



VAC QUESTIONNAIRE

A. Name and date of creation

Institution of HR Ombudsman is established on 14.12.1995 (Annex IV and VI of the General Framework Agreement for Peace in Bosnia and Herzegovina), but it commenced its functioning 1996

B. Status of the institution (to tick)

- Separate or autonomous institution, established by law, with reference to the Convention on the rights of the child
- Institution integrated in a general human rights institution (Human Rights Commission / Mediator / General Ombudsperson) with specific legislation**
- Institution integrated in a general human rights institution (Human Rights Commission / Mediator / General Ombudsperson) without specific legislation
- Conformity with the Paris Principles and General Comment no. 2 of the Committee on the Rights of the Child

C. Mandate and Competences

- Which general principles are contained in the mandate of the institution?

Independence, impartiality, objectivity, fairness

- Which laws? Which treaties?

Constitution of BiH and all the international treaties appended thereto, the Law on Human Rights Ombudsman of BiH, the Law on Prohibition of Discrimination in BiH

- Affirmation of the principle of independence?

The Law on Human Rights Ombudsman of BiH provides that an Ombudsman shall be under no orders. Within the framework of his or her constitutional and legal competencies, each Ombudsman shall not be given instructions by any authority. Each Ombudsman shall act independently.

- Best interests of the child?

In its daily work, in dealing with individual complaints of the citizens, the Institution of the Human Rights Ombudsman of BiH calls the relevant bodies to act in the best interest of the child, which, however, needs to be established in each particular case. In addition to that, in the absence of the legal provisions, relevant authorities are called to directly implement the Convention on the Rights of the Child. This Institution employs a lot of efforts to promote the Convention on the Rights of the Child, its principles and the rights of the child in general

- What is its overall mission?

Overall mission and mandate of the Institucija of the Human Rights Ombudsman is to contribute as much as possible to fulfilling the commitments of Bosnia and

Herzegovina in respect to the human rights enjoyment, that is, to ensure our citizens to enjoy the highest standards of internationally recognized human rights

- Which powers has it been attributed?
 - Jurisdiction: public sector/private sector?

Institution has powers in both public and private sector

- Powers of investigation:
 - Referral powers different than those for adults? Can it take up cases as of right?

Acting in accordance with the Law, the Ombudsman, if it establishes during its investigation either upon an individual complaint or ex officio, that there had been a violation of the rights and freedoms, may issue a recommendation to the relevant authority recommending it to do what is necessary in order to „redress“ such violation and alleviate its consequences. In case of non-compliance with the recommendations of the Ombudsmen within the determined time frame, it may draw the attention of the higher authorities and if the Ombudsman following that is not satisfied it may incorporate the whole case, mentioning the names of the authorities and the function-holders involved, in its annual report which is presented to the parliamentary bodies of Bosnia and Herzegovina or in its special report. The Institution can refer cases to the judicial bodies (more details below).

- Visit places for children without need for prior authorization (detention centres, schools, hospitals, workplaces, children's centres, etc.)

All the government bodies have a legal obligation to cooperate with BiH Ombudsman (Law on Human Rights Ombudsman of BiH), and some other laws include provisions governing the way of functioning of the Ombudsman pursuant to which the Ombudsman can visit mentioned and similar places without necessity to ask for any permission since it does not need it

- Obligation for other actors to provide documentation and/or testimony upon request?

In addition to the obligation or others to cooperate with Ombudsman, the Ombudsman also has access to premises of any authority in BiH, in order to check all requisite information, conduct personal interviews or study the necessary files or documents. The Ombudsman may not be denied access to any file or administrative documents related to any activity under investigation. Furthermore, the Ombudsman may require government bodies to hand over any documents considered necessary to perform its duties, including those classified as confidential or secret in accordance with law. In such cases, the Ombudsman shall apply the requisite discretion to these documents and shall not make them available to the public

- Possibility for the institution to refer a case to the courts?

Article 6 of the Law on Human Rights Ombudsman of BiH provides that the Ombudsman may refer cases of alleged human rights violations to the highest judicial authorities of Bosnia and Herzegovina competent in human rights matters, pursuant to the rules concerning appeals to these authorities, whenever he or she finds that this is necessary for the effective performance of his or her duties. Although such a legal provision is in place, it was never implemented in practice for the existence of numerous obstacles, mostly of administrative nature since the law governing the procedure of initiation of court proceedings does not provide for the Ombudsman to initiate it.

- Advice and recommendations on laws and policies:

- Possibility for the institution to make recommendations regarding the adoption of or amendments to laws, in particular with respect to the right to effective protection from violence and sexual exploitation?

Irrespective of the area concerned, the Ombudsman has the possibility to suggest the amendments of the legislation or the criteria used in their adoption or to suggest the relevant authorities to adopt new measures.

- Possibility for the institution to provide advice on draft laws in order to ensure conformity with the Convention on the Rights of the Child, in particular with respect to the right to effective protection from violence and sexual exploitation?

There is possibility for the Ombudsman to participate in drafting the legislation in the children's rights field to facilitate the implementation of the Convention on the Rights of the Child. For instance, our Children Rights Protection Department addressed the Ministry of Justice of Republika Srpska asking to participate in the working group's meetings and in the process of drafting the relevant legislation.

- Responsibility to promote child participation and taking children's views into account in all matters affecting them?

The Ombudsman of BIH, in addition to its cooperation with the Save the children Norway, implemented series of the activities related to the promotion of the Convention on the Rights of the Child and its basic principles including the principle of child participation and taking children's views into account. To this end, a lot of education workshops in primary and secondary schools, were organized, analyzed was situation on the ground, field surveys conducted as to whether children are familiar with the Convention and their rights and degree on their participation in decision-making process in schools in matters affecting them which includes analyzing the by-laws governing marking system, disciplinary proceedings, organization of excursions etc.

- Responsibility to promote human rights/child rights education?

Most of the activities implemented by the Institution are earmarked to the promotion of the rights of the child, which is one of the strategic directions as drafted in the Strategy of HR Ombudsman 2010-2014.

- Advice provided to children directly?

Through the different workshops, visits, through media and other activities the Institution's representatives and staff inform children on their rights and try to raise their awareness and encourage them to address us and report cases of violations of their rights and any problem encountered. Above that, children are informed on the existence of relevant institutions and authorities obligated to react to their addresses for any reason involving their rights infringement and provided with the list of duties and obligations of such authorities.

- Is a system/mechanism of individual complaints established and operational within the institution?

Dealing with individual complaints of physical and legal bodies is one of the most important forms of the Ombudsman's activities. Apart from this, at any moment, the Ombudsman may decide to open an investigation ex officio. Such ex officio activities are the most common in the Children Rights Protection Department since such investigations are being initiated whenever the staff learns from media or

otherwise on children rights violations and children are not empowered enough to seek their rights themselves.

D. Level of intervention (to tick)

- Regional
- National**
- Local
- Between local and national

E. Functioning of the institution

➤ How is the head of the agency appointed?

Three (3) persons compose the Ombudsman. They are selected from the ranks of the three constituent peoples of BiH which does not preclude the possibility of appointing an ombudsman from the ranks of others. They are appointed by the Parliamentary Assembly of BiH which forms a separate ad hoc Commission, publishes a public invitation and following the conducted procedure establishes the make a list of candidates fulfilling requirements. List of candidates is submitted to the houses (the House of Representatives and House of Peoples) of the Parliamentary Assembly of Bosnia and Herzegovina. The ombudspersons then need to be appointed within 60 days from the date of submission of proposals of the ad hoc committee to the parliamentary houses, and not later than three (3) months from the date of carried on 60 days after the nomination was sent to the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina or, at the latest, three months after the post became vacant or after the Ombudsman ceased performing functions for the reasons prescribed by the law. Appointment is don for the period of 6 years (only one mandate).

- Which authorities are involved in the process? What is the role of civil society in such a process? Child participation?

One of the specific features of the Ombudsman appointment process lay in fact that it is intended at inclusion of civil society in a way that civil society representatives participate in work of the Ad hoc Selection Panel, although they cannot vote. This is in an attempt to make this process as transparent as possible.

