

From Collection to Prevention

Preconditions for Comprehensive Gathering of
Information on Discrimination in Bosnia and Herzegovina



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Emina Ćerimović
Dženana Hrlović



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Authors:

Emina Ćerimović

Dženana Hrlović

Editor:

Edin Hodžić

Reviewer:

Saša Madacki

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info@analitika.ba

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Zlatko Čustović

Cover design:

Vanesa Prodanović and Tarik Hodžić

Inside design:

Branka Ilić

DTP:

Jasmin Leventić

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Open Society Fund B&H Anti-Discrimination Program

The report is produced within the framework of the Open Society Fund B&H Anti-Discrimination Program, which brings together partner organizations across B&H divided into four teams committed to key activities in the field of combating discrimination: monitoring, documenting and reporting, strategic litigation, policy analysis, and advocacy.

For more information on the Open Society Fund B&H Anti-Discrimination Program, please visit the website www.diskriminacija.ba.



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1.

Introduction

The adoption of the Law on the Prohibition of Discrimination (hereinafter LPD) in July 2009, was a milestone in the efforts to ensure the right of each individual in Bosnia and Herzegovina (BiH) to the protection from discrimination. The institutional framework for the protection against discrimination was defined through the appointment of the Institution of the Human Rights Ombudsman of BiH as the central institution for the protection against discrimination and the appointment of the Ministry for Human Rights and Refugees of BiH as the central institution responsible for monitoring the implementation of the LPD.¹

The LPD provisions provide for important protection mechanisms and activities aimed at the prevention and elimination of discrimination in BiH. The protection mechanisms defined under this Law are the discrimination lawsuits² and the proceedings in response to the complaints lodged with the Institution of Ombudsman of BiH.³ The effectiveness of protection mechanisms in discrimination cases before the Ombudsman is further enhanced by the introduction of a minor offence liability for the failure to act upon Ombudsman's recommendation in a concrete case.⁴ In addition, the Law provides for an important obligation of the competent state bodies to collect, consolidate and analyse data on discrimination cases.⁵

The activities of collecting and analysing data on discrimination are recognised as one of the key measures undertaken by governments in fighting discrimination.⁶ However, collecting data in this field is a complex task for which the best modalities

¹ "Zakon o zabrani diskriminacije BiH" [Law on the Prohibition of Discrimination of BiH], *Official Gazette of BiH* 59/09, Articles 7 and 9.

² *Ibid*, Articles 11 and 12.

³ *Ibid*, Article 7, para. 2, item e).

⁴ *Ibid*, Article 19, para. 4.

⁵ *Ibid*, Article 7, para. 1, item e), Article 8.

⁶ Patrick Simon, "Ethnic" statistics and data protection in the Council of Europe Countries: Study report (Strasbourg: European Commission against Racism and Intolerance, 2007); See: European Commission Directorate-General for Employment and Social Affairs, *Comparative study on the collection of data to measure the extent and impact of discrimination within the United States, Canada, Australia, the United Kingdom and the Netherlands* (Luxembourg: Office for Official Publications of the European Communities, 2004), p. 5.

are yet to be found. There is no universally accepted model for the collection of such data and the methodology used differs between countries. In addition, there are certain dilemmas as to whether the collection of this data is justified with regards to ethical issues (for example, allegations that discrimination data itself reinforces prejudices and discrimination patterns),⁷ financial implications, and privacy protection concerns. However, the multiple benefits of reliable data on discrimination, particularly in the context of strengthening the measures and policies against discrimination, clearly indicate that the collection of data on discrimination requires special attention.

Currently, the data on discrimination in BiH is collected in a fragmented manner, on an *ad hoc* basis, and the LPD provisions that regulate this matter are implemented with delay. The Rulebook on Methods of Collecting Data on Cases of Discrimination in BiH (hereinafter the Rulebook), which was supposed to be adopted within 90 days after the Law enters into force, was adopted almost four years later – at the beginning of April 2013.⁸ In addition, the central database on discrimination cases (the central database) has not been established yet, and the above-mentioned Rulebook stipulates its establishment only by the end of 2013.⁹

It is clear that an effective fight against discrimination requires both, the adoption of appropriate legal and institutional framework, as well as taking concrete steps in order to ensure its implementation.¹⁰ In this regard, taking into account the current legal framework in this field, this study attempts to answer the questions as to *what are the key difficulties that the competent institutions face in collecting data on discrimination in BiH and what needs to be done to overcome them?* The goal of this study is to provide recommendations for a better, more comprehensive, and consistent data collection on discrimination in BiH.

⁷ For more details: Simon, “*Ethnic*” statistics and data protection in the Council of Europe Countries, p. 37.

⁸ “Pravilnik o načinu prikupljanja podataka o predmetima diskriminacije u Bosni i Hercegovini” [Rulebook on Methods of Collecting Data on Cases of Discrimination in BiH], *Official Gazette of BiH* 27/13.

⁹ *Ibid*, Article 13.

¹⁰ European Commission, “Communication from the Commission to the Council, the European Parliament, the European Economic and Social committee and the Committee of the Regions - Non-discrimination and equal opportunities for all - A framework strategy SEC(2005) 689” (Brussels: European Commission, June 1, 2005), p. 2; and Timo Makkonen, *European Handbook on Equality Data* (Luxemburg: European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, 2006), pp. 11-12.

In seeking to address the key research questions, first, the relevant literature on the subject of the collection of data on discrimination was reviewed. Then, the LPD, the Rulebook on Methods of Collecting Data on Cases of Discrimination in BiH, other national legislation relevant to this subject matter, legislation of other countries, including international documents related to the collection of data on discrimination, were analysed. Also, the system of data collection on discrimination cases in BiH was examined, as provided for in the LPD, i.e. the manner in which the Ministry for Human Rights and Refugees of BiH, The Institution of Human Rights Ombudsman of BiH and other stakeholders interpret the relevant provisions of the LPD and their own obligations as prescribed by law. In addition, in order to compare the BiH system of data collection with the best comparative practices, an analysis of current and planned activities of the key BiH players in this field was undertaken. Due to the lack of secondary data on this subject matter in BiH, a total of 14 interviews with the key stakeholders, including the representatives of institutions responsible for the implementation of the LPD, were conducted. Finally, with the aim of identifying good practices and possible solutions to the identified problems, a comparative analysis of the experiences of the countries in the region and the European Union (EU) in the collection of data on discrimination was also conducted.

The above-described goal of the study also largely determines its structure. The first part of the study elaborates on the *importance* of data collection in fighting discrimination. The second part of the study deals with the type of data on discrimination that should be collected, focusing on the comparative experiences and the legal framework for the collection of discrimination data in BiH. The following section attempts to answer the question as to who collects data on discrimination. In addition, this section aims to identify some of the basic preconditions for successful collection of data on discrimination. The fifth section of the study aims to identify the methods for the collection of data on discrimination and the sources of such data in the light of international standards and comparative experiences. This section additionally provides an overview of the sources of data in BiH. Given the complex ethical issues inevitably arising in the collection of such, usually sensitive, data, the subsequent section seeks to address the privacy protection concerns in data collection, followed by the section that deals with the issue of access and availability of the collected data. Finally, an overview and analysis of the current situation in this field in BiH, as well as the experiences of other countries, served as a useful framework for proposing recommendations in order to improve the collection of data on discrimination in BiH.

2.

Why Do We Collect Data on Discrimination?

There are numerous reasons why the collection of discrimination data is important. Accurate and reliable data may serve as a convincing basis for determining the existence and the extent of discrimination, with the aim of creating efficient measures and policies for improving the protection against this negative social phenomenon.¹¹ The need for the collection of data on discrimination in order to create adequate protection measures was recognised at the EU level through the adoption of EU directives on equal treatment¹² and through the launch of the Action programme to combat discrimination.¹³

Furthermore, the collection of data is necessary in order to comply with particular human rights treaty provisions on prohibition of discrimination in practice. For example, the International Covenant on Civil and Political Rights and the UN Convention on the Elimination of All Forms of Racial Discrimination oblige state parties to take appropriate steps to ensure enjoyment of the right to equality and compliance with the principles of non-discrimination, which may include the

¹¹ Timo Makkonen and European Network of Legal Experts in the non-discrimination field, *Measuring discrimination: Data Collection and EU Equality Law* (Luxemburg: Office for Official Publications of the European Communities, 2007), p. 5 and 12; See: Makkonen, *European Handbook on Equality Data*, p. 21.

¹² The Council of the European Union, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, *Official Journal of European Union* L 18/2000; The Council of the European Union, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, *Official Journal of European Union* L 303/2000; The Council of the European Union, Council Directive 2004/113/EC of 13 December 2004 implementing the principle of the equal treatment between men and women in the access to and supply of goods and services, *Official Journal of European Union* L 373/2004; The Council of the European Union, Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Recast Directive), *Official Journal of European Union* L 204/2006.

¹³ The Council of the European Union, Council decision 27/11-2000 of 27 November 2000 establishing a Community action programme to combat discrimination 2000/750/EC (2001 to 2006); See: European Commission, *Comparative study on collection of data*, p. 5.

obligation to thoroughly investigate alleged discriminatory conduct.¹⁴ Such an international obligation to investigate may require the collection of appropriate data, considering that the quantitative and the qualitative data may confirm or deny the allegations of discrimination.¹⁵ The existence of such data also allows specialised national bodies (such as the Ombudsman or Anti-discrimination Commission/Body) and international monitoring bodies (such as the UN bodies or ECRI) to effectively monitor compliance with human rights standards, including the right to protection from discrimination.¹⁶ It is important to note that, unlike other human rights treaties, the UN Convention on the Rights of Persons with Disabilities explicitly obliges state parties, including BiH, to collect statistical data on persons with disabilities, including data on discrimination against them.¹⁷

The bodies monitoring the implementation of human rights treaties in Bosnia and Herzegovina have repeatedly drawn attention to the need to collect and record data on discrimination. Thus, for example, the Recommendations of the Committee on the Elimination of Discrimination against Women, which monitors the implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women, stressed in its official report to the Committee, that BiH should “prioritize data collection and include comprehensive gender-disaggregated statistical data in its next report so as to provide a full picture of the *de facto* enjoyment by women of their human rights”,¹⁸ which includes the right to protection against discrimination. In its latest report on BiH, the European Commission against Racism and

¹⁴ Makkonen and European Network of Legal Experts, *Measuring discrimination*, p. 22.

¹⁵ *Ibid*, p. 22.

¹⁶ *Ibid*, p. 5 and 12; See: Makkonen, *European Handbook on Equality Data*, p. 23. For example: UN Committee on the Elimination of All Forms of Racial Discrimination urges state parties to the Convention on the Elimination of All Forms of Racial Discrimination in the General Comment on Discrimination against Roma to “include in their periodic reports, in an appropriate form, data about the Roma communities within their jurisdiction, including statistical data about Roma participation in political life and about their economic, social and cultural situation, including from a gender perspective.” United Nations Committee on the Elimination of Racial Discrimination, General recommendation XXVII on discrimination against Roma, HRI/GEN/1/Rev.7 (May 12, 2004); See: United Nations Human Rights Committee, “Consolidated guidelines for state reports under the International Covenant on Civil and Political Rights,” CCPR/C/66/GUI/Rev.2 (February 26, 2001), para. C. 6 and United Nations Committee on the Elimination of Racial Discrimination, General Recommendation IV concerning reporting by States parties (article 1 of the Convention), HRI/GEN/1/Rev.7 (May 12, 2004).

¹⁷ UN, Convention on the Rights of Persons with Disabilities, Article 31; See: Makkonen European Network of Legal Experts, *Measuring discrimination*, p. 21.

¹⁸ UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding Comments of the Committee on the Elimination of Discrimination against Women: Bosnia and Herzegovina, CEDAW/C/BIH/CO/3 (UN CEDAW, June 2, 2006), para. 18.

Intolerance (ECRI) expressed its concern about the lack of government efforts to ensure the systematic collection of information on racist violence in BiH.¹⁹

Data on the manifestation and the scope of discrimination is also important in the judicial evaluation on the existence of discrimination in a particular case.²⁰ Namely, statistics can play the key role in proving both direct and indirect discrimination.²¹ In cases of direct discrimination, statistics can show that there is a pattern of direct discrimination, and thus may constitute circumstantial evidence of discrimination in the context of a particular complaint.²² In any case of indirect discrimination, the plaintiff can use statistics to prove that the application of universal provisions or criteria affecting a number of people belonging to a particular group puts them in a disadvantaged position.²³ In addition, both the plaintiff and the defendant can use statistics to establish or contest a *prima facie* case of discrimination. Finally, the statistics can be used as a mean to dispute the evidence of the opposing side.²⁴ This is also recognised in Article 15(1) of the LPD, that stipulates that statistical data or databases can be used as evidence for proving discrimination, but they can also be important to the alleged perpetrator, on whom the burden of proof is placed, to prove “that the principle of equal treatment or the prohibition of discrimination has not been breached“.²⁵

Furthermore, the quantitative and qualitative data on discrimination can serve as a compelling factual basis for initiating a broader discussion on discrimination for the purposes of advocacy and training on this matter,²⁶ and it is particularly

¹⁹ European Commission against Racism and Intolerance (ECRI), *ECRI Report on Bosnia and Herzegovina (fourth monitoring cycle)* CRI(2011)2, adopted on December 7, 2010, published on February 8, 2011, Bosnian translation, para. 55; See: UN Committee on the Rights of the Child, Concluding observations: Bosnia and Herzegovina, CRC/C/OPSC/BIH/CO/1 (UN Committee on the Rights of the Child, October 10, 2010), para. 7.

²⁰ Makkonen and European Network of Legal Experts, *Measuring discrimination*, p. 5; See: Makkonen, *European Handbook on Equality Data*, pp. 21-22.

²¹ Adrijana Hanušić, *Judicial Protection from Discrimination in Bosnia and Herzegovina: Analysis of Laws and Practice Based on Initial Cases in This Field* (Sarajevo: Analitika – Center for Social Research, 2013), p. 44; See: Makkonen and European Network of Legal Experts, *Measuring discrimination*, p. 5; Makkonen, *European Handbook on Equality Data*, pp. 21-22.

²² Makkonen and European Network of Legal Experts, *Measuring discrimination*, p. 40.

²³ *Ibid*, p. 40.

²⁴ *Ibid*, p. 5; See: Makkonen, *European Handbook on Equality Data*, pp. 21-22.

²⁵ “Law on the Prohibition of Discrimination of BiH,” Article 15.

²⁶ Makkonen and European Network of Legal Experts, *Measuring discrimination*, p. 5 and 12; See: Makkonen, *European Handbook on Equality Data*, p. 23.

effective in the context of raising awareness of discrimination.²⁷ Availability of data on equality or inequality in a society is an essential source of information when carrying out research on discrimination, which contributes to a better understanding of this social phenomenon.²⁸ Discrimination is a complex and frequently hidden social phenomenon that becomes visible only through research efforts. Therefore, a reliable and comprehensive research based on actual data from practice is a vital precondition for the development and the effective implementation of anti-discrimination measures and policies.²⁹

Last but not least, in addition to these practical purposes, data collection on discrimination also has a symbolic significance. These activities convey a number of messages to the general public, i.e. that discrimination is not acceptable, that its occurrence is a serious problem and that the necessary measures for its elimination will be taken.³⁰

²⁷ Niklas Reuter, Timo Makkonen and Olli Oosi, *Study on Data Collection to Measure the Extent and Impact of discrimination in Europe: Final report 7.12.2004*. (Finland: Net Effect Oy, 2004), p. 14; See: Makkonen, *European Handbook on Equality Data*, p. 23.

