

# **Mapping and Needs Assessment of the LGBT Community in Kosovo and in Bosnia and Herzegovina**

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## **ACRONYMS**

BD	Brčko District
BIRN	Balkan Investigative Reporting Network
BiH	Bosnia and Herzegovina
B.U.K.A.	Banjalučko Udruženje Kvir Aktivista (Banja Luka Association of Queer Activists)
CDCS	Country Development Cooperation Strategy
CEL	Center for Equality and Liberty Kosovo
COE	Council of Europe
CPT	Center for Peace and Tolerance
CSGD	Center for Social Group Development/Elysium
CSO	Civil Society Organization
ECtHR	European Court of Human Rights
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
FtM	Female to Male (transgender)
FTV	Federalna TV
GoK	Government of Kosovo
HIV	Human Immunodeficiency Virus
ICITAP	Department of Justice International Criminal Investigative Training Assistance Program
IDAHOT	International Day Against Homophobia and Transphobia
ILGA Europe	European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association
IVLP	International Visitor Leadership Program
KWN	Kosovo Women's Network
LGE	Law on Gender Equality (Bosnia and Herzegovina)
LGB	Lesbian, Gay, Bisexual
LGBT	Lesbian, Gay, Bisexual, and Transgender
LPD	Law on Prohibition of Discrimination (Bosnia and Herzegovina)
MHRR	Ministry for Human Rights and Refugees (Bosnia and Herzegovina)
FtM	Female to Male (transgender)
MtF	Male to Female (transgender)
NGO	Non-governmental organization
OGG	Office of Good Governance (Kosovo)
OSCE	Organization for Security and Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe
QESh	Qendra për Emancipim Shoqëror / Center for Social Emancipation
RAE	Roma, Ashkali and Egyptian
RS	Republika Srpska
RTA	Resident Twinning Advisor (Kosovo)
RTK	Radio Television Kosovo
SIDA	Swedish International Development Cooperation Agency

SOC Sarajevo Open Center  
SOP Standard Operating Procedure  
USG U.S. Government  
USAID U.S. Agency for International Development  
YIHR Youth Initiative for Human Rights (in Kosovo and in Bosnia and Herzegovina)

## **EXECUTIVE SUMMARY**

The purpose of this study was to do a mapping and needs assessment of the current situation in Kosovo and in Bosnia and Herzegovina (BiH) related to Lesbian, Gay, Bisexual and Transgender (LGBT) rights; the current groups involved in advocating for rights based on sexual orientation and gender identity; and effective interventions for social and institutional change.

Both countries are still strongly impacted by the aftermath of war and the ethnic conflict and nationalism stemming from the breakup of Yugoslavia. Additionally, traditional patriarchal values shaped by nationalism and religion characterize much of the discourse around gender and sexuality. LGBT communities are mostly still hidden and even the major cities have few or no welcoming meeting places. During the last two years, there have been violent homophobic attacks in both countries on public events, and the response of the criminal justice system has been minimal. Individuals who experience violence or discrimination based on sexual orientation or gender identity are rarely willing to take cases to relevant authorities for fear of additional discrimination, lack of adequate response, or wider disclosure of their identity.

However, there are significant positive indicators as well as opportunities for intervention. National level anti-discrimination legislation is present in both countries. While implementation of the legislation is weak, the legal codes do explicitly include sexual orientation; the state level Law on Protection from Discrimination in BiH also includes gender identity and revisions to the Anti-Discrimination Law in Kosovo will likely result in the inclusion of gender identity soon. Both countries have several organizations focused on strengthening LGBT communities and advocating for rights based on sexual orientation and gender identity, though neither country has lesbian or transgender specific organizations. Over the last several years these organizations have had a significant impact on creating stronger community networks and developing relationships to government actors, especially the police. External pressure is also an effective tool in both Kosovo and BiH, though it is most effective when used in tandem with efforts from local actors. European Union (EU) accession is a powerful factor for increased state support for LGBT rights, especially in Kosovo. The United States Government (USG) also has a strongly influential role in both countries and the new diplomatic and development focus of the USG on issues of sexual orientation and gender identity has already resulted in additional support for LGBT organizations and initiatives.

The findings in this report are based on a review of relevant documents and reports, a review of the legal frameworks, interviews with stakeholders, and attendance at community events. The research for the report on Kosovo was conducted during April 2014 and the research on Bosnia and Herzegovina was conducted at the end of May and the beginning of June of 2014.

Based on the findings, the report provides a concrete list of recommendations for each country that can be used for: a) continuing to provide ongoing, culturally and contextually sensitive support to current efforts; b) exploring possible shifts in current programming to ensure inclusiveness; c) suggesting possible areas where additional funding could provide significant and sustainable impact, and d) identifying opportunities to effectively use the influence of the USG and other international stakeholders.

The full list of country specific recommendations can be found in the *Recommendations* section of each country report; however, several primary recommendations for USAID in both countries can be summarized as follows:

- Include sexual orientation and gender-identity in USAID program design and work with implementing partners to ensure that it is included where relevant, especially in (but not limited to) programs focusing on civil society, the justice sector, media, education, health, economic empowerment, youth, gender equality, and human rights. Include indicators to measure success.
- Consider adding an indicator to the Mission Performance Monitoring Plan to monitor and track the success of implementers in working directly with LGBT organizations and including sexual orientation and gender identity in their projects, where relevant.
- Continue to provide support and capacity building to LGBT civil society organizations; for smaller organizations with more limited capacity use a small grants mechanism and, where relevant, include funding for security measures and technical support such as assistance with financial management and strategic planning.
- Encourage and fund non-LGBT human rights, women's rights, cultural, and arts organizations to include sexual orientation and gender identity in their current work, and to take on LGBT specific projects to expand the base of support.
- Recognize the diversity of the LGBT community and ensure that programs include women and transgender people.
- In addition to funding, continue to strengthen working relationships between the USAID Mission, other USG agencies, and LGBT organizations; ensure the inclusion of the variety of LGBT organizations and stakeholders.
- Continue to coordinate with other international and local actors to speak out publicly on LGBT rights as human rights.
- As with other cross-cutting issues, consider establishing a task force that coordinates across USG agencies and focuses the U.S. Embassy's work on sexual orientation and gender identity.
- Ensure that staff members of USAID and the U.S. Embassy have clear guidance regarding how to communicate policy priorities; ensure internal training opportunities for American and local staff on issues of sexual orientation and gender identity to support staff members who may not feel comfortable or have sufficient knowledge on LGBT issues.

## **INTRODUCTION**

The focus on LGBT issues on the part of the United States Government (USG) and the United States Agency for International Development (USAID) has grown dramatically over the last several years. In 2011, President Obama directed “all agencies engaged abroad to ensure that U.S. diplomacy and foreign assistance promote and protect the human rights of LGBT persons.”<sup>1</sup> Internationally, the USG has increasingly provided support to LGBT communities and protection of human rights based on sexual orientation and gender identity through engaging bilaterally, regionally, and in international fora. USAID has now included sexual orientation and gender identity in a number of policy frameworks and strategies, including the *Gender Equality and Female Empowerment Policy* and the *USAID Strategy on Democracy, Human Rights and Governance*.<sup>2</sup>

Most recently, USAID has released the “*LGBT Vision for Action: Promoting and Supporting the Inclusion of Lesbian, Gay, Bisexual, and Transgender Individuals*.” In this document, USAID states its “commitment to championing the human rights of LGBT persons and promoting their inclusion in development efforts as part of a coordinated, whole of government effort.” Among other key points, this *Vision for Action* indicates that USAID will prioritize increasing “the capacity for inclusive development within USAID” and building “the capacity of LGBT organizations in developing countries.”<sup>3</sup>

This mapping and needs assessment of LGBT rights and the LGBT community in Kosovo and BiH is conducted in the framework of USAID’s increasing commitment to LGBT human rights.

The LGBT movements in Kosovo and in BiH are developing in the context of the Western Balkans, and the regional post-Communism and post-conflict transition. Norms around gender and sexuality are still strongly influenced by religious and traditional patriarchal values, and strongly homophobic views are still held by most of the public in both countries. Ethnic and nationalist tensions remain high, and shape public discourse and public opinion. Homophobic attitudes are interwoven with these religious and nationalist discourses. For example, in May of 2013 the mayor of Prijedor, a town in BiH, dismissed White Armband Day, a commemoration of the people who were killed in the city during the 1992-1995 conflict, by equating it to a “gay pride parade.”<sup>4</sup> In Kosovo, after the physical attacks on *Kosovo 2.0* a newsmagazine that that addressed LGBT issues positively, videos threatening the LGBT community in Kosovo were released which intermingled religious verses with death threats against community members.<sup>5</sup>

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<sup>1</sup> Office of the Press Secretary, “Presidential Memorandum -- International Initiatives to Advance the Human Rights of Lesbian, Gay, Bisexual, and Transgender Persons,” 2011. Retrieved from <http://www.whitehouse.gov/the-press-office/2011/12/06/presidential-memorandum-international-initiatives-advance-human-rights-l>

<sup>2</sup> United States Agency for International Development, “*Gender Equality and Female Empowerment Policy*,” Washington, DC, 2012. Retrieved from [http://www.usaid.gov/sites/default/files/documents/1860/1-Gender\\_Equality\\_and\\_Female\\_Empowerment\\_Policy\\_2012.pdf](http://www.usaid.gov/sites/default/files/documents/1860/1-Gender_Equality_and_Female_Empowerment_Policy_2012.pdf).; United States Agency for International Development, “*USAID Strategy on Democracy, Human Rights, and Governance*,” 2013. Retrieved from [http://pdf.usaid.gov/pdf\\_docs/pdacx557.pdf](http://pdf.usaid.gov/pdf_docs/pdacx557.pdf),

<sup>3</sup> United States Agency for International Development. *Vision for Action: Promoting and Supporting the Inclusion of LGBT Individuals*, 2014

<sup>4</sup> U.S. Department of State, *Bosnia and Herzegovina 2013 Human Rights Report*, 2014.

<sup>5</sup> Letter from the Special Rapporteur to Prime Minister Thaçi, January 10, 2013.

Most organizing around LGBT activism in the region began in the 1990s, and most of the LGBT organizations currently operating in Kosovo and in BiH were founded or revived in the last several years. Presently, both countries have several committed LGBT organizations focusing on community strengthening, public awareness, and advocacy for rights. Regionally based organizing is limited in the Western Balkans, though activists and organizations do have some connections to one another across national borders. For example, activists from Serbia have conducted a number of trainings and empowerment workshops in both Kosovo and BiH, and in December 2013, a regional conference with participants from BiH, Croatia, Serbia, Montenegro, and Macedonia was held in Sarajevo. While the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA Europe) has had some involvement in the region and has provided some support to the Western Balkans, most of the local organizations in Kosovo and BiH have had only limited involvement with ILGA Europe.

Governmental protection mechanisms are weak in BiH and Kosovo; despite some legal protections, implementation is lacking. In both countries, activists are advocating for legislative changes to ensure comprehensive legal protection for human rights based on sexual orientation and gender identity. Furthermore, even with legal protections, the judicial systems are not equipped to enforce the protection that exists; for the most part, police, prosecutors, and judges have limited training, knowledge or commitment to protecting the rights of LGBT people. Both Kosovo and BiH have recently had several highly publicized cases of violence against public LGBT events without any significant response from the judicial sector. This lack of reaction confirms the perception that the judicial sector and human rights mechanisms are not effective. Most cases of discrimination or violence, if they are reported at all, are only reported to civil society organizations. LGBT organizations in both countries are working on training police, documenting human rights violations, and encouraging reporting of human rights violations by community members to appropriate authorities. Currently, many members of LGBT communities in Kosovo and BiH accept discrimination and violations of basic rights as normative.

Both countries are looking toward EU accession, a process that requires demonstrated government commitment and reforms to protect rights based on sexual orientation and gender identity. In BiH, overall political conflict, complicated governance structures, and the continued ethnic divisions make it difficult to implement government reforms to conform to EU standards. In Kosovo, there are more indicators of forward progress: the government has several outspoken champions for LGBT rights, has established a governmental committee on rights based on sexual orientation and gender identity, and has done a few high profile events on LGBT rights. Perhaps the most visible indicator of the support of the Government of Kosovo (GoK) was the decision to, with the help of the USG, light the government building in rainbow colors for the 2014 International Day Against Homophobia and Transphobia (IDAHOT).<sup>6</sup> While this action did not concretely change access to rights or increase protection for LGBT people, it was a visible display of support from the GoK in the center of the capital city.

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<sup>6</sup> IDAHOT 2014: Country Report Kosovo. Retrieved from <http://dayagainsthomophobia.org/what-is-happening-in-your-country/kosovo/idahot-report-2014-kosovo/>

The opportunity for international actors to have a significant impact in both countries is high, given the generally positive public perception of diplomats and international organizations. The political influence of diplomats as well as the willingness of international actors to make culturally sensitive public statements is repeatedly referenced by stakeholders as a critical mechanism for moving LGBT rights forward. In key sectors, such as the judiciary, economic development, education, healthcare, and media, the international community is engaged in providing significant funding and technical assistance. Inclusion of sexual orientation and gender identity as cross-cutting issues in these sectors has the potential for sustainable, and long-term impact. Additionally, given the generally limited access to funding for organizations focused on sexual orientation and gender identity,<sup>7</sup> especially for small organizations, the support provided by USAID makes a critical difference to the landscape of organizing for LGBT rights and strengthening LGBT communities.

## **STRUCTURE OF THE REPORT**

In order to make this report the most useful to stakeholders working in Kosovo and in BiH, the findings and recommendations are structured with a section for each country. Each country section contains an *Executive Summary*, *Introduction*, *Findings*, and *Recommendations* allowing the sections to be used independently.

Research was conducted through a review of relevant reports and literature as well as meetings with relevant stakeholders. A local legal expert provided extensive assistance and legal analysis in each country.<sup>8</sup> The research in Kosovo was primarily conducted during three weeks in April, 2014. The research in BiH was primarily conducted during three weeks at the end of May and beginning of June, 2014. In-country research allowed for extensive meetings with stakeholders and attendance at community events. The extensive flooding and landslides that hit much of BiH in mid-May, just prior to this research, were a major natural disaster and limited access to some stakeholders in BiH who were involved in disaster relief.

The interviews and meetings with relevant stakeholders form the core of the analysis and included local activists, LGBT community members, representatives of human rights and civil society organizations, academics, representatives of governmental institutions, political leaders, and representatives of international organizations and embassies. Additional conversations were held with donor organizations and LGBT organizations based outside of Kosovo and BiH. A complete list of these meetings is in the annex for each country report.

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<sup>7</sup> Maulbeck, Ben Francisco, *The Physics of LGBTQ Funding: Momentum, Resistance, and Impact*, Funders for LGBTQ Issues, 2013.

<sup>8</sup> Many thanks to Natyra Avdiu in Kosovo and Aleksandra Miletić-Šantić in BiH.

## Kosovo

### **EXECUTIVE SUMMARY (Kosovo)**

This section comprises a mapping and needs assessment of the current situation in Kosovo related to Lesbian, Gay, Bisexual and Transgender (LGBT) rights; the current groups involved in advocating for rights based on sexual orientation and gender identity; and effective interventions for social and institutional change. The findings are based on a review of relevant documents and reports, a review of the legal framework, interviews with stakeholders, and attendance at community events during a three-week period in April, 2014.

Support for rights based on sexual orientation and gender identity is often viewed in Kosovar society as imposed from external and international actors. Accordingly, it is critical that engagement by international actors is directed toward strengthening the capacity of Kosovar activists and government counterparts to directly implement the work and to visibly lead the efforts.

The existence of several active LGBT organizations, the growing commitment of the Government of Kosovo (GoK), the engagement of international actors, and an increasing inclusion of sexual orientation and gender identity in public discourse makes this a particularly opportune time for interventions designed to increase LGBT rights.

An overview of the findings and recommendations in six key areas are listed below.

#### ***Enhancing the Legal Framework:***

Overall, the legal framework of Kosovo has strong anti-discrimination provisions that cover sexual orientation (but not gender identity or expression). However, procedural mechanisms in the law are weak, the law has not been well implemented, and other areas of the legal framework do not adequately cover sexual orientation and gender identity.

- *Overall recommendation: Work with civil society, the Government of Kosovo, and the Advisory Group in the Office of Good Governance (OGG) to ensure that the legal framework of Kosovo provides full protections on the basis of sexual orientation and gender identity.<sup>9</sup>*

#### ***Empowering LGBT Community and Ensuring Effective Services***

While there are three LGBT organizations in Kosovo, they have limited networks with other human rights and civil society organizations. The LGBT population is mostly hidden and afraid, has limited opportunity to come together in safe spaces, and is not yet at a place to provide significant community support or advocate strongly for their rights. Furthermore, basic services are lacking, for example: healthcare and mental healthcare providers are rarely sensitive or trained for dealing with LGBT issues and may actually be overtly hostile; there is no identified health or mental health care at all for transgender people; there are no services or shelters for

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<sup>9</sup> The full membership of the Advisory Group is indicated later in the section on the *Government and Justice Sector*.

young people who are rejected from family homes and do not have employment; and there is limited legal aid for cases of discrimination or other legal needs.

- *Overall recommendation: Strengthen and empower the LGBT community while strengthening networks to other human rights organizations that can broaden the base of support. Ensure that there is appropriate training, expectation, and support for professionals so that services are appropriately provided to members of the LGBT community.*

### ***Enhance Public Discourse Around LGBT Rights***

The attacks on *Kosovo 2.0* opened public discourse around sexual orientation and gender identity; while not all of the public discussion was positive, several sources noted that it created a new openness for conversations that had never previously happened. Additionally, LGBT groups are becoming stronger and public officials are speaking out more broadly.

- *Overall recommendation: Broaden the discourse by providing support to LGBT groups, other civil society actors, prominent Kosovars, and government officials to speak out strongly and frequently about LGBT rights in the frame of human rights and anti-discrimination. Ensure that media treats the matter appropriately by training the media sector and strengthening the capacity of LGBT groups and human rights groups to hold the media accountable.*

### ***Increasing Support of the Government of Kosovo, the Judiciary, and other Duty Bearers***

The pressure towards EU accession means that there is sufficient political will to move support for LGBT rights forward within the Government of Kosovo; but as one source put it, “There is no resistance; there is no enthusiasm either.” Among duty bearers, the judiciary remains a particular area of concern; police have made some forward progress since 2006, but judges and prosecutors are identified by most sources as a continuing problem. While there is not widespread support, there are several outspoken government champions of human rights for LGBT people, a newly established Advisory and Coordination Group at the National level in the Republic of Kosovo for LGBT rights, and a new Austrian/Finnish twinning project with the Office of Good Governance.

- *Overall recommendation: The political capital and expertise of international actors can play a strong role in ensuring the commitment of the Government of Kosovo to rights based on sexual orientation and gender identity; from support to government officials and the Advisory Group to training opportunities and increasing the professional responsibility of duty bearers.*

### ***Ensure Inclusive Education***

Most sources identified education as a key sphere for intervention, from the primary level through university. From curriculum reform to ensuring safety in school for those students who do not conform to prevailing norms regarding sexual orientation and gender identity, the educational sector provides avenues to protect members of the LGBT community while also opening doors for enhancing commitment to human rights.

- *Overall recommendation: Ensure cooperation and communication between various projects in the educational sector; at the primary and secondary level, different projects*

*work with teacher training and curriculum reform, both of which can benefit from an enhanced focus on human rights inclusive of LGBT rights; at the university level, create enhanced teaching tools and teaching opportunities around sexual orientation and gender identity.*

### ***Continued Donor Coordination***

A variety of sources indicated that they appreciated opportunities for donor coordination and information sharing regarding LGBT projects; they also felt that these opportunities could be significantly strengthened. There was appreciation for the USG role in organizing such opportunities as well as some possible tension around the entry of the USG into a sphere where other donors and actors had been active for a significant amount of time.

- *Overall Recommendation: Continue to organize and facilitate donor coordination while creating opportunities to ensure ongoing activities, share responsibility, and support civil society and the Government of Kosovo.*

## **INTRODUCTION (Kosovo)**

Kosovo is at an opportune moment for key interventions on lesbian, gay, bisexual, and transgender (LGBT) rights. While current efforts for LGBT rights in Kosovo are still limited, a combination of a number of factors provide a milieu for positive social change. In particular, the current context includes: increasingly active Kosovar LGBT organizations; pressure on the GoK around EU accession and visa liberalization; support from key governmental officials; an engaged international community with outspoken diplomats; and the opening of a broader societal dialogue in the wake of the attacks against *Kosovo 2.0* which were well-covered in the Kosovar media and continue to form part of the national public and social discourse.

