in the rest of BiH and in the Republic of Croatia. The cost of social services in institutions in Croatia is twice as high as that in the BiH; the costs are paid from the Cantonal budget of the WH Canton. There is no legislation between Croatia and BiH regulating this matter<sup>2</sup>.

#### **5.2.1.2 Realization of Rights**

None of the CSWs have established commissions of experts as required by the Law. Ljubuski municipality has formed only one commission on mentally and physically handicapped children. Posusje and Grude claim to base their opinions and findings on the categorizations provided by commission in Mostar and/or Sarajevo. The lack of funding for payment of commission experts is the main reason given by the municipalities for failure to establish the commissions as anticipated by the Law. The CSWs were of the opinion that the establishment of a commission or more per municipality is unrealistic and that municipalities should be allowed to form one per 2 or 3 municipalities or for the entire WH Canton. Article 24 of the Law allows for municipalities to establish joint commissions of experts. It is difficult to believe that the CSWs are unfamiliar with this provision in the law and this may just be an excuse; the implication is that the CSWs may not appreciate the full value of the expert commissions and may only view it as marginal and symbolic. Under current Cantonal legislation and regulations, commissions have a broader and more important role than just categorization of beneficiaries.

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<sup>1</sup> This was required by the Law as stipulated in Article 200.

<sup>2</sup> The authorities are also reluctant to provide information on the number of BiH persons placed in institutions in Croatia.

### ***5.2.1.3 Financing and Implementation***

The salaries and expenses of CSWs staff are paid from the municipal budget. Funds for social assistance are drawn from the Cantonal budget. These funds are however not received promptly thus resulting in delays in payment of social benefits to beneficiaries. The municipalities have received threats of lawsuits from beneficiaries for non-payment of social allowances but no legal claims have been brought so far. There is also an issue of prioritization of beneficiaries. While the Federation Law provides more favorable conditions to children and adult with permanent mental or physical handicaps, the WH Canton Law does not provide any explicit prioritization. However the Ministry claims that the Canton allocates finance with the following priorities: disabled children, elderly people, IDPs and refugees.

The WH Canton does not receive any financial support for social protection from the Federal Government. The Canton and municipalities face a financial deficit for the full implementation of the Law on Social Welfare. The Cantonal authorities have commented that the implementation of social policy should not be left mainly to Cantons but that the State and entities should bear the largest burden in terms of financial provision.

## 6 COMPARATIVE ANALYSIS OF LEGAL FRAMEWORK

### 6.1 Analysis by regulation

Issue	RS	FBiH	Cantons	Comment
<b>1. Children as Beneficiaries of social protection</b>	<p>Children without parental care</p> <p>Children who are physically or mentally disabled</p> <p>Children whose development is disturbed by family circumstances</p> <p>Children with neglected upbringing and demeanor</p>	<p>Children without parental care</p> <p>Educationally neglected children</p> <p>Children who are uncared for</p> <p>Children whose development is disrupted due to family circumstances</p> <p>children with disabilities and with disturbed physical and psychological development</p>	<p><i>Una Sana</i>: Identical to FBiH</p> <p><i>West Herzegovina</i>: Identical to FBiH</p> <p><i>Sarajevo</i>: Identical to FBiH but also includes persons exposed to domestic abuse and violence.</p>	<p>The categories of child beneficiaries are almost identical.</p> <p>The distinction between uncared for children and educationally neglected children in FBiH is not entirely clear.</p> <p>Although the intention of the Law is to provide protection, children are categorized as having negative behavior or violating generally accepted norms of behavior and not primarily as victims of abuse, neglect or violence in need of special protection. Only in Sarajevo Canton law is there provision for persons exposed to domestic abuse and violence.</p>
<b>2. Rights of child beneficiaries</b>	<p>Material assistance</p> <p>Vocational education for children and the youth</p>	<p>Financial and other material assistance</p> <p>Vocational education for</p>	<p><i>Una Sana</i>: Identical to FBiH. The Law specifies the amounts and levels and assistance.</p>	<p>The rights provided are very similar.</p>

