



**International Convention on  
the Elimination  
of all Forms of  
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-eighth session

SUMMARY RECORD OF THE 1735th MEETING

Held at the Palais Wilson, Geneva,  
on Wednesday, 22 February 2006, at 3 p.m.

Chairman: Mr. de GOUTTES

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY  
STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Initial to sixth periodic reports of Bosnia and Herzegovina

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY  
STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Initial to sixth periodic reports of Bosnia and Herzegovina (CERD/C/464/Add.1;  
HRI/CORE/1/Add.89/Rev.1)

1. At the invitation of the Chairman, the members of the delegation of Bosnia and Herzegovina took places at the Committee table.
2. Mr. NAGRADIC (Bosnia and Herzegovina), introducing his country's initial to sixth periodic reports (CERD/C/464/Add.1), said that more than a year had passed since the completion of the report. Since then, the environment for the promotion and protection of human rights in Bosnia and Herzegovina had changed, leading to an overall reduction of discrimination in many spheres of life. Progress had been achieved in the following areas: the drafting of new legislation; greater awareness of human rights and discrimination; strengthening of human rights mechanisms; strengthening of the NGO sector; greater attention to the needs of vulnerable groups; and development of strategies, plans of action and reforms in all areas of the social spectrum. Those achievements were attributable, in part, to the cooperation received by Bosnia and Herzegovina from various international governmental and non-governmental organizations, which had organized numerous conferences, round tables, workshops and scientific colloquiums on issues pertaining to discrimination.
3. From the standpoint of the implementation of the Convention, the main problem was not so much racial discrimination as other forms of discrimination, primarily those related to ethnic and national diversity. That diversity was a factor that made efforts to combat discrimination extremely complex. Another factor was the ongoing process of rehabilitation and reconciliation that had followed the inter-ethnic civil strife of only a decade earlier. As a result, progress was still slow. Some of the challenges that lay ahead were: to promote human rights education and raise awareness of the Convention, to expand public knowledge concerning the elimination of existing forms of discrimination, and to prevent new forms of discrimination from emerging. It was time to shift emphasis from protecting the rights of displaced persons and returnees, and to turn it towards the protection of vulnerable groups, including children with disabilities, war victims and pensioners. Strengthening the cultural identity of national and religious minorities and guaranteeing their access to information were two additional priorities.
4. Ms. TARABA (Bosnia and Herzegovina) said that the Convention (ICERD) had entered into force in her country in 1993 and been incorporated into the Constitution; its provisions could be invoked directly in the courts. As was the case with other international treaties, such as the European Convention on Human Rights, the provisions of the ICERD had primacy over domestic legislation.
5. Given that Bosnia and Herzegovina was a complex State with highly individual characteristics, and that the values of tolerance and coexistence had been gravely threatened during the war of 1992-1995, the report contained only information on progress made following the war during the period from 1996 to 2004. The report had been prepared on the basis of data

collected by State-level ministries and administrative bodies, entity-level ministries (i.e. those of the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District), and NGOs and academic institutions that dealt directly with the issues described in the report.

6. One of the major problems facing the Ministry of Human Rights and Refugees in the preparation of the report had been the lack of a unified data collection system. Since the most recent census had been conducted in 1991, the figures contained in the report were out of date. While her Government recognized that the social and ethnic structure of the country had altered since 1991, it had been impossible to gather updated statistics and thus give accurate replies to many of the Committee's questions. Insufficient financial and material resources had also hindered preparation of the report. The Government was aware that increased cooperation from NGOs would have improved the final document.

7. Mr. BOYD, Country Rapporteur, said that a decade after the end of the armed conflict in the State party, the Committee welcomed the opportunity to consider the Government's implementation of the Convention together with the delegation. While the report provided much information and addressed many issues germane to the Convention, it contained insufficient evidence of the State party's efforts to implement the rights embodied in key provisions, particularly those in article 5. If no statistics were available, the Committee would welcome some practical examples of the implementation of those rights.

8. The Committee welcomed the assertion that the provisions of the United Nations instruments ratified by the State party and the European Convention on Human Rights were directly implemented and prevailed over all domestic legislation, pursuant to article 2 of the Constitution. The delegation should clarify, however, which of the international instruments had been incorporated in the Constitution by specific reference and what the practical impact of such incorporation had been in State and entity-level domestic courts.

9. It was unclear whether constitutional violations committed on grounds of race could be brought before any courts, tribunals or administrative bodies. It would be useful to learn about the scope and range of remedies that could be employed, and whether any such cases of racial discrimination had been heard. Information should be provided on the number of cases, who had brought them, which court had adjudicated in the matter, in what geographic region the hearing had taken place and what the outcomes had been. Was that information disaggregated by race, ethnicity, nationality or religion?

10. It would be useful to know how long the prohibition against officials denying rights or granting privileges on a discriminatory basis had been part of the Criminal Code (under chap. XV, art. 14). Had there been any prosecutions under that law, and had any officials been convicted? Was there any civil equivalent to that article, and if so, which courts and administrative or executive bodies had authority to hear such cases? What remedies were available to those courts to provide redress? The Committee would be grateful for any examples of relevant cases.

11. It was difficult to understand how the Convention was compatible with the Constitution of Bosnia and Herzegovina and the constitutions of its constituent entities which had resulted from the Dayton Peace Agreement. The Constitution of the Republika Srpska recognized Serbs

as the dominant constituent people in that area, and the Constitution of Bosnia and Herzegovina recognized Bosniaks and Croats as the dominant constituent peoples in the Federation. That recognition had granted special status to the Serbs, Bosniaks and Croats. It seemed to create a system in which ethnicity was the determining factor for participation in the election process, and therefore in people's access to political power.

12. Under article 5 of the Constitution, members of national minority groups appeared to be excluded from the process of electing members to the presidency, as were constituent peoples living in an entity in which they were not the dominant constituents. Similarly, voters could choose between Bosniaks and Croats only in the Federation, and choose only Serbs in the Republika Srpska. Moreover, members of each constituent group could be elected only from the territory in which they had preferential status under the Constitution. Equally prescriptive rules were applicable to elections to the House of Peoples of the Parliament. Restrictions on self-identification excluded individuals of mixed ethnicity who refused to choose one constituent people identity over another. Was the result not that national minorities and constituent peoples living in an entity where they were not recognized as such were effectively disenfranchised? While the existing constitutional framework had undoubtedly been one of the prices of peace at Dayton, significant constitutional reform would now seem necessary. It would be useful to hear the delegation's reaction to that suggestion.

13. Furthermore, it would be interesting to hear the delegation's views on the apparent links between that participation based solely on ethnicity, and other discriminatory practices relating to access to employment, health care and education. Was it true to say that there was a tangible link between political power, which was ethnically assigned by law, and the lack of enjoyment by ethnic minorities of the rights provided for under article 5 of the Convention? Could such exclusion partially explain the entrenched poverty endured by some national minorities, particularly the Roma, and also the mono-ethnic character of many neighbourhoods and the increasing concern over the existence of segregated schools with separate curricula?

14. As to the statutory framework for anti-discrimination laws, it would be useful for the Committee to have additional information on the Law on the Protection of National Minorities. He wished to know what specific requirements existed within that Law concerning the mandate and responsibilities of the national authorities and the resources at their disposal. He further asked the delegation to provide examples of action taken by the authorities pursuant to the Law. He was also interested in knowing what were the rights and duties of members of national minorities with respect to their ethnic, cultural, linguistic and religious identities, as set out in article 1 of the Law.

15. Turning to the role of the Ombudsman, he said that although paragraphs 26 and 77 of the report described the purpose of the establishment of the Office of the State Human Rights Ombudsman, he was still uncertain about the scope of the Ombudsman's mandate. Similarly, it was not clear whether investigations by the Ombudsman were limited to violations committed by government officials, or whether the conduct of private individuals was also liable to such investigation. From the perspective of article 2 of the Convention, he wondered what were the precise constitutional rights and freedoms that the Ombudsman was empowered to protect. He noted that rights involving non-discrimination in the housing and employment sectors had not

been addressed in that context, and asked the delegation to indicate which aspect of domestic law granted protection of such rights. He stressed that the issue was of particular relevance to the Committee's assessment of the reporting State's compliance with articles 2, 5 and 6 of the Convention.

16. According to paragraph 146 of the report, the Ombudsman had no authority to represent citizens in court proceedings. However, it had come to the attention of the Committee that there had been instances in which an Ombudsman had brought civil actions on behalf of victims of racial or ethnic discrimination. He therefore wondered if there were in fact counterparts to the Ombudsman at the entity level who might be authorized to represent victims of discrimination. In the event that the Ombudsman had no such authority, he wished to know whether other departments within the Government at State or entity level, apart from a criminal prosecutor, were empowered to seek legal redress for victims of discrimination.

17. The Committee was interested in quantitative and qualitative feedback on the work of the Ombudsman to date. It would like to know how many complaints had been lodged, what the nature of such complaints had been and how they had been resolved. Were there available data disaggregated by race, ethnicity, nationality or religious affiliation of the complainants, victims and alleged defendants? Likewise, he asked whether there were any governmental bodies with the authority to seek or provide redress for victims of discrimination related to the rights contained in article 5 of the Convention.

18. As a general comment on reporting procedure, he said it would be helpful in future for the delegation to provide information on the number, nature and location of criminal prosecutions brought by State authorities, pursuant to articles 145 and 146 of the Criminal Code, on the identity of perpetrators, and on victims and decisions handed down.

19. He invited the delegation to elaborate on the work of the Human Rights Chamber and its successor, the Commission for Human Rights. More specifically, information was needed on the nature of complaints of racial or ethnic discrimination brought before the Commission. He was curious about the processing of complaints and outcomes, including findings and remedies granted.

20. In view of the numerous allegations that threats had been made against members of national minorities returning to their former homes, he wished to know what enforcement mechanisms existed to implement the law on refugees and displaced persons and amendments thereto, under which such returnees were protected. He also wondered whether those mechanisms were well publicized, whether there were sufficient resources to monitor compliance, and what government agency held such responsibility. He further asked whether any complaints or criminal charges had been lodged in that regard, and if so, whether the delegation could provide some idea of the results obtained. In addition, he was curious to know what link existed between that legislation and article 146 of the Criminal Code, which criminalized the use of force, or threat of force, by anyone to prevent or dissuade displaced persons from returning to their homes.

21. Mr. SICILIANOS praised the Government of Bosnia and Herzegovina for the important advances it had made in terms of domestic legislation and international treaties, while taking due account of the specific nature of the situation in the country and striving to ensure recognition of genuine democratic Bosnian citizenship.
22. He noted the proposed adoption of comprehensive civil and administrative legislation to combat direct and indirect discrimination based on ethnic or national origin, and asked the delegation to elaborate on action taken thus far. On the question of alleged ethnic discrimination concerning social security and retirement benefits, he stressed that such entitlements must be guaranteed by the State, which must dismantle current obstacles to their enjoyment. The adoption of such measures would greatly enhance the smooth return of refugees and displaced persons.
23. In addition, he stressed the need to provide education within a system that accommodated the various ethnic and linguistic needs and, in that way, prevent the entrenchment of prejudice and animosity over several generations.
24. Mr. KJAERUM, commending the delegation for its frank and self-critical presentation of the report, acknowledged the magnitude of the obstacles the Government had confronted. He asked whether the Government had had fewer resources available for the preparation of the present report to the Committee than it had had for reporting to other treaty bodies.
25. He was also interested to know more about the difficulties the Government had encountered in its interaction with civil society while compiling the report. Emphasizing the importance of input from NGOs both at the reporting stage and again at the stage of implementing the Committee's recommendations, he asked the delegation to comment on the obstacles it had encountered.
26. Drawing attention to the systematic use of the term "others" as opposed to "constituent peoples", he asked whether the concept of "others" referred exclusively to members of national minorities, or whether it encompassed all persons who did not wish to be associated with one of the three groups of constituent peoples. Several representatives of national minorities had indicated that they found the use of that expression offensive and that it implied social exclusion.
27. On the subject of employment, he asked whether any form of affirmative action had been taken to increase the representation of "ethnic" returnees in the workforce, and whether there were administrative mechanisms in place for handling complaints regarding discrimination in the labour market.
28. Turning to paragraph 11 of the report, which mentioned the establishment of the advisory body, the "Roma Board", he noted that the Board had not been truly effective for a number of reasons, including a scarcity of resources, and had not often been consulted by relevant ministries. He was therefore curious to know how the Government perceived the role of the Board and the strengthening of integration of the Roma community into society at large. He drew attention to the appallingly low rate of attendance of Roma children at the primary school level, and noted that the report had not indicated what action was planned to remedy that

situation. He suggested that the Government might be able to learn from the abundant experience of neighbouring countries that had dealt successfully with the issue of education in Roma communities.

29. Mr. VALENCIA RODRÍGUEZ said that the concept of minorities had indeed emerged from the multi-ethnic nature of Bosnia and Herzegovina, and placed an obligation on the State to ensure protection for them. He noted that a number of NGOs and political groups had been established by, and on behalf of, those minorities, and wondered whether such mobilization had come about as a consequence of the war. He also wished to know what concrete measures had been taken to improve the standard of living of national minorities, pursuant to article 2 of the Convention.

30. In connection with article 4, the report stated that adequate measures had been taken to satisfy requirements under article 4 (b) on the characterization of the promotion of intolerance and racial discrimination as a punishable offence. The Committee would, however, welcome more information on any administrative or judicial initiatives that had been taken to secure compliance with the provisions of article 4 (a).

31. He noted the imprecise documentation of minorities, particularly the Roma population, and asked for further comments on the extent of reprisals against minorities and the level of political representation achieved by those communities. He further asked whether investigations had been conducted into cases of forced expulsion based on ethnic affiliation and blatant racial discrimination against returnees, and what action had been taken to bring the perpetrators of such violations to justice.

32. Following up on questions asked by the Country Rapporteur, he also stressed the need for clarification on the role of the Ombudsman, specifically on the types of cases that the Ombudsman was empowered to handle. In conclusion, he sought confirmation of the primacy of the Convention vis-à-vis domestic legislation and information on the procedure whereby individuals could bring cases of racial discrimination directly before the national courts.

33. Mr. AVTONOMOV requested the delegation to supplement the information provided in the report on the election of minority representatives. Clarification was also needed concerning the extradition of naturalized citizens mentioned in paragraph 17 of the report; he failed to understand how naturalization was different from citizenship. He enquired whether the Draft Law on Primary and Secondary Education referred to in paragraph 157 had been adopted, and whether it contained equal opportunity and non-discrimination provisions. It was unclear whether acts of discrimination were governed by federal legislation or by legislation in force in the two political entities that composed the Republic of Bosnia and Herzegovina. He also wished to know which criteria were used to distinguish the residents of Montenegro from the group described as “the Czarna Gorá minority”.

34. Mr. YUTZIS said it was regrettable that information provided in the report on the media seemed to concentrate on issues relating to freedom of expression and press freedom, while little was said about the dissemination of ideas based on racial superiority or hatred. Paragraphs 209 and 210 suggested that racist propaganda did indeed exist, but said nothing about measures to combat the phenomenon. He asked the delegation to comment.

35. The report stated that the return of displaced Roma to their homes and the restitution of their property were crucial to their enjoyment of fundamental rights. At the same time, it indicated that the vast majority of Roma currently lived in informal settlements without any clear ownership status and might be subject to forcible evictions. He asked whether State party legislation safeguarded citizens' right to housing and whether Roma families could be evicted from property they themselves owned. The delegation should explain why Islam was deemed to contribute to the loss of language, culture and traditions of the Roma population, as suggested in paragraph 112 of the report. He asked whether ethnic separation, intolerance, segregation and discrimination in the education system were prohibited by law. If so, the delegation should explain what impeded the effective implementation of the relevant provisions.

36. Mr. AMIR asked whether the dissemination of racist propaganda was criminalized. If not, he wished to know what the Government intended to do to close that legal gap. The delegation should also describe the measures taken to identify and prosecute human traffickers and protect refugees.

37. Mr. LINDGREN ALVES said that the disparity between the Constitution of Bosnia and Herzegovina and the Convention was a serious impediment to the implementation of the latter. Sustained efforts were required to establish ways to monitor discrimination, which appeared to be all-pervasive, and to protect and compensate the victims. Additional information was required on the reasons for the underrepresentation of Roma children in education, and on the extradition of naturalized persons described in paragraph 17.

38. Mr. SHAHI said that, given the difficulties posed by the Constitution in force, the commitment voiced by Bosnian, Serb and Croat leaders to embark on constitutional reform was encouraging. He deduced from the information provided in the report that national minorities had been granted participation in the political life of the country; it was unclear, however, whether any minority groups were excluded and how the State party ensured consistency with the principles of non-discrimination at all stages of the electoral process.

39. The delegation should describe the avenues of redress and compensation available to victims of discrimination, especially those who had been most affected by the conflict. He wished to know what additional measures had been taken to ensure that the remaining 180,000 displaced persons could return home in safety and dignity based on the principle of non-discrimination. The disparity in pensions in different parts of the country constituted a serious obstacle to the return process. What measures had been taken to equalize pensions throughout Bosnia and Herzegovina so as to prevent ethnic discrimination? The delegation should explain how the State party ensured equal access to education, employment and health-care services.

40. The lack of identity documents among members of the Roma community impeded their enjoyment of fundamental rights; he would therefore welcome information on steps taken to reduce the number of unregistered Roma. He enquired what progress had been made in the implementation of the National Strategy for Roma adopted in July 2005.

41. He was pleased to learn that over 80 per cent of the recommendations made by the Ombudsman for Human Rights were implemented by the authorities concerned. However, the reported underfunding of the institution threatened to undermine its effectiveness. Given the



Ombudsman's role of defending the human rights of all citizens, mandate-holders' reported partiality in favour of a given ethnic group, which resulted from the institution's tripartite structure, was also a cause for concern.

42. Mr. THORNBERRY noted with satisfaction the wide range of legislative provisions relating to national minorities. However, the scope of both civil and criminal legislation concerning other forms of discrimination was comparatively limited. Minority legislation was not a substitute for broader non-discrimination legislation, and he encouraged the State party to take measures to remedy those shortcomings. Measures should also be taken to integrate the concepts of intercultural learning into educational curricula.

43. He, too, was concerned at the discrimination embodied in the State party's current political structure. While the Convention provided for temporary derogation from the principle of non-discrimination, such a measure could not be prolonged indefinitely and steps should be taken to introduce the necessary changes. However, rather than placing excessive emphasis on existing incompatibilities with the principles of the Convention, it would be more constructive to aim for gradual approximation on a case-by-case basis.

44. Mr. TANG asked what administrative and legislative measures had been taken to facilitate the resettlement of Roma in regions other than Brčko district. He also enquired whether specific provisions existed to ensure the return of property and compensation for displaced persons.

The meeting rose at 6 p.m.





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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-eighth session

SUMMARY RECORD OF THE 1737th MEETING

Held at the Palais Wilson, Geneva,  
on Thursday, 23 February 2006, at 3 p.m.

