



## Organization for Security and Co-operation in Europe

### Special Representative and Co-ordinator for Combating Trafficking in Human Beings

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#### Foreword

In June 2012, I had the pleasure to pay an official country visit to Bosnia and Herzegovina (BiH). In Sarajevo, I held discussions with representatives of national authorities, including with the Minister of Justice, the Minister of Security, the State Co-ordinator for Combating Trafficking in Human Beings and other senior officials, to support ongoing efforts in the prevention of trafficking in human beings, the protection of the victims and holding accountable the perpetrators. I also had the opportunity to meet with civil society organizations and academics active in these efforts from all over the country.

The specific objective of the country visit was to promote full implementation of the OSCE commitments in the field of anti-trafficking action and to suggest action-oriented recommendations to better prevent and respond to human trafficking

I would like to acknowledge, in particular, the constructive engagement of the Government of BiH with regard to the enhancement of anti-trafficking efforts. The draft recommendations stemming from this visit were shared in advance with the authorities and I am delighted to report that concrete measures have already taken place. First of all, I welcome the recent legislative amendments in Brcko District and most recently in Republika Srpska, to harmonize the legislation on THB with international standards, and note that there have also been steps taken in this direction in the Federation of BiH. Further, there is also now agreement reached on the competence and jurisdiction of entity and state levels regarding cases of THB, so that cases which have an international dimension will be referred to the state level. I was also pleased to learn of the recent passing of legislation to protect foreign victims of THB in BiH.

I appreciated the consultations held in BiH and the exchange of knowledge and information to identify both good practices and challenges. There is a strong commitment on the part of the Government of BiH and civil society to strengthen prevention of human trafficking, the protection of the victims and the punishment of the offenders, including in the area of trafficking for labour exploitation. I look forward to further co-operation on the occasion of follow-up to the report.

A handwritten signature in blue ink, appearing to read 'M. Giammarinaro', with a horizontal line extending to the right.

Maria Grazia Giammarinaro



## Organization for Security and Co-operation in Europe

### Report by OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her visit to Bosnia and Herzegovina, 12–14 June 2012<sup>1</sup>

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#### Introduction

1. This Report presents the main findings of the official country visit to Bosnia and Herzegovina (BiH) of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings (in the following referred to as the Special Representative) that took place (in Sarajevo) from 12 to 14 June 2012.<sup>2</sup>
2. The focus of the Special Representative's visit was to learn about the country's ongoing anti-trafficking efforts and to support further work aimed at preventing trafficking, assisting trafficked persons and protecting their rights, as well as bringing justice to perpetrators in line with OSCE commitments and relevant international standards.
3. In the course of the visit, the Special Representative engaged in direct consultations with high-level State officials, including the Minister of Justice, Mr. Bariša Čolak, Minister of Security and Deputy Chairman of the Council of Ministers, Mr. Sadik Ahmetovic, Deputy Minister of Human Rights and Refugees, Ms. Radmila Mitrović, Deputy Minister of Civil Affairs, Ms. Denisa Sarajlić-Maglić, and Deputy Minister of Foreign Affairs, Ms. Ana Trišić Babić. In addition, she met with Ms. Aleksandra Pandurevic, the Chairperson of the BiH Parliamentary Assembly Joint Committee for Human Rights, Child Rights, Youth, Immigration, Refugees, Asylum and Ethics, and conducted meetings with the State Co-ordinator for Combating THB, the Director of the Gender Agency, and Judge Ms. Minka Kreho, who is the President of the Criminal Division of the BiH Court, as well as staff from the State Prosecutor's Office. Moreover, she held a consultation meeting with NGOs from all over the country, including: Međunarodni forum solidarnosti – Emmaus, Udruženje građana Budućnost, Medica Zenica, Fondacija lokalne demokratije, Fondacija BH Inicijativa žena, Caritas Biskupske konferencije BiH, Association "Novi put", Hope and Homes for Children, Udruženje "Žena BiH" Mostar, Novi početak, Lara Bijeljina, Roma Women Association "Bolja Budućnost", Vaša prava, OTAHARIN Bijeljina, Save the

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<sup>1</sup> The report was finalized on 7 December 2012.

<sup>2</sup> The Head of OSCE Mission to BiH, Ambassador Fletcher M. Burton, and Deputy Head of Mission, Ms. Nina Suomalainen, joined the Special Representative in high-level meetings. In addition, the Special Representative was accompanied by her Executive Adviser, Ms. Liliana Sorrentino, and other officials from the OSCE Mission to BiH.

Children, and Udruženje “Žene sa Une”. An additional consultation meeting took place with international organizations including: UNHCR, UNICEF, UN WOMEN, IOM, and ICMPD. Bilateral meetings were held with the EU Delegation to BiH and with the Embassies of the United States and Italy. The Special Representative concluded her visit by contributing to a public discussion on trafficking in human beings for labour exploitation organized by the OSCE Mission to BiH.

