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Совет по правам человека

Сорок четвертая сессия

15 июня – 3 июля 2020 года

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**Поощрение и защита всех прав человека,
гражданских, политических, экономических,
социальных и культурных прав,
включая право на развитие**

Посещение Боснии и Герцеговины

Доклад Специального докладчика по вопросу о правах человека мигрантов** ***

Резюме

Специальный докладчик по вопросу о правах человека мигрантов Фелипе Гонсалес Моралес имеет честь препроводить настоящий доклад о своей поездке в Боснию и Герцеговину, состоявшейся 24 сентября – 1 октября 2019 года.

В ходе своей поездки Специальный докладчик встретился с представителями соответствующих правительственных ведомств и судебных органов, омбудсменами, страновой группой Организации Объединенных Наций, делегацией Европейского союза в Боснии и Герцеговине, представителями организаций гражданского общества, волонтерами и мигрантами. Помимо встреч с соответствующими сторонами, Специальный докладчик посетил центры приема мигрантов. Во время этих посещений он встречался и беседовал наедине с женщинами, мужчинами, девочками и мальчиками из числа мигрантов.

Основная цель поездки заключалась в оценке существующих законов, политики и практики в области управления миграцией в Боснии и Герцеговине и их воздействия на права человека мигрантов всех категорий, включая просителей убежища и мигрантов с неурегулированным статусом.

* Переиздано по техническим причинам 29 мая 2020 года.

** Резюме доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен.

*** На основании достигнутой договоренности настоящий доклад издается позднее предусмотренного срока его публикации в связи с обстоятельствами, не зависящими от представляющего доклад лица.



Annex

Report of the Special Rapporteur on the human rights of migrants on his visit to Bosnia and Herzegovina

I. Introduction

1. The Special Rapporteur on the human rights of migrants, Felipe González Morales, conducted an official visit to Bosnia and Herzegovina from 24 September to 1 October 2019, at the invitation of the Council of Ministers of Bosnia and Herzegovina. The main objective of the visit was to assess existing laws, policies and practices in relation to migration governance in Bosnia and Herzegovina and their impact on the human rights of migrants of all categories, including asylum seekers and migrants in an irregular situation.

2. During his visit, the Special Rapporteur met with the relevant government authorities, representatives from the judiciary, Ombudspersons, the United Nations country team, the delegation of the European Union, representatives of civil society organizations, volunteers and migrants. In Sarajevo, the Special Rapporteur met with the Minister of Security, representatives of the Ministry of Foreign Affairs, the Ministry of Human Rights and Refugees, the Ministry of Justice, the Ministry of Civil Affairs and the Coordination Body for Migration and judges from the Court of Bosnia and Herzegovina. He also had the opportunity to meet with the Ombudspersons. In Banja Luka, he met with representatives of the Ministry of the Interior of Republika Srpska and members of the coordination body for monitoring the movement of migrants. In Bihać, he met with the Prime Minister and Police Commissioner of Una-Sana Canton and the Mayor of Bihać.

3. In addition to meetings with interlocutors in relevant areas, the Special Rapporteur conducted visits to facilities for migrants, including the immigration detention centre in Sarajevo, the asylum centre in Delijaš, the Ušivak temporary reception centre, the Miral temporary reception centre, the Bira temporary reception centre, the Sedra temporary reception centre, the Borići temporary reception centre and the Vucjak site. During those visits, he met and spoke in private with migrant women, men, girls and boys.

4. The Special Rapporteur expresses his appreciation for the cooperation extended to him by the authorities in Bosnia and Herzegovina prior to, during and after the visit. He thanks the United Nations country team for their valuable support and assistance. He also extends his gratitude to every migrant who shared his or her personal testimony with him during the visit.

II. General background information

5. The conflicts in Bosnia and Herzegovina between 1992 and 1995 resulted in large population movements and demographic changes. Currently, the country is experiencing a demographic decline, with a high rate of emigration. In the absence of accepted State-wide census results, an estimate of the total population of Bosnia and Herzegovina as at 2016 is approximately 3.5 million.¹ Based on available official data of relevant statistical agencies of countries hosting citizens of Bosnia and Herzegovina and diplomatic and consular representations of Bosnia and Herzegovina, it is estimated that at least 2 million persons have emigrated from Bosnia and Herzegovina, representing approximately 56.6 per cent of the total population of the country.²

¹ Bosnia and Herzegovina, Agency for Statistics, "Bosnia and Herzegovina in numbers, 2016", *Official Gazette*, No. 60/16.

² Bosnia and Herzegovina, Ministry of Security, "Migration profile for the year 2018", June 2019.

6. Following the closure of the “Western Balkan route”³ in 2018, the number of migrants, including asylum seekers, arriving in Bosnia and Herzegovina increased significantly. According to the statistics provided by the authorities during the visit of the Special Rapporteur, between January 2018 and August 2019, approximately 40,000 migrants entered Bosnia and Herzegovina irregularly. Most of them crossed the eastern border with Serbia, and some entered from the southern border with Montenegro. Once in Bosnia and Herzegovina, most migrants travelled through the territory of Republika Srpska to reach Una-Sana Canton in the Federation of Bosnia and Herzegovina. At the time of the visit, there were approximately 7,300 migrants in the country. Most of them were sheltered in Una-Sana Canton, bordering Croatia. The migrant influx has exposed the political divisions in the country. In October 2019, one year after the elections, Bosnia and Herzegovina still had not formed a State-level Government.

7. Nevertheless, in his exchanges with government officials, the Special Rapporteur noted with appreciation that, despite having different points of view on various issues, authorities at all levels mentioned the humanitarian aspect of their approaches to the migration situation in the country. It is equally hopeful to know that ordinary citizens of Bosnia and Herzegovina have demonstrated sympathy and solidarity towards migrants. Having experienced an atrocious war, many citizens of Bosnia and Herzegovina mentioned that they related to the plight of migrants. It is remarkable that people generously distributed food, clothes and basic goods to migrants transiting through their towns. Some also sheltered migrants in their private homes. In areas where reception centres are located, local residents came forward to work with United Nations agencies and civil society organizations, providing a wide range of services and assistance to migrants.

