

## UNHCR Recommendations concerning the Upcoming Amendment of the Bylaw on Asylum of Bosnia and Herzegovina

### ADVOCACY PAPER

#### Introduction

UNHCR offers this paper as the agency entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions for refugees. As set forth in its Statute<sup>1</sup>, UNHCR fulfils its international protection mandate by, *inter alia*, "[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto."<sup>2</sup> UNHCR's supervisory responsibility under its Statute is reiterated in Article 35 of the 1951 Convention relating to the Status of Refugees ("the 1951 Refugee Convention")<sup>3</sup> according to which State parties undertake to "co-operate with the Office of the United Nations High Commissioner for Refugees [...] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention". The same commitment is included in Article II of the 1967 Protocol relating to the Status of Refugees ("the 1967 Protocol").<sup>4</sup>

#### Brief observations on the asylum law and practice

UNHCR welcomes Bosnia and Herzegovina's (BiH) efforts to align its new Bylaw on Asylum with the Common European Asylum System and relevant international standards. The Law on Asylum and the Bylaw on Asylum are for the most part in compliance with international refugee law and standards. However, UNHCR has identified some gaps, which can be addressed through a further strengthening of the asylum legislation and practice. The present document has been prepared in order to structure and facilitate UNHCR's advocacy efforts in view of the upcoming amendment of the Bylaw on Asylum<sup>5</sup>. The Bylaw on Asylum implements provisions of the Law on Asylum<sup>6</sup> and regulates aspects of the asylum procedure, such as the categories of persons protected by the non-refoulement principle, the non-penalization of irregular entry, right to interpretation, etc. The Bylaw further provides details on the asylum procedure in relation to cessation and revocation of status and regulates the formats and content of documents, including the intention to seek asylum attestation, asylum-seeker card and identification documents issued to refugees and persons granted subsidiary protection.

The present recommendations are related to selected issues and based on gaps that were identified in the Bylaw on Asylum and which would affect the operation of the asylum procedure and asylum-seekers' access to rights and services as provided for by international refugee law in BiH. Some recommendations are also related to initiatives that the relevant authorities could

---

<sup>1</sup> *Statute of the Office of the United Nations High Commissioner for Refugees*, General Assembly Resolution 428 (V) of 14 December 1950, available at: <https://www.unhcr.org/protection/basic/3b66c39e1/statute-office-united-nations-high-commissioner-refugees.html>

<sup>2</sup> *Ibid.* para. 8(a).

<sup>3</sup> UN Treaty Series (UNTS) No. 2545, Vol. 189, p. 137.

<sup>4</sup> NTS No. 8791, Vol. 606, p. 267.

<sup>5</sup> *Bosnia and Herzegovina: Bylaw on Asylum* [Bosnia and Herzegovina], 16 September 2016, available at: <https://www.refworld.org/docid/5ecfdaef4.html>

<sup>6</sup> *Bosnia and Herzegovina: Law on Asylum* [Bosnia and Herzegovina], 11/2016, 19 February 2016, available at: <https://www.refworld.org/docid/58b575084.html>

consider in order to address technical issues which do not come strictly under the purview of the Bylaw on Asylum.

Also, access of asylum-seekers to some of the rights guaranteed by Article 76 of the Law on Asylum<sup>7</sup> needs to be further regulated in the Bylaw on Asylum to facilitate an effective enjoyment of these rights. For instance, the practical problems faced by asylum-seekers due to the fact that asylum-seeker cards are not accepted as adequate documentation for accessing various rights and services need to be addressed.

Furthermore, the Law on Asylum stipulates in Article 76 (4) that an asylum-seeker is entitled to access the labour market if the Ministry of Security has not adjudicated the asylum claim within 9 months since it was lodged, provided the reasons for this delay cannot be attributed to the asylum-seeker. While access to the labour market of other foreigners is regulated by the Law on Foreigners, the provisions of which are applicable only to persons holding a residence permit, the Bylaw on Asylum lacks provisions that would support access of asylum-seekers to the labour market. This has left room for different interpretations and in practice only few asylum-seekers have been able to access the labour market without work permits.