Chairman: Mr. de GOUTTES

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY  
STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Initial to sixth periodic reports of Bosnia and Herzegovina (continued)

FOLLOW-UP TO THE WORLD CONFERENCE AGAINST RACISM, RACIAL  
DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Initial to sixth periodic reports of Bosnia and Herzegovina (continued)  
(CERD/C/464/Add.1; HRI/CORE/1/Add.89/Rev.1)

1. At the invitation of the Chairman, the members of the delegation of Bosnia and Herzegovina resumed their places at the Committee table.
2. Mr. NAGRADIC (Bosnia and Herzegovina) said that while there were no official statistics on the size of each of the 17 legally recognized national minorities, it was estimated that in total those minorities made up about 2 per cent of the population. Despite sharing the language and religion of the Serbs, the Montenegro minority had now been recognized as a national minority.
3. The largest national minority was the Roma. According to estimates, there were between 30,000 and 40,000 Roma, although NGOs tended to over-estimate their number. Most of the Roma living in the Federation of Bosnia and Herzegovina were Muslim. The majority of those living in the Republika Srpska practised the Orthodox religion, while a small proportion were Muslim. For most Roma living in the Federation or in the former Yugoslav republics, however, religious affiliation was less important than it was for other national minorities.
4. The Roma were the most vulnerable national minority in social terms. While some Roma were extremely rich, many lived in poverty. Few of them had regular jobs, since they had no qualifications. They did not usually complete compulsory education, and large numbers of Roma did not attend school. In 2005, however, enrolment of Roma children had increased to 80 per cent in some regions, thanks to the provision of school transport, meals and equipment. The current problem was the lack of teachers who had been trained to teach in the Roma language; some primary schools, particularly in Tuzla Canton, did provide that teaching, but many more qualified staff were needed. Many Roma parents kept their children out of school, but some local authorities were also guilty of not enforcing the law to ensure that those children attended school.
5. In 2002, the Roma Board had been established as an advisory body to identify problems affecting that community and to refer issues to the competent bodies. Some 40 NGOs currently worked to protect the rights of the Roma, and the nine members of the Roma Council had been freely elected to work with the Council of Ministers. In 2005 that Council had adopted a strategy on Roma issues which had been published in the Official Gazette and published as a brochure. The strategy identified a number of problem areas, and action plans would be prepared on housing, employment and education for the Roma population. Despite its best efforts, the Government recognized that there were insufficient resources to ensure that the Roma adequately enjoyed their rights.

6. Many civil servants, academics, politicians and other professionals were members of national minorities. The electoral law was being amended to ensure that those minorities were represented, and the House of Representatives would include at least three members of national minorities.

7. At the beginning of 2006, the Parliamentary Assembly had begun consideration of a legislative amendment that would merge the entity-level offices of the ombudsman and the State Ombudsman into a single human rights Ombudsman's Office. While that process was under way, the Government was aware that the current priority was to raise awareness of the existence and mandate of the Ombudsman.

8. Since the country currently included three constituent peoples and 17 national minorities, creating a nation State was a complex issue. The "others" referred to as bearers of sovereignty in the preamble to the Constitution were people other than the constituent peoples. They were the members of all national minorities and the 0.1 per cent of the population who were members of neither a constituent people nor a national minority.

9. Ms. DJUDERIJA (Bosnia and Herzegovina) said that cantonal and municipal courts were now fully independent. The Independent Judicial and Prosecutorial Council was responsible for monitoring the work of newly appointed judges and prosecutors. Independent centres in both entities provided human rights training for judges and prosecutors. They cooperated with the relevant ministries and other institutions in an attempt to ensure that all members of the judiciary upheld human rights in accordance with domestic and international legislation.

10. In 2004, the mandate of the Human Rights Chamber had been taken over by the Human Rights Commission, working within the Constitutional Court. The Commission had about 20,000 cases pending. The Constitutional Court, as the highest judicial instance, could hear appeals relating to human rights violations.

11. Roma women and girls were often forced to beg and were sexually abused. Steps had been taken to inform them of their rights and to empower Roma women. While the custom of buying and selling girls for marriage still existed, several women's organizations were now working to eradicate the practice.

12. Ms. TARABA (Bosnia and Herzegovina), referring to a question raised in the Amnesty International report, said that an agreement had been signed by the representative of the Aluminij aluminium factory in Mostar, the Prime Minister and four other ministers. That agreement had yet to be approved by the House of Peoples of the Parliament in order to become binding.

13. Equal opportunity of employment was encouraged in all spheres of the public sector. She confirmed that a number of civil service employees belonged to the group categorized as "the others". As requested, she provided an example of a previously mono-ethnic private enterprise in central Bosnia, where the majority of the population was Croat. The current workforce at that enterprise consisted of 25 per cent Bosnians, and 15 to 20 per cent Jews, Serbs and Roma. Her

Government would provide more precise details on equal opportunity and diversity in the labour market in future, but wished to emphasize that it supported enterprises' efforts to create jobs throughout Bosnia and Herzegovina by, inter alia, facilitating the issuance of permits and licences.

14. Ms. RADIC (Bosnia and Herzegovina) explained that the Action Plan for children with special needs defined a comprehensive strategy to eliminate the obstacles impeding the participation of children at all levels of education and society at large. The objectives of the Action Plan included systemic changes aimed at enhancing methodologies to accommodate children, the elimination of administrative obstacles throughout the system, and participation and coordination between parents, educational institutions and community organizations.

15. She mentioned the work under way to eliminate potentially offensive content from textbooks through a systematic procedure of modernization and innovation of school curricula. In addition, special guidelines had been drafted for authors of textbooks, particularly in more sensitive subjects such as history and geography.

16. In response to a question by Mr. AMIR on racial propaganda and incitement of hatred, she said that her delegation was not aware of any registered organizations that used racially insensitive language. She welcomed the fact that the matter had been raised, and reassured the Committee that her Government would remain vigilant in that area.

17. Lastly, addressing the apparent discrepancy in the regulation of the media to which Mr. YUTZIS had alluded, she said that regulation was applied to both the electronic and print media. The data provided in the report were, for the most part, still valid in the case of the print media, but it would perhaps take some time before self-regulation became fully operational.

18. The CHAIRMAN said that the discussions with the delegation had provided the Committee with a better grasp of the institutional complexities and specificity of the situation of the constituent peoples and minorities of Bosnia and Herzegovina. Given the recent tragic history of the country, it was clear that major challenges remained to be resolved, including the difficulties involved in reintegrating returnees into society, as well as more practical aspects such as their access to housing and employment.

19. He noted that certain aspects of legislation, particularly those relating to electoral provisions, were not in line with the requirements of the Convention, but he was confident that the Government was keen to make the necessary improvements. He wished to pay special tribute to the delegation's declaration of commitment to the establishment of a just and lasting peace in Bosnia and Herzegovina as a matter of priority.

20. Mr. BOYD, Country Rapporteur, said that Bosnia and Herzegovina had laudably faced up to its challenges since the end of the armed conflict. Referring to advances in the implementation of the provisions of the Convention, he said the Committee was pleased that international treaties, including the Convention, had been incorporated into domestic law and therefore held primacy. It was particularly significant that those treaties were used by the Human Rights Chamber and constitutional courts as precedents, on a par with constitutional

provisions, and could be applied in judicial proceedings as a basis for decisions. The Committee would have welcomed more information on the specific provisions of the Convention that were used by the competent authorities or aggrieved private parties in seeking legal redress for acts of racial discrimination.

21. The high level of expertise possessed by the members of the delegation reflected the Government's serious intent to effectively implement the provisions of the Convention. In addition, he was impressed by the candour with which the delegation acknowledged shortcomings and the need for reform, and its frustration at the slow pace of progress in certain important areas. He assured the delegation that the country's performance would be assessed in terms of progress made rather than the level of perfection achieved.

22. He highlighted some notable points raised by the delegation in the course of the discussion, including the challenges to human rights practitioners in reconciling the apparent differences in the approaches to implementation of human rights principles taken by European legal experts, on the one hand, and their Anglo-American counterparts on the other.

23. He also appreciated the admission of incompatibility between the existing constitutional structure of Bosnia and Herzegovina and the provisions and goals of the Convention. In its quest to achieve the overriding goal of national peace, the Government had recognized the importance of initiating constitutional reform. He underscored the value of assigning rights among all political, ethnic and social constituencies.

24. In that regard, the delegation had mentioned the symbolic and substantive need for agreements in principle to introduce amendments to the Constitution in order to eliminate the ethnically-based system of eligibility to stand for election. Although the process was not yet complete, that was a laudable development, especially since the drafters of those amendments felt there was an urgent need to complete the task.

25. Much remained to be done in order to fully implement the terms of the Convention. Nevertheless, the authorities had taken significant first steps towards reconciliation, both within and among the peoples of Bosnia and Herzegovina, and reconciliation between domestic legislation and the international treaties it had ratified, including the ICERD.

26. He further emphasized the need to ensure that the constitutional structure and electoral law provided genuine and equal access and responsibilities for all, at all levels, including the national minorities referred to as "the others".

27. The Committee appreciated the delegation's candid acknowledgement of the existence of 56 ethnically-segregated schools, the Government's discomfort with the status quo, and its desire to move towards a more inclusive model. The abolition of segregation in schools must be followed by greater and active integration, particularly in primary education. Improvements in the social, economic and security situation would contribute to the delivery of a more inclusive educational system. Integration would be further enhanced through a standardized curriculum that included intercultural elements, focusing on tolerance and active engagement based on shared values among people of varied ethnicities. He also mentioned the legacy of the armed

conflict and the potentially offensive connotations associated with ethnic flags and symbols. Bosnia and Herzegovina must find a way to retain minority children in primary and secondary education. The report that only 10 to 15 per cent of Roma children attended school constituted a national emergency with potentially dire future consequences.

28. He echoed Mr. Kjaerum's hope that the enhanced effectiveness and capacity of the Ombudsman's Office would be supported by adequate financial means.

29. In conclusion, he applauded the country's progress from a situation of armed conflict to the present, highlighting the tremendous work the Government had undertaken to bring about improvements. He believed the level of effort already displayed augured well for the future development of Bosnia and Herzegovina.

30. The CHAIRMAN thanked the delegation for its participation.

31. Mr. NAGRADIC (Bosnia and Herzegovina) said that his delegation appreciated the warmth with which it had been received and thanked the Committee for its comments, which would provide valuable guidance to his Government in tackling the remaining challenges. His delegation wished to assure members of its commitment to the prompt implementation of the recommendations they proposed.

The meeting was suspended at 4.25 p.m. and resumed at 4.40 p.m.

FOLLOW-UP TO THE WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (agenda item 10)  
(E/CN.4/2005/20; E/CN.4/2004/WG.21/10)

32. Ms. JANUARY-BARDILL gave a brief overview of the activities of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action since its creation in 2002. At the request of the Working Group, the Committee on the Elimination of Racial Discrimination had submitted its written views on the implementation and effectiveness of (a) the substantive provisions of the Convention and (b) the Committee's procedures (E/CN.4/2004/WG.21/10) at the Group's third session. In that connection, she drew attention to paragraphs 50 and 51 of the Group's report (E/CN.4/2005/20), which summarized the comments made by Committee members concerning the document. She also reminded the Committee of the Group's recommendations on complementary standards, which were contained in chapter VI, paragraphs 25 to 36, of the report. In paragraph 36 of its recommendations, the Group had requested OHCHR to convene a high-level seminar within its fourth session to address the work identified in paragraphs 22 and 35 of the recommendations; the seminar had been held from 16 to 20 January 2006.

33. Mr. PILLAI said that the main topics discussed at the high-level seminar had been racism and the Internet, and complementary international standards. The Committee's participation had been largely limited to the deliberations on complementary standards; its written views on the implementation and effectiveness of (a) the substantive provisions of the Convention and (b) the Committee's procedures submitted at the Working Group's previous session had been discussed at length.



34. Participants in the seminar had made repeated reference to the provisions of the Convention, in particular articles 4, 9 and 14. There had been extensive debate on the scope of article 1 in the context of contemporary forms of racism. Article 2 had been mentioned with reference to affirmative action. Article 4 had been discussed in relation to issues such as freedom of expression and cybercrime; the idea of an optional protocol on racism and the Internet had also been considered. In connection with article 5, participants had discussed the advisability of adopting an international instrument on cultural rights defining the context of those rights. Article 6 had been invoked in relation to proposals to rethink the burden of proof placed on victims of racial discrimination seeking remedies under that article. Participants had also underlined the importance of article 7; emphasized the need to create enhanced awareness of the Convention and its provisions; and discussed reporting procedures in the framework of article 9. Broad discussions had taken place on article 14, in particular in relation to States' reluctance to make a declaration under that article, and follow-up to the recommendations and comments made by the Committee concerning communications received.

35. The debate on procedural issues had focused on timely reporting; areas and quality of reporting; follow-up to the Committee's comments and recommendations; new procedures; States parties' reluctance to make a declaration under article 14; and the absence of communications from certain States parties that had made such a declaration years before.

36. The Committee's views on the implementation and effectiveness of the Convention had received broad support. Particular attention had been given to: the need to promote ratification of the Convention; efforts to encourage States parties to review their reservations, especially those concerning article 4; the request for States parties to fulfil their reporting obligations; the importance of strengthening OHCHR's capacity to provide technical assistance in the drafting of reports; the request that the General Assembly should devote greater attention to the Committee's annual reports; and the call for allocation of sufficient resources to enable the Committee to fulfil its mandate.

37. Mr. DOUGAN-BEACA (Chief, OHCHR Anti-Discrimination Unit) said that the Anti-Discrimination Unit provided secretarial support to the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action, the Working Group of Experts on People of African Descent; and the group of five eminent experts. It had also been mandated to compile a database of good practices in addressing racism, racial discrimination, xenophobia and related intolerance; work on the database would commence in 2006. In that context, efforts would also be made to identify less well-known or new manifestations of racism with the aim of finding ways to combat such phenomena in the framework of existing anti-discrimination action.

38. At the sessions of the Intergovernmental Working Group, it had transpired that there was a need for OHCHR to enhance its assistance to States parties in formulating anti-discrimination legislation; the formulation of model provisions to be included in domestic legislation had been considered useful in that regard. In response, the Anti-Discrimination Unit planned to review and update the first draft of such provisions prepared in 2002; the results would be submitted to member States for consideration.

39. There had been broad support for the work of the Committee; its views on the implementation and effectiveness of the Convention mentioned by Mr. Pillai had been incorporated in the Group's recommendations. The Group had further invited the Committee to prepare a document on ways to improve its procedures and close existing gaps in the implementation of the Convention, in particular with regard to the scope of article 1 and the implementation of article 4. In addition, the group of five independent eminent experts had been requested to undertake a study on gaps in the implementation of existing international anti-discrimination legislation. The study and the document submitted by the Committee would be considered jointly at the Group's next session.

40. The unprecedented level of participation in the Group's fourth session was encouraging, although the number of high-level dignitaries attending the seminar had been rather low owing to time and resource constraints. Among other conclusions, the outcome document currently being drafted identified the Internet as a useful tool for promoting universal ratification of international instruments. Broad consensus had been reached on: certain issues relating to complementary standards, including the importance of implementing existing instruments; the relevance of the ICERD in combating racism; and the key role of the Committee in monitoring the implementation of international standards pertaining to anti-discrimination.

41. The CHAIRMAN said that cooperation between the Anti-Discrimination Unit and the Committee was indispensable. The Committee should take advantage of Governments' perception that racial discrimination was becoming an increasingly pertinent issue and that the Convention was the principal instrument to deal with it. He invited members to reflect on what steps the Committee could take in order to respond to contemporary forms of discrimination. At previous meetings on the subject, it had been suggested that improving the Committee's working methods would be more effective in that regard than drafting complementary standards. Discussion had taken place on the notion of an additional protocol to combat racism on the Internet. That had given rise to the question whether such a protocol should be linked to the Convention or whether it should be a separate instrument.

42. Mr. AMIR requested clarification of the mandate of the Anti-Discrimination Unit. He favoured the idea of drafting an additional protocol to the Convention as that would make the provisions of the Convention more explicit for States parties, which were often not fully aware of their implications. It was important to know which reforms would ultimately be made to the treaty body system in order to determine what action the Committee should take to improve the effectiveness of implementation of the Convention.

43. Mr. VALENCIA RODRÍGUEZ said that the Durban Declaration and Programme of Action constituted an excellent response to the scourge of racial discrimination that existed in many countries. The inter-ethnic conflicts and tribal struggles currently affecting certain regions of the world were reminders of the need to take decisive action in fulfilling the provisions of that instrument. Renewed efforts should be made to strengthen the political will of States parties to comply with the Committee's recommendations. In considering whether to draft an additional protocol to the Convention to combat racism on the Internet, Committee members should determine whether such a protocol would strengthen the scope of article 4 of the Convention.

44. He requested updated information on the efforts of the independent eminent experts on the implementation of the Durban Declaration and Programme of Action in relation to possible gaps that might exist between the Convention and its practical implementation.

45. Ms. DAH asked whether the additional protocol being discussed would address only article 4 of the Convention, or whether it would refer to issues dealt with in other international human rights treaties. She wished to know how the proposed protocol would relate to the imminent reform of the human rights treaty body system. Would a decision regarding the scope of the proposed protocol be taken immediately or following the reform?

46. Mr. SICILIANOS said that given the transitional stage in which the treaty body system currently found itself, the present was not the best time to introduce complementary standards. Moreover, the Committee had already expressed the view at the third session of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action (E/CN.4/2004/WG.21/10) that the scope of article 1 of the Convention was adequate to address contemporary forms of discrimination. Efforts made by the Committee in recent years had allowed a broader interpretation of the already broad definition of racial discrimination contained in the Convention; hence, there was no need to develop a complementary instrument. However, an additional protocol to the Convention, especially one modelled on the Additional Protocol to the Convention on Cybercrime of the Council of Europe, was worth considering. Since both the Convention on Cybercrime and its Additional Protocol were open to signature by non-members of the Council of Europe, and given the universal nature of the Internet, it might be useful for technical and legal reasons to consider promoting universal accession to those instruments.

47. Regarding the issue of country visits, the Committee had expressed the view that such visits would further the objectives of the Convention and would have the additional advantage of increasing the Convention's visibility. The incorporation of the Committee's existing early warning and urgent action procedure into an additional protocol to the Convention would help to strengthen its effectiveness by giving it a more solid foundation.

48. Mr. SHAHI said that drafting an additional protocol to the Convention was more desirable than developing new standards in the area of racial discrimination since States parties were already finding it difficult to fully implement the existing ones. Efforts to curb cybercrime were necessary, given the great potential for harm to relations between peoples and nations that could come from defamatory comment on the Internet, which was subject to the rule of law as the print media. Greater efforts should be made to ensure that aggrieved communities could take advantage of access to justice provided by national systems of law, thereby enabling them to channel their anger constructively. He suggested that the OHCHR secretariat should consider conducting an expert study on the Convention on Cybercrime of the Council of Europe.

