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**REPORT BY**

**THE COMMISSIONER FOR HUMAN RIGHTS**  
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**ON HIS VISIT TO BOSNIA AND HERZEGOVINA**

**4 - 11 June 2007**

For the attention of the Committee of Ministers  
and the Parliamentary Assembly

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## I. Introduction

1. The Council of Europe Commissioner for Human Rights, Mr. Thomas Hammarberg, visited Bosnia and Herzegovina (BiH) upon invitation of the Foreign Ministry of Bosnia and Herzegovina from 4 to 11 June 2007. The visit was part of a continuous process of regular country missions by the Commissioner to all member states of the Council of Europe to assess their effective respect for human rights.<sup>1</sup> The Commissioner was accompanied by Ms. Sirpa Rautio, Mr. Berry Kralj and Mr. Alp Ay, members of his Office.
2. In the course of the visit the Commissioner met Mr. Željko Komšić, Chairman of the BiH Presidency, Mr. Nikola Špirić, Prime Minister of the BiH Council of Ministers, Mr. Sven Alkalaj, Minister of Foreign Affairs, Mr. Safet Halilović, Minister for Human Rights and Refugees, Mr. Bariša Čolak, Minister of Justice and Mr. Sredoje Nović, Minister of Civil Affairs. He also met with authorities at the Entity and local levels, members of the judiciary, ombuds-institutions, parliamentarians, religious leaders and civil society representatives. He visited Sarajevo, Mostar and Banja Luka and made several institutional visits to facilities and sites with human rights relevance. The Commissioner also met with the High Representative, Mr. Christian Schwarz-Schilling, and other representatives of international organisations present in Bosnia and Herzegovina. He is grateful for their valuable information and advice.<sup>2</sup>
3. The Commissioner expresses his appreciation for the co-operation of the Bosnian authorities at all levels in facilitating the visit and for the frank exchange of views. He extends his gratitude to all people met during the visit and, especially, the many civil society representatives and individuals that came to meet him to share their experiences and valuable insights regarding the human rights situation in Bosnia and Herzegovina. Finally, the Commissioner expresses his sincere gratitude to Mr. Tim Cartwright, the Special Representative of the Secretary General of the Council of Europe in Bosnia and Herzegovina and his dedicated staff for the advice and assistance offered in organising and carrying out the mission.
4. Taking into account the specificity of the situation in Bosnia and Herzegovina, a country still recovering from the consequences of the 1992-1995 war, and the continued strong international community involvement in the country, the Commissioner decided to focus his attention on the rights of certain categories of people deemed particularly vulnerable in the Bosnian society.
5. This report begins with a brief assessment of the national system for human rights protection in Bosnia and Herzegovina and the role of the international community, followed by chapters on specific human rights concerns. The Commissioner is well aware of the ongoing reform efforts of the police, judiciary, the national human rights structures and other policy areas, such as education. He also recognises that reforms continue to be driven to a large extent by international actors present in Bosnia and Herzegovina. However, the Commissioner strongly believes that the ultimate responsibility for progress in BiH, and for the protection and promotion of human rights, lies with the national authorities and the recommendations in this report are addressed to them.
6. This report is based on information gathered during the visit along with reports and statistics available from Government sources and civil society organisations. The reports prepared by human rights monitoring mechanisms of the Council of Europe, including those conducted

<sup>1</sup> See the Commissioner's mandate – especially Article 3 (e), Resolution (99) 50 on the Council of Europe Commissioner for Human Rights.

<sup>2</sup> The programme of the assessment mission can be found in the appendix to this report.

under the “accession monitoring”, are an important source for this report, as are the reports of other international organisations, such as the UN and the OSCE. This assessment report reflects what the Commissioner considers to be among the priorities for improving the protection of human rights in the country and the quality of lives of ordinary Bosnians.

## II. National system for human rights protection

### 2.1 Status of international human rights standards

7. The Dayton Peace Agreement (DPA)<sup>3</sup> that brought an end to the war in BiH in 1995 provided for a set of institutional arrangements for the protection of human rights and rule of law in BiH.
8. The Constitution of Bosnia and Herzegovina provides for the direct application of the rights and freedoms set forth in the European Convention on Human Rights, which “shall have priority over all other law”<sup>4</sup>. Annex 6 (on Human Rights) of the Dayton Agreement set forth the direct applicability of 15 more international human rights instruments<sup>5</sup>.
9. BiH has made significant progress in the implementation of the formal obligations and commitments accepted upon its accession to the Council of Europe on 23 April 2002. Bosnia and Herzegovina has signed and ratified a number of Council of Europe treaties including the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its protocols (with the exception of Protocols 9 and 10), the European Charter of Local Self-Government, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT) and its protocols, and the Framework Convention for the Protection of National Minorities<sup>6</sup>. The European Charter for Regional or Minority Languages and the CoE Convention on Action against Trafficking in Human Beings have been signed and are pending ratification. The ratification of the revised European Social Charter remains among the outstanding commitments undertaken by BiH when joining the Council of Europe. Bosnia and Herzegovina signed the Revised European Social Charter on 11 May 2004, but has yet to ratify it.<sup>7</sup>
10. Despite significant progress made in the area of accession to and ratification of international instruments as well as in the area of legislative reform, there are still major deficiencies in the practical implementation of these reforms.

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<sup>3</sup> General Framework Agreement for Peace in Bosnia and Herzegovina, signed in Paris on 14 December 1995.

<sup>4</sup> Constitution of Bosnia and Herzegovina. Annex 4 of the Dayton Peace Agreement, Art II (2).

<sup>5</sup> Appendix to Annex 6 of the Dayton Framework Agreement for Peace in BiH and listing the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto; 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Protocols thereto; 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto; 1957 Convention on the Nationality of Married Women; 1961 Convention on the Reduction of Statelessness; 1965 International Convention on the Elimination of All Forms of Racial Discrimination; 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto;

1966 Covenant on Economic, Social and Cultural Rights; 1979 Convention on the Elimination of All Forms of Discrimination against Women; 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; 1989 Convention on the Rights of the Child; 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; 1992 European Charter for Regional or Minority Languages; 1994 Framework Convention for the Protection of National Minorities

<sup>6</sup> For a full list of signed and ratified CoE treaties, reference is made to the country overview on:

<http://conventions.coe.int/Treaty/Commun/ListeStats.asp?PO=BOS&MA=999&CM=17&CL=ENG>

<sup>7</sup> The BiH government presented an instrument of ratification on 10 May 2007. However, the instrument did not respect the obligations set by the Charter as to the number of full articles or paragraphs to be accepted as a minimum by state parties. The BiH Government is committed to present a new one as quickly as possible under an urgent procedure.

## 2.2 Institutional framework for the protection of human rights

11. The country's present Constitution contained in Annex IV to the DPA establishes a complex, multi-layered institutional system characterized by fragmentation and overlapping. Depending on how the one State, two entities, one autonomous district and ten cantons are counted, Bosnia is divided into three, four or fourteen territorial jurisdictions with separate sets of laws. This fragmentation and substantive inconsistency is an impediment to the effective protection of human rights of all citizens.
12. Besides declaring the European Convention on Human Rights (ECHR) directly applicable, the DPA in its Annex VI established, on the State level, the Commission on Human Rights consisting of the Office of the Ombudsman and the Human Rights Chamber and providing it with a mandate to address individual complaints challenging violations of the ECHR as well as of a range of other human rights treaties.
13. The DPA provided for the transfer of responsibility of the Human Rights Chamber from the international community to BiH institutions at the latest 5 years after the signing of the DPA. However, its' mandate was extended until the end of 2003. The Human Rights Commission, operating within the framework of the Constitutional Court, was established to enable the proper completion of cases taken on by the Human Rights Chamber. The rationale of the Human Rights Commission staffed with 5 judges from the Human Rights Chamber was to work swiftly on the reduction of the backlog of pending cases lodged before the Human Rights Chamber until the end of 2003. The Human Rights Commission has managed this task reasonably well. Since January 2007, the Commission has been fully incorporated into the Constitutional Court and the remaining pending cases have been transferred directly to the Constitutional Court.

### a) *The Judiciary*

14. The State-level Court of BiH, the two Entities' Supreme Courts and Constitutional Courts, and the BiH Constitutional Court form the country's six high courts. Judicial appointments to the Constitutional Court are made by the Parliaments upon the recommendations of the High Judicial and Prosecutorial Council. All other judges are appointed by the High Judicial and Prosecutorial Council as an impartial and independent body. The structure of the judicial system mirrors the country's administrative-territorial organization. Important reforms introduced a few years ago<sup>8</sup> have resulted in noticeable improvements of the independence of the judiciary and making the work of the judicial and prosecutorial sector more professional. However, all interlocutors that the Commissioner met with confirmed that the reform process had lost momentum since 2006.
15. At the end of 2006, there were approximately two million pending cases at courts across the country. The backlog in combination with poor court management and scarce modern equipment and infrastructure accounts for the slow processing of cases. A coherent and systematic action plan to reduce the backlog of cases is therefore needed urgently. The introduction of alternative dispute resolution measures and other out-of-court resolution could make a significant contribution to the reduction of the backlog of unresolved court cases. Further efforts are required to improve the efficiency and effectiveness of the national courts and the execution of court decisions.
16. The Constitution of Bosnia and Herzegovina provides the legal framework for the organization and functioning of the Constitutional Court, which has its seat in Sarajevo. Six judges out of the total nine are selected by the respective assemblies of the two Entities.

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<sup>8</sup> Reform highlights included the adoption of new substantive and procedural criminal codes and the creation of the BiH State Court, the High Judicial and Prosecutorial Council and the State Prosecutor's Office.

The remaining three judges are appointed by the President of the European Court of Human Rights after consultation with the Presidency of Bosnia and Herzegovina.

17. At the end of 2006, the Constitutional Court accounted for approximately 3000 unresolved cases. Due to the absence of a supreme court at the state level, the Constitutional Court is increasingly acting as an appellate court. The decisions of the Constitutional Court are, however, often not implemented by the relevant bodies and authorities, which is of serious concern as it undermines the rule of law and respect for the Constitutional Court. Furthermore, there is no mechanism in place currently that could remedy the situation. The non-execution of final court decisions needs to be addressed.
18. The State Court of BiH is composed of the Criminal, Administrative and Appellate Division. It has jurisdiction over criminal offences defined in the Criminal Code of Bosnia and Herzegovina and other laws of Bosnia and Herzegovina (Article 13 Law on Court of BiH and Article 23 CPC BiH) as well as over criminal offences prescribed in the Laws of the Federation of Bosnia and Herzegovina, Republika Srpska and the Brcko District of Bosnia and Herzegovina, if such criminal offences have the potential to endanger the sovereignty or territorial integrity of the country. The Criminal Division is separated into three Sections for War Crimes, Organized Crime and other criminal offences respectively. Within its administrative jurisdiction, the Court is, *inter alia*, competent to decide on the legality of final individual or general administrative acts and/or orders. The Appellate division decides upon appeals against decisions delivered by the Criminal or Administrative Division of this Court.
19. The War Crimes Chamber was established in March 2005 and has secured itself a good reputation both among national and international observers for its professional handling of domestic war crimes cases. Despite delays and problems before its start, the Chamber has issued nineteen indictments against 33 suspects and handed down eight verdicts. However, it is clear that most of the numerous domestic war crimes will not be tried by the well-equipped War Crimes Chamber, but by other local courts.<sup>9</sup> These courts often lack adequate infrastructure and financial as well as human resources.