²⁸ Makkonen and European Network of Legal Experts, *Measuring discrimination*, p. 12; See: Makkonen, *European Handbook on Equality Data*, p. 23.

²⁹ Makkonen, *European Handbook on Equality Data*, p. 23.

³⁰ *Ibid.*

3.

Which Data on Discrimination Should be Collected?

Defining which data is important with respect to keeping records on discrimination, particularly in the context of the BiH legal framework, is the main precondition for a more in-depth analysis of problems and challenges in implementing the LPD provisions in this field. However, this is also where the first issue regarding the discrimination data collection arises. Namely, the LPD does not provide a clear guidance on what types of data should be collected. In the part of the law that refers to record-keeping, the Law mentions data collection activities that include “data on the manifestations and the scope of discrimination”³¹ and “data on the cases of discrimination”.³² In addition, the LPD foresees that only the data on the *committed* acts of discrimination should be collected in the central database.³³ At the same time, it prescribes that competent authorities in BiH are required to regularly keep records of all *reported* cases of discrimination.³⁴ The confusion in terms of wording in the Law was transferred into subsequent discussions and activities aimed at defining a framework for data collection on discrimination in BiH. As the above-mentioned concepts regarding data on discrimination are vague and imprecise, their differences and implications are outlined in the section below.

3.1. Data on Discrimination Cases

3.1.1. The LPD and the Rulebook Provisions

The narrow interpretation of the LPD provision stipulating that the central database should contain only the data on *committed* acts of discrimination implies that only the data on acts of discrimination that have been established as such by

³¹ “Law on the Prohibition of Discrimination of BiH,” Article 8, para. 2.

³² *Ibid*, Article 7, para. 2, item e); Article 8, paras. 1 and 4.

³³ *Ibid*, Article 8, para. 5.

³⁴ *Ibid*, Article 8, para. 1.

the Parliamentary committees,³⁵ the executive, the administrative or the judicial authorities should be collected in the central database. If that was the case, the data on reported/alleged discrimination would not be recorded. However, the current Rulebook provides that data on all *reported* cases of discrimination shall also be regularly recorded in the central database. It follows that the central database is also to include data on the recently instigated proceedings, as well as the proceedings not necessarily resulting in “establishing discrimination”.³⁶ Accordingly, the database is to contain data on all cases of discrimination, regardless the stage of the proceedings.³⁷

The data on discrimination that will be collected from the individual cases pursuant to the Rulebook³⁸ is as follows:

- General information about the complainant/plaintiff - name, father’s name, gender, type of lawsuit (individual or collective) or complaint about discrimination, date of birth, municipality of residence and nationality;
- Information about the defendant - whether it is a public authority, a natural or legal person in the private sector, a natural or legal person in the public sector and the name and the seat of the plaintiff;
- Information about the perpetrator of discrimination - whether it is a public authority, a natural or legal person in the private sector, a natural or legal person in the public sector and the name and the seat of the perpetrator;
- Information about proceedings for protection against discrimination - the date of the instigation and conclusion of the proceedings, whether it was a complaint or legal action in court (rejected, dismissed or sustained), type of procedure (administrative, civil, non-contentious litigation and other proceedings) and the type of issued decision;
- Information about forms of discrimination - the manner of commission and the form of discrimination (direct or indirect discrimination, harassment, sexual harassment, mobbing, segregation, ordering others to discriminate, aiding and abetting discrimination and incitement to discrimination);³⁹
- Information about the basis for discrimination - sex, race, age, colour, language, religion, ethnicity, national or social origin, connections with a national minority,

³⁵ For example, the Joint Committee on Human Rights, Rights of Children, Youth, Immigration, Refugees, asylum and Assembly, as well as the competent bodies (commissions and committees) for the protection of human rights in the Federation Parliament and the National Assembly of the Republika Srpska.

³⁶ “Rulebook on Methods of Collecting Data on Cases of Discrimination in BiH,” Article 3, para. 2.

³⁷ *Ibid.*

³⁸ *Ibid.*, Article 7, para. 2.

³⁹ Pursuant to Articles 3 and 4 of the Law on the Prohibition of Discrimination of BiH.

political or other opinion or affiliation, property, membership in a trade union or other associations, education, sexual expression or orientation or other circumstances that have the purpose or effect of preventing or affecting the equal recognition, enjoyment or exercise of the right of any person;⁴⁰

- Information about the area of discrimination - 15 areas are enumerated (for example, the areas of education, science and sports or health care);⁴¹
- Information about the institution providing information – an institution or a body that provides information and the area of discrimination, applicable laws, regulations and internationally accepted standards that have been violated.

3.1.2. Limitations of the Current Definition of Data on Discrimination

The above-described framework for collecting data on discrimination has several problematic parts. First, with regards to the concept of identifying discrimination itself, it is unclear why the Rulebook does not provide for the collection of a wider range of information on the claimant, and also on the perpetrator/defendant. Socioeconomic status, religious affiliation, potential disability or any other circumstance pertaining to the claimant (i.e. the victim of discrimination) that could result in an unequal and discriminatory treatment should be recorded. In addition, it would be useful to record the number of instances the claimant has reported discrimination.⁴² Furthermore, it would be equally useful to expand the amount of relevant information about the defendant/perpetrator, particularly when the defendant/perpetrator is a natural person. In this regard, it is important to provide for the collection of information on age, sex, ethnicity or nationality, socioeconomic status, membership in extremist movements and organizations and, in particular, whether the defendant is a repeat perpetrator of offences defined under the LPD.⁴³ This additional information would ensure greater comparability of data and identification of trends; it would assist in the identification of vulnerable groups and, in general, create a stronger and more concrete basis for analysing the actual situation in this field in Bosnia and Herzegovina. Such additional information could be used in the research on multiple discrimination, which is usually a complex phenomenon that is difficult to identify.⁴⁴

⁴⁰ Basis for discrimination set forth in the Rulebook are in line with LPD. See: Law on the Prohibition of Discrimination of BiH, Article 2.

⁴¹ *Ibid*, Article 6.

⁴² Reuter and associates emphasize the need to collect data on victims and potential victims of discrimination. See: Reuter, Makkonen and Oosi, *Study on Data Collection*, p. 14.

⁴³ Compare with the identified data the experts believe should be collected in the EU. See: *Ibid*.

⁴⁴ European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, *Tackling Multiple Discrimination: Practices, policies and laws* (Luxembourg: Office for Official Publications of the European Communities, 2007), p. 49.

In addition, the Rulebook also provides for the obligation of submitting statistical data on reported and completed cases on discrimination to the Ministry.⁴⁵ The data is collected for the purpose of drafting reports and proposing measures for the prevention and suppression of discrimination in accordance with the Ministry's obligations.⁴⁶ The Rulebook stipulates that, "in order to carry out research and conduct analyses" and as necessary, the Ministry shall collect data on judicial and administrative proceedings whose merits do not relate to establishing discrimination, as well as data implying that a person or a group is placed in a less favourable position.⁴⁷ Such a formulation suggests a problematic and narrow understanding of a discrimination case in this context, according to which only data on cases in which discrimination is decided on merits are collected on a regular basis. According to the wording of this provision, the cases in which discrimination is deliberated as a preliminary issue will be addressed only by the *ad hoc* activities of the Ministry and then only "if necessary", thus possibly ignoring a significant number of cases in BiH and thereby calling into question the representativeness of the data collected in this manner.

3.2. The Importance of a Comprehensive Approach to Data Collection

Data pertaining only to discrimination cases is not in itself a strong and reliable indicator of the level and trends of discrimination, as many cases often remain unreported.⁴⁸ For example, it is estimated that in one year only 4% of people subject to discrimination report it to the Ombudsman against Ethnic Discrimination in Sweden.⁴⁹ The Office for Human Rights and National Minorities of the Government of the Republic of Croatia also believes that the number of complaints is much lower than the actual number of incidents of discrimination.⁵⁰ Similarly, it is estimated that the number of discrimination cases in BiH is much higher than the number

⁴⁵ "Rulebook on Methods of Collecting Data on Cases of Discrimination in BiH," Article 4.

⁴⁶ *Ibid*, Article 4, para. 4.

⁴⁷ *Ibid*, Article 5, para. 1.

⁴⁸ Makkonen and European Network of Legal Experts, *Measuring discrimination*, p. 45.

⁴⁹ John Wrench, *The Measurement of Employment Discrimination by Research: Problems of Comparability* (paper presented at the 33rd seminar titled "Ethnic and Racial Discrimination on the Labour Market: Measurement, statistics and indicators," organized by The European Advisory Committee on Statistical Information in the Economic and Social Spheres Valletta, Malta, June 7-8, 2007), pp. 7-8.

⁵⁰ Interview with Tatjana Vlašić, Advisor to the Office for Human Rights and National Minorities of the Government of the Republic of Croatia, December 7, 2012.

of complaints received by the Ombudsman and the number of lawsuits before courts.⁵¹

Therefore, the recommendations of experts, as well as the international experience in this field, emphasise the need for a more comprehensive and ambitious approach to data collection on discrimination.⁵² In this regard, the importance of collecting and the use of a wider range of data was recognised; especially the one collected through the surveys of vulnerable groups, as well as other qualitative research in the field of employment, education and housing, legislative initiatives, racist violence and crime, stereotypes, social distance, the perception of discrimination, etc.⁵³ For example, the EU Agency for Fundamental Rights⁵⁴ collects additional data on discrimination by conducting research on instances of racism, xenophobia and discrimination, as well as fundamental rights across the EU.⁵⁵ The Agency collects data using surveys, case studies and different types of qualitative research.⁵⁶ This data, together with the data on discrimination cases, is used for the preparation of annual reports on incidents and developments regarding discrimination in all member states and in every area in which discrimination occurs.⁵⁷

⁵¹ Interview with Predrag Raosavljević, Assistant Ombudsman of BiH/Head of Department for Elimination of All Forms of Discrimination in the Institution of Human Rights Ombudsman of BiH, December 6, 2012.

⁵² Reuter, Makkonen and Oosi, *Study on Data Collection*, p. 30.

⁵³ *Ibid*; See as an example: Open Society Fund BiH, *Izvještaj o rezultatima ispitivanja javnog mnijenja o percepciji i iskustvu diskriminacije* [Report on the Results of the Public Opinion Survey on the Perceptions and Experiences of Discrimination (own translation)], Open Society Fund 2012.

⁵⁴ European Union Agency for Fundamental Rights was established as an independent professional body and is the successor of the European Monitoring Centre on Racism and Xenophobia (EUMC). See: Wrench, *The Measurement of Employment Discrimination*, p. 1. In a sense, the Agency is in the EU what the national human rights institutions are in member states: it is an EU institution for the protection of human rights. See: European Union Agency for Fundamental Rights, *Fundamental rights: challenges and achievements in 2011: Annual report 2011* (Luxembourg: Publications Office of the European Union, 2012), p. 30.

⁵⁵ See the European Union Agency for Fundamental Rights website, "What we do," <http://fra.europa.eu/en/about-fra/what-we-do> (Accessed on February 26, 2013).

⁵⁶ European Union Agency for Fundamental Rights, "Research and Data Collection," <http://fra.europa.eu/en/about-fra/how-we-do-it/research-and-data-collection> (Accessed on February 26, 2013). For example, in 2008, in the sample of 23,500 people from selected immigrant and ethnic minorities in the 27 EU member states, the Agency conducted a poll about minorities and discrimination as a "response to the widespread lack of availability of data on the experiences of immigrants and ethnic minorities in the EU." The results of this study enabled the Agency to identify useful and relevant indicators of discrimination. See: European Union Agency for Fundamental Rights, *EU-MIDIS technical report: Methodology, Sampling and Fieldwork, European Union Minorities and Discrimination Survey* (European Union Agency for Fundamental Rights, 2009).

⁵⁷ See the European Union Agency for Fundamental Rights website.

In other countries, human rights institutions that collect data on discrimination do it, as a rule, by combining different methodologies and approaches. For example, the Irish Human Rights Commission⁵⁸ collects data on discrimination cases on the basis of investigations (upon receiving complaints or *ex officio*) and based on the information gathered from external sources, such as the information from the NGO sector.⁵⁹ Experience of the countries in the region is similar. In Croatia, the People's Ombudsman keeps records of complaints of discrimination it receives. However, for the annual reports to the Croatian Parliament on the phenomenon and prevalence of discrimination, the Institution also collects data based on its own research;⁶⁰ data from judicial institutions; data obtained through the monitoring of the media; data from the reports of various international organisations and institutions, and data obtained from civil society, religious groups, social partners and the Council for National Minorities.⁶¹ According to the latest report, the Montenegro Ombudsman collects data on discrimination complaints it has received; data on lawsuits filed with judicial authorities,⁶² and data from surveys on discrimination among the members of "social reference groups".⁶³ Also, the Serbian Commissioner for Protection of Equality collects various data from various sources, ranging from complaints received by the Institution, data from the media⁶⁴ and data obtained

⁵⁸ See the Irish Human Rights Commission website: <http://www.ihrc.ie/> (Accessed on March 29, 2013).

⁵⁹ European Union Agency for Fundamental Rights, *National Human Rights Institutions in the EU Member States: Strengthening the fundamental rights architecture in the EU I* (Luxembourg: Publications Office of the European Union, 2010), p. 34.

⁶⁰ Among the data collected in this manner there was data on social distance, data on stereotypes and prejudices of people of Croatia, as well as data on the perception of discrimination. Interview with Tena Šimonović Einwalter, Coordinator for the Area of Non-Discrimination in the Croatian People's Ombudsman Office, December 3, 2012.

⁶¹ The Croatian People's Ombudsman Office sent 60 individual calls for information and it published "an open invitation to cooperation in drafting the report through submission of data regarding observations and experiences related to the phenomenon of discrimination in the areas and on the grounds that the particular subject covers in their work" on its website. For the complete list of organizations that submitted responses, see: Office of the People's Ombudsman, *2011 Report on discrimination* (Zagreb: The Croatian People's Ombudsman Office, 2012), p. 76.

⁶² The report mentions only briefly the number of cases in individual institutions and their current status. For more information, see: Protector of Human Rights and Freedoms of Montenegro (Ombudsman), *Report on protection against discrimination in the first six months of 2011* (Podgorica: Protector of Human Rights and Freedoms of Montenegro, October 2011) p. 14.

⁶³ "Social reference groups" included in the study were women, people of different sexual orientations, members of ethnic minorities, the elderly, Roma and people with disabilities. *Ibid.*

⁶⁴ It also includes information on the opinions and statements "which incite racial hatred and intolerance towards Roma" as "a severe form of racial discrimination." See: The Serbian Commissioner for the Protection of Equality, *2011 Regular Annual Report of the Serbian Commissioner for the Protection of Equality* (Belgrade: Serbian Commissioner for the Protection of Equality, 2012), pp. 30-31.

through their own research,⁶⁵ to data obtained from other various sources, such as the Strategy for the Advancement of Women or the National Employment Service's records.⁶⁶ In addition, the Commissioner uses information about non-compliance with legal provisions and regulations, such as the violation of gender equality in the appointment of members of international delegations.⁶⁷ Indeed, given that there are very different forms of discrimination and that discrimination can occur in different areas of life,⁶⁸ a flexible and comprehensive approach to data collection is essential in measuring and monitoring the complex social phenomenon of discrimination.