4. The Special Representative wishes to thank the authorities of Bosnia and Herzegovina for their excellent co-operation during the visit. She also wishes to extend her gratitude to all of her interlocutors, including national authorities, civil society and international organizations, for their willingness to offer their knowledge and insights on the situation. Moreover, the Special Representative extends her particular thanks to the Head of the OSCE Mission to Bosnia and Herzegovina and his staff for their invaluable contribution to the visit and for lending their field expertise.
5. Consultations during the visit focused on current human trafficking trends in the country, ongoing policy and legislative initiatives, as well as practical responses to counter this criminal phenomenon and protect victims' rights. Particular attention was dedicated to trafficking for labour exploitation and internal trafficking, especially of children.
6. Over the past ten years, the Government of BiH, in partnership with NGOs and international organizations, has developed a wide array of anti-trafficking efforts. BiH has established an institutional mechanism for co-ordinating anti-trafficking activities, has engaged in legislative reform to enable the prosecution of traffickers and the protection of victims, and has adopted State Strategies and Action Plans to combat THB<sup>3</sup>. In this regard, the Special Representative positively noted the commitment of the Government over the years, and the impact that such measures have had in addressing trafficking for the purpose of sexual exploitation. Indeed, several sources indicate that the number of identified victims of trafficking for sexual exploitation has decreased significantly compared to the emergency situation in the late 1990s and early 2000s.<sup>4</sup>
7. The Special Representative notes that BiH institutional and legislative responses to THB were designed and implemented to respond mainly to trafficking in women for sexual exploitation at a time when BiH was a major transit and destination for trafficking, and much less a country of origin. However, the

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<sup>3</sup> See Bosnia and Herzegovina Council of Ministers, *Action Plan for Combating Trafficking in Human Beings in Bosnia and Herzegovina 2008-2012*, available at: <[http://www.msb.gov.ba/anti\\_trafficking/dokumenti/planovi/Archive.aspx?pageIndex=1](http://www.msb.gov.ba/anti_trafficking/dokumenti/planovi/Archive.aspx?pageIndex=1)>.

<sup>4</sup> UNICEF, UNHCHR, OSCE ODIHR, *Trafficking in Human Beings in South Eastern Europe* (2005), available at: <<http://www.unicef.org/ceecis/Trafficking.Report.2005.pdf>>; UN Commission on Human Rights, *Addendum to the Report on the Special Rapporteur on Trafficking in Persons, Especially Women and Children: Mission to Bosnia and Herzegovina* (30 November 2005), E/CN.4/2006/62/Add.2, available at: <<http://www.unhcr.org/refworld/docid/45377af48.html>>; IOM, *Changing Patterns and Trends of Trafficking in persons in the Balkan Region* (July 2004), available at: <[http://publications.iom.int/bookstore/free/Changing\\_Patterns.pdf](http://publications.iom.int/bookstore/free/Changing_Patterns.pdf)>.

features of trafficking have been changing in recent years. There have been growing signs of internal trafficking involving sexual exploitation and forced marriages, as well as trafficking in children for sexual, labour exploitation and forced begging.<sup>5</sup> This is confirmed by the available 2011 data, which indicate that of a total number of 35 potential victims, only 23 per cent (i.e., 8) were foreign victims.<sup>6</sup> Children represent 54 per cent (i.e., 19) of all recorded cases; they were exploited for forced labour/forced begging (47 per cent), sexual exploitation (26 per cent), and forced marriages (26 per cent).<sup>7</sup> All identified adult trafficked persons were women (i.e., 46 per cent of the total), of which 81 per cent were sexually exploited.<sup>8</sup>

8. Notwithstanding these data, the Special Representative observes that in line with current global trends<sup>9</sup>, over the past few years there have been noteworthy reports of trafficking of BiH citizens for labour exploitation in both distant destination countries and neighbouring countries.<sup>10</sup> More specifically, recent official statistics<sup>11</sup> do not reflect the so-called SerbAz company case, which involved several hundred workers from BiH and other neighbouring countries who were allegedly trafficked to Azerbaijan to be exploited in the construction industry and then returned to BiH.<sup>12</sup> In this regard, the Special Representative is

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<sup>5</sup> B. Limanowska, *Bosnia and Herzegovina*, in GAATW, *Collateral Damage*, available at <[http://www.gaatw.org/Collateral%20Damage\\_Final/singlefile\\_CollateralDamagefinal.pdf](http://www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf)>; see also UNICEF, Save the Children Norway, *Research on Child Trafficking in Bosnia and Herzegovina* (2004), available at <[http://combattrafficking.eu/sites/default/files/child\\_trafficking\\_bosnia\\_herzegovina.pdf](http://combattrafficking.eu/sites/default/files/child_trafficking_bosnia_herzegovina.pdf)>; UN Commission on Human Rights, *Addendum to the Report on the Special Rapporteur on Trafficking in Persons, Especially Women and Children: Mission to Bosnia and Herzegovina* (30 November 2005), E/CN.4/2006/62/Add.2, available at: <<http://www.unhcr.org/refworld/docid/45377af48.html>>.

