

**Submission by the United Nations High Commissioner for Refugees  
For the Office of the High Commissioner for Human Rights' Compilation Report –  
Universal Periodic Review:  
BOSNIA AND HERZEGOVINA**

**I. BACKGROUND INFORMATION**

Bosnia and Herzegovina (BiH) is a State party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*. The BiH legislation on asylum is generally in line with international standards. The *2008 Law on the Movement and Stay of Aliens and Asylum (LMSAA)* has been supplemented with the necessary bylaws. The LMSAA was amended in November 2012 and some of the bylaws have yet to be harmonized with these amendments.

BiH is a party to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*. BiH also ratified the *1997 European Convention on Nationality*. Furthermore, the BiH Constitution and the *Law on Citizenship* contain provisions on statelessness. On 5 November 2013, the BiH Parliament adopted amendments to the law on BiH citizenship, which will allow refugees and stateless persons to qualify for citizenship in BiH.

The political and international pressures that shape policy in Bosnia and Herzegovina (BiH) currently emphasize national interests over the rights of individuals and vulnerable groups, negatively affecting the ability of refugees, asylum-seekers, internally displaced persons (IDPs), returnees, and stateless persons to exercise their human rights.

The 1992-1995 conflict in BiH generated approximately 2.2 million refugees and IDPs. As of January 2013, some 103,000 people remain internally displaced within the country. In addition, thousands of returnees face persisting obstacles to full reintegration and access to rights. These obstacles are especially acute for “minority returnees”, who have returned to the areas in which their ethnic group is a numeric minority. The majority of asylum-seekers came to BiH as a result of the Kosovo crisis of 1998-1999, when more than 50,000 persons from the former Federal Republic of Yugoslavia (Serbia, Montenegro and Kosovo) were registered as refugees under the temporary admission (TA) regime. In recent years, the share of asylum-seekers originating from countries outside the region increased significantly, in particular as a result of the conflict in Syria. There are currently 39 asylum-seekers in BiH (7 from the region and 32 from outside the region). Of 163 recognized refugees in BiH, 137 are from Kosovo and were recognized under UNHCR’s mandate before the Government took over responsibility for refugee status determination (RSD) in 2004. There are also 6,733 refugees from Croatia in BiH. Coupled with the lack of facilitated local integration in Bosnia and Herzegovina, many remain on the margins of society with limited access to rights and in need of assistance to obtain a durable solution.

BiH also has specific legislation on internal displacement. The legal protection of IDPs and returnees is regulated by *Annex VII of the Dayton Peace Agreement (DPA)*, as well as by one State-level law and two entity-level laws. These laws define “displaced person” and “returnee” as specific legal statuses with accompanying entitlements, and provide regulations for conferring and ceasing such status, as well as articulating relevant State obligations. The legal framework incorporates a number of protection principles included in the *Guiding Principles on Internal Displacement*, such as the right to voluntary and safe return, freedom of movement and non-discrimination. However, a number of key rights in the *Guiding Principles* are not explicitly incorporated into relevant national legislation, for example, protection from arbitrary displacement and the right of IDPs to fully participate in the planning and management of their return, resettlement or reintegration. In addition, IDP status is directly linked to return, as IDP status ceases upon return, and returnee status only lasts for six months after the physical return has taken place. Hence, the definition of IDPs in BiH, which bases protection on legal status, is narrower than the description of IDPs in the *Guiding Principles*, which emphasizes protection based on needs and vulnerability.

The “Sarajevo Process” is a regional initiative, jointly set off by the Governments of BiH, Croatia, Montenegro, and Serbia and supported by key international stakeholders – UNHCR, the European Union, and the OSCE – to find lasting solutions for the remaining refugees displaced by the 1991-1995 conflicts in the Western Balkans. The Regional Housing Programme (RHP), an integral part of this project, will provide housing assistance for vulnerable refugees in the region and IDPs in BiH through grants disbursed by a number of donors. The implementation of the RHP, in conjunction with other initiatives in the country is expected to contribute significantly to the resolution of the remaining problems of wartime displacement in BiH. In line with the framework set out in the Revised Strategy, the Regional Process and the CEB loan project will facilitate housing solutions via return or local integration for some 21,000 refugees, returning refugees, and IDPs throughout the country from 2013 to 2017. This response must address the wider needs of displaced communities in targeted areas in addition to the housing needs of vulnerable families.

## **II. ACHIEVEMENTS AND BEST PRACTICES**

The legal framework for asylum in BiH is generally in line with international law and EU standards. In November 2013, a provision allowing for facilitated naturalization of refugees after a stay of five years in the country was adopted, in line with Article 34 of the *1951 Convention*. There have also been positive developments in the implementation of the equal rights of refugees to health care, education, work, and social welfare, with the finalization of bylaws governing the implementation of these rights. The bylaws are currently being amended following the 2012 amendments to the LMSAA. However, work remains to be done to ensure smooth implementation, and thus refugees’ ability to enjoy all these rights in practice.

## **III. KEY PROTECTION ISSUES AND RECOMMENDATIONS**

### **Issue 1: Access to the territory and effective protection against *refoulement***

In 2011 and 2012, the BiH Border Police refused entry to the territory to 6,828 persons. During the same period, only five persons expressed the intention to seek asylum at the border. While most were likely refused entry for valid reasons, this number also includes

individuals from refugee-producing countries. Due to lack of resources and regular access, UNHCR cannot reliably monitor whether the individuals that are refused entry have an opportunity to access the asylum system. The low number of persons seeking asylum at the border raises questions about the efforts of border officials to properly identify persons who may be in need of international protection.

The right to seek and enjoy asylum in BiH remains limited in practice, as implementation of legislation is problematic in a number of areas, including the right to free and effective legal aid, provision of appropriate interpreters, detention of undocumented asylum-seekers for 90 days or even an extended period of another 90 days and issuance of expulsion orders as a sanction for late expression of seeking asylum. There are no Standard Operating Procedures in place for unaccompanied and separated children seeking international protection and, in such cases, the Centers of Social Welfare do not yet determine the best interest of the child. Furthermore, while family reunification is guaranteed under the law, there is no mechanism in place for facilitating family reunification.

The majority of the 163 recognized refugees in BiH are from Kosovo. Most were recognized by UNHCR prior to its handover of refugee status determination to the BiH Government in 2004. Since 2004, the BiH Government has only recognized ten refugees. In addition, the Ministry of Security granted subsidiary protection to 54 individuals (5 Kosovars, 44 Syrians, 3 Eritreans, 1 Iraqi and 1 Palestinian).

### **Recommendations:**

UNHCR recommends that Bosnia and Herzegovina:

- Train border officials to proactively identify potential asylum-seekers through the use of proper questioning and to pay special attention to persons originating from refugee-producing countries.
- Organise, on a regular basis, refresher sessions and training on asylum law for the Border Police inspectors.
- Provide persons refused entry and persons attempting to cross the border without authorization with information on the asylum procedure and the rights of asylum-seekers.
- Equip all official border crossing points with at least one confidential interview room.
- Employ more female border officials to ensure that female asylum-seekers with sensitive cases would be able to talk to a female officer if they wish.
- Display at all border crossings posters and informational pamphlets announcing the right to seek asylum and the procedure for doing so.
- Establish formal referral mechanisms between the first contact government officials (border and police officials and migration and asylum authorities) to facilitate prompt exchange of information, and ensure that persons with international protection or other needs are referred to appropriate authorities for further action in a timely manner.
- Encourage initiatives related to responsibility sharing for potential asylum-seekers.

### **Issue 2: Fair and efficient asylum procedures**

While respective legislation is generally in line with international standards, the implementation of the law leaves much to be desired. Certain basic principles guaranteeing a fair and efficient asylum procedure are not always respected, such as the right to free and effective legal aid from the moment of expressing the intention to seek asylum, and the

provision of gender sensitive interpreters or interpreters in the language of the applicant. The Sector for Asylum does not consider an alien who expresses intention to seek asylum as an asylum-seeker until s/he formally submits an asylum request. This results in delays in receiving asylum requests, registering asylum-seekers in detention, initiating procedures for appointing guardians to unaccompanied minors, and determining responsibility for release of an asylum-seeker from detention and accommodation in the Asylum Centre.

Decision makers at the administrative level do not issue well-reasoned or fully analysed decisions. Rather the standard of analysis is weak and the quality of legal reasoning poor. As a result asylum decisions are generally neither clear nor comprehensible. Factual lacunae, misinterpretations of law and failure to consider reliable country of origin information are typical shortcomings of asylum assessments in BiH appearing in most cases. Together these constitute a restrictive approach to granting the right to international protection.

While some protection against inadequately considered and poorly reasoned decisions is provided to asylum-seekers through their access to the courts to challenge negative decisions, such protection is insufficient. The courts rarely decide the cases on merits and if they do, the level of legal analysis and assessment of asylum claims is similar to the administrative body. In some cases, the judicial review takes unnecessarily long time. In 2012 and 2013, BiH granted subsidiary protection to 44 Syrian nationals. Not one Syrian was afforded refugee status during this period, which reflects a wider policy of the government of granting only subsidiary protection to Syrian nationals.

### **Recommendations:**

UNHCR recommends that Bosnia and Herzegovina:

- Establish training programmes for eligibility officers, judges of the Court of BiH and their clerks to increase the overall quality of assessments of asylum applications.
- Ensure interpretation of definition of an asylum-seeker in line with international and EU standards, as well as asylum-seekers' timely access to reception facilities.
- The BiH authorities should consider adoption of SOPs for protection of unaccompanied or separated children seeking international protection to ensure their timely and effective protection.
- Provide written technical guidance to eligibility officers on issues of concern, in particular, on relevant legal aspects such as non-state agents of persecution and standard of proof required for a 'well-founded fear' of persecution, as well as on interviewing techniques, credibility assessment and proper use of country of origin information.
- Allocate sufficient resources to ensure that legal aid and interpretation services are provided free of charge, and increase regional cooperation in order to ensure the provision of sufficient interpretation services and gender-sensitive interpretation.
- The BiH authorities should take into account UNHCR's advice at the drafting stage of assessments of asylum applications.

### **Issue 3: Detention of asylum-seekers**

Asylum-seekers are often detained for prolonged periods, and persons who express their intention to seek asylum after their apprehension in the territory, have been issued expulsion orders in spite of being asylum-seekers. Except in very few cases, in which the asylum-seekers were moved to other facilities after challenging the detention decision, asylum-seekers are usually released from detention when the applications for international protection are granted. It appears that detention is being used punitively to sanction persons who seek asylum late or after having been apprehended in the territory without authorization. This practice has become more pervasive as the number of asylum-seekers from outside the

Balkans has increased, suggesting that it may be a kind of “preventive detention” designed to discourage such persons from seeking asylum in BiH. There are particularly vulnerable persons among those detained, including children.