The LPD prescribes the obligation of reporting based on the data *on the manifestations and the scope of discrimination*⁶⁹, which should be interpreted so as to include the collection of data from a much wider range of sources than only the data from discrimination cases. However, as further elaborated in the section below, the current measures and activities undertaken with a view to establishing a data collection system in this field in BiH are not quite in line with this broad interpretation of discrimination data.

⁶⁵ The Serbian Commissioner for the Protection of Equality carried out a research on the attitude of citizens of Serbia towards discrimination, through collecting data on the awareness of the concept of discrimination among citizens, their estimates regarding the prevalence of discrimination today compared to 2009, the estimates of their exposure to discrimination, the most discriminated against groups, ethnic and social distance, as well as the roles and responsibilities of individual institutions in the protection against discrimination. The study was conducted on a sample of 1,196 citizens of Serbia. At the time of preparation of this report the research had not been published; only a working version, i.e. the overview of results was prepared. E-mail communications with Antigona Andonov, Head of the Serbian Office of Commissioner for the Protection of Equality, December 17, 2012; See also the presentation titled "Istraživanje javnog mnjenja: Odnos građana prema diskriminaciji u Srbiji" [Public Opinion Survey: Citizens' attitude towards discrimination in Serbia] prepared by the Serbian Commissioner for the Protection of Equality, UNDP and CeSiD, available in the archives of Analitika.

⁶⁶ The Serbian Commissioner for the Protection of Equality, *2011 Regular Annual Report*, p. 30.

⁶⁷ For more information, see: *Ibid.*

⁶⁸ Reuter, Makkonen and Oosi, *Study on Data Collection*, p. 4.

⁶⁹ "Law on the Prohibition of Discrimination of BiH," Article 8, para. 2.

4.

Institutional Framework: The System of Data Collection on Discrimination

The section below provides a brief overview of the competences and the coordination of activities regarding data collection on discrimination in the EU and the countries of the region. In addition, an outline of the system planned for BiH, as well as the analysis of the extent to which the solutions adopted in BiH are in line with the best practices of other countries and in accordance with the actual needs in terms of collecting data on discrimination are given as well. The issue of functionality of the envisaged data collection system in BiH are also specifically addressed.

4.1. International Experience

At the international level, data on discrimination is collected by various institutions. In European countries this work is performed by national statistical agencies, judicial authorities, law enforcement agencies, correctional institutions, ombudsmen or other specialised bodies (e.g. anti-discrimination committees or commissions), non-governmental organisations specialising in issues of discrimination, as well as other non-governmental organisations that keep records relevant for this field.⁷⁰ For example, the National Institute of Statistics⁷¹ of Belgium has primary responsibility for the collection of statistical data, including data on discrimination.⁷² In addition, universities⁷³ and private companies that provide consulting services also collect

⁷⁰ Reuter, Makkonen and Oosi, *Study on Data Collection*, pp. 20-22.

⁷¹ Direction générale de statistique et information économique.

⁷² Reuter, Makkonen and Oosi, *Study on Data Collection*, pp. 89.

⁷³ *Ibid.*

data on discrimination.⁷⁴ The situation is similar in Germany, where the Federal Statistical Office is responsible for collecting statistical data on discrimination,⁷⁵ although other institutions are involved in this process as well, such as the Federal Anti-discrimination Agency.⁷⁶ Discrimination statistical data in Sweden is collected by the Ombudsman against Ethnic Discrimination and various research institutes.⁷⁷ In Croatia, these activities are performed by the People's Ombudsman,⁷⁸ Special Prosecutor's Offices, the Ministry of Justice and the Office for Human Rights and National Minorities of the Government of the Republic of Croatia.⁷⁹

In order to use the full potential of the data on discrimination collected by different institutions, it is necessary to establish a mechanism for coordination and cooperation. In this regard, it is a common practice to establish or appoint an authority responsible for the coordination of data collection on discrimination; both at the EU level and at the level of individual states. For example, the EU Agency for Fundamental Rights collects and analyses data from all EU member states. The task of the Agency is to inform the EU institutions and the member states of the extent to which individuals effectively enjoy human rights, including the right to protection from discrimination, in everyday life.⁸⁰ In order to efficiently carry out the activities of the Agency, ranging from the analysis of national and EU legislation to

⁷⁴ Such as, for example, Milieu, a company that carries out research and collects data on fundamental rights on the basis of consultancy contracts with individual EU member states, but also assists in data collection on discrimination in the EU. For more information, see the Milieu website, <http://www.milieu.be/index.php?page=justice-and-fundamental-rights> (Accessed on March 10, 2013).

⁷⁵ Johannes Klostermann, *Eliminating racist discrimination in Germany: Parallel report addressed to the Committee on the Elimination of All Forms of Racial Discrimination of the United Nations* (Forum Menschenrechte, 2008), p. 6.

⁷⁶ For more information, see the Antidiskriminierungsstelle des Bundes website, http://www.antidiskriminierungsstelle.de/EN/AboutUs/aboutUs_node.html (Accessed on March 10, 2013).

⁷⁷ See, for example: in Sweden: Skaraborg Institute For Research and Development, <http://www.skaraborg-institute.se/> (Accessed on March 10, 2013) and Centre Against Racism, http://www.centrummotrasism.nu/index.php?option=com_content&view=article&id=4&Itemid=4&lang=en (Accessed on March 10, 2013).

⁷⁸ For more details, see: The Office of the Croatian People's Ombudsman, *Izvešće o pojavama diskriminacije za 2011 [2011 Report on Occurrence of Discrimination]*, pp. 10-24.

⁷⁹ "Zakon o suzbijanju diskriminacije Republike Hrvatske" [Anti-discrimination Act of the Republic of Croatia], *RH Official Gazette* 85/08, 112/12, Article 14. The Office for Human Rights and National Minorities of the Government of the Republic of Croatia does not have access to the data kept by the People's Ombudsman. On the other hand, the People's Ombudsman, as an independent institution, "monitors the work of, *inter alia*, governmental bodies," which is a safeguard of the independence of the Institution of the People's Ombudsman. Interview with Tatjana Vlašić, Office for Human Rights and National Minorities of the Government of the Republic of Croatia, December 7, 2013.

⁸⁰ European Union Agency for Fundamental Rights, *Fundamental rights*, p. 20; See: the European Union Agency for Fundamental Rights website.

the analysis of sociological data and information gathered through primary research (e.g., surveys/polls),⁸¹ an efficient coordination is necessary. For this purpose, FRANET⁸² network, consisting of National Focal Points of each EU member state, was created.⁸³ Similarly, in order to ensure better accuracy, objectivity, comparability and consistency of data, in some EU member states the National Focal Points also serve as national coordinators for data collection on discrimination.

Besides the EU Agency for Fundamental Rights, a number of other EU institutions are also involved in data collection in this field, usually in close cooperation with the Agency.⁸⁴ Among them, the most important are European Commission Directorates-General⁸⁵ and Eurostat that collects statistical data used for EU policy making. Eurostat, in cooperation with member states, has been collecting statistical data on equality and discrimination at the level of the EU since 2001.⁸⁶ However, as Eurostat does not act alone, but organises and compares statistical data provided by national statistical offices,⁸⁷ the effective consolidation and dissemination of

⁸¹ *Ibid.*

⁸² FRA's multidisciplinary research network. FRANET was launched in 2011 as a replacement for the then RAXEN (European Racism and Xenophobia Network of National Focal Points). More information is available at the European Union Agency for Fundamental Rights website.

⁸³ *Ibid.*

⁸⁴ Albert Kraler and David Reichel, *Statistics on migration, integration, and discrimination in Europe: Prominstat Final Report* (International Centre for Migration Policy Development - ICMPD, 2010), p. 3.

⁸⁵ For example, Directorate General for Employment and Social Affairs (currently Directorate-General for Employment, Social Affairs and Inclusion) established a Working Group to examine available data on equality and to consider a way forward to improve the availability and quality of data on discrimination. See: Michel Glaude, *Statistics on Discrimination within the Context of Social Statistics: Main issues* (paper presented at the 33rd seminar titled "Ethnic and Racial Discrimination on the Labour Market: Measurement, statistics and indicators," organized by The European Advisory Committee on Statistical Information in the Economic and Social Spheres, Valletta, Malta, June 7-8 2007), p. 1.

⁸⁶ The European Advisory Committee on Statistical Information in the Economic and Social Spheres. For more information, see *ibid*; See: Reuter, Makkonen and Oosi, *Study on Data Collection*, p. 79. Since 2007 the Commission's Annual Statistical Programme mentions data collection on discrimination as a separate activity in relation to the collection of general statistics. See: The European Parliament and the European Council, Decision No 1578/2007/EC of the European Parliament and of the Council of 11 December 2007 on the Community Statistical Programme 2008 to 2012, *Official Journal of the European Union* L 344/15, December 28, 2007, p. 33.

⁸⁷ Reuter, Makkonen and Oosi, *Study on Data Collection*, p. 77.

data also require close and coordinated cooperation, which is achieved through the European Statistical System.⁸⁸

The practice of many European countries and the countries in the region demonstrate a tendency towards establishing a system for centralised collection of data on discrimination as a way of ensuring a high level of coordination in this field. Thus, for example, the Finnish Ministry of the Interior acts as the central repository for data collected on discrimination from various sources.⁸⁹ In Montenegro, centralised data collection is the obligation of the Ombudsman,⁹⁰ while the 2010 Law on Prevention and Protection Against Discrimination of the Former Yugoslav Republic of Macedonia provides for an obligation to collect “statistical and other data, develop databases, carry out research, studies and training related to discrimination” as part of the competences of the State Commission for Protection against Discrimination.⁹¹ The Serbian Commissioner for the Protection of Equality also emphasises the need for establishing a unified and centralised system for collecting, recording and analysing data on discrimination cases, as a basic precondition for the successful elimination of discrimination.⁹² However, the applicable law prohibiting discrimination in Serbia has not provided for such a system.⁹³

⁸⁸ The European Statistical System is a partnership comprising Eurostat, national statistical institutes and other national statistical bodies in each member state responsible for producing and disseminating statistical data. See: *Decision No 1578/2007/EC of the European Parliament and of the Council*, p. 1.

⁸⁹ Ministry of the Interior of Finland, “Discrimination Research and Monitoring“, http://www.intermin.fi/en/equality/discrimination_research_and_monitoring (Accessed on October 24, 2012). To this end, the Equality.fi website, which should be a central point for collection of materials relevant for this field, was developed. According to available data, the site has been under reconstruction since July 7, 2010. Equality.fi, http://www.yhdenvertaisuus.fi/welcome_to_equality_fi/ (Accessed on October 24, 2012).

⁹⁰ “Zakon o zabrani diskriminacije Republike Crne Gore” [Law on Prohibition of Discrimination of the Republic of Montenegro], *Official Gazette of Montenegro* 46/10, Article 21, para. 2.

⁹¹ “Law on Prevention and Protection against Discrimination,” *Official Gazette of the Republic of Macedonia* 50/10, April 13, 2010, Article 24.

⁹² The Serbian Commissioner for Protection of Equality, *Redovan godišnji izveštaj* [Regular Annual Report], p. 10, 21 and 24.

⁹³ “Zakon o zabrani diskriminacije Republike Srbije” [Anti-discrimination Law of the Republic of Serbia], *Official Gazette of the Republic of Serbia* 22/09.

4.2. Responsibility for Discrimination Data Collection in BiH

Pursuant to the LPD and the Rulebook, all competent institutions in BiH have to regularly keep records of all reported cases on discrimination and discrimination cases processed in their areas of responsibility.⁹⁴ The central institution responsible for the coordination of data collection on discrimination cases in BiH, as noted above, is the Ministry for Human Rights and Refugees of BiH. According to Article 8 of the LPD, the competences and obligations of the Ministry include the establishment and maintenance of a central database, as well as reporting on the manifestations of discrimination.

The Ministry is required to produce a report for the Council of Ministers of BiH at least once a year and special reports containing proposed measures for prevention and suppression of discrimination in Bosnia and Herzegovina.⁹⁵ The Ministry is required to report, through the Council of Ministers, to the Parliamentary Assembly of BiH on the manifestations of discrimination and with regards to that, “propose concrete legislative or other measures.”⁹⁶

In addition, the Institution of Human Rights Ombudsman of BiH also has the competence to collect and analyse statistical data on discrimination cases.⁹⁷ This Institution collects data as a part of its obligation to submit annual and, if necessary, special reports on discrimination and as a part of its obligation to propose legal and other solutions designed to ensure equal treatment.⁹⁸ Furthermore, the Institution of Ombudsman collects data as a part of its obligation to inform the public about discrimination manifestations.⁹⁹ Accordingly, in 2010, its Department for Elimination of All Forms of Discrimination established a database for recording data on discrimination cases that are based on individual complaints to the Ombudsman and

⁹⁴ “Law on the Prohibition of Discrimination of BiH,” Article 8, para. 1; “Rulebook on the Collection of Data on Discrimination Cases in BiH,” Article 3.

⁹⁵ “Law on the Prohibition of Discrimination of BiH,” Article 8, para. 2.

⁹⁶ *Ibid*, Article 8, para. 3.

⁹⁷ *Ibid*, Article 7, para. 2, item e). Also, Article 35 of the Law on Human Rights Ombudsman of BiH stipulates that, in its annual report, the Institution of Ombudsman should provide “the number and nature of complaints received”. See: “Zakon o ombudsmenu za ljudska prava BiH” [Law on Ombudsman for Human Rights of BiH], *Official Gazette of BiH* 19/02, 35/04, 32/06, Article 35, para. 1.

⁹⁸ “Law on Prohibition of Discrimination of BiH,” Article 7(1)(f); See: Institution of Human Rights Ombudsman of Bosnia and Herzegovina, *Izveštaj o pojavama diskriminacije u Bosni i Hercegovini za 2011. godinu* [2011 Report on occurrence of discrimination in Bosnia and Herzegovina] (Banja Luka: Institution of Human Rights Ombudsman of Bosnia and Herzegovina, 2012).

⁹⁹ “Law on Prohibition of Discrimination of BiH,” Article 7, para. 1, item g).

data on cases initiated *ex officio*.¹⁰⁰ The Ombudsman also regularly collects data through monitoring of discrimination cases before the courts.¹⁰¹

Taking into account the above-described principles of data collection in this field and the above-mentioned experiences of other countries, one can say that the system of collecting data on discrimination in BiH is conceptually well defined. It features a centralised collection and, at least in principle, a division of tasks between the Ministry for Human Rights and Refugees of BiH and the Institution of Human Rights Ombudsman of BiH. In this regard, the envisaged activities of the two institutions are largely complementary. The Ministry is the central institution responsible for the coordination and data collection on discrimination in a broader sense. At the same time, all the competent institutions, including the Institution of Human Rights Ombudsman of BiH, are required to submit data on their own cases to the Ministry.¹⁰² On the other hand, the Ombudsman provides independent analysis and assessment of trends within narrowly defined categories of data on discrimination, and, ideally, it can, to some extent, be regarded as an independent corrective or control mechanism with regards to the activities of the Government and the competent Ministry for Human Rights and Refugees.

It is important to point out that some of the essential elements of the future data collection system are already operational. This primarily pertains to the ease of access to the data on discrimination cases before the courts in Bosnia and Herzegovina through the Court Case Management System - CCMS,¹⁰³ as well as the data on discrimination cases initiated before the Institution of Human Rights Ombudsman of BiH.¹⁰⁴ However, despite the relatively well-defined legal and institutional framework, BiH faces a number of challenges in the attempt to implement the activities on data collection on discrimination. These issues will be addressed in the sections below.