III. Normative and institutional framework for the protection of the human rights of migrants

A. International legal framework

8. Bosnia and Herzegovina is a party to all the core human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the second Optional Protocol thereto, the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto, the Convention on the Rights of the Child and the Optional Protocols thereto and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

9. Bosnia and Herzegovina has ratified the Convention relating to the Status of Refugees and the 1967 Protocol thereto, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness. Bosnia and Herzegovina has also ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

10. It is also noteworthy that Bosnia and Herzegovina voted in favour of the Global Compact for Safe, Orderly and Regular Migration (see A/73/PV.60).

1. National legislation and policies

11. Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Agreement, signed on 14 December 1995, contains the current Constitution of Bosnia and Herzegovina. As an integral part of a peace agreement, the

³ In 2015, mixed migration flows, which include asylum seekers, began to follow an irregular migration pattern, through Greece by way of North Macedonia, through Serbia into Hungary, then towards Western European countries.

Constitution establishes Bosnia and Herzegovina as a democratic State, operating under the rule of the law, and grants citizens all of the rights and freedoms set forth in the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto.

12. Bosnia and Herzegovina consists of two entities, namely, Republika Srpska and the Federation of Bosnia and Herzegovina. Each entity has its own Constitution. Article 2 of the Constitution of the Federation of Bosnia and Herzegovina guarantees that all persons within the territory of the Federation shall enjoy the rights to, *inter alia*, asylum, freedom of movement, education, health and shelter.⁴

13. The domestic normative framework is generally aligned with the international human rights treaties ratified by Bosnia and Herzegovina. In an effort to bring domestic legislation into line with the relevant European standards, Bosnia and Herzegovina adopted a new Law on foreigners in November 2015 and a new Law on asylum in February 2016, replacing the previous Law on the movement and stay of aliens and asylum.

14. The Law on foreigners upholds the principles of non-refoulement and non-discrimination. It prohibits collective expulsion. Under the current normative framework, irregular entry and stay are not considered criminal offences. Immigration detention is not used in connection with irregular entry into the country or breaching the conditions of stay. Once an expulsion decision is adopted, migrants in an irregular situation are allowed to leave the country voluntarily within the deadline of execution of the expulsion order.

15. Under the Law on foreigners, a decision may be taken ordering surveillance by placement in an immigration centre for a period not exceeding 90 days. After the expiration of that period, if there are still reasons for which a foreigner has been ordered to be placed under surveillance, the surveillance may be extended, up to 90 days, so that the total duration of surveillance at the immigration centre cannot exceed 180 days. In case of a lack of cooperation by a foreigner in the process of deportation or a delay in obtaining the necessary documents from the country to which the foreigner is to be deported, the duration of surveillance may be extended for a period longer than 180 days, provided that the total duration of surveillance at the immigration centre does not exceed 18 months continuously. The Special Rapporteur was informed in meetings with the relevant authorities that that is the case for countries with which Bosnia and Herzegovina has not signed readmission agreements, such as Afghanistan, Algeria and Pakistan. If it is not possible to deport the foreigner from Bosnia and Herzegovina within the above-mentioned period, he or she may be placed under surveillance by restriction of freedom of movement to a certain area or place, with the obligation to report to the local organizational unit of the Service for Foreigners' Affairs under the Ministry of Security or the police department. An appeal to the second-instance authority may be lodged against the decision to order surveillance through placement in the immigration centre, within three days of issuance of the decision. The appeal does not stay the enforcement of the decision. An appeal may be lodged with the second-instance authority against the decision to place a foreigner under surveillance through restriction of movement to a certain area or place, within 15 days of issuance of the decision. The appeal does not stay the enforcement of the decision. In both scenarios, an administrative dispute may be instituted against the decision of the second-instance body by filing a lawsuit before the Court of Bosnia and Herzegovina.

16. Under the Law on asylum, to claim asylum in Bosnia and Herzegovina, a person may express the intent to apply for asylum either to the border police of Bosnia and Herzegovina at a border crossing or to the local-level organizational units of the Service for Foreigners' Affairs. Following the expression of the intent to apply for asylum, an attestation of the expressed intent is issued by the Service. Provided by the Law, the attestation of the expressed intent to apply for asylum is normally valid for eight days. In situations in which a large number of people express the intention to apply for asylum, the attestation of the expressed intention may be valid for 14 days. In practical terms, therefore, during a period of mass arrivals, within 14 days of having expressed the intention to seek asylum, one must file an asylum application with the Sector for Asylum under the Ministry of Security of Bosnia

⁴ Constitution of the Federation of Bosnia and Herzegovina. Available at http://rai-see.org/wp-content/uploads/2015/08/constitution_fbih.pdf.

and Herzegovina. In the event that the asylum application is not submitted within the deadline, without a justifiable reason, the person will be subject to the provisions of the Law on foreigners, which regulates the movement and stay of aliens.

17. According to the Law on asylum, upon receipt of the asylum application by the relevant authorities, the asylum seeker is registered. After the registration, the Sector for Asylum, responsible for evaluating asylum claims, conducts interviews. The Law provides that the Ministry of Security must decide on the asylum application within 18 months. Decisions made on asylum applications by the Ministry of Security may be appealed with a lawsuit brought before the Court of Bosnia and Herzegovina. The Ministry of Human Rights and Refugees is the responsible authority overseeing a person who has been granted refugee status or subsidiary protection.

18. The Law on the provision of free legal aid⁵ in Bosnia and Herzegovina was adopted in 2016. Until the adoption of that State law, the free legal aid system in Bosnia and Herzegovina was fragmented. Some entities and cantons enacted laws and established institutions to provide free legal aid. Pursuant to the State Law on the provision of free legal aid, the Ministry of Justice is in charge of the implementation of the Law. A legal aid office was established to provide those services.

