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COMMISSAIRE AUX DROITS DE L'HOMME



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## REPORT

**by Thomas Hammarberg**  
**Commissioner for Human Rights of the Council of Europe**

Following his visit to Bosnia and Herzegovina  
on 27-30 November 2010

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Issues reviewed:  
Fight against discrimination,  
human rights of people displaced by the war,  
asylum seekers and stateless persons,  
post-war justice and reconciliation

## Summary

The Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, and his delegation visited Bosnia and Herzegovina, from 27 to 30 November 2010. In the course of this visit the Commissioner held discussions with authorities at the State and Entity levels, and with international and non-governmental organisations. The Commissioner also held meetings with the Human Rights Ombudspersons and representatives of minority groups.

Drawing upon the focused nature of the Commissioner's visit, the present report tackles the following major issues:

### I. Fight against discrimination

The Commissioner remains concerned that the provisions of the Constitution and the Election Law are still unchanged, despite their discriminatory character and the European Court of Human Rights' judgment of 2009 in the case of *Sejdic and Finci*. Furthermore, the 2008 amendment to the Election Law is likely to result in reduced possibilities for national minorities to be represented in municipal authorities. The Commissioner calls on the authorities to take all necessary measures, including legislative measures, to eliminate discrimination towards national minorities and to provide persons belonging to national minority groups with real opportunities for political representation. The authorities should enable the national minorities' councils to participate actively in this process, by providing all necessary financial and technical support to make their work effective.

The Commissioner welcomes the adoption of an anti-discrimination law, and the creation of a unified Human Rights Ombudsperson's Office at the State level. Nonetheless he remains concerned about persisting discrimination towards national minorities, persons with disabilities and LGBT persons. Public manifestations of hate speech and intolerance, especially by politicians, remain a source of concern for the Commissioner. The authorities are urged to step up their efforts to ensure full and effective implementation of the anti-discrimination law, and to effectively implement the decisions of the Human Rights Ombudspersons. The social welfare system needs to be carefully examined and strategically revised to enable equal protection of civilian and military victims of war.

The Commissioner urges the authorities to increase and systematise their efforts in order to enhance the protection of Roma, in particular in the sectors of employment, education, housing and healthcare, drawing upon the Council of Europe Committee of Ministers' Recommendation (2008)5 *on Policies for Roma and/or Travellers in Europe*. The collection of complete and reliable statistics concerning the ethnic composition of the country's population would facilitate the effective application of programmes for the protection of the human rights of national minorities, particularly the Roma. In this regard, the Commissioner urges the authorities to adopt the census law, so as to enable the census to be carried out in 2011.

Widespread segregation and discrimination and in public schools in Bosnia and Herzegovina remain of serious concern to the Commissioner. No progress has been made in bringing to an end the system of "two schools under one roof" since the last visit by the Commissioner in 2007. Ethnically-based and divided education systems remain an obstacle to sustainable returns. The Commissioner urges the authorities to introduce a common, core curriculum while respecting the particularities of each constituent people's language, culture and heritage. The language and culture of national minorities should also be included in the school curricula to enable them to preserve their values. In relation to the education of children with mental disabilities, the Commissioner welcomes the development of programmes that are now available in schools. At the same time, he calls on the authorities to put an end to the practice of placing children with mild mental disabilities in special schools.

### II. Human rights of people displaced by the war, asylum seekers and stateless persons

As regards the pending human rights and humanitarian issues following the 1992-1995 war, the Commissioner welcomes the adoption of the Revised Strategy for the implementation of Annex VII of the Dayton Peace Agreement that has provided for alternative solutions for those still displaced and unable to return, as well as for compensation for lost or damaged property. The most vulnerable remain the approximately seven thousand persons still living in collective centres. In the collective centre in Lukavica, near Sarajevo, the Commissioner witnessed the substandard conditions in which ten displaced families still live. The Commissioner urges the authorities to take all necessary

measures to provide adequate housing to vulnerable, including elderly, citizens of collective centres, in accordance with the standards of the European Social Charter.

Any further measures related to the return of displaced individuals should be based on updated, reliable data on the numbers and the situation of the displaced persons. The Commissioner encourages Bosnia and Herzegovina to follow up on the decisions taken at the International Conference on Durable Solutions for Refugees and IDPs which took place in March 2010 in Belgrade, and to enhance co-operation with all relevant neighbouring countries. Discrimination in the enjoyment of the human rights to healthcare, social care and pension rights, the slow pace of demining and the lack of effective and systematic monitoring of ethnically-motivated violence remain barriers to sustainable return. The Commissioner urges the authorities to effectively address these issues so that the right of displaced persons to *voluntary return in safety and dignity* can effectively be exercised.

In terms of the treatment of asylum seekers, the Commissioner is particularly concerned by the situation of Roma who have been expelled from Kosovo<sup>1</sup>, and who have lived for many years in Bosnia and Herzegovina with their families. The Commissioner calls on the authorities to find durable solutions for members of this group, particularly for those for whom return to Kosovo\* is not an option.

Whilst noting the progress made in reducing Roma statelessness, Commissioner Hammarberg urges the authorities to take additional measures to facilitate naturalisation of Roma, especially children, if this is necessary. Some individuals, whose Bosnia and Herzegovina citizenship was revoked by the State Commission for Revision of Decisions on Naturalization of Foreign Citizens, are subject to deportation to their country of origin. The Commissioner draws the authorities' attention to the Council of Europe standards, including the Committee of Ministers' *Twenty Guidelines on Forced Return* (2005), and reiterates his call to the authorities to ensure availability of effective remedies, if necessary with suspensive effect, against decisions to deport foreign nationals especially if they are stateless.

### **III. Post-war justice and reconciliation**

The Commissioner underlines the significance of justice for inter-ethnic reconciliation and peace and encourages the authorities of Bosnia and Herzegovina to strengthen their efforts aimed at effectively investigating and prosecuting the cases relating to the war atrocities, in accordance with the international legal principles of accountability, justice and the rule of law. At the same time, access to justice for victims should be ensured and effective domestic remedies should be provided, thus ensuring adequate, effective and proportionate reparation. The authorities are urged to step up their efforts to ensure effective implementation of the 2008 National War Crimes Processing Strategy. Particular emphasis should be placed on strengthening the national capacity for the prosecution of war-related crimes, and on the provision of adequate staff and equipment for the State Investigation and Protection Agency (SIPA). The existing accountability gap for the war crimes of rape and other forms of sexual violence must be eliminated so that these victims attain access to justice and adequate, effective and proportionate reparation. The Commissioner considers of pivotal importance the provision of effective protection and support to witnesses in the context of war-related proceedings. He urges the authorities to take necessary measures, including legislative measures, to considerably improve the witness protection system and to promptly investigate and prosecute all reported cases of threats and intimidation of witnesses. The authorities are also urged to remove the remaining obstacles to regional co-operation in relation to prosecution of war-related crimes.

Regarding particular persons still missing after the war, the Commissioner encourages the authorities to continue, with the same determination, their efforts aimed at resolving the approximately 10,000 open cases and comforting their families. The Commissioner notes the particular importance of history teaching for building peace and social cohesion in post-conflict countries. He encourages the Bosnia and Herzegovina authorities, possibly in co-operation with the relevant neighbouring countries, to reflect at greater length on the need to promote history teaching in an unbiased, constructive manner that would enhance the much needed inter-ethnic reconciliation.

Finally, the Commissioner urges the authorities to resolve the pending, serious issue concerning the efficiency of the justice system, paying particular attention to the non-enforcement of domestic judicial

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<sup>1</sup> All references to Kosovo in this text, whether to the territory, institutions or its population, shall be understood to be in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.

decisions. He also draws the authorities' attention to the cases of about 220 police officers who were decertified in the late 1990s following a vetting process that was procedurally flawed, and calls for the provision of adequate redress to those still in need of it.

[The authorities' reply is appended to the present report.]

## Introduction

1. The present report follows a visit to Bosnia and Herzegovina by the Council of Europe Commissioner for Human Rights (the Commissioner) from 27 to 30 November 2010.<sup>2</sup>
2. The Commissioner expresses his sincere gratitude to the authorities of Bosnia and Herzegovina in Strasbourg and Sarajevo for the assistance that they provided in facilitating the independent and effective accomplishment of his visit.
3. During the visit the Commissioner held consultations with authorities at the State and Entity levels, including the member of the Presidency, Mr Bakir Izetbegovic, the Chairman of the Council of Ministers, Mr Nikola Spiric, the President of Republika Srpska, Mr Milorad Dodik, the Ministers of the Federation of Bosnia and Herzegovina, Ms Meliha Alic and Mr Edin Music, and the Mayor of the Brcko District, Mr Dragan Pajic.
4. The Commissioner also met with national human rights structures, international organisations and other NGOs in Sarajevo and Banja Luka. The Commissioner visited the collective centre for internally displaced persons in Lukavica, near Sarajevo; a Roma settlement in Sarajevo; and the Roma settlement Prutace in the Brcko District. The Commissioner also met with the members of two families of Serb refugees from Croatia.
5. Bosnia and Herzegovina acceded to the Council of Europe on 24 April 2002 and has signed and ratified most of the major Council of Europe and core United Nations human rights treaties, including Protocol No 12 to the European Convention on Human Rights. The Commissioner notes that Bosnia and Herzegovina has not yet signed or ratified the International Convention for the Protection of All Persons from Enforced Disappearance and the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession.
6. The Commissioner notes with grave concern the persistent polarisation between different ethnic groups in Bosnia and Herzegovina, a legacy of the past war. Regrettably, the observed rise of nationalistic rhetoric, and the current difficult financial situation have contributed to the stagnation of the protection of human rights in Bosnia and Herzegovina. The country's complex, multi-layered political and institutional structure constitutes an additional impediment.
7. At the time of the Commissioner's visit, an agreement had not yet been reached on the necessary constitutional reform. The Commissioner notes that this reform is part of the need to proceed in a resolute and systematic manner in order to achieve post-war justice and inter-ethnic reconciliation. This process can only reach fruition when the dichotomies of the past are left behind and the country's leadership proceeds in a determined manner towards the building of a country that reflects its multiethnic richness and fully respects and protects all constituent elements of its population, without any distinction. The human rights standards of the Council of Europe constitute crucial pathfinders in this context.
8. Drawing upon the focused nature of the Commissioner's visit, the present Report concentrates on the following major issues: fight against discrimination (section I); human rights of persons displaced by the war, asylum seekers and stateless persons (section II); and post-war justice and reconciliation (section III). Each section is accompanied by the Commissioner's conclusions and recommendations.

## I. Fight against discrimination

### *1. Anti-discrimination law and policy with a special reference to national minorities*

9. The Constitution of Bosnia and Herzegovina uses the term 'constituent people' with regard to three ethnic majority groups: Bosniaks, Croats and Serbs. It also refers to the presence of

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<sup>2</sup> During the visit, the Commissioner was accompanied by the Deputy to the Director of his Office, Mr Nikolaos Sitaropoulos, and his Adviser, Ms Eriha Bicakcic.

'others', meaning that other ethnic groups are not considered as part of the 'constituent peoples'.

10. According to the 1991 census, the population of Bosnia and Herzegovina consisted of Bosniaks (43.5%), Serbs (31.2%), Croats (17.4 %), Yugoslavs (5.5%) and others (2.4%). The category of 'others' was composed of members of 17 national minorities. The national minorities, listed in the 2003 State Law on National Minorities, in order of size (from largest to smallest), are: Montenegrins, Albanians, Roma, Ukrainians, Slovenians, Macedonians, Italians, Czechs, Poles, Hungarians, Slovaks, Jews, Turks, Russians, Romanians, Ruthenians and Germans.
11. According to the Constitution and the relevant provisions of the Bosnia and Herzegovina Election Law, members of the above national minorities are prevented from being candidates for the Presidency and the House of Peoples of the Bosnia and Herzegovina Parliamentary Assembly. Based on this constitutional arrangement the House of Peoples of the Parliamentary Assembly and the Presidency are composed only of persons belonging to the three 'constituent peoples'.
12. The Commissioner has noted that the Grand Chamber of the European Court of Human Rights, in its judgment concerning the case of *Sejdic and Finci*,<sup>3</sup> held that the exclusion of citizens not belonging to the three 'constituent peoples' from being elected to the Presidency and the House of Peoples in Bosnia and Herzegovina violates, *inter alia*, Protocol No 12 to the European Convention on Human Rights. The Commissioner has noted that this judgment of the Court prompted a series of high-level meetings and discussions on the reform of the Constitution of Bosnia and Herzegovina. However, due to the lack of political consensus on the content of the constitutional reform, no agreement has been reached as yet. The general elections in October 2010 were held under the discriminatory provisions of the Constitution and the Election Law.
13. As for the institutional framework for the protection of national minorities, the Commissioner has noted that in 2008 the Council of National Minorities in the Parliamentary Assembly of Bosnia and Herzegovina was set up. Similar councils were set up in 2007 in Republika Srpska and in 2009 in the Federation of Bosnia and Herzegovina. The Assembly's Council provides advice, opinions and recommendations to the Parliamentary Assembly on issues pertaining to the rights, status and interests of national minorities. The Commissioner is concerned by reports indicating that implementation of the laws on national minorities at the local level has been slow, and has lacked financial support from the State and the Entities.<sup>4</sup>
14. The Commissioner has noted with concern that the amendment made to the Election Law of Bosnia and Herzegovina in 2008 is likely to result in reduced opportunities for national minorities to be represented in municipal authorities. The amendment set the threshold allowing persons belonging to national minorities to benefit from a reserved seat within local assemblies to 3% of the population of a given municipality.<sup>5</sup> Previously, they had a reserved seat where they constituted up to 3% of the entire population of a municipality. According to the 1991 census, there are only 4 (out of 137) municipalities in Bosnia and Herzegovina with 3% of their population belonging to national minorities.
15. The Commissioner has noted concerns of the Advisory Committee of the Framework Convention for the Protection of National Minorities (FCNM) that the scope of the term 'national minorities' in the 2003 Law on Protection of Members of National Minorities and the respective laws at the Entities' level continues to apply only to citizens of Bosnia and Herzegovina. The citizenship requirements can have a negative impact on those persons whose legal status is still unclear as a result of the past conflicts in the region. This is particularly relevant in the case of

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<sup>3</sup> European Court of Human Rights, Grand Chamber, *Sejdic and Finci v Bosnia and Herzegovina*, judgment of 22 December 2009.

<sup>4</sup> The results of a European Commission-sponsored survey was carried out in 2010 by the NGO Biro za ljudska prava based in Tuzla, see [http://www.nacionalnemanjinebih.org/index.php?option=com\\_content&view=article&id=77:prezentacija-analize-efikasnosti-djelovanja-vijeasavjeta-nacionalnih-manjina-u-bih&catid=3:vijesti1&Itemid=75](http://www.nacionalnemanjinebih.org/index.php?option=com_content&view=article&id=77:prezentacija-analize-efikasnosti-djelovanja-vijeasavjeta-nacionalnih-manjina-u-bih&catid=3:vijesti1&Itemid=75).

<sup>5</sup> The Advisory Committee (AC) on the Framework Convention for the Protection of National Minorities (FCNM), Second Opinion on Bosnia and Herzegovina, 2009, page 35, paragraph 197.

the Roma, who often face difficulties in obtaining nationality, or confirmation of it, notably due to lack of personal identification documents.

16. The Commissioner welcomes the ratification in September 2010 by Bosnia and Herzegovina of the European Charter for Regional and Minority Languages. Implementation of this Council of Europe treaty should improve the use by minorities of their languages that are scarcely present in Bosnian public affairs and cultural life. They are not used in relations with the administrative authorities, and topographical signs in minority languages do not exist, despite legislation on the subject that provides for use of minorities' languages freely, in private and public. These guarantees are provided for by the 2003 Law on Protection of National Minorities, which also imposed a set of obligations on the State to ensure that national minorities enjoy this right. There are very few radio or television programmes in minority languages, including in the public service media.<sup>6</sup>
17. The Commissioner has noted with concern the failure of the Parliament of Bosnia and Herzegovina to enact a census law. A postponement of adoption of this law undermines, *inter alia*, the development and implementation of programmes for the effective protection of national minorities. In 2010 the United Nations Committee on the Elimination of Racial Discrimination (CERD) recommended that the authorities establish adequate mechanisms that can ensure efficient methods of collection of data providing complete and reliable disaggregated statistics on the ethnic composition of its population. This should be done without fear of repercussions and in full respect of the principle of freedom of self-identification concerning members of racial or ethnic groups.<sup>7</sup>
18. The Commissioner welcomes the adoption and entry into force in 2009 of an Anti-Discrimination Law, which provides for an active role of the Human Rights Ombudsmen of Bosnia and Herzegovina in its implementation. The Commissioner further welcomes the establishment of a single, unified office of the Human Rights Ombudsmen for Bosnia and Herzegovina. He has noted with satisfaction that the newly appointed Ombudspersons are proactive, and have gained confidence and credibility that are necessary to successfully carry out their work. The three Ombudspersons with whom the Commissioner met during the visit (Ms Jasminka Dzumhur, Ms Nives Jukic and Mr Ljubomir Sandic) highlighted as major systemic problems in the country: the complex constitutional structure, non-enforcement of domestic judicial decisions, and the lack of harmonisation of legislation. They stressed that co-operation with authorities has significantly improved, but that the failure to implement their decisions is often due to the above mentioned systemic problems.
19. The Commissioner has noted with interest that a first instance judgment in an anti-discrimination case was delivered in July 2010 by the municipal court in Mostar. The court ruled in favour of a child with mild mental disabilities who suffered from discrimination in the enjoyment of his right to education.<sup>8</sup> This is the first judgment based on the aforementioned Anti-Discrimination Law.

## **2. Violence against minorities and hate speech**

20. Hostile reactions and acts of violence against returnees, who are members of minorities in their place of return, have reportedly diminished<sup>9</sup> but still occur throughout the country. Reportedly, these acts include desecration of graves, graffiti, and arson, damage to houses of worship, verbal harassment, dismissal from work, threats, and assaults. In 2009 such incidents were reported both in the Federation of Bosnia and Herzegovina and in Republika Srpska. Investigations into such incidents are still ongoing. About 40 incidents in 2009 were directed against religious officials and religious facilities of all four confessions. The incidents included physical and verbal attacks against religious officials, arson and damage to churches, bombing

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<sup>6</sup> Ibid. page 27.

<sup>7</sup> UN CERD, Concluding observations, CERD/C/BIH/CO/7-8, 25 August 2010, paragraph 6.

<sup>8</sup> The court found that the child was subject to discrimination due to the failure of the school that he attended and the cantonal authorities to provide professional assistance to enable him to continue to attend a regular school. The authorities and the school insisted that the parents enrol the child in a special school, even though it was established by a professional expert that he could attend a regular school if he was provided with professional assistance.

<sup>9</sup> AC FCNM, *ibid.*, paragraph 134.

of a mosque in Banja Luka and anti-Semitic graffiti on Synagogues in Sarajevo and Doboj.<sup>10</sup> According to local media, several incidents against Bosnian Croat returnees in the Konjice and Jablanica region (Herzegovina) were reported to the local police in 2010. The most serious act of violence happened in September 2010 when a group of Bosniaks fired a weapon on the houses of Bosnian Croat returnees, causing property damage.<sup>11</sup>

21. Acts of violence against representatives of minorities are often the product of incitement to ethnic and religious hatred that has been widely present in the society. The Commissioner has noted reports indicating that public manifestations of hate speech and intolerance, especially by politicians, have continued.<sup>12</sup> Hate speech is also widely used on the Internet, especially when topics implicating inter-ethnic issues have been discussed.
22. The Commissioner has noted concerns by the UN Committee on the Elimination of Racial Discrimination and the Advisory Committee on FCNM that the monitoring of acts of ethnic-based discrimination and violence remain far from satisfactory.<sup>13</sup> The concerns are in particular related to the lack of classification by police of ethnically motivated violence as such. In 2009 the Advisory Committee on FCNM called on the authorities to develop systematic monitoring of hate crimes and training for police to detect and adequately classify ethnically-motivated violence and hate crimes.<sup>14</sup> .
23. The Criminal Code of Bosnia and Herzegovina was amended in January 2010 to introduce the criminal offence of 'incitement to national, racial or religious intolerance'. The Entities' criminal codes include similar provisions. However, none of the existing criminal codes in Bosnia and Herzegovina includes all forms of hate speech provided for by the Council of Europe Committee of Ministers' Recommendation No.R (97)20 on "hate speech".<sup>15</sup> Furthermore, hate speech used on the Internet is not a criminal offence, although in 2006 Bosnia and Herzegovina ratified the Additional Protocol to the Council of Europe Convention on cybercrime, which concerned the criminalisation of acts of a racist and xenophobic nature committed through computer systems. The Additional Protocol provides that criminal codes should include as offences 'threats and intimidations motivated by racism and xenophobia' committed through a computer system.

### **3. Discrimination in employment**

24. The Commissioner has noted that ethnic discrimination in employment remains a problem. A large number of minority returnees reportedly face barriers to employment, as it is often conditioned by ethnic or political affiliation.<sup>16</sup> Furthermore, the representation in the public sector of persons not belonging to the majority remains far lower than it should be in the light of the legislation in force, notably the State Law on National Minorities that provides that they be represented in the public sector in accordance with the results of the most recent population census.<sup>17</sup>

### **4. Ethnic discrimination and segregation in public schools**

25. The Commissioner has noted with grave concern that the segregation of pupils based on their national origin persists within the country through the system of 'two schools under one roof' or the existence of separate mono-ethnic schools, despite his recommendation made in 2008 to

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<sup>10</sup> Interreligious Council in Bosnia and Herzegovina, Report on the Enjoyment of the Right to Religion (covering the period from 1 January 2009 to 31 December 2009),

[http://www.mrv.ba/images/stories/documents/izvjestaj%20o%20spsv\\_2009.pdf](http://www.mrv.ba/images/stories/documents/izvjestaj%20o%20spsv_2009.pdf).

<sup>11</sup> Information about the incidents available at <http://www.dnevnik.ba/novosti/kronika/jablanica-iz-automata-pucali-na-hrvatske-povratnike> and <http://www.eupmbih.eu/Detail.aspx?ID=1500&TabID=5>.

<sup>12</sup> UN CERD, Concluding Observations, CERD/C/BIH/CO/7-8, 25 August 2010, paragraph 10.

<sup>13</sup> UN CERD, Concluding Observations, *ibid.*, paragraph 9. and the AC FCNM, *ibid.*, paragraph 134.

<sup>14</sup> AC FCNM, *ibid.*, paragraph 136.

<sup>15</sup> In this Recommendation the CM stated that the term hate speech 'shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin'.

<sup>16</sup> AC FCNM, *ibid.*, paragraph 81.

<sup>17</sup> *Ibid.*, paragraph 218.



unify the education system.<sup>18</sup> Many children still travel, sometimes long distances, to attend schools with their own ethnic group and relevant curricula. The divisions along ethnic lines in the education system seem to be even more present nowadays than it was before, reportedly even openly backed by leading political figures.