¹⁰⁰ Cases in the database are classified according to the grounds for discrimination and the forms of discrimination. Interview with Predrag Raosavljević, Institution of Human Rights Ombudsman of BiH, December 6, 2012.

¹⁰¹ *Ibid.*

¹⁰² "Law on Prohibition of Discrimination of BiH," Article 8, para. 1.

¹⁰³ A discrimination case report from the CCMS was provided to the authors of this study.

¹⁰⁴ There has already been some communication on matters of discrimination between the two institutions. Interview with the Ministry of Human Rights and Refugees of BiH, November 30, 2012.

4.3. Functioning of the Data Collection System in Bosnia and Herzegovina: Discrepancy between Law and Practice

4.3.1. Issues Identified in Relation to the Ministry for Human Rights and Refugees BiH

The Ministry for Human Rights and Refugees of BiH was required to establish a central database and to enact a rulebook that would define the content and the form of the questionnaire for collecting data on the cases of discrimination and “other issues related to the procedure for collecting required data”.¹⁰⁵ The Rulebook was enacted with a delay of almost four years, namely, at the beginning of April 2013.¹⁰⁶ It is clear from its content that, as will be elaborated later in the report, this piece of legislation obviously has not resolved all relevant issues related to the process of data collection. The deadline of 120 days for producing instructions on how to fill in the questionnaire¹⁰⁷ further prolongs the initiation of concrete activities in this field. In addition, the central database has not been established yet, and the Rulebook provisions stipulate that it should be done by the end of 2013.¹⁰⁸ Finally, the Ministry’s obligation to produce annual and special reports on the manifestations and the scope of discrimination in BiH has not been implemented either. The first such report was still at the draft stage at the moment of the finalisation of this study.¹⁰⁹

Reasons for the delay in establishing the record keeping system and data collection for discrimination cases are numerous. One is the lack of financial resources for the development of the central database.¹¹⁰ In addition, the competent institutions have limited human resources and demonstrate the lack of real commitment and determination with regards to the establishment of a systemic collection of data

¹⁰⁵ “Law on Prohibition of Discrimination of BiH,” Article 8.

¹⁰⁶ “Rulebook on Methods of Collecting Data on Cases of Discrimination in BiH.”

¹⁰⁷ *Ibid*, Article 11.

¹⁰⁸ *Ibid*, Article 13.

¹⁰⁹ Interview with the Ministry of Human Rights and Refugees of BiH, November 30, 2012.

¹¹⁰ According to the representatives of the Ministry, between BAM 60 and 100 thousand are needed to set up the database, but because of the decision on temporary financing, these funds could not be secured earlier Interview with the Ministry of Human Rights and Refugees of BiH, November 30, 2012.

on discrimination. Finally, the absence of pressure and initiatives by civil society towards undertaking specific activities in this field is also evident.¹¹¹

The delay in fulfilling the obligations prescribed by law in this area has numerous consequences. Primarily, the absence of a functional discrimination data collection system precludes obtaining comprehensive information on the instances and types of discrimination, making it impossible to map the actual situation regarding discrimination in BiH. The delay has also resulted in incomplete documenting of discrimination by official institutions of BiH, which is currently reflected in the existence of only one report on discrimination - the one prepared by the Institution of Human Rights Ombudsman of BiH.¹¹² Ultimately, the incomplete picture of discrimination in BiH does not allow for the formulation of adequate policies and activities of protection against discriminatory treatment in BiH, as well as its prevention, which is one of the key objectives of the LPD.

4.3.2. Limited Sources of Information of the Ombudsman of BiH

However, viewed from a different perspective, the Ombudsman has fulfilled its legal obligation. A database of cases brought before this institution has been set up and the first report of the Ombudsman on discrimination in BiH¹¹³ was released in 2011, albeit with a one-year delay. Although this Institution emphasises its cooperation with civil society organisations with regards to the collection of discrimination data, the report was primarily based on the data obtained through the Ombudsman's discrimination cases and the analysis of statistical data on civil proceedings for protection against discrimination conducted before courts.¹¹⁴ However, the said report does not reflect the above-mentioned wealth of sources and the analysis is based mostly on the cases decided by the Ombudsman with a limited analysis of data from the monitoring activities of judicial proceedings.¹¹⁵

¹¹¹ For an analysis of the role of civil society in the enforcement of LPD, see: Boris Topić, *Unused Potential: The Role and Importance of Non-governmental Organizations in Protection against Discrimination in Bosnia and Herzegovina* (Sarajevo: Analitika – Center for Social Research, 2012).

¹¹² For more information see: Institution of Human Rights Ombudsman of BiH, *2011 Report on Occurrence of Discrimination in BiH*.

¹¹³ *Ibid.*

¹¹⁴ Interview with Predrag Raosavljević, Institution of Human Rights Ombudsman of BiH, December 6, 2013.

¹¹⁵ Institution of Human Rights Ombudsman of BiH, *2011 Report on Occurrence of Discrimination in BiH*.

It should be noted that the Ombudsman does not collect data on court cases directly from courts (with the exception of a few cases it monitors).¹¹⁶ Rather, the Ombudsman relies on the information it receives from the parties in proceedings, other organisations or media reports.¹¹⁷ The data presented in the report is generally very brief,¹¹⁸ probably because of the manner of its collection. It is not clear why this data is not collected officially, directly from the courts or from the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC BiH). Although there are some shortcomings regarding recording of discrimination cases - to be discussed later in the study - since January 2011, the HJPC has access to the data on discrimination cases pending before all the courts in BiH through the CCMS.¹¹⁹ Collecting data directly from the HJPC would certainly ensure greater reliability and timely recording, as well as a more concrete data for analysis. This is particularly relevant given the legal obligation of all legal and natural persons to provide “requested data”,¹²⁰ upon the request from the BiH Ombudsman, - which means that the Ombudsman is authorised to request data on discrimination cases both from the HJPC BiH and directly from the courts.

¹¹⁶ *Ibid.*

¹¹⁷ Interview with Predrag Raosavljević, Institution of Human Rights Ombudsman of BiH, December 6, 2013.

¹¹⁸ Institution of Human Rights Ombudsman of BiH, *2011 Report on Occurrence of Discrimination in Bosnia and Herzegovina*.

¹¹⁹ Interview with the High Judicial and Prosecutorial Council of Bosnia and Herzegovina BiH (HJPC BiH), December 3, 2012.

¹²⁰ “Law on the Prohibition of Discrimination of BiH,” Article 7, para. 6. Also, it is important to note that, pursuant to the Law on Administration BiH, the administrative authorities are required to provide the Ombudsman with all requested information: “Zakon o upravi BiH” [Law on the Administration of Bosnia and Herzegovina], *Official Gazette of BiH* 32/02, Article 35.

5.

Collection Methods and Sources of Data on Discrimination

According to experts in the field, the concrete discrimination data collection activities should be preceded by a research which identifies the existing activities and mechanisms for the collection of data on discrimination. This entails identifying all the sources of data on discrimination that could be used.¹²¹

After the background research, a national action plan needs to be prepared by the key stakeholders in this field. According to experts, this action plan should provide for adequate funding for the various activities of data collection, set out the means by which the data will be disseminated to the public, secure access to data and provide for the evaluation of the national data collection system and the action plan itself.¹²² It is necessary to ensure the full participation in the process by: equality groups, data users, those who collect/consolidate data, experts in statistics, legal experts in anti-discrimination and privacy issues, as well as employers and employees in a variety of areas - since the area of employment and labour is recognised as one of the key areas where data collection activities should be carried out.¹²³

To our knowledge, these steps in BiH, except for the inclusion of a number of stakeholders in defining specific activities in this field,¹²⁴ had not been undertaken before the Rulebook was drafted and completed.¹²⁵ One could say that this largely explains the current problems in the BiH data collection system.

Taking into account the legally prescribed obligations of the Ministry and the data collection mechanisms in BiH, as well as examples of good practice, the following four major sources of information on equality and discrimination can be discerned:

¹²¹ Makkonen, *European Handbook on Equality Data*, pp. 97–98.

¹²² *Ibid.*

¹²³ *Ibid.*, p. 97.

¹²⁴ Interview with Adnan Kadribašić, a member of the Working Group for drafting the Rulebook on behalf of the Gender Equality Agency of BiH, November 27, 2012.

¹²⁵ Interview with the Ministry of Human Rights and Refugees of BiH, November 30, 2013.

(1) official records of the reported and processed cases in relevant institutions, (2) information obtained from agencies and offices of statistics, (3) secondary data sources and (4) primary research. The following analysis of the key issues in defining the data collection system in BiH is based precisely on the above-mentioned key data sources.

5.1. Official Recording of Data on Discrimination Cases by the Competent Institutions

All the relevant institutions and bodies at the level of BiH, entities, cantons, Brčko District BiH, municipal authorities, legal persons with public competences and other natural and legal persons are required by the Rulebook to record and submit data on reported and processed cases of discrimination.¹²⁶ According to the Rulebook, this list is not exhaustive and should be updated by the Ministry on an annual basis.¹²⁷ The data shall be submitted to the Ministry in line with the Questionnaire for the Collection of Data.¹²⁸ The Rulebook also foresees that the data shall be submitted accurately and on a regular basis.¹²⁹ However, the Rulebook does not specify what the term “on a regular basis” precisely means, i.e. no deadline is prescribed for the submission of data to the Ministry.

In this regard, the Rulebook provides for a more precise timeline for the dissemination of data on *final decisions* issued in administrative and judicial proceedings in discrimination cases. Specifically, it determines that the information should be delivered *immediately* after decisions become final.¹³⁰ Such data, in line with the Questionnaire for the Collection of Data, should be submitted by: courts, administrative bodies in BiH, legal persons with public competences that decide on discrimination complaints in administrative proceedings, the Office of Disciplinary Counsel of the HJPC, and other bodies established under special regulations that decide on the rights of citizens, legal persons or other parties.¹³¹

¹²⁶ “Rulebook on Methods of Collecting Data on Cases of Discrimination in BiH,” Article 3.

¹²⁷ *Ibid*, Article 3, para. 4.

¹²⁸ *Ibid*, Article 6, para. 2; “Upitnik za prikupljanje podataka: Dodatak Pravilniku o načinu prikupljanja podataka o predmeti ma diskriminacije u Bosni i Hercegovini” [Questionnaire for the Collection of Data: Appendix to the Rulebook on Methods of Collecting Data on Cases of Discrimination in BiH], *Official Gazette of BiH* 27/13.

¹²⁹ “Rulebook on Methods of Collecting Data on Cases of Discrimination in BiH,” Article 3, para. 2.

¹³⁰ *Ibid*, Article 6, para. 4.

¹³¹ *Ibid*, Article 3, para. 3.

As previously noted, it is foreseen that the Ministry also collects *statistical data on reported and completed* anti-discrimination proceedings. Institutions identified as competent for processing and dissemination of such data are as follows:¹³²

- a) The High Judicial and Prosecutorial Council of BiH should submit statistical data on discrimination cases pending before courts;
- b) The Institution of Human Rights Ombudsman of BiH should submit data on cases pending before this Institution;
- c) The Constitutional Court should provide data on proceedings in which a person or a group of persons is placed in a less favourable position on any grounds;
- d) The Office of the Agent of the Council of Ministers before the European Court of Human Rights should submit data on proceedings in which a person or a group of persons is placed in a less favourable position on any grounds.

According to the Rulebook, this data is to be submitted as aggregated statistical data at least once a year and no later than 31 March for the previous calendar year.¹³³

5.1.1. Recording Discrimination by Courts: Identified Issues

The records kept by judicial institutions undoubtedly have a great importance in the field of data collection on discrimination. Therefore, it is important to consider several potential ambiguities in this field in Bosnia and Herzegovina.

5.1.1.1. Record-Keeping of Discrimination in Criminal Proceedings

Independent statistical data on discrimination obtained from discrimination lawsuits should be distinguished from statistical data on crimes with discriminatory elements obtained from criminal proceedings. The Office for Democratic Institutions and Human Rights (ODIHR) points out that the two concepts should be considered separately and that separate records and statistics should be kept for each of them.¹³⁴ In that regard, the LPD provides for the establishment of *separate records* in judicial bodies in order to register cases of discrimination determined in criminal, civil, non-contentious litigation and enforcement proceedings.¹³⁵

¹³² *Ibid*, Article 4, para. 1.

¹³³ *Ibid*, Article 4, para. 3.

¹³⁴ Compare: OSCE/ODIHR, "Combating Hate Crimes in the OSCE Region: An Overview of Statistics, Legislation, and National Initiatives," (Warsaw: OSCE/ODIHR, 2005), p. 15.

¹³⁵ "Law on the Prohibition of Discrimination of BiH," Article 8, para. 4.

Therefore, this section elaborates on the provision of discrimination data obtained from criminal proceedings. In countries where such legislation exists, it is important to monitor and collect statistical data on criminal offences of discrimination, which would include both criminal reports and final verdicts in such cases.¹³⁶ While discrimination in BiH is not explicitly defined as a criminal offence, criminal codes in BiH do include the criminal offence of violation of the equality of individuals and citizens¹³⁷ that prohibits discrimination¹³⁸. In their regular records, law enforcement bodies, prosecutors' offices and courts in BiH record data on this criminal offence (criminal reports, investigations, indictments, verdicts).¹³⁹ In addition, criminal codes in BiH include provisions on hate crimes, whose main element is a motive based on bias against a particular group.¹⁴⁰ Finally, describing the crime of torture, the Criminal Code of Bosnia and Herzegovina defines as unlawful the infliction of physical or mental pain or severe physical or mental suffering on the grounds of, *inter alia*, any kind of discrimination.¹⁴¹

However, according to the available information, neither the police authorities in BiH nor the prosecutors' offices in BiH or the courts keep records on the discriminatory elements of the crime of torture. The data on aggravated form of bias-motivated crimes is not recorded either.¹⁴² This is certainly a significant omission from both the perspective of keeping separate statistics of bias-motivated crimes and from the perspective of providing comprehensive court records on criminal proceedings with discriminatory elements. Finally, this is a significant omission in the context of providing a complete picture of discrimination in BiH.

¹³⁶ Reuter, Makkonen and Oosi, *Study on Data Collection* p. 20-26; Makkonen and European Network of Legal Experts, *Measuring discrimination*, p. 45.

¹³⁷ "Krivični zakon BiH" [Criminal Code of BiH], *Official Gazette of BiH* 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, Article 145; "Krivični zakon Federacije BiH" [Criminal Code of the Federation of BiH], *Official Gazette of FBiH* 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, Article 177; "Krivični zakon Brčko distrikta BiH" [Criminal Code of Brčko District of BiH], *Official Gazette of Brčko District of BiH* 10/03, 6/05, 21/10, Article 174; "Krivični zakon RS" [Criminal Code of RS], *Official Gazette of Republika Srpska* 49/03, Article 162.

¹³⁸ Sevima Sali-Terzić, Komentari Zakona o zabrani diskriminacije: Recenzija [Commentary on the Law on the Prohibition of Discrimination: Review] (Sarajevo, May 2010), p. 2; See: Human Rights Observatory: Bosnia and Herzegovina, Prohibition of Discrimination.

¹³⁹ Interview with Fatmir Hajdarević, Head of the Office of Police Commissioner, December 6, 2012; and interview with the representative of HJPC BiH, December 3, 2012.

¹⁴⁰ See: OSCE Mission to Bosnia and Herzegovina, *Tackling Hate Crimes: An Analysis of Bias-motivated Incidents in Bosnia and Herzegovina, with recommendations* (Sarajevo: OSCE Mission to BiH, 2012).