<sup>6</sup> For a general overview of the situation and statistics, see the Council of Ministers of Bosnia and Herzegovina, *Trafficking in Human Beings in Bosnia and Herzegovina Situation Report and the Report on Implementation of the Action Plan for Combating Trafficking in Human Beings in Bosnia and Herzegovina for 2011*, adopted on 13 September 2012.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> For example, in its *Global Estimate of Forced Labour*, the ILO estimates that some 20.9 million people have been victims of forced labour/trafficking at any given point in the period 2002–2011; see ILO (SAP-FL), *ILO Global Estimate of Forced Labour* (June 2012). Moreover, a significant trend, according to intelligence from Europol as well as from many OSCE participating States, is the increase in trafficked children, as well as a growing recognition of the scale of trafficking for labour exploitation, a phenomenon that remains largely undetected. See Europol, *Trafficking in Human Beings in the European Union*, File No. 2565-84 (The Hague, 1 September 2011); Europol, *OCTA 2009, EU Organized Crime Threat Assessment*.

<sup>10</sup> OSCE Mission to Bosnia and Herzegovina, *Trafficking in Human Beings for the Purpose of Labour Exploitation. A reference paper for Bosnia and Herzegovina* (2011) available at: <[http://www.oscebih.org/documents/osce\\_bih\\_doc\\_2012061414570456eng.pdf](http://www.oscebih.org/documents/osce_bih_doc_2012061414570456eng.pdf)>; ICMPD, *Trafficking in Human beings in Croatia: An assessment focusing on labour exploitation* (2010), available at <<http://www.icmpd.org/Trafficking-in-Human-beings-in-Croatia-An-assessment-focusing-on-labour-exploitation.1832.0.html>>.

<sup>11</sup> Official statistics are reported in the annual situation reports on THB issued by the State Co-ordinator and submitted for adoption by the Council of Ministers of BiH (e.g., “*Trafficking in Human Beings in Bosnia and Herzegovina Situation Report and the Report on Implementation of the Action Plan for Combating Trafficking in Human Beings in Bosnia and Herzegovina for 2010 and 2011*”). In the course of the visit, it was understood that the official statistics in these reports do not count those victims of trafficking who declined assistance or were not granted assistance.

<sup>12</sup> For information about this case and related initiatives, see for example Astra, *The Case of Labor Exploitation of the Citizens of the Republic of Serbia, the Republic of Bosnia and Herzegovina and the Republic of Macedonia in the Republic of Azerbaijan. Country of Origin Report* (27 November 2009); ITUC, *Action plan for preventing future trafficking cases in Eastern Europe* (7 March 2010), available at <<http://www.ituc-csi.org/action-plan-for-preventing-future.html?lang=en>>; ITUC, *Joint platform to combat trafficking for labour exploitation* (12 April 2010), available at <<http://perc.ituc-csi.org/spip.php?article389>>; ITUC, *2010 Annual Survey of violations of trade union rights – Bosnia and Herzegovina* (14 November 2011), available at <<http://unhcrsurveys.wordpress.com/2011/05/14/2010-annual-survey-of-violations-of-trade-union-rights-bosnia>

concerned that despite complaints from numerous trafficked workers and in-depth reports on the case by specialized NGOs<sup>13</sup>, and despite the ongoing prosecution in the SerbAz company case, victims were not included in the assistance system and not counted in THB statistics. Furthermore, she observes that had victims of the SerbAz company case been counted in the official data on THB, a different picture of the trafficking phenomenon in the country would emerge.

9. BiH has established a composite institutional framework to design and co-ordinate anti-trafficking policy and action, which includes a State Co-ordinator, a State inter-ministerial group, as well as a Strike Force and Regional Monitoring Teams.<sup>14</sup> Aware of the systemic challenges stemming from the constitutional architecture of BiH, the Special Representative acknowledges with interest the recent efforts of the Strike Force and Regional Monitoring Teams. In particular, the Strike Force has led the development of proposals for harmonizing criminal legislation at entity and State level with the support of the international community. This initiative was based on the work of a group of prosecutors from all jurisdictions in the country, as well as on close consultations with the ministries of justice at entity and State level and with the State Co-ordinator. The Regional Monitoring Teams and their Core Teams also signal an interesting development towards strengthening operational multidisciplinary co-ordination at the local level, together with NGO contributions. In line with international standards, the Special Representative stresses the importance of establishing a strategic partnership with NGOs in developing anti-trafficking policies and practices.<sup>15</sup> This means recognizing their contribution as civil society partners beyond their engagement in directly assisting trafficked persons, and formalizing such partnerships. Furthermore, the Special Representative wishes to reiterate that the purpose of national co-ordination mechanisms is to foster positive collaboration among various institutions and organizations. Different competencies, responsibilities and perspectives must be integrated into a unified and coherent operational approach that is capable of effectively implementing anti-trafficking law and policies. To this end, she emphasizes the importance of securing political support – at both entity and State level – for the work of the State Co-ordinator, the Strike Force and the Regional Monitoring Teams.

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<sup>13</sup> Astra, *The Case of Labor Exploitation of the Citizens of the Republic of Serbia, the Republic of Bosnia and Herzegovina and the Republic of Macedonia in the Republic of Azerbaijan. Country of Origin Report* (27 November 2009).

<sup>14</sup> Information gathered in the course of the visit indicates that the State Group has been inoperative in recent years.

<sup>15</sup> See United Nations (UN), *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime* (15 November 2000), Article 9; Council of Europe (CoE), *Convention on Action against Trafficking in Human Beings*, CETS No. 197 (Warsaw, 16 May 2005), Chapter II, Article 5.6; OSCE Permanent Council, *Decision No.557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005), Chapter V, Article 3 and Chapter VI, Article 3.