26. The system of 'two schools under one roof' is still found in more than 50 schools in the Federation of Bosnia and Herzegovina where Bosniak and Croat populations are dominant. The education system in the Federation of Bosnia and Herzegovina is decentralized, and the cantons have retained extensive powers in these matters. During their meetings with the Commissioner, the authorities of the Federation of Bosnia and Herzegovina stressed that differences in the curricula of cantons amount to approximately 30%, a situation that they find acceptable under the current legislation.
27. The Commissioner is concerned by the fact that the differences in question relate to so-called 'national subjects' such as history, geography and language. The different perspectives of history that the pupils are taught in schools seem to generate more divisions and ethnic discrimination. Although there has been progress in eliminating explicit hate speech from history and geography textbooks, significant differences in history teaching still exist and cause serious concern.
28. The Commissioner has noted that on 16 February 2010 the Parliament of the Federation of Bosnia and Herzegovina invited the cantonal Ministries of Education to take necessary measures to bring the 'two schools under one roof' system to an end before the beginning of the new school year. However, on 18 February 2010 the cantonal Ministries of Education in three cantons where this system exists stated that unification of schools was not to take place before the beginning of the new school year, thereby prolonging this unacceptable system. The state level education authorities do not have the means to enforce and monitor implementation of the legislation in this field since Republika Srpska and the cantons of the Federation of Bosnia and Herzegovina have retained extensive powers in these matters.
29. In Republika Srpska, the entity with a predominantly Serb population, the schools do not accommodate the needs of minority pupils. The curriculum is taught in Serbian and the Cyrillic alphabet, and is designed to meet the needs only of the majority pupils.
30. Ethnic divisions and segregation in schools have had a negative impact on pupils' relationships in schools. The Commissioner has noted with concern reports according to which every one in eight students frequently avoids activities with students of other ethnicities; one in seven students frequently expresses aggressive behaviour towards the students of other ethnicities; and one in six students does not want to be in the same class as students of other ethnicities. Furthermore, the vast majority of children mostly live in mono-ethnic environments and attend mono-ethnic schools where the entire school organisation suits the majority ethnic group.<sup>19</sup>
31. The Commissioner reiterates that the policy of separating children according to their ethnic origin can only reinforce the prejudices and intolerance towards others and perpetuate ethnic isolation. Measures to unify the educational system are long overdue. Ethnically-based, divided education systems also remain a serious obstacle to sustainable returns of persons displaced due to the war (see section II).
32. The Commissioner stresses the need for the Bosnia and Herzegovina authorities at all levels to face their responsibilities in the education sector: a sector which is of extreme importance for the young generations and the future of the country. Inter-ethnic tolerance and respect should be the main objectives of education and be pursued by the authorities in a resolute and systematic manner. Against this backdrop, the Commissioner commends the progress in integrating schools in the Brcko District where the pupils from different communities attend the same classes and the common core curriculum is better developed than elsewhere in Bosnia and

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<sup>18</sup> Commissioner's Report on his visit to Bosnia and Herzegovina from 4-11 June 2007, 28 February 2008, paragraph 33.

<sup>19</sup> Save the Children Norway, 'Discrimination of children in schools in Bosnia and Herzegovina', 2008, available at [www.scn-see.ba](http://www.scn-see.ba).

Herzegovina.<sup>20</sup> In the Brcko District where an ethnically divided system existed after the war, systemic and structural education reform has been carried out since 2000. Currently the students of different ethnicities go to school together, receive instruction in their own languages in the same classroom, and retain their individual cultural identities.<sup>21</sup>

##### **5. The human rights of the Roma**

33. The Roma are considered to be one of the largest national minorities in Bosnia and Herzegovina. The lack of reliable data on the number of Roma continues to present a significant obstacle for the development and implementation of targeted measures to improve their situation. The 1991 census registered 8,864 Roma, but the actual number was much higher as many Roma had declared themselves to be members of other ethnic groups. In 2004 Bosnia and Herzegovina reported to the Advisory Committee of the FCNM that there were approximately 50,000 Roma in the country. Research that was carried out by local Roma associations led by the National Roma Council confirmed that at least 76 000 Roma lived in Bosnia and Herzegovina in the first half of 2007. Although this registration was reported to have been carried out in a somewhat haphazard way, this appears to be the most precise data currently available on the Roma population.
34. The Commissioner has noted that Roma in Bosnia and Herzegovina face marginalisation seriously affecting, inter alia, their social and economic well-being. Similarly to the situation in the neighbouring countries, reduced access to healthcare services, low education levels, poor housing conditions and high unemployment rates are, among others, factors contributing to persistent marginalisation of Roma.
35. The Commissioner noted that the living conditions in the Roma settlement in Prutace, near Brcko, which he visited on 30 November, are substandard and may be qualified as degrading. Although some houses appear solid from the outside, the living conditions inside are far from adequate. According to United Nations High Commissioner for Refugees (UNHCR), the settlement was originally intended to accommodate refugees and Internally Displaced Persons (IDPs), but current inhabitants are primarily Roma from Bosnia and Herzegovina. Reportedly 570 persons live there, including approximately 370 children. The Commissioner was informed by UNHCR that 200 children attend the primary school. However, the conditions in a local primary school also appear to be substandard. At the time of the Commissioner's visit, when the outside temperature was very low, the central heating was not working in the primary school. The Commissioner met with the representatives of the settlement who stressed that the residents are faced with extreme poverty and unemployment. Reportedly none of the residents are employed. A local NGO, which is the UNHCR legal aid implementing partner, informed the Commissioner that they have helped many of the residents to obtain identity documents in order to gain access to healthcare and unemployment-related services.
36. The Commissioner welcomes the adoption in 2008 by Bosnia and Herzegovina of the Action Plan to Address the Problems of Roma in Employment, Housing and Healthcare. Through this Action Plan and the 2004 Action Plan on the Educational Needs of Roma and of the Members of other National Minorities, Bosnia and Herzegovina fulfilled a requirement for joining the 'Decade of Roma Inclusion'. Bosnia and Herzegovina joined the Decade of Roma in 2008, and in 2009 it appointed a National Coordinator for the 'Decade of Roma Inclusion'. The Action Plan on Employment, Housing and Health aims to improve access to healthcare in the entire Bosnia and Herzegovina for Roma. The measures shall be introduced upon registration of those who have not been registered in birth records. A number of awareness-raising activities, trainings, and information campaigns in the healthcare field have also been envisaged by the Action Plan.
37. The Commissioner has noted with satisfaction that on 10 June 2010 the Council of Ministers of Bosnia and Herzegovina adopted a decision on allocation of funds from the state budget to address access of Roma to employment, housing and healthcare. Following this decision a public call for project proposals to tackle the housing problems of Roma has been announced. It

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<sup>20</sup> AC FCNM, *ibid*, paragraph 168.

<sup>21</sup> OSCE Mission to Bosnia and Herzegovina, 'Lessons from Education Reform in Brcko', October 2007, page 5., see <http://www.oscebih.org/documents/9994-eng.pdf>.

was made known that two million BAM (€ 1 million) has been allocated for financing projects aimed at resolving housing problems of Roma. The Commissioner has noted that in 2009 and 2010, 206 housing units for Roma were constructed and living conditions in 90 housing units were improved, whereas BAM 135,000 (€ 65,000) was spent on improvement of healthcare for Roma children.<sup>22</sup>

38. The lack of registration and of identity documents of Roma continues to represent one of the main obstacles to the enjoyment by Roma of their social, economic and civil rights. Research carried out in 2006 by the Institution of Ombudsman of the Federation of Bosnia and Herzegovina showed that in three major cities in the Federation of Bosnia and Herzegovina approximately 6,000 children were not properly registered, most of whom were believed to be Roma.<sup>23</sup> Registration problems persist for those children who were born at home as well as for those children whose parents lack identity documents. The Commissioner has noted with satisfaction the authorities' survey from 2009 on Roma household needs and their willingness to share the relevant data on undocumented persons with all interested stakeholders, including UNHCR. Arguably this survey is an important step towards reducing and preventing the statelessness of Roma in Bosnia and Herzegovina. The Commissioner welcomes the decision of the Council of Ministers of Bosnia and Herzegovina in November 2010 to allocate BAM 50,000 (€ 25,000) to the local centres of social work for purchase of equipment and training of staff to maintain the data base on the needs of the Roma households. The Commissioner would like to receive more information on the follow-up of the authorities in this process.

#### *5.a. Access of Roma to quality education*

39. The Commissioner notes that despite the progress made in implementing the Action Plan for Education of Roma, inequalities in access to education by Roma have remained, as a result of which the school attendance rate continues to be unacceptably low. According to a 2007 report by UNICEF, up to 80% of Roma children in Bosnia and Herzegovina do not attend school, only 20% of Roma participate in secondary education, and less than 1% in higher education. Thus, Roma illiteracy remains extremely high, particularly among elderly women. These problems are mostly related to poverty, geographical and social isolation, the lack of identity documents, discrimination and widespread prejudice and hostile reactions within the school system itself.<sup>24</sup> A practice of particular concern is that Roma parents, in a number of cases, enrol Roma children in schools catering for children with mental disabilities because other Roma children already attend these establishments and they fear hostile attitudes in other schools.<sup>25</sup>
40. The Commissioner has noted with satisfaction that many municipalities have continued to take positive initiatives in connection with the implementation of the 2004 Action Plan for Education of Roma. The Brcko authorities, for example, have earmarked money for implementing the Action Plan and have created a post of a Roma educational mediator. Similar posts have been set up in other municipalities and a number of study grants have been awarded to Roma students who have reached the level of secondary or higher education.<sup>26</sup> The Commissioner was informed that the authorities in Bosnia and Herzegovina have taken steps to improve enrolment of Roma children in pre-school, as well as primary and secondary education. The authorities have also taken measures to provide free textbooks for all Roma pupils, and scholarships for Roma students.

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<sup>22</sup> See <http://mhr.evlada.ba/Saopcenja/?id=1741>.

<sup>23</sup> Submission by the Bosnia and Herzegovina Working Group on Child Protection regarding the Universal Periodic Review of Bosnia and Herzegovina to the Office of the United Nations High Commissioner for Human Rights, 7 September 2009.

<sup>24</sup> UNICEF, 'Breaking the Cycle of Exclusion – Roma children in South-East Europe', 2007, available at [www.unicef.org](http://www.unicef.org).

<sup>25</sup> AC FCNM, *ibid.*, paragraph 178.

<sup>26</sup> *Ibid.* paragraph 177.

### *5.b. Access of Roma to employment*

41. The proportion of Roma employed within the public sector in Bosnia and Herzegovina is estimated at 2–3%.<sup>27</sup> The most common source of income for Roma is self-employment, specifically in the sector of secondary raw material collection and waste recycling. The situation in the employment sector also affects the access of Roma access to healthcare. Registration with the employment services is a condition for accessing health insurance. As most Roma are unemployed they have serious difficulties in accessing healthcare services.
42. In the Federation of Bosnia and Herzegovina legislation provides for a 30-day deadline for registering with the Employment Service where a person moves to a new municipality. This deadline is an additional obstacle for Roma in accessing healthcare as they often have no knowledge of laws and procedures and therefore fail to submit their requests within the deadlines provided for by law. The Commissioner has been informed of a plan devised by the Federation of Bosnia and Herzegovina authorities that may lift this deadline, and is looking forward to receiving more information from the authorities on this plan.
43. Against this background, the Commissioner welcomes the allocation in 2009 by the State Ministry for Human Rights and Refugees to the Entity and Brcko District employment offices of BAM 702,000 (€360,000) for employment programmes for Roma. The programmes, which included financial support for employers, self-employment of Roma and qualification-related trainings, resulted in the employment of 119 Roma in Bosnia and Herzegovina (98 in the Federation of Bosnia and Herzegovina, 17 in Republika Srpska, and 9 in the Brcko District). The employment has been carried out through the system of public vacancies. A number of Roma who applied could not get employed due to the lack of necessary education. The Commissioner has noted with satisfaction that funds have been provided for the continuation of the programmes in 2011.<sup>28</sup> The Commissioner encourages the authorities to continue their efforts to develop and implement employment programmes for Roma. The Entity and Brcko District authorities are, in particular, encouraged to continue the implementation of qualification-related trainings in order to enable as many Roma as possible who do not have adequate education to get employed.

### **6. Discrimination against LGBT persons**

44. The Commissioner has noted with satisfaction the introduction into the 2009 Anti-Discrimination Law of a provision that enshrines the principle of equality and non-discrimination on the grounds of sexual orientation and gender identity.
45. However, he remains concerned at reports indicating a trend of discrimination against LGBT persons. The hate speech against homosexuals expressed by certain political figures during the preparations for the First Queer Festival in Sarajevo at the end of September 2008 proved that anti-LGBT sentiments prevail in Bosnia and Herzegovina society. The Commissioner was particularly concerned about statements of parliamentarians and some religious leaders supporting persons who had physically assaulted participants of the Festival, resulting in eight casualties. The targets of the assaults were campaigners for the rights of LGBT persons<sup>29</sup> as well as activists engaged in the fight against human trafficking. Investigations into these attacks have not resulted in any prosecutions. Extreme stereotyping, discrimination and homophobia in the media continue to be of serious concern to the Commissioner.
46. The Commissioner noted with grave concern a statement in July 2009 of the Director of the state-run Sarajevo Student Centre that 'gay students do not belong in student dormitories in Sarajevo' and a similar declaration of the Director of the state-run student dormitory of the

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<sup>27</sup> The 2008 Action Plan to Address the Problems of Roma in Employment, Housing and Healthcare, <http://www.romadecade.org/files/downloads/Decade%20Documents/Introduction%20-%20Decade%20National%20Action%20Plan%20BiH.pdf> .

<sup>28</sup> See <http://mhr.evlada.ba/Saopcenja/?id=1741>.

<sup>29</sup> Amnesty International, 'Eight injured as Sarajevo Queer Festival attacked' and 'Sarajevo Queer Festival organizers still under threat', 30 September 2008. Decapitation death threats were reported against one of the organizers of the First Queer Festival in Sarajevo, Svetlana Djurkovic, at the end of September 2008. In addition, eight participants of the Festival were physically assaulted: information available at [www.amnesty.org](http://www.amnesty.org).

University of Mostar. It is of particular concern that government authorities reportedly remained silent on the issue while civil society representatives and the media protested at what they described as unacceptable hate speech.

47. The Commissioner has been informed that as a result of their political and LGBT-related activism, two nationals of Bosnia and Herzegovina, Svetlana Đurković and Alma Selimovic, felt obliged to move to the United States where they requested asylum on the ground of their sexual orientation. The Commissioner is deeply concerned that LGBT-related activists and their organisations are reported to be exposed to constant pressures and threats, aimed at preventing them from performing their work. The Commissioner has been informed that the first official LGBT organization, Organization Q, discontinued its activities in 2010.<sup>30</sup>

## **7. The human rights of persons with disabilities**

48. The Commissioner welcomes the ratification in March 2010 by Bosnia and Herzegovina of the Convention on the Rights of Persons with Disabilities and its Optional Protocol. The ratification was followed by the adoption by the Entities of the Strategies on Rights of Persons with Disabilities in September 2010, and a decision by the Council of Ministers of Bosnia and Herzegovina on establishing a council for persons with disabilities in Bosnia and Herzegovina.
49. Notwithstanding these positive measures, persons with disabilities remain one of the most vulnerable populations in Bosnia and Herzegovina. Moreover, there is discrimination between different categories of disabled persons in their enjoyment of their social, economic and civil rights. The Commissioner has been informed that in Bosnia and Herzegovina persons with disabilities are divided into four groups: disabled war veterans, civilian war victims, disabled workers and civilian persons with disabilities. The Commissioner has noted that fragmented legislation does not provide equal protection to disabled persons throughout the country. The disabled war veterans are in a relatively better position, since they are entitled to disability allowances at least six times higher than those received by other persons with disabilities. Disabled civilian war victims appear to be in the worst position. According to data of the World Bank, almost 43% of them are not provided with any material support.<sup>31</sup>
50. The Commissioner was informed that the assessment by competent Entity and cantonal authorities of the level of disability in Bosnia and Herzegovina is made in an inconsistent manner and is only based on the medical model, failing to incorporate the International Classification of Functioning, Disability and Health of the World Health Organization.
51. The inadequacies in the social welfare system continue to adversely affect the conditions of persons with disabilities, including the mentally ill, who remain particularly vulnerable to social exclusion. Many individuals with disabilities live in institutions. In September 2009 the Human Rights Ombudspersons of Bosnia and Herzegovina issued a special report on the situation of human rights in the institutions for accommodation of mentally disabled persons,<sup>32</sup> following their visits to these institutions in the Federation of Bosnia and Herzegovina and in Republika Srpska. The visits revealed that many institutions are not part of the social protection system and are not properly supervised by the competent authorities. The Ombudspersons concluded that the lack of adequate state protection has turned the mentally disabled persons into 'invisible citizens', closed in their institutions and excluded from all social networks.
52. The Commissioner was informed that close to two-thirds of the total adult population of persons with disabilities live close to or below the poverty line. According to data provided during the Commissioner's visit by specialist NGOs, the unemployment rate of persons with disabilities is

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<sup>30</sup> Information provided to the Commissioner's office by Svetlana Djurkovic a founder of the Organisation Q. She informed the Commissioner that the organisation had discontinued all activities except the maintenance of their web page.

<sup>31</sup> Report of Informal NGO Coalition for Universal Periodic Review from Bosnia and Herzegovina, September 2009, <http://humanrightshouse.org/Articles/11713.html>.

<sup>32</sup> The Human Rights Ombudsmen of Bosnia and Herzegovina, 'Special report on the situation of human rights in the institutions for accommodation of mentally disabled persons', 10 September 2009, <http://www.ombudsmen.gov.ba/docs/SpecialReportontheSituationofHumanRightsintheInstitutionsforAccommodationofMentallyDisabledPersons.pdf>.

82%. To date, Bosnia and Herzegovina has not developed programmes for employment or professional training for persons with disabilities. Additionally, employers are not sufficiently incentivised to provide employment to these persons. Furthermore, due to the different financial situation in the cantons of the Federation of Bosnia and Herzegovina, persons with disabilities enjoy different levels of rights protection depending on their residence. According to a specialist NGO the differences also exist in relation to persons with disabilities' access to orthopedic aids, to the extent that some of them cannot obtain necessary orthopedic aid as it is not covered by healthcare in their particular canton. In addition to this problem, about 4% of persons with disabilities do not have health insurance, as the relevant legislation does not provide for the possibility of a person getting insured only on the basis of disability.

53. Lastly, the Commissioner has been informed that the movement of persons with disabilities and their physical access to institutions (such as healthcare institutions, schools, administrative and other institutions) is considerably limited. Access to public transport is made impossible for some categories of disabled persons, such as disabled persons in wheelchairs. Children with disabilities lack sufficient medical care and educational opportunities. Buildings are rarely accessible to persons with disabilities in practice.
54. In the Federation of Bosnia and Herzegovina, a 2004 by-law on spatial planning provides that all public buildings should be made accessible to persons with disabilities and that new buildings must be constructed so as to be accessible. The by-law provided that its implementation would have been completed by the end of February 2009. However, as reported to the Commissioner by specialist NGOs, in most municipalities in the Federation of Bosnia and Herzegovina this by-law has not been implemented. The Commissioner has noted that Republika Srpska has comparable laws for public access, but few old public buildings are accessible.

#### *Conclusions and recommendations*

55. The Commissioner calls on the authorities of Bosnia and Herzegovina to end the longstanding discrimination towards members of national minorities by bringing the Constitution and the Election Law fully in line with the European Convention on Human Rights, in light of the European Court of Human Rights' judgment in the case of *Sejdic and Finci*.
56. The Commissioner encourages the authorities of Bosnia and Herzegovina to step up their efforts to ensure full and effective implementation of the 2009 Anti-Discrimination Law. He notes that introduction of training courses on the implementation of anti-discrimination legislation and available legal remedies, as well as raising awareness in this regard, would be highly beneficial for disadvantaged groups of the population, in particular Roma.
57. Whilst he welcomes the creation of a unified Human Rights Ombudsperson institution at the State level, the Commissioner calls on the authorities to ensure that the decisions of the Human Rights Ombudspersons are fully and effectively implemented.
58. The Commissioner urges the authorities of Bosnia and Herzegovina to implement promptly and effectively the laws on national minorities' councils. Systematic financial support is needed to make effective the work of all national minority councils. The authorities are urged, in particular, to enable the councils to participate actively in policy-making and in the process of drafting of legislation concerning national minorities.
59. The Commissioner has noted with concern that the amendment made to the Election Law of Bosnia and Herzegovina in 2008 is likely to result in reduced possibilities for national minorities to be represented in municipal authorities, due to the raising of the threshold allowing persons belonging to national minorities to benefit from a reserved seat within local assemblies. He urges the authorities to take all necessary measures, including legislative measures, to provide persons belonging to national minorities with real possibilities of representation in municipal councils and assemblies. The Commissioner fully supports the findings and recommendations made in 2008 by the Advisory Committee on the Framework Convention for the Protection of National Minorities in this regard.

60. The Commissioner calls on the authorities of Bosnia and Herzegovina to adopt the census law so as to enable the census to be carried out in 2011. The collection of complete and reliable statistics concerning the country's ethnic composition would make possible the development of effective programmes for the protection of the human rights of national minorities. The Commissioner underlines that this process should be carried out with due respect to an individual's right to self-identification.
61. The Commissioner commends the efforts undertaken so far by the authorities of Bosnia and Herzegovina to improve the situation of the Roma, in particular in relation to the access to adequate education and employment. However, there are numerous shortcomings in practice that need to be seriously addressed and to which adequate solutions should be found. The Commissioner urges the authorities to step up their efforts to implement their action plans to solve the problems of Roma in employment, education, housing and healthcare, in accordance with the Council of Europe Committee of Ministers' Recommendation CM/Rec(2008)5 on *Policies for Roma and/or Travellers in Europe*. The authorities are urged, in particular, to effectively monitor and publish regular evaluation reports on the implementation and impact of their action plans, in line with the above Recommendation.
62. The Commissioner remains concerned by the widespread segregation and discrimination in schools in Bosnia and Herzegovina. The Entity and cantonal authorities are urged to undertake effective measures to end the system of 'two schools under one roof' or mono-ethnic schools, and to introduce a common, core curriculum while respecting the particularities of each constituent people's culture. The Commissioner calls on the authorities to include in the school curricula the language, history and culture of national minorities so that persons belonging to national minorities preserve their languages and culture.
63. In this context, the Commissioner recalls the Council of Europe Parliamentary Assembly Recommendation 1880 (2009) on *History teaching in conflict and post-conflict areas* and reiterates the significant role of history teaching for reconciliation in post-conflict situations, such as the one in the region of the former Yugoslavia. Genuine knowledge of history facilitates understanding, tolerance and trust between individuals, especially the young, and peoples. All countries concerned should realise the vital need to teach history without resorting to one single interpretation of events. The Commissioner stresses that it is only through an open dialogue, knowledge of the truth and deep reflection that members of post-conflict democracies in Europe may attain social cohesion and preserve their inherent, valuable pluralism.<sup>33</sup>
64. The Commissioner calls on the authorities in Bosnia and Herzegovina to amend the formulation of the criminal offence of 'incitement to national, racial or religious intolerance' so that it includes all forms of hate speech, in accordance with the Council of Europe Committee of Ministers' Recommendation No. R (97) 20 on "hate speech".
65. The Commissioner remains concerned about the manifestations, occasionally violent, of discrimination and homophobia in the society of Bosnia and Herzegovina. It is of particular concern that investigations into attacks against LGBT activists and their supporters have not resulted in any prosecution so far. The authorities are urged to do their utmost to enable LGBT organizations and activists to perform their work without pressures and threats.
66. The Commissioner calls on the authorities of Bosnia and Herzegovina to consider revising the social welfare legislation in order to enable equal division of funds between different categories of disabled persons. Further investments should be made to build infrastructure that would make possible disabled persons' access to public premises. Sufficient medical care and educational opportunities should be provided to children with mental incapacities, and the common practice of placing children with mild mental incapacities in special schools should be ended. The authorities' attention is drawn to the pertinent guidelines contained in Recommendation CM/Rec(2010)2 of the Committee of Ministers *on deinstitutionalisation and community living of children with disabilities*.

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<sup>33</sup> See also Commissioner's Viewpoint, 'Atrocities in the past must be recognised, documented and learnt from', 22 March 2010.