These factors exist, of course, against a more complicated backdrop. There is still strong social condemnation of homosexuality and of gender identities that differ from what is perceived to be normative by most of the population. Patriarchal and traditional society values frame ideas of ‘appropriate’ genders and sexualities, and deviating from those norms often invites, at a minimum, harassment, and in some cases, attacks and violence.<sup>10</sup> Furthermore, both personal conversations and published reports indicate that there is a rise in vocal fundamentalist Islamists who are strongly opposed to “homosexuality.”<sup>11</sup> While this is still a minority of the population, their impact is strongly felt and shapes the planning of any kind of visible or public manifestations by LGBT communities.

The current landscape includes three organizations that are directly focused on LGBT rights: Qendra për Emancipim Shoqëror / Center for Social Emancipation (QESH), the Center for Equality and Liberty Kosovo (CEL) and the Center for Social Group Development/Elysium

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<sup>10</sup> European Commission, *Kosovo\* 2013 Progress Report*, 2013.; US Department of State, *Kosovo 2013 Human Rights Report*, 2014.

<sup>11</sup> A religious party that espouses hatred against LGBT people in print and social media registered as a political party in 2013. European Commission, *Kosovo\* 2013 Progress Report*, 2013.; US Department of State, *Kosovo 2013 Human Rights Report*, 2014.

(CSGD). QESH and CEL focus broadly on empowering the LGBT community and advocating for rights, and CSGD, the oldest gay organization in Kosovo focuses more closely on health and HIV, while still implementing some activities focusing specifically on LGBT communities. There are also several other human rights organizations working on LGBT rights, some in collaboration with the LGBT organizations. A fuller description of these organizations is in the section on community. One significant challenge is the lack of a strong human rights network that is inclusive of rights based on sexual orientation and gender identity.

The study was conducted through interviews with numerous stakeholders, including LGBT activists, individual members of the LGBT community, members of civil society, USAID and USG staff, government of Kosovo officials, diplomatic representatives, the donor community (including donors based outside of Kosovo), and a few regional activists outside of Kosovo. Additionally, Natyra Avdiu, a Kosovar human rights lawyer, provided a review of the current legal context. A more extensive list of interviews is indicated in the annex. The interviews and document review took place primarily during three weeks in April of 2014. The Austrian/Finnish twinning project with the Office of Good Governance had just begun as this project was being researched and could not be fully taken into account with regard to recommendations. The work of the twinning project should be taken into consideration with regard to any programming that may overlap with their mandate.

## **FINDINGS (Kosovo)**

### ***Legal Framework***<sup>12</sup>

The *Constitution of the Republic of Kosovo* and the Anti-Discrimination Law both provide important human rights protections and explicitly include sexual orientation. Unfortunately, the protections have not been effectively implemented to protect the LGBT community, in part because of a weak judicial system, and in part because the Anti-Discrimination Law needs to be amended to provide more effective mechanisms.

First, the Constitution recognizes sexual orientation as a protected characteristic and thus prohibits discrimination on the basis of sexual orientation.<sup>13</sup> It also lists a number of fundamental rights and freedoms that are to be enjoyed without discrimination. Secondly, the Constitution provides for direct applicability of a range of international human rights agreements and instruments such as the European Convention on Human Rights<sup>14</sup> and in instances of incompatibility between the national and international norms, it is the international norm which prevails. In addition, interpretation of human rights provisions shall be consistent with the decisions of the European Court of Human Rights.<sup>15</sup> For the LGBT community, this is especially significant as the European Court of Human Rights has already developed its jurisprudence and has recognized the rights of the LGBT community in different spheres of society. This includes

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<sup>12</sup> Legal analysis was provided by Natyra Avdiu.

<sup>13</sup> Article 24.2, Constitution of the Republic of Kosovo

<sup>14</sup> Article 22, Ibid

<sup>15</sup> Article 53, Ibid

freedom of assembly,<sup>16</sup> freedom of expression,<sup>17</sup> balancing freedom of thought, conscience and religion and non-discrimination in the context of employment,<sup>18</sup> succession to a tenancy,<sup>19</sup> social protection,<sup>20</sup> parental authority,<sup>21</sup> and adoption,<sup>22</sup> civil union,<sup>23</sup> and gender identity.<sup>24</sup>

In addition, the Anti-Discrimination Law prohibits direct and indirect discrimination<sup>25</sup> in a range of fields including employment (access to employment, as well as promotion, training and dismissal), education, social protection and social advantages, access to housing, access to goods and services, participation in public affairs, access to public places and any other right set forth by law.<sup>26</sup> Harassment, instruction to discrimination, victimization and segregation are also deemed as forms of discrimination and thus are prohibited.<sup>27</sup> However, despite the fact that the Anti-Discrimination Law has been in force since 2004, there are not many discrimination cases that have reached the courts. As has been previously reported, this is partly due to the inadequacies of the law itself in relation to procedures<sup>28</sup> and the lack of an independent equality body<sup>29</sup> that would assist victims of discrimination to seek redress.<sup>30</sup>

During 2012, the GoK included the Anti-Discrimination Law in the legislative agenda to be amended, and the new draft has some improvements, including the addition of gender identity.<sup>31</sup> However, the amendments need to go further with addressing procedures before the courts and the role of an independent equality body, as these two areas have hindered implementation. While the Ombudsperson has been proposed as the equality body, this raises significant questions, because the mandate of the Ombudsperson is restricted to monitoring public authorities, and cannot address discrimination in the private sector,<sup>32</sup> where much of the discrimination against LGBT people takes place.<sup>33</sup> As part of a larger project, the Council of

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<sup>16</sup> See the cases of: *Genderdoc-m v Moldova*, Application No. 9106/061; *Alekseyev v Russia*, Application No. 4916/07, 25924/08, 14599/09; *Baczkowski and Others v Poland*, Application No. 1543/06

<sup>17</sup> *Vejdeland and Others v Sweden*, Application No. 1813/07

<sup>18</sup> *Ladele and McFarlane v UK*, Application No. 5167/10 and 36516/10

<sup>19</sup> *Karner v Austria*, Application No. 40016/98, *Kozak v Poland*, Application No. 13102/02

<sup>20</sup> *P.B and J.S v Austria*, Application No. 18984/02

<sup>21</sup> *Salgueiro da Silva Mouta v Portugal*, Application No. 33290/96

<sup>22</sup> *Frette v France*, Application No. 36515/97; *E.B. v France*, Application No. 43546/02; *Gas and Dubois v France*, Application No. 25951/07; *X and Others v Austria*, Application No. 19010/07

<sup>23</sup> *Valliantos and Others v Greece*, Application No. 29381/09 and 32684/09

<sup>24</sup> *X, Y and Z v United Kingdom*, Application No. 21830/93; *Sheffield and Horsham v United Kingdom*, Application No. 22885/93 and 23390/94; *Christine Goodwin v United Kingdom*, Application No. 28957/95; *Van Kuck v Germany*, Application No. 35968/97; *Grant v United Kingdom*, Application No. 32570/03; *L v Lithuania*, Application No. 27527/03, *Schlumpf v Switzerland*, Application No. 29002/06;

<sup>25</sup> Article 2.a, Anti-Discrimination Law, Law No. 2004/3

<sup>26</sup> Article 4, *Ibid*

<sup>27</sup> Article 3, *Ibid*

<sup>28</sup> Chapter II, *Ibid*

<sup>29</sup> Chapter III, *Ibid*

<sup>30</sup> See report by Youth Initiative for Human Rights – Kosovo, ‘Anti-Discrimination Law in Kosovo – Seven Years On’ December 2011, available at [http://ks.yihr.org/public/fck\\_files/ksfile/Anti-Discrimination%20Law%20in%20Kosovo%20-%20seven%20years%20on.pdf](http://ks.yihr.org/public/fck_files/ksfile/Anti-Discrimination%20Law%20in%20Kosovo%20-%20seven%20years%20on.pdf) accessed on 20/05/2014.

<sup>31</sup> Article 3, Draft Law on Protection from Discrimination

<sup>32</sup> Article 132.1, Constitution of the Republic of Kosovo

<sup>33</sup> See report by Youth Initiative for Human Rights – Kosovo, ‘Discrimination Cases in Kosovo – do they exit?’, July 2013, p.43 available at [http://ks.yihr.org/public/fck\\_files/ksfile/Discrimination%20Cases%20Report%20-%20Final.pdf](http://ks.yihr.org/public/fck_files/ksfile/Discrimination%20Cases%20Report%20-%20Final.pdf) accessed on 20/05/2014

Europe (COE) with the support of the European Union (EU), has provided legislative expertise on the three draft laws,<sup>34</sup> and the GoK has agreed to take these recommendations into account. None of these laws have been sent to Parliament, and until the new government is formed it will be unclear how these laws will progress. In order to ensure that the Anti-Discrimination Law can be more effectively implemented, it is critical that the draft law goes through an open and consultative process to address the outstanding issues, and that the consultations include civil society as well as the GoK and international actors. If the amendments to the laws pass it will be important to ensure appropriate training in the judicial sector, such as through the Kosovo Judicial Institute.

With regard to hate speech, according to the Criminal Code of Kosovo, inciting hatred, discord or intolerance is a criminal offence punishable by a fine or by imprisonment of up to five years. Such hatred, discord or intolerance could be against a national, racial, religious, ethnic or other such group living in the Republic of Kosovo.<sup>35</sup> Since sexual orientation is not specifically recognized, it has been argued that this would fall into ‘other such group.’ Not explicitly being named as a protected ground can potentially create challenges in successfully prosecuting crimes on this basis.

With regard to family recognition, the Constitution of the Republic of Kosovo proscribes that everyone has the right to marry and create a family, but the Family Law of Kosovo<sup>36</sup> proscribes who can exercise this right. According to the Family Law, ‘marriage is a legally registered community of two persons of different sexes’.<sup>37</sup> As the legal framework stands, members of the LGBT community would not be able to get married or seek recognition of their cohabitation, since the Family Law does not permit them to exercise their right to private and family life. However, the decision of the European Court of Human Rights (ECtHR) in *Valliantos and Others v Greece* may, at some point, provide the basis for challenging this exclusion.

The legal status for transgender people in Kosovo is ambiguous. Birth registration in Kosovo is regulated through the Law on Civil Status. The birth certificate legally confirms the birth<sup>38</sup> and one of the details that it will record is sex.<sup>39</sup> Importantly, the law recognizes that the content of the act of birth may be amended in cases expressly stipulated in the Law on Civil Status or other laws in force, although this is not elaborated further.<sup>40</sup> The Law on Personal Names permits a citizen of legal age to change his/her personal name upon his/her request.<sup>41</sup> Therefore, the current legislation does not permit a person to change the data on their birth certificates and obtain gender recognition. However, recently a case has been reported of a woman who had gender confirming surgery in Germany and was able to change her name and gender in her Kosovar documents through the assistance of a lawyer. While the legal basis is not clear, it is reported that

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<sup>34</sup> See report of the Council of Europe, ‘Reform Proposals to Energize Non-Judicial Human Rights Institutions in Kosovo’, December 2013, available at

[http://www.monckton.com/docs/general/REFORM\\_PROPOSALSfinale\\_%20\(1\).pdf](http://www.monckton.com/docs/general/REFORM_PROPOSALSfinale_%20(1).pdf) accessed on 20/05/2014

<sup>35</sup> Article 147, Criminal Code of Kosovo, Code No. 04/L-082

<sup>36</sup> Law No. 2004/32

<sup>37</sup> Article 14.1, Family Law of Kosovo

<sup>38</sup> Article 32, Law on Civil Status, Law No. 04/L-003

<sup>39</sup> Article 36.3.6, *Ibid*

<sup>40</sup> Article 38, *Ibid*

<sup>41</sup> Article 12, Law on Personal Name, Law No. 02/L-188

she had documents from medical professionals and a decision from a German court, which may have been used to persuade the Kosovar authorities for the necessary changes in her documents.

Similarly, the law as it relates to intersex people is ambiguous, and simply states that in the event that the child's organs have a disorder, the gender shall be established by a medical report.<sup>42</sup> While it was outside the scope of this report to investigate medical practices regarding children deemed to be intersex at the time of birth, it is an area that warrants further investigation to ensure that infants and children are not subjected to unnecessary medical or surgical treatment that is cosmetic rather than vital for health.<sup>43</sup>

While the above highlights some of the key areas for protection of rights based on sexual orientation and gender identity, there is currently no comprehensive review of the Kosovar legal framework for the areas where protection is fully provided and where there are significant gaps and exclusions. Furthermore, there are few lawyers in Kosovo with significant legal expertise in this area, making it difficult for LGBT organizations to participate fully in national conversations regarding draft laws, pursue strategic litigation, or provide assistance for cases that can be initiated under the current legal code. QESH has recently hired a law student to assist with cases; however, the development of additional legal expertise will be important for ensuring redress for discrimination under current laws and for successfully pursuing changes to the code where protection is not currently provided.

### *Community Context*

Kosovo has three organizations that explicitly work on advocating for LGBT rights and building community: Qendra për Emancipim Shoqëror / Center for Social Emancipation (QESH), Center for Equality and Liberty Kosovo (CEL), and Center for Social Group Development/Elysium (CSGD). The relationships between these organizations can be characterized as fragile. All report that there is significant pressure from donors and international actors for them to cooperate and collaborate. QESH and CEL both report that the relationship between them is improving, though there are still some tensions and questions about the best ways they can most effectively cooperate. CSGD collaborates with CEL, but the relationship between CSGD and QESH remains tense.

Many sources attributed some or most of the tension to personal conflicts and fights as opposed to differing philosophies about organizing or advocacy. Other stakeholders commented that some of the tension might be able to be attributed to the focus of the organizations, for example, the level of connection to and consultation with members of the LGBT community. There are some positive developments with regard to organizing for the International Day Against Homophobia and Transphobia (IDAHOT), as QESH and CEL met together and, as of the time of the research, indicated that they intended to collaborate on at least some components of the planning for the day.

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<sup>42</sup> Article 32.2, Law on Civil Status, Law No. 04/L-003

<sup>43</sup> See, for example, PACE Resolution 1952(2013), accessed at <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20174&lang=en> on April 28, 2014

Furthermore, there are a number of human rights organizations that have worked on LGBT rights, or who might be willing to do so in the future. These organizations include, Youth Initiative for Human Rights (YIHR-KS), Alter Habitus, Kosovo Women's Network (KWN), Levizja Fol, Kosovo Gender Studies Center, the Center for Peace and Tolerance (CPT), and others. Additionally, both Dokufest and Pri Fest consistently include films with significant LGBT content in their programming, and the Balkan Investigative Reporting Network (BIRN) and *Kosovo 2.0* regularly include LGBT content in their publications.

Most of the time, specific collaboration between the LGBT organizations and other civil society organizations is infrequent, though all of the organizations say that they are very open to additional collaboration. Tension over funding is part of the landscape; some stakeholders perceive that other organizations are working on LGBT issues solely as an opportunity to access donor funding. In other cases, it seems those organizations that might usefully collaborate and who express willingness to do so, simply have not reached out to one another, or have not done so consistently. The recent large award to QESH from USAID also was mentioned on several occasions; in a small funding environment with few organizations, the shift in funding and access is noticeable.

When discussing the local context around LGBT rights, almost all stakeholders brought up the attacks on *Kosovo 2.0* and *Libertas* within the first few minutes of the conversation. The incidents are also a key component of most human rights reports on Kosovo, including this one.<sup>44</sup> Those events in December 2012 clearly still shape the landscape for many people committed to enhancing LGBT rights in Kosovo, and they bring into clear relief both challenges and opportunities for community organizing, the justice sector, and public discourse. The attacks also highlighted the continued need for local and international support for LGBT rights and the importance of security and protection. At the same time, some community members and other civil society actors mentioned that they wanted a more balanced discourse that no longer focused so heavily on the incidents around *Kosovo 2.0* as the sole or primary focus of conversations regarding LGBT rights in Kosovo.

Among community members, the attacks highlighted the very real risk of physical violence. In the case of these two incidents, rising levels of vocal religious and community intolerance quickly transformed into violence.<sup>45</sup> While no similar attacks on public manifestations have been repeated since then, vandalism of property has been reported to the police, attacks on individuals continue to be reported to organizations and in research reports, and security was a part of most conversations with activists.<sup>46</sup>

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<sup>44</sup> US Department of State, *Kosovo 2012 Human Rights Report*, 2013.; ILGA Europe, *ILGA-Europe's written submission to the European Commission's 2013 Progress Report on Kosovo\**, May 17, 2013.; European Commission, *Kosovo\* 2013 Progress Report*, 2013.

<sup>45</sup> Domi, Tanya, "Update: Organized Thugs Attack *Kosovo 2.0* Magazine Launch of Sexuality Edition," *The New Civil Rights Movement*, December 15, 2012, retrieved from <http://thenewcivilrightsmovement.com/organized-thugs-attack-kosovo-2-0-magazine-launch-sexuality-edition/news/2012/12/15/56422> on May 8, 2014.

<sup>46</sup> YIHR and CGSD, *Freedom and Protection for Lesbians, Gays, Bisexuals and Transgender in Kosovo*, November 2013.

The police have not documented significant numbers of incidents in the past two years, but community organizations receive complaints both formally and informally. There is not yet a clear mechanism for ensuring consistent documentation of human rights violations, most of which are perpetrated by non-state actors. CEL is generally referring incidents to QESh. QESh launched an online portal for reporting incidents in May, shortly after the research period. Unfortunately, at this point, none of the organizations have received formal training about reporting and documenting human rights violations, and QESh is currently using written materials that describe how to do documentation and reporting as a guide. Focused training from an individual or organization skilled in documentation of human rights violations is critical to ensure that documentation of violations is consistent, can be used for advocacy, and will be most useful in cases when victims wish to pursue police or legal action. Given that all of the organizations report that people contact them regarding rights violations, this training would ideally include staff of all of the organizations. At the time of the research, there had not yet been broad communication to the community about where and how to report, from either government institutions or from organizations. The launch of QESh's reporting mechanism in May might increase community awareness; however, it will be important to follow whether or not this happens, and if community members know about mechanisms to report and feel safe reporting.

Most organizations and stakeholders reported that many LGBT people in Kosovo still fear being open, besides to a few close friends.<sup>47</sup> While there are a few activists who are willing to be open, including in national and international media, even they carefully consider where and how they choose to make public statements. Being open carries the risk of conflict with family and friends, economic consequences if a job or family support is lost, and the potential for harassment or violence.<sup>48</sup> There is no formal "safety net" if an individual is rejected by his or her family due to sexual orientation or gender identity. Especially given the limited economic opportunities and high unemployment,<sup>49</sup> rejection by family can have severe consequences. There are currently no shelters that will house people rejected by their families; those people who are connected with organizations or other gay people are provided with informal support from friends or other community members.

According to the organizations and other stakeholders, mental health professionals do not have proper training to deal with LGBT clients in a sensitive manner. Medical doctors are similarly lacking training, and in the report produced by YIHR and CGSD they expressed significant discomfort in providing competent care for LGBT clients.<sup>50</sup> CGSD did report that the medical system was generally dealing appropriately with HIV positive clients. While there were no official reports of discrimination against HIV positive people, there are anecdotal reports that some discrimination does occur.<sup>51</sup>

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<sup>47</sup> Legebitra, IRD Slovenia, CPT, *Situation and Response Analysis: LGBT Vulnerability in Kosovo in 2012: In the Name of Tradition*, January 2013.; Savic Marija, *Invisible LGBT: Report on the Position of the LGBT Community in Kosovo*, Heartefact Fund, January 2013.

<sup>48</sup> Astraea: Lesbian Foundation for Justice, *LGBTI Landscape Analysis: The Balkans*, November 2013.

<sup>49</sup> Cozzarelli, Catherine, *2012 Country Gender Assessment for USAID/Kosovo*, August 15, 2012.

<sup>50</sup> YIHR and CGSD, *Freedom and Protection for Lesbians, Gays, Bisexuals and Transgender in Kosovo*, November 2013.

