Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review: *3rd Cycle, 34th Session*

BOSNIA AND HERZEGOVINA

I. BACKGROUND INFORMATION

Bosnia and Herzegovina (BiH) is a Party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*, by succession, since 1993 (hereinafter jointly referred to as the *1951 Convention*). BiH is also a Party to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness* (the *1954 Convention* and the *1961 Convention*, respectively), by succession, since 1993. BiH adopted a new *Law on Foreigners* in 2015 and a new *Law on Asylum* in 2016.

While the *Law on Asylum* guarantees asylum seekers the right to adequate reception conditions, in particular with respect to accommodation, to food, primary health care, primary and secondary education, as well as free legal aid and psycho-social support, several gaps remain. The *Law on Asylum* requires asylum seekers to fill in an intention to seek asylum and then make a formal application. Refugee status also requires formal recognition by the Ministry of Security. The *Law on Asylum* maintains extended clauses on exclusion and cessation of refugee status. Moreover, under the *Law on Asylum*, persons with subsidiary protection do not have access to family reunification and travel documents. The law does not prohibit the detention of unaccompanied and separated children (UASC) and other vulnerable groups.

Major concerns regard the limited access to adequate protection and services for vulnerable asylum seekers and migrants in BiH, particularly obstacles to access the asylum procedure, adequate reception conditions and accommodation, health care services and birth registration as well as to have guardians appointed for unaccompanied and separated children.

Up until December 2017, BiH was seen as a transit country, including by many of the asylum seekers and refugees involved in mixed movements towards Western European countries. Consequently, the authorities resorted to restrictive measures, which included expulsion orders and detention of asylum seekers, including unaccompanied minors, who did not express an intention to seek asylum within 24 hours of arriving on BiH territory. This practice was abandoned following the increase in new arrivals in 2018. However, there were cases of detention of families with children from 7 to 20 days pending their readmission to countries of origin.

In 2018, there were 24,069 known arrivals of asylum seekers and migrants. Out of this number, 22,130 persons expressed their intention to seek asylum, but only 1,567 of them (7%) chose or managed to register their asylum claim. UNHCR is concerned with the fact that many persons were not able to register their asylum claims and access the asylum procedure. Close to 5,000 asylum seekers and migrants remain in the country with close to 4,000 persons only in one of the ten cantons in BiH at the beginning of 2019. Persons who

expressed an intention to seek asylum but who have not registered their asylum application enjoy limited rights, such as the right to accommodation, including services available in reception centres, and the right to remain in BiH for the period of validity of the attestation on intent to seek asylum. In practice, reception conditions, in particular for vulnerable persons, were inadequate throughout 2018 both for formally registered asylum-seekers and for persons who expressed intention to seek asylum.

As of December 2018, BiH hosts 79 recognized refugees and 30 persons under subsidiary protection. No Convention refugee status was granted since 2014. Additionally, BiH hosts 90 persons identified to be at risk of statelessness. Although the Government devoted great efforts to reduce the number of persons at risk of statelessness among the Roma population, gaps still remain in law and practice with regard to birth registration. Regarding the persons displaced by the conflict that took place in 1992-1995, nearly 97,000 of them still retain the official status of Internally Displaced Persons. There are also 47,000 minority returnees, out of which 30% are in need of durable solutions due to problematic access to rights, lack of adequate housing and infrastructure.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Linked to 2nd cycle UPR recommendation no. 107.165: "Consistently and rigorously implement the revised strategy for the implementation of Annex VII of the Dayton Peace Agreement and make all efforts to improve the living conditions of internally displaced persons and returnees"(Czech Republic).