2. National human rights institution

19. The Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, established in 1996, has A status accreditation granted by the Global Alliance of National Human Rights Institutions. As an independent institution, the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina handles complaints related to the poor functioning of, or human rights violations committed by, any authority of Bosnia and Herzegovina, its entities and the Brčko District. There are three ombudspersons in the Institution. In November 2018, the Institution published a special report on migration in Bosnia and Herzegovina.⁶

3. Coordination Body for Migration

20. The State-level Coordination Body for Migration was established following decisions adopted by the Council of Ministers in 2013 and 2016.⁷ The Coordination Body is headed by the Ministry of Security and composed of representatives from all levels of government. As an operational headquarters, the Coordination Body was mandated to coordinate all activities related to migration with the competent institutions and agencies, as well as with established headquarters or other bodies at the entity and Brčko District levels and with international organizations and non-governmental organizations, in order to overcome the migration crisis. The Coordination Body is also tasked with proposing measures, decisions and procedures, through the Ministry of Security, to the Council of Ministers of Bosnia and Herzegovina and appropriate institutions and agencies to address the migration crisis.

21. At the time of the visit of the Special Rapporteur, the Coordination Body for Migration had not yet adopted a comprehensive strategy for providing a durable solution to the current migration situation in Bosnia and Herzegovina. The Coordination Body had failed to allocate in a timely manner suitable premises as reception centres for accommodating asylum seekers and migrants. The lack of preparedness and of a strategy of the State-level authorities, despite their being aware of the arrival of migrants, including asylum seekers, has generated

⁵ Bosnia and Herzegovina, *Official Gazette*, No. 83/16.

⁶ Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, "Special report on migration in Bosnia and Herzegovina". Available at www.ombudsmen.gov.ba/documents/obmudsmen_doc2019010713545979eng.pdf.

⁷ In 2013, the Council of Ministers of Bosnia and Herzegovina adopted the decision establishing the Coordination Body for Migration in Bosnia and Herzegovina. The decision amending the decision on the establishment of the Coordination Body, in 2016, extended the competence of the Coordination Body, so that in case of migration emergencies or an anticipated migration emergency, the Coordinating Body also acts as the Operational Headquarters for Migration in Bosnia and Herzegovina, which will also include representatives of the headquarters at the entity and Brčko District levels. See Bosnia and Herzegovina, *Official Gazette*, No. 10/13, No. 64/13 and No. 1/14.

frustrations among ordinary citizens. The Special Rapporteur notes with concern the challenges faced by the Coordination Body in enforcing its decisions at the entity, cantonal and municipal levels. In that regard, at the time of reporting, the authorities of Bosnia and Herzegovina informed the Special Rapporteur that a new decision on the Coordination Body had been prepared, with a view to enlarging the scope and enhancing the level of representation of the relevant authorities in the Coordination Body.

22. In addition to the State-level Coordination Body for Migration, there are similar bodies at the entity level. In August 2018, the “coordination body to monitor the movement of illegal migrants across the territory of Republika Srpska” was established to monitor the movement of migrants in accordance with a decision of the entity Government.⁸ The coordination body in Republika Srpska, chaired by the Police Director, is tasked with monitoring the movement of such migrants and assisting with humanitarian transit through the entity.

IV. Accommodation capacity and conditions at reception centres

A. Official and temporary reception centres

23. Migrants, including asylum seekers, in Bosnia and Herzegovina are generally accommodated in open reception centres. There are two official reception centres for asylum seekers and refugees in Bosnia and Herzegovina, namely, the Delijaš asylum centre and the Salakovac refugee and asylum centre.

24. In response to the influx of migrants, five temporary reception centres were established through funding from the European Union. The five facilities are Bira, Borići, Miral and Sedra temporary reception centres in Una-Sana Canton and Ušivak temporary reception centre in Sarajevo Canton. All five temporary reception centres are located in the Federation of Bosnia and Herzegovina. Ušivak temporary reception centre has been run jointly by Service for Foreigners’ Affairs and the International Organization for Migration (IOM) since its inception. The other four temporary reception centres were being managed by IOM while the takeover procedures were in progress, at the time of the visit of the Special Rapporteur. There are established house rules at each facility. All reception centres receive operational support from a number of United Nations agencies and civil society organizations, providing a wide range of services, including protection service, health care, distribution of food and non-food items, psychosocial services, provision of water, sanitation and hygiene facilities, transportation and logistics services, legal aid, interpretation services and the organization of educational and leisure activities. Most of those services, including protection-related services, are project-based and subject to the availability of funding.

25. A private security company contracted by IOM provides security services at all temporary reception centres to ensure the safety and security of the residents. Unarmed private security personnel are present around the clock at all facilities. IOM provides security focal points who receive and address any complaints against security personnel with the private security company or with the local police, if the situation warrants it. The Special Rapporteur learned that, at the beginning of the operation of the facilities, there were reports of abusive conduct by private security personnel. As a result, IOM ceased engagement with nine private security officers. All personnel contracted through the private security company receive a series of human rights training courses provided by the United Nations.

26. The Special Rapporteur visited six reception facilities, namely, the Delijaš asylum centre and the Bira, Borići, Miral, Sedra and Ušivak temporary reception centres. At the time of the visit, while all the temporary facilities were running at almost their full capacities, there were approximately 40 individuals at the Delijaš asylum centre, one of the two official reception centres for refugees and asylum seekers, which has a maximum capacity of 154 beds. The Special Rapporteur notes that the Delijaš facility is located in a remote area close to the border between two entities. Despite the fact that the apartments at the facility are in

⁸ See the website of the entity Government of Republika Srpska (www.mup.vladars.net/eng/index.php?vijest=19060&vrsta=).

good condition and that residents there are provided with basic services, such as cleaning, transportation, primary health-care, free legal aid and psychological support services, asylum seekers occasionally refuse to be accommodated there due to, inter alia, its remote location, lack of Internet connection, poor telephone reception and lack of sufficient transportation services.