**b) Law enforcement bodies and police reform**

20. At present, BiH has fifteen criminal law enforcement agencies. In a review carried out in 2004, the European Commission established that the country's police forces are divided and over-staffed, and that cross-entity-cooperation was insufficient. The Police Reform Directorate<sup>10</sup> confirmed these findings in its 2006 report describing the current policing system in BiH as "too complicated, too expensive, and not sufficiently effective in combating crime".
21. The reform of the police with the aim of unifying the fragmented police forces under a single state police structure is one of the EU's major preconditions for the signing of a Stabilization and Association Agreement (SAA). However, due to lacking political will and opposed views over the competencies and administrative borders, political leaders in BiH have failed to reach an agreement on this important topic thus far.<sup>11</sup>

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<sup>9</sup> "Besides the so-called *11bis*-cases transferred to it by the ICTY, the War Crimes Chamber of the BiH Court has jurisdiction to select and prosecute its own cases initiated without the involvement of the ICTY. In doing so, the War Crimes Chamber takes on (only) "highly sensitive" cases, whereas the other, lower-profile cases (including those considered "sensitive" only), which constitute the vast majority of the caseload, are handled by the cantonal and district courts as appropriate. Factors used in assessing whether a case meets the threshold of "highly sensitive" include the nature and the circumstances of the crime alleged. E.g., cases involving allegations of genocide, multiple murders, and persecutions on a widespread and systematic scale may result in a case being considered "highly sensitive".

<sup>10</sup> This body is referred to both as Police Reform Directorate and Police Restructuring Commission. In this report, the term "Police Reform Directorate" (PRD) is used.

<sup>11</sup> In its latest progress report, the European Commission establishes that the "lack of progress in this area is seriously undermining BiH's progress towards the EU."

22. Decertified police officers continues to be a standing issue for the police forces in BiH. These police officers were barred from police service for life as a result of the vetting process of the United Nations International Police Task Force (IPTF), which took place from 1996 to 2002. IPTF was established to reorganise the police forces in BiH under Appendix 11 of the Dayton Peace Agreement and was one of the major components of the UN Mission in Bosnia and Herzegovina (UNMIBH).
23. In December 2006, the Commissioner visited Sarajevo to discuss the complaints of some 260 decertified police officers. Considering the absence of basic procedural safeguards during the vetting process and the lack of appropriate legal remedies to challenge the decisions on “decertification”, the Commissioner concluded in his report that this situation was a human rights problem. He underlined the necessity of finding a solution to this problem which would give justice to the individuals without undermining the authority of the UN decisions, using a constructive – and, if necessary, creative – approach by the involved parties.<sup>12</sup>
24. Later, on 30 April 2007, the issue was addressed by the UN Security Council through a letter from the United Kingdom, as president of the Security Council in April 2007, to the BiH Government. The letter stated that the UN Security Council recognising the “improvements in the legal standards and practices for the recruitment and selection of police officers within Bosnia and Herzegovina”, considered that where relevant domestic legislation allows, “persons denied certification or decertified by the IPTF may be permitted to apply for positions” in BiH law enforcement agencies.<sup>13</sup>
25. The Commissioner, considering the respective positions of all relevant stakeholders, welcomed this development as an important step towards a solution to the problems of these police officers. An important dimension of the Security Council letter was the implicit recognition that the prohibition from police service “for life” was no longer absolute. In view of the procedural flaws in the IPTF procedures, the Commissioner is of the opinion that the decertified police officers should have an opportunity to seek employment in the police forces again and, when having qualified according to satisfactory vetting procedures, to be reinstated.
26. In the course of the visit, the Commissioner discussed the issue with the relevant ministers, NGOs and international stakeholders. The Commissioner stressed the importance of a coordinated legislative action by the Government. While welcoming the recent actions of the BiH Government to this end, the Commissioner believes that the success of the Government’s efforts depends on active and constructive dialogue with the representatives of these police officers.

**c) Ombudsman**

27. In the course of the visit, the Commissioner visited all three Ombudsman institutions on both state and entity levels and met with the Ombudspersons for an exchange of opinion on the past work and to discuss the challenges in the process of creating one unified state level Ombudsinstitution.
28. The new law on Ombudsmen at the State level was adopted in April 2006. According to the law, the three existing Ombuds institutions at state and entity levels were planned to be merged into one single, state-wide structure as of 1 January 2007. The transfer has yet to

<sup>12</sup> See the report of the Commissioner for Human Rights, CommDH(2007)2 dated 17 January 2007.

<sup>13</sup> The Council of Ministers of BiH has accepted this position, which secures the possibility for decertified police officers to apply for vacant positions in police services. Comments by the Ministry for Human Rights and Refugees on the draft report by the Commissioner for Human Rights.

be implemented. In the course of the meetings with the Ombudspersons as well as in his exchanges with other governmental and non-governmental stakeholders, the Commissioner reiterated his recommendation to the country's relevant decision makers to invest all efforts in order to ensure that the professional experience and expertise of the present Ombudsinstitutions will not be lost in the transition to the new structure.

29. At the time of the writing of this report, the selection of the new Ombudsmen by the House of Representatives remains blocked.<sup>14</sup> The Commissioner and his office will continue to follow this process closely.

**d) National coordination**

30. The State level Ministry of Human Rights and Refugees (MHRR) has a central role in implementing the Annex 7 of the DPA on the return of refugees and displaced persons. However it does not have an overall coordination role in the field of human rights. Its' mandate, scope for initiative and power are compromised by the constitutional set-up: it lacks relevant power and implementation force, either laterally across State level ministries or vertically through the Entities and Cantons.
31. While welcoming the active role the MHRR has had in facilitating the returns, the Commissioner recommends that the MHRR is given a more active role in the overall coordination of human rights issues within the BiH Council of Ministers. The Commissioner recommends that consideration is also given to a development of a National Human Rights Action Plan. One of the goals of such a plan would be to ensure the implementation of recommendations issued by human rights monitoring bodies by the relevant authorities.

### **III. The role of the international community**

#### **3.1 International involvement in Bosnia and Herzegovina**

32. Twelve years after the Dayton Peace Agreement was signed, international organisations are still present in large numbers in Bosnia and Herzegovina. The Office of the High Representative (OHR), mandated by Annex 10 of the Dayton Agreement, is the final authority on the civilian implementation of the peace settlement. Since 1997, when the Peace Implementation Council granted the "Bonn Powers" to the High Representative, the OHR has wielded significant power in the political life and administration of the country. It has been leading the reform agenda, often imposing legislation as required. The Bonn powers have been used to institute significant reforms, including passing laws, amending constitutions, issuing executive decrees, appointing judges and removing and banning elected politicians and others from holding public office or positions.<sup>15</sup> In fact, much of the progress achieved in BiH in recent years has been due to the role played by the OHR, while the national ownership has yet to emerge.

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<sup>14</sup> In September 2007, the House of Representatives of the Parliamentary Assembly of BiH had not given consent for the appointment of the Ombudsman of BiH among members of Serb and Bosnian peoples. The selection process therefore continues and the vacancies for the appointment of the Human Rights Ombudsmen of BiH will have to be announced for the 2<sup>nd</sup> time. Comments by the Ministry of Human Rights and Refugees on the draft report by the Commissioner for Human Rights.

<sup>15</sup> Much has been written about the international involvement in BiH, some of which is critical towards the international community. For recent analyses see e.g. the report by the International Crisis Group, Ensuring Bosnia's Future: A New International Engagement Strategy, February 2007. See also an analysis by ESI, the European Stability Initiative (Legal Dynamite – How a Bosnian Court may bring closer the end of the Bosnian protectorate, 12 March 2007), which is very critical of the lack of accountability of the international authority. Perhaps reflecting the complexity of the situation in BiH, the views expressed often go in opposing directions.



33. The OSCE Mission in BiH is the lead organisation mandated to deal with human rights, rule of law and democratisation. Its primary responsibility after the Dayton Peace Agreement was related to organising and supervising elections, a responsibility taken over by the national authorities for the first time during the 2002 elections. The OSCE is the organisation with the largest field presence in BiH. UNHCR is the main agency charged with the co-ordination and assistance of the return of refugees and displaced persons and the implementation of Annex 7 of the Dayton Agreement. Others with major roles in the field of human rights, rule of law and development are the European Commission, the United Nations Development Programme (UNDP), the International Committee of the Red Cross (ICRC) and the International Commission on Missing Persons (ICMP). The World Bank, the International Monetary Fund and the European Bank for Reconstruction also play major roles in BiH. Most of these organisations are also members of the OHR chaired Board of Principles, which coordinates the work of the international community in BiH.

### 3.2 The Council of Europe

34. Bosnia and Herzegovina was accepted as a member state of the Council of Europe on 24 April 2002. In becoming a member of the Organisation, it consented to honour the obligations placed on all member states under Article 3 of the Organisation's Statute, together with a number of specific undertakings set out in an Opinion of the Parliamentary Assembly.<sup>16</sup>
35. The progress made in fulfilling the accession commitments continues to be reviewed under the monitoring procedures put in place by the Parliamentary Assembly. The Committee of Ministers also reviews the situation in BiH regularly with a view to adapting the co-operation and assistance programmes of the Council of Europe. The monitoring of the 'post-accession commitments', as well as the monitoring by the Committee of Ministers, continues to play an important role in supporting reforms in BiH. The European Union, in its pre-accession negotiations with BiH, has reiterated these commitments as conditions for EU membership. The Commissioner fully supports the findings and recommendations made by the Parliamentary Assembly and the Committee of Ministers.<sup>17</sup>
36. Offering support to the human rights institutions and clarifying their respective competences has been a major contribution by the Council of Europe since the Dayton Peace Agreement. Ensuring the compatibility of the Constitution of the two Entities with the Constitution of the State of Bosnia and Herzegovina was a task entrusted to the Venice Commission. Regular work carried out by the Council of Europe monitoring bodies, the European Committee for the Prevention of Torture (CPT), the European Commission on Racism and Intolerance (ECRI) and the Advisory Committee of the Framework Convention on National Minorities has commenced since accession, and their recommendations give important guidance to the Bosnian authorities in their respective fields of expertise.
37. The Venice Commission had made a major contribution to discussions on the future constitutional arrangements for BiH when in 2005, following a request made by the Parliamentary Assembly, it produced an Opinion<sup>18</sup> in which it concluded that constitutional reform was indispensable as the "present arrangements were neither efficient nor rational and lacked democratic content". It developed a set of proposals, starting with a transfer of

<sup>16</sup> Opinion No. 234 (2002) of the Parliamentary Assembly of the Council of Europe (PACE)

<sup>17</sup> For details, see the reports by the Parliamentary Assembly on Honouring of obligations and commitments by Bosnia and Herzegovina, Doc. 102000, 4 June 2004 and on Constitutional Reform in Bosnia and Herzegovina, Doc. 10982, 27 June 2006 and Information Documents on Bosnia and Herzegovina Compliance with obligations and commitments and implementation of the post-accession co-operation programme, July 2006 and May 2007.

<sup>18</sup> *European Democracy through Law (Venice Commission)*. Opinion on the Constitutional Situation in Bosnia and Herzegovina and the powers of the High Representative. CDL-AD(2005)004. March 2005.

responsibilities from the Entities to the State of Bosnia and Herzegovina, a streamlining of decision-making procedures at that level, especially with respect to the vital interest veto, and a reform of the provisions on the composition and election of the Presidency and the House of Peoples. It suggested concentrating legislative responsibilities within the Federation of Bosnia and Herzegovina at Entity level and to strengthen local government in both the Federation and the Republika Srpska.