¹⁴¹ "Criminal Code of BiH," Article 190.

¹⁴² Interview with Fatmir Hajdarević, Head of the Office of Police Commissioner, December 6, 2012; See: OSCE Mission to BiH, *Combating Hate Crimes*, p. 50.

5.1.1.2. Record-keeping of Discrimination Cases in Civil Proceedings: Identified Issues

With respect to keeping adequate records on discrimination cases in civil proceedings conducted on the basis of discrimination lawsuits,¹⁴³ a special challenge is posed by the fact that the CCMS does not foresee a designated case-type code for cases of discrimination that would refer to the distinct anti-discrimination procedure under which they are processed.¹⁴⁴ More specifically, the Rulebook on the Automated Court Case Management System provides codes pursuant to the type of court cases.¹⁴⁵ For example, criminal cases carry the case-type code letter “K,” civil cases letter “P,” labour disputes “RS,” etc.¹⁴⁶ Considering that no particular coding was assigned to the cases of discrimination, they were labelled either “RS” or “P.”

Seeking to address this issue in 2011, the HJPC introduced the possibility of recording cases of discrimination by the court’s CCMS data entry clerks. However, the cases are not recorded by case type, but in accordance with the legal grounds referred to in the lawsuit. Thus, only the cases in which the plaintiff states “discrimination” as the legal ground, the discrimination case will be recorded as such. However, in practice, plaintiffs often fail to state legal grounds, which means that a certain number of discrimination cases will be categorised as “other”.¹⁴⁷ Although trial judge has a duty to check the data entry at his/her initial contact with the CCMS case-file and request necessary correction to be made,¹⁴⁸ the fact that there are significant oversights in this regard further complicates establishing the exact number of initiated discrimination lawsuits and the collection of adequate data on discrimination. The positive aspect of this is that internally established categorisation of discrimination cases with the letter “D” is not used only for internal court procedures, but also in communication with the public. Thus, in cases when plaintiff in a discrimination lawsuit states “discrimination in the area of employment, labour and work conditions” as the legal ground, in addition to the letters denoting the type of the case – RS for labour dispute – the acknowledgment of the receipt of the lawsuit will also contain the code “D1c” used to label cases of discrimination

¹⁴³ “The Law on the Prohibition of Discrimination of BiH,” Article 12.

¹⁴⁴ “Pravilnik o sistemu za automatsko upravljanje predmetima u sudovima (CMS)” [Rulebook on the Automated Court Case Management System], document no: 09-50-1191/2011 (Presidency of the High Judicial and Prosecutorial Council of BiH, Sarajevo, March 23, 2011), Article 47.

¹⁴⁵ *Ibid*, Article 11. There are, in total, 27 different codes used for discrimination in relation to the discriminatory legal grounds.

¹⁴⁶ *Ibid*, Article 47.

¹⁴⁷ Interview with Aziz Babić, Secretary of the Municipal Court Sarajevo and Muriz Lončarević, Chief of Registry of the Municipal Court Sarajevo, November 23, 2012.

¹⁴⁸ “Rulebook on the Automated Court Case Management System,” Article 37.

in this area, which is exactly the code used in the CCMS for cases of discrimination in this area.¹⁴⁹

5.2. Data Kept by Statistical Bodies and Administrative Records

Data derived from various socioeconomic variables may be important for verifying discrimination, including data collected from administrative records – e.g. central or local population registries or education enrolment statistics from the ministries of education.¹⁵⁰ However, one should bear in mind that this type of data cannot be used as a direct indicator of discrimination in a society.¹⁵¹ This type of statistical data is more descriptive than analytical – it may be an indicator of differences in results for different population groups, but it does not provide explanation for these differences.¹⁵² In this context, it is difficult to assess whether the unfavourable social and economic position of one group is indeed a result of discrimination or caused by other factors.¹⁵³ However, such data is definitely important as an additional source of information on discrimination in a particular country.

The key institutions that provide official statistical data in BiH are the Agency for Statistics of Bosnia and Herzegovina, Federal Office of Statistics of FBiH and Institute of Statistics of Republika Srpska. They collect demographic and socioeconomic data.¹⁵⁴ The State Agency for Statistics, in cooperation with the entity office/institute is responsible for conducting census in 2013. The census is an important source of information relevant to the data collection on discrimination. In addition to the size and territorial representation of the population in BiH, the purpose of this census is to collect data on ethnic and national affiliation, religion,

¹⁴⁹ Municipal Court Sarajevo, Acknowledgement of the receipt: Case No. 65 O Rs 315787 13 RS of January 14, 2013. Acknowledgement available in the archives of Analitika.

¹⁵⁰ Makkonen and European Network of Legal Experts, *Measuring discrimination*, p. 44.

¹⁵¹ Yamam Al-Zubaidi, *Statistikens roll i arbete mot diskriminering – en fråga om strategi och trovärdighet* (Stockholm: Diskrimineringsombudsmannen, 2012), p. 37.

¹⁵² Al-Zubaidi, *Statistikens roll i arbete mot diskriminering*, p. 37.

¹⁵³ Makkonen and European Network of Legal Experts, *Measuring discrimination*, p. 43.

¹⁵⁴ For example, Agency for Statistics of Bosnia and Herzegovina, *Women and Men in Bosnia and Herzegovina, Thematic Bulletin TB 03* (Sarajevo: Agency for Statistics of Bosnia and Herzegovina, 2011), p. 5.

disability, gender, age, education and the employment rate of the population.¹⁵⁵ ECRI clearly notes the importance of disaggregating data by the stated categories when conducting census in BiH, expecting this to enable the measuring of “whether some groups are adversely affected by certain phenomena”.¹⁵⁶ This institution believes that collecting such disaggregated data should help achieve realisation of equality of all members of the society.¹⁵⁷

A representative of the Ministry for Human Rights and Refugees believes the census to be one of the key sources which should ensure better comparability of data.¹⁵⁸ Considering the variety of questions contained in the current version of the census questionnaire,¹⁵⁹ it can be expected that various data that will be collected may ultimately be useful for establishing inequality and indicate at possible discrimination in certain areas. However, it is important that neither the LPD nor the Rulebook explicitly provide for the use of the official statistics as a source of data on discrimination. Therefore, this issue needs to be given special attention in further institutionalisation of data collection system in this area in BiH.

5.3. Secondary Sources

The Rulebook provides for collection of data from all other “legal and natural persons” in various areas.¹⁶⁰ However, a more precise explanation of the methodology of data collection from these sources is not provided. Considering that there is no legal requirement for natural and legal persons to collect and submit data on cases of discrimination,¹⁶¹ the Ministry will have to take an active role in collecting such data, primarily by doing secondary, *desk* research.

Data collected from non-governmental organisations can probably be one of the most important sources of information about discrimination. Usually, the local

¹⁵⁵ Agency for Statistics of Bosnia and Herzegovina, *Pilot Census of Population, Households and Dwellings in 2012: Questionnaire (P-1)*. It is important to note that the data on disability to be collected under the current questionnaire will be very limited.

¹⁵⁶ ECRI, *ECRI Report on Bosnia and Herzegovina*, para. 163.

¹⁵⁷ *Ibid.*

¹⁵⁸ Interview with representatives of the Ministry for Human Rights and Refugees of BiH, November 30, 2013.

¹⁵⁹ Agency for Statistics of Bosnia and Herzegovina, *Pilot Census*.

¹⁶⁰ Interview with representatives of the Ministry for Human Rights and Refugees of BiH, November 30, 2013.

¹⁶¹ *Ibid.*

community associations or organisations that monitor discrimination are the first to notice changes in discrimination patterns and identify new problems affecting particular groups or areas of life and work. NGOs also may receive complaints of discrimination; particularly in situations when an individual does not wish to appear before court. Thus, non-governmental organisations may provide complementary information to the official data on reported cases of discrimination.¹⁶² In this context, it would be especially important to collect data from non-governmental organisations that represent victims of discrimination in discrimination related court proceedings, as well as other non-governmental organisations that keep records related to this issue.

However, comparative experiences demonstrate that competent institutions need to take a proactive approach in order to include data from the non-governmental sector, as well as data from private companies.¹⁶³ The practice of collecting data from NGOs in Croatia can be regarded as a good example. The Ombudsman has already established cooperation with non-governmental organisations specialised in combating discrimination. With some NGOs, this cooperation is formalised through a memorandum of cooperation ensuring the process of regular exchange of data.¹⁶⁴ Furthermore, the representatives of this institution state that the Ombudsman requests data from NGOs directly, analyses the data contained in the NGOs' publications, as well as the discrimination-related data found on the NGOs' websites. Similar practice of collecting data from NGOs is exercised by the Commissioner for Protection of Equality of Serbia.¹⁶⁵ These examples of good practice can certainly serve as an illustration to the competent ministry in BiH in finding adequate modalities of data collecting from NGOs, insofar as the Rulebook, besides providing for "coordination with non-governmental organisations", fails to provide detailed instruction as to what this exactly entails.¹⁶⁶

¹⁶² Makkonen, *European Handbook on Equality Data*, p. 66.

¹⁶³ This particularly refers to the data in the area of employment.

¹⁶⁴ Interview with Tena Šimonović Einwalter, Coordinator for the area of non-discrimination in the Ombudsman Office of Croatia, December 3, 2013.

¹⁶⁵ As confirmed by this institution, the data was so far collected from the electronically available research and the practice of non-governmental organisations, reports of international bodies and the media. E-mail correspondence with Marija Zarić, Advisor to the Commissioner for the Protection of Equality of Serbia, December 3, 2013.

¹⁶⁶ Article 8 of the Rulebook regulates "coordination with non-governmental organisations," without providing an explanation.

It is more difficult to obtain data from private companies.¹⁶⁷ The lack of data on inequality, in particular on racial discrimination in employment and labour relations also represents a general problem in the European Union member states.¹⁶⁸ Considering the amount of data that could potentially be collected in this area and considering the number of information sources (private companies, non-governmental organisations, etc.), it appears that establishing a formal cooperation with non-governmental organisations and conducting appropriate research on discrimination in the private sector would be the most efficient way of achieving this purpose. In this regard, the Ministry could rely on relevant data which is available at different research centres or it could conduct independent research, as will be discussed in more details further in this report.

5.4. Primary Research

Data collection on the manifestations and the scope of discrimination should include various qualitative and quantitative data relevant to discrimination in BiH. For example, it could include data on the perception of discrimination or victimisation, collected through surveys on the experience of people at a particular risk of discrimination or through research on social distance and stereotypes in a society.¹⁶⁹

Such primary research is particularly important considering that adequate documenting of discrimination requires a special approach that involves using several methods¹⁷⁰, including:

“(...) social and economic statistics, national justice system statistics, victim and other targeted surveys (...), attitude surveys, discrimination testing, qualitative research (such as case studies), laboratory

¹⁶⁷ In Croatia, there was an attempt to collect data that would assist in mapping discrimination in this area by publishing a call for an award to employers. One of the requirements to be nominated for this award was to fill out a questionnaire with relevant data. However, it turned out that many employers do not collect various data on employees that could be useful for this purpose, which was particularly pronounced in companies with fewer employees and less developed system of human resources management. Interview with Tatjana Vlašić, Office for Human Rights and Rights of National Minorities of the Government of Republic of Croatia, December 7, 2013.

¹⁶⁸ European Monitoring Centre on Racism and Xenophobia, *Racism and Xenophobia in EU Member States: trends, developments and good practice, Annual Report 2005, part 2* (European Monitoring Centre on Racism and Xenophobia, 2005), p. 37.

¹⁶⁹ Reuter, Makkonen and Oosi, *Study on Data Collection*, p. 30.

¹⁷⁰ *Ibid*, p. 5.

experiments, and internal record-keeping by Ombudsmen, specialized bodies, specialized NGO's and public and private bodies and companies."¹⁷¹

In its recommendation on this issue, ECRI states that the statistics on racist and discriminatory incidents should be supplemented by data on "opinions, attitudes and perceptions" of both the actual and potential victims, and of the majority population, towards issues of racism and intolerance.¹⁷² This Commission emphasises the importance of conducting survey among members of various groups *vulnerable* to acts of racism, xenophobia, anti-Semitism and intolerance.¹⁷³ As mentioned above, the importance of conducting primary research for the purpose of establishing the actual state of discrimination is very important in the context of BiH, considering relatively small number of cases of discrimination reported to the Institution of Human Rights Ombudsman of Bosnia and Herzegovina and even smaller number of initiated court proceedings.¹⁷⁴

Conducting primary research on discrimination in BiH is an explicit legal obligation of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina.¹⁷⁵ However, carrying out these activities is highly uncertain considering the lack of staff and funds faced by this institution.¹⁷⁶ On the other hand, the LPD also provides for the responsibility of the Ministry to report about the *manifestations and the scope of discrimination* on the basis of the collected data.¹⁷⁷ This provision can be interpreted to suggest that the Ministry will also conduct its own research – victim surveys, attitude surveys, etc. However, neither the LPD nor the recently adopted Rulebook provide for a broader definition or clarification of the term *data on discrimination*, nor do they provide a methodology to be applied for this purpose. The Ministry for Human Rights and Refugees has the intention to use primary research to collect

¹⁷¹ *Ibid*, p. 4.

¹⁷² ECRI, ECRI General Policy Recommendation No. 4 on National Surveys on the Experience and Perception of Discrimination and Racism from the Point of View of Potential Victims, CRI(98)30: Bosnian language version (Strasbourg: ECRI, June 13, 1997), pp. 3-4.

¹⁷³ *Ibid*.

¹⁷⁴ In 2011, the Institution of Human Rights Ombudsman of Bosnia and Herzegovina registered 191 cases relating to discrimination in total. See: The Institution of Human Rights Ombudsman of BiH, *Report on Occurrences of Discrimination*, p. 7, 11 and 26. Although, more than three years have passed since the adoption of the Law, there was a small number of final verdicts for discrimination. More information available at: Hanušić, *Judicial Protection from Discrimination in Bosnia and Herzegovina*, p. 8, footnote 1.

¹⁷⁵ "The Law on the Prohibition of Discrimination of BiH," Article 7, para. 2, item h).

¹⁷⁶ Interview with Predrag Raosavljevic, the Institution of Human Rights Ombudsman of BiH, December 6, 2013.

¹⁷⁷ "The Law on the Prohibition of Discrimination of BiH," Article 8, para. 2.

data on discrimination. However, there is still no clear plan or idea developed about what data can be collected, from whom and how.¹⁷⁸

It is understandable that conducting primary research, which requires advanced level of expertise in relation to the topic of research and the method and techniques of data collection, represents quite a challenge for any institution that is essentially not involved in scientific research. In order to conduct these activities the Ministry would need to have either its own research capacity or the necessary knowledge to engage external experts and research institutions to conduct primary research for the Ministry. This is, of course, another issue that should be taken into consideration before the actual data collection activities and reporting on discrimination begin.

¹⁷⁸ Interview with the representatives of the Ministry for Human Rights and Refugees of BiH, November 30, 2013.

6.

Data Collection and the Right to Privacy

Considering the vulnerability of victims of discrimination, a special attention in this area should be given to the protection of privacy. The right to privacy and the right to protection of personal data are guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms,¹⁷⁹ International Covenant on Civil and Political Rights,¹⁸⁰ the 1981 European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data¹⁸¹ and the 1995 EU Data Protection Directive.¹⁸² These documents guarantee the right of any person to refuse to provide information that would violate his/her privacy.¹⁸³ This puts in question the legitimacy of collecting data that are sensitive but particularly important in terms of discrimination. This refers to data on ethnicity, religion, sexual orientation or disability,¹⁸⁴ i.e. data considered by the national legislation as a special category of data.¹⁸⁵ Despite the existence of various ethical dilemmas in relation to sensitive data collection, researchers and experts agree that it is not the collection and existence of such data that poses the risk *per se* – it is the context of its use that may raise concern.¹⁸⁶ Therefore, emphasis should be placed on the prevention of misuse of data, rather than on the prevention of data collection.¹⁸⁷

¹⁷⁹ Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14 (Rome: Council of Europe, November 4, 1950), Article 8.