Issue	RS	FBiH	Cantons	Comment
	<p>Accommodation in another family or in social protection institutions</p> <p>Social and other professional services</p> <p>Compensation for assistance and care of another person</p> <p>These rights cannot be ceded or be the subject of enforcement (Art 6).</p>	<p>children and the youth</p> <p>Accommodation in another family</p> <p>Accommodation in social protection institutions</p> <p>Social and other professional services</p> <p>Home care and assistance</p> <p>Cantonal legislation determines the amounts and level of monetary and material assistance.</p>	<p><i>West Herzegovina:</i> Identical to FBiH. The Law defines the entitlements under the rights.</p> <p><i>Sarajevo:</i> Identical to FBiH. The Law defines the entitlements.</p>	
<p><b>3. Conditions for realization of entitlements</b></p>	<p>Law only deals with eligibility for right to material assistance.</p> <p>Beneficiary (permanent or temporary) must be resident in the territory of the relevant municipality.</p> <p>Disability (for minors) is determined by expert commissions to be formed by the municipal authorities</p>	<p>In accordance with Cantonal legislation.</p> <p>Cantonal legislation determines the conditions and procedures for realization of rights (Art 9).</p>	<p><i>Una Sana:</i> Permanent or temporary residence for at least six months generally required.</p> <p><i>West Herzegovina:</i> Persons must be BiH citizens with residency in WH Canton or registered displaced persons and refugees.</p> <p><i>Sarajevo:</i> Generally permanent or temporary residence for at least one year required; also returnees who have been resident in Canton since 30 Apr 1992.</p>	<p>The requirement of residence presents a problem for the homeless and Roma people, some of whom do not possess sufficiently strong or clear types of property titles to be eligible to have their pre-war homes restored to them as of right through the property laws. Others inhabit homes illegally and cannot therefore prove their residence.</p>

Issue	RS	FBiH	Cantons	Comment
<p><b>4. Procedure for realization and recourse</b></p>	<p>Initiated by submission of request by individual or <i>ex officio</i></p> <p>First instance decision determined by CSW &amp; appeal by Ministry of Health &amp; Social Welfare (the Ministry)</p> <p>Conducted according to Law on General Administrative Procedure</p>	<p>In accordance with Cantonal regulation</p>	<p>Identical for <i>Una Sana, West Herzegovina &amp; Sarajevo</i>:</p> <p>Initiated by submission of request by individual or <i>ex officio</i></p> <p>First instance decision determined by CSW &amp; appeal by Ministry of Labor &amp; Social Policy (the Ministry)</p> <p>Jurisdiction of CSW is based on residence of applicant</p>	<p>The procedure for realization is similar for both entities and cantons. The jurisdiction of CSW is usually based on residence of applicant.</p>
<p><b>5. Social Protection Institutions (SPIs)</b></p>	<p>Homes for children without parental care &amp; children whose development is hindered by family circumstances</p> <p>Homes for disabled children</p> <p>Reception units/shelters for children and the youth</p> <p>Law provides for their establishment, management and maintenance of records.</p>	<p>Institutions for children without parental care</p> <p>Institutions for neglected and uncared for children</p> <p>Institutions for disabled children</p> <p>Day-care centers</p> <p>Establishment and management are regulated by Cantonal Law.</p>	<p><i>Una Sana</i>: Similar to FBiH</p> <p><i>West Herzegovina</i>: Similar to FBiH</p> <p><i>Sarajevo</i>: Similar to FBiH but no specific provision for homes for disabled children.</p> <p>Additionally, Cantonal provisions include shelters, discipline centers, rehabilitation centers and safe houses.</p>	<p>Although the provisions between the entity and Cantonal laws are similar, Cantonal laws additional institutions for children.</p>
<p><b>6. Supervision and Monitoring</b></p>	<p>Supervision of professional work is done by the Ministry of Health &amp; Social Welfare</p>	<p>No specific provision for supervision of professional social work</p> <p>CSWs are responsible for</p>	<p><i>Una Sana</i>: Supervision of professional work is done by the Ministry.</p> <p><i>West Herzegovina</i>: Supervision</p>	<p>Apart from FBiH, the Laws regulate the supervision and monitoring of social work and professionals.</p>