38. Furthermore, the Venice Commission stressed the need for further constitutional reforms in the long-term with a view to “changing the emphasis from the equality of three constituent peoples to a state based on the equality of citizens”, noting that “if the interests of individuals are conceived as being based mainly on ethnicity, this impedes the development of a wider sense of nationhood”. The Commissioner concurs with this assessment and the approach which would enable the elimination of discrimination currently institutionalised.
39. The Venice Commission’s Opinion contributed to the development of a package of constitutional reform work necessary for the more effective functioning of the State, which found the support of the BiH Presidency in April 2006. Unfortunately, this first stage of reform was not approved by the House of Peoples in May 2006. During the Commissioner’s visit in June 2007, many people with whom the Commissioner discussed this issue expressed the view that the reform was absolutely crucial for the future of the country, but were doubtful if the political agreement required could be found any time soon. The Commissioner calls for the political leaders to put the interest of citizens first and start again discussing the constitutional reforms, taking into account the proposals made by the Venice Commission.<sup>19</sup>

## **IV. Specific human rights issues - focus on vulnerable persons and groups**

### **4.1 Poverty and social exclusion**

40. Poverty, social exclusion and inequality are a growing concern in Bosnia and Herzegovina. This is somewhat paradoxical, since the economy in BiH is doing well and continues to grow.<sup>20</sup> According to a recent report by UNDP over 50 % of the population in BiH is socially excluded, while approximately 22 % of the population is extremely socially excluded from even the most basic processes and needs.<sup>21</sup>
41. Groups such as minority returnees, Roma, the elderly, people with disabilities and many youth and children have not only the highest risk of income poverty and unemployment, but have also far less access to public services and participation in political and public life. Almost half of the population lives below or close to the poverty line. To address these serious concerns, the BiH Council of Ministers adopted in 2004 a Medium Term Development Strategy, revised in 2006, which outlines key policy measures needed to combat social exclusion and fight poverty in BiH.
42. To a large extent, the situation is still a consequence of the conflict in 1992-1995, which caused enormous human loss, displacement and material destruction. It is estimated that up to 258,000 people in BiH were killed or are missing, representing 5.9 % of the pre-war population. Over two million people were displaced. The conflict also destroyed much of the social safety nets that would normally provide some form of protection to the vulnerable

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<sup>19</sup> Constitutional Reform in Bosnia and Herzegovina, PACE Doc. 10982, 27 June 2006

<sup>20</sup> In 2006, real GDP growth was 6,2 % up from 4,3 % in 2005. Bosnia and Herzegovina 2007 Progress Report, Commission of the European Communities, Brussels, November 2007.

<sup>21</sup> Information in this chapter is mainly drawn from a recent report on social inclusion in Bosnia and Herzegovina, National Human Development Report, 2007, UNDP. Social exclusion is measured through indicators reflecting living standards, health, education, participation in society and access to services, and is thus distinct from income poverty.

persons in a society. However, the current system of social protection can not provide even minimum protection to persons in need of support and assistance and does not guarantee equal rights to all citizens. One of the problems with the current approach is that attention is not paid to the needs of the individuals. Although the proportion of national income spent on social assistance in BiH is in line with the European average, its distribution is not. There are some groups in the society – mainly war veterans – who receive much higher levels of social assistance than others.<sup>22</sup> As a consequence of the unequal distribution, almost 100,000 persons who need assistance are not covered by any social protection and are left destitute.

43. The right to adequate health care is lacking for many citizens. The health insurance coverage in Bosnia and Herzegovina is only 80 %. The entitlements to health services – e.g. medicines and treatments - vary significantly from region to region, and some groups, such as people with disabilities (civilian war victims and others), minorities and displaced persons, face great difficulties in accessing healthcare.
44. The situation of elderly people is alarming with every third elderly person considered to be poor. The key problem is the inadequate and fragmented pension system. There is no single pension system in BiH, which creates inequalities and access difficulties. At the same time, the level of pensions is very low; the average pension being below the poverty line calculated for BiH.<sup>23</sup>
45. Families with children are most at risk of poverty, especially single-parent families. Lack of access to education, training and employment opportunities are serious concerns for children and youth. According to a recent survey, over 60% of young people would like to leave Bosnia and Herzegovina if they could. Apathy and lack of participation in society are common.
46. There are others, often invisible, who face extreme social exclusion in BiH. The situation of lesbians, gays, bi-sexual and transgender (LGBT) persons is difficult, and many are forced to hide their orientation and identity in fear of abuse and even physical attacks, sometimes by their own family members. Many have left the country to seek a better life without fear. Societal attitudes reflect the non-acceptance of being “different” and the lack of tolerance present in Bosnian society. Legally, the protection of human rights of LGBT persons has improved in recent years, yet in practice there has not been a noticeable improvement. (see chapter VII on discrimination based on gender and sexual orientation).<sup>24</sup>
47. In addition to the tragic human losses suffered, numerous people lost their property and other assets as a consequence of the war. (The scope and consequences of displacement are discussed below in chapter V). The Commissioner met with several individuals in BiH who had lost all their savings, which had been deposited in foreign saving accounts in banks prior to the dissolution of the former Socialist Federal Republic of Yugoslavia. The first judgment against BiH<sup>25</sup> in the European Court of Human Rights concerns this problem. In October 2006, the Court delivered its final judgment, in which it found two violations of the ECHR (in relation to access to court and protection of property) and awarded the applicant significant damages. Over a year after the judgment was issued, the Bosnian government has not taken the necessary measures required to execute the judgment.<sup>26</sup>

<sup>22</sup> The entitlements of veterans are so generous that there are hardly any funds left for the neediest. In 2004, of the social programme spending in BiH, some 66 % went to disabled war veterans. In comparison, benefits for refugees and displaced persons was 2 %. Ibid.

<sup>23</sup> At the end of 2004, average pension was KM 184 per month, while the poverty line was KM 185 per month.

<sup>24</sup> Organisation Q described the LGBTI community in BiH as one that is “stigmatized, closed in and inert in many respects, because the society does not offer any support to those individuals who differ from traditional ideas of gender and sexuality”. *Rights and Freedoms of Sexual and Gender Minorities in Bosnia and Herzegovina: An Analysis of the Relevant Legislation*, Organization Q. Sarajevo 2005.

<sup>25</sup> Case of Jeličić v. Bosnia and Herzegovina, Judgement of 31 October 2006. Final on 31 January 2007.

<sup>26</sup> There are 85 similar cases pending before the Court submitted on behalf of more than 3,750 applicants.

48. The main human rights concerns in BiH today are to be found in the field of economic, social and cultural rights and discrimination. Although BiH has not yet ratified the revised European Social Charter, it is party to the United Nations Convention on the Economic, Social and Cultural Rights (ICESCR) and thus has a duty to implement the rights recognized in this Covenant<sup>27</sup>. BiH has also ratified a number of treaties with non-discrimination articles and Protocol No. 12 to the European Convention on Human Rights.
49. In May 2004, BiH submitted its' initial State report to the monitoring Committee under the ICESCR, which issued its Concluding observations in January 2006.<sup>28</sup> While recognizing the difficulties impeding the implementation of the Covenant – the effects of the armed conflict – the Committee noted that the constitutional framework for BiH imposed by the Dayton Peace Agreement “confers limited responsibility and authority to the Government at the State level, in particular in the field of economic, social and cultural rights, and creates a complex administrative structure, which often results in the lack of harmonisation and implementation of laws and policies relating to the equal enjoyment of economic, social and cultural rights by the population.” The Commissioner concurs with these findings, which again highlight the need for urgent constitutional and structural reforms in BiH.
50. In the following chapters the rights of displaced persons and returnees, minorities, women, children, asylum-seekers and refugees are analyzed more in detail. Other factors causing vulnerability, such as gender, age and disability, are also discussed where relevant. The Commissioner emphasizes the importance of addressing multiple forms of exclusion and discrimination, which renders some persons particularly disadvantaged (e.g. women with disabilities). However, not *all* persons belonging to the categories mentioned are vulnerable (e.g. women in general are not vulnerable).

## V. Displacement and returns

### 5.1 The scope of displacement and progress made

51. The conflict in BiH caused large-scale involuntary displacement. At the end of the conflict in 1995, almost half of the country's inhabitants had been uprooted. Approximately one million people were internally displaced within BiH and 1.2 million had become refugees in other countries. Out of an estimated 2.2 million persons forcibly displaced during the war, by the end of March 2007 1,018,292 former refugees and internally displaced persons (IDPs) have been recorded as having returned to their pre-war homes and municipalities in Bosnia and Herzegovina.
52. Recorded returns include some 459,543 minority returns, as opposed to the 558,749 majority returns (returns to areas where their own constituent people of BiH are in a numeric majority). Of the total, 443,688 were refugees who had fled BiH and 574,604 had been forcibly displaced inside the country. Nearly three-quarters of the total (737,617) have returned to the Federation of Bosnia and Herzegovina and one-quarter (259,293) to the Republika Srpska (RS).<sup>29</sup>
53. In the first few years following the end of the conflict, there were almost no minority returns. Initially, even freedom of movement across the inter-entity boundary line or to areas controlled by another ethnicity remained very limited. Minority returns, or visits to pre-war homes, were obstructed by authorities at all levels. Violence against minority returnees was

<sup>27</sup> BiH acceded to the ICESCR through the succession process on 1 September 1993.

<sup>28</sup> UN E/C.12/BiH/CO/1 24 January 2006.

<sup>29</sup> Broken down by the constituent peoples of BiH, they included around 631,112 Bosniaks, 249,325 Bosnian Serbs and 129,784 Bosnian Croats. Statistics in this chapter from UNHCR.

common. Although large amounts of financial support by international donors was made available for minority returns, there was no political will to allow it. Security concerns and the political situation were the main impediments to return.

54. In addition to questions of safety, property-related problems were a major obstacle to return, although Annex 7 of the Dayton Agreement granted refugees and IDPs “the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them”.<sup>30</sup>
55. As of 1999, with the Office of the High Representative taking the lead and with the improvement of the security and political situation in certain areas, property laws were amended and returns started to accelerate. Return efforts were concentrated on property re-possession and reconstruction of housing and the accompanying infrastructure. Considerable progress in solving property issues and returns were made in 2003 and 2004, although in some parts of the country resistance to returns continued and slowed down minority returns. By the end of 2006, the property repossession process had been completed in all municipalities in BiH. The peak of minority returns was reached in 2002, when over 100,000 minority returns were recorded.<sup>31</sup>
56. However, despite the high number of minority returns, in many cases the returns were not sustainable. Many of the returnees came back only to repossess and sell or exchange their property. In many cases, the families were split up, with the elderly persons returning while the rest of the family stayed in the place of displacement.

