



**International Convention on  
the Elimination  
of all Forms of  
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9  
OF THE CONVENTION**

**Eighth periodic reports of States parties due in 2008\***

**BOSNIA AND HERZEGOVINA\*\* \*\*\***

[25 August 2008]

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\* This document contains the seventh and eighth periodic reports of Bosnia and Herzegovina, due on 16 July 2008, submitted in one document. For the initial to the sixth periodic reports and the summary records of the meetings at which the Committee considered the report, see document CERD/C/464/Add.1, CERD/C/SR.1735, 1736, 1754 and 1755.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

\*\*\* The annexes to the report may be consulted in the files of the secretariat.

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## Introduction

1. The Committee on Elimination of Racial Discrimination in Geneva, pursuant to Article 9 of the International Convention on Elimination of All Forms of Racial Discrimination, at its meetings (CERD/C/SR.1735 and 1736), held on 22 and 23 February 2006, examined all reports presented by BiH, starting with the initial one to the sixth periodical report of Bosnia and Herzegovina, for the period 1994 - 2004, each report separately, but treating it as a single document (CERD/C/464/Add.1).
2. According to the established practice of the UN committees, following the adoption of mentioned documents, the responsible UN committee, at its 1754 and 1755 meeting (CERD/C/SR.1754 and 1755), held on 8 March 2006, adopted the Concluding Observations and Recommendations of the Committee on Elimination of Racial Discrimination obligating BiH to prepare the seventh and eighth report on the progress or negative trends that the country is facing with in relation to the subject matter by 16 July 2008.
3. From the recommendations and concluding observations it can be noted that the Committee on Elimination of Racial Discrimination with due attention reviewed and took note of all factors and obstacles impeding the implementation of the International Convention on Elimination of All Forms of Discrimination, this primarily relating to the organisational structure of the society, the fundamental rights of which are based solely on ethnic grounds, which in practice very often leads to direct violation of the Convention or jeopardise its full implementation.
4. Also, the Committee appreciates positive steps undertaken by BiH in the field of meaningful legislative and institutional reforms aimed at eliminating all forms of racial discrimination. In particular, it appreciates the progress made by the state in reducing the number of post-war ethnically-based incidents, which were common during the return of refugees and displaced persons, when the return was impeded by force, threats or other impediments to return of refugees and IDPs to their homes of origin. The efficiency of authorities in prosecuting and punishing the perpetrators of incidents in accordance with articles 145 and 146 of the BiH Criminal Code was welcomed.
5. Indubitably, the Committee on Elimination of Racial Discrimination expressed major concern over the issues that the State party must address without delay. According to the Concluding Observations, the Committee recommended to the State party that it submit report on the issues raised below by 16 July 2008.

**Recommendation No. 8: The Committee recommends to the State party that it endeavour to collect disaggregated statistical data on the ethnic composition of its population and establish adequate mechanisms for monitoring acts of ethnically motivated discrimination and violence among its different ethnic groups.**

6. Item 8 of the Concerns and Recommendations of the Committee pointed to the lack of updated statistical data on the ethnic composition of the population, as well as on the number and nature of reported acts of racial discrimination within the territory of the State party. It is a fact that the last census in BiH was conducted in 1991. Also, the armed conflict caused significant ethnic-based demographic changes, therefore, under such circumstances it is very difficult to

make a merits-based assessment of the degree and recurrence of ethnic discrimination within the territory of the State party. Taking the issue seriously, on the basis of comprehensive analysis, estimates and official data maintained by the state and entity statistical institutes, as well as the data collected by international and national NGOs, the relevant authorities and institutions of the State party are making efforts towards establishing adequate monitoring mechanisms for ethnically-motivated discrimination and potential violence among different ethnic groups. It should be stressed that the situation is improving in a sense that the public is duly informed on each incident and relevant authorities timely involved in resolving them, and all this is followed by appropriate public reaction and condemnation. Recent murders of an elderly woman and a young boy committed by a group of minors in Sarajevo testifies to this, when the citizens following the incidents protested strongly demanding the resignations of City authorities and the improvement of security situation and its adequate treatment in the future. There is also the case of Fata Orlovic, at whose land the Orthodox Church was unlawfully constructed. This problem has also been taken seriously and relevant authorities together have reached an agreement with the representatives of the Orthodox Church to reallocate this unlawfully constructed building to other more appropriate site. Also, a positive example is the action of authorities in case of reallocation of Roma settlement from the first (I) water protection zone Ilidža Sarajevo, which by uncontrollable construction grew to a settlement of 44 families or 236 inhabitants, jeopardising the first (I) water protection zone supplying the City of Sarajevo. It has been established that there has been no discrimination in this case since the non-Roma population living on the other side of the road does not jeopardise the water protection zone as their settlement has been constructed according to the urbanistic plan.

7. According to the agreement reached by municipalities of Sarajevo City, the Roma will, with their consent, be provided with adequate flats and the problem will thus be solved without any discrimination.

8. There has been a number of attacks on religious property in recent times, but owing to due and timely reaction of responsible authorities the perpetrators of these acts of violence have been increasingly identified and prosecuted, which leads to a more seldom occurrence of such incidents.

9. The 2005-2008 Work Plan of the BiH Statistics Agency provides for the commencement of census in BiH. To that end, in 2006 and 2007, the Statistics Agency, in cooperation with the UNFPA, has developed the Census Preparation Concept Paper. This document contains all tasks and activities required for the conduct of census. The census is planned to be conducted in 2011, since the majority of countries in the region will also have their censuses conducted in 2011.

10. The 2011 census will contain the question of ethnicity as all previous censuses in BiH also contained this question. This question also derives from the Law on the Protection of Rights of Minorities ("BiH Official Gazette", No: 12/03), as well as from the BiH Election Law.

11. The polls conducted in BiH (the poll on poverty, the poll on consumption in households, the poll on labour force) did not contain the question on ethnicity because all these polls were random and as such did not cover the entire population, but only some groups (e.g. the poll on labour force involved the population of working age, that is the population aged 15 to 64 and the responses concerning the members of the household were normally provided by one member of the household). The census includes all individuals and each respondent is providing answers for

himself/herself, especially when it comes to the question of ethnicity, as it is the right of each individual to declare his/her ethnicity himself/herself. The exceptions are only those below 15, on behalf of whom the responses are provided by parents or custodians. The upcoming census will be an opportunity to establish adequate mechanisms for monitoring and presentation in cases caused by ethnically-motivated discrimination and violence in BiH.

**Recommendation No. 9: The Committee recommends to the State party that it ensure the financial autonomy and functional effectiveness of the Office of the Ombudsman, in accordance with the Paris Principles of 1993,<sup>1</sup> and that in the event of a merger among the Ombudsman Offices of the State and its constituent entities, such consolidation proceed with a view towards ensuring a unitary rather than ethnically divided approach to defending fundamental human rights.**

12. One of the commitments undertaken by Bosnia and Herzegovina with the signing of the SAA is a more active role in terms of protection of human rights, and to that end, the merging of entity ombudsman institutions with the BiH Human Rights Ombudsman Institution. The objective of this significant reform is, primarily, to ensure adequate handling of complaints filed by citizens across BiH, equal degree of protection of human rights, as well as the creation of a more efficient and more effective institution.

13. With regard to that, for several years now Bosnia and Herzegovina has been making efforts towards establishing a more efficient and sound functioning of this very important institution, the BiH Human Rights Ombudsman Institution. In 2004, the Law on Human Rights Ombudsman of Bosnia and Herzegovina was adopted, which stipulated the abolishment of entity ombudsmen. The activities on the adoption of the Decision on the Cessation of Entity Ombudsmen followed. The entities were instructed to adopt the laws regulating the abolishment of entity ombudsmen.

14. The Parliament of the Federation of Bosnia and Herzegovina adopted the Law on the Cessation of FBiH Ombudsman in the interim period and the transfer of competencies to the BiH Human Rights Ombudsman Institution, which was published in the "FBiH Official Gazette", No: 51/07, of 1 August 2007. This Law entered into force the day after it was published in the "FBiH Official Gazette".

15. The Draft Law on the Cessation of the Ombudsman of Republika Srpska was included in the Agenda of the 14<sup>th</sup> session of the RS National Assembly, which was held on 11 September 2007, which could have facilitated the early commencement of work of the Human Rights Ombudsman of BiH in its full capacity, and in accordance with the Law on Human Rights Ombudsman of BiH. The Draft Law was not accepted by the RS Board for Petitions and Social Supervision, and the Draft Law was consequently withdrawn by the proponent. There are no new activities in relation to this issue.

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<sup>1</sup> GA Res. A/48/134 of 20 December 1993.

16. The Decision and Study on the Establishment of the Children Rights Monitoring Department that is going to be established soon were adopted at the coordination meeting of BiH ombudsmen and the Draft Rule Book on Internal Organisation and Systematisation of Jobs of the BiH Human Rights Ombudsman was also discussed.

17. An Ad Hoc Committee of the BiH Parliamentary Assembly for appointment of the BiH Human Rights Ombudsman has been established. The Committee has adopted the Rules of Procedure of the Committee and the text of the public announcement for appointment of the BiH Human Rights Ombudsman. In addition to the members of the Committee, the session was also attended by representatives of the OHR and OSCE.

18. Pursuant to Article 8 and Article 9 of the Law on Human Rights Ombudsman of BiH ("BiH Official Gazette", No: 19/02 and 32/06) and the Rules of Procedure of the Ad Hoc Committee of the BiH Parliamentary Assembly for appointment of three ombudsman to the BiH Human Rights Ombudsman Institution, on 23 February 2008, the Ad Hoc Committee issued a public announcement for appointment of ombudsmen through competition to the BiH Human Rights Ombudsman Institution. The public announcement was published in the most circulated dailies: Dnevni avaz, Večernji list, Nezavisne novine and the "BiH Official Gazette", and it was also posted on the web page of the BiH Parliamentary Assembly. The public announcement was closed on 18 March 2008, inclusive.

19. Pursuant to Article 9 of the Rules of Procedure of the Ad Hoc Committee of the BiH Parliamentary Assembly for appointment of three ombudsman to the BiH Human Rights Ombudsman Institution, the Ad Hoc Committee made a public call (posted on the web page of the BiH Parliamentary Assembly) to all interested institutions informing them that the sessions of the Ad Hoc Committee for appointment of three ombudsmen are open to public and invited them to express the interest to attend the sessions of the Committee.

20. At its meeting held on 26 March 2008, the Ad Hoc Committee of the BiH Parliament noted that 26 candidates applied to three positions of Ombudsman. The applications were checked in terms of formal requirements of the job opening. There were some dilemmas with regard to lacking documents of candidates born in Republika Srpska, as the police there does not issue the Certificate of No Criminal Conviction upon personal request. For this reason, the Committee decided that it should request the mentioned documents afterwards, for each candidate from his/her place of birth, respectively. The candidates for three positions of BiH Ombudsman were interviewed. The Committee made 4 list of candidates which will be submitted to the House of Representatives and the House of Peoples of the BiH Parliamentary Assembly for their decision. It is expected that these lists will be on the agenda of both houses of the BiH Parliamentary Assembly end of June/beginning of July.

21. With a view to promoting good governance and the rule of law, as well as the protection of human rights, the Office of Human Rights Ombudsman has been established in Brcko District to supervise the work of institutions of Brcko District BiH.

22. The Office is also responsible with cases relating to poor functioning or violations of human rights and freedoms committed by any body of Government of Brcko District BiH. The

institutions are acting upon the receipt of the complaint (or ex officio), undertaking general investigations, recommending specific and general measures, but do not interfere with decision-making.

23. Through their recommendations, the ombudsmen provide support to the institutions of Brčko District BiH in eliminating discriminatory regulations and administrative practice resulting in human rights violation. During this reporting period, the Office of Ombudsman of Brcko District intervened only in one case, which related to the employment procedure upon the public job opening.

**Recommendation No. 10: The Committee recommends that the State party take the necessary legislative measures to ensure that the prohibition of ethnic discrimination contained in Article II (4) of the Constitution of Bosnia and Herzegovina applies with respect to the enjoyment of all of the rights and freedoms set forth in Article 5 of the Convention.**

24. Bosnia and Herzegovina as a country composed of three constituent peoples and 17 minorities has been undertaking necessary legislative and other measures to ensure the ban on ethnic discrimination under Article II (4) of the Constitution of Bosnia and Herzegovina ensuring thus the protection of rights and freedoms under Article 5 of the Convention for all citizens.

25. It should be stressed that the Constitution of BiH, the entity constitutions and the Constitution of Brčko District BiH have been harmonised with the standards of UN conventions ratified by BiH, and in particular with the European Convention on the Protection of Human Rights and Fundamental Freedoms, as this Convention is directly applicable in BiH and takes priority over all other laws. In that respect, the Constitution of BiH directly prohibits discrimination, which is contained in the provision reading as follows: “The enjoyment of the rights and freedoms set forth in the Convention shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”. This is directly incorporated in the Constitution of BiH and in accordance with Article II, item 2, of the Constitution, this Convention is directly applicable and takes priority over all other laws. In terms of protection of human rights and fundamental freedoms, the entity constitutions and the Statute of Brcko District BiH, as well as the cantonal constitutions have been harmonised with the principles of respect for human rights guaranteed under the Constitution of BiH.

26. Even though the Constitution of Bosnia and Herzegovina guarantees to all citizens the enjoyment of all rights across the entire territory of the country, without any form of discrimination, following the tragic war, the problem of ethnic-based exclusion reflected in minorisation of some ethnic groups, either Bosnians, Serbs, Croats or others, in terms of their numeric representation in executive and judicial bodies, remains. The consequence of that was the adoption of the Decision by the Constitutional Court of BiH, which relates to the obligation to amend the constitutions of entities and Brcko District BiH and bring them in line with the Constitution of BiH. The Decision of the Constitutional Court of BiH provides, *inter alia*, the interpretation of the Preamble of the Constitution of BiH reading that the Article II/4 of the Constitution of BiH prohibits any form of discrimination such as, among other, minority-based

discrimination, and in such a way it presupposes the existence of groups denoted as national minorities. The text of the Constitution of BiH makes a clear distinction between constituent peoples and national minorities, in the interest of affirming the continuity of BiH as a democratic and multinational state. A step forward towards reinforcing the political and legal order of the country has been made through the constitutional amendments, as well as towards guaranteeing the equal rights to all peoples and citizens. That constitutes the basis for the elimination of discrimination that is the discriminatory attitude towards individuals and minority groups on the grounds of their ethnic, religious or political affiliation. In accordance with the Decision of the Constitutional Court of BiH all existing designations of entities (flag, coat of arms and anthem) have been abolished as they do not reflect the constitutionality of peoples in the entire territory of Bosnia and Herzegovina. The activities of entity parliaments on modification of designations as to bring them in line with the requirements set by the Decision of the Constitutional Court of BiH are underway.

27. Further to previously conducted activities and following several months long discussions, in the beginning of 2006, the parliamentary parties reached an Agreement on the Revision of BiH Constitution. As agreed by the BiH Parliament, the constitutional changes will be aiming at increasing the efficiency of decision-making by BiH authorities. Also, the revised text on human rights to be incorporated in the Constitution would eliminate these provisions which in some interpretations could constitute the discrimination of non-constituent peoples. The reason for this is that the existing formulations in the BiH Constitution, which stipulate that the BiH Presidency (the nominal Head of State) shall be composed of one Bosnian, one Serb and one Croat, means that a member of "Others", or minority peoples, for formal and legal reasons can not be a candidate for BiH Presidency, and this should be replaced by a new text. The current proposal stipulates the abolishment of the collective Head of State, as well as that the President and two Vice-Presidents can not be from the rank of the same People. This proposal would eliminate the objection that the positions of President and Vice-Presidents are not open to all citizens of BiH from the rank of "Others", i.e. the members of minorities. The existing constitutional formulations formally do not preclude the candidacy of a national minority members and their election as members of BiH Parliamentary Assembly, be it as independent candidates or political party representatives, however, in practice none of them have been elected as MPs to date. Three positions in the House of Representatives are guaranteed to national minorities by the proposed amendments to the Constitution. It means that proposed constitutional solutions would guarantee the representation of minority communities in the BiH Parliamentary Assembly.

28. Item 10 of the key observations expresses deep concern over the fact that Article II/3 of the State Constitution, which contains the catalogue of human rights and freedoms, does not include all civil, cultural, economic, political and social rights protected under Article 5 of the Convention. This is the misinterpretation of the Constitution of Bosnia and Herzegovina as the catalogue of human rights of the Constitution includes not only what is contained in Article II/3, but also the European Convention on the Protection of Human Rights and Fundamental Freedoms (Article II/2 of the Constitution of Bosnia and Herzegovina), as well as 15 international mechanisms for protection of human rights and fundamental freedoms. All these elements constitute the so-called substantial constitutional law, which is applied in its full capacity. These 15 international mechanisms also include the Convention (item 6, Annex I to the Constitution of Bosnia and Herzegovina). That *per se* means that Article 5 of the Convention is fully guaranteed.



**Recommendation No. 11: The Committee urges the State party to proceed with amending the relevant provisions of the State Constitution and the Election Law, with a view to ensuring the equal enjoyment of the right to vote and to stand for election by all citizens irrespective of ethnicity.**

29. With a view to implementing the above in practice, it will be necessary, through the Election Law, to develop the mechanisms for filling in the three guaranteed positions for national minorities in the election lists. Therefore, the future enhancement of constitutional provisions which concern the members of national minorities will also include the holders of positions in the Parliamentary Assembly. The existing arrangements determining that these positions belong to the constituent peoples, in the proposed amended version should read as follows: “President and Vice-presidents of each of the houses of Parliament shall not belong to the people ...”, meaning that these positions would be made available to the members of national minorities as well. As proposed amendments to the BiH Constitution failed, and the parliamentary elections took place on 1 October 2006, the proponents of constitutional amendments, political parties and representatives of the international community (the EU and the OHR) have agreed to continue the activities towards new constitutional arrangements and develop proposals to be submitted for adoption to the Parliament. It is expected that the amendments to the Constitution will also address the issues and arrangements concerning the rights of national minorities, i.e. the category of “Others” in the Constitution.

30. The Constitutional Court of Bosnia and Herzegovina, acting upon two cases, within its competence of performing the abstract control of constitutionality under Article VI/3 (a) of the Constitution of Bosnia and Herzegovina discussed the “constitutionality” of relevant provisions, specifically in relation to mentioned discrimination, and, subsequently, declared itself incompetent to establish the “constitutionality” of the Constitution of Bosnia and Herzegovina or of the provisions of one law (the Election Law), which accurately replicates the constitutional provision (see the decisions of the Constitutional Court of Bosnia and Herzegovina, No. U-5/04, of 27 January 2006, and U 13/05, of 26 May 2006; all decisions are available at: <[www.ustavnisud.ba](http://www.ustavnisud.ba)>). Therefore, despite all good will, these provisions can be altered only through the parliamentary procedure amending the Constitution of Bosnia and Herzegovina.

**Recommendation No. 12: The Committee urges that the State party ensure that all rights provided by law are granted, both in law and in fact, to every person within the territory of the State Party, irrespective of race or ethnicity. The Committee strongly recommends that the State party review and remove all discriminatory language from the State and Entity Constitutions, and from all legislative and other domestic law texts, including especially, but not limited to, distinctions between so-called “constituent peoples” and “Others”.**

31. From the point of view of the Constitution of BiH, entity constitutions, the Statute of Breko District BiH and 10 cantonal constitutions, all citizens of BiH are guaranteed the rights provided under the law, irrespective of their racial, national, ethnic or any other affiliation. When acting upon the subject matter, in the mentioned and all other documents, it is necessary to have removed all discriminatory language barriers, in particular those that introduce the distinction between “Constituent Peoples” and “Others”. It can be expected that BiH will, through the future discussions on constitutional changes, pay due attention to this issue as well, and that it will devise such legal formulation for term “Others” in order to make the members of “national minorities” equal in rights with the “Constituent Peoples”. It would be the continuation of earlier

activities on amendments of entity constitutions, which were made in 1998 and 2000, on the basis of decisions of the BiH Constitutional Court and in 2002, the High Representative for BiH referring specifically to the BiH Constitutional Court decisions, adopted decisions amending the entity constitutions by way of direct provisions on proportional representation of “Constituent Peoples” and “Others” in the state bodies and public institutions of Bosnia and Herzegovina. This was done with the intention of achieving non-discriminatory participation of citizens in bodies of authority at the level of BiH. This principle was developed through the provisions regulating the structure of representative bodies and executive authorities.

32. In the BiH Federation House of Representatives each constituent people is represented by at least 4 members, while in the House of Peoples the constituent peoples have 17 delegates each, and “Others” seven. In Republika Srpska, the constitutional amendments introduced the institute of the “protection of national interest”, which provides that no law regulating the issues of a vital national interest can enter into force unless it is adopted by the House of Peoples, which is composed of eight members from each constituent people and four members from the rank of “Others”. As an instrument for the protection of a vital national interest a Special Chamber has been established within the Constitutional Court of Republika Srpska, which is composed of two judges from each constituent people and one from the ranks of “Others”.

33. Judging by these examples, the political and legal status of minority groups in BiH has been regulated in accordance with generally accepted European standards, but the main problem is that mentioned provisions have not been fully applied in practice.

**Recommendation No. 13: The Committee recommends that the State party enact comprehensive administrative, civil and/or criminal anti-discrimination legislation, which prohibits acts of racial discrimination in employment, housing, healthcare, social security (including pensions), education and public accommodations.**

34. With regard to the commitments of BiH in terms of transposition of more inclusive administrative and criminal anti-discrimination acts prohibiting the acts of racial discrimination, particularly in the areas of employment, housing, health protection and social insurance (including the pensions), education and public accommodation, the majority of these issues are falling under the competencies of entities and Brcko District. The Ministry of Civil Affairs, as a line ministry at the state level, closely follows the mentioned issues. According to the information received from entity and Brcko District institutions in charge, when it comes to violation of human rights, the BiH Ministry of Human Rights and Refugees, through its sectoral activities (the Human Rights Sector, the Refugees, Displaced Persons and Housing Policy Sector, the Reconstruction, Development, Monitoring and Regional Centres Sector, the BiH Gender Agency), closely follows the situation in relation to discrimination in the areas of employment, housing, health protection and social insurance (including the pensions), education and public accommodation.

35. The employment situation in Bosnia and Herzegovina is quite complex and of serious concern. According to the data provided by entity employment institutes and BiH Employment Agency, as well as the estimates of some international and local institutions and NGOs, the unemployment rate in BiH is over 40% and is one of the highest in the region. Generally speaking, from the point of view of fundamental human rights which also include the right to work and employment as an important right, it can be said that a number of BiH citizens has

been discriminated on these grounds. This sort of discrimination is more prevalent among the most vulnerable groups such as DPs and refugees, Roma as the most vulnerable minority, women, disabled persons, youth and elderly working population. There is also a number of workers who unwillingly lost the jobs and, at the same time, they are still not entitled to age retirement, while, on the other hand, their chances to find the new job are slim. Quite numerous young and educated population seeking the employment outside BiH are also victims of employment-related discrimination. The problem of work and employment in BiH could be solved through investments which would have direct or indirect impact to the rise of employment, i.e. the creation of new jobs. The subsequent issue to be dealt with would be to how to ensure equal employment opportunities for all BiH citizens.

36. It is generally recognised that after the tragic war conflict the housing sector in BiH has changed dramatically, with partial or complete destruction of almost half pre-war housing fund. The total of 452.000 housing units was partially or fully destroyed. It is also important to say that the average pre-war household in BiH had 60.45 m<sup>2</sup>, that is 16.68 m<sup>2</sup> per person. In addition to that, a great number of people were displaced exactly because of this destruction of their pre-war houses. They moved into “safer” premises, occupying temporarily the abandoned property. So, this abandoned property was occupied by internally displaced persons. In this way, more than 200.000 housing units were occupied. It can only be assumed what degree of discrimination has been involved here.

37. Bearing in mind the complexity of housing situation, the BiH authorities have focused their activities on two operational areas: property/occupancy right repossession and reconstruction of housing fund.

38. It is important to say that property laws have been implemented in full, which means that the decisions have been fully enforced and the housing units returned to their pre-war owners and occupancy-right holders.

39. According to the official data, the total of 260 thousand housing units have been reconstructed to date, of which the reconstruction of 170 thousand housing units was funded by donors. Immediately after the war the reconstruction was almost 100% funded by international donors, after which the national donors at all levels of power in BiH have also become involved, allocating significant budgetary funds for this purpose. Unfortunately, after so many years, a number of BiH citizens has still been waiting for the reconstruction and return. According to the up-to-date data, some 38 thousand families, that is 130 thousand individuals in BiH have been awaiting the assistance for reconstruction of their pre-war homes. In terms of discrimination, it concerns all those who have not been able to exercise the basic human right. This time as well, we have to stress that the most vulnerable category are the returnees from minority groups and Roma, whose housing units were destroyed, but as they did not have the construction permits, it is difficult for them now to prove and exercise their property rights. These and other issues have, of course, been given priority in order to more efficiently address the discrimination in this area as well. A positive example is the solution that has been found for a “wild” Roma settlement in Butmir, Ilidza municipality, which is located in the first water-protection zone supplying with water the City of Sarajevo. The agreement has been reached between the representatives of Roma community and Sarajevo City authorities to reallocate the settlement. It has been agreed

that this issue will be solved by 2008, through the construction of suitable apartments for 54 Roma families, that is 283 individuals, which will be funded by nine Sarajevo municipalities.

40. The health insurance and the utilisation of health care services in FBiH have been regulated by the Law on Health Insurance ("FBiH Official Gazette", No: 30/97 and 7/02), the Law on Health Protection ("FBiH Official Gazette", No: 29/97) and by-laws adopted on the basis of these laws.

41. The citizens of the BiH Federation, by investing the funds on the basis of mutuality and solidarity, and obligation, exercise their right to health protection within the Canton, as well as other rights deriving from compulsory health insurance in accordance with relevant laws and by-laws.

42. The solidarity fund has been established under the Federal Health Insurance and Re-insurance Institute in order to ensure equal conditions for health insurance in all cantons for some priority health protection vertical programmes, as well as for the provision of the most complex forms of specialised health protection. The solidarity funds are secured through the compulsory health insurance. The percentage of allocation to the Federal Solidarity Fund is established annually by special decision of the Federal Government. The Law on Health Insurance has established the basis for inclusion of all citizens of BiH Federation into the compulsory health insurance.

43. For all those insured under it, the Law guarantees the equal treatment in exercising the rights under the compulsory health insurance, the health standards on equal terms in the area of primary, specialist and consultative and hospital health care, as well as the equal access to the health care services, i.e. the Law stipulates the rights and obligations of citizens - those insured in exercising the right to health protection, as well as the procedure for the protection of these rights, both within the health insurance institutions and the health care institutions.

44. The line ministry has no information on racial discrimination, or any other form of discrimination against those entitled to health protection under the compulsory health insurance.

45. The fact that a number of citizens have not been insured is of major concern, because these citizens are being put in an unequal position against their will as this mainly concerns those unemployed or other persons who should be included in the compulsory health insurance scheme through the budgetary allocation. With regard to discrimination between insured and uninsured persons, the inference is clear - the discrimination is evident and alarming.

46. As regards health protection for Roma, the final version of the Roma Health Protection Action Plan has been completed by the Working Group established by the BiH Ministry of Human Rights and Refugees. This Action Plan has defined the objectives and a number of measures and activities to be implemented in order to secure the right to basic health care for the entire Roma population. To implement these measures and activities, the Action Plan listed the institutions in charge, the timeline for their implementation and the required funds.

47. In the BiH Federation, the Law on Social Protection, the Protection of Civil War Victims and the Protection of Families with Children ("FBiH Official Gazette", No.: 36/99), has stipulated:

- The basis for social protection of citizens and their families, the basic social protection rights and the beneficiaries of social protection
- The establishment and functioning of institutions for protection of disabled persons and their association
- The basic rights of civil war victims and members of their families
- The basis for protection of families with children
- The funding and other issues pertaining to the exercise of social protection rights, the protection of civil war victims and families with children in the BiH Federation

48. In line with that, the Law on Social Protection (“Republika Srpska Official Gazette”, No.: 5/93, 15/96 and 110/03), as well as the Law on Health Protection (“Republika Srpska Official Gazette”, No.: 18/99, 58/01, and 62/02), are entirely anti-discriminatory. The drafting of the new Law on Social Protection is under way. This Law, which is also anti-discriminatory, defines that all citizens of Republika Srpska are entitled to the rights provided under this Law on equal terms, irrespective of their race, colour, sex, language, political or other opinion, national or social origin, disability or any other status, as well as that the physical and legal entities applying this law shall respect the dignity of beneficiary and take due account of his/her interest.

49. The system of health protection in Republika Srpska has been regulated by the Law on Health Protection, Article 9 thereof stipulates that, in exercising their duties and providing health care, the medical staff shall abide by the principle of equality.

50. The Law on Health Insurance (“Republika Srpska Official Gazette”, No. 18/99, 51/01, 70/01, 53/03 and 57/03) regulates the system of compulsory and extended health insurance, the rights under the insurance, the exercise of rights and the principles of private health insurance. The compulsory health insurance covers all citizens of Republika Srpska and other persons within the meaning of the Law. In 2007, the Health Insurance Fund of Republika Srpska published the leaflets on the rights of patients in Republika Srpska in the area of health protection.

51. The provisions of the Constitution mentioned above also imply the respect for the human rights of Roma. In relation to that, the Ministry of Health and Social Protection, in the period 11 May to 14 August 2007, conducted the poll as a basis of situation analysis in the area of social, child and health protection of Roma in Republika Srpska.

52. According to information collected by all social work centres and social care services in Republika Srpska, 75 Roma individuals are beneficiaries of financial assistance and 250 individuals are beneficiaries of one-off financial assistance. The entitlement for care and assistance to other person is utilised by 34 individuals, and 237 persons have become entitled to health protection through the social work centres or social care services.

53. According to information available to the Child Protection Fund, the number of children using the child benefits is 307, and the number of parents beneficiaries of child benefits is 151.

The number of those entitled to financial assistance for newborns is 44, and those entitled to financial assistance is 28. In Republika Srpska, in the area of health, social and child protection, due attention is being paid to anti-discriminatory policy.

54. The Family Law (“FBiH Official Gazette”, No.: 35/05) regulates the following subject matters: family, marriage and legal marital relations, the parents-children relations, adoption, custody, legal effects of extra-conjugal relations, the rights and obligations of family members. The mentioned laws stipulate specific rights, which implies that all individuals, irrespective of their race, are entitled to these rights and that the provisions of these laws are not discriminatory, i.e. they do not provide grounds for discrimination. There is information in relation to the violation of the Convention.

55. In accordance with the legal regulations in force in BiH Federation, the establishment and work of social work centres shall be regulated by cantonal regulations, and, consequently, the funds required for their work are allocated from the cantonal and municipal budgets. One of the priority reform activities presented in the Mid-term Development Strategy for BiH is the investment into the local social care services, education of staff and management, as well as the activities on the development of the Book of Rules prescribing the standards, norms and procedures for the work of the social work centres which are underway.

56. The area of social protection in Republika Srpska has been regulated by the Social Protection Law (“RS Official Gazette”, No. 05/93, 15/96 and 110/03), the Child Protection Law (“RS Official Gazette”, No. 4/02,17/08), the Law on Employment and Professional Rehabilitation of Persons with Disabilities (“RS Official Gazette”, No. 98/04, 91/06), the Law on Protection of Persons with Mental Disabilities (“RS Official Gazette”, No. 46/04), the Law on Protection Against Family Violence (“RS Official Gazette”, No. 118/05, 17/08).

57. The rights to social protection in Republika Srpska are exercised by all those fulfilling the legally stipulated requirements, irrespective of their race, colour, sex and other. The new Law on Social Protection, which is in the procedure of adoption, contains the explicit non-discrimination provision.

58. The research in the area of rights to social protection showed that the enjoyment of these rights is conditioned on the registered residence on the territory of Republika Srpska, i.e. the citizens residing on this territory, if they for some reason have not registered their residence, can not exercise mentioned rights. That is exactly the problem that Roma population is faced with, as they usually do not register the residence, and not even the newborn children, and, as a consequence, they do not possess personal documents. These situations should not be identified as discrimination, as this concerns the failure to fulfil the legally stipulated requirements, and not discrimination.

59. In accordance with the Law on Pension and Disability Insurance (“FBiH Official Gazette”, No.: 29/98, 49/00 and 59/06) the rights under the pension and disability insurance include:

- The right to age retirement
- The right to disability retirement

- The right to family retirement
- The rights of beneficiaries with altered work ability

60. The Federal Institute for Pension and Disability Insurance, in performing the duties set forth in Article 4 of the Law on Organisation of Pension and Disability Insurance of the Federation of Bosnia and Herzegovina ("FBiH Official Gazette", No.: 32/01 and 18/05), i.e. the duties set forth in Article 5 of the Statute of the Federal Institute for Pension and Disability Insurance ("FBiH Official Gazette", No.: 38/03), shall ensure the equality before the law to all persons irrespective of their race, color, national or ethnic origin. The institutions of Bosnia and Herzegovina, earlier the Human Rights Chamber of Bosnia and Herzegovina, and now the Human Rights Committee under the Constitutional Court of Bosnia and Herzegovina, which are in charge of alleged violations of the Convention (as well as of other conventions and declarations), which make an Annex to the Constitution of BiH as instruments for protection of human rights with the equal legal effect to that of the constitutional provisions, have found that the Federal Institute has, in some specific cases, and specifically in applying the Agreement on Mutual Rights and Obligations under the Pension and Disability Insurance ("FBiH Official Gazette", No.: 24/00), discriminated the applicants of rights protected under Article 9 of International Pact on Economic, Social and Cultural Rights.

61. The Decision on Admissibility has been made in 19 cases. In these decisions, the grounds for discrimination are found in the fact that the beneficiaries of pensions, who exercised the right to retirement by 1992, on the territory of what is today the Federation of Bosnia and Herzegovina, were taken over by the insurance holders in Republika Srpska, and having in the meantime returned to the Federation of Bosnia and Herzegovina as their permanent residence, they are discriminated in terms of amount of their pensions receiving them from Republika Srpska and living in Federation, where the living standard is higher. Thus, on the basis of these decisions, the disparity in pensions that the beneficiaries are receiving in Republika Srpska and those that they would be entitled to in the Federation have been paid out to them.

62. In line with the decisions mentioned above, the activities towards the amendments to the Agreement on Mutual Rights and Obligations under the Pension and Disability Insurance have been launched ("FBiH Official Gazette", No.: 24/00), with a view to balancing the rights of pensioners-returnees with other pensioners from the entity that they returned to, eliminating thus potential discrimination in terms of amount of pensions.

63. The Federal Institute for Pension and Disability Insurance holds that the amendments to the Agreement should not be made in such a way to cause the discrimination between the beneficiaries of pensions of the Federal Institute for Pension and Disability and those of the Fund of Republika Srpska and *vice versa*. The Institute fully abide by legal interpretations and objections of courts in terms of procedure, both as regards the rulings of cantonal courts, and the Supreme Court of Federation of Bosnia and Herzegovina. This issue has been addressed more in details in Recommendation No. 18.

64. The Law on Pension and Disability Insurance ("Republika Srpska Official Gazette", No.: 32/00, 40/00, 37/01, 32/02, 47/02, 110/03 and 67/05) - the Amendments to this Law set

forth the obligation of sorting the statistical data per sex and making it available to public, and it also stipulates the fines for failure to maintain statistical data in line with the provisions of the Law on Gender Equality in BiH.

65. This issue affects in particular the refugees and displaced persons in BiH in terms of their sustainable return. Even though the Ministry of Human Rights and Refugees has been developing the legal framework including the relevant by-laws defining the modalities for exercise of rights to assistance by refugees and displaced persons in the process of return, the tangible results have been felt only with the adoption of the Law on Amendments to the Law on Refugees and Displaced Persons in BiH, which, in its later stage, facilitated the harmonisation of entity laws with the state Law. Also, a very transparent selection procedure has been applied to beneficiaries of assistance in the process of return, and that has been ensured through an Instruction on the Method and Procedure for Selection of Beneficiaries of Return Projects and Reconstruction of Housing Units.

66. In the context of possibilities for assistance to reconstruction of housing units for the purpose of return to pre-armed residence, it should particularly stressed that the relevant legal framework, including the by-laws regulating this subject matter, recognises as potential beneficiaries of this type of assistance only refugees from BiH, displaced persons within BiH and returnees. Any other form of discrimination on any other is disqualified and thus illegal.

67. With regard to the access to other rights in the process of return (education, health and social protection, pensions and other), the activities towards developing the Strategy for Implementation of Annex VII of the Dayton Peace Agreement have been launched with a view to finding new solutions in terms of sustainability of return. The experts on Strategy development have completed their discussions and the first draft of a revised document is expected to be finalised shortly, which will be followed by public discussions.

68. It should be stressed that a large number of refugees in Bosnia and Herzegovina is still accommodated in refugee collective centres, or individual accommodation. For those enjoying the refugee status under the internationally recognised norms and national legislation, Bosnia and Herzegovina has secured the rights deriving from the Refugee Convention from 1951 and the Law on Movement and Stay of Foreign Nationals and Asylum. In that way, the refugees in Bosnia and Herzegovina are entitled to education, health and social protection, labour-related rights and other, and they exercise these rights on equal terms as other citizens of Bosnia and Herzegovina. In case when the refugees are unable to exercise the guaranteed rights due to the lack of funds, the institutions of Bosnia and Herzegovina cover for these expenses.

69. Bosnia and Herzegovina is still in the phase of developing the Strategy to Enable the Access to Accommodation for Socially Vulnerable Groups of Population in BiH, which will cover the significant part of BiH population. It is important to ensure the principle of non-discrimination, something the appropriate institutions in charge have been intensively working on in cooperation with experts engaged through the project supported by the European Union, through its Delegation in BiH. This Strategy is aiming at promoting the right to social protection and accommodation and the obligation of the state to secure accommodation for those in need.



70. The problem of electrification at the sites of return has, along with the accommodation, been the basic pre-requisites for sustainable return. For years now, the Ministry of Human Rights and Refugees has been making efforts to resolve this issue, but with little success in the filed. Generally speaking, the laws and by/laws regulating the electrification including the sites of return, do not contain discriminatory provisions, but their implementation has not always been efficient.

71. The lack of funds for the reconstruction of seriously devastated electro and road network, the rapidly falling influx of donations, market-oriented functioning of electro companies (large investments for small number of beneficiaries are not profitable in short-term perspective) are, certainly, some of objective reasons that seriously hold back the process of electrification. Although there has been some progress achieved in the field, the number of returnee households not having the electricity, the slow pace in solving the electrification problems and especially the selection of locations and category of beneficiaries for priority investment indicate the lack of awareness among the relevant authorities of importance to properly address the issue of electrification as one of pre-requisites for sustainable return.

72. In the context of the above, as well as of the commitment undertaken by BiH as a signatory of Annex VII of the General Framework Agreement for Peace in BiH and the International Covenant on Economic, Social and Cultural Rights, BiH is continuing the electrification works as a basic pre-requisite for return and reintegration of returnees, the reconstruction of road network, the renovation of housing units and school and medical premises. These are the most serious problems related to employment of returnees.

73. Generally, for all these issues the preparations for adoption of an anti-discrimination state-level law is of great importance. A team of experts has been established and tasked to develop the draft law by end 2008, which will then be submitted for adoption before the Parliament.

74. Socially vulnerable categories of population exercise their rights mostly in accordance with the provisions of entity laws regulating social protection, the protection of civil war victims and the protection of families with children. These are mainly the persons with bodily damages, poor health as a consequence of torture, inhuman and humiliating treatment and other, as well as the persons who sustained bodily damages as a consequence of war events, family members of missing persons, and family members of those killed in war.

75. All in all, the problem of civil war victims in BiH still remains, although the situation differs between the entities. This has also been acknowledged by the international community representatives as follows:

- The BiH regulations in this area are often deficient or incomplete, under which the category of disabled persons is treated unequally in comparison with the war invalids, especially in terms of financial benefits, and there are no indications as to overcoming this gap shortly.
- It has been noted that the civil war victims, who exercised the rights that they are entitled to under this status, are losing these rights upon the return to the other entity, which is a sort of discrimination and some efforts have been made in order to overcome it.

- There are also some shortfalls in legal regulations denying the beneficiaries the right to leave the country for more than three months, which is in contravention with the Constitution and international conventions on the protection of human, civil and social rights.

76. The Study on Social Inclusion in BiH has shown a dramatic degree of social inclusion of persons with disabilities. According to the Study, the persons with disabilities in are practically excluded from education process (at the time when the poll was conducted only 0.7% of these persons were receiving some sort of education - the access to education is limited and the level of literacy is generally lower). The situation in the health care sector is also not good (the percentage of persons with disability without the health insurance is higher than among those without disability, the quality of services provided is not very good, and the same applies to their price and accessibility).

77. The persons with disabilities have limited access to employment. There is high rate of employment among this population even though these persons are able to do suitable jobs. The situation in terms of housing and infrastructure is also not satisfactory.

78. It can be said that Bosnia and Herzegovina must and should make more efforts to improve the position of persons with disabilities and with adoption of new regulations all forms of discrimination need to be eliminated.

**Recommendation No. 14: The Committee recommends that the State party strengthen the role of the Roma Council by providing sufficient funds for the Council to effectively carry out its mandate, and that the Council be consulted in connection with any decision-making processes that impact the rights and interests of the Roma population, in accordance with the Committee's General Recommendation 27.<sup>2</sup>**

79. The first Conference bringing together 22 Roma NGOs was held in Vogosca in 2001. The first BiH Roma Council was established on that occasion, as the highest representative body of Roma in BiH. The primary goal of the Conference was the capacity building of the BiH Roma Council, the establishment of partner relations with governmental sector, as well as the promotion of the BiH Roma Council as a framework institution.

80. The second BiH Roma Council was established at the "Roma NGO Assembly", held in Banja Luka on 27 and 28 June 2006. The participants were the representatives of Roma NGOs and associations from all over BiH. The new membership of the Roma Council was elected at this Assembly. The members of the BiH Roma Council are local NGOs which took part in the founding Assembly, as well as those which signed the Declaration/accession statement and which respect and protect the interests of the BiH Roma Council.

81. The decision on the appointment of the new members of the Council is made by the bodies of the Council: the Assembly and the Steering Board. The Steering Board of the Council is composed of 9 members. The elected members of the Council are obliged to represent and

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<sup>2</sup> CERD, 57th session, General Recommendation No. 27: Roma Discrimination, paragraph 43.

protect the interests of Roma population, to represent and protect the interests of the members of the Council, at all levels provided that these interests are not in contravention with the BiH Constitution and laws of BiH.

82. Bearing in mind the significance of this representative body, the objective of the state is to reinforce it and provided support for its activities. To that end, the Council of Ministers of BiH has allocated a special item in the budget for funding of the Council. The support has also been provided to the work and networking of Roma NGOs, especially these without adequate financial means. All this should contribute to a more effective decision-making regarding the rights and interests of the Roma population in BiH, which has been provided under general recommendation No. 27.

**Recommendation No. 15: The Committee recommends that the State party review the National Strategy for Roma to ensure that it identifies specific measures, establishes adequate budgetary allocations, and identifies the bodies responsible for its implementation.**

83. The BiH authorities, the BiH Council of Ministers in the first place, as well as the BiH Ministry of Human Rights and Refugees, have taken up the commitment of undertaking concrete measures aiming at protecting and promoting the rights of national minorities, addressing the outstanding issues of national minorities, and persistently working towards full implementation of the Law on the Protection of National Minorities in BiH. We are aware of the fact that the implementation of this Law, as well as of the Framework Convention for the protection of national minorities is hampered seriously, primarily because of the lack of reliable data. The last census was conducted in 1991, that is before the war, and its results do not reflect at all the current demographic situation in the country. There is an apparent need for a new census from the point of view of national minorities, and especially the Roma community in BiH.

84. To that end, the Ministry of Human Rights and Refugees BiH, in cooperation with the Roma Council under the Council of Ministers of BiH, has developed the "BiH Roma Strategy". Until the development and adoption of the Roma Strategy, in BiH or in any of its entities there has been no other significant and comprehensive document treating the problems of Roma and proposing adequate.

85. Neither the Framework Programme of the Roma Council from 2002, nor the Platform for establishment and functioning of the BiH Roma Council contains such features and dimension. Therefore, this has been a targeted document - made as an inventory of the problems that the Roma population is facing with daily, as well as an incentive and instruction for the authorities and other stakeholders as to how to identify the problems and activities to address them properly, that is to ensure the normal integration of Roma into the society, with all its specificities and challenges.

86. Following several months long detailed discussion over the BiH Roma Strategy by the entity and cantonal governments, the consultations with the Roma and other organisations dealing with minority issues, the BiH Council of Ministers adopted the Strategy and published it in the BiH Official Gazette, No.: 67/05 of 27 September 2005. The adoption of this document means the adoption of 15 specific activity programmes covering different areas of life which will help improving the social position of Roma population in BiH (education, employment, health

and social protection, census and other). Following the adoption of this document, the Roma Council under the BiH Council of Ministers decided to publish it as a booklet and in addition to three official languages of BiH to have it translated and published both in English and in Roma language.

87. The BiH Ministry of Human Rights and Refugees, through the activities conducted jointly with the entity governments, NGOs and with the support of international community and institutions such as the European Commission, UNHCR, OSCE, UNICEF, Council of Europe, SIDA from Sweden, the World Vision, the World Bank and other, is currently developing the three action plans for implementation of the Employment, Housing and Health Care Strategy.

88. It is the obligation of all authorities in BiH (the State, entity, cantonal and local ones) to fulfil the set tasks falling under their respective competencies. The development of three high-quality action plans which is at its final stage, together with the Education Action Plan for Roma and other minorities in BiH, means further action in addressing the needs of Roma national minority in BiH and it should facilitate the accession to the Roma Decade Inclusion Programme for 2005-2015.

89. An important activity is the implementation of the BiH Roma Housing Strategy. The Working Group composed of representatives of the BiH Roma Council, line ministries and municipalities in which Roma population lives, has, with the support of humanitarian organisations, developed a Roma Employment Action Plan providing the measures for improvement of employment situation among Roma community in BiH. Prior to the adoption by the BiH Council of Ministers, the Ministry of Human Rights and Refugees has submitted the action plans for employment, health care and housing to the entity governments. The proposed measures have foreseen the employment of Roma to the positions in employment bureaus and local communities where the employment needs are defined and planned. To that end, some incentives relating to co-funding for job providers and self-employment have also been planned, as well as some administrative benefits to local communities in which the Roma have been self-employed.

90. The Action Plan has foreseen that the monitoring over the implementation of measures shall be ensured by the State line ministries, the Roma Council and Committee and the National Minorities Council under the BiH Parliamentary Assembly, as well as by the employment bureaus and donors who will secure the funding for implementation of a number of measures and actions. The timeframe for implementation of these measures by the responsible authorities is from 2008 to 2015, when the Roma Decade is finishing and the results should be fully achieved by then.

91. This time as well we would like to stress that the Roma population has already traditionally been faced with the problem of social exclusion. On one hand, this is caused by the racial discrimination based prevention of their inclusion, and on the other, which is only a consequence of the earlier said, by self-imposed isolation of Roma within their own Roma communities,<sup>3</sup> the

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<sup>3</sup> Social inclusion in Bosnia and Herzegovina. Human Development Report. UNDP-IBHI. 2007. p. 41.

relevant studies and research have shown that the lack of education as a major problem among Roma (76% of Roma have never attended or completed primary school); the problem with access to and use of health care services; the problem of employment (the employment rate among Roma is 1:25).

92. This is especially relevant for female members of Roma population who are faced with even stronger and bigger obstacles than men, since their employment prospects are poorer and the access to income more difficult. In terms of education, again, Roma women are more discriminated in comparison with Roma men; the rate of primary school enrolment is lower with women than with men, which can be attributed to traditional factors such as early marriages, lack of awareness of importance of education, the house-keeping requirements and other. The research conducted by the UNDP shows that the percentage of female who complete the education is lower in comparison with male, which, again, is attributed to traditional factors. The discrimination of Roma women is also present at labour market. The percentage of unemployed women is higher than men. The percentage of unemployed Roma women is 71%, and men 39%. So, 59% of Roma men and only 20% of Roma women have been employed (to compare, the same research shows that among the rest of BiH population, 70% of other men and 43% of other women have been employed in BiH). The health of Roma women is also problematic due to social and economic factors (poverty, inadequate food, lack of access to health care facilities), as well as due to cultural stereotypes (early-age pregnancies and child birth, more children and high rate of abortions).

93. This data clearly shows the degree of social exclusion of the entire Roma population in our society, the direct violation of their rights, in particular in the areas of education and employment, as well as the gender-based discrimination against Roma women.

**Recommendation No. 16: The Committee urges that the State party ensure the effective implementation of all legal provisions aimed at eliminating racial discrimination, and that it provide in its next report updated information concerning the application by courts within Bosnia and Herzegovina of criminal law provisions punishing acts of racial discrimination, in particular Articles 145 and 146 of the Criminal Code of Bosnia and Herzegovina; such information should include the number and nature of cases brought, convictions obtained and sentences imposed, and any restitution or other remedies provided to victims of such acts.**

94. This report was written in the view of the Convention on the Elimination of All Forms of Racial Discrimination, concerning its implementation through the practice of the Constitutional Court of Bosnia and Herzegovina and the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, as an independent body, the legal successor of the former Human Rights Chamber (Annex 6 of the General Framework Agreement for Peace in Bosnia and Herzegovina). The Report covers the period between February 2005 and April 2008. Since the subject matter also includes discrimination based on nationality, religion, ethnicity, language, and culture, the overview of practice regarding discrimination in general is also given (Article II/4 of the Constitution of Bosnia and Herzegovina in connection with other constitutional rights and freedoms), although the Convention is being exclusively referred to.

95. In the period covered by the Report the Constitutional Court of Bosnia and Herzegovina had around 10 cases in which the appellants invoked the violation of this Convention. In only

two cases the violation was taken into meritory consideration, whilst only in one case (U 4/05, dated 22 April 2005) a violation of the Convention was established. There were no cases related to this Convention before the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, although it is guaranteed by the Annex 6 of the General Framework Agreement for Peace in Bosnia and Herzegovina. Unfortunately this statistics does not show that there is no racial discrimination in Bosnia and Herzegovina, but that people are, in general, 'unaware' of the rights guaranteed by the Convention, although these rights are institutionally protected, which is proven by the practice of these institutions. The verification of this view is the fact that the allegations of discrimination, especially national and ethnic, are much more frequent in proceedings before the Constitutional Court of Bosnia and Herzegovina and the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina.

96. In its reporting period until 2005, the Committee on the Elimination of Racial Discrimination noted the lack of efficient implementation of the provisions of the Convention on the Elimination of All Forms of Racial Discrimination (although the Convention is incorporated into the legal system of Bosnia and Herzegovina), in connection to the Articles 145 and 146 of the Criminal Code of Bosnia and Herzegovina, which sanction the crimes of racial discrimination. As a State party, Bosnia and Herzegovina was ordered by the Committee to ensure efficient implementation of all provisions of the criminal legislative at all levels of government, which incriminate criminal offences of racial and all other discrimination and to inform it on the measures carried out in the next regular report.

97. In this regard, the following information has been collected in cooperation with the Police, Courts and Prosecutors' Offices at all levels of Government in Bosnia and Herzegovina.

98. According to the available information obtained from the Ministry of Justice BiH, it was established that the Court of BiH has no records of any cases involving criminal offences of discriminatory nature, incriminated by the Articles 145 and 146 of the Criminal Code of Bosnia and Herzegovina, and consequently has no verdicts related to this criminal offence. According to the records of this Court, there are no cases before it regarding criminal offences of racial discrimination, under articles 145 and 146 of the Criminal Code of Bosnia and Herzegovina.

99. Until 1998 the legal framework of the judiciary of Bosnia and Herzegovina was completed at the entity levels, with the exception of the Constitutional Court of Bosnia and Herzegovina, which was established through the Article VI of the Constitution of Bosnia and Herzegovina.

100. As a result of efforts envisaged in the Declaration of the Peace Implementation Council from December 1998 (the Madrid Declaration), which clearly stated that establishing the rule of law that will have the trust of all citizens is a pre-condition for lasting peace, in August 2002, the High Representative for BiH issued a Decision Enacting the Law on the Prosecutor's Office of Bosnia and Herzegovina with the aim of ensuring a more efficient execution of the state competencies, respect of human rights and the principle of legality, more efficient combating against crime and strengthening the rule of law. The above mentioned Law was adopted in the Parliamentary Assembly of BiH and published in the Official Gazette, issue 42/03, by which the Prosecutor's Office of Bosnia and Herzegovina was established and started working on 27 January 2003. The Prosecutor's Office of Bosnia and Herzegovina is a body competent for carrying out investigations for criminal offences under the jurisdiction of the Court of Bosnia and Herzegovina in accordance to the Criminal Procedure Code of Bosnia and Herzegovina.

101. Therefore, in Bosnia and Herzegovina there are Prosecutors Offices at the state, entities and the Brcko District levels. The Prosecutor's Office of Bosnia and Herzegovina is an institution at the state level involved in finding out, investigating and processing crimes foreseen by the Criminal Code of Bosnia and Herzegovina. It is of note that the Prosecutor's Office of Bosnia and Herzegovina does not have hierarchical jurisdiction over other Prosecutors' Offices in Bosnia and Herzegovina. Therefore, in case of criminal offences which are also discriminatory in their nature on any grounds, the Prosecutor's Office of Bosnia and Herzegovina is limited only to offences foreseen by the Criminal Code of Bosnia and Herzegovina, while other Prosecutors' Offices have jurisdictions according to the entities codes and the Criminal Code of Brcko District.

102. In order to obtain a true picture of the situation in Bosnia and Herzegovina regarding criminal offences involving victims who were discriminate against, we took into consideration statistical data of all Prosecutors' Offices in BiH.

103. The Prosecutor's Office of Bosnia and Herzegovina has not received any criminal reports, or an order to carry out investigation for crimes under Article 145 CC BiH - Infringement of the Equality of Individuals and Citizens and Article 190 CC BiH - Torture and Other Forms of Cruel, Inhumane and Humiliating Treatment. Because of this, the information on the given criminal offences is not in the records of the Prosecutors' Office BiH.

104. By reviewing the records of the Prosecutor's Office of Bosnia and Herzegovina it was established that two criminal reports were filed based on the Law on Equality of Sexes in BiH; one investigation was opened, and for the other report an order was issued not to carry out investigation. According to the available records, other criminal reports related to crimes which are discriminatory in their nature have not been filed to the Prosecutor's Office of Bosnia and Herzegovina.

105. In the War Crimes Section of the Court BiH the data on crimes against humanity - persecution on the political, racial, ethnic, cultural, religious and other grounds under article 172, paragraph 1, item h, are as follows:

- Number of orders to conduct investigation - 89 (eighty nine) in total, against more than 150 (hundred and fifty) persons
- Number of raised indictments - 27 (twenty seven) in total, against more than 30 (thirty) persons
- Number of first-instance decisions - 8 (eight) in total, out of which 6 (six) sentencing verdicts and 2 (two) acquittals
- Number of second-instance verdicts - 6 (six) in total, out of which 5 (five) sentencing verdicts and 1 (one) acquittal

106. Please note that the data on the number of orders to carry out investigations is not final and are subject to change in accordance with the dynamics of performing investigative activities and the possibility that other existing orders to conduct investigation that do not contain item h in their legal qualification include this item in the indictment. (See Table 1, annex).

107. The role of the Registry Office in strengthening the legal framework, administrative and operational aspects of the work of Special Sections of the Prosecutor's Office of Bosnia and Herzegovina is becoming more important along with the process of integration of domestic staff into institutions and appointing a local Registrar in 2007.

108. Following the continued process of reviewing the laws such as the Criminal Procedure Code of Bosnia and Herzegovina, Criminal Code of Bosnia and Herzegovina, the Law on Protection of Witnesses Under Threat and Vulnerable Witnesses, and the Law on Transfer of Cases from the International Criminal Tribunal for Former Yugoslavia to the Prosecutor's Office and the use of evidence collected by the International Criminal Tribunal for Former Yugoslavia in proceedings before Courts in Bosnia and Herzegovina, the Registry Office will also continue to provide its overall evaluation on whether there is an additional need for amending provisions related to the work of the Prosecutors' Office.

109. One of the most important responsibilities of the Registry Office in 2008 is continued support to the Chief Prosecutor regarding development of the National Strategy for War Crimes Processing, which will set out the direction of activities regarding the current situation and the modality of work on the existing war crimes cases, the division of responsibilities between the State and the entities and the consideration of regional and international cooperation and the mechanisms of alternative implementation of laws and regulations.

110. Domestic governmental structures in Bosnia and Herzegovina together with international representatives are still trying to overcome tragic consequences of armed conflict in social, economic, political, legal, and institutional sense. Problems such as the number of reported war crimes and the number of suspects for whom it is alleged that they committed such crimes have to be demystified without delay. The willingness and the ability of the domestic governmental bodies to bring to trial those responsible for such crimes are the most important factors for resolving the difficult situation related to war crimes and the future development of this country towards its full integration into European and international communities. The other factors include establishing a domestic judiciary system that is capable to conduct fair and objective investigations, to criminally prosecute the alleged perpetrators of war crimes in accordance to the law and justice, individual responsibility and human rights standards, as well as establishing an appropriate balance between restorative and retribution justice for all those who have been affected by this conflict.

111. Day-to-day practice demonstrates that it is necessary to constantly evaluate the applicability of the legal framework, which is important for the work of the Prosecutor's Office of Bosnia and Herzegovina and to consider drafting new amendments with the aim of improving predictability and efficiency of criminal regulations. In that sense, it is important to support the Criminal Code Implementation Assessment Team, established by the Ministry of Justice, which is performing review of provisions of the Criminal Code of Bosnia and Herzegovina. Similarly, the Legal Department working under supervision of the Registry Office for special sections, will take active part in the process of reviewing the Law on Protection of Witnesses under Threat and Vulnerable Witnesses, which was initiated by a working group in the Ministry of Justice BiH.

112. Bearing in mind the current transition process and the inevitable changes, it is still necessary to examine the Law on Transfer of Cases from the International Criminal Tribunal for Former Yugoslavia and using its evidence for several reasons. Considering that transfer of new



cases from the International Criminal Tribunal for Former Yugoslavia to the Prosecutor's Office is not expected, the Special Section for War Crimes should concentrate on improving regulations related to the use of evidence collected by the International Criminal Tribunal for former Yugoslavia and on witness protection. It would be useful to introduce general principles applied in criminal procedure to the relevant legal text: Criminal Code and Criminal Procedure Code of Bosnia and Herzegovina, as well as Rules of Procedure and Evidence of the International Criminal Tribunal for Former Yugoslavia should be applicable in the cases not regulated by the Law on Transfer of Cases; urgency of proceedings; relying on the jurisprudence of the International Criminal Tribunal for Former Yugoslavia; fair trial standards; principles of cooperation with the International Criminal Tribunal for Former Yugoslavia, and the highest level of witness protection. It would also be useful to harmonise already established jurisprudence and legal provisions regarding the foreseen criteria for using widely known established facts, the facts that have already been adjudicated or material evidence.

113. In addition, contrary to the practice of the Court of Bosnia and Herzegovina, the possibility of using evidence and facts adjudicated by the International Criminal Tribunal for Former Yugoslavia in the proceedings before cantonal/district and higher entity Courts is not completely accepted as a legal instrument. Arguments that can be given to justify the lack of their use in these Courts include incompatibility of legal provisions with the domestic legal tradition or simply the fact that the Law on Transfer of Cases was never published in the official gazettes in the entities and Brcko District.

114. The primary goal of the work of the Prosecutor's Office of Bosnia and Herzegovina is to bring to trial those responsible for war crimes, crimes against humanity or genocide, committed during the armed conflict. By criminally prosecuting the individuals responsible for crimes against humanity, war crimes against civilian population and other grave violations of humanitarian law, Courts and prosecutions fulfil their principal mandate, which is determining individual responsibility and contributing to ascertaining justice in the country. However, raising awareness of the general public and civil society about criminal proceedings is as important as criminal prosecution and trials themselves. With this in mind, the Registry Office is currently preparing the document *Policy Paper on Outreach Activities of the Prosecutors' Office for Special Sections*, whose aim is informing and communicating with the public of Bosnia and Herzegovina, especially with victims and witnesses, interest groups from the civil society, and the media. The aim of this document is to generally educate the target public on the criminal-legal system and the importance of proceedings conducted before the Court and Prosecutors' Office. In that sense, it was confirmed that the Court and the Special War Crimes Section achieved significant results which prove that it is possible to achieve justice in individual criminal cases and to start uniting the society towards the wider goal. This will help people to understand the course of proceedings in war crimes cases and their limitations, contributing to more realistic expectations of the public and interested individuals regarding the level of services they are getting from the Court and Prosecutors' Office. Moreover, this will have considerable impact on building the trust of public in the criminal-legal system and the work of the Court and the Prosecutor's Office.

115. The fourth category of cases consists of appeals in criminal cases, submitted to the Special War Crimes Section from March 2004, when the Prosecutor's Office BiH took over the

jurisdiction over the war crimes cases. During 2007, the Special War Crimes Section carried out activities in 613 cases, opened 172 new investigations against 510 suspects (see Table 1 and Chart 1 in annex) during this reporting period.

116. In the same period, the analysis of the Special War Crimes Section shows that the Section I for War Crimes of the Court BiH confirmed 19 indictments against 32 accused, while 24 main trials were conducted against 48 accused. First-instance decisions were issued in 10 cases against 11 accused, whilst 9 cases against 10 accused were completed by issuing legally binding verdicts.

### **The Prosecutor's Office of the Federation BiH**

117. Criminal offences related to racial discrimination are regulated by the Criminal Code of the Federation BiH (CC BiH), which came into force on 1. August 2003. The documents also contain data collected from all ten cantonal Prosecutors' Offices from the Federation BiH on the number of cases and persons related to war crimes processing.

118. The Criminal Code F BiH and the Criminal Procedure Code F BiH (CPC F BiH) are in force (Official Gazette F BiH, issue 36/2003 from 29 July 2003) in the Federation BiH, which came into force on 1 August 2003. Article 419 of the applicable Criminal Code F BiH foresees that on the date this code comes to force, the Criminal Code F BiH ceases to be in force (Official Gazette F BiH, issues 43/98, 2/99, 15/99, 29/00, and 52/02), and Article 458 of the applicable Criminal Code F BiH foresees that on the day this Code comes to force, the Criminal Code F BiH ceases to be in force (Official Gazette F BiH, issues 43/98, 2/99, 15/99, 29/00 and 52/02), and the Article 458 of the applicable CPC F BiH foresees that on the day this Code comes into force, the CPC F BiH ceases to be in force (Official Gazette F BiH, issues 43/98 and 23/99), unless provisions under the Article 451 and 457 foresee otherwise.

119. A special part of CC F BiH in Chapter Fifteen XV - Criminal Offence against the Constitutional Order of F BiH - contains criminal offence under Article 163. - Inciting national, racial or religious hatred, discord or hostility and it says the following:

- Whosoever publicly incites and inflames national, racial or religious hatred, discord or hostility among constituent peoples and others who live in the Federation of Bosnia and Herzegovina shall be punished by imprisonment for a term of between one and five years.
- Whosoever commits an offence under paragraph 1 above by employing duress and torture, jeopardizing the safety of any person, exposing national, ethnic or religious symbols to derision, damaging other people's belongings, desecrating monuments or graves, shall be punished by imprisonment for a term of between one to eight years.
- The aforesaid liability under paragraph 2 above shall extend to whomever commits an offence under paragraph 1 above by abuse of his official capacity, or if the offence results in riots, violence or any other serious consequence to the co-existence of the constituent peoples and others who live in the Federation of Bosnia and Herzegovina.

- Whosoever commits an offence under paragraphs 2 above by abuse of his official capacity, or if the offence results in riots, violence or any other serious consequence to the co-existence of the constituent peoples and others who live in the Federation of Bosnia and Herzegovina, shall be punished by imprisonment for a term of between one and ten years.

120. In chapter XVI (Criminal Offence Against Life and Limb Article) of the Criminal Code, article 166, paragraph 2, item (c), states that:

(2) The liability to imprisonment for a minimum term of ten years or to life imprisonment shall be imposed on any person who:

(c) Deprives another person of his life on racial, national or religious grounds.

121. According to article 43, paragraph 1 of the CC F BiH, imprisonment may not be shorter than thirty days or longer than twenty years. According to paragraph 2, for the gravest forms of serious criminal offences committed with intent, imprisonment for a term of twenty to forty-five years may be exceptionally prescribed (long-term imprisonment). Paragraph 3 foresees that long-term imprisonment may never be prescribed as the sole principal punishment for a certain criminal offence. Paragraph 4 foresees that long-term imprisonment cannot be imposed on an offender who has not reached twenty-one years of age at the time of committing the criminal offence.

122. Article 172, paragraph 4, of the Criminal Code provides that:

Whosoever commits an act under paragraph 1 above on racial, national or religious grounds, shall be punished pursuant to paragraph 3 above (between one and ten years of prison).

123. In chapter XVII (Criminal offences against freedom and rights of individuals and citizens) of the Criminal Code, article 177 (Infringement of the equality of individuals and citizens), paragraph 1, provides that:

(1) Whosoever, on the grounds of race, skin colour, national or ethnic background, religious, political or other belief, sex, sexual orientation, language, education, social status or social origins, denies or restricts the civil rights of any person as provided for by any international agreement, the Constitution, any law, other regulation or general act of the Federation of Bosnia and Herzegovina or, whosoever, on the grounds of these differences or background or other status, grants unjustified privileges or favours to any person, shall be punished by imprisonment for a term of between six months and five years.

(2) Any official or responsible person in the Federation of Bosnia and Herzegovina, who commits any offence under paragraph 1 above, shall be punished by imprisonment for a term of between one and eight years.

(3) Any official or responsible person in any of the institutions of the Federation of Bosnia and Herzegovina who, in contravention of the regulations on the equal use of languages and alphabets of the constituent peoples and others living on the territory of

Bosnia and Herzegovina, restricts or denies any citizen the free use of his language or alphabet while addressing bodies or institutions of the Federation of Bosnia and Herzegovina, trade companies or other legal persons in order to exercise his rights, shall be punished by a fine or imprisonment for a maximum term of one year.

(4) Any official or responsible person in the institutions of the federation of Bosnia and Herzegovina, who denies or limits the right of citizens to free employment within the entire territory of Bosnia and Herzegovina and under the same prescribed terms, shall be punished by imprisonment for a term of between six months and five years.

124. The data from ten cantonal Prosecutors' Offices from the Federation BiH pertain to the period between 2005 and 2008. Please note that the Cantonal Prosecutors' Office from Orasje, Livno, Gorazde, Bihac, Siroki Brijeg, Zenica, and Tuzla have not had any cases related to racial discrimination.

125. According to the data obtained from the Cantonal Prosecutor's Office of the Central Bosnia Canton Travnik, during this period this Office had four cases against five persons for the criminal offence of inciting national, racial or religious hatred, discord or hostility under the Article 163 of CC F BiH. In two cases orders to conduct investigations were issued, one case is at the reporting stage, and in one case against two accused a Plea Bargaining Agreement was reached (conditional 2 years' imprisonment, 8 months' imprisonment each).

126. According to the data obtained from the Cantonal Prosecutor's Office of the Herzegovina-Neretva Canton - Mostar, this Office raised indictments in two cases. In one case an indictment was raised against the accused person for the criminal offence under article 163, paragraph 2, in connection to paragraph 1 of the Criminal Code, upon which the accused was pronounced guilty for this criminal offence and sentenced to one to one and a half years' of prison. In the other case an indictment was also raised against two persons for the same criminal offence, but the Municipality Court in Mostar has not issued a decision in this case as yet.

127. According to the data obtained from the Cantonal Prosecutors' Office of the Sarajevo Canton - Sarajevo, this Office is conducting several criminal proceedings related to these criminal offences. There are six ongoing cases in connection to article 163 of the Criminal Code; in one, a decision to cease investigation was issued; in another, a decision not to initiate investigation was issued, while the other four cases are ongoing, without final prosecutorial decisions. There were 12 suspects in total in these cases.

128. This Prosecutor's Office received four reports involving four persons in relation to the crime of Infringement of the Equality of Individuals and Citizens. With regards to two reported persons, an order not to conduct investigation was issued, and with regards to the other two reported person, the proceedings are ongoing and no final prosecutorial decisions have been made.

129. According to the information available at the Sector for Crime Police of the Administration of Federal Police on crimes based on national, ethnic or religious intolerance towards returnees, the members of the constitutive peoples who are in minority, the Roma, foreigners, etc. for the period between 2005 and 2007 the following criminal offences were recorded.

130. Criminal offences against freedoms and rights of individuals, as well as other criminal offences committed because of racial, ethnic or religious motives are foreseen in the Criminal Code of BiH, article 145 (Infringement of the equality of individuals and citizens) and article 146 (prevention of return of refugees and displaced persons) and in the Criminal Code of F BiH, article 163 (Inciting national, racial or religious hatred, discord or hostility), article 177 (Infringement of the equality of individuals and citizens) and article 178 (prevention of return of refugees and displaced persons).

131. According to the statistical data of the Department for Analysis, Statistics and Documentation of the Administration of Federal Police, in 2005, in the territory of F BiH there were a total of twelve crimes reported in connection to this issue:

- Under the Article 163 of CC F BiH ‘Inciting National, Racial or Religious Hatred, Discord or Hostility’, ten criminal offences, five committed by a known perpetrator, and five by an unknown perpetrator. A total of thirteen persons were reported.
- Under the Article 177 of CC F BiH ‘Infringement of the Equality of Individuals and Citizens’ one criminal offence committed by a known perpetrator.
- Under the Article 178 of CC F BiH ‘Prevention of Return of Refugees and Displaced Persons’ one criminal offence committed by a known perpetrator.

In 2006, there were total of 14 crimes reported in F BiH:

- Under the Article 163 of CC F BiH ‘Inciting National, Racial or Religious Hatred, Discord or Hostility’ twelve criminal offences, five committed by known perpetrators, and seven by unknown. A total of twenty persons were reported, out of which 14 minors and two returnees.
- Under the Article 177 of CC F BiH ‘Infringement of the Equality of Individuals and Citizens’ one criminal offence committed by known perpetrators. Three persons were reported.
- Under the Article 178 of CC F BiH ‘Prevention of Return of Refugees and Displaced Persons’, one criminal offence committed by a known perpetrator. One person reported.

In 2007, there were eight criminal offences reported in F BiH:

- All eight criminal offences under the Article 163, three of them committed by known perpetrators, and five by unknown perpetrators. Eleven persons were reported, out of which four were minors and three returnees.

132. In the reporting period, between 2005 and 2007, according to the statistical data of the Department for Analysis, Statistics and Documentation of the Administration of Federal Police, there were 34 reported crimes in total, which were related to inciting national, racial or religious hatred, discord or hostility and infringement of the equality of individuals and citizens.

133. The Department for Analysis, Statistics and Documentation of the Administration of Federal Police does not have systematised data on persons who were victims of the above mentioned criminal offences towards the above mentioned segment of population. Hopefully, the cantonal ministries of the interior have data on the citizenship-legal status both of the perpetrators of criminal offences and their victims.

134. The Administration of Federal Police submitted one Report to the relevant Prosecutor's Office about a perpetrator of a crime 'Inciting National, Racial or Religious Hatred, Discord or Hostility' in 2006, while the cantonal ministries of the interior submitted 33 reports in total about perpetrators of crimes for the period from 2005 to 2007. Further in the Report a number of criminal offences based on national, ethnic and religious hostility is given, according to cantons, as follows.

#### **Ministry of the Interior of the Zenica-Doboj Canton**

135. It has been established that in the territory of the Zenica - Doboj Canton there were no criminal offences based on national, ethnic, and religious hostility towards returnees, members of constitutive peoples in minority, the Roma, foreigners, etc., which could be connected to a form of racism.

136. However, there were a few criminal offences in the sense of inciting national and religious hostility through offensive graffiti on religious and other buildings, thus offending the national feelings of citizens. These criminal offences were solved and the perpetrators were mainly minors. Reports on these criminal offences were submitted to the relevant Prosecutors' Offices. With regards to issuing and obtaining identification documents by the Roma population, there were no problems that were observed, that would have impact on exercising the rights of this minority, apart in the cases when illiterate clients would turn up, among which there were also the Roma, who were instructed how to fill in personal data when obtaining identification documents. With the aim of improving inter-ethnic relationship and the safety situation in the returnee and other areas, a Forum of the returnees was established, which has been active since the beginning of 2005. This Forum regularly considers and evaluates the safety situation of the returnee population. Similarly, a Forum on the safety of citizens was established in every municipality in the Canton, which initiates, instigates and considers the above mentioned and similar issues, as well as resolves security problems that aggravate the safety situation in certain area.

#### **Ministry of the Interior of the West Herzegovina Canton**

137. Analysis was carried out regarding the required information on the number and characteristics of criminal offences based on national, ethnic or religious hostility towards returnees, members of constitutive peoples who are in minority, the Roma, foreigners, etc. for the period between 2005 and 2007. The data obtained from the Federal Institute for Statistics was used and the results are as follows.

138. In the territory of West Herzegovina Canton, according to the census from 1991 there were 88,992 inhabitants, out of which:

- 86 168 (96.83%) Croats

- 1 611 (1.81%) Muslims
- 708 (0.80%) Others
- 278 (0.31%) Yugoslavs
- 231 (0.26%) Serbs

139. The Federal Institute for Statistics did not provide the information regarding the number of persons belonging to a specific national minority out of the total number of people who belong to the “Others” group in the territory of this Canton.

140. In the period between 2005 and 2007, in the territory of the West Herzegovina Canton there were no recorded criminal offences or incidents based on national, ethnic or religious hostility.

141. The armed conflict led to displacement of 1100 persons from the Canton. Out of those, 750 returned, and 350 decided to live outside the Canton. All of them claimed their property without any incidents. Furthermore, during the war the Canton took in several thousands displaced persons from other parts of BiH, ensuring the accommodation and social care for them.

142. With regard to the protection of rights and freedoms of all constitutive peoples and national minorities, they are following and fully respecting provisions of the Annex VII of the Constitution BiH, the Constitution of the Herzegovina-Neretva Canton (Official Gazette of the Herzegovina-Neretva Canton, issue 1/96), The Law on Internal Affairs of Herzegovina-Neretva Canton (Official Gazette of the Herzegovina-Neretva Canton, issue 12/03), The Law on Police Officers of the Herzegovina-Neretva Canton (Official Gazette of the Herzegovina-Neretva Canton, issue 8/07), The Law on Public Peace and Order (Official Gazette of the Herzegovina-Neretva Canton, issue 11/05). In addition, the stipulations of the international Convention on Elimination of All Forms of Discrimination are also respected.

143. Regarding the issue of rights and freedoms of constitutive peoples who are in minority and those of national minorities, it can be concluded that their rights and freedoms are fully respected through these institutions of the West Herzegovina Canton. All inhabitants of this Canton have equal rights regarding employment, housing, health care, social security (including pensions), schooling and public accommodation. In cooperation with the municipal and cantonal authorities, the Ministry of the Interior of the West Herzegovina Canton will continue implementing all measures to ensure complete ban of ethnic discrimination under Article II(4) of the Constitution of BiH, with exercising all rights and freedoms under article 5 of the Convention on the Elimination of All Forms of Discrimination.

#### **Ministry of the Interior of the Una-Sana Canton, Bihac**

144. Within its regular activities, the Administration of the Police of the Cantonal Ministry of the Interior of the Una-Sana Canton, Bihac monitors the security situation of the national minorities, which can be evaluated, together with the safety of other citizens in the Una-Sana Canton, as satisfying.

145. In the territory of this Canton there were no recorded cases of racially motivated criminal offences and misdemeanours committed against national minorities, nor any other forms of discrimination of national minorities, which would have a negative impact on the safety of this population. The members of national minorities complain about unemployment and economic insecurity, but the same problems affect the constitutive peoples as well in this area.

146. It has been observed that the members of the Roma nationality, who are the largest national minority in this area, are often involved in organised begging in cooperation with other BiH citizens of Roma nationality from other areas (Ilidza, Zivinice, Bijeljina, Kiseljak, Zvornik, etc.). Thus, in 2007 there was one recorded case of organised begging involving 17 persons in total, all Roma, in the Cazin area, organised by a Roma person from the Cazin area. Measures prescribed by law were taken against them, and the centre for social work was informed.

147. According to the information of the Administration of the Police, although not connected to the safety of national minorities, it is ensured that the members of national minorities can exercise their rights, including the right to schooling, reviving culture, mark important dates, which are significant for a certain national minority, media appearances, obtaining identification documents, the right to work and property, etc. It is very important with regards to the Roma population to engage in raising awareness regarding registering newborns, which makes them eligible for health care, schooling, etc. The Administration of the Police of this Canton treats this issue adequately and in accordance with the law prevents any form of possible discrimination and endangering safety of national minorities.

#### **Ministry of the Interior of the Bosnia-Podrinje Canton, Gorazde**

148. In the territory under the jurisdiction of the Ministry of the Interior of the Bosnia-Podrinje Canton, Gorazde, there was one registered criminal offence, setting on fire a family house of a returnee. The perpetrator was identified and an official report was filed to the Cantonal Prosecutors' Office because of committing a criminal offence of arson, Article 301, paragraph 1 of CC F BiH.

149. There were no other recorded events or criminal offences based on national, ethnic or religious hostility towards returnees, the members of constitutive peoples who are in minority, or the Roma in the territory of the Bosnia-Podrinje Canton.

#### **Ministry of the Interior of the Herzegovina-Neretva Canton, Mostar**

150. Regarding the safety of national minorities, especially Roma, as well as the returnees, the members of the constitutive peoples who represented minority in the period between 2005 and 2007 in the area of the Ministry of the Interior of Herzegovina-Neretva Canton, Mostar, there have not been any cases of criminal offences and offences based on national, ethnic or religious hostility, nor the problems related to the lack of identification documents, registration and/or citizenship of the Roma and returnees who are members of the constitutive peoples, and their safety is at the same level as the safety of other citizens.



### **Ministry of the Interior of the Tuzla Canton, Tuzla**

151. Analysing the information obtained from the Ministry of the Interior of the Tuzla Canton, Tuzla, it has been established that there were no criminal offences based on national, ethnic or religious hostility towards the returnees, constitutive peoples who are in minority, the Roma, or foreigners.

152. The general safety of all national minorities, including the Roma, is at the same level as is the case with other citizens. According to the available information, the biggest problem of this population is mainly poverty and the lack of formal education. That is most probably the reason why there is a widespread problem of begging, both individually and organised, amongst this segment of population. The percentage of the Roma who are registered as criminally active does not deviate much from the percentile representation of other national groups compared to the number of inhabitants.

153. According to the estimation of the representatives of the Association of the Roma Citizens 'Zivinice', around 5% of adult Roma population is not registered in the birth records or citizenship records, the number of non-registered children is around 0.6% compared to the number of Roma population. Lately the majority of activities regarding the protection of this segment of population is organised through numerous non-governmental organizations with which the police has very good cooperation.

### **Ministry of the Interior of the Sarajevo Canton**

154. All criminal offences under the Article 163 of CC F BiH - Inciting National, Racial or Religious Hatred, Discord or Hostility - which have been reported and recorded by the Ministry of the Interior of the Sarajevo Canton, in the period between 1 January 2005 and 31 December 2007 were treated and recorded according to the law and in a completely identical manner regardless the nationality, race, or citizenship of the perpetrator and victim. Taking into account the above mentioned, the Ministry of the Interior of the Sarajevo Canton does not have records which would indicate potential vulnerability of any of those categories. According to article 21 of the Law on Displaced Persons and Returnees in the Federation BiH and refugees in Bosnia and Herzegovina (Official Gazette of the Federation BiH, issue 15/05 from 16 March 2005), the obligation for keeping records on returnees lies with the competent services within municipalities, thus the Administration of the Police of the Ministry of the Interior of the Sarajevo Canton and its organisational units have never kept records that would treat exclusively the returnee population on any grounds.

155. In the period between 1 January 2005 and 31 December 2007, in the territory of the Sarajevo Canton there were 13 registered criminal offences under article 163 of CC F BiH - Inciting National, Racial or Religious Hatred, Discord or Hostility. Through necessary measures and actions, the police solved nine criminal offences and submitted official reports to the relevant Prosecutor's Office, against 21 persons, out of which 13 were minors. During 2005, in the territory of the Sarajevo Canton there were six recorded criminal offences in connection with article 163 of CC F BiH - Inciting National, Racial or Religious Hatred, Discord or Hostility:

- On 2 January 2005, on the walls of several blocks of flats in the territory of the Novi Grad municipality, five minors sprayed graffiti with offensive content insulting national feelings of Bosnians and Croats. Perpetrators were identified and an official report was submitted to the relevant Prosecutor's Office about the case in question.
- On 26 January 2005 on the wall in Golobrdica Street, Stari Grad municipality graffiti appeared offending the national feelings of Serbs. The perpetrator was identified and an official report about this case was filed to the relevant Prosecutor's Office.
- On 25 February 2005 on the walls of a building in the Josipa Slavenskog Street, Ilidza municipality graffiti appeared with offensive content offending national feelings of Serbs. Perpetrator was identified and an official report about the case in question was submitted to the relevant Prosecutor's Office.
- On 6 March 2005 on the staircase of block of flats in the Samir Catic-Kobra Street, Ilidza municipality, nationalistic graffiti were written by an unknown perpetrator. An official report about the case in question was submitted to the relevant Prosecutor's Office.
- On 22 June 2005 in the Zagrebacka Street, Novo Sarajevo municipality, in front the International Franciscan Student Centre, priests and students were insulted verbally. The perpetrators were identified and an official report about this case was filed to the relevant Prosecutor's Office.
- On 4 December 2005 on a pedestrian path above the motorway, Ilidza municipality, graffiti with offensive content was sprayed on by an unknown perpetrator. An official report about this case was submitted to the relevant Prosecutor's Office.

156. In the territory of the Sarajevo Canton during 2006 there were four recorded criminal offences foreseen by article 163 of CC F BiH - Inciting national, racial or religious hatred, discord or hostility:

- On 11 February 2006 in the courtyard of a house in the Bare Street, Ilidza municipality, a person of Serb nationality was verbally insulted on the grounds of nationality. The perpetrator was identified and an official report about this case was submitted to the relevant Prosecutor's Office.
- On 23 February 2006 on a concrete wall next to a local road in Mrakovo, Ilijas municipality graffiti was sprayed on with offensive content, insulting the national feelings of Serbs. The perpetrator was identified and an official report on this case was submitted to the relevant Prosecutor's Office.
- On 15 October 2006 on the asphalt surface of the local road in the territory of the Ilijas municipality, five minors wrote graffiti with offensive content insulting national feelings of Serbs and Croats. Perpetrators were identified and an official report about the case in question was submitted to the relevant Prosecutor's Office.

- On 10 November 2006, on memorial plaque for the killed veterans of the Army BiH in the Japalaci street, Hadzici municipality, graffiti were written with offensive content insulting national feelings of the Bosniaks. The perpetrator was identified and an official report about this case was filed to the relevant Prosecutor's Office.

157. In the territory of the Sarajevo Canton in 2007 there were three recorded criminal offences foreseen under article 163 of CC F BiH - inciting national, racial or religious hatred, discord or hostility:

- On 21 March 2007 on the asphalt surface of a local road in the territory of the Ilijas municipality, an unknown perpetrator wrote graffiti with inappropriate content regarding Srebrenica, insulting national feelings of the Bosniaks. An official report about this case was filed to the relevant Prosecutor's Office.
- On 5 July 2007 on a wall beneath the mosque in the Bosanski put Street, Ilijas municipality, graffiti was written with insulting content, offending national feelings of Serbs. Perpetrators of this criminal offence were identified, an adult and three minors, and an official report was submitted to the relevant Prosecutor's Office.
- On 15 September 2007, at the Orthodox cemetery in Ljubinici, Ilijas municipality, an unknown perpetrator damaged four crosses on graves. An official report on this criminal offence was submitted to the relevant Prosecutor's Office.

#### **Ministry of the Interior of the Canton 10, Livno**

158. In the territory, which is under jurisdiction of the Ministry of the Interior of the Canton 10, Livno, in the period between 1 January 2005 and 31 December 2007, there were two recorded criminal offences regarding 'inciting national, racial and religious hatred, discord or hostility' from article 163 of CC F BiH. Out of those, one was in the area of Bosansko Grahovo in 2005 and one in the area of Livno in 2007, and two criminal offences of 'Damaging property belonging to another' from article 293 of CC F BiH in the territory of Glamoc municipality in 2005, for which it could be said that they were motivated by national and religious hostility.

159. With regard to the criminal offence 'Inciting national, racial and religious hatred, discord or hostility' under article 163 of CC F BiH, which was recorded in the area of Bosansko Grahovo on 30 May 2005, a ground for suspicion was established that one person of Serbian nationality damaged memorial plaque and a cross erected in the honour of the Croatian Army in BiH.

160. The second criminal offence of 'Inciting national, racial and religious hatred, discord or hostility' under article 163 of CC F BiH, was recorded in the area of Livno municipality on 1 March 2007, where a ground for suspicion was established that three persons of Bosnian nationality damaged several tombstones in the Orthodox cemetery in Guber, Livno municipality.

161. During 2005 in the territory of Glamoc municipality, there were two recorded criminal offences of 'Damaging property belonging to another' under article 293 of CC F BiH, on 7 January 2005 and 4 June 2005 respectively. In both cases a Serb Orthodox Church flag was

burnt in front of the Orthodox Church in Glamoc. In the first case a grounds for suspicion was established that the criminal offence in question was committed by one person of Croat nationality, and in the second case by two persons of Croat nationality.

162. The above-mentioned criminal offences were at first recorded to have been committed by an unknown perpetrator, but later on they were solved through work of the Administration of the Police of the Ministry of the Interior of the Canton 10, Livno. In the said period there were no recorded criminal offences of 'Infringement of the Equality of Individuals' under article 177 of CC F BiH and 'Prevention of Return of Refugees and Displaced Persons' under article 178 of CC F BiH (Articles 145 and 146 of CC BiH).

163. The Ministry implements fully the Convention with regard to implementation of legal and other regulations in the area of citizenship, travel documents, late registration in birth registry books, personal identification documents, place of residence, personal identification number and other areas which are under jurisdiction of the above mentioned Ministry. The right to personal identification documents and all other rights in the given areas are exercised by all the inhabitants of this Canton equally, regardless their race, sex, age, religion, or any other difference.

#### **Ministry of the Interior of the Posavina Canton, Orašje**

164. In the territory of the Posavina Canton in the period between 2005 and 2007 there were no recorded criminal offences based on racial discrimination on any ground, nor other forms of violation of human rights.

#### **Ministry of the Interior of the Central Bosnia Canton, Travnik**

165. Analysing the situation in previous years, from the aspect of return of displaced persons and refugees, and the national minorities in the territory of the Ministry of the Interior of the Central Bosnia Canton, it was established that the situation was satisfactory. Namely, through continued work of the police on the problem areas, and later analysis of the general safety situation, and through monitoring available information on the above mentioned category of population, it can be said that the safety situation of returnees and national minorities in the area of jurisdiction of this Ministry is at a high level. This Ministry does not have information on racially motivated criminal offences, or those which would endanger the safety of national minorities.

166. With regard to the problem of safety of national minorities, especially the Roma, according to the special plan of visits to groups of returnees and the minority peoples, the returnees of the Roma nationality have been located in the Vitez and Jajce municipalities and during this visit it has been established that the safety situation was satisfactory, and that the biggest problem of the Roma returnees is related to economic and social problems (the lack of infrastructure in certain areas, such as water, electric energy, road and phone communication, the problem of health care, and especially employment, etc.), which aggravates the work of the police in the field.

167. Based on the collected information, it is evident that begging by the Roma represents a great problem. Statistical data for persons involved in begging and persons who organise begging and recruit minors and mentally ill or mentally impaired for begging.

168. The total number of organisers of begging in the territory under the jurisdiction of the Ministry of the Interior of the Central Bosnia Canton for the period between 2005 and 2007 was:

1. Organisers .....	2 (1 Jajce and 1 Vitez)
Structure according to sex .....	M
Structure according to nationality.....	Roma
Citizenship .....	BiH
Person coerced into begging are mainly minors.	

169. The total number of the persons on record who beg in the area of the Ministry of the Interior of the Central Bosnia Canton for the period between 2005 and 2007 was:

1. Persons involved in begging .....	138
Structure according to sex .....	66/F and 72/M
Up to 7 years of age .....	2
7-14 years of age .....	13
From 14 to 18 years of age .....	1
Over 18 years of age .....	122
Structure according to nationality .....	126 Roma, 20 Bosniaks, 1 Serb and 1 Albanian
Citizenship .....	BiH
Locations for begging .....	Markets, streets, cafés and restaurants

170. This category of people represents a big problem to the officers of the Police of the Ministry of the Interior of the Central Bosnia Canton when checking their identity. In solving problems of this segment of population, other State bodies have to be involved at all levels of government, especially the municipality services (finding methods for employment, schooling, providing other forms of assistance with registering in birth registers, issuing personal and other documents, and similar) in order to solve the problem of begging and thus facilitate largely the work of the police of the Ministry of the Interior of the Central Bosnia Canton.

171. With the aim of improving the safety situation in the territory of the Central Bosnia Canton in connection to the negative occurrences and problems regarding this category of people, and to prevent and curb the aforementioned issues, the police officers of the Ministry of the Interior of the Central Bosnia Canton will implement the following measures and actions:

- (1) Increase the measures of control and identifying individuals coming to the town, especially on market days, religious holidays and other significant gatherings of people, in order to act on time and prevent their activity immediately.
- (2) Special attention and further work will be needed in cases of organised transport of children and disabled persons for the purposes of begging.
- (3) Undertaking legal measures for sanctioning the submission of criminal reports against person who are involved in begging or who coerce minors into begging according to the Article 4, items 12 and 13 of the Misdemeanour Act, (Official Gazette, issue 7, 8 June 2002). Agree a more efficient method of work with the relevant Courts for carrying out all activities.

- (4) Achieve higher level of cooperation with relevant centres for social work, and together find solutions for some specific cases (children without guardians, heavily disabled person, and similar). A special attention needs to be paid to initiating better cooperation and coordination of work of the Centre for Social Work from the area the persons are coming and the Centre for Social Work which is active in the said municipality.
- (5) It is necessary to immediately carry out checks for suspicious individuals regarding their criminal tendencies and possible connection to criminal offences (pick-pocketing, theft, possible breaking into flats, houses, etc.).
- (6) Continuous task during patrol work, and through the project 'The Work of Police in the Community' is establishing continued communication with all citizens as well as the owners of cafes and restaurants, shops, and similar, with the aim of their inclusion and contribution to prevention of this problem on their premises so that the police officers react in a timely manner in the case they receive a call from the owners. The reason for this is that more and more beggars lately ask for money for building religious objects, treating different ailments of their close family members, and similar. They also use this activity for committing different criminal acts (braking into flats, theft in shops, and similar).
- (7) To exercise utmost caution in dealing with people with serious disabilities, minors, and similar, and ensure a careful approach, especially when using possible proportionate force in cases of arrest, intervention, and similar, because of potentially negative reaction of the public and animosity that the citizens can demonstrate towards the police.

#### **Ministry of the Interior of the Herzegovina-Neretva Canton**

172. With regards to issuing travel documents, identification documents, registration of place of residence, registration of personal identification number, regulating the BiH citizenship and late registration in the birth registry books, there were no recorded complaints from the citizens or cases contrary to the provisions of the International Convention on Elimination of All Forms of Racial Discrimination. Also, in the area under jurisdiction of the Ministry of the Interior of the Herzegovina-Neretva Canton, there were no recorded cases of violating provisions of the criminal legislative which forbid racial and any other discrimination.

173. In the territory under jurisdiction of the Ministry of the Interior of the Herzegovina -Neretva Canton, on 30 March 2008, on the Dervis Pasha Bajazidagic mosque and on the nearby houses, located in the Podhum-Mostar area, graffiti were sprayed on with insulting content offending the national feelings of Bosniaks. The Imam of the mosque submitted a criminal report to the relevant police office and the investigation is under way.

#### **The Prosecutor's Office of Republika Srpska**

174. The Prosecutor's Office of Republika Srpska, in coordination with the relevant district Prosecutor's Office, established that there is one criminal report at the District Prosecutor's Office Trebinje related to article 162, paragraph 1, of the Criminal Code RS, which incriminates racial and any other form of discrimination, filed by the Zahumlje, Herzegovina and Primorska Eparchies, Tvrdoš-Trebinje Monastery against two known perpetrators of criminal offence of

inciting racial and other hatred and hostility. The report of the Eparchies states that this was the case of defamation of the clergy and the Bishop of the Eparchies, and public inciting of hatred toward persons who are not from Herzegovina originally.

175. In addition, it was stated that in the period between 2005 and 2008 the above mentioned case was the only recorded case of violating the provisions of the Criminal legislative of Republika Srpska, which forbids racial and any other discrimination.

#### **Safety of returnees in Republika Srpska and the activities of the police**

176. The implementation of Annex 7 of the Dayton Peace Accord in the past years, to a certain extent and in certain areas, has had an impact on the safety aspect. This imposed the need that the Ministry of the Interior increases operational-preventive and other forms of engaging in personal and property protection of the returnees.

177. During this year and the last, but also in the previous years, in the Ministry of the Interior of Republika Srpska there were no processed criminal offences under Articles 145 of Criminal Code of BiH (Infringement of equality of individuals and citizens) and 146 (Prevention of return of refugees and displaced persons). Also, there were no recorded criminal offences under Article 162 of the Criminal Code of RS (Infringement of equality of citizens), but there were cases which were qualified as criminal offences of inciting national, racial or religious hatred, discord or hostility under the Article 390 of CC RS. In 2007, there were 14 criminal offences of this kind (in the regions of Banja Luka and Bijeljina 5 each, in Doboj three, and one in Trebinje). Eleven reports were submitted to the Prosecutors' Offices and 17 identified perpetrators were reported. One case was not solved. It was similar in previous years - in 2006 there were 16 processed criminal offences with 18 reported perpetrators, in 2005 there were 13 criminal offences with 15 reported perpetrators. In four months of this year, there were three reported criminal offences of this kind (two in Doboj and one in Bijeljina).

178. The Police of the Ministry of the Interior RS, in accordance with the legal authority and based on guiding instructions, continually undertakes numerous preventive, but also repressive measures, with the aim of maintaining beneficial and stable public order and peace. Logically, a special attention is paid to the prevention and solving different forms of endangering others, which is less frequent than before, especially in the first years of return. Priority is given to sanctioning and reporting criminal offences and misdemeanours targeting returnees or non-Serbs in general. These were mainly physical attacks and threats, damaging property, disturbing and provocations. There were recorded cases of damaging religious buildings, which is also given adequate importance regarding discovering and reporting perpetrators and carrying out preventative measures and protection. These are mostly minor damages, but we keep in mind the fact that events of such nature have also other effect - to encourage the sense of insecurity and inadequate protection.

179. In 2007, there were 550 recorded criminal offences to the detriment of the returnees, which is approximately the same as the previous year and represents 4.5% compared to the total number of criminal offences in general crimes. The largest number of such criminal offences was reported in the Bijeljina area (241), then in the area Doboj area (161), Banja Luka (91), and less in the area of Eastern Sarajevo (34) and Trebinje (23). The majority relates to property crimes, or serious theft - 275 reported, and theft - 123, and 35 damaging property belonging to another,

15 forest thefts, and others. 11 aggravated robberies were reported, 16 cases of domestic violence, and there were three unsolved murders. In Prijedor and Gradiska two elderly Bosnian women were murdered, and the perpetrators were also Bosnians; the primary motive was gain. Murder of a returnee in Bosanski Brod was also solved, the perpetrator was a Serb, and the motive was personal relationship of the murder victim and the mother of the perpetrator. One aggravated robbery (Barlovci near Banja Luka) ended up with murder, the victim was a Croat returnee, and perpetrators were Croats arrested in Croatia, where criminal proceedings are being conducted. Taking into account these facts, these, otherwise serious crimes, did not have impact in the sense of deteriorating safety of the returnees and the level of their protection compared to the majority population. Among serious crimes were one rape and one attempted rape, where perpetrators were the members of the returnee population.

180. Because of the general climate, in the first years of return, criminal offences, incidents, and incidents towards returnees or those with inter-ethnic characteristics were more frequent. Especially pronounced were cases of explosives and explosive devices, mostly hand grenades, with the aim of causing material damage and especially intimidation, which had negative impact amongst the returnee population and the public in general. The number of such cases has gone down with years and is much smaller now. Thus, in 2002, out of 118 recorded explosions, in 18 cases the property of returnees was targeted, and in nine cases it was attack on religious buildings. During 2003 out of 99 recorded explosions, in nine cases the target was property of a Bosnian person, resulting in injuries. That year religious buildings were not targeted by explosives. In 2004, out of 77 recorded explosions, in six cases the property of a non-Serb individual was targeted, without injuries, and in 2005 there were three such cases recorded, without significant damage to the buildings. In 2006 and 2007, there were three such cases. Religious buildings were not targeted.

181. More frequent thefts and aggravated thefts have been recorded (breaking and entering and other methods), especially in previous years, in particular in the areas of Prijedor, Doboj, Zvornik and Bratunac. It is also often the case of stealing each other's building material, doors and windows, furniture, tools and other equipment from renovated or newly built houses. This is contributed by the fact that a number of renovated houses are still vacant, and the building materials are unsecured. There have been cases where the stolen building material was transported to the Federation BiH, which was characteristic for places in the Zvornik area. Those and similar criminal acts are often connected with criminals of Serb nationality. We do not consider this as worrying, because it fits into reasonable expectations and consequences of more extensive return and they are treated like anybody else involved in criminal acts.

182. In addition, it is important to mention gatherings on the occasion of building or renovating religious buildings or buildings of commemorative character. On those occasions the Ministry of the Interior carried out very extensive measures of security and thanks to responsible and professional engagement, as well as a change in general climate, it enabled holding such gatherings in a safe environment and through pre-emptive measures it prevented possible endangering of participants.

183. Also, based on the information on the number, type, the manner of perpetration and the gravity of consequences of criminal offences committed to the detriment of returnees, regarding motives or the status of the perpetrators in the majority of cases, an assessment about increased vulnerability of these categories could not be made. Such tensions have reduced considerably,



but are still present, especially in certain areas, and are treated as a special segment of security and are given priority in regards to the activities of the Ministry of the Interior of Republika Srpska.

184. Police intervened in all other cases, carried out crime scene investigations, carried out actions for the purpose of discovering perpetrators of criminal offences, and in all cases of disturbing public peace and order in this context, reported perpetrators regardless their national or religions background to the relevant misdemeanour Courts or regular Courts. Police also carries out preventive activities with the aim of preventing incident and conflict situations of such nature. Thus, through its regular patrol service, both in the returnee and places with diverse inhabitants, the police is present 24 hours. This presence is additionally enhanced through the implementation of the project 'Strengthening the Abilities of Local Police Regarding Safety of Returnees' and project 'The Work of Police in the Community'. These projects and the regular police work mean direct and daily engagement in the field, contacts with the returnees and their associations and other measures within the police jurisdiction. Contacts are established constantly with the representatives of religious communities and especially with the fora for security in municipalities where they exist, which proved to be useful and efficient. Some religious buildings, in accordance to evaluation, are secured directly and constantly, and all others are covered by the patrol services.

#### **Brcko District BiH**

185. Since its inception the Brcko District BiH Police represents a successful concept of functioning of multi-ethnic model of police, which has, according to the evaluation of the meritory international organisations OHR and EUPM, achieved significant results, especially in the area of respecting human rights and eliminating all forms of racial discrimination. For the purposes of clarity, we will present the data according to segment of the work of the Police of Brcko District BiH, first in the areas of criminal investigations, where in the three years period, there were only three cases standing out, which indicate a certain form of racial discrimination.

186. With regards to reported events and conducted investigations in 2005, 2006, and 2007, the Police of Brcko District BiH recorded a very small number of cases, which, according to their characteristics, can point to certain forms of racial discrimination and ethnically motivated conflicts. During 2005, the Crime Unit of the Police of Brcko District BiH had one reported case of a criminal offence of inciting national, racial and religious hatred, discord and hostility, which was related to gathering and insults of football fans after a game. During the investigation the elements of the alleged criminal offence were not established, and the report was submitted to the Prosecutors' Office of Brcko District BiH. The other two cases were recorded in 2007. The first refers to an event when a group of people in the territory of Brcko District BiH wrote a number of graffiti which have characteristics of the criminal offence of inciting racial and religious hatred, discord or hostility and offensive content. During the investigation two persons were detained, while for five of them a report was submitted on the committing the above mentioned criminal offence.

187. Another case in 2007 is related to events that occurred in the city area, which started off as disturbing public order and peace and culminated in verbal abuse and insults on ethnic ground of two young men of different nationality. After the investigation, a report was submitted to the relevant Prosecutors' Office.

188. The above mentioned cases in their form, the mode of manifestation and gravity do not represent serious forms of racial discrimination but rather they are a consequence of suspicions and prejudices caused by the war in Bosnia and Herzegovina. These were mainly the cases when citizens (Serb, Croat, Muslim and Roma nationalities) express their doubts as to the fairness and lawfulness of actions of individuals and institutions of Brcko District BiH because of certain prejudices that they are in subordinate position because of their nationality. The second portion of events is related to disturbance of public order and peace through quarrelling and fighting of two or more persons of different nationality, which was not caused by racial discrimination, but by the common causes for creating such situations.

189. It is necessary to point out that the number of these events is in percentages very small compared to the total number of cases in the Police of Brcko District BiH, but these cases do not have the element of deteriorating general safety situation and the safety of all citizens of Brcko District BiH, or the occurrence of racial discrimination.

190. The other part of the data is about proceedings of the police, where the Police of Brcko District BiH does not have recorded cases which would indicate racial discrimination of the citizens by the Police. This statement is confirmed by the analysis of the comments of citizens about the work of the police, where, in the last three years there were only four cases recorded, one from 2005, and the other three from 2006, and that all complaints were rejected as ungrounded after conducting internal investigation of the Unit for professional standards.

191. Analysis of these issues indicates that the Brcko District Police in cooperation with other competent institutions of the Brcko District Government carries out a wide range of activities with the aim of safe return of refugees and displaced persons to the territory of Brcko District BiH, which had preventive impact to reduction and prevention of occurrence of any form of racial discrimination. In addition, the Police achieved significant success regarding prevention of racial discrimination through the project named 'The Work of Police in the Community', which was initially implemented in Brcko District BiH, and later on in the rest of Bosnia and Herzegovina.

192. With the aim of preventing inter-ethnic incidents between school children, the Police initiated and carried out the project called 'The School Policeman', starting from the school year 2005/2006, which produced significant results in prevention and reduction of commission of criminal offences in and around schools.

193. Within the above-mentioned projects a special attention was given to the ethnic group of the Roma, through continued work of the police in the field, materialising cooperation with the representatives of the Roma community, lectures, coordination with other governmental and non-governmental organisations in solving issues, etc.

194. All the abovementioned activities the Police of Brcko District currently plans to carry out through the program 'Strategy for Work of Police in the Community', which represents an important pre-condition for efficient combat and prevention of any form of racial discriminating in the territory of Brcko District.

195. For the period between 1 January 2005 and 30 June 2007, the Prosecutor's Office of Brcko District received one report against two persons for the criminal offence of 'Damaging property

belonging to another' under Article 287, paragraph 2 in connection to the paragraph 1 of the Criminal Code of the Brcko District BiH in concurrence with the criminal offence of inciting national, racial and religious hatred, discord or hostility under Article 160, paragraph 2 of the Criminal Code of the Brcko District BiH, in connection to Article 31 of the same Code. On 12 September 2007 the Prosecutor's Office raised indictment against the said persons for the above criminal acts, which was confirmed by the Basic Court of Brcko District. The case is currently at the main trial stage.

196. According to the data for 2008, there have not been any proceedings regarding criminal offences of 'Infringement of the Equality of Individuals' under Article 174 and prevention of return of refugees and displaced persons Article 175 of the Criminal Code of Brcko District BiH before the Appellate Court of the Brcko District BiH, data for 2008.

197. The Judiciary Commission of Brcko District BiH, through carrying out the analysis in civil proceeding and criminal reports established that there were no cases from Article 174 ('Infringement of the Equality of Individuals') and criminal offence from Article 175 of CC Brcko District BiH (prevention of return of refugees and displaced persons) before the Basic Court of Brcko District BiH, nor were there civil proceedings regarding the demands of the workers who were dismissed or put on waiting lists during armed conflict because of their ethnic background from 2001 until present.

#### **Roma issues**

198. In the Republika Srpska, the Roma mostly live in larger towns (Bijeljina, Banjaluka, Prijedor, Gradiška, Doboj etc.), having a lot of status and social problems, mostly the same as they have in other parts of the country. From the point of view of policing and security in general, we can note that there are no problems specific to the group. On one hand the group is not a security risk group and on the other hand we cannot say that the security of the group is more jeopardized than other groups' is. The number of crimes in the Roma communities is not high. Usually they are crimes which are often subsumed under the statutory crime of "theft" (larceny-theft, burglary), brawls and violent behaviour within the Roma communities not having serious consequences. Being aware of its duties and responsibilities and guided by an assessment of the current security situation the RS Ministry of the Interior has streamlined the police stations in the entire Republika Srpska. Therefore, having in mind the security of returnees, the Ministry has set up new police station in six places (Ljubija, Kozarac, Jezero, Janja, Osmaci, Kozluk), where a great number of non-Serbs and returnees is concentrated.

199. In addition, in order to protect returnees and improve the safe environment and adequately the territory of the Republika Srpska, police substations have been set up as inherent parts of main police stations. Most of the substations have been set up where returnees are a majority. We deem that this structure has a positive outcome although in some cases it is far from being cost-effective.

200. Having in mind facts above we can conclude that Bosnia and Herzegovina will fully support the implementation of all suggestions made in the recommendations by the UN Committee on the Elimination of Racial Discrimination and will continue respecting all CERD

provisions with a view to preventing or fully reducing the number of crimes involving racial, national or religious discrimination, with a special emphasis on the security of returnees and persons belonging to minorities in a particular area.

**Recommendation No. 17: The Committee urges the State party to take immediate steps, e.g. by removing administrative obstacles, to ensure that all Roma have access to personal documents that are necessary for them to enjoy, inter alia, their economic, social and cultural rights, such as employment, housing, health care, social security and education.**

201. At the initiative of the Roma Board within the Council of Ministers, supported by the Council of Roma, OSCE to BiH, some municipalities in BiH populated by the Roma, the BiH authorities, i.e. the Ministry of Human Rights and Refugees, took some actions in 2003-2004. The outcome of these actions is reflected in the fact that today the number of the Roma in BiH who are not registered in vital records and other records kept by various government offices and agencies has greatly decreased. The number of Roma who managed to get identity card, driving licence, in some cases, health insurance, passports and the like has also increased after the information campaign. However, all these are not enough yet. BiH authorities will seek to have all Roma registered in vital records and in possession of personal identification documents.

202. To this end, the Council of Ministers of BiH gives the assignment to the CIPS Project, meaning the Ministry of Civil Affairs of BiH, which has been in charge of all affairs concerning records and issuance of personal identification documents to BiH citizens, and holds it accountable.

203. The Council of Ministers of BiH suggests to the entity ministries, government and local self-government, cantonal ministries and municipal departments in charge of this matter that they should ensure an institutional framework and human resources to work for this goal and purpose and necessary funds that are not too high or impossible to ensure in the budget lines so that this affairs important for the Roma population can be finished as early as in 2008.

204. Understandably, the campaign for registration of the Roma in vital records can be easier organized and finished only if the campaign involves all Roma NGOs, i.e. in cooperation with the network of Roma NGOs. Therefore, their networking and coordination of joint activities, not only for the purpose of registration, is an imperative. That is an assignment for the Roma Board within the Council of Ministers and the Council of Roma of BiH. At the same time, an information campaign should be launched by the media with a view to registering Roma in vital records and other records.

205. In Bosnia and Herzegovina health-care services are regulated at the entity level and Brčko District level, i.e. in the Laws on Health Insurance and the Laws on Health Care Services. Pursuant to the entity Laws and the Law of Brčko District on Health Insurance, members of Roma families, as well as members of all other families, in the event they are not in the groups that do not pay contributions to the health insurance scheme, are not entitled to health care services. However, Article 26 of the Law on Health Insurance of the Federation of BiH reads: "Persons who permanently reside in the territory of the Federation of BiH and do not have means of living as defined in the social assistance regulations, are entitled to obligatory health insurance

to the scope determined for family members of an insured person if health care services are not provided on some other grounds”. Most often Roma people are not entered in vital records, they do not register their place of residence and are not familiar with the role of the Canters of Social Welfare and thereby do not exercise a number of entitlements available to them.

206. Roma children, as all other children, are included in the free of charge immunization. The children who are in pre-school, primary and secondary education and full time students are covered by obligatory health insurance. The children who have turned 15, and have not finished primary school or have not been employed after having finished primary school are entitled to health care services if they have reported to the Institute of Employment within 30 after having turned 15 or after the end of the school year. The same goes for the persons who have lost the status of a primary, secondary or full time university student or dropped out and they keep the entitlement to health care services for one year of dropping out if they have reported to the Institute of Employment within 30 after having dropped out and are not entitled to health care services on some other grounds. A small percentage of Roma people is included in the educational system of Bosnia and Herzegovina and the Roma people do not exercise the rights available to them.

#### **The Ministry of Civil Affairs of BiH**

##### **The Direction for the Implementation of “CIPS” Project**

207. They are administrative proceedings within competence of the Ministry of the Interior of RS, cantonal ministries of the interior of the FBiH and the public registries of Brčko District of BiH, conducted in pursuance of the valid legislation respecting the matter, such as the Law on the Identity Card of BiH Citizens (“BiH Official Gazette” 32/01, 16/02), the Law on travel Documents of BiH Citizens (“BiH Official Gazette” 4/07, 1/99, 27/00, 32/00, 19/01, 47/04, 53/04, 15/08, 33/08) or the Rulebook on Driving Licence (“BiH Official Gazette” 13/07), where in all proceedings necessary proofs are enclosed with applications - the same for all BiH citizens, without any exceptions for Roma people.

208. The Direction for the Implementation of “CIPS” Project records all details of identification documents that are issued in the central records under the Law on Central Records and Data Exchange (“BiH Official Gazette” 32/01,16/02, 44/07), pursuant to which the information about nationality are not recorded, as they are a specific class of data particularly protected in the Law on the Protection of Personal Data.

209. Having said this we note that there is no information about difficulties for Roma people to get personal identification documents.

#### **The Ministry of Government and Self-government of RS**

210. Article 10 of the Constitution of RS provides: “Citizens of the Republic shall be equal in their freedoms, rights and duties; they shall be equal before the law and they shall enjoy equal legal protection irrespective of their race, sex, language, national origin, religion, social origin, birth, education, property status, political and other beliefs, social status and other personal attributes.”

211. Thus, the Law on the RS Citizenship (“RS Official Gazette”, 35/99, 17/00, 33/04, 64/05) determines that requirements and procedure for acquisition of BiH and RS citizenship is equal for all foreigners and there are no provisions excluding, limiting or grounding it on race, colour or ethnic origin of the persons who want to acquire citizenship, meaning that neither the legal provisions nor the practice reveal any violation of the Convention on the Elimination of All Forms of Discrimination in the sense that a specific group of people are favoured when acquiring citizenship or that constraining requirements are imposed on them when acquiring citizenship.

212. The Law on Vital Records (“RS Official Gazette”, 18/99) determines that the personal status is recorded in birth registers, marriage registers and death registers in which the statutory facts about birth, marriage and death and remarks about these facts are recorded. Nationality and religion of the child are recorded at the birth according to the parents’ declaration. If the parents do not want to give details about nationality and religion of the child, these columns will be left blank, with a possibility to subsequently fill them in, and the person can do it by herself/himself after reaching majority.

213. Further, having in mind the facts above we deem that that provisions of the Constitution of the Republika Srpska, the Law on Citizenship of the Republika Srpska and the Law on Vital Records or their implementation in the practice do not violate human rights or fundamental freedoms enshrined in the Convention on the Elimination of All Forms of Discrimination.

#### **Activities of the Gender Centre of the Federation of BiH for the improvement of the situation of Roma people**

214. The Gender Centre of the Federation of BiH, together with the Agency for Gender Equality of BiH and the Gender Centre of the Republika Srpska Government, took part in the implantation of three-day “Gender Sensitivity” training for Roma organizations held in Vogošća on 28-30 August 2007 with support of the OSCE, World Vision and BOSPO.

215. The Gender Centre of the Federation of BiH has drafted a proposal for measures of integrating the gender dimension in activities aimed at improving the situation of the Roma and submitted it to the Council of Roma of BiH.

216. The Gender Centre of the Federation of BiH took part in a presentation of the Strategy for the Roma Women of BiH, organized and held by OSCE in Vogošća on 6 and 7 December 2007. It is important to point out that after a prior course of training the Roma Women’s organizations established a good cooperation with the gender mechanisms at all levels and designed the Draft Proposal Strategy for the Improvement of the Situation of the Roma Women, which was presented at the training.

217. The Gender Centre of the Federation of BiH is a member of the Social Policy Advisory Group (SPAG) of the Federation of BiH which suggests measures for the improvement of the situation and social inclusion of all vulnerable groups, including the issues of national minorities, including the Roma as the major minority in the most difficult situation. Two pilot projects are implemented in the municipalities of Tuzla and Banja Luka/Gradiška aiming at the inclusion of Roma in development processes in the local community.

**Recommendation No. 18: The Committee urges the State party to ensure that the claims of all workers who were dismissed from their jobs and/or placed on waiting lists during the armed conflict because of their ethnicity are resolved expeditiously and that the recommendations of the Entity and cantonal Commissions are implemented promptly and in good faith.**

218. At the level of Bosnia and Herzegovina, with regard to labour and employment, the Law on Civil Service in the Institutions of BiH (“BiH Official Gazette” 19/02) and the labour Law for the Institutions of BiH (“BiH Official Gazette” 26/04), which govern employment and labour relations of employees and civil servants in the institutions of BiH, are implemented. The above-mentioned laws contain provisions banning any form of racial discrimination while recruiting and employing people in the Institutions of BiH.

219. Article 23 of the Law on Civil Service in the Institutions of BiH provides that while conducting the procedure of recruitment of a civil servant in a public competition the Civil Service Agency ensures that there will be no discrimination, as provided in Article 15(2) of the Law, which reads: “A civil servant shall be entitled to receive fair and equitable treatment in all aspects of personnel management without regard to his ethnic origin, social origin, entity citizenship, residency, religion, political or other opinion, sex, colour, birth, marital status, age, property, handicapping condition or other status.”

220. Article 6 the Labour Law for the Institutions of BiH provides that any person seeking job with an employer or an employee cannot be discriminated against on the basis of race, colour, sex, language, religion, political or other opinion, ethnic or social background, sexual orientation, financial situation, birth or any other circumstance, membership or non-membership in a political party, physical impairment or on the basis of any other reason opposed to basic human rights and freedoms as prescribed in the Constitution of Bosnia and Herzegovina and the law.

221. The legislation of the Federation of Bosnia and Herzegovina, with regard to labour and employment, contains anti-discrimination provisions and sanctions in case of any violation. An anti-discrimination provision in Article 2 of the Law on Intermediation in Employment and Social Security of the Unemployed (“FBiH Official Gazette 55/00, 41/01, 22/05, 9/08) reads:

*“No person shall pursuant to this Law be discriminated against based on race, color, sex, language, religion, political or other opinion, ethnic or social background, financial situation, birth or any other circumstance, membership or non-membership in a political party, membership or non-membership in a trade union, and physical or mental impairment.”*

222. The penal provisions under Article 56 of the Law read:

*“A legal person acting in breach of Article 2 of this law, shall be liable to be fined for the violation in an amount between 1.000,00KM and 10.000,00KM;*

*For the violation referred to in Paragraph 1 hereof, a responsible person in the legal entity shall be liable to be fined in an amount between 500,00KM and 2000,00KM;*

*Any person who believes that he or she has been discriminated against in violation of Article 2 of this Law may claim compensation before a relevant court.”*

223. The Law provides that the employers needing employees and the persons seeking job can ask for the help of the Employment Service in finding a job. The unemployment rights of an unemployed person shall be exercised with the Employment Service that corresponds to the place of his/her permanent residence. The unemployment rights of an unemployed person that due to the conflict left the place of permanent residence shall be exercised with the Employment Service that corresponds to the place of his/her temporary residence.

224. The anti-discrimination clause under Article 5 of the Labour Law (“FBiH Official Gazette” 43/99, 32/00, 29/03) reads:

*“A person seeking employment, as well as a person who becomes employed, shall not be discriminated against based on race, color, sex, language, religion, political or other opinion, ethnic or social background, financial situation, birth or any other circumstance, membership or non-membership in a political party, membership or non-membership in a trade union, and physical or mental impairment.”*

225. The penal provisions under Article 139a of the Law read:

*“A fine from KM 1,000 to KM 10,000 shall be imposed on an employer who is a legal entity for an offence if: ... he discriminates against a person seeking employment and a person whom he has employed (Art. 5).”*

*An employer - natural person shall be fined for the offense referred to in paragraph 1 of this article with KM 1,000 to KM 3,500.*

*A responsible person with the employer who is a legal entity shall be fined for the offense referred to in paragraph 1 of this article with KM 500 to KM 1,000 KM.”*

226. Pursuant to the Labour Law and Law on Intermediation in Employment and Social Security of the Unemployed all forms of discrimination and thereby any discrimination on ethnical, i.e. national grounds, in recruitment by any employer are excluded regardless of the nature of ownership and type of the employer. All citizens of Bosnia and Herzegovina have the right of association in any statutory type of interest professional organizations, trade unions, crafts associations etc.

227. According to the Roma Strategy of BiH a working group consisting of the Council of Roma of BiH, appropriate ministries of the Federation of BiH and the RS and municipalities where the Roma live, with technical assistance of humanitarian organizations, designed the Roma Employment Action Plan with measures to increase the number of the Roma people employed in BiH. The Ministry of Human Rights and Refugees of BiH submitted Actions plans for employment, health care services and housing to the Entity Governments for deliberation before submitting them to the Council of Ministers for adoption.

228. Funds required for the implementation of the Roma Employment Action Plan should be provided in the Budgets of BiH, the Federation of BiH and Brčko District, from funds of the entity institutes of employment and cantonal offices of employment in the F BiH, and the Roma



Inclusion Decade funds. The proposed measures should result in employment of the Roma in the civil service, coo-funding of employers that give jobs to the Roma and financial support to the Roma for self-employment.

229. The Roma Employment Action Plan provides for the establishment of a body for proposed measures monitoring and evaluation and a body for the implementation of measures and activities.

230. The Labour Law (“Republika Srpska Official Gazette” 20/07 - Consolidated text) - Amendments to the 2007 Labour Law extends the ban on discrimination to any discrimination on any grounds whatsoever so that it now has a chapter titled “prohibition of discrimination”, which defines the prohibition of indirect and direct discrimination in recruitment and employment, with a focus on the ban on discrimination on the grounds of sex, harassment, sexual harassment and mobbing in the work place and the Law is thereby fully brought in line with the human rights and ILO conventions.

231. The Law on Employment (“Republika Srpska Official Gazette” 38/00, 85/03) - Amendments to the Law advances the safeguards for gender equality in recruitment, prohibits any discrimination on the grounds of sex, save an introduction of specific measures for the promotion of gender equality, provides for an obligation to provide gender aggregated statistics and make them available to the public and introduces fines for the failure to keep statistics under the Law on Gender Equality of BiH.

232. The Law on Employment of Foreigners (“FBiH Official Gazette 8/99) determines the manner and requirements for employment of a foreigner or a stateless person, competences of the Federal Institute for Employment and cantonal employment offices in the process of recruitment of a foreigner and other matters related to employment of a foreigner. The Law determines that a foreigner can enter into a contract for employment or a special service agreement on the grounds of work permit, if he meets requirements under the law and by-laws of the employer. The work permit is issued under the condition that he has already had permanent or temporary residence granted in BiH and that the employment offices do not have persons who meet requirements set forth by the employer for the conclusion of a contract for employment or a special service agreement registered. A work permit is issued for a definite period of time, for a year at the most. Exceptionally, a foreigner with permanent residence in BiH can get a work permit for an indefinite period of time.

233. For a number of years Bosnia and Herzegovina has been facing a high rate of unemployment. The fact that the rate of unemployment is between 35-40% is self-evident. Another problem is workers who were laid off due to winding up or bankruptcy of companies while a lot of workers left Bosnia and Herzegovina and live abroad or are displaced throughout Bosnia and Herzegovina. After the war, comprehending the problem in the both Entities, the issue of dismissed workers has been seriously tackled. The Labour Laws in the both Entities incorporate Articles 142 and 152 seeking to at least alleviate the difficult situation of the dismissed workers. According to the data collected the situation is as follows.

234. With regard to the implementation of Article 143 of the Labour Law of the Federation of BiH, according to the information received from the Cantonal commissions for the

implementation of Article 143, after the war, 59,603 claims were filed until December 2007, and 41,257 were decided. 18,346 are still pending. This number does not include claims still pending before the Commission of the West Herzegovina Canton, as the Ministry does not have the relevant information.

235. The Federal Commission for the Implementation of Article 143 of the Labour Law received altogether 5,760 claims and 5,700 claims were decided until December 2007 inclusive. This Commission gave assistance to claimants concerned in the sense of legal advice, information and legal instructions for the enforcement.

236. We can see from the figures above that in spite of numerous difficulties concerning the problem of funding and a heavy workload the Federal Commission had, the statistics show good results and a success in the implementation of this Article although the real indicators are difficult to get.

237. Of course, there were cases of violation of the article and non-compliance with the Commission's orders, but then the statutory forced enforcement was available to the claimants.

238. The labour legislation in the Republika Srpska contains anti-discrimination provisions and penal provisions against those violating them. To this end we are citing the anti-discrimination provision in Article 3 of the Labour Law ("Republika Srpska Official Gazette" 54/05, 64/06) which reads:

"While implementing this Law, other regulations or by-laws of the Institute or other organization dealing with recruitment of employees, no person can be discriminated against on the basis of race, colour, sex, language, religion, political or other opinion or affiliation, ethnic or social affiliation or background, financial situation, membership or non-membership in a trade union, political party or organization or mental or physical impairment, if work requirements allow it, or on the basis of any other reason opposed to the principle of equality of all citizens before the law."

239. The penal provision in Article 60 of this Law that is applied in case of violation of Article 3 of the Law respecting the Employment Office reads:

"A fine ranging between 1,000 and 5,000 convertible marks shall be imposed for a minor offence to the Employment Office for denying an unemployed person any right provided for in the law:

"For the offence above, a responsible person in the Employment Office shall be liable to be fined in an amount between 100,00KM and 500,00KM."

240. The anti-discrimination provision in Article 5 of the Labour Law - consolidated text ("Republika Srpska Official Gazette" 55/07) reads:

"An employee as well as an individual seeking employment shall not be discriminated against on the basis of race, ethnicity, colour, gender, language, religion, political or other opinion or conviction, social origin, property, membership or non-membership in a trade union or political party, physical and mental condition or any other characteristics which are not directly related to the nature of employment."

241. Article 112 (1) of the Law provides for an entitlement to bring an action to the court and it reads:

“In case of discrimination in terms of Article 5 of the present Law an individual seeking employment or an employee can file a complaint for compensation against the employer with the competent court in pursuance of the law.”

242. A penal provision is contained in Article 180 (1) and it reads:

“A legal person shall be liable to be fined in an amount between 1.000,00KM and 10.000,00KM for

(a) The failure to ensure equality of employees at work and equality of unemployed persons seeking job (Article 5 of this Law);

For the offence referred to in Paragraph 1 hereof, a responsible person in the legal entity shall be liable to be fined in an amount between 100,00KM and 500,00KM.”

243. The anti-discrimination provision in Article 3(5) of the Law on Safety at Work (“Republika Srpska Official Gazette” 1/08) reads:

“The Labour Law determines that any discrimination of employees in the exercise of the right to safety and health at work is prohibited on any grounds defined by the Law.”

244. The Law does not have any penal provisions for violation, as the right to safety at work is a right arising from the Labour Law where a sanction against the employer is provided for.

245. The Republika Srpska has made a significant progress in the implementation of Article 182 of the Law (earlier Article 152.), given some claimants have received severance pay in cases where the Commission found that the employment was terminated unlawfully in the period between 31 December 1992 and 16 November 2000.

246. In 2007 the Republika Srpska appropriated funds to the extent of BAM 2.000.000,00 while in this year the appropriate Ministry earmarked funds to the extent of BAM 2.500.000,00 to be able to pay severance pays to all claimants whose claims were sustained. The Ministry of Labour and the Protection of Veterans and People with Disabilities provided funds for the payment in June 2007 and subsequently paid BAM 500.000,00 to 350 claimants while the next payment of enforceable decisions of the Commission was made in October 2007. The list had 619 claimants and BAM 922.652,00 was paid. The Commission for the Implementation of Article 182 of the Labour Law - consolidated text has processed 13.244 claims, encountering the problem of a great number of incomplete and incorrect claims, as the implementation of property laws in Bosnia and Herzegovina brought about relocation of claimants and a change of addresses. The Commission continues deciding claims and paying severance pays in 2008.

247. The issue of institutional protection of dismissed workers under Article 152 of the Labour Law of the Republika Srpska was reviewed by the Commission of Human Rights within the Constitutional Court of Bosnia and Herzegovina (CH/01/7776 et al., *against the Republika Srpska*, Decision on Admissibility and Merits, 13 September 2006), where the Commission

ordered the Republika Srpska to establish an institutional protection, to establish a severance pay fund and conduct proceedings pursuant to the reasonable duration of proceedings under the fair trial standards.

248. Article 13 of the Statute of the Brčko District of BiH (“Brčko District of BiH Official Gazette” 3/07) defining the fundamental rights and responsibilities excludes any discrimination on whatsoever grounds. With regard to recruitment in the public sector of the District, Article 20 provides that it is based on the professional qualifications and reflects the composition of population. The article further states that any public employee of the District - save some high officials that are appointed, will be selected in an open competition for a vacancy published in the District and throughout Bosnia and Herzegovina.

249. Article 4 of the Labour Law of the Brčko District of BiH (Brčko District of BiH Official Gazette 19/06) also forbids any form of discrimination in recruitment. Article 3 provides that an employee takes up an employment entering into a contract between the employer and employee. It means that an employer is not obliged to publish a vacancy or recruit an employee in an open competition prior to the conclusion of the contract.

250. Article 5 of the Law on Employment and the Rights during Unemployment (“Brčko District of BiH Official Gazette” 33/04) provides that “While implementing this Law, other regulations or by-laws of the Employment Institute or Agency, equality shall be ensured to all persons seeking employment regardless of their race, colour, national or ethnic background, sex, language, religion, political or other opinion or affiliation, social affiliation or background, financial situation, marriage or family status, age, membership in a trade union, association or political party or any other circumstances that may be the grounds of discrimination or unequal treatment of individuals seeking employment.”

251. With regard to people from the Roma community, we have to point out that it is very difficult to monitor their employment in the data available in the records of the Institute of Employment of the Brčko District of BiH. A well-known fact is that there has not been any census in Bosnia and Herzegovina after the war, and only five unemployed persons declared themselves as Roma in the records of the Institute of Employment of the Brčko District of BiH. A number of Roma declare themselves as Bosniacs and a number of people are subsumed under other class (about 120) where the names reveal that most of them are Roma.

252. Programmes and measures of the Government of the Brčko District of BiH and the Institute of Employment of the Brčko District of BiH encourage employment of the Roma. Programmes of employers that apply for funds for the improvement of the Roma situation and for employment of the Roma entail an increase in the amount given for employment of unemployed Roma by 40%.

253. With regard to Article 143 of the Labour Law, both the Constitutional Court of Bosnia and Herzegovina and the Commission of Human Rights within the Constitutional Court of Bosnia and Herzegovina gave protection to all citizens who filed applications with this Court if they met formal criteria. The FBiH received an order not to advise applicants to bring lawsuits for enforcement of final decisions of the Commission concerning Article 143 of the Labour Law but to enforce the decisions, which expedited the procedure for the severance pay payment significantly (e.g. CH/03/13453, Decision on Admissibility and Merits, 8 February 2006). Also

the courts received an order not to cancel proceedings involving labour relations or not to remit them to the commissions if they do not involve an entitlement to severance pay under Article 143 of the Labour Law but involve other violations of the Labour Law (CH/02/10720, Decision on Admissibility and Merits, 16 January 2006). Finally, if the payment of severance pay took a long period of time, these institutions ordered for an urgent payment (CH/99/2743, Decision on Admissibility and Merits, 3 June 2003). At the end, in case U 83/02 (19 December 2003), the Constitutional Court found that Article 143 of the Labour Law violated Article 5 e) and 5 i) of the Convention.

254. Accordingly, the two institutions proved to be an effective mechanism for the protection of entitlements under Articles 143 and 152 of the Labour Law of the FBiH and the RS respectively. The Brčko District of BiH did not have any actions brought by workers who were dismissed or put on waiting lists during the armed conflict due to their ethnic origin.

**Recommendation No. 19: The Committee recommends that the State party improve the employment of ethnic minorities, including in particular the Roma, in the public and private labour sectors, by implementing strategies that include offering training to qualify such persons for jobs in the labour market, providing incentives to employers for hiring such persons, and establishing an independent mechanism at the State level to address discrimination in the hiring and promotion practices in the public and private employment/labour sectors.**

255. Bosnia and Herzegovina authorities are drafting three action plans for addressing Roma issues in Bosnia and Herzegovina in employment, health care services and housing. One of the priorities is better employment of Roma people in Bosnia and Herzegovina. The Action Plan for employment of the Roma seeks to define objectives and measures for better employment of Roma people in Bosnia and Herzegovina. The authorities responsible for identification and tackling the issue of Roma employment are the Labour and Employment Agency of BiH, entity and cantonal employment institutes and offices, entity and cantonal ministries and authorities of economy, labour, social policy and security, privatization directorate and offices, centres of social welfare, municipal administrations, offices and departments of communal affairs. While implementing the employment measures and process Bosnia and Herzegovina authorities at all levels are absolutely obliged to respect and implement the Conventions of the International Labour Organization (ILO), most of which Bosnia and Herzegovina has signed. The time line for these tasks is not set as the tasks are permanent given the backlog of actions and complexity of the issue.

256. In case U 4/05 (*loc. cit.*), the Constitutional Court of Bosnia and Herzegovina found that rights of the Serbs under Article 5(1)(c) of the Convention were violated when the City Council of the City of Sarajevo was constituted and discrimination occurred. In the decision the Constitutional Court of Bosnia and Herzegovina gave guidelines for overcoming such and similar difficulties (point 26 *et seq.*).

257. For the time being the employment institutes do not implement programmes of co-funding of employment, vocational training, training for higher qualifications and change of qualifications of members of national minorities, including the Roma as a separate target group taken out from the rest of the unemployed.

258. The measures of active employment policy are being implemented by cantonal employment offices and all programmes implemented are open to all people who registered in the unemployment records, including members of national minorities. This group is also engaged in the programmes of public works in utilities infrastructure and the protection of environment, which are implemented by cantonal employment offices every year.

259. We emphasize a positive approach in addressing the issue of Roma employment. The Federal Employment Institute financially supported the “Prosperitet Roma” Association while the Tarčin recycling centre operating within S.O.O. “Eko Sekund” has the project of metal, paper and plastics recycling, which employs six (6) Roma. In 2009 the Federal Employment Institute is going to prepare an employment project targeted at the unemployed Roma.

**Recommendation No. 20: Referring specifically to General Recommendation 27,<sup>4</sup> the Committee urges the State party to facilitate the return of all people of different ethnic origin, especially the Roma, to their pre-armed conflict homes, to ensure their ability to occupy and reside in informal Roma settlements legally and safely, and where necessary, to provide adequate alternative housing or compensation for displaced Roma, including to pre-armed conflict tenants who have been evicted from their settlements or whose homes have been destroyed.**

#### **The Ministry of the Interior of the Republika Srpska**

260. In the Republika Srpska, the Roma mostly populate major towns (Bijeljina, Banja Luka, Prijedor, Gradiška, Doboj etc.), having a lot of status and social problems, mostly the same as they have in other parts of the country. From the point of view of policing and security in general, we can note that there are no problems specific to the group. On one hand the group is not a security risk group for the community and on the other hand we cannot say that the security of the group is more jeopardized than other groups' is. The number of crimes in the Roma communities is not high. Usually they are crimes which are often subsumed under the statutory crime of “theft” (larceny-theft, burglary), brawls and violent behaviour within the Roma communities.

261. However, for years now there has been another serious problem - begging, which is criminalized as a petty offence in the Law on Public Peace and Order. In reality only a small number of cases is prosecuted, as the minor offences judges cannot impose the statutory sanctions - they are fines, and even when they are imposed they are not collected due to a poor financial condition of the offenders. In many cases beginning is evidently well organized, but in the practice it is very difficult to draw the line between the cases of destitute individuals and the cases of organized beginning. A great number of these families come from Serbia and then we have difficulties in proceedings and procedures. On several occasion they were, for example, taken away from Banja Luka across the border, but they would return immediately. Obviously this matter is not within competence of the police only, so the police cannot resolve the situation, which is a logical outcome. This is only one segment of a very wide problem of the society.

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<sup>4</sup> CERD, 57<sup>th</sup> session (2000), General Recommendation No. 27: Discrimination against Roma, at para. 31.

## **The Ministry of Human Rights and Refugees of BiH**

### **The Department of Refugees, Displaced Persons and Housing**

262. Since the establishment of the Ministry of Human Rights and Refugees of BiH within the Council of Ministers, the Department of Refugees, Displaced Persons and Housing has developed a legal framework with appropriate by-laws to define the manner of exercising the entitlement to assistance in the process of return of refugees and displaced persons. For all stages of this activity, we sought an opinion of the Senior Officials in the Ministry of Human Rights and Refugees and only after receiving an affirmative opinion we took the next step. An outcome of this activity is the Law on Amendments to the Law on Refugees from BiH and Displaced Persons in BiH ("BiH Official Gazette" 33/03), which brought about harmonization of entity laws with the state level law at a subsequent stage. On the grounds of the law above we have developed a very transparent manner of the selection of beneficiaries of the aid given to returnees and ensured its application by issuing the Instruction on the Manner and Procedures of the Selection of Beneficiaries in the Return and Housing Reconstruction Projects ("BiH Official Gazette" 48/06). The Instruction makes the basis for the implementation of the Joint Project and some other projects implemented by international humanitarian organizations in BiH.

263. Accordingly, in the context of the presentation of the possibilities of getting aid for the reconstruction of housing units intended for return in pre-war homes, we want to emphasize the fact that the relevant laws and by-laws governing this matter define potential beneficiaries exclusively as refugees from BiH, displaced persons in BiH and returnees. Any other form of discrimination on whatsoever grounds is absolutely precluded and as such unlawful.

264. Given the concluding observations insist on replies, the question how the Roma can exercise the right to reconstruction of their pre-armed conflict homes gets the answer as clear as this: "under the same conditions as other citizens of Bosnia and Herzegovina can".

265. The same conditions are applied exclusively to any application for reconstruction of a housing unit for the purpose of returning to the pre-war home or relocation of 1991 home, where the application is strictly decided in very strict procedures under the Instruction on the Manner and Procedures of the Selection of Beneficiaries in the Return and Housing Reconstruction Projects.

266. No other kind of aid for Roma housing is provided in the valid legislation, which was enacted with a view to exercising rights under Annex VII of the General Framework Accords for Peace in Bosnia and Herzegovina.

267. The Constitutional Court of Bosnia and Herzegovina and the Commission of Human Rights within the Constitutional Court of Bosnia and Herzegovina continue considering cases of discrimination of returnees. Mass discrimination of returnees in Bosanski Brod on ethnic grounds was found (CH/03/12928, *Leopoldina Ivanović v Republika Srpska*, Decision on Admissibility and Merits, 13 September 2006).

268. Given the affairs for addressing this important issue are within competence of the Ministry of Town Planning and Environment of Sarajevo Canton, the Ministry has taken numerous activities to relocate Roma settlements from the water protected zone in Butmir and Sokolović kolonija.

269. The location of the Roma settlements, which were set up without any town planning permission or plan, is water protected area at the border of the first (I) water protected zone. The Law on Waters of Sarajevo Canton, the Ordinance of the Requirements for Determining the Zones of Sanitary Protection and Protective Measures for Springs of Water That Are Used or Are Planned to Be Used for Drinking and the Decision on the Protection of Springs of Drinking Water in Sarajevo Valley (“Sarajevo Canton Official Gazette” 16/00) provides for the following constraints.

270. In order to preserve the quality of surface and underground waters in Sarajevo Canton:

- A ban is placed on construction or reconstruction of production facilities, housing or other business or water supply facilities on the land in the zone influencing the quality of underground waters that can be used for drinking and in the areas where planning and other documents envisage accumulations of water for drinking to be used by people and corporate facilities in Sarajevo Canton.
- A ban is placed on the storage of substances dangerous and harmful to water in the zones of sanitary protection of springs of drinking water.
- The protection of springs of water used for drinking, i.e. springs that in water management and other planning documents are determined to be used for drinking and the protection of water from pollution in Sarajevo Canton have long-term significance for the Canton, the City of Sarajevo, municipalities, legal persons and citizens of the Canton. In the first (I) protection zone, i.e. the first A (I A) protection zone, a ban is placed on all activities that are not in connection with regular work and maintenance of the system of water supply. The activities that are taken with a view to regular maintaining the system of water supply must not be harmful to the springs.

271. Since June 2006 the Cantonal Ministry has been conducting numerous actions to relocate the Roma settlements. A number of meetings have been held where appropriate bodies and institutions at all levels have been involved with a view to realizing understandings about the need to relocate the Roma settlements from the water protected zone as a main precondition of regulation of the situation in the area. The meetings were attended by appropriate institutions and authorities of Sarajevo Canton, Roma associations, the Council of Roma of BiH, international organizations and “Butmir” Roma settlement.

272. According to the records, 44 families with 236 members live in Butmir settlement and 6 families with 22 members live in Sokolovic Kolonija settlement, which makes 50 families with 258 members altogether. In the number 124 children of 0-17 years old were registered: in Butmir 112 and in Sokolović Kolonija 12.

273. Without any doubts a decision has been made that they should be relocated for reasons stated above.

274. After considering a number of locations, Vlakovo was offered as a location where it was feasible to set up a Roma settlement. Considering the Vlakovo location, it was ascertained that the land was owned by Ilidža Zemljoradnička Zadruga (an agricultural Cooperative). The Roma settlement would be a temporary settlement. Accommodation of 250 persons would be provided



in containers. This requires 5,000 to 6,000 m<sup>2</sup> of land. In this area some space need to be designated for a secondary raw material depot. To accommodate all the people from the settlements 63 containers would be needed for living (four persons in one container), 5 containers with toilets and showers would be installed and 2 containers would be installed as a secondary raw material depot.

275. The containers to be set up need appropriate infrastructure such as: connection to the main water pipe, biological device for water purification, connection to electricity and outdoor lights, graveling of the streets, concrete slabs for containers, repairing the access road and providing rubbish containers. All these activities to set up the container settlement would cost 640.000,00 KM.

276. On 1 June this year the Ministry of Housing of Sarajevo Canton and the Municipality of Ilidža signed the Protocol on Co-funding of the Project of the Relocation of Roma Settlement form Butmir to Vlakovo, the Municipality of Ilidža. The Protocol was aimed at providing better conditions for living and work to the inhabitants of the settlement. The Ministry has committed to appropriate 720.000,00 KM for all required activities and the Municipality of Ilidža has committed to give the land for relocation of the Roma settlement to Vlakovo, with an approval of the Ministry of Economy, which is the owner of the land, to ensure a preliminary and detailed design of the location including the infrastructure, to select the contractor and supervisor and to make interim and final reports on the implementation schedule of the project to the Ministry of Housing. The Protocol also defines an obligation of the Municipality of Ilidža to, in cooperation with “Naša budućnost” Roma Association, take all activities needed to list all people to be relocated and to obtain various permits. On the grounds of the Protocol a separate Agreement on the Project Implementation will be concluded to regulate duties and responsibilities of the respective signatories to the Protocol. The projects should be finished successfully by the end of 2007.

277. The OSCE and UNHCR have taken the position that the location for the Roma has to be ensured under a presumption that they will not be relocated in the next 10 years, which mean that this will be a permanent solution of the problem.

278. However, at a meeting held in late August 2007 talks were opened anew because the Swedish International Development Agency (SIDA) sent a Letter of Intention to the Ministry of Housing, giving a guarantee that in the next year it would give funds to build houses instead of containers to relocate the Roma settlement. SIDA would ensure funds to the extent of 5.000.000 SFK, which had a tremendous impact on the future activities in solving the issue.

279. Activities of the Ministry were taken with a view to finding locations to build houses in the nine municipalities of Sarajevo Canton, pointing out that the solution of the problem of water protection zone and drinking water is a problem affecting all inhabitants of Sarajevo Canton. To this end all Sarajevo municipalities were required to build one house with four housing units in each municipality and the Cantonal Government was required to use the funds earmarked for the purchase of containers to buy land and build infrastructure in the locations where the houses would be built. Thus, 11 houses with 4 housing units will correspond to the number of family

members. The houses would have the ground floor and high attic. One housing unit would be 8x8 m in outside dimension. The Letter of Intention specifies that the works should start in January 2008 so the houses will be finished in mid-2008. In this manner inhabitants of the Roma settlement would be taken care of in the best way.

280. The land has already been provided: in the Municipality of Hadžići 800-900 m<sup>2</sup> for two housing units and in the Municipality of Vogošća for one house, while the Swedish Caritas will have an obligation of implementation of documents for construction of the houses. The houses to be build will be owned by the municipalities and the occupants will use them on the grounds of a contract for the use of housing and be obliged to pay utilities bills. If one family moves out or somehow acquire another kind of housing, the housing unit will be allocated to another family, again as temporary accommodation.

281. The next positive examples of activities taken in Bosnia and Herzegovina to provide housing for Roma families are the Municipality of Ilijaš, where two houses were built for the Roma families and the Municipality of Stari Grad and “Naša budućnost” Roma Association, which will provide 800.000 KM as aid for the Roma from the Butmir settlement. There is no discrimination of the families living in the water protected zone. All actions have been taken to ensure that the relocation will meet all standards and that all citizens of Sarajevo will exercise their right to drinking water without any form of discrimination against the Roma living in the settlement in comparison with the neighbouring inhabitants who are pre-war occupants and owners of the land and buildings on it, which are not in the water protected zone, in accordance with the valid legal requirements. Thus, the documents respecting town planning are public documents issued by appropriate authorities and are the grounds for legal use of private property. We point out that the non-Roma people living across the street are not in the water protected zone and their houses were built in accordance with the master plan of the Municipality of Ilidža.

282. We remind that the Roma settlement is an illegal settlement. The housing is inadequate as some houses are built of cardboard. They were built without any plan or necessary permits or approvals. The inhabitants have no legal grounds to use the land and it is state owned land. The particular fact to have in mind is that the settlements is a risk to the first (I) water protected zone, from where water is supplied to 92% of the Sarajevo population. With regard to compensation, they will be compensated with new and comfortable houses.

283. The Roma families will be moved out of Butmir at the beginning of winter. The new apartments where they will be moved into will be located in nine municipalities. In this way the water protected zone will be finally cleared up. In June Caritas will finish the construction documentation and constructing will start. The area of the apartments will depend of the number of family members. The Ministry of Housing of Sarajevo Canton will give 780.000 KM for development and infrastructure of the location. One house will cost 65.000 KM.

284. We want to point out that Bosnia and Herzegovina has not acceded to the “Decade of Roma Inclusion” yet, an initiative that was adopted by nine countries in the Central and South-East Europe and supported by the international community. The Decade is a political commitment of the countries concerning the Roma to reduce their inequality in the sense of economic and overall development by making reforms and implementing programmes aimed at

cutting the vicious circle of destitution and constant exclusion of the Roma from society. In the preparations for the Decade, each country identified a limited number of national objectives which can be modified along the way, including three themes that are intertwined. Each country designed action plans stating goals and indicators in each field.

285. As a compensation for it, we point out that in 2005 Bosnia and Herzegovina adopted the Roma Strategy, which is a great step forward towards a comprehensive national policy for the protection of the Roma. In order for the Strategy to have an effective impact, specific action plans were designed to define the activities to be taken, including the time line, responsible authorities and detailed budgetary funding.

286. Bosnia and Herzegovina has already met requirements for applying for the Decade programme. Apart from the existing Action Plan for Educational Needs of Roma and Other National Minorities, the following action plans are being designed: Action Plan for Employment, Action Plan for Housing and Action Plan for Health Care. They are being finalized and hopefully Bosnia and Herzegovina will soon meet all requirements for accession to the Roma Decade Programme. A confirmation is also a recent conference in Mostar on the Roma Strategy in Bosnia and Herzegovina where the preparation of action plans was discussed. These and other activities taken confirm the commitment of Bosnia and Herzegovina to address issues and problems of national minorities, including the largest one - the Roma, by setting priorities and designing action plans and then, by implementing them. On a recommendation by the Council of Ministers of BiH the action plans should be adopted in July 2008, which will be followed by accession to the Roma Decade.

**Recommendation No. 21: The Committee requests that the State party ensure that pension and health care benefits are provided on a non-discriminatory basis, without regard to ethnicity, especially where minority returnees are involved. The Committee further recommends that the State party review the deployment of its pension benefits and health care services and, for the time being, implement the Inter-Entity Agreement on health care.**

287. The Human Rights Chamber and the Commission of Human Rights within the Constitutional Court of Bosnia and Herzegovina reviewed the issue of deployment of the pension benefits of returnees in F BiH who returned from the RS. An earlier known fact is that, in the Decision on Admissibility and Merits of 6 January 2003, CH/02/8923 et., the Human Rights Chamber found that the Respondent Party, the Federation of Bosnia and Herzegovina, discriminated against the applicants in the exercise of the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights. In the Decision the Chamber ordered (conclusion 7):

“By 10 votes to 2, to order the Federation of Bosnia and Herzegovina to take all necessary legislative and administrative actions, by 10 July 2003, to ensure that the applicants are no longer discriminated against in their enjoyment of pension rights guaranteed by Article 9 of the International Covenant on Economic, Social and Cultural Rights, particularly in comparison to those pensioners who remained in the Federation during the armed conflict.”

288. Given the FBiH did not enforce this Decision, on 13 December 2007 the Constitutional Court of Bosnia and Herzegovina issued the Decision on Non-enforcement of the Decision. In a case against Bosnia and Herzegovina the European Court of Human Rights found that the rights of the appellant were violated as the decision of the Human Rights Chamber was not complied with. Now talks about how to find *modus operandi* for enforcement of the decision are under way.

289. In recommendation 21 “The Committee notes that although pension benefits are significantly higher in the Federation than in the Republika Srpska”, pensioners who previously received their pensions in the Federation, but who were internally displaced in the Republika Srpska, continue to receive pensions from the Republika Srpska Pension Fund upon their return to the Federation. This statement of the Committee is already questionable because the pension benefits in the Republika Srpska have reached the level of the pension benefits in the Federation of BiH and even have become higher this month. However, the fact that since 1992 Bosnia and Herzegovina has had two separate pension funds and the situation was confirmed by Annex IV of the Dayton Peace Accords, so that today the matter of pension benefits regulation falls, unfortunately, within competence of the Entity exclusively, while there is no legislation or joint pension fund at the level of Bosnia and Herzegovina. This legal arrangement affects and discriminates against, first of all, pensioners of the former single pension fund of the SR BiH, i.e. persons retired as civilian pensioners before April 1992. We substantiate the fact with the following facts:

(a) The Republic of Bosnia and Herzegovina passed the Law on Cessation of Work of Funds and Institutes (RBiH Official Gazette 27/93), which came into effect on 31 December 1993, providing that in wartime the funds and institutes established by law ceased from working on the date cited, and particularly the Socially-Owned Fund of Pension and Disability Insurance of Bosnia and Herzegovina;

(b) The Federation of Bosnia and Herzegovina passed a law that is still in force titled the Law on Organization of Pension and Disability Insurance of the Federation of Bosnia and Herzegovina (RBiH Official Gazette 49/00, 32/01). The Law provides for the establishment of the Federal Institute of Pension and Disability Insurance that will emerge as a result of streamlining of the Socially-Owned Fund of Pension and Disability Insurance of Bosnia and Herzegovina and the Fund of Pension and Disability Insurance of Mostar;

(c) The Republika Srpska established the Public Fund of Pension Insurance of the Srpska Republika of Bosnia and Herzegovina (Official Gazette of the Serbian People in Bosnia and Herzegovina 10/92) in the part of BiH then named the Srpska Republika of Bosnia and Herzegovina and the decision came into effect on 30 June 1992;

(d) Pensions in the Republika Srpska are governed by the Law on Pension and Disability Insurance (Republika Srpska Official Gazette 32/00, 40/00, 26/01, 37/01, 32/02, 47/02) providing for the establishment of the Fund of Pension and Disability Insurance of the Republika Srpska;

(e) The Federal Fund of Pension and Disability Insurance is made up of collected contributions for the current month and pensions for the next month are paid on the basis of the collected funds. Pursuant to the Law on Contributions of the Federation (FBiH Official

Gazette 35/98, 54/00, 16/01, 37/01, 1/02) contributions are computed and paid on other incomes of insurers, on the remuneration paid at the expense of the employer and from other sources ensured by the computing entities. Pursuant to the Law the rate of contributions is 17% from wages and other incomes of insurers and 7% from the remuneration paid at the expense of the employer, so that the overall rate is 24%. In the Republika Srpska Law on Contributions of the Republika Srpska (RS Official Gazette 51/00) provides that a contribution payer is a natural person - a resident in the Republika Srpska, and the base is the net wage and all remuneration paid by the employer. The Law determines the rate contributions of 24% of the base;

(f) In regard to the statement of the Committee about higher pension benefits in the Federation of BiH than in the Republika Srpska we note that obviously this applies to so-called state pensions, i.e. pensions that are paid from social security funds and are paid from the budget paying a minimum pension equal for all. Obviously in Bosnia and Herzegovina pensions are paid at the expense of current work of the employed and the level of pensions depends on the base determined for payment of contributions and the rate of contributions;

(g) As the base is different and the rate of contributions is the same a realistic expectation is that if the base is increased, "filling of the funds" will also increase, i.e. that in this connection the pensions will be higher at one point of time in one fund and at the other point of time in the other fund. That is exactly what happened in the situation when the Human Rights Chamber (Constitutional Court of BiH) issued decision CH/02/9364 in Karanović case ordering that the applicant should receive a difference in the amount of pension of 6.238,00 KM for the period between 28 February 2002 and 20 February 2008. However, at the end of this period the difference was minimal, so that in December the difference was 9,11 KM, in January 4,81 and in February 2008 only 3,21 KM. According to still unofficial statistics, if Mr. Karanovic had remained an insurer of the Fund Pension and Disability Insurance of the RS, in March 2008 he would have received a pension higher by 33,18 KM;

(h) Owing to the difficulties that occurred in relation to the regulation of returnees' rights and the rights of people who under the same conditions retired before the independence of Bosnia and Herzegovina in April 1992 the two funds concluded the Agreement on Mutual Rights and Obligations in Affairs of Pension and Disability Insurance (Republika Srpska Official Gazette 15/00 and FBiH Official Gazette 24/00 of 30 June 2000). This Agreement provides that insurance carrier that paid pensions to a pensioner on the affective date of the Agreement will continue paying it regardless of the place of permanent or temporary residence of the pensioner. On 13 February 2002 the Fund of Pension and Disability Insurance of the Republika Srpska stopped applying the Agreement;

(i) Deciding an appeal by a party to an action - the plaintiff - the Fund of Pension and Disability Insurance of the Republika Srpska with the main offices in Bijeljina against the defendant - the Fund of Pension and Disability Insurance of the FBiH with the main offices in Mostaru, the Cantonal Court of Mostar decided the case: 58 0 Ps 902182 08 Pz of 8 April 2008 and found that the appeal was not grounded and sustained the original judgment. In the reasoning of the decision the Court deems that the Agreement on Mutual Rights and Obligations in Dealing with Pension and Disability Insurance under the Law on Contracts and Torts was cancelled when one of the Parties stopped applying the Agreement, that the Republika Srpska, however, applied its own legislation and took over the pensioners who happened to be in its territory before the

Agreement was signed, and had been retired by the former Socially-Owned Fund of Pension and Disability Insurance of SRBiH, and on its own accord continued paying them pensions after it stopped applying the Agreement, and they accepted the offered solution;

(j) The fact is also that the Court finds in the judgment that the two funds that were established as described above have not determined a division of rights and responsibilities or made a division balance sheet or statutory regulated the issue of pensions acquired before 1992 in the former single pension fund of the SR BiH under equal conditions, which implicates a single method of filling in (establishment of) the fund;

(k) Thus, the essence of the problem is that the pensions acquired before 1992 under equal conditions have become unequal in the same fund and the source of the discrimination in the social rights is found in the non-harmonized and inadequate entity legislation throughout Bosnia and Herzegovina;

(l) In the meantime the Human Rights Chamber of Bosnia and Herzegovina decided case CH/03/12994 and dismissed the application of Vidosava Mičić against BiH, FBiH and RS for lower pension she is receiving in the Republika Srpska than pensioners in the Federation of BiH who are beneficiaries in the same fund in which till 1992 he husband was retired. In points 98 and 99 of the decision the Human Rights Chamber considers justification of the proceeding by the FBiH Fund and in points 103 and 104 it finds that, given two funds operate after the dissolution of the SRBiH Fund, the Federation of FBiH is entitled not to recognize entitlements of the pensioners living in the territory of the Republika Srpska. It also concludes that the applicant, as an internally displaced person who has not returned to the Federation of BiH and receives pension in the place and the Entity where he/she lives, is not discriminated against by the Federation of BiH in the exercise of the right to social security in comparison with the persons who are in a similar situation who remained in the Federation of BiH.

290. 165. Contrary to the findings above the Human Rights Chamber found discrimination in exercise of the right to social security in a number of decisions on pensions of internally displaced persons who received pension from the RS Fund as returnees to the Federation of BiH, recalling first of all the fact that in the Federation of BiH costs of living are higher so that the returnees are placed in a less favourable situation when they receive lower pensions from the Republika Srpska than the pensioners who remain in the FBiH and were not displaced. As international agreements on pension benefits are implemented through the Entities and in accordance with the entity legislation it is the ground of discrimination. The following decisions were issued: CH/03/12861 J.I., CH/03/12862 Cvijetko Ristić, CH/02/12527 Anica Bosiljčić, CH/03/12869 Miloš Špirić, CH/03/12871 Stana Karanović, CH/03/12873 Slavko Vuković, CH/03/12885 Vasilije Bosiljčić, CH/03/12920 Mladen Stojanović, CH/03/12954 Čedo Manojlović, CH/03/12999 Mara Manojlović, CH/03/13003 A.R., CH/03/13004 S.S., CH/00/6413 Dragosava Vuković, CH/01/16825 Milije Ilić, CH/02/9967 Mladen Šekerović, CH/03/13031 Zora Buha against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. In all these cases the FBiH was ordered to pay the difference in the pension and take appropriate legal and administrative measures.

291. For non-compliance with the Decision of the Human Rights Chamber ordering the Federation of Bosnia and Herzegovina to take specific measures, Applicant Duško Karanović filed an application with the European Court of Human Rights for a violation of Article 6(1) of

the European Convention on Human Rights by infringing the right to access the court by not complying with a decision of a national court - the Human Rights Chamber, i.e. the Constitutional Court of BiH. The European Court of Human Rights decided the application and rendered judgment 39462/03 of 20 November 2007, finding a violation of the Applicant's rights under Article 6(1) of the ECHR involving non-compliance with the Decision of the Human Rights Chamber BiH. The Decision ordered that Duško Karanović should become a pensioner of the Federal Fund of Pension and Disability Insurance of the FBiH and pecuniary and non-pecuniary damages should be paid to him.

292. Acting upon the request of the Office of the Agent of the Council of Ministers of BiH before the European Court of Human Rights, all individual measures ordered in this case were taken within three months of the final judgment of the European Court of Human Rights, which is in line with the rules by the Council of Europe Committee of Ministers for Supervision of the Implementation of Judgments of the European Court of Human Rights at the National Level. Bosnia and Herzegovina is also expected to take all general legal and administrative measures ordered in the case within 6 months of the final judgement, the deadline running from 20 February 2008.

293. Owing to this case before the European Court of Human Rights and other cases closed or pending before national courts involving the obligation to pay pension benefits to pensioners of one or other fund who retired before 1992, the Ministry of Civil Affairs, which a coordinating authority in pension and disability insurance, convened a meeting of appropriate entity ministers and directors of the pension insurance funds in Bosnia and Herzegovina. The first meeting was held on 12 March 2008 and in pursuance of conclusion from the meeting a working expert group was appointed with two experts - representatives of the entity ministries in charge of pension and disability insurance and one representative of the Ministry of Civil Affairs of BiH. The working expert group had a meeting as early as on 20 March 2008 producing the following recommendations:

- A project task of the working group is to find out proposals for a solution of the issue of inter-entity payments of pensions to pensioners retired before 30 April 1992.
- Within 10 days, i.e. until 30 March 2008, the Ministry of Civil Affairs of BiH should send in a list of issues concerning this matter and proposals for a solution with detailed explanations in order to forward the materials to the entity institutions in charge of pension and disability insurance in order to inform them with the content and to bring views on the manner of solution of the problem in line.

294. According to the information delivered on phone to the Deputy Agent, which was confirmed later on in an official letter, a progress has been made in the work of the expert group in the sense that enactment of a single law governing pensions acquired before 1992 has been espoused and, in this connection, establishment and payment from the same fund or already existing funds also have been espoused.

295. The requirement set by the Committee on the Elimination of Racial Discrimination in Recommendation 21 might be complied with in the following manner: to enact a permanent law at the level Bosnia and Herzegovina (framework law) that will provide for equality in pensions paid to all pensioners retired before 1992 regardless of the place of residence and govern all

other issues in pension and disability insurance in the manner that will ensure the enforcement of the Agreement on Social Security. In this manner and establishing a single fund at the level of BiH and through funding mechanisms that will equalize the minimal base for computing contributions and applying a single rate of contributions, it is possible to ensure equality of citizens of BiH in pension insurance and at the same time enable the Entities to regulate some peculiarities of their own in their own laws.

296. If this was accomplished, it would mean compliance with the general measures under the Karanović judgment. The information about individual and general measures is expected to be submitted by the Agent of the Council of Ministers of BiH before the European Court of Human Rights to Council of Europe General Secretariat Department for Supervision of the Implementation of Judgments of the European Court of Human Rights until 20 July 2008.

**Recommendation No. 22: The Committee urges the State party to implement effectively the recommendations contained in the Action Plan on Educational Needs of Roma and Other National Minorities (2004), and to combat discrimination against Roma children and children belonging to other ethnic minority groups by teachers, school authorities, and classmates and their families.**

297. BiH authorities, i.e. the Ministry of Human Rights and Refugees of BiH intensively work on the implementation of “The Action Plan on Educational Needs of Roma and Other National Minorities in BiH”, adopted in February 2004. In this school year, 2007-2008, a greater number of Roma students and students from national minorities has enrolled schools and universities (often as a result of affirmative action). Depending on the financial condition of municipalities, cantons and Entities school utensils, text books and financial aid for a meal at school and transport are given away.

298. As a good example we should point out Tuzla Canton where a large number of Roma people are concentrated. Roma representatives are very vigilant in this Canton and thanks to them the appropriate ministry got the information that in 2007 a number of Roma children were not registered in birth registers and did not enrol primary school. It was 22 Roma children, who were returnees and housed in sheds located on the former confrontation line.

299. The Ministry of Education hired a Roma person in the post of Roma officer, who was responsible for visiting Roma settlements and register Roma children (who were not born in hospital) in birth registers. His job is also to check whether all children enrolled primary school and whether they attend school regularly. Roma children usually complete four grades, not five or six grades, and then try to complete primary school taking exams without attending classes.

300. 50.000 KM are earmarked annually in the budget and the funds are spent specifically for textbooks, a meal and transport to school if the place of residence is more than 4 km far from the school. Regular competitions for scholarships are published for Roma children.

301. An estimate is that Tuzla Canton has between 10.000 and 15.000 Roma. 846 Roma children are at primary school and 57 Roma children attend secondary school. There are two settlements where the Roma are majority and there is primary school there. In Čaršija 148 Roma children are at school and classes are in the Bosnian language as the Roma do not have a standardized language.



302. There is also an issue of declaration - a number of Roma do not declare themselves as Roma but as Bosnians. For the World's Roma Day competitions are organized for students in fine arts and music. In Tuzla three Roma are undergraduate students and two Roma are postgraduate students. A Roma woman has been recently conferred the PhD degree and she works at the Training and Rehabilitation Faculty of Tuzla as an associate professor.

303. There are about 50 Roma houses in Živinice and about 70 houses in a settlement on the way to Tuzla and those are the most beautiful houses in the Canton. The owners are in various crafts. 172. All Roma children have health insurance, i.e. they can use health care services free of charge, and the Fund of Health Care of Tuzla pays them.

304. The Ministry of Human Rights and Refugees of BiH is currently working to identify a partner and funds for amending, i.e. revising the Action Plan.

305. In 2001 the Law on Primary and Secondary Education of the Brčko District of BiH was passed and it is the ground for the establishment of an integrated and transparent educational system available to all citizens regardless of their social, religious or national background. So the European Convention on the Protection of Human Rights and Fundamental Freedoms has been materialized in this small integral part of the state of Bosnia and Herzegovina. Article II2 of the Constitution of BiH reads « The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.» So, even before formal ratification by BiH in 2004, the European Convention on the Protection of Human Rights and Fundamental Freedoms was incorporated in the legal system of the Brčko District of BiH. In addition, Article 2 of Protocol 1 to the European Convention on the Protection of Human Rights and Fundamental Freedoms reading: « No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.» is fully applicable and further affirms itself in Brčko District. According to the ECHR case law, the right to education is extended to all forms of education provided by the government, including:

- The right of access to educational institutions at any time
- The right to effective education
- The right to official recognition of the studies a student has successfully completed

306. Post-accession obligations to the Council of Europe signed on 24 April 2002 oblige BiH to adopt the Framework Agreement on Education, the Brčko District of BiH being the first one in Bosnia and Herzegovina to bring its valid law governing this matter in line with the Agreement immediately after the passage in 2003. The amendments to the Law even more entrenched the high European standards guaranteed to students, ensuring the preconditions for the continuation of reforms in this field with an elimination of all aspects of segregation and discrimination on the grounds of ethnic origin.

307. With a view to implementing the European Convention on the Protection of Human Rights and Fundamental Freedoms and other Conventions respecting the right to education and

fulfilling the commitments, the Brčko District of BiH made a legal framework to ensure full openness of school, transparency of the work, management and administration and a multiethnic composition of teaching staff and classes and ensured access to school to everybody regardless of religion, race, sex, age, ethnicity or any other affiliation. Social programmes (implementation of the Law on Supplementary Rights of Children of Fallen Combatants and War Invalids Relating to Scholarships etc.) protect the interests of the groups that can hardly afford schooling due to destitution. Inclusive educational services, which are still in the phase of affirmation, are provided to all persons who need them and have the possibility of such a form of schooling. The Action Plan for Educational Needs of Roma and Other National Minorities adopted in 2004 determines the activities to give equal opportunities to the people to take part in the economic and social development of the community.

308. Apart from BiH nationals, students from neighbouring countries are at schools in the Brčko District of BiH. Last year great interest for enrolment in our schools was shown by a great number of foreign students. All facts stated above indicate that the Brčko District of BiH ensures the high standards in education enshrined in the conventions to all BiH nationals and other nationals.

**Recommendation No. 23: The Committee strongly urges the State party to end public school segregation, that is, that it eliminate mono-ethnic schools and schools that are structured as “two schools under one roof” as soon as possible. The Committee recommends that competent authorities within the State party unify previously segregated schools under one administration, intensify their efforts to remove ethnically discriminatory elements from textbooks, remove mono-ethnic or mono-religious symbols and flags from all schools, and implement a modernized common core curriculum for all schools within the territory of the State party, which is sensitive to the diverse cultural attributes of the various ethnic groups within the territory of the State party.**

309. Pursuant to the Constitution of Bosnia and Herzegovina, the educational system in BiH is governed by an entity law in the Republika Srpska and cantonal laws in the Federation of BiH and a law of the Brčko District of BiH.

310. The activities taken at the State level on enactment of a framework law governing education: The Framework Law on Primary and Secondary Education in BiH (BiH Official Gazette 18/03 of 1 July 2003), The Framework Law on High Education in BiH (BiH Official Gazette 59/07 of 7 August 2007), The Framework Law on Pre-school Upbringing and Education in BiH (BiH Official Gazette 88/07 of 20 November 2007); The Law on the Agency for Pre-school, Primary and Secondary Education, which were published on 20 November 2007 (BiH Official Gazette 88/07); and the adoption of the following policy documents: The Strategy for Development of Pre-school Upbringing and Education, 2005, The Strategy for Development of Vocational Education and Training in BiH for the period 2007-2013 (BiH Official Gazette 65/07 of 28 August 2007).

311. The laws and the policy documents contain provisions determining that every child has equal access and equal opportunities to take part in pertaining upbringing and education without any discrimination on whatsoever grounds. Equal access and equal opportunities presume an insurance of equal conditions and opportunities for all, for the beginning and continuation of further upbringing and education.

312. We should also state that the activities initiated by the Ministry of Human Rights and Refugees of BiH and the Ministry of Civil Affairs of BiH are being carried to revise the Action Plan on Educational Needs of Roma.

313. In spite of intensive invitations and efforts of the Peace Implementation Council, The Office of the High Representative and the pressure exerted by the international community, there are still schools organized as “two schools under one roof”. This happens in Middle Bosnia Canton and Herzegovina Neretva Canton. Generally, the cantonal authorities have not done much to solve the problem, although provisions of the Framework Law on Primary and Secondary Education in BiH provide that “Education authorities competent to organize education system in Brcko District of BiH, Republika Srpska, Federation of BiH, and Cantons in accordance with the constitution, institutions that are registered according to the valid laws in Bosnia and Herzegovina for providing educational services in the field of preschool, elementary, secondary and adult education and other expert institutions in the field of education, are obliged to implement and respect the principles and norms set forth in this Law and ensure educational services under equal conditions for all students.” (Article 1 of the Framework Law on Primary and Secondary Education in BiH).

314. Another promising example is Mostar Grammar School, which was united administratively in school year 2004/2005. The administrative unification, which unites the management of the school, does not affect segregated classes or curricula, but helps that the children have a feeling of belonging to the same institution and can form a single students’ council, as in Mostar Grammar School. The aim of the administrative unification of these schools is to eliminate the physical, social and psychological separation of students, to register schools as one legal person, with one principal, multiethnic school board, parents’ council, students’ council and joint administrative staff. The administrative unification does not affect the curricula or syllabi (common core curricula are applied) but it would place teacher and students in the same shifts so that the physical separation of students of different ethnicity can be reduced.

315. The concept of “two schools under one roof” is in contravention of principles set forth in the key document “Education Reform: A Message to the People of BiH” (this document is the most important step in the long-term process of development of a modern and high quality educational system and its approximation to European and international standards and defines objectives of the education reform and measures and activities required for the achievement of the objectives by 2010 and particularly for the attitude of entity and cantonal ministries of education “to stop segregation and discrimination in education”).

316. Unfortunately, the most recent events in Čapljina demonstrated how grave results of non-performance in the education reform are. At the local level obviously the transformation of the educational system in BiH into a human rights compliant system has not been finished yet.

317. The issue of elimination of “two schools under one roof” is a very complex issue. Resolving this issue means, on one hand, full implementation of non-discrimination of students on whatever grounds and, on the other hand, full exercise of the right to education in the mother tongue.

318. In resolving this issue both the requirements have to be accommodated. To this end, the educational authorities in BiH are expected to offer a well designed and realistic approach to the problem by defining in details short-term and long-term actions and measures.

319. The Law on Primary School of the Republika Srpska (RS Official Gazette 38/04) and the draft Law on Primary Education and Upbringing provide that “each child shall have an equal right of access and equal opportunities in primary education and upbringing, free from discrimination on any ground”. This provision prohibits any discrimination on whatsoever grounds and any violation is punishable. The Ministry of Education and Culture of the Republika Srpska states that no discrimination of students on ethnic or other grounds has been reported, and the RS has not had any segregation or “two schools under one roof” as there has not been any separation of children on the ethnic grounds.

320. However, the appropriate Ministry of the Republika Srpska, which decides what curricula and syllabi are applied in schools within its competence, does not specify whether the children from a minority ethnic group (the constituent peoples are Bosniacs and Croats) face an inadequate educational structure not adjusted to their specific needs, so compelling them to be taught according to the curricula and syllabi that do not respect their cultural characteristics.

321. The Agency for Pre-school, Primary and Secondary Education, which is an authority at the state level, should take long-term actions. It means that normative and pedagogical regulations should govern the issue of organization and conduct of teaching in the mother tongue (all subjects, subjects from the “national group”, the mother tongue) and that the activities started on definition, development, monitoring and assessment of the implementation of the Common Core Curricula and Syllabi or the uniform curricula and syllabi.

322. We should remind of a progress that ensued to the passage of the Framework Law on Primary and Secondary Education in BiH. In school year 2002/2003 the textbooks were revised at the inter-entity level and offensive contents were removed from the textbooks in the subjects from the “national group”, (mother tongue and literature, history, geography, acquainting with nature and society, religious education). This was finished before the beginning of school year 2003/2004.

323. With a support of the international community, in 2004 and 2005, an expert mixed group established at the level of BiH designed the *Guidelines for Production of History and Geography Textbooks*. The document was signed by all ministers of education and thereby publishing of the Guidelines and a competition for production of the history and geography textbooks in 2007/2008 was possible. Currently a group of potential authors is trained in the application of guidelines for production of the textbooks.

324. A “prototype” of the Rulebook on the Establishment and Work of the School Board was drafted in pursuance of the Framework Law. The educational authorities in the Republika Srpska, Brčko District, Tuzla Canton, Zenica Doboje Canton and Sarajevo Canton enacted their own rulebooks. Also a “prototype” of the Rulebook on the Criteria for the Names and Symbols of Schools and Organization of School Events was enacted. The educational authorities in the Republika Srpska, Brčko District and several cantons in the Federation of BiH: Una Sana Canton, Zenica Doboje Canton and Middle Bosnia Canton enacted their own rulebooks respecting this matter.

325. A Commission that was established by the Council of Ministers of BiH developed curricula and syllabi for the subjects of supplemental classes for children nationals of BiH who live abroad. They are mostly subjects from the “national group”. The Ministry of Civil Affairs of BiH, in cooperation with entity ministries of education, has planned to provide appropriate textbooks for supplemental classes of the subjects, which are being produced. The educational authorities provide displaced children and children returnees with other forms of aid in accordance with their possibilities and funds available for this purpose (free textbooks and school utensils, school meal), numerous non-governmental organizations being very actively involved.

326. Significant achievements were made in Brčko District which has created a basis for the enhancement of curricula and syllabi and the selection of high quality textbooks and teaching aids as well as conditions for application of new methods and expertise from the pedagogical and didactical practice.

327. Since 2000, i.e. since the establishment of the Brčko District of BiH, the educational system of the Brčko District of BiH has undergone a lot of changes. Namely, until 2000 schools have three fully different and yet very similar systems that virtually function in BiH nowadays. The most experienced teachers were dedicated for months to find out a joint proposal of harmonized curricula and syllabi, which were finished in mid-2001, and a single curriculum was introduced in school year 2001/02 both in primary and in secondary schools. The main initial outcome is that all the children have equal access to education in primary and secondary schools. The Law on Education in Primary and Secondary Schools in the Brčko District of BiH offers equal opportunities in gaining knowledge to everybody attending 15 primary schools, one music primary school and 4 secondary schools. The Law on Pre-school and High Education, which will be submitted to the Assembly, is being drafted. The passage of these laws, which is expected in the first half of 2008, will fully round up the legislation respecting education in the Brčko District of BiH.

328. Brčko District has multiethnic education and only the subjects from the “national group” are taught separately according to students’ ethnicity (the mother tongue, history and music culture) in primary schools. In the Grammar School history and music culture are taught to all students together as the teachers designed and agreed on a single curricula, while the mother tongue is the only subject that is taught separately according to students’ ethnicity. In secondary vocational school, history and the mother tongue, as the subjects from the “national group”, are taught separately according to students’ ethnicity. This created a proper basis so that Brčko District can work on the enhancement of curricula and syllabi and the selection of high quality textbooks and teaching aids as well as conditions for application of new methods and expertise from the pedagogical and didactical practice. In the most recent period an important progress was made in training and professional development of primary and secondary school teachers, the training being carried now and planned for the coming period.

329. Reforms concerning an introduction of nine-year education in primary school and an introduction of modular classes in secondary school are under way. The first triad of the nine-year education has already been finished and the second triad is under way. The lessons learned are valuable as they can help in designing good curricula and syllabi of the second triad, as well as necessary amendments to the curricula and syllabi of the first and second triad, i.e. to remove unnecessary content and incorporate any possible omissions. During this school year the

elementary school teachers have reviewed the curricula and syllabi and the textbooks they use in order to make the best possible choice for the beginning of school year 2007/08 and have modern classes.

330. In the education reform in BiH an important stage is a reform of public administration in the sector of education, which is carried out within a wider reform of public administration in BiH. The goal of the reform is streamlining and restructuring of the public administration based on a good review that had been prepared earlier. This stage of the reform has been completed and the second stage including consultations with the ministries and the Education Department with a view to designing an action plan with precisely determined steps that will be taken in this field is under way.

331. At this stage of the reform the role of pedagogical institutes should be determined in details and their functions should be defined clearly. This institution in the Brčko District of BiH is specific as the functions of a pedagogical institute are performed by the Pedagogical Council appointed by the Assembly of Brčko District and its role and functions have not been defined adequately, so in the coming period the mandate and direction of its work and activities should be clarified.

332. According to a new Organizational Plan, which has been already adopted, the Education Department will have two new units and they are Human Resources Unit and Pedagogical Institution Unit, which, along with the three existing units, greatly help with the creation of prerequisites for the enhancement of high quality upbringing and educational process in the Brčko District of BiH.

333. We should point out that the establishment of the Agency of Pre-school, Primary and Secondary Education at the level of BiH will boost the implementation of the common core curriculum. Within the reform the management has undergone various courses of training and professional development in their role in modern democratic school, where a student is in the focus.

334. The main reforms in elementary schools concern an introduction of nine-year primary education although there is eight-year primary education at the same time. Constant cooperation and experience sharing between the educational institutions in the Republika Srpska and the FBiH are cherished and lessons learned are also exchanged and all problems arising are sought to be solved along the way. The school development project is being implemented. The mathematics and mother tongue syllabi for III, VI and IX grades of primary school are being developed drawing upon own experience and expertise and practice of EU countries. Grammar schools are also being reformed with a view to introducing a leaving examination at the end of all courses in pursuance of the Lisbon Convention, which will place students leaving grammar school in BiH in an equal position with students from other countries. In other secondary schools new modern curricula and syllabi of some vocational courses were developed and applied in the manner that principles and teachers were trained in developing and applying the new curricula and syllabi through pilot schools, the aim being education of vocations demanded in the labour market. Both in primary and secondary schools the new curricula and syllabi are focused on a student and a teacher is a moderator who directs activities according to the needs of the student.

335. With regard to apprenticeship in secondary schools there is some progress made, i.e. EU-VET programme for a modernization of curricula and syllabi is implemented with a support of European Union. The goal is to empower teachers to apply new teaching methodologies, i.e. to train students in vocations that are needed by companies and helpful to further strengthening of the BiH economy. Secondary vocational education requires uprooting changes as the reforms being made are still inadequate, so an urgent reform of vocational schools is necessary. The modular classes are the first step, then results should be monitored and new vocations needed by companies should be introduced. It is very important to adequately furnish schools with teaching equipment, in particular with the workshops where apprenticeship is carried on, and to provide a large number of students with the possibility to serve their apprenticeship with local companies. An especially important element is to change the relations between teachers and students, i.e. it is essential to ensure that the students share their views and opinions and show creativity. Unfortunately, it does not happen in present schools and that is why reforms are necessary. It is important to gradually relieve pressure on students by reducing the theoretical part and increasing the practical work.

336. The total funds that are appropriated for the Education Department are meant for material expenses, construction and reconstruction of the schools and employees' salaries. The employees' salaries take up about 80% of the total amount. The employees' salaries in education of the Brčko District of BiH were somewhat higher than in the FBiH and the Republika Srpska. Since 2006 the both Entities have improved the financial situation in education.

337. With regard to the national group of subjects, in primary schools of the Brčko District of BiH the following actions have been taken:

- All offensive texts have been removed from the textbooks.
- The content of the curricula and syllabi has been reduced by 30% in order to relieve the heavy load of curricula and the content has been reshuffled horizontally and vertically from V-VIII class. The common core curriculum is applied at the level of BiH and, having made an analysis and having compared the curricula and syllabi, an assessment has been made that the curricula and syllabi of the Brčko District have been brought in line with the common core curriculum. All students use textbooks in the language and script of the ethnic group whose history they learn.

338. Given a great number of citizens of the Brčko District of BiH were educated or are still at schools abroad, they are entitled to seek from the competent educational institution of the Brčko District of BiH to validate diplomas and recognize certificates of education. If they demonstrate that they have a legitimate interest, other citizens, foreigners and stateless persons have the same entitlement. The validation and recognition is carried on by the Educational Department of the Brčko District of BiH in consultation and with approval of the competent authority of Bosnia and Herzegovina. The Law on Administrative Procedure of the Brčko District of BiH is applied in the validation and recognition proceedings, while decisions on the validation and recognition are final in the administrative procedure. The Department files the documentation and keeps records on the validation and recognition in pursuance of the instruction on keeping these records and the instruction is enacted by the Brčko District of BiH mayor.

339. In BiH appropriate Ministries give accreditation to high education institutions. Validation/recognition of university diplomas can be performed either by the appropriate ministry or by the university, depending on the entity or canton. The validated/recognized diploma is accepted throughout Bosnia and Herzegovina. The Centre for Information and Recognition of Documents in High Education, which is to be established as an independent administrative authority (The Framework Law on High Education of BiH, BiH Official Gazette 9/07, Articles 44, 45, 46) will issue recommendations to the appropriate ministries but will not decide on validation and recognition itself.

**Recommendation No. 24: The Committee encourages the State party to actively support programmes that foster inter-cultural dialogue, and emphasize tolerance and understanding with respect to the culture and history of different ethnic groups within Bosnia and Herzegovina. The Committee further encourages the State party to promote such programs in public education, and in political and media symposia, with a view towards fostering greater respect for, and appreciation of the role of diversity in forging a stronger sense of national unity in the context of a common, multi-ethnic concept of Bosnian citizenship.**

340. The Constitutional Court of Bosnia and Herzegovina and the Commission of Human Rights within the Constitutional Court of Bosnia and Herzegovina respect equality of religious communities and protect their interests equally. In a number of cases, the two institutions reviewed the issue of equality of religious communities, discrimination against them and other issues. So, e.g. Vrhbosna Archdiocese was reinstated in its property in Travnik in order to prevent discrimination in comparison with the Islamic Religious Community (CH/02/968, *Vrhbosanska nadbiskupija v. the Federation of Bosnia and Herzegovina*, Decision on Admissibility and Merits of 9 May 2003).

341. Having in mind the actions recommended by the Committee on the Elimination of Racial Discrimination in Recommendation number 24 respecting the fostering of inter-cultural dialogue, tolerance and understanding with respect to the culture and history of different ethnic groups within Bosnia and Herzegovina, we note that, to fight racism, discrimination and intolerance, the government (in cooperation with the non-governmental sector) has taken the following actions.

342. With a view to promoting tolerance and respect differences in a multinational, multireligious and multicultural society as BiH society is, the Roma Council (the largest and the most disadvantaged national minority in BiH) operates within the Council of Ministers and also the National Minorities Council an advisory body, has been established within the Parliamentary Assembly of BiH. The Gender Agency, as an independent administrative organization within the Ministry of Human Rights of BiH was established in December 2004 with a view to promote GENDER equality, while the Inter-religious Council of BiH, which gathers representatives of the four traditional religious communities under auspices of the government, fosters inter-religious dialogue.

343. In Bosnia and Herzegovina the Council of Children of BiH (numerous NGOs dealing with the protection of children's rights are involved in its work) operates as an advisory and coordinating body, which is fully supported by the Ministry of Human Rights and Refugees of BiH with a view to comprehensively protecting the rights of a child enshrined in the UN Convention of the Rights of a Child.



344. Bosnia and Herzegovina is home (according to the BiH Constitution) of three constituent peoples (Bosnians, Serbs and Croats) and (according to the Law on the Protection of the Rights of National Minorities) of 17 national minorities, which indicates the richness and a variety of cultural heritage and national treasure of BiH society.

345. In Bosnia and Herzegovina there are four major monotheistic religions (beside Jerusalem, Sarajevo, the capital of Bosnia and Herzegovina is the second example in the world of a town where there are Cathedral, Orthodox Church, Bey's Mosque and Synagogue only within 500 square meters (we remind that Bosnia and Herzegovina gave a refuge to Sephardi Jews when they were expelled from Spain in 15th century, while Ashkenazi Jews settled in Bosnia and Herzegovina when Austria-Hungarian Monarchy rule was introduced in the territory in the period between 1875-78, when present Synagogue was built next to the Old Jewish Temple).

346. Unfortunately during the tragic armed conflict in the period between 1992-95 Bosnia and Herzegovina lost an enormous number of human lives (the exact figure still unknown, as we can see from the fact that an Institute of Missing Persons has been established) and numerous cultural and religious buildings that bore evidence of centuries long history of BiH statehood and multicultural community of all its peoples (e.g. Aladža Mosque in Foča, Ferhadija Mosque in Bana Luka, Old Bridge in Mostar, Žitomislići Orthodox Monastery near Mostara, Orthodox Church in Mostar, Plehan Catholic Monastery in Posavina, Hadži-Alija's Mosque in Počitelj - BiH painters' colony, Sultan Esma's Mosque in Jajcu, Begovina and Mosque in Stolac etc.).

347. Signing the Framework Accords for peace in Dayton brought about peace in Bosnia and Herzegovina and it set off on a fast journey of recovery, strengthening tolerance, respect and recognition of differences through development of a modern democratic state indicating aspirations to join the European integration processes as soon as possible.

348. Mostar Old Bridge has been rebuilt (UNESCO protected), which received full media coverage both by national and foreign press, the cornerstone for Ferhadija Mosque in Banja Luka has been laid to rebuild it, Žitomislići Orthodox Monastery and Plehan Catholic Monastery have been reconstructed, Bašćaršija-the old town of Sarajevo has been repaired and the famous Bridge over the Drina River, i.e. Višegrad bridge that was described by BiH Nobel Prize Winner, Ivo Andrić, which was built by Mehmed-paša Sokolović as an endowment and nominated for a world heritage site. An understanding has been reached that Orthodox Church in Mostar will be reconstructed.

349. Bosnia and Herzegovina is committed to respect human rights and fundamental freedoms (the European Convention on Human Rights is inherent part of BiH Constitution directly applicable in the legal system of Bosnia and Herzegovina) by strengthening democracy, multicultural dialogue and respect of national, cultural and religious differences and suppressing any form of discrimination or intolerance against members of any group.

350. The Criminal Code of Bosnia and Herzegovina (BiH Official Gazette 03/03) in Article 183 criminalizes destruction of cultural, historical and religious monuments within the chapter criminalizing acts against freedoms and rights of humans and citizens, as the cultural monuments are considered values of international significance.

351. The Criminal Code of the Federation of BiH (FBiH Official Gazette 50/03) in Article 322 criminalizes unauthorized research and appropriation of cultural monuments, while the Criminal Code of the Republika Srpska (RS Official Gazette 49/03) in Chapter titled Criminal Offences against Property, Article 253, criminalizes appropriation, destruction or damaging of cultural monuments, protected natural sites and objects that are of cultural and historical significance, while Article 254 provides for a punishment of an offender who takes away objects that are of cultural and historical significance or natural rarities from the country.

352. Articles 315 and 316 the Criminal Code of the Brčko District of BiH in Chapter 26 titled Criminal Offences against Environment, Agriculture and Natural Resources criminalizes damaging, destroying and illicit export of cultural monuments and protected natural assets and unauthorized research and appropriation of cultural monuments.

353. The Commission for Preservation of National Monuments of Bosnia and Herzegovina was established by Annex 8 of the General Framework Accords for Peace in Bosnia and Herzegovina. In the period between 1996 and 2001 it operated under auspices of UNESCO and in December 2001 a decision of the Presidency of Bosnia and Herzegovina made it a governmental institution. The Commission consists of five members: three national and two international experts, who are appointed to the office on the basis of professional references. Their term of office is five years. Every six months the national members rotate in the position of the Commission chairman. All decisions made to declare a national monument (there have been 300 decisions) were made by the Commission unanimously. The constituting meeting was held by the Commission on 4 March 2002. A decision of the Presidency of Bosnia and Herzegovina entrusted the Commission with international cooperation affairs concerning cultural and historic legacy of Bosnia and Herzegovina.

354. Decisions declaring national monuments are implemented in pursuance of the Law on Commission's Decisions Enforcement, while the entity governments, i.e. ministries of town planning, are responsible for the enforcement. It is important to note that the Commission monitors cases of endangered national monuments and takes measures to protect them by instituting criminal proceedings before competent courts in pursuance of the Law on Criminal Proceedings (unlawful construction, unprofessional reconstruction, failure to maintain them and other forms of destruction).

355. Linking various cultural, educational and media institutions, conditions for strengthening open democratic society are created, the society being recognizable for its intercultural dialogue respecting differences, new value criteria and access to educational events having an international character.

356. In Bosnia and Herzegovina there are a few international festivals and events that are very popular among the participants, artists, audience and the public and they are: MESS International Theatre Festival, a festival with long tradition, which has a rich programme of theatre performances from the world and national production. Beside the theatre performances, accompanying events such as exhibitions, concerts, round tables and the like are organized. "Sarajevska zima" (Sarajevo Winter) International Festival is a traditional event for artists from the world and the country. This festival has been on for 24 years, bringing together artists and audience from all over the world.

357. In Sarajevo, the capital of Bosnia and Herzegovina, in summertime a cultural event with rich programme (from concerts through exhibitions to theatre performances) is held under name “Bašćaršijske noći” (Bašćaršija Nights).

358. Sarajevo Film Festival is the most prestigious festival in Bosnia and Herzegovina screening pieces of commercial film productions, the best movies and documentaries from international film festivals, regional programmes with the production from the region, programmes of video projects and children’s programmes with the latest film hits. Within the festival accompanying programmes such as workshops, training in the film review such as digital technologies, documentaries etc.

359. “ARS AEVI” Project is the most important international project in the contemporary arts in Europe and the world, aimed at creating in Sarajevo a complex of architectonic urbane attraction designed by the most famous architects of our time, where the most prominent living artists will make a collection for the ARS AEVI museum of contemporary arts in Sarajevo.

360. The government of Bosnia and Herzegovina especially supports the associations that promote tolerance, among which we point out the **Inter-religious Council of BiH** in particular. On 9 June 1997, leaders of the four traditional religious communities - Islamic, Orthodox Christian, Catholic and Jewish - signed an Agreement on Mutual Ethic Obligation and thereby established the Inter-religious Council of BiH. The Council operates at the level of Bosnia and Herzegovina and at the establishment it was registered in pursuance of the Law on Associations and Foundations of Bosnia and Herzegovina.

361. The mandate of the Inter-religious Council of BiH is strengthening of peace in Bosnia and Herzegovina and endeavouring to bring about reconciliation throughout the country. Internationally, the Inter-religious Council has got in touch with international organizations dealing with the freedom of confession and takes part in the World Conference of Religion for Peace (WCRP).

362. In Bosnia and Herzegovina, the Inter-religious Council has taken all steps to familiarize and better understand people from other religious communities and launched “**Susret**” (Meeting) radio programme where the accent is not placed on differences, but similarities among different religions are pointed out instead. The Inter-religious Council has also published the first impression of *The Glossary of Religious Terms*, which is targeted at the media and intended for the public to get familiar with the Inter-religious Council, *the Religious Views* publication and *the Inter-religious Dialogue from the Perspective of BiH* publication.

363. Members of the Inter-religious Council very much helped in drafting the **Law on Freedom of Religion and Legal Status of Churches and Religious Communities in Bosnia and Herzegovina** (BiH Official Gazette 5/04) setting up a legal framework at the level of Bosnia and Herzegovina which equalize rights and responsibilities of all churches and religious communities in Bosnia and Herzegovina without any discrimination and prohibits all forms of intolerance or discrimination grounded on the confession of faith and religious beliefs. The Law is brought in line with international declarations and conventions signed by Bosnia and Herzegovina that are inherent part of Bosnia and Herzegovina legal system.

364. The Inter-religious Council tackles important issues in the application of the Law on Freedom of Religion and the exercise of rights and responsibilities of churches and religious communities provided for in the Law. The Inter-religious Council urges the return of property to the churches and religious communities. This matter will be efficiently addressed once the Law on Restitution has been passed, the Law being drafted by Council of Ministers appointed commission. Pursuant to the BiH Constitution, the Basic Agreement between Bosnia and Herzegovina and the Holy See was signed in April 2007. Bosnia and Herzegovina guarantees to the Catholic Church and the legal and natural persons freedom of mutual communication and maintaining contacts with the Holy See, bishop conferences of other countries and with other institutions and persons in the country and abroad. The basic principles from the Agreements are applied without any hindrance or stoppages.

365. In order to promote the inter-religious dialogue, BiH has signed and ratified international agreements of bilateral nature both with the Holy See and the Serbian Orthodox Church.

366. Thus, the **Inter-religious Council of BiH** helps with both truth seeking and reconciliation and linking of differences with a view to the religions co-existing in full respect of one for another and being fully cooperative. In this way it helps with better understanding of co-existence in Bosnia and Herzegovina.

367. The Inter-religious Council consists of the following communities: the Islamic Community of BiH, the Serbian Orthodox Church, the Catholic Church and the Jewish Community of BiH.

368. The Inter-religious Council condemns any violence against human beings as human rights violations mean violations of God's laws.

369. Bosnia and Herzegovina guarantees to all the religious heads freedom of unhindered discharging their mission throughout BiH. Each child has an opportunity to, at his/her own choice, enjoy the right to religious teaching and any act of hatred grounded on ethnic or religious background is condemned.

370. In May 2006 the Parliamentary Assembly of BiH passed and published a Decision on the establishment of **the Council of National Minorities of Bosnia and Herzegovina** within the Parliamentary Assembly of Bosnia and Herzegovina (BiH Official Gazette 38./2006.).

371. For two or three years now Bosnia and Herzegovina has been continuously informing the public about national minorities. The TV channels regularly broadcast information about minority communities, their culture, customs, and specific characteristics of individual minority communities and activities of the national minorities' NGOs. The Radio Television of the Republika Srpska has a weekly programme about minorities, while TV BiH and the Federal Television have thematic programmes at irregular intervals.

372. As a general policy, good cooperation between minorities' NGOs and other associations with their countries of origin is enabled. No formalities are required or any obstacles are posed in cross-border communication. Namely, all minority communities, except the Roma, have contacts within their countries of origin and keep them without any conditions or barriers. The NGO of Slovenians, Checks, Ukrainians, Italians, Hungarians, Macedonians and others have particularly good cooperation in culture, education, learning the mother tongue, information etc. The active

NGOs have managed to identify their needs and, collaborating with the embassies of their parent countries, have developed various modes of cooperation to meet needs in the fields mentioned above.

373. In the territory of BiH, within the non-governmental sector, there are numerous associations for the protection and promotion of human rights (Helsinki Committee, Centre for Human Rights, Link Diversity etc.) and for preservation of ethnic and cultural legacy of the minority communities (“Češka beseda” - Check association in the RS, “Taras Ševčenko” - Ukrainian association in the RS-u, “Lira” Cultural Society of Jews etc.).

374. It is important to note that, as a general policy, for a few years now a number of thematic debates have been held on various issues involving the situation of minorities. Round tables attended by minority communities, NGOs protecting rights of minorities and international community and appropriate ministries of BiH, entities, cantons and municipalities have received media coverage of high professional quality, which for sure contributed to the enhancement of tolerance and understanding of the minorities’ situation in Bosnia and Herzegovina.

375. Signing the Framework Accords for peace in Dayton brought about peace in Bosnia and Herzegovina and it set off on a fast journey of recovery, strengthening **tolerance, respect and recognition of differences through development of a modern democratic state indicating aspirations to join the European integration processes as soon as possible.**

376. The Inter-religious Council of Bosnia and Herzegovina has been operational since 1997 on the grounds of an understanding and efforts of four major religious communities in BiH: the Islamic Community of BiH, the Serbian Orthodox Church, the Catholic Church and the Jewish Community of BiH.

377. We need to emphasize that the Inter-religious Council of BiH is no supra-religious institution nor is it an institution aiming at controlling or dictating things to any church or religious community, as each and every of them have full autonomy and full integrity. The Inter-religious Council is a forum of agreeing and taking joint positions wherever it is possible and therefore, so far none of the decisions, statements or opinions have been given without having reached consensus. If there is no consensus they will not give any view. However, the Inter-religious Council of BiH has taken a lot of initiatives that involved the issues easily addressable: the issue of relations between church and mosque, the issue of relations between religion and education in public schools, the issue of restitution of the property taken away from religious communities and churches and the like.

378. The Inter-religious Council of BiH took an initiative for the Law on Freedom of Religion and Legal Status of Churches and Religious Communities in Bosnia and Herzegovina, which was passed in 2004. This Law guarantees to all citizens of BiH the right to freedom of consciousness and religion pursuant to the BiH Constitution. This Law is aimed at helping a faster advancement of mutual understanding and respect for the right to freedom of consciousness and religion and at creating a single legal framework that will equalize rights and obligations of all churches and religious communities without any discrimination.

379. The Inter-religious Council has prepared a glossary of religious terms with the main goal to help the citizens of BiH who want to receive religious education.

380. In their public addresses the Inter-religious Council of BiH, i.e. members of the Executive Board, very frequently warn and call upon the public, individuals and BiH institutions to jointly respond to and condemn incidents, especially those that involve violence to which juveniles are parties to, disseminating national and religious hatred, intolerance and other negative and detrimental acts that slacken the development of the society. On the contrary, presenting their views the Inter-religious Council of BiH indicates how important dialogue and cooperation based on the truth, justice, peace and reconciliation, equality and trust among all citizens of BiH are.

381. With a view to promoting inter-religious dialogue, BiH has signed and ratified international agreements of bilateral nature both with the Holy See and the Serbian Orthodox Church.

**Recommendation No. 25: The Committee recommends that the State party take into account the relevant provisions of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, particularly as regards Articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.**

382. Respecting the relevant provisions of the Durban Declaration and recommendations concerning Programme of Action that the State parties should take when combating against any form of racial discrimination, pursuant to Article 2 of the Convention on the Elimination of All Forms of Discrimination, Bosnia and Herzegovina expressly prohibits any kind of support of or encouragement to a racial discrimination in the Constitutions of both BiH and Entities and in the Statute of the Brčko District of BiH. An overall legislative and legal system has been set up to prohibit racial discrimination.

383. Having acceded to the Human Rights Council in May 2007, BiH has been a co-sponsor of numerous resolutions which condemn racial discrimination in the world. In addition, in its actions BiH endorses the Declaration and Programme of Action adopted at the 2001 World Conference on Racial Discrimination in Durban (South Africa). Acceding EU, BiH voted for the resolution of the UN General Assembly on holding the Durban Review Conference in 2009. In this context, as a member of the Human Rights Council, BiH endorses the work of the Inter-governmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action.

384. Pursuant to the obligations flowing from the valid legislation and other documents at the level of BiH, the Ministry of Foreign Affairs of BiH has considered draft laws and regulations protecting and promoting the rights of national minorities in BiH, especially the Roma, as the largest national minority, and gave them its full support.

385. On its part, as a member to the UN Human Rights Council, BiH has always been open for cooperation with the holders of the special procedures mandate. In this context, in 2007 the Ministry of Foreign Affairs of BiH took part in organizing a visit by the Special Rapporteur on the Right to Education, Mr. Vernor Munoz, who paid a visit to some of the schools in BiH called “two schools under one roof” as one of the numerous activities he had while visiting BiH.

386. Respecting Article 3 of the Convention BiH condemns any form of racial discrimination or apartheid, with a resolution to eliminate all such acts promptly at the moment they have occurred. To that end, BiH condemns any form of propaganda inciting intolerance or racial discrimination. BiH provides protection before courts that issue decisions subject to appeal. BiH is sensitive enough to take actions should intolerance or racial discrimination occur in education, upbringing, culture and information with a view to successfully fighting against prejudices that usually lead to racial discrimination, to helping with understanding tolerance and friendship among nations and ethnic groups. This is pointed out because BiH has three constituent peoples and 17 national minorities, where various forms of intolerance or discrimination have the possibility to occur.

387. BiH is especially interested in points 86 and 87 of the Durban Declaration warning that the dissemination of all ideas based upon racial superiority or hatred shall be declared an offence punishable by law with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in articles 4 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination. BiH holds the following points particularly important for it: point 68 paying attention to the Roma, as in BiH the national minorities is the largest and their situation has been elaborated above; points 47, 50 and 51 of the Durban Declaration are dedicated to migrant workers and the exercise of their rights in the countries where they live and work. Bosnia and Herzegovina is among rare countries that has signed the International Convention on The Protection of The Rights of All Migrant Workers And Members of Their Families and has already sent to the treaty committee the Initial Report presenting the situation of migrant workers and members of their families in BiH. Currently an invitation to present the Report and its adoption is expected; a topic in the Durban Declaration that especially attract Bosnia and Herzegovina's attention are points 54 and 55 of the Declaration reminding the State Parties of the refugees and asylum seekers treatment. Although the rights of refugees and displaced persons are mostly exercised adequately, especially with regard to property issues, where property has been reinstated almost 100 %, we have problems with sustainable return. It means that returnees should be provided, apart from repairing houses and other buildings, with roads and other kinds of infrastructure, employment, health insurance and social security, conditions for regular schooling of children and a lot of other prerequisites. A separate problem is segregation in schools where there are "two schools under one roof", which is elaborated in Recommendation No. 24. Unfortunately, although BiH has been putting a lot of efforts, it does not have its own capacities to solve them by itself. Action and other plans have been adopted and hopefully the problems heavily weighing on all its citizens will be soon resolved with a support of the international community. One very important part of Durban Declaration is about the situation and functioning of religious communities, which is elaborated in the preceding section of the Report.

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