The Law on Asylum, Article 76 (1) also provides that asylum-seekers are entitled to primary health care. Access to primary health care is further regulated by the relevant laws and regulations at the Entity and Cantonal levels, which do not address access to health care for asylum-seekers. The Bylaw on Asylum does not contain provisions stipulating how asylum-seekers can access primary health care in practice, particularly when they are not accommodated in reception centres. For asylum-seekers accommodated in reception centres, access to primary health care services is provided through contractual arrangements made by the Ministry of Security or an NGO with a local health institution.

The Law on Asylum envisages priority asylum processing for persons with specific needs. However, the Bylaw on Asylum does not contain specific guidance on the procedure for the identification and referral of specific needs in order to be taken into consideration in the context of the asylum procedure.

### **Access to the procedure and backlogs**

Access to the asylum procedure requires registration of one's private residential address with the Field Offices of the Service for Foreigners Affairs or the local police station, except when accommodated in an official reception centre, and the possession of a valid attestation confirming an intention to seek asylum, which is valid for up to 8 or 14 days, when a high number of intentions to apply for asylum are made at the same time (Law on Asylum, Article 32). Many asylum-seekers face obstacles in initiating the asylum procedure due to the expiration of their attestation or because they were accommodated or transferred (sometimes without their consent) to different reception centres where registration was not systematically conducted since these were not considered as "official" reception centres, such as the ones located in the Una-Sana Canton.

From 1 January 2018 through the end of August 2020, a total of 60,801 persons expressed an intention to seek asylum upon arrival in BiH and held attestations confirming an intention to seek asylum, out of which only 2,543 were registered by the Sector for Asylum. At the end of August 2020, some 10,000 persons are still in the country. While some may have no interest in registering

---

<sup>7</sup> Article 76 of the Law on Asylum enumerates rights of asylum-seekers including stay in BiH, right to information, accommodation, primary health care, access to elementary and secondary education, access to labour market, access to free legal aid, interpretation in the asylum procedure and psycho-social support. Paragraph (2) of Article 76 stipulates that asylum-seekers can realize the listed rights on the basis of the asylum-seeker card and that funds for covering the related costs would be secured by the Ministry of Security in the budget of the BiH institutions approved for this purpose or through donations.

their asylum claims, there are indications that some who wanted to register were not able to do so because of the above-mentioned difficulties.

These difficulties are further compounded by the fact that BiH has accumulated a backlog of pending cases, which is negatively affecting processing of asylum claims and the registration of new asylum-seekers by the Sector for Asylum. As of the end of August 2020, there was a backlog of 692 pending cases: 376 individuals identified by UNHCR's legal partner who are pending registration of their asylum claim and 316 registered asylum-seekers awaiting an interview or final decision. Out of the 316 registered asylum-seekers, only 33 have had an RSD interview.

The existing capacity of the Sector for Asylum needs to be strengthened to ensure timely registration of the asylum claims of individuals who have expressed an intention to seek asylum, and to process the pending refugee status determination cases fairly and efficiently.<sup>8</sup>

The effective implementation of the 1951 Refugee Convention relies upon fair and expeditious asylum procedures.<sup>9</sup> States should take all necessary measures to register and document asylum-seekers and refugees on their territory as swiftly as possible upon their arrival, bearing in mind the resources available. Support and co-operation of UNHCR can be sought where appropriate.<sup>10</sup>

**UNHCR recommends to:**

- Consider introducing in the Bylaw on Asylum provisions that allow for the strengthening of fair and efficient asylum processing through timely registration and processing of claims. To this end:
- Consider introducing in the Bylaw a provision allowing asylum-seekers to register asylum claims as soon as and after their attestation on intention to seek asylum has expired regardless of the reception centres in which they are accommodated, i.e. including the temporary reception centres and those run by NGOs;
- Consider merging the application and registration process to enable the simultaneous submission of the asylum claim and the registration of asylum-seekers, particularly in instances where an increased number of persons have expressed an intention to seek asylum;
- Create a dedicated working group to develop a methodology and an action plan to address the current backlog of pending asylum cases.