Two rejected individuals originally detained on national security grounds while seeking asylum, a Syrian in 2008 and an Iraqi in 2009 remain in prolonged detention<sup>1</sup>. The ECtHR ruled in the case of the Syrian in February 2012 finding violation of Article 3 of the ECHR in case the individual would be returned to Syria, and violation of Article 5 of the ECHR for the period the individual was held in detention for the sole reason of national security grounds until a deportation order was issued to him. The Iraqi filed a complaint to the HRC in 2010. The HRC adopted its views on the complaint on 1 November 2013. The Committee found violation of the rights guaranteed under Article 9 (par. 1, 2, 4) and Articles 17 and 23. The HRC concluded that BiH should either release the individual on appropriate conditions or provide him with an adequate opportunity to challenge all grounds on which his detention is based. It also concluded that BiH should undertake full reconsideration of the reason for and the effects of removing the individual to Iraq on his family life, prior to any attempt to return the individual to Iraq.

### **Recommendations:**

UNHCR recommends that Bosnia and Herzegovina:

- Limit the use of detention of asylum-seekers only to necessary, in line with UNHCR ExCom Conclusion No. 44 on the Detention of Refugees and Asylum-Seekers.
- Ensure that persons detained for administrative migration-related violations have prompt access to legal counsel and interpretation services.
- Ensure that UNHCR is informed of potential asylum-seekers and has unhindered access to the individuals in the Immigration Centre.
- Ensure that alternatives to detention are found for children and persons with special needs, including pregnant women, torture and trauma victims/survivors, unaccompanied elderly persons and persons with mental and physical disabilities.
- Prevent detaining foreigners for unauthorized stay in BiH if they have expressed an intention to seek asylum.

### **Issue 4: Sustainable Return**

Since the end of the conflict in 1995, through concerted national and international efforts including improvements in security, freedom of movement, the repossession of property and the reconstruction of houses, it is estimated that over one million refugees and displaced persons have exercised their right to voluntary return, which is a success, albeit limited. Reported return figures, however, may not necessarily reflect refugees’ and IDPs’ current place of residence. Moreover, while property rights have been largely respected through repossession and reconstruction programmes, these have not always been accompanied by measures to ensure access to social and economic rights in areas of return. As a result, many returnees today are without a source of income or lack the required infrastructure to ensure that their return is sustainable. A primary constraint remains the insufficient response on behalf of the authorities to meet the needs of IDPs and returnees.

Of the estimated 84,500 remaining IDPs, UNHCR is particularly concerned about

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<sup>1</sup> In this regard, the Human Rights Committee is concerned that persons subject to removal on national security grounds are subjected to indefinite detention based solely on the discretionary decisions by the security organs of the State.

approximately 8,600 IDPs who reside in inadequate and sub-standard living conditions in collective accommodation; facilities which were established to provide temporary accommodation to displaced people during and after the conflict. In many cases, IDP families share kitchens and water and sanitation facilities. On occasion water and sanitation facilities are non-functional and there is a lack of ongoing maintenance. Most IDP families in collective accommodation, many of whom have lived in these locations for more than a decade, have been allocated insufficient space in relation to their family size. The majority of IDPs in collective accommodation are extremely vulnerable to protection problems because they are physically and/or mentally disabled, extremely traumatized from sexual or gender based violence, chronically ill, or older without any source of income or family support. A UNHCR-supported study found that most of the households in collective accommodation are female-headed, with a significant number headed by widows.

A significant number of returnees also experience limited enjoyment of the right to adequate housing. While the majority of people displaced by the conflict were able to voluntarily return and repossess their property, there is lack of infrastructure (such as access to electricity) in many returnee areas, which undermines the sustainability of return. In addition, reconstruction assistance is often provided without sustainability measures to ensure returnees are able to generate incomes or livelihoods. Limited access to healthcare and other social services in rural areas also impedes the ability of returnees to fully enjoy the right to adequate housing. One of the persisting obstacles is discrimination of minority returnees, particularly in the areas of employment and access to utilities.

While the economic crisis and the poor governance situation impact upon the entire population in BiH, IDPs and returnees are particularly disadvantaged. Moreover, BiH still lacks a comprehensive national plan setting out the measures needed to ensure that the remaining IDPs can obtain a durable solution of their choice. The Revised Strategy for the Implementation of *Annex VII of the Dayton Peace Agreement* adopted in June 2010 (Revised Strategy) sets out a number of measures to strengthen economic, social and cultural rights for IDPs and returnees, but this implementation of this strategy remains to be effectively operationalized and coordinated. On 5 July 2013, UNHCR, the European Union, the UN, Bosnia and Herzegovina Minister for Human Rights and Refugees and the competent Ministers of the Republika Srpska and the Federation of Bosnia and Herzegovina signed a Joint Declaration on Resolving Protracted Displacement in Bosnia and Herzegovina. The signatories expressed their mutual commitment to develop such a plan and coordination mechanism in order to solve the problem of protracted displacement in BiH within an agreed time frame.

### **Recommendations:**

UNHCR recommends that Bosnia and Herzegovina:

- intensify its efforts to facilitate returns of refugees and displaced persons, including by constructing housing, the accompanying infrastructure and ensuring sustainability measures and addressing the specific situation of those who would otherwise have difficulties in benefiting from the reconstruction assistance;
- work systematically on eliminating identified obstacles to ensure adequate housing, access to infrastructure and electricity, health and social care, education and employment for returnees and remaining IDPs in line with the recommendations of the Revised Strategy

## **Issue 5: Statelessness**

In the course of extensive field visits carried out by UNHCR and its partners in 2013 covering all 255 known Roma communities in BiH, 427 people were identified who lack basic civil documentation and consequently are at risk of statelessness<sup>2</sup>. While legislation exists that regulates civil registration procedures, it is not fully harmonized throughout the country. The lack of civil registration and documentation increases the risk of statelessness among the Roma population, and particularly acts as an obstacle to access such rights as health care, social welfare, housing, employment and education. However, there have been improvements with the adoption of new legislation at the entity levels between 2009 and 2012. These improvements include fee waivers and free legal aid for vulnerable individuals and national minorities, as well as greater involvement of Centres for Social Welfare in assisting with birth registration. Additional efforts need to be made to increase awareness among the Roma population on the importance of timely birth registration and other civil registration procedures in communities where documentation is lacking.

In November 2013, the BiH Citizenship Law was amended with a provision enabling naturalization for refugees and stateless persons.<sup>3</sup> In order for the law to take full effect, harmonizing legislation at the entity level is necessary. Furthermore, the BiH Law on Citizenship is generally in line with international standards on the safeguards against statelessness but includes a provision which in certain situations requires persons applying for BiH nationality to become stateless in order to acquire BiH nationality by requiring renunciation of another nationality before acquisition of BiH nationality. The law also does not include a sufficient safeguard to prevent the persons from remaining stateless. Previously, renunciation was only required upon acquisition of BiH nationality, but the law was amended in November 2013 and now requires renunciation of nationality as a prerequisite for acquiring BiH nationality<sup>4</sup>. A bylaw to the Law on Citizenship provides for

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<sup>2</sup> In this regard, the Committee on the Elimination of Discrimination against Women is concerned about the lack of effective implementation of universal birth registration in Bosnia and Herzegovina, in particular among Roma women and girls, which places them at risk of statelessness and hinders their access to basic services. It notes with concern that the lack of information, as well as the existence of administrative and financial obstacles, may prevent Roma women from registering births and obtaining birth certificates. *Feedback Report, 55<sup>th</sup> Session of the Committee on the Elimination of Discrimination against Women, para. 29, 8 – 26 July 2013 Geneva\_BOSNIA AND HERZEGOVINA*

<sup>3</sup> Art. 11a of the Law on Citizenship of Bosnia and Herzegovina (Official Gazette of BiH nos. 4/97, 13/99, 41/02, 6/03, 14/03, 82/05, 43/09, 76/09, 87/13):

- (1) *A stateless person and a recognized refugee may acquire BiH citizenship, without fulfilling requirements stipulated by Article 9 paragraph (1) sub-paragraphs 2., 3., 6., 9. and 10., only if he/she has continually resided in BiH, as a stateless person or a recognized refugee, for a period of five years preceding the application.*
- (2) *A minor child of a person who has acquired BiH citizenship in accordance with paragraph (1) above is entitled to BiH citizenship, without fulfilling the requirements stipulated by Article 9 paragraph (1) sub-paragraphs 1., 2., 3., 6., 9. and 10., if he/she has been granted a refugee status or temporary residence in BiH, regardless of the duration of his/her stay.*
- (3) *If the child is over 14 years of age, his/her consent is required.*

<sup>4</sup> Article 9 : *A foreigner who has submitted an application for acquisition of BiH citizenship may acquire it by naturalization if he/she fulfils the following conditions: ...*

- (6) *That he/she renounces or otherwise loses his/her former citizenship before he/she acquires the BiH citizenship, unless a bilateral agreement mentioned in Article 14 provides otherwise. The renunciation or cessation of the former citizenship shall not be required if it is not allowed or*

assurances to be given of BiH nationality in such cases, but as the bylaw also allows for revocation of the assurances<sup>5</sup>, there is a possibility that a person is rendered stateless as a result. There is also a need to adopt legislation to establish a mechanism to systematically identify stateless persons and ensures enjoyment of their rights under *the 1954 Convention*.

### **Recommendations:**

UNHCR recommends that Bosnia and Herzegovina:

- Ensure that all children born on the territory of the State, in particular Roma children, are registered at birth, as a means of preventing statelessness and to ensure their access to education, social services, health care and citizenship; and develop measures to identify unregistered individuals, including adults, and ensure that they are registered and provided with personal identity documents;
- Ensure that civil registration is easy to access and complete so that all persons currently without civil documentation can obtain it in order to ensure their rights.
- Strengthen its public awareness-raising campaigns to ensure that Roma parents are aware of the importance of birth registration and of the procedural requirements to obtain birth certificates, and ensure their access to registration services and procedures;
- Amend the citizenship legislation to ensure that the requirement to renounce another nationality before acquisition of BiH nationality does not lead to statelessness.
- Harmonize the citizenship legislation at the entity level in line with the recent amendments to the State level citizenship legislation. ;
- Create a mechanism in law to systematically identify stateless persons in BiH and to ensure the full enjoyment of their rights under *the 1954 Convention*.

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*cannot be reasonably required;*

Article 10: *A foreign spouse of a BiH citizen may acquire BiH citizenship under the following conditions: ...*

*(2) That he/she renounces or otherwise loses his/her former citizenship before he/she acquires the BiH citizenship, unless a bilateral agreement mentioned in Article 14 provides otherwise; the renunciation or cessation of the former citizenship shall not be required if it is not allowed or cannot be reasonably required.*

<sup>5</sup> Article 3 of the Bylaw on Provisions of Assurances of the Citizenship of Bosnia and Herzegovina (Official Gazette of BiH no. 7/14): *Subject to fulfilment of lawful requirements, an alien holding a foreign citizenship, who has applied for BiH citizenship, in terms of Articles 9, 10, 11, 12(2) and 12a of the Law, may be issued with a letter of assurances of BiH citizenship, at his/her request, if he/she renounces his/her foreign citizenship or if his/her foreign citizenship is lost in any other way whatsoever.*

Article 4: ...