27. The Bira temporary reception centre is located in the centre of Bihać. The facility is equipped with 1,595 beds, but the approved accommodation capacity by the local authorities is for a maximum of 1,500 persons. At the time of the visit, the facility hosted approximately 1,300 migrants, including asylum seekers, predominately single men, and families with children and unaccompanied or separated children. At the gate of the Bira temporary reception centre, the Special Rapporteur witnessed a large group of migrants queuing for registration to reside at the centre. Some of them claimed to be minors. The Special Rapporteur learned that, although there were some empty beds at the facility, a part of them were reserved for those who had left the facility for less than 48 hours, given that they might return.

28. The Borići temporary reception centre exclusively hosts families with children, unaccompanied or separated children and individuals with other vulnerabilities. The maximum capacity is 430 beds and, at the time of the visit, there were approximately 280 individuals residing there.

29. The Miral temporary reception centre predominately accommodates single men and, on a temporary basis, unaccompanied or separated children. The facility has a capacity of approximately 600. On the day of the visit of the Special Rapporteur, the facility hosted 613 migrants, including asylum seekers, with approximately 100 individuals waiting outside the facility hoping to be accommodated.

30. The Sedra temporary reception centre is exclusively for families with children, unaccompanied or separated children and other individuals who are prioritized for voluntary relocation from other sites in the country. The facility has a maximum capacity of 420 beds. At the time of the visit, there were approximately 300 individuals accommodated there.

31. The Ušivak temporary reception centre has a capacity of up to 800 beds. On the day of the visit of the Special Rapporteur, approximately 730 individuals were accommodated there. The residents at the facility were predominately single men, but there were also families, unaccompanied or separated children and other individuals belonging to vulnerable groups accommodated there.

B. Families with children

32. The Special Rapporteur noted with appreciation the efforts made by the staff, many of which were nationals of Bosnia and Herzegovina, by the relevant United Nations agencies and by civil society organizations to create dignified, child-friendly and gender-sensitive living conditions for families with children, as much as resources allowed. In Sedra and Borići temporary reception centres, where most families with children are accommodated, there are a wide range of activities and services provided to the families living there. There are designated areas for nursing mothers and education and recreational activities for women and children of various age groups, and psychosocial support is provided.

33. The Special Rapporteur remains concerned that some families with children were accommodated at facilities that were designed for single men, such the Bira temporary reception centre. He learned that families were regularly relocated to more appropriate facilities, like the Borići and Sedra temporary reception centres.

C. Unaccompanied and separated children and other individuals with protection needs

34. In general, existing reception capacities for migrants, including asylum seekers, and the conditions of some temporary reception centres do not sufficiently meet the current needs, both in terms of capacity and protection-related requirements. Over 10 per cent of the people

on the move in Bosnia and Herzegovina are children, more than one third of whom are unaccompanied minors.⁹

35. Although extremely vulnerable persons are often referred to non-governmental organization-run safe houses or other appropriate shelters whenever available, there is a lack of appropriate alternative housing provided by the State for unaccompanied or separated children and victims of abuse and exploitation. Due to the lack of alternatives, the Bira temporary reception centre, designed for accommodating single men, is currently housing mixed populations of single men, unaccompanied minors and families with children. The Special Rapporteur notes with appreciation that United Nations agencies, as well as civil society organizations, are providing a wide range of educational, psychosocial and legal services to the children living there, however, the living conditions in the centre are not adequate or suitable for children. Although families with children and unaccompanied minors are lodged in designated areas, the lack of a possibility to fully separate various populations increases protection risks, including being exposed to human traffickers or smugglers.

36. In addition to the lack of adequate reception conditions for minors, especially unaccompanied and separated minors, the Special Rapporteur noticed several other issues of concern during his visit. The Ministry of Security does not conduct an age assessment of applicants; the age is systematically taken as claimed, without any evaluation. There are cases of unaccompanied minors who claimed to be older than their real age in order to be accommodated with adults for various reasons, including trying to get closer to sources of information about smugglers or on smuggling routes. The lack of an age assessment may result in minors being exposed to manipulation, exploitation or other abuses.

37. The Special Rapporteur also learned about the worrying trend of “pretend families”. Due to the lack of accommodation, many single men are left outside reception centres. There are over 40 known cases of single men pretending to be family members of an unaccompanied child in order to acquire access to services. In many of those cases, the single man abandons the child after he has received such access.

38. Migrant children, including asylum-seeking children, are not provided with family-based care, such as foster care or community-based care, independent living units or other alternatives. There are hardly any shelters or safe houses for children who are victims of violence or abuse, except for one shelter in Bihać run by a local non-governmental organization. Similarly, although victims of gender-based violence and other abuses have been identified in various centres, due to a lack of safe houses available in Bosnia and Herzegovina, victims cannot be effectively separated from the alleged perpetrators.

39. Pursuant to the Law on asylum, unaccompanied minors are to be provided with a guardian. The centres for social welfare, a subnational institution, provide social workers to act as legal guardians for unaccompanied or separated asylum-seeking children. The Special Rapporteur learned that some unaccompanied children faced difficulties in obtaining access to guardians in a timely manner, which further delayed their access to asylum procedures. In addition, the process of determining the best interests of the child seems flawed. Between January and August 2019, over 700 unaccompanied children were appointed with legal guardians. Due to the large number of unaccompanied minors entrusted to guardians, guardianship often extends only to legal representation and not to the promotion of the child’s overall well-being and the safeguarding of the child’s best interests.

D. Vucjak site

40. There has been a large discrepancy between the maximum capacity for accommodation in reception centres and the estimated number of migrants, including asylum seekers, in the country throughout 2018 and 2019. Apart from those accommodated in private

⁹ United Nations Children’s Fund (UNICEF), “Situation analysis of children in Bosnia and Herzegovina”, p. 21. Available at www.unicef.org/bih/media/4971/file/Situation%20Analysis%20of%20Children%20in%20Bosnia%20and%20Herzegovina.pdf.

houses and civil society-run accommodations, a great number of individuals, mainly single men, have stayed without shelter, mostly in Una-Sana Canton.