Bosnia and Herzegovina has achieved significant progress in the implementation of the revised strategy for the implementation of Annex VII of the Dayton Peace Agreement. The authorities led by the Ministry of Human Rights and Refugees continued strengthening coordination mechanisms grounded on a systemic and needs-based approach. The Regional Housing Program progressed with the completion of 776 housing units and efforts are ongoing for the provision of an additional 1,172 units. Progress was also achieved in the implementation of the CEB II project for the closure of 121 collective centres. These projects have gained greater sustainability thanks to the inclusion of social integration measures to complement the housing solutions.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Birth registration and prevention of statelessness

Linked to 2nd cycle UPR recommendation no. 107.107: "Ensure that all children are registered at birth and provide unregistered children with personal documents" (Estonia).

Despite some progress, registration of birth and/or citizenship remains overly complex and costly for many categories or cases, including: children whose parents do not have all required documents, children born abroad to BiH parents before they were returned to BiH under readmission agreements (and subsequently need to register their citizenship), and children whose parents are undocumented foreign migrants or asylum seekers who are not yet formally registered. In addition, the 2015 BiH *Law on Temporary and Permanent Residence* contains provisions[1] which may prevent citizens from registering their residence

[1] Article 8 of the Law on Temporary and Permanent Residence of Citizens of BiH requires individuals to submit evidences for registration of permanent residence, such as proof of ownership or proof that they initiated legalization of the real property. Some persons are unable to provide such evidence, e.g. homeless persons, social cases, many of whom are destitute Roma. The Law contains safeguard provisions for such cases, which need to be clarified to facilitate in practice registration of residence of all BiH citizens.

and thus obtain identity documents. These provisions may impose additional obstacles to the birth registration of their children.

As of January 2019, there are 90 persons identified as being at risk of statelessness. There is a small number of children born in BiH to foreign undocumented parents who wish to seek asylum but have not been able to formalize their asylum seeker status due to inability to register residence outside of the two official reception centers for asylum seekers and thus did not receive asylum-seeker cards. Birth registration for these children is problematic, since the authorities require the presentation of asylum seeker cards or any other identification documents, despite the fact that there is an obligation to register the birth of all children. The number of such children is likely to increase since registration of asylum claims remains an issue.

Recommendations:
UNHCR recommends that the Government of Bosnia and Herzegovina:

(a) Accede to the *2006 Council of Europe Convention for the Avoidance of Statelessness in relation to State Succession*;
(b) Ensure that all children born in BiH are immediately registered at birth, irrespective of their migration status or that of their parents, by alleviating the bureaucratic burden and facilitating procedures;
(c) Facilitate registration in birth records in BiH of children born abroad to BiH nationals;
(d) Establishe a sustainable mechanism for prevention, identification and response to risks of statelessness at the local level, including free legal aid in law and in practice; and
(e) Facilitate procedures of registration of permanent residence by BiH citizens in accordance with the *Law on Temporary and Permanent Residence* and guarantee access to identity documents.

Issue 2: <u>Access to rights for internally displaced persons (IDPs) and returnees</u>

Linked to 2nd cycle UPR recommendation no. 107.166: "<u>Ensure that IDPs and returnees can fully enjoy their rights relating to social protection, health care, education, housing, employment and physical security</u>" (Hungary).

Among the 96,830 officially registered IDPs and estimated 47,000 minority returnees, UNHCR estimates that one third are vulnerable and in need of assistance in order to either be able to integrate in local communities or to return to their pre-war homes. Return or local integration prospects are, in particular, affected by an inconsistent application of legislative frameworks at different administrative levels, inadequate policies and fragmentation of administrative procedures that hamper access to health care, education, social protection, adequate housing and employment.

Moreover, although physical security is no longer a major concern, hate crime incidents against minorities still occur. IDPs and returnees cannot access legal aid provided by the government under the same conditions throughout the country. This is a result of the inconsistent eligibility criteria for accessing free legal aid, the defined scope of free legal aid in different administrative entities, and uneven capacities of legal aid providers.[2]

Recommendations:
UNHCR recommends that the Government of Bosnia and Herzegovina:

[2] The same applies to persons under international protection in BiH, persons seeking asylum, stateless persons and persons at risk of statelessness.