<sup>51</sup> US Department of State, *Kosovo 2013 Human Rights Report*. 2014

There are very few spaces for community members to feel free and safe; CEL and CGSD drop-in centers serve this purpose for some people, and CEL reports that the number of new people accessing their center is increasing. While there are no explicitly gay commercial locations, people reported that there are certain bars, coffee houses, and restaurants that are known to be more “friendly.” During the time of the investigation of this report, there were several events that took place that allowed LGBT community members to come together in a safe atmosphere. One of these events was the reception hosted by the U.S. Embassy at the Pri Fest on April 26, 2014. Numerous members of the LGBT community attended this event, which was held in a public space in front of the National Theater of Kosovo, and was explicitly marked as part of the *Let It Be* program of LGBT films. Activists and more active members of the community indicate that more people are coming to activities and events, and that concurrently, more people are feeling comfortable being open in certain public spaces. Several community members are also remarked in casual conversation that they were comfortable being open, and felt safe being photographed at the event.

There is very limited participation of members of the Serbian and the Roma, Ashkali and Egyptian (RAE) communities. While activists indicate that members of these communities will occasionally attend events, in general the participation is nearly exclusively Albanian. Some individuals suggested that it is possible that Serbian Kosovars are also accessing community activities in Serbia. There are no organizations planning events or explicitly addressing the needs of minority members of the LGBT communities.

Similarly, there are no organizations with a primary focus on lesbian and bisexual women or on transgender individuals. Lesbians are involved in leadership roles in both CEL and QESh. In June, CEL hosted a one-day regional lesbian conference with participants from Kosovo, Albania, Serbia, and Montenegro. There is some limited participation of individuals that self-identify as transgender in the current organizations. A fairly sensationalistic television program on Klan Kosova about a Kosovar transgender woman living in Germany aired in March 2014 and was mentioned numerous times during interviews. It was referenced as one of the few ways that many Kosovars might know about transgender people.<sup>52</sup> With regard to current resources in Kosovo, CGSD does report that there are a significant number of transgender women that take advantage of their drop-in center. CEL recently conducted trainings for community members about gender identity. All of the organizations indicate that they know people who identify as transgender, most of whom are male to female (MtF), though there is one individual connected to the organizations who self-identifies as female to male (FtM). Currently, obtaining gender confirmation surgery in Kosovo is not available; however, nearby Belgrade has become a hub for people from around the world who are seeking surgical assistance, and might provide one option for Kosovars with sufficient funds.<sup>53</sup>

Nearly all activities of the organizations take place in Pristina. CSGD conducts outreach, predominantly in cruising areas, in areas outside of Pristina; CEL also has plans to do outreach outside of Pristina. However, the organizations do not plan LGBT themed events outside of the

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<sup>52</sup> “Edona, Shqiptari Qe Kaloi Ylberin.” Prive. Klan Kosova. Aired on March 22, 2014. Retrieved on May 5, 2014 from <https://www.youtube.com/watch?v=Z1RiygMjYyA>

<sup>53</sup> Bilefsky, Dan, “Serbia Becomes a Hub for Sex-Change Surgery,” New York Times, July 23, 2012.

capital, though they do all report that people who do not live in Pristina will come to Pristina to attend events or spend time at the drop-in centers. Dokufest, based in Prizren, does screen LGBT themed films at the annual film festival in August, and plans to continue to do so. Dokufest and KWN both are interested in possibly planning LGBT related activities in areas outside of Pristina where they are already active with programming or have partner organizations.

Organizations and activists are involved in regional networks, such as Babelnor,<sup>54</sup> and regularly attend conferences and trainings outside of Kosovo and throughout the region. At the time of the research none of the organizations were members of ILGA Europe, the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, though they have had contact with the organization and said that they intended to join. While there are strong personal connections with some of the activists in Albania, those connections have not resulted in significant organizational cooperation though the activists in both Kosovo and Albania suggest that they are very open to increased collaboration. Connections appear to be closer with organizations based in Serbia, including Labrys, and CEL has done programming in Kosovo in collaboration with Labrys.

No religious leaders who were publicly supportive of LGBT issues were identified during the course of the research, and LGBT groups did not indicate that they had any connections to religious groups or religious leaders.

Many stakeholders and research reports indicate that there is a perception in Kosovar society that homosexuality has become a ‘problem’ due to pressure from Western societies.<sup>55</sup> To counter this perception, there is a strong feeling among most stakeholders and LGBT activists that efforts to support rights based on sexual orientation and gender identity must be led by Kosovars from the LGBT organizations, from civil society, and from within the government.

Finally, throughout the interviews and conversations, multiple stakeholders frequently reiterated two comments:

- 1) a famous Kosovar needs to come out publicly as gay; and
- 2) the Kosovo Constitution allows gay marriage, so a couple should apply and create the opportunity for changes to the family code.

However, in light of the other findings, both seem unlikely in the near term, and the second event, based on published reports and stakeholder comments, seems guaranteed to create a significant backlash. While neither of these potential events is in the control of any one organization or actor, they also do not seem necessary in order to create positive movement forward on LGBT rights or community empowerment.

### ***Public Discourse***

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<sup>54</sup> BABELNOR is a network that aims to empower LGBTQ\* youth activists in the Balkans, Ukraine, Belarus and the Nordic countries. <http://www.babelnor.org>

<sup>55</sup> Libertas, *Survey on the Attitudes of the Kosovar Society Toward Homosexuality*, 2013. Astraea, *LGBTI Landscape Analysis: The Balkans*, November 2013.

Prior to the attacks on the *Kosovo 2.0* launch, public discourse in Kosovo regarding rights based on sexual orientation and gender identity was limited. While perceptions of *Kosovo 2.0* and the handling of the launch of the *Sex* issue of the magazine differ among various stakeholders, all agree that public discussion of LGBT issues dramatically increased after December 2012. All stakeholders further agree that increased public dialogue and generating additional and frequent supportive comments from respected Kosovar public figures is an important component of increasing public support for rights based on sexual orientation and gender identity.

With regard to the quality of media reporting, perceptions among stakeholders differ. Some point to various journalists or editors who have handled the issue sensitively, and there is a sense among some stakeholders that in general media reporting is neutral or positive; more often people paint media depictions as relying on stereotypes, sensationalistic, and geared toward increasing readership. Furthermore, some stakeholders reported that media do not always report on LGBT events, even when they have been specifically invited or notified. QESh has been working on a limited review of media reports, which may provide more insight. One area of significant challenge is that many print media outlets have online portals, where comments are either not moderated or not well-moderated, allowing discriminatory and inflammatory speech to flourish in response to articles on LGBT themes.<sup>56</sup> In general, the LGBT and human rights organizations have not been able to closely monitor these online portals, have not taken action to ask for the removal of postings that violate terms of service or hate speech laws, and do not report these portals and outlets to the relevant monitoring bodies, such as the Press Council of Kosovo and the Independent Media Commission.

Some interventions with media have been done, such as media trainings, a Swedish LGBT study visit that included a journalist, and a conversation with media editors hosted by the head of the EU Office in Kosovo after *Kosovo 2.0*.

With regard to actors who are engaging in positive interventions in the public discourse, a few LGBT activists have chosen to speak out publicly, using their full names, in national or international media. In general, these statements are in the print media. Activists indicate that many of the televised media outlets wish to host programming with a “pro” and “con” format, and they do not wish to go on television to argue with people, especially not with religious figures. They are willing to do television programs that are not in a debate format, and both CEL and QESh indicated that they are exploring possibilities for using media such as Radio Television Kosovo (RTK), the public broadcast network, to continue to engage in public discourse.

There are also a number of prominent Kosovar academics, artists, and civil society activists who are willing to speak out publicly in favor of the human rights of LGBT people, including on television programs. Some of these people formed a “support group” for LGBT rights in 2011 or 2012 (participants were not entirely clear on the time frame). Unfortunately, after several meetings, the group disbanded, though there is some willingness to consider reconvening the group in collaboration with the key leadership of the LGBT organizations.

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<sup>56</sup> YIHR, *In the Name of Freedom Of Expression*, 2013. This report has an extensive discussion of the types of comments that are found in response to articles, as well the responses, of lack thereof, of the various media outlets.

Additionally, several government officials, in particular, Vlora Çitaku, the Minister of EU Integration, Petrit Sellimi, the Deputy Minister of Foreign Affairs, and Habit Hajredini, the Director of the Office of Good Governance, Human Rights, Equal Opportunities and Gender Issues, regularly speak publicly and strongly in favor of rights based on sexual orientation and gender identity. Prime Minister Hashim Thaçi also spoke out strongly after the attacks on *Kosovo 2.0*. While none of the stakeholders interviewed could provide a clear indication of other GoK officials willing to speak out, Vlora Çitaku indicated that she was interested in hosting specific events to talk about LGBT rights in the frame of human rights, such as a visit to the police directorate or to a school in collaboration with international diplomats, as a way to generate further publicly supportive comments. At the time of the research, most people indicated that pushing for additional public statements from government officials would be difficult prior to the elections. Early elections were held in June of 2014. Now that elections have concluded, once a new government forms, there may be more room to push government officials to make public statements.

### ***Government and Justice Sector***

The government and judicial sector are key actors for ensuring equal treatment and for the provision and protection of human rights based on sexual orientation and gender identity. While, as noted above, the legal framework is fairly strong, the implementation of the laws and protection mechanisms is weak.<sup>57</sup> There are limited means to hold the government accountable for reforms, and there has been very little or no training provided to the judiciary and prosecutors.<sup>58</sup> Police receive more positive reviews from stakeholders, and have had some training, but still can use significant additional support to ensure that they are able to fully protect human rights for everyone, regardless of sexual orientation and gender identity.

The GoK has done several high profile events to support LGBT rights, such as a conference in May 2013 cosponsored by the Office of Good Governance (OGG) in the Prime Minister's Office and QESH, and a December conference on LGBT rights hosted by the Ministry for EU Integration.<sup>59</sup> However, the GoK does little to inform the public and the LGBT community about the resources and protections that are available to them. For example, the OGG indicated that there is a brochure that details the rights of members of the LGBT community and how to access resources, but this brochure was never mentioned by any member of the LGBT community or by the LGBT organizations.

Stakeholders and reports indicate that the judiciary and prosecutors have limited competency to handle cases based on sexual orientation and gender identity. Numerous people pointed to the fact that in the case of the violence following *Kosovo 2.0* there were only limited and very weak sentences. Furthermore, the YIHR and CSGD report showcased the discomfort around issues of

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<sup>57</sup> YIHR, *Anti-Discrimination Law in Kosovo: Seven Years On*, December 2011.; European Commission, *Kosovo\* 2013 Progress Report*, 2013.

<sup>58</sup> YIHR and CSGD, *Freedom and Protection for Lesbians, Gays, Bisexuals and Transgender in Kosovo*, November 2013.

<sup>59</sup> US Department of State, *Kosovo 2013 Human Rights Report*. 2014

sexual orientation and gender identity of many judges, prosecutors and lawyers.<sup>60</sup> Interviews indicate that the legal education provided to judges, prosecutors, and lawyers does not include significant discussion of sexual orientation and gender identity. Judges and prosecutors have received limited or no training to provide competency around issues of sexual orientation and gender identity, and currently the LGBT organizations do not indicate that they have any relationships with judges or prosecutors.

After an incident in 2006, the police received some training from the Organization for Security and Cooperation in Europe (OSCE), incorporated LGBT human rights into their training curriculum, and developed a standard operating procedure (SOP) for how to handle cases of violations based on sexual orientation and gender identity that are reported to them. The police track cases based on sexual orientation and gender identity, though the tracking is either poor, or very few cases are being reported to them, since their database only holds a record of approximately 10 cases in the last 3 years. Additionally, each police station has a designated community policing officer that is tasked with responding to incidents experienced by members of the LGBT community. Forty-six community policing officers were trained by QESH in February, 2014. The police have also been responsive to requests from organizations to have police presence, either in uniform or undercover, at events. However, there is little awareness raising from the police or the government about the training that has been given to the police, nor is there any indication of how a member of the LGBT community would know that there are specifically trained officers.

Further increasing the challenge in this sector is the limited legal expertise of the LGBT organizations. While the organizations are recently hiring or considering hiring legal officers, until now, these organizations have not had the legal expertise to strongly engage in legal advocacy, to support the cases of people who have had their rights violated, or to engage deeply when laws impacting their rights are proposed.

The OGG is charged with monitoring and ensuring the protection of human rights, including rights based on sexual orientation and gender identity. As part of this mandate, the OGG is responsible for establishing and convening an Advisory and Coordination Group at the national level for the rights of the LGBT community, which was formally established on December 18, 2013, by the GoK. This group has representatives from a variety of government and civil society stakeholders, as well as observers and supporters from international organizations.<sup>61</sup> The OGG is

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<sup>60</sup> YIHR and CGSD, *Freedom and Protection for Lesbians, Gays, Bisexuals and Transgender in Kosovo*, November 2013.

<sup>61</sup> See the report on the establishment of the Committee on the Office of the Prime Minister's website at <http://www.kryeministri-ks.net/?page=2,9,3923>, retrieved on May 8, 2014. The initial membership of the group included the following: Members: Office of Good Governance – PMO – President; Civil Society representative– Deputy President; Ministry of European Integration; Legal Office – DPM; Ministry of Culture, Youth and Sport; Ministry of Education, Science and Technology; Ministry of Labor and Social Welfare; Ministry of Health; Ministry of Internal Affairs; Ministry of Local Government Administration; Ministry of Justice; Kosovo Police; Judiciary; QESH; CEL; ISDY; Kosovo Women's Network Group; CIVIKOS; CSGD; YIHR; Observers: EU Office in Kosovo; CoE Office in Prishtina; Representative of Embassies in Kosovo; Ombudsperson; OSCE Mission in Kosovo; USAID/Kosovo; Office of the High Commissioner for Human Rights in the United Nations; Rights Defenders in Kosovo.

considered to be weak by nearly all stakeholders interviewed for this project. While people are hopeful that the Advisory and Coordination Group may be able to play a significant role, the mandate of the group is generally limited to providing advice and recommendations. Additionally, the first meeting of the group was significantly delayed, and most representatives of civil society, including the LGBT organizations, did not receive an invitation to the first meeting, which the OGG blamed on a technical glitch. These facts, combined with the perceived limited ability of the OGG to make meaningful interventions in general, translated to significant skepticism on the part of most stakeholders about the real potential of the Advisory and Coordination Group. Several stakeholders mentioned that in order for the group to be successful, it would be critical to assess the group's mandate, establish benchmarks and timelines, and institute a mechanism for monitoring and evaluating progress.

On the positive side, a Twinning Project, "Fight Against Homophobia and Transphobia," led by Austria with Finland as a junior partner, was beginning just as this report was being researched. In part, the mandate of the project is to assist the OGG in effectively carrying out its responsibilities such as coordinating the Advisory Group and mainstreaming LGBT rights throughout relevant national action plans. The twinning project will also assist with the development of trainings and competent trainers in key sectors. The Resident Twinning Advisor (RTA) and the team of short-term experts that will assist with the twinning project will focus on developing the ability of the actors in a variety of key sectors, including the judiciary, prosecutors, and the police, to effectively carry out their professional responsibilities, including protection of human rights based on sexual orientation and gender identity.

### ***Education***

From elementary through university and professional school, education was repeatedly referenced as a sector that needed both short-term interventions as well as having the potential for long-term sustainable change.

As far as any sources indicated, there are no comprehensive surveys of the curriculum that review whether and how sexual orientation and gender identity are currently included in the pre-university curriculum. However there are currently a number of projects from EU countries and USAID that are working to review the pre-university curriculum as well as teacher training. Many stakeholders indicated the importance of including human rights discussions that are inclusive of sexual orientation and gender identity into the pre-university curriculum, and donor supported, currently ongoing projects may provide opportunities without the expenditure of additional funds or the creation of new projects.

An example of the success of one such intervention in high school classrooms is the Young Men Initiative (YMI), a gender transformative curriculum implemented in Pristina by CARE International, the International Center for Research on Women, and the Peer Educators Network. The program is aimed at young men and integrated into the school curriculum at participating vocational schools. In the framework of anti-violence and gender equality, the curriculum also

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included anti-homophobia education, and saw a measurable decrease in homophobic attitudes among the young men who participated.<sup>62</sup>

Additionally, incorporating information about human rights into teacher training is important to ensure that teachers are equipped to teach an inclusive curriculum and help prevent bullying of students in the schools. A previous project conducted by IRD Slovenia included a segment for teachers on human rights that also discussed sexual orientation. While there was initial hesitation, especially around security after *Kosovo 2.0*, when the training was actually conducted, there were no challenges from the teachers.

At the level of the university, there are several faculty members who incorporate sexual orientation and gender identity into some classroom discussions, predominantly in anthropology, sociology, and psychology. QESH is conducting lectures in the classes of a psychology professor. But these interventions are limited to the very few faculty members who are open to the inclusion of discussions of sexual orientation and gender identity. There are almost no texts on LGBT issues that have been translated into the Albanian language, making it harder to teach about the subject, and both faculty and activists have expressed strong interest in the translation of additional texts. The newly founded Center for Gender Studies and Research also provides possible opportunities for further inclusion of conversations around LGBT issues, especially since several of the faculty involved in the Center are also the faculty members who are already including these conversations in their classrooms. Alter Habitus, an alternative academic and feminist institute, just finished a reading group focused on gender, and might be another possible avenue for engaging students and faculty in discussions of sexual orientation and gender identity.

Finally, professional education for lawyers, doctors, and psychologists includes little or no accurate information about sexual orientation or gender identity. As a result, there is little competency in these key professions to ensure that the rights of LGBT people are protected and that they are able to access necessary services in an appropriate and sensitive manner.

### ***Donors/International Actors:***

Numerous donors and international actors are engaged in Kosovo. Some of the projects focus directly on LGBT rights and community; others touch on sectors that impact the protection of rights based on sexual orientation and gender identity, the education of the public, or other areas where commitment to rights based on sexual orientation and gender identity can be advanced. In general, current support for LGBT specific projects is going to the twinning project with the OGG and the three LGBT specific organizations, CEL, QESH, and CSGD/Elysium.

Conversations with nearly all stakeholders indicated that coordination among donors and international actors was critical in order to ensure that funding was not duplicated and that projects are complementary, to the extent possible. In general, the leadership of the USG in initiating donor conversations was appreciated, though it was possible to sense some tension

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<sup>62</sup> International Center for Research on Women, *Be a Man, Change the Rules! Findings and Lessons from Seven Years of CARE International Balkans' Young Men Initiative*, 2014, retrieved from [http://www.icrw.org/files/publications/YMI\\_ExecutiveSummary\\_2013-WEB-PREVIEW.pdf](http://www.icrw.org/files/publications/YMI_ExecutiveSummary_2013-WEB-PREVIEW.pdf)

around the role of the USG moving strongly into a sector where other actors have had a more significant history of funding and support.

All discussions of donor and international support, from local advocates, representatives of the GoK, and diplomats included strong caveats that internationals cannot take the lead and that it is critical that Kosovar actors drive efforts.

International and diplomatic actors have a critical role to play in encouraging and supporting government actors and representatives, as well as providing crucial international support when government representatives take stances on LGBT rights. However, it was reiterated multiple times by local and international sources that it is critical to strike a delicate balance between supporting and encouraging while allowing local actors to develop and visibly implement the work.

Local LGBT organizations need the assistance and capacity building provided by international actors, and greatly appreciate the support. At the same time there is also a significant desire for projects not to be donor-driven, and for donors to respect, as much as possible, the way in which local actors want to develop projects and activities, even when it may not entirely fit with the vision of the donors.

Additionally, local organizations indicated that they also greatly appreciated support provided by international actors beyond the financial support. This type of support included: attending activities, checking in with organizations outside of mandated reporting deadlines, stopping by offices (in consultation with the organizations to ensure comfort) to meet staff or community members, invitations to embassy events, inviting activists to study visits and hosting LGBT specific study visits, and facilitating connections between LGBT community groups and other human rights organizations and government officials.