Issue	RS	FBiH	Cantons	Comment
		<p>monitoring placement and care of children in institutions and for maintaining contact with placement families.</p>	<p>of the implementation of the Law and the work of social protection institutions are carried out by the Cantonal Ministry.</p> <p><i>Sarajevo:</i> Supervision and monitoring of social work by institutions and social work professionals is done by the Cantonal Ministry.</p>	<p>Except in FBiH, there is no explicit provision for monitoring placement, treatment and care of children and for maintaining contact between parents, families and children.</p>
<p><b>7. Financing</b></p>	<p>Funds for social protection are drawn from RS and municipal budgets.</p> <p>CSWs are responsible for forwarding funds to social protection institutions.</p>	<p>Funds for social protection provided primarily from:</p> <ul style="list-style-type: none"> <li>- Cantonal and municipal budgets.</li> <li>- investments of the founder(s) of the institutions</li> <li>- personal contribution of beneficiaries</li> <li>- endowments and wills</li> </ul>	<p><i>Una Sana:</i> Identical to FBiH. Funds may be drawn from Federal budget if available. Law defines which aspects are to be financed by Cantonal budget and by municipal budgets.</p> <p><i>West Herzegovina:</i> Identical to FBiH.</p> <p><i>Sarajevo:</i> Sources of funding identical to FBiH. Law defines which aspects of to be financed by Cantonal budget and by municipal budgets.</p>	<p><i>West Herzegovina</i> provision for financing is very vague; there is no provision of the divisions of financial participation between the municipalities and the Canton.</p>
<p><b>8. Penalties</b></p>	<p>No provisions in the Law</p>	<p>Penalties are imposed where a beneficiary is denied his/her rights; a person is allowed to benefit rights wrongfully; a</p>	<p><i>Una Sana:</i> Penalty provisions are provided for institutions (1,000-5,000 KM), individuals (500-1,000 KM) and employers</p>	

Issue	RS	FBiH	Cantons	Comment
		<p>child is placed on in an unsuitable family; an institution refuses to admit a child recommended by CSW; an institution releases a child contrary to the Law.</p> <p>Penalty for institution is 500-1000 KM while for individual it is KM 100-400.</p> <p>Penalties of 100-400 KM are imposed on placement families which make decisions regarding medical treatment of child without consent of the child's parents.</p>	<p>who fail to comply with specified duties according to the Cantonal Law.</p> <p><i>West Herzegovina:</i> Similar to FBiH. Fines are for institutions (500-5,000 KM), individuals (50-500 KM) and foster families (40-400 KM).</p> <p><i>Sarajevo:</i> No provisions in the Law</p>	

6.2 Analysis by key CRC provisions

CRC Provision	RS	FBiH	Cantons	Comment
<b>1. Definition of a child (Art 1)</b>	No reference	Art 6: Child is defined as a person who is below the age of 18 years For the purpose of realizing the right to claim child allowance or scholarships or stipends for pupils and students, a child is considered to be a person of at least 18 years but less than 27 years of age.	<i>Una Sana</i> : No reference <i>West Herzegovina</i> : A child is regarded under this law as a person below the age of 15 years, or if attending regular schooling, up to 19 years of age. <i>Sarajevo</i> : No reference	The FBiH definition may be taken to apply to the Cantons.  The RS Constitution has no reference either so a definition cannot be inferred from it.
<b>2. Non-discrimination (Art 2)</b>	No reference	Article 50: In the performance of their (social welfare) activities, institutions of social protection cannot impose restrictions on the basis of listed social strata	<i>Una Sana</i> : No reference <i>West Herzegovina</i> : No reference <i>Sarajevo</i> : No reference	Non discrimination principle in FBiH law applies with regard to institutions.  The principle should explicitly be provided in the Laws and be applied across the board especially with regard to minorities since they are not listed as part of the peoples of BiH in the State Constitution, e.g. the Roma.
<b>3. Best Interests of the Child (Art 3)</b>	No reference	Social protection of the child is exercised in the best interests of the child (Art 11).  Protection of families with	<i>Una Sana</i> : No reference <i>West Herzegovina</i> : Social protection of the child is exercised in the best interests of	In FBiH and West Herzegovina Canton, the Laws fall short of requiring that the best interests of the child be a primary