41. In June 2019, the local authorities in Bihać decided to begin relocating migrants, including asylum seekers, staying outside reception centres to the Vucjak site, which is a camp located very close to landmine-affected areas. There is a high fire and explosion risk, given that the site was formerly a landfill site. The decision by the Bihać authorities was believed to have been endorsed by the relevant authorities at the State level.

42. On the day of his visit to Vucjak, the Special Rapporteur learned that approximately 800 adult men and around 20 minors were located there. Migrants at the site mainly came from Afghanistan, Pakistan and the Islamic Republic of Iran. Many of them were escorted to the site by the local police. There was no running water. Drinking water was provided by the city, and two meals per day were delivered by the International Committee of the Red Cross in Bihać. The condition of the site was inhuman. There was no electricity, very few sanitation facilities, no warm water for showering and no medical care available. The tents used at the camp were thin and not warm enough for the cold weather in winter.

43. In his preliminary findings at the end of the official visit, the Special Rapporteur concurred with the assessment made by the United Nations country team concerning the Vucjak site and highlighted his concerns about the significant safety and health risks at the camp. He found the location of the site to be absolutely inappropriate and inadequate for accommodating human beings. For fear of any loss of life in the forthcoming winter, the Special Rapporteur urged the relevant authorities of Bosnia and Herzegovina, at the end of his visit, to cease the forcible escorting of migrants to that site and to urgently identify an alternative location to accommodate those migrants, prioritizing minors. After the visit, the same appeal was made to the State authorities in a follow-up letter dated 28 October 2019.

44. In that regard, the Special Rapporteur welcomes the actions taken by the relevant authorities. He was pleased to learn from the State authorities that the Vucjak site was finally dismantled on 11 December 2019. With the assistance provided by IOM, migrants who were located at the camp were transferred to Blažuj, a newly identified reception location near Sarajevo.

V. Access to asylum procedures and services provided to asylum seekers

A. Factors hindering fair and efficient access to asylum procedures

45. Based on the information provided by the authorities and the relevant United Nations agencies, of the 40,000 migrants who arrived in Bosnia and Herzegovina between January 2018 and August 2019, 93 per cent expressed their intention to seek asylum in Bosnia and Herzegovina. At the time of the visit of the Special Rapporteur, only 5.4 per cent of those who had expressed that intention chose to, and were able to, file an asylum application formally with the Sector for Asylum, due to the multiple barriers in law and in practice that hindered fair and efficient access to asylum procedures.

46. The Law on asylum provides that the attestation of the expressed intent to apply for asylum is valid for 14 days. In practice, 14 days is a very short period for asylum seekers to submit a formal asylum application, owing to a number of factors. The Special Rapporteur notes with concern that the Ministry of Security has not allocated sufficient resources to the Sector for Asylum to allow it to receive applications and process registrations during situations of mass influx. The Law on asylum requires that applicants register their temporary addresses with the competent authorities. In practice, it is not feasible for the majority of asylum seekers in the country who live outside the two official reception centres, including the five temporary reception centres, private accommodations or shelters, to do so. While most migrants are sheltered in Una-Sana Canton, the Sector for Asylum, which is in charge of receiving and registering asylum applications, does not have an office there. The first registration exercise conducted in Una-Sana Canton in 2019 did not take place until July, at a location where 110 individuals were registered. At the time of the visit of the Special

Rapporteur, there remained approximately 1,200 individuals awaiting asylum registration in the country. Delays in the asylum procedures are significant and have effectively become a deterrent for some asylum seekers to pursuing their asylum claims in Bosnia and Herzegovina.

47. Other factors hindering fair and efficient access to asylum procedures include the requirement of a KM 10 (approximately €5) administrative fee for the registration of an address for persons who are not accommodated in the two official reception centres and the lack of legal aid and interpretation services provided by the State.

48. The Special Rapporteur expressed his concerns regarding the above-mentioned obstacles faced by asylum seekers in the country. The Special Rapporteur was pleased to hear that the relevant authorities expressed their willingness to look into those issues. It was agreed by some officials that the KM 10 administrative fee should be removed. With regard to legal aid, every asylum seeker in Bosnia and Herzegovina is entitled by law to free legal aid. According to the Law on the provision of free legal aid, the office on the provision of free legal aid, within the Ministry of Justice, is the competent body that is mandated to provide the service. The Special Rapporteur unfortunately did not meet with a representative from that office. Based on the information collected from various stakeholders, he was only made aware of legal aid being provided by Vaša Prava Bosnia and Herzegovina, a non-governmental organization funded by the Office of the United Nations High Commissioner for Refugees (UNHCR).

B. Services provided to asylum seekers

49. State-level institutions are responsible for migration issues, whereas education, health care and other basic services are under the responsibility of the cantonal and municipal authorities. Although individuals who have expressed the intention to seek asylum in Bosnia and Herzegovina are entitled by law to accommodation, primary health-care and free legal aid services and access to the labour market, among other things, in practice, the enjoyment of those rights is often dependent upon where they are accommodated and the willingness of the authorities in charge of the relevant services at the entity, cantonal or municipal levels to provide them.

50. As mentioned above, Vaša Prava Bosnia and Herzegovina provides free legal information, legal counselling and legal assistance services to asylum seekers. Its staff are frequently present at a number of reception centres in the country.