(a) Consider the harmonization of health care and health insurance legislation to facilitate IDPs and returnees' access to health care in practice and across the country;
(b) Consider the harmonization of social protection legislation to facilitate access to social aid by IDPs and returnees, based on needs;
(c) Ensure access to adequate housing for IDPs and returnees, including by closing all remaining collective centres, allocating sufficient budgetary resources for housing programmes, developing the social housing legal framework, and establishing complementary local integration programmes; and
(d) Ensure free legal aid for IDPs and returnees, in law and practice.

Additional protection challenges

Issue 3: Access to territory and asylum procedures

The proper identification and referral of asylum seekers, at the borders and within BiH, remains an issue of concern and as a consequence asylum seekers do not fully enjoy an effective right to seek asylum and to access the territory.

As of December 2017, persons who seek asylum must obtain attestations certifying their intention to seek asylum. The attestation is valid for 14 days, within which they must formally register their asylum claim. Many asylum seekers are unable to register their asylum claims, because they cannot fulfil one of the imposed requirements, namely to indicate a registered residence address in BiH. Furthermore, once the attestations on expressed intent to seek asylum expire, authorities rarely renew them, leaving asylum seekers outside of the asylum process and related rights. In addition, the capacities of the Sector for Asylum are insufficient to ensure timely registration and refugee status determination.

Moreover, the BiH law regulating extradition allows for the extradition of asylum seekers who applied for asylum after an extradition request has been made, in contradiction to international and European Union standards. In 2018, there were two asylum seekers in administrative detention pending extradition. They obtained interim measures from the European Court of Human Rights and the UN Human Rights Committee, respectively, recommending suspension of their extradition orders pending the determination of their asylum claims. These interim measures were respected only in one case.

Recommendations:
UNHCR recommends that the Government of Bosnia and Herzegovina:
(a) Strengthen national capacities to identify and refer asylum seekers at the borders and within the country;
(b) Enhance the capacity of the responsible authorities to process asylum claims in a reasonable time;
(c) Ensure access to asylum for all by facilitating renewal and/or extension of attestation on expressed intent to seek asylum, waiving the mandatory fees and need to register a residence address; and
(d) Amend BiH extradition legislation to suspend extradition pending the final determination of asylum claims, in line with international human rights instruments.

Issue 4: Reception conditions for asylum seekers and migrants

Reception sites fall short of responding to asylum seekers' needs and ensuring their protection. For instance, a great number of people stayed without shelter in deplorable living conditions in the Una-Sana Canton throughout 2018. Despite the increase in the number of reception centres, the shelter capacity for vulnerable persons, UASCs, survivors of sexual and gender-based violence (SGBV), single women and families fails to meet the foreseen needs. At the same time, access to humanitarian assistance remains a challenge, and the

process to access accommodation for asylum-seekers is particularly cumbersome. In addition to the dire situation of accommodation and living conditions, the risk of SGBV, including rape, sexual harassment and domestic violence is prevalent in reception centres affecting particularly asylum seeking women, girls and UASC. Institutional responses to cases of SGBV are limited, if not absent.

Furthermore, asylum seekers have limited access to health care services. Primary health care services are only accessible to asylum seekers who formalised their status and are accommodated in the asylum centres in Trnovo and Mostar. However, primary health care does not cover hospitalization and medical assistance at child birth. Access to health care is further limited for asylum seekers who are accommodated outside the asylum centres.[3]

Recommendations:
UNHCR recommends that the Government of Bosnia and Herzegovina:

(a) Improve reception conditions for asylum seekers and migrants by:
    i. increasing accommodation capacities, including protection-sensitive housing for vulnerable categories;
    ii. streamlining processes to access reception centres;
    iii. ensuring adequate access to health care, including secondary and tertiary health care in specific situations; and
    iv. strengthening the capacity of the Centres for Social Welfare, police and health centres to respond to cases of SGBV, including cases of domestic violence.