CRC Provision	RS	FBiH	Cantons	Comment
		children involves ensuring financial and other means, for upbringing and care of children for independent life and in the best interests of the child (Art 87).	the child (Art 11). <i>Sarajevo</i> : No reference	consideration. It is important to ensure that the best interests of the child underline decisions taken on his/her behalf, especially in decisions which may result in removal of the child from the family, placement in an institution or another family.
<b>4. Separation from parents; continued contact of child with parents while in the care of the state to the maximum extent compatible with the child's best interests (Art 9)</b>	No reference	No explicit reference.	<i>Una Sana</i> : No reference <i>West Herzegovina</i> : No reference <i>Sarajevo</i> : No reference	BiH has a reservation on Art 9(1) since the law provides for competent (guardianship) authorities to determine separation of children without recourse to judicial review
<b>5. Respect for the views of the child</b>	No reference	No explicit reference but the Law requires that consent of the parents and the child (15 years old plus) be sought before placement in a foster family.	<i>Una Sana</i> : No reference <i>West Herzegovina</i> : No reference <i>Sarajevo</i> : No reference	Since the separation of children from their families takes place without recourse to judicial review, the requirement of consent in FBiH is a good safeguard although there may be cases where the requirement parents' consent may not be in child's best interests.

CRC Provision	RS	FBiH	Cantons	Comment
				It is also important that the child's views are also given due consideration and they should not be substituted by those of the parents. This should be reflected in the legislation.
<b>6. Children deprived of family environment, State responsibilities to provide alternative care (Art 20)</b>	Provides for placement of children with another family or in an institution if the child has no family or relatives to support him/her or if the relatives are unable to care for him/her: (Arts 20, 33-43)	Provides for placement of children with another family or in an institution if the child has no family or relatives to support him/her or if the relatives are unable to care for him/her (Arts 19, 31-40, 41-45)	<i>Una Sana, West Herzegovina &amp; Sarajevo: Identical to FBiH.</i>	There is nothing in the Law that stipulates that placement in another family should be precede placement in an institution. There is no requirement that institutionalization be seen only as a last resort. In addition, there seems to be no obligation to inform children of the reasons why they are being removed from their family and being taken into alternative care.
<b>7. Rights of disabled children (Art 23)</b>	Disabled children are entitled to vocational education and accommodation with another family or in institution. (Arts 30, 37 & 38)	Disabled children are entitled to vocational education, accommodation with another family or in an institution. (Arts 29, 32 & 41)	Sarajevo: There is no provision in the Law requiring that disabled children be placed in separate institutions from adults and this is also the case in practice.	No explicit reference in the Laws that institutionalization of children, especially disabled children, should be seen as a last resort and that families should be supported in order to help them provide suitable environment for upbringing and

CRC Provision	RS	FBiH	Cantons	Comment
				development of the child.
<b>8. Periodic review of placement for children in care (Article 25)</b>	No reference	No specific reference. However, the Law requires that the Centers for Social Work assist foster families and maintain contact with the child through regular visits (Art 33).	<i>Una Sana</i> : No reference <i>West Herzegovina</i> : No reference <i>Sarajevo</i> : No reference	The Law should explicitly provide for periodic review of placement for children in alternative care through regular visits and reports from placement families and institutions.
<b>9. Social Security (Art 26)</b>	Certain categories of children are entitled to social protection (Arts 10-14)	Certain categories of children are entitled to social protection (Art 12)	<i>Una Sana, West Herzegovina &amp; Sarajevo</i> : Identical to FBiH.	These categories in RS & FBiH are very similar and mainly include children without parental care, disabled children, neglected children.