## II. Human rights of persons displaced by the war, asylum seekers and stateless persons

### 1. The protection of human rights of persons displaced by the war

#### 1a. Human displacement outside and inside Bosnia and Herzegovina as a result of the war

67. Over half a million individuals who left Bosnia and Herzegovina during the 1992-1995 war are still residing out of the country. More than 80% of them have been integrated in host countries. The countries in Europe that host the largest numbers of refugees from Bosnia and Herzegovina are Germany, Serbia, Austria, Slovenia and Croatia.<sup>34</sup> About 80,000 refugees from Bosnia and Herzegovina are still in need of durable solutions to their situation, including voluntary return to their homes. Many of them find it too hard to return because their pre-war property is destroyed and is listed among the nearly 45,000 housing units of returnees that has to be reconstructed.<sup>35</sup> According to officials, of the 467,000 housing units that were destroyed or damaged during and immediately after the war, about 317,000 housing units have been reconstructed so far. About 150,000 remain destroyed, damaged or otherwise uninhabitable. The authorities have stressed their commitment to prioritise reconstruction of 45,000 housing units for the return of IDPs.<sup>36</sup>
68. A major human rights and humanitarian issue with which the country is still confronted is that of IDPs. According to UNHCR there are currently 113,000 IDPs in Bosnia and Herzegovina. Many IDPs are extremely vulnerable persons (who in many cases have physical or mental problems, or are elderly without family support) and are unable to return home: more than 10,000 IDPs in Republika Srpska fall into the category of vulnerable persons, while almost 16,000 persons are older than 60. In addition, many returnees, particularly 'minority returnees' (people who can only return to an area where their ethnic group is a numerical minority), continue to face obstacles to securing a durable livelihood and rebuilding their lives.<sup>37</sup>
69. Annex VII of the Dayton Peace Agreement addresses the situation of persons displaced by war, whether refugees or IDPs, with particular emphasis placed on return. The Commissioner has noted reports indicating that the authorities of Bosnia and Herzegovina have prioritised the solution of returning IDPs to their former homes over the option of facilitating local integration. However, the lack of sustainable return programmes has left many IDPs without a durable solution. The Commissioner has noted that, despite the progress achieved in the return process, many returns consisted mainly in repossession of properties, not followed by lasting settlement of the returnees.<sup>38</sup>
70. Whilst commending the authorities of Bosnia and Herzegovina for the successful implementation of the property legislation that resulted in 2009 in the restitution of 99.7% of property to the pre-war owners in Bosnia and Herzegovina, the Commissioner regrets that the actual return figures are far lower. Overall, it appears that many of the displaced persons have remained in or moved to areas where their ethnic group is a majority.<sup>39</sup> The Commissioner has noted that during 2009, fewer than 1,000 IDPs returned to their pre-war homes.<sup>40</sup>

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<sup>34</sup> Migration profile of Bosnia and Herzegovina for 2009, available at [www.msb.gov.ba](http://www.msb.gov.ba).

<sup>35</sup> Report submitted by Bosnia and Herzegovina to the Human Rights Council in accordance with paragraph 15 (A) of the Annex to Human Rights Council Resolution (UPR), 8 December 2009, A/HRC/WG.6/7/BIH/1, [http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/BA/A\\_HRC\\_WG6\\_7\\_BIH\\_1\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/BA/A_HRC_WG6_7_BIH_1_E.pdf).

<sup>36</sup> Ministry of Human Rights and Refugees of Bosnia and Herzegovina, Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement, January 2010, page 18. and 19, available at [http://www.unhcr.ba/index.php?Itemid=117&catid=113:spotlight&id=390:revised-strategy-for-the-implementation-of-annex-vii&option=com\\_content&view=article](http://www.unhcr.ba/index.php?Itemid=117&catid=113:spotlight&id=390:revised-strategy-for-the-implementation-of-annex-vii&option=com_content&view=article).

<sup>37</sup> UNHCR, Protracted Displacement in Bosnia and Herzegovina and the Western Balkans, available at: <http://www.reliefweb.int/rw/rwb.nsf/db900sid/JBRN-7XRHY2?OpenDocument>.

<sup>38</sup> AC FCNM, *ibid.*, paragraph 133.

<sup>39</sup> UNHCR Representation Office in Bosnia and Herzegovina, *IDP/Returnee Field Unit Report 2009*, entry on Bosnia and Herzegovina, available at [www.unhcr.ba](http://www.unhcr.ba).

<sup>40</sup> Internal Displacement Monitoring Center, Newsletter, 'Broader and improved support for durable solutions required', 31 December 2009, available at [www.internal-displacement.org](http://www.internal-displacement.org).



71. The Commissioner welcomes a substantial increase of Entity and State funding for IDPs and returnees. In 2008 and 2009, it was reported that 100 million KM (€50 million) has been allocated to projects for the return of IDPs. At the same time the Commissioner remains concerned at reports indicating that beneficiaries are often selected on the basis of ethnicity rather than according to their vulnerability.
72. The Commissioner is seriously concerned by the fact that 7,500 IDPs are still living in collective centres in Bosnia and Herzegovina. This population continues to endure extremely difficult living conditions. The Commissioner has been informed that certain basic facilities, such as sanitation and water, are non-functional in some of the collective centres. During his visit he himself witnessed that the living conditions in the collective centre in Lukavica, near Sarajevo, are substandard and may be qualified as degrading. The accommodation provided to IDPs is inadequate. The building and the individual units where IDPs are accommodated have cracked walls, crumbling floors and destroyed pipelines. There are currently 10 families (30 persons) accommodated in the collective centre, including 10 children who all attend local school. The Commissioner was informed that only two families in the above collective centre have IDP status, whereas others have lost their IDP status and are in need of social care assistance. Since 2006, when the municipality took the ownership of the centre, the residents have been obliged to pay a rent to the municipality of 1 BAM (€ 0,5) per square metre. Furthermore, the residents are obliged to pay for all utilities including water, electricity and heating.
73. Only collective toilets are available in the collective centre and the conditions of these facilities are degrading. For some of the residents who are chronically ill, or for children, to use such collective toilets is a traumatic experience itself. The Commissioner visited one family where both family members have recently undergone difficult surgeries; a wife was still recovering after cancer surgery. The prospects for their recovery are not good due to the living conditions, but also because they do not take some of the prescribed medication, as they cannot afford it. They told the Commissioner that they had no hope that things would ever get better for two of them, as they lost their housing rights in Vogosca, near Sarajevo, and therefore had no prospect of return. The Commissioner also visited a single mother who lives in the collective centre with her 20-year old daughter, a student herself. The Commissioner was impressed by the determination of the mother to provide decent living conditions to her daughter, even in such difficult conditions and despite the mother's serious heart condition.
74. Almost two-thirds of the households in collective centres contain or support someone who is infirm or otherwise socially vulnerable. Around one fifth of the residents of collective centres are chronically ill, physically or mentally disabled. Furthermore, over half of all households are female-headed and almost one third are single-member households. 70% of families receive limited income through social welfare payments.<sup>41</sup> In 2009 UNHCR expressed concerns that the Bosnia and Herzegovina Gender Action Plan does not adequately recognise IDPs in collective accommodation as a vulnerable group requiring specific and immediate support.
75. The collective centres were built during the war in Bosnia and Herzegovina, and their purpose was to temporarily accommodate IDPs until durable solutions were been found for them. But many IDP families have lived in these locations for more than a decade. They have been allocated insufficient space in relation to their family size. For example, in the collective centres located in Republika Srpska, more than 59% of families live in an area that spans less than 30 square metres. Furthermore, 30% of families do not have water and a third of the total number do not have a toilet inside their actual accommodation. About a hundred children are living in collective centres in Republika Srpska, and 37% of them have completed only primary education. A recent survey indicated that despite good results demonstrated in schools, children could not continue their education due to the inability of their families to support them financially.<sup>42</sup>

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<sup>41</sup> These are the results of a survey on the situation facing residents of collective centres in Bosnia and Herzegovina conducted by the Danish Refugee Council with UNHCR support in October 2009: <http://www.reliefweb.int/rw/rwb.nsf/db900sid/SKEA-7XBK4S?OpenDocument&RSS20&RSS20=FS>

<sup>42</sup> Survey carried out in 2010 by the Republika Srpska Council for Children; information about the survey available at: [http://www.slobodnaevropa.org/content/nve\\_kolektivni\\_centri/2057062.html](http://www.slobodnaevropa.org/content/nve_kolektivni_centri/2057062.html).

76. The Commissioner is afraid that for many of the extremely vulnerable IDPs, after more than a decade in this situation, return home is not a realistic option. He was also made aware of these concerns by IDPs living in the collective centre that he visited, as well as by NGOs active in this field. The Commissioner was informed that UNHCR is advocating for local settlement of IDPs to be made available, as an urgent priority for extremely vulnerable IDPs. UNHCR has indicated that solutions could include construction of geriatric centres, assisted living facilities, renovation of existing structures, and social housing construction. The Commissioner urges the authorities to bring to an end the agony of people living in collective centres in Bosnia and Herzegovina by providing durable solutions for this population.
77. The Commissioner has noted that the Council of Europe Parliamentary Assembly's Resolution 1701 (2010) *on the functioning of democratic institutions in Bosnia and Herzegovina* calls upon the authorities of Bosnia and Herzegovina to adopt urgently the Revised Strategy for the Implementation of Annex VII to the Dayton Peace Agreement, which, *inter alia*, grants refugees and displaced persons the right to safely return home and regain lost property, or to obtain just compensation.
78. Against this background, the Commissioner welcomes the adoption in June 2010 of the Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement. Two Annexes to the Revised Strategy have also been adopted, namely, the Framework Programme 2009-2014 and the Concept Paper on Compensation. The Bosnia and Herzegovina Ministry for Human Rights and Refugees developed the Strategy in close co-operation with other competent state, entity and cantonal bodies as well as with civil society and international organizations. The positive aspect of the Strategy is that, although it still focuses on facilitating people's return to their original homes, it stresses the need to sustain those who have already returned and to provide alternative solutions for those still displaced and unable to return, in particular members of vulnerable groups. The authorities of Bosnia and Herzegovina should now focus on the systematic implementation of the Strategy.

*1.b. Protection of war refugees from former Yugoslavia*

79. The Commissioner has noted that as a result of the 1998-1999 war in Kosovo\* 50,000 persons from former Yugoslavia entered Bosnia and Herzegovina and were registered as refugees under the temporary admission (TA) regime. The TA status expired for the majority of this group in 2003, whereas for individuals whose last permanent residence was in Kosovo\* it was extended twice until it finally ceased on 30 September 2007. According to UNHCR, from June 2007 to November 2010 some 570 individuals with TA status applied for asylum.
80. In line with the UNHCR guidelines on the international protection needs of individuals from Kosovo\*, UNHCR has resettled 293 refugees/former TA status holders to Canada and Australia during the last three years. The vast majority of this group comprises Roma from Kosovo\*. In 2010 there were 207 asylum seekers residing in Bosnia and Herzegovina, the majority coming from Kosovo\* and holding the TA status.
81. The Commissioner remains particularly concerned about the situation of 19 families/82 asylum seekers (former TA holders) who are Roma from Kosovo\*. He was informed that since the beginning of 2010, 28 finally rejected asylum seekers from Kosovo\* have been under the threat of expulsion. The first deportation took place in June 2010. A Kosovo\* Roma was deported to Serbia instead of Kosovo\*, apparently at his own request. This may be considered a forcible return to secondary displacement.
82. During his visit the Commissioner visited a Roma settlement in Sarajevo, in Novopazarska Street, where some of the Roma asylum seekers from Kosovo\* live. Many of them have been in Bosnia and Herzegovina for over a decade. They have settled, some of them have bought houses, their children attend local schools, and some of the children have families of their own. In one of the families that the Commissioner visited, a mother and the children have Bosnia and Herzegovina citizenship, whereas the father's asylum claim has been dismissed. Upon the final rejection of his asylum request, he will be faced with expulsion to Kosovo\*. The Roma with whom the Commissioner met stressed that return to Kosovo\* is not an option for them as they fear for their lives.

83. The Commissioner welcomes the enthusiasm shown by the Chair of the Council of Ministers of Bosnia and Herzegovina, Mr Nikola Spiric, in responding positively to asylum requests of asylum seekers from Kosovo\* including Roma, whose return to Kosovo\* is not possible. Nevertheless, the Commissioner believes that durable solutions for this group of people need to be urgently found. The authorities should accord them a legal status that would enable them to remain in Bosnia and Herzegovina and ultimately naturalise if they wish so.
84. According to UNHCR, there are about 6,900 registered refugees from Croatia living in Bosnia and Herzegovina, mostly in Republika Srpska. The Commissioner was informed about the significant support that the authorities of Republika Srpska have provided to this group of refugees, some of whom continue to live in temporary accommodation. After more than a decade in Bosnia and Herzegovina, many refugees from Croatia have taken steps to locally integrate and it is reported that most have obtained Bosnia and Herzegovina citizenship. The Commissioner is aware that they are facing serious obstacles to return and access their rights in Croatia, in particular with regard to their civil status, repossession and/or reconstruction of property, housing care 'convalidation'<sup>43</sup> and pension rights. The most problematic issue remains the cancellation of occupancy/tenancy rights, which deprived refugees from Croatia of their pre-war housing, without the means to receive either restitution or compensation.<sup>44</sup>
85. The Commissioner has been informed that UNHCR has begun supporting local integration at a small-scale level for the most vulnerable refugees from Croatia who cannot return, providing small-scale income generation support as well as occasional housing upgrades. Approximately 50 families benefited from such assistance in 2009.
86. The Commissioner believes that regional initiatives could promote and facilitate a regional dialogue aimed at resolving, *inter alia*, the outstanding issues related to voluntary return of refugees in the countries of their origin. In this regard the Commissioner welcomes the commitments of Bosnia and Herzegovina, Croatia, Montenegro and Serbia, made at the International Conference on Durable Solutions for Refugees and IDPs in Belgrade on 25 March 2010. The countries committed themselves to working towards solutions for a number of outstanding issues by the end of 2010, including clarifying refugee statistics. The Commissioner commends Bosnia and Herzegovina for taking a leading role in the development of this process that was initially launched through the Sarajevo Declaration of 31 January 2005.

#### 1c. Obstacles to displaced persons' voluntary return

87. The Commissioner has noted that many IDPs still face legal, social, economic and administrative obstacles, which not only jeopardize the sustainability of their return, but also discourage IDPs who would wish to return from doing so. Moreover, relations between minority returnees and the majority communities continue to be difficult in some areas, while politicians keep on using nationalist rhetoric, often directed against minority returnees.<sup>45</sup> During his visit, the Commissioner received reports of the negative impact such rhetoric has had on the relationships between different ethnic communities, which has given rise to feelings of insecurity for returnees.
88. The Commissioner has noted concerns by UNHCR that many returnees have serious medical needs, but do not have insurance in their place of return and have limited financial resources to cover their healthcare. A large number of returnees are elderly and vulnerable and have difficulties in accessing their pensions or other forms of social protection and welfare. In this regard, the Commissioner notes that on 20 November 2007 the European Court of Human Rights found in the case of *Karanovic v. Bosnia and Herzegovina* that the respondent state had violated the Convention due to the failure to enforce a binding decision of the Human Rights Chamber for Bosnia and Herzegovina concerning the pension rights of returnees. The case

<sup>43</sup> See the Commissioner's Report on the visit to Croatia from 4-9 April 2010, 17 June 2010, paragraph 39.

<sup>44</sup> See the Commissioner's Report on the visit to Croatia, cited above, paragraphs from 29 to 35 and UNHCR Representation Office in Bosnia and Herzegovina, 'Protection Activities in 2009', [http://www.unhcr.ba/index.php?option=com\\_content&view=category&layout=blog&id=122&Itemid=127](http://www.unhcr.ba/index.php?option=com_content&view=category&layout=blog&id=122&Itemid=127).

<sup>45</sup> AC FCNM, *ibid*, paragraph 133.

concerned the inability of a pensioner living in the Federation of Bosnia and Herzegovina who was internally displaced during the war in Republika Srpska to obtain a pension in the Federation of Bosnia and Herzegovina. The applicant moved to Republika Srpska because of the armed conflict in 1992 and started receiving his pension from the fund of this Entity. When he moved back to Sarajevo after the end of the war, he continued receiving his pension from the Republika Srpska fund. However, pensioners who returned from elsewhere continued receiving their pensions from the Federation of Bosnia and Herzegovina Fund ('the Federation Fund') which provided a higher pension than Republika Srpska. The Human Rights Chamber had ordered on 6 January 2003 that the Federation of Bosnia and Herzegovina take all necessary measures to remedy this difference in treatment. As of August 2010 the Council of Europe Committee of Ministers was still supervising the adoption of Bosnia and Herzegovina of general measures for the full execution of this judgment. (See section below on the independence of the judiciary and enforcement of domestic judicial decisions.)

89. Lack of infrastructure, including roads and electricity, especially in rural areas, compounds the situation.<sup>46</sup> Although the funds for IDPs' returns are quite significant today, they are not often accompanied by positive measures that would ensure that they address the specific needs of these individuals and their families.<sup>47</sup> During his visit the Commissioner received information from NGOs working in this field indicating that procedures relating to financial support for reconstruction of IDPs' houses, that include local administration, are tainted by a lack of transparency and corruption.
90. The Commissioner has noted that, although acts of hostility or direct, ethnically-motivated violence have decreased, they still represent an obstacle for the sustainable return of IDPs. Instances of violence among pupils of different ethnic origins have been reported at schools. Moreover, hate crime seems to often take the form of attacks on persons because of their religious belief (see also above section on fight against discrimination). The police do not classify ethnically-motivated crimes as such and systematic monitoring of the situation in this field is lacking.<sup>48</sup>
91. Another major obstacle for returns remains the country's contamination by landmines. Whilst he welcomes the ratification on 7 September 2010 by Bosnia and Herzegovina of the Convention on Cluster Munitions, the Commissioner is concerned at the fact that Bosnia and Herzegovina is still one of the most landmine-contaminated countries in South East Europe. The total suspect area currently covers around 1 555 km<sup>2</sup>, that is, 3.04 % of the total country. Although the number of landmine victims has decreased in 2009 and 2010 (to 28 and 2 victims respectively), compared with 63 in 2008, 48 in 2007, and 50 in 2006, the landmine contamination of the territory of Bosnia and Herzegovina poses additional grave obstacles for the sustainable return of displaced persons.
92. A national casualty database revision for the period 1992–2009 recorded 7,431 mine/explosive remnants of war casualties (1,614 people killed, 5,703 survivors, and 114 unknown). Most casualties (65%) were military personnel or others involved in similar duties at the time of the incident. Half of the reported civilian casualties were returnees, refugees, or IDPs (948 of 1,846 where residency was recorded). In 2009 five children made up just over 20% of civilian casualties. This represented the highest number of annual child casualties since 2004. From 1992 to 2009 children made up some 19% of the civilian casualties (599 of 3,165 where the age was recorded).<sup>49</sup>
93. The Commissioner has noted that under Article 5 of the Mine Ban Treaty (and in accordance with the 10-year extension request granted in 2008), Bosnia and Herzegovina is required to destroy all antipersonnel mines in mined areas under its jurisdiction or control as soon as possible, but not later than 1 March 2019. The Commissioner has noted with concern that

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<sup>46</sup> UNHCR Representation Office in Bosnia and Herzegovina, 'Protection activities in 2009', [www.unhcr.ba](http://www.unhcr.ba).

<sup>47</sup> Submission by the UNHCR for the Office of the High Commissioner for Human Rights' Compilation Report – UN Universal Periodic Review, September 2009.

<sup>48</sup> AC FCNM, *ibid.*, paragraph 134.

<sup>49</sup> Landmine and Cluster Munition Monitor, Country Profile – Bosnia and Herzegovina [http://www.the-monitor.org/index.php/cp/display/region\\_profiles/](http://www.the-monitor.org/index.php/cp/display/region_profiles/).

Bosnia and Herzegovina has so far failed to meet the targets set in the Mine Action Strategy 2009-2019 which provides for completing clearance within Bosnia and Herzegovina's deadline. Namely, in 2009 demining organizations manually cleared less than 2 km<sup>2</sup>, barely one-fifth of planned clearance for the year. In 2010, Bosnia and Herzegovina planned manual clearance of 9.27 km<sup>2</sup> but in June it reported it had completed clearance of only 1 km.<sup>50</sup>

94. The Commissioner has been informed that the existing Mine Action Strategy over the period 2005-2007 was evaluated and that a new strategic plan for the next 10 years (2009-2019) was made. This was done in accordance with the country's obligations under the Mine Ban Treaty. According to the new Mine Action Strategy an increase of €15 million per year in Bosnia and Herzegovina's budget is envisaged for demining.<sup>51</sup> The Commissioner hopes that this increase in funding for demining activities will accelerate the demining process, given its importance for the returns of IDPs and refugees.
95. Demining and ERW clearance is a serious issue that should be addressed by the authorities of Bosnia and Herzegovina as a matter of extreme urgency, given Bosnia and Herzegovina's obligations not only under the Mine Ban (Ottawa) Treaty but also under the European Convention on Human Rights and the contracting states' positive obligation to safeguard, amongst other rights, the right to life of everyone within their jurisdiction (Article 2).
96. Lastly, the Commissioner has noted with concern that the inadequacies in the social welfare systems continue to adversely affect persons with disabilities, including landmine survivors. Civilian persons with disabilities, including landmine survivors, often lack access to health protection and the labour market. The vast majority of civilians with disabilities are unemployed. The war veterans with disabilities are given a privileged status compared to civilian war survivors and other persons with disabilities (see also above section I).

## **2. Human rights of asylum seekers, recognised refugees and stateless persons**

### *2a. Asylum seekers and recognised refugees*

97. According to UNCHR, of the 180 recognised refugees in Bosnia and Herzegovina, 163 are from Kosovo\*. Most of them were recognised prior to the handover of refugee status determination by UNHCR to the authorities of Bosnia and Herzegovina in 2004. Since 2004, refugee status has been granted only to eight persons, none of whom is from Kosovo\* (five Palestinians, one Serb, one Saudi Arabian and one Sri Lankan). In addition, the Ministry of Security granted subsidiary protection to four Roma minors from Kosovo\* in June 2009, and one Bosniak from Kosovo\*.
98. Bosnia and Herzegovina is a state party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The 2008 Law on Movement and Stay of Aliens and Asylum regulates asylum. The law is in line with international standards and the minimum standards of the EU. According to UNHCR, the asylum system in Bosnia and Herzegovina is reasonably well developed. However there are several concerns about its full and proper implementation. Major concerns are: burdensome requirements for access to asylum such as the need to have a registered residence, the lack of procedural safeguards (access to appropriate interpretation services and legal aid throughout the asylum procedure), limited reception conditions for asylum seekers, and the lack of access to adequate healthcare.
99. Against this background, the Commissioner welcomes the signing, on 15 April 2010 of an Agreement on Cooperation between UNHCR and the Ministry of Security, aimed at ensuring that asylum seekers in Bosnia and Herzegovina are provided with adequate protection and reception conditions.
100. Since July 2004 the Asylum Division of the Ministry of Security is competent to decide on the requests of persons seeking international protection. Prior to this date this procedure was carried out by UNHCR. As of 31 December 2010, there are 153 asylum seekers registered with

<sup>50</sup> Landmine Monitor Report 2009, entry on Bosnia and Herzegovina, <http://www.the-monitor.org>.

<sup>51</sup> Bosnia and Herzegovina Mine Action Centre (BH MAC), *Bosnia and Herzegovina Mine Action Strategy (2009-2019)*, available at [www.bhmac.org](http://www.bhmac.org).

the Ministry for Security of Bosnia and Herzegovina out of which 78 are former temporary admission status holders from Kosovo\* (with the following breakdown for ethnic origin: 56 Roma, 10 Albanians, 11 Bosniaks, and one Gorani).<sup>52</sup> The countries of origin of the other seekers of international protection are: the former Yugoslav Republic of Macedonia, Iraq, India and Croatia.<sup>53</sup>

101. The Commissioner commends the authorities for the accommodation and healthcare that they have provide to recognised refugees in need. The Commissioner has been informed that the State Ministry for Human Rights and Refugees covers the health insurance costs for 51 recognised refugees and their families (about 112 persons). Limited financial assistance has been provided to 11 families (about 55 people) through the network of local centres for social work.<sup>54</sup> The State Ministry for Human Rights and Refugees is also responsible for the functioning of the refugee reception centre in Salakovac, Mostar, which accommodates 50 persons, 37 of whom are recognised refugees.<sup>55</sup> The remaining persons are asylum seekers, mainly Roma from Kosovo\*, and the members of their families. Recognised refugees not accommodated in the reception centre are mainly in private accommodation.

