

**Submission from the Internal Monitoring Displacement Centre (IDMC)
of the Norwegian Refugee Council (NRC) for consideration at the
51st Session of the Committee on Economic, Social and Cultural Rights**

(4-29 November 2013)

Bosnia and Herzegovina

13 September 2013

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Internal Displacement Monitoring Centre

The Internal Displacement Monitoring Centre (IDMC) is a world leader in the monitoring and analysis of the causes, effects and responses to internal displacement. Through its monitoring and analysis of people internally displaced by conflict, generalised violence, human rights violations, and natural or human-made disasters, IDMC raises awareness and advocates for respect of the rights of at-risk and uprooted peoples. IDMC is part of the Norwegian Refugee Council (NRC). All of the information contained in this submission can be found online at www.internal-displacement.org. www.internal-displacement.org

I. Background on Internal Displacement in Bosnia and Herzegovina

1. More than a million people were internally displaced during the 1992 to 1995 war in Bosnia and Herzegovina following the collapse of the Socialist Federal Republic of Yugoslavia. People fled their homes as a result of inter-ethnic generalised violence, human rights violations and armed conflict between Serb, Croatian and Bosnian armed forces and militias.

2. There has been no further large-scale violence since the *General Framework Agreement for Peace in Bosnia and Herzegovina* was signed in 1995. Nevertheless, secessionist and divisive political rhetoric remains intense and the country remains ethnically divided. The underlying causes of instability and displacement are still to be adequately addressed. In the current tense environment further violence and displacement cannot be ruled out.

3. At the end of 2012, the government reported there were still around 103,000 internally displaced persons (IDPs). The figure may be higher since it is based on resolved property repossession cases and IDPs' intentions to return. For example the majority of property repossession cases have been resolved however, there continues to be individuals living in collective centres or make-shift housing without the means to reconstruct their pre-war residence. As a result of lingering mistrust, IDPs have mostly remained in areas where they are part of the majority ethnic group.

4. Improved security and the prospect of being able to repossess and rebuild their homes prompted many IDPs to return, but many have experienced continued security incidents and only limited access to roads, water and electricity. Many lack health insurance and struggle to access pensions and social benefits. Only around 360 people returned during 2012.

5. This submission aims to inform the work of the 51st session of the Committee on Economic Social and Cultural Rights during its examination of Bosnia and Herzegovina's compliance with the Covenant.

II. Issues of Concern

Non Discrimination (Article 2.2)

6. Discrimination against IDPs who were displaced and/or returned to areas where they were an ethnic minority continues. Often, they face intimidation and generally struggle to access housing, jobs, education, social benefits and health care.

7. Hate crimes in 2012 continued to manifest particularly in areas where displaced people have returned. The Organization for Security and Cooperation in Europe (OSCE) reported in 2012 that such incidents still occur regularly in Srebrenica, Banja Luka and Mostar regions. Hate crimes are a significant barrier to sustainable IDP return and integration, and detrimental to rebuilding social trust. Continuation of these crimes may instigate further violence and displacement.

8. On July 24, 2013 the House of Representatives adopted a draft law on amendments to the Criminal Law of the Federation of Bosnia and Herzegovina, which expanded the definition of a hate crime to include "persons who, publicly incite or make publicly available pamphlets, photos, texts and other materials which advocates, urges or incites hatred, towards any person or group of persons because of their race, religion, national or ethnic origin, colour, sex,

sexual orientation, gender identity, disability, health status or other personal property,” as proposed by civil society. The draft law will go before the House of Peoples in September 2013.

Right to Work (Article 6 and Recommendation 35)

9. Lack of access to employment continues to be one of the factors hampering minority returns. Employment practices are discriminatory both in the public and private sector, emphasising ethnic divisions and failing to respect the State Law on Prohibition of Discrimination (2008) as well as the pre-war ethnic composition of BiH (ECRI 2011). The composition of the staff of local administrations remains strongly imbalanced in favour of the locally constituting ethnic majority. Decisions of Cantonal and Entity-level commissions tasked to assess the lawfulness of war-time dismissals often suffered unreasonable delays; furthermore, even where adopted, some of the decisions were not duly implemented. Concrete initiatives such as the 2003 OSCE's Fair Employment Project aimed at curbing discrimination in the labour market only had a limited impact.

10. In 2010, nearly 80 per cent of internally displaced persons and returnees, comprising 2.9 per cent of the national population, lived below the national poverty line (UNHCR Global Report 2010). In comparison, only 14 per cent of the overall population lives below the national poverty line (World Bank). Limited access to employment has deterred many IDPs from returning to their pre-war community, while others who have returned often struggle to make ends meet.

11. Some internally displaced families have resumed livelihoods or found work through international assistance. For example, in 2012 the Zakat Foundation of America Livestock Development Project gave livestock to IDP families, and the Turkish government gave loans to minority returnees.