## 5.2 Situation of internally displaced persons and returnees

### a) Legal framework

57. The legal framework for returns is laid down in the *Law on Refugees from BiH and Displaced Persons in BiH* (BiH Law), the *Law on Displaced Persons and Returnees in the Federation of Bosnia and Herzegovina and Refugees from BiH* and the *Law on Displaced Persons, Returnees and Refugees in the Republika Srpska*. Another important instrument is the *Protocol on the Implementation of the Revision of the Number and Status of Displaced Persons in BiH*, March 2004, which regulates the determination and cessation of the status of a displaced person and the identification of the needs of the remaining displaced persons for the purpose of finding durable solutions for them.
58. At the end of 2004, the Bosnian authorities started a country-wide re-registration exercise of displaced persons, which was completed in December 2006. The re-registration exercise resulted in figures dropping from some 518,000 displaced persons, who had registered in 2000, to 188,307 persons registering this time. As a result of the re-registration, 135,500 people were finally confirmed with the status of a displaced person in BiH.
59. The Entity laws adopted in 2005 contained very similar provisions regulating acquisition and cessation of the status and access to rights, which enabled a harmonised approach to the resolution of the issue of displacement. The definition of a displaced person contained in these laws was harmonised with the one stipulated by the BiH Law, which reads as follows: “*A displaced person is a citizen of BiH residing within BiH who has been expelled from his habitual residence as the consequence of the conflict or left his habitual residence after 30 April 1991, owing to a well-founded fear of being persecuted for reasons of race,*

<sup>30</sup> Compensation mechanisms or funds were never set up as donors feared that it would consolidate “ethnic cleansing” and discourage returns.

<sup>31</sup> For more detailed information and analysis, see the comprehensive report on Bosnia and Herzegovina of the UN Representative of the Secretary General on the human rights of internally displaced persons, Walter Kalin. E/CN.4/2006/71/Add.4 from 29 December 2005.

*religion, nationality, membership to a social group or political opinion, and who is neither able to return in safety and dignity to his former habitual residence nor has voluntarily decided to take up permanent residence elsewhere.”*

60. This definition, although narrower than the internationally accepted definition of an internally displaced person, served as a good starting point when conducting the procedure for revising the status. Unfortunately, in some cases, the interpretation by the authorities has been too strict and caused cessation of status of those who are still displaced and in need of protection. The wording “habitual residence” has been interpreted by the authorities as a *property* over which the displaced person has *ownership right*. For this reason, some displaced persons without property lost their status even in situations where they have compelling reasons for not returning to the former place of residence. As a result of such practice and due to the lack of an appropriate social protection system in BiH, a new vulnerable category of persons without any status and, subsequently, access to basic rights has been created.
61. In order to remedy the situation and to ensure application of legislation in line with international standards, the Ministry for Human Rights and Refugees developed *Guidelines for the bodies responsible for revising and recognition of the status of a displaced person in Bosnia and Herzegovina* in July 2005. The Guidelines provide broader interpretation of the cessation clauses contained in the laws, explaining how and in what cases protection and humanitarian concerns should be taken into account. Although application of the guidelines has not been unified over the whole territory of BiH, they have produced some positive results through issuance of positive status decisions based on humanitarian grounds.<sup>32</sup> The Commissioner encourages all the competent authorities to apply the definition liberally and in line with the Guidelines.

**b) Rights of displaced persons - vulnerable groups**

62. Although in both Entities legislation provides for a number of rights and entitlements to registered displaced persons, *de facto* they are often deprived access to their economic and social rights.<sup>33</sup> Displaced persons are disproportionately affected by the general problems of the population and constitute around 45 % of the extremely poor in the Federation of BiH and 21 % in the Republika Srpska. Only an estimated 17% of displaced persons are employed.
63. It is estimated that 20% of displaced persons are without any source of income and some are extremely vulnerable. Among them are persons who need special attention, such as physically and/or mentally challenged and those who are chronically ill.<sup>34</sup> Among the remaining displaced, there are around 19,000 children and a significant number of displaced persons – roughly 96,000 - are women. Women, especially those heading a household, are a group of particular concern.
64. At least 7,000 displaced persons are still living in collective centres, although only a few hundred in officially recognised ones.<sup>35</sup> The rest live in irregular collective centres, *ad hoc* shelters and informal settlements, mainly in the Federation of BiH. These shelters are often

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<sup>32</sup> Information mainly from UNHCR in BiH.

<sup>33</sup> In the Federation, the Law provides for the right to accommodation, food, social reintegration and psychological support, health care and education. In the RS, the law provides for financial assistance, health care, education, unemployment benefits, loans for income-generating projects and temporary accommodation.

<sup>34</sup> According to UNHCR information, 8,845 persons are physically and/or mentally challenged and 10,926 are chronically ill. 2,467 are elderly without any source of income, many without any family support.

<sup>35</sup> Information from the Ministry of Human Rights and Refugees of BiH.

in deplorable condition and not in accordance with the right to an adequate standard of living. Unofficial settlements, mainly inhabited by displaced Roma, are not connected to any public services and have no running water and electricity.<sup>36</sup>

65. As almost all the inhabitants belong to particularly vulnerable groups and have been living for a long time in displacement, their return is unlikely for various reasons. Many have suffered great trauma. This is especially prevalent in households headed by females with missing family members.<sup>37</sup> There are also an estimated 200,000 camp survivors and an unknown number of victims of sexual violence (mainly women) in BiH who are in need of specific services, which are still lacking in BiH. There is no law at the State level which would grant them specific rights.
66. Facilitating returns by reconstructing damaged houses and rehabilitating the infrastructure of return areas has been the main focus of efforts. Less attention has been paid to the needs of those displaced persons who are not able to return, either for protection or humanitarian reasons. These are some of the most vulnerable persons and groups in Bosnian society.
67. Continued efforts to facilitate returns are essential, but the particular needs of those who are not able to return due to past trauma or other special protection concerns need to be addressed as well. Local integration as a durable solution may well be the best - or the only option - for some of the vulnerable displaced persons. Resources need to be directed towards assisting them in their integration. This is also in line with the UN Guiding Principles on Internal Displacement (the UN Guiding Principles)<sup>38</sup>, according to which the internally displaced persons have the right to choose between return and integration.

### **c) *Obstacles to return***

68. According to the UN Guiding Principles, return should be voluntary and conducted in safety and dignity. Returnees are entitled to recover their property and be protected against discrimination. In Bosnia and Herzegovina, the option of return has clearly been prioritised by the international community, as well as some of the Bosnian authorities, in order not to legitimise "ethnic cleansing". It is generally acknowledged that for return to be successful, the following conditions must be fulfilled: safety, return of property, and adequate economic, social and political conditions. It is the latter conditions that remain the biggest challenge to sustainable returns in BiH today.
69. Unlike in the first years following the end of the conflict, the lack of security is not a major obstacle to returns in BiH, although it remains a concern. The threats to life and security of returnees have been decreasing, although security incidents, some of which very serious, have continued to be reported.<sup>39</sup> Despite the general improvement in security conditions, there are certain groups and individuals who are particularly exposed to risk or attacks.

<sup>36</sup> Report of UN Representative of the Secretary General on the human rights of internally displaced persons, Walter Kalin. E/CN.4/2006/71/Add.4 from 29 December 2005.

<sup>37</sup> Of a population of 3.4 million, at the end of the conflict in 1995 an estimated 30,000 persons were unaccounted for in BiH, a significant proportion of the total population. ICMP (International Commission on Missing Persons) estimates that as of the year 2006, approximately 15,000 are unaccounted for in Bosnia and Herzegovina.

<sup>38</sup> E/CN.4/1998/53/Add.2

<sup>39</sup> According to UNHCR information, the number of security incidents against returnees was lower in 2006 than in previous years, but the nature of the incidents was serious, including two murders. In 2006, 175 security incidents were reported that could be attributed to return or directed against minority returnees.

These include war crimes victims and witnesses, as well as some ethnic minorities, such as Roma. With many alleged war criminals still free and enjoying impunity, the protection needs and safety of these persons can not be underestimated.

70. A number of suspected war criminals, reportedly, still hold official functions in local authorities, and the failure to arrest and prosecute them is an obstacle to return and affects the sense of security of returnees. Witnesses testifying in war crimes cases are particularly vulnerable due to the lack of a functional witness protection programme in BiH. The *Law on Protection of Witnesses under Threat and Vulnerable Witnesses* does not sufficiently address their rights. Threats and acts of intimidation against witnesses by defendants are common and have not been addressed properly by authorities. The Commissioner calls for stronger efforts to arrest and prosecute war criminals and bring them to justice.
71. In many areas landmines and unexploded ordnance (UXO) continue to threaten the life and security of returnees, especially those engaged in agricultural activities. Fortunately, the downward trend in new casualties has continued every year since 2000. In 2005, there were 19 new casualties, including two children.<sup>40</sup> The Commissioner welcomes the efforts made in de-mining activities, which need to continue and stresses the importance of mine risk education for communities at risk, returnees and children.
72. While most of the occupied property has been returned to the original owners, housing reconstruction and infrastructure works need to continue.<sup>41</sup> Women, in particular female heads of households, often lack property titles, which prevents them from benefiting from re-possession or reconstruction assistance. The situation of Roma is also problematic as before the war they often lived in informal settlements, often without any records and their rights were not recognised by authorities. The Commissioner stresses that projects to reconstruct housing must also address those who have had difficulties in benefiting from reconstruction assistance, such as female heads of households and Roma.
73. Returnees, in particular those who are a “minority” in the area of return, are often denied access to social protection and health care. This is due to the lack of harmonisation between legislation and welfare systems of the two Entities. The absence of an inter-Entity agreement on pension rights and the failure of the entities to fully implement the Inter-Entity Agreement on Health Care are serious obstacles for sustainable return<sup>42</sup>. In this context, the situation of elderly returnees and persons with disabilities in need of health treatment raises particular concerns. The Commissioner emphasises the need to ensure that pension entitlements, health care and social benefits are provided on a non-discriminatory basis.
74. Discrimination in employment is yet another serious concern. There is a strong tendency in BiH to employ only members of the dominant ethnic group or political party. There are also certain groups, such as war veterans or families of soldiers killed in the war, who are given priority. Although according to the law in both Entities, unfairly dismissed persons should be rehired or compensated, in practise no returnees have been able to get back their pre-war jobs – or receive compensation – on the grounds of unfair dismissal.

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<sup>40</sup> The number of casualties in 2004 was 43 and in 2003 54. Information from Landmine Monitor Report 2006, Bosnia and Herzegovina,

<sup>41</sup> According to the Ministry for Human Rights and Refugees, some 43,000 families with almost 140,000 household members seek assistance of the State for housing reconstruction. Comments by the Ministry for Human Rights and Refugees on the draft report by the Commissioner for Human Rights.

<sup>42</sup> Access to pensions improved with the *Agreement on the Mutual Rights and Obligations Regarding the Implementation of Pension and Disability Insurance* concluded between the pension funds in May 2000. However, in 2002 the RS Pension Fund withdrew from the Agreement. A new Memorandum of Understanding was agreed upon in 2004 between the Entity pension funds, however, it remains at the level of principles and has yet to be translated into concrete agreements and eventually law.



75. The returnees often face problems in getting access to necessary public utilities, such as electricity, water and telephone services and infrastructure repairs. An Agreement signed in December 2005 by the BiH electricity companies and proposed by the Ministry of Human Rights and Refugees would allow for more returnee areas to be connected to electricity. This is a necessary and welcome step, taking into account that access to electricity is one of the main conditions for sustainable return. The Commissioner urges the authorities to find practical solutions to the obstacles identified in order to create the necessary conditions for sustainable return. Comprehensive legislation prohibiting discrimination in all sectors and on all grounds should be passed.