49. The CHAIRMAN said that any action relating to the development of an additional protocol would have to await the outcome of proposed reforms to the human rights treaty body system. However, that did not prevent the Committee from considering new ways to strengthen the effectiveness of the Convention. He recalled that, in its views on the implementation of the Convention and its effectiveness, which had been submitted to the third session of the Intergovernmental Working Group, the Committee had expressed reservations about adopting a new instrument or drafting an additional protocol, considering that article 4 already constituted

an adequate basis for dealing with racism on the Internet. However, it had also said that visits were important for strengthening dialogue with States parties and that those could be carried out either within the framework of its early warning or other existing procedure or through the adoption of an additional protocol. Additional consideration would have to be given to all those issues.

50. Mr. DOUGAN-BEACA (Chief, OHCHR Anti-Discrimination Unit) said that the mandate of the Unit was to follow up on implementation of the Durban Declaration and Programme of Action, and to deal with all questions relating to racial discrimination. That included assisting the Committee in ensuring that States parties acted on its concluding observations after consideration of their periodic reports.

51. At the high-level seminar on racism and the Internet and on complementary international standards for combating racism, which had been held within the fourth session of the Intergovernmental Working Group, most of the delegations present had initially been in favour of adopting an additional protocol. However, in the second part of the seminar, which had dealt with complementary international standards, the consensus had been that an additional protocol was not necessary and that the Committee's interpretation of the provisions of the Convention were adequate to deal with the problem of combating racism on the Internet. Reference had also been made to promoting increased accession to the Council of Europe's Convention on Cybercrime as an alternative to developing new standards. The seminar had concluded with a request that a group of experts should be established in order to propose future action on the issue. It was most likely that, following submission of the experts' report, the discussion concerning complementary standards would continue for several months before a final decision was reached.

52. The CHAIRMAN said that Ms. January-Bardill and Mr. Pillai, who represented the Committee on the Intergovernmental Working Group, would undoubtedly take note of the views expressed.

The meeting rose at 6.05 p.m.



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COMMISSION ON HUMAN RIGHTS  
Sixty-second session  
Item 12 of the provisional agenda

**INTEGRATION OF THE HUMAN RIGHTS OF WOMEN  
AND THE GENDER PERSPECTIVE**

**Report on the Special Rapporteur on trafficking in persons,  
especially women and children, Sigma Huda**

**Addendum**

**MISSION TO BOSNIA AND HERZEGOVINA\***

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\* The summary of this document is being circulated in all official languages. The report, which is annexed to the summary, is being circulated in the language of submission only.

### Summary

The Special Rapporteur visited Bosnia and Herzegovina from 21 to 28 February 2005. She requested an invitation to visit Bosnia and Herzegovina to learn about the situation of trafficking in a post-conflict society characterized by a heavy international presence and about progress made in the fight against trafficking through legislative, administrative and other measures, as well as about new trends and obstacles encountered. During the visit, the Special Rapporteur met with government officials, representatives of international organizations and of non-governmental organizations. She also visited shelters for victims of trafficking.

The Special Rapporteur notes that since the emergence of this phenomenon, the Government of Bosnia and Herzegovina, with the assistance of the international community, has spared no effort to combat trafficking in persons in the country. There is clearly a demonstrable need for national ownership of the legislative and administrative functions, not least to ensure that the mechanisms for implementation can function in a practical and effective manner.

The situation in the area of prevention and suppression of trafficking in Bosnia and Herzegovina has substantially changed since action began with the adoption of the National Plan of Action. A large number of foreign women who were illegally in the country have left, many bars have closed, and several persons involved in trafficking are serving prison sentences. Major changes have occurred in the legislation and the institutional setting to deal with trafficking, law enforcement, border control, identification, and assistance to victims and prosecution of perpetrators.

The Special Rapporteur notes however that weaknesses persist in all these areas and that efforts must continue to achieve further progress towards breaking the trafficking cycle. Issues of coordination, harmonization, training on the new legislation and procedures, awareness-raising and education to eliminate existing gender and other stereotypes, sensitization of law enforcement and the judiciary and assistance to victims, witness protection, which are all addressed in the Plan of Action, still require close attention. The Special Rapporteur observes that in some cases the implementation of laws and administrative instructions to combat trafficking is hampered by a lack of resources.

The Special Rapporteur notes that the phenomenon of trafficking has changed in magnitude and nature. Traffickers have adapted their modus operandi to the overall anti-trafficking strategy adopted by the Government. She therefore considers that there is a need to continuously review the elements of such a strategy to ensure that they are abreast of the new methods adopted by traffickers.

In particular, the Special Rapporteur believes that increased attention must be paid to the emerging phenomenon of internal trafficking and that the mechanisms in place to combat trafficking and protect the persons involved must be reviewed and adapted so as to ensure that they also cover nationals and that specific measures exist for their protection. Measures are also needed to address another emerging phenomenon, the trafficking of citizens of Bosnia and Herzegovina to other countries.

There is also a dire need to establish separate methodologies and structures to combat trafficking in children and to provide them with the protection they are entitled to under the Convention on the Rights of the Child.

The Special Rapporteur notes that the entire anti-trafficking agenda was initiated and developed by the international community; Bosnia and Herzegovina therefore did not have much of an initial role in that regard. However, the Special Rapporteur welcomes the new National Plan of Action and the fact that appropriate budget allocations have been approved. The Special Rapporteur also welcomes the fact that the Plan focuses on prevention and addresses internal trafficking and trafficking of children.

**Annex**

**REPORT OF THE SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS,  
ESPECIALLY WOMEN AND CHILDREN, SIGMA HUDA, ON HER MISSION  
TO BOSNIA AND HERZEGOVINA, 21 TO 28 FEBRUARY 2005**

**CONTENTS**

	<i>Paragraphs</i>	<i>Page</i>
Introduction .....	1 - 3	5
I. BACKGROUND .....	4 - 8	5
II. IMPLEMENTATION OF THE PLAN OF ACTION .....	9 - 67	7
A. Institutional arrangements .....	9 - 12	7
B. Anti-trafficking interventions .....	13 - 19	8
C. Border controls .....	20 - 26	9
D. Identification of and assistance to victims .....	27 - 39	10
E. Awareness-raising .....	40	13
F. Legislative reform .....	41 - 45	13
G. Prosecution .....	46 - 57	14
H. Trafficking of children .....	58 - 67	16
III. CONCLUSIONS .....	68 - 74	18
IV. RECOMMENDATIONS .....	75 - 95	19
A. Coordination .....	77	19
B. Legislative reform .....	78 - 79	19
C. Law enforcement, identification of and assistance to victims .....	80 - 87	20
D. Victim-witness protection .....	88	21
E. Prevention .....	89 - 91	21
F. Trafficking in children .....	92 - 95	22



## **Introduction**

1. By letter dated 23 November 2004, the Special Rapporteur on trafficking in persons, especially women and children, sought an invitation from the Government of Bosnia and Herzegovina to conduct an official mission to the country. By letter dated 18 January 2005, the Government responded favourably to this request. The Special Rapporteur visited the country from 21 to 28 February 2005. She takes this opportunity to thank the Government for its full assistance and cooperation, which greatly facilitated her task. She also thanks the Permanent Mission of Bosnia and Herzegovina to the United Nations Office at Geneva for its collaboration in preparing her visit. She further expresses her thanks to the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Bosnia and Herzegovina for its very valuable support and cooperation prior to, during and after the mission, as well as to the numerous representatives of civil society and private individuals she was able to interview.

2. The Special Rapporteur decided to visit Bosnia and Herzegovina because she was interested in studying the situation of trafficking in a post-conflict society characterized by a heavy international presence and in learning about progress made in the fight against trafficking through legislative, administrative and other measures, as well as about new trends and obstacles encountered. The purpose of the trip was twofold: to gather lessons learned in combating trafficking and to study the current situation and formulate recommendations to assist the Government in addressing the root causes of trafficking and protecting the human rights of its victims.

3. During the visit, the Special Rapporteur met with government officials, including the Minister of Justice, the Minister of Security, the Deputy Minister for Foreign Affairs and the Head of the Consular Department of the Ministry for Foreign Affairs, the Director of the Human Rights Sector of the Ministry for Human Rights and Refugees and the State Coordinator for Measures against Trafficking in Human Beings and Illegal Migration. The Special Rapporteur further met with the head of the OHCHR country office; representatives of the United Nations Children's Fund (UNICEF), the International Organization for Migration (IOM), the Organization for Security and Cooperation in Europe (OSCE), the European Union Police Mission (EUPM) and the International Criminal Investigative Training Assistance Programme (ICITAP). She also met with representatives of non-governmental organizations (NGOs) and visited shelters for victims of trafficking.

## **I. BACKGROUND**

4. In order to understand the situation of trafficking in Bosnia and Herzegovina, it is necessary to briefly review how the phenomenon originated. On 21 November 1995, in Dayton, Ohio, United States of America, a peace agreement put an end to three years of inter-ethnic conflict. The Dayton Agreement created a joint multi-ethnic Government charged with conducting foreign, diplomatic and fiscal policy. A second tier of Government was also recognized, comprising two entities: the Bosniak/Croat Federation of Bosnia and Herzegovina (the Federation) and the Bosnian Serb-led Republika Srpska (RS), charged with overseeing most government functions and the autonomous district of Brcko. The Federation is further divided into 10 districts called cantons. Each entity has its own government and civil structures. There are therefore 13 political units, each possessing constitutional and legislative authority.<sup>a</sup>

5. During the conflict inter-ethnic cooperation had developed to ensure the smuggling of necessary commodities, including weapons. Such cooperation continued after the war, moving from wartime commodities to post-conflict market needs. The post-war period saw the deployment of a complex and significant international presence in the country.<sup>b</sup> This created the perception of a demand for sexual services. Traffickers therefore shifted practice to accommodate this perceived demand, and trafficking for the purpose of sexual exploitation started in Bosnia and Herzegovina.

6. The Special Rapporteur was informed that during 1997 what had been labelled prostitution started to be recognized as trafficking for sexual exploitation. NGOs and the International Police Task Force (IPTF) started to report some cases of women trafficked mainly from the Republic of Moldova, Romania and Bulgaria, with others coming from Ukraine, Belarus, the Russian Federation, the former Yugoslav Republic, Kazakhstan and Hungary. Reportedly, trafficking continued to be on the increase at least until the second half of 2001. According to official and unofficial sources, most women were lured into prostitution through promises of work as barmaids, dancers, or housekeepers.<sup>c</sup> Since border controls were very weak, most of these women were initially smuggled in. Others had temporary work or residence permits, some of which were forged. The majority of victims of trafficking worked in bars and clubs. The perpetrators of trafficking came from a variety of backgrounds, and included freelance operators, local crime gangs and large international organized crime syndicates. Some employment, travel and tourist agencies also fronted for traffickers. It has been conceded in the early period that the majority of the clients were non-nationals. As the number of trafficked women in Bosnia and Herzegovina decreased, so did the percentage of international customers. The Special Rapporteur was told that at least 70 per cent of all profits from prostitution were estimated to come from non-nationals, who paid higher rates.

7. In 2001 the Government of Bosnia and Herzegovina signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The Council of Ministries developed and adopted a National Plan of Action (NPA) to combat trafficking in persons in December 2001. The Plan focused on prevention, detection and prosecution of crimes related to human trafficking, as well as assistance and protection to victims. In the NPA the following were identified as the main measures for combating trafficking: establishment of the State Commission for the implementation of the NPA; establishment of shelters for victims, protection programmes, and assistance to and repatriation of victims; reform of the legal framework; training, education and other activities aimed at raising awareness of the issues; and prevention. The Protocol was ratified on 24 April 2002.

8. In 2004 a plan of activities for the implementation of the NPA was adopted and the NPA itself was revised in 2005 to cover the period 2005-2007 and to address new developments in trafficking in the country.

## **II. THE IMPLEMENTATION OF THE NATIONAL PLAN OF ACTION**

### **A. Institutional arrangements**

9. When the NPA was adopted, the Council of Ministers also decided to establish a State Commission for its implementation to ensure inter-ministerial cooperation. However, in October 2002 elections were held and the new Law on Ministries led to an increased number of ministries at the State level and changed their competencies. The issue of human trafficking passed from the responsibility of the Ministry for Human Rights and Refugees to that of the Ministry of Security. The Ministry for Human Rights and Refugees kept the responsibility for issues relating to asylum and the rights of refugees, while the Ministry of Security was entrusted with responsibility for the immigration and asylum policies of Bosnia and Herzegovina. The Special Rapporteur was informed that the shift had caused some problems due to the slow transfer of competencies from one ministry to another. Furthermore, as a result of these changes, the structure of the State Commission no longer reflected the structure and competencies of the ministries involved in the implementation of the NPA.

10. In view of these developments, in July 2003 the Council of Ministers adopted the Decision on Procedures and Ways to Coordinate Activities to Suppress Trafficking in Persons and Illegal Migration in Bosnia and Herzegovina, which established the function of State Coordinator responsible for: ensuring the coordination of activities relating to human trafficking with relevant domestic and international institutions; directing the activities of, and establishing contacts with, other ministries at the State and entity level; initiating meetings with all organizations and institutions involved in the suppression of human trafficking and illegal immigration and for collecting all relevant information for the purpose of preparing reports and for monitoring the implementation of the NPA. The Decision requested the Minister of Security, the Minister for Human Rights and Refugees, the Minister for Foreign Affairs, the Minister of Justice and the State Prosecutor to appoint State officials for the coordination of competencies within relevant ministries. The Decision further requested the State Coordinator, in cooperation with the appointed officials from the ministries and the Office of the State Prosecutor, to follow up and implement the NPA and to make quarterly suggestions on measures for its improvement; to organize and chair meetings with domestic and international organizations and institutions involved in activities to combat human trafficking; and to harmonize programmes and projects that were part of the implementation and goals of the NPA.

11. The Special Rapporteur was informed that, although the establishment of the post of State Coordinator was a positive step, the above-mentioned Decision led to replication of activities in areas such as the preparation of instructions for the treatment of victims, the establishment of shelters, the protection of victims and their repatriation; in effect, responsibility for the protection and assistance of victims was given to three different bodies.

12. In order to ensure better coordination, the Council of Ministers decided that representatives of relevant ministries should be appointed to form a group to discuss the implementation of the NPA. The group consists of seven members, including the State Coordinator and representatives from the Ministries for Human Rights and Refugees, Security, and Justice, and the State Prosecutor's Office. A subgroup was also established in March 2004 to deal with issues relating to children. It comprises entity and Brcko District members from relevant ministries, including education, labour and social affairs, as well as NGOs, UNICEF

and Save the Children Norway. The revised NPA foresees the institutionalization of a State Group to coordinate activities under the Plan itself and its extension to include representatives of newly formed institutions such as the State Investigation and Protection Agency (SIPA), as well as representatives of the Ministry of Civil Affairs.

## **B. Anti-trafficking interventions**

13. The Special Rapporteur learned with interest about measures taken to combat trafficking and identify victims, as well as about the changing nature of the phenomenon.

14. In July 2001, UNMIBH launched the United Nations Special Trafficking Operation Programme (STOP) to combat trafficking through bar raids, under the management of the IPTF. Raids were conducted jointly by STOP teams and local police. According to the IPTF, from July 2001 until the end of 2002, STOP teams interviewed approximately 7,300 women during bar raids.<sup>d</sup> According to IOM, during 2002, STOP teams brought to their shelters 255 women, of whom some 130 were repatriated, while the others refused assistance and left the shelter. The overall number of women brought to the shelter grew in 2002 compared with 2001, but the number of those repatriated decreased.

15. According to some sources, the STOP approach was not effective, in that many women who were brought to shelters subsequently returned to work in the same bars and often perceived the action of the police more as harassment than support. Most of the victims were in fact repatriated and sent back to the same situation that had made them vulnerable to trafficking in the first place, without protection from traffickers.

16. The NPA anticipated the establishment of one safe house near Sarajevo and four additional satellite centres in other parts of Bosnia and Herzegovina where victims could be accommodated for two to three days until their transfer to the main shelter in Sarajevo. The shelter project was presented in the NPA but was not implemented due to lack of resources. Initially the only organization which had developed an assistance programme for victims of trafficking was IOM. IOM would receive any woman found during the bar raids, even if she had not been trafficked, to facilitate identification. There was one shelter for high security cases (women testifying in court) where security was provided by the police. Over time, NGOs increased their capacity and, with the adoption of the Temporary Instruction<sup>e</sup> and the signing of the Protocol of Cooperation with the Ministry for Human Rights and Refugees, a number of them started to provide assistance for victims. Reportedly, assistance was initially only provided to those women who accepted to be repatriated.

17. When EUPM took over functions of IPTF at the beginning of 2003 a new strategy towards trafficking was adopted, allowing local partners more initiative. According to EUPM, local police raided 85 establishments in the first four months of 2003, interviewed 198 women and girls and provided assistance to 17 by transferring them to shelters. Among those interviewed, 37 were sex workers with legitimate documents and 32 had forged documents or no documents at all. The majority of assisted women were from the Republic of Moldova, Ukraine and Romania. In the bars, they found women from Bosnia and Herzegovina and Croatia.<sup>f</sup> The model of intervention was further changed in 2003 to favour gathering intelligence and finding

evidence of trafficking before taking police action and by restructuring the local police by creating units dealing with trafficking-related crimes. Fewer bar raids were conducted and only women requesting assistance were referred to shelters.

18. In October 2001, the Council of Ministers decided to establish the Strike Force for Combating Trafficking in Persons and Organized Illegal Migration (Strike Force) to coordinate high-level anti-trafficking operations. Special units were established within the police consisting of one representative of the key government actors at the State and entity levels. The Federation has an anti-trafficking unit in each canton, providing information to the Strike Force. In the RS, staff have been appointed in the headquarters of all police districts to investigate trafficking. A new structure was introduced in 2003 in order to accommodate the changes in the Criminal Code which gave authority to lead the investigation to the State Prosecutor. The Strike Force's effectiveness is reportedly hindered by a lack of cooperation with the prosecutors and with the relevant inspection units of the labour, taxes and public health sectors.

19. The Special Rapporteur was informed that, while the new approach had its advantages, the increased involvement of the local police produced a greater reluctance on the part of the victims of trafficking to come forward. Some police officers have been involved in trafficking or have been among the users of services provided by the victims. In fact, local police reportedly receive very low salaries and there are many reported cases of corruption. For example, there are reports of police giving information to bar owners about raids, giving protection to the bars and fraternizing with the bar owners.

### **C. Border controls**

20. The Special Rapporteur was informed that the borders of Bosnia and Herzegovina are now legally under the complete control of the State Border Service (SBS), which is a unit of the Ministry of Security. As a result, data on the entry and exit of foreign nationals are more complete and the formerly large number of illegal border crossings has been reduced. However, there are technical, financial, staffing and other issues which prevent complete border coverage.

21. Information obtained by the SBS gives a snapshot of the movement of foreign female nationals in and out of Bosnia and Herzegovina, and may give an indication of the impact of anti-trafficking actions. The SBS should now in fact be able to determine whether any persons who left Bosnia and Herzegovina returned by different means. Irregular border crossing at the airport has been drastically reduced due to stricter controls. However, it appears that land border crossings are still not totally controlled and Bosnia and Herzegovina continues to be a transit country for the smuggling of migrants to Slovenia and Croatia and from there to the EU countries. Furthermore, the SBS database on aliens is not complete and not connected to the Ministry of Security; therefore, other law enforcement agencies do not have access to it. The Special Rapporteur was informed that IOM is working to establish a comprehensive database.