Current donor funded projects that directly focus on LGBT rights and community include:

- The EU funded twinning project, “Fight Against Homophobia and Transphobia” that is led by Austria with Finland as the junior partners. This project focuses on assisting the government of Kosovo in strengthening government institutions to protect rights based on sexual orientation and gender identity, as well as to raise general awareness among the Kosovar public. The twinning advisor is embedded in the Office of Good Governance based within the Prime Minister’s Office. The project is 700K Euro over two years.
- The USAID project which is currently supporting the organization QESh for a two-year time frame, beginning in October, 2013, and which has additional funds that are not yet programmed. The project includes \$200K over two years for QESh for their office, staff, and programs. There is also approximately \$200K in funding that is not yet programmed.
- The Global Fund is funding CSGD/Elysium for work on HIV prevention, education, testing, and initial coordination of care. While the funding is not directly focused on support for the LGBT community, the primary target group for CSGD/Elysium is men who have sex with men. That funding is anticipated to continue until 2017. The amount is dependent on indicators and activities, but this year it is 150K Euros.

- The embassy of Finland has supported QESh for two years with approximately 40K Euros each year. It is unlikely that funding will be able to continue once the current funds are finished.
- The Swedish Civil Rights Defenders project supporting CEL. Funds are provided on an annual basis, but are anticipated to continue at this point. Currently CEL is receiving 28K Euros from this project that supports the drop-in center, their staff, and other programs.
- The Dutch embassy supports CEL for small projects, including movie nights, translations, and lesbian outreach. Currently the project is for 8,000 Euros for one year.

Other funding has supported organizations such as Dokufest and Pri Fest to include LGBT programming in their film festivals.

CEL and QESh have also applied for funding to the Astraea foundation. While those grants have not yet been decided, Astraea is planning to give a total of \$75K this year in four grants to organizations in Kosovo and Bosnia and Herzegovina. The decision on those grants is anticipated in May or June. In general, once Astraea begins funding an organization, that support continues over several years.

Embassies, development agencies, and USAID have also funded or supported a variety of other projects that include study visits, art exhibitions, trainings (including an upcoming training for judges and prosecutors), research reports, films, and other activities designed to strengthen LGBT communities and ensure recognition of human rights based on sexual orientation and gender identity. The Victory Fund is also planning to hold leadership training seminars in the region.

Finally, many sources strongly emphasized that donor support does not only come in direct support to LGBT projects or initiatives. For example, some community activists mentioned how much they appreciated that there was direct outreach to them from donor organizations regarding opportunities for scholarships. As donors are engaged in many of the above mentioned sectors, such as reforming education, strengthening rule of law, and economic empowerment, ensuring that human rights based on sexual orientation and gender identity are interwoven throughout programming and outreach is critical. In addition, donors can play a strong role in ensuring that non-LGBT implementing organizations understand that sexual orientation and gender identity are cross-cutting issues that should be incorporated throughout project plans. *Annex 1* uses examples from Bosnia and Herzegovina to provide some sample strategies for incorporating sexual orientation and gender identity into project plans as cross-cutting issues.

## **RECOMMENDATIONS (Kosovo):**

These recommendations are overall recommendations; while they are primarily aimed at donor support, other actors could directly implement many of them. Furthermore, they are the result of intensive conversations and literature review during a short period of time; as reiterated by many

actors throughout, implementing any of them should be done in consultation with local actors and stakeholders, especially the LGBT organizations.

Additionally, the recommendations fall into four main types:

- Those that require additional funding;
- Those that can be implemented through incorporating sexual orientation and gender identity into already existing programs;
- Those that require the use of political capital from international actors to provide support to local actors; and
- Those that simply require support or encouragement.

### **Enhancing the Legal Framework:**

*Overall, the legal framework of Kosovo has strong anti-discrimination provisions that cover sexual orientation (but not gender identity or expression). However, procedural mechanisms in the law are weak, the law has not been well implemented, and other areas of the legal framework do not adequately cover sexual orientation and gender identity.*

***Overall recommendation: Work with civil society, the Government of Kosovo, and the Advisory Group in the Office of Good Governance (OGG) to ensure that the legal framework of Kosovo provides full protections on the basis of sexual orientation and gender identity.***

- Support a comprehensive survey of legislation and the legal framework to identify gaps and needed changes in order to ensure effective inclusion of sexual orientation and gender identity.
- Ensure inclusion of gender identity and expression in the current Draft Law on Protection from Discrimination.
- Ensure that the current Draft Law on Protection from Discrimination can be effectively implemented by providing adequate procedures to be followed if a victim brings a case alleging discriminatory conduct. Ensure that the Draft Law on Protection from Discrimination creates an equality body with specific powers that is able to assist victims of alleged violations in the public or private sector; current legal opinions suggest that using the Ombudsperson in this role can present difficulties.
- If the Draft Law on Protection from Discrimination reaches Parliament and is passed, support training for the judicial sector on the changes to the law.
- Initiate a review of the legal framework to ensure that it provides sufficient protection for those who are subject to hate speech or subject to hate crimes due to their sexual orientation and provide training for law enforcement officials.
- Initiate a review of the legal framework to determine the current status for individuals who want to change their name or their legal gender marker, and ensure that the law properly protects and supports these individuals.
- Assist in the creation of a network of lawyers who are knowledgeable about sexual orientation and gender identity and who are willing to work with organizations or individuals on a low cost or pro-bono basis.
- Contribute to raising capacities of LGBT organizations to develop skills to effectively participate in law-making, monitoring, and assisting of victims.

### **Empowering LGBT Community and Ensuring Effective Services**

*While there are three LGBT organizations in Kosovo, they have limited networks with other human rights and civil society organizations. The LGBT population is mostly hidden and afraid, has limited opportunity to come together in safe spaces, and is not yet at a place to provide significant community support or advocate strongly for their rights. Furthermore, basic services are lacking, for example: healthcare and mental healthcare providers are rarely sensitive or trained for dealing with LGBT issues and may actually be overtly hostile; there is no identified health or mental health care at all for transgender people; there are no services or shelters for young people who are rejected from family homes and do not have employment; and there is limited legal aid for cases of discrimination or other legal needs.*

***Overall recommendation: Strengthen and empower the LGBT community while strengthening networks to other human rights organizations that can broaden the base of support. Ensure that there is appropriate training, expectation, and support for professionals so that services are appropriately provided to members of the LGBT community.***

- Support a regional activist and academic conference in Pristina with participants particularly from Albania, Croatia, Bosnia and Herzegovina, Macedonia, Montenegro, Serbia and other surrounding countries to strengthen the capacity of local activists and academics; to continue current collaborations; and to generate new ideas and initiate new regional partnerships. Such a conference would need to be planned with attention to security, but also would allow for a broader participation of Kosovar activists than regional convenings that take place outside of Kosovo
- Continue to support community empowerment activities, including activities such as movie nights, discussion groups, art activities, and other events that serve to create safe spaces and closer networks between community members.
- Encourage outreach possibilities outside of Pristina, including: collaborations with Dokufest in Prizren as well as their activities in other cities; activities with KWN with their network members based outside of Pristina; explicit activities with CPT in Gračanica in order to increase support for Serbian Kosovar LGBT people.
- In consultation with LGBT organizations, consider establishing a short-term LGBT advisor with the role of supporting capacity building and collaboration among the LGBT groups and other like-minded organizations; ensure the skill and experience of the advisor, regional expertise, and neutrality of the advisor in relation to the various local actors.
- In order to create stronger networks between LGBT organizations and other human rights organizations, and to strengthen overall human rights dialogue, consider facilitating the creation of a human rights roundtable in Kosovo that explicitly includes LGBT organizations and rights based on sexual orientation and gender identity; encourage a stronger human rights discourse that mainstreams LGBT rights with organizations such as YIHR-KS, Alter Habitus, Kosovo Women's Network, Levizja Fol, Kosovo Gender Studies Center, the Center for Peace and Tolerance, and others.
- Ensure that groups receive training on professionally monitoring and documenting human rights violations, as well as assisting victims of violations to report effectively if they are willing to do so; ensure that all groups have access to this training, as different

community members may feel most comfortable with staff members from varying organizations.

- Ensure that police, prosecutors, and the Ombudsperson are consulted about the system for monitoring and documentation in order to ensure that the system and the documentation will provide support for cases in situations where victims choose to report.
- Provide funding for LGBT groups to provide or expand psychosocial support and legal support; ensure that the professionals who are hired have adequate skills and knowledge; provide support for additional training, if necessary, to ensure that the capacity exists for these professionals to provide culturally sensitive care.
- Continue to support activists on study visits, especially encouraging a wider range of leaders to participate in order to ensure that training strengthens the whole organization and emerging leaders; consider study visits or activities focusing on LGBT rights that bring together a range of actors, including journalists, LGBT activists, lawyers and academics.
- Continue to encourage groups to be collaborative instead of competitive and to expand the range of activities rather than replicating activities; encourage exchanges with other regional groups in order to generate new ideas.
- Ensure that, regardless of funding source, organizations are equally invited to present or share perspectives at various forums where donors, government officials, and other stakeholders are present; ensure that donors and organizations are transparent regarding funding and activities.
- Increase the capacity of LGBT groups to educate and inform community members about their rights, as well as their ability to effectively use the law as a tool to advocate for better implementation of their rights; partnerships with other human rights organizations and regional LGBT groups are one way to enhance this capacity.
- Ensure that Kosovar LGBT groups become part of ILGA Europe in order to expand the level of support, expertise, training, and regional knowledge.
- Support projects that document community and activist efforts, so that the rich history being created is not lost; encourage the telling of and sharing of stories, while ensuring safety for participants.
- Consider support for a shelter to provide temporary relief for young people who are rejected by families due to sexual orientation or gender identity; explore mechanisms for combining such a shelter with job training that would help with transitioning to self-sufficiency given the high unemployment rate and frequent reliance on families for economic support; consider a variety of resources, including currently existing shelters, for such support; ensure that any such shelter recognizes the significant challenges such a project entails, including the potential for abuse.
- Use diplomatic and human rights networks to explore possibilities for constructive rights based dialogues with religious groups.
- Continue to ensure that security is considered at all activities that are public.

### **Enhance Public Discourse Around LGBT Rights**

*The attacks on Kosovo 2.0 opened public discourse around sexual orientation and gender identity; while not all of the public discussion was positive, several sources noted that it created*

*a new openness for conversations that had never previously happened. Additionally, LGBT groups are becoming stronger and public officials are speaking out more broadly.*

***Overall recommendation: Broaden the discourse by providing support to LGBT groups, other civil society actors, prominent Kosovars, and government officials to speak out strongly and frequently about LGBT rights in the frame of human rights and anti-discrimination. Ensure that media treats the matter appropriately by training media sector and strengthening the capacity of LGBT groups and human rights groups to hold the media accountable.***

- Support the reactivation of the voluntary support group of Kosovar activists, academics, artists, public intellectuals and others who support LGBT rights, and ensure inclusive participation of people with different sets of skills and backgrounds.
- Encourage collective public statements from mainstream human rights and civil society groups during relevant events, such as IDAHOT, or in response to negative incidents, in order to broaden the visible public support for LGBT rights from Kosovar actors.
- Work closely with the Advisory Group and government officials to increase opportunities for high level government officials to make public comments on LGBT rights on occasions besides IDAHOT; for example, joint visits of high level diplomats and government officials to the police, the judiciary, or schools.
- Support journalists to become more effective at reporting on LGBT issues and assist in creating stronger relationships between ethical journalists and LGBT groups; consider if there are opportunities for training or if there are ways that diplomats and embassies can strategically host formal or informal conversations to help to strengthen these relationships.
- Support Dokufest and the Pri Fest in continuing to provide avenues for screening films and hosting discussions touching on sexual orientation and gender identity; encourage greater collaboration in these events directly with LGBT organizations.
- Explore possibilities with Dokufest to use their current programming to more directly engage with LGBT rights as part of a human rights dialogue: in particular, their programming in schools outside of Pristina; their regional film school; and their television programming of documentaries may provide significant opportunities to expand public discussion and awareness.
- Assist LGBT groups and community activists in becoming more effective at using press statements, responding to the media, and engaging in public debates; the public affairs offices of embassies as well as supportive media outlets such as BIRN may be able provide useful training and skills building.
- Support LGBT organizations and human rights organizations to monitor the media and online portals and to have the ability to proactively advocate for their rights when violations against the community occur by effectively utilizing complaints mechanisms within the Kosovo Press Council and the Independent Media Commission.

### **Increasing Support of Government of Kosovo, the Judiciary, and other Duty Bearers**

*The pressure towards EU accession means that there is sufficient political will to move support for LGBT rights forward within the Government of Kosovo; but as one source put it, “There is no resistance; there is no enthusiasm either.” Among duty bearers, the judiciary remains a*

*particular area of concern; police have made some forward progress since 2006, but judges and prosecutors are identified by most sources as a continuing problem. While there is not widespread support, there are several outspoken government champions of human rights for LGBT people, a newly established Advisory and Coordination Group at National level in the Republic of Kosovo for LGBT rights, and a new Austrian/Finnish twinning project with the Office of Good Governance.*

***Overall recommendation: The political capital and expertise of international actors can play a strong role in ensuring the commitment of the Government of Kosovo to rights based on sexual orientation and gender identity, from support to government officials and the Advisory Group to training opportunities and increasing the professional responsibility of duty bearers.***

- Collaborate with and support the work of the new twinning project “Fight Against Homophobia and Transphobia” being implemented by Austria and Finland and the Office of Good Governance; in particular, USG projects can collaborate closely with the anticipated training for police, judges, prosecutors, and teachers through the twinning project.
- Ensure an effective Advisory Group: in cooperation with the twinning project and committed government officials, support conducting an assessment of the group’s mandate, and institute benchmarks and timelines in order to hold the government accountable for implementation of Advisory Group recommendations.
- In collaboration with the twinning project and other actors, increase police training for community policing officers that are specifically charged with responding to the LGBT community, as well as within the police academy in order to ensure that all police officers have access to adequate training on issues of sexual orientation and gender identity.
- With the participation of LGBT groups, and in collaboration with the twinning project and other actors, review the police academy curriculum for appropriate inclusion of sexual orientation and gender identity and review and revise the current SOP for dealing with incidents based on sexual orientation and gender identity.
- After the anticipated training of judges and police officers by the U.S. judge in June, identify gaps and opportunities for follow-up and continued education and training on LGBT rights.
- In collaboration with the twinning project, increase training for judges and prosecutors on issues of sexual orientation and gender identity, and ensure their knowledge of relevant Kosovar laws, European standards, and decisions of the European Court of Human Rights; if necessary, ensure that relevant European standards and court decisions are translated into Albanian and Serbian to ensure access by all judges and prosecutors.
- Ensure that Kosovo Judicial Institute trainers are sufficiently educated on rights based on sexual orientation and gender identity, and capable of providing effective training on the topic.
- Assist LGBT organizations to forge a working relationship with the Kosovo Judicial Institute.
- Support the government in producing easily accessible written documentation of relevant legal rights based on sexual orientation and gender identity as well as mechanisms for support and reporting violations; ensure that such documents are up-to-date, produced in

consultation with LGBT groups and human rights lawyers, available in print and online format, and distributed broadly to the government and civil society organizations.

- Assist LGBT groups in making such documentation of legal rights, support, and reporting mechanisms available in their offices, but also through social media and online portals in order to ensure that community members have access, especially since they may be unable or unwilling to keep written documents because of safety or security concerns.
- Ensure that there is effective response to violations by the judicial sector, in part by supporting LGBT groups to have sufficient legal expertise to document and follow cases.

### **Ensure Inclusive Education**

*Most sources identified education as a key sphere for intervention, from the primary level through university. From curriculum reform to ensuring safety in school for those students who do not conform to prevailing norms regarding sexual orientation and gender identity, the educational sector provides avenues to protect members of the LGBT community while also opening doors for enhancing commitment to human rights.*

***Overall recommendation: Ensure cooperation and communication between various projects in the educational sector; at the primary and secondary level, different projects work with teacher training and curriculum reform, both of which can benefit from an enhanced focus on human rights inclusive of LGBT rights; at the university level, create enhanced teaching tools and teaching opportunities around sexual orientation and gender identity.***

- Ensure that the primary and secondary school curriculum has discussions of human rights inclusive of sexual orientation and gender identity.
- In collaboration with the twinning project and LGBT organizations, provide training of trainers, and teacher training on human rights that is inclusive of LGBT rights, as well as promoting the responsibility that teachers have for protection of students in the schools.
- Support translation of LGBT materials for use in university classrooms and by LGBT and human rights organizations.
- Encourage Alter Habitus to consider a discussion group on sexual orientation and gender identity.
- Explore opportunities such as additional classroom lectures by members of the LGBT community in the courses of supportive faculty and through the university Center for Gender Studies and Research; encourage current supportive faculty to identify other supportive faculty in order to create a more inclusive environment at the University of Pristina.
- Support opportunities such as study visits and hosting regional academic symposia in Pristina that strengthen the ability of current faculty members to include topics related to sexual orientation and gender identity in their courses.
- Ensure that the professional school curriculum for doctors and psychologists, law enforcement (police, prosecutors, judges, lawyers, and victim's advocates) is inclusive; find avenues to provide ongoing training on sexual orientation and gender identity for currently practicing professionals in these fields.

### **Continued Donor Coordination**

*A variety of sources indicated that they appreciated opportunities for donor coordination and information sharing regarding LGBT projects; they also felt that these opportunities could be significantly strengthened. There was appreciation for the USG role in organizing such opportunities as well as some possible tension around the entry of the USG into a sphere where other donors and actors had been active for a significant amount of time.*

***Overall Recommendation: Continue to organize and facilitate donor coordination while creating opportunities to ensure ongoing activities, share responsibility, and support civil society and the Government of Kosovo.***

- Expand the current informal donor coordination, and establish a semi-regular schedule, if desired by participants. Consider creating a rotating chair in order to share responsibility for a regular meeting of donors and like-minded institutions.
- Ensure that staff members of USAID and the U.S. Embassy have clear guidance regarding how to communicate policy priorities; ensure internal training opportunities on issues of sexual orientation and gender identity to assist staff members who may not feel comfortable or have sufficient knowledge.
- Collaborate with civil society and government of Kosovo to continue to create opportunities for collective engagement and public statements beyond just the International Day Against Homophobia; continue to ensure that as much as possible, activities are Kosovar-led.
- Continue to provide support to civil society activities and organizations; many sources from the local organizations commented that they appreciated the presence and interest of embassies and diplomats, especially participation beyond major events, such as coming to the office to meet staff and community while also respecting comfort levels of community members.
- Ensure that LGBT projects being implemented by non-LGBT organizations have, as much as possible, participation and collaboration from LGBT organizations in order to decrease friction and dissension between civil society organizations; consult with LGBT organizations about non-LGBT specific organizations that are being selected as partners to implement projects on sexual orientation and gender identity.
- As with other cross-cutting issues, consider establishing a task-force that focuses the embassy's work on sexual orientation and gender identity.
- Recognize the diversity of the LGBT community; ensure that funded projects and invitations to participate in USG opportunities include women and transgender people.
- Include sexual orientation and gender-identity in program design for implementing partners where relevant; include indicators to measure success.
- Consider adding an indicator to the Mission Performance Monitoring Plan to monitor and track the success of implementers in working directly with LGBT organizations and including sexual orientation and gender identity in their projects, where relevant.
- Consider offering a national or regional LGBT International Visitor Leadership Program (IVLP) program. Include other relevant stakeholders such as supportive journalists. Also, ensure that LGBT activists are included in general IVLP programs.
- Include content about sexual orientation and gender identity into IVLP programs focused in other relevant sectors, such as education, judiciary, and health care. For example, an

IVLP program for prosecutors could include meetings with prosecutors who work on prosecuting hate crimes on the basis of sexual orientation, and an IVLP program for teachers could include meetings with organizations who work for the prevention of bullying in schools.

## Bosnia and Herzegovina (BiH)

### **EXECUTIVE SUMMARY (BiH):**

This section comprises a mapping and needs assessment of the current situation in Bosnia and Herzegovina (BiH) related to Lesbian, Gay, Bisexual and Transgender (LGBT) rights; the current groups involved in advocating for rights based on sexual orientation and gender identity; and effective interventions for social and institutional change. The findings are based on a review of relevant documents and reports, a review of the legal framework, interviews with stakeholders, and attendance at community events during a three-week period.

Combating discrimination based on sexual orientation and gender identity and ensuring equal treatment under the law currently receives very limited support from the BiH government, institutions or the public. Actual and potential violence against activists, individuals, and public manifestations remains a critical narrative running through most conversations with stakeholders. Most stakeholders also indicate that vocal support from international actors plays a key role in opening public discourse, changing institutional policies, and generating sustainable support for LGBT communities and for rights based on sexual orientation and gender identity. At the same time, increasing the visibility and capacity of local Bosnian activists, organizations, and public figures is crucial for long-term success in reducing discrimination and increasing inclusion of LGBT people in BiH.