10. BiH has already adopted three State Action Plans to tackle THB, the current one covering the period 2008–2012 and the next one in the process of being developed.<sup>16</sup> The Special Representative acknowledges that these Plans have been ambitious, and wishes to underline that more public resources and efforts are necessary to strengthen implementation, as this is currently largely dependent on donor funding.<sup>17</sup> In addition, to identify feasible next steps the next Action Plan should also include a careful analysis of the impact of previously planned or taken measures. Furthermore, the Special Representative believes that the next Action Plan should respond in a more targeted manner to current features of trafficking in the country, especially with regard to labour exploitation.
11. In 2003, BiH introduced the specific offence of THB in the State-level criminal code under the jurisdiction of the State Prosecutor and the State Court.<sup>18</sup> More recently, in 2010 the BiH criminal code was further aligned with relevant international standards.<sup>19</sup> While taking positive note of these recent amendments, the Special Representative nevertheless observes that criminal legislation at the entity level and in the Brčko District is still not in line with international standards on THB.<sup>20</sup> Furthermore, it appears that entity prosecutors have significant discretion and limited guidance in deciding whether an offence should be forwarded to the State level. More specifically, it seems that more guidance is needed for law enforcement regarding the referral of investigations from the entity level to the State level, which is a key in determining which level the ensuing responsibility to prosecute a crime lies. In this regard, the Special Representative is concerned that deficient legislative coherence and uncertain rules for referring cases from the entity to State level may hinder the effective investigation and prosecution of trafficking, as well as the protection of the rights of victims of serious crime and violation of human rights.<sup>21</sup> The Special Representative takes the view that these issues, including potential conflicts of jurisdictions, are most likely related to systemic challenges in the criminal justice system. Indeed, these matters are decisive, since investigative and prosecutorial practice shows that the timely initial qualification of factual allegations in possible trafficking cases closely determines the outcome of the case. The Special Representative thus welcomes the proposals of the Strike Force that aim at ensuring compliance with international standards of THB-related legislation at the entity level, as well as the

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<sup>16</sup> Bosnia and Herzegovina, *Anti-THB Action Plan for Bosnia and Herzegovina for period 2008-2012*.

<sup>17</sup> European Commission, *Commission Staff Working Document, Bosnia and Herzegovina 2012 Progress Report accompanying the document Communication from the Commission to the European Parliament and the Council. Enlargement Strategy and Main Challenges 2012–2013* {COM(2012) 600 final}, Brussels, 10.10.2012 SWD(2012)335 available at: <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/ba\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ba_rapport_2012_en.pdf)>.

<sup>18</sup> OSCE Mission to BiH, *Trafficking in Human Beings and Responses of the Domestic Criminal Justice System* (June 2009), available at <[http://www.oscebih.org/documents/osce\\_bih\\_doc\\_2009070710460618eng.pdf](http://www.oscebih.org/documents/osce_bih_doc_2009070710460618eng.pdf)>.

<sup>19</sup> For more details, see Council of Ministers of Bosnia and Herzegovina, *Trafficking in Human Beings in Bosnia and Herzegovina Situation Report and the Report on Implementation of the Action Plan for Combating Trafficking in Human Beings in Bosnia and Herzegovina for 2010*, adopted on 13 July 2011.

<sup>20</sup> Bosnia and Herzegovina ratified the UN Convention on Transnational Organized Crime and Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, Especially Women and Children on 2 April 2002, and the Council of Europe Convention on Action Against Trafficking in Human Beings on 11 January 2008.

<sup>21</sup> For more details, see for example OSCE Mission to Bosnia and Herzegovina, *Trafficking in Human Beings and Responses of the Domestic Criminal Justice System* (June 2009), available at <[http://www.oscebih.org/documents/osce\\_bih\\_doc\\_2009070710460618eng.pdf](http://www.oscebih.org/documents/osce_bih_doc_2009070710460618eng.pdf)>.

harmonization of legislation between the State and entity levels. Furthermore, the Special Representative notes that it is important to establish objective criteria for attributing jurisdiction in THB cases to either the entity or State level. A proposal in this direction foresees entrusting jurisdiction to the BiH Prosecutor's Office and the BiH Court only in those THB cases that have an international element, while all other cases would fall under the competency of prosecutorial and judicial authorities at the entity level or at the level of Brčko District.