22. In a meeting with a representative of the Department of Consular Relations of the Ministry for Foreign Affairs, the Special Rapporteur was informed that cases of irregular border crossing from the Republic of Moldova, Romania, Ukraine and Pakistan dropped dramatically in the period 2003-2004. However, this decrease can be interpreted in different ways.

23. When visas expire the aliens concerned become irregular. If Bosnia and Herzegovina has an agreement with the country of origin, as in the case of Croatia, irregular aliens are returned. In some cases, however, they disappear after the expiry of their visas. Also, it was reported that many women from the Republic of Moldova, Ukraine and Romania often arrive with a visa for Serbia and Montenegro and then cross into Bosnia and Herzegovina illegally through the RS (Bosnia and Herzegovina has an agreement with Serbia and Montenegro whereby it is possible to enter the country simply by showing an identity card of either country, which can be much more easily forged than a visa). Also, when an order of repatriation is issued, aliens, including possibly victims of trafficking, can move or are moved to a different canton under a different jurisdiction, making the enforcement of the deportation order impossible.

24. The Special Rapporteur was further informed that in spite of all the measures put in place to combat trafficking, traffickers are always one step ahead of the law. Reportedly, there have been reports of fake marriages between men from Bosnia with women from the Republic of Moldova, Romania and other countries. However, after marriage many of these women found themselves obliged to work as prostitutes in bars and nightclubs. The Special Rapporteur was informed about efforts to combat these new practices, such as the decision in some cases not to approve visa requests for some women on the assumption that if their marriages to Bosnian men were genuine they would try again six months later. The Special Rapporteur welcomes all efforts to prevent trafficking and protect possible victims; however, she wishes to stress that there is a need to ensure that such measures do not negatively impact on the enjoyment of other human rights, such as the right to family life.

25. The Special Rapporteur was informed that through the database it is possible to check authorized visas. Some cases raise natural suspicions. For example, in Moscow tourist visas were issued for 39 applicants, all young women (20-25 years) from Ukraine, for a 14-day visit to Medjugorje, Bosnia and Herzegovina. Instructions were given for them to be followed so that if they were not going to the declared destination they could be intercepted and deported. In case of suspicion of trafficking, relevant NGOs and government organizations are contacted to provide adequate protection and undertake necessary investigations. The Special Rapporteur was advised that the assessment was made by the officials involved according to his/her experience and on a case-by-case basis.

26. Reportedly, coordination between the SBS and other law enforcement agencies remains a problem, especially between the entity Ministries of the Interior, the Brcko District, the Ministry for Foreign Affairs and Interpol. Since the entry into force of the Law on Movement and Stay of Aliens and Asylum there has been a marked improvement in border control. Problems remain, however, due to the lack of rule books and procedures to give effect to various parts of the new law. For example, there are no instructions on how to deal with a situation where there are mere suspicions that a person is crossing illegally either into or out of the country, and there are many instances when the SBS merely registers individuals as being "suspected" illegal immigrants.

#### **D. Identification of and assistance to victims**

27. The Special Rapporteur was informed that in the past two years the number of referrals decreased dramatically and at the time of the visit shelters were almost empty. There are different opinions on the reasons for this. Some argue that numbers have not dropped, but fewer victims are identified, while others believe that the incidence of trafficking has been reduced.

The State Coordinator and other sources suggested, for example, that market demand had decreased with the departure of large sections of the international community. However, many said that the majority of clients had always been locals.<sup>8</sup>

28. Many argue that the smaller numbers of victims identified is due to a change in the modus operandi of traffickers. It was reported that the exploitation of trafficked women and girls for prostitution moved from public establishments to private apartments and secluded houses. Reportedly, the large-scale raids by IPTF contributed to pushing the phenomenon underground. Traffickers now use more local women and women from Serbia who are in the country legally and often have contracts as waitresses or dancers. Identification of local women is more difficult as all the structures in place were created for the identification of foreigners. Furthermore, now that trafficking in persons is highly criminalized, traffickers have reportedly started to treat trafficked victims better, including providing them with salaries and imposing less restriction of their freedom. In the locations known to the police, this seems to be especially true and women have started to declare that they work voluntarily in the sex industry. Often, however, women who receive salaries are obliged to spend them in the bar to pay for meals and accommodation, or to purchase drugs and condoms sold by the traffickers. They reportedly also have separate lodgings and no longer live in the bars where they work. An increasing number of victims are addicted to drugs or alcohol or are subjected to other forms of control by traffickers. In an environment in which corruption is highly developed, it has also become easy for organized crime to obtain travel documents, residence and work permits and visas, thus making identification and interception more difficult.

29. Victims are still subjected to intimidation and threats, and female pimps or traffickers from the same country as the victim are used more frequently as a way of exercising control. Victims often believe that if they come forward to denounce their situation they will be obliged to cooperate with the police and they fear for themselves and their families; they therefore prefer to declare that they are engaging in prostitution voluntarily.

30. The majority of international assisted victims continue to be Moldavians and Romanians, with Ukrainians making a third, much smaller, group. According to information received by the Special Rapporteur, the victims seem to be older, but this could be due to the fact that they agree to be assisted only after they have spent several years in Bosnia and Herzegovina. The percentage of victims from rural areas has increased considerably, which could indicate a change in methods of recruitment, such as through newspaper advertisements which are more accessible in urban areas. There was also reportedly an increase in the number of Bosnian recruiters and former victims of trafficking becoming involved in the recruitment and control of new victims. An increasing number of victims reportedly knew that they would be working in Bosnia and Herzegovina, but the majority were not aware that the job involved sexual services. Many of them were physically abused while being trafficked and some have become addicted to drugs or alcohol given to them as a means of control.

31. According to some information, Bosnia and Herzegovina was also emerging as a country of origin for Bosnian victims trafficked from within and outside its borders, mainly for sexual exploitation, reportedly to other countries in Europe. Reportedly, traffickers organize passports and visas and use legal means to transport victims to their destination. Many victims are trapped through debt bondage and expected to pay back the cost of their travel, documents and other services such as accommodation, food and condoms.

32. There is a problem in identifying national victims of trafficking because all the protection measures adopted so far have been only for foreigners. The limitation of the protection measures also make it difficult to identify victims who are exploited for purposes other than sex, for example children trafficked for the purpose of begging.

33. Reportedly, the identification of victims also became difficult because the women believed repatriation was the only available option and preferred not to come forward. They in fact know that they cannot be protected from traffickers once they are back home, as they come from small communities and can easily be traced, punished or re-trafficked. The impossibility of sustaining themselves and their families and the issue of the stigma attached to being a victim of trafficking are also strong factors preventing women from seeking assistance. Self-identification by victims is rare, unless or until they are in a shelter and receiving assistance. In order to address this problem the Ministry of Security adopted a Rule Book on the Treatment of Trafficking Victims. According to the current legislation victims should remain for 10 days in a temporary shelter where they can recover and decide on their future course of action. They have the option of applying for a humanitarian visa and remaining in the country for a further three months; this is not conditional upon giving evidence to or cooperating with the police. During this period they are provided with health care, counselling and general support. This approach ensures that victims are kept out of police custody and given a reflection period away from the police, whom they usually do not trust. However, the Special Rapporteur was informed that the police are often not aware of the procedures to follow when they identify a victim of trafficking.

34. The Special Rapporteur is concerned that the Rule Book does not address the issue of internal trafficking and trafficking for purposes other than prostitution, and there is no regulation governing the protection of victims of trafficking from Bosnia and Herzegovina to third countries. Under the new National Plan of Action it is foreseen that assistance will be provided to national victims, although it is not clear whether by NGOs or the relevant government ministries.

35. An additional difficulty is that the majority of officials working on the front line to prevent and suppress trafficking, including in the law enforcement agencies, are men. A hotline was established that women can call to get assistance.

36. The Ministry for Human Rights and Refugees stressed that the legal framework is in place, but there are problems of implementation due to the lack of financial resources; Bosnia and Herzegovina depends heavily on donations from the international community and there is reportedly a lack of resources in particular for long-term protection of and assistance to victims. The Special Rapporteur believes that cost-sharing schemes with countries of origin might be one solution.

37. According to some NGOs, more legal than social assistance is sought. If the women have been designated as victims, they are reimbursed for shelter, medical assistance and other expenses.

38. The Special Rapporteur was further informed that access to health care is provided only for foreigners coming from countries with which Bosnia and Herzegovina has an agreement. The majority of victims of trafficking do not come from these countries and have access only to emergency health care.



39. NGOs running shelters expressed concern at the lack of information on follow-up to victims' repatriation.

#### **E. Awareness-raising**

40. Several programmes of awareness-raising were implemented in schools and through the media. However, there was little effort to assess the impact of such campaigns. The Deputy Minister for Foreign Affairs informed the Special Rapporteur that after the implementation of advocacy programmes much progress was achieved, and the majority of citizens (men and women) were informed and aware of the problem. However, other interlocutors stated that the problems were perception and prejudice. The Special Rapporteur was also informed that there is a high level of awareness in urban areas but not necessarily in rural areas, and that most people think trafficking involves foreign women but not nationals.

#### **F. Legislative reform**

41. Bosnia and Herzegovina has ratified the main human rights instruments.<sup>h</sup> The Dayton Agreement ensured that the highest level of internationally recognized human rights protections would apply by, inter alia, making the Convention for the Protection of Human Rights and Fundamental Freedoms directly applicable. Chapter III of the Constitution defines human and civil rights and freedoms in such a way that they cannot be removed or limited. Bosnia and Herzegovina and both its entities have committed themselves to ensuring the highest level of protection of economic, social and cultural rights through the implementation of domestic and international regulations. The Constitutions of Bosnia and Herzegovina and both entities prohibit discrimination on any ground.<sup>i</sup>

42. The Special Rapporteur learned about the extensive legislative reform undergone by Bosnia and Herzegovina. The Government implemented a new Criminal Code and Criminal Procedure Code in March 2003, making trafficking in persons a State-level crime punishable by up to 10 years' imprisonment. The RS and the Federation began harmonizing their criminal codes in July and August 2003. A Law on Protection of Witnesses under Threat and Vulnerable Witnesses was also imposed by OHR. A new Law on the Movement and Stay of Aliens and Asylum was imposed in October 2003.

43. Article 186 of the new Criminal Code, defines the criminal act of "trafficking in persons"<sup>j</sup> while other trafficking-related criminal acts are contained in separate articles: 185 - Establishment of slavery and transport of slaves;<sup>k</sup> 187 - International procuring for prostitution; 188 - Unlawful withholding of identity papers; 189 - Smuggling of persons.

44. Article 187 defines the international procurement of a person for the purposes of prostitution as a criminal act. Paragraph 1 of this article stipulates that "whoever procures, entices or leads away another person to offer sexual services for profit within a state excluding the one in which the person has residence or of which he/she is a citizen, is committing a crime". Some of the Special Rapporteur's interlocutors pointed out that this activity should be prosecuted as trafficking. However, there is no clarity as to jurisdiction and to what is meant by "international procurement for prostitution". If this offence is perpetrated against a child or a juvenile, the perpetrator may be punished by imprisonment for between 1 and 10 years, which is less than in the case of trafficking in children under article 186, where the sentence prescribed is

no less than 5 years. The definition also raises the issue of how to treat international recruitment for the purpose of other forms of exploitation - such as forced begging or labour exploitation - which is not addressed by the Criminal Code of Bosnia and Herzegovina.

45. The Witness Protection law and the Witness Protection Programme were adopted at State and entity levels and cover two categories of witnesses: witnesses under threat and vulnerable witnesses, the latter including children witnesses. They are entitled to psychological and social assistance and professional help and other protection measures governing the presentation of evidence and testimony, including measures to protect anonymity. The Special Rapporteur was informed that this law is unfortunately not being effectively implemented due to a lack of resources.

### **G. Prosecution**

46. Before the new Criminal Code, prosecutors most frequently used article 228, Procuring and pandering, and article 229, Mediation in (or promoting) prostitution, to prosecute trafficking cases. These two provisions targeted “pimping” rather than trafficking and carried minimal penalties. The crime of trafficking, involving organized crime, should be prosecuted at State level. Unfortunately, in the process of harmonization, the entities have retained responsibility over some criminal acts that relate to trafficking.

47. Due to changes in the Code of Criminal Procedure the investigation procedure is now the responsibility of the prosecutor rather than the investigating judge. According to information received by the Special Rapporteur, when there is a suspected case of trafficking the police have to inform the prosecutor’s office, which undertakes an investigation. Law enforcement agencies initially did not receive training on the new procedure. The State Prosecutor in early 2003 requested all prosecutors to be notified of cases falling within the competency of the State court. However, it was not clear under what circumstances a case should be referred to the State court as a trafficking case and when it should be tried at the local level.

48. Almost all law enforcement is organized at entity level. Often there is confusion as to what criteria and at what stage the State Prosecutor would move the case to State level. The Special Rapporteur was informed that, as a result, there are divergent court practices, unequal treatment of victims and defendants, unnecessary delays and ineffective prosecutions.

49. Data provided by the prosecutor’s office reveal that during the period when the reform was getting under way, a number of criminal prosecutors relating to human trafficking and smuggling were at various stages, but only a handful of these were cases of trafficking.

50. It can be concluded from the length of time it takes for cases to be brought before the courts that the procedures take too long; they frequently end in light sentences.

51. According to information received by the Special Rapporteur, there is a lack of cooperation between agencies responsible for combating trafficking, a lack of cooperation between the entities, especially between their law enforcement organs, and a lack of investigators at the State level, which result in the low number of prosecutions.

52. Also, according to information received by the Special Rapporteur, prosecutors often do not press the police to conduct better investigations or to complete the investigations, and have a tendency to pursue bar owners for lesser charges such as possession of stolen/forged passports. Even if the prosecution is successful, sentences are very light. The Special Rapporteur was also informed that cases are poorly argued and for this reason often dismissed. Furthermore, the evidence gathered by police is sometimes insufficient and it is up to the prosecutor to call the police to testify in court. Reportedly, police officers rarely testify in trafficking cases.

53. The State Criminal Intelligence Investigation Agency (SIPA) investigates State-level crime. At the time of the visit there were nine criminal investigators specializing in trafficking. More were in the process of being recruited. However, there were complaints of a poor flow of information between the different levels of the police. A tax investigation unit for related financial investigations was established in December 2004.

54. Since prosecutions rely largely on testimony by victims, securing convictions is difficult. Victims may be reluctant to give evidence because they either are or feel threatened or intimidated and are afraid of being prosecuted. The existing legal framework in fact provides for the possibility of prosecuting the users of sexual services, as well as those engaged in selling sex; unfortunately, the common practice among the police is reportedly to submit reports only on those who provide sexual services. According to information received by the Special Rapporteur, victims who refuse to give evidence run the risk of being prosecuted for prostitution. The State Prosecutor confirmed that there had been cases of women who did not claim to be victims of trafficking being arrested and prosecuted for prostitution.

55. The Special Rapporteur was informed that the Law on Protection of Witnesses under Threat and Vulnerable Witnesses guarantees protection only before and during the trial, to ensure that the identity of the victim is not disclosed. However, communities are small and there are problems of corruption, and victims do not feel sufficiently protected to come forward and testify. The Minister of Justice informed the Special Rapporteur that in theory, after the trial the victim can be protected for up to 30 years at the request of the lawyer; however, in practice protection cannot be guaranteed. There is no adequate recourse for victims or provision for prosecuting those who violate the law. It makes no special provision for relocation of a protected witness. The Special Rapporteur was informed that the Ministry of Security did not even have funds to provide for transportation of the witnesses.

56. The Special Rapporteur noted with satisfaction that the new entity codes of criminal procedure contain specific provisions allowing testimony to be taken from victims, in the presence of defence counsel, before a preliminary hearing judge. In this way, the defendant's due process rights can be respected and crucial testimony can be admitted at the trial. However, the Special Rapporteur is concerned that in practice the preservation of evidence is hampered by the extremely high standard required to prove that a witness is "unavailable": as presently drafted the relevant provision states that witnesses will be deemed unavailable only when the proponent of the evidence can prove that he/she has made every effort to secure the witness's presence at main trial; a preferable definition of unavailability would include, at a minimum, situations where the proponent of the evidence has made an effort in good faith. Moreover, the definition should explicitly acknowledge that victim-witnesses can be rendered unavailable through fear and should not be subject to subpoena or arrest and/or detention as a material witness.

57. Victims can seek compensation under the Civil Code, but this is reportedly time-consuming, and in the meanwhile they need shelter and legal assistance, which are not always available. Compensation is not automatically awarded upon conviction and there is no provision in the legislation concerning the confiscation of assets and illegally obtained property, which could be used for that purpose.

## **H. Trafficking of children**

58. According to the information received by the Special Rapporteur, in 2002 about 10 per cent of trafficked victims interviewed by STOP teams were girls under 18. In 2003, the percentage reportedly decreased to 5 per cent. However, the Special Rapporteur was informed that the grounds on which the police estimated the ages of the girls without documents or with false documents were not clear or coherent. Furthermore, statistics referred to the ages of victims when they first came into contact with law enforcement or assistance and not at the time they were trafficked. According to the data, the majority of foreign children trafficked for sexual exploitation came from Romania and the majority were girls over 14. Many trafficked children had forged papers so precise identification is very difficult.

59. According to the 2003 UNICEF Guidelines for Protection of the Rights of Children Victims of Trafficking, children victims of trafficking, according to the Convention on the Rights of the Child, are entitled to special protection measures for their recovery and reintegration. Children separated from their parents and family environment are entitled to special protection and assistance provided by the State. In all actions concerning children victims of trafficking, whether undertaken by public or social welfare institutions, police courts of law, administrative authorities or legislative bodies, the best interest of the child should be a primary consideration. A child victim who is capable of forming his or her views enjoy the right to express those views freely in all matters affecting him or her, for example, in decisions concerning his or her possible return to the family or country of origin. The views of the child need to be given due weight in accordance with his/her age, maturity and best interests. Child victims must be provided with information in a language they understand about, for example, their situation, their entitlements, services available and the family reunification and/or repatriation process. Children are entitled to confidentiality and all necessary measures must be taken to protect the privacy and identity of child victims.<sup>1</sup>

60. The Special Rapporteur was informed that in practice law enforcement officials and service providers reportedly apply the same procedures and standards to children and adults. IOM and NGOs running shelters reportedly do not have special standard procedures to deal with children. In particular, the Special Rapporteur was informed that children are accommodated in shelters together with adults and there are no specific forms of counselling for them. Social services rarely get involved in cases of foreign trafficked victims, in spite of the fact that social protection legislation assigns concrete guardianship of all separated children and children in need of special protection and related monitoring tasks to the Centres for Social Work. There is normally no administrative procedure for appointing a guardian, reportedly due to lack of resources. The Special Rapporteur was informed that when children are identified, the social services are informed and encouraged to contact the families of the children, who are subsequently sent back home. The Law on Social Protection provides the framework for the protection of children from abuse and violence. However, the implementation of the law is poor.