51. The Special Rapporteur acknowledges the challenges faced by Bosnia and Herzegovina in providing health care to migrants, asylum seekers and refugees, while its health care system is already stretched in its capacity to meet the needs of its own citizens. Medical assistance at reception centres is facilitated by the Danish Refugee Council, with funding from the European Civil Protection and Humanitarian Aid Operations of the European Union. Working closely with the relevant United Nations agencies, such as IOM, UNHCR, the World Health Organization and UNICEF, the Danish Refugee Council assists with access to primary and secondary health-care services, including psychosocial and mental health services, for migrants, asylum seekers and refugees. By providing financial support to direct health-care responders, the Danish Refugee Council enhances the capacity of local hospitals to attend to the needs of migrants, asylum seekers and refugees. Each reception centre that the Special Rapporteur visited had a medical centre equipped with basic equipment for check-ups and a pharmacy. Doctors and nurses visit the facilities regularly. The Danish Refugee Council also facilitates specialized treatment or hospitalization, when required, and contributes to enhancing the overall protective environment and to the identification of individuals with protection needs, among other things.

52. The Bosnia and Herzegovina Women's Initiative, a non-governmental organization and one of the partner organizations of UNHCR, provides psychosocial support, interpretation and transportation services and recreational and vocational activities to asylum seekers and refugees at reception centres.

53. The Special Rapporteur noted that staff of United Nations agencies and civil society organizations worked closely with one another at all reception facilities that he visited. On the one hand, that demonstrates the openness of Bosnia and Herzegovina to cooperate and work with the international community and civil society organizations; on the other hand, it shows that, while the State should be primarily responsible, Bosnia and Herzegovina has been heavily relying upon the international community and civil society to provide essential services to migrants, asylum seekers and refugees.

C. Access to education

54. The Law on asylum provides that asylum-seeking children have the right to elementary and secondary education in Bosnia and Herzegovina. The Special Rapporteur was pleased to learn that, since January 2019, all asylum-seeking children between 6 and 15 years of age have been enrolled in the formal education system in Sarajevo and Una-Sana Cantons. That is a clear manifestation of the goodwill of the Government and the excellent collaboration among the competent authorities, the relevant United Nations agencies and civil society organizations.

55. The enrolment of asylum-seeking children in formal education does not seem to be a countrywide practice, however, partly due to the complex and highly fragmented education system in Bosnia and Herzegovina. It was brought to the Special Rapporteur's attention that asylum-seeking children accommodated in the Salakovac refugee and asylum centre in Herzegovina-Neretva Canton still did not have access to formal education. A decision on that matter was pending before the cantonal authorities, and the Special Rapporteur hopes to see positive developments soon. In the meantime, he understood that civil society organizations, United Nations agencies and the relevant authorities were working together to facilitate the enrolment of asylum-seeking children between 15 and 18 years of age in formal education.

VI. Immigration detention

56. The Special Rapporteur was pleased to learn that immigration detention was not automatic or mandatory and that it was used as a last resort in Bosnia and Herzegovina. Immigration detention, or placing an alien under surveillance in the immigration centre managed by the Service for Foreigners' Affairs, is a measure provided by the Law on foreigners, and triggered by an issued decision. In 2018, a total of 948 aliens were detained in the immigration centre.

57. In Bosnia and Herzegovina, forcible removal occurs when an alien has received an order to leave Bosnia and Herzegovina and has failed to abide with the decision within the deadline provided for the voluntary return. The Service for Foreigners' Affairs is responsible for the removal of aliens from Bosnia and Herzegovina. In 2018, 1,540 expulsion orders were issued, but only three individuals were forcibly removed from Bosnia and Herzegovina.¹⁰ The Special Rapporteur acknowledges the low percentage of forcible removal in Bosnia and Herzegovina and is encouraged to see the efforts made by the relevant authorities of Bosnia and Herzegovina to primarily apply the method of voluntary return in the context of irregular entries.

58. The immigration centre managed by the Ministry of Security is located in the eastern part of Sarajevo. The facility has a capacity of 80 beds in a male pavilion, 12 beds in a female pavilion and two apartments for families. On the day of the visit of the Special Rapporteur, 53 individuals, all single males, were held at the facility. During the visit to the immigration centre, the Special Rapporteur witnessed one migrant being put into solitary confinement, through an administrative decision, for a period of seven days for violent behaviour. The Special Rapporteur verified through several sources that there was an incident the preceding day at one of the reception centres in which the behaviour of the migrant concerned indeed put others in danger. Solitary confinement is a harsh measure, which may cause severe

¹⁰ Bosnia and Herzegovina, Ministry of Security, "Bosnia and Herzegovina migration profile for the year 2018".

psychological and physical adverse effects on individuals. Although the Special Rapporteur recognizes the valid security concerns of the authorities, he wishes to stress that solitary confinement should only be used in exceptional cases, as a last resort, for as short a time as possible and be subject to independent review.

59. The Special Rapporteur was informed at the immigration centre that at least two migrants detained at the facility claimed to be minors. After an exchange on the matter with the relevant authorities, it was confirmed that there were similar cases in which individuals, after being placed in immigration detention for a while, declared that they were minors. According to the relevant authorities, there is a strictly prescribed legal procedure to follow for such requests. The competent authorities are obliged to act in accordance with article 123 of the Law on foreigners, on the protection of the rights of minors, and every request is processed under an urgent procedure, unless otherwise determined. Although the Special Rapporteur is not in a position to verify the authenticity of the two claims that were brought to his attention during the visit, he is concerned about the alleged lack of an age assessment, including when the individuals changed their age claims. Based on the information provided by the relevant authorities, when interviewing a migrant for the first time, in cases in which there is no identity document available to establish the age of the person, the age is recorded as provided by the person. The lack of an age assessment in the registration process and the potential negative impacts on children are mentioned above, in the section concerning unaccompanied and separated children and other individuals with protection needs.

60. While acknowledging that the centre was short staffed, because some staff were reassigned to other facilities due to the influx of arrivals, the Special Rapporteur was concerned that, because of the workforce shortfall, some detainees had been deprived of their entitled outdoor activities for months. With regard to access to free legal aid, the Special Rapporteur was concerned to learn that detainees at the facility had virtually no access to free legal aid. Information on how to request legal aid was not provided at the facility.

VII. Restrictions on the freedom of movement of migrants

61. Although the authorities of Bosnia and Herzegovina did not consider there to be any limitations on the freedom of movement of migrants in the country, during the visit, the Special Rapporteur received ample evidence proving that such limitations existed and were extensive.