12. In her meetings with the BiH Minister of Justice and with the Chairperson of the BiH Parliamentary Assembly Joint Committee for Human Rights, Child Rights, Youth, Immigration, Refugees, Asylum and Ethics, the Special Representative expressed the view that additional harmonization is necessary to enable effective and consistent prosecution of trafficking and to ensure the effective implementation of the principle of equality before the law throughout the entire territory of BiH.<sup>22</sup> The Special Representative therefore supports the recent efforts by the Strike Force in this direction and welcomes the approval of the Strike Force's proposed legislative amendments on THB by the Criminal Code Implementation Assessment Team of the BiH Ministry of Justice.<sup>23</sup> She also encourages parliamentary activity in support of these efforts.
13. In addition to securing the necessary legislative reform, there is also a need to enhance the capacity of law enforcement agents, prosecutors, and judges to ensure the full and effective application of laws on THB throughout BiH. Over the past decade, there have been a number of training initiatives on THB that have targeted BiH police officers, prosecutors, and judges. However, the high turnover of such professionals, the non-mandatory character of this training, and the limited scope and length of the training sessions suggest that systematic and continued efforts to build capacity remain necessary. This is especially the case with regard to tackling more recent forms of THB (i.e., internal trafficking and trafficking for labour exploitation), as well as with regard to ensuring the protection of victims' rights and promoting the use of organized crime investigative techniques, including financial investigations.
14. In the course of the visit, the Special Representative learned about the country's efforts to establish a comprehensive and operative national referral mechanism, as well as about the challenges of building capacity and securing adequate resources for service providers, in particular NGOs and Centres for Social Work. In this regard the Special Representative stresses the importance of promoting the role of social welfare institutions and NGOs in identifying and assisting

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<sup>22</sup> For more details, see OSCE ODIHR, *Review of the Legislation on Combating Trafficking in Human Beings* (14 December 2011), Opinion-Nr.:TRAFF-MOL/189/2011; OSCE Mission to Bosnia and Herzegovina, *Trafficking in Human Beings and Responses of the Domestic Criminal Justice System* (June 2009), available at <[http://www.oscebih.org/documents/osce\\_bih\\_doc\\_2009070710460618eng.pdf](http://www.oscebih.org/documents/osce_bih_doc_2009070710460618eng.pdf)>; see also Commission Staff Working Document, *Bosnia And Herzegovina 2012 Progress Report*, accompanying the document *Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2012-2013* {COM(2012) 600 final} available at: <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/ba\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ba_rapport_2012_en.pdf)>.

<sup>23</sup> Information received from the OSCE Mission to Bosnia and Herzegovina.

trafficked persons. In addition, she recalls that in line with relevant international and regional standards<sup>24</sup>, OSCE participating States are committed to rendering assistance and protection to persons trafficked for any type of exploitation. It is important to note that BiH is a party to the Council of Europe Convention on Action against Trafficking in Human Beings and is therefore requested to provide minimum standards of assistance regardless of whether a victim agrees to cooperate in investigations and criminal proceedings.<sup>25</sup> Current practice in BiH suggests that there is room for more effective implementation of these commitments. More specifically, the current system of assistance and protection is mainly geared towards assisting victims of trafficking for sexual exploitation and is exclusively shelter-based, i.e., only if a trafficked person resides in a “recognized or authorized shelters” do they have access to material and psychological assistance, medical care, legal counselling and aid. This approach limits a trafficked person’s right to assistance. For example, if victims of trafficking for labour or other forms of exploitation prefer not to live in shelters, they consequently may be not eligible for legal aid; similarly, foreign trafficked persons with temporary residence permits may lose all entitlements to assistance including emergency health care when/if they leave the shelter, as they are not granted the right to work and thus remain without opportunities for subsistence.<sup>26</sup>

15. In the past, there have been reports of victims of trafficking, including children, being punished, as for example for violations of public order.<sup>27</sup> Yet, OSCE participating States have committed themselves to ensuring that the requirement of non-prosecution and non-punishment of victims of trafficking is implemented at the national level.<sup>28</sup> Furthermore, the principle of non-punishment is also a legally-binding norm foreseen in the Council of Europe Convention on Action against Trafficking in Human Beings.<sup>29</sup> In this regard, the Special Representative observes that this principle is not included in the BiH Criminal and Criminal Procedure Codes, and is only partially envisaged in the Rulebook on Foreign

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<sup>24</sup> United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (15 November 2000); Council of Europe (CoE), *Convention on Action against Trafficking in Human Beings*, CETS No. 197 (Warsaw, 16 May 2005); European Union (EU), *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA* (5 April 2011), in *Official Journal L 101*, 15/04/2011.

<sup>25</sup> Council of Europe, *Op. Cit.*, art. 12.

<sup>26</sup> See ODIHR and Council of Europe, *Review of Legislation Pertaining to Trafficking in Human Beings in Bosnia and Herzegovina*, Opinion-Nr: 127/2009 (MA), pp. 54-55.

<sup>27</sup> See ODIHR and Council of Europe, *Review of Legislation Pertaining to Trafficking in Human Beings in Bosnia and Herzegovina*, Opinion-Nr: 127/2009 (MA), p. 27, 73. In particular, in some cantons prostitution is a violation of public order that is punishable by imprisonment. It is also reported that child victims of trafficking for forced begging may be punished for offences related to their having been trafficked; see for example US State Department, *2012 Trafficking in Persons Report: Bosnia and Herzegovina* (2012), available at <<http://sarajevo.usembassy.gov/tip-2012.html>>.

<sup>28</sup> See OSCE Ministerial Council, *Decision No. 1 Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings* (Vienna, 28 November 2000), para. 9; OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation* (Madrid, 30 November 2007), para. 10; OSCE Ministerial Council, *Ministerial Declaration on Combating All Forms of Human Trafficking*, MC.DOC/11/11/Corr.1 (Vilnius, 7 December 2011), para. 10.