61. The first NPA provided that a Government-funded shelter would have to be created for longer stay of children who had been trafficked by their families and could not therefore be repatriated, where they could receive special care. However, this provision was reportedly not implemented and there was little or virtually no cooperation between local services for children and agencies assisting victims of trafficking.

62. The first cases of internal trafficking of children emerged in 2002. According to several interlocutors, a significant percentage of victims of internal trafficking are minors. When the Special Rapporteur visited a "high risk" shelter in Sarajevo, she found there a 13-year-old girl from Bosnia and Herzegovina who had been sold for sexual exploitation, and was told that the girl's sister had been sold for begging. The shelter does not have temporary custody over minors.

63. According to UNICEF, there is an overall lack of outreach work and efforts to gather information on underage victims through regular control of and visits to places used for commercial sexual exploitation.

64. The Special Rapporteur was informed of many cases of children begging in the street. Trafficking of children for begging involves mainly local children and a very few children from Serbia and Montenegro. Whether they are defined as trafficked depends on the interpretation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children supplementing the United Nations Convention on Transnational Organized Crime. A few reports refer to children being organized by adults, often their parents, sometimes moved across borders and often obliged to give their earnings to adults. However, the line between trafficking and the struggle for survival is in this case blurred. What can be asserted without doubt is that these children are often in a situation of forced labour and are very vulnerable to exploitation by criminal gangs. The Special Rapporteur believes that there should be a systematic approach to dealing with children living and working in the street in order to protect them against forced labour and trafficking. However, their situation is reportedly often blamed on their culture - a reference to the Roma - and they are often recorded as delinquents.

65. The police claimed that there was a lack of material and personnel resources to combat child trafficking. The National Plan of Action for Children in Bosnia and Herzegovina includes trafficking as a special protection issue and states that protection measures will be planned in agreement with the NPA on trafficking. At the time of the visit, reportedly no such activities had been implemented. The National Plan of Action for Children also raises the issue of child labour and the need to reduce the number of children in Bosnia and Herzegovina involved in labour activities.

66. The Special Rapporteur was informed of sporadic and unconfirmed reports that would indicate that Bosnia and Herzegovina is becoming a country of origin of trafficking of children. No data or estimates are available on this phenomenon.

67. The Special Rapporteur was informed about projects such as the BatCom Project of the Star Network World Learning devoted to raising awareness about cases of internal trafficking, working in particular with schoolchildren. Reportedly, children are aware of the problem, but if they are approached by traffickers there are concerns that they might not know how to react.

Competitions for children on their understanding of trafficking are also organized. In a painting competition many children depicted scenes of violence at home, a situation that may make children more vulnerable to trafficking. The Special Rapporteur was informed that a new law had been passed, under which in cases of domestic violence the perpetrator - usually the father - had to leave the house rather than the family, but there is a need to educate judges and prosecutors on the new law. The Special Rapporteur was informed of plans to establish a community watch to report suspicious practices and behaviour. However, many people are reportedly afraid to report traffickers. Often the families and the community are involved, especially in the case of exploitation of children for begging. UNICEF also works on issues of domestic and sexual violence to build sustainable programmes to empower women and children and prevent child trafficking. IOM also works towards strengthening the social protection system. With regard to begging and the issue of the Roma culture, UNICEF has tried to make schools more accessible to Roma children and to educate law enforcement and social services agencies.

### III. CONCLUSIONS

68. The Special Rapporteur notes that since the emergence of the phenomenon of trafficking in persons, the Government of Bosnia and Herzegovina, with the assistance of the international community, has spared no effort to combat it. There is clearly a need for national ownership of the legislative and administrative functions, not least to ensure that the mechanisms for implementation can operate in a practical and effective manner.

69. The situation in the area of prevention and suppression of trafficking in Bosnia and Herzegovina has changed substantially since the adoption of the NPA. A large number of foreign women who were illegally in Bosnia and Herzegovina have left, many bars have closed and several persons involved in trafficking are serving prison sentences. Major changes have occurred in the legislation and the institutional setting to deal with trafficking, law enforcement, border control, identification of and assistance to victims and prosecution of perpetrators.

70. The Special Rapporteur notes, however, that weaknesses persist in all these areas and that efforts must continue to achieve further progress towards breaking the trafficking cycle. Issues of coordination, harmonization, training on the new legislation and procedures, awareness-raising and education to eliminate existing gender and other stereotypes, sensitization of law enforcement officials and the judiciary, assistance to victims and witness protection, which are all addressed under the NPA, still need close attention. The Special Rapporteur observes that in some cases, laws and administrative instructions put in place to combat trafficking suffer from a lack of resources and have therefore not been implemented.

71. The Special Rapporteurs notes that the phenomenon of trafficking has changed in magnitude and nature. Traffickers have adapted their modus operandi to the overall anti-trafficking strategy adopted by the Government. The Special Rapporteur considers that there is a need to continuously review the elements of that strategy to ensure that it remains abreast of the new methodologies adopted by traffickers.

72. In particular, the Special Rapporteur believes that increased attention must be paid to the emerging phenomenon of internal trafficking and that the mechanisms in place to combat trafficking and protect the persons involved must be reviewed and adapted so as to ensure that they properly cover nationals and that specific measures exist for their protection. Measures are also needed to address another emerging phenomenon: trafficking of citizens of Bosnia and Herzegovina to third countries.

73. There is also a dire need to establish separate methodologies and structures to combat trafficking in children and to provide them with the protection they are entitled to under the Convention on the Rights of the Child.

74. The Special Rapporteur notes that the entire anti-trafficking agenda was initiated and developed by the international community, and that the role of Bosnia and Herzegovina in that regard was limited. However, the Special Rapporteur welcomes the new NPA and the fact that it has provided for budgetary allocations. The Special Rapporteur also welcomes the fact that the NPA focuses on prevention and that it addresses internal trafficking and trafficking of children.

#### **IV. RECOMMENDATIONS**

75. The Special Rapporteur addresses a number of recommendations to the Government, the civil society and the international community to support their efforts to combat trafficking and protect its victims. The Special Rapporteur is aware that some of the following recommendations have financial implications and recommends that all relevant actors cooperate in their implementation and, when appropriate, that the international community lend its support.

76. The Special Rapporteur welcomes the revision of the NPA and encourages the Government to take the lead in its implementation, including in supporting shelters and rehabilitation programmes, and to use it as a tool to sustain efforts to combat trafficking, also drawing on the recommendations contained in this report.

##### **A. Coordination**

77. The Special Rapporteur welcomes the efforts at coordination undertaken by the Government, including through the appointment of the State Coordinator, and encourages the Government to achieve further progress along this path.

##### **B. Legislative reform**

78. The impressive legislative reform accomplished in Bosnia and Herzegovina has provided a framework for the prevention of trafficking and the prosecution of perpetrators. However, the Special Rapporteur notes that there are still weaknesses and recommends further efforts to harmonize the provisions of entity-level criminal laws with the State criminal law. In this context, she recommends that further reforms be undertaken to ensure that the crime under article 187 of the Criminal Code is prosecuted as trafficking and that issues of jurisdiction be clarified. The Special Rapporteur further recommends necessary legislative reforms to ensure that prostitutes are not criminalized and that assets and illegally obtained property are confiscated, and that the proceeds go directly into a compensation fund for victims.

79. The Special Rapporteur believes that reforms are necessary on issues such as the employment of aliens and their access to health and social rights, so as to ensure that they do not become vulnerable to trafficking.

### **C. Law enforcement, identification of and assistance to victims**

80. The Special Rapporteur welcomes the strengthened border controls and the fact that the State Border Service has developed the capacity to keep track of foreigners within the territory of the State. In this connection, she wishes to recommend that measures be taken to ensure better control of the border with Serbia and to prevent the misuse of the right to cross the border only with an identity card. She also recommends that when irregular aliens are intercepted, efforts be undertaken to determine their situation individually and to ensure that they have access to asylum procedures, if relevant, and that if they are victims of trafficking they receive adequate assistance and are not immediately deported. The Special Rapporteur recommends that further training be given to SBS officers on the identification of the victims of trafficking, on the Rule Book and the UNICEF Guidelines for the Protection of the Rights of Children Victims of Trafficking.

81. The Special Rapporteur further recommends that the identification of victims not be left totally to the discretion of SBS officers and other law enforcement officials, but that specific guidelines be developed. In defining guidelines for identification of victims, the Special Rapporteur recommends that the relevant chapter of the Legal Manual on Protection of Victims of Trafficking in Persons in Bosnia and Herzegovina prepared by the OHCHR Office in Bosnia and Herzegovina be taken into account. Rule books and procedures should also be developed on issues such as how to act in case of suspicion that a person is crossing the border irregularly.

82. The Special Rapporteur recommends greater coordination between the SBS and other law enforcement agencies, especially in the exchange of intelligence, including through joint training on the prevention of trafficking and assistance to victims. More training for law enforcement officials on the Rule Book is also necessary. The Special Rapporteur recommends that the Rule Book be revised to ensure that it addresses the question of protection of national victims and victims of trafficking for purposes other than prostitution. Measures should be taken to address the problem of corruption of local police, including introducing higher salaries, promoting internal mechanisms to report cases of corruption and ensuring that internal disciplinary measures are taken in cases of corruption.

83. The Special Rapporteur recommends that measures be considered to achieve gender balance among officials, in particular those in law enforcement, working to prevent and suppress trafficking, so as to encourage and facilitate identification of victims.

84. The Special Rapporteur also strongly recommends that steps be taken to ensure the existence of organized legal counselling, to be made available to victims upon identification so that they are aware of the alternatives at their disposal. The Special Rapporteur recommends that legal assistance be made available to victims so that they can seek compensation under the civil procedure, while being accommodated in shelters and provided with assistance, training and rehabilitation.



85. The Special Rapporteur further recommends greater coordination between the Government, NGOs and IOM to ensure that data are made available on the situation of victims after repatriation, so as to enable better assessment of the impact of identification, referral, assistance and repatriation programmes.

86. The Special Rapporteur recommends further efforts in the implementation of the new criminal procedure codes so as to clarify which crimes are to be prosecuted at the State level as trafficking rather than in the entity courts as offences carrying lesser penalties. In particular, law enforcement officials should receive training on when, how and at what stage to transmit a case to the State prosecutor. Training on investigative methods of gathering evidence should also be implemented for the police. Prosecutors should be sensitized to the need to conduct thorough investigations and to avoid precipitous prosecution for offences carrying lesser penalties. State investigations should also be strengthened, as well as cooperation between different levels of law enforcement. The Special Rapporteur strongly recommends that training be undertaken for law enforcement officials in detecting and properly investigating acts of trafficking. Steps should also be taken to increase cooperation among law enforcement agencies and between them and the prosecutors' offices so as to improve cooperation and information exchange and therefore achieve more effective prosecution.

87. In order to ensure effective prosecution, the Special Rapporteur further recommends that measures be taken to amend the standards required to prove that the victim-witness are genuinely unavailable at trial and to ensure that the definition of unavailability recognizes that the victim-witness can also be rendered unavailable through fear and that she should therefore not be subject to subpoena or arrest and/or detention as a material witness.

#### **D. Victim-witness protection**

88. The Special Rapporteur believes that proper protection must be provided to the victims who decide to cooperate with the prosecution so that they do not feel threatened or intimidated. The Special Rapporteur recommends that protection of victims be provided not only during trial but also before and afterwards. It should include temporary leave to remain in the country for the duration of civil proceedings and work permits. Agreements on relocation to third countries should also be sought. Proper allocations should be secured to ensure the implementation of the witness protection law and the Witness Protection Programme. The Special Rapporteur recommends that agreements be sought with the countries of origin of the victims on cost-sharing schemes in order to provide strengthened assistance to the victims.

#### **E. Prevention**

89. The Special Rapporteur believes that greater attention should be devoted to addressing the root causes of trafficking in persons into Bosnia and Herzegovina. In this context, the Special Rapporteur encourages initiatives in the countries of origin of trafficked victims, such as supporting the development of women's cooperatives, promoting women's entrepreneurship, and supporting the creation of women's economic networks to provide advocacy, training and information to businesswomen, unemployed women and women in agriculture, among others. Long-term prevention should also include anti-discrimination measures, job opportunities for women, legal migration projects targeting women, awareness-raising and programmes targeting violence against women.

90. The Special Rapporteur recommends that awareness-raising programmes be undertaken, especially in rural areas, in the main countries of origin of victims by the respective Governments, the civil society and the international community.

91. The Special Rapporteur recommends that increased attention be devoted to prevention of internal trafficking and trafficking from Bosnia and Herzegovina to other countries, with particular attention to the root causes of the phenomenon. In particular, the Special Rapporteur believes that measures to combat trafficking should take into account the Law on Gender Equality and the Poverty Reduction Strategy, as gender-based discrimination and poverty can turn Bosnia and Herzegovina into a country of origin of trafficking and foster internal trafficking.

#### **F. Trafficking in children**

92. The Special Rapporteur recommends increased efforts to combat international and internal trafficking of children, including through the allocation of funds specifically for this purpose. The Special Rapporteur further recommends increased regular surveillance of premises suspected of harbouring trafficked children and intensified efforts to detect and identify child victims. Special training on trafficking of children and the protection to which they are entitled under national and international law, as well as child-focused methods of intervention, detection, identification, assistance should be provided to all relevant actors (social workers, NGOs, the media, the judiciary). The Special Rapporteur further recommends that needs in terms of shelters and structures for child victims of trafficking be analysed and measures taken to ensure that children receive the assistance and protection to which they are entitled.

93. The Special Rapporteur endorses the recommendations of UNICEF concerning the need to increase general prevention measures to identify children vulnerable to becoming victims of trafficking and to make use of the Guidelines for the Protection of the Rights of Children Victims of Trafficking concerning detection, registration, referral, shelter, protection and follow-up for children from Bosnia and Herzegovina and from other countries. The Special Rapporteur recommends increased efforts to sensitize potential users of services provided by trafficked children about the human suffering of the victims, as well as teenage girls about the risks related to trafficking. Also, public campaigns with children and youth in rural areas are recommended to prevent them from becoming victims of trafficking.

94. The Special Rapporteur further recommends that police methods for dealing with children living or working in the streets, children in conflict with the law and children who are victims of crime be modernized through greater focus on proactive outreach work, confidence-building measures and cooperation with social services. The Special Rapporteur recommends outreach assistance for children living and working in the streets and members of high-risk groups, as well as the investigation of the involvement of criminal networks in begging. Professionals coming into contact with children living or working in the streets, as well as the general population, should be sensitized to the Roma culture and child protection.

95. The Special Rapporteur welcomes community watch programmes, as well as programmes undertaken by NGOs, UNICEF and IOM to tackle domestic violence and address the root causes of trafficking in children.

## Notes

<sup>a</sup> The Office of the High Representative (OHR), was established by the Security Council to oversee the implementation of the civilian aspects of the agreement and coordinate all international organizations in Bosnia and Herzegovina. OHR has the authority to intervene and adopt binding decisions.

<sup>b</sup> In 1995/96, a NATO-led international peacekeeping force (IFOR) of 60,000 troops was deployed in Bosnia and Herzegovina to implement and monitor the military aspects of the Agreement. IFOR was succeeded by a smaller, NATO-led Stabilization Force (SFOR) with the mission of deterring renewed hostilities. European Union peacekeeping troops (EUFOR) replaced SFOR in December 2004 with the mission of maintaining peace and stability throughout the country. The United Nations Mission in Bosnia and Herzegovina (UNMIBH) was mandated by the Security Council to contribute to the establishment of the rule of law in Bosnia and Herzegovina and to assist civilian law enforcement agencies to operate in accordance with international police and human rights standards. UNMIBH ended its mission in December 2002 and the European Union Police Mission (EUPM) took over the task of police monitoring in Bosnia and Herzegovina from January 2003. The International Police Task Force (IPTF), comprised of international civilian police officers from States Members of the United Nations, was responsible for assisting in the restructuring and training of law enforcement agencies. The Bosnia and Herzegovina Mission of the Organization for Security and Cooperation in Europe (OSCE) was established in December 1995 under the Dayton Agreement with the mandate of promoting democratic values, monitoring and furthering the development of human rights, and organizing and supervising elections, as well as implementing arms control and security-building measures.

<sup>c</sup> See UNICEF, OHCHR, OSCE/ODIHR, *Trafficking in Human Beings in South Eastern Europe*, 2003.

<sup>d</sup> However, the Special Rapporteur was informed that some bars were raided repeatedly and the same women interviewed several times.

<sup>e</sup> In September 2002, the Ministry for Human Rights and Refugees introduced Temporary Instructions on treatment of trafficking victims, based on the following principles: all persons found in places in which there is a question of illegal activity taking place are given the status of a protected person for a period of up to 10 days. During this period it is necessary to determine their identity and age and whether or not they had been trafficked; a protected person is immediately accommodated in a shelter (safe house), run by a local NGO which has signed a Protocol of Cooperation with the Ministry; if it is determined that a person has been trafficked, the person is automatically given temporary residency for humanitarian reasons for a period of up to three months, which can be extended under certain conditions. Minor victims of trafficking should receive special protection and treatment.

<sup>f</sup> See op. cit. at note c.

<sup>g</sup> IOM, *Changing Patterns and Trends of Trafficking in Persons in the Balkan Region*, July 2004.

<sup>h</sup> The International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Optional Protocol to the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the United Nations Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime; and the Rome Statute of the International Court.

<sup>i</sup> See HRI/CORE/1/Add.89/Rev.1, 9 June 2004.

<sup>j</sup> Trafficking in Persons, article 186: “(1) Whoever takes part in the recruitment, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to obtain the consent of a person having control over another person, for the purpose of exploitation, shall be punished by imprisonment for a term between one and ten years. (2) Whoever perpetrates the criminal offence referred to in paragraph 1 of this Article against a juvenile, shall be punished by imprisonment for a term not less than five years. (3) Whoever organizes a group of people with an aim of perpetrating the criminal offence referred to in paragraphs 1 and 2 of this Article, shall be punished by imprisonment for a term not less than ten years or long-term imprisonment. (4) Whoever acting out of negligence facilitates the perpetration of the criminal offence referred to in paragraphs 1 through 3 of this Article, shall be punished by imprisonment for a term between six months and five years.”

<sup>k</sup> Establishment of Slavery and Transport of Slaves, article 185: “(1) Whoever, in violation of the rules of international law, places another in slavery or in a similar status or keeps him in such a status, buys, sells, hands over to another person or mediates the purchase, sale or handing over of such a person or induces someone else to sell his freedom or the freedom of the person he provides for or takes care of, shall be punished by imprisonment for a term between one and ten years. (2) Whoever, in violation of the rules of international law, buys, sells, hands over to another person or mediates in the purchase, sale or handing over a child or a juvenile for the purpose of adoption, transplantation of organs, exploitation by labour or for other illicit purposes, shall be punished by imprisonment for a term not less than five years. (3) Whoever, in violation of the rules of international law, transports persons who are in a position of slavery or in similar status, shall be punished by imprisonment for a term between six months and five years.”