12. The government has made little effort to help IDPs secure a stable income or address access to social protection and education. Most IDPs continue to rely on pensions and social benefits as their main source of income. Discrimination with regards to access to employment continues (SWD (2012) 355 final). Further employment and livelihood projects aimed at displaced communities are needed to address the disproportionate number of IDPs living below the national poverty line.

Right to Social Security (Article 9 and Recommendation 42)

13. Bosnia and Herzegovina spends four per cent of its GDP on non-contributory assistance schemes while the poorest 20 per cent of the population receives only about 17 per cent of total social transfers. This means BiH is spending more than most states on non-contributory assistance schemes, yet the poorest segments of the population receive the least amount of social benefits. Social assistance is split between the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS).

14. The lack of harmonized national legislation on social benefits such as health care, pensions, and compensation for civilian victims of war has convinced many IDPs not to return, while some of those who had returned chose to leave again. This is because entitlements can be lower in the area of return. Others who did return have kept their registration residence in areas of displacement, in order to continue profiting from better social services, such as health care, education and pension funds, which are generally more advantageous in the FBiH than in RS.

15. Many minority returnees are unable to access adequate health care due to barriers related to their return. For example, in some cases, if a returnee misses certain administrative deadlines, access to health care is lost. Furthermore, many rural returnees have no access to health care locally because facilities have been destroyed or are poorly equipped. This means that they must travel great distances at prohibitive costs to access healthcare.

16. On 29 April 2013, the Cantonal Parliament of Sarajevo adopted legislation that will ensure anyone leaving Sarajevo for their pre-war home will retain their healthcare and social benefits, while returning war veterans will keep their pensions and disability payments in the Sarajevo Canton where they used to be displaced. However, this legislation is restricted to those within the cantonal government of Sarajevo.

Right to Adequate Standard of Living (Article 11, Recommendation 46)

17. Some 8,500 displaced persons continue to live in dilapidated collective centres; others live without indoor plumbing or electricity in substandard private accommodations.¹ Many are internally displaced women who are physically and mentally challenged, chronically ill, elderly, without income and/or cannot return to their places of origin due to serious protection concerns. The Government reports that around 146,000 housing units, or 30 per cent of the damaged or destroyed housing stock, still need to be rebuilt. Comprehensive information on the living conditions of IDPs living outside of collective centres and outside of their area of origin is unavailable.

18. The majority of cases regarding property repossession have been resolved with 197,688 out of 211,791 claims positively decided (MHRR). However, there remain 110 unresolved cases and approximately 300 cases still pending before the Court of Bosnia and Herzegovina in which the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) is a respondent party in administrative dispute procedures. However, the CRPC's mandate expired in 2009 and no further action from the Commission has been taken. In addition, there is still no reliable database on outstanding claims and property registers (SWD (2012) 335 final).

19. The Regional Housing Programme (RHP) and the Council of Europe Development Bank (CEB) loan for sustainable social housing for collective centre residents serves as catalysts for engaging national actors in a coordinated and prioritised response. This response addresses the wider needs of displaced communities in targeted areas in addition to the housing needs of vulnerable families. In line with the framework set out in the Revised Strategy, the Regional Process and the CEB loan project will facilitate housing solutions through return or local integration for some 21,000 refugees, returning refugees and IDPs throughout the country from 2013 to 2017.

20. On 5 July 2013, a Joint Declaration on Resolving Protracted Displacement in Bosnia and Herzegovina which addresses the issue of refugees, IDPs and collective centre residents in BiH, was signed by representatives of the European Union, UN, UNHCR, the Republika Srpska and the Federation of Bosnia and Herzegovina expressing mutual commitment to

¹ On 5 July 2013, UN Resident Coordinator in BiH Yuri Afanasiev announced, "although 18 years have passed since the end of the war, over 100,000 people are still considered displaced persons in BiH, and over 8,500 continue to reside in collective accommodation centres." This number demonstrates a decrease of 100 previously recorded displaced persons residing in collective centres. Available at: <http://www.undp.ba/index.aspx?PID=7&RID=856>

solving the problem of protracted displacement in BiH. All collective centres are expected to be closed at the end of 2014 and the current occupants placed in adequate housing units with significantly improved living conditions.

21. The Government of BiH has complied with Recommendation 46 by adopting a housing strategy, identifying the most vulnerable families and offering assistance through the Regional Housing Programme as well as the Joint Declaration on Resolving Protracted Displacement in BiH. IDPs still residing in collective centres remain in need of Government assistance as well and adequate housing provided following the closure of the collective centres in line with Article 11 and Recommendation 46.