## **Reception conditions**

### ***Access of asylum-seekers to the labour market***

Reception standards include measures related to reception conditions as well as access to services, notably employment.<sup>11</sup> The ability to engage in decent work is an important human right, integral to human dignity. For refugees and asylum-seekers it can also provide an opportunity to contribute to their host communities, including through participation to the local and national

---

<sup>8</sup> UNHCR, Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures), 31 May 2001, EC/GC/01/12, available at: <https://www.refworld.org/docid/3b36f2fca.html>

<sup>9</sup> Executive Committee of the High Commissioner's Programme, Determination of Refugee Status No. 8 (XXVIII) - 1977, 12 October 1977, No. 8 (XXVIII), available at: <https://www.refworld.org/docid/3ae68c6e4.html>

<sup>10</sup> Executive Committee of the High Commissioner's Programme, Conclusion on Registration of Refugees and Asylum-seekers No. 91 (LII) - 2001, 5 October 2001, No. 91 (LII), available at: <https://www.refworld.org/docid/3bd3e1d44.html>

<sup>11</sup> UN High Commissioner for Refugees (UNHCR), Discussion Paper on Recommended Reception Standards for Asylum-Seekers in the Context of the Harmonisation of Refugee and Asylum Policies of the European Union, June 2000, available at: <https://www.refworld.org/docid/3ae6b3378.html>

economy. Moreover, where refugees and asylum-seekers do not enjoy the right to work, the cost of social security and other material assistance can be burdensome on a State.

UNHCR and its Executive Committee have indicated on multiple occasions that refugees have skills that are valuable to host countries and receiving societies.<sup>12</sup> Reception arrangements can be mutually beneficial where they are premised on the understanding that many asylum-seekers can attain a certain degree of self-reliance, if provided with an opportunity to work.

The Law on Asylum stipulates in Article 76 (4) that asylum-seekers are entitled to access the labour market if the Ministry of Security has not issued a decision on their asylum claims within 9 months of lodging the asylum application, provided the reasons for the delay are not attributable to the asylum-seekers. The Bylaw on Asylum does not contain any provision giving effect to Article 76 (4) of the Law on Asylum and specifying how asylum-seekers can access the labour market. The Law on Foreigners and Entity legislation on employment of foreigners do not explicitly exempt asylum-seekers from the obligation to obtain a work permit to access the labour market, as it is the case for refugees and beneficiaries of subsidiary protection. As a result of this gap, only a few asylum-seekers have been able to access the labour market without first having obtained a work permit. Additionally, delays in the registration of asylum claims can also impact access to the labour market.<sup>13</sup>

**UNHCR recommends to:**

- In line with Article 76 of the Law on Asylum, consider including in the Bylaw on Asylum explicit provisions that outline modalities for ensuring access of asylum-seekers to the labour market without requiring the issuance of a work permit, as is the case for refugees and persons granted subsidiary protection.

**Access of asylum-seekers to health care**

International human rights law and refugee protection standards provide relevant references for the definition of adequate reception standards for asylum-seekers, including access to medical care<sup>14</sup> upon arrival as well as throughout the asylum procedure.<sup>15</sup>

Article 76 (1) d) of the Law on Asylum provides that asylum-seekers are entitled to primary health care. The provision of primary health care is further regulated in the relevant laws and regulations on health care at the Entity and Cantonal levels. Furthermore, provision of health care is based

<sup>12</sup> See Executive Committee Conclusion Nos. 93 (LIII), 2002; 104 (LVI), 2005 and 109 (LXI), 2009

<sup>13</sup> “[UNHCR Executive Committee] Recognizes the need to establish and apply fair and expeditious asylum procedures, so as to identify promptly those in need of international protection and those who are not, which will avoid protracted periods of uncertainty for the asylum-seeker, discourage misuse of the asylum system and decrease the overall demands on the reception system.” (Executive Committee of the High Commissioner’s Programme, Conclusion on reception of asylum-seekers in the context of individual asylum systems No. 93 (LIII) - 2002, 8 October 2002, No. 93 (LIII), available at: <https://www.refworld.org/docid/3dafdd344.html> Executive Committee of the High Commissioner’s Programme, Determination of Refugee Status No. 8 (XXVIII) - 1977, 12 October 1977, No. 8 (XXVIII), available at: <https://www.refworld.org/docid/3ae68c6e4.html>

<sup>14</sup> UN High Commissioner for Refugees (UNHCR), *Ensuring Access to Health Care: Operational Guidance on Refugee Protection and Solutions in Urban Areas*, available at: <https://cms.emergency.unhcr.org/documents/11982/39268/UNHCR%2C+Operational+guidance+on+refugee+protection+and+solutions+in+urban+areas+%E2%80%93+Ensuring+access+to+health+care/300ef365-188c-4b34-aa32-c00a387ee098>

