



Organization for Security and
Co-operation in Europe
Mission to Bosnia and Herzegovina



The Right to Social Protection in Bosnia and Herzegovina

Concerns on Adequacy and Equality



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PREFACE

The aim of a social protection system is to contribute to a country's social stability by ensuring that the most vulnerable sectors of society have access to assistance. This is even more vital in times of economic crisis when the number of unemployed persons and, consequently, the number of persons in need of social assistance increase.

Pursuant to its legal obligations stemming from international and European human rights instruments (in particular the 1966 International Covenant of Economic, Social and Cultural Rights, and the 1996 Revised European Social Charter), Bosnia and Herzegovina (BiH) is obliged to ensure the progressive realization of social rights in a fair, adequate and non-discriminatory manner. The recent economic crisis has highlighted the need for comprehensive amendments to the social protection system in BiH to ensure both the sustainability and the capacity to secure social inclusion for vulnerable individuals.

The OSCE Mission to BiH has been involved in social protection issues for many years, co-operating with and supporting the relevant counterparts at governmental and local level through our extensive field presence across the country.

The present report is a product of studies and assessments undertaken by the OSCE Mission to BiH on the social protection system. The report represents an overview of the system and highlights areas of concern regarding inadequacies and inequalities within it. Reform of the system would enhance social stakeholders' ability to efficiently target and assist the most vulnerable individuals. Contained in the report are a number of short and long term recommendations addressed primarily to the entity governments.

The OSCE Mission to BiH is confident that this report will contribute to ongoing discussions on the need to amend and update the social protection system. It will allow for a comprehensive understanding of the system and the improvements necessary to bring social protection in line with international and European standards.

I would like to use this opportunity to express my sincere thanks to the governmental officials and public institution representatives who made themselves available and gave their full support to the Mission's activities and recommendations in the social protection area. Moreover, I wish to thank the representatives of civil society organizations and international organizations for their co-operation and dedication to fostering the realization of social rights.

Sarajevo, January 2012

Ambassador Fletcher M. Burton

EXECUTIVE SUMMARY

Social assistance, as part of social protection, is a basic human right specified in core human rights instruments. The OSCE Human Dimension commitments identify the importance of social rights and specifically address the significance of “access for all to basic social benefits, (...) adequate levels of protection of socially vulnerable groups, and the prevention of social exclusion (...).”¹ Equally important is a state’s obligation to ensure that all persons who are objectively in need can enjoy social assistance without discrimination. Bosnia and Herzegovina (BiH) has recognized these rights and ratified core international and European human rights treaties; nonetheless there remain serious gaps between those standards and the existing legislation and practice, which constitute the current social protection system in BiH.

This report is targeted at social policy authorities and professionals within the entity governments of the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS), who are responsible for shaping social protection policy in the country. It highlights the main concerns identified during ongoing monitoring by the OSCE Mission to BiH.² The issues identified focus on:

- a) the inadequate levels of social assistance benefits currently provided to vulnerable groups; and
- b) the ongoing discriminatory practice of preferential treatment afforded to war veterans and related groups who enjoy significantly higher levels of protection.

These and similar concerns, also identified by other international actors in BiH, should be considered in light of the fact that BiH spends 4 per cent of the annual GDP on non-contributory assistance schemes (making the country second only to Croatia in social assistance spending when compared to Eastern Europe, Central Asia

1 See Maastricht 2003, OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century and the OSCE Strategy Document for the Economic and Environmental Dimension.

2 The data and information presented reflect monitoring results through September 2010. As such, the report does not reflect changes that have taken place after that time except in some cases, which are expressly mentioned.

and the average spending of OECD countries). According to the World Bank, these excessive budgetary allocations are so poorly targeted that a higher share of social benefits reaches the richer segments of the population, while the poorest 20 per cent of the population receives only about 17 per cent of total social transfers. The World Bank repeatedly calls attention to the lack of financial sustainability of the current system and the burden it creates for entity budgets without achieving protection for the most vulnerable.³ The International Monetary Fund included the moderation of war veteran benefits in the conditions set for the Stand-By Agreement in 2010; the issue was also identified by the Peace Implementation Council and the EC.⁴

The current system is characterized by a dichotomy between war veterans and non-war related groups, practically creating two parallel systems of benefits, which are being awarded based on the beneficiaries' status rather than on their level of need. This report argues that this practice is discriminatory and not in line with international and European human rights standards. The discrepancies between the two groups are so substantial that they cannot be considered reasonably justified (discrepancy in the level of financial assistance accessible to the two different groups, different percentages of disability necessary to access assistance, different methods of revising the needs, discrepancy in the number of accessible benefits for each category). Further, entity governments have a contrasting stance and policy toward the two groups of beneficiaries in relation to legislation and implementation, resulting in further inequality in the realization of rights (see also par. 3.3).

The authorities of BiH are failing to fulfil their obligation to use existing resources to their maximum capacity and prioritize those most in need. Excessive spending on war-related beneficiaries weighs heavily on the budgetary means available to entity governments, hampering their ability to adequately provide social assistance to the most vulnerable and to contribute meaningfully to social inclusion and poverty reduction. According to the World Bank, BiH ranks as one of the highest spending countries in terms of social protection expenditures; nonetheless the greatest part of those expenditures targets war-related beneficiaries, leaving insufficient funds available for vulnerable groups who demonstrate similar or higher levels of need.

This report addresses the benefits provided by the main entity or cantonal schemes. These schemes are most pertinent to war veteran related groups and civilian victims of war, as well as to the main categories of non-war related groups such as the most destitute, families with children and persons with non-war related disabilities. Additional benefit schemes do exist, particularly at the municipal level, however, these do not fall within the scope of this report. The complexity and fragmentation of these systems render their description too extensive for the purposes of the present

3 See World Bank Policy Note, *Social Transfers in Bosnia and Herzegovina: Moving towards a more sustainable and better targeted safety net*, April 2009, and World Bank, *Protecting The Poor During The Global Crisis: 2009 Bosnia and Herzegovina Poverty Update*, December 2009.