## **VI. The protection of national minorities**

### **6.1. Legal framework for the protection of national minorities**

76. The Constitution of Bosnia and Herzegovina defines Bosniacs, Serbs and Croats as “Constituent Peoples” while the rest are referred to as “the Others”. According to the 1991 census, the population of Bosnia and Herzegovina consisted of Bosniacs (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.
77. Bosnia and Herzegovina is a state party to the Framework Convention for the Protection of National Minorities (FCNM), but it has yet to ratify the European Charter for Regional or Minority Languages. It did not enter any declaration of reservation on the personal scope of application upon accession to the FCNM.
78. The Advisory Committee of FCNM carried out a visit to BiH in February 2004<sup>43</sup>. It provided a detailed analysis of the implementation of the Convention in BiH in its Opinion adopted on May 2004.<sup>44</sup> BiH submitted its second report to the Advisory Committee recently in August 2007. Based on this report, and other information available, the Advisory Committee will again provide a detailed assessment of the implementation of the FCNM in BiH.
79. The adoption of the Law on the Protection of Rights of Persons Belonging to National Minorities in 2003 (hereinafter the Law on National Minorities) was important in improving the legal protection of national minorities in BiH and in raising awareness of the rights of minorities. The Law on National Minorities defines the term “national minority” in Article 3: “A national minority, in the sense of this Law, is a part of the population - citizens of Bosnia and Herzegovina - that does not belong to one of the three constituent peoples of Bosnia and Herzegovina, and it consists of the people of the same or similar ethnic origin, same or similar tradition, customs, religion, culture, and spirituality, and close or related history and other features. Bosnia and Herzegovina shall protect the position and equality of persons belonging to national minorities: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks, Ukrainians, and others who satisfy requirements from paragraph 1 of this Article.”
80. The Law covers several important areas of life, such as education, culture, participation and media and provides a good starting point by laying down the overall legal framework. The rights introduced in this law can, however, only be implemented through sectoral legislation

<sup>43</sup> The Advisory Committee received the initial State Report of Bosnia and Herzegovina on 20 February 2004 (due in June 2001), i.e after it had been authorised by the Ministers' Deputies to start its monitoring of BiH.

<sup>44</sup> Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities – ACFC/INF/OP/1/(2005)003

at the State level or via secondary legislation at the Entity/Cantonal level. These laws have not yet been fully realised.<sup>45</sup>

81. The Law provides for the establishment of the Council of National Minorities. The Decision on the Establishment of the Council of National Minorities was adopted in May 2006, but the Council has yet to start functioning. Once operational, it could provide an important contribution to the promotion of rights of national minorities by enhancing their participation in matters that concern them.
82. In Bosnia and Herzegovina, the three constituent peoples are not considered as national minorities. However, *de facto* persons belonging to one of the three constituent peoples often find themselves in a minority position in the area where they reside, thus making them vulnerable and subject to various types of discrimination. In view of this fact, the Advisory Committee considered in its Opinion that “Bosniacs and Croats in the Republika Srpska as well as Serbs in the Federation could also be given the possibility - in case they so wish - to rely on the protection provided by the Framework Convention as far as the issues concerned are within the competence of the Entities.” It went on to say that “the same possibility could also be given to the Croats and the Bosniacs living in the Cantons where they constitute a numerical minority”. The Advisory Committee “did not intend to imply a weakening of their status as constituent peoples as provided for by the Constitution, but merely aims at offering an additional tool to respond to a specific need for protection.”
83. The Commissioner finds the view adopted by the Advisory Committee useful and practical and recommends that it should be implemented. The Commissioner firmly believes that an approach “from ethnicity to citizenship” and “from group rights to individual rights” should be adopted by the authorities of Bosnia and Herzegovina.
84. The recent conflict continues to have an affect not only on the socio-economic conditions in BiH, but also on inter-ethnic relations. The Commissioner considers it extremely important to continue efforts towards strengthening intercultural dialogue and mutual understanding among all persons irrespective of their ethnic, religious or cultural identity. The role of religious and political leaders is crucial in this respect, as is the role of the media. Dealing with the past in an objective and factual manner is a crucial element of the process of healing and reconciliation.

## **6.2. The situation of Roma minority**

85. Roma are the largest national minority in Bosnia and Herzegovina. Although (in the absence of a recent census) the exact number of Roma is not known, it is estimated that there are between 30,000 to 60,000 Roma living in the territory of Bosnia and Herzegovina.<sup>46</sup> Before the war, the Roma communities used to live mainly in the territory of what is today the Republika Srpska. During the war, large numbers of Roma left their pre-war places of residence, either as displaced persons or as refugees. Many were expelled and very few have returned to their place of origin. Consequently most of the Roma today are residing in the territory of the Federation of BiH. The vast majority of the Roma in Bosnia and Herzegovina live in extremely difficult socio-economic conditions and in extreme poverty.<sup>47</sup>

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<sup>45</sup> The National Assembly of Republika Srpska enacted the said Law in December 2004. The Parliamentary Assembly of the Federation of Bosnia and Herzegovina still has not finalized this process. Within the Federation, no Canton has yet adopted a special law to implement the Framework law.

<sup>46</sup> Figure from joint fact-finding project of the OSCE High Commissioner for National Minorities and the Council of Europe.

<sup>47</sup> See ECRI report on BiH from 2004, in which the situation of Roma was a particular issue of concern.

**a) Education**

86. The education level of Roma in BiH is generally low, especially among the younger Roma<sup>48</sup>, and the illiteracy rate is very high. Two in five Roma have never been to school. The Roma women and girls are often even more disadvantaged. Very few girls finish primary education. Early marriage of Roma girls is still common. Generally, Roma children in BiH perform poorly in school; language barriers, lack of school readiness programmes and support programmes for Roma children within the education system are the main contributors to low educational achievement. UNICEF research on Roma education in BiH indicates that Roma children achieve similar results to non-Roma children given the same level of preparation. The school readiness of Roma and non-Roma children therefore represents a systemic gap, which is not being addressed in BiH.<sup>49</sup>
87. The new draft law on Preschool Education stipulates obligatory preschool education for all children. Once adopted, its full implementation is expected to take time, considering that the current rate of preschool involvement is 6% (the lowest in Europe). There is also the risk that Roma children will be excluded from the initial phases of implementation. To prevent this from happening, awareness raising and programme development needs to be undertaken by those working with and for Roma. Roma children generally have high drop out rates, and this needs to be addressed via school programmes and work at the community level. Primary school enrolment rates in BiH are high on average, at 94 per cent, but are only 33 per cent for Roma children.
88. The Commissioner recommends that authorities take comprehensive measures to increase the attendance of Roma children in school and to prevent early drop out. Ensuring the inclusion of Roma children in preschool education should be one of the early priorities. Particular attention should be paid to the inclusion of Roma girls in education at all levels.

**b) Employment and social protection**

89. Roma are the most unemployed ethnic group in BiH. Only one in twenty-five Roma is employed or self-employed. The main sources of income are the sale of secondary raw materials (29 %) and begging (19%). Over 70 % of the Roma do not have any form of social insurance. Due to the low level of education, Roma are generally not adequately qualified to respond to modern labour market needs. Although it may not be possible to prove open and systematic discrimination of Roma in employment, it is reported that employers reluctantly hire Roma people.
90. The Strategy for Roma foresees measures towards increased Roma employment. The Commissioner is aware that the BiH authorities together with the Roma Council are currently working on the development of Action Plans for Roma Employment, Housing and Health Protection and that efforts are also underway to revise the Education Action Plan. The Commissioner welcomes these efforts and urges the inclusion of more consistent and long-term strategies for improving the quality of livelihood, health protection and employment of Roma.

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<sup>48</sup> This is due to the fact that in the Socialist Republic of Former Yugoslavia, the state socialism provided development opportunities for Roma, particularly in terms of access to employment, health care and education. See *At Risk: Roma and Displaced in Southeast Europe*. UNDP, Regional Bureau for Europe and CIS. Bratislava 2006. Page 13-14 in chapter Roma under socialism.

<sup>49</sup> Information received from UNICEF in Bosnia and Herzegovina.

**c) *Lack of personal documents, health care and housing***

91. Lack of personal documents like birth certificates and personal identity documents remains a problem for many, and renders the Roma especially vulnerable. Access to health care services for Roma families is often limited by the lack of health insurance. This is due to a lack of citizenship and/or residency status, as well as from a lack of formal employment. Roma children are often not getting even the most basic vaccinations because of a lack of registration or information, and the percentage of non-immunised Roma is as high as 41 %. Roma women often deliver their children outside of medical institutions due to a lack of funds. These children are consequently left unregistered at birth. Information campaigns with Roma have been carried out to remedy this problem with some success.
92. Most members of the Roma community in BiH do not have any legal title over the land they have resided on for decades or longer, nor can they receive assistance from donors for reconstruction of homes since most donors require proof of ownership. Many Roma settlements were destroyed during the course of the war and Roma regularly face eviction from current settlements. According to OSCE data, 75 % of Roma lack adequate housing and accommodation. The Roma who live in informal settlements are often living in conditions which threaten their general health. As many of them were living in informal settlements before the war, their return process causes particular challenges.
93. In view of the seriousness of the housing conditions, both the ECRI and the Advisory Committee of FCNM have stressed the urgent need of addressing the informal settlements of the Roma populations with a view to legalising them or providing alternatives to these settlements. The Commissioner shares their views. He is extremely concerned at the level of social exclusion and poverty faced by the Roma in Bosnia and Herzegovina in all areas of life and calls for comprehensive measures to be taken by the Bosnian authorities.
94. The establishment of the Roma Committee with the Council of Ministers of BiH as a permanent advisory body made up of Roma representatives and representatives of relevant Ministries in June 2002 was a positive development with regard to the participation of the Roma. The Roma Committee should be further strengthened and its resources increased to enable it to function effectively.

## **VII. Prevention of discrimination**

### **7.1 Legal framework**

95. Bosnia and Herzegovina has ratified a number of treaties with non-discrimination articles as well as the Protocol No. 12 to the European Convention on Human Rights. While there are a number of laws in place (in the various legal entities) addressing some types of discrimination, comprehensive anti-discrimination legislation remains yet to be enacted. The implementation of anti-discrimination laws and provisions is far from satisfactory.

### **7.2 Gender discrimination and violence against women**

96. BiH is a state Party to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and has ratified the Optional Protocol in September 2002. The first state report of BiH was considered by the CEDAW in May 2006 and it issued its concluding Comments in June 2006.<sup>50</sup> The Committee welcomed the establishment of the Gender Equality Agency at the State level as well as the creation of Gender Centres in both Entities. The enactment of the Law on Gender Equality in 2003, which forbids direct and

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<sup>50</sup> CEDAW/C/BIH/CO/3, 2 June 2006.

indirect discrimination in private and public domain in all sectors of society was welcomed, as was a number of legislative developments with respect to the protection of women against violence.