<sup>l</sup> See also UNICEF and Save the Children Norway, Research on Child Trafficking in Bosnia and Herzegovina, October 2004.

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COMMISSION DES DROITS DE L'HOMME  
Soixante-deuxième session  
Point 14 c) de l'ordre du jour provisoire

**GROUPES ET INDIVIDUS PARTICULIERS:  
EXODES MASSIFS ET PERSONNES DÉPLACÉES**

**Rapport du Représentant du Secrétaire général pour les droits de l'homme  
des personnes déplacées dans leur propre pays, Walter Kälin**

**Additif**

**MISSION EN BOSNIE-HERZÉGOVINE\***

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\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit, qui figure en annexe au document, est distribué uniquement dans la langue dans laquelle il a été présenté.

## Résumé

À l'invitation du Gouvernement bosniaque, le Représentant du Secrétaire général pour les droits de l'homme des personnes déplacées dans leur propre pays, Walter Kälin, a effectué une mission officielle en Bosnie-Herzégovine du 9 au 15 juin 2005. L'objectif de cette visite était d'évaluer la situation des personnes déplacées dans le pays, en s'attachant à déceler les problèmes et à trouver des solutions durables aux questions non réglées. Le Représentant a fait part de ses premières impressions dans un communiqué de presse publié à la fin de sa mission, l'ensemble de ses constatations étant exposé dans le présent rapport.

Pendant son séjour, le Représentant a rencontré le Premier Ministre de l'État de Bosnie-Herzégovine, le Ministre d'État des droits de l'homme et des réfugiés, des hauts responsables du Ministère des affaires étrangères, les Ministres des réfugiés et des personnes déplacées des deux entités, des représentants des autorités cantonales et municipales, des représentants d'organismes des Nations Unies, d'organisations intergouvernementales et d'organisations non gouvernementales. Outre Sarajevo, le Représentant s'est rendu à Tuzla, Zvornik, Bratunac, Srebrenica, Mostar, Stolac, Livno, Drvar, Prijedor et Banja Luka. Partout, il s'est entretenu avec des personnes déplacées afin qu'elles l'informent elles-mêmes de leurs principaux sujets de préoccupation.

Le Représentant a constaté que les principaux obstacles à un retour durable des populations déplacées étaient l'insécurité physique, la lenteur de la restitution de leurs biens aux propriétaires d'origine et de la reconstruction des bâtiments, ainsi que le contexte économique, social et politique qui décourageait tout retour et toute réintégration. Si le Représentant reconnaît que les menaces qui pesaient sur la vie et l'intégrité physique des personnes déplacées et des rapatriés se sont considérablement réduites, il s'inquiète toutefois de l'insuffisance de la protection accordée à certains groupes vulnérables particulièrement exposés aux risques d'agressions, comme les victimes et les témoins de crimes de guerre, ainsi que les minorités ethniques comme les Roms. Les mines antipersonnel continuent de mettre en péril la sécurité des rapatriés et les empêchent de se consacrer à l'agriculture. Le Représentant félicite le Gouvernement et la communauté internationale d'avoir restitué une grande partie des biens immobiliers occupés à leurs propriétaires d'origine. Toutefois, il a observé que beaucoup restait à faire pour résoudre les litiges fonciers, reconstruire les maisons et les raccorder aux réseaux d'eau et d'électricité et remettre sur pied les infrastructures. Pour les rapatriés appartenant à des minorités, ces procédures sont souvent plus longues et reportées sans raison. Les femmes, en particulier celles qui sont chefs de famille, et les victimes traumatisées des crimes de guerre se retrouvent souvent en position défavorable.

Le principal défi d'aujourd'hui est de créer des conditions propices au retour des personnes déplacées, alors qu'on assiste à un ralentissement des retours et qu'il semblerait que de nombreux rapatriés aient vendu les biens immobiliers qui leur avaient été restitués et aient choisi de demeurer dans leur communauté d'accueil plutôt que de réintégrer leur communauté d'origine. Si l'ensemble de la population est touchée par certains problèmes économiques, comme le chômage élevé, les personnes déplacées et les rapatriés doivent faire face à des difficultés particulières, leurs droits fondamentaux étant souvent bafoués. Des pratiques discriminatoires dans l'accès des rapatriés issus de minorités aux emplois du secteur public comme du secteur privé violent le droit au travail. Le droit à l'éducation est bafoué par la persistance, dans certaines régions, d'écoles pratiquant la ségrégation. La non-application des lois, la réticence des autorités policières de certaines régions à enquêter sur d'éventuels incidents, les carences

et l'engorgement de la justice et l'impunité dont continuent de jouir les auteurs de crimes commis pendant ou juste après la guerre sont autant de difficultés pour les personnes qui souhaitent revenir dans leur région d'origine. Le recours provocateur de certaines autorités locales à des symboles nationaux et religieux ne fait qu'aggraver le sentiment qu'ont les rapatriés issus de minorités de ne pas être les bienvenus. L'absence de règles uniformes concernant les pensions et l'assurance maladie et la non-application des dispositions légales en la matière dans les deux entités portent atteinte aux droits à la sécurité sociale et à la santé.

Le Représentant demande aux autorités nationales et locales de s'acquitter de leur obligation de créer un environnement favorable à un retour durable en respectant et en appliquant pleinement les garanties pertinentes en matière de droits de l'homme. Il faudrait trouver sans délai des solutions durables pour les personnes qui vivent encore dans des conditions déplorables dans des centres collectifs. Le Représentant prie instamment la communauté internationale à continuer à soutenir le processus actuel de rapatriement et à fournir des moyens supplémentaires pour soulager la détresse des groupes vulnérables, comme les personnes traumatisées ou handicapées, les personnes âgées sans soutien familial, les femmes chefs de famille et les Roms, afin de leur permettre de jouir pleinement de leurs droits fondamentaux.

**Annex**

**REPORT OF THE REPRESENTATIVE OF THE SECRETARY-GENERAL  
ON THE HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS,  
WALTER KÄLIN, ON HIS MISSION TO BOSNIA AND HERZEGOVINA**

**(9-15 June 2005)**

**CONTENTS**

	<i>Paragraphs</i>	<i>Page</i>
Introduction .....	1 - 6	5
I. CONTEXT OF INTERNAL DISPLACEMENT IN BOSNIA AND HERZEGOVINA .....	7 - 18	6
A. General observations.....	7 - 11	6
B. History of displacement and return.....	12 - 18	7
II. RESPONSES TO INTERNAL DISPLACEMENT .....	19 - 28	9
A. Domestic responses.....	19 - 26	9
B. International responses .....	27 - 28	11
III. PROTECTION NEEDS OF INTERNALLY DISPLACED PERSONS DURING DISPLACEMENT .....	29 - 32	12
IV. PROTECTION NEEDS OF INTERNALLY DISPLACED PERSONS REGARDING RETURN AND OTHER DURABLE SOLUTIONS .....	33 - 53	13
A. Safety .....	35 - 37	14
B. Property.....	38 - 41	14
C. Adequate economic, social and political conditions.....	42 - 53	15
V. CONCLUSIONS AND RECOMMENDATIONS.....	54 - 66	18



## **Introduction**

1. Following an invitation by the Government of Bosnia and Herzegovina dated 13 December 2004, the Representative of the Secretary-General on the human rights of internally displaced persons (the Representative) conducted an official mission to Bosnia and Herzegovina from 9 to 15 June 2005 in pursuance of his mandate to engage in coordinated international advocacy and action for improving protection and respect of the human rights of internally displaced persons (IDPs) through dialogue with Governments as well as non-governmental organizations (NGOs) and other relevant actors (Commission resolution 2004/55, para. 24).
2. The mission was undertaken as part of a visit to the region including missions to Croatia and Serbia and Montenegro, including Kosovo.<sup>1</sup> This allowed the Representative to assess the situation in each of the countries visited in the regional context. He presented his regional findings to the General Assembly in his report to the sixtieth session (A/60/338). The present report focuses on the situation in Bosnia and Herzegovina alone. It looks at the present situation of IDPs as well as future challenges that may arise for the protection of the rights of IDPs.
3. The main objectives of the mission were (i) to assess the situation of displacement in Bosnia and Herzegovina; (ii) to assist the national authorities to fulfil, in accordance with their human rights obligations, their responsibility to protect and assist the displaced and to find durable solutions for them; and (iii) to give advice to United Nations specialized agencies, donors, and other actors involved on how best to address their protection needs.
4. The Representative visited Sarajevo, Tuzla, Zvornik, Bratunac, Srebrenica, Mostar, Stolac, Livno, Drvar, Prijedor and Banja Luka. He met with the Prime Minister of Bosnia and Herzegovina, the State Minister for Human Rights and Refugees, senior officials of the Ministry for Foreign Affairs, the Ministers for Refugees and Displaced Persons of the two entities, cantonal and municipal government officials, and representatives of international agencies and NGOs as well as organizations of displaced persons and returnees. He also visited several collective centres for displaced persons and some communities of returnees.
5. The Representative would like to express his gratitude for and recognition of the full cooperation of the authorities of Bosnia and Herzegovina at all levels, entity, canton and municipality, for their willingness to receive him and the open and constructive nature of the meetings. He also would like to thank the United Nations Country Team, in particular the Office of the United Nations High Commissioner for Refugees (UNHCR), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF) and the United Nations Development Programme (UNDP), for the extraordinary logistical support and the high quality of briefings. The Representative was also deeply impressed with the information provided to him by members of civil society, and expresses his thanks to the members of the aid community and the NGOs with whom he met. Finally, he would like to thank the IDPs who were ready to share their experiences with him.
6. The Representative's conclusions and recommendations in this report are informed by the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) (the Guiding Principles). The Representative observes that IDPs in Bosnia and Herzegovina remain entitled, as citizens of their country, to enjoy the protection of all guarantees of international human rights

and humanitarian law subscribed to by the State or applicable on the basis of international customary law. They do not lose, as a consequence of their being displaced, the rights of the population at large. At the same time, they have specific needs distinct from those of the non-displaced population which need to be addressed by specific protection and assistance measures. These rights are reflected and detailed in the Guiding Principles, which form the basic international framework for the protection of IDPs. The primary duty and responsibility to provide such protection lies with the national authorities, and IDPs have the right to request and receive such protection and assistance from their Governments (principle 3). As stressed in the Representative's report to the Commission on Human Rights in 2005,<sup>2</sup> protection must not be limited to securing the survival and physical security of IDPs but relates to all relevant guarantees, including civil and political as well as economic, social and cultural rights, attributed to them by international human rights and humanitarian law. In this regard, Bosnia and Herzegovina has an obligation to prevent any violations of these rights from occurring or from recurring; to stop them while they are being committed; and to ensure reparation to and full rehabilitation of victims.

## **I. CONTEXT OF INTERNAL DISPLACEMENT IN BOSNIA AND HERZEGOVINA**

### **A. General observations**

7. Bosnia and Herzegovina consists of two entities, the Federation of Bosnia and Herzegovina and the Republika Srpska. The Federation is administratively subdivided into 10 cantons. Cantons are divided into 84 municipalities. The Republika Srpska is administratively organized into 63 municipalities. The Brčko District has been established as a single administrative unit of local self-government existing under the sovereignty of Bosnia and Herzegovina, in accordance with the Final Award of the Arbitral Tribunal for Dispute over Inter-Entity Boundary in the Brčko Area of 5 March 1999. The capital of Bosnia and Herzegovina is Sarajevo. The official languages are Bosnian, Croatian and Serbian.

8. Bosnia and Herzegovina has a total area of 51,209.2 km<sup>2</sup>. According to the 1991 census, the population totalled 4,377,000 inhabitants, consisting of Bosniaks (43.5 per cent), Serbs (31.2 per cent), Croats (17.4 per cent), Yugoslavs (5.5 per cent) and others (2.4 per cent). The category of "others" was understood to include members of 17 national minorities, including a substantial number of Roma. The Government estimates that, as at March 2001, the total population had dropped to approximately 3,364,000 inhabitants with 48.3 per cent Bosniaks, 34.1 per cent Serbs, 15.3 per cent Croats and 2.3 per cent "others".<sup>3</sup>

9. The State of Bosnia and Herzegovina was internationally recognized on 6 April 1992. This event triggered an armed conflict between the main ethnic groups with the involvement of the neighbouring States. On 14 December 1995, the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) signed the General Framework Agreement for Peace in Bosnia and Herzegovina and the Annexes thereto (Dayton Peace Agreement) as a result of efforts of the international community to end the armed conflict. Annex 4 to the Dayton Peace Agreement contains the Constitution of Bosnia and Herzegovina, Annex 6 addresses the issue of human rights protection and Annex 7 deals with questions related to the rights of refugees and IDPs, recognizing their "right to freely return to their homes of origin" as well as their "right to have restored to them property of which they

were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them". According to Annex 10, the High Representative in Bosnia and Herzegovina is the final authority regarding the implementation of the civilian aspects of the Dayton Peace Agreement.

10. Annex 6 to the Dayton Peace Agreement obliges Bosnia and Herzegovina to respect all major international human rights instruments, as enumerated in Annex I to the national Constitution. These international human rights instruments have priority over all other laws. In accordance with these obligations, the Constitution of Bosnia and Herzegovina contains a detailed catalogue of human rights. Its article II, paragraph 2, stipulates that the rights and freedoms set forth in the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. Annex 6 established the Commission on Human Rights, the Office of the Human Rights Ombudsman, which unfortunately lacks the independence originally envisaged,<sup>4</sup> and the Human Rights Chamber, and entrusted them with the task of monitoring the implementation of these human rights obligations. The Human Rights Chamber was closed in December 2003; cases already registered were taken over by the Special Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina. Other human rights bodies include the Commission on Human Rights of the national Parliament, the Federation of Bosnia and Herzegovina and Republic of Srpska Ombudsmen and the Commission on the Protection of Human Rights under the Presidency of the Republic.

11. In line with its international human rights obligations, Bosnia and Herzegovina has recently had its initial reports under the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment considered by the respective committees, all of which expressed concern about the situation of IDPs and/or returnees. Bosnia and Herzegovina also recognizes the competence of the Committee against Torture, the Human Rights Committee and the Committee on the Elimination of Discrimination against Women to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by the State, although no such communications have yet been examined by the committees. Within the framework of the special procedures of the Commission on Human Rights, the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia reported in 2001 that the return of refugees and displaced persons continued to be the main concern in Bosnia and Herzegovina, with major obstacles to sustainable return being a lack of security in some parts of the country, obstructions in property law implementation, lack of basic utilities and employment opportunities, difficulties with regard to pensions and health care, discrimination and a weak judiciary lacking independence.<sup>5</sup>

## **B. History of displacement and return**

12. The 1992-1995 conflict in Bosnia and Herzegovina induced large-scale involuntary displacement. A large number of persons were displaced by the Bosniak-Croat conflict lasting from April 1993 to March 1994. In all parts of Bosnia and Herzegovina, forced displacement was deliberately used by the warring parties to create ethnically homogeneous areas, which constitutes a crime against humanity now commonly referred to as "ethnic cleansing". At the end of the conflict in 1995, more than 2.2 million persons, i.e. almost half of the country's

inhabitants, had been uprooted. Approximately 1 million had become internally displaced, while 1.2 million had fled across the border, seeking asylum in the neighbouring countries (Croatia, Serbia and Montenegro) and other host States. Most persons fled from one entity to the other, while those members of minority groups remaining within their entity sought refuge in areas where their group constituted the majority. Between 1996 and 1999, an additional 200,000 were displaced, among them 80,000 persons, most of them Serbs, following the transfer of territories between the Republika Srpska and the Federation of Bosnia and Herzegovina.

13. Since 1995, more than 566,000 IDPs have returned to their places of origin, in addition to more than 441,000 refugees. No gender-disaggregated data are available to indicate how many displaced or returnees are women, which prevents a gender analysis of the return process.<sup>6</sup> Up to May 2005, UNHCR recorded some 450,000 minority returns (270,304 in the Federation of Bosnia and Herzegovina, 159,307 in the Republika Srpska and 21,382 in the Brčko District), concluding that almost half of all returns were to minority areas. The other returnees went back to municipalities where their ethnic group constitutes the numeric majority. While exact figures are not available, it is clear that the actual number of persons who are now living in their former homes is lower than these return figures suggest, as a considerable number of returnees felt compelled to leave again due to inadequate or adverse conditions. The Representative saw several areas of return where families had found it difficult to live and where reconstructed or repaired houses stood empty or where the population consisted mainly of elderly persons. In other areas returnees had sold their houses to local people and left again.

14. During the four years following the war, hardly any minority returns took place, as many IDPs and refugees were unable or unwilling to return to places governed by the same authorities who had caused them to flee. The displaced were not only fearful of returning to areas where their group had been the minority, but also to places where the ethnic composition of the population had changed. Also, contrary to Annex 7 to the Dayton Peace Agreement, political institutions at entity, cantonal or municipal level refrained from supporting minority returns or even opposed them actively with the aim of maintaining or continuing “ethnic cleansing”. Although substantial financial aid to assist and sustain returns was available at the time due to the international community’s focus on return, the political will to use it was missing.

15. For many years, property-related problems have been one of the main obstacles to return. While Annex 7 to the Dayton Peace Agreement grants refugees and IDPs “the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them”,<sup>7</sup> the implementation of this right was difficult. In order to solve property disputes, Annex 7 established the Commission for Real Property Claims of Displaced Persons and Refugees.<sup>8</sup> This body had the task of deciding, in a final and binding manner, any claims for real property where the property had not voluntarily been sold or otherwise transferred during the war. The Commission, which started to render decisions in 1997, was quite efficient in solving disputes and identifying the rightful owners. However, there was no mechanism to implement its decisions. Nor did the Commission address the issue of secondary occupants and their eviction, or the laws in both entities, as well as the attitudes of local authorities who made it difficult to recover property in practice. The Human Rights Chamber, established by Annex 6 and empowered to decide claims of human rights violations, decided in many cases that the non-implementation of the Commission’s decisions violated the right to property as enshrined in article 1 of Protocol No. 1

to the Convention for the Protection of Human Rights and Fundamental Freedoms. However, these decisions were not implemented, either.

16. From 1999 onwards, when the High Representative started to impose amendments to the property laws of the two entities, the political situation improved in certain areas, allowing for an acceleration of the return process as well as a significant increase in minority returns. Relevant international actors concentrated their efforts on property repossession through the Property Law Implementation Plan of 2000, and local authorities became increasingly involved. Returnees themselves were also an important driving force, generating pressure on politicians. Considerable progress in solving property issues was made in 2003, and by the end of 2004, 93 per cent of property claims lodged by pre-war owners had been resolved.<sup>9</sup> Returns peaked in 2002 with over 100,000 people returning to areas where their group constituted a numerical minority.<sup>10</sup> This positive return record can largely be attributed to the determination of the international community to overcome political obstruction by nationalist forces, coupled with a successful property repossession process and a more favourable attitude towards returnees on the part of relevant authorities at the different levels of the State. Today, according to the Federation of Bosnia and Herzegovina Ministry for Refugees and Displaced Persons, return is no longer considered a political issue but rather a technical matter. However, in some parts of the country, a certain resistance to return continues at local levels of government, and minority returns slowed down during 2003 and 2004. In addition, even where return is undertaken, it is often not sustainable.