¹⁸⁰ United Nations, International Covenant on Civil and Political Rights, adopted by the General Assembly, December 16, 1966, Resolution No. 2200 A /XXI/, entered into force on March 23, 1976, Article 17.

¹⁸¹ Council of Europe, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, ETS. 108 (Strasbourg: Council of Europe, January 28, 1981).

¹⁸² European Parliament and Council, Directive 95/46EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, *Official Journal* L 281, November 23, 1995.

¹⁸³ Makkonen and European Network of Legal Experts, *Measuring discrimination*, p. 52.

¹⁸⁴ Makkonen, *European Handbook on Equality Data*, pp. 25-26.

¹⁸⁵ “Zakon o zaštiti ličnih podataka” [The Law on the Protection of Personal Data], *Official Gazette* 49/06, Article 3.

¹⁸⁶ Makkonen, *European Handbook on Equality Data*, p. 52.

¹⁸⁷ *Ibid*, pp. 25-26; Makkonen and European Network of Legal Experts, *Measuring discrimination*, pp. 51-52.

Collecting such data is not *per se* incompatible with international law. For example, the standards set by the European Convention of Human Rights provides for mandatory protection of privacy when collecting, keeping, using and disclosing personal data. The processing of personal data without the consent or knowledge of the data subject results in interference with a person's right to privacy.¹⁸⁸ However, the right to respect for private life has no absolute priority and the interference with this right can be justified if: a) interference is provided for in the law, b) pursues a legitimate aim, or is c) necessary in a democratic society.¹⁸⁹ Article 17 of the International Covenant on Civil and Political Rights similarly foresees that no one may be subjected to arbitrary or unlawful interference with his/her private life and that everyone has the right to the protection of the law against such interference.¹⁹⁰ Accordingly, any collection of personal data must be based on law, and effective measures must be taken to ensure that data is not used illegally and is kept safely.¹⁹¹

While the aforementioned documents provide for the protection of personal data from a broader perspective of the right to privacy, other international documents are governing this area in more details. The key document in this area is the 1995 EU Data Protection Directive which significantly influenced the data protection laws in the EU member states.¹⁹² Although the Directive contains a *prima facie* prohibition of processing sensitive data, it also provides for exceptions thereto. Primarily, collection of data which is by nature anonymous is not prohibited,¹⁹³ and processing of personal data which is not anonymous is permitted on the basis of the data subject's consent,¹⁹⁴ and sometimes even without it.¹⁹⁵ In terms of data

¹⁸⁸ Makkonen and European Network of Legal Experts, *Measuring discrimination*, pp. 66-69.

¹⁸⁹ See Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Article 8, para. 2; and the European Court of Human Rights. *Rotaru v. Romania, Application no. 28341/95* (Strasbourg: The European Court of Human Rights, May 4, 2000), para. 48.

¹⁹⁰ UN, International Covenant on Civil and Political Rights, Article 17.

¹⁹¹ Office of the High Commissioner for Human Rights, General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17): 04/08/1988. (Geneva: Office of the High Commissioner for Human Rights, 1996), para. 10.

¹⁹² Makkonen, *European Handbook on Equality Data*, p. 42.

¹⁹³ Reuter, Makkonen and Oosi, *Study on Data Collection*, p. 29; Glaude, *Statistics on Discrimination within the Context of Social Statistics*, p. 7; Makkonen and European Network of Legal Experts, *Measuring discrimination*, p. 7.

¹⁹⁴ European Parliament and Council, Directive 95/46EC, Article 8, item a).

¹⁹⁵ Data collection and data processing without a consent of the data subject are allowed in three cases: when such collection is necessary for the establishment, exercise or defence of legal claims, for reasons of substantial public interest and when regulated either by national law or by decision of the supervisory authority. Directive 95/46EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Article 8, item b), paras. 3 and 4.

collection and processing, it is always necessary to ensure that the personal data is: processed fairly and lawfully, collected for specific and legitimate purposes, appropriate, relevant and not excessive in relation to the purpose. The data should be accurate and kept in a form which permits identification of data subject for no longer than necessary for the purpose for which the data was collected or for which it is further processed.¹⁹⁶

Despite not being a member of the EU, BiH has established both legal and institutional protection measures for the purpose of preventing or prohibiting activities that could eventually threaten the security of personal data or rights of any group of people.¹⁹⁷ In accordance with good practices of the EU member states, the legislation in BiH also strictly prohibits that the data collected solely for the statistical purposes is used for any other purpose.¹⁹⁸

Other principles set in the Law on the Protection of Personal Data of BiH are also harmonised with the said EU Directive. Namely, in accordance with the provisions of this Law, the data must be processed fairly and lawfully, collected for specific, clear and legitimate purposes, only to the extent, scope and time necessary to fulfil the purpose. Also, the data must be accurate, kept in a form which permits identification of the data subjects for no longer than is required and if the data was collected for different purposes, it should not be consolidated or combined.¹⁹⁹ The Law on the Protection of Personal Data also requires the consent of the data subject,²⁰⁰ however, it also provides for exceptions such as the need to process data to fulfil statutory competencies and public interest.²⁰¹ Particularly important, from the perspective of this study, is the provision that explicitly grants processing of personal data without the consent of the data subject for the purposes of statistics, archives and science, provided that they are processed anonymously and fully respecting the right to protection of privacy or personal life of the data subject.²⁰²

Data protection is also safeguarded by internal procedures of individual institutions that collect such data. For example, in Denmark, the data about cases of discrimination are part of records on crime accessible to the police, the state police commissioner and courts. When such data is forwarded to the state statistics

¹⁹⁶ European Parliament and Council, Directive 95/46EC, Article 6.

¹⁹⁷ "The Law on the Protection of Personal Data."

¹⁹⁸ *Ibid*, Article 20, para. 1.

¹⁹⁹ *Ibid*, Article 4.

²⁰⁰ *Ibid*, Article 5, para. 1.

²⁰¹ *Ibid*, Article 6.

²⁰² *Ibid*, Article 20, paras. 2 and 3.

agency, the identification data is deleted.²⁰³ In Croatia, the Ombudsman Office makes data on discrimination available to the public through its annual reports on the manifestations of discrimination. Although the report contains examples of cases dealt with by the institution, the personal data is kept anonymous.²⁰⁴ In Bosnia and Herzegovina, data are also protected through internal procedures. Thus, relevant institutions exchange data on cases of discrimination through their cooperation without exchanging personal data.²⁰⁵ Some institutions, such as the Agency for Statistics of BiH, do not even enter personal data into their databases, when collecting statistical data.²⁰⁶

The Rulebook foresees the collection of personal data, including the name of the plaintiff, date of birth, residence, nationality and the name and address of the perpetrator of discrimination.²⁰⁷ In this context, it is important to emphasise that the provisions of the LPD also protect privacy, by defining the use of personal data only for the purpose of relevant statistical or analytical reporting and prohibits their use for other purposes.²⁰⁸ Similar provisions are contained in the Rulebook stipulating that the collection of personal data should be conducted in accordance with the Law on the Protection of Personal Data and that specific data are to be used in line with the Law, and only in order to separate individual cases of discrimination.²⁰⁹ Additional data protection will be ensured through the database management system, according to which each institution competent for collecting data will appoint a person responsible for data entry.²¹⁰

Taking all this into account, it is evident that the existing legislation in BiH is taking over the positive practice in data protection and in ensuring realisation of rights to privacy when data is collected.

²⁰³ Reuter, Makkonen and Oosi, *Study on Data Collection*, p. 36.

²⁰⁴ Interview with Tena Šimonović Einwalter, Coordinator for the area of non-discrimination in the Ombudsman Office of Croatia, December 3, 2013; and interview with Tatjana Vlašić, Office for Human Rights and Rights of National Minorities of the Government of Republic of Croatia, December 7, 2013.

²⁰⁵ Interview with representatives of the HJPC, December 3, 2013; interview with representatives of the Ministry for Human Rights and Refugees of BiH, November 30, 2013; interview with Adnan Kadribašić, member of the Working Group for drafting of the Rulebook, November 27, 2012; interview with Fadil Fatić, Deputy Director, Agency for Statistics of BiH, December 19, 2012.

²⁰⁶ Interview with Fadil Fatić, Deputy Director, Agency for Statistics of BiH, December 19, 2012.

²⁰⁷ "On Methods of Collecting Data on Cases of Discrimination in BiH," Article 7, para. 2, items a), b) and c).

²⁰⁸ *Ibid*, Article 2, para. 1.

²⁰⁹ *Ibid*, Article 2, para. 2.

²¹⁰ *Ibid*, Article 6, para. 5.

7.

Access to Data on Discrimination

The importance of the existence of data on discrimination for creating and maintaining a general system of protection against discrimination is manifold. As already elaborated in the section of the report addressing the importance of data collection, the existence of data on discrimination is a pre-condition for establishing patterns and forms of discrimination in a country. The ultimate goal of such activities is the efficient development of measures and policies to improve protection against discrimination and to create conditions to facilitate verification and rejection of allegations of discrimination in court proceedings. Also, a wider spectrum of data on discrimination is necessary for getting a complete picture of the actual situation in this area, in order to initiate broad debates, advocacy, training, awareness raising, as well as research in the field of protection against discrimination.

From the above-said, it is clear that any comprehensive and thorough insight into the issue of discrimination depends on the ability of institutions collecting relevant data to make them easily accessible to the end users – state institutions, non-governmental organisations, research centres, and all other citizens/individuals. Specifically, this means that it is necessary to ensure access to as comprehensive data as possible through the least number of access points.²¹¹ In an ideal situation this would imply some form of institutionalised coordination and standardisation of data collection and creation of a unified database, or creation of a suitable electronic system in which data, upon the anonymisation of personal information, would be stored and available to the end users.²¹² The current plans of the Ministry of Human Rights and Refugees related to making the data on discrimination available are very limited, considering that the Ministry only plans to publish analysis and reports on its website.²¹³ In addition, the only access to the central database

²¹¹ Using the formulation of domestic laws regulating freedom of access to information, it is necessary to facilitate and promote disclosure of information in the control of public authorities. See: “Zakon o slobodi pristupa informacijama u BiH” [Freedom of Access to Information Act for Bosnia and Herzegovina], *Official Gazette of BiH* 28/00, Article 2; See: Freedom of Access to Information Act for FBiH, *Official Gazette of FBiH* 32/01 and 48/11, Article 2; “Freedom of Access to Information Act for RS, *Official Gazette of RS* 20/01, Article 2.

²¹² This system would make the data publicly available (or upon a request) in accordance with provisions regulating access to information and protection of personal data.

²¹³ “Rulebook on Methods of Collecting Data on Cases of Discrimination in BiH,” Article 10.

provided for in the Rulebook is the authorised access, and only for the purpose of data entry and data processing.²¹⁴ Therefore, it is currently not foreseen for the data on discrimination collected by the Ministry and used for its reports, to be accessible to the wider public.

Ensuring access to data on discrimination to a wider circle of users and for citizens/individuals, while protecting personal data, is necessary in order to fulfil its purpose. If the collected data cannot be accessed, there is no significant benefit from its collection. For example, it is difficult to imagine that an NGO or an individual could conduct an efficient research on the phenomenon of multiple discrimination without having access to a wealth of data that will be collected by the Ministry for Human Rights and Refugees of BiH. Ensuring access to such data to a wider circle of stakeholders is particularly important in the light of the limited financial and human resources of the Ministry, which would benefit from any form of assistance in analysing and interpreting the collected data.

Inclusion of a larger number of institutions and stakeholders in the data analysis inevitably leads to a better understanding of discrimination and to achieving the ultimate goal of combating discriminatory treatment. It should also be noted that providing access to data on discrimination is in line with the general trend of sharing government-owned data with the general public.²¹⁵ This trend is based on the principle that all the data collected by the government is, in essence, the property of the people. In this context, the data on discrimination should also be considered in terms of the Freedom of Access to Information Act for Bosnia and Herzegovina.²¹⁶ The Law guarantees the right to access to information which is in the possession or under the control of the state authorities, with the aim to provide easier access for natural persons and legal entities to the information they need.²¹⁷ According to the Law, the definition of information includes “any material (in the possession of public authorities) which communicates facts, opinions, data or any other content (...), regardless of physical form or characteristics”,²¹⁸ which clearly includes databases. Therefore, it can be concluded that the current legal framework

²¹⁴ The Ministry will authorise access to the central database on the basis of a decision appointing a competent person. *Ibid*, Article 6, para. 5.

²¹⁵ An example of a data base is the Canadian Legal Information Institute, www.canlii.org/en (Accessed on February 22, 2013). This is a website providing unlimited access to all court judgments, including the judgments on discrimination in Canada. Another example is the Equal Opportunity Commission of South Australia website, <http://www.eoc.sa.gov.au/> (Accessed on February 22, 2013), providing access to all reported cases of discrimination (summarised and anonymised) submitted to this Commission.

²¹⁶ “Freedom of Access to Information Act for Bosnia and Herzegovina.”

²¹⁷ *Ibid*, Articles 1 and 12.

²¹⁸ *Ibid*, Article 3.

in BiH follows the general trends, providing for the possibility of access to relevant information for the general public. This essentially means that the access to the data collected by the Ministry should be allowed on these grounds as well.

Restricting access to an entire database in order to protect personal data is not an appropriate solution. It has already been mentioned that, when analysing data collected in the central database, the Ministry intends to protect the personal data of the citizens through anonymisation and prohibition of publishing data on discrimination. However, the use of technological solutions based on the modern information and communication technologies could satisfy both requirements – to provide a simple guarantee of privacy, ensuring access to data to all who may need it.

8.

Concluding remarks

Bosnia and Herzegovina should have a comprehensive approach and be highly ambitious with regards to combating and elimination of discrimination. The ultimate goal is to achieve equal rights and opportunities for all the people in BiH and to establish an organised system of protection against discriminatory treatment.²¹⁹ One of the key prerequisites for achieving such a goal is the existence of appropriate, accurate and complete data on discrimination.

Comparative experiences show the need for a coordinated, more flexible and more comprehensive approach in the collection of data on discrimination. The objective is to establish cooperation and coordination between many institutions involved in this process, in order to achieve complementarity of their activities, and, in some countries, also the centralisation of data collection. Given the complexity of discrimination as a phenomenon, it is obvious that in the practice of other countries and at the EU level, a wider and more comprehensive approach is being adopted in defining the data on discrimination and that various methodologies and sources for their collection are being used. The objective is not only to establish a database as such, but to establish the knowledge database on discrimination²²⁰ that will provide an objective and accurate picture of discrimination and document its causes, manifestations, patterns and impact. Ideal modality has not been found yet, and it remains an open issue that many countries will certainly have to address in the near future. In this context, it should be noted that a defined system of collecting data on discrimination is still in infancy, but it is rather well positioned and adopting some of the best practices in terms of activities in this area. However, significant problems and shortcomings are evident, as elaborated in this report, which should not be at all allowed to jeopardise the potential of the entire system of collecting data on discrimination in BiH.