97. Some of the main concerns of the CEDAW committee have been reflected throughout this report. These are the result of laws and policies which have often neglected gender analysis. In the post-war period women's enjoyment of their human rights has been negatively affected by several factors: the lack of a gender analysis of the consequences of the armed conflict and the lack of women's participation in and gender analyses of the peace, reconstruction and transformation processes. Furthermore, the creation of the constitutional framework as well as political and administrative structures based on ethnicity has contributed to a limited recognition and implementation of gender equality principles.<sup>51</sup>
98. Although the legislation and institutional gender mainstreaming mechanisms are in place, it has not yet led to full harmonisation of existing legislation and policies. According to the Law on Gender Equality in BiH, the Gender Equality Agency should assess draft laws, acts and by-laws in advance. However, it does not always receive the drafts through a regular procedure and is therefore unable to perform this task. The Gender Equality Agency remains understaffed and under-resourced and is therefore unable to implement effectively its wide-ranging mandate as required by the Law on Gender Equality. In September 2006, the BiH Council of Ministers adopted an *Action Plan on Gender issues* drafted by the Agency, which incorporates the recommendations made by CEDAW. The Commissioner welcomes the adoption of the Action Plan. Taking into account the need to ensure effective implementation of the Action Plan, the Commissioner recommends that the Agency is given more resources and authority and that procedures are established to enable the Agency to assess draft legislation.
99. Women continue to be underrepresented in elected and appointed bodies and in the public administration and judiciary, in particular at high levels. Women also enjoy low representation in the labour market and are concentrated in certain employment sectors and in low-paid jobs. They, more often than men, work in the "grey economy", which negatively affects their eligibility for social security and health care.
100. Violence against women is a pervasive human rights concern in all Council of Europe member states, and this is also the case in BiH. The situation of victims of sexual violence in the 1992-1995 conflict, most of whom were women, remains to be adequately addressed. This failure continues to disadvantage large numbers of women, many of whom are female heads of households and internally displaced persons. The Commissioner regrets that their specific type of suffering was only very lately recognised in the legal frameworks for civilian war victims and not at all at the State level.<sup>52</sup> Furthermore, there is no coherent strategy nor adequate financial allocations in place to support these women, although these measures are included as priority activities under the Project on Gender Action Plan implementation developed by the Gender Equality Agency.
101. The legislation to provide protection for women against violence is comprehensive. The Law on Gender Equality in BiH defines the terms of gender-based violence, harassment and sexual harassment. The Law forbids all forms of gender-based violence in the private and public spheres. There are also laws in both Entities enacted in 2005 to provide protection from domestic violence.

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<sup>51</sup> Ibid.

<sup>52</sup> The Law on the Basic Principles of Social Welfare, Welfare of Civilian Victims of War and Welfare of the Families with Children of the Federation of BiH established a special category for women victims of war rape among the victims of civil war which can claim specific social and other rights. Published in Official Gazette of F BiH in July 26, 2006.

102. The Action Plan addresses violence against women in one of its sections and designates concrete tasks, the institutions responsible for carrying out these tasks and the deadlines for implementation. However, currently there are only seven shelters in the country with a capacity of around 120 persons and primarily run and financed by local non-governmental organisations supported by international donors.<sup>53</sup>
103. The Commissioner recommends further measures to be taken to ensure full implementation of the legislative frameworks in practice. Further investments are needed to improve the infrastructure for addressing violence, including shelters for women and children who are victims of violence, counselling centres for victims and services for violators. Financial support needs to be allocated to relevant institutions, and NGOs working to combat violence should receive support from the State funds.
104. Trafficking in women remains a problem in BiH despite the significant efforts invested in combating it employed by the national authorities with the assistance of the international community. Since the end of the conflict, BiH has been one of the countries with the highest number of identified cases of trafficking in women for the purpose of sexual exploitation in Europe. BiH has ratified the UN Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Person in 2002. Provisions of the law relating to trafficking and human smuggling in BiH are in conformity with the UN Trafficking Protocol.<sup>54</sup>
105. The primary responsibility for combating trafficking in human beings rests with the Office of the State Coordinator for Combating Trafficking in Human Beings, which, in co-operation with other institutions has developed the State Action Plan for Combating Trafficking in Human Beings.
106. However, there are concerns about the implementation of the laws in practice relating to a lack of understanding of the definition and a lack of recognition that people might be trafficked and subjected to forced labour for other purposes than sexual exploitation. As an example, trafficking of children for begging is not recognised as such. Another aspect of the problem is insufficient identification of victims, which has negative consequences on their rights. Until very recently, protection measures did not apply to nationals of BiH who have been trafficked internally. Shortcomings in the assistance programmes, such as restricted freedom of movement for the victims and long periods of residence in shelters for witnesses in trafficking cases, need addressing.
107. At the time of the visit, the Commissioner recommended that national authorities ratify the Council of Europe Convention on Action against Trafficking in Human Beings. He welcomes the recent ratification of the Convention on 11 February 2008.

### **7.3 Discrimination of LGBT persons**

108. The Law on Gender Equality adopted in 2003 specifically prohibits discrimination based on gender and sexual orientation. The Criminal Codes (of the State of BiH and of both Entities) also include sexual orientation as a ground in their anti-discrimination clauses. Same sex conduct between consenting adults is no longer a crime in BiH.<sup>55</sup> Despite the legal

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<sup>53</sup> Open Society Institute, Factsheet on Violence against Women, 2006.

<sup>54</sup> For a full analysis of the situation as regards trafficking in human beings in BiH, see a recent article by Barbara Limanowska in a publication *Collateral Damage, The Impact of Anti-Trafficking Measures on Human Rights around the World*, by the Global Alliance Against Traffic in Women, 2007.

<sup>55</sup> Decriminalised in the Federation of BiH in 1996 and the Republika Srpska in 1998.

protections afforded, some legal lacuna still exists. For instance, there is no legislation in place that would provide legal, social or health care to transsexual individuals (in line with the case law of the ECHR under Article 14).

109. The main problems are, however, lack of implementation of the laws and negative social perceptions. Persons, who have been open about their gender or sexual orientation have reportedly been dismissed from their employment in some cases.<sup>56</sup> Extreme stereotyping, discrimination and homophobia in the media is another serious concern.
110. It is encouraging that the first official LGBT organisation – Organisation Q – was formally registered in 2004 and continues to carry out various activities, including research, awareness raising and monitoring and reporting. The Commissioner met with a representative of the Organisation Q in Sarajevo and was positively impressed with their approach and activities in combating homophobia and discrimination. They and their work – and the work of other LGBT organisations in BiH – deserve further support from the Bosnian authorities. Awareness raising measures and education in tolerance are needed in addition to comprehensive antidiscrimination legislation.

## VIII. The rights of children

### 8.1 Legal framework and national action plan

111. BiH became a state Party to the United Nations Convention on the Rights of the Child with its succession in 1993. The initial report under article 44 of the Convention was submitted by BiH in 2004 and the Committee on the Rights of the Child issued its *Concluding Observations* in June 2005. The Committee was generally concerned that “the political and administrative structure of the State party may constitute an obstacle for the development and implementation of cohesive State policies and comprehensive and coordinated legislation in full compliance with the principles and provisions of the Convention.”
112. Bosnia and Herzegovina has adopted an *Action Plan for Children 2002-2010* and established a *Council for Children* of Bosnia and Herzegovina, as a body to monitor the status of children’s rights and to advise the State through the Council of Ministers. While the Commissioner welcomes these measures, he remains concerned that the practical impact of the Action Plan and the Council of Children remains limited. The Commissioner recommends that the implementation of the Action Plan is made a higher priority by the Government and that measures are taken to ensure effective functioning of the Council for Children.

### 8.2 Child poverty and right to social security

113. According to the Medium Term Development Strategy (2004-2007) of the BiH Council of Ministers, approximately 20 per cent of the population of BiH live below the general poverty line.<sup>57</sup> A further 30 per cent live just above the poverty line. Adolescents and children are defined as groups of population who have the largest chances of being poor in BiH. Out of the total number of unemployed in BiH, 49.2 % are young people. Families with children, especially those with two and more children, are particularly at risk of poverty.

<sup>56</sup> US State Department Country Report 2005. IHF, Human Rights in the OSCE Region, entry for BiH.

<sup>57</sup> The Medium Term Development Strategy of BiH 2004-2007 was adopted in 2004 and revised in 2006.

114. Although the level of expenditure on social protection in BiH is around the regional average, the structure of expenditure is such that it impedes the access of families of children to social benefits. In the Republika Srpska, the child allowance transfers are decentralised and standardised, but are very low and do not reach all children in need. In the Federation of BiH, the cantonisation creates variations in access and standards to child benefits, which are very seldom paid due to lack of budgetary means. According to the report of BiH to the Committee on the Rights of the Child, in only one canton (Sarajevo) are child allowances actually paid. The result is unequal access to child benefits and non-existence of minimum standards for all children in BiH.<sup>58</sup>
115. The Commissioner recommends measures to be taken to improve access to child benefits at an equal level for all children in BiH. One of the ways forward could be the establishment of the Solidarity Fund in the BiH Federation to address the inequalities. The establishment of a fund at the State level or standardisation of benefits across entities is a more long term goal supported by the Commissioner.

### **8.3 Children separated from their parents**

116. There are an estimated 3,000 children without parental care in BiH. In addition to the lack of exact figures, data is also missing on the reasons for the separation of children from parents. There are children who are taken away from their parents without the knowledge of responsible authorities (children left to the care of extended family or friends, street children, child-victims of trafficking), whose numbers are not accurately determined. The existing statistical data on social welfare services does not indicate whether prevention of the separation of children from parents is adequately present in the activities of the centres for social work. The absence of a functional information system in the country makes the registration and monitoring of social service clients very difficult.
117. Institutions are not effective in preparing children without parental care for independent living. The funding of institutions is frequently inadequate, vaguely defined and varies from one Canton to another in the Federation of BiH, as well as between the Entities. The majority of institutions employ inadequate numbers of professional staff in relation to the number of children. Some 1,400 children in BiH are placed in foster families. Absence of standardised procedures for the recruitment, selection, training, support and supervision of foster families is a problem resulting in inadequate regulation of foster care in BiH.<sup>59</sup>
118. The Commissioner is concerned at the large numbers of children living in institutions. Institutionalisation should only be used as a last resort and only in the best interests of the child. The placement of a child in an institution should be reviewed periodically. The proper functioning and monitoring of care institutions and foster care must be established as a matter of priority.

### **8.4 Corporal Punishment**

119. Corporal punishment is lawful in the home and not expressly prohibited in BiH. However, children are protected from serious abuse and neglect under a variety of laws.<sup>60</sup> Corporal punishment is prohibited in schools under the Child Protection legislation. Authoritative data on violence against children does not exist. Available statistics from official sources do not

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<sup>58</sup> Information from UNICEF in Bosnia and Herzegovina.

<sup>59</sup> Ibid.

<sup>60</sup> The Family Code in the Federation of Bosnia-Herzegovina and in the Republika Srpska; the Criminal Code of Bosnia and Herzegovina (2003), the Social Protection Law and the Protection of Families with Children Law in the Federation of Bosnia-Herzegovina; the Law on Child Protection in the Republika Srpska; and the Law on Child Protection in the District Brcko.



capture the extent of this “invisible” form of violence. There remains a lack of sensitivity and awareness around issues of violence and abuse, especially when it happens within the family, which also results in a lack of reporting and data.

120. The Commissioner, while welcoming the many legislative measures to protect children from violence and abuse, is concerned about information he received that children are often exposed to domestic violence and other forms of abuse, including sexual abuse. He reiterates his earlier call made to the Bosnian authorities<sup>61</sup> to prohibit corporal punishment at home and in institutions. Awareness raising, reporting and monitoring activities need to be enhanced to ensure adequate responses to violence and abuse of children, including in the family home.<sup>62</sup>

## 8.5 Juvenile justice

121. In its first report on BiH<sup>63</sup>, the Committee on the Prevention of Torture was greatly concerned about the lack of appropriate facilities for minors (i.e. persons under 18) in Bosnia and Herzegovina. Minors who had been found guilty of committing a criminal offence and sent to prison were sometimes placed in the same building as - and associating with - adult inmates, a situation which undoubtedly undermined the goal of rehabilitating them. The CPT also noted with concern that juveniles could be held on remand at the establishments visited. The conditions of detention of these young prisoners were at times appalling. Moreover, the regime offered them was no less impoverished than that of adult remand prisoners and, in particular, they were being offered no education. In the CPT's view, all juvenile prisoners, including those on remand, should be held in detention centres specifically designed for persons of this age, offering regimes tailored to their needs and staffed by personnel trained in dealing with young people.
122. Some progress have been made to implement the CPT recommendations, e.g. the opening of the Tunjice educational reformatory home in the RS in early 2007.
123. However, the major development in the field of juvenile justice was the adoption of the National Strategy Against Juvenile Offending, along with Action Plans (2006-2010), in July 2006 by the BiH Council of Ministers. The process of developing the Strategy and the Action Plans was inclusive and a large pool of professionals and organisations gave input during the process. The main goal of the Strategy and Action Plans is to bring legislation, policies and practice in the area of juvenile offending in line with international and European standards. The five strategic thematic areas relevant to the situation in BiH are legislation, alternative measures, institutional treatment, prevention and the application of criminal legislation to juvenile offenders in practice.
124. The Commissioner welcomes the new National Strategy Against Juvenile Offending, but is concerned that the effective implementation has yet to begin. The responsibility for the implementation and coordination rests currently with the state-level Ministry of Security, a law enforcement body. However, an effective approach to dealing with juvenile justice requires also human and child rights expertise; the key to effective strategy on juvenile justice lies in the understanding of the rights of juveniles in conflict with the law.

<sup>61</sup> The Commissioner's letter to Prime Minister of Bosnia and Herzegovina, 18 May 2007, where he called for explicit prohibition of corporal punishment of children in the family home, schools or in alternative forms of care.

<sup>62</sup> In June 2007, the Council of Ministers of BiH adopted the National Strategy on Combating Violence against Children 2007- 2010.

<sup>63</sup> The report to the Government of Bosnia and Herzegovina drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) following its visit to Bosnia and Herzegovina from 27 April to 9 May 2003. The report was adopted by the CPT at its 52<sup>nd</sup> meeting, held from 3 to 7 November 2003.

125. In his meeting with Prime Minister Nikola Špirić, the Commissioner raised the possibility of moving the responsibility for the implementation of the Strategy from the Ministry of Security to the Ministry of Justice at the state level, where it might more appropriately belong. He also recommended that the Ministry of Human Rights and Refugees should be closely involved in the implementation. The Commissioner stresses the urgency of the implementation to benefit from the impressive work done in developing the Strategy.

## 8.6 The right to education

126. The educational system in Bosnia and Herzegovina is extremely fragmented; currently 14 Ministries of Education<sup>64</sup> are involved in managing and running educational activities in BiH. Apart from being ineffective and expensive, the decentralisation of education in the Bosnian context has contributed to ethnic separation. Progress towards a modern and unified education system in BiH would require a strengthening of the role of the State in education. A recent report by the OSCE Mission in BiH warned that “education in BiH is in danger of becoming a security issue in itself because it is hindering the development of a stable and functional democratic state.”<sup>65</sup> It called for measures to be taken to create a unified education system in BiH that would help reduce ethnic division and the potential for future instability. It also encourages Regional cooperation in this area.
127. Some positive developments have occurred, mainly in the legislative field. The adoption of a State-level *Framework Law on Primary and Secondary Education* in 2003 and the adoption of a *Law on Higher Education* in July 2007 have been positive steps.<sup>66</sup> The *Framework Law on Primary and Secondary Education* envisages a common core curriculum, syllabus and the right to use one’s mother tongue. However, the law is not uniformly applied across the whole country. Introduction of education for democratic citizenship and new approaches to history teaching are other modest improvements made in the field of education.
128. There are still many instances of pupils being segregated according to their ethnicity. The most blatant form of exclusion in an education policy in BiH is the system of running “two schools under one roof”. This is still the case in 54 schools in the Federation of BiH<sup>67</sup>. In these divided schools, the school facilities are completely separated for the children and staff of different ethnic groups. This applies both to the administration of the school as well as to the use of different curricula. On the other hand, the mono-ethnic curriculum in the Republika Srpska does not accommodate the needs of the minority pupils either.
129. The practice of transporting school children to ethnically homogeneous schools outside of their catchment area is still not completely eliminated, although progress has been made. Many children continue to travel, sometimes long distances, to attend schools with their own ethnic group and to have ethnic-related curricula.
130. The Commissioner is extremely concerned at the status of education in BiH. The policy of separating children according to their ethnicity can only reinforce the prejudices and intolerance towards others and ensure continued ethnic isolation. Measures to unify the educational system are long overdue. Ethnically-based and divided education systems

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<sup>64</sup> One at the state level (Ministry of Civil Affairs), one in each entity and one in each of the ten cantons of the Federation. Brcko District has its own Education Ministry as well.

<sup>65</sup> Background report by the OSCE Mission to BiH: Education in Bosnia and Herzegovina, A Neglected Security Issue, 28 June 2007.

<sup>66</sup> In addition, the Framework Law on Preschool Education in BiH and the Law on the Agency for Preschool, Primary and Secondary Education were published on 20 November 2007 (comments by the Ministry of Civil Affairs on the report by the Commissioner for Human Rights).

<sup>67</sup> Information from OSCE Mission in BiH.

remain an obstacle to sustainable returns. The Commissioner encourages the recent initiatives to involve parents and communities more in the development of a more democratic, inclusive and equal school environment. Although more research is still required, this might be the right approach to overcome the divisive policies and the politization of the education field, which is not in the best interest of the children.

131. It is generally recognised that quality education accessible to all children is the best tool to prevent inequality and the most efficient way to escape poverty and social exclusion. While in Bosnia and Herzegovina nearly universal primary education (between ages 6 – 15) has been achieved, the percentage of non-enrolled children is increasing and is now an estimated 4 %.<sup>68</sup>
132. Significant disparities exist between children from poor and more affluent households. It is estimated that in the poorest segments of the society, one in four children do not attend school at all, despite the fact that primary school is compulsory for all children. This clearly increases the risk of “recycling” poverty from one generation to another. Roma children are the most disadvantaged. Children in rural areas in general face more difficulties in accessing quality education than children living in towns.
133. Children with special needs have particular problems receiving appropriate schooling. Even though the legislation is in place to facilitate inclusion, in practice the implementation has proceeded very slowly. According to the latest information available from school year 2003-2004, only 1 % of children with special needs are included in the regular school system. One of the reasons is that often the school facilities are not adjusted to meet their needs. However, the main obstacle is the lack of understanding of the need to include such children in regular schools together with other children.
134. Compared to most of the other European countries, preschool education is extremely rare. In urban areas, the coverage is only some 12 -14 %, while in rural areas it is almost non-existent. Pre-school education is accessible to few children from poor and rural families. Roma children, as discussed above, are largely excluded with detrimental effects on their school readiness.
135. As regards secondary education, the attendance levels are also low in BiH compared to other European countries. The quality of education and the relevance of the school curriculum to working life is also questionable. There remains a strict division into “male and female” professions, contributing to gender stereotypes and preventing an increase of gender equality in working life. As regards higher education, less than 25 % of youth in BiH attend – compared to over half in the EU. Again, poverty is a serious barrier and only very few Roma take part in higher education. The areas of adult education and informal education are also undeveloped in BiH. Taking into account that during the war education was disrupted for a large number of young people, this is yet another serious issue to be tackled in BiH.

## **IX. Treatment of asylum-seekers, refugees and foreigners**

### **9.1 Asylum and temporary protection of refugees**

136. Bosnia and Herzegovina is a State party to the 1951 Convention and its 1967 Protocol relating to the Status of Refugees. The legal framework for the institution of asylum is defined in the *Law on Movement and Stay of Aliens and Asylum*, which entered into force in October 2003. In general, legislation on asylum is in line with international standards and the minimum standards of the EU *acquis*. The provisions are in conformity with the international standards, including the principle of *non-refoulement*.

<sup>68</sup> Social Inclusion in Bosnia and Herzegovina, National Human Development Report, UNDP 2007.

137. Most of the refugees and asylum seekers in BiH are from Kosovo and neighbouring countries. The temporary protection regime in BiH for persons from Serbia and Montenegro whose place of last permanent residence was Kosovo was established through a decision by the Council of Ministers in accordance with Article 85(1) of the *Law on Movement and Stay of Aliens and Asylum*. In total 3,057 persons from 921 families have benefited from temporary admission status, which remained in force until 30 June 2007. A total of 447 persons lived in the three reception centres established. The Commissioner commends the BiH authorities for the generosity they have demonstrated in having provided temporary asylum to refugees from Kosovo for many years with the assistance of UNHCR.
138. On 7 June 2007, the Commissioner visited the collective accommodation centre in Sokolovac near Mostar, where mainly refugees of Roma origin from Kosovo were residing. The Commissioner observed that all the children in the Sokolovac centre were attending the local school, although reportedly many Roma refugee children have difficulties in getting access to education. The refugees in Sokolovac informed the Commissioner that their temporary status was going to expire at the end of June 2007. Understandably, they were very concerned about what was going to happen to them after that date and if they would be forced to return to Kosovo.
139. Following his visit, on 18 June 2007, the Commissioner wrote to Prime Minister Nikola Spirić to convey his concerns regarding the situation of refugees coming from Kosovo currently residing in Bosnia and Herzegovina on a temporary admission status. The Commissioner in his letter said that while he could “agree in principle that temporary admission as a measure for protection has to come to an end at some point”, he “did not agree, however, that the situation in Kosovo yet allows for return of all refugees in safety and dignity. In particular, conditions for return for Roma, Serbs and Albanians in a minority situation are not there yet.”
140. The Commissioner proposed that efforts should be turned to identification of durable solutions for the members of this group, particularly for those for whom return to Kosovo is not yet possible. He encouraged the Bosnian authorities to facilitate the acquisition of citizenship for those entitled to it and to adopt a liberal attitude towards applications from Roma in this regard. Furthermore, he suggested that those under temporary admission be informed that they have access to the procedure for the assessment of their eligibility for refugees status or granting of other forms of protection in Bosnia and Herzegovina. The Commissioner insisted that as a minimum requirement the refugees should be granted a temporary stay.
141. The Prime Minister informed the Commissioner in the end of June 2007 that the temporary admission status had been extended for a further three months until the end of September 2007. The Commissioner has since been informed by UNHCR that most of the refugees from Kosovo have applied for asylum and are waiting for the outcome of the refugee determination process. The Commissioner reiterates his recommendations expressed in the letter of June 2007.

## **9.2 Reviews of citizenships granted to foreign nationals since 6 April 1992**

142. In the course of the visit, the Commissioner was approached by a number of BiH citizens whose citizenships were under review by the relevant “State Commission for Revision of Naturalization of Citizenship”, and who were facing the threat of deportation<sup>69</sup> in case of

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<sup>69</sup> During the preparation period for the visit as well as during the actual visit there were several public statements made by BiH officials calling upon those concerned to “voluntarily leave the country before they are deported” .

revocation of citizenship. The Commissioner also met with the Chair and members of the State Commission and was informed in detail of the work and procedures of the Commission.