Issue 5: <u>Protection of Unaccompanied and Separated Children</u>

National authorities, including the Border Police and Service for Foreigners' Affairs, lack proper capacity to identify migrant and asylum seeking UASCs, or to timely ensure guardianship measures as required by the *Law on Asylum and Entity Family Law*. For these reasons, children do not receive specialized assistance, are not accommodated in protection-sensitive lodging and often remain exposed to security and protection risks. To fill this gap, in 2018, UNHCR, with the help of partners specialized in addressing psychosocial issues, identified 429 asylum seeking and migrant UASC. Due to limited capacity, guardians were appointed to only 103 UASC, who were then able to access asylum procedures with their guardian's support. In fact, guardianship is limited to representation in the asylum procedure or provision of care during accommodation in a temporary reception centre. The best interest of UASC is often neglected due to lack of capacity of Centres of Social Welfare.

Recommendations:
UNHCR recommends that the Government of Bosnia and Herzegovina:

(a) Ensure that appropriate protection and assistance is provided to all children including migrant and asylum seeking UASC by:
    i. stepping up identification and referral capacities;
    ii. facilitating access to guardianship and asylum procedures for UASC as a priority;
    iii. adopting and implementing Standard Operating Procedures on the protection and provision of assistance within the national protection system;
    iv. ensuring protection-sensitive accommodation for UASC; and
    v. ensuring that the best interest of the child is the primary consideration in all measures concerning migrant and asylum-seeking UASC.

UNHCR, March 2019

[3] The BiH Ministry of Security only ensures primary health care services in Asylum Centers (Trnovo and Mostar) and only to persons who have formalised their status as asylum-seekers. Asylum-seekers in urban environment have to travel to the Asylum Centre Delijas where health care is ensured in order to be referred to the health care institution. Otherwise, many relay on temporary and project based services in Una Sana Canton or rely on volunteers to get support to access health care.

ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

BOSNIA AND HERZEGOVINA

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations and UN Treaty Monitoring Bodies' Concluding Observations reports relating to issues of interest and persons of concern to UNHCR with regards to BOSNIA AND HERZEGOVINA.

I. Universal Periodic Review (Second Cycle – 2014)

Recommendation[4]	Recommending State/s	Position[5]
Refugees, asylum-seekers, stateless and displaced persons		
107.164 Reinvigorate efforts to fulfil article VII of the Dayton Accords, guaranteeing refugees the right to return to their homes of origin;	United States of America	Supported
107.165 Consistently and rigorously implement the revised strategy for the implementation of Annex VII of the Dayton Peace Agreement and make all efforts to improve the living conditions of internally displaced persons and returnees;	Czech Republic	Supported
107.166 Ensure that IDPs and returnees can fully enjoy their rights relating to social protection, health care, education, housing, employment and physical security;	Hungary	Supported
Birth registration		
107.106 Ensure that all children born in the country, who have not been registered, are provided with birth certificates and personal documents;	Czech Republic	Supported
107.107 Ensure that all children are registered at birth and provide unregistered children with personal documents;	Estonia	Supported
107.108 Take further steps to ensure registration of all births and provide identity documents to all persons whose birth was not registered;	Romania	Supported
107.109 Consider stepping up efforts to achieve free and universal birth registration by, among other measures, harmonizing State and local Government entities' legislation pertaining to civil registration and eliminating remaining obstacles that prevent Roma women from registering births and obtaining birth certificates for their children;	Philippines	Supported
Trafficking and exploitation		
107.76 Prosecute the exploitation and trafficking of children, in particular of girls from ethnic minorities forced into early marriage;	Sierra Leone	Supported
107.77 Address serious problems associated with pursuing perpetrators of child pornography and other forms of sexual exploitation and sexual abuse of children and providing assistance for and protection of victims and	Iran	Supported

[4] All recommendations made to Bosnia and Herzegovina during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Bosnia and Herzegovina" (4 December 2014), A/HRC/28/17, available at: https://www.ohchr.org/EN/HRBodies/UPR/Pages/BAIndex.aspx.