The Law on Prohibition of Discrimination BiH quite accurately defines the obligations of the key actors in collecting data on discrimination in BiH, thus providing a good framework for establishing a system of data collection in this area. However, the key concepts and mechanisms relevant for this area in the specific

²¹⁹ “The Law on the Prohibition of Discrimination of BiH,” Article 1, para. 1.

²²⁰ Makkonen, *European Handbook on Equality Data*, p. 97.

BiH context, such as, for example, the definition of data or the deadlines for their submitting to the Ministry, are not precisely provided for, which leaves room for misinterpretation in the effort to meet this obligation. Currently, the definition of data on discrimination is vague with regards to the provisions of the Law and the Rulebook, and the competent institutions are still uncertain in practice as to which type of data they should collect. In addition, the implementation of the legal provisions is slow; therefore it is uncertain when the first comprehensive and official evaluation of the situation regarding discrimination in our country can be expected.

With regards to the records themselves, it is important to note that certain institutions, such as the Ombudsman, the HJPC and courts (with identified shortcomings) already keep separate records on discrimination cases in line with the provisions under the Law on the Prohibition of Discrimination. However, in general, collection of data on discrimination in BiH is largely neglected. This is primarily reflected in the fact that the Rulebook on Methods of Collecting Data on Cases of Discrimination in BiH was adopted with an almost four-year delay, and in the fact that the Ministry for Human Rights and Refugees of BiH, despite the clear legal obligation, has still not submitted a single report on the situation, i.e. the manifestations and the scope of discrimination in BiH.

Shortcomings in the current efforts of relevant institutions in this field are numerous and almost overshadow all the positive aspects. Thus, there are still no separate records of discriminatory elements of the criminal offense of torture and bias-motivated criminal offenses in criminal proceedings. Furthermore, there is no separate case-type code for the discrimination cases in the CCMS as a type of cases according to the procedural method of processing them, thus recording of discrimination cases currently depends on a rather uncertain mechanism – citing legal grounds by the applicant, and/or the representative/power of attorney of the alleged victim of discrimination. In addition, the Ministry for Human Rights and Refugees of BiH does not have a clear vision for conducting primary research in this area, nor for the integration of the data in the possession of non-governmental organisations and various actors from the private sector.

Finally, the foreseen access to the central database on the discrimination cases is not adequately defined and it is too restrictive, which lessens the potential such a database could have in combating discrimination. Technological solutions enabling a simple guarantee for the protection of personal information, while at the same time allowing general access to anyone who could find the data useful, have not been considered in the policy and procedure making process in this area.

Bearing in mind the importance of collecting data on discrimination, it is clear that an urgent change in BiH is needed with regards to the current approach to this issue in order to timely eliminate the identified shortcomings and to speed up the

process of finalising the system for collecting data on discrimination and finally ensure its functioning. Such intervention is even more urgent bearing in mind that concrete steps are yet to be taken. Only providing that in the next, crucial stage, this process is carried out in a proper manner, involving a wider circle of actors from civil society and expert community, a comprehensive and efficient system of collecting data on discrimination in BiH shall be put on sound foundations and its positive effects in the domain of combating discrimination can be expected.

9.

Recommendations

The following recommendations are the result of the above presented analysis:

Recommendations for the Ministry for Human Rights and Refugees of BiH:

1. In the BiH context, it is necessary to research and identify all the available sources of data on discrimination and define the methodology of their collection and classification. Generally speaking, it is necessary to expand the methodology and the sources of collecting data on discrimination, especially bearing in mind the existing records of data that could indicate discrimination, which are currently largely ignored, such as the official statistical data. It is particularly important to develop the appropriate methodology of collecting data on discrimination from private companies, non-governmental organisations, research centres and other relevant actors.

2. Before initiating the activity of collecting data on discrimination itself, it is necessary to prepare an adequate action plan, in the form of a strategy. The strategy, in addition to detailed definition of the possible sources of data and the methodology, should also: define financing of the data collection activity, determine the manner of dissemination of the results, ensure access to the data and provide for the evaluation of the system for data collection, but also of the strategy itself. Institutions for equality, the users of the data and/or the generators of the data, statistics experts, legal experts in the area of anti-discrimination and the issue of confidentiality, but also employers and employees should all be involved in the process of drafting the action plan.

3. It is necessary to accelerate the process of establishing the central database. It is of great importance to start creating the central database's software as soon as possible, using the existing CCMS (Court Case Management System) as a good example. In addition, it is necessary to ensure the compatibility of the central data base with the courts' CCMS, which would facilitate the transfer of data itself, i.e. the communication between the databases.

4. It is necessary to accelerate the activities on the adoption of the instructions on how to fill in the questionnaire for collecting data on discrimination cases.

5. It is necessary to expand the range of data which is planned to be collected from the competent institutions on the bases on the report of discrimination. Thus the data on socioeconomic status, religious affiliation, and every other circumstance that could result in unequal treatment of the person reporting discrimination and/or the victim of discrimination should be collected as well as the information on the number of times the said person has reported discrimination and in which areas of life. With regards to the perpetrator, if it is a natural person, the information on his/her age, sex, ethnic origin or nationality, socioeconomic status, membership in extremist movements, and in particular whether the said person is a repeat offender in relation to the violation of the provisions under the Law on the Prohibition of Discrimination should be collected.

6. It is necessary to make every effort to establish cooperation with non-governmental organisations which provide support and assistance, especially legal aid to the victims of discrimination, in order to ensure that they too keep records of the received reports of discrimination and periodically submit the collected data to the Ministry.

7. It is necessary to urgently start drafting and publishing annual and special reports on discrimination. Bearing in mind the inevitable limitations and shortcoming of the mechanism for the collection of data on discrimination, as it exists today, or is at least planned to be created in BiH, it is necessary to supplement the collected data with the relevant surveys on victimisation and perception of discrimination and other qualitative research within every reporting period.

8. It is necessary to ensure that the use of data is allowed only in an absolutely anonymous form, and that public and private bodies are prohibited from using them for other purposes than the identification or quantifying discrimination.

9. The users of the data have to be provided with a simple access to the collected data, in line with the legal standards on access to information, subject to obligatory compliance with the relevant legal provisions protecting the confidentiality of personal information. This can be best achieved by using modern information technologies and by ensuring access to the central data base via the Internet, enabling access to all but private information.

Recommendations for the Institution of Ombudsmen for Human Rights BiH:

10. It is necessary to expand the methodology and the sources for collecting data on discrimination for the purpose of submitting annual reports and special reports on discrimination in BiH. In this regards, it is particularly important to ensure the collection of data on court cases directly from courts or the HJPC.

Recommendations for the HJPC BiH:

11. When recording the cases of discrimination in CCMS, it is necessary to eliminate the element of subjectivity of the applicant or of the representative/power of attorney in stating the legal grounds in order to ensure establishing the correct number of anti-discrimination lawsuits. In this regard, it is necessary to introduce a separate case-type code for discrimination cases in the automatic case management system in courts (CCMS), with regards to the specificity of procedural approach to addressing them. The existing system of recording labour disputes can serve as a good basis for this, providing the cases categorised as discrimination cases would carry the case-type code “D”.

12. In the area of recording criminal cases, the existing CCMS should also have an option of recording the confirmed discrimination as an element of a criminal offence, i.e. recording of a discriminatory motive, with regard to bias-motivated crimes. This would be a simple way of making the cases of discrimination established in criminal proceedings a part of discrimination records.

Courts:

13. Until the HJPC adopts the case-type code “D” to denote the type of cases for anti-discrimination civil proceedings in CCMS, the alternative solution could be for the data input clerk in courts to insist on precise and accurate definition of legal grounds in order to avoid the categorisation of a discrimination case as “other”.

14. It is necessary to insist that the trial judge at the time of the first or subsequent review of the case, in accordance to his/her obligations under the Rulebook on the Automated Court Case Management System, carefully checks the information in the case. If s/he finds that it is a proceeding provided for in the Law on the Prohibition of Discrimination, which has not been recorded as such, the judge has to issue an order for the necessary corrections to be made in order for “discrimination” to be recorded as the legal grounds.

Other competent institutions:

15. It is necessary to ensure that all the competent institutions start collecting data and keeping records on the reports of discrimination as soon as possible. It is particularly important to train the relevant staff in the said institutions and ensure internal procedure enabling the fulfilment of this legal obligation.

Bibliography

Books, Articles, Reports and Guides

1. Agency for Statistics BiH. *Žene i muškarci u Bosni i Hercegovini, Tematski bilten TB 03. [Women and Men in Bosnia and Herzegovina, Thematic Bulletin TB 03]*. Sarajevo: Agency for Statistics BiH, 2011.
2. Al-Zubaidi, Yamam. *Statistikens roll i arbete mot diskriminering – en fråga om strategi och trovärdighet*. Stockholm: Diskrimineringsombudsmannen, 2012. http://www.do.se/Documents/rapporter/Statistikens%20roll%20i%20arbete%20mot%20diskriminering_en%20fr%C3%A5ga%20om%20strategi%20och%20trov%C3%A4rdighet_ej%20bilagor.pdf (Accessed on January 17, 2013).
3. European Commission Directorate-General for Employment. Social Affairs and Equal Opportunities. *Tackling Multiple Discrimination: Practices, policies and laws*. Luxembourg: Office for Official Publications of the European Communities, 2007.
4. European Commission Directorate-General for Employment and Social Affairs. *Comparative study on the collection of data to measure the extent and impact of discrimination within the United States, Canada, Australia, the United Kingdom and the Netherlands*. Luxembourg: Office for Official Publications of the European Communities, 2004.
5. European Monitoring Centre on Racism and Xenophobia. *Racism and Xenophobia in EU Member States: trends, developments and good practice, Annual Report 2005, part 2*. http://fra.europa.eu/sites/default/files/fra_uploads/103-ar05p2en.pdf (Accessed on February 21, 2013).
6. European Union Agency for Fundamental Rights. *EU-MIDIS technical report: Methodology, Sampling and Fieldwork, European Union Minorities and Discrimination Survey*. European Union Agency for Fundamental Rights, 2009. http://fra.europa.eu/sites/default/files/eu-midis_technical_report.pdf (Accessed on February 26, 2013).
7. European Union Agency for Fundamental Rights. *Fundamental rights: challenges and achievements in 2011: Annual report 2011*. Luxembourg: Publications Office of the European Union, 2012. http://fra.europa.eu/sites/default/files/fra_uploads/2211-FRA-2012_Annual-Report-2011_EN.pdf (Accessed on March 10, 2013).
8. European Union Agency for Fundamental Rights. *National Human Rights Institutions in the EU Member States: Strengthening the fundamental rights architecture in the EU I*. Luxembourg: Publications Office of the European Union, 2010. http://fra.europa.eu/sites/default/files/fra_uploads/816-NHRI_en.pdf (Accessed on January 10, 2013).
9. Open Society Fund BiH. *Izveštaj o rezultatima ispitivanja javnoj mnijenja o percepciji i iskustvu diskriminacije. [Report on the results of the public opinion survey on the perceptions and experiences of discrimination (own translation)]*. Open Society Fund BiH, 2012. http://www.diskriminacija.ba/sites/default/files/Diskriminacija_izvjestaj_1.pdf (Accessed on December 25, 2012).
10. Glaude, Michel. *Statistics on Discrimination within the Context of Social Statistics: Main issues*. Paper presented at the 33rd seminar titled “Ethnic and Racial Discrimination on

the Labour Market: Measurement, statistics and indicators”, organized by The European Advisory Committee on Statistical Information in the Economic and Social Spheres titled *Ethnic and Racial Discrimination on the Labour Market: Measurement, statistics and indicators*, Valletta, Malta, June 7-8, 2007.

11. Hanušić, Adrijana. *Judicial Protection from Discrimination in Bosnia and Herzegovina: Analysis of Laws and Practice Based on Initial Cases in This Field*. Sarajevo: Analitika – Center for Social Research, 2013. <http://www.analitika.ba/publikacije/sudska-zastita-od-diskriminacije-u-bosni-i-hercegovini> (Accessed on May 3, 2013).

12. Institution of the Human Rights Ombudsmen for of Bosnia and Herzegovina. *Izveštaj o pojavama diskriminacije u Bosni i Hercegovini za 2011. godinu* [2011 Report on occurrence of discrimination in Bosnia and Herzegovina]. Banja Luka: Institution of the Human Rights Ombudsmen for of Bosnia and Herzegovina, 2012.

13. Klostermann, Johannes. *Eliminating racist discrimination in Germany: Parallel report addressed to the Committee on the Elimination of All Forms of Racial Discrimination of the United Nations*. Forum Menschenrechte, 2008. <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/ForumMenschenrechte.pdf> (Accessed on January 17, 2013).

14. Kraler, Albert i Reichel, David. *Statistics on migration, integration, and discrimination in Europe: Prominstat Final Report*. International Centre for Migration Policy Development - ICMPD, 2010. http://www.emnbelgium.be/sites/default/files/publications/prominstat_final_report-en.pdf (Accessed on March 10, 2013).

15. Makkonen, Timo i European Network of Legal Experts in the non-discrimination field. *Measuring discrimination: Data Collection and EU Equality Law*. Luksemburg: Office for Official Publications of the European Communities, 2007. http://www.non-discrimination.net/content/media/Measuring%20Discrimination%20-%20Data%20collection%20and%20EU%20Equality%20Law%20_en.pdf (Accessed on November 20, 2012).

16. Makkonen, Timo. *European Handbook on Equality Data*. Luksemburg: European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, 2006. http://yhdenvertaisuusfibin.directo.fi/@Bin/36280a49f76c5da1f93164b71afcfbc8/1362745092/application/pdf/117492/Europeanhandbook_WEB.pdf (Accessed on March 8, 2013).

17. OSCE Mission to BiH. *Borba protiv krivičnih djela počinjenih iz mržnje: Analiza incidenata motiviranih predrasudama u Bosni i Hercegovini, sa preporukama*. [Tackling Hate Crimes: An Analysis of Bias-motivated Incidents in Bosnia and Herzegovina, with recommendations] Sarajevo: OSCE Mission to BiH, 2012.

18. Office of the High Commissioner for Human Rights. General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17): 04/08/1988. Geneva: Office of the High Commissioner for Human Rights, 1996.

19. Opservatorij ljudskih prava: Bosna i Hercegovina. *Zabrana diskriminacije*. [Human Rights Observatory: Bosnia and Herzegovina, *Prohibition of Discrimination*] Observatorij ljudskih prava: Bosna i Hercegovina. <http://ljudskaprava.ba/zabrana-diskriminacije/> (Accessed in March 2013).

20. OSCE/ODIHR. “Combating Hate Crimes in the OSCE Region: An Overview of Statistics, Legislation, and National Initiatives.” Varšava: OSCE/ODIHR, 2005.