See also: Executive Committee of the High Commissioner’s Programme, *Safeguarding Asylum No. 82 (XLVIII)* - 1997, 17 October 1997, No. 82 (XLVIII), available at: <https://www.refworld.org/docid/3ae68c958.html> “The obligation to treat asylum-seekers and refugees in accordance with applicable human rights and refugee law standards as set out in relevant international instruments.” See also Article 25 of the UDHR, Article 12(1) of the ICESCR and Article 24(1) of the CRC, which recognise the right to medical care.

<sup>15</sup> Executive Committee of the High Commissioner’s Programme, Conclusion on reception of asylum-seekers in the context of individual asylum systems No. 93 (LIII) - 2002, 8 October 2002, No. 93 (LIII), available at: <https://www.refworld.org/docid/3dafdd344.html>

on contractual arrangements made with the local health institutions by the Ministry of Security. This is the case for the Delijas Asylum Centre and the Salakovac Refugee Reception Centre. For the other temporary reception centres, the contractual arrangements are made by an NGO.

As such, health care is not accessible to asylum-seekers residing in private accommodation located in urban areas, unless they travel by their own means to the reception centres where health care is available but which may be located far from their place of residence.

**UNHCR recommends to:**

- Ensure that health care services are available to all asylum-seekers irrespective of their place of residence through inclusion of a provision in the Bylaw on Asylum that would enable access to the national health care system for asylum-seekers in their place of residence and upon presentation of the asylum-seeker documents;
- Consider regulating access to health care of asylum-seekers in their place of residence through the establishment of a health insurance scheme.

## **Procedural guarantees in the asylum procedure**

### ***Profiling of asylum-seekers and early identification of vulnerabilities***

Article 13(2) of the Bylaw on Asylum requires officials of the Ministry to be 'sensitive' while dealing with vulnerable categories of asylum-seekers referred to in Article 29(3) of the Law on Asylum, including by prioritizing their asylum applications. However, the Bylaw on Asylum lacks provisions specifying the modalities for ensuring close coordination of the Field Offices of the Service for Foreigners' Affairs with relevant stakeholders, such as municipal Centres of Social Welfare and free legal aid providers, in order to enable an efficient identification of asylum-seekers with specific needs, prioritised processing of their asylum claims, referral and provision of proper reception conditions in terms of accommodation and required services.<sup>16</sup>

Refugee law standards related to women and girls at risk,<sup>17</sup> unaccompanied and separated children,<sup>18</sup> victims of sexual and gender-based violence (SGBV) and/or at risk of exposure to SGBV or other forms of violence, victims of trafficking, traumatized persons, persons with disabilities, Lesbian Gay Bisexual Transgender and/or Intersex (LGBTI) individuals,<sup>19</sup> etc. require their early identification. Article 22 of the Convention on the Rights of the Child requires legislation to address with special care the particular situation of separated and unaccompanied children seeking asylum and to provide for child-sensitive procedural safeguards, guided by the principle of the "best interests of the child".<sup>20</sup>

<sup>16</sup> Executive Committee of the High Commissioner's Programme, *Conclusion on reception of asylum-seekers in the context of individual asylum systems No. 93 (LIII) - 2002*, 8 October 2002, No. 93 (LIII), available at: <https://www.refworld.org/docid/3dafdd344.html>

<sup>17</sup> Executive Committee of the High Commissioner's Programme, *Conclusion on Women and Girls at Risk No. 105 (LVII) - 2006*, 6 October 2006, No. 105 (LVII), available at: <https://www.refworld.org/docid/45339d922.html>

<sup>18</sup> Executive Committee of the High Commissioner's Programme, *Conclusion on Children at Risk No. 107 (LVIII) - 2007*, 5 October 2007, No. 107 (LVIII), available at: <https://www.refworld.org/docid/471897232.html>

<sup>19</sup> UN High Commissioner for Refugees (UNHCR), *Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR's Efforts to Protect Lesbian, Gay, Bisexual, Transgender, and Intersex Asylum-Seekers and Refugees*, December 2015, available at: <https://www.refworld.org/docid/566140454.html>