*(2) The assurances may be revoked if, prior to acquiring BiH citizenship, an alien does not continue to fulfill any of the requirements prescribed for acquisition of BiH citizenship.*



## **Issue 6: Discrimination**

IDPs and returnees experience discrimination and inequality in accessing social protection. Government funds to support them have steadily increased over the years and are quite significant today. However, assistance for return is too often allocated on the basis of ethnicity and/or political affiliation, rather than need or vulnerability. Government allocations for return which aim to support IDPs are not often accompanied by positive measures to ensure that the funds address the specific needs of these individuals and families. As a result, many IDPs and returnees enjoy limited access to employment, pensions, healthcare, and utilities, such as water and electricity, and social protection. IDPs and returnees are further limited in accessing these rights as the social protection system is highly fragmented and does not actively identify or support the most vulnerable individuals, including IDPs and returnees. Rebuilding infrastructure on the basis of equality, including restoring electricity and water connections in rural areas, remains an acute concern. Returnees who have civil victim of war status also face unequal treatment based on the entity of their residence. Returnees and IDPs' rights under labor law to receive compensation for loss of employment during the conflict continue to be significantly delayed. Discrimination and segregation in education persist. The authorities do not provide adequate or systematic solutions for persons who want to return to their pre-war homes if those homes have been invested in by other persons who lived there in the owner's absence. Returnees also continue to experience harassment accompanied by inadequate administration of justice for suspected perpetrators. Hate incidents leave returnees who experience them with feelings of extreme insecurity, which undermines their ability to exercise other rights, such as freedom of movement. Roma refugees are also discriminated against because they are not afforded equal treatment as citizens in regard to access to social housing, despite provisions in the law that they should be accorded this right. The free legal aid system in place falls far short of adequately responding to the needs of these populations.

### **Recommendations:**

UNHCR recommends that Bosnia and Herzegovina:

- Implement the measures set out in the Revised Strategy so that IDPs and returnees can enjoy an adequate standard of living and continuous improvement of living conditions.
- Create a coordinated plan of action, drawing upon all available national and international resources.
- Improve the socio-economic integration of those who have returned, by ensuring equal enjoyment of their social, economic and cultural rights, especially in the field of social protection and pension, health care, equal employment and equal education.

**Human Rights Liaison Unit  
Division of International Protection  
UNHCR  
March 2014**

## **ANNEX I**

### **Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures' Reports**

#### **- Universal Periodic Review:**

### **BOSNIA AND HERZEGOVINA**

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations and from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Bosnia and Herzegovina.

#### **I. Treaty Bodies**

##### **Committee on the Elimination of Discrimination against Women**

CEDAW/C/BIH/CO/4-5, 55<sup>th</sup> Session

30 July 2013

#### **B. Positive aspects**

4. The Committee welcomes the progress achieved since the consideration, in 2006, of the State party's combined initial, second and third periodic reports (CEDAW/C/BIH/1-3) in undertaking legislative reform, in particular:

- (a) The adoption, in 2009, of the law on the prohibition of discrimination, which includes sex, sexual expression or sexual orientation as prohibited grounds of discrimination;
- (b) Amendments, in 2009, to the law on gender equality (2003);
- (c) Amendments, in 2010, to the Criminal Code of Bosnia and Herzegovina, which include a definition of trafficking in line with international standards (article 186).

5. The Committee commends the State party for improving its institutional and policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality, including:

- (b) The adoption of the national action plan to combat trafficking and illegal migration (2008-2012);

#### **C. Principal areas of concern and recommendations**

### **Women in post-conflict situations**

9. While recognizing the State party's efforts to improve the situation of women in post-conflict situations, the Committee is deeply concerned about:

- (a) The slow pace of prosecutions and very low level of conviction rates of perpetrators of sexual violence, which result in pervasive impunity, despite the implementation of the 2008 national war crimes prosecution strategy;
- (b) The inadequate definition, at both the State and entity levels, of acts of sexual violence as war crimes and crimes against humanity, in particular the elements of the crime of rape, which are not in line with international standards; the large number of cases at the district and cantonal levels, at which rape continues to be prosecuted as an ordinary crime, without taking into account the dimension of the armed conflict; and the parallel applicability of different criminal codes, resulting in inconsistent jurisprudence and lenient sentencing practices;
- (c) Long delays in adopting measures to address the needs of a large number of women victimized by the conflict;
- (d) The lack of adequate victim reparation in war crimes trials, where victims are being referred to initiate separate civil proceedings, while such claims can be submitted and ruled upon during criminal proceedings;
- (e) The deficiencies of witness protection measures in cases prosecuted at the district and cantonal levels, where the law on the witness protection programme is not applicable;
- (f) Women's inadequate and unequal access to compensation, support and rehabilitation measures for violations suffered during the war, such as enforced disappearances. These measures include sustained psychological and medical support as well as financial and social benefits, which are regulated differently in the entities;
- (g) The lack of measures taken to address the systematic stigmatization faced by women victims of wartime sexual violence, which hampers their access to justice and social reintegration.

10. **The Committee recommends that the State party:**

- (a) Speed up the implementation of the national war crimes strategy and increase the number of prosecutions of war crimes cases by allocating more financial resources and investigative capacities to address the large backlog of cases;**
- (b) Amend all relevant criminal codes to include a definition of wartime sexual violence in line with international standards, including a specific definition of rape as a war crime and a crime against humanity, in order to adequately reflect the gravity of the crimes committed and intensify its efforts to harmonize the jurisprudence and sentencing practices of its courts throughout the State party, by establishing effective cooperation mechanisms between prosecutors and courts competent to deal with war crimes at all levels of the State party;**
- (c) Expedite the adoption of pending draft laws and programmes designed to ensure effective access to justice for all women victims of wartime sexual violence, including adequate reparation, such as the draft law on the rights of victims of torture and civilian war victims, the programme for victims of sexual violence in conflict and torture (2013-2016) and the draft strategy on transitional justice aimed at improving access to justice;**
- (d) Ensure the effective implementation of the new law on the witness protection programme and establish sustainable and operational witness protection measures at the district and cantonal levels;**
- (e) Develop a comprehensive approach to improve the status and position of all women victims of the war, including by combating the stigma attached to sexual violence; and expand the provision of compensation, support and rehabilitation measures and**

**benefits, and ensure equal access to such services for all women victims, irrespective of their place of residence.**

### **Constitutional and legislative framework**

13. While acknowledging the existing definitions in the gender equality law, the Committee is concerned that the Constitution does not at present include a comprehensive definition of discrimination against women, in line with article 1, or of the principle of equality between women and men, in line with article 2 of the Convention.

**14. In the light of the constitutional review process, the Committee recommends that the State party specifically incorporate into its new Constitution a definition of equality between women and men and a prohibition of direct and indirect discrimination against women in the public and private spheres, in accordance with articles 1 and 2 of the Convention.**

### **Stereotypes**

19. The Committee reiterates its concern about the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and in society at large (see CEDAW/C/BIH/CO/3, para. 23). It notes that such attitudes and stereotypes constitute a significant impediment to the implementation of the Convention, as they are root causes of:

- (a) women's disadvantaged position in the State party in political and public life, especially in decision-making positions and elected offices, as well as in the labour market;
- (b) the prevalence of violence against women in the State party; and
- (c) gender segregation as reflected in women and girls' educational choices. In addition, the Committee regrets the serious delays in addressing the remaining gender stereotypes found in school textbooks and materials.

**20. The Committee urges the State party to:**

- (a) Remove, as a matter of priority, gender stereotypes from educational textbooks and teaching materials;**
- (b) Disseminate the principles of non-discrimination and gender equality throughout the educational system, both formal and informal, with a view to enhancing a positive and non-stereotypical portrayal of women, by incorporating human rights and gender equality into training and educational materials and by providing training on women's rights to teaching staff;**
- (c) Develop a comprehensive, wide-ranging strategy across all sectors, with proactive and sustained measures, targeted at women and men, girls and boys, to overcome patriarchal and gender-based stereotypical attitudes about the roles and responsibilities of women and men in the family and in society, in particular in areas where women are in the most disadvantaged position, such as public and political life and employment;**
- (d) Intensify its cooperation with civil society and women's organizations, political parties, education professionals, the private sector and the media, and disseminate information to the general public and to specific audiences, such as decision-makers, employers, youth and disadvantaged groups of women, on women's rights in the private and public spheres.**

### **Violence against women**

21. While welcoming the State party's increased efforts to combat domestic violence, the Committee reiterates its serious concern about the high prevalence of domestic violence and the lack of monitoring and accountability mechanisms regarding the implementation of existing strategies, at both the State and entity levels; insufficient data collection to assess the

phenomenon of domestic violence; and insufficient support services dependent on non-governmental organizations and foreign funding. The Committee is also concerned about the inconsistent application of the laws regulating domestic violence by the courts of both entities, which undermines women's trust in the judicial system despite the comprehensive legislative framework in place; the underreporting of domestic violence; the limited number of protective measures issued; and the lenient sentencing policy, including a large percentage of suspended sentences. In addition, the Committee regrets the absence of information regarding Brčko District and the insufficient information on other forms of violence against women in the State party.

**22. The Committee recommends that the State party:**

- (a) Establish effective institutional mechanisms to coordinate, monitor and assess the effectiveness of the impact of the strategies developed and measures taken with a view to ensuring the consistent application of the laws at all levels;**
- (b) Encourage women to report incidents of domestic violence by de-stigmatizing victims and raising awareness about the criminal nature of such acts, and intensify its efforts to ensure that all reported cases of domestic and sexual violence against women and girls are effectively investigated and that perpetrators are prosecuted and sentenced commensurate with the gravity of the crime;**
- (c) Collect statistical data on domestic violence, including femicide, disaggregated by sex, age and relationship between victim and perpetrator, and undertake research on the extent of all forms of violence against women and its root causes;**
- (d) Provide mandatory training for judges, lawyers and law enforcement officers on the uniform application of the existing legal framework, including on the definition of domestic violence and on gender stereotypes;**
- (e) Provide adequate assistance, protection and rehabilitation to women victims of all forms of violence, including by strengthening the capacity of existing shelters and by enhancing cooperation with and funding for non-governmental organizations providing shelter and rehabilitation to victims.**

**Trafficking and exploitation of prostitution**

23. While noting the new legislative framework in place at the State level, the Committee remains concerned about the low number of prosecutions, undue delays in proceedings and the leniency of sentences, despite the growing trend of internal and international trafficking in the State party. It is particularly concerned that the Criminal Codes of the entities and of Brčko District have not been harmonized with the State Criminal Code and therefore do not allow adequate prosecutions at the entity and district levels with corresponding punishments and convictions of acts of trafficking, especially internal trafficking. Furthermore, while noting the adoption of regulations protecting victims and witnesses and the development of a new strategy for combating trafficking in human beings, the Committee is concerned about the lack of effective victim identification procedures, especially regarding women and girls from Roma communities and internally displaced women who are increasingly affected, and that most of the shelters providing adequate services to victims of trafficking, are operated by non-governmental organizations that rely on external funding.