## 2b. Stateless persons

102. Bosnia and Herzegovina ratified the European Convention on Nationality in 2008 but has not signed or ratified the 2006 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession. The Bosnia and Herzegovina Constitution and the Law on Citizenship contain relevant provisions on statelessness. The Commissioner has noted that impediments to the exercise of the right to a nationality exist in Bosnia and Herzegovina. There is no formal mechanism for determining statelessness in Bosnia and Herzegovina, whereas a significant part of the population is presumed to be *de facto* stateless.
103. UNHCR estimates that there are currently up to 5,000 persons of concern in term of statelessness-related problems in Bosnia and Herzegovina.<sup>56</sup> The Commissioner remains concerned that Roma make up nearly all of this population.<sup>57</sup> According to the 2010 survey of the Roma population conducted by the Ministry of Human Rights and Refugees, 7% of Roma in Bosnia and Herzegovina were never registered in birth registries, while some 1,900 persons have been identified to be in need of assistance for civil registration, which means that they are at risk of statelessness.<sup>58</sup>
104. The domestic legislation concerning nationality, civil status, and documentation is fragmented. There is no specific authority tasked with examining cases where a child's parents do not register the former's birth. These shortcomings have a disproportionate effect on the *de facto* stateless Roma, and in addition, prevent their access to other basic human rights such as quality education, healthcare, adequate housing and employment because civil registration is a precondition for the enjoyment in practice of these rights.<sup>59</sup>
105. The Commissioner has noted that according to the legislation in place, facilitated naturalization is currently not available for stateless persons or recognised refugees. Recognised refugees cannot acquire the citizenship of Bosnia and Herzegovina under any conditions. While

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<sup>52</sup> Information received from the UNHCR Representation Office in Bosnia and Herzegovina in January 2011.

<sup>53</sup> The migration profile of Bosnia and Herzegovina for 2009, cited above, also lists the following countries of origin: Iraq Sri Lanka, Bangladesh, Iran, China, Syria, Pakistan, Jordan, Albania, Germany, Poland, Slovenia, Moldova, Saudi Arabia, Lithuania and Brazil.

<sup>54</sup> The 2009 Bosnia and Herzegovina submission to the UPR, cited above, paragraph 87.

<sup>55</sup> Information received from the UNHCR Representation office in Bosnia and Herzegovina in January 2011.

<sup>56</sup> Information received from the UNHCR Representation in Bosnia and Herzegovina in January 2011.

<sup>57</sup> Submission by the UNHCR for the Office of the High Commissioner for Human Rights' Compilation Report – UN Universal Periodic Review, September 2009, p. 3.. This information was confirmed in 2011 by the UNHCR Office in Bosnia and Herzegovina.

<sup>58</sup> Information received from the UNHCR Representation in Bosnia and Herzegovina, January 2011.

<sup>59</sup> Submission by the UNHCR for the Office of the High Commissioner for Human Rights' Compilation Report – UN Universal Periodic Review, cited above, page 3.

legislation exists that regulates civil registration procedures, it is not harmonized throughout the country.<sup>60</sup>

106. Many Roma are not registered in the birth registers (*maticne knjige*). The Commissioner has been informed that UNHCR, with funds from the EU, Liechtenstein and Switzerland, has continued in 2010 to assist the civil registration of Roma, helping them to obtain birth certificates, national identity cards and other documents. This has led to the successful resolution of 776 cases, including 306 birth registrations and 1,489 other documents, some obtained from other countries. Furthermore, in 2009, UNHCR began to undertake follow-up activities with newly registered Roma, to improve their access to basic rights.

*2c. Revocation of citizenship, and subsequent detention of individuals on national security grounds*

107. The State Commission for Revision of Decisions on Naturalization of Foreign Citizens ('the Commission'), which was tasked with reviewing the processes surrounding the acquisition of citizenship by foreign nationals from April 1992 to January 2006, continued its work up until February 2009. More than 400 persons<sup>61</sup> (from Turkey, Egypt, Syria, Sudan, Tunis and Russia) have had their citizenship revoked by the State Commission. Some of them have decided to voluntarily leave the country; some are at risk of being deported. According to the law, the Commission was mandated to withdraw the citizenship of, among others, persons deemed to have obtained it for reasons which were not in accordance with the relevant regulations, or on the basis of false information, on condition that doing so would not render the individual stateless.
108. The procedural shortcomings that were reported to the Commissioner during his previous visit to Bosnia and Herzegovina in 2007<sup>62</sup> seem to have continued until the end of the Commission's work. In 2009 it was reported<sup>63</sup> that the decisions of the Commission were taken *in camera* and that the final decision did not contain detailed reasoning. The individuals concerned had no opportunity to participate either initially or in the appeal procedure, and could not challenge the information used against them. It was alleged that there was a lack of adequate safeguards against the risk of return to serious human rights abuse, including torture or ill-treatment, for those subject to deportation.
109. The Commissioner underlines that it is essential that the right of judicial remedy within the meaning of Article 13 of the European Convention on Human Rights be guaranteed in law but also granted in practice when a person alleges that the competent authorities have contravened or are likely to contravene a right guaranteed by the Convention. The right of effective remedy must be guaranteed to anyone wishing to challenge an expulsion order. It must be capable of suspending enforcement of an expulsion order, at least where contravention of Articles 2 or 3 of the Convention is alleged.<sup>64</sup>
110. The Commissioner has noted that five former citizens of Bosnia and Herzegovina of Syrian, Algerian, Tunisian or Iraqi origin, whose citizenships were lifted by the Commission, have remained in detention since October 2008 and June 2009 respectively, in the Lukavica immigration centre. They were detained without charge on national security grounds, based on undisclosed evidence to which they and their lawyers have had no access.
111. The Commissioner has been informed that Imad Al Husin, whose deportation to Syria was halted by the European Court of Human Rights in January 2008, remains detained in the Lukavica immigration centre. An appeal on the revocation of his citizenship is pending. Local and international NGOs expressed concerns in May 2010 about the case of Awad Aiman,

<sup>60</sup> Ibid.

<sup>61</sup> Amnesty International, Briefing to the UN Committee Against Torture, October 2010, paragraph 1.1.

<sup>62</sup> See Commissioner's Report on the visit to Bosnia and Herzegovina, 4-11 June 2007, 28 February 2008, paragraph 144.

<sup>63</sup> Human Rights Watch submission for the UN Universal Period Review on Bosnia and Herzegovina, 24 August 2009, <http://www.hrw.org/en/news/2009/08/24/human-rights-watch-upr-submission-bosnia-and-herzegovina>.

<sup>64</sup> Commissioner's Recommendation concerning the rights of aliens wishing to enter a Council of Europe member state and the enforcement of expulsion orders, CommDH(2001)19, paragraph 11.

whose citizenship was also revoked, and who is subject to deportation to Syria and reportedly risks being subjected to inhuman or degrading treatment if deported. The other three detainees are Omar Frendi (of Algerian origin), Ammar Al Hanchi (of Tunisian origin), and Abdullah Baura (of Iraqi origin). In 2009 a sixth man, Benkhira Aissa (of Algerian origin), who had also been on hunger strike, was released from detention in Lukavica after his citizenship was restored on appeal.

*Conclusions and recommendations*

112. The pending issues arising out of the forced displacement that occurred during the 1992-1995 war are key for the development of social cohesion and human rights in Bosnia and Herzegovina. Their resolution is linked to and depends on the process of ethnic reconciliation in the region of former Yugoslavia and on the development of the region's national systems concerning protection of human rights, and especially of national minorities. The Commissioner commends the efforts made by the authorities of Bosnia and Herzegovina in the field of forced displacement due to the war, and urges them to continue their work in a determined and principled manner, giving priority to the urgent needs and effective human rights protection of the persons concerned, in accordance with the Council of Europe standards.
113. The Commissioner recalls that states have the duty and responsibility to establish conditions and provide the means that would allow refugees and IDPs to enjoy one of the following options: *voluntary return* to the homes or places of habitual residence in safety and with dignity; *voluntary resettlement*; and *local integration* in the community where they are. In the course of any of these three possible processes, all of which necessitate strenuous efforts and determination on the part of the state, the competent authorities should not forget to ensure the full participation of the refugees and IDPs themselves in the planning and management of the required measures.<sup>65</sup>
114. The Commissioner considers positive the discussions held on 25 March 2010 in Belgrade in the context of the International Conference on Durable Solutions for Refugees and IDPs. He encourages all countries concerned to be proactive and continue their co-operation in a sustained and systematic manner.
115. Any pertinent measures should be based on updated, reliable data on the numbers and situation of refugees, IDPs and returnees. The Commissioner urges the authorities in Bosnia and Herzegovina to enhance their co-operation with all neighbouring countries, and with UNHCR, in order to immediately create an updated, harmonised database.
116. The Commissioner welcomes the adoption in June 2010 of the Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement. He calls on the authorities of Bosnia and Herzegovina to ensure full and effective implementation of the Strategy, in order to create the conditions for sustainable voluntary return, facilitating local integration of those IDPs who cannot or do not wish to return to their pre-war homes, and to provide compensation for lost or damaged property.
117. The Commissioner remains very concerned by the fact that 7,500 people are still living in collective centres in Bosnia and Herzegovina. This population continues to endure extremely difficult living conditions, especially since many of them are unemployed, elderly and suffer from ill health. The authorities of Bosnia and Herzegovina are urged to provide adequate housing to vulnerable (including elderly) residents of collective centres, possibly by converting a number of collective centres into social housing.
118. Whilst he welcomes the increase of funds in the state budget provided for the return of IDPs and refugees, the Commissioner notes with concern that many obstacles to sustainable return still exist in Bosnia and Herzegovina. The authorities are urged to take all necessary measures to

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<sup>65</sup> See the 2005 UN Principles on Housing and Property Restitution for Refugees and Displaced Persons ('Pinheiro Principles' – Principle 10), the 1998 UN Guiding Principles on Internal Displacement (Principle 28); see also Council of Europe Committee of Ministers Recommendation (2006)6 on internally displaced persons and Commissioner's Viewpoint, 'Persons displaced during conflicts have the right to return', 15/09/2008, [http://www.coe.int/t/commissioner/Viewpoints/080915\\_en.asp](http://www.coe.int/t/commissioner/Viewpoints/080915_en.asp).



enable IDPs and returnees to enjoy fully, and without discrimination, their rights to healthcare, social care and pension rights. Allocations of funds for return need to be accompanied by positive measures to ensure that the funds address the specific needs of these individuals and their families. The authorities are urged to take all necessary measures to fight corruption in the financial sector involved in returns of IDPs, in particular by investigating and prosecuting all reported cases of corruption.

119. The Commissioner remains deeply concerned by ethnically motivated violence that still represents an obstacle to returns in Bosnia and Herzegovina. The authorities are urged to carry out systematic monitoring of and effective investigation into the ethnically motivated violence and hate crimes to enable effective prosecution of these crimes. In this regard the Commissioner calls on the authorities to align the formulation of the criminal offence of 'incitement to national, racial or religious intolerance' with the Council of Europe Committee of Ministers' Recommendation No.R (97) 20 on "hate speech".
120. The Commissioner calls on the authorities of Bosnia and Herzegovina to accelerate their efforts aimed at clearing the parts of the country's territory which remain contaminated by landmines and ERW. The Commissioner notes that this is an obligation emanating not only from the 1997 Mine Ban Treaty but also from Bosnia and Herzegovina's obligations arising notably from the fundamental provisions of Article 2 of the European Convention on Human Rights, where everyone's right to life has been enshrined and positive obligations are placed on all states parties to protect this right.
121. The Commissioner welcomes the increase in funds for demining. This increase should speed up the demining process, given its additional importance for the process of the return of all displaced persons. The Commissioner reiterates his call on the authorities of Bosnia and Herzegovina to consider revising the social welfare legislation in order to enable the disabled civilian victims of landmines to enjoy the same social protection benefits as the disabled war veterans.
122. The Commissioner remains deeply concerned by the situation of Roma forcibly displaced from Kosovo\*, whose requests for asylum have been rejected by the authorities, and are subject to deportation. The Commissioner calls on the authorities of Bosnia and Herzegovina to find durable solutions for the members of this group, in accordance with the relevant guidelines provided by UNHCR.
123. The Commissioner remains deeply concerned by the significant number of stateless Roma in the region of the former Yugoslavia, including Bosnia and Herzegovina. He urges the authorities of Bosnia and Herzegovina to take additional measures to facilitate access of Roma to citizenship, especially for children. Naturalisation procedures for Roma should also be simplified. In this regard the Commissioner calls on the authorities of Bosnia and Herzegovina to ratify the 2006 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession.
124. Lastly, the Commissioner remains concerned by the procedural shortcomings in the work of the State Commission for Revision of Decisions on Naturalization of Foreign Citizens, which was completed in 2009. Individuals whose citizenship was revoked are subject to deportation to their countries of origin and allegedly face serious risks of human rights abuses, including torture or ill-treatment. The Commissioner recalls the Council of Europe standards, including the Committee of Ministers' 2005 *Twenty Guidelines on Forced Return*, and urges the authorities to ensure availability of effective legal remedies against decisions to deport foreign nationals, especially in cases where they are deprived of their citizenship.

### **III. Post-war justice and reconciliation**

125. The Commissioner underlines that genuine inter-ethnic reconciliation in the former Yugoslavia, including Bosnia and Herzegovina, cannot be achieved without justice. Justice is not only retributive, in the sense that it is aimed to punish through fair proceedings those who have committed gross human rights violations and serious violations of international humanitarian law. It is also, or above all, preventive, aiming to ensure that all people in the region come to

terms with the past, and live in peace in a cohesive, pluralist democratic society. Justice means, moreover, provision of adequate, effective and proportionate reparation to comfort and heal the wounds of all victims of the war without any distinction.

126. It is indeed only through such a cathartic process that ethnic prejudices and polarisation that have torn societies apart will be combated and overcome. This requires wise vision by determined political leadership. Recent constructive steps taken by leaders of the region's countries, including the 'Istanbul Declaration' signed in April 2010 between Bosnia and Herzegovina and Serbia, are signs of a positive impetus that should be carried on and is encouraged by the Commissioner.

### **1. Legal framework and international co-operation**

127. Bosnia and Herzegovina is vested with an adequate legal framework relating to the prosecution of war-related crimes, the potential of relevant co-operation with the neighbouring countries and with the International Criminal Tribunal for the former Yugoslavia (ICTY). Bosnia and Herzegovina's co-operation with the ICTY is regulated by the Decree with Force of Law on Extradition at the Request of the International Tribunal of 1995. Bosnia and Herzegovina has ratified all major international human rights, humanitarian and criminal law treaties concerning war-related crimes.
128. In 2004 the law on the transfer of cases from ICTY to the Prosecutor's Office of Bosnia and Herzegovina and the use of evidence collected by ICTY in the courts in Bosnia and Herzegovina entered into force. This law sets out the procedure for the transfer of the cases from ICTY to the Prosecutor's Office of Bosnia and Herzegovina, and the admissibility of evidence collected by the ICTY in the courts in Bosnia and Herzegovina.
129. Regional co-operation has been an important factor for the successful prosecution of war-related crimes in Bosnia and Herzegovina, Croatia and Serbia, as large parts of evidence, witnesses, victims, and suspects in cases dating from the war period are located in these neighbouring countries. The Parliamentary Assembly of the Council of Europe, by Resolution 1564 (2007) on *Prosecution of offences falling within jurisdiction of the International Criminal Tribunal for the former Yugoslavia* and Resolution 1785 (2011) on *the obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes*, has highlighted the need to eliminate impunity for war-related crimes that occurred in the former Yugoslavia. The guidance provided by these documents is valuable in the efforts of all countries of former Yugoslavia, including Bosnia and Herzegovina.
130. Whilst he welcomes the signature in February 2010 of the bilateral agreements between the Ministers of Justice of Bosnia and Herzegovina, Croatia and Serbia, to prevent the abuse of dual citizenship in extradition processes of convicted criminals<sup>66</sup> the Commissioner remains concerned about the reports indicating that Bosnia and Herzegovina and Serbia<sup>67</sup> still bar extradition based on nationality and about the existence of other legal barriers preventing the transfer of war-related criminal cases from one state to another.<sup>68</sup> One symptom of these obstacles is parallel investigations for the same offences, carried out in the countries concerned.

### **2. Domestic proceedings concerning war-related crimes**

131. The Commissioner has noted that trials for war crimes, crimes against humanity and genocide are currently held in the Court of Bosnia and Herzegovina, and in cantonal and district courts in the Federation of Bosnia and Herzegovina and Republika Srpska, respectively. The War Crime Chamber of the Court of Bosnia and Herzegovina, which was established in 2004, began working in March 2005. Until the creation of the War Crime Chamber, trials for war crimes,

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<sup>66</sup> The agreements will allow the arrest and extradition of convicted criminals who have evaded justice as a result of holding dual citizenship.

<sup>67</sup> In June 2010 Croatia adopted a constitutional amendment to allow extradition of Croatian citizens to other countries.

<sup>68</sup> International Tribunal for the Former Yugoslavia, 'Seventeenth annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 to the UN Security Council', 30 July 2010, available at [www.icty.org](http://www.icty.org).

crimes against humanity and genocide were held in the cantonal and district courts at a very slow pace, mainly due to the political obstructions and the lack of necessary expertise.

132. The Commissioner has noted that the creation of the War Crime Chamber of the Court of Bosnia and Herzegovina has played a significant role in speeding up the prosecution and trials. However, he remains concerned at reports indicating that currently the justice systems in both entities, including the cantonal and district courts and prosecutors' offices, appear to face serious obstacles in trying war crime cases. Many obstacles are practical, such as limited prosecutorial resources, lack of necessary expertise and lack of witness protection. There also appear to exist obstacles related to the application of different criminal codes throughout Bosnia and Herzegovina, a lack of willingness of the police to investigate crimes, and the failure of prosecutors to make use of available evidentiary sources.
133. The Commissioner is concerned by reports indicating the existence of a serious backlog of unresolved court cases in the country, amounting to almost two million. Of this backlog 160,000 are unresolved criminal cases; among them it has been estimated that between 6,000 and 16,000 are unresolved war-related crimes cases, at different stages of prosecution, registered in all 13 jurisdictions of the country.<sup>69</sup>
134. The Commissioner has been informed that in October 2009 the State Parliament of Bosnia and Herzegovina rejected the extension of the mandate of international judges and prosecutors working in the War Crime Chamber of the State Court of Bosnia and Herzegovina. This development raised serious concerns about the capacity of the justice system of Bosnia and Herzegovina to prosecute war-related crimes cases in accordance with international human rights standards. In December 2009, the High Representative used his special powers, provided for by the 1995 Dayton Peace Agreement, to overrule the State Parliament's decision and extended the above international judges and prosecutors' mandate for an additional period of three years.
135. The Parliamentary Assembly of the Council of Europe by its Resolution 1626 (2008) on the *honouring of obligations and commitments by Bosnia and Herzegovina* welcomed the work carried out by the War Crime Chamber of the State Court of Bosnia and Herzegovina in prosecuting war crimes. However, the Parliamentary Assembly regretted the fact that inconsistencies still exist in the application of criminal law by various courts at State and Entity level with respect to war crimes, which lead to inequality of treatment. The Parliamentary Assembly called on the authorities to ensure the uniform application of the Criminal Code of Bosnia and Herzegovina at State and Entity level, in particular with respect to war-related crimes cases. The authorities were called upon to finalise, without further delay, the strategy to deal with the remaining cases.
136. In December 2008 the Council of Ministers of Bosnia and Herzegovina adopted the National War Crimes Processing Strategy ('National Strategy'). The National Strategy<sup>70</sup> refers to an estimated 10,000 suspects, of whom about 1,300 are under active investigation. It set seven years as the time needed to prosecute the most complex and highest priority cases, and fifteen years the time required for other cases. The Strategy provides for the establishment of a unique, centralized database containing information on all incomplete cases. Whilst he welcomes the adoption of the National Strategy, the Commissioner is concerned by reports indicating that limited progress has been made in its implementation, mainly due to insufficient coordination between the various justice sector institutions at the State level, in the Entities and the Brcko District, and the lack of funds for its implementation.
137. The Commissioner is seriously concerned by the verbal attacks on the justice system and denial of war crimes by some senior politicians in the country. Such instances undermine the country's efforts to achieve post-war justice and reconciliation.

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<sup>69</sup> Amnesty International, Briefing to the UN Committee Against Torture, October 2010, paragraph 2.2.

<sup>70</sup> The text of the strategy is available at <http://www.mpr.gov.ba/en/str.asp?id=11>.

*2.a. Protection of witnesses in war-related criminal proceedings*

138. Provision of effective protection and support to witnesses in the context of war-related proceedings is crucial. These services are vital for the collaboration of witnesses, particularly victim witnesses. Testimonies of witnesses are principal evidence in most war-related criminal cases because of the non-existence or unavailability of documentary evidence.
139. Witness protection in Bosnia and Herzegovina is regulated at the State and the Entity levels. On 1 March 2003 the High Representative in Bosnia and Herzegovina imposed the Law of Protection of Witnesses under Threat and Vulnerable Witnesses in Bosnia and Herzegovina. Subsequently relevant laws were adopted in 2003 at the Entity level. The criminal codes in the Entities, and the Criminal Code of Bosnia and Herzegovina, also set out measures that can be applied to protect witnesses. Available measures range from those related to out-of-court and in-court protection (assignment of pseudonyms, testimony behind screens, etc), as well as the prosecution of perpetrators who threaten or intimidate witnesses. Special measures, such as relocation or change of identity, are available only on State level under the 2004 Law on the Witness Protection Programme. The 2004 Law on the State Investigation and Protection Agency (SIPA) set out the competencies of this law enforcement body in the witness protection system.
140. The Commissioner has taken note of reports indicating that the authorities of Bosnia and Herzegovina have not taken sufficient steps to effectively guarantee the right of witnesses to life, to stop and prevent unjustified infringements to protect witnesses from acts of harassment and violence, and to enable them to participate in trials with dignity. In reported cases where witnesses have been threatened, the judiciary has not taken action to determine whether these threats are real or serious.<sup>71</sup>
141. Despite the explicit guarantees in the relevant laws relating to psycho-social support to vulnerable victims and witnesses, there is only one structure that provides such services in a sustainable manner, the Witness and Victim Section at the Court of Bosnia and Herzegovina. The Section was established in May 2005 and is equipped to protect witnesses during trials.
142. The Commissioner is seriously concerned by reports indicating that, due to the fear for their physical integrity, an increasing number of witnesses are unwilling to testify in trials. Many suspects of war-related crimes enjoy impunity for such a long period of time that victims no longer believe that the trials can deliver justice.
143. Returnees who are ethnic minority in the places of return, and who are victims of war-related crimes and potential witnesses, are in the most difficult situation. Many of them live in the communities where they regularly see individuals whom they have reported to the authorities as suspects of war-related crimes, but who have not been prosecuted. Furthermore, despite the vetting process that was carried out by the UN International Police Task Forces in the late 1990s, there is still a certain number of active law enforcement officers who are suspected of having committed war-related crimes.
144. Another major problem is the lack of systematic protection of witnesses in the war-related criminal proceedings at the Entity level. In some instances the Entity prosecutors avail themselves of services provided by SIPA.<sup>72</sup> However, SIPA does not have sufficient resources to perform its functions to the extent needed for the successful protection of witnesses. The National War Crimes Processing Strategy adopted in 2008 addresses this problem, as it provides that SIPA shall be additionally staffed and equipped with material and technical resources. It further provides that basic and specialized training and education of officers in the field of witness protection will be organized and available.
145. The Commissioner regrets that a new draft Law on the Witness Protection Programme that was proposed in 2008 by the Council of Ministers of Bosnia and Herzegovina has not been adopted

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<sup>71</sup> OSCE Mission to Bosnia and Herzegovina, 'Witness Protection and Support in BiH Domestic War Crimes Trials: Obstacles and recommendations a year after adoption of the National War Crimes Processing Strategy', January 2010, available at [www.osce.ba](http://www.osce.ba).