4 See Communiqué of the Steering Board of the Peace Implementation Council, 30 June 2009, Statement By The Ambassadors Of The Peace Implementation Council Steering Board, 22 February 2010, as well as Bosnia and Herzegovina 2009 Progress Report (Brussels, 14.10.2009, SEC(2009) 1338), Bosnia and Herzegovina 2008 Progress Report (Brussels, 05.11.2008, SEC(2008) 2693 final), European Commission.

paper. It must be emphasized that the existence of smaller schemes does not alter the scope of concerns addressed in this report.

Based on these concerns a number of recommendations have been formulated for entity governments, with the aim of supporting and urging them to ameliorate the current situation:

1. abandon *ad hoc* measures based on the short-term availability of funds in order to engage in long-term strategic planning for the entire social protection sector;
2. engage in a comprehensive reform of the system of social protection, eliminating discriminatory practices in accordance with human rights obligations;
3. gradually eliminate benefits based on status, prioritize a needs-based approach and improve the targeting of benefits;
4. ensure that adequate minimum standards are set for the protection of the most vulnerable groups throughout the country; and
5. engage in meaningful public dialogue with representatives of vulnerable groups and war veterans, with a view to amending public understanding of the social protection capacities and obligations of the authorities.

Meanwhile, the authorities are also urged to undertake the following immediate steps:

1. implement legislation to set a reasonable income threshold for war veteran benefits in both entities;
2. intensify and accelerate the revision of war veteran benefits in the FBiH;
3. adopt legislation pending in the FBiH, i.e. draft Law on Social Care and Social Minimum, draft Law on Basic Rights of Persons with Disabilities, draft Law on Families with Children, draft Law on Civilian Victims of War;
4. adopt the proposed Law on the Establishment and Manner of Compensation of Non-paid Obligations Incurred Upon the Law on Basics of Social Protection, Protection of Civilian Victims of War and Families with Children in the FBiH or otherwise adequately resolve the pending debt towards past beneficiaries of the FBiH Law on Social Protection;
5. adopt the new draft Law on Social Protection in the RS;
6. adopt measures to improve support to persons with non-war related disabilities in the RS;
7. ensure the payment of the debt by the Federation Government to the FBiH Pension and Disability Fund and consider subsidizing ‘minimum pensions’; and
8. refrain from any increase in benefits to war veteran related categories and rationalize the overall spending on these groups.

1. International Human Rights Standards

The right to social security is defined in human rights instruments as one of the basic economic, social and cultural rights, most importantly in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁵ which BiH ratified by succession in 1992. This obligation is also enshrined in the revised European Social Charter (ESC),⁶ a Council of Europe instrument to which BiH became a party in 2009. The OSCE Human Dimension Commitments underline the importance of social rights, including access to basic social benefits.⁷ Finally, the BiH Constitution sets substantive standards for the right to social security.⁸

The aim of social protection is to provide continuous decent social circumstances and reflects the right of individuals to be protected against the lack thereof caused by insufficient resources. In particular, states are under an immediate obligation to assist those who cannot access or maintain the core essentials of this right; meaning essential health care, basic housing conditions, water and sanitation, foodstuffs, and the most basic forms of education.⁹ Further, states are obligated to use all available resources to allow persons to realize the right to social security without any discrimination; states must guarantee a minimum enjoyment of this right to all peoples.¹⁰

The ICESCR, as well as the revised ESC, recognizes that non-contributory schemes, i.e. social assistance, form an integral part of the right to social security, as insurance-based systems cannot guarantee adequate coverage for every person.¹¹ Qualifying conditions for benefits must be reasonable, proportionate and transparent.¹²

The ICESCR, in Article 2, states that the principles of non-discrimination apply fully to all economic, social and cultural rights, including social security and social assistance.¹³ As such, differences in the realization of rights are only permitted if there are objectively justified aims, and if the measures to achieve such aims are proportionate to effect them.

5 International Covenant on Economic, Social & Cultural Rights (993 U.N.T.S 3).

6 See European Social Charter (revised, CE.T.S 163), Arts. 12 and 13.

7 See Maastricht 2003, OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century and OSCE Strategy Document for the Economic and Environmental Dimension.

8 See Constitution of Bosnia and Herzegovina, Annex 1.

9 "The right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, *inter alia*, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents." Committee on International Covenant on Economic, Social & Cultural Rights, General Comment 19 (E/C.12/GC/19), Par. 2.

10 Id. Par. 4.

11 Id. Par. 50 and European Social Charter (revised, CE.T.S 163), Art. 13.

12 Committee on International Covenant on Economic, Social & Cultural Rights, General Comment 19 (E/C.12/GC/19), Par. 24.

13 See *also* Committee on International Covenant on Economic, Social & Cultural Rights, General Comment 20 (E/C.12/GC/20).

Moreover, the ICESCR states that measures adopted to achieve social security for persons in need shall respect the principle of equality in legal protection. In this regard, the Constitution of BiH references the International Covenant on Civil and Political Rights (ICCPR) in the activities of all domestic organs.¹⁴ In Article 26, the ICCPR establishes that when a law protects a right, the law shall also extend the right to any individual living in the country without discrimination: “All persons are equal before the law and entitled without any discrimination to the equal protection of the law.”¹⁵

Accordingly, some distinct principles pertaining to domestic social protection legislation should be articulated. Such legislation would, first of all, ensure that any individual in need of social assistance enjoys equal protection of the law without discrimination. Whilst equality in legal protection can only be achieved by accommodating the specific needs of each person seeking social assistance, such legislation would also set forth reasonable as well as transparent qualifying conditions and be capable of realizing social rights for its beneficiaries.

Finally, BiH ratified the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol in March 2010. Equality and non-discrimination are stated as general principles.¹⁶ According to the Convention the “States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right”.¹⁷

¹⁴ International Covenant on Civil and Political Rights (New York, 16 Dec. 1966) 999 U.N.T.S. 171 and 1057 U.N.T.S. 407, entered into force 23 Mar. 1976.

¹⁵ Id. Art. 26, Par. 1.

¹⁶ UN Convention on the Rights of Persons with Disabilities (6 Dec. 2006), A/61/611, Art. 3.

¹⁷ Id. Art. 28, Par. 2.

2. Local Legal Framework and Overview of Social Assistance Benefits

Social protection, including contributory and non-contributory social protection schemes, falls under the competence of the entity level governments in BiH. The two entities, the FBiH and the RS, pursue distinctly different systems of non-contributory social protection schemes; however they both separate responsibility between the entity and local level.

In the FBiH, the competence of providing social assistance is divided among the FBiH and cantonal governments; each prescribe and fund certain rights and benefits and share others. The provision of social assistance is mainly prescribed in the FBiH Law on Social Protection¹⁸ adopted in 1999; amendments in 2004, 2006 and 2009 stipulated the transfer of responsibility for certain benefits to the entity level, in what may be considered a positive step towards at least some level of harmonized benefits for the entire FBiH. In RS, social assistance is prescribed in the RS Law on Social Protection;¹⁹ however the benefits set by the law are in fact funded by municipal budgets.

2.1 Permanent Financial Assistance

The most basic social assistance benefit in both BiH entities is the Permanent Financial Assistance (PFA)²⁰ intended to be basic subsistence support to the poorest part of the population. In the FBiH, the basic principles of PFA are established by entity legislation; however, the benefits are regulated in detail by cantonal laws, with different levels of financial assistance and different income-related eligibility criteria.

Overall, eligibility is conditioned both by the absence of working capacity or capacity to earn an income (usually this includes persons above 65 years, below 15 years, pregnant women and other conditions) and by a monthly personal income of below BAM 100 on average.²¹ The level of the PFA benefit ranges from 10 to 20 per cent of the average net salary or, in other cases, the PFA is calculated to complement the income of the individual/family so that it reaches 20 per cent of the average net salary. In general, the PFA usually amounts on average to less than BAM 100 monthly per person.

18 Law on Basics of Social Protection, Protection of Civilian Victims of War and Families with Children (FBiH OG No. 36/99, 54/04, 39/06 and 14/09).

19 Law on Social Protection (RS OG No. 5/93, 16/96, 110/03 and 33/08).

20 Further assistance grants are provided by municipal level authorities, either as extended forms of assistance or as one-time grants. These types of assistance fall outside the scope of the present report. It may be noted nonetheless that such types of assistance are normally low as well as inconsistent among different municipalities, depending on municipal budgets and subject to local authorities' discretion.

21 Income thresholds are defined differently in each canton and change depending on the number of family members.

In the RS, the eligibility criteria are similar and include both the certified absence of working capacity and income thresholds. For example, a one member family is eligible for PFA only if their monthly income is below BAM 41 and a two member family is eligible for PFA only if their income is below BAM 82. The amount of PFA awarded to a one-member family is BAM 41 monthly and BAM 49 monthly for a two-member family.

2.2 Assistance to Persons with Non-war Related Disabilities

A further type of social assistance benefit targets persons with non-war related disabilities (hereinafter PWDs). In the Federation, assistance to PWDs is regulated by the FBiH Law on Social Protection and is funded by the FBiH budget. Related benefits are categorized as disability pay, allowance for care and assistance by another person and orthopedic pay. Currently²², these benefits are awarded, irrespective of means testing, to persons with a disability level of at least 90 per cent;²³ the levels of total amount of assistance provided may vary from BAM 219 to 396 monthly depending on the type and level of disability.

In the RS, the Law on Social Protection regulates the rights and benefits for persons with non-war related disabilities. In reality such benefits are practically non-existent in the RS; the only benefit PWDs are eligible for is the allowance for care and assistance by another person, amounting to BAM 41 monthly. Further, this benefit is only available to persons with a severe degree of disability.

2.3 Assistance to Families with Children

In the FBiH, the Law on Social Protection²⁴ prescribes basic benefits that should be available to families with children, such as child allowance and subsidies for salary payment during absences from work due to pregnancy.²⁵ The FBiH Law on Social Protection prescribed that the cantons further regulate the rights of and benefits for families with children within three months from the date the Law entered into force (i.e. 1999). However, almost half of the cantons have failed to adopt the respective legislation or did so with significant delay. Those cantons which adopted the necessary regulations to define eligibility conditions and levels of assistance in a timely fashion represent a positive example of reform.

In cantons in which benefits are available, child allowance benefits range from BAM 10 to 33 monthly.²⁶ The subsidy for salary payment during absence from work due

22 Details on past amendments and changes to PWD benefits in the FBiH are included in chapter 3.3.

23 In the FBiH, disability is categorized by percentage of damage to the body certified by the Institute of Medical Examination.

24 Article 89 and Article 103.

25 Further benefits include allowance for financial support during pregnancy and delivery of an unemployed woman/mother, one-time assistance for layette, support up to six months for breastfeeding mothers.

26 Examples: BAM 10.85 in Zenica-Doboj Canton, BAM 20 in Tuzla Canton, BAM 33 in Sarajevo Canton.

to pregnancy in most cases is lower than the salary earned during employment.²⁷ Financial support to unemployed mothers during pregnancy ranges from 10 to 20 per cent of the average net salary or is paid as a one-time assistance.²⁸

In the RS, the level and availability of assistance to families with children have improved; the majority of benefits are funded by contributions²⁹ and by the RS Fund for Child Protection, in accordance with the RS Law on Child Protection.³⁰ The level of child allowance is BAM 45 for a second and fourth child and BAM 100 for a third child; child allowance is conditional upon proof of a low family income. Employed mothers continue to receive their salary in full for the duration of absence from employment. However, since the beginning of 2011, child allowance and maternity care have been reduced by 30 per cent, resulting in a retrogression of the realization of this social right for these categories.

2.4 Assistance to Civilian Victims of War

Benefits are also provided to civilian victims of war, namely civilians who sustained injuries during the war resulting in physical damage, a physical or mental disability or significant deterioration of health. In both the FBiH and the RS, eligibility is conditional on having a minimum of 60 per cent level of disability or sustained harm to the body, while the level of benefits are set to approximately 70 per cent of the benefits awarded to war veterans with the same disability (see below).

2.5 Assistance to War Veterans and Related Categories

War veterans, war military invalids and families of fallen soldiers are entitled to several types of benefits in the FBiH and the RS; in both entities such benefits are largely funded by the entity budgets. Both in the FBiH and the RS, new laws were adopted in 2004,³¹ which significantly improved the benefits awarded to the war related categories, and also increased the budgetary spending for these purposes.³²

Disabled war veterans in both entities receive a number of benefits, namely personal disability pay, subsidy for care and assistance by another person, and an orthopaedic

27 From 60 per cent up to 90 per cent of net salary (Sarajevo 60 per cent, Zenica-Doboj 80 per cent, Tuzla 90 per cent).

28 In Zenica-Doboj Canton this refers to a one-time grant of BAM 150; in Central Bosnia Canton a one time grant of 35 per cent of net salary.

29 Article 2 and 3 of the Law on Contributions (RS OG No. 31/09).

30 Law on Child Protection (RS OG No. 4/02, 17/08 and 1/09).

31 Law on Rights of Defenders and Members of Their Families of FBiH (FBiH OG No. 33/04, 56/05, 70/07 and 9/10); Law on the Rights of Combatants, Military Invalids and the Families of the Fallen Combatants of the Homeland War of RS (RS OG No. 46/04, 53/04, 20/07 and 118/09). On 23 December 2011, RS adopted the new Law on the Rights of Combatants, Military Invalids and the Families of the Fallen Combatants of the Homeland War of RS (RS OG No. 134/11).

32 The budgetary spending for these categories increased from 118 million in 2005 to 206 million in 2009 See: <http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpb/DJEL/Documents/BROSURA%20Boraca%202005-1Q09%20pdf.pdf>

subsidy. In both entities, the amounts of these benefits are calculated each year using a so called “basis for calculation.” In the FBiH for example, the basis for calculation was increased in 2004 from BAM 213 to 734; by 2009 the basis was raised to BAM 914. In the RS the basis for calculation has been continuously increased since 2004. For example, the minimum financial assistance for war veterans of the 1st category of disability increased from BAM 513 in 2005 to BAM 1285 in 2009.³³

In addition to benefits provided for disabled war veterans, in the FBiH in 2005³⁴ and 2006³⁵ medal holders as well as unemployed defenders were granted rights to financial assistance and privileged pensions. In the same period, the RS granted benefits to medal holders³⁶ and fighters.³⁷ Families of fallen soldiers also receive benefits; further benefits, most notably housing, are granted in both entities to all war-related categories.³⁸

Apart from straightforward social assistance-type benefits, in the RS disabled war veterans and the families of fallen soldiers are granted additional rights in accordance with the Law on Pension and Disability Insurance.³⁹ In addition, the RS Law on the Realization of Rights for Compensation of Material and Non-Material Damages which Occurred during War Activities from 20 May 1992 till 19 June 1996⁴⁰ also provided these individuals with compensation for non-material damages.

33 See: <http://www.vladars.net/sr-SPCyril/Vlada/Ministarstva/mpb/DJEL/Documents/Informacija%20Uporedni%20pokazatelj%20MR iBIZ%2006-10.pdf>

34 Law on Special Rights of Winners of War Acknowledgement and Medals and Member of Their Families (FBiH OG No. 70/05, 61/06).

35 Law on Rights of Demobilized Defenders and Member of Their Families (FBiH OG No. 61/06, 27/08, 32/08).

36 Article 33 of the Law on the Rights of Combatants, Military Invalids and the Families of the Fallen Combatants of the Homeland War of RS.

37 Decree on combatants' allowance (RS OG No. 45/07 and 73/08). Article 33 of the new Law on the Rights of Combatants, Military Invalids and the Families of the Fallen Combatants of the Homeland War of RS adopted in December 2011 envisages an additional right for the combatants to a supplementary monthly benefit. On 26 January 2012 during the 49th session, the RS Government adopted the Decree regulating the conditions and procedure for the realization of this new supplementary monthly benefit.

38 Decree on Housing Accommodation of the Family of Fallen Combatants and Military War Invalids of the Homeland War of RS (RS OG No. 43/07 and 73/08).

39 Law on Pension and Disability Insurance (RS OG No. 134/11).

40 'Law on the Realization of Rights for Compensation of Material and Non-Material Damages which Occurred during War Activities from 20 May 1992 till 19 June 1996 (RS OG No. 103/05, 1/09, 49/09 and 118/09)'.

3. Identified Human Rights Concerns

The existing system of social assistance benefits for both war and non-war related beneficiaries, as described above, raises several concerns in terms of BiH's obligations to international and European human rights instruments. These concerns relate mainly to the inadequacy of assistance provided to non-war related beneficiaries and discrimination resulting from significant discrepancies in the protection afforded to war-related categories in comparison to others; as well as from the distinctly different stance of the entity governments towards the different groups.

These identified concerns should be considered in light of the fact that BiH spends 4 per cent of the annual GDP on non-contributory assistance schemes, making the country second only to Croatia in social assistance spending when compared to Eastern Europe, Central Asia and the average spending of OECD countries.⁴¹ According to the World Bank these excessive budgetary allocations are so poorly targeted that a higher share of social benefits reaches the richer segments of the population, while the poorest 20 per cent of the population receives only about 17 per cent of total social transfers.⁴² The excessive budgetary allocations to social transfers are mainly caused by the significant amount of funds allocated to war-related assistance, as non-war related social assistance benefits account for only one-third of total spending of non-contributory schemes in the FBiH, and one-fourth of such spending in RS.⁴³

3.1 Concerns with Respect to Inadequacy of Social Assistance

An essential principle in international human rights instruments is the assurance of social assistance benefits that are adequate in both amount and duration to ensure a minimum standard of living and enjoyment of basic rights.⁴⁴ However, an examination of the benefits provided by the BiH authorities strongly indicates that the allocated assistance is not adequate enough to ensure an acceptable standard of living. It also fails to act as a tool for effective poverty reduction, as it does not improve the standard of living in the long-term.

PFA, a benefit that aims to target the most destitute and poorest segments of the population, amounts in the best case to BAM 120 monthly; in the RS PFA is BAM 41 monthly, which is obviously inadequate to cover even basic needs. It is important to view this in context; the general poverty line is BAM 2198 annually or BAM 183

⁴¹ See: World Bank Policy Note, *Social Transfers in Bosnia and Herzegovina: Moving towards a more sustainable and better targeted safety net*, April 2009, pp. 9-10.

⁴² *Ibid.* pp.17-20.

⁴³ *Ibid.* p.12.

⁴⁴ "Benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care [...] Committee on International Covenant on Economic, Social and Cultural Rights, General Comment 19 (E/C.12/GC/19) Par. 22.

per month in BiH. The PFA in RS, in particular, does not cover the levels necessary to avoid extreme poverty.⁴⁵ This is also the case with basic benefits such as child allowances in the FBiH; where available (several cantons still do not provide family support benefits) the amount of assistance provided can not in reality cover the needs of a family with children, especially given the low income level tied to eligibility. The BAM 41 provided monthly to persons with severe disabilities in the RS is inadequate to cover any substantial needs or disability-related costs.

It is not only the level of benefits that need to be examined, but also their effectiveness in reaching the most vulnerable and those most in need. In both entities, eligibility for basic social assistance benefits is restricted by means testing for individuals or families with extremely low levels of income. Although such measures are intended to reach the most vulnerable, the cut off points, for example BAM 60 to 120 monthly income for PFA, raise the concern that a large number of persons who are just above such income levels are not receiving any support, though their incomes can not be considered adequate. The income level of BAM 41 in RS ensures that persons with severely low incomes are not eligible for assistance. The fact that PFA is also restricted only to persons who have no working capacity also excludes persons who, in a country like BiH with high levels of long-term unemployment, may be in serious need.

In apparent recognition of the above mentioned concerns, both entity governments have drafted legislation which at least partly addresses the question of adequacy of basic social assistance benefits. The FBiH Ministry of Labour and Social Policy has prepared a draft Law on Social Care and Social Minimum, which would provide PFA for a limited amount of time (nine months) conditional upon availability and level of income, without consideration of working capacity. The draft law represents an improvement, particularly in terms of ensuring the same levels of “social minimum” benefit and income thresholds throughout the FBiH, eliminating the varying levels of assistance provided in the cantons. Concerns still remain as to the proposed low level of social minimum standard (BAM 80 monthly) as well as to the low income threshold. The legislation has remained as a draft for at least a year and at the time of writing this report it remains questionable if and when it will be adopted.

Similarly, the draft Law on Social Protection in RS envisages an increase of the PFA from BAM 41 to (average) 120 and further improvements to levels of income thresholds. Most importantly, the latest version of the draft Law proposes the sharing of budgetary responsibility by the municipal and entity levels for basic social assistance, which would better harmonize assistance levels and reduce concern about non-allocation of assistance due to weaknesses of municipal budgets. However, the draft Law has been in process since 2006 and it is still uncertain when it will be adopted. This situation raises obvious concerns regarding the commitment of the RS

⁴⁵ See Bosnia and Herzegovina Mid Term Development Strategy - Poverty Reduction Strategy Paper, March 2004, p. 20: “The determination of the general poverty line takes into account that an individual also has survival needs other than nutrition, such as housing, clothes, etc. (...). The total expenditure arrived at in this way amounts to BAM 2198 per person per annum, and this is the general poverty line for BiH (while expenditure on minimum nutritional needs, i. e. the extreme poverty line, amounts to BAM 760 per person per annum).” The accuracy of these figures was confirmed in the Mid-Term Development Strategy for Bosnia and Herzegovina 2004-2007.

government to engage in improvement of the current system, due to considerations about the additional budgetary burden that would be placed on the entity.

3.2 Concerns with Respect to Inequalities in the Provision of Social Protection

The multi-layered practice of inequality between the different categories of beneficiaries remains one of the most significant causes of concern. There are two main lines along which social protection is provided in unequal ways: the geographical area of residence and the status-based versus needs-based determination of benefits.

Different levels of assistance are provided to beneficiaries with comparable levels of need based solely on their place of residence. Due to the fragmentation of competencies, PFA and family allowances differ significantly among the FBiH cantons. Further, some benefits continue to be non-existent in several cantons. In addition it is impossible to overlook the disparities in the levels of assistance between the two entities. A most telling example is the difference between assistance afforded to persons with non-war related disabilities in the RS and the FBiH.

The most noticeable instance of inequality in social assistance is the disparity between the protections afforded to disabled war veterans and persons with disabilities (both physical and mental) resulting from an accident, illness or existing since birth. The two categories not only receive very different benefits but also face very different situations with regard to eligibility criteria, administration of social assistance and the policy of the authorities with regard to amendments and cuts (see also par. 3.3).

In the FBiH, persons with non-war related disabilities receive benefits almost five times lower than war veterans with the same level of disability. Civilian victims of war form a third category with different levels of assistance, more favourable than for non-war related disability but less than disabled war veterans' support. A non-war related PWD with 100 per cent disability may receive a maximum of BAM 396 monthly while a disabled war veteran with the same level of disability may receive a maximum of BAM 1845 monthly.

There are also substantial discrepancies in the eligibility criteria for different groups of persons with disabilities. Since 2009, persons with non-war related disabilities are eligible for benefits only when they suffer from a 90 per cent or more degree of disability; this provision excludes persons with a less severe disability from any type of disability related support. In contrast, civilian victims of war require a 60 per cent degree of disability to be eligible, while disabled war veterans require only 20 per cent degree of disability to be eligible. As such, the broad spectrum of benefits available to persons with the same degree of disability and the same level of need are determined solely on the individual's status.

In the RS, the highest amount available to non-war related PWDs with a severe disability is BAM 41 monthly, while a disabled war veteran with the same degree

of disability may receive a total of BAM 1825 monthly.⁴⁶ Most importantly, non-war related PWDs are only eligible for allowance for care and assistance by another person while disabled war veterans are granted disability pay, allowance for care and assistance by another person, orthopaedic pay, additional material assistance and family disability pay. In addition, as in the FBiH, disabled war veterans enjoy a number of other non-pecuniary benefits such as eligibility for housing assistance, for which PWDs with non-war related disability are not eligible. Civilian victims of war again are positioned “between” the other two groups, both in terms of assistance amounts and eligibility.

Disparities in the levels of assistance and eligibility criteria provided to recipients based on their status constitute direct discrimination pursuant to the relevant international instruments and the Law on Prohibition of Discrimination.⁴⁷ While establishing a separate category of beneficiaries based on status might be objectively justifiable, such large disparities in benefits could not in any way be considered proportionate. Recent reforms that served to exacerbate, rather than mitigate, these disparities represent additional substantiation of discrimination.

There are further concerns regarding unequal treatment when considering the social assistance provided to the most vulnerable, i.e. through permanent financial assistance to those unable to work and with very low incomes, in comparison to others in a comparable situation who are eligible for war related benefits. For example, the families of fallen soldiers are eligible to benefits in both entities; a widow of a fallen soldier with two children enrolled in school may receive a monthly grant of BAM 483 in the FBiH or BAM 475 in the RS. Similar benefits exist for families of civilians who died or disappeared during the war; a widow of a civilian victim of war with two children enrolled in school is eligible for approximately BAM 338 in the FBiH and BAM 150 in RS on a monthly basis. Most importantly, such benefits are not means tested, i.e. they are awarded irrespective of the family’s level of income. The discrepancies between these benefits and the social assistance eligibility of a family that lost a member due to non-war related causes are vast.

“Privileged pensions” provided to war veterans represent another aspect of the gap between benefits available to war vs. non-war beneficiaries.⁴⁸ These pensions are funded by the FBiH budget.⁴⁹ On the other hand, the FBiH Pension and Disability Fund provides so-called “minimum pensions”⁵⁰ to almost 50 per cent of its pension

46 See p. 7 <http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpb/DJEL/Documents/BROSURA%20Boraca%202005-1Q09%20pdf.pdf>

47 BiH OG 59/09.

48 Decree No. 1 on Favorable Conditions for Acquiring of Right on Retirement Pension of Military Insured of FBiH Army (FBiH OG No. 2/00, 21/01 and 25/01); Decree No. 2 on Favorable Conditions for Acquiring of Right on Retirement Pension of Military Insured of FBiH Army (FBiH OG No. 18/04, 27/04 and 47/04); Decree No. 3 on Acquiring of Right on Retirement Pension under Favorable Conditions of members of Former FBiH Army and Civil Servants and State Employee of Former Federal Ministry of Defence (FBiH OG No. 75/06, 58/07, 89/07 and 31/08).

49 The FBiH failure to pay their obligations to the Pension and Disability Fund produced a debt which exceeded BAM 180 million in 2010.

50 Amount of minimum pension is BAM 296 for October 2010.

beneficiaries; these pensions have a social character, i.e. are in fact a partially non-contributory type of social assistance, and are provided to those who have not been able to accumulate an adequate level of pension through contributions. While privileged pensions burden the entity budget, the minimum pensions are being covered by the Fund, affecting the contributory pension system. However, minimum pensions would be considered as a form of social assistance, thus they should be covered by the entity budget.

While this report focuses on the provision of social assistance benefits, i.e. monetary support provided by the entity or cantonal level, it is also important to consider such benefits in light of further protection afforded by the state to different groups. War-related groups enjoy a variety of additional support provided by all levels of authorities and in several areas: war veterans and their families are eligible for housing assistance, prioritized access to health care, advantages in education and employment. The cantons in the FBiH and municipalities in both entities provide additional types of support, including to war veterans associations. At the same time, support measures for non-war related vulnerable groups are limited and generally underfunded, due to a lack of resources. Although these types of support fall outside the scope of this report, it is important to recognize them, as they further demonstrate the differential treatment of war-related groups, and should also be considered in the evaluation of levels of need.

3.3 Concerns with Respect to Past and Ongoing Attempts at Reform

The disability related social assistance benefits have been the subject of ongoing debate and several sets of legislative amendments over the past seven years. Within these processes discrepancies exist in the attitude toward the groups of PWDs depending on their war or non-war related status. Most importantly, an examination of the process reveals the attitude of authorities towards different groups, their impact on the availability of benefits for different groups and as such on the realization of the right to social protection.

In the FBiH, in particular, benefits to both disabled war veterans and non-war related PWDs were significantly increased in 2004.⁵¹ As mentioned above, amendments to legislation resulted in a significant increase in the number of beneficiaries and to the budgetary costs of benefits. By 2009, it became apparent that the FBiH budget was incapable of supporting payments. In response, in 2009, the FBiH Law on Social Protection was amended to eliminate all benefits for persons with a non-war related disability degree below 90 per cent and prescribed that those still eligible, i.e. with 90 to 100 per cent disability, were to undergo a new medical examination. Significant delays and several procedural problems characterized the implementation of the

⁵¹ Amendments to the FBiH Law on Social Protection granted the benefits of disability pay, allowance for care and assistance by another person and orthopedic pay to non-war related PWDs. At the same time, the FBiH Law on Rights of Defenders and Members of their Families (FBiH OG No. 33/04) increased the basis for calculation of benefits for war disabled veterans by BAM 213 to BAM 734.

amendments; even those eligible lost payment of their benefits over a period of several months, despite reassurances by the FBiH Government that the amendments were designed to protect the groups of persons with the highest percentage of disability. The measures were introduced despite complaints by disability associations and benefits cut collectively without considering existing needs. In response to these complaints, the FBiH Parliament adopted a resolution binding the FBiH Government to prepare a new law regulating the rights of persons with disabilities and addressing the cancellation of a significant part of their benefits. The resolution was never actioned, as the draft Law on Basic Rights of Persons with Disabilities was never forwarded to the FBiH Parliament.

Further concerns exist in relation to a significant number of non-war related disability beneficiaries who, though in possession of positive decisions in accordance with the Law as amended in 2004, were still awaiting the payment of several months of benefits by the FBiH authorities at the time of the 2009 amendments. To this day beneficiaries have not been paid what is essentially owed to them yet they were within their legal rights to claim disability related benefits in accordance with the Law as applicable at the time. A plan by the FBiH Government to introduce a “Law on Debt”⁵², by which government bonds would be awarded to resolve the debt, was in adoption procedure before the FBiH Parliament at the end of January 2012.

In contrast to the above, disabled war veteran benefits as well as other war-related benefits were raised in 2004 and have been increasing consistently over the past five years. In 2009 and 2010, both entities came under pressure by the IMF and the World Bank to introduce means testing and reduce benefits, among other measures set as conditions for the IMF Loan under the Stand-By Agreement. In the FBiH one of the measures included the process of revision of disabled war veteran’s benefits, in response to indications that the system was being abused.⁵³ The revision process was initiated, with significant delay, in August 2010. So far it has been slow and has not shown significant results. It is expected to last for at least two years. On the other hand, the RS is engaged in regular revisions of these benefits.

A further condition put forward by the IMF was that means testing should be introduced to war-related benefits. Both entities adopted relevant legislation introducing, in principle only, means testing for disabled war veterans and families of fallen soldiers; the income thresholds or cut-off point for eligibility has not been specified at the time of writing this report.⁵⁴ Neither entity has taken any steps toward specifying the income threshold or toward outlining the necessary procedure for submission of claims and documentation by potential beneficiaries. As such, the introduction of means testing for disabled war veterans and the families of fallen

52 Law on Establishing and Manner of Compensation of Non paid Obligations Incurred Upon the Law on Basics of Social Protection, Protection of Civilian Victims of War and Families with Children.

53 The FBiH Law on Conducting of Control of Legality of Exercising Rights in Area of Defenders and Disability Protection (FBiH OG No. 82/09).

54 Article 6 of the Law on Amendments to the Law on Rights of Defenders and Members of Their Families (FBiH OG No. 09/10) and Article 3 of the Law on the Rights of Combatants, Military Invalids and the Families of the Fallen Combatants of the Homeland War of RS (RS OG No.118/09).

soldiers has not translated into any amendment in benefits, and it remains unclear when and if the legislation will be implemented.

In addition, it is crucial to note that in both entities means testing for disabled war veterans will, when implemented, apply only to the “lower” categories of beneficiaries with a degree of disability lower than 60 per cent. With other war veteran related means testing (see below) as an indication, as well as the ongoing attitude of preferential treatment of war veterans by entity governments, one can expect that the income threshold for eligibility will be high and consequently not able to decrease the number of beneficiaries that will be affected by the measure. These weaknesses raise valid concerns that no significant reduction will be enforced, minimizing the overall reduction in expenditure for the category of disabled war veterans and families of fallen soldiers.

Finally, in 2010, the FBiH Government introduced means testing for benefits awarded to medal holders.⁵⁵ This is, to date, the only group for which the income threshold has already been defined. Nonetheless, the cut-off point of income for eligibility for the benefits is currently defined at close to BAM 2000 (two and a half times the average net salary in FBiH in the previous year). This high income threshold undermines the potential of the measure to significantly reduce the number of beneficiaries as well as the overall budgetary spending. Further, when compared to other existing means testing levels, for example PFA beneficiaries or families with children, the income threshold highlights the discrepancy between the levels of need that are addressed by “general” social assistance and war related schemes, raising serious concerns about the unequal treatment of vulnerable groups.

A lack of meaningful reduction or rationalization of benefits exists in both the FBiH and the RS. Income thresholds for means testing for disabled war veterans have not been specified, while benefits for medal holders as well as for ex-combatants such as the fighter supplement remain the same at the end of 2010 without any indication that the expenditures will be rationalized.

On a positive note, in 2010 unemployment benefits provided for demobilized soldiers were cancelled in the FBiH.⁵⁶ The impact is limited, due to the fact that the nature of the benefits meant that most benefits would in any case cease to be provided in 2010; nonetheless, the cancellation of the law should be recognized as at least one example of progress towards the rationalization of war-related benefits in the FBiH.

55 Based on Article 5 (5) of the Law on Amendments to the Law on Special Rights of Winner of War Acknowledgement and Medals and Member of Their Families (FBiH OG No. 09/10) the FBiH Government adopted a Decree on Income Census for the Users of Rights Based on War Acknowledgments and Medals (FBiH OG No. 25/10).

56 Law on Cessation of the Law on Rights of Demobilized Defenders and Member of Their Families (FBiH OG No. 9/10).

4. Conclusions and Recommendations

While raising concerns as to discriminatory practices related to social protection benefits for war and non-war related categories, it is important to underline that this report recognizes that government authorities may have a potentially objective basis for providing different levels of social protection to different groups. With regard to benefits awarded to war veterans, policy makers tend to consider the sacrifices made and services afforded to their country during the war, and the need for recognition of that service. This helps to explain the character of compensation to war veterans as well as the benefits to families of fallen soldiers. On its own, this premise is valid and can be respected as an acknowledgment of both services to a state and the sacrifice that results due to that service or to loss of life.