**24. The Committee recommends that the State party:**

- (a) Amend the Criminal Codes of both entities and of Brčko District to harmonize them with the relevant provisions of the Criminal Code of Bosnia and Herzegovina in order to ensure that acts of trafficking are adequately prosecuted;**
- (b) Ensure the effective implementation of the new legislative framework and the timely prosecution and punishment of traffickers, as well as review its sentencing policy in trafficking cases;**

- (c) Provide mandatory and gender-sensitive training for judges, prosecutors, police officers and other law enforcement officers on applicable legal provisions, including regulations on the protection of witnesses of trafficking;**
- (d) Strengthen mechanisms aimed at the early identification and referral of victims of trafficking, with a special focus on Roma and internally displaced women, as well as preventive measures such as raising awareness about the risks of trafficking for disadvantaged groups of women;**
- (e) Ensure adequate funding for anti-trafficking activities undertaken by non-governmental organizations.**

25. The Committee expresses concern at the fact that the State party remains a country of origin, destination and transit for trafficking in human beings, in particular women and girls, for purposes of sexual exploitation. It is also concerned at the fact that prostitution that is punishable as an administrative offence, as well as at the absence of research and data on the prevalence of exploitation of prostitution in the State party and the lack of policies and programmes to address that phenomenon.

**26. The Committee calls upon the State party to:**

- (a) Amend its legislation to ensure that women victims of prostitution are no longer punished by a fine; ensure the investigation, prosecution and punishment of those who exploit prostitution; and take measures to discourage the demand for prostitution;**
- (b) Pursue a comprehensive approach to addressing the exploitation of prostitution, including by developing strategies to support and provide rehabilitation for women who wish to leave prostitution; and provide, in its next periodic report, comprehensive information and data on the prevalence of exploitation of prostitution.**

### **Nationality**

29. The Committee is concerned about the lack of effective implementation of universal birth registration in the State party, in particular among Roma women and girls, which places them at risk of statelessness and hinders their access to basic services. It notes with concern that the lack of information, as well as the existence of administrative and financial obstacles, may prevent Roma women from registering births and obtaining birth certificates.

**30. The Committee calls upon the State party to:**

- (a) Ensure that all children born on the territory of the State party, in particular Roma children, are registered at birth, as a means of preventing statelessness and to ensure their access to education, social services, health care and citizenship; and develop measures to identify unregistered children and ensure that they are provided with personal documents;**
- (b) Strengthen its public awareness-raising campaigns to ensure that Roma women are aware of the importance of birth registration and of the procedural requirements to obtain certificates, and ensure their access to registration services and procedures.**

### **Education**

31. While commending the State party for the high level of education of women and girls, the Committee remains concerned about the persistent segregation of fields of study at the post-secondary level, with women concentrated in traditionally female-dominated areas and underrepresented in technical/vocational education. The Committee is also concerned about the existing mono-ethnic school system, which discriminates against girls on the basis of their ethnicity and has a negative impact on their education opportunities. In addition, the Committee expresses concern about the low enrolment rates and high dropout rates of Roma girls at the primary school level.

**32. The Committee recommends that the State party:**

- (a) Further encourage young women to choose non-traditional fields of study and professions and implement programmes aimed at counselling boys and girls on educational choices;**
- (b) Implement the recommendations developed by the Federal Ministry of Education and Science, in collaboration with the education ministers of the Federation, with a view to eliminating the mono-ethnic school system;**
- (c) Promote access for Roma girls to education and their retention at all levels of education, by raising awareness of the importance of education as a human right and as the basis for the empowerment of women, and strengthen the implementation of re-entry policies enabling Roma girls who have dropped out to return to school.**

**Employment**

33. The Committee notes that the State party has taken various measures to support the participation of women in the labour market, as part of the Bosnia and Herzegovina strategy for employment (2010-2014) and the entities' employment strategies; that the gender action plan of Bosnia and Herzegovina for the period 2013-2017 gives priority to women's economic participation by developing measures aimed at facilitating the reconciliation of private and professional life; and that a framework law was enacted in order to unify and harmonize the social sector in the State party, including through maternity protection. However, the Committee remains concerned about:

- (a) The markedly low participation rate of women in the labour force, in spite of their high level of education, as reflected by the disproportionately high unemployment rate among women;
- (b) The concentration of women in such sectors as health care, education and agriculture, in the informal sector and in the "grey economy", and the large number of women employed with temporary contracts; and the exclusion from the formal labour market of disadvantaged groups of women, such as internally displaced women, rural women and Roma women;
- (c) The lack of an institutional framework to enforce the prohibition of gender-based discrimination and sexual harassment at work and the lack of measures to facilitate the reporting of such acts and to inform women of their rights;
- (d) The lack of childcare facilities, which constitutes an obstacle to the full exercise of women's right to work;
- (e) The 12 different existing regimes with different regulations on maternity protection depending on women's place of residence, which have a negative impact on their ability to participate in the labour force and reinforce the unequal division of family responsibilities between women and men.

**34. The Committee urges the State party to:**

- (a) Adopt temporary special measures in accordance with article 4, paragraph 1, of the Convention and with the Committee's general recommendation No. 25, aimed at achieving de facto equal opportunities for women and men in the labour market, including disadvantaged groups of women; and establish special training programmes and counselling for different groups of unemployed women, including by promoting women's entrepreneurship;**
- (b) Take effective measures to integrate disadvantaged groups of women and women working in the "grey economy" into the formal labour market;**
- (c) Closely monitor the working conditions of women in the informal sector and those employed with temporary contracts, by strengthening labour inspections; ensure their access to social services and social security; and consider ratifying International Labour**

**Organization Convention No. 189 (2011), concerning decent work for domestic workers;**

- (d) Adopt effective measures, including temporary special measures, to eliminate horizontal and vertical occupational segregation based on stereotypes related to gender;**
- (e) Develop a confidential and safe system for filing complaints related to gender-based discrimination and sexual harassment in the workplace, and ensure that victims have effective access to such means of redress;**
- (f) Enhance the availability and affordability of childcare facilities to help women exercise their right to work, in order to increase women's access to the labour market;**
- (g) Ensure that the implementation of the framework law regulating the social sector results in the harmonization of pregnancy and maternity protection in the State party, in order to guarantee paid maternity leave for all women;**
- (h) Carry out awareness-raising and education initiatives for both women and men on the sharing of domestic and family responsibilities between women and men and provide incentives for active participation by men in such responsibilities, e.g., by introducing special non-transferable paternity leave.**

### **Disadvantaged groups of women**

37. The Committee expresses concern about the situation of various disadvantaged groups of women, including Roma women, internally displaced women, many of whom continue to live in collective accommodation, so-called minority returnee women, rural women, older women and women with disabilities, who are more vulnerable to poverty and are at risk of intersectional forms of discrimination in terms of education, health care, employment and public and political participation. It regrets the insufficient information provided by the State party in this regard and the limited information provided on the use of temporary special measures.

**38. The Committee calls upon the State party to take effective measures to eliminate discrimination against Roma women, internally displaced women and minority returnee women, rural women, older women and women with disabilities, particularly in the areas of education, health and employment and in political and public life, by developing targeted strategies, including temporary special measures, to increase equality in those areas. The Committee also recommends that the State party increase its cooperation with civil society organizations in this regard and requests that it include detailed information, including disaggregated data and information, on the situation of disadvantaged groups of women in its next periodic report.**

### **Marriage and family relations**

39. The Committee is concerned about the prevalence of the practice of early marriage within Roma communities and about the lack of sustained, systematic and concrete action taken by the State party to address this harmful practice, despite the legal prohibition of such acts.

**40. The Committee recommends that the State party develop comprehensive measures to combat the practice of early marriage and to raise awareness among Roma communities about the legal prohibition of child marriage, as well as its negative effects on girls' health and their completion of education, notably by establishing cooperation with community leaders.**

### **Committee on the Rights of the Child**

CRC/C/BIH/CO/2-4, 61<sup>st</sup> Session

29 November 2012



## **II. Follow-up measures undertaken and progress achieved by the State party**

4. The Committee welcomes the withdrawal of the State party's reservation to article 9 of the Convention. It also notes as positive the adoption of the following legislative measures:

- (a) The Law on Birth Registration in the Federation of Bosnia and Herzegovina, in July 2011;
- (d) Legislation on birth registration in the Republika Srpska, in October 2009;

5. The Committee also welcomes the accession to or ratification of:

- (d) The Council of Europe Convention on Action against Trafficking in Human Beings, in January 2008;

6. The Committee also welcomes the adoption of the following institutional and policy measures:

- (d) The National Action Plan to Combat Trafficking in Human Beings (2008–2012);
- (f) The National Strategy to Combat Violence against Children (2011–2014);
- (g) The Revised Action Plan on the Educational Needs of Roma of 2010.

## **III. Main areas of concern and recommendations**

### **Coordination**

13. The Committee notes that, while the State party's Ministry for Human Rights and Refugees is mandated to coordinate the implementation of the Convention, the responsibility for child rights in the State party is split among a very large number of entity-, district- and canton-level line ministries. The Committee is concerned at the absence of effective coordination for the consistent implementation of the Convention throughout the State party. The Committee also regrets that despite its previous recommendation to strengthen the State party's Council for Children (CRC/C/15/Add.260, para. 13), the mandate of the Council for Children was not renewed in 2007 due to a lack of agreement on the election procedures of the Council's members. The Committee is concerned that this constitutes a significant obstacle to the development, coordination and realization of coherent State policies for the implementation of the Convention.