<sup>72</sup> Ibid.

yet, due to the opposition of representatives of Republika Srpska. The draft law provides for expanding SIPA's activities to witnesses testifying before the Entity courts. The Commissioner hopes that this issue will be a priority for the new government, given its importance for the effective protection of witnesses in all trials in Bosnia and Herzegovina.

## 2b. Adequate and effective reparation of victims

146. Adequate, effective and prompt reparation to the victims of war-related crimes is a constituent element of post-conflict justice. In this regard the Commissioner refers to the UN *Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights and Serious Violations of International Humanitarian Law* (2005), which highlights various forms of reparations that should be introduced at the national level in order to provide redress. In this regard it is underlined that reparation should be proportional to the gravity of the violations and the harm suffered.
147. The Commissioner remains concerned by the failure of the authorities of Bosnia and Herzegovina to establish an effective mechanism that would ensure reparation for all victims of war-related crimes and their families in Bosnia and Herzegovina. A representative of an NGO working in the field of assistance to the war victims, with whom the Commissioner met during his visit, stressed that the lack of adequate state support caused individual tragedies: ten former detainees of concentration camps in Bosnia and Herzegovina during the 1992-1995 war had committed suicide since 2000. Post-war justice may not be obtained solely by prosecuting and convicting war criminals, but also by restoring the human dignity of all victims who have suffered pecuniary and especially non-pecuniary damages.
148. The existing system of complicated individual payments through the social protection and disability scheme in the Federation of Bosnia and Herzegovina does not effectively address the needs of the victims of war-related crimes. The relevant legislation on Entity and cantonal levels aimed at providing reparation to the victims of the war is significantly more favourable to war veterans than to civilian victims. Furthermore, the authorities have so far failed to provide adequate reparation to the survivors of war crimes of sexual violence, in order to enable them to rebuild their lives (see also relevant subsection below).
149. The Commissioner has noted that under the 2005 War Damages Act Republika Srpska authorities developed a general compensation scheme for war damages. However, the non-existence of a 'formal reparation scheme' prompted many war victims from 1999 to 2005 to initiate ordinary civil proceedings in which they requested compensation for pecuniary and non-pecuniary damages. During this period, the courts in Republika Srpska rendered around 9,000 judgments ordering the Republika Srpska to pay some €70 million in total plus default interest to the plaintiffs. Their enforcement has been pending since 2002 pursuant to the legislation which provided for the settlement scheme and the payment of the principal debt and default interest in annual installments.
150. In this regard, the Commissioner has noted that on 10 November 2009 the European Court of Human Rights in the case of *Colic and others v. Bosnia and Herzegovina* found that the respondent state had violated the Convention due to the failure to enforce final court decisions, including the decision of the Human Rights Chamber, concerning compensation for pecuniary and non-pecuniary damages to the war victims and their families in Republika Srpska. The Court noted that while a significant number of pending, war-related civil claims may militate in favour of a general compensation scheme, this was of no relevance to the respondent state's obligation to enforce judgments which had become final prior to the creation of such a scheme. In this respect the Court stressed that there were already more than a hundred similar applications pending before it. For this reason it underlined that the state must take appropriate measures in respect of other persons in the applicants' position and grant adequate and sufficient redress to all applicants as regards similar applications already lodged with the Court. Although this judgment concerns the execution of domestic court judgments in Republika Srpska, it appears that the same problem exists in the Federation of Bosnia and Herzegovina.
151. As of September 2010, the Council of Europe Committee of Ministers was still supervising the execution by Bosnia and Herzegovina of the above judgment in light of an action plan for the

execution of the judgment which was requested by the Committee of Ministers to be provided by the authorities. In January 2011 the authorities of Bosnia and Herzegovina submitted to the Committee of Ministers the action plans of Republika Srpska and the Federation of Bosnia and Herzegovina for determining the obligations related to pecuniary and non-pecuniary damages stemming from the above judgment.<sup>73</sup>

152. The Commissioner has noted that the authorities of Bosnia and Herzegovina prepared a draft law on victims of torture and civilian victims of war, aimed at establishing a mechanism for providing compensation and harmonizing the rights of victims of war and torture in the country.<sup>74</sup> The Commissioner would like to receive more information about the prospects for adoption of this law.

### **3. Protection of victims of sexual violence during the war**

153. The 1992-1995 war in Bosnia and Herzegovina was characterised by heinous crimes, including systemic, widespread rape and other forms of sexual violence against women. Although the exact number of victims of these crimes in Bosnia and Herzegovina is not known, there are reports indicating that an estimated 20,000 women of Bosniak, Croat and Serb origin were victims of acts of serious sexual violence in the 1991-1995 wars in the region of former Yugoslavia.<sup>75</sup>
154. It is noted that the 2008 UN Security Council Resolution 1820, on *Women, Peace and Security* observed that rape and other forms of sexual violence can constitute a war crime, a crime against humanity and a constitutive act with respect to genocide. The UN Security Council called upon states to prosecute persons responsible for such acts and to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice. The importance of ending impunity for such acts as a part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation was also stressed in this Resolution.
155. Furthermore, in its Resolution 1670 (2009) on *sexual violence against women in armed conflict*, the Parliamentary Assembly of the Council of Europe raised concerns about persisting impunity and victims' inability thus far to access justice to receive reparation in Bosnia and Herzegovina.
156. The Commissioner is seriously concerned by the failure of the authorities of Bosnia and Herzegovina to fulfil their international obligations to effectively prosecute war-related crimes of sexual violence, and to provide adequate protection and reparation to the victims of these crimes.
157. The Commissioner has noted with serious concern that many perpetrators of war-related crimes of sexual violence enjoy impunity and often live in the same communities as their victims. There are no reliable statistics on the number of unresolved cases of war-related crimes of serious sexual violence. However, there are reports indicating that the number of cases prosecuted so far is extremely low compared to the alleged number of the acts of these crimes that amounts to several thousand. As of September 2010 the Court of Bosnia and Herzegovina has delivered final judgments in 18 cases related to war-related crimes of sexual violence and seven additional cases were pending at the trial stage or on appeal.<sup>76</sup>
158. The Commissioner has noted reports indicating that many women, who are victims of war-related crimes of sexual violence, have continued to live in poverty, being unable to find a job still suffering from the physical and psychological consequences of their war-time experience. Although the authorities have adopted some measures aimed at providing them with social

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<sup>73</sup> See the Execution of Judgments of the European Court, Additional Information on Bosnia and Herzegovina, [http://www.coe.int/t/dghl/monitoring/execution/Themes/Add\\_info/BIH-ai\\_en.asp](http://www.coe.int/t/dghl/monitoring/execution/Themes/Add_info/BIH-ai_en.asp).

<sup>74</sup> See, 'Committee against Torture reviews report of Bosnia and Herzegovina', <http://www.reliefweb.int/rw/rwb.nsf/db900sid/EGUA-8AWQGE?OpenDocument>

<sup>75</sup> See also Parliamentary Assembly of the Council of Europe, Resolution 1670 (2009) on *sexual violence against women in armed conflict*.

<sup>76</sup> Amnesty International, Briefing to the UN Committee Against Torture, October 2010, cited above, paragraph 2.2.

benefits which are related to their status of civilian victims of war, there are serious gaps in relevant legislation and in their implementation, which call for the authorities' particular attention.<sup>77</sup>

159. The Commissioner has noted that, like civilian war victims, the victims of war-related crimes of sexual violence are also affected by the discrepancies in the social protection system between different categories of the war victims. In practice this means that in both Entities they have significantly lower social allowances compared to war veterans. The Commissioner regrets that the authorities have not yet developed more equitable allocation of funds for social protection, despite a number of recommendations in this regard made by international human rights bodies, including the UN Committee on Economic, Social and Cultural Rights.<sup>78</sup>
160. The Commissioner has been informed that the relevant legislation in the Federation of Bosnia and Herzegovina provides that the civilian victims of war-related crimes of rape and other forms of sexual violence shall have preferential treatment in employment. Access to vocational training to help them qualify for jobs is also provided for by the law. The Commissioner is concerned by reports indicating that these parts of the law remain largely unimplemented. Moreover, in Republika Srpska the right to preferential treatment in employment or to vocational training is not enshrined in the law regulating the status of the civilian victims of war.<sup>79</sup>
161. Many survivors of war-related sexual violence suffer post-traumatic stress disorder and other psychological and physical problems. The Commissioner is concerned that provision of psychological support to survivors of war-related sexual violence is inadequate and that many of the women victims have not been able to access the healthcare system. On average there is one mental health centre for every 40–50,000 people. This situation leaves many local communities without a psychologist or a psychiatrist, as is the case in Bratunac, where 8,000 IDPs have returned since the end of the war. It has been reported that almost 90% of rape victims do not receive any kind of psychological treatment.<sup>80</sup> Local NGOs appear to be the only institutions offering psychological support to victims.

#### **4. Missing persons**

162. It is estimated that 28,000-30,000 persons disappeared in Bosnia and Herzegovina during the 1992-1995 war.<sup>81</sup> About two thirds of the missing persons have been accounted for, while one third remains missing. Out of a total of approximately 14,000 missing persons in former Yugoslavia, there are currently 10,402 open cases of missing persons in Bosnia and Herzegovina. These include 9,232 persons whose fate remains unknown and 1,170 persons whose death is known but whose remains are yet to be found and returned.<sup>82</sup>
163. In 2007 Bosnia and Herzegovina signed, but has not yet ratified, the 2006 International Convention for the Protection of All Persons from Enforced Disappearance. In 2004 Bosnia and Herzegovina enacted the Law on Missing Persons, and in 2008 the Missing Persons Institute (MPI) was founded by the Council of Ministers of Bosnia and Herzegovina and the International Commission on Missing Persons (the ICMP). The MPI is responsible for continuing the search for missing persons in partnership with the International Commission on Missing Persons.
164. The Commissioner has noted that before establishing the MPI the Entity commissions for missing persons carried out the work on the cases of missing persons at a very slow pace, mainly due to a lack of collaboration. In 2007, the staff of both Entities' commissions was fully

<sup>77</sup> Amnesty International Report 'Whose Justice – Women of Bosnia and Herzegovina Are Still Waiting', September 2009, <http://www.amnesty.org/en/library/asset/EUR63/006/2009/en/8af5ed43-5094-48c9-bfab-1277b5132faf/eur630062009eng.pdf>.

<sup>78</sup> UN CESCR, Concluding Observations on Bosnia and Herzegovina, 2006.

<sup>79</sup> Amnesty International Report cited above.

<sup>80</sup> Ibid. paragraph 2.6.3.

<sup>81</sup> United Nations Working Group on Enforced or Involuntary Disappearances, preliminary findings of the visit to Bosnia and Herzegovina, June 2010, available at <http://www2.ohchr.org/english/issues/disappear/group/docs/PR21.06.10.pdf>.

<sup>82</sup> ICRC, Figures related to the persons missing from the Balkans conflicts, August 2010, document provided to the Commissioner's Office by ICRC.

integrated into the MPI, and joint exhumation teams took over functions previously split between the Entities. In 2008, the MPI became fully operational. The establishment and the work of MPI have been considered as a successful model for post-war justice that could be applied worldwide.

165. The Commissioner has nonetheless noted with concern developments that have obstructed the efficiency and effectiveness of the MPI. In 2008 Republika Srpska formed an Operational Team for the Search for Missing Persons, to carry out the same work as the MPI. Some ethnic Serb staff from MPI left that institution to work in the Republika Srpska team. It has been alleged that Republika Srpska's operational teams refused to provide MPI personnel access to archives that should have been transferred to the MPI in accordance with the 2004 Law on Missing Persons. These issues need to be clarified and the problems resolved.
166. The Commissioner has noted the need to further support and strengthen MPI by putting more resources at their disposal. Of primary importance is also the provision of available technology necessary to detect graves and to carry out exhumations.
167. The 2001 Law on Missing Persons also envisaged the creation of a database of missing persons and the opening of the Fund for Support to the Families of Missing Persons. The authorities' failure to establish these two mechanisms (at the State, the Entities and the District levels) is in breach of their constitutional obligation to implement the decisions of the Constitutional Court related to the issue of missing persons. In its leading decision of 27 May 2005, the Constitutional Court of Bosnia and Herzegovina upheld the appeals of citizens of Bosnia and Herzegovina lodged over the disappearances of persons during the war in Bosnia and Herzegovina. Although non-enforcement of the decisions of the Constitutional Court of Bosnia and Herzegovina is a criminal offence under the Criminal Code of Bosnia and Herzegovina, no one has as yet been indicted.
168. The Commissioner has noted that following his visit, in February 2011, with the assistance of the ICMP, the MPI created a database of missing persons (Central Records on Missing Persons). The Commissioner believes that the creation of this database will contribute to the reconciliation process in Bosnia and Herzegovina, since for the first time in post-war Bosnia and Herzegovina accurate and reliable information regarding cases of missing persons is available. The Commissioner urges the authorities to fulfil their remaining obligation stemming from the Law on Missing Persons, namely to open a fund for the families of missing persons.
169. The Commissioner underlines that the process concerning the resolution of the cases of all missing persons should continue unabated. One of the major problems is to determine where further mass graves can be found, and this is becoming more and more difficult with the passage of time. In 2010 the UN Working Group on Enforced or Involuntary Disappearances (UNWGEID), following their visit to Bosnia and Herzegovina, pointed out the need to strengthen witness protection programmes in order to encourage more people to reveal information concerning grave sites, as well as to provide protection and support to families of missing persons who are at times subject to threats, intimidations and sometimes even blackmailing. WGEID also noted that the resources and staff of the prosecutors' offices countrywide are very limited, which has a great impact on the exhumation process since for an exhumation to take place a prosecutor has to obtain a court order.<sup>83</sup>
170. The Commissioner is concerned by the lack of access by the families of missing persons to information on the criminal investigations into disappearances of their relatives, their results and possible prosecution. Given the sensitivity of this issue, the WGEID has proposed that special personnel should be appointed to meet with families and keep them informed, on a regular basis, of the progress made in their cases. The Commissioner supports the WGEID's proposal to appoint psychologists in the courts in order to meet with the families and inform them, on a regular basis, of progress made in their cases. The courts, which have already introduced this practice, could share their experience in this regard. Local NGOs that work in this field could

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<sup>83</sup> United Nations Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, cited above, paragraph 33.



also provide aid. The need to provide greater training to all public servants working on issues related to enforced disappearances has also been highlighted.

171. The Commissioner has noted that in the absence of adequate measures by the authorities to address the issue of missing persons, some families of missing persons sought justice before international human rights institutions. In 2009, the Advocacy Centre – TRIAL (ACT), an NGO based in Geneva, lodged five individual communications with the UN Human Rights Committee on behalf of families of missing persons in Bosnia and Herzegovina, complaining about lack of investigation, prosecution, reparations and effective remedy. ACT submitted in 2009 an additional sixteen applications to the European Court of Human Rights on behalf of the relatives of the disappeared.<sup>84</sup> There are currently 25 cases regarding missing persons in Bosnia and Herzegovina pending before the European Court of Human Rights.

##### **5. Independence of the judiciary and enforcement of domestic judicial decisions**

172. The Commissioner has noted with concern reports indicating that the pressure by leading political figures on the judiciary in Bosnia and Herzegovina, particularly on the Court and the Prosecutor's Office of Bosnia and Herzegovina, increased in 2009. It is of equal concern that certain politicians have alleged that war-related criminal trials are ethnically biased. These claims were rejected as groundless by the OSCE mission in Bosnia and Herzegovina in their 2010 Report on the Independence of Judiciary.<sup>85</sup>
173. Whilst he understands that open discussion of matters of public interest is necessary for the proper functioning of democratic society, including discussions of issues of efficiency, impartiality and independence of judiciary, the Commissioner is concerned that the statements at issue go far beyond this approach. The Commissioner wishes to underline the guidelines contained in the 2010 Report by the Venice Commission concerning *the independence of the judicial system*. An appropriate balance needs to be struck between the need to protect the judicial process on the one hand and freedom of the press and open discussion of matters of public interest on the other, in order to ensure that no undue pressure is being put on the judicial process.
174. The Commissioner has been informed that in May 2010 judges of the Constitutional Court of Bosnia and Herzegovina unanimously decided to remove Mr Krstan Simić (appointed by Republika Srpska) from his post as a Judge. A procedure for his removal was initiated following the publication in local media of a letter in which he had addressed the Prime Minister of Republika Srpska as his 'boss'. The grounds for his dismissal were that he had intentionally damaged the image and the dignity of the Court, as well as the image and the dignity of a judge. On 7 September 2010, the Republika Srpska National Assembly failed to appoint a successor to Mr Simić. There are currently five national and three international judges in the Constitutional Court. The Constitutional Court has a backlog of about 8,500<sup>86</sup> cases, mostly applications related to human rights violations.
175. The Commissioner has noted that non-enforcement of domestic court judgments continues to be a systematic problem that seriously hinders the efficiency of the judicial system, thus threatening the rule of law in Bosnia and Herzegovina. In seven (out of a total of fourteen) judgments delivered from October 2006 to May 2010 against Bosnia and Herzegovina, the European Court of Human Rights found a violation of Article 6 of the European Convention on Human Rights due to non-enforcement of domestic court judgments. Around 100 decisions of the Constitutional Court of Bosnia and Herzegovina and the Human Rights Chamber have not been enforced since 2003.<sup>87</sup> In all cases the Constitutional Court forwarded the decisions on non-enforcement to the Prosecutor's Office of Bosnia and Herzegovina. Although some

<sup>84</sup> Amnesty International Report 2010 – Bosnia and Herzegovina, available at <http://www.unhcr.org/refworld/country,,AMNESTY,,BIH,,4c03a83c53,0.html>.

<sup>85</sup> OSCE Mission in Bosnia and Herzegovina, 'Inappropriate Pressure against Judicial Institutions in Bosnia and Herzegovina', December 2009, <http://www.oscebih.org/documents/15868-eng.pdf>.

<sup>86</sup> Information provided by the Constitutional Court of Bosnia and Herzegovina in January 2011.

<sup>87</sup> Information provided by the Constitutional Court of Bosnia and Herzegovina in January 2011.

investigations are pending, no one has been charged so far with a criminal offence of non-enforcement of decisions of the Constitutional Court and the Human Rights Chamber.

176. The Commissioner has noted that there are two other major categories of judgments by the Strasbourg Court which are pending execution before the Council of Europe Committee of Ministers. The first group relates to non-payment of 'old savings' accounts denominated in foreign currency. Another major judgment of the Strasbourg Court concerns the failure by the authorities of Bosnia and Herzegovina to enforce a decision of the Human Rights Chamber of Bosnia and Herzegovina that could potentially affect many returnees in Bosnia and Herzegovina who are receiving pensions from different Entity funds.
177. As regards the issue of 'old savings', in his 2008 report following his visit to Bosnia and Herzegovina, the Commissioner noted that in 2006 the European Court of Human Rights delivered its final judgment in the case of *Jelić*,<sup>88</sup> in which it found two violations of the Convention (in relation to access to court and protection of property) and awarded the applicant damages. At the time of the Commissioner's visit in 2007, Bosnia and Herzegovina had not taken the necessary measures required to execute the judgment.<sup>89</sup>
178. In the meantime, the Commissioner has noted progress in the execution of this and other judgments related to non-payment of 'old savings'. The Council of Europe Committee of Ministers has been informed that the Entities have taken concrete steps to ensure the enforcement of domestic courts' judgments ordering the payment of 'old savings' without any special procedures, in particular, by allocating necessary funds. More information is awaited on the enforcement of all judgments ordering payment of 'old savings'.<sup>90</sup>
179. The other major outstanding issue relates to the enforcement of the Strasbourg Court's 2007 judgment in the case of *Karanovic*,<sup>91</sup> and the failure of the authorities of Bosnia and Herzegovina to enforce a decision of the Human Rights Chamber of Bosnia and Herzegovina that could potentially affect many returnees in Bosnia and Herzegovina who receive pensions from the different funds of Entities. The case concerns the inability of a pensioner living in the Federation of Bosnia and Herzegovina who was internally displaced during the war to Republika Srpska to obtain a pension in the Federation of Bosnia and Herzegovina upon return after the war, whereas pensioners who returned to the Federation of Bosnia and Herzegovina from abroad were able to obtain a pension. The Human Rights Chamber had ordered in 2003 that the Federation of Bosnia and Herzegovina take all necessary measures to remedy this difference in treatment. (see above sub-section concerning obstacles to displaced persons' voluntary return).
180. As of August 2010 the Council of Europe Committee of Ministers was still supervising the adoption by Bosnia and Herzegovina of general measures for the full execution of this judgment. The Committee of Ministers has noted that it appears that further measures are necessary to remedy the systemic problem. It also appears necessary to determine the exact number of pensioner returnees that are entitled to payment of differences in pension so that the authorities can assess the scope of this problem and its implications.<sup>92</sup>

## **6. Decertified police officers**

181. The Commissioner remains concerned by the failure of the authorities to resolve the issue of about 220 unemployed police officers who had been barred from police service following the vetting process of the UN International Police Task Force (IPTF) from 1996 to 2002. The

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<sup>88</sup> Case of *Jelić v. Bosnia and Herzegovina*, judgment of 31 October 2006.

<sup>89</sup> There are 85 similar cases pending before the Court submitted on behalf of more than 3 750 applicants.

<sup>90</sup> See status of execution of the judgment at: <http://www.coe.int/t/dghl/monitoring/execution/>

<sup>91</sup> Case of *Karanovic v. Bosnia and Herzegovina*, judgment of 20 November 2007.

<sup>92</sup> The Council of Europe Committee of Ministers, CM/Inf/DH(2010)22, 20 May 2010, Cases concerning the non-enforcement of final domestic court decisions in Bosnia and Herzegovina, Progress achieved in executing the Court's judgments and outstanding issues.

process was flawed due to the absence of basic procedural safeguards and the lack of appropriate legal remedies to challenge the decisions on decertification.<sup>93</sup>

182. The Commissioner was informed during the mission about positive legislative developments, relating to the abolition of provisions on the prohibition from service for life. However, implementation of the legislation appears to be limited. During his visit the Commissioner met with the representatives of associations of decertified officers who informed him that only 30 of them have been reemployed. In the meantime six others died from heart failure or high blood pressure and one had committed suicide. The Commissioner was also informed that 90% of the total number of decertified police officers have not been prosecuted for any criminal offence, including war-related crimes, whereas 30 police officers who were certified by the UN IPTF had been convicted for war-related crimes. The Commissioner welcomes the interest shown during the meetings by leading politicians on State and Entity levels in resolving this issue, and calls on them to take all possible measures in order to provide adequate redress to those still in need of it.