[5] Bosnia and Herzegovina's responses can be found at: *https://www.upr-info.org/database/index.php?limit=0&f_SUR=22&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly*

witnesses;		
107.78 Make necessary amendments to the national legislation in order to bring it into line with international obligations and commitments for the protection of children and in particular for their protection against sexual abuses, as well as against trafficking of persons;	Switzerland	Noted
107.79 Raise public awareness of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;	Lithuania	Supported
107.81 Amend laws to explicitly prohibit all forms of human trafficking, with a specific focus on child labour and forced begging;	United States of America	Supported
107.84 Maintain its efforts in the area of combating trafficking in persons, especially women and children, including through a victim-oriented approach and an enhanced level of international and regional cooperation;	Egypt	Supported
Torture, war crimes and ill treatment		
107.97 Adopt a law on reparation and compensation for victims of torture during the war;	France	Noted
107.98 Continue efforts to fight impunity for serious violations of human rights committed during the armed conflict;	Argentina	Supported
107.99 Modify the criminal codes with a view to harmonizing them and bringing them into conformity with international criminal law obligations and commitments in the sphere of proceedings against perpetrators of international crimes, in particular war crimes involving sexual violence;	Switzerland	Noted
107.100 Harmonize the penal code applied in cases of war crimes, in addition to the review of verdicts where appropriate. In addition, it is necessary to define adequately the condition of victims of war and to provide necessary reparation;	Chile	Noted
Equality and non-discrimination		
107.119 Make the necessary constitutional changes to end discrimination against minorities in exercising their right to full political participation;	Australia	Supported
107.134 Ensure that all people in Bosnia Herzegovina including returnees, people with disabilities or Roma, have access to public services, including health care and education without discrimination;	Belgium	Noted
107.135 Develop as a matter of priority a multi-ethnic, inclusive and non-discriminatory common core curriculum, with all levels of Government ensuring that the content of school textbooks promotes and encourages tolerance among ethnic minority groups;	Slovenia	Noted
107.131 Adopt additional measures to achieve gender equality, in policy formulation and decision-making at all levels of Government;	Bahrain	Supported
107.132 Fully ensure gender equality in labour recruitment and appointments to political posts;	Russian Federation	Supported
Freedom of expression and assembly		
107.111 Take the necessary measures to guarantee, in all circumstances, full respect for freedom of expression and freedom of the press;	France	Supported
107.114 Ensure the protection of journalists, media personnel and human rights defenders against any attacks, investigate and prosecute such attacks and bring those responsible to justice	Estonia	Supported
107.117 Use international good practices as specific benchmarks for progress to improve the situation of the media community, as proposed by the media freedom representative of the Organization for Security and Cooperation in Europe, Dunja Mijatović;	Lithuania	Supported
107.118 Protect freedom of assembly and hold accountable any police officers involved1;	Lithuania	Supported

Racism, xenophobia and hate crimes		
107.41 Enact legislation and norms prohibiting the creation of associations that promote and disseminate hate speech and racism, consistent with appropriate international instruments;	Chile	Supported
107.43 Redouble its efforts to combat public manifestation of hate speech and intolerance;	Indonesia	Supported
107.44 Strengthen legislation to combat incitement to hate and discrimination on the grounds of ethnicity, culture, religion or nationality, particularly when it comes in political statements or from public officials;	Mexico	Noted

II. Treaty Bodies

Human Rights Committee

Concluding Observations, (13 April 2017), CCPR/C/BIH/CO/3

Protection of minors and the rights of the child
33. The Committee is concerned about the practice of arranged marriages involving Roma minors, including those between the ages of 12 and 14 years, and the reluctance of prosecutors to investigate cases that may involve child trafficking and to prosecute offenders (arts. 8 and 24).