14. **The Committee urges the State party to take the necessary measures:**

- (a) To ensure respect for children's rights across the State party at all levels of government: national, entity, district and canton;**
- (b) To reinforce the coordination role of the Ministry for Human Rights and Refugees by ensuring that the Ministry has sufficient authority and adequate human, technical and financial resources to effectively coordinate actions for children's rights across different sectors and from the national to the entity, district and canton levels;**
- (c) To strengthen the role and leadership of the Ministry for Human Rights and Refugees in advocacy for child rights, policy formulation, monitoring of implementation of programmes and mobilization of resources for children;**
- (d) To consider reinstating the Council for Children to assist in the above;**
- (e) To rationalize the work of the various child rights bodies and provide them with the necessary human and financial resources to carry out their role with efficiency.**

### **Non-discrimination**

29. The Committee welcomes the adoption of the Law on Prohibition of Discrimination, in July 2009, and the Revised Action Plan on the Educational Needs of Roma, in July of 2010. However, the Committee notes with concern that racial discrimination remains serious and widespread in the State party. It is particularly concerned that:

- (a) The harmonization of the State party's legislation with the anti-discrimination law is inadequate, resulting in its limited practical implementation, as reflected by the few complaints of discrimination registered and the low level of public awareness on the legal remedies available in cases of discrimination;
- (b) Discrimination in the context of education continues to be prevalent, including with regard to the continued "two-schools-under-one-roof" and mono-ethnic schools policy in the State party, where classes are separated on the basis of ethnicity, resulting in children attending only schools for their ethnic group;
- (c) The State party's Action Plan on the Educational Needs of Roma and Members of Other National Minorities was not effectively implemented as a consequence of budget allocation limitations and inadequate clarity regarding the division of responsibilities among stakeholders; and that Roma children continue to be frequently subjected to widespread and grave discrimination resulting in, inter alia, serious violations of their rights to education and health care;
- (d) The State party has failed to respond to the previous recommendations (CRC/C/15/Add.260, paras. 26 and 27) of the Committee on introducing a code of conduct regarding discrimination to prohibit stereotyped and stigmatizing portrayals of minority and/or ethnic groups in the media and to take measures to follow up on the Declaration and Program of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

**30. In accordance with article 2 of the Convention, the Committee urges the State party:**

- (a) To take further legislative measures to systematically harmonize its legislation with the requirements of its 2009 anti-discrimination law, and raise public awareness on the legal remedies available in cases of discrimination, including by making available information on how to make complaints to the State party's Institution of the Human Rights Ombudsman in Bosnia and Herzegovina, especially in education and health-care institutions, where children frequently encounter discrimination;**
- (b) To immediately end the segregation of children in schools on the basis of ethnicity by discontinuing the policy of "two schools under one roof" and mono-ethnic schools, and in doing so ensure adequate support measures and properly trained education personnel to facilitate ethnic diversity and integration in schools;**
- (c) To take active measures to ensure the implementation of its Revised Action Plan on the Educational Needs of Roma, including by allocating adequate human, technical and financial resources and establishing clear responsibility among relevant State entities and/or stakeholders;**
- (d) To, in line with the Committee's previous recommendation (CRC/C/15/Add.260, para. 26), develop, in consultation with the media, a code of conduct with a view to eliminating the stereotyping and stigmatization of minority and/or ethnic groups in the media;**
- (e) To provide specific information in its next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child implemented by the State party to follow up on the Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account general comment No. 1 (CRC/GC/2001/1, 2001).**

**Best interests of the child**

31. While noting that the principle of the best interests of the child is taken into account in most of the State party's legislation, the Committee is concerned that the principle is not adequately applied in situations concerning children deprived of a family environment. In particular, the Committee is concerned that the best interests of the child are not the primary

consideration when regulating and implementing the placement of children deprived of a family environment into different forms of alternative care, including institutions.

**32. The Committee urges the State party to strengthen its efforts to ensure that the principle of the best interests of the child is widely known and appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings and all policies, programmes and projects relevant to and with an impact on children, particularly those deprived of a family environment. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance for determining the best interests of the child in every area, and to disseminate them to public and private social welfare institutions, courts of law, administrative authorities and legislative bodies. The legal reasoning of all judicial and administrative judgments and decisions should also be based on this principle. The Committee stresses the need for the State party, in doing so, to pay particular attention to ensuring primacy of the principle of the best interests of the child, particularly with respect to ensuring full regard for the principle when regulating and implementing the placement into different forms of alternative care, including institutions.**

### **Birth registration**

35. The Committee welcomes the State party's endorsement of the Zagreb Declaration, which is aimed at addressing civil documentation and registration gaps in South-Eastern Europe, in October 2011. The Committee also notes as positive the adoption of legislation on birth registration in Republika Srpska in October 2009 and in the Federation of Bosnia and Herzegovina in July 2011. However, the Committee remains concerned that the State party has not yet established a free and universal birth registration system, which results in difficulties in birth registration for children born outside of hospitals, children living in remote areas, refugees and children belonging to minority groups. The Committee is particularly concerned about:

- (a) Inadequate accessibility of registration offices in rural and outlying areas;
- (b) Birth registration not being free of charge for births occurring outside hospitals;
- (c) Difficulties encountered by families belonging to ethnic minorities, particularly those of Roma ethnicity, due to the lack of translation and interpretation services;
- (d) Birth registration being subject to the immigration status of the child's parents, resulting in particular disadvantage to the Roma community, which has markedly lower rates of parents possessing the necessary documentation;
- (e) The lack of public awareness of the importance of birth registration, particularly among the Roma population.

**36. The Committee urges the State party to take immediate and concrete steps to implement the Zagreb Declaration, including by reviewing its birth registration process in detail to ensure that all children born in its territory are registered at birth, and that no child is disadvantaged due to procedural barriers to registration. In this context, the Committee recommends that the State party:**

- (a) Consider increasing the number of birth registration offices in rural and outlying areas;**
- (b) Issue birth certificates free of charge;**
- (c) Provide special support to facilitate birth registration for illiterate persons or persons without documentation;**
- (d) Issue birth certificates for all children born in its territory, regardless of the immigration status of the child or his/her parents;**
- (e) Raise awareness, especially among the Roma population, of the importance of birth registration.**

### **Sexual exploitation and abuse**

43. The Committee welcomes the State party's adoption of the Action Plan for improving the system of protection against child pornography and other forms of sexual exploitation and sexual abuse of children through information and communication technologies in Bosnia and Herzegovina (2010–2012). However, the Committee is concerned about:

- (a) The lack of a framework for cross-border cooperation for the prosecution of perpetrators, as well as assistance for and protection of victims and witnesses;
- (b) The type and length of sentences for sexual exploitation and sexual abuse in the Criminal Codes at both the State and entity levels frequently not being commensurate;
- (c) Inadequate financial resources for implementing the Action Plan.

44. **The Committee recommends that the State party:**

- (a) Develop appropriate legislation and legal frameworks to ensure the effective pursuit of perpetrators as well as assistance for and protection of victims and witnesses;**
- (b) Ensure commensurate sanctions for perpetrators of child sexual exploitation and abuse offences within its jurisdiction and throughout its territory;**
- (c) Ensure the provision of adequate human, technical and financial resources for the implementation of the Action Plan for improving the system of protection against child pornography and other forms of sexual exploitation and sexual abuse of children through information and communication technologies in Bosnia and Herzegovina (2010-2012).**

### **Freedom of the child from all forms of violence**

45. **Recalling the recommendations of the United Nations study on violence against children (A/61/299), the Committee recommends that the State party prioritize the elimination of all forms of violence against children. The Committee further recommends that the State party take into account general comment No. 13 (CRC/C/GC/13, 2011), and in particular:**

- (a) Develop a comprehensive national strategy to prevent and address all forms of violence against children;**
- (b) Adopt a national coordinating framework to address all forms of violence against children;**
- (c) Pay particular attention to the gender dimension of violence;**
- (d) Cooperate with the Special Representative of the Secretary-General on violence against children and other relevant United Nations institutions.**

### **Education, including vocational training and guidance**

62. The Committee welcomes the State party's adoption of the Framework Law on Preschool Education. It also notes as positive the State party's adoption of a strategy for developing preschool education (2007–2013) in 2007, and the primary school enrolment of 98 per cent, with a nine-year curriculum for basic education being widely implemented. However, the Committee remains concerned at:

- (a) Recent education reforms reducing expenditures and closing satellite schools in remote areas, impeding children's access to education in remote areas;
- (b) The lack of free textbooks and free transportation to and from school in the majority of primary and secondary schools, exacerbating the difficulties in access to education for children from low-income families and contributing to the low rate (31 per cent) of secondary education completion;
- (c) Conditions in primary schools frequently failing to meet adequate hygiene, equipment and didactic standards;

(d) Inadequate language lessons and support, school readiness programmes and support programmes addressing the educational needs of Roma children and other children of ethnic minorities;

(e) The rate of children attending preschool education remaining at a low of 9 per cent;

(f) The large differences in the quality of education between urban and rural areas and the inadequacy of teacher training and the resulting limited quality of the education in the State party's schools.

**63. The Committee recommends that the State party:**

**(a) Take into full account article 28, paragraph 1 (e), of the Convention in its ongoing education reforms involving the closing of satellite schools in rural areas and its implication for child access to education in these areas;**

**(b) In accordance with article 28, paragraph 1 (b), of the Convention, take measures to make secondary education available and accessible to every child, such as the introduction of free education and the provision of financial assistance in case of need;**

**(c) Ensure the allocation of adequate resources to guarantee that its schools have adequate standards of hygiene, equipment and didactic material;**

**(d) Adopt specific measures to combat discrimination against Roma children in access to education, including through the provision of additional language lessons and support, school readiness programmes and support programmes to address the educational needs of Roma children and other children in a minority situation, and in doing so ensure that such additional measures are not provided in a manner that exacerbates stigmatization or segregation;**

**(e) Further improve the quality and coverage of its early childhood care and education, including by prioritizing the provision of such care to all children between the age of 0 and 3 years and with a view to ensuring that such care is provided in a holistic manner that includes overall child development and the strengthening of parental capacity;**

**(f) Specifically allocate human, technical and financial resources for improving the quality of education in rural areas, and revise and strengthen its national teacher training and qualification process with a view to improving the overall quality of education.**

#### **Migrant, asylum-seeking and refugee children**

66. The Committee notes as positive the adoption of the 2010 Revised Strategy for the Implementation of Annex VII of the Dayton Peace Agreement, which sets out measures for strengthening access to rights for internally displaced persons (IDPs) and returnee children. However, the Committee remains concerned that:

(a) Inadequacies in living conditions persist for Roma and minority returnee children, and that there are internally displaced children living in collective centres that continue to exist even though the conflict ended 16 years ago;

(b) Asylum-seeking, internally displaced and returnee children are not guaranteed access to adequate health care, with entitlements only to "basic" health care, which is not defined by law and frequently insufficient; and that many rural health-care facilities have been destroyed or are unequipped, resulting in rural returnees having no access to health care locally;

(c) Minority returnees, including those of Roma ethnicity, and IDPs frequently experience difficulties in covering the costs relating to education, such as school supplies and travel costs;

(d) The State party does not provide legal aid for IDPs, minority returnees, refugees, asylum seekers and people at risk of statelessness.