#### *Conclusions and recommendations*

183. It is hard to overstate the importance for post-war peace and stability of international legal principles of accountability, justice and the rule of law. The Commissioner recalls the 2005 UN 'Basic Principles and Guidelines',<sup>94</sup> and the states' obligation to effectively investigate and take action against all persons allegedly responsible for gross human rights violations and serious violations of international humanitarian law.<sup>95</sup> The provision to all war victims of adequate, effective and proportionate reparation for the harm they have suffered during the war is also a major constituent element of the justice that should be delivered.
184. Whilst welcoming the adoption of the National War Crimes Processing Strategy in December 2008, the Commissioner remains concerned at the limited progress attained so far, which seems to be linked to a lack of political will, reflected in insufficient coordination between the various justice sector institutions at the State level, in the Entities and in the Brcko District, and lack of funds for its implementation. The authorities are urged to step up their efforts to ensure effective implementation of the Strategy, including by ensuring adequate financial resources. Particular emphasis should be placed on the strengthening of capacities for the prosecution of war-related crimes.
185. Whilst welcoming the signing of bilateral agreements in February 2010 between the Ministers of Justice of Bosnia and Herzegovina, Serbia and Croatia, to prevent the abuse of dual citizenship in extradition processes of convicted criminals, the Commissioner is worried about persisting obstacles to regional co-operation in relation to prosecution of war-related crimes. While Croatia had lifted constitutional ban on extradition of their nationals, Bosnia and Herzegovina and Serbia still bar extradition based on nationality (citizenship). Other legal barriers preventing the transfer of war crimes cases from one state to another still exist. The Commissioner is also concerned by parallel investigations of war-related crimes being conducted in these countries, which in effect undermine the capacities and resources employed for the effective investigations and prosecutions of war-related crimes. The Commissioner reiterates his call on the authorities of

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<sup>93</sup> IPTF was established to reorganise the police forces in Bosnia and Herzegovina under Appendix 11 of the Dayton Peace Agreement. More than six hundred policemen had been denied certification in this process. About one third of them had not accepted the decision and had appealed to domestic courts. These had concluded that they had no authority to overrule the United Nations. The Commissioner requested in 2007 that the UN Security Council should allow the local authorities to resolve the problems on an individual basis and the President of the Security Council made an interpretative statement which would make it possible for them to reappoint decertified policemen.

<sup>94</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law UN GA Resolution 60/147, 16 December 2005.

<sup>95</sup> See also Council of Europe Parliamentary Assembly, Resolution 1785 (2011) on *the obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes*.

Bosnia and Herzegovina, Serbia and Croatia to step up their efforts to remove the remaining obstacles to regional co-operation in relation to prosecution of war-related crimes.<sup>96</sup>

186. The Commissioner considers unacceptable statements that deny the crime of genocide which was committed in Srebrenica in 1995. Such statements seriously affect the process of prosecution of war-related crimes, undermine the work of the ICTY and the Bosnia and Herzegovina judiciary, and discourage witnesses from participating in the war-related proceedings. Furthermore, such statements are detrimental for the process of reconciliation and rebuilding of lives of victims of war-related crimes.
187. Everyone claiming to be a victim of war-related crimes should have effective access to justice and be provided with effective remedies, making reparation possible. The Commissioner urges the authorities of Bosnia and Herzegovina to take all necessary measures to ensure reparation to victims of war-related crimes and their families, in line with the established principles of international law as reiterated in the 2005 UN 'Basic Principles and Guidelines'.
188. The authorities are urged, in particular, to examine with care the cases of civilian victims of war-related crimes and to provide them with adequate social protection, eliminating unequal treatment that exists between civilian and military victims of war.
189. The Commissioner recalls the authorities' obligations arising notably from Articles 2 and 3 of the European Convention on Human Rights<sup>97</sup> and invites them to continue with determination their efforts, at national and regional level, aimed at identifying the approximately 10,000 pending cases of missing persons due to the war. Adequate support should be provided for the effective continuation of the work of the Missing Persons Institute whose work can effectively contribute to the alleviation of the continued suffering of the missing persons' relatives.
190. In this regard, the Commissioner urges the authorities to ratify the 2006 International Convention for the Protection of All Persons from Enforced Disappearance, which was signed in 2007 by Bosnia and Herzegovina. The authorities are urged to create the Fund for Support to the Families of Missing Persons, as provided for by the 2004 Law on Missing Persons.
191. The Commissioner considers very important the provision of effective protection and support to witnesses in the context of war-related proceedings. He is deeply concerned about reports indicating that authorities of Bosnia and Herzegovina on occasions have not taken sufficient steps to effectively guarantee the witnesses' right to life, to stop and prevent unjustified infringements to witnesses' security and privacy, to protect them from acts of harassment and violence, and to enable them to participate in trials with dignity. The Commissioner is also concerned by non-existence of systematic witness protection on the level of Entities. In this regard the Commissioner urges the authorities to adopt the Law on the Witness Protection Programme that was proposed in 2008 by the Bosnia and Herzegovina Council of Ministers.<sup>98</sup> The Commissioner urges the authorities to implement the National War Crimes Processing Strategy in relation to the provision of adequate staff and equipment for the State Investigation and Protection Agency (SIPA).
192. It is of equal concern that many reported cases of threats and intimidations of witnesses remain uninvestigated by the competent authorities. The authorities are urged to investigate promptly all reported cases of threats and intimidation of witnesses, initiate criminal proceedings in such cases, and fully protect the security of the witnesses concerned.
193. The Commissioner has noted the call of the UN Security Council upon states to comply with their obligations under the UN Security Council Resolution 1820 (2008) for prosecuting persons responsible for the war-crimes of rape and other forms of sexual violence. The authorities of

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<sup>96</sup> See also Council of Europe Parliamentary Assembly Resolution 1786 (2011) *on reconciliation and political dialogue between the countries of the former Yugoslavia*.

<sup>97</sup> See, *inter alia*, European Court of Human Rights, Grand Chamber, *Cyprus v. Turkey*, judgement of 10 May 2001.

<sup>98</sup> See also Council of Europe Parliamentary Assembly, Resolution 1784 (2011) *on the protection of witnesses as a cornerstone for justice and reconciliation in the Balkans*.

Bosnia and Herzegovina are urged to undertake all necessary measures to ensure that the war-crimes of rape and other forms of sexual violence are effectively investigated and prosecuted, so as to enable the victims to have access to justice and to adequate reparation. This should also enable the victims who wish to return to their pre-war homes to do so in safety and without fear.

194. The collection of reliable statistics on the number of victims of these crimes are necessary to establish what kind of measures and resources should be put in place by the authorities in order to prosecute the perpetrators of those crimes and to provide the victims with access to justice and reparation.
195. In this context the Commissioner wishes to note that post-war justice and peace call for measures far beyond the necessary criminal proceedings and victims' reparation. He recalls the Council of Europe Parliamentary Assembly's Recommendation 1880 (2009) on *history teaching in conflict and post-conflict areas* and reiterates the significant role of history teaching for reconciliation in post-conflict situations. Genuine knowledge of history facilitates understanding, tolerance and trust between individuals, especially the young ones, and peoples. All countries concerned should realise the vital need to teach history without resorting to one single interpretation of events. The Commissioner stresses that it is only through an open dialogue, knowledge of the truth and deep reflection that members of post-conflict democracies in Europe may attain social cohesion and preserve their inherent, valuable pluralism.
196. The Commissioner has noted with concern instances of undue pressure and reported obstacles to the independence and efficiency of the judiciary in Bosnia and Herzegovina. Whilst understanding that open discussion on matters of public interest is necessary for the proper functioning of a democratic society, including discussions related to the issues of efficiency, impartiality and independence of the judiciary, some statements given by politicians in Bosnia and Herzegovina appear to go far beyond this approach. The Commissioner urges the authorities of Bosnia and Herzegovina to take effective measures to ensure that the judicial institutions in Bosnia and Herzegovina carry out their work without undue pressure in a climate that fully safeguards their impartiality and independence.
197. Non-enforcement of domestic judicial decisions continues to be a problem that hinders the efficiency of the judicial system and constitute a blow to the rule of law in Bosnia and Herzegovina. A number of judgments delivered by the European Court of Human Rights against Bosnia and Herzegovina found violations of the Convention due to non-enforcement of domestic judicial decisions. The Commissioner recalls the Council of Europe Committee of Ministers' Recommendation Rec(2003)17 *on enforcement*, and Recommendation CM/Rec(2008)2 *on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights*, and urges the authorities to immediately take all necessary measures that would ensure effective implementation of domestic court decisions and the removal of all obstacles to the proper functioning of the courts in Bosnia and Herzegovina.
198. Finally, the Commissioner calls on the authorities to examine and resolve the cases of the 220 police officers who were denied an appeal after having been barred from police service following the procedurally flawed vetting process of the UN International Police Task Force in the late 1990s. Adequate redress should be provided to those of them who are still in need of it.

## APPENDIX

### **Comments of Bosnia and Herzegovina on the Report by the Commissioner for Human Rights of the Council of Europe , following his visit to the Bosnia and Herzegovina on 27-30 November 2010**

First of all we should start from the fact that the Constitution of Bosnia and Herzegovina was established by Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Agreement, signed in Paris on 14 December 1995.

According to the Constitution, Bosnia and Herzegovina is a complex state which consists of two Entities: the Federation of Bosnia and Herzegovina and Republika Srpska and the District Brcko, as an independent administrative unit under international administration established in an award by the International Arbitration Tribunal in March 2000. The State consists of 14 administrative and government units in a 5-tiered administrative system, the Federation of Bosnia and Herzegovina is divided into 10 Cantons, which are divided into 79 Municipalities, and the Republika Srpska is divided into 62 Municipalities.

The Constitution of Bosnia and Herzegovina ensures the highest level of internationally recognized human rights and fundamental freedoms. Article II of the Constitution of Bosnia and Herzegovina provides that the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto shall be directly applied in Bosnia and Herzegovina. These shall have supremacy over all other laws. So, the European Convention on Human Rights and Fundamental Freedoms is the highest form of law in the legal system of Bosnia and Herzegovina.

The Constitution of Bosnia and Herzegovina provides that all persons shall be free from discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, affiliation with a national minority, property, birth or other status (the Constitution of Bosnia and Herzegovina Article II para. 4) and Article 14 - Prohibition of discrimination of the European Convention on Human Rights and Fundamental Freedoms. Regarding the protection of human rights, both the Entity Constitutions and the Cantonal Constitutions are brought in line with the principles on protection of human rights which are enshrined in the Constitution of Bosnia and Herzegovina.

The Constitution of Bosnia and Herzegovina determines the status of constituent peoples (Bosniaks, Croats, Serbs) and other citizens in Bosnia and Herzegovina in terms of guaranteeing the constitutionality and all rights in the entire territory of Bosnia and Herzegovina without any type of discrimination. After the tragic war in Bosnia and Herzegovina, in practice, for a quite long time, a problem of national exclusion and minorization of certain ethnic groups or Bosniaks or Croats or Serbs or others in terms of numerical representation in the legislative, executive and judicial bodies has been present. All the above resulted in a decision of the Constitutional Court of Bosnia and Herzegovina ordering amendments to the constitution of Entities and cantons and alignment with the Constitution of Bosnia and Herzegovina.

A partial decision on constitutionality issued by the Constitutional Court of Bosnia and Herzegovina ("BiH Official Gazette" No. 23/00) has given an interpretation of Preamble of the Constitution in which Bosniaks, Serbs and Croats are defined as "constituent peoples". Furthermore, the decision notes that Article II / 4 of the Bosnia and Herzegovina Constitution prohibits discrimination on any grounds such as *inter alia* affiliation with a national minority and thereby assumes the existence of groups defined as national minorities. It also states that the BiH Constitution makes a clear difference between constituent peoples and national minorities, in order to affirm the continuity of Bosnia and Herzegovina as a democratic multinational state. Constitutional amendments have made an important step in consolidating the political and legal order in the country as well as formal legal guarantees of equality of members of all peoples and equality of all citizens. This is the basis for the elimination of discrimination or discriminatory treatment of individuals and minority groups on the grounds of national, religious or political affiliation.

A decision issued by the Constitutional Court of Bosnia and Herzegovina has abolished previous entity symbols (flag, coat of arms and anthem), because they do not represent constituent peoples in the whole territory of Bosnia and Herzegovina.

A primary constraint, emphasized in the conclusions and recommendations of the UN Committee and the Council of Europe, is the Constitution of Bosnia and Herzegovina (Annex IV to the Dayton Peace Agreement, which stopped the tragic conflict in Bosnia and Herzegovina) which provides for the three constituent peoples (Bosniaks, Serbs and Croats) and the so-called "Others" and does not regulate Bosnia and Herzegovina as a community "of its citizens" because the term "the others" may include both national minorities and those who are "undeclared". The Constitution does not leave any possibility of a citizen of Bosnia and Herzegovina who is not a member of any of the constituent peoples to be elected to any top position in the country, either (the right of so-called "Others" to be elected is violated).

Owing to the violation of the right to be elected and discrimination against "Others", who are not members of any of the three constituent peoples of Bosnia and Herzegovina according to the Constitution, an application was filed with the European Court of Human Rights in Strasbourg by representatives of Roma and Jews. It is the case of *Dervo Sejdic and Jakob Finci against Bosnia and Herzegovina*. On 22 December 2009 the Grand Chamber of the Court of Human Rights in Strasbourg rendered judgment No. 27996/06, in favour of the applicants, ordering BiH to bear the legal costs of applicants and to proceed with the constitutional changes that will be compatible with the European Convention on Human Rights and Fundamental Freedoms.

With the aim of introducing the relevant constitutional and legislative amendments, the Council of Ministers adopted an action plan on 4 March 2010 and appointed a Working Group to draft them. The Central Election Commission adopted the Action Plan on 18 February 2010, stating in detail the provisions which should be adopted and possible steps to be taken if the amendments are not adopted before the scheduled general election by the end of May the same year.

On 4 April 2010 the Council of Ministers adopted the Action Plan in this regard and appointed a Working Group to draft the relevant constitutional and legislative amendments. Unfortunately, the Working Group of the Council of Ministers did not meet the deadline set to reach an agreement on proposed constitutional amendments because the leading politicians had a disagreement on substantive issues. After that, on 22 April 2010, the Council of Ministers considered the report of the Working Group responsible for the preparation of constitutional and legislative amendments and gave it a new deadline for discharging the task. This means that also the October election in Bosnia and Herzegovina passed without Bosnia and Herzegovina having complied with the judgment of the European Court of Human Rights. Therefore, this is expected to be finished and complied with immediately after the election, once the newly-elected and appointed officials take office in Bosnia and Herzegovina.

In this regard, the first priority of Bosnia and Herzegovina is the constitutional amendments that will equally treat all citizens of Bosnia and Herzegovina and expand the scope of the State's competences so that the State could have all necessary powers as the states in the region, Europe and worldwide have.

With regard to the comment of the Council of Europe Commissioner for Human Rights on the legal status of Roma refugees from Kosovo and the proposal that they need to have facilitated naturalization, our opinion is that this issue is not only a BiH concern but a regional concern that should be tackled regionally.

For the purpose of promotion of the protection of human rights, Bosnia and Herzegovina has adopted the following legislation:

1. The Law on Protection of National Minorities' Rights was passed and entered into force in May 2003 (Official Gazette of Bosnia and Herzegovina, No. 12/2003). After the passage the Law on Protection of National Minorities' Rights was published in the Official Gazette of Bosnia and Herzegovina in three official languages of Bosnia and Herzegovina and translated into English and the Roma language, which is very important for the emancipation of the Roma national minority in Bosnia and Herzegovina.

In late December 2004, the National Assembly, as the highest body of the legislative authority in Republika Srpska, passed the Law on Protection of National Minorities' Rights in Republika Srpska (Official Gazette of Republika Srpska, No. 2/2005), and after a long delay, in 2010 the Parliament of

the Federation of Bosnia and Herzegovina finalized the procedure of adoption of the Law on Protection of the National Minorities' Rights.

2. The Law on Amendments to the Law on the Protection of National Minorities' Rights was passed in October 2005 ("Official Gazette of Bosnia and Herzegovina" No. 76/2005). The decision on establishing the Council for National Minorities of the Parliamentary Assembly of Bosnia and Herzegovina was passed and published in May 2006 (Official Gazette of Bosnia and Herzegovina No. 38/2006), on the basis of which the above mentioned advisory body was constituted. A body with the same competences was constituted in the National Assembly of Republika Srpska and the Parliament of the Federation of Bosnia and Herzegovina.

3. The Law on Victims of the Torture and the Civil War Victims in Bosnia and Herzegovina is in preparation phase, and its draft was made by a Small Working Group, appointed in a decision by the Minister of Human Rights and Refugees. The draft will be presented for public consultations in which both the appropriate ministries of Bosnia and Herzegovina, Entities and District Brčko and the NGO sector will be involved.

The obligation of Bosnia and Herzegovina to draft the Law on Victims of Torture and Civil War Victims in Bosnia and Herzegovina is contained in the conclusions and recommendations of the UN Committee Against Torture which is in charge of monitoring the implementation of the Convention on the Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Member States of the UN.

The legal basis for the preparation of a Draft of the Law on Victims of Torture and Civil War Victims in Bosnia and Herzegovina is contained in the recommendation of the UN Committee against Torture, which states that the Committee against Torture encourages the State of Bosnia and Herzegovina "to develop legal and other measures enforceable throughout the State, including an official program for the rehabilitation of victims of torture including sexual violence, providing them recognition as victims and the capacity to pursue redress and their right to fair and adequate compensation and rehabilitation."

Regarding the education of national minorities in Bosnia and Herzegovina, it is important to emphasize the measure that authorities in Bosnia and Herzegovina adopted with the assistance of the OSCE Mission in Bosnia and Herzegovina and it was an Action Plan to meet the educational needs of Roma and other ethnic minorities in Bosnia and Herzegovina, on whose review the Action Plan Review Commission is currently working.

The Ministry of the Human Rights and Refugees, in cooperation with the Roma Board of Bosnia and Herzegovina, has prepared a document titled "The Strategy for Solving the Roma Issues in Bosnia and Herzegovina" (Roma Strategy). The adoption of this document presents the adoption of specific program of activities in different areas of life that will effect changes and improve the overall social situation of the Roma population in Bosnia and Herzegovina (education, employment, housing, health and social care, registration of the needs of Roma and others).

The Council of Ministers of Bosnia and Herzegovina has adopted the Action Plan for solving the Roma issues in the fields of: employment, housing and health care. At the 4 September 2008 Belgrade Conference, Bosnia and Herzegovina joined the Roma Decade and in early 2009 the Coordination Body for monitoring and implementation of the Action Plan was established and the Chairman of the Council of Ministers of Bosnia and Herzegovina appointed the National Coordinator for the Roma Decade.

The adoption of the Law on Protection of National Minorities' Rights of Bosnia and Herzegovina formally extended the possibility of exercising the rights of national minorities, especially after the enactment of adequate implementing legislation and affirmation of the basic international documents relating to the protection of national minorities. In this, a special place belongs to the Framework Convention for the Protection of National Minorities Rights, the European Convention on Human Rights and Fundamental Freedoms and the European Charter for Regional or Minority Languages which Bosnia and Herzegovina ratified in September 2010.



4. In order to exercise freedom of conscience and religion, as guaranteed by the Constitution of Bosnia and Herzegovina and the highest international standards, in March 2004, the Bosnia and Herzegovina Parliament adopted the Law on Freedom of Religion and Legal Position of Churches and Religious Communities in Bosnia and Herzegovina in order to contribute to improving the mutual understanding with respect to their own heritage and traditional values of tolerance and coexistence which has been present for decades in Bosnia and Herzegovina.

Pursuant to the provisions of the Law, Bosnia and Herzegovina has signed and ratified two international agreements and they are:

1. The Basic Agreement between Bosnia and Herzegovina and the Holy See (signed in April 2006) and the Additional Protocol to Basic Agreement which was signed in September 2006.
2. The Basic Agreement between Bosnia and Herzegovina and the Serbian Orthodox Church which was signed in 2007 and ratified in 2008.
3. The Basic Agreement between Bosnia and Herzegovina and the Islamic Community of Bosnia and Herzegovina is at drafting stage with a view to equally protecting all religious rights and freedoms.

According to the provisions of the Basic Agreement between Bosnia and Herzegovina and the Holy See, in December 2008 a Joint Committee for the implementation of the agreement was appointed, while the establishment of the Joint Commission for the implementation of the basic agreements with the Serbian Orthodox Church and the Islamic community is in the preparatory phase.

In Bosnia and Herzegovina the Agency for Gender Equality of Bosnia and Herzegovina has been established. The passage of the Law, the National Action Plan, as well as the establishment of the Agency is meant to prevent all forms of discrimination against women in Bosnia and Herzegovina.

5. On 21 May 2003 the Parliamentary Assembly of Bosnia and Herzegovina adopted the Law on Gender Equality of Bosnia and Herzegovina, which regulates, promotes and protects gender equality and guarantees equal opportunities for all citizens, both in public and private spheres of society, and prevents direct and indirect discrimination based on sex, bearing in mind the situation of gender representation in public life. Full gender equality is guaranteed in all spheres of society, particularly in education, economy, employment, labour, social and health care, sports, culture, public life and media, regardless of marital or family status.

6. In order to ensure a high level of protection of human rights, to sanction offenders and to protect victims of violence in Bosnia and Herzegovina, both entities have adopted the Law on Protection from Domestic Violence.

7. Learning from the negative experience and many victims resulting from the latest armed conflict (1992-1995), as evidenced by the adoption of the Law on Missing Persons and the establishment of the Institute for Missing of Bosnia and Herzegovina (the number of missing persons in Bosnia and Herzegovina is about 8,000 while 2,500 persons have been found, but they are still unidentified), Bosnia and Herzegovina, as a member of the UN and the Council of Europe and as a country that has been existing on the European ground for thousands of years, has recently signed an Agreement on Stabilization and Association with the EU, is committed (as evidenced by the legislation above) to strengthen the multinational, multicultural democratic society in which members of both the three constituent peoples of Bosnia and Herzegovina and 17 ethnic minorities, which are exhaustively enumerated in the Law, fully enjoy human rights guaranteed by international instruments protecting them, without fear of any new genocide, since the recent history of this country in the time span of 50 years records the genocide of Jews, Serbs and Roma in the Quisling NDH (1941-1945) and the Bosniaks (1995, in Srebrenica) without prejudice to the heinous crimes against humanity against all anti-fascists in the past and in the most recent wars.

8. After initial difficulties, the process of transfer of responsibilities from the Entity Ombudsmen to Bosnia and Herzegovina Ombudsmen was successfully completed, and the Institutions of Ombudsman were abolished in both Entities and on the basis of legal provisions the entity laws on Ombudsmen were abrogated.

The Law on Ombudsman for Human Rights in Bosnia and Herzegovina established the Institution of Ombudsman for Human Rights in Bosnia and Herzegovina as an independent institution for promotion of good governance and rule of law, protection of the rights and freedoms of natural and legal persons which are guaranteed, particularly by the Constitution of Bosnia and Herzegovina and international agreements, which are contained in the appendix of the Constitution, which will, in connection to this, monitor activities of the institutions of Bosnia and Herzegovina, its entities and Brcko District. Nationality, citizenship, domicile, gender, the minority, ethnic origin, religion, legal incapacity, imprisonment of any kind, and, in general, special relationships with and dependence on an authority of the government, may not restrict the right to file an application with the Institution (the principle on prohibition of discrimination).

In the Ombudsman Institution, separate departments have been established and they are:

- a) The Department for Protection of the Rights of the Child,
- b) The Department for Protection of Persons with Disabilities,
- c) The Department for the Rights of National, Religious and other Minorities
- d) The Department for Protection of the Rights of Detainees/Prisoners.

9. Following the example of European countries that support the adoption of comprehensive anti-discrimination legislation, Bosnia and Herzegovina have passed the Law on the Prevention of all Forms of Discrimination (the Anti-discrimination Law) while the Rulebook on the Collection of Data on Discrimination Cases, as a piece of subordinate legislation arising from the provisions of the Law, which prescribes establishment of a central database, is being finalized. The Law on Prohibition of All Fascist and Neo-Fascist Organizations and the Use of Their Symbols, has unfortunately stalled in the adoption procedure before the Parliamentary Assembly of Bosnia and Herzegovina.