<sup>29</sup> Council of Europe, *Convention on Action against Trafficking in Human Beings*, CETS No. 197 (2005), art. 26; This principle is also enunciated in EU, *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*, art. 8.



Victims. It is not included in the Rules on Domestic Victims. In addition, guidance for prosecutors on implementing this principle is lacking.<sup>30</sup>

16. In the course of the visit, several Governmental and non-governmental interlocutors signalled a growing concern with regard to children living, working or begging in the streets, which suggested a possible increase in child trafficking for forced begging to and within BiH. The Special Representative considers the situation of these children an especially challenging social issue, all the more so since it disproportionately affects a particular group, namely, the Roma and Sinti communities. She adds that this situation demands comprehensive responses that strengthen the system of child protection and focus on the protection of children's rights. This implies that timely, inclusive and tailored interventions must be available for responding to any type of violence against children, child abuse, or neglect, regardless of whether or not trafficking is involved. She adds that this does not mean weakening the importance of the criminal justice response to trafficking, but by observing children's rights and meeting their needs for special protection and assistance, it will also be possible for prosecution to be more effective. Furthermore, the Special Representative emphasizes that it is important to distinguish between situations of trafficking involving organized crime and situations of family economic begging. While the former demands a strong criminal justice response, the latter needs to be based on an approach of child protection that involves the family and aims at tackling conditions of poverty, neglect and abuse; in both cases children's rights need to be at the centre to secure the best interests of the affected children and to build a durable solution. In the course of the visit, the Special Representative learned about the ongoing work of drop-in centres as well as outreach work with street children. She encourages the authorities to support NGO efforts in this area and to further develop such practices (including facilitating birth registration, providing ID documents, and ensuring access to health care and education) in order to enhance child protection and prevent child trafficking. Outreach work should provide a qualitative analysis of the street children phenomenon in order to build a stock of evidence that will better enable targeted interventions. In addition, it is also important to establish more links and concrete communication between the NRM and the child protection system (in particular, with the Centres for Social Work), including the development of protocols and procedures to foster multidisciplinary co-operation when handling individual child trafficking cases.
17. A specific focus of the visit was the prevention of trafficking for labour exploitation. The Special Representative pointed out that there are opportunities for improving prevention by connecting anti-trafficking activities with other policies more systematically and effectively. For example, the Special Representative welcomes the inclusion of measures aimed at reducing THB and strengthening

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<sup>30</sup> *Rulebook on Protection of Foreign Victims of Trafficking in Persons* (10 November 2008), Official Gazette of BiH: 90/08, art. 4; *Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings Who Are Citizens of BiH* (5 July 2007), Official Gazette of BiH No: 66/07. See also ODIHR and Council of Europe, *Review of Legislation Pertaining to Trafficking in Human Beings in Bosnia and Herzegovina*, Opinion-Nr: 127/2009 (MA), p. 27.

institutional capability for migration management into the recently adopted Strategy in the Area of Migrations and Asylum and the related Action Plan for 2012–2015.<sup>31</sup> She further observes that with the respect to trafficking, this strategy appears primarily to focus on preventing trafficking among vulnerable foreign populations (including unaccompanied minors and asylum seekers), while there seems to be limited attention regarding the prevention of trafficking among BiH citizens migrating abroad<sup>32</sup>. In this regard, the Special Representative notes that among its measures, the strategy foresees academic research on emigration. Such research efforts are considered a possible means for information leading to THB prevention, such as enhancing awareness about trafficking for labour exploitation of BiH citizens, and informing potential emigrants about legal and safe work opportunities abroad. In the course of the visit, the Special Representative also discussed labour market policies and inquired about labour recruitment practices, both formal and informal, drawing the attention of the authorities to the importance of analysing and learning from recent cases of trafficking for labour exploitation. She stressed in particular the importance of monitoring labour recruitment as a means of preventing the abuse and exploitation of workers.

18. The Special Representative calls for keeping anti-trafficking action a State priority. Although THB was a grave phenomenon in the early post-conflict period, mainly in the area of sexual exploitation of women trafficked from abroad, today there are new types of trafficking that need to be dealt with effectively. She thus encourages BiH State officials to address the current trends of trafficking, especially those involving the exploitation of children and migrant workers. She further draws their attention to the need of developing more articulated responses that take into account the fact that BiH is no longer only a destination and transit country, but also a country of origin for THB, especially trafficking for labour exploitation. The Special Representative therefore places emphasis on and calls for renewed efforts in fighting all forms of trafficking, ensuring legislative coherence, protecting victims' rights and access to justice, and in prevention. To conclude, the Special Representative encourages the authorities to strengthen the implementation of the OSCE anti-trafficking commitments and invites them to consider the following recommendations when developing the next State Action Plan on THB and/or other related policy initiatives.

19. The Special Representative and her office look forward to further co-operation with the BiH authorities and NGOs, in close co-ordination with the OSCE Mission to BiH, to support the follow-up to these recommendations.

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<sup>31</sup> BiH, Ministry of Security, *Strategy in the Area of Migrations and Asylum and Action Plan for 2012–2015* (Sarajevo, June 2012), available at: <<http://www.msb.gov.ba/PDF/Strategy%20and%20Action%20Plan%202012-2015,%20engleski.pdf>> .

<sup>32</sup> Ibid.: It is estimated that there are approx. 1.5 million emigrants from BiH.

## **Recommendations**

### **1. Ensure enhanced political commitment to anti-trafficking by:**

- Launching a renewed State effort with the adoption of the next State Strategy and Action Plan to prevent and combat THB, and ensuring State budgetary allocations to support the implementation;
- Raising public awareness about the current trends of THB, especially internal trafficking, child trafficking and trafficking for labour exploitation;
- Promoting parliamentary hearings on current THB trends and invite civil society organizations to contribute to the hearings.

### **2. Enhance co-ordination of anti-trafficking action, including through:**

- Securing adequate human and financial resources for co-ordinating anti-trafficking action at both State and entity levels, i.e., to support the work of the State Anti-Trafficking Co-ordinator, the Strike Force, and the Regional Monitoring Teams;
- Establishing formal consultative mechanisms for the participation and contribution of civil society organizations, not only for rendering assistance to trafficked persons, but also for developing anti-trafficking policies and co-ordinating activities (e.g., in the Strike Force). Such efforts should ensure respect for the independent role of NGOs as civil society partners;
- Promoting the contribution of the Ministry of Civil Affairs, the Gender Agency, trade unions and labour inspectorates to anti-trafficking action.

### **3. Strengthen criminal justice responses to trafficking by:**

- Supporting the process of harmonization of criminal legislation on THB to ensure full compliance with international standards at both State and entity levels;
- Establishing objective criteria for the attribution of jurisdiction in THB cases between prosecutorial and judicial authorities at the entity and State level. One such criterion might be entrusting the BiH Prosecutor's Office and the BiH Court with jurisdiction only in those THB cases that have an international element, while having all other cases fall under the competency of prosecutorial and judicial authorities at the entity level as well as at the level of Brčko District;
- Developing clear guidelines and training for law enforcement and prosecutors at the State and entity level to ensure the proper referral of THB cases, as well as the full and effective application of the laws on THB throughout the country;
- Integrating training about THB in the continuing education programme of judicial training institutes for prosecutors and judges at all levels, and ensuring that adequate credits are assigned for participation in training on THB.

#### **4. Improve identification of victims, their assistance, and protection of their rights by:**

- Enhancing co-operation with civil society by recognizing the role of NGOs and their contribution to reaching out, identifying and assisting trafficked persons;
- Further developing the National Referral Mechanism to render it more flexible and effective in protecting victims' rights, especially with regard to ensuring access to material and psychological assistance, health care, and legal counselling on a non-residential basis;
- Increasing funding for assistance to trafficked persons, especially children, and, in particular, ensuring funding for legal counselling and legal aid for trafficked persons;
- Adopting and effectively implementing legislation and guidance to ensure that victims of trafficking are not punished for offences related to their having been trafficked, or as a consequence of having been trafficked. More specifically, introduce a non-punishment provision to enable the non-prosecution of victims, or the termination of prosecution at an early stage. In this case, when a prosecutor and/or a judge recognize the existence of justifications for exempting the defendant from liability, prosecution must be discontinued without delay;
- Strengthening the capacity of service providers, including Centres for Social Work and NGOs, by means of multidisciplinary training.

#### **5. Enhance prevention of child trafficking by:**

- Strengthening existing child protection services, and building capacities for intervening in situations of neglect, abuse and violence against children, including trafficking. More specifically, prioritizing interventions for protecting and caring for children who live, work or beg in the streets (regardless of whether these situations qualify as trafficking cases);
- Promoting outreach work with children living, working or begging in the streets in order to build trust, and to work with their families in order to address poverty and social exclusion, promote birth registration, issue identity documents, and provide access to education and other basic social services;
- Building on outreach work to improve the design of comprehensive measures aimed at tackling family economic begging and at enhancing the protection of the rights of children living, working or begging in the streets;
- Strengthening the criminal justice response to child trafficking for forced begging, and ensuring that such responses are based on children's rights, including the best interests of the child, as well as his/her right to be heard and to participate in the legal process;
- Considering the development of protocols and instructions that foster multidisciplinary co-operation between actors in the National Referral Mechanism (NRM) and the child protection system (in particular, the Centres

for Social Work and relevant NGOs) when handling individual child trafficking cases;

- Prioritizing law enforcement investigations in organized crime cases of trafficking for forced begging, and ensuring that law enforcement interventions are well planned and co-ordinated with child protection authorities to ensure the best interests of involved children.
- Ensuring that measures are put in place to identify and address discrimination in children's access to rights, such as education and health, as well as to justice, including compensation, with particular view to children from marginalized and vulnerable communities;
- Ensure that the marginalized and vulnerable communities and the children themselves, such as Roma and Sinti, are actively involved in the development and implementation of preventive and protective responses to child trafficking, including child begging.

**6. Develop measures to prevent and counter trafficking for labour exploitation by:**

- Examining informal recruitment mechanisms in the labour market more closely, and seeking ways for developing measures to curb fraudulent recruitment and improve the prevention of labour trafficking;<sup>33</sup>
- Ensuring the regular monitoring of private employment agencies to prevent abuse and exploitation;
- Enhancing the capacity of labour inspectors and involving them in the co-ordination and design of preventative and protection responses;
- Further developing labour migration management to increase opportunities for safe and regular migration, including approaches that are gender-sensitive;
- Building on planned academic research on emigration to allow awareness raising measures about trafficking for labour exploitation, and designing empowering measures for potential emigrants regarding legal and safe opportunities for work and study abroad.

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<sup>33</sup> OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation*, MC.DEC/8/07 (Madrid, 30 November 2007), para. 16.



## APPENDIX

### AGENDA OF THE OSCE SPECIAL REPRESENTATIVE AND CO-ORDINATOR FOR COMBATING TRAFFICKING IN HUMAN BEINGS IN BOSNIA AND HERZEGOVINA<sup>34</sup> 12–14 June 2012

#### Tuesday 12 June

- 8.00 - 08:45      **Welcome by the OSCE Mission to Bosnia and Herzegovina**
- **Ambassador Fletcher M. Burton**, Head of Mission
  - **Mr. Christopher Engels**, Head of Judicial and Legal Reform Section
  - **Ms. Selma Zekovic**, National Anti-trafficking Officer
- 09:00 - 09:45      Meeting with Minister of Justice, **Mr. Bariša Čolak**
- 10:00 - 10:45      Meeting with State Co-ordinator for Combating THB, **Mr. Samir Rizvo**
- 11:00 - 13:00      **Meeting with Anti-Trafficking NGOs:**
- Međunarodni forum solidarnosti Emmaus
  - Udruženje građana Budućnost
  - Medica Zenica
  - Fondacija lokalne demokratije
  - Fondacija BH Inicijativa žena
  - Caritas Biskupske konferencije BiH
  - Centar za pravnu pomoć ženama Zenica
  - Association "Novi put"
  - Hope and Homes for Children
  - Udruženje "Žena BiH" Mostar
  - Novi početak
  - Lara Bijeljina
  - Roma Women Association "Bolja Buducnost"
  - Vaša prava
  - OTAHARIN Bijeljina
  - Save the Children
  - Udruženje "Žene sa Une"

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<sup>34</sup> Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Ms. Maria Grazia Giammarinaro, and her Executive Adviser, Ms. Liliana Sorrentino, were accompanied for certain meetings by Ambassador Fletcher M. Burton, Head of the OSCE Mission to BiH, and the Deputy Head of Mission, Ms. Nina Suomalainen, as well as by other officials from the OSCE Mission to BiH.

- 13:15 - 14:45 Working Lunch with NGO Novi Početak **Mr. Marko Tamindžija** and **Mr. Zlatko Kokosar**
- 15:00 - 15:45 Meeting with the **OSCE Mission to Bosnia and Herzegovina**
- **Ms. Nina Suomalainen**, Deputy Head of Mission
  - **Mr. Andrea Cellino**, Political and Policy Unit Director
  - **Mr. Richard Williams**, Director of Human Dimension
  - **Mr. Christopher Engels**, Head of Judicial and Legal Reform Section
  - **Ms. Selma Zekovic**, National Anti-trafficking Officer
- 16:00 - 16:45 Meeting with the Deputy Minister of Human Rights and Refugees, **Ms. Radmila Mitrović**
- 17:00 Meeting with the Deputy Head of European Delegation, **Mr. Renzo Daviddi**

### **Wednesday 13 June**

- 9:00 - 09:45 Meeting with Deputy Minister of Civil Affairs, **Ms. Denisa Sarajlić-Maglič**
- 10:00 - 10:45 Meeting with Deputy Minister of Foreign Affairs, **Ms. Ana Trišić Babić**
- 11:00 - 11:30 Meeting with President of the Criminal Division of the BiH Court, **Judge Minka Kreho**
- 11:30 - 12:00 Meeting with staff in BiH Prosecutor's Office, Expert Associate, **Mr. Tin Begtasevic**
- 12:30 - 13:45 Working lunch hosted by Ambassador Fletcher M. Burton with :
- **Mr. Patrick Moon**, U.S. Ambassador to BiH
  - **Mr. Steven Gillen**, Second Secretary/Political Officer, U.S Embassy to BiH
  - **Ms. Ante Miliša**, Political Assistant, U.S Embassy to BiH
- 14:00 - 14:45 Meeting with Minister of Security, **Mr. Sadik Ahmetovic**

- 15:00 - 15:45 Meeting with Chairperson of the BiH Parliamentary Assembly Joint Committee for Human Rights, Child Rights, Youth, Immigration, Refugees, Asylum and Ethics, **Ms. Aleksandra Pandurevic**
- 16:00 - 16:45 Meeting with Director of the Gender Agency, **Ms. Samra Hadziabdic-Filipovic**
- 17:00 Meeting with **International Organizations:**
- UNHCR, Ms. Sabina Čejović
  - UNICEF, Ms. Florence Bauer
  - UN Women, Ms. Amna Muharemović
  - IOM, Ms. Sasha Barnes
  - ICMPD, Ms. Ajli Bahtijaragić

### **Thursday 14 June**

- 8:00 - 08:45 Meeting with Head of OSCE Mission, **Ambassador Fletcher M. Burton**
- 11:00 - 12:30 Event on Labour Exploitation organized by the OSCE Mission to Bosnia and Herzegovina