**67. The Committee recommends that the State party:**

- (a) Fully implement the measures set out in the Revised Strategy for the Implementation of Annex VII of the Dayton Peace Agreement and the Action Plan on Roma Housing so that internally displaced, returnee and Roma children can enjoy an adequate standard of living;**
- (b) Develop and implement a coordinated plan of action, drawing upon all available resources, both national and international, to fully implement the health-care measures set out in the Revised Strategy for the Implementation of Annex VII of the Dayton Peace Agreement, to ensure that internally displaced and returnee children can enjoy the highest attainable standard of health care;**
- (c) Provide financial support to facilitate access to education for minority returnee, internally displaced and Roma children, including taking measures to ensure that all children have unimpeded access to education without fear of discrimination;**
- (d) Consider the expeditious adoption of its pending law on the right to legal aid free of charge, aimed at providing free legal aid for those unable to afford it, including persons in need of international protection, stateless persons, victims of trafficking and unaccompanied minors.**

#### **Sale, trafficking and abduction**

72. The Committee welcomes the adoption by the State party of the National Action to Combat Trafficking in Human Beings (2008-2012). However, it remains concerned that:

- (a) There are significant discrepancies between the number of trafficking-related incidents reported by the police and the number of investigations ordered by the prosecutors as a result thereof;**
- (b) Courts at all levels have not issued commensurate sanctions for trafficking-related cases, including in those involving child victims;**
- (c) There have been cases where the testimony of a child victim was deemed inadequate in the establishment of the guilt of the perpetrator;**
- (d) There have been reports of girls, particularly those of Roma ethnicity, being trafficked for forced marriage and/or involuntary domestic servitude.**

73. **The Committee recommends that the State party:**

- (a) Take measures, including by considering the establishment of an independent third party monitor, to ensure that all cases of trafficking are subject to due and proper investigations;**
- (b) Ensure commensurate sanctions for perpetrators of trafficking-related cases, particularly those involving child victims;**
- (c) Ensure that the age of a victim never constitutes the sole grounds for invalidating his/her testimony;**
- (d) Allocate specific human, technical and financial resources for investigating trafficking for forced marriage and/or involuntary servitude.**

#### **Human Rights Committee**

CCPR/C/BIH/CO/2, 106<sup>th</sup> Session

13 November 2012

#### **B. Positive aspects**

3. The Committee welcomes the following legislative and other steps taken by the State party:

- (d) The adoption of a revised strategy for the implementation of annex 7 (the Framework Programme for the Return of Refugees and Internally Displaced Persons) in 2010.**

### **C. Principal matters of concern and recommendations**

14. While appreciating the efforts made by the State party to protect the right of persons against refoulement, the Committee is concerned that persons subject to removal on national security grounds are subjected to indefinite detention based solely on the discretionary decisions by the security organs of the State. The Committee is also concerned that the appeals submitted to courts by asylum seekers that are ordered by administrative authorities have no suspensive effect and that information on countries of origin provided by relevant international organizations and agencies is not always sufficiently taken into account (arts. 7, 9 and 10).

**The State party should revise the law that provides for the detention of persons who are subject to removal from the State party on grounds of national security to ensure that full legal security is guaranteed and that such persons are not held indefinitely. In this regard, the State party should also consider introducing other methods of surveillance in place of indefinite detention. The State party should also ensure that, in all cases involving refoulement, all appeals to courts have suspensive effect and all relevant information on the situation in the country of origin is duly taken into account by competent administrative and judicial organs.**

16. The Committee recalls its previous observations (CCPR/C/BIH/CO/1, paras. 20 and 21) and remains concerned that a considerable number of refugees, returnees and internally displaced persons have still not been resettled and continue to reside in collective centres (art. 12)

**The Committee reiterates its previous recommendations (CCPR/C/BIH/CO/1, paras. 20 and 21) and recommends that the State party should expedite efforts for the resettlement and return of refugees, returnees and internally displaced persons in order to complete the phasing-out of collective centres. In this regard, the State party should continue to take practical measures aimed at providing adequate alternative housing to the residents of collective centres and the creation of the necessary conditions for sustainable returns and resettlement.**

17. The Committee recalls its previous observations (CCPR/C/BIH/CO/1, para. 22) and notes with concern the challenges in the registration of births and the provision of birth certificates, particularly for the Roma, which affect their access to health insurance, social security, education and other basic rights (arts. 16 and 24).

**The Committee reiterates its previous concluding observations (CCPR/C/BIH/CO/1, para. 22) and recommends that the State party should increase its efforts to improve birth registration and the provision of birth certificates, particularly among the Roma, through appropriate interventions such as awareness-raising programmes aimed at changing mindsets regarding the need to register births or obtain birth certificates.**

20. While welcoming the State party's efforts to prosecute acts of hate speech and the perpetration of racist attacks, particularly against the Roma, the Committee is concerned at continued reports of racist attacks. The Committee is also concerned at the lack of a specific law that prohibits the establishment of associations that instigate hatred and racist propaganda (arts. 2, 19, 20, 22 and 27).

**The State party should strengthen its efforts to combat hate speech and racist attacks, particularly against the Roma, by, inter alia, instituting awareness-raising campaigns aimed at promoting respect for human rights and tolerance for diversity. The State**

**party should also strengthen its efforts to ensure that alleged perpetrators of racist attacks are thoroughly investigated and prosecuted and, if convicted, punished with appropriate sanctions, and that the victims are adequately compensated. Furthermore, the State party should enact a law that prohibits the formation of associations that are founded on the promotion and dissemination of, inter alia, hate speech and racist propaganda**

21. The Committee recalls its previous recommendations (CCPR/C/BIH/CO/1, para. 24) and reiterates its concern regarding the de facto discrimination of the Roma. The Committee is particularly concerned that Roma children continue to be subjected to the segregated system of mono-ethnic schools, and that they lack opportunities to receive instruction in their languages. The Committee is also concerned at the poor indicators of the Roma in areas of, inter alia, access to housing, health care, employment and participation in the conduct of public affairs (arts. 26 and 27).

**The Committee reiterates its previous concluding observations (CCPR/C/BIH/CO/1, para. 24) that the State party should take necessary measures to give effect to the linguistic and education rights of the Roma as protected under the Law on the Protection of Rights of Persons Belonging to National Minorities. The State party should strengthen efforts to ensure that Roma children can receive education instruction in their mother tongue. The State party should also take practical measures to improve the rights of the Roma with regard to access to housing, health care, employment and their participation in the conduct of public affairs.**

### **Committee on Migrant Workers**

CMW/C/BIH/CO/2, 17<sup>th</sup> Session

26 September 2012

#### **B. Positive aspects**

4. The Committee notes with appreciation the adoption of the following legislative measures:  
(a) The amendments of Articles 186 and 189 of the Criminal Code on the definition of human trafficking and smuggling of migrants, in 2010; and

5. The Committee welcomes the adoption of the new Strategy on Migration and Asylum and the related Action Plan for the period 2012-2015, in June 2012.

#### **C. Principal subjects of concern, suggestions and recommendations**

13. The Committee notes that, in April 2012, a new draft law amending the Law on Movement and Stay of Aliens and Asylum was submitted by the Council of Ministers to Parliament for adoption.

**14. The Committee urges the State party to ensure that the new draft law amending the Law on Movement and Stay of Aliens and Asylum fully complies with the provisions of the Convention and to adopt it without delay.**

#### **Non-discrimination**

19. The Committee notes with concern that the Law on Prohibition of Discrimination adopted in 2009 has not been fully harmonized with the relevant laws and provisions at entity, district and municipal levels, as required by article 24 of the Law, which may adversely affect the equal enjoyment by migrant workers and members of their families of their rights under the



Convention. The Committee also reiterates its concern about the insufficient information on the implementation of the principle of non-discrimination, as enshrined in the existing legal framework (CMW/C/BIH/CO/1, para. 19).

**20. The Committee recommends that the State party accomplish the harmonization of its anti-discrimination legal framework within a clearly defined time frame, and to include in its next periodic report detailed information on the application of the Law on Prohibition of Discrimination in relation to migrant workers.**

25. The Committee is concerned about the lack of procedural safeguards concerning decisions on detention (“placement under supervision”) under the Law on Movement and Stay of Aliens and Asylum, in particular:

(a) The fact that the Law on Movement and Stay of Aliens and Asylum provides for an extension of the length of detention beyond 180 days in exceptional cases, and the absence of a time limit in the Law for administrative detention of migrant workers;

(b) The possibility of issuing detention orders placing migrant workers under supervision during appellate proceedings against decisions rejecting an application for a residence permit;

(c) The fact that residence permits are not extended until a final decision on the legality of the stay of a migrant worker has been taken, which places the migrant worker concerned in a situation of irregularity and vulnerability;

(d) The limited accessibility of information and legal aid to appeal detention orders against migrant workers or members of their families; and

(e) Reports that, in practice, migrant workers apprehended without a valid permission to enter, to stay and to engage in a remunerated activity in the State party are often detained, contrary to information provided by the delegation during the dialogue.

**26. In accordance with article 16 of the Convention, the Committee recommends that the State party:**

**(a) Amend the Law on Movement and Stay of Aliens and Asylum to define the maximum length of administrative detention that is not derogable, with a view to preventing prolonged or indefinite detention;**

**(b) Consider extending residence permits for the period during which an appeal against a decision of the Service for Foreigners’ Affairs on the legality of a migrant’s stay is pending before the competent administrative or judicial authorities;**

**(c) Ensure that detention orders against migrant workers, including those in an irregular situation, are only taken as a last resort, on a case-by-case basis, and strictly in compliance with applicable international standards;**

**(d) Ensure that migrant workers have access to legal aid and information on available remedies to appeal decisions ordering their detention, and provide information thereon in its next periodic report, including examples of cases where migrant workers in an irregular situation have received legal aid; and**

**(e) Ensure timely access by detained migrant workers to effective legal remedies.**

27. The Committee reiterates its concern at information about prolonged detention of migrant workers whose citizenship has been revoked (CMW/C/BIH/CO/1, para. 21) and about their expulsion to countries where they may face a serious risk of being subjected to ill-treatment. It further notes with concern the lack of information received by the Committee on their access to legal remedies.

**28. The Committee recommends that the State party ensure that migrant workers who have been deprived of their citizenship have access to effective legal remedies to submit the reasons why they should not be expelled to a third country, in particular when they would face a risk of ill-treatment upon return to that country.**

29. The Committee is concerned that children of migrant workers are being placed in the Lukavica Immigration Centre and that this facility is not adapted to their needs.

**30. The Committee recommends that the State party give priority to alternatives to the placement of children of detained migrant workers in immigration centres and ensure that custodial measures are only taken as a last resort, when non-custodial measures are unavailable to uphold the right to family life.**

31. While noting that, under the Law on Movement and Stay of Aliens and Asylum, an appeal automatically stays a decision on expulsion, the Committee is concerned about the short time-limit for migrant workers to lodge appeals against such decisions, particularly when they are based on article 88 of the Law, in which case they must be appealed within 24 hours.

**32. The Committee recommends that the State party uphold all the procedural safeguards contained in article 22 of the Convention and consider extending the time limit for lodging appeals against decisions on expulsion.**

33. The Committee is concerned about the lack of measures taken to protect migrant domestic workers, including those in an irregular situation, particularly women, who are regularly exposed to exploitation and abuse.

**34. In line with article 25 of the Convention, the Committee recommends that the State party:**

**(a) Ensure that labour inspections monitor the working conditions of migrant domestic workers;**

**(b) Increase fines and other penalties for employers exploiting migrant domestic workers or subjecting them to forced labour and abuse, especially in the informal economy; and**

**(c) Ensure that migrant domestic workers have access to effective mechanisms for bringing complaints against employers, and prosecute and punish those responsible for abuses against them, in line with the Committee's general comment No. 1 (2010) on migrant domestic workers.**

35. The Committee is concerned that children of migrant workers, including Roma children and children of migrant workers in an irregular situation, are often not registered at birth and issued personal identity documents, which impedes their access to health care, social benefits and education.

**36. The Committee recommends that the State party:**

**(a) Intensify its efforts to ensure that all children of migrant workers are registered at birth and issued personal identity documents;**

**(b) Provide training to the relevant law enforcement officers on the systematic birth registration of all children of migrant workers; and**

**(c) Raise awareness on the importance of birth registration among migrant workers and members of their families, especially those in an irregular situation.**

37. The Committee is concerned about the lack of information on access to education for children of migrant workers in the State party. It is further concerned by the exclusion of children of migrant workers from certain mono-ethnic schools based on their ethnicity.