For the ease of understanding of the significance which Bosnia and Herzegovina attaches to the respect and protection of human rights we want to inform you about the following:

Bosnia and Herzegovina is a Party to numerous international agreements, conventions and treaties respecting the interdependent, undivided and universal character of human rights and, following the international instruments of multilateral character, it has successfully presented the Initial and Periodic Reports to the competent committees of both the UN and the Council of Europe and they are:

- Universal Periodic Review (UPR);
- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights;
- UN Convention on the Elimination of All Forms of Discrimination;
- UN Convention on the Rights of the Child;
- UN Convention on the Elimination of All Forms of Discrimination against Women;
- UN Convention on the Rights of Migrant Workers and Members of Their Families;
- The Reports on the Optional Protocols to the Convention on the Rights of the Child

(Child pornography and child prostitution and Children in armed conflicts) and presentation of the First Report of Bosnia and Herzegovina on European Social Charter (revised), which was submitted to the competent Committee of the Council of Europe in November 2010, is under preparation.

Considering the above, it can be concluded that the State of Bosnia and Herzegovina and its Entities (the Federation of Bosnia and Herzegovina and Republika Srpska), Brcko District and the NGO sector, the Office of the Council of Europe and the Office of the UN High Commissioner for Human Rights in Sarajevo have continuous cooperation in the fight against racism, discrimination and intolerance with a view to respecting human rights, which is especially evident during the Bosnia and Herzegovina's preparation of reports on the implementation of internationally recognized document which Bosnia and Herzegovina has signed and ratified, and presentation before the competent committees of the Council of Europe and UN.

So, it is to conclude that Bosnia and Herzegovina is committed to the process of harmonization of national legislation with European and international legislation in order to develop democratic institutions and civil society, and gain faster inclusion into European integration processes.

## **RIGHTS OF PERSONS WITH DISABILITIES**

In order to carry out activities related to awareness-raising, promotion and improvement of the implementation of UN Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention, the Ministry of Human Rights and Refugees has prepared the Decision on the Establishment of the Council of People with Disabilities of BiH. This decision determines that the Council of People with Disabilities of BiH shall be established to ensure cooperation with the competent Entity authorities and associations of persons with disabilities.

The legal grounds for the decision are found in Article 17 of the Law on the Council of Ministers (BiH Official Gazette, nos. 30/03, 42/03, 81/06, 76/07, 94/07 and 24/08) which stipulates that the Council of Ministers makes decisions for the execution of its duties. Also Article 10(3) of the Law on the 2009 Budget of BiH Institutions and International Obligations (Official Gazette, no. 7 / 09) determines that the distribution of all available grants that is not defined by law or appropriate regulations of the Parliamentary Assembly of BiH, the Presidency or the Council of Ministers shall be governed by a decision of the Council of Ministers.

At 135th meeting of the Council of Ministers held on 19 October 2010 the decision was adopted, provided that, as indicated in the decision itself, Article 8 should be amended as requested by the Minister of Civil Affairs. Given the amending proposed has started in the meanwhile, the Council for Persons with Disabilities of BiH is expected to be established as ordained in the decision.

In order to strengthen the Council, the Human Rights Department of the Ministry of Human Rights and Refugees has submitted a project proposal titled *"Capacity Building of Associations of People with Disabilities Who are Members of the Council for Persons with Disabilities of BiH"* to the European Commission, within the IPA funds. We hope that if this project is approved, it will further enhance the work of the Council and improve the overall situation of people with disabilities throughout Bosnia and Herzegovina.

Bosnia and Herzegovina, as a Party to the Convention on the Rights of Persons with Disabilities, is obliged to submit the first report on measures for exercising the rights guaranteed by the Convention two years after the entry into force in the State party. After this report, it will report at least every four years or more frequently if requested by the UN Committee on the Rights of Persons with Disabilities.

The Ministry of Human Rights and Refugees, in cooperation with the Ministry of Civil Affairs, will continue discharging program tasks under Action Plan for People with Disabilities in order to generally improve the status of and enjoyment of all rights under the Convention on the Rights of Persons with Disabilities.

## **INTERNALLY DISPLACED PERSONS**

At the time of signing the Dayton Peace Agreement in late 1995, Bosnia and Herzegovina had about one million displaced persons, making almost one fourth the total population of BiH.

Based on data obtained from the relevant Entity ministries and departments of the Government of the Brcko District of BiH, currently in Bosnia and Herzegovina 37,408 families have the status of displaced families with a total of 113,642 displaced persons, out of which 48,772 or 43% are displaced in the Federation, 64,624 or 56.8% in the RS and 246 or 0.3% in the Brcko District.

The national structure of displaced persons is: 36% are Bosniaks, 6% are Croats, 57.3% are Serbs and 0.7% are other nationalities.

An overall picture at the state level shows that the highest number is the number of people displaced from one into another Entity (inter-Entity displacement), with the highest percentage in the RS, where over 90% of the displaced persons come from the FBiH, while in the FBiH a majority of displaced persons are displaced within the Entity (intra-Entity displacement), with the same situation particularly prevailing in Brcko, where more than half of the displaced persons are displaced within the District, or internally displaced.

Furthermore, internal displacement or displacement within the place of residence prevails in urban areas where so-called socially-owned housing units / flats were highest in numbers. This can be directly linked with a significant number of housing units in multi-family buildings that are still damaged and destroyed and whose renovation has not adequately followed the need to return due to the high costs of rehabilitation and other problems, such as unresolved property issues and the like.

In the Federation, most displaced people live in the municipalities of Canton Sarajevo and Tuzla and the City of Mostar, while in the Republika Srpska most of them live in Banja Luka and municipalities of Doboj, Zvornik, Prijedor and Bijeljina.

Displaced persons reside in different types / forms of housing in the two Entities and Brcko District. While the displaced persons in Brcko District are housed exclusively in individual housing, in the two Entities there are different forms of collective accommodation. However, unlike the Federation, in which there are still facilities specifically assigned and officially recognized as collective centres, and other forms of collective accommodation as well, in the Republika Srpska, collective centres for displaced persons are various facilities converted and adapted for this purpose, and they are usually former schools, community centres, barracks, medical centres and the like, with very poor living conditions, and also some facilities such as hotels or motels or corporate facilities having served to accommodate workers, are rented to serve as collective centres. In these buildings the living standard of displaced persons is very poor.

Unfortunately, even today, 14 years after the conflict, about 2,800 families with a total of about 7,500 people still live in these accommodation facilities.

When the data on the number of displaced persons is compared with the number of registered returns in the same period, we can see encouraging figures, which indicate that a majority of displaced people resolved their status by returning to pre-war homes.

It is evident, however, that a number of people have opted for integration in their place of displacement, while a number of displaced persons has found a permanent solution in leaving BiH.

For most of the remaining displaced persons in BiH, a permanent solution can be found in sustainable return to pre-war homes, while about one-third of them need some other type of durable solutions to be worked out, be it integration in the place of displacement or placement in appropriate facilities.

Undoubtedly, the top priority of Bosnia and Herzegovina is to find appropriate durable solutions for displaced persons accommodated in collective housing.

## **THE RIGHT TO EFFECTIVE LEGAL REMEDY**

In Bosnia and Herzegovina, the judiciary is independent and every person has a statutory right to seek redress in the court when his/her rights are violated.

The judicial system in Bosnia and Herzegovina follows the administrative structure of Bosnia and Herzegovina, so that at the level of Bosnia and Herzegovina there are the Constitutional Court of Bosnia and Herzegovina and the Court of Bosnia and Herzegovina established.

The Constitutional Court is an appellate court that has exclusive jurisdiction to rule on any dispute that arises under the Constitution of Bosnia and Herzegovina between the Entities or between Bosnia and Herzegovina and one or both Entities, and between the institutions of Bosnia and Herzegovina (Article VI of the Constitution). The Court of Bosnia and Herzegovina has five types of jurisdiction, and, *inter alia*, decides on positive or negative conflicts of jurisdiction, as well as any other disputes which may arise in the relationship between state and Entity governments and institutions of Bosnia and Herzegovina.

Therefore, the Constitutional Court as a *sui generis* Court, is the highest instance of legal guarantees of human rights and freedoms in Bosnia and Herzegovina.

The Court of Bosnia and Herzegovina has been established by the Law on Court of Bosnia and Herzegovina, which determines its criminal, administrative and appellate jurisdiction.

The independence of the court is ensured through appointments by the Commission for Appointment of Judges and a judicial position is incompatible with any political position.

There are three Divisions in the Court: the Criminal, Administrative and Appellate Division. The Court has jurisdiction to take a final and binding position in connection with law enforcement and international agreements on request of any Entity court or any court of the Brcko District which is in charge of the implementation of these legal provisions. It resolves conflicts of jurisdiction between Entity courts, decides on the reopening of criminal proceedings, decides on appeals against final administrative decisions of the institutions of Bosnia and Herzegovina, assesses the legality of individual and general subordinate legislation enacted on the basis of a State law, resolves property disputes between the State and Entities and Brcko District of Bosnia and Herzegovina.

The judicial power in the Federation of Bosnia and Herzegovina is vested in: the Supreme Court of the Federation of Bosnia and Herzegovina, 10 Cantonal Courts and 28 Municipal Courts.

Article 4 of the Constitution of the Federation of Bosnia and Herzegovina (Judicial Authority of the Federation) provides that the judicial authorities of the Federation of Bosnia and Herzegovina are autonomous and independent. It is stipulated that the Courts will provide equal position of all parties in court proceedings (principle of equality - *audiatur et altera pars*).

The Supreme Court of the Federation of Bosnia and Herzegovina has Civil, Criminal and Administrative Departments.

The judicial power in the cantons is exercised by Cantonal and Municipal Courts that were established on the basis of the Constitutions of the Cantons.

In the Republika Srpska the following Courts operate: the Supreme Court of Republika Srpska, which consists of Civil, Criminal and Administrative Departments, 5 District Courts and 19 Basic Courts.

The Law on Amendments to the Law on Courts of Republika Srpska has established eight new commercial district courts and a higher commercial court. The Law came into force in late December 2008.

The Entity Constitutional Courts are competent to evaluate the constitutionality of a law, i.e. whether it complies with the Constitution of the Entity. The Entity Constitutional Courts have appellate jurisdiction, as is the case with the Constitutional Court of Bosnia and Herzegovina.

In Bosnia and Herzegovina, until early December 2006, there were Misdemeanour Courts, as the courts of special jurisdiction whose jurisdiction in the Federation of Bosnia and Herzegovina and the Republika Srpska was taken over by the newly established Misdemeanour Departments within the Municipal Courts and Basic Courts respectively. The Cantonal Courts in the Federation and the District Courts in the Republika Srpska are designated as courts of second instance (court of appeals).

The Law on Courts of the Brcko District of Bosnia and Herzegovina has established the Basic Court (Court of General Jurisdiction) and the Appeal Court.

The Basic Court is competent to deal with criminal, misdemeanour, economic, civil and administrative cases as the court of first instance. The Appeal Court has jurisdiction to decide on the regular legal remedies lodged against decisions of the Municipal Court of Brcko District Bosnia and Herzegovina and extraordinary legal remedies against final court decisions.

The Courts are impartial and independent and ensure equality of all citizens before the law as guaranteed by the act of establishing them in accordance with Montesquieu's separation of powers into the legislative, executive and judicial branches.

In order to establish independent and impartial judiciary and prosecution, the Judicial Commission of Brcko District of Bosnia and Herzegovina ensures independence and competence in performing judicial and prosecutorial functions.

Thus, the judicial authorities in Bosnia and Herzegovina are autonomous and independent.

The High Judicial and Prosecutorial Council of Bosnia and Herzegovina has a special role in the judicial system of Bosnia and Herzegovina. It was established under the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina, which entered into force on 1 June 2004. The Council is an autonomous body of Bosnia and Herzegovina and it is a legal entity, which, in addition to other duties, ensures the independence and autonomy of courts and judges in Bosnia and Herzegovina. Functioning of the judicial system is based on four key principles and they are: the independence of the court, the responsibility of judges, court efficiency and quality of judicial decisions.

The Constitution of Bosnia and Herzegovina prescribes the procedure of selecting judges to the Constitutional Court of Bosnia and Herzegovina and Entity Constitutional Courts.

Control and protection of work by judges and prosecutors is ensured through the High Judicial and Prosecutorial Council, while an oversight of code of conduct is achieved through the Office of Disciplinary Counsel.

### **The right to judicial protection**

The 14 December 1995 General Framework Agreement for Peace in Bosnia and Herzegovina (to the wider public known as the Dayton Peace Agreement) established Bosnia and Herzegovina as an internationally recognized state, which consists of two entities: the Federation of Bosnia and Herzegovina with ten Cantons and the Republika Srpska.

The Brcko District of Bosnia and Herzegovina, as a condominium, was established by an Arbitration Decision on Brcko, on 5 March 1999, as a special administrative unit named the Brcko District of Bosnia and Herzegovina.

The criminal legislation of Bosnia and Herzegovina protects the guaranteed rights and freedoms of citizens by criminalizing the actions which may impede or restrict the enjoyment of the guaranteed freedoms.

Among other, the right to judicial protection provides also for the right to fair trial, right to efficiency of the court, the right to appeal, the right to compensation, etc.

Regarding the right to appeal, as a regular legal remedy, it should be stressed that this right is guaranteed in Bosnia and Herzegovina in a two-step court procedure and under some special circumstances even second appellate proceedings are allowed when there are extraordinary legal remedies (e.g. revision).

## **HUMAN RIGHTS INSTITUTIONS**

According to the state and Entity laws, there is a number of institutions that are mandated to promote, enhance and protect human rights, at the state level or at the Entity level.

Basic local mechanisms for the protection of human rights are: Ombudsman for Human Rights of Bosnia and Herzegovina, the Commission of the Constitutional Court of Bosnia and Herzegovina, Ministry of Human Rights and Refugees of Bosnia and Herzegovina.

### ***a) The Ombudsman for the Human Rights of Bosnia and Herzegovina***

The Ombudsman for Human Rights of Bosnia and Herzegovina is authorized to examine the alleged violations of human rights and to make recommendations for redress. The Ombudsman can work on the basis of complaints or *ex officio* and his/her efforts are focused on peaceful settlement of disputes. The Ombudsman investigates allegations of human rights violations, issues findings and conclusions about it, and notifies the competent official or institution of his report or request. The Ombudsman may initiate proceedings before the Court for Human Rights and has free access to official documents.

On 12 December 2000, the High Representative imposed the Law on the Ombudsman for Human Rights in Bosnia and Herzegovina, on the basis of which the ombudsman institution has come within competences of Bosnia and Herzegovina on the basis of which, after a long waiting period, integration into a single Institution of the Ombudsman for Human Rights at the state level was made.

The establishment of a single Institution of Ombudsman of Bosnia and Herzegovina was one of 16 pre-conditions of the European Union that preceded the signing of the Stabilization and Association Agreement.

In early December 2008, three new Ombudsmen were appointed in Bosnia and Herzegovina. It created the new normative environment for the operation of the institutions, which takes place in two directions:

a) the adoption of by-laws of the Institutions to ensure its smooth functioning (Rules of Procedure, Employees' Policies and Decision-Making Procedure Manual, the Rulebook on Salaries, Rules of the Office Operations, Rulebook on Internal Structure and Job Descriptions, Rulebook on Disciplinary Responsibility etc.);

b) the adoption of by-laws that will create conditions for the termination of the entity Institutions (Rulebook on Organizational Structure and Job Descriptions and Decision on the Taking Over of Personnel, Facilities and Equipment of Entity Institutions).

Seven specialized Departments have been established and they are: the Department for Protection of the Rights of the Child, the Department for Protection of Persons with Disabilities, the Department of the Rights of National, Religious and Other Minorities, the Department of Economic, Social and Cultural Rights, the Department of Political and Civil Rights, the Department for Elimination of All Forms of Discrimination and Protection of the Rights and the Department of the Rights of Detainees/Prisoners.

The Department for Elimination of All Forms of Discrimination is very significant, bearing in mind the fact that the Parliamentary Assembly has recently adopted a comprehensive Law on Prohibition of Discrimination (Anti-discrimination Law) which provides that the Institution of the Ombudsmen for the Human Rights in Bosnia and Herzegovina shall be a mechanism for monitoring the implementation of the Law and submission of complaints.

### **b) The Constitutional Court of Bosnia and Herzegovina**

Decisions of the Constitutional Court are final and binding. In the earlier judges' term of office and now, there have been outstanding difficulties in funding and equipping the Court as well as in modernization and developing a database of the Court.

The Constitutional Court consists of 9 judges, of whom 4 judges are appointed by the House of Representatives of the Federation of Bosnia and Herzegovina, 2 judges are appointed by the Assembly of the Republika Srpska and the remaining 3 judges are appointed by the President of the European Court for Human Rights. The term of office of the judges is 5 years.

In regard to alleged human rights violations, primarily through the work of the Constitutional Court, Bosnia and Herzegovina has fully accepted and been practically applying the principles which are applied by the European Court of Human Rights.

### **c) The Ministry of Human Rights and Refugees**

The Ministry of Human Rights and Refugees was established in April 2000, in accordance with the Law on the Council of Ministers and Ministries of Bosnia and Herzegovina. In 2003, the Law on Ministries and Other Administrative Bodies was passed. In accordance with Article 12 the Ministry of Human Rights and Refugees, among other things, is responsible for: the promotion and protection of individual and collective human rights and freedoms, the creation and implementation of activities to meet obligations in respect of accession of Bosnia and Herzegovina to Euro-Atlantic organisations, particularly in connection with the implementation of the European Convention on Human Rights and Fundamental Freedoms and Protocols thereto; establishment and functioning of the Agent of the Council of Ministers of Bosnia and Herzegovina and the Office of the Agent of the Council of Ministers before the European Court for Human Rights, the establishment and functioning of the Gender Equality Agency in Bosnia and Herzegovina and the protection of gender equality.

Besides the mentioned activities, the Ministry is responsible for monitoring the human rights situation in Bosnia and Herzegovina, contacts with national and international institutions in the field of human rights, contacts and cooperation with NGOs as well as for monitoring the degree of conformity of domestic laws with the conventions which are applicable in Bosnia and Herzegovina, primarily with the European Convention on Human Rights and Fundamental Freedoms.

A special role is given to the Agent of the Council of Ministers before the European Court for Human Rights in Strasbourg, which operates within the Ministry.

Most cases involve foreign currency savings, non-enforcement of judgments of domestic courts in which "war damages" have been awarded or "war claims" have been sustained, the return of military housing in the Federation of Bosnia and Herzegovina and persons that went missing during the war. It is interesting to note that the European Court of Human Rights in Strasbourg ruled in the case of *Sejdić and Finci against Bosnia and Herzegovina* in favour of the applicants and ordered the removal of discriminatory provisions from the Constitution of Bosnia and Herzegovina in order to provide all citizens of Bosnia and Herzegovina, besides with the right to elect, also with the right to stand for election and be elected.

Each of these institutions is opened to help the citizens of Bosnia and Herzegovina and one can freely, without restrictions, submit an application for the protection of human rights. The fact is that there are a lot of problems and cases pending before the three authorities. It is evident that the human rights situation in Bosnia and Herzegovina is improving.

After having exhausted all legal remedies before national judicial authorities, including regular and extraordinary legal remedies, any citizen of Bosnia and Herzegovina has recourse to the European Court of Human Rights in order to have his/her rights and freedoms protected in individually initiated proceedings. Citizens of Bosnia and Herzegovina have at their disposal the possibility of extraordinary review of judgments in terms of compliance with the Constitution of Bosnia and Herzegovina and the international conventions which Bosnia and Herzegovina is required to apply.

In 2010 the Committee on Civil and Political Rights received the first applications from citizens of Bosnia and Herzegovina involving transitional justice and missing persons, and cancellation of residence permits to foreign nationals. Bosnia and Herzegovina has sent its considerations in a timely fashion to the UN Human Rights Council in these proceedings which are still pending.

#### **Other institutions for the protection of human rights:**

1. The Joint Commission for Human Rights, Rights of the Child, the Youth, Immigration, Refugees, Asylum and Ethics of the Bosnia and Herzegovina Parliamentary Assembly.

The Joint Commission for Human Rights, Rights of the Child, the Youth, Immigration, Refugees, Asylum and Ethics of the Parliamentary Assembly of Bosnia and Herzegovina (hereinafter: the Commission) is a permanent working body. Its mandate is governed by provisions of Article 59 of the Rules of Procedure of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina and Article 53 of the Rules of Procedure of House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina.

The Joint Commission for Human Rights, Rights of the Child, the Youth, Immigration, Refugees, Asylum and Ethics considers issues relating to the exercise of human rights and fundamental freedoms, in order to implement Annex 6 and 7 of the Dayton Peace Agreement.

#### **Entity Human Rights Commissions**

2. The Commission for Human Rights and Freedoms of the House of Representatives of the Federation of Bosnia and Herzegovina considers alleged violations of freedoms and rights of citizens provided for in the Constitution and laws in the Federation of Bosnia and Herzegovina.

As a rule, the Commission does not consider cases which are pending before judicial and other authorities, except when it comes to an unacceptable delay in the proceedings or evident abuse of power or arbitrariness the Ombudsman draws attention to.

3. The Commission for the Human Rights and Freedoms of the House of Representatives of the Parliament performs the following tasks: considers alleged violations of rights and freedoms stipulated by the Constitution and laws of the Federation by the State bodies, public institutions and organizations exercising public authority, as well as broader issues of importance for the protection of human rights and fundamental freedoms which are triggered by the Ombudsmen, citizens, political



organizations and civic associations, other organizations and communities and informs the House of Representatives about them.

The Commission submits communications, complaints and suggestions that initiate the adoption, modification or amendment of laws and subordinate legislation to the Speaker and Deputy Speaker of the House of Representatives.

### **3. The Committee of Equal Opportunities**

The Committee for Equal Opportunities discusses issues under the jurisdiction of the National Assembly concerning the equality of men and women, the social status of women, labour and occupational safety, child protection, social security, protection of pensioners and the elderly, youth and sport, science, culture and art, education, housing policy, privatization, non-governmental organizations with similar program activities; election law, violence against women and all other areas that affect the equality of the sexes. The Committee's work is determined by the Rules of Procedure of the National Assembly of Republika Srpska.

#### **Strengthening partnership with civil society**

It is an indisputable fact that NGOs have a very important role to play in the development of the civil society, rule of law and democracy in Bosnia and Herzegovina. Of course, they are primarily characterized by freedom of association, the lack of burden of authority and institutionalization, easily recognized by widespread and voluntary membership, as well as their organized involvement in those issues that are issues of their interest as well as the interest of the society as a whole. In this way, nowadays the civil society has become a vision and desire of all democratic systems, as the concept of the establishment and exercise of liberty by an individual, his/her full participation in conducting of public affairs and the principles of equality and the rule of law in whose creation and implementation the citizens and their associations have been increasingly taking part. On these bases, non-governmental organizations in Bosnia and Herzegovina have been increasingly becoming institutional forms of the society. They have been assuming the exercise of public affairs and services, in a democratic way achieving the protection of public interests important to a citizen, because he/she directly participates in making the important decisions, in accordance with his/her wishes and the extent of his/her needs. Thus, the definition of civil society as "democracy in action" has been confirmed, because the authorities in Bosnia and Herzegovina have more interest in the inclusion of the NGO sector in the overall development of democratic relations and establishing a strong rule of law and democratic state.

Although in Bosnia and Herzegovina there are several thousand of registered NGOs, only a hundred of them are active and contributing to the development of the society in different areas. This means that a large number of NGOs has not demonstrated the ability to formulate a clear strategy for the civic democratic development by requiring the changes in certain segments of society. In this regard it is visible that the impact and importance of NGO development depends primarily on a clearly established legal framework within which they operate, the existence of institutional mechanisms for the involvement of NGOs in the political and social processes, creating conditions for opening the political institutions to communicate and cooperate with them, visibility of the NGO sector in the public and ensuring public confidence in it etc.