## 7 CONCLUSION

The Laws on Social Protection in both Entities are similar in many aspects. In comparison to the RS Law, the Federation Law seems to make more reference to children's rights. Generally, the Laws are wide-ranging in terms of the beneficiaries and forms of social protection covered. In the light of the present social and economic circumstances in BiH, the Laws may be termed as ambitious; while the letter of the Law may demonstrate a commitment to protecting the vulnerable individuals in society, implementation of the Laws is far from being achieved.

As far as social protection for children is concerned, the Laws provide for various forms of protection for certain categories of children. While some of the Laws mention that the realization of social protection for children be given favorable consideration and exercised in the best interests of the child, there is no sufficient commitment both in the letter of the Law and in practice. This is well illustrated by the lack of a proper foster family system in BiH and the practice of institutionalization of children without parental care. In some cases, children are placed in institutions in Croatia without any legal regulation to monitor such placements.

One of the key conditions for eligibility for social protection is the requirement of permanent or temporary residence in the Canton or municipality. This raises an issue with regard to children or persons who cannot prove residence since they may be homeless, displaced or refugees. In particular it is an issue as far as the Roma community is concerned since many of the Roma people do not possess proper property titles. This requirement also presents an obstacle in the protection of victims of trafficking, many of whom may not be able to provide immigration documentation let alone proof of residence in a particular area.

With regard children without care, the principle that institutionalization, especially for disabled children, be seen as a last resort is not reflected in the legislation. With regard to disabled children, social assistance given to them should not result in their isolation from society but rather to enable self-reliance and integration and participation in society. Their education, training, alternative care, play and recreation should be provided in an integrated setting. Special care and assistance for disabled children should not be means tested and support should be provided to parent are in bringing up disabled children.

In addition, there is no explicit provision in the Laws for the periodic review of children in care. In addition, there seems to be no obligation to inform children of the reasons why they are being removed from their family and being taken into alternative care. This is the same as regards informing children who are capable of independent life and who leave care at the age of majority about their rights, social benefits such as housing, etc. Children who have reached the age of majority sometimes are forced to remain in care because they have nowhere else to live<sup>1</sup>.

In general, the Laws on Social Welfare do not provide for intervention measures in the protection of children. This is evidenced in practice by the information received from the Center for Social Work in Vitez where they mostly deal with persons who attend the Center; rarely do they intervene.

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<sup>1</sup> UNICEF, *Unaccompanied Children and Children and Children at Risk of Being Institutionalized in Bosnia and Herzegovina*, 2003.

Any legal reform with regard to social protection of children must focus not only at the incorporating the special need of protection for children, must be tailored in a manner that can be implemented. It is also to look at the practice in the Cantons where new legislation has not been drafted but where social protection is still provided, such as Zenica-Doboj Canton. It is also imperative to identify examples of good practice in social protection which can form a sound basis for enforceable legislation.

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### **Constitutions & Legislation**

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- Constitution of Republika Srpska 1992
- Federation Law on the Basis of Social Welfare, Protection of Civilian War Victims and Families with Children 1999
- RS Law on Child Protection 1996
- RS Law on Social Welfare 1993
- Una Sana Canton Law on Social Protection, Protection of Civilian Victims of War and Protection of Families 2000
- West Herzegovina Canton Law on Social Protection, Protection of Civilian Victims of War and Protection of Families 2001
- Sarajevo Canton Law on Social Protection, Protection of Civilian Victims of War and Protection of Families 2002

## 9 ABBREVIATIONS

BiH	Bosnia and Herzegovina
CPF	Child Protection Fund in Republika Srpska
CRC	Convention on the Rights of the Child
CSW	Center for Social Work
DfID	Department for International Development, United Kingdom
FBiH	Federation of Bosnia and Herzegovina
PRSP	Poverty Reduction Strategy Programme
RS	Republika Srpska
SPI	Social Protection Institution
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund