

Child Marriage in Bosnia and Herzegovina (Summary)



I was 13 when I had my first child, 15 when I had my second one, and 17 when I gave birth to the third.

—Child spouse

Country context

Bosnia and Herzegovina (hereafter BiH) is a country whose recent past has been marked by an armed conflict, loss of lives, material destruction, and disintegration of the social fabric. The post-war transition to a market economy, which was sudden and poorly planned, has resulted in a low standard of living, high unemployment, unsatisfactory economic growth, and poor economic perspective. Child rights are a low priority overall for the governments of the entities and district that make up BiH, and child protection services are poorly coordinated. The issue of child marriage competes for attention with other problems, which are perceived as more important. As a result, the state and the society have little awareness of the existence, causes, and consequences of child marriages, nor of the importance of a comprehensive approach to this problem.

The national legislation reflects the complexities of the administrative and legal systems of BiH, which consists of two entities: Republika Srpska (hereinafter RS) and the Federation of Bosnia and Herzegovina (hereinafter FBiH), and one district: the Brčko District of Bosnia and Herzegovina (hereinafter BDBiH). The FBiH is composed of ten cantons. All of these legal entities have their own executive, legislative, and judicial bodies.

Legal context

Bosnia and Herzegovina is a party to the Convention on the Rights of the Child (CRC) (and the two Optional Protocols), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (and its Optional Protocol), and the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms.

The BiH Framework Law on Primary and Secondary Education defines a child as a person under 18 years of age. The Family Laws of FBiH, RS, and BDBiH all stipulate that legal capacity is attained at 18, or 16 if the individual has contracted a marriage or become a parent. The Criminal Codes of BiH, FBiH, and the BDBiH stipulate that a child is a person under the age of 14 years, while a juvenile is a person who has not reached 18 years of age. The RS Criminal Code does not provide a definition of a child and juvenile, but stipulates that a criminal act, committed by a minor under the age of 14 years, cannot be subject to criminal sanctions.

In Bosnia and Herzegovina, child marriages occur among all sections of the population. Sporadic evidence indicates that child marriage is more prevalent in the Roma community, though due to a number of subjective and objective reasons this observation is difficult to quantify.



According to the three Family Laws, marriage cannot be contracted by a person under 18 years of age, and both spouses must give their consent. Exceptionally, a court can allow a person who has reached 16 years of age to contract a marriage if the person is physically and mentally able to fulfil the rights and duties of matrimonial life, and if the marriage is in the person's interest. In practice, there is usually no dispute during the out-of-court proceeding to decide whether a person under 18 can marry, since all the parties – minor(s), parents, and social welfare centres – agree that the marriage is in the minor's best interests and should be contracted. All three family laws stipulate that a marriage is not valid if a spouse agreed to the marriage out of fear caused by a serious threat.

The criminal codes of the RS, FBiH, and the BDBiH stipulate that it is illegal for an adult to live in a common-law marriage (cohabit) with a juvenile under 16 years of age. However, the criminal codes stipulate that if the adult marries the person under 16, he can escape criminal prosecution. This reduces the deterrent effect of the criminal codes.

Family planning and reproductive rights

The three Family Laws guarantee the right to establish a family. The RS Health Care Law, the FBiH Health Care Law, and the BDBiH Health Care Law provide for healthcare coverage of certain subpopulations, including women in relation to family planning, during pregnancy, delivery, and maternity (up to 12 months after the delivery). The RS Health Insurance Law, the FBiH Health Insurance Law, and the BDBiH Health Insurance Law all guarantee the right to complete care during pregnancy and maternity, under compulsory health insurance schemes. The rights of citizens in the BDBiH, FBiH, and RS to exercise choice in regard to family planning are protected in law, including access to abortion.

Knowledge and use of family planning methods is varied. According to data from public healthcare providers in FBiH, only 1 per cent of women of childbearing age used a modern method of contraception in 2010, while a 2006 survey found

that one in three women aged 15–49 in BiH, married or in union, used some modern or traditional form of contraception (35.7 per cent). However, of these, only 11.2 per cent of women used a modern method of contraception.

Another study revealed that 81 per cent of adolescents who were regularly having sex relied only on calculation of fertile days or withdrawal as a method of contraception. The participants in this study mostly reported that they learned about contraception from magazines, rather than from parents or teachers. Indeed, information on sexuality and reproduction is not included in the school curriculum in a consistent way. Lack of reliable information is exacerbated by inadequate provision of reproductive health services for adolescents.

Roma in Bosnia and Herzegovina

Currently, estimates of the number of Roma people in BiH range from 10,000 to 100,000. In reality, there is no way to estimate with any accuracy the number of Roma living today in BiH. During the 1992-1995 war in BiH, an unknown number of Roma took refuge abroad and it is unclear how many of them have returned. In addition, a number of Roma from Kosovo took refuge in BiH during the Kosovo war. The next official census, scheduled for April 2013, should help clarify how many Roma currently live in BiH, though it is likely that estimating will continue unless the relevant authorities introduce a more systematic process of Roma registration.

Almost as a rule, Roma do not register marriages and live births in the official registries. They practice common-law marriages and they raise children to follow the same customs. Roma consider such marriages as valid marriages in their community. While arranged marriages and early betrothals take place, it is more common for young Roma couples to elope without seeking their parents' advice or approval. The act of elopement then becomes the act of marriage. A survey carried out in 2010 by a Roma NGO found that of women who were interviewed, 44 per cent had married before the age of 18; most of these women had married between the ages of 14 and 16.

Roma do not attribute child marriages to Roma tradition, but rather to the circumstances in which they live. A representative from a Roma NGO voiced the opinion that illiterate people are more prone to enter child marriages, which serve as a source of comfort and a 'place' to escape life's realities.

One of the important consequences of Roma lifestyle is that few Roma children have birth certificates, which makes it difficult for them to be enrolled in school. Lack of infrastructure in Roma settlements also makes it difficult for Roma children to receive an education. Later on, they face problems obtaining identification documents and registering with relevant authorities. Child marriage is one of several factors contributing to the cycle of illiteracy, lack of education, lack of skills, unemployment, poverty, poor healthcare, low standard of living, discrimination, and lack of perspective in which many Roma find themselves, and which can make it very hard for some within the Roma community to avoid engaging in criminal activity.

Responses to child marriage

Youth-targeted reproductive health services. The Youth Peer Education Network (Y-Peer) in BiH provides advice and peer education on sexual and reproductive health through its three information centres in Banja Luka, Bihac, and Mostar. Since 2002, the Y-Peer network in BiH has reached more than 60,000 young people.

Recommendations

- A standardised definition of a child as a person under 18 years of age should be adopted by the relevant legislatures.
- A more demanding out-of-court procedure for the examination of petitions for marriage of persons who have reached 16 but not 18 years of age should be introduced that will focus on the best interest of the child and examine in detail the circumstances surrounding the petition.
- Educators and social welfare centres should play a more active role in reporting cases of common-law marriage involving an adult and a juvenile under 16 years of age.
- All such cases should be prosecuted, regardless of whether the marriage is contracted or not. The possibility should be considered of deleting the provisions in the three criminal codes that make it possible for an adult living in a common-law marriage with a juvenile under 16 years of age to avoid criminal prosecution if a marriage is contracted.
- Comprehensive, age-appropriate education on sexual and reproductive health and rights should be introduced into the public education system.

Roma-specific recommendations

- The problem of child marriages among Roma should be comprehensively addressed through a number of measures that should aim to improve the level of literacy among adult Roma, reduce school dropout rates among Roma children, improve the standard of housing and infrastructure in Roma settlements, and educate Roma on sexual and reproductive health and on the health consequences of child marriages.
- The problem of lack of identification documents for Roma needs to be addressed, as well as the issue of registration of births, marriages and deaths, in those cases where they have not been registered.



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