However, from a human rights perspective, discrepancies in social protection afforded by a state need to be justified in terms of legitimacy, proportionality and their effect. In that regard, the differences in social assistance between war and non-war related categories with objectively similar levels of need or vulnerability are so significant that they cannot be justified. They may also not be considered proportionate given the reality of the comparable situations of the different groups. In a de-centralized system, such as the one existing in BiH, some differences among levels of self-government may be understood; this does not relieve BiH of the obligation to apply an adequate minimum standard throughout the country.

In addition, and as mentioned before, it is most important to recall that BiH remains one of the highest spending countries in terms of social protection expenditures, not only in the immediate region but amongst most European countries. Unfortunately, the high levels of spending do not translate into proportionate results on the ground, as benefits do not reach the poorest segments of the population due to insufficient targeting. Against this background, the preferential treatment afforded to war veterans and the large entity budgetary allocations required to maintain their benefits must be questioned, particularly as they clearly overwhelm spending on non-war related social assistance benefits.

The abovementioned information needs to be considered in light of the previously discussed inadequacy of social assistance to non-war related vulnerable groups, particularly as budgetary constraints are consistently quoted as justification for the limited levels of assistance, as well as the non-adoption of pending legislation. In view of how entity budgets are used, it is obvious that entity governments would be in a much better position to provide improved social assistance to vulnerable groups if spending on the war veteran categories were rationalized. In other words, there is no need to increase budgetary allocations to improve social protection, but there is clearly a need to redistribute available funds in a fairer manner, and to better target such funds through improved means testing.

In terms of BiH's international human rights obligations, such a redistribution and rationalization of spending is clearly required, as the country is obliged to utilize

the maximum of available resources to ensure the right of all persons to social security without any discrimination.⁵⁷ As one group receives a disproportionate level of benefits, the entity governments are without the means to provide meaningful assistance to other groups or effectively improve the protection afforded to them, in accordance with their obligation to realize social rights.

The obligation to maximize the utilization of available resources prioritizing the most vulnerable recipients remains the central issue on evaluation of social protection in BiH. It is understandable that a country wishes to provide compensation or recognition to a veteran that was disabled during the war; or to a family that has lost a member in the war. Often these persons or families are, in fact, vulnerable and in need. But, in a country that has limited funds at its disposal, vulnerability and need must be prioritized over an “earned right” based on status; the authorities must fulfil their international obligations and protect the population from poverty and social exclusion, contributing to the overall development of the country.

Political will must be raised in this discussion; a central problem is the different attitudes entity governments have adopted in amending legislation and in the general management of the parallel systems of war and non-war related benefits. Attempts at meaningful reform must be coupled with a general change of thinking among the authorities and the public in general. The current blend of compensation-type benefits for war veterans with social assistance schemes should be addressed; ideally, needs based social assistance should be distinctly separate from any other type of compensatory payments that are dependent on the capacities of the entity budget to support them.

In highlighting the inadequacy of social assistance benefits and the existing inequalities in BiH, it is important to note that the present report does not advocate for a system in which citizens become dependent on state assistance or for a system that negatively impacts the promotion of employment and self-reliance. Advocating for more adequate social assistance is done with the understanding that a multitude of measures are necessary to combat poverty and social exclusion. In that respect some positive steps may be mentioned; for example the adoption of the Law on Professional Rehabilitation and Employment for PWDs in the FBiH and the RS.⁵⁸ The need for other measures, however, does not relieve BiH from its obligations to protect the most vulnerable through assistance, especially given the reality of extreme poverty and unemployment.

57 Committee on International Covenant on Economic, Social and Cultural Rights, General Comment 19 (E/C.12/GC/19) Par. 4.

58 Law on Professional Rehabilitation, Qualification and Employment of Invalids (RS OG No. 98/04, 91/06, 12/09, 39/09 and 54/09) and Law on Professional Rehabilitation, Qualification and Employment of Persons with Invalidity (FBiH OG No. 9/10).

Based on these concerns a number of recommendations have been formulated for entity governments, with the aim of supporting and urging them to ameliorate the current situation:

1. abandon *ad hoc* measures based on short-term availability of funds in order to engage in long-term strategic planning for the entire social protection sector;
2. engage in a comprehensive reform of the system of social protection, eliminating discriminatory practices in accordance with human rights obligations;
3. gradually eliminate benefits based on status, prioritize a needs-based approach and improve targeting of benefits;
4. ensure that adequate minimum standards are set for the protection of the most vulnerable groups throughout the country; and
5. engage in meaningful public dialogue with representatives of vulnerable groups and war veterans, with a view to amend public understanding of the capacities and obligations of the authorities in relation to social protection.

Meanwhile, the authorities are also urged to undertake the following immediate steps:

1. immediately implement legislation to set a reasonable income threshold for war veteran benefits in both entities;
2. intensify and accelerate the revision of war veteran benefits in the FBiH;
3. adopt legislation pending in the FBiH, i.e. draft Law on Social Care and Social Minimum, draft Law on Basic Rights of Persons with Disabilities, draft Law on Families with Children, draft Law on Civilian Victims of War;
4. adopt the proposed Law on Establishing and Manner of Compensation of Non-paid Obligations Incurred Upon the Law on Basics of Social Protection, Protection of Civilian Victims of War and Families with Children in the Federation or otherwise adequately resolve the pending debt towards past beneficiaries of the FBiH Law on Social Protection;
5. adopt the new draft Law on Social Protection in the RS;
6. adopt measures to improve support to persons with non-war related disabilities in the RS;
7. ensure the payment of debt by the FBiH Government to the FBiH Pension and Disability Fund and consider subsidizing the “minimum pensions”; and
8. refrain from any increase in the benefits to war veteran related categories and rationalize overall the spending on these groups.