An overview of the findings and recommendations in six key areas are listed below.

#### ***Enhancing the Legal Framework:***

Overall, the legal framework of BiH has strong anti-discrimination provisions that cover sexual orientation and gender identity. However, the language needs updating, the law has not been well implemented, and other areas of the legal framework including the gender law, do not adequately cover sexual orientation and gender identity. Furthermore, the laws of the state, the entities, and the district need to be harmonized.

- *Overall recommendation: Work with civil society, Sarajevo Open Center (SOC), the government of BiH, and other international actors to ensure that the legal framework of BiH provides full protections on the basis of sexual orientation and gender identity. This should include harmonization of laws as well as the development of an action plan for the implementation of the Anti-Discrimination law.*

#### ***Empowering LGBT Community:***

While there are several LGBT organizations in BiH, the complicated legal framework and government structures necessitate stronger organizations throughout the country to ensure effective advocacy. While there are increasing organizations and activists, the LGBT population is mostly hidden and afraid, has limited opportunity to come together in safe spaces, and organizations are still working to increase the level of community support. Furthermore, basic services are lacking, for example: healthcare and mental healthcare providers are rarely sensitive or trained for dealing with LGBT issues and may actually be overtly hostile; there is no

identified health care at all for transgender people and national health care does not pay or reimburse for costs for gender confirming treatment.

- *Overall recommendation: Strengthen and empower the LGBT community while strengthening networks to other human rights organizations that can broaden the base of support. Support the creation of safe spaces, opportunities for economic empowerment of community members, and more training opportunities for service providers.*

#### ***Enhance Public Discourse Around Sexual Orientation and Gender Identity:***

Public discourse in BiH has often focused on the sensational or on the negative, such as the attack on the Merlinka festival; however, anecdotal evidence and studies of media coverage show that there is some increase in balanced positive reporting. There is significant need for additional vocal support for LGBT rights in the public discourse from public intellectuals, BiH government officials, and mainstream human rights groups.

- *Overall recommendation: Continued public statements by international actors are critical. Additionally, broaden the discourse by providing support to LGBT groups, other civil society actors, prominent intellectuals, and government officials to speak out strongly and frequently about LGBT rights in the framework of human rights.*

#### ***Strengthening the Support of the Government of BiH and Duty Bearers:***

The government of BiH struggles with meeting the basic competencies of governmental responsibility. Furthermore, many governmental actors do not view it as a priority to guarantee rights based on sexual orientation or gender identity or to guarantee the safety of LGBT people. The push toward EU accession and pressure from other international actors such as the USG and USAID is critical to ensure that the government of BiH upholds its responsibility and to support civil society organizations advocating for rights based on sexual orientation and gender identity.

- *Overall recommendation: In collaboration with civil society, use the political capital and expertise of the U.S. and other donors to ensure the commitment of the Government of BiH to rights based on sexual orientation and gender identity. Support training opportunities for duty bearers, especially in cooperation with other USG justice sector programs and other international actors.*

#### ***Ensure Inclusive Education:***

Most sources identified education as a key sphere for intervention, from the primary level through university. While accessing educational spaces is difficult, there are both formal and ad hoc activities that are currently taking place that provide opportunities for inclusion of sexual orientation and gender identity explicitly, or in the framework of conversations on human rights or gender.

- *Overall recommendation: At the primary and secondary level, improve education on human rights including LGBT rights; at the university level, create enhanced teaching tools and teaching opportunities around sexual orientation and gender identity.*

***Ensure sexual orientation and gender identity are included as cross-cutting issues for the work of USAID and the USG:***

As one of the largest and most consistent bilateral donors to BiH, USAID has a unique opportunity to further rights based on sexual orientation and gender identity in a long-term sustainable manner by ensuring inclusion in program design and working with implementing partners to strengthen their capacities for work on LGBT issues. Furthermore the political influence of the USG and other international actors allows for effective ongoing engagement in the public sphere and directly with governmental and non-governmental actors.

- *Overall Recommendation: Continue to be a strong voice for LGBT rights as human rights. Work with all implementing partners and with all USG programs to ensure that sexual orientation and gender identity are included as cross-cutting issues.*

## **INTRODUCTION:**

Bosnia and Herzegovina currently provides significant opportunities for interventions to provide a more supportive environment and increase access to rights for lesbian, gay, bisexual and transgender people. After several years with almost no local actors working on LGBT advocacy, since 2011 there has been a substantial increase in organizing around LGBT rights. There is an inclusive statewide anti-discrimination law, though there is also room for improvement in the legal framework. There are also a number of international actors and donors that are willing to support, partner with, and fund the work of civil society organizations working on issues of sexual orientation and gender identity.

At the same time, implementation of existing laws is weak, and the government and judicial sector do not provide sufficient support for the protection of rights based on sexual orientation and gender identity. The aftermath of the brutal war from 1992 – 1995 and the ensuing peace process continue to shape daily life and the governmental framework. Religious and nationalist rhetoric is increasing,<sup>63</sup> and often includes hate speech targeting LGBT people. Patriarchal and traditional family values remain a powerful influence in public attitudes. Many people in the government and among the public freely state that addressing discrimination toward LGBT people is not a priority, given the challenges facing the country. Still, a combination of local advocacy, the pressure from the European Union (EU) as part of the accession process, and pressure from other international actors creates the possibility for change and greater inclusion of LGBT rights in BiH.

In terms of advocacy from civil society, the most well known actor in BiH is the Sarajevo Open Center (SOC), which has a strong focus on research and advocacy. There are also several additional formal and informal grassroots organizations working explicitly on LGBT rights, including Okvir in Sarajevo, the Banja Luka Association of Queer Activists (B.U.K.A.), and informal groups in Mostar and Tuzla. A few other human rights organizations, including CURE Foundation, work on LGBT rights projects in cooperation with LGBT organizations. A fuller description of these organizations is in the section on community. While there are individual collaborations on projects with human rights organizations, there is not a strong human rights network in BiH that includes a significant focus on sexual orientation and gender identity.

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<sup>63</sup> Jasna Jelusic, "Bosnia and Herzegovina," *Nations in Transit 2012*, Freedom House, 2012.; Astraea Lesbian Foundation, *LGBTI Landscape Analysis: The Balkans*, November 2013.

This study was conducted through interviews with numerous stakeholders, including LGBT activists, individual members of the LGBT community, members of civil society, USAID and USG staff, BiH government officials, diplomatic representatives, the donor community (including donors based outside of BiH), and a few regional activists outside of BiH. Additionally, Aleksandra Miletić-Šantić, a Bosnian lawyer, provided a review of the current legal context. A more extensive list of interviews is indicated in the annex. The interviews and the document review took place primarily during a three-week period at the end of May and beginning of June in 2014. A majority of the data collection was in Sarajevo, but the assessment also included visits to Banja Luka and Mostar.<sup>64</sup>

## **FINDINGS:**

### ***Legal Framework***<sup>65</sup>

*Constitutions:* The prohibition of discrimination is a key principle of the Constitution of BiH as well as Annex 4 of the General Framework Agreement. Moreover, BiH has ratified relevant international and European agreements related to prevention of discrimination. Article II, ¶ 2, expressly applies the rights and freedoms of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols. This is important because of the European Court of Human Rights (ECtHR) decisions recognizing the rights of LGBT persons in various spheres of public and private life. Article II, ¶ 2, further enumerates the rights and freedoms of all persons within the territory of BiH and obligates **the state to secure their enjoyment** “without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” Gender identity and sexual orientation are not listed, and though both might be considered “other status,” no court decision has established inclusion. Further, though the Federation of BiH (FBiH) and Republika of Srpska (RS) Constitutions guarantee individual rights and freedom from discrimination, neither expressly includes sexual orientation or gender identity.

*Law on Gender Equality:* The 2003 Law on Gender Equality<sup>66</sup> (LGE) prohibits discrimination on the basis of sexual orientation. The LGE regulates, promotes and protects gender equality, guarantees equal opportunities and equal treatment regardless of gender in public and private sphere of society, and regulates protection from discrimination on grounds of gender.<sup>67</sup> Article 2 prohibits discrimination on the basis of sex (gender) and sexual orientation.<sup>68</sup> However, Part II of the LGE entitled *Discrimination*, Article 4, refers solely to discrimination on the basis of

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<sup>64</sup> The flooding and associated mudslides that occurred in Bosnia and Herzegovina in mid-May 2014, just prior to when this assessment was conducted, comprised the worst natural disaster that has occurred in the country. Disaster relief made it more difficult to meet with some stakeholders. Additionally, the ongoing long-term ongoing efforts for rebuilding may divert the attention and funding of some international actors and the BiH government which may impact the ability to move forward on projects that are focused on LGBT rights.

<sup>65</sup> Legal analysis was provided by Aleksandra Miletić-Šantić.

<sup>66</sup> Law on Gender Equality in Bosnia and Herzegovina, Official Gazette of BiH 16/03, 102/09 (amendment); 32/10(consolidated).

<sup>67</sup> *Id.* art 1.

<sup>68</sup> *Id.* art. 2(3).

gender defining direct and indirect gender discrimination. Likewise, Part II, *Definitions*, Article IV, fails to include sexual orientation (or gender identity). Aside from the prohibition on discrimination on the basis of sexual orientation in Article 2, the LGE includes no other express reference to orientation, thereby largely failing to provide meaningful protections.

*Law on Prohibition of Discrimination:* The 2009 Law on Prohibition of Discrimination (LPD)<sup>69</sup> does establish a framework for implementation of equal rights for all persons. The LPD defines discrimination as “every different treatment including every exclusion, limitation or preference based on real or assumed features . . . on the grounds of . . . sexual expression or sexual orientation.”<sup>70</sup> It is important to note that, though intended to cover sexual orientation and gender identity, the terms used, “spolna orijentacija” and “spolno izražavanje” were essentially incorrect and subject to misinterpretation. These terms must be corrected to ensure appropriate implementation.<sup>71</sup> This provision applies to public bodies and natural and legal persons (*e.g.*, corporations) in the public and private sector.<sup>72</sup> The LPD defines the forms of discrimination (direct and indirect as well as harassment, sexual harassment, mobbing, segregation, incitement, aiding and abetting discrimination).<sup>73</sup> However, the LPD also provides an exception for disparate treatment “if based upon objective and reasonable justification.”<sup>74</sup> Article 18 prohibits adverse consequences against those who report discrimination or participate in legal proceedings related to discrimination.

The LPD identifies the Office of Ombudsman as the central institution for protection from discrimination.<sup>75</sup> Although embodied with a very broad mandate, including receiving complaints, informing complainants about their rights and initiating and participating in certain discrimination-based judicial proceedings, the institution suffers from a lack of resources to fulfill its mandate.<sup>76</sup> Also, the Ministry for Human Rights and Refugees (MHRR) is responsible for monitoring of the implementation of the LPD,<sup>77</sup> though its oversight is weak. For example, despite a requirement in the LPD for a state-level database of discrimination cases, this has not yet been established.<sup>78</sup>

Victims of discrimination may then seek protection of their rights before the courts or before the Ombudsman. While the Ombudsman is only empowered to issue recommendations and only the court can render legally binding decisions, the LPD does provide for a minor-offence responsibility for non-compliance with the recommendations of Ombudsman.<sup>79</sup>

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<sup>69</sup> Law on Prohibition of Discrimination, Official Gazette of BiH 59/09.

<sup>70</sup> LPD, art. 2. (unofficial translation)

<sup>71</sup> Sarajevo Open Center, *Pink Report: Annual Report on the State of LGBT Persons in Bosnia and Herzegovina in 2013*, 2014.

<sup>72</sup> LPD, art. 2 (2).

<sup>73</sup> *Id.* art. 3-4.

<sup>74</sup> *Id.* art. 5.

<sup>75</sup> LPD, art. 7.

<sup>76</sup> The Institution of Human Rights Ombudsman of Bosnia and Herzegovina, *Universal Periodical Review On the Situation of Human Rights In Bosnia and Herzegovina* § 4.1 (Mar. 2014).

<sup>77</sup> LPD, *id.* art. 9.

<sup>78</sup> Sarajevo Open Center, *Pink Report: Annual Report on the State of LGBT Persons in Bosnia and Herzegovina in 2013*, 2014.

<sup>79</sup> *Id.* art. 19-21.

Although the LPD expressly allows for lawsuits alleging discrimination or violation of the right to equal treatment,<sup>80</sup> it has been reported that as of the end of 2012, courts had approved only three discrimination claims.<sup>81</sup> This could be attributable to a many causes including both the weakness of the judiciary and the lack of legal resources directed toward bringing discrimination cases. While the enactment of the LPD is an important step in addressing discrimination in BiH, it is clear that support and education of the judiciary system remains a priority.

*Criminal Codes/Hate Crimes:* The Criminal Code of BiH prohibits the infringement of the equality of individuals and citizens, by “officials,” persons elected or appointed to legislative, executive and judicial office within BiH or “responsible persons,” persons in a business enterprise who, have been entrusted with the implementation of law or regulations.<sup>82</sup> Infringement is described as “den[ying] or restrict[ing] the civil rights” provided in the Constitution, laws of BiH, ratified international agreements, regulations, or general act of BiH on the grounds of, among other things, “sexual orientation,” but not gender identity. The crime is punishable by the imprisonment between 6 months and 5 years.<sup>83</sup>

There is no generally applicable hate crimes provision in the Criminal Code of BiH. However, the Criminal Codes of RS<sup>84</sup> and Brčko District (BD)<sup>85</sup> were amended to include hate crimes in 2010. The amendments define hatred as “a motive for perpetration of a criminal offense” already regulated by the Code based on, among other things, sexual orientation or because of association with the other persons with one or more of the stated characteristics. Gender identify is not included. Hate-based motive is considered an aggravating circumstance.<sup>86</sup>

In spite of pressures of the international community and state level authorities, as well as dynamic and intense advocacy and lobbying activities of the civil society organizations in BiH, the basis for hate crimes has never been incorporated in the Criminal Code of FBiH. This is a priority area for continued support for civil society and ongoing pressure on the government by international actors for the passage of this legislation.

*Marriage/Family Law:* Although all three constitutions guarantee everyone the right to marry and create a family, the Family Laws of BD<sup>87</sup>, FBiH<sup>88</sup> and RS<sup>89</sup> regulate legal relations in marriage, the parent-child relationship, adoption, guardianship and cohabitation, and all three define marriage as the union of a woman and man. Same-sex couples are not allowed to legally

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<sup>80</sup> *Id.* art. 12.

<sup>81</sup> Initiative for Monitoring BiH's European Integration, *Shadow Report on the Progress of Bosnia and Herzegovina's EU Accession Process 27-28*, 2013; The Institution of Human Rights Ombudsman of Bosnia and Herzegovina, *Universal Periodical Review On the Situation of Human Rights In Bosnia and Herzegovina § 4.1*, March 2014

<sup>82</sup> Art. 145(1), Criminal Code of Bosnia and Herzegovina, Official Gazette, 3/03, 32/03 (correction to translation), 37/03.

<sup>83</sup> *Id.*

<sup>84</sup> Art. 31, Law on Amendments of the Criminal Code of RS, Official Gazette RS 73/10.

<sup>85</sup> Art. 1, Law on Amendments of the Criminal Code of BD, Official Gazette BDBiH 21/10.

<sup>86</sup> *E.g.*, art. 37, Law on Amendments of the Criminal Code of RS.

<sup>87</sup> Family Law BD, Official Gazette of BD 23/07.

<sup>88</sup> Family Law FBiH, Official Gazette of FBiH 35/05, 41/05, 31/14.

<sup>89</sup> Family Law RS, Official Gazette of RS 54/02, 41/08.

marry in BiH nor are such relationships legally recognized for any other purpose. Activists are considering the possibility of amendments to existing law to provide some of the protections that are currently lacking for same-sex partners.

*Health Care:* The Law on Health Protection of FBiH explicitly prohibits discrimination on the grounds of sexual orientation (Article 19)<sup>90</sup>, while the Law on Health Protection of RS provides general prohibition of discrimination on any grounds (Article 11).<sup>91</sup> This prohibition on discrimination does not prevent actual discrimination in health care, as described later in this report.

*Changes to Registered Name and Sex:* The laws of FBiH and RS provide some protection to transgender persons through the ability to legally change their sex as identified in birth registers<sup>92</sup> after a surgical gender reassignment.<sup>93</sup> The Law on Registers of BD does not provide for the change of identified sex in the registers. The BiH Law on Unique Identification Number provides for a change of the citizen's ID number based on the decision establishing the change of sex.<sup>94</sup> The Law on Personal Name of FBiH<sup>95</sup> provides for a change personal name coincidental to a change of personal status, including change of sex. Further, the Laws on Personal Name of RS and BD provide for a general entitlement of all citizens to change the personal name.<sup>96</sup>

*Intersex:* Intersex persons are not specifically included in an anti-discrimination laws or regulations at any level in BiH nor are there any regulatory standards for medical determination of the sex of a baby. There are no prohibitions on invasive medical practices that are not medically necessary in the case of intersex infants, nor is there any tracking of how many intersex children are born or what medical interventions are performed.

Notwithstanding the affirmative legal protections described above, BiH remains a deeply ethnically divided, barely functioning state. While national and state laws may prohibit discrimination or require equal treatment, these laws are not effectively implemented and the will of the relevant institutions to enforce these provisions is limited. In view of the acceptance of ethnic division in many spheres of life,<sup>97</sup> and the pervasive perception that discrimination on the basis of sexual orientation and gender identity is far less of a priority than other pressing

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<sup>90</sup> Law on Health Protection of FBiH, Official Gazette of FBiH 46/10.

<sup>91</sup> Law on Health Protection of RS, Official Gazette of RS 107/05, 72/09 i 88/10, 99/10 i 57/11)

<sup>92</sup> Law on Registers FBiH, Official Gazette of FBiH 37/12; Law on Registers RS, Official Gazette of RS 111/09, 43/13.

<sup>93</sup> Durkovic, Svetlana, *Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Legal Report: Bosnia and Herzegovina*, COWI: The Danish Institute for Human Rights, n.d.

<sup>94</sup> Law on Unique Identification Number, Official Gazette of BiH 32/01, 63/08, 103/11, 87/13.

<sup>95</sup> Art. 9 (2), Law on Personal Name of FBiH, Official Gazette of FBiH 7/12.

<sup>96</sup> Law on Personal Name of RS, Official Gazette of RS 27/93, 15/00; Law on Personal Name of BD, Official Gazette of BD 8/02, 29/05.

<sup>97</sup> Compare the ECtHR decision in *Sejdić & Finci v. Bosnia and Herzegovina* App. Nos. 27996/06 & 34836/06 (European Court of Human Rights (Grand Chamber) Dec. 22, 2009) finding that the Articles IV and VI of the BiH Constitution restricting the Presidency and House of Peoples on the basis of ethnicity violated European Convention on Human Rights with earlier decisions of the BiH Constitutional Court that found those restrictions to be objectively and reasonably justified in post-conflict Bosnia. See, e.g., Case No. U-5/04 (Const. Ct. Bosn. & Herz. Mar. 31, 2006); Case No. U-13/05 (Const. Ct. Bosn. & Herz. May 26, 2006); Case No. AP-2678106 (Const. Ct. Bosn. & Herz. Sept. 29, 2006). The judgment of ECtHR against BiH has not yet been implemented.

problems, any movement toward actual equality will require more than the mere adoption of legal safeguards.