**38. The Committee recommends that the State party:**

**(a) Ensure that all children of migrant workers have access to primary and secondary education on the basis of equality of treatment with nationals of the State party;**

- (b) Take measures to eliminate discrimination against children of migrant workers in the educational system; and**
- (c) Include in its next periodic report information on the measures taken in that regard and on the enrolment rates of children of migrant workers, including those in an irregular situation.**

41. While noting the State party's efforts to negotiate bilateral agreements with neighbouring countries to improve the protection of migrant workers and seasonal workers, the Committee notes with concern that no data is available on the number of seasonal workers employed in the State party and that seasonal workers continue to face violations of fundamental labour rights, as acknowledged by the State party. The Committee therefore reiterates its concern that the absence of legislation protecting seasonal workers employed in the State party makes them particularly vulnerable to unjust and exploitative conditions of work (CMW/C/BIH/CO/1, para. 33).

**42. The Committee requests the State party to:**

- (a) Collect data on the number of seasonal workers in the State party;**
- (b) Expedite the adoption of the amendment of article 84 of the Law on Movement and Stay of Aliens and Asylum, establishing a system of registration of seasonal workers;**
- (c) Monitor employment practices, in particular in the construction industry, agriculture and domestic work, as well as the working conditions of seasonal workers employed in the State party, including by strengthening labour inspections;**
- (d) Ensure that seasonal workers enjoy the rights protected in part IV in the Convention that can be applied to them by reason of their presence and work in the State party, taking into account that they do not have their habitual residence in the State party; and**
- (e) Pursue its efforts to sign further bilateral agreements.**

43. While noting the continued work of the Coordination Body established in 2009 to monitor the implementation of the new Strategy on Migration and Asylum and the related Action Plan for the period 2012–2015, the Committee reiterates its concern that the lack of coordination between the institutions and services that deal with the various aspects of migration policy at State and Entity levels negatively impact on the implementation by the State party of certain rights protected under the Convention (CMW/C/BIH/CO/1, para. 35).

**44. The Committee recommends that the State intensify its efforts to improve the coordination between ministries and agencies at State and Entity levels for the effective implementation of the rights protected under the Convention as well as the new migration strategy for the period 2012–2015.**

45. The Committee regrets the lack of information on the support provided by the State party to Bosnian returnees and on measures to facilitate their durable economic, social and cultural reintegration.

**46. The Committee recommends that the State party take measures to assist in the durable reintegration of returning migrant workers into the economic, social and cultural fabric of the State party, and to inform the Committee thereof in its next periodic report.**

47. While acknowledging the State party's efforts to combat trafficking in persons and commercial sexual exploitation of migrant workers, the Committee is concerned that the Criminal Codes of both Entities and of Brčko District have not yet been harmonized with the amended provisions of the State Criminal Code, including the new definition of trafficking in

article 186 of the State Criminal Code. It is particularly concerned about the high number of migrant children who are victims of trafficking and about remaining gaps in the enforcement of anti-trafficking laws, in the light of the absence of convictions and prosecutions at State level in 2011.

**48. The Committee recommends that the State party:**

- (a) Harmonize the Criminal Codes of both the Entities and the Brčko District with relevant State legislation;**
- (b) Criminalize the sale and prostitution of children, including migrant children, in line with the recommendations of the Committee on the Rights of the Child;**
- (c) Increase its efforts to enforce anti-trafficking laws and train police officers, judges, prosecutors and social service providers on the existing legal framework;**
- (d) Allocate adequate resources to implementing strategies to combat trafficking;**
- (e) Develop effective mechanisms to identify victims of trafficking, especially migrant women and children; and**
- (f) Provide adequate assistance, protection and rehabilitation to all victims of trafficking in human beings, including migrant workers, by funding non-governmental organizations assisting those victims, and ensure that victims of trafficking are informed of their rights under the Convention.**

### **Committee against Torture**

CAT/C/BIH/CO/2-5, 45<sup>th</sup> Session

20 January 2011

#### **B. Positive aspects**

5. The Committee welcomes that since the consideration of the initial periodic report, the State party has ratified the following international and regional instruments:

(c) Council of Europe Convention on Action against Trafficking in Human Beings on 11 January 2008.

6. The Committee notes the State party's ongoing efforts to revise its legislation in areas of relevance to the Conventions, including:

(a) The adoption of the Law on Movement and Stay of Aliens and Asylum in 2008;

7. The Committee also welcomes the efforts being made by the State party to amend its policies and procedures in order to ensure greater protection of human rights and give effect to the Convention, including:

(b) The adoption of the revised Strategy for the Implementation of Annex 7 of the Dayton Peace Agreement in 2010 aimed at improving the living standards of the remaining internally displaced persons and returnees in Bosnia and Herzegovina;

(c) The adoption of the third National Action Plan to Combat Human Trafficking and Illegal Migration in Bosnia and Herzegovina for the period 2008-2012;

(d) The adoption of the National Strategy to Combat Violence against Children for the period 2007-2010;

(e) The adoption of the National Strategy for Preventing and Combating Domestic Violence in Bosnia and Herzegovina for the period 2008–2010;

#### **C. Principal subjects of concern and recommendations**

### **Violence against women and children, including domestic violence**

13. The Committee, while noting legal and administrative measures undertaken by the State party to combat gender-based violence, including the resolution on the fight against violence against women in the family adopted by the Parliamentary Assembly, expresses its concern about the persistence of violence against women and children, including domestic violence. While appreciating the State party's intention to amend the elements of crimes of rape by abolishing the requirements of both penetration and active resistance by the victim, it is concerned at insufficient information on the entity laws prohibiting and criminalizing such violence and at the low numbers of investigations and prosecutions of cases of domestic violence. The Committee is concerned at reports about the inadequate provision of protection measures and rehabilitation programmes for victims (arts. 1, 2, 4, 11, 12 and 16).

**The Committee recommends that the State party enhance its efforts to prevent, prosecute and punish all forms of violence against women and children, including domestic violence, and ensure effective and full implementation of the existing laws and the national strategies adopted to that end, including the Strategy for Preventing and Combating Domestic Violence and the National Strategy to Combat Violence against Children. The State party should provide support for victims through the establishment of additional shelters, the provision of free counselling services and such other measures as may be necessary for the protection of victims. Furthermore, the State party is encouraged to conduct broader awareness-raising campaigns and training on domestic violence for law enforcement personnel, judges, lawyers and social workers who are in direct contact with the victims as well as for the public at large.**

### **Refolement**

14. Notwithstanding article 91 of the Law on Movement and Stay of Aliens and Asylum with regard to the principle of prohibition of return (CAT/C/BIH/2-5, para. 76), the Committee remains concerned at reports that the competent authorities of Bosnia and Herzegovina have failed to properly assess the risk of refolement faced by those who apply for international protection and that persons considered to be a threat to national security are subject to being expelled or returned to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture. It is also concerned at the very low rate of successful asylum applications (art. 3).

#### **The State party should:**

- (a) Ensure (i) procedural safeguards against refolement and (ii) effective remedies with respect to refolement claims in removal proceedings, including review by an independent judicial body concerning rejections;**
- (b) Ensure that a thorough review of each individual case is provided for asylum claims and that persons whose applications for asylum have been rejected can lodge an effective appeal with the effect of suspending the execution of the decision on the expulsion or deportation;**
- (c) Revise its current procedures and practices in the area of expulsion, refolement and extradition and align its interpretation of key concepts of domestic asylum law fully with international refugee law and human rights standards;**
- (d) Continue to follow up on and keep the Committee informed of the case of the citizen of Bosnia and Herzegovina who remains in detention in Guantanamo Bay military base;**
- (e) Ensure that national security considerations do not undermine the principle of non-refoulement and that the State party fulfil its obligations to respect the principle of absolute prohibition of torture in all circumstances, in accordance with article 3 of the Convention.**

15. With regard to individuals whose citizenship has been revoked by the State Commission for Revision of Decisions on the Naturalization of Foreign Nationals and who consequently are detained in the deportation centre, the Committee takes note of the State party's report claiming that legal rights to judicial protection had been provided for them. However, noting the concerns expressed by several international bodies, the Committee remains concerned that reported cases on the prolonged detention in inadequate conditions of those individuals and the denial of their right to effectively challenge the decisions to revoke their citizenship, detain and deport them have not been fully clarified (arts. 3 and 16).

**The State party should revise its practice regarding the prolonged detention of those individuals and fully respect their right to effectively challenge the decisions to revoke their citizenship, detain and deport them. Furthermore, the State party should guarantee key principles related to a fair and efficient asylum procedure, including adequate translation and interpretation services, free legal aid and access of applicants to their case file.**

#### **Return of refugees and internally displaced persons**

16. In addition to the problems recognized by the State party, inter alia the security concerns for the minority returnees and the lack of investigation and prosecution of crimes and acts of violence against refugees and internally displaced persons (CAT/C/BIH/2-5, para. 142), the Committee expresses its concern at persistent reports claiming that existing programmes of property restitution have failed to take into account gender and the psychological needs of the victims of sexual violence. The Committee is also concerned at their lack of economic opportunities and the poor living conditions (arts. 3, 7 and 12).

**The Committee recommends that the State party intensify its efforts to facilitate returns of refugees and displaced persons, including by constructing housing and the accompanying infrastructure and addressing the specific situation of those who would otherwise have difficulties in benefiting from the reconstruction assistance. The State party should take all necessary measures to effectively tackle the identified obstacles and ensure that all crimes and acts of violence against refugees and internally displaced persons are properly and promptly investigated and prosecuted. In addition, it is necessary to fully implement the recommendations made by the Representative of the Secretary-General on the human rights of internally displaced persons in the report on his mission to Bosnia and Herzegovina (E/CN.4/2006/71/Add.4).**

#### **Trafficking in persons**

23. The Committee takes note of several measures taken by the State party, including the adoption of the State Action Plan to combat human trafficking and illegal migration (2008-2010), the establishment of a central database on identified victims of trafficking and the issuance by the Ministry of Security of regulations on the protection for trafficking victims. However, the Committee remains concerned at the absence of a provision in the Criminal Code in relation to the legal penalties for persons who have committed or been involved in the crime of trafficking, and at the lenient sentences imposed in cases of trafficking. The Committee also expresses concern over the slowness and the complexity of redress procedures for victims of trafficking (arts. 2, 4 and 16).

**The State party should strengthen its efforts to combat trafficking in persons, especially in women and children, in particular by:**

**(a) Ensuring that trafficking is defined as a crime in all parts of the State party in accordance with international standards, and that these offences are punishable by appropriate penalties which take into account their grave nature;**

- (b) Improving the identification of trafficking victims and providing them with appropriate rehabilitation programmes, genuine access to health care and counselling;**
- (c) Providing training to law enforcement personnel and other relevant groups, and raising awareness of the problem among the public.**

#### **Data collection**

26. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and prison personnel, war-time rape and sexual violence, extrajudicial killings, enforced disappearances, trafficking, domestic and sexual violence and means of redress for victims.