34. The State party should implement programmes specifically designed to reduce the incidence of child marriages and train prosecutors to investigate cases of early marriage linked to the trafficking in persons.

Refugees and displaced persons
35. While welcoming the State party's efforts towards closing collective centres for internally displaced persons and providing them with alternative housing, the Committee remains concerned that returnees and internally displaced persons continue to face discrimination, including in employment and education, which hampers their reintegration into society. It is further concerned at reports that persons granted subsidiary international protection do not receive access to services on an equal basis with refugees (arts. 12 and 26).

36. The State party should strengthen its efforts to fully implement the revised strategy for the implementation of annex VII to the Dayton Peace Agreement to facilitate reintegration of returnees and internally displaced persons and enjoyment of their rights without discrimination. It should also continue its efforts to close collective centres and provide internally displaced persons with alternative housing solutions and ensure that persons granted with international subsidiary protection receive access to services on an equal basis with refugees, including for family reunification and travel documents.

Rights of persons belonging to ethnic, religious or linguistic minorities
39. While welcoming the efforts made by the State party to eliminate discrimination against the Roma, including improvements in birth registration among the Roma population and increased enrolment of Roma children in schools, the Committee remains concerned about persistent de facto discrimination with respect to Roma children accessing education,, high unemployment rates and the lack of access to adequate housing (arts. 2, 24 and 26-27).

40. The State party should continue its efforts to ensure birth registration of all persons on its territory, particularly the Roma people, and to tackle de facto discrimination of the Roma through practical measures, programmes, incentives and

awareness-raising initiatives to ensure full enjoyment of all their rights under the Covenant.

Committee against Torture

Concluding Observations, (22 December 2017), CAT/C/BIH/CO/6

Refugees and non-*refoulement*

28. The Committee is concerned at the extremely low rate of successful asylum applications in the State party and notes with concern that no refugee status was granted in 2015 and 2016. While the domestic legislation on asylum provides for access by refugees and asylum seekers to their rights, the Committee is concerned that, in practice, inadequate legal aid and low quality interpretation service prevent asylum seekers from accessing the asylum procedure and being identified at an early stage. The Committee notes with concern that, in 2016, 42 per cent of asylum seekers applied for asylum only after they had been placed in an immigration detention facility. The Committee is also concerned at information received that the State party detains asylum seekers whose asylum applications are pending and that neither the appeal proceedings before the Court of Bosnia and Herzegovina nor the Constitutional Court have automatic suspensive effect on a deportation order (arts. 2–3 and 16).

29. **The State party should ensure full protection from *refoulement* by establishing the necessary legal and administrative safeguards and remedies in forced return procedures and thereby guarantee at all times that no person in need of international protection will be returned to a country where he or she is in danger of being subjected to acts of torture or cruel, inhuman or degrading treatment, conditions or punishment. To that end, the State party should:**

(a) **Facilitate access to a prompt and fair individualized refugee determination procedure, including by ensuring a timely identification of asylum seekers and by providing training to border police and immigration officials on promptly providing information on the right to seek asylum;**

(b) **Guarantee, in law and in practice, access to independent, qualified and free legal assistance and interpretation services for asylum seekers throughout the asylum procedure;**

(c) **Enhance the capacity of immigration officials to thoroughly assess country-of-origin information and apply reasonable standards of proof of persecution faced by asylum applicants;**

(d) **Refrain from detaining refugees, asylum seekers and undocumented migrants for prolonged periods and use detention only as a measure of last resort and for as short a period as possible, including by promoting alternatives to detention.**

Committee on Enforced Disappearances

Concluding Observations, (3 November 2016), CED/C/BIH/CO/1

Non-*refoulement*

29. The Committee observes that domestic law does not yet provide for an explicit prohibition against carrying out an expulsion, return, surrender or extradition where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance (art. 16).

30. The Committee recommends that the State party incorporate into its domestic legislation an explicit prohibition against carrying out an expulsion, return, surrender

or extradition where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance