



Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report
- Universal Periodic Review

BOSNIA AND HERZEGOVINA

I. Background and Current Conditions

The fragmented and complex governing structure in Bosnia and Herzegovina (BiH) impedes the ability of refugees, asylum-seekers, internally displaced persons (IDPs), returnees, and stateless persons to exercise their human rights. The 1992-1995 conflict in BiH generated approximately 2.2 million refugees and IDPs. As of June 2009, some 117,000 people remain internally displaced within the country. In addition, thousands of returnees face persisting obstacles to full reintegration and access to rights. These obstacles are especially acute for “**minority returnees,**” returnees who have returned to the areas in which their ethnic group is a numeric minority. The majority of asylum-seekers came to BiH as a result of the Kosovo crisis of 1998-1999, when more than 50,000 persons from the former Federal Republic of Yugoslavia (Serbia, Montenegro and Kosovo) were registered as refugees under the temporary admission (TA) regime. There are at present 398 asylum-seekers in BiH, the majority of who are persons from Kosovo who held TA status for as long as nine years.

BiH is a State party to all major international human rights related treaties, including the *1951 Convention and its 1967 Protocol relating to the Status of Refugees (the 1951 Convention)*. The BiH legislation on asylum is generally in line with international standards. The 2008 Law on Movement and Stay of Aliens and Asylum (LMSAA) has for the most part been supplemented with the necessary implementing bylaws; however, some bylaws remain outstanding.

BiH is also a party to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*. It also has ratified the European Convention on Nationality. The BiH Constitution and the *Law on Citizenship* contain provisions on statelessness.

BiH also has specific legislation on internal displacement. The legal protection of IDPs and returnees is regulated by **Annex VII of the Dayton Peace Agreement (DPA)**, as well as by one state-level law and two entity-level laws. These laws define “displaced persons” (DPs) and

“returnees” as specific legal statuses with accompanying entitlements, and provide regulations for conferring and ceasing DP/returnee status and articulate relevant state obligations. The legal framework incorporates a number of protection principles included in the *Guiding Principles on Internal Displacement*, such as the right to voluntary and safe return, freedom of movement and non-discrimination. However, a number of key rights in the *Guiding Principles* are not explicitly incorporated in relevant national legislation, for example, protection from arbitrary displacement and the right of IDPs to fully participate in the planning and management of their return, resettlement or reintegration. In addition, DP status is directly linked to return, as DP status ceases upon return, and returnee status only lasts for six months after the physical return has taken place. Hence the definition of DPs in BiH, which bases protection on legal status, is narrower than the description of IDPs in the *Guiding Principles*, which emphasizes protection based on needs and vulnerability. Additional legal reforms are required to ensure compatibility with the *Guiding Principles* as well as full access to rights for IDPs and returnees.

II. Promotion and protection of human rights on the ground

The **right to seek and enjoy asylum** in BiH remains limited in practice, though the legal framework is generally in line with international principles. Of major concern is the situation facing Roma from Kosovo who originally held temporary admission status and who then applied for asylum. The Ministry of Security continuously rejects asylum applicants from Kosovo, contrary to UNHCR’s assessment of the risks facing this group, set out in *UNHCR’s Position on Continued International Protection Needs of Individuals from Kosovo* (June 2006). Roma who are **entitled to international protection** can therefore be exposed to **refoulement**. Accelerated procedures are rigidly applied and procedural safeguards are not always fully respected, particularly in terms of the **right to an interpreter and to free legal aid in asylum proceedings**.

The **right to seek and enjoy asylum is further undermined by considerable external pressure** in the areas of national security, counter-terrorism, and border management. This can manifest itself in an extensive application of the exclusion clauses in Article 1F of the 1951 Convention. Furthermore, inconsistent application of the relevant legislation by administrative bodies and the judiciary has caused uncertainty about key questions, such as whether an individual applicant deserves international protection and whether detention of an applicant is warranted.

The majority of the 187 recognized refugees in BiH are from Kosovo. Most were recognized by UNHCR prior to its handover of refugee status determination to the BiH government in 2004. **Since 2004, the BiH government has only recognized eight refugees.** In addition, the Ministry of Security granted subsidiary protection to four minors (Roma from Kosovo) in June 2009. The **right to family reunification** for recognized refugees remains a problematic issue. Refugees from Croatia face other unique impediments to full access to their rights, primarily in terms of obstacles to return and reintegration in Croatia. But coupled with the lack of facilitated local integration in Bosnia, many remain on the margins of society with limited access to rights and in need of assistance to obtain a durable solution. Although refugees are generally able to access most basic rights at the level of citizens, there are significant difficulties in achieving local integration as a durable solution.

Impediments to exercise the **right to a nationality** exist in Bosnia. There is no formal mechanism for determining statelessness in BiH. However, a significant population is presumed to be *de facto* stateless, and Roma make up nearly all of this population. Furthermore, legislation in the areas of **nationality, civil status, and documentation** is not harmonized and very fragmented in application. There is no clear referral system in place, nor is any authority clearly assigned to act in cases where a child's parents do not register the birth. These shortcomings have a disproportionate effect on the *de facto* stateless Roma population, and in addition, prevent access to other rights such as education, health care, housing and employment because civil registration is a precondition for those rights.

Facilitated naturalization is currently not available for stateless persons or recognized refugees. Recognised refugees cannot acquire BiH citizenship under any conditions, due to the specific nature of their residence permit. This contradicts Article 34 of the 1951 Convention protecting the **right to facilitated naturalization**. While legislation exists that regulates civil registration procedures, it is not harmonized throughout the country, and implementation is uneven. This has a significant impact on the **de facto stateless Roma** population, and particularly acts as an obstacle to access to such rights as **health care and education**.

IDPs and returnees experience **discrimination and inequality** in accessing social protection. Government funds to support them have steadily increased over the years and are quite significant today. However, assistance for return is too often allocated on the basis of ethnicity and/or political affiliation, rather than need or vulnerability. Government allocations for return which aim to support IDPs are not often accompanied by positive measures to ensure that the funds address the specific needs of these individuals and families. As a result, many IDPs and returnees enjoy limited access to **employment, pensions, healthcare, utilities (water and electricity) and social protection**. IDPs and returnees are further limited in accessing these rights as the social protection system is highly fragmented and does not actively identify or support the most vulnerable individuals, including IDPs and returnees. Rebuilding infrastructure on the basis of equality, including restoring electricity and water connections in rural areas, remains an acute concern. Returnees also continue to perceive, and sometimes directly experience, harassment, which is accompanied by the inadequate **administration of justice** for suspected perpetrators. As a result, many returnees are left with feelings of insecurity, which undermines their ability to exercise other rights such as freedom of movement. Roma refugees are also discriminated against because they are not afforded equal treatment as citizens in regard to access to social housing, despite provisions in the law that they should be accorded this right.

Of the 117,000 remaining IDPs, UNHCR is particularly concerned about some 7,500 IDPs who reside in **inadequate and sub-standard living conditions** in collective accommodation; facilities which were established to provide temporary accommodation to displaced people during and after the conflict. In many cases, IDP families share kitchens and water and sanitation facilities. On occasion water and sanitation facilities are non-functional and there is a lack of ongoing maintenance. Most IDP families in collective accommodation, many of whom have lived in these locations for more than a decade, have been allocated insufficient space in relation to their family size. The majority of IDPs in collective accommodation are extremely vulnerable to protection problems because they are physically and/or mentally disabled, extremely traumatized from sexual or gender based violence, chronically ill, or older without any source of income or family support. A recent UNHCR-supported study found that most of the households in collective accommodation are female-headed, with a significant number

headed by widows. The BiH Gender Action Plan does address the issue of IDPs and returnees with respect to problems relating to employment and social inclusion; however, it does not adequately recognize IDPs in collective accommodation as a vulnerable group requiring specific and immediate support.

A significant number of returnees also experience limited enjoyment of the **right to adequate housing**. While the majority of people displaced by the conflict were able to voluntarily return and repossess their property, there is lack of infrastructure in many returnee areas, which undermines the sustainability of return. For example, in 2008 the BiH Ministry for Human Rights and Refugees estimated that 2,600 housing units located in 65 municipalities remain without electricity. In addition, reconstruction assistance is often provided without sustainability measures to ensure returnees are able to generate incomes or livelihoods. Limited access to **healthcare and other social services** in rural areas also impedes the ability of returnees to fully enjoy the right to adequate housing. In addition, access to adequate accommodation, food and health care for asylum-seekers remains an area of concern.

While the economic crisis and the poor governance situation impact upon the entire population in BiH, **IDPs and returnees** are particularly disadvantaged. The national response to the IDP situation in BiH, as further elaborated in Part III below, is not yet comprehensive nor based on responding to the most pressing needs on the ground. So far, the primary focus has been on the **right to voluntary return**, with significant international and national investments made in this area. Conversely, support for IDPs who wish to **locally integrate** has been more limited, impinging on the ability of these IDPs to obtain a durable solution. Moreover, BiH still lacks a comprehensive national strategy setting out the measures needed to ensure that the remaining IDPs can obtain a durable solution of their choice. It is important to note that the competent authorities at all levels have reached a compromise on a draft strategy. However, at the time of writing, this strategy had yet to be adopted at the state level.