Right to Physical and Mental Health (Article 12, Recommendation 41)

22. Failure to provide legal remedy and free access to adequate psychosocial counselling to survivors of wartime sexual violence in accordance with international standards guaranteeing the right to reparation and remedy continues to discourage return to their place of origin. This is specifically the case for those receiving healthcare and psychological support in Tuzla, and whose place of origin is Republika Srpska.

23. Compensation to victims of wartime sexual violence can be provided based on the status of a “Civilian Victim of War”. However, the Federation of BiH (FBiH) and Republika Srpska (RS), regulate this issue differently in separate entity laws often leading to unfulfilled government commitments to survivors.

24. The Government’s failure to support victims of wartime sexual violence by refusing to adopt legislation such as the draft Law on the Rights of Victims of Torture and Civilian War Victims as well as a Programme for Victims of Sexual Violence in Conflict and beyond highlights a key gap in its commitments to Article 12 and CESCRC Recommendation 41 and prevents victims of sexual violence from realizing their rights of reparation.

Right to Education (Article 13 and Recommendation 50)

25. The Temporary Agreement on Accommodation of Specific Needs and Rights of Returnee Children (2002) assisted in institutionalising segregated education known as “two schools under one roof” within Bosnia and Herzegovina by providing returnee children with an opportunity to study the so-called “national group of subjects” in accordance with the curriculum of their own choice. The policy which was conceived to facilitate the return of minority IDPs in their areas of origin resulted in an additional challenge to reintegration of the same communities.

26. On 16 February 2010, the parliament of the Federation of BiH adopted a resolution establishing multi-ethnic school departments in 57 schools in South and Central BiH.

27. In April 2012, the Mostar municipal court ruled that ethnic segregation in the schools of Stolac and Čapljina was discriminatory and ordered officials to end the practice by September 2012. Despite the ruling there have been no changes in Stolac and Čapljina. The Cantonal Court overruled this verdict in summer 2013.

28. Following the ruling, on 20 August 2012 the Minister of Education of the Federation BiH presented a two year plan to end the ‘two schools under one roof’ policy in the Federation BiH. Successful discontinuation of segregated schools in Brcko District, among other cantons

is a positive step. However, the presence of such schools remains a critical issue for Herzegovina-Neretva and Central Bosnia cantons (SG/Inf/2013/4 FINAL).

III. Recommendations

29. At the 51st session of the Committee on Economic, Social and Cultural Rights, IDMC invites the Committee to consider the following recommendations to the Government of Bosnia and Herzegovina:

Non Discrimination

30. Fully implement and observe domestic and international commitments signed and ratified by Bosnia and Herzegovina including the Law on Prohibition of Discrimination (2009) as well as exercising full legal remedies against perpetrators of hate crimes, particularly those targeting ethnic minority returnees.

31. Adopt the Draft Law on amendments to the Criminal Law of FBiH which expands the definition of a hate crime as proposed by civil society.

Right to Work

32. Develop and implement income generating programmes targeting IDPs.

Right to Social Security

33. Adopt the Law on Social Care and Social Minimum (FBiH) and fully implement the Law on Civilian Victims of War, as well as the Law on Social Protection (RS)

34. Encourage and promote laws on retaining assistance while returning to pre-war homes, as seen in Sarajevo, in order to facilitate return.

Right to Adequate Standards of Living

35. Continue to implement the Revised Strategy of BiH for the Implementation of Annex VII of the Dayton Peace Agreement, to ensure that those who cannot or choose not to return to their pre-war homes are given suitable alternatives.

36. Ensure that the 8,500 IDPs currently living in collective centres are provided adequate housing following the closure of the collective centres in 2014 in line with the Guiding Principles on Internal Displacement and the Joint Declaration on Resolving Protracted Displacement in Bosnia and Herzegovina (2013).

37. Develop a short-term mandate for the Commission for Real Property Claims of Displaced Persons and Refugees to facilitate the resolution of outstanding cases currently pending before the court as well as to develop a database on outstanding property claims and registers to facilitate the final resolution of property repossession in Bosnia and Herzegovina drawing from the information gathered under the Property Law and Implementation Plan.²

Right to Physical and Mental Health

38. Draft and adopt legislation aimed to ensure access to justice and reparation for all civilian victims of war, including survivors of sexual violence

² As reported in the "Follow Up on the functional Review of the Return Sector in Bosnia and Herzegovina", Property Law and Implementation Plan representatives started publishing monthly statistical indicators in 2000 from municipality level to BiH level, analysing and comparing the indicators.

39. Ensure the harmonization of laws on civilian victims of war between entities to facilitate equal access to rehabilitation and other measures of reparation for all civilian victims of war, as required under international law, without discrimination on any ground and regardless of where they may live.

Right to Education

40. Take measures to discontinue the use of “two schools under one roof” in fulfilment of previous CESCRC recommendations and domestic legal rulings and initiatives.