One important opportunity for the movement toward full equality for LGBT persons is BiH's participation in the European Commission's Structured Dialogue on Justice. The Structured Dialogue is a tool designed to advance structured relations on the rule of law with potential candidate countries such as BiH. It will provide the context to discuss all reforms that are necessary to allow BiH to progress in the alignment of its judicial system with the accumulated EU law and relevant standards, including anti-discrimination laws and court decisions relating to human rights.<sup>98</sup>

### *Community Context*

There are currently two registered organizations in Bosnia and Herzegovina with an explicit mandate to advocate on LGBT rights and build LGBT community. Both of these organizations, Sarajevo Open Center (SOC) and Okvir are based in Sarajevo. There are also several other informal groups of activists in other cities that are working on LGBT rights and community; this includes groups in Banja Luka, Mostar, and Tuzla. The group in Banja Luka, Banjalučko Udruženje Kvir Aktivista (B.U.K.A.) or in English, the Banja Luka Association of Queer Activists, has applied for registration and has been rejected twice, as of June 2014. They are planning to make requested changes to their documents and reapply. The group in Mostar is also considering applying for registration. Another organization, based in Sarajevo and with a focus on starting a regional LGBT archive, is seeking funding. Additionally, there are a few other human rights organizations that have implemented LGBT programs in partnership with LGBT organizations. For example, in collaboration with SOC, CURE Foundation, a feminist activist organization, is implementing "Coming Out," an advocacy program on LGBT rights.

There are no formal or informal LGBT groups outside of the main cities. LGBT groups report having members from all ethnic groups and religious backgrounds, and community members and community activists state that ethnic and religious identity does not create conflict within LGBT social networks or community organizing.

Most stakeholders name SOC as the primary actor in BiH on LGBT issues currently. In fact some stakeholders are not even aware that there are other organizations working on LGBT issues in BiH. SOC was established in 2007, but has been working explicitly and consistently on LGBT rights since 2011. The strategic plan they adopted in 2013 makes their primary focus LGBT rights and women's rights. The organization strongly focuses on advocacy with BiH institutions and legislation, as well as with regional and international accountability mechanisms. Additionally, they provide support to the LGBT community for legal rights and human rights violations reporting, as well as organizing cultural activities in Sarajevo and other cities in BiH.

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<sup>98</sup> Delegation of the European Union to BiH & European Union Special Representative in BiH. Retrieved from <http://europa.ba/Default.aspx?id=87&lang=EN>.

They have made significant progress in creating cooperative relationships with institutions, including the police in Sarajevo Canton.<sup>99</sup>

Okvir, founded in 2011, is a much smaller organization that is more closely focused on grassroots activities and direct support to the community through creating safe spaces for community gatherings, peer to peer counseling, psychological support, trainings for counselors, and grassroots advocacy actions. Okvir's office is designed to operate partly as a community center and to facilitate community drop-in and community access to library materials and other resources. They report that they receive 30-40 visitors to their offices each week to access movies, books, peer support and to spend time with other community members.

SOC's capacity building program (funded by USAID) has significantly contributed to the development of activists in cities outside of Sarajevo. All the activists outside of Sarajevo mention the empowerment workshops as well as the materials and technical support provided by SOC as critical for their development. Currently, none of the groups outside of Sarajevo have any funding or office space, and they are instead reliant on volunteer efforts, support from SOC, and support from local organizations that periodically provide limited financial support or allow the use of space for events without payment.

SOC and Okvir do not work together, largely due to differences in style, philosophy, and focus. However, both SOC and Okvir work closely with the groups in Banja Luka, Tuzla, and Mostar as well as with CURE Foundation. Both groups also speak of the critical importance of having multiple actors working on LGBT rights in BiH, both within Sarajevo and outside of Sarajevo, given the complicated political and social landscape.

There is limited collaboration between LGBT organizations and other civil society, human rights, and gender rights organizations. SOC, Okvir, and the informal activist groups in Mostar, Banja Luka, and Tuzla do cooperate with a few other human rights organizations, but most stakeholders state that LGBT rights are not consistently included by many human rights organizations. Some of the civil society groups that have consistently partnered with or supported LGBT projects include the Media Center, Youth Initiative for Human Rights, CURE Foundation, Prava Za Sve (Rights for All), Youth Initiative for Human Rights, the Human Rights Centre at the University of Sarajevo, the Helsinki Committee in Republika Srpska, Kwart (Prijeedor), and OKC Abrašević (Mostar). In general, these organizations do not independently pursue LGBT specific initiatives, but they will support advocacy or partner on projects initiated by the LGBT organizations and are willing to incorporate issues of sexual orientation and gender identity into their ongoing work. Increasing the number of human rights organizations that proactively support rights based on sexual orientation and gender identity is critical for mainstreaming LGBT rights in BiH as human rights.

One of the activities frequently implemented by the LGBT organizations are empowerment and education workshops regarding LGBT rights in BiH targeted to community members. Activists repeatedly mentioned that many community members are not aware of their rights, and to highlight this fact, one activist mentioned that community members often ask whether it is illegal

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<sup>99</sup> Among other publications, see Sarajevo Open Center, *Pink Report: Annual Report on the State of LGBT Persons in Bosnia and Herzegovina in 2013, 2014*.

to hold meetings of gay people.<sup>100</sup> Furthermore, community members often accept physical and verbal attacks and discrimination on the basis of sexual orientation and gender identity as normal part of life.

Discussing the community context in BiH generally leads quickly to a discussion of potential or actual violence. Stakeholders repeatedly referenced several major incidents, including the attack in February on the Merlinka festival organized by SOC<sup>101</sup> and the attack in 2008 on the Queer Sarajevo Festival that was hosted by Organization Q (the main organization working on sexual orientation and gender identity in BiH from 2003 through 2010).<sup>102</sup> In both cases, the attacks were well-organized and left attendees injured. The attack in 2008 included mob violence and was followed by death threats to the organizers. Okvir activists have been attacked several times including one time at a press conference they held and another time when they were recognized on the street. In March, masked men came to the home of the Banja Luka activists and threatened them. These attacks are generally framed in light of nationalist and religious rhetoric and are often attributed to “football hooligans,” people involved in nationalist movements, or “Wahabbi extremists.” Prominent religious leaders who are publicly supportive of LGBT rights are non-existent and most public statements by religious leaders are overtly hostile. Some religious leaders have even been linked to incitement of violence.<sup>103</sup>

As a result, most activists emphasized that they do not generally feel safe, and state that being an activist increases your risk of attack, especially once you become visible and known to potential attackers.<sup>104</sup> One activist commented, “It’s not a fun life inside the closet; it’s not a fun life outside the closet.”<sup>105</sup> Okvir has security cameras at their office, as well as panic buttons to alert a security company. Given the likelihood of attack, other organizations, especially the organization in Banja Luka should consider security measures, and funders should include support for security at offices and, when necessary, for private security at public events.

Community members also face attacks, violence, and discrimination. SOC documents and monitors human rights violations against the LGBT community and produced a report detailing the homophobic and transphobic violence faced by LGBT people in BiH. In a period of just seven months in 2013, they documented 18 cases of hate crimes and five cases of discrimination based on sexual orientation or gender identity.<sup>106</sup> Most of these incidents were not reported to the police, as community members often only felt safe reporting to a trusted organization.

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<sup>100</sup> Personal communication with an activist in Banja Luka.

<sup>101</sup> Jukic, Elvira C, Sarajevo Queer Fest Violence Condemned, *Balkan Insight*, February 3, 2014, retrieved from <http://www.balkaninsight.com/en/article/sarajevo-violence-over-queer-fest-condemned>.

<sup>102</sup> Clashes at Bosnia’s Gay Festival. *BBC News*, September 25, 2008, retrieved from <http://news.bbc.co.uk/2/hi/europe/7635197.stm>.

<sup>103</sup> Kajinic, Sanja, “Battle for Sarajevo” as “Metropolis”: Closure of the First Queer Sarajevo Festival according to Liberal Press, *Anthropology of East Europe Review* 28(1) Spring 2010.

<sup>104</sup> Also see, Cooper, Alex, *Living with Prajd: LGBTQ Activism in Bosnia and Herzegovina*. May 8, 2014, retrieved from <http://councilforeuropeanstudies.org/critcom/living-with-prajd-lgbtq-activism-in-bosnia-and-herzegovina/>.

<sup>105</sup> Personal communication with an activist in Sarajevo.

<sup>106</sup> Vasić, Vladana, *Homophobic and Transphobic Hate Crimes and Incidents in Bosnia and Herzegovina: Data Collected From March to November 2013*, Sarajevo Open Center, 2013.

Currently, there are very few spaces where LGBT community members are able to gather safely in BiH. There are no bars, restaurants, coffee houses, or any other type of commercial establishment directed toward an LGBT clientele. Larger cities such as Sarajevo, Mostar, and Banja Luka have commercial spaces that are considered to be ‘friendly,’ but they remain tenuous spaces, and the owners can, and often will, revoke the tacit permission that allows people to comfortably gather. For example, on the last night of this study it was reported that the owner of a bar considered ‘friendly’ explicitly told a staff member to make sure that gay people stopped congregating at the bar.<sup>107</sup> OKC Abrašević in Mostar and Kriterion in Sarajevo are willing to provide space for LGBT cultural events, and also serve as public spaces where members of the LGBT community are welcome. SOC sponsors periodic parties, and Okvir is considering restarting the parties that they used to host. SOC, Okvir, and the informal groups in other cities host periodic movie screenings, workshops, exhibitions, and discussions. Male community members reference online dating sites and applications like Grindr as among the primary ways that they meet other men.

There are no explicitly lesbian or transgender spaces or organizations. While there are no explicitly lesbian organizations, women are strongly involved in the leadership of all of the current LGBT groups, and CURE Foundation has openly lesbian staff members. Lesbian workshops have been conducted by SOC, Okvir, B.U.K.A. and CURE Foundation. Both Okvir and SOC are considering starting transgender support groups.

Given the public attitudes and the lack of safe spaces, it is not surprising that community members make statements such as they don’t feel “free,” that everything is “underground,” and that they feel “swept under the rug.”<sup>108</sup> Community members and activists continually referenced the need for increased access to safe gathering spaces.

Furthermore, community members and activists describe a situation where being open or being perceived to be LGBT is not just about possible physical violence, but also can have consequences in terms of relationships with family and friends, at school, and at work. One study indicates that for “50% of the population it is unacceptable to have LGBT individuals as family members, friends, neighbours or colleagues.”<sup>109</sup> A Gallup poll in 2012 indicated that 72% of the public in BiH believes that homosexual relations are wrong and 75% think that their city or town is not a good place for gay or lesbian people.<sup>110</sup> Not surprisingly, many people choose not to be open to their family or social networks. People tell stories of being rejected by family or having extremely strained relationships with family members or friends. Anecdotal reports, as well as a survey conducted by SOC, indicate that discrimination at work and school is also pervasive if people are known or perceived to be gay.<sup>111</sup>

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<sup>107</sup> Personal communication from a community member.

<sup>108</sup> Personal communications from various community members during the research.

<sup>109</sup> Durkovic, Svetlana, *Report on Bosnia and Herzegovina, 7th Round of the Universal Periodic Review – February 2010*, retrieved from <http://sexualrightsinitiative.com/wp-content/uploads/Bosnia-and-Herzegovina-UPR-7.pdf>.

<sup>110</sup> Carroll, Angus, *Testing the Waters: LGBT People in the Europe & Eurasia Region*, United States Agency for International Development, 2014.

<sup>111</sup> Čaušević, Jasmina, *Numbers of Life: Analysis of the results of the research on needs of LGBT community in Bosnia-Herzegovina*. Sarajevo Open Center, 2013.

These strained relationships can also lead to economic disempowerment because of the close connection between personal and familial relationships and employment in the BiH. Official unemployment among young people according to the Country Development Cooperation Strategy is 48.7%, though that figure does not account for labor in the informal economy.<sup>112</sup> Families often share economic resources, and families are connected to social networks that help provide jobs. This creates additional challenges for LGBT people who may have less secure family and social networks, and who may not have the same support from their families. Furthermore, people known or perceived to be LGBT may have a more difficult time getting jobs and staying employed, as was noted by stakeholders and the SOC report referenced above. Ensuring that LGBT people are incorporated into economic development programming is critical, and can be done through specific outreach sessions coordinated with LGBT organizations on topics such as job skills, access to microcredit, or other business and educational opportunities.

Anecdotal reports and studies indicate that some LGBT people consider moving in order to improve their economic or social situation. Some people choose to move to Sarajevo from other cities in BiH to find a more open environment. Furthermore, some members of the LGBT community consider emigration in order to face less discrimination and social pressure, and to find a setting where they can feel “free.” One study of community members indicated that nearly half of the respondents were considering living outside of BiH specifically due to their sexual orientation or gender identity.<sup>113</sup>

Access to health and mental health care can also be challenging for members of the LGBT community. One woman told the story of a friend who visited a gynecologist only to be refused treatment.<sup>114</sup> The survey of experiences of LGBT people in BiH provides similar results; according to the study, a significant number of LGBT people faced negative or unprofessional reactions from medical and mental health care professionals.<sup>115</sup> Furthermore, psychology students report that they receive little or no training on sexual orientation or gender identity as part of their education. Despite this situation, both SOC and Okvir report that they do have networks of mental health professionals who are supportive. One organization, Wings of Hope, takes referrals from both organizations, and Okvir reports that they are in contact with at least one supportive therapist in each major city in BiH.

None of the LGBT organizations include HIV prevention or education as a major area of focus. There are low numbers of HIV infection reported in BiH; the official number of HIV infections reported at the end of 2013 by the Public Health Institute is 245.<sup>116</sup> Most initiatives that are

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<sup>112</sup> United States Agency for International Development. *Bosnia and Herzegovina Country Development Cooperation Strategy 2012 – 2016*. 2012.

<sup>113</sup> Durkovic, Svetlana, *The Invisible Q? Human Rights Issues and Concerns of LGBTIQ Persons In Bosnia and Herzegovina*, Organizations Q, 2008.

<sup>114</sup> Personal communication from an activist.

<sup>115</sup> Čaušević, Jasmina, *Numbers of Life: Analysis of the results of the research on needs of LGBT community in Bosnia-Herzegovina*. Sarajevo Open Center, 2013.

<sup>116</sup> Dzenan, Karic and Sexual Rights Initiative, *Submission to the Universal Periodic Review of Bosnia and Herzegovina, 20th Session, October-November 2014*, Retrieved from [http://sexualrightsinitiative.com/wp-content/uploads/UPR2\\_joint-stakeholder-submission\\_Bosnia\\_and\\_Herzegovina\\_SRI\\_individual-collaborator\\_final.pdf](http://sexualrightsinitiative.com/wp-content/uploads/UPR2_joint-stakeholder-submission_Bosnia_and_Herzegovina_SRI_individual-collaborator_final.pdf)

addressing HIV prevention and treatment in BiH also include men who have sex with men (MSM) as one of the target groups.<sup>117</sup>

Health care for transgender individuals is challenging. There are no doctors in BiH that can provide adequate health care for the transition of transgender individuals. While nearby Belgrade, Serbia does have excellent facilities,<sup>118</sup> this is not a reasonable or affordable option for many people, and the costs of treatment are not covered or reimbursed by the national health care. Furthermore, doctors in BiH are not trained to be able to provide follow-up care.<sup>119</sup> There is limited information available regarding intersex people, though several people in the survey conducted by SOC did self-identify as intersex.

Surgery is required prior to a legal transition for transgender individuals.<sup>120</sup> While the legal codes in FBiH and RS allow for changing names and gender documents on legal documents, actually managing to go through the administrative processes can be difficult.<sup>121</sup> It is critical to ensure that these processes are clear and well-documented and that both community members and civil servants understand the process.

Despite the challenges mentioned, stakeholders frequently repeated that the situation was improving. Organization Q was the primary organization from 2003 until nearly 2010; many stakeholders repeatedly referenced their work very positively. However, when that organization stopped working actively, it left a significant gap. One woman said that it was like a “desert” in 2011. Many stakeholders talked about positive changes that were happening during the last several years, and were hopeful about the possibilities of the current landscape that includes the strong advocacy of SOC, combined with the grassroots efforts of Okvir, and several newly forming and energetic groups in Sarajevo, Mostar, and Banja Luka. The enthusiasm of activists for the work that they were doing in Sarajevo and in cities like Banja Luka and Mostar was evident, as was their belief that they will be able to create positive change in BiH.

### ***Public Discourse***

In 2008, prior to the launch of the first Sarajevo Queer Festival, media articles, internet postings, and posters around Sarajevo condemned homosexuality, and called for organizers of the festival to be lynched, stoned, doused with petrol, or expelled from the country.<sup>122</sup> These public media attacks culminated in mob violence at the festival. In 2014, prior to the launch of the Merlinka

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<sup>117</sup> AIDS Projects Management Group, *Report of the Independent Evaluation of the HIV/AIDS Programme in Bosnia and Herzegovina*, January 2014

<sup>118</sup> Bilefsky, Dan, “Serbia Becomes a Hub for Sex-Change Surgery,” *New York Times*, July 23, 2012.

<sup>119</sup> Sarajevo Open Center, *Pink Report: Annual Report on the State of LGBT Persons in Bosnia and Herzegovina in 2013*, 2014.

<sup>120</sup> Council of Europe, *Discrimination on grounds of sexual orientation and gender identity in Europe*, 2nd edition, Strasbourg, 2011.

<sup>121</sup> Sarajevo Open Center, *Pink Report: Annual Report on the State of LGBT Persons in Bosnia and Herzegovina in 2012*, 2013.

<sup>122</sup> *Report submitted by the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya*. A/HRC/10/12/Add.1, 4 March 2009. Retrieved from <http://www2.ohchr.org/english/issues/defenders/docs/A.HRC.10.12.Add.1.pdf>

festival in Sarajevo, organizers noted an increase in online hate speech encouraging violence against LGBT people.<sup>123</sup> During the second day of the festival, masked men stormed the event.

Most stakeholders indicated that the media and public discourse are critical areas for intervention, both because of the importance of media in influencing public opinion and because the media is a major platform for hate speech and incitement to violence against LGBT people. Overall, stakeholders indicated that there is some positive movement in media reporting despite the fact that most mainstream media reports are still largely sensationalistic.<sup>124</sup>

While print, television, and online media can be a source of hostility, hate speech, and incitement to violence, nearly all stakeholders agreed that the media was also an important source of support and that continuing to increase positive and balanced media coverage was critically important. Training for media and support for independent media sources is viewed as an important long-term strategy for creating more positive public discourse. USAID implementers like Internews have worked in collaboration with local organizations such as the Mediacenter Sarajevo and YIHR to strengthen independent media and to do media education. Trainings for journalists and journalism students have been conducted by SOC and the Mediacenter. SOC has also produced a report regarding the current state of media reporting and best practices for reporters and media outlets.<sup>125</sup> In an upcoming project funded by USAID, the Mediacenter will focus on diversity in media and will collaborate with SOC to increase positive reporting.

In general, the mainstream media has a strong political influence connected with ethno-nationalism making it harder to ensure accurate and unbiased reports in the major print newspapers and on television.<sup>126</sup> Radio Sarajevo and the magazine Dani, were repeatedly referenced as media outlets that report in a balanced manner. Oslobodjenje has also run several positive articles. SOC is collaborating with the internet portal Frontal.ba to produce a series of articles regarding various aspects of sexual orientation and gender identity in BiH. Independent media is far more likely to report accurately and to be open to producing reports and articles that are not solely focused on violence or other sensational events.

Internet portals are reportedly an important source of news and of independent reporting in BiH, including balanced reporting on LGBT issues; with a reported internet penetration of more than 65%,<sup>127</sup> a large portion of the population has access to online news. However, comments on internet portals are also one of the most frequent locations for hate speech and threats; media agencies often leave these sites unregulated and unmonitored, allowing hate speech to flourish and potentially contributing to the organization of violent attacks. One media outlet, Radio

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<sup>123</sup> Ekerstedt, Malin, *Hate attacks against LGBT activists in Bosnia and Herzegovina*, February 7, 2014. Retrieved from <http://kvinnatillkvinna.se/en/2014/02/07/hate-attacks-against-lgbt-activists-in-bosnia-herzegovina/>.

<sup>124</sup> Sarajevo Open Center, *Pink Report: Annual Report on the State of LGBT Persons in Bosnia and Herzegovina in 2013*, 2014.

<sup>125</sup> Huremović, Lejla; Ljevak, Kristina; and Čaušević, Jasmina, *Ka pozitivnim praksama: Izvještavanje medija u 2013 godini o LGBT temama u Bosni i Hercegovini*, Sarajevo Open Center, 2014.

<sup>126</sup> United States Agency for International Development. *Bosnia and Herzegovina Country Development Cooperation Strategy 2012 – 2016*. 2012; "Bosnia and Herzegovina," *Freedom of the Press*, 2013. Freedom House.

<sup>127</sup> "Bosnia and Herzegovina," *Freedom of the Press*, 2013. Freedom House.

