



Disability: The Time to Account is Now

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There are no accurate statistics on how many people with disabilities live in Bosnia and Herzegovina (BiH). According to the World Health Organization, 15 per cent of world's population, or roughly 650 million people, live with some disability. Because of the recent war in BiH, we can only estimate that the national figure is much higher. Currently, only very few women, men, and children with disabilities are full and equal members of the BiH society and enjoy human rights on an equal basis with other BiH citizens. The great majority face discrimination, segregation, and violation of their basic rights (CoE Report, 2011). Their exclusion from education, employment and social network is alarming. According to the CoE 2011 Report, the unemployment rate of persons with disabilities is as high as 82 per cent. Moreover, children with disabilities lack sufficient medical care and have a low or no access to compulsory education (Ombudsman Report, 2011). Persons with mental disabilities, referred to as "invisible citizens" by the Ombudsman, are denied the right to make decisions for themselves and are subjected to institutional medical treatment without their free and informed consent. The existing assessment of the level of disability applied in BiH is based on the medical model only. Finally, a recent research on the stigmatization of persons with disabilities has revealed that people with disabilities are perceived as charity beneficiaries and objects of others' decisions rather than holders of rights (Ćerimović, 2011).

In 2008, BiH adopted the State Disability Policy, followed up with two entity strategies (in FBiH and RS), with the aim to ensure that all persons with disabilities enjoy full human rights, fundamental freedoms and dignity and that they are fully included into the majority society. Subsequently, the Council of Ministers of BiH established the Council for Persons with Disabilities (Council) at the state level, which started

functioning in the beginning of 2012. In March 2010, BiH also adopted the UN Convention on the Rights of Persons with Disabilities (CRPD), whereby BiH agreed to put its efforts to promote, protect and ensure the full and equal enjoyment of all human rights by all persons with disabilities.

The ratification of the CRPD as such is a positive step, but it is only the beginning of a very long process. There is an alarmingly low level of awareness about the rights of persons with disabilities, both among people whose rights are affected, but also in the BiH community and among authorities. Policies and programmes are developed and implemented by individual ministries and departments, without any coordination and communication across the governmental bodies. Lastly, there are no independent mechanisms at the domestic level to monitor the implementation of the existing human rights standards.

By signing, and thus accepting the obligations stemming from the CRPD, under Article 33 (2), BiH has taken over the duty to establish or designate a national independent mechanism for matters related to the promotion and protection of the rights of persons with disabilities and to monitoring the implementation of the CRPD. Article 33 (2) of the CRPD seeks to address the implementation gap between international human rights law and the actual situation on ground regarding the human rights of people with disabilities. The implementation of this particular article will affect the implementation of all the others.

Although a variety of monitoring mechanisms exists both at the state and entity level of BiH, an independent mechanism has not been designed until today. If there is no independent institution mandated to promote, protect and monitor the CRPD, the realization of the rights of persons with disabilities will continue to be a very protracted process.

Summary

This policy brief urges for a decisive action in protecting human rights of persons with disabilities, who have been constantly left out of the state accountability system, denied basic human rights that other people take for granted. It calls for an urgent change by creating an external and independent national monitoring body, which would be able to alert BiH to violations of rights of persons with disabilities and assist with the adoption of appropriate measures that would forestall such violations. By signing, and thus accepting the obligations stemming from the UN Convention on the Rights of Persons with Disabilities under Article 33 (2), BiH authorities have agreed to establish (or designate) a national independent mechanism mandated to promote and protect human rights of persons with disabilities and monitor the implementation of the Convention. The findings of the research show that the role of an independent national monitoring body should be entrusted to the Ombudsman Institution of BiH, as the only existing body in BiH that fulfills the requirements stemming from the Convention and has sufficient experience in the field of protection of human rights of persons with disabilities and prevention from their violations in BiH.

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AN OVERVIEW OF THE CRPD AND ARTICLE 33 (2)

The UN Convention of the Rights of Persons with Disabilities is the first human rights treaty that comprehensively details all human rights of persons with disabilities and clarifies the obligation of States to respect, protect and fulfil those rights. It represents a shift in paradigms as people with disabilities are no longer regarded as persons in need of medical assistance because of their impairment (the so-called medical model) but as right-holders (the so-called social model). Finally, it outlines the institutional changes, which States have to undertake in order to facilitate its implementation. Article 33(2) requires States to designate or establish one or more independent mechanisms to promote, protect and monitor the implementation of the Convention. This makes the CRPD the first human rights treaty— with partial exception of the Optional Protocol to the Convention against Torture - that includes the obligation to create a national monitoring mechanism.