- Conditions of eligibility? (age, functions, competencies)

Any citizen of Bosnia and Herzegovina, who is a graduated lawyer, who has passed the Bar examination, who has at least ten (10) years of experience and distinguished career in the legal profession, who has a demonstrated experience in the field of human rights and is of recognized high moral stature, may be appointed an Ombudsman..

- Conflicts of interest?

The position of an Ombudsman is incompatible with the holding of any representative office; with any political activity or office or responsibilities of propaganda; with continued activity in government service; with membership of a political party or with the exercise of leadership of a political party, trade union, association, foundation, or religious organisation or with employment by any of these; with performance of the duties of a judge; and with any activity in an occupation or profession, in commerce or in employment.

- Conditions of resignation?

Ombudsman's duties can terminate for any of the reasons including:

- resignation

- **the manifest inability to perform the duties**
- **failure to give up an incompatible position**
- **conviction and final sentencing for an intentional offence punishable by more than five (5) years, yet it is on the Parliamentary Assembly to decide whether to allow an Ombudsman to be prosecuted, detained or tried**

➤ How is the staff selected?

Public invitations are published in daily newspapers covering the territory of in the whole Bosnia and Herzegovina pursuant to the by-laws of the Institution, necessary selection panels are formed, which, following the review of applications received and interviews with candidates held, form the ranking list of candidates and the final decision on employment is made by the Ombudsman.

○ Child rights specialists?

Specialized Department for the Protection of the Rights of the Child comprises of two lawyers, and, with support of the international NGO „Save the Children Norway“, two psychologists, 2 other legal experts, 1 economist and a technical assistant.

○ Lawyers? Psychologists? Social Workers?

○ Full time or part time staff?

Employees of the Institution have employment contracts to an indefinite time period.

➤ If there is a complaints mechanism within the institution, how is its budget allocated?

Budget is determined in the framework of the overall budget of the Institution, and additional funds for some program activities are provided with support of the Save the Children Norway.

○ Portion of the overall budget of the institution?

○ Budget for a hotline?

○ Allocated by the Executive? By Parliament?

The Ombudsman plans the budget, send it to the Ministry of Finance and Treasury of BiH, which, then, forward it to the Council of Ministers to deliberation and preparation of the budget draft adopted by the Parliamentary Assembly of BIH.

○ Possibility to raise funds from other sources? (eg. private sector, international organizations, NGOs, etc)

There is possibility of obtaining of such funds.

F. Participation of civil society and of children in the functioning of the complaints mechanism

➤ Specific system for child participation? Representation of children within the institution? If so, of what nature? Representation of girls or of children in difficult circumstances?

Through the different activities on the field, the Ombudsman's representatives are always encouraging children to contact the Institution. In addition to that, through the projects, recommendation, special reports and other activities the Institution aims at including as much children as possible (children with special needs, children in need for social welfare, children without parental care etc.). On the occasions such as the Day of the Child or the Children's Week the Institution organizes workshops and tries, in a creative way, to familiarize children with their rights, the

Convention and the work of the Department for the Protection of the Rights of the Child.

- Mechanism of coordination/advice involving civil society?

NGOs are partners of the Institution and there are attempts, particularly in the last two years to establish a permanent dialog and co-operation.

- What is the nature of cooperation between the institution and civil society organizations? Possibility of signing agreements?

In the period April-June the Ombudsman held a couple of meetings with the representatives of NGO sector in order to define principles of possible cooperation and joint activities. Models of such co-operation are almost finalized to include possibility of signing of co-operation agreement.

Insofar as an individual complaints mechanism is in place:

G. Accessibility

- To all children, without discrimination? Means by which children can access the mechanism and that are known to them (address, hotline, sms)

The Ombudsman Institution is accessible to children. Yet a lot of efforts are employed in the promotion of the Department for the Protection of the Rights of the Child which is operating since 01.06.2009. Web-site of the Institution is in place, as well as the promotion material including contact data. The Department is permanently engaged in work on the improvement of models of work to make it more child-friendly and accessible.

- Physical accessibility: child-friendly reception (trained staff and child-friendly space)?

The Ombudsman Institution is physically accessible to the children all-over Bosnia and Herzegovina as it has offices in Banja Luka, Sarajevo, Brčko, Mostar i Livno, the staff is professional and the premises are adequate.

- Geographic accessibility (local branches? In areas frequented by children?) Does the mechanism depend on existing structures (NGOs, schools)? Effectiveness? Relationship between the national and local levels?

As mentioned, there are offices in all larger cities, in distribution of which care was taken of necessity to cover the whole territory of the country. Chosen were regional centers, urban areas with a lot of inhabitants, and consequently, a lot of children, schools, NGOs etc.

- Practical/material accessibility (languages; access by children with disabilities)

This question has already been answered, given the fact that there wasno cases of children addressing the Institution directly, but it is done through their parents or guardians. School children and other children do visit the Institution in the framework of some project activities organized in the area of education about democracy, human rights or information on general aspects of human rights.

- Activities in place to provide information and advice to children, in a child-sensitive manner, particularly to child victims of sexual violence or exploitation?

There are activities, particularly directed to media, in order to advise media to pay special attention to way of placing information about mentioned offences involving children as victims. In the Ombudsman's reports the role of social welfare centers and other welfare organizations is highlighted and the national, entity, cantonal and municipal authorities invited to work on strengthening their capacities as they need professional staff in order to prevent such offences or to alleviate their consequences in dealing with victims.

- Dissemination of information on the role and existence of the complaints mechanism to potential users?

Any activity of the Institution is used to explain to citizens mechanisms of its work.

H. Protection

- Description of allegations received and processed regarding violence against children, particularly cases of sexual violence and exploitation (numbers, nature, form)

Currently there are three cases, all initiated ex officio. The Ombudsman learnt about the cases from the press. It is about alleged sexual exploitation (1 case) and physical abuse and violence – 2 cases. The cases are processed and sent to the relevant prosecutor's offices.

- Proactive in visiting structures and private spaces? (number, reports, results obtained)
- Contribution to child protection policies (legislative reform, child protection strategies)?

The Ombudsman's duty is to turn the attention of parliamentary bodies to the problems in human rights area including children, so they can plan relevant strategies and similar documents.

I. Confidentiality and protection of the child's right to privacy

- How does your institution ensure the protection of the confidentiality of the child?

Children's personal data have never been published.

- What are the procedures for archiving documents?

After we archive a case, it is kept for a certain period and following that forwarded to the national archive.

- What kind of relationships does your institution establish with parents/tutors of children?

The Ombudsman Institution is trying to include both children and their parents as much as possible and parents are mostly, those who address the Institution with regard to their children's rights. Cases involving the infringement of the child's rights by their parents are rare except in cases of divorce where one of the parents is addressing the Institution. This arises from the fact that children do not address the Institution personally yet.

- Are there any mechanisms of coordination with NGOs, associations or institutions for children? With other human rights mechanisms?

Cooperation with NGO sector is definitely in place, through the organizing of public discussions, meetings, membership in the Ombudsman networks etc.

J. Follow-up / Evaluation

- Follow-up of judicial procedures?

Ombudsmen may follow-up judicial procedures, but cannot interfere with the adjudicative functions of the courts and the Institution is keeping records of it. This method is very often used.

- Follow-up of child victims, particularly child victims of sexual violence and exploitation?

➤ Obligation of annual reporting? If so, to which authorities?

There is a legal obligation of the BiH Ombudsman to report to the parliamentary bodies in BiH (Parliamentary Assembly of BiH, Parliament of the Federation of BiH and the National Assembly of Republika Srpska).

K. Challenges, Good practices and Recommendations

Kindly send your contribution before 10 September 2010, through the Office of the High Commissioner for Human Rights, Palais des Nations CH-1211, Switzerland (to the attention of Ms. Dima Yared, childrenstudy@ohchr.org).

Sincerely,

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Special Rapporteur
on the sale of children
child prostitution and child pornography

Marta Santos-Païs
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against children