<sup>20</sup> Article 3 in conjunction with Art 22, UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at <https://www.refworld.org/docid/3ae6b38f0.html>  
UN High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, April 2019, HCR/1P/4/ENG/REV. 4, par. 213-219, p.46, Guidelines on International Protection no. 8, p. 162-164, available at: <https://www.refworld.org/docid/5cb474b27.html>

**UNHCR recommends to:**

- Consider the inclusion of specific provisions in the Bylaw on Asylum to ensure that the identification of asylum-seekers with specific needs is carried out at an early stage of the asylum procedure to ensure that required services are timely and efficiently provided and asylum processing of such cases prioritized as provided by Article 29 of the Law on Asylum.
- Consider including a provision in the Bylaw on Asylum outlining the role and coordination functions of the Field Offices of the Service for Foreigners Affairs with Municipal Centres of Social Welfare and free legal aid providers with a view to improve identification and referral of asylum-seekers with specific needs such as women and girls at risk, unaccompanied and separated children, victims of sexual and gender-based violence (SGBV) and/or at risk of exposure to SGBV or other forms of violence, victims of trafficking, traumatized persons, persons with disabilities and LGBTI. This would improve the referral of asylum-seekers with specific needs to adequate accommodation and required services.
- Consider stronger case management provisions requiring that any interaction with a presumed unaccompanied or separated child takes place in coordination with the Centre for Social Welfare, and that identified needs are shared with the asylum processing body, i.e. the Sector for Asylum and are also recorded by the Centre for Social Welfare.
- Consider appropriate means, respectful of data protection principles, to reflect information on specific needs of asylum-seekers on the attestation on expressed intention to seek asylum, allowing for proper and timely referral to necessary services. This could be done through a coding system. Concretely, the results of a vulnerability assessment can be included in the form of attestation on expressed intention to seek asylum by amendment to the Form no. 1.

***Effective communication with asylum-seekers***

Effective communication with asylum-seekers is an essential prerequisite for a fair and efficient asylum procedure. To submit her/his claim, an applicant should be provided with a competent interpreter in a language which is understood and in which the applicant is able to communicate.<sup>21</sup>

Articles 15 and 76 (1) b) of the Law on Asylum guarantees the right to information on the asylum procedure, as well as on the rights and obligations of foreigners who express an intention to seek asylum, asylum-seekers, refugees and persons granted subsidiary protection. This information should be provided in a language that they understand or for which it can be reasonably assumed that they understand it.

Article 5 of the Bylaw on Asylum covers the right to an interpreter. However, in practice, persons who wish to seek asylum often do not receive from the Service for Foreigners Affairs information about the procedure, or on their rights and obligations, in a language they understand or for which it can be reasonably assumed that they can understand it. This is mainly due to a lack of interpreters and an absence of written information in the required languages.

---

<sup>21</sup> Executive Committee of the High Commissioner's Programme, *Determination of Refugee Status No. 8 (XXVIII) - 1977*, 12 October 1977, No. 8 (XXVIII), available at: <https://www.refworld.org/docid/3ae68c6e4.html>

**UNHCR recommends to:**

- Ensure that asylum-seekers are provided with comprehensive information on the asylum procedure, including their rights and obligations, at an early phase of the asylum procedure by the Service for Foreigners Affairs by:
- Amending Article 7 paragraph (2) and Form no. 1. of the Bylaw on Asylum to ensure that information on the asylum procedure, rights and obligations is included on the attestation of the expressed intention to seek asylum form and through inclusion of additional safeguards in Article 5 of the Bylaw;
- Providing a list of contacts for service providers in a language that the individual understands;
- Providing a copy of the attestation of the expressed intention to seek asylum in a language that is understood by the applicant;
- Establishing a pool of remote interpreters for this purpose.

**Conclusion**

In the context of the upcoming amendments to the Bylaw on Asylum, UNHCR would like to reiterate the need to review aspects of the Bylaw on Asylum with a view to ensure fair and efficient asylum procedures. UNHCR would also like to point out that the reform requires an allocation of adequate State resources, close cooperation and coordination among relevant State agencies, as well as with international organizations in order to be effective. UNHCR remains committed to supporting the authorities of Bosnia and Herzegovina in this regard and to provide them with its expertise.

**UNHCR**  
**September 2020**