Why is it necessary?

In all human rights treaties, the implementation obligation is closely linked to a monitoring component. It is a way of assessing whether domestic legislation, policy and practice comply with a treaty. Previously, monitoring of international human rights treaties has been conducted by international bodies, on the basis of the report by a State Party to the treaty. For example, in BiH, Ministry for Human Rights and Refugees is the principal body tasked to monitor and report about the implementation of all human rights treaties adopted by BiH to international bodies, which would then verify BiH's compliance with human rights. On the contrary, Article 33 (2) places the obligation on State Parties to focus on domestic independent monitoring.

Interviews conducted for the purposes of this paper with government officials in BiH revealed that the vast majority of respondents did not see the need for a shift of paradigm from a pure international monitoring to an additional national monitoring mechanism. The importance of national bodies in the process cannot be underestimated, though. Firstly, national bodies are closer to local realities and can be much more effective in pushing for a particular political direction and commitment on this issue, but they can also assess the adoption and effective implementation of measures and their actual impact (De Beco, 2011). Secondly, there is no comprehensive approach to disability issues in Bosnia, as policies are dispersed among entities, Brcko District and cantonal ministries, with the main role given to the health or social ministries. In addition, the human rights dimension of disability issues has for a long time been ignored by Bosnian policy makers. Thirdly, the CRPD is considered as a pure implementation convention; it does not aim to elaborate new human rights, but to increase the compliance with the existing set of human rights (De Beco, 2011). Overall, the following is needed: 1) a change in thinking of decision makers leading to fostering the CRPD values; 2) consistent and continuous notifications to BiH authorities about potential violations of the CRPD rights; 3) as-

sisting BiH to adopt measures that can prevent such violations; and 4) constant assessment of the adoption and effective implementation of measures and their actual impact. Finally and most importantly, BiH has an obligation to establish or designate a distinct, independent, and external entity responsible for promotion, protection and monitoring of the CRPD. In short, an urgent change is imminent.

Where to look for the Independent Mechanism in BiH?

According to the Convention, BiH can either establish a new body or designate the monitoring function to an existing body. However, whatever form it takes, it must be able to perform the tasks stemming from the Convention and it must comply with the Paris Principles.

Council for Persons with Disabilities

The Council consists of twenty members – ten members are governmental officials and the other ten are representatives of organizations of persons with disabilities (DPOs) in BiH. According to the constituting Decision, the Council has a broad mandate to promote and monitor the rights of persons with disabilities. However, contrary to the Paris Principles and the CRPD independence requirement, representatives of ministries have voting rights within the Council. Moreover, the work of the Council shall be financed from the budget of the Ministry for Hu-

What is Independent Monitoring Mechanism?

One or more independent mechanisms mandated to promote and protect the rights of persons with disabilities and monitor the implementation of the CRPD includes an adequately skilled body, which is fully independent of governments, meets the requirements of the Paris Principles – a UN document drafted as a guide for national human rights institutions. It requires the participation of persons with disabilities and their respective organization in the monitoring process.



man Rights and Refugees, which implies that the Council is not endowed with a separate budget. Therefore, it is questionable how it will be able to perform any of its functions independently.

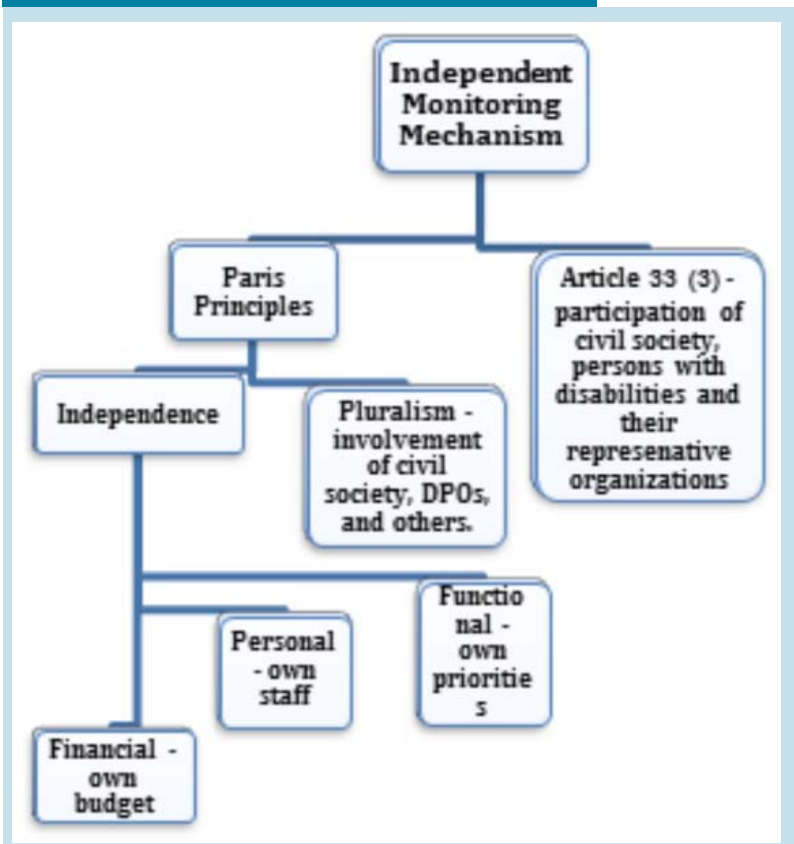
Organizations of Persons with Disabilities (DPOs)

DPOs in BiH have played the most important role in promoting policy making in the long-ignored disability issues. DPOs have been of the principal actors involved in drafting the Disability Policy and entity strategies. Eventually, DPOs successfully convinced BiH to ratify the Convention. However, the majority of interviewed representatives of specialized DPOs across the country were of the opinion that they cannot take over the responsibility of the independent mechanism in BiH. Reasons were numerous: incoherence of the DPOs sector, even discrimination and segregation; insufficient capacities of the available human and material resources; and, as one of the representative said, lack of clear idea who could coordinate, organize and finance this kind of “activity”. However, their involvement in the independent monitoring mechanism is one of the most important requirements of both the Paris Principles and Article 33 (3) of the CRPD, and they must not be ignored by Bosnian policy makers. They are the closest to persons with disabilities and have the greatest expertise in the field of human rights in general. DPOs should either be members of the independent mechanism or in an effective way cooperate with the mechanism.

The Ombudsman Institution for Human Rights in BiH

BiH should “maintain, strengthen, designate or establish” an independent mechanism mandated to promote, protect and monitor the CRPD rights, taking into account the Paris Principles. When referring to the Paris Principles, which outline the responsibilities, composition and working methods of National Human Rights Institutions (NHRIs), the CRPD indicated that NHRIs were the very inspiration for its drafters.

Key requirements of the monitoring mechanism:



During interviews with relevant representatives of state and entity ministries, this research revealed an alarming misunderstanding in what the Convention requires when it requires a “national framework, including one or more independent mechanism”. When asked, “Who in their opinion should be the independent mechanism for BiH”, the respondents were either of the opinion that BiH did not need it, “because Ministry of Human Rights and Refugees has the competence under the Law to monitor and report about all human rights treaties”, or with regard to the entities, that relevant entity ministries had already established departments within the ministries responsible for monitoring and reporting on the implementation of the Convention, and adopted entity strategies. When the researcher stressed out the independence requirement, most of the respondents stated that this requirement was vested in organizations of persons with disabilities. “They can always submit a shadow report to the UN Committee”, was one of the answers.

The Office of High Commissioner for Human Rights is of the opinion that assigning NHRI the role of the independent mechanism "can be considered as the safest option in order to have independent mechanisms comply with the Paris Principles (UN OHCHR, 2011). NHRI are not concerned with the implementation of human rights, but with promotion, protection and monitoring in the same way as the independent mechanism. BiH have an NHRI that is already exercising the function of monitoring rights of persons with disabilities, the Ombudsman. The Ombudsman is guided by the Paris Principles, and has extensive expertise in the protection of international human rights. Its main duty is to handle complaints by individual or legal persons about human rights violations committed by any body in BiH. The Ombudsman can act *ex officio* as well. It reports about its monitoring activities to the public and submits recommendations to BiH authorities.

The Ombudsman Institution has already integrated disability issues into its framework by creating a Department for the protection of the Persons with Disabilities (the Department). The Department has already received and registered multiple complaints for violations of rights and freedoms and has acted also *ex officio* in cases related to violations of rights of persons with disabilities. In addition, the Department monitors the harmonization of laws and other policies in BiH related to the protection of rights and interest of persons with disabilities. The Ombudsman is in ongoing consultations with the NGOs sector, authorities and maintains an open dialogue with citizens. Finally, using an already existing institution would facilitate this

Ombudsman Institution for Human Rights is halfway between the state and non-state actors. It can thus serve as a mediating platform where civil society and BiH authorities can discuss their disability rights concerns. They can involve both representatives of DPOs and in an advisory capacity, representatives of governmental departments. This is how a human rights dialogue between civil society and the public administration can be created.

process and be more cost effective. Therefore, BiH should designate its independent mechanism to this body and avoid creating a new institution.

How to Make it Work?

To ensure timely implementation of the obligations stemming from the CRPD:

The Ministry for Human Rights and Refugees, in cooperation with the Ombudsman Institution, relevant ministries in BiH and NGO's, particularly organizations of persons with disabilities in BiH, shall find an appropriate legal solution on designation of the Ombudsman Institution for Human Rights of Bosnia and Herzegovina as the national independent monitoring mechanism outlining its functions, independence, and all other relevant competences.

The Council of Ministries of BiH, in cooperation with the BiH Council of Persons with Disabilities, shall consider the proposed legislative solution and make a conclusion about the same.

The Ministry of Finance, in cooperation with the Ministry for Human Rights and Refugees shall find a solution to secure funds from the Budget of BiH Institutions and international obligations of BiH so that the Ombudsman Institution - its Department for the Protection of Persons with Disabilities - could perform the functions of the independent mechanism. Furthermore, BiH authorities need to draw upon international cooperation in order to ensure the framework receives public funds to perform its monitoring tasks.

In April 2012, BiH was supposed to submit its first initial report on the implementation of the Convention to the UN Committee on the Rights of Persons with Disabilities. BiH missed the deadline and was later granted a deadline extension. By June 2012, BiH will have to report to the UN Committee on the implementation of the CRPD and it will have to provide information on the independent monitoring mechanism.



The Ombudsman Institution should change its Rules of Procedure as to define its mandate to promote, protect and monitor the CRPD. In addition, to ensure adequate human resources, the Ombudsman Institution, in the time of submitting its financial plan to the Ministry of Finance, should request funds for the employment of two additional members in the Department for the Protection of Persons with Disabilities and additional financial resources to perform its monitoring functions. In this sense, the Ombudsman Institution should develop a strategic plan on how it will perform its independent monitoring functions: *promote* the CRPD rights (through awareness raising and education campaigns), *protect* (in addition to handling individual complaints and inquiry procedure, the Ombudsman should help persons with disabilities to introduce complaints before the UN Committee on the Rights of Persons with Disabilities), and to monitor the implementation of the Convention (through examining the compliance of both BiH legislation and practice with the CRPD - not just the conformity with the CRPD, but also some broader implications). Lastly it can easily *involve* a) persons with disabilities as monitors and experts, b) representatives of ministries in an advisory capacity, and c) professional organizations concerned with disability rights.

Organizations of persons with disabilities should alert the BiH authorities to establish the independent mechanism as soon as possible by designating the role to the Ombudsman Institution.

International organizations, particularly the Mission of the OSCE and the Office of the Council of Europe in BiH, should help BiH in the process of establishing the national independent mechanism.

OMBUDSMAN INSTITUTION FOR HUMAN RIGHTS OF BIH	
Promotion	<ul style="list-style-type: none"> - educating persons with disabilities on the CRPD rights; - training and advising executive and legislative bodies on the rights of person with disabilities and recommend new legislative and administrative rules; - encouraging education systems in BiH to integrate disability into human rights education (law faculties and human rights institutions should be encouraged to include the rights of persons with disabilities in their curricula, teaching and research); - organizing campaigns and other awareness-raising activities about the CRPD in the media.
Protection	<ul style="list-style-type: none"> - handle complaints of alleged violations of the CRPD rights reported by persons with disabilities and make recommendations to government to comply with the CRPD; - lobby in the government to provide legal aid throughout the territory of BiH so that people with disabilities can bring alleged violations of the CRPD to local courts.
Monitor	<ul style="list-style-type: none"> - examine existing laws, programmes and practices and make recommendations for their harmonization with the CRPD; - monitor and comment upon the development of new laws; submit a parallel report to the UN Committee on the rights of Persons with Disabilities.

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