Sarajevo, has disabled comments on articles where it has been a particular problem in order to diminish the hate speech.

The Press Council is a voluntary self-regulatory agency for the media, and has been relatively supportive; however, it has no power to fine, suspend, or close down media outlets, and it has no power if the media outlet is not a member. The Communications Regulatory Agency (CRA) does have enforcement authority, but because its members are politically appointed they are also more subject to political influence and control. Both the Press Council's Press Code of BiH<sup>128</sup> and CRA regulations<sup>129</sup> include sexual orientation as a protected category. SOC has successfully reported violations to both agencies.<sup>130</sup>

Television outlets currently provide limited positive coverage; however, SOC was able to successfully negotiate with Federalna TV (FTV), one of the three major public television channels in BiH, to screen *My Child*, one of the films from the Merlinka Festival. FTV screened the film about parents of LGBT children on May 15, and the station estimated that nearly 150,000 people viewed it. Many stakeholders view television as one of the most powerful ways to reach a broad public audience and this screening was mentioned several times during the course of the research. Support for increasing positive coverage on public television may be another avenue for improving public opinion.

There is a significant need for increase in positive public discourse, especially from local public figures. The vocal and public support from international actors was generally viewed very positively, and was perceived as intervening in a public discourse that is largely silent or negative about issues of sexual orientation and gender identity.<sup>131</sup> While there are Bosnian intellectuals, professors, artists, civil society leaders and other public figures that are supportive, according to many stakeholders, public statements by these individuals are generally made only after a specific request from LGBT organizations. Increasing positive public statements from respected public figures is another important area of intervention that is lacking in BiH, and international actors may be able to provide encouragement and support for greater public engagement from supportive Bosnian public figures.

### ***Government and Justice Sector***

Although the government and judicial sectors should be key protectors of the rights of all citizens, including members of the LGBT community, in practice this is not generally true in

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<sup>128</sup> Article 4a, The Press Code of BiH, available at,

[http://english.vzs.ba/index.php?option=com\\_content&view=article&id=218&Itemid=9&lang=bs](http://english.vzs.ba/index.php?option=com_content&view=article&id=218&Itemid=9&lang=bs) ("Journalists shall avoid direct or indirect comments which might place individuals in an unequal position or discriminate them based on . . . sexual identity, gender identity, gender expression and/or sexual orientation.")

<sup>129</sup> See the Law on Communications of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, No.31/03.

<sup>130</sup> Sarajevo Open Center, *Pink Report: Annual Report on the State of LGBT Persons in Bosnia and Herzegovina in 2013*, 2014.

<sup>131</sup> For example, consider the statement of Milorad Dodik, Prime Minister of Republika Srpska, "I simply will not allow various faggots into my cabinet," as quoted in COWI, *Study on Homophobia, Transphobia, and Discrimination on Grounds of Sexual Orientation and Gender Identity: Sociological Report: Bosnia and Herzegovina*. 2010.

BiH. The government and justice systems of BiH are characterized by political and ethnic disagreements that make it difficult to pass legislation and implement laws effectively. Human rights institutions, such as the Office of the Ombudsman and the various Gender Centers, have limited funding and capacity to effectively carry out their mandates, and overlapping competencies allow different institutions to avoid assuming responsibility.<sup>132</sup>

EU accession has been a driving factor in passing some protective legislation, such as the inclusion of sexual orientation and gender identity in the Law on Protection of Discrimination. However, the challenging decision-making structure combined with political disagreements makes governance difficult, and reduces the ability of the government to meet EU accession requirements.<sup>133</sup> In addition to the structural and institutional challenges, there is a common perception stated by government officials, some civil society activists, as well as members of the public that, given the variety of serious problems faced by BiH, the rights of LGBT people are not and should not be a priority for the government.<sup>134</sup>

There were no indications that any governmental human rights entity or justice sector institution has produced outreach materials or conducted public education regarding rights based on sexual orientation or gender identity.

In addition to the above challenges, there is explicit public opposition to LGBT rights by some prominent government officials, including the President of the RS, the mayor of Prijedor (a town near Banja Luka), and the FBiH Minister of Culture, Sports, and Youth.

Given this backdrop, it is not surprising that members of the LGBT community have little confidence in the ability or willingness of government institutions to protect their rights. Despite pervasive reports of discrimination to civil society organizations and on surveys, very few cases are reported to the police, the Ombudsman, or other government agencies.<sup>135</sup> Reasons for non-reporting include: lack of trust that the institution will take action; a belief that reporting may result in additional victimization by the institution or the original perpetrators; and/or a belief that reporting may result in an unwanted disclosure of identity.

The Ombudsman is charged with being the central institution for protection from discrimination. Yet, during 2013, the Ombudsman only received four complaints of discrimination based on sexual orientation or gender identity. Furthermore, the Ombudsman has received only 20 complaints based on sexual orientation or gender identity since the adoption of the Law on the Prohibition of Discrimination in 2009, several of which the institution initiated themselves based on public reports of violence or publicly reported cases of public hate speech. In its 2013 Annual

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<sup>132</sup> U.S. Department of State, *Bosnia and Herzegovina 2013 Human Rights Report*, 2014.; European Commission, *Bosnia and Herzegovina 2013 Progress Report*, 2013.

<sup>133</sup> European Commission, *Bosnia and Herzegovina 2013 Progress Report*, 2013.

<sup>134</sup> The report produced by COWI found similar perspectives among representatives of BiH institutions. COWI, *Study on Homophobia, Transphobia, and Discrimination on Grounds of Sexual Orientation and Gender Identity: Sociological Report: Bosnia and Herzegovina*. 2010.

<sup>135</sup> Sarajevo Open Center, *Pink Report: Annual Report on the State of LGBT Persons in Bosnia and Herzegovina in 2013*, 2014.; Vasić, Vladana, *Homophobic and Transphobic Hate Crimes and Incidents in Bosnia and Herzegovina: Data Collected From March to November 2013*, Sarajevo Open Center, 2013.

Report, the Office of the Ombudsman notes that this a significantly low rate of reporting in comparison to other vulnerable groups and suggests that it is likely due to people fearing disclosure of their sexual orientation if they report discrimination.<sup>136</sup> Despite identifying this discrepancy between likely incidents and reports, they fail to identify any other possible causes, nor do they suggest meaningful ways to address the discrepancy.

In 2013, civil society organizations formal requested that the Ombudsman produce a special report on the state of human rights for LGBT people in BiH, similar to what the institution prepared relating to the Roma and people with disabilities. Such a report would provide an opportunity for the Ombudsman to more fully investigate the current situation for LGBT people as well as provide recommendations to improve the protection of human rights on the basis of sexual orientation and gender identity. Unfortunately, the Ombudsman has not yet agreed to produce such a report. Furthermore, in a meeting with all three Ombudsmen, they repeatedly referenced sexuality as a “private” matter, and suggested that while LGBT people faced infringements on their rights to freedom of expression and freedom of assembly, they did not face significant other rights violations. This outdated view of LGBT rights as a “private” matter and the lack of recognition of the many serious rights violations that occur in BiH is a significant impediment to full implementation of the laws prohibiting discrimination. There is a clear need for continued dialogue to ensure that the institution of the Ombudsman is a proactive partner in ensuring the full protection of the human right of LGBT people in BiH.

Similarly, despite significant violations of human rights on the basis of sexual orientation and gender identity, other government institutions have also been limited in their protection of the rights of LGBT people. For example, the Ministry of the Interior of Republika Srpska indicated that they were receiving few or no reports, and concluded that it was not their responsibility to reach out if the public was not reporting violations. Even the Gender Centers of RS and of BiH provide extremely limited support, despite the inclusion of sexual orientation in the Gender Law and, at a minimum, the need to include lesbian, bisexual and transgender women in their mandate just as they ensure inclusion of other marginalized women. The Minister of Human Rights and Refugees has repeatedly not provided a letter of request to the Council of Europe (COE) that would allow the COE to provide support to the government, the Ministry, and the Ombudsman on compliance, implementation, and capacity in relation to sexual orientation and gender identity.

Many other sectors of government and the judiciary are equally unsupportive. Stakeholders report that prosecutors and judges have limited competency to handle cases based on violations of rights based on sexual orientation or gender identity. The lack of successful prosecutions or significant sentences despite the widely publicized attacks on the Queer Sarajevo Festival, the Merlinka Festival, and other attacks on activists furthers a perception that attacks can happen with impunity and that there is limited recourse for LGBT people or activists to systems of protection.<sup>137</sup> Furthermore, in the recent case of the Merlinka Festival, the police had been alerted to the event well in advance, there was an agreement between the organizers and the

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<sup>136</sup> *Annual Report on Occurrences of Discrimination in Bosnia and Herzegovina*, The Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, 2013.

<sup>137</sup> Cooper, Alex, *Living with Prajd: LGBTQ Activism in Bosnia and Herzegovina*. May 8, 2014, retrieved from <http://councilforeuropeanstudies.org/critcom/living-with-prajd-lgbtq-activism-in-bosnia-and-herzegovina/>.

police for protection, yet the police were not present as agreed at the time when the attack took place.<sup>138</sup> Improved support from the judiciary and law enforcement is necessary throughout BiH.

In a positive development, SOC has successfully begun organizing trainings for the police of Sarajevo Canton, with the cooperation of the Ministry of the Interior of the canton.<sup>139</sup> The trainings will be expanded and implemented as part of the permanent education of the 1500 police officers in Sarajevo Canton. Furthermore, SOC and the Organization for Security and Cooperation in Europe (OSCE) are planning additional police trainings in five additional cantons in FBiH. In the RS, despite the absence of proactive support from the Ministry of the Interior, activists have opened a dialogue with police and have had initial success with reporting cases of anti-gay graffiti and requests for protection at events.

Support for continued and expanded training for police and the judiciary on anti-discrimination and human rights is recommended, in cooperation with activists, civil society organizations, international actors, and existing training mechanisms such as the High Judicial and Prosecutorial Counsel of Bosnia and Herzegovina (HJPC) and police academies.

### ***Education***

From elementary through university and professional school, education was repeatedly referenced as a sector that needed both short-term interventions as well as having the potential for long-term sustainable change. At the same time, interventions within the educational sphere were referenced as potentially the most difficult, given the multiple layers of government approval required for any formal interventions in the educational sector.

Anecdotal reports and surveys indicate that teachers, school counselors, and other school officials are not well-trained on issues of sexual orientation and gender identity, and may express negative opinions in the classroom.<sup>140</sup> An activist from Tuzla referred to an incident where a high school counselor explicitly told students with the ability to vote in the Croatian elections to vote for a law that defined marriage as between a man and a woman.<sup>141</sup> A 2012 pilot study on the attitudes of high school students towards homosexuality indicated that over half of the

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<sup>138</sup> *Summary of the Three Days of Merlinka in Sarajevo*, Sarajevo Open Center, retrieved from <http://soc.ba/en/summary-of-the-three-days-of-merlinka-in-sarajevo/>.

<sup>139</sup> Initiative for Monitoring BiH's European Integration, *Shadow Report on the Progress of Bosnia and Herzegovina's EU Accession Process*, 2013.

<sup>140</sup> Čaušević, Jasmina, *Numbers of Life: Analysis of the results of the research on needs of LGBT community in Bosnia-Herzegovina*. Sarajevo Open Center, 2013.; Human Rights Watch, "Bosnia and Herzegovina," *Human Rights Watch World Report 2010*.; Durkovic, Svetlana, *The Invisible Q? Human Rights Issues and Concerns of LGBTIQ Persons In Bosnia and Herzegovina*, Organizations Q, 2008.

<sup>141</sup> Personal communication from an activist; this incident is also referenced in the 2013 *Pink Report* from Sarajevo Open Center.

students believed that homosexuality was a “disease,” and “unnatural.”<sup>142</sup> Reports also indicate that textbooks and curriculum contain references to homosexuality as an illness.<sup>143</sup>

At the university level, there are some professors in a variety of fields who include discussions of sexual orientation and gender identity into their university courses. However, inclusion in the academic curriculum is uneven. The LGBT organizations have provided some trainings for students and professionals, including therapists, teachers, journalists, and law students. Examples include teacher trainings done by SOC and CURE Foundation,<sup>144</sup> trainings for therapists conducted by Okvir, and a professor in Tuzla who is offering a seminar on gender identity that will include a visiting expert from the U.S. funded by the U.S. Embassy. Additionally, some criminal justice professors have expressed an interest in having SOC do trainings with their students. The training and inclusion in the curriculum is generally *ad hoc* and based on interest of individual students, professors, or professionals, as opposed to being directly included in the curriculum or mandatory professional training.

There are a significant number of places where there could be further interventions. For example, the Gender Center in RS works on a gender equality summer school that could discuss sexual orientation and gender identity in the larger framework of gender rights. Activists and university contacts indicate a need for additional translations to be able to be used as educational materials. Moot courts and other educational programs that are implemented by justice, media, and other development programs can use case studies that touch on sexual orientation and gender identity. Diversity and tolerance programs such as *Education for a Just Society* can examine where and how the program can incorporate discussions of gender and human rights.

Programs such as the *Young Men Initiative* (YMI) implemented by CARE International, ICRW, and the XY Association in vocational schools in Sarajevo demonstrate how inclusion of conversations about gay men and sexual orientation in the larger framework of education about anti-violence, human rights, and gender norms can have a concrete and positive impact on attitudes toward LGBT persons and homophobia. The YMI workshops are conducted in vocational schools and included as a compulsory part of the school curriculum, with the support of the school administration. Programs such as the YMI can serve as a potential model for successful inclusion of sexual orientation and gender identity as a cross-cutting issue.<sup>145</sup> Support for similar programs is recommended.

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<sup>142</sup> Sarajevo Open Center, *Pink Report: Annual Report on the State of LGBT Persons in Bosnia and Herzegovina in 2012*, 2013.

<sup>143</sup> Durkovic, Svetlana, *The Invisible Q? Human Rights Issues and Concerns of LGBTIQ Persons In Bosnia and Herzegovina*, Organizations Q, 2008.

<sup>144</sup> Ausserer, Caroline, “Coming out! – LGBT awareness-raising campaigns in Bosnia Herzegovina,” Heinrich-Böll Stiftung Foundation, May 7, 2014, retrieved from <http://www.boell.de/en/2014/05/06/coming-out-lgbt-awareness-raising-campaigns-bosnia-herzegovina>.

<sup>145</sup> International Center for Research on Women, *Be a Man, Change the Rules! Findings and Lessons from Seven Years of CARE International Balkans’ Young Men Initiative*, 2014, retrieved from [http://www.icrw.org/files/publications/YMI\\_ExecutiveSummary\\_2013-WEB-PREVIEW.pdf](http://www.icrw.org/files/publications/YMI_ExecutiveSummary_2013-WEB-PREVIEW.pdf).

### ***Donors/International Actors***

International actors and donors have a critical role to play in BiH including providing technical assistance, donor funding, and leadership. All stakeholders interviewed commented on the importance of the role of international actors in supporting LGBT organizations and protecting LGBT rights. There are a variety of strong international and diplomatic actors who are actively supportive of LGBT issues in BiH; some of these actors include USAID, USG, EU, COE, OSCE, the Swedish International Development Cooperation Agency (SIDA), the Norwegian Embassy, and the Dutch Embassy. In addition to these actors, there are other organizations that provide important funding and technical support including Open Society, the Astraea Lesbian Foundation for Justice, the Heinrich Boell Foundation, and the National Endowment for Democracy. These lists of actors are not exhaustive, but instead are intended to highlight some of the key players and to illustrate the diversity of support for LGBT rights in BiH.

Activists and other stakeholders repeatedly talked about the significance of public statements supporting LGBT rights by international actors as well as the importance of the participation and presence of international partners and diplomats at events. These public statements open a space in the public discourse, and the presence of international actors at public events focusing on sexual orientation and gender identity not only provides moral support but also adds an element of safety and protection for local actors. For example, the organization in Banja Luka indicated that the police repeatedly asked them for the specific time at which diplomats would be attending events commemorating the International Day Against Homophobia and Transphobia (IDAHOT) because the police wanted to ensure that they were providing adequate protection when the diplomats were present.

Actions by the USG in Sarajevo such as lighting the U.S. Embassy in rainbow colors to mark IDAHOT not only have an impact in BiH but also have a regional impact; that activity in 2013 inspired the Government of Kosovo to light the Kosovar government building in rainbow colors in 2014 with the support of the USAID Mission in Kosovo.

Unfortunately, donor funding is decreasing; some bilateral donors have left BiH and others are reportedly leaving.<sup>146</sup> Civil society stakeholders repeatedly referenced the decreased funding pool as a major concern. For civil society organizations, as donors leave or decrease funding in BiH, it raises questions for the sustainability of projects and organizations. As a major donor, the USG can play a strong role in supporting the development of local LGBT civil society organizations, especially given the otherwise generally limited access to funding for LGBT organizations.<sup>147</sup> Furthermore, with new funding mechanisms for smaller organizations, USAID can play a critical role in strengthening the diversity of voices advocating for LGBT rights, both by supporting small or newly emerging LGBT organizations that do not yet have the capacity for large grants, and by supporting other human rights organizations to include sexual orientation and gender identity as a more significant component of their work.

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<sup>146</sup> United States Agency for International Development. *Bosnia and Herzegovina Country Development Cooperation Strategy 2012 – 2016*. 2012.

<sup>147</sup> Maulbeck, Ben Francisco, *The Physics of LGBTQ Funding: Momentum, Resistance, and Impact*, Funders for LGBTQ Issues, 2013.

Similarly, major USAID projects in BiH provide a critical opportunity to create long-term sustainable impact by incorporating sexual orientation and gender-identity as cross-cutting issues in project design and throughout project implementation. Whether the project is focused on reforming education, strengthening rule of law, enhancing diversity in media, or economic empowerment, ensuring that human rights based on sexual orientation and gender identity are interwoven throughout programming and outreach is critical. It is critical to include relevant indicators for both implementing partners and for the mission in order to monitor and ensure the success of this type of inclusion.<sup>148</sup> Conversations with current implementing partners and potential partners can help identify most effective areas to incorporate sexual orientation and gender identity; some sample strategies are included at the end of this report.

Other USG agencies are also involved or could be involved with advancing rights for LGBT people in BiH. For example, the Office of Public Affairs has provided small grants to LGBT organizations and is bringing a speaker during the summer of 2014 to participate in a university program on gender identity. The International Visitor Leadership Program (IVLP) is a critical tool for professional exchange. Supporting the participation of LGBT activists in these programs strengthens their skills and provides opportunities for them to build networks with other human rights activists. Including sexual orientation and gender identity in IVLP programs focused on other sectors such as law enforcement or health care can increase support and knowledge of LGBT issues for professionals in key sectors. Regional IVLP programs focusing on LGBT issues create stronger regional networks for protection of rights based on sexual orientation and gender identity. Department of Justice programs such as the Office of Overseas Prosecutorial, Development, and Training (OPDAT) and the International Criminal Investigative Training Assistance Program (ICITAP) can support LGBT organizations in their work with law enforcement and the judiciary. The embassy already has task forces on similar cross-cutting issues that are mission priorities; establishing a working group or task force on LGBT issues can help coordinate work as well as highlight areas where sexual orientation and gender identity can be more effectively included in ongoing mission programming.

Finally, USAID has recently strongly stated that it is committed to include LGBT issues in every aspect of the work of the agency.<sup>149</sup> However, training on sexual orientation and gender identity is not yet a consistent part of training for American or local staff. To ensure that the staff of USAID and the USG understand and have the tools to effectively implement this policy priority, it is important to provide all staff members with sufficient training and knowledge on issues of sexual orientation and gender identity.

## **RECOMMENDATIONS:**

These recommendations are overall recommendations; while they are primarily aimed at USAID and USG interventions, other actors could directly implement many of them. Furthermore, they

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<sup>148</sup> Carroll, Aengus, *Testing the Waters: LGBT People in the Europe & Eurasia Region*, United States Agency for International Development, 2014.

<sup>149</sup> United States Agency for International Development. *Vision for Action: Promoting and Supporting the Inclusion of LGBT Individuals*, 2014.

are the result of intensive conversations and literature review during a short period of time; any implementation should be done in consultation with local actors and stakeholders, especially the LGBT organizations.

The recommendations fall into four main types:

- Those that require funding for programs or organizations;
- Those that can be implemented through incorporating sexual orientation and gender identity into already existing programs;
- Those that require the use of political capital from international actors to provide support to local actors; and
- Those that simply require support or encouragement.