17. During the reregistration carried out in 2005, some 185,000 persons registered as IDPs, two thirds less than the number reached during the previous reregistration exercise in 2000. The decrease in registered IDPs is partly due to some 210,000 recorded additional returns, and to the fact that some 120,000 people decided not to reregister as displaced persons for various reasons, such as successful integration or emigration, while some were unaware of, or confused by, the requisite procedures, or did not feel it was of value to them.

18. In addition to its IDPs, Bosnia and Herzegovina hosts some 11,000 refugees, mostly from Croatia (around 8,000) and Serbia and Montenegro including Kosovo (around 3,000), together with a few hundred asylum-seekers.

## **II. RESPONSES TO INTERNAL DISPLACEMENT**

### **A. Domestic responses**

19. At the State level, the Law on Refugees from Bosnia and Herzegovina and Displaced Persons in Bosnia and Herzegovina<sup>11</sup> sets out the general principles regulating the acquisition and cessation of the status of refugee or displaced person as well as these persons' rights, including the right to recover their property. The State establishes a framework requiring the entities to pass their own laws which need to be consistent with State law and each other. However, while laws on property restitution exist at the entity level,<sup>12</sup> the State has never passed such a law.

20. According to the Federation of Bosnia and Herzegovina Law on Displaced-Expelled Persons and Repatriates, holding IDP status entitles a person to a number of rights and benefits, such as accommodation, food, social reintegration and psychological support, health care,

education for children and youth and other essentials.<sup>13</sup> In practice, however, only accommodation and basic health care are provided. In the Republika Srpska, the Law on Displaced Persons, Returnees and Refugees regulates legal IDP status and its cessation, as well as rights and entitlements to certain benefits, such as cash assistance, basic health care, elementary education, unemployment benefit, loans to start income-generation projects as well as temporary basic accommodation, provided IDPs cannot cover expenses themselves. It specifically stresses that “responsible authorities shall issue to displaced persons and returnees all documents necessary for the exercise of their legal rights”.<sup>14</sup> According to both laws, IDP status including its entitlements ceases upon return to a person’s pre-war place of residence, “when a safe and dignified return to her/his former place of residence is possible, but a displaced person has not returned there, or when this person voluntarily decided to permanently settle in another place”.<sup>15</sup>

21. There is no law at the State level concerning the protection of victims of war crimes and crimes against humanity, most of whom remain displaced. Instead, their protection is regulated by entity laws, with the consequence that their rights differ from one entity to another. In the Federation of Bosnia and Herzegovina, for example, the Law on the Basis of Social Welfare, Protection of Civilian Victims of War and Protection of Families with Children does not include women who were raped in the categories of persons eligible for such status. The Republika Srpska Law on the Protection of Civilian Victims of War grants wider protection to civilian victims of war, i.e. persons who suffered bodily harm as a result of ill-treatment, rape, deprivation of freedom and forced labour and who suffered harm over at least 60 per cent of their bodies.<sup>16</sup> However, the deadline to apply for victim status was set for 2000 when returns were still comparatively low.

22. Established in 2000, the State Ministry for Human Rights and Refugees is responsible for the coordination of inter-entity return activities. Each entity has its own IDP-related ministry: the Ministry for Refugees and Displaced Persons in the Republika Srpska and the Ministry for Refugees and Displaced Persons in the Federation. To encourage dialogue between State and entity ministries, the State Commission for Refugees and Displaced Persons was created in February 2000. Its mandate is to receive and decide claims for real property in cases where the property has not voluntarily been sold or otherwise transferred since 1 April 1992, and where the claimant does not now enjoy possession of that property. Claims may be for return or just compensation in lieu of return. As regards claims for compensation, the required mechanisms have not been set up as donors feared that compensation in lieu of return would consolidate “ethnic cleansing”.

23. The main task of the State Commission for Refugees and Displaced Persons is the examination and approval of return and reconstruction projects prepared by the entities and their sub-units (municipalities as well as cantons in the Federation of Bosnia and Herzegovina) and collected by the State Ministry for Human Rights and Refugees. It also authorizes and supervises the financial support of approved reconstruction and return projects through the Return Fund. The Return Fund was established in 2000 with the aim of supporting the sustainability of return. It ensures that both domestic and external financial aid allocated to the return process are concentrated in one single institution. It became operational in late 2004 after the State, the entities and the Brčko District made their financial contributions.

24. At the entity level, the Federation of Bosnia and Herzegovina Ministry for Refugees and Displaced Persons is responsible for return projects approved by the State Commission for Refugees and Displaced Persons. Each of the 10 cantons in the Federation of Bosnia and Herzegovina has a ministry responsible for return, although this task is in most cases combined with competencies in other areas. The role of cantonal ministries in both the reconstruction of housing and the implementation of sustainability measures is largely an administrative one, limited to the procurement and delivery of materials for repairs and reconstruction carried out by returnees themselves. In the Republika Srpska, the centralized authority responsible for refugees and IDPs is the Ministry for Refugees and Displaced Persons.

25. Most of the 164 municipalities of Bosnia and Herzegovina have departments for refugees and IDPs. Since 2003, municipalities have had the main responsibility for beneficiary selection and technical implementation of reconstruction projects. In 2003, four Regional Centres for the return process were established in Sarajevo, Banja Luka, Tuzla and Mostar under the State Ministry for Human Rights and Refugees. They are responsible for supervising the implementation of the return and reconstruction process at the municipal level.

26. In January 2003, the State and the entities adopted the "Strategy of Bosnia and Herzegovina for the Implementation of Annex 7" to the Dayton Peace Agreement which had been prepared by the Ministry for Human Rights and Refugees. As the first joint framework document at the country level since the Agreement, the strategy is the most comprehensive orientation for the sector of refugee and IDP returns and has been endorsed by the international community. The strategy outlines the necessary actions and reforms for the full realization of Annex 7, such as capacity-building for a transfer of responsibilities to domestic institutions. Its goals, envisaged to be achieved by the end of 2006 (although at the time of writing, the deadline seems likely to be extended), are: (a) completion of the return process of IDPs and refugees; (b) completion of the reconstruction of housing units for returnees; (c) realization of property and occupancy rights and repossession; and (d) securing conditions for sustainable return and reintegration. As affirmed by Parliament, the right to return cannot, however, be limited to a specific deadline.<sup>17</sup> Actions and reforms to be undertaken include the harmonization of entity laws with the State law on refugees from Bosnia and Herzegovina and IDPs, as well as the harmonization of regulations in the fields of education, health, pension and disability insurance, allocation of socially owned property and the application of property laws. The strategy further envisages structural and organizational reforms to the institutional framework dealing with return. The main change would be the planned reduction of the institutional layers responsible for return from four to two, so that only the State and the municipalities would deal with return issues, eliminating the involvement of the entities and cantons.

## **B. International responses**

27. As signatories to Annex 7, the entities as well as the Republic of Bosnia and Herzegovina are the main parties responsible for the realization of these obligations. To facilitate their efforts, the Dayton Peace Agreement provides for a strong international presence, comprising a civilian office headed by the High Representative as well as a NATO-led military force. Further support for the strengthening of local capacities is envisaged by the 2003 European Union and UNDP joint Sustainable Transfer to Return-related Authorities (SUTRA) initiative which focuses on return, reconstruction and area-based development. UNHCR has significantly contributed to

successful returns and local capacity-building, and together with UNICEF, which is monitoring and addressing the situation of IDP children and their families, supports legal aid projects for IDPs and returnees.

28. At the regional level, the Ministerial Declaration signed in Sarajevo on 31 January 2005 by Bosnia and Herzegovina, Croatia and Serbia and Montenegro contains a framework for "just and durable solutions to the refugee and IDP situation". The signatories committed to solving the remaining displacement by the end of 2006, facilitate returns or local integration of refugees and IDPs in their countries without discrimination and in accordance with the individual decisions of those concerned, and provide assistance and support to refugees and IDPs in cooperation with UNHCR, the European Union and the OSCE.

### **III. PROTECTION NEEDS OF INTERNALLY DISPLACED PERSONS DURING DISPLACEMENT**

29. Displaced persons suffer mainly from problems concerning their economic and social rights (see guiding principles 18 and 19, para. 1). They are disproportionately affected by the general problems of the population. For example, while the whole country struggles to cope with the economic depression resulting from the effects of war and the transition to a market-led economy, IDPs constitute around 45 per cent of the extremely poor in the Federation of Bosnia and Herzegovina, and 21 per cent in the Republika Srpska.<sup>18</sup> Within the displaced population, vulnerable groups such as female heads of households, disabled persons, victims of torture and severely traumatized individuals, elderly persons without family support, unaccompanied children and the Roma are again particularly affected and often live under extremely adverse conditions.

30. Due to achievements with regard to the rate of return, as well as the start of the closure of camps by international agencies and local authorities some years ago, only several hundred IDPs remain in officially recognized collective centres. However, according to official figures, about 7,300 persons still live in irregular collective centres and ad hoc settlements which were originally provided by local authorities as temporary shelter for those displaced by the conflict. Most of these centres, which remain monitored by UNHCR, are located in the Federation of Bosnia and Herzegovina where some receive limited support from the Federation of Bosnia and Herzegovina Ministry of Refugees and Displaced Persons or the cantons and municipalities concerned. The Representative visited some of these unofficial centres and settlements no longer supported by the Government or the international community and noted with concern the abject poverty and deplorable living conditions of IDPs, which are clearly not in accordance with the right to an adequate standard of living as provided for by guiding principle 18. Unofficial settlements inhabited mainly by Roma have no running water and electricity and are not connected to public services such as waste collection. As a consequence of these conditions, the social isolation of the centres and the high percentage of inhabitants suffering from depression and trauma, an increased level of learning and psychological difficulties among children has been documented by UNICEF, affecting especially those children who have been living there for extended periods of up to 10 years.<sup>19</sup>

31. Almost all inhabitants of collective centres belong to particularly vulnerable groups, such as female-headed households, elderly persons without family support and the disabled, severely traumatized individuals, witnesses in war crime investigation or Roma. Their return



to their places of origin is unlikely for a variety of reasons, mainly: (a) unresolved property repossession processes; (b) delays in reconstruction of their houses, sometimes because they have been unable to submit the required documentation; (c) adverse conditions in communities of origin, such as lack of infrastructure, employment opportunities, access to education and health care; and (d) changes in the ethnic structure of return communities or the still outstanding return of other community members.<sup>20</sup> Special assistance to these groups is necessary, and 10 years after the Dayton Peace Agreement, instituting systematic efforts to find durable solutions for them is a matter of urgency.

32. Many IDPs are suffering from long-term post-traumatic stress disorder (PTSD). PTSD is especially prevalent in households headed by females because the husbands and fathers are missing. The extent of the trauma suffered as well as other difficulties faced by displaced children in the post-war period, including mourning the missing and killed, lack of financial resources and separation from closely related persons, gravely affects their development and health. Particularly difficult is the health situation of the estimated 200,000 camp survivors and an unknown number of victims of sexual violence, who are in need of specific social services and psychological programmes. Bosnia and Herzegovina still lacks adequate medical and psychiatric services to address their continuing suffering. This infringes on the rights of traumatized, sick and disabled IDPs to receive the medical care and attention they require (guiding principle 19, para. 1). While camp survivors and victims of sexual violence have been recognized as victims of torture by the International Criminal Tribunal for the former Yugoslavia,<sup>21</sup> their status does not amount to a legal recognition which would grant them specific rights and protection measures. The absence of an umbrella law at the State level for their protection and the lack of acknowledgement by society and the State of their suffering may lead to re-traumatization. The Representative notes the assurances recently given by a representative of Bosnia and Herzegovina to the Committee against Torture that an umbrella law on their protection would be initiated at the State level in 2006.<sup>22</sup>

#### **IV. PROTECTION NEEDS OF INTERNALLY DISPLACED PERSONS REGARDING RETURN AND OTHER DURABLE SOLUTIONS**

33. In accordance with guiding principle 28, IDPs have the right to choose between return and integration in the area of displacement or another part of the country. Return shall be voluntary and conducted in safety and with dignity. Reintegration shall be facilitated. In Bosnia and Herzegovina, the international community through the Dayton Peace Agreement has clearly prioritized return over local integration in order not to legitimize "ethnic cleansing". Returnees are entitled, according to guiding principle 29, to be protected against discrimination and to recover their property or to receive compensation for lost property.

34. Experience indicates that the degree of respect for these standards has a direct impact on how successful return is. Successful return of IDPs to their homes and former places of habitual residence is based on three elements: (a) ensuring the safety of life and limb of returnees; (b) returning property to the displaced and reconstruction of their houses; and (c) creating an environment that sustains return, that is, which allows life under adequate conditions in the area of return. In Bosnia and Herzegovina, obstacles preventing IDPs from returning are often due to a lack of respect for their human rights.

### **A. Safety**

35. Thanks to the efforts of the international community and the authorities, general physical security can be considered one of the achievements of the return process. Nevertheless, as the Committee on the Rights of the Child recently stressed, concerns about “violent incidents against returnees and displaced persons and their property, memorials or religious objects” remain.<sup>23</sup>

The Representative was informed of a series of acts of intimidation and harassment of witnesses in war crime trials and regrets the absence of a functional witness protection programme.

With large numbers of alleged war criminals still enjoying impunity, the protection needs and safety concerns of these persons cannot be underestimated and often pose a decisive obstacle to them upon return to their communities of origin. The domestic criminal justice system persistently failed to take steps to actively prosecute alleged perpetrators. A major factor regarding continuing impunity was the lack of cooperation between the Federation of Bosnia and Herzegovina and Republika Srpska judicial authorities and police forces. The War Crimes Chamber within the Bosnia and Herzegovina State Court has after much delay taken up its work in September 2005, which constitutes an important step towards expediting the prosecution of war criminals. However, the lack of financial and other urgently required resources is a continuing cause for concern, as it may undermine the effectiveness of the Chamber’s operation and impedes the realization of a witness protection programme.

36. In some instances, tensions between local communities and returnees have led to isolated acts of violence, some of them ethnically motivated. The Representative is concerned about the lack of willingness of some local police to investigate incidents against minorities, in particular returnees, and its failure to identify and arrest the perpetrators, in particular when victims were Roma, as well as a weak and overburdened judiciary which fails to prosecute and punish.

37. Landmines pose a significant obstacle to the safety of returnees, to reconstruction efforts and to the development of economic activities in Bosnia and Herzegovina, which remains the most heavily mined country in South-Eastern Europe. As the majority of returns are taking place to rural areas where agriculture and cattle-breeding are essential means of subsistence, IDPs and returnees are particularly heavily affected. From 2003 to 2004, a total of 95 persons were victims of mine accidents, of whom 37 were returnees and 5 were IDPs. The Ministry of Civil Affairs, which is responsible for the implementation of the mine action plan, intends to prioritize mine clearance in return areas. However, at the current rate of mine clearance, which is almost totally funded by international donors, this will take an estimated 10 years.<sup>24</sup> The Representative also received allegations of a deliberate lack of mine clearance efforts in some return areas.

### **B. Property**

38. As indicated above, significant progress has been made in solving disputes over property left behind by IDPs and refugees, and the actual recovery of such property. By December 2004, 93 per cent of property claims lodged by pre-war owners had been resolved. However, some obstacles remain, including problems in the implementation of repossession and reconstruction as well as particular difficulties for vulnerable groups, such as female-headed households and Roma, to assert their property rights and access permits or assistance for reconstruction.

39. Female heads of household, frequently widows of war veterans or of civilian war victims or missing persons, often lack property titles, which prevents them from submitting claims for both repossession and reconstruction of their houses. Some women have lost access to their pre-war property due to divorce or because their husband has abandoned them. Some widows did not formally inherit their late husband's property, making them dependent on the goodwill of parents-in-law to obtain access to their property. A number of war orphans have also not been able to reclaim property, as they are not included in the Property Law Implementation Plan, and institutions with guardianship over these children often failed to claim their rights. The situation of the Roma is particularly problematic. Before the war, a large number of the Roma community lived in settlements which were built on State-owned land and often not recognized by local authorities. As a result, there are few records of these settlements, and no concrete information about the exact location of houses. Today, an estimated 50-70 per cent of Roma reside in informal settlements in a precarious situation as the land could be reallocated by local authorities at any time.<sup>25</sup> Currently, some two thirds of all Bosnian Roma are not registered at a permanent address, which complicates or bars various administrative procedures such as obtaining official documents. The Representative noted with concern cases of forced eviction of Roma communities, such as that in Bisce Polje near Mostar in 2003. A Roma settlement built on State-owned land was reportedly demolished and burnt by the authorities without prior warning and with no alternative accommodation offered.

40. Some municipalities have been discriminating between different groups of IDPs concerning the allocation of plots of land, the provision of construction material or compensation for destroyed property, giving preferential treatment and assistance to those belonging to the local majority group. Minority returnees have been and sometimes still are subject to discrimination, as public enterprises frequently refuse to connect their houses to electricity, water and telephone services and fail to repair roads and provide other municipal services in a timely manner. Often, authorities have remained inactive when houses belonging to minority groups such as the Roma had been looted by temporary occupants.

41. Some 50,000 housing units remain destroyed or in need of substantive repairs, and many need to be reconnected to the public water and electricity supplies. Resources for reconstruction are scarce as donors are increasingly directing funds to other priorities. Again, vulnerable groups face the biggest difficulties in having their houses reconstructed. They may only receive part of the building material required or lack the capacity or the resources to do the actual construction work. Vulnerable categories have often been excluded from the process of identifying beneficiaries for reconstruction assistance.

### **C. Adequate economic, social and political conditions**

42. The creation of adequate economic, social and political conditions making return sustainable remains the biggest challenge. The lack of such conditions which, according to the Dayton Peace Agreement and national legislation, authorities are obliged to create is one of the main obstacles to return and has caused the overall rate of returns to slow down. Significant questions as to the long-term sustainability of returns remain. As mentioned above, there are many cases in which returnees have left again after a short while, or where only the elderly, but not families with children, have returned. While living conditions in many return areas are difficult for the resident population too, many returnees face additional, specific difficulties, often caused by insufficient respect for their human rights.

43. As regards the right to work, limited or lack of access to employment is a major factor deterring people from returning. Unemployment affects mainly young people, women and displaced persons, particularly those who lived in rural areas before the war and often lack the education and skills required for formal employment.<sup>26</sup> At the already very high rate of 50 per cent in 2004,<sup>27</sup> unemployment is expected to rise with the continuing process of privatization of State-owned enterprises, which is also the subject of concerns about a lack of transparency. Widespread discrimination based on ethnicity, political affiliation and gender adds to the difficulties for returnees to access the labour market. Discriminatory practices persist mainly in public companies, such as the postal, telephone, electricity and forestry companies, which are directly controlled by cantons in the Federation of Bosnia and Herzegovina and by the entity Government in the Republika Srpska. Recruitment processes are reportedly neither transparent nor merit-based, and complaints about the absence of vacancy announcements by public companies and the municipal administration are common in some areas.<sup>28</sup> There is a strong tendency to employ only members of the dominant ethnic group or political party. Preference is also given to soldiers, disabled war veterans and their families, as well as family members of soldiers killed in action. Returnees are virtually excluded as they do not belong to any of these categories.