62. According to the coordination body for monitoring the movement of migrants established by Republika Srpska, its mandate is to monitor the movement of migrants in an irregular situation and provide humanitarian transit. The relevant authorities of the coordination body informed the Special Rapporteur that the police of Republika Srpska did not prohibit migrants from leaving the Sarajevo-Bihać train nor restrict their movement through the entity. According to the authorities of Republika Srpska, all migrants who had registered their intention to file asylum applications enjoyed full freedom of movement in the direction towards their designated migrant centre, as indicated in their certificate of registration. Should migrants be found not to have a certificate, they are referred to the Banja Luka field office of the Service for Foreigners' Affairs. However, the Special Rapporteur received numerous allegations of restrictions on the freedom of movement of migrants, including asylum seekers, imposed by the police of Republika Srpska. Migrants on the train from Sarajevo by way of Banja Luka to Bihać were reportedly not allowed to disembark on the territory of the entity. That confirms the Special Rapporteur's understanding of the position of Republika Srpska not to accept any migrant reception centre on its territory, but only to provide a corridor for migrants to reach the territory of the Federation of Bosnia and Herzegovina. The Special Rapporteur took note that Republika Srpska lacked the necessary capacities to provide accommodation and care for migrants or to establish reception centres on its own. Nevertheless, he wishes to stress that providing support to the efforts of Bosnia and Herzegovina in responding to migration challenges is primarily a question of solidarity. Migrant reception centres established in other parts of Bosnia and Herzegovina received strong support from the international community.

63. Although the authorities of Una-Sana Canton have in fact been shouldering the responsibility of the influx of migrants, with limited support from other parts of the country, they have also imposed restrictions on the freedom of movement of migrants, including asylum seekers. The Special Rapporteur is concerned that those restrictions have been enforced without any legal basis, since October 2018. Based on the information received from various sources, the police of Una-Sana Canton stop all buses and trains entering the Canton and ask all migrants to disembark. As a result of collective efforts by civil society and the relevant United Nations agencies, women and children have usually been allowed to continue their journey or provided with transportation services by IOM. Single male migrants were all forced to get off the bus or train, although they had purchased tickets for the ride. The restrictions resulted in migrants, including duly registered asylum seekers, being obliged to disembark from public transportation at the entry of the Canton and left with no choice but to walk for hours to reach reception centres. In addition, migrants were in practice mostly interdicted from using taxis or public transportation within Una-Sana Canton. In addition, the Special Rapporteur learned about incidents where police rounded up migrants, mainly single men, in the city and forcibly escorted them to the Vucjak site.

VIII. Pushback

64. Most of the migrants in Bosnia and Herzegovina have attempted to cross the border into Croatia, and the Special Rapporteur received reliable information about violent pushback against migrants and asylum seekers by the border police of Croatia, which forcibly returned them to the territory of Bosnia and Herzegovina. According to the testimonies received, many migrants were forcibly escorted back into Bosnia and Herzegovina, without going through any official procedure. The specific tactics vary, however, common patterns include the capture of people on the move, the confiscation of their property, especially communications equipment, being beaten with batons and chased by dogs with the purpose of physically exhausting them and preventing them from attempting another crossing. A number of male migrants were reportedly stripped, beaten and forced to walk back to Bosnia and Herzegovina barefoot. The abusive actions by the border police of Croatia clearly violate the human rights of those individuals. In reality, the approach of pushing back migrants has not deterred people on the move from advancing towards European Union countries. Instead, it seems to have led to a flourishing network of smugglers and organized criminal activities.

65. The Special Rapporteur had an opportunity to address his concerns with the Ambassador of Croatia to Bosnia and Herzegovina, in Sarajevo. Dialogue with the authorities of Croatia continued after the visit. The Special Rapporteur appreciates having received a written response from the competent authorities of Croatia in that regard.

66. In its response, it was mentioned that, in order to carry out its task to protect the integrity of the State border of Croatia, which is also the external border of the European Union, Croatia has deployed a large number of police officers to the border with Bosnia and Herzegovina. Croatia is of the view that actions taken by its border police towards migrants have been misrepresented. The Special Rapporteur was informed that those migrants who had crossed the border into Croatia were “issued with a decision on return in an administrative procedure pursuant to the Aliens Act”. It was also mentioned in the response that: “all reports of alleged use of means of coercion by Croatian police were looked into, but none of the reports provided sufficient information that would require a criminal investigation. In addition, in none of the reported cases [to date] was it determined that police officers had indeed used means of coercion against migrants. It was not confirmed in any of the cases that police officers committed the criminal offence of theft at the expense of third-country nationals.”

67. The Special Rapporteur also learned from the reply that the Ministry of the Interior of Croatia had a policy of zero tolerance against the unlawful use of means of coercion by its police forces. The Ministry holds regular human rights training for border police officers. Additional training courses, including ones on relevant European Union law and fundamental rights, were provided to police officers working on border surveillance. In that regard, the Special Rapporteur suggests that training materials for such courses should include the

recommended principles and guidelines on human rights at international borders¹¹ prepared by the Office of the United Nations High Commissioner for Human Rights.

68. The Special Rapporteur calls upon Croatia to adhere fully to its human rights obligations, including the principle of non-refoulement, through the prevention of the pushback of migrants in its operations at its borders. He looks forward to receiving updated information on the developments on the ground, in particular information on positive improvements in that regard.

IX. Conclusions and recommendations

A. Recommendations to the authorities of Bosnia and Herzegovina

69. The Special Rapporteur welcomes the openness demonstrated by Bosnia and Herzegovina in cooperating with the international community and civil society in the area of migration governance. United Nations agencies and civil society organizations are providing substantial contributions to the protection and promotion of the human rights of migrants during the present influx of migrants. The competent authorities of Bosnia and Herzegovina are encouraged to continue working closely with international and local partners, in particular those with strong human rights protection mandates. The Special Rapporteur notes with appreciation that immigration detention is used as a last resort in Bosnia and Herzegovina and that migrants are generally accommodated in open reception centres where they have access to basic services. The enrolment of school-age asylum-seeking children in the formal primary education system is a good practice. The Special Rapporteur encourages the authorities of Bosnia and Herzegovina to share their experience with their counterparts in other countries in that regard. Good cooperation with the international community and civil society also exists in the area of health-care and other services provided to migrants, asylum seekers and refugees.