21. The Serbian Commissioner for the Protection of Equality. *Redovan godišnji izveštaj Poverenika za zaštitu ravnopravnosti za 2011. godinu*. [T2011 Regular Annual Report of the Serbian Commissioner for the Protection of Equality]. Beograd: Poverenik za zaštitu ravnopravnosti Republike Srbije, 2012. <http://www.ravnopravnost.gov.rs/files/Poverenik%20Izvestaj%20za%202011.%20godinu%20lat.docx> (Accessed on November 4, 2012).
22. Protector of Human Rights and Freedoms of Montenegro (Ombudsman). *Izveštaj o zaštiti od diskriminacije u prvom polugodištu 2011. godine*. [Report on protection against discrimination in the first six months of 2011]. Podgorica: Protector of Human Rights and Freedoms of Montenegro, October 2011.
23. Reuter, Niklas, Makkonen, Timo i Oosi, Olli. *Study on Data Collection to Measure the Extent and Impact of discrimination in Europe: Final report 7. 12. 2004*. Finland: Net Effect Oy, 2004. <http://ec.europa.eu/social/BlobServlet?docId=1797&langId=en> (Accessed on August 23, 2012).
24. Sali-Terzić, Sevima. *Komentar zakona o zabrani diskriminacije: Recenzija*. [Commentary on the Law on the Prohibition of Discrimination: Review]. Sarajevo: 2010. http://pravosudje.ba/vstv/faces/pdfServlet?p_id_doc=4867 (Accessed on March 11, 2013).
25. Simon, Patrick. *“Ethnic” statistics and data protection in the Council of Europe Countries: Study report*. Strasbourg: European Commission against Racism and Intolerance, 2007.
26. Topić, Boris. *Unused Potential: The Role and Importance of Non-governmental Organizations in Protection against Discrimination in Bosnia and Herzegovina*. Sarajevo: Analitika – Center for Social Research, 2012. <http://www.analitika.ba/publikacije/uloga-nvo-u-zastiti-od-diskriminacije> (Accessed on March 10, 2013).
27. The Office of the Croatian People’s Ombudsman. *Izvešće o pojavama diskriminacije za 2011. [2011 Report on Occurrence of Discrimination]*. Zagreb: The Office of the Croatian People’s Ombudsman, 2012. <http://www.ombudsman.hr/dodaci/Izvje%C5%A1%C4%87e%20o%20pojavama%20diskriminacije%20za%202011.pdf> (Accessed on December 12, 2012).
28. Wrench, John. *The Measurement of Employment Discrimination by Research: Problems of Comparability*. Paper presented at the 33rd seminar titled “Ethnic and Racial Discrimination on the Labour Market: Measurement, statistics and indicators,” organized by The European Advisory Committee on Statistical Information in the Economic and Social Spheres titled *Ethnic and Racial Discrimination on the Labour Market: Measurement, statistics and indicators*. Valletta, Malta, June 7-8, 2007.

Regulations and Jurisprudence in BiH

1. “Krivični zakon BiH” [Criminal Code of BiH]. Consolidated, unofficial text. *Official Gazette of BiH* 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07 and 8/10.
2. “Zakon o slobodi pristupa informacijama u FBiH” [The Freedom of Access to Information Act for the Federation of Bosnia and Herzegovina]. *Official Gazette of FBiH* 32/01 and 48/11.

3. "Zakon o slobodi pristupa informacijama u BiH" [The Freedom of Access to Information Act for Bosnia and Herzegovina]. *Official Gazette of BiH* 28/00.
4. "Zakon o slobodi pristupa informacijama u RS" [The Freedom of Access to Information Act for Republika Srpska]. *Official Gazette of RS* 20/01.
5. "Zakon o upravi BiH" [Law on Administration BiH]. *Official Gazette of BiH* 32/02.
6. "Zakon o zaštiti ličnih podataka" [Law on the Protection of Personal Data. *Official Gazette of BiH* 49/06.
7. "Zakon o zabrani diskriminacije BiH" [Law on the Prohibition of Discrimination BiH]. *Official Gazette of BiH* 59/09. <http://www.ombudsmen.gov.ba/materijali/Zakon%20o%20zabrani%20diskriminacije%20SlGlasnik%20BiH%20broj%2059-09.pdf> (Accessed on October 29, 2012).
8. "Zakon o ombudsmenu za ljudska prava BiH" [Law on Ombudsman for Human Rights of BiH]. *Official Gazette of BiH* 19/02, 35/04 i 32/06.
9. "Krivični zakon Brčko Distrikta BiH" [Criminal Code of Brcko District BiH]. *Official Gazette of BDBiH* 10/03, 6/05 and 21/10.
10. "Krivični zakon Federacije BiH" [Criminal Code of the Federation BiH]. *Official Gazette of Federation BiH* 36/03, 37/03, 21/04, 69/04, 18/05 and 42/10.
11. "Krivični zakon RS" [Criminal Code of RS]. *Official Gazette of RS* 49/03.
12. "Pravilnik o načinu prikupljanja podataka o predmetima diskriminacije u Bosni i Hercegovini" [Rulebook on Methods of Collecting Data on Cases of Discrimination in BiH]. *Official Gazette of BiH* 27/13.
13. Pravilnik o sistemu za automatsko upravljanje predmetima u sudovima (CMS) [Rulebook on the Automated Court Case Management System]. Number of document: 09-50-1191/2011. Sarajevo: Presidency of the High Judicial and Prosecutorial Council BiH, March 23, 2011. http://www.pravosudje.ba/vstv/faces/pdfservlet;jsessionid=be85ba02d80f75c6a04f9e8a7e437fbab2bbcc803c65221999f0281ab103bcee.e34TbxyRbNiRb40Lb38TbhaTc3a0e0?p_id_doc=12702 (Accessed on April 24, 2013).
14. "Upitnik za prikupljanje podataka: Dodatak Pravilniku o načinu prikupljanja podataka o predmetima diskriminacije u Bosni i Hercegovini" [Questionnaire for the collection of data: Appendix to the Rulebook on methods of collecting data on cases of discrimination in BiH]. *Official Gazette of BiH* 27/13.

Laws and Jurisprudence of Other Countries

1. "Zakon o zabrani diskriminacije Republike Crne Gore" [Law on Prohibition of Discrimination of the Republic of Montenegro]. *Official Gazette of Montenegro* 46/10.
2. "Zakon o zabrani diskriminacije Republike Srbije" [Anti-discrimination Law of the Republic of Serbia]. *Official Gazette of the Republic of Serbia* 22/09.
3. Law on Prevention and Protection against Discrimination. *Official Gazette of the Republic of Macedonia* 50/10, April 13, 2010. http://www.legislationline.org/download/action/download/id/3483/file/FYROM_Law%20on%20protection%20against%20discrimination_2010_en.pdf (Accessed on November 3, 2012).

4. "Zakon o suzbijanju diskriminacije Republike Hrvatske" [Anti-discrimination Act of the Republic of Croatia]. *Official Gazette of Republic of Croatia* 85/08 and 112/12.
5. The European Court of Human Rights. *Rotaru v. Romania, Application no. 28341/95*. Strasbourg: The European Court of Human Rights, May 4, 2000.

International Mechanisms and Treaties

1. Council of Europe. Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14. Rim: Council of Europe, November 4, 1950.
2. European Commission. Bosnia and Herzegovina 2012, Progress Report, SWD (2012) 335. Brussels: European Commission, October 10, 2012.
3. European Commission. "Communication from the Commission to the Council, the European Parliament, the European Economic and Social committee and the Committee of the Regions - Non-discrimination and equal opportunities for all - A framework strategy SEC(2005) 689". Brussels: European Commission, June 1, 2005. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0224:FIN:EN:PDF> (Accessed on November 6, 2012).
4. European Commission against Racism and Intolerance (ECRI). *ECRI Report on Bosnia and Herzegovina (fourth monitoring cycle)* CRI(2011)2. Adopted on December 7, 2010, published on February 8, 2011. Bosnian version, http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/bosnia_herzegovina/BIH-CBC-IV-2011-002-BIH.pdf (Accessed on March 8, 2013).
5. European Commission against Racism and Intolerance (ECRI). ECRI General Policy Recommendation No. 4: on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims CRI(98)30. Strasbourg: ECRI, June 13, 1997. Bosnian version, http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n4/Rec4-1998-30-BIH.pdf (Accessed on November 23, 2012).
6. The European Parliament and the European Council. Directive 95/46EC of the European Council and of the Parliament of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. *Official Journal L* 281, 23/11/1995. <http://www.azlp.gov.ba/images/PropisiBOS/Direktiva%2095-46-EC%20Europskog%20parlamenta%20i%20Vije%20C4%87a%20od%2024.10.1995.%20bos.doc> (Accessed on May 9, 2013).
7. The Council of the European Union. Council decision of 27/11-2000 of 27 November 2000 establishing a Community action programme to combat discrimination 2000/750/EC (2001 to 2006). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000D0750:EN:NOT> (Accessed March 8, 2013).
8. The Council of the European Union. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. *Official Journal of European Union L* 18/2000.

9. The Council of the European Union. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. *Official Journal of European Union* L 303/2000.
10. The Council of the European Union. Council Directive 2004/113/EC of 13 December 2004 implementing the principle of the equal treatment between men and women in the access to and supply of goods and services. *Official Journal of European Union* L 373/2004.
11. The Council of the European Union. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Recast Directive). *Official Journal of European Union* L 204/2006.
12. The European Parliament and the European Council. Decision No 1578/2007/EC of the European Parliament and of the Council of 11 December 2007 on the Community Statistical Programme 2008 to 2012. *Official Journal of the European Union* L 344/15, December 28, 2007.
13. United Nations. International Covenant on Civil and Political Rights adopted by the General Assembly of United Nations on 16 December 1966. Resolution No. 2200 A / XXI/. Entered into force on March 23, 1976. <http://www.mprh.hr/lgs.axd?t=16&id=1557> (Accessed on March 10, 2013).
14. UN Committee on the Elimination of Discrimination Against Women (CEDAW). Concluding Comments of the Committee on the Elimination of Discrimination against Women: Bosnia and Herzegovina, CEDAW/C/BIH/CO/3. UN CEDAW, June 2, 2006. <http://www.unhcr.org/refworld/docid/4537784511.html> (Accessed on March 8, 2013).
15. UN Committee on the Elimination of Racial Discrimination. General Recommendation IV concerning reporting by States parties (article 1 of the Convention), HRI/GEN/1/Rev.7, May 12, 2004.
16. UN Committee on the Elimination of Racial Discrimination. General recommendation XXVII on discrimination against Roma, HRI/GEN/1/Rev.7, May 12, 2004.
17. UN Committee on the Rights of the Child. Concluding observations: Bosnia and Herzegovina. Committee on the Rights of the Child, CRC/C/OPSC/BIH/CO/1. UN, October 1, 2010.
18. UN Human Rights Committee. Consolidated guidelines for state reports under the International Covenant on Civil and Political Rights, CCPR/C/66/GUI/Rev.2, February 26, 2001. <http://daccessddsny.un.org/doc/UNDOC/GEN/G01/408/86/IMG/G0140886.pdf?OpenElement> (Accessed on March 8, 2013).
19. UN. Convention on the Rights of Persons with Disabilities. <http://www.un.org/disabilities/convention/conventionfull.shtml#top> (Accessed on May 3, 2013).
20. Council of European Union. Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, ETS. 108. Strasbourg: Council of Europe, January 28, 1981. http://www.ohr.int/ohr-dept/afd/int-ref-ef/Other%20European%20Conventions/default.asp?content_id=5260 (Accessed on March 10, 2013).

Other

1. Agency for Statistics BiH. “*Probni popis stanovništva, domaćinstava i stanova 2012: Popisnica (P-1)*”[*Pilot Census of Population, Households and Dwellings in 2012: Questionnaire (P-1)*]. Agency for Statistics BiH. http://www.bhas.ba/popis2011/P1_en.pdf (Accessed on January 17, 2013).
2. Ministry of Interior of Finland. “*Discrimination Research and Monitoring*”. Ministry of Interior of Finland. http://www.intermin.fi/en/equality/discrimination_research_and_monitoring (Accessed on October 24, 2012).

Annex 1

Table 1. Overview of potential sources, types of data and the methodology of collecting data on discrimination in BiH

Data	Source	Type of information	Methodology of data collection
Official records of reported and processed cases in the competent institutions*	<ul style="list-style-type: none"> - Judiciary system in BiH, - Institution of the Human Rights Ombudsmen of BiH, - Administration bodies, - Legal entities with public authorities, - Office of Disciplinary Counsel, - Constitutional Court BiH, - Office of the representative/ agent of the Council of Ministers before the European Court for Human Rights and - Other bodies deciding on the rights of citizens, established in accordance with special regulations. 	<ul style="list-style-type: none"> - Statistics of reported/ confirmed discrimination, - Areas where discrimination usually occurs: types/forms/area of the occurrence of discrimination, - Trends of discrimination, - Socioeconomic, demographic and other data on victims and perpetrators and - Data on the work of the competent judiciary bodies and the Institutions of Ombudsmen. 	<ul style="list-style-type: none"> - Submitting data using the questionnaire to the central data base,** - Examination of records of all competent bodies, - Technical integration for automatic transfer of data from CMS to the central data base and - Collecting data from relevant reports, other publications, as well as monitoring the work of competent institutions.

Data	Source	Type of information	Methodology of data collection
Official statistics and the statistics of administrative records	<ul style="list-style-type: none"> - Agency for statistics BiH, - Federal Office of Statistics of FBiH, - Institute of Statistics of Republika Srpska, - All state bodies keeping administrative records, such as competent ministries for education, ministries for labour and social policies, etc. 	<ul style="list-style-type: none"> - Census and - Demographic, socioeconomic and other statistical data. 	<ul style="list-style-type: none"> - Data is collected directly from publications and databases of official statistical institutes/offices. - Data is collected on the bases of requests or by examining various administrative registers.
Secondary sources	<ul style="list-style-type: none"> - State agencies and institutions, - Non-governmental organisations, - Research agencies and institutes. 	<ul style="list-style-type: none"> - Wide spectrum of qualitative and quantitative data, - Descriptive studies, - In-depth analysis and case studies and - Policy studies 	<ul style="list-style-type: none"> - Direct requests to organisations, - Websites of organisations, - Registering to mailing lists of organisations, - Participation in events organised by relevant organisations.
Primary research	<ul style="list-style-type: none"> - Conducted by the Ministry for Human Rights and Refugees BiH, using their own resources or by engaging expert organisations or consultants. 	<ul style="list-style-type: none"> - Data on the citizens' perception of discrimination, - Data on the attitudes, awareness and the knowledge of citizens, - Data on experiences of citizens and - Data on discrimination in the employment area provided by private companies. 	<ul style="list-style-type: none"> - Survey research, - Focus groups, - Interviews, - Observation, - Case studies, - Longitudinal research, - Comparative research, - Testing discrimination, etc.

* The collection of data from these sources is provided for in the Rulebook.

** The use of this methodology is provided for in the Rulebook.

About the Authors

Emina Ćerimović earned an LLM degree with Merits in Human Rights with a Specialisation in European Union Law at the Department for Legal Studies at Central European University, Budapest, Hungary (with a scholarship of Central European University). She graduated from the Law School at the University in Sarajevo. In 2011, she was awarded the Development Fellowship Program by the Open Society Fund BiH and in 2012 Think Tank Development Young Professional Fellowship by the Open Society Foundations. She worked on a number of research studies and has published several papers in the field of criminal law and international human rights.

Dženana Hrlović obtained her BA degree at the Department of Psychology at the University of Sarajevo, where she is currently completing an MA in Psychology. She gained her previous research experience in the citizens' association "Eureka" working on the project aimed at supporting gifted students, and in "ProMENTE social research", on the research of psychosocial consequences of the war in BiH. She presented several research papers in the field of psychology at an academic congress in Sarajevo and a conference in Zagreb. She has been engaged in Analitika – Center for Social Research since 2011 on several research projects in the area of public law and public administration.

Analitika - Center for Social Research is an independent, non-profit, non-governmental policy research and development center based in Sarajevo, Bosnia and Herzegovina. The mission of Analitika is to offer well-researched, relevant, innovative and practical recommendations that help drive the public policy process forward, and to promote inclusive policy changes that are responsive to public interest.

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