#### **Constitutional and legal framework for NGOs in Bosnia and Herzegovina**

##### **a) The constitutional grounds**

The legal status of NGOs in Bosnia and Herzegovina should be considered in light of the provisions of the Constitution, under which Bosnia and Herzegovina and both entities have a constitutional obligation to provide "the highest level of internationally recognized human rights and fundamental freedoms". Thus, the freedom of citizens of Bosnia and Herzegovina to associate with others is their constitutional right and the State and both Entities must ensure it, without discrimination. It is particularly important to emphasize that the rights and freedoms referred to in Article II of the Constitution of Bosnia and Herzegovina, including freedom of association with others, cannot be eliminated or diminished by any amendments to the Constitution itself, which means that this cannot happen by amending the Constitution of Entities or their laws, either.

The constitutional grounds for the legal regulation of associations and foundations are enacted by the highest legislative body of Bosnia and Herzegovina, which is the Parliamentary Assembly of Bosnia

and Herzegovina. This is about the freedom of association with others and it is not constituted but simply stated in the Entity Constitutions, and it is constituted by the Constitution of Bosnia and Herzegovina, along with the international responsibility of Bosnia and Herzegovina for its security and protection.

### **b) Legal framework**

Starting from these constitutional grounds at the state level, in 2001 the Law on Associations and Foundations was adopted and its value is indisputable as it puts every person on the whole territory of Bosnia and Herzegovina in the same position and provides them with the same conditions while exercising and protecting their human and internationally recognized right to associate with each other. Pursuant to the Law on Associations and Foundations, the non-governmental organizations can generate income from providing goods and services. NGOs can also engage directly in joint economic activities. However, the law limits the revenue derived from the separate entities (companies / enterprises owned by the NGOs) established by the NGOs to the amount of BAM 10,000. As this matter is not regulated by law at the state level, this applies only to the non-governmental organizations that are registered under the laws of the Entities. NGOs can compete for government contracts, but it is still a rare practice. We still need to work on the elaboration of the Law on Associations and Foundations, especially in the part that relates to tax policy.

### **c) Agreement on Cooperation between the Council of Ministers and the NGO sector in Bosnia and Herzegovina**

The Agreement aims to create a new approach to partnership between the Council of Ministers and the NGO sector in Bosnia and Herzegovina. The Council of Ministers and the NGO sector can share many interests - the tendency toward openness, commitment to the public life and support to building sound communities. Although not a legally binding document, its strength rests on the consent of partners to mutual consultations, discussions and agreements especially when it comes to important issues and topics. The Agreement particularly emphasizes the cooperation of the NGO sector with the lower levels of government, because the governments at lower levels of government and NGO sector have a range of complementary functions and shared values that will be enhanced with this Agreement in the future. It is a partnership for the betterment of society, encouraging and supporting the voluntary social activities.

### **Achievements - examples of good practice**

Besides the above-mentioned Agreement on cooperation between governmental and non-governmental sector, in practice, a significant progress has been made to reflect in the cooperation with the ministries and other state agencies with NGOs. An example of good practice is the cooperation of the Ministry for Human Rights and Refugees with the non-governmental organizations that monitor human trafficking, when an Agreement on cooperation was signed with six NGOs. There is good cooperation with NGOs in preparation of draft laws, by-laws and preparation of the Initial and Periodic Reports, which Bosnia and Herzegovina, as a member of the UN and the Council of Europe, has to submit to the competent international committees and other institutions in a timely fashion. Governmental and non-governmental organizations of civil war victims, refugees and displaced persons, representatives of missing persons, the Roma communities, minority organizations, religious groups etc. have especially good and constructive cooperation.

As an example of good cooperation with the NGO sector, we can emphasize their cooperation with the Ministry of Justice or the Department for Strategic Planning and Integration, which together with JSDP USAID was in charge of making rules for the consultation.

A positive initiative, as an example of good relations and constructive cooperation, is also the initiative of 10 NGOs when they, in mid-June 2009, presented to the Council of Ministers the conclusions of debates that were organized in nine cities in Bosnia and Herzegovina. Topics of the conclusions are their views on the participation of citizens, civic groups and NGOs in the processes of policy making and legislation enacting, building the institutional and legal framework for the operation and development of the NGO sector, measures to support the development of non-governmental organizations etc.

As a positive example of good practice we note the adopted Strategy for the Sustainable Development of the NGO sector, prepared by the Committee of the "Work and Succeed Together" Coalition, which brought together more than 300 non-governmental organizations from all over Bosnia and Herzegovina. The main objective of the mentioned program is to define and establish a more favourable overall social framework and build the necessary infrastructure for sustainable development of the NGO sector in Bosnia and Herzegovina.

We should cite here the good cooperation with the Helsinki Committee for Human Rights of Bosnia and Herzegovina and the Helsinki Committee for Human Rights of Republika Srpska, Transparency International (TI) of Bosnia and Herzegovina, in the issues of human rights where human rights violations are pointed to in the field, proposals for new legislation and amendments to valid legislation are taken under consideration and their reports are taken into account and used for faster and more efficient troubleshooting.

Especially good cooperation was established with the Office of the Ombudsman for Human Rights of Bosnia and Herzegovina, whose reports indicate to and alert authorities of violations of human rights in various areas of society.

Good and positive cooperation was maintained with UNICEF, UNHCR, Save the Children Norway, UNDP and others, which is reflected in the professional and financial support, especially when it comes to the projects related to children's rights and the exercise of national minorities' rights, particularly Roma.

### **The situation and problems of the Non-Governmental sector in Bosnia and Herzegovina**

In Bosnia and Herzegovina in the last 15 years the NGO sector has been intensively developing. NGOs were the first form of thinking different from the opinion of the government sector. However, still most of the NGOs are not adequately trained to fulfil their mission because they face different problems. Their major internal problems can be mainly defined as a lack of financial and other material resources, inadequate level of expertise and competence of their leaders and activists, particularly in rural parts of the country.

Most non-governmental organizations that are active today are oriented in two main directions: firstly, they are oriented to the various international institutions and organizations with the aim of obtaining the necessary financial resources and equipment (for example, human rights, democracy, return of refugees and displaced persons, European integration, environment etc.), secondly, they are oriented to the State and its sources of funding (the association of veterans, refugees, national associations and professional associations such as beekeepers, technicians etc.).

In the practice of NGOs in Bosnia and Herzegovina, as a rule, most of them happen to get the support from international institutions in various ways at the time of establishment and at early stages of its operation, but they are abandoned soon, just when they begin the process of affirmation in the community as successful non-governmental organizations. In such circumstances, most of them remain only on the paper, because without donor support they cease to exist, not managing to ensure sustainability and ability to resist the various pressures that they are exposed to.

So, when it comes to the non-government sector, Bosnia and Herzegovina as a whole still does not have a developed internal structure and affirmation in the wider social structure. Currently, the non-governmental sector needs more help from the authorities, which would be reflected in additional financial resources for their further profiling, institutional building and significant influence on solving problems in Bosnia and Herzegovina.

### **Directions to improve the place and role of the NGO sector in Bosnia and Herzegovina**

Besides building functional, organizational and personnel capacities of the NGO sector in Bosnia and Herzegovina, the sector should be strengthened and directed towards:

- Continuous and substantial cooperation between government and NGO sector,
- Strengthening technical and financial capabilities of NGOs to implement activities and achieve goals they have been established .

Since realistic assumptions for the development of the NGO sector in Bosnia and Herzegovina (the constitutional basis, the agreement with the Council of Ministers of Bosnia and Herzegovina, strategy for the development of NGOs etc.) have been established, the tasks of the government sector should imply the following: independence of the NGO sector, material and financial support, involvement of

NGOs in development and consultation and strengthening the quality of work of the NGO sector and the preparation of appropriate legislation that will more than ever strengthen the NGO sector. On the other hand, tasks of the NGO sector should move in the following direction: the responsible discharge of duties and responsible use of resources, including proactive participation in the development and communication and the constant strengthening and improving the quality of its work.

### **Education and awareness-raising**

Based on the recommendations of the Ministry of Civil Affairs of Bosnia and Herzegovina, an additional certification process for teaching staff in "Democracy and Human Rights" in secondary schools is under way. The first conference on Democracy and Human Rights as a school subject was held on 9 October 2010 in Sarajevo and included 160 teachers. The conclusion of the Conference was to continue the ongoing development of teachers in the field of democracy and human rights and to this end, to improve the curricula and to work of the visibility of the inclusion of this subject in both secondary and primary schools in Bosnia and Herzegovina.

Education in human rights and democracy is an integral part of the curricula in all universities throughout Bosnia and Herzegovina.

Bearing in mind the above, it is evident that within the overall activities, Bosnia and Herzegovina pays attention to development of young people's awareness of the importance of protecting and promoting human rights and the principles of sound democracy.

In the field of human rights and the implementation of human rights conventions, treaties and charters, the regular training of judges, prosecutors and lawyers and civil servants are in place at all levels of government in Bosnia and Herzegovina.

### **Action-oriented policies, practices and strategies in preventing human rights violations**

On the basis of comments and recommendations of the UN Committees and Committees of the Council of Europe, Bosnia and Herzegovina has adopted the Framework Action Plan for implementation of these recommendations, which is implemented continuously in cooperation with the governments of both Entities and the Brcko District of Bosnia and Herzegovina.

Bearing in mind the grave socio-economic situation in Bosnia and Herzegovina, in response to the global economic crisis, all the governments in Bosnia and Herzegovina have defined some measures in the social sector to eliminate effects of the crisis. The intention of the measures of the government is reflected in the adjustment of public spending through amending the spending accounts of the budget by reducing the level of salaries and reforming the system of social benefits.

Learning from the negative experience in the past, Bosnia and Herzegovina has established the mechanisms for the protection against unwanted conflicts criminalized in the Criminal Code and guaranteed the protection by establishing the War Crimes Chamber within the Court of Bosnia and Herzegovina, Prosecutor's Office, the Ministry of Security of BiH, under which the Investigation and Protection Agency operates, the Intelligence and Security Agency and the Interpol in Bosnia and Herzegovina.

As part of the security activities Bosnia and Herzegovina has established continuous cooperation with the International Tribunal for War Crimes in The Hague.

### **Provision of effective remedies, recourses and other measures at the national level**

We use this opportunity to recall the existence of the Institution of Ombudsman for Human Rights as an independent institution responsible for the protection of human rights in accordance with the principles contained in the Constitution of Bosnia and Herzegovina and international agreements that are appended to it. Acting *ex officio* or at a party's request, the Ombudsman for Human Rights considers any matter related to the unsatisfactory performance or violation of human rights committed by the authorities (at all levels of government in Bosnia and Herzegovina).

The Ombudsman Institution cannot interfere with the decision-making process or require modification of decisions or represent anybody in proceedings (criminal, misdemeanour, civil, litigation, non-contentious, executive and administrative), but the function of the Ombudsman is making

recommendations (after human rights violation(s) are found) so that the authorities could find mistakes and correct any irregularities in the proceedings, acting in accordance with established principles.

The Ministry for Human Rights and Refugees has the Department for the Protection of Human Rights, which interacts with other authorities on the basis of citizens' applications in order to prevent and redress human rights violations.

In 2010 the mentioned Department processed 218 applications involving the following types of violations:

- The right not to be subjected to torture or inhuman or degrading treatment or punishment
- The right not to be subjected to slavery or humility or forced or compulsory labour
- The right to liberty and security
- The right to fair trial
- The right to private and family life, home and correspondence
- The freedom of thought, conscience and religion
- The freedom of expression
- The right to an effective remedy
- The prohibition of discrimination
- The right to free elections (*ius suffragi*)
- The right to property
- The right to freedom of movement and residence (*animus vivendi*)
- The right to marry and to found a family
- The freedom of peaceful assembly and association
- The prohibition of expulsion of nationals
- The compensation for wrongful conviction rendered
- The right not to be tried or punished twice (*ne bis in idem*)
- The right of appeal in criminal cases
- The protection of the rights of the child (child's best interest)
- The right to the minimum necessities of life
- The employment rights
- The exercise of the rights of families of missing persons
- The exercise of the rights of persons with disabilities
- The process of tracing missing persons
- The exercise of the rights to reconstruction of destroyed property.

Recently, through the Mission of Bosnia and Herzegovina to the UN in Geneva, the authorities of Bosnia and Herzegovina has been receiving communications from citizens of Bosnia and Herzegovina, who seek to exercise their rights, referring to provisions of the International Covenant on Civil and Political Rights. Mostly, these are cases of cancellation of residence permit and placement of aliens in the Immigration Centres and cases involving the exercise of rights of families of missing persons to aid and social protection, demands for bringing to justice the perpetrators of war crimes etc. The cases are pending before competent authorities, while the competent UN bodies are provided with required considerations and information within the set deadlines.

## ACTIVITIES IN RELATION TO THE CASE OF DECERTIFIED POLICE OFFICERS

In connection with the information regarding the law on police officers in Bosnia and Herzegovina, which should fulfil international obligations, i.e a request of the President of the UN Security Council made in a letter dated 30 April 2007, which refers to resolving the status of persons IPTF refused to certify, **the Ministry of Justice of Bosnia and Herzegovina** notes that Bosnia and Herzegovina has complied with the request of the President of the UN Security Council made in a letter dated 30 April 2007. Specifically, it has emphasized that the following laws have been passed:

1. Law on Police Officers of Bosnia and Herzegovina („Bosnia and Herzegovina Official Gazette“, 27/04, 63/04, 5/06, 33/06, 58/06, 15/08, 63/08, 75/09),
2. Law on Police Officers of the Federation of Bosnia and Herzegovina („Federation of Bosnia and Herzegovina Official Gazette“, 27/05, 70/08),
3. Law on Police Officers of Republika Srpska („Republika Srpska Official Gazette“, 43/10) and
4. Law on Police Officers of the Brčko District of Bosnia and Herzegovina („Brčko District of Bosnia and Herzegovina Official Gazette“, 41/07, 04/08, 36/09).

It has also pointed out that the above-mentioned international obligation has been fulfilled through amendments to the Rulebook on Organizational Structure of the Ministry of Justice of

Bosnia and Herzegovina adopted in 2010, which, *inter alia*, defines requirements for recruitment of court police officers.

In conjunction with the above question the **Border Police of Bosnia and Herzegovina** submitted its response, noting that the Law on Amendments to the Law on Police Officers of Bosnia and Herzegovina ("Bosnia and Herzegovina Official Gazette" No.63/08) amended Article 130 of the Law on Police Officers of Bosnia and Herzegovina. Paragraph (3) of the article gives the possibility of employment in the police of people whose certification was refused by IPTF and who are not referred to in paragraphs (1) and (2) of the article that bans hiring in any police agency of persons whose certification was refused or authorization to carry out police duties was recalled by IPTF.

The persons above are exempted from the application of Article 46, item b) of the Law (age between 18 and 35 years) and when applying for a job (only through a public advertisement), they are obliged to provide a proof –a relevant document issued by IPTF confirming the refusal of certification.

In its response, the Border Police stated that since the entry into force of the Law on Amendments to the Law on Police Officers of Bosnia and Herzegovina, the Border Police of Bosnia and Herzegovina has not reported any cases of application for job by persons whose certification was refused by IPTF.

**The Federation Ministry of the Interior** has submitted the information that the issue of individual amending of legislation relating to persons whose certification was refused by IPTF was resolved through the enactment of two laws and they are:

1. *The Law on Amendments to the Law on Police Officers of the Federation of Bosnia and Herzegovina* („Federation of BiH Official Gazette“, 70/08).

Article 46 of the Law on Police Officers of the Federation of Bosnia and Herzegovina („Federation of Bosnia and Herzegovina Official Gazette“, 27/05) sets forth general requirements for employment in any police agency. Item i) of the article provides that a person to be hired as a police officer has to fulfil general requirements and they are: his certification was not refused or authorization to carry out police duties was not temporarily recalled by IPTF. Article 46, item i) has been deleted by virtue of Article 9 of the Law on Amendments to the Law on Police Officers of the Federation of Bosnia and Herzegovina.

2. *The Law on Security Agencies and In-house Departments for Protection of People and Property* („Federation of Bosnia and Herzegovina Official Gazette“, 78/08).

Article 9(2) and Article 12(1) of the Law on Security Agencies and In-house Departments for Protection Of People and Property („Federation of Bosnia and Herzegovina Official Gazette“, 50/02) provide for requirements for granting licences to agencies if founded by natural persons and requirements for providing security services within competence of agency, regarding the individuals who provide these services.

Article 9(3)(1) of the Law on Security Agencies and In-house Departments for Protection of People and Property provides that a license cannot be granted to an agency if the founder is a natural person who was dismissed by IPTF Commissioner or whose permit was temporarily cancelled or who was refused a certificate for service in Bosnia and Herzegovina. Article 12 (6) (1) of the Law provides that security services within competences of an agency cannot be provided by a person who was dismissed by IPTF Commissioner or whose permit was temporarily cancelled or who was refused a certificate for service in BiH.

The above-mentioned provisions of Articles 9 and 12 have been deleted from the Law on Security Agencies and In-house Departments for Protection of People and Property.

**With regard to the case above, the Republika Srpska Ministry of the Interior** has submitted the information that Article 112 of the Law on Police Officers („Republika Srpska Official Gazette“, 43/10) has provisions that allow people whose certification was refused by IPTF to apply for jobs under statutory conditions.

**The Republika Srpska Ministry of the Interior informed** that in September 2010 it published advertisements for police officer vacancies (7 officers with four-year university education and 14 officers with secondary school) on 27 September 2010. There were 247 applications, including 46 ones by people whose certification was refused by IPTF.

The recruitment procedure for these vacancies has been suspended, given that in November 2010 the Republika Srpska Government adopted the conclusion that all ministries, the Republika Srpska Administration and Administrative Organisations were ordered to suspend any new recruitments until further notice, including all recruitment proceedings pending, regardless of the stage thereof.

In its response, **the Police of the Brčko District of Bosnia and Herzegovina** stated that the **Brčko District of Bosnia and Herzegovina** Assembly passed Law on Police Officers of Brčko District of Bosnia and Herzegovina („Brčko District of Bosnia and Herzegovina Official Gazette“, 41/07, 4/08, 36/09, 60/10), where Article 152 regulates the issue of decertified police officers. The article sets forth arrangements identical to arrangements in the Law on Police Officers of Bosnia and Herzegovina and the Law on Amendments to the Law on Police Officers of Bosnia and Herzegovina ("Bosnia and Herzegovina Official Gazette" No.63/08).

## ACHIEVEMENTS AND PROGRESS

With regard to the measures Bosnia and Herzegovina has been continuously taking in applying the basic principles of the multilateral international instruments such as conventions, charters and covenants of the UN and the Council of Europe, Bosnia and Herzegovina has ratified or took over by succession, primarily the European Convention on Human Rights and Fundamental Freedoms, we state the following:

1. **A unique institution of the Ombudsman for Human Rights in Bosnia and Herzegovina has been established,**
2. For years, **the Gender Equality Agency** has been operating uninterruptedly,
3. **The Commission for Human Rights, Immigration, Refugees and Asylum** operates within the Parliamentary Assembly of Bosnia and Herzegovina and its main task is the protection of fundamental human rights and fundamental freedoms, guaranteed in the Constitution and laws of Bosnia and Herzegovina;
4. Pursuant to Articles IV and V of the Constitution of Bosnia and Herzegovina, efforts are made to resolve rights of national minorities which, under the Constitution, are defined as "Others", which the ECtHR found to be discriminatory in case *Finci - Sejdić*, because it favours the constituent peoples (Bosniaks, Serbs and Croats) and grants them special privileges and advantages, in relation to other ethnic groups - 17 of them which are established in the Law on the Protection of National Minorities that was adopted in 2003. The problem in Bosnia and Herzegovina is expected to be resolved soon in accordance with the ECtHR's judgment as the Council of Ministers has appointed a working group and adopted the Action Plan for implementation of the judgment of the Court of Human Rights in Strasbourg.
5. In 2009 the **Law on Prohibition of Discrimination** was adopted.
6. Bosnia and Herzegovina condemns any form of propaganda which encourages intolerance and racial discrimination.
7. Currently BiH is working on **solving the problem of "two schools under one roof"**, which is an obvious example of segregation and division of students because of ethnicity.
8. Bosnia and Herzegovina **criminalizes** spreading of the ideas of racial discrimination or hatred, **defining it as a criminal offense of incitement of ethnic or religious hatred in the criminal legislation at the state level and Entity level.**
9. Joining the **Decade of Roma Inclusion 2005-2015**, in 2008, Bosnia and Herzegovina committed to improve the general situation of Roma in Bosnia and Herzegovina in all segments of social development. The Methodology and Implementation Plan of Spending the Funds That the State Has Earmarked in the Budget and Intended for the Implementation of the Action Plan for Roma has been designed for the following areas: housing, employment and health care. The Action Plan for the area of education was adopted earlier. To have the activities more effectively and efficiently implemented at

the state level, needs of Roma in Bosnia and Herzegovina were recorded and currently a database of Roma in Bosnia and Herzegovina is being developed. Currently, operational activities to implement the adopted Action Plan for Solving the problems of Roma in these areas are in progress in the field, where a special contribution is made by a donor, Swedish SIDA.

9. A special element of abolition of every form of intolerance is the attitude towards refugees and asylum seekers. Although in Bosnia and Herzegovina the rights of refugees and displaced persons have been successfully exercised for many years, especially in regard to property rights issues, where the property has been restored almost one hundred percent, difficulties prevail in sustainable return. This means that in addition to returning to pre-war homes they should be provided with basic conditions for resuming a normal life. In addition to repairs and construction of residential buildings that were destroyed or demolished, it is necessary to provide the returnees with jobs, school buildings, clinics, road network, electricity and other conditions for normal work and life. Unfortunately, the country has not managed to solve the problems of refugees and displaced persons yet according to the Action Plan at the country level. It is assumed that this problem could be fully resolved, with the help of the international community and donors, by the end of the 2014. In this regard, in 2010 the Council of Ministers of Bosnia and Herzegovina adopted the Revised Strategy for Return.

10. It is important to note that, in terms of position and functioning of religious communities, Bosnia and Herzegovina **has made significant progress by adopting the Law on Freedom of Religion and Legal Position of Churches and Religious Communities.**

11. With the help of the Communications Regulatory Agency, which operates at the state level, Bosnia and Herzegovina **continuously make efforts and takes necessary measures in the fight against inciting violence motivated by hatred, which is mongered by abuse of the press, audio-visual, electronic media and new communication technologies.**

12. Bosnia and Herzegovina has taken an initiative to enact **the Law on Prohibition of All Fascist and Neo-Fascist Organizations in Bosnia and Herzegovina.**

13. First of all, it is necessary to note that Bosnia and Herzegovina commits to maintain a multicultural society through **the strengthening of mutual dialogue** as the primary means of **connecting diversities and developing of tolerance in society.**

The establishment of international bodies for the protection of human rights including the bodies of the Council of Europe (ECRI) and the body of the UN (CERD) to combat racism, intolerance and prevent all forms of discrimination and the adoption of the Durban Declaration and Programme of Action contribute to strengthening of human rights mechanisms through raising awareness of target groups in order to strengthen tolerance, connecting diversities, equality before the law, the right to equal access to the courts, the right to freedom of conscience and religion, right to education etc.

Bosnia and Herzegovina **makes efforts to fill vacant positions in international bodies provided for representatives of Bosnia and Herzegovina.**

Unfortunately, experience teaches us that the above-mentioned rights are flagrantly violated in Bosnia and Herzegovina in the past armed conflict, evidenced by the above-mentioned numbers of missing persons, refugees, displaced persons, destroyed and damaged cultural monuments, and destroyed homes.

Bearing in mind the above-mentioned, Bosnia and Herzegovina is aware that it has a lot outstanding tasks to be discharged in the field of individual human rights, which are relating, primarily, to the implementation of the adopted legal framework that is harmonized with the international instruments.