**The State party should compile statistical data, disaggregated by crime, ethnicity, age and sex, relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and prison personnel, war-time rape and sexual violence, extrajudicial killings, enforced disappearances, trafficking and domestic and sexual violence, and on means of redress, including compensation and rehabilitation, provided to the victims.**

#### **Committee on the Rights of the Child**

CRC/C/OPAC/BIH/CO/1, 55<sup>th</sup> Session

26 October 2010

#### **Measures adopted to protect the rights of child victims**

17. While noting the draft law on the rights of victims of torture and civil victims of war, the Committee is concerned that civilian victims, including children, may be discriminated in relation to personal disability benefits compared to disabled war veterans under the State party's current legislation on the regulation of social benefits.

18. The Committee recommends that the State party adopt the Law on the Rights of Victims of Torture and Civil Victims of War without delay and that it ensures that child victims of armed conflict or its consequences are not discriminated against, including in the distribution of personal disability benefits in order to ensure their full physical and psychological recovery and their social reintegration.

#### **Committee on the Rights of the Child**

CRC/C/OPSC/BIH/CO/1, 55<sup>th</sup> Session

25 October 2010

#### **A. Positive aspects**

4. The Committee welcomes various measures in areas relevant to the implementation of the Optional Protocol, in particular:

(b) The adoption of the third National Action Plan to Combat Human Trafficking and Illegal Migration in Bosnia and Herzegovina 2008-2012;

(c) The adoption of the Action Plan for the Improvement of Protection System in the area of Child Pornography and other forms of Sexual Exploitation and Abuse of Children through Internet and Communications Technologies in Bosnia and Herzegovina 2010-2012; and

(d) The adoption of the National Strategy to Combat Violence against Children 2007-2010.

## **II. Data**

6. The Committee notes that the Ministry of Human Rights and Refugees and the State Coordinator for the prevention of trafficking in human beings and illegal immigration collect some data on child victims of trafficking in human beings, and that the Ministry plans to establish a database to monitor the implementation of the Convention and its Optional Protocols. The Committee nevertheless remains concerned that data is not systematically collected on all crimes covered under the Optional Protocol in both Entities of the State party as well as in Brčko District and at the limited capacity of the State party, including of the Agency for Statistics of Bosnia and Herzegovina, to collect data on children in general, and on the adoption of children in particular.

**7. The Committee recommends that the State party further develop and centralize its mechanisms for systematic data collection in all areas concerning the implementation of the Optional Protocol, including the establishment of a database within the Ministry of Human Rights and Refugees to monitor implementation of the Convention and the Optional Protocols. The Committee recommends that the State party develop a coordinated system for comprehensive data collection – disaggregated, inter alia, by age, sex, geographical location and socio-economic background – that cover all persons below the age of 18. In addition, the Committee reiterates its recommendation (CRC/C/15/Add.260, para. 19) that the State party carry out a census of the population.**

## **III. General measures of implementation**

### **Legislation**

8. While welcoming efforts to integrate various aspects of the Optional Protocol in the legislation of the State party, the Committee is concerned that they have focused almost exclusively on trafficking of children, neglecting specific offences under the Optional Protocol, namely sale of children, child prostitution and child pornography.

**9. The Committee reminds the State party that its legislation must satisfy its obligation with regard to the sale of children, a concept which is not identical to trafficking in persons, in order to adequately implement the provision contained in the Optional Protocol.**

### **Coordination and evaluation**

12. While noting the establishment of the State Coordinator for the prevention of trafficking in human beings and illegal immigration and the Task Force to coordinate such activities at State and Entity levels, the Committee is concerned at the poor coordination between structures with responsibilities for the implementation of the Optional Protocol at State and Entity levels. The Committee is particularly concerned that the Council for Children of Bosnia and Herzegovina, set up under the Ministry of Human Rights and Refugees as a coordinating and advisory body on children's rights, de facto ceased to exist in 2007. While welcoming the plan of Ministry to establish a Department for Human Rights of Children, the Committee is concerned that no specific State body is currently mandated to coordinate, monitor and evaluate the implementation of children's rights in general.

**13. The Committee recommends that the State party take immediate measures to reactivate the Council for Children of Bosnia and Herzegovina and to establish a Department for Human Rights of Children under the Ministry of Human Rights and Refugees. It further recommends that the State party consider placing the Council for Children or the new Department for Human Rights of Children, or another appropriate body, in charge of the coordination and evaluation of the implementation of the**



**Convention and the two Optional Protocols and provide it with the human, technical and financial resources and authority within the Government to carry out its mandate effectively.**

### **Training**

16. The Committee welcomes specialized trafficking awareness training to members of Bosnian troops prior to their deployment to international peacekeeping missions and that the Optional Protocol is included in training carried out by the Centre for the Training of Judges and Prosecutors and by the State Coordinator for the prevention of trafficking. The Committee is nevertheless concerned that professional groups working with and for children, including members of the police, social workers, judges and prosecutors, members of the State Investigation and Protection Agency (SIPA) do not receive adequate and targeted training specifically on the provisions of the Optional Protocol.

**17. The Committee recommends that the State party allocate adequate and earmarked resources for the development of programmes and training materials on all areas covered by the Optional Protocol and ensure that such training is provided to all relevant professional groups, in particular to immigration and law enforcement officers, including members of SIPA, judges and prosecutors, social workers as well as members of the European Union Force (EUFOR) currently present in Bosnia and Herzegovina.**

### **Measures adopted to prevent offences prohibited under the Optional Protocol**

22. The Committee, while welcoming measures aimed at preventing offences under the Optional Protocol, nevertheless regrets that measures adopted to date have primarily focused on the crime of trafficking, while targeted preventive measures specifically against the sale of children, child prostitution and child pornography remain limited. The Committee is particularly concerned at the increase in domestic trafficking of children which may involve the sale of children and may lead to child prostitution and child pornography. The Committee is furthermore concerned at the weak capacity of the State party to monitor the adoption of children and regrets, in this regard, that the State party has not yet ratified the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption .

**23. The Committee recommends that the State party:**

- (a) Adopt a national plan for the prevention of sale of children, child pornography and child prostitution;**
- (b) Ensure concerted and coordinated activities by law enforcement agencies to prevent and eliminate domestic trafficking in children;**
- (c) Strengthen its mechanisms for monitoring the adoption of children and to ratify the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.**

24. While appreciating the adoption of various plans and strategies to enhance social inclusion of children, especially Roma children, the Committee regrets that Roma children, children in street situations, children with disabilities, children involved in organized begging, and children lacking birth registration remain vulnerable to offences under the Optional Protocol.

**25. The Committee encourages the State party to strengthen systematic prevention measures, targeting children who are especially vulnerable or at risk, in order to protect them from the offences under the Optional Protocol. In addition, the Committee recommends that the State party harmonize State and Entities legislation pertaining to civil registration and take immediate and effective measures to ensure the registration of all children at birth.**

### **Measures adopted to protect the rights and interests of child victims of offences prohibited under the Optional Protocol**

34. The Committee welcomes the adoption of several protection measures, including legislation ensuring access of trafficking victims to the asylum procedure, amendments to the Law on Social Policy which provide that child victims of trafficking be regarded not as “neglected children” but as victims, and the development of guidelines for social workers and police working with child victims. The Committee, however, is concerned that these measures have focused primarily on child victims of trafficking and not on victims of offences under the Optional Protocol. In addition, the Committee is concerned that the procedures for identifying child victims remain weak.

**35. The Committee recommends that the State party strengthen measures to protect the rights and interests of child victims of all offences under the Optional Protocol, including through further development of guidelines on child protection work for social workers and law enforcement officials and ensure training on such guidelines. In particular, procedures should be strengthened to ensure a more proactive approach to identifying child victims vulnerable to the offences under the Optional Protocol, including by sensitizing and developing effective partnerships with parents and families of child victims.**

### **Recovery and reintegration of victims**

38. The Committee welcomes that children victims of offences under the Optional Protocol can benefit from social services and other protection activities undertaken by the section on victims of criminal offences within the Ministry of Human Rights and Refugees, but regrets that such support is primarily reactive and limited in scope due to inadequate resources and does not apply affirmative social action for the benefit of children in vulnerable situations.

**39. The Committee recommends that the State party establish a unit within the Section on Victims of Criminal Offences specifically mandated to provide assistance and support to children victims of offences under the Optional Protocol and provide it with adequate human, technical and financial resource allocations. The Committee further recommends that the State party pay special attention through affirmative social action to the needs of children in vulnerable situations (para. 24).**

### **Committee on the Elimination of Racial Discrimination**

CERD/C/BIH/CO/7-8, 77<sup>th</sup> Session

23 September 2010

8. While welcoming the various measures adopted by the State party to ensure an effective solution to the problems related to the return of refugees and displaced persons, the Committee is concerned that a large number of war displaced persons remain unable to return to their former residences or to effectively integrate into their former or new communities (art. 5(d) (i), (e)).

**The Committee encourages the State party to continue implementing measures to accelerate the sustainable return of refugees and internally displaced persons to their places of origin, *inter alia* by improving their reception conditions. The Committee recommends that further activities be devised to improve the socio-economic integration of those who have returned, and by ensuring equal enjoyment of their social, economic and cultural rights, especially in the field of social protection and pension, health care, equal employment and equal education. Returnees should receive appropriate**

**assistance or compensation, as the case may be, in order to prevent a further worsening of their human rights situation.**

12. While welcoming the steps taken to eliminate discrimination against Roma in the field of housing, employment, education and health care, the Committee continues to be concerned about the persistence of acts of discrimination targeting this marginalized minority group. It notes, in particular, that the Roma children birth registration campaign that should have been concluded by 2008 has not yet achieved its objectives, with serious implications for their eligibility for health-care insurance, social aid and school enrolment (arts. 2, 3 and 5(e)).

**The Committee reiterates its recommendations to the State party, with reference to its general recommendation No. 27 (2000), to continue to endeavour to combat prejudices against Roma, and to ensure that all Roma have access to personal documents that are necessary for them to enjoy their civil and political rights, as well as their economic, social and cultural rights. The Committee recommends also that the State party fully implement its various Roma strategies and action plans in line with the declaration and programme of work of the Decade of Roma Inclusion 2005-2015, with action mainly devoted to ensuring adequate housing, health care, employment, social security and education for Roma people.**

## **I. Special Procedures**

### **Report of the Working Group on Enforced or Involuntary Disappearances**

Addendum: Mission to Bosnia and Herzegovina

Human Rights Council, 16<sup>th</sup> Session

A/HRC/16/48/Add.1, 28 December 2010

71. **In the context currently prevailing in Bosnia and Herzegovina, the Working Group identified a central issue in the claim by all victims and all groups in the society to be treated equally and without any discrimination of any kind. It is recommended that the right to non-discrimination be promoted and protected in any activities, and that all persons in Bosnia and Herzegovina should be treated equally, wherever they live and whatever their ethnic origin. Legislation and processes to promote equality and prevent discrimination should be a priority.**