143. The Commission was established in accordance with Article 40 (3) of the Law on Citizenship of Bosnia and Herzegovina by the Council of Ministers on 16 February 2006 and tasked with reviewing BiH citizenships acquired by foreign nationals in the period from 6 April 1992 to 1 January 2006. Out of the ca. 16'000 persons, who acquired BiH citizenship through naturalization in the said period of time, the commission is focusing its review on the ca. 1'500 persons which at the time of naturalization did not have the citizenship of the former Socialist Federal Republic of Yugoslavia (SFRY)<sup>70</sup>.
144. In the meeting with the Commissioner, a group of individuals subject to the citizenship review process expressed their deep concerns about procedural shortcomings, unclear and contradictory provisions in the substantive law as well as, most importantly, the absence of effective legal remedies. The complainants alleged that the procedure violated their right to a fair hearing by a competent court or tribunal in a matter that determined civic rights, violations of their right to an effective legal remedy, and potentially the right to family life of the deported persons (respectively under Articles 2(3)(f), 6, 8 and 13 of the ECHR). The crucial issue of whether the revocation of citizenship would render any of the persons stateless does not seem to have been adequately assessed prior to the decision making.
145. The biggest concern expressed by the interlocutors remains the risk of deportation to their countries of origin.
146. During his discussions, the Commissioner urged the authorities to secure the availability of effective legal remedies and recalled the state's responsibility to provide safeguards against extrajudicial transfers and refoulement. The European Court of Human Rights has repeatedly affirmed that any transfer to a country where the individual concerned would be at risk of torture or inhuman and degrading treatment or punishment is a violation of Article 3 of the ECHR, which is an integral part of the BiH Constitution.

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<sup>70</sup> The focus of the review commission is on the so-called "mujahedeen", who during the '92-'95 war participated on the Bosniak side and subsequently were granted BiH citizenship

## **X. Summary of recommendations**

The Commissioner, in accordance with Article 3, paragraphs b, c and e and with Article 8 of Resolution (99) 50 of the Committee of Ministers, recommends that the Bosnian authorities:

### **National system for human rights protection**

1. Establish more effective co-ordination by enhancing the coordination role of the Ministry of Human Rights and Refugees and by developing a national action plan on human rights.
2. Establish a mechanism for the review and implementation of the recommendations made by international human rights monitoring mechanisms, including the Council of Europe and UN treaty bodies.
3. Embark on a process of constitutional reform with a view to changing the emphasis from the equality of three constituent peoples to a state based on the equality of citizens.

### **Poverty and social exclusion**

4. Implement as a matter of priority the policy measures and reforms outlined in the Medium Term Development Strategy adopted by the Council of Ministers to combat social exclusion and poverty.
5. Ratify the revised European Social Charter and accept the collective complaint procedure by making a declaration to that effect.

### **Displacement and returns**

6. Apply the definition of internally displaced persons liberally and in line with the *Guidelines for the bodies responsible for revising and recognition of the status of a displaced person in Bosnia and Herzegovina*.
7. Continue the efforts to facilitate returns, including by constructing housing and the accompanying infrastructure. Ensure that return projects also address the specific situation of those who would otherwise have difficulties in benefiting from the reconstruction assistance, such as female heads of households and Roma.
8. Strengthen the efforts to fight impunity; arrest and prosecute war criminals and bring them to justice.
9. Continue de-mining activities and education on the risks of mines for communities at risk, such as returnees and children.
10. Ensure that pension entitlements, health care and social benefits are provided on a non-discriminatory basis to minority returnees.
11. Continue to find practical solutions to the obstacles identified, such as lack of access to utilities, in order to create the necessary conditions for sustainable return.
12. Address the particular needs of those internally displaced persons who are not able to return, e.g. due to past trauma or other special protection concerns by assisting them to integrate locally.

**Protection of national minorities**

13. Ratify the European Charter for the Regional and Minority Languages.
14. Put in place the sectoral legislation required for full implementation of the Law on the Protection of Rights of Persons Belonging to National Minorities at the State level or via secondary legislation at the Entity/Cantonal level.
15. Ensure the effective functioning of the Council of National Minorities to enhance the participation of minorities in matters that concern them.
16. Continue efforts towards strengthening intercultural dialogue and mutual understanding among all persons irrespective of their ethnic, religious and cultural identity.
17. Take comprehensive measures to increase the attendance of Roma children in school and to prevent their drop-out. Ensure the inclusion of Roma children in pre-school education and of Roma girls in education at all levels.
18. Plan and implement consistent and long-term strategies for improving the housing and employment situation for Roma.
19. Strengthen and increase the resources of the Roma Committee to enable it to function effectively.

**Prevention of discrimination**

20. Ensure effective implementation of the Action Plan on Gender issues by giving more resources and authority to the Gender Equality Agency.
21. Develop further policy measures to address persistent inequality of women in the labour market and in public life and administration.
22. Ensure that legislation to combat violence against women is fully implemented in practice.
23. Make further investments to build the infrastructure necessary for addressing violence, including shelters for women and children who are victims of violence, and allocate funds to relevant institutions and NGOs working to combat violence from the State funds.
24. Implement the laws and regulations concerning trafficking in human beings in practice. Take measures to improve the understanding of what constitutes trafficking, taking into account that people might be trafficked and subjected to forced labour for purposes other than sexual exploitation.
25. Improve the identification of victims and ensure the respect of their human rights. In particular, make sure that there are no undue limitations put on their freedom of movement by extended periods of stay in closed shelters.
26. Ensure full implementation of legislation protecting LGBT persons and take concrete actions to combat negative social perceptions by, inter alia, supporting current civil society initiatives in this field.
27. Pass comprehensive anti-discrimination legislation.

### **The rights of children**

28. Implement effectively the Action Plan for Children 2002-2010 and ensure proper functioning of the Council for Children.

29. Improve equal access to child benefits for all children.

30. Take measures to reduce the number of children living in institutions. Resort to placement in an institution only as a last resort and only when in the best interests of the child. Establish proper functioning and monitoring of care institutions and foster care.

31. Prohibit corporal punishment at home and in institutions. Enhance awareness raising, reporting and monitoring activities to ensure adequate responses to violence and abuse of children, including in the family home.

32. Start urgently the implementation of the new National Strategy Against Juvenile Offending.

33. Take measures to unify the educational system. Stop any policies and practices of separating children according to their ethnicity or those with special needs. Ensure full implementation of the Framework Law on Primary and Secondary Education and its core provisions on common core curriculum, syllabus and the right to use mother tongue.

### **Treatment of asylum-seekers, refugees and foreigners**

34. Find durable solutions for those refugees, who have been under the temporary protection scheme, particularly those for whom return to Kosovo is not yet possible.

35. Secure effective legal remedies with suspensive effect against decision to deport foreign citizens deprived of their citizenship to ensure the State's responsibility to provide safeguards against extrajudicial transfers and refoulement as any transfer to a country where the individual concerned would be at risk of torture or inhuman and degrading treatment or punishment is a violation of Article 3 of the ECHR.



# APPENDIX

## PROGRAMME

### Saturday, 2 June

14h30           Arrival of delegation  
                  Mr. Alp AY  
                  Ms. Sirpa Rautio

### Sunday, 3 June

12h00           Arrival, Zenica

12h00-13h30    Meeting with representative of the UNHCHR  
                  - Ms Jasna Džumhur, Head of the mission

13h30-15h00    Meeting with representative of «Medica» Zenica  
                  - Ms Duska Andrić, Director

15h00           Arrival of delegation  
                  Mr Thomas Hammarberg  
                  Mr. Berry Kralj

16h30           Departure to Sarajevo

18h00           Sarajevo, arrival

### **Monday, 04 June**

- 09h00-10h00 Meeting with representatives of the FBiH Ombudsman
- Ms Branka Raguž
  - Mr Esad Muhibić
  - Ms Vera Jovanović
- 10h00-11h00 Meeting with the member of the BiH Presidency
- Željko Komšić
- 11h15-12h30 Meeting with representative of the Orthodox community
- 12h30-13h30 Meeting with representatives of the UNICEF
- 15h00-16h30 Meeting with representatives of Catholic community in BiH
- Cardinal Vinko Puljić
- 16h30-19h00 Meeting with representatives of NGOs
- 20h00 Dinner with representatives of International Organisations

### **Tuesday, 05 June**

- 09h00-09h45 Meeting with representative of the city of Sarajevo
- Ms Semiha Borovac, Mayor
- 10h00-11h00 Meeting with representatives of the BiH Ombudsman
- Mr Mariofil Ljubić
  - Mr Safet Pašić
  - Mr Vitomir Popović
- 11h00-12h30 Meeting with High Representative
- Mr Christian Schwartz-Schilling
- 13h30-15h00 Working lunch with representatives of the OSCE
- 15h00-16h00 Meeting with representatives of the MFA
- Mr Sven Alkalaj, Minister for Foreign Affairs
- 16h30-17h45 Meeting with representatives of decertified police members
- 18h00-19h30 Visit to Srebrenica refugees

**Wednesday, 06 June**

- 08h30-09h20 Meeting with representatives of the International Commission on Missing Persons  
- Ms Kathryn Bomberger, Head of Mission
- 09h30-11h00 Meeting with BiH Council of Ministry's  
- Mr Safet Halilović, Minister of Human Rights and Refugees  
- Mr Bariša Čolak, Minister of Justice
- 11h00-11h50 Meeting with representative of the BiH Council of Ministers  
- Mr Nikola Špirić, Prime Minister
- 12h00-13h30 Meeting with the Collegiums of House of Representatives and House of People, BiH Parliament  
- Mr Beriz Belkić, HoR, Speaker  
- Mr Ilija Filipović, HoP, Speaker  
- Mr Niko Lozančić, HoR, deputy speaker  
- Mr Sulejman Tihić, HoP, deputy speaker  
- Mr Mladen Ivanić, HoP, deputy speaker
- 13h30 -15h00 Lunch with BiH delegation to PACE
- 15h00-16h15 Meeting with members of BiH Council of Ministry & of Commission for Review of Citizenships  
- Mr Sredoje Nović, Minister of Civil Affairs (MCA)  
- Mr Šerifa Godinjak, MCA, Health department  
- Ms Esma Hadžagić, MCA, Education Department  
- Mr Vjekoslav Vuković, Commission for Review of Citizenships
- 16h15-17h15 Meeting with representatives of Constitutional Court  
- Mr. Dušan KALEMBER, Secretary General  
- Mr Faris Vehabović, registrar
- 17h30-18h30 Meeting with representatives NGOs
- 20h15 Dinner with CoE member state Ambassadors in BiH

**Thursday, 07 June**

- 10h00-12h00 Meeting with representative of the Commission for Review of Citizenships  
- Mr Vjekoslav Vuković, Head of Commission
- 12h00-12h15 Meeting with representative of Ministry for Human Rights and Refugees  
- Mr Mirsad Husenbasic, Head of Cabinet
- 12h15 Departure to Mostar/Salakovac/Stolac
- 14h00-15h30 Visit to Roma collective center in Salakovac, near Mostar  
- Mr Mario Nenadic, Assistant Minister, MHHR  
- Representatives of the UNHCR
- 17h15 Departure to Banja Luka

**Friday, 08 June**

- 09h00-10h00 Meeting with representatives of the RS Ombudsman
- 10h00-11h30 Meeting with representatives of the RS Government  
- Mr Anton Kasipović, Deputy PM and Minister of Education  
- Mr Džerard Salman, Minister of Justice  
- Mr Omer Branković, Minister of Refugees and Displaced persons
- 11h30-12h30 Meeting with representatives Muslim community  
- Mr Edhem Čamdžić, Mufti
- 12h30-13h30 Meeting with representative of the City of Banja Luka  
- Mr Dragoljub Davidović, Mayor
- 15h00-17h00 Meeting with representatives of refugees from Croatia

**Saturday, 09 June**

- 08h30-10h30 Meeting with representative of the Nezavisne Novine daily  
- Mr Zeljko Kopanja, owner and editor in chief
- 11h00 Departure from Banja Luka to Zagreb
- 13h00 Zagreb
- 14h30 Departure of delegation