### **Enhancing the Legal Frameworks:**

*Overall, the legal framework of BiH has strong anti-discrimination provisions that cover sexual orientation and gender identity. However, the language needs updating, the law has not been well implemented, and other areas of the legal framework including the gender law, do not adequately cover sexual orientation and gender identity. Furthermore, the laws of the state, the entities, and the district need to be harmonized.*

***Overall recommendation: Work with civil society, Sarajevo Open Center (SOC), the government of BiH, and other international actors to ensure that the legal framework of BiH provides full protections on the basis of sexual orientation and gender identity. This should include harmonization of laws as well as the development of an action plan for the implementation of the Anti-Discrimination law.***

- Support a comprehensive survey of legislation and the legal framework to identify gaps and needed changes in order to ensure effective inclusion of sexual orientation and gender identity. Ensure that this review includes the state level, the entities, the district, and the canton level and that there is close examination of the legislation on family relations, education, health, and social welfare.
- Support the ongoing efforts to amend the BiH Law on the Prohibition of Discrimination to ensure that the proper terms for “sexual orientation” and “gender identity” are included in the law.
- Support initiatives to amend the FBiH criminal code to ensure the inclusion of hate crime legislation.
- In order to ensure that the Law on the Prohibition of Discrimination is properly implemented, support the creation of a multi-year state-level anti-discrimination action plan, with indicators that measure progress.
- Strongly encourage full compliance with the recommendations identified during the “Structured Dialogue on Justice and Additional Rule of Law Matters between the European Union and Bosnia and Herzegovina.”
- Provide support for a full review of the legal framework and associated regulations for individuals who want to change their name or their legal gender marker, and ensure that the law properly protects and supports these individuals.

## **Empowering LGBT Community**

*While there are several LGBT organizations in BiH, the complicated legal framework and government structures necessitate stronger organizations throughout the country to ensure effective advocacy. While there are increasing organizations and activists, the LGBT population is mostly hidden and afraid, has limited opportunity to come together in safe spaces, and organizations are still working to increase the level of community support. Furthermore, basic services are lacking, for example: healthcare and mental healthcare providers are rarely sensitive or trained for dealing with LGBT issues and may actually be overtly hostile; there is no identified health care at all for transgender people and national health care does not pay or reimburse for costs for gender confirming treatment.*

***Overall recommendation: Strengthen and empower the LGBT community while strengthening networks to other human rights organizations that can broaden the base of support. Support the creation of safe spaces, opportunities for economic empowerment of community members, and more training opportunities for service providers.***

- Continue supporting and partnering with the Sarajevo Open Center both through funding and by supporting their government advocacy and training initiatives.
- Using a small grants mechanism, provide support for small organizations such as Okvir in Sarajevo, and newly forming organizations outside of Sarajevo such as B.U.K.A. in Banja Luka. Ensure that support for these smaller organizations includes capacity building, technical support, and security assistance.
- Fund the development of important safe social and community spaces for the LGBT community.
- Encourage and fund non-LGBT human rights, cultural, and arts organizations to include sexual orientation and gender identity in their current work, and to take on LGBT specific projects to expand the base of support.
- Continue to attend events both in Sarajevo and in other cities to provide moral support, visibility, and increased safety.
- Continue to support activists on study visits, especially encouraging a wider range of leaders to participate in order to ensure that training strengthens the whole organization and emerging leaders; consider study visits or activities focusing on LGBT rights that bring together a range of actors, including journalists, LGBT activists, lawyers and academics.
- Ensure that, regardless of funding source, organizations are equally invited to present or share perspectives at various forums where donors, government officials, and other stakeholders are present; ensure that donors and organizations continue to coordinate their funding and activities.
- Support projects that document community and activist efforts, so that the rich history being created is not lost; encourage the telling of and sharing of stories, while ensuring safety for participants.
- Continue to ensure that security is considered at all activities that are public. Include security funding when funding support is provided.

## **Enhance Public Discourse Around LGBT Rights**

*Public discourse in BiH has often focused on the sensational or on the negative, such as the attack on the Merlinka festival; however, anecdotal evidence and studies of media coverage show that there is some increase in balanced positive reporting. There is significant need for additional vocal support for LGBT rights in the public discourse from public intellectuals, BiH government officials, and mainstream human rights groups.*

***Overall recommendation: Continued public statements by international actors are critical. Additionally, broaden the discourse by providing support to LGBT groups, other civil society actors, prominent intellectuals, and government officials to speak out strongly and frequently about LGBT rights in the framework of human rights.***

- Continue support for independent media, and continue to incorporate support for sexual orientation and gender identity into media projects being done by USAID implementers.
- Continue to provide public statements during relevant events, such as IDAHOT, or in response to negative incidents, in order to broaden the visible public support for LGBT rights. Encourage participation in such statements from other BiH civil society actors, government representatives, and USAID implementers, where relevant. Continue to include sexual orientation and gender identity into general statements being made about human rights, gender, and gender based violence.
- Encourage stronger public support for LGBT rights from key supportive public intellectuals, such as academic, artists, and civil society leaders. In collaboration with LGBT organizations, consider hosting a roundtable/reception with LGBT activists and key supportive public intellectuals to encourage them to speak publicly more frequently.
- Fund and support a general human rights or anti-discrimination campaign that provides Bosnian public intellectuals with an easy opportunity to speak openly specifically on sexual orientation and gender identity within the framework of human rights.
- Support journalists to become more effective at reporting on LGBT issues and assist in creating stronger relationships between ethical journalists and LGBT groups; support ongoing training and consider if there are ways that diplomats and embassies can strategically host formal or informal conversations to help to strengthen these relationships. For example, host a roundtable/reception with LGBT activists and key media editors to encourage better media coverage and strengthen relationships.
- Consider sending journalists on IVLP programs focusing on sexual orientation and gender identity.

### **Strengthening the Support of the Government of BiH and Duty Bearers:**

*The government of BiH struggles with meeting the basic competencies of governmental responsibility. Furthermore, many governmental actors do not view it as a priority to guarantee rights based on sexual orientation or gender identity or to guarantee the safety of LGBT people. The push toward EU accession and pressure from other international actors such as the USG and USAID is critical to ensure that the Government of BiH upholds its responsibility and to support civil society organizations advocating for rights based on sexual orientation and gender identity.*

***Overall recommendation: In collaboration with civil society, use the political capital and expertise of the U.S. and other donors to ensure the commitment of the government of BiH to rights based on sexual orientation and gender identity. Support training opportunities for duty bearers, especially in cooperation with other USG justice sector programs and other international actors.***

- In collaboration with SOC and other civil society organizations continue to pressure the Ombudperson institution to produce a series of special reports including a report on sexual orientation and gender identity.
- Strongly encourage the Gender Centers to be more inclusive in their work, to recognize sexual orientation as part of their mandate, and to more fully include lesbian, bisexual, and transgender women.
- Encourage greater inclusion of sexual orientation and gender identity in training programs for police, prosecutors and judiciary. Do so in collaboration with civil society organizations and with OPDAT, ICITAP, the new USAID rule of law program, the OSCE and other existing mechanisms.
- Ensure that regulations and processes regarding changing the gender marker and name on documents are clear, that civil servants have training, and that the public has easy access to an explanation of the process.
- Encourage relevant government agencies, such as the Ombudsman, the Ministry of Human Rights and Refugees, the Gender Centers, and the police agencies to produce easily accessible written documentation of relevant legal rights based on sexual orientation and gender identity as well as mechanisms for support and reporting violations; ensure that such documents are up-to-date, produced in consultation with LGBT groups and human rights lawyers, available in print and online format, and distributed broadly to government civil servants and to civil society organizations.
- Assist LGBT groups in making such documentation of legal rights, support, and reporting mechanisms available in their offices, but also through social media and online portals in order to ensure that community members have access, especially since they may be unable or unwilling to keep written documents because of safety or security concerns.

### **Ensure Inclusive Education**

*Most sources identified education as a key sphere for intervention, from the primary level through university. While accessing educational spaces is difficult, there are both formal and ad hoc activities that are currently taking place that provide opportunities for inclusion of sexual orientation and gender identity explicitly, or in the framework of conversations on human rights or gender.*

***Overall recommendation: At the primary and secondary level, improve education on human rights including LGBT rights; at the university level, create enhanced teaching tools and teaching opportunities around sexual orientation and gender identity.***

- Support primary and secondary school initiatives that are inclusive of sexual orientation and gender identity in a human rights framework. Use initiatives that are already in place, such as media education or justice education to do so. Ensure that USAID implementers

that are engaged in classroom education incorporate sexual orientation and gender identity where relevant.

- Support translation and development of LGBT materials for use in university classrooms and by LGBT and human rights organizations.
- Support a full review of textbooks to identify where sexual orientation or gender identity are referred to in a discriminatory manner. Support advocacy efforts to change textbooks to eliminate these discriminatory references.
- Support initiatives designed to provide more inclusive training for teachers, health care and mental health care professionals, and law students.
- Consider supporting additional comprehensive and rigorous research into attitudes and competencies of educators around issues of sexual orientation and gender identity, perhaps in collaboration with the Human Rights Center of the University of Sarajevo.
- Engage with and support education initiatives such as the work being done by the *Young Men's Initiative*, which incorporates anti-homophobia education into their school-based gender-transformative curriculum for young men.

**Ensure sexual orientation and gender identity are included as cross-cutting issues for the work of USAID and the USG:**

*As one of the largest and most consistent bilateral donors to BiH, USAID has a unique opportunity to further rights based on sexual orientation and gender identity in a long-term sustainable manner by ensuring inclusion in program design and working with implementing partners to strengthen their capacities for work on LGBT issues. Furthermore the political influence of the USG and other international actors allows for effective ongoing engagement in the public sphere and directly with governmental and non-governmental actors.*

***Overall Recommendation: Continue to be a strong voice for LGBT rights as human rights. Work with all implementing partners and with all USG programs to ensure that sexual orientation and gender identity are included as cross-cutting issues.***

- Ensure that staff members of USAID and the U.S. Embassy have clear guidance regarding how to communicate policy priorities; ensure internal training opportunities on issues of sexual orientation and gender identity to assist staff members who may not feel comfortable or have sufficient knowledge.
- Include sexual orientation and gender-identity in program design for implementing partners where relevant; include indicators to measure success.
- Consider adding an indicator to the Mission Performance Monitoring Plan to monitor and track the success of implementers in working directly with LGBT organizations and including sexual orientation and gender identity in their projects, where relevant.
- Strengthen relationships between LGBT organizations and USG programs that focus on justice, law enforcement, and media such as OPDAT, ICITAP, and the Office of Public Affairs.
- As with other cross-cutting issues, consider establishing a task-force that focuses the embassy's work on sexual orientation and gender identity.
- Recognize the diversity of the LGBT community; ensure that funded projects and invitations to participate in USG opportunities include women and transgender people.

- Consider offering a national or regional LGBT IVLP program. Include other relevant stakeholders such as supportive journalists. Also, ensure that LGBT activists are included in general IVLP programs.
- Include content about sexual orientation and gender identity into IVLP programs focused in other relevant sectors, such as education, judiciary, and health care. For example, an IVLP program for prosecutors could include meetings with prosecutors who have worked on prosecuting hate crimes on the basis of sexual orientation, and an IVLP program for teachers could include meetings with organizations that worked for the prevention of bullying in schools.
- Continue to provide support to civil society activities and organizations; many sources from the local organizations commented that they appreciated the presence and interest of embassies and diplomats; this presence not only provides critical public support but also strengthens security for events.
- Continue to use the influence of the USG to speak privately and publicly on LGBT rights.

## **ANNEX 1**

### **Including sexual orientation and gender identity as cross-cutting issues Examples from Bosnia and Herzegovina**

#### **Sample strategies:**

##### **Example 1: Justice System**

*Situation:* There is currently no or almost no training for prosecutors or judges on sexual orientation and gender identity in either law school or in ongoing professional training.

*Possible responses:*

- Working collaboratively with civil society organizations, the Department of Justice Office of Overseas Prosecutorial, Development, and Training (OPDAT), and other actors in the justice sector, advocate for incorporation of a mandatory training on the anti-discrimination law for judges and prosecutors through the High Judicial and Prosecutorial Counsel of Bosnia and Herzegovina (HJPC). Ensure that an explicit example of discrimination based on sexual orientation or gender identity is included in the training and that the trainer is properly prepared to discuss discrimination based on sexual orientation and gender identity
- In Moot Court activities that are done for high school and law students through justice projects and media law projects, incorporate case examples of discrimination based on sexual orientation or gender identity.

##### **Example 2: Civil Society Strengthening**

*Situation:* The Civil Society Sustainability Project is focused on strengthening civil society, building the capacity of non-governmental organizations to do effective advocacy, and increasing the role of civil society in holding the government accountable. This project is currently focused on 12 sectors, with a different organization building coalitions in each sector. Sexual orientation and gender identity would be cross-cutting issues in a variety of these sectors.

*Possible responses:*

- Inclusion of LGBT organizations is critical in the sector of human rights.
- Invite LGBT organizations to participate in other sectors, such as education, health, justice, or economic empowerment. This allows LGBT organizations to help define critical issues, as well as strengthen their relationships to other civil society and human rights organizations working in key sectors.

##### **Example 3: Economic Empowerment**

*Situation:* Unemployment in BiH is challenging for everyone. According to the CDCS, young people have the highest unemployment rate, currently at 48.7%. This situation is worse for young people who are LGBT because of several reasons: 1) Family is a safety net, but that safety net is not as secure for LGBT young people; 2) Social networks often lead to jobs, but the social networks for LGBT people are more insecure because they may be more fragile and limited due to sexual orientation or gender identity; 3) Direct discrimination may make it more difficult for people to find and retain jobs.

*Possible responses:*

- Do outreach through LGBT organizations for participants in job skills seminars, training opportunities, workshops on microcredit, and other economic empowerment activities.

- Consider offering these types of opportunities directly in collaboration with LGBT organizations including organizations outside of Sarajevo.
- Consider, in collaboration with other organizations and projects working on economic empowerment, offering an ongoing series of workshops directly to the LGBT community.

**Example 4: Initiative to Prevent Gender Based Violence:**

*An example of the successful inclusion of sexual orientation as a cross-cutting issue in an educational program.*

*Situation:* CARE International, the International Center for Research on Women (ICRW), and the XY Association implemented the Young Men Initiative, a long-term project working with boys and men on educating and transforming perspectives on gender and social norms with the goal of preventing gender based violence and increasing healthy social interactions. They worked with young men in vocational schools in Banja Luka and Sarajevo, and with the support of school administrators, the most recent sessions were included as part of the school curriculum rather than as extracurricular activities. Their research, conversations, activities and education conducted as part of the Young Men Initiative included anti-homophobia education.

*Results:*

- Because of the explicit inclusion of attitudes toward gay men as a part of a project on gender based violence, the initiative was able to track and see positive overall trends in terms of the attitudes boys held toward homosexuality.
- Because of the overall focus on gender-based violence, substance abuse, and health, the curriculum has received support from school administrators and has been able to be implemented directly in schools; the inclusion as a cross-cutting issue allowed positive conversations around sexual orientation to be implemented directly in schools.
- The program was able to rigorously document measurable and significant decreases in homophobic attitudes among the young men who participated in the program in Sarajevo.

## **ANNEX 2**

### **Meetings for Kosovo Research**

Consultations and meetings were held with representatives of the organizations and institutions listed below.

Most meetings and consultations in Kosovo were held in Pristina between April 6 and April 30, 2014. One consultation was held in Prizren. Some consultations were conducted by phone and in-person prior to those dates, including consultations with donors and activists based outside of Kosovo. Consultations with activists in Albania were held in Tirana, Albania.

#### **Kosovar governmental structures**

Office of Good Governance in the Office of the Prime Minister  
Kosovo Police – Community Policing Office  
Republic of Kosovo Ombudsperson

#### **Kosovar political representatives**

Petrit Selimi, Deputy Minister of Foreign Affairs  
Vlora Çitaku, Minister for EU Integration

#### **USG representatives**

United States Agency for International Development – Kosovo  
United States Agency for International Development – Bureau for Europe and Eurasia/Office of Democracy, Governance and Social Transition  
US Embassy Pristina  
Political/Economic Section  
Office of Public Affairs  
Department of Justice International Criminal Investigative Training Assistance Program (ICITAP)

#### **International and Diplomatic Representatives**

European Union Office in Kosovo  
Embassy of Sweden  
Embassy of Finland  
UN Office of the High Commissioner for Human Rights  
Austrian Development Agency  
Embassy of the Kingdom of the Netherlands  
Twinning Project – Resident Twinning Advisor

#### **Kosovar LGBT NGOs, activists, community members**

CEL – Center for Equality and Liberty Kosovo  
CSGD – Center for Social Group Development/Elysium  
QESH – Qendra për Emancipim Shoqëror / Center for Social Emancipation  
Community members

**Kosovar Human Rights NGOs, Cultural NGOs, and Academic Institutions**

Alter Habitus

Balkan Investigative Reporting Network

Center for Peace and Tolerance, Alternative Cultural Center

Dokufest (Prizren)

Faculty member, Department of Social Sciences, University of Pristina

*Kosovo 2.0*

Kosovo Women's Network

Lëvizja FOL

Swedish Civil Rights Defenders

Youth Initiative For Human Rights – Kosovo

Freelance journalist with experience on LGBT issues

**International Donor and LGBT Organizations**

Astraea Lesbian Foundation for Justice

ILGA-Europe – the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association

Legebitra (Slovenia)

Aleanca Kunder Diskriminimit LGBT (Albania)

Swedish Civil Rights Defenders (Albania)

Open Society Foundation LGBTI Rights Initiative

## **ANNEX 3**

### **Meetings for Bosnia and Herzegovina research**

Consultations and meetings were held with representatives of the organizations and institutions listed below.

Most meetings and consultations were held in BiH in Sarajevo, Banja Luka, and Mostar between May 22 – June 13, 2014. Some consultations were conducted by phone and in-person prior to those dates, including consultations with donors and activists based outside of BiH.

#### **BiH governmental structures**

The Institution of Human Rights Ombudsman  
The Ministry of Human Rights and Refugees  
The Gender Center of Bosnia and Herzegovina  
The Gender Center in the Republika Srpska  
The Republika Srpska Ministry of the Interior  
The Ministry of the Interior, Canton Sarajevo

#### **BiH political representatives**

Besima Boric, Representative in the House of Representatives, FBiH  
Ismeta Dervoz, Member of the Parliamentary Assembly of BiH, member of the permanent  
Delegation of the Parliamentary Assembly of BiH in the Parliamentary Assembly of the  
Council of Europe

#### **USG representatives**

United States Agency for International Development – Bosnia and Herzegovina  
U.S. Embassy Sarajevo  
Political/Economic Section  
Office of Public Affairs  
DOJ Office of Overseas Prosecutorial Assistance, Development, and Training  
U.S. Embassy Banja Luka Branch Office

#### **International and Diplomatic Representatives**

The Office of the Council of Europe in BiH  
The Royal Netherlands Embassy in Sarajevo  
The Embassy of Sweden in Sarajevo  
The Delegation of the European Union

#### **BiH LGBT NGOs, activists, community members**

Sarajevo Open Center  
Okvir  
Banja Luka Association of Queer Activists  
Informal LGBT activist group in Mostar  
Informal LGBT activist group in Tuzla  
Newly forming group focusing on a regional LGBT archive

Activists from former Organization Q  
Transgender activists  
Several community members

**BiH Human Rights NGOs, Cultural NGOs, and Academic Institutions**

BiH Women (Mostar)  
CURE Foundation  
Helsinki Citizens' Assembly Banja Luka  
Human Rights Center, University of Sarajevo  
Kvart (Prijeedor)  
Kvina til Kvina  
Mostarski Teatar Mladih (Mostar Youth Theater)  
OKC Abrašević (Mostar)  
Open Society  
Prava za sve (Rights for All)  
Swedish Civil Rights Defenders  
Youth Initiative for Human Rights

**USAID Implementers and Partner Organizations**

Catholic Relief Services  
Center for Civic Initiatives  
Internews  
Mediacenter  
USAID Justice Sector Development Project II

**International Donor and LGBT Organizations**

Astraea Lesbian Foundation for Justice  
ILGA-Europe – the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association

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