70. The increased flow of migrants in 2018 and 2019 has exposed the significant institutional and coordination weakness of the authorities at various levels of government of Bosnia and Herzegovina. The political deadlock has undermined the capacity of the State to respond to the migration situation in line with international human rights standards. The Special Rapporteur strongly urges Bosnia and Herzegovina to assume State responsibility and engage with authorities at all levels with a view to working towards a State-led response to the migration situation in the country.

71. Issues related to migration governance are politicized at various levels of government. Certain politicians use anti-migrant rhetoric for political gain, neglecting the negative impact that it has on the rights of migrants. Bosnia and Herzegovina should take all measures necessary to take the lead in the development of both short-term and long-term migration strategies that place the human rights of migrants at their centre. An assessment of the total number of migrants in the country, as well as in the region, would be helpful first steps.

72. Considering the nature of migration and the specific regional context, Bosnia and Herzegovina may benefit from a meaningful regional consultation with neighbouring countries for seeking constructive regional solutions. A participatory consultation with countries in the region on migration governance would provide an opportunity to assess the profile of migrants in the region. A regional consultation could also provide a platform for the intensification of regional efforts to combat human trafficking, smuggling networks and other organized criminal activities. The Special Rapporteur encourages the resident coordinator to facilitate such a regional consultation.

73. The Special Rapporteur calls upon Bosnia and Herzegovina to undertake all steps necessary to strengthen the State-level Coordination Body for Migration and to

¹¹ OHCHR, "Recommended principles and guidelines on human rights at international borders". Available at www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf.

ensure that decisions taken by the Coordination Body are based on wide consultation with the relevant government institutions at the entity, cantonal and municipal levels. It is also essential to enhance the Coordination Body's power to enforce the implementation of its decisions. The Special Rapporteur encourages Bosnia and Herzegovina to take action in that regard.

74. The Special Rapporteur urges Bosnia and Herzegovina to improve access to asylum and enhance the efficiency of the asylum procedure. To that end, he recommends that the Government:

(a) Set up outreach teams to conduct individual assessments, determine protection needs and register asylum seekers at the border areas and within the country, including in Republika Srpska;

(b) Undertake age assessments to identify children, especially unaccompanied or separated children, to ensure that protection measures are in place and that, in all actions concerning children, the best interests of the child are a primary consideration;

(c) Allocate additional resources to the authorities in charge of asylum procedures to enhance their capacity and efficiency in registering and processing asylum claims and address the delay in the asylum procedure, with a view to ensuring that asylum seekers are registered and that applications for asylum are assessed within a reasonable time frame;

(d) Consider technical cooperation with the relevant United Nations agencies, in particular UNHCR, to identify and favourably prioritize applications from individuals with manifestly well-founded claims or vulnerabilities warranting prioritized attention to meet their protection needs;

(e) Provide necessary identification and other administrative documents, without undue delay, for asylum seekers whose claims are pending for evaluation to enable their access to work and other services;

(f) Provide free legal aid and interpretation services, throughout the procedure, as recognized in domestic legislation, for asylum seekers;

(g) Take the steps necessary to remove all administrative obstacles faced by asylum seekers in registering their claims, including facilitating the registration of addresses and waiving any administrative fees;

(h) Improve the working methods of the centres for social assistance and welfare to avoid unnecessary delays in providing unaccompanied or separated children with a guardian and other necessary protection.

75. With regard to the reception conditions for unaccompanied or separated children, the Special Rapporteur is concerned that, although there are designated zones for unaccompanied or separated children in a number of reception facilities, many protection risks remain. The Special Rapporteur calls upon the Government of Bosnia and Herzegovina to provide appropriate care and accommodation, such as family or community-based care or foster care for unaccompanied children and children who are victims of abuse or exploitation.

76. The Special Rapporteur is concerned about restrictions imposed by the entity, cantonal and local authorities on the freedom of movement of migrants who have expressed their intention to seek asylum in Bosnia and Herzegovina. Those restrictions are in violation of domestic legislation and relevant international human rights standards. He calls upon the relevant authorities to ensure the right to freedom of movement for migrants, especially asylum seekers, in the entire territory of Bosnia and Herzegovina.

77. The Special Rapporteur notes with concern the large discrepancy between the maximum capacity for accommodation in reception centres and the estimated number of migrants, including asylum seekers, in the country and that many single men and male minors are sheltered in harsh conditions. Although individuals have various protection needs, no one should be left behind. To that end, the Special Rapporteur

recommends that the two official reception centres for refugees and asylum seekers be fully open to migrants based on their protection needs, regardless of their status. In the interim, considering the situation in the region, Bosnia and Herzegovina should work closely with the international community and civil society partners to identify additional locations and increase its reception capacity for migrants, asylum seekers and refugees.

78. The Special Rapporteur welcomes the fact that immigration detention is generally used as a last resort in Bosnia and Herzegovina and that immigration detention is understaffed due to the current migration situation in the country. He urges the competent authorities and monitoring bodies, including the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, to conduct regular visits to the immigration detention centre in order to protect migrants deprived of liberty and to prevent any human rights violations against them.

B. Recommendations to the United Nations country team

79. The resident coordinator and the United Nations country team should assist with and facilitate the holding of a participatory regional consultation on migration governance to develop a regional strategic plan and find durable regional solutions that ensure the protection of the rights of migrants in the region.

80. The United Nations country team and the office of the resident coordinator are encouraged to raise funds and include in all projects a human rights-based approach to addressing the various protection needs of people on the move.