III. Achievements, best practices, challenges and constraints

Since the end of the conflict in 1995, through concerted national and international efforts including improvements in security, freedom of movement, the repossession of property and the reconstruction of houses, it is estimated that over one million refugees and displaced persons have exercised their right to voluntary return, which is a success, albeit limited. Reported return figures, however, may not necessarily reflect refugees' and IDPs' current place of residence. Moreover, while property rights have been largely respected through repossession and reconstruction programmes, these have not always been accompanied by measures to ensure access to social and economic rights in areas of return. As a result, many returnees today are without a source of income or lack the required infrastructure to ensure that their return is sustainable. A primary constraint remains the insufficient response on behalf of the authorities to meet the needs of IDPs and returnees. A revised Strategy on durable solutions for IDPs and returnees, formulated in 2007-8 with a broad range of actors, including representation from civil society, all levels of government and the international community, has yet to be adopted by the Government. At municipal and entity levels, authorities frequently undermine the rights of IDPs and returnees through obstruction or discrimination in the allocation of public funds. Hence the overall national response is inadequate in light of the persisting humanitarian needs and unfulfilled human rights of IDPs and returnees.

There have been positive developments in the **implementation of the equal rights of refugees to health care, education, work, and social welfare**, with the finalization of bylaws governing the implementations of these rights. However, work remains to be done to ensure a smooth implementation, and thus refugees' ability to enjoy these rights in practice.

IV. Key national priorities, initiatives and commitments

From the perspective of UNHCR, the following areas need to be prioritised:

→ **IDPs / Returnees**: A comprehensive set of actions, for example as outlined in the strategy on durable solutions for refugees and IDPs (previously titled the Revised Strategy for Implementation of Annex VII) is still required in order to close the chapter of internal displacement in a dignified manner. Adopting the Strategy, or promoting implementation of existing and relevant human rights commitments through specific policies and programmes, would expedite the process of securing durable solutions for the remaining IDPs and returnees, including some 7,500 IDPs in collective accommodation. The commitment and political will at all levels of authorities is necessary to ensure that IDPs and returnees receive the assistance needed to secure durable solutions.

→ **Refugees, Asylum-Seekers and Stateless Persons**: The government should accelerate the adoption of draft amendments to the citizenship legislation that would provide for the right to facilitated naturalization for recognized refugees and stateless persons. In addition, citizenship legislation needs to be reviewed and amended to include protections against even temporary loss of citizenship. There is also a need for a mechanism to systematically identify statelessness; such a mechanism needs to provide for a clear division of responsibilities and a means for identifying statelessness through the census process in the law that will regulate the next census. Furthermore, all relevant legislation governing civil status needs to be harmonized. Bylaws related to travel documents for refugees and identification documents for persons who are granted international protection need to be finalized. The rights of asylum-seekers should be ensured during the process of reviewing their claims. All actors in the asylum procedure should be adequately trained on the relevant legislation to ensure a common understanding of international refugee law. In particular, the authorities' ability to analyse and apply country of origin information needs further development. This is particularly critical in cases where asylum claims are rejected and applicants may be forcibly returned. Furthermore, adequate rights to accommodation, food, health care, education and employment should be ensured for asylum-seekers. Roma refugees should be given access to programs for Roma at the same level as Roma who are citizens.

V. Capacity Building and Technical Assistance, if applicable.

UNHCR has assisted in improving asylum and refugee related legislation, such as the 2008 Law on the Movement and Stay of Aliens and Asylum and the 2009 Bylaw on Asylum, and continues to help develop the capacity of the relevant administrative and judiciary bodies. In addition, UNHCR works with government authorities and other stakeholders through two significant civil registration projects which aim to minimize the number of de facto stateless persons in BiH and prevent future statelessness. The projects are designed not only to ensure registration of individuals, but also to develop the registration system so that it can eventually become self-sustainable. UNHCR is also working closely with the BiH government to identify durable solutions for the remaining displaced persons and refugees as part of UNHCR's

protection mandate and in line with the responsibilities emerging from UNHCR's specific mandate in BiH derived from the Dayton Peace Agreement. UNHCR recently supported the BiH Ministry for Human Rights and Refugees in revising the Strategy for the Implementation of Annex VII of the Dayton Agreement.

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