44. Although the law (Federation of Bosnia and Herzegovina Labour Law, art. 143 and Republika Srpska Labour Law, art. 152) provides that a former employee who has been unfairly dismissed must be rehired or compensated by the enterprise, in practice no returnees have been able to return to their pre-war jobs or receive compensation on the ground of unfair dismissal.<sup>29</sup> While a complaints procedure with entity and canton commissions exists, there is neither an implementation system for the commissions' decisions nor a monitoring mechanism. In addition, new private owners of former public companies have no legal obligation to rehire or award compensation.

45. While some returnees might get some support from international donors to start small income-generation activities, those requiring financial assistance indicated that the high interest rates of microcredit programmes deter self-employment initiatives. The main employment opportunities for IDPs returning to rural areas would lie in the agricultural sector. However, due to the slow pace of mine clearance, part of the agricultural land still cannot be cultivated. In addition, the lack of a comprehensive agriculture development policy prevents some IDPs from giving up their temporary residences in the cities, where temporary and/or informal employment opportunities are more likely to arise.

46. Problems in the area of the right to education, such as discrimination and ethnic separation, pose another important obstacle to sustainable return. For years after the war, children attending the same school were separated on the basis of ethnicity, and different curricula with strong nationalist content were taught to different groups. As a result, many families have split, with one parent returning and the children staying with the other in the place of displacement to be able to follow the curriculum corresponding to their ethnicity. In other cases, children have returned with their parents but travel long distances to school. Since the authorities stopped financing the bussing of children to other entities at the end of the 2003/04 school year, some parents organize transportation themselves.

47. Although serious efforts have been made to address discrimination and to develop an egalitarian education system with curricula designed at State level, many challenges remain.

In some regions, education is still organized along ethnic lines. For example, some 50 so-called "two schools under one roof"<sup>30</sup> located mainly in parts of Herzegovina use the same facilities but are administratively separate and follow different curricula. Children, teachers and non-teaching staff segregated along ethnic lines attend the same school in shifts or use separate entrances and sections. The Representative found that school segregation perpetuates ethnic tensions into the next generation and delays the process of national reconciliation.

48. Efforts addressing these challenges include the 2002 education reform and an "interim agreement on accommodation of specific needs and rights of returnee children" signed in March 2002 between the entity Ministers of Education. As a result, returnee teachers were hired, and a larger number of schools offer to their minority returnee children separate classes on certain subjects such as language and literature, history, geography and religious instruction. Some schools have introduced the common core curriculum agreed upon by the education ministers in August 2003. As a consequence, certain areas recorded an increase in the number of returnee children attending schools in their places of return. Despite these efforts, marginalized groups of children, including IDPs and returnees as well as children with disabilities, face difficulties in accessing schooling. Of the 4-6 per cent of children not attending school at all, the majority are Roma and displaced children.<sup>31</sup>

49. Access of IDPs and returnees to health care and social security is adversely affected by the lack of harmonization between the relevant legislation and welfare systems of the two entities. By contrast to the single nationwide insurance scheme in existence before the war, at present there are separate health insurance schemes in the Republika Srpska, in Brčko District and in the Federation of Bosnia and Herzegovina, where the operational capacity is delegated to the cantons. One of the difficulties is that coverage cannot be transferred from one entity to another. This poses an obstacle to persons considering return and has turned into a problem for returnees, many of whom have to travel to the other entity to access health care and other social services. As the first major inter-entity agreement prepared and negotiated without the intervention of the international community, the directors of the entities and the Brčko District health insurance funds signed an agreement in 2001 securing for all those insured in one entity, health coverage in another. The implementation of the agreement, however, is reportedly unsatisfactory.<sup>32</sup>

50. As the protection of civilian victims of war is regulated by entity laws which, as described above, differ from one another, the different eligibility criteria for recognition of the status of civilian victim of war may be an obstacle to return for those holding such status in the entity of displacement.

51. Similarly, the different pension calculation schemes and pension amounts in each entity also adversely affect returns. Following the Agreement on Mutual Rights and Obligations in the Implementation of Pension and Disability Insurance between the entity funds, it became possible for a beneficiary receiving a pension from the fund in his or her place of displacement to continue receiving this pension after return. However, individual return decisions and sustainability are influenced by the difference in pension amounts between entities in conjunction with differences in the cost of living. Further, it is impossible for pensioners collecting their pensions from a fund in one entity to enjoy other related social benefits, the most important being health insurance, in the other entity.<sup>33</sup>

52. Due to discriminatory attitudes and practices by some local authorities, returnees expect or face problems regarding participation in public affairs, which also prevents or complicates returns, particularly of minorities, and subsequent social reintegration. In July 2000, the Constitutional Court of Bosnia and Herzegovina ruled that none of the three main ethnic groups as the constituent peoples of Bosnia and Herzegovina shall be excluded from exercising its rights in the entities and that their members shall be represented at all levels of government and public administration. However, problems remain with the implementation of these principles as well as for those who do not belong to any of the three constituent peoples, the so-called “others” such as the Roma. Returnees often lack information about their rights and how to exercise them. The provocative use of national or religious symbols by some local authorities contributes to creating and maintaining a hostile environment towards minorities. Public institutions are often dominated by nationalist political parties who follow a policy of ethnic homogenization, which leads to favouritism privileging the ethnic majority while neglecting or underrepresenting the interests of vulnerable groups. This discredits public institutions which are perceived by minority returnees as non-transparent and open to corruption. The lack of trust in public institutions is a serious democratic deficit. In some municipalities, minority returnees are indirectly excluded from voting in elections because of the limited information made available to them, or the lack of transportation.<sup>34</sup> Many Roma IDPs are excluded from voting as they lack the required documentation.

53. Specific problems are encountered by some rejected asylum-seekers, persons whose temporary protection status in host States has ceased and other persons returned from countries of asylum in Western and Northern Europe. The Representative was concerned that those who, upon return, do not have the means to sustain themselves and do not have access to durable solutions are at an increased risk of becoming displaced themselves. An increasing number of countries of asylum, mostly in Western Europe, have started applying the “internal flight alternative” to asylum-seekers from Bosnia and Herzegovina, arguing that the latter are not in need of international protection as they can find refuge elsewhere in their country of origin. In view of the conditions described above, however, this ostensible alternative may not be a viable option for many individuals. Given the small size of the country and the continuing impunity, some persons, in particular victims or witnesses of war crimes, may be exposed to a serious risk to their safety even in an area of relocation if returned to Bosnia and Herzegovina. Concerns also include severely traumatized individuals, who are not likely to be able to live anywhere in the country without being constantly reminded of their suffering and past violations and who, in practical terms, would not be in a position to receive the assistance they need, such as specific social services and psychological support, given the poor state of the health system and the absence of sufficient psychosocial counselling.<sup>35</sup> Apart from these problems affecting specific groups, many interlocutors shared with the Representative their concern that the country’s reintegration and absorption capacities would be overburdened should mass returns from abroad take place; indeed, renewed displacement might be the consequence.

## V. CONCLUSIONS AND RECOMMENDATIONS

54. **The Representative is concerned about the deplorable living conditions of IDPs, especially those belonging to particularly vulnerable groups, such as the elderly without family support, traumatized victims, disabled or sick persons, female-headed households and families of missing persons, witnesses in war crimes investigations and trials, or members of the Roma and other minorities, who still live in collective centres,**

**irregular settlements and other forms of temporary shelter, often experience multiple discrimination and are unlikely to be able to return to their original homes.**

**55. The Representative urges national and local authorities, in collaboration with international agencies and donors, to seek durable solutions for these persons, including the creation of adequate housing and appropriate institutional arrangements such as foster families, social housing projects or homes. He urges the international community and donors to support such projects.**

**56. Vulnerable groups of IDPs and returnees are particularly affected by human rights violations. These groups include female-headed households, disabled persons, victims of torture and severely traumatized individuals, elderly persons without family support, unaccompanied children, the Roma and other minorities. Multiple discrimination along ethnic, gender, age, class and other lines results in an accumulation of rights deprivation. The Representative recommends to the authorities that they mainstream the protection needs of vulnerable groups when formulating all policies and measures affecting them and devise specific measures to find durable solutions. The international community should provide additional durable solutions for vulnerable groups among the displaced and returnees and make sure that their rights are not adversely affected as international aid further diminishes.**

**57. Sustainable return in Bosnia and Herzegovina is dependent on: (a) ensuring the safety of life and limb of returnees; (b) property repossession and reconstruction of houses; and (c) a political, social and economic environment that respects human rights and addresses the special needs of returnees. While impressive results have already been achieved, many challenges remain. The Representative recommends that all necessary measures be taken to ensure the effective protection of human rights of displaced persons and returnees, including by implementing his recommendations. He calls upon the international community to ensure that assistance programmes entail a transfer of responsibilities and capacities to national and local stakeholders and that during this process the human rights of displaced persons and returnees are mainstreamed into all relevant parts of the administration. The Representative invites the authorities and the international community to establish a mechanism to closely monitor the return situation and its sustainability by using reliable indicators and disaggregated data.**

**58. Most returnees now enjoy physical security. Concerns remain about the widespread presence of landmines as well as threats against witnesses in war crimes investigations and trials and members of ethnic minority groups. The Representative recommends that the authorities continue, and possibly accelerate, with the support of the international community, the process of mine clearance with a priority on return areas. Law enforcement institutions should take effective measures to ensure that all crimes and acts of violence against IDPs and returnees are properly investigated and prosecuted. A functional witness protection programme should be established.**

**59. Despite the huge progress made in solving property disputes, restitution of houses and reconstruction of buildings, a considerable number of cases remain to be solved. Vulnerable groups and minorities are disproportionately affected by unsolved cases and deficiencies in infrastructure, and they have difficulties accessing aid for reconstruction**

and connection to public services. The Representative recommends that the authorities continue, with the support of the international community, the reconstruction process and reconnection of houses to services in a non-discriminatory manner, and examine carefully unsolved cases of property repossession, in particular where members of vulnerable groups are affected.

60. The unwillingness of local authorities to sufficiently respect, protect and fulfil the human rights of returnees, in particular their economic and social rights, continues to pose a major obstacle to sustainable return. These obstacles often originate in widespread and persistent discrimination along ethnic lines which still penetrates all spheres of public and private life in many regions of the country. Despite recent efforts, non-harmonized laws and regulations at different levels remain and have also hampered return and integration. The Representative recommends that existing legislation be reviewed at all levels in the light of human rights provisions relevant to IDPs and returnees, with support from the international community. A comprehensive policy of non-discrimination, possibly designed with the assistance of the international community, should be adopted to address discrimination in all spheres, particularly education, health, social protection, employment, access to justice, public participation and the media. It should include legislative measures as well as effective mechanisms for redress and compensation, a system monitoring the situation of vulnerable groups, codes of conduct and public campaigns. The participation of all sectors of society, including the private sector, would be essential for the successful implementation of the policy. Legislation should be harmonized and simplified, especially in the areas of pensions and employment, access to health, education, the use of symbols in public institutions and the recognition of the status of civilian victim of war. Human rights training, including on the Guiding Principles on Internal Displacement, should be provided to officials of the Ministry for Human Rights and Refugees and their counterparts in the entities and municipalities. At the same time, measures should be taken to better inform IDPs and returnees of their rights and existing mechanisms with which to seek redress. All IDPs and returnees, in particular the Roma, should be provided with the documents necessary to allow them equal access to administrative procedures. Further, the Representative recommends that the authorities make the necessary budget allocations for the implementation of laws affecting the situation of returnees and displaced persons, especially in the areas of social welfare and health. Municipalities should likewise allocate an adequate budget for return. The Representative invites the authorities to consider accepting the competence of the Committee on the Elimination of Racial Discrimination to examine individual communications, by making the declaration under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

61. The Representative recommends to the international community that it concentrate its efforts and resources towards the creation of an environment conducive to sustainable return. It could assist with human rights training and human rights-based capacity-building in areas such as administration of justice, employment policies, and the harmonization of the health and education systems.

62. Limited, or lack of, access to the right to education constitutes a major obstacle to return, as IDPs are reluctant to return to areas where their children would face segregation and intolerance and have to attend schools with a curriculum that does not respect the cultural traditions of their own ethnic group. The Representative recommends that



**the authorities continue the process of harmonization of the educational system and gradually eliminate the system of “two schools under one roof”. Countrywide educational programmes aimed at creating an environment of tolerance, peace and understanding of diversity should be established.**

**63. The right to health is undermined by inconsistencies in health insurance schemes between entities, which mainly affect IDPs and returnees who suffered the most acute consequences of the war and who are in need of specific physical and psychological assistance. The Representative recommends that the authorities implement the 2001 agreement between the entities and the Brčko District health insurance funds, to ensure that all those insured by one entity can receive health coverage in another. Specific resources need to be allocated to assist persons suffering from post-traumatic stress disorder. State-level legislation recognizing the status of victim of torture, creating specific protection measures and granting victims specific entitlements, should be enacted.**

**64. Discriminatory practices in employment, especially prevalent in the public sector of municipalities, discourage minority returns. Returnees excluded from the formal labour market have to resort to the informal economy or other coping mechanisms. The Representative recommends that the authorities closely review and monitor recruitment practices in the public sector with a view to eliminating discrimination. Disproportionate underrepresentation of one ethnic group in a given public company should be taken as an indication of discrimination unless otherwise demonstrated. Programmes and initiatives aimed at creating employment opportunities specifically for IDP and female returnees who are heads of household should be created. Such measures might include vocational training for women as well as training for employers on gender equality. Authorities should also take steps towards creating an environment conducive to economic growth and development in return areas, and ensure that the privatization process is conducted in a transparent and accountable manner. Past incidents of discrimination in employment need to be addressed by providing those unfairly made redundant with re-employment or compensation.**

**65. Mass returns of refugees from abroad, repatriation to areas of unsustainable conditions, evictions of temporary occupants during the property repossession process and the closing of settlements may pose the risk of renewed or multiple displacement.**

**66. The Representative recommends that the authorities avoid depriving IDPs of their current accommodation without offering an adequate alternative solution. The Sarajevo Declaration should be implemented so as to facilitate sustainable return of internally displaced persons and avoid successive displacement. Further dialogue and collaboration on displacement at the regional level could be facilitated by the international community. The Representative calls upon the authorities to raise concerns related to the sustainability of return with the competent authorities of countries of asylum, with a view to avoiding the displacement of deportees and repatriates once they are returned to Bosnia and Herzegovina. The international community is also called upon to alert asylum States concerned of existing risks and to appeal to them to proceed cautiously with returns to Bosnia and Herzegovina, in particular of persons belonging to ethnic minorities.**

## Notes

- <sup>1</sup> See the reports on the Representative's visits to Croatia (E/CN.4/2006/71/Add.3) and Serbia and Montenegro, including Kosovo (E/CN.4/2006/71/Add.3).
- <sup>2</sup> E/CN.4/2005/84.
- <sup>3</sup> All figures are reproduced from the initial report submitted by Bosnia and Herzegovina under the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.65).
- <sup>4</sup> See E/C.12/BIH/CO/1.
- <sup>5</sup> E/CN.4/2001/47.
- <sup>6</sup> Norwegian Refugee Council/Global IDP Project, Profile of internal displacement: Bosnia and Herzegovina, Geneva (2005), p. 38.
- <sup>7</sup> Dayton Peace Agreement, Annex 7, article I, paragraph 1 (14 December 1995).
- <sup>8</sup> Originally Commission for Displaced Persons and Refugees.
- <sup>9</sup> For details see the Profile of Internal Displacement: Bosnia and Herzegovina, available in the Global IDP Database of the Norwegian Refugee Council, available at: [www.idpproject.org](http://www.idpproject.org).
- <sup>10</sup> *Functional review of the return sector in BiH, Final Report*, Sarajevo (April 2005), p. 10.
- <sup>11</sup> Law on Refugees from BiH and Displaced Persons in BiH, BiH Official Gazette (23/99, 21/03 and 33/03).
- <sup>12</sup> *Functional review*, op. cit., p. 12.
- <sup>13</sup> Article 11.
- <sup>14</sup> Article 15, Republika Srpska Official Gazette, No. 33/99 (26 November 1999).
- <sup>15</sup> Article 10, Federation of Bosnia and Herzegovina law, article 9, Republika Srpska law.
- <sup>16</sup> Article 2.1.
- <sup>17</sup> Ministry for Human Rights and Refugees, *Bulletin 2004*, Sarajevo (December 2004), p. 6.
- <sup>18</sup> Norwegian Refugee Council, op. cit., p. 5.
- <sup>19</sup> UNICEF briefing note for the Representative (June 2005).
- <sup>20</sup> Ministry for Human Rights and Refugees, *Sustainable return for residents of collective centres and alternative accommodations and for spontaneous return cases: housing stock reconstruction FIP 13503, Feasibility study* (August 2004), p. 4.

<sup>21</sup> ICTY, *Furundzija* (IT-95-17/1), *Lasva Valley* and *Zejnir Delalic, Zdravko Nucic, Hazim Delic and Esad Landzo*, judgement of the Trial Chamber II 1998 and of the Appeals Chamber 2001, available at: [www.icty.org](http://www.icty.org) and see *Interights Bulletin*, vol. 14, No. 4, 2004, pp. 166-169.

<sup>22</sup> See CAT/C/BIH/CO/1, para. 8.

<sup>23</sup> CRC/C/15/Add.260, paras. 25 and 60.

<sup>24</sup> Norwegian Refugee Council, op. cit., p. 57.

<sup>25</sup> Ibid., pp. 158-159, 168.

<sup>26</sup> UNHCR, *Survey on displaced persons in Tuzla canton from the Podrinje area, Eastern Republika Srpska* (June 2003), p. 13.

<sup>27</sup> UNHCR, *Update*, op. cit., p. 10.

<sup>28</sup> UNDP/OHCHR, *Consolidated report of the municipality assessment in Bosnia and Herzegovina, Rights-based municipal assessment and planning project (RMAP)*, Sarajevo (April 2004), p. 23.

<sup>29</sup> UNDP/OHCHR, op. cit., pp. 36-37.

<sup>30</sup> Norwegian Refugee Council, op. cit., p. 100.

<sup>31</sup> UNICEF, op. cit. The Committee on the Rights of the Child expressed its concern for the extensive discrimination in access to education towards ethnic and/or national minorities, especially Roma (only 33 per cent attend primary school) (CRC/C/15/Add.260, para. 57).

<sup>32</sup> Norwegian Refugee Council, op. cit., p. 88 and 90.

<sup>33</sup> Ibid., p. 112.

<sup>34</sup> UNDP/OHCHR, op. cit., p. 22.

<sup>35</sup> UNHCR, *Update*, op. cit. pp. 7-9.

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