



# International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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## Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families Thirty-first session

### Summary record of the 434th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 4 September 2019, at 10 a.m.

*Chair:* Ms. Landázuri de Mora (Vice-Chair)  
*later:* Mr. Tall (Chair)

## Contents

Consideration of reports submitted by States parties under article 73 of the Convention  
(*continued*)

*Third periodic report of Bosnia and Herzegovina (continued)*

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*In the absence of Mr. Tall, Ms. Landázuri de Mora, Vice-Chair, took the Chair.*

*The meeting was called to order at 10.05 a.m.*

**Consideration of reports submitted by States parties under article 73 of the Convention** *(continued)*

*Third periodic report of Bosnia and Herzegovina (continued)* (CMW/C/BIH/3; CMW/C/BIH/Q/3 and CMW/C/BIH/Q/3/Add.1)

1. *At the invitation of the Chair, the delegation of Bosnia and Herzegovina took places at the Committee table.*

2. **Ms. Đuderija** (Bosnia and Herzegovina) said that the Institution of the Ombudsman for Human Rights was independent, enjoyed many powers, and its three members reflected the different peoples of Bosnia and Herzegovina. In accordance with the Law on Prohibition of Discrimination, the Ombudsman played a central role in ruling on cases of discrimination. While the Government had drafted a new Law on the Ombudsman for Human Rights in an effort to improve that Institution, the legislation had not been passed owing to a lack of political will. Amendments had therefore been made to the existing Law whereby the Institution's budget would be established by parliament and the Ombudsman would be obliged to cooperate with civil society organizations, particularly in the area of monitoring human rights and discrimination. Additional functions had been assigned to the Institution of the Ombudsman, including that of a national preventive mechanism to combat torture and other cruel, inhuman or degrading treatment or punishment. It had a mandate to draw up reports on a wide range of human rights issues which were used by the Ministry of Human Rights and Refugees in its human rights monitoring work. The Government would endeavour to ensure that the Paris Principles were fully implemented.

3. The Action Plan Against Trafficking in Human Beings 2016–2019 included measures on cooperation and coordination between law enforcement agencies, courts, prosecutor's offices and human rights institutions. The Ministry of Foreign Affairs and the Ministry of Human Rights and Refugees also played a key role. There was a specific annual budget for the provision of care to victims of trafficking. Non-governmental organizations cooperated with the authorities in the running of safe houses, where trafficking victims stayed for an average of three to nine months. The safe houses had been used to accommodate approximately one-third of the increasing number of potential victims of trafficking arising from higher migration levels, including unaccompanied minors suspected of being victims of trafficking, of whom there had been 40 in 2018.

4. The Government was required by law to take care of child migrants and appoint guardians for them if they were unaccompanied. While children were generally accommodated together, those who were citizens of Bosnia and Herzegovina were, if possible, reunited with family members. Particular attention was paid to children found on the street, who were potential victims of abuse; the law enforcement agencies would send them to the relevant institutions, where their cases were processed.

5. There had been a small increase, compared to the previous reporting period, in the number of cases reported to prosecutor's offices involving trafficking of persons and abuses committed against them. Most of the cases involved organized begging, forced marriage or sexual exploitation of girls, many of whom were minors. Investigations had been launched against 38 persons in 2017, resulting in 17 convictions and 14 prison sentences. Where possible, the issue of compensation of victims was considered by the courts during the criminal proceedings through, for example, the identification of assets belonging to the perpetrator that could be seized, but efforts to improve compensation procedures were ongoing.

6. With regard to the exercise of voting rights by nationals of Bosnia and Herzegovina working abroad, data from the Central Election Commission showed that the number of registered voters for local and general elections had almost doubled between 2014 and 2018, to 76,000. Postal voting was widely, and increasingly, used. Various actions had been taken to disseminate brochures and leaflets on voting rights and voting procedures. In addition, the

number of diplomatic and consular offices in other countries was increasing every year, thereby increasing the support that could be provided to citizens abroad.

7. **Mr. Kličković** (Bosnia and Herzegovina) said that the Labour and Employment Agency collected statistics on migrant workers, disaggregated by sex, age, country of origin and industry, and submitted them to the Council of Ministers and other relevant bodies. In all of the country's administrative units, work permits for remunerated activities were granted to foreign workers in accordance with the Law on Aliens. While the Entities - the Federation of Bosnia and Herzegovina and the Republika Srpska – and Brcko District were responsible for issuing the permits, the overall annual quotas for the employment of foreigners in a given industry were decided by the Council of Ministers, based on data received from the respective employment bureaux. There were also quotas for seasonal workers, with permits issued for 90–180 days.

8. Applications for work permits were filed by the potential employer, who was required to submit information including proof of business registration, details of the foreigner he or she wished to employ and the proposed remuneration. A job description was also required in order to justify the hiring of a migrant worker rather than a national of Bosnia and Herzegovina, thereby protecting nationals from competition from abroad. The work permit was issued to the employer if no nationals of Bosnia and Herzegovina were registered as seeking the employment in question. A contract of employment was subsequently drawn up, setting out the rights and obligations of both migrant worker and employer. The work permit could not be transferred to another employer.

9. Some groups of migrants, including those with permanent residency permits, did not require work permits. If a migrant's temporary residency permit was cancelled, the work permit was also cancelled. There had been no lawsuits concerning cancellation of employment contracts or work permits. Statistics on migrant workers' employment were sent to the Labour and Employment Agency, which was responsible for collecting and processing them. A total of about 2,800 work permits had been issued in 2018: approximately 1,800 in the Federation of Bosnia and Herzegovina, around 800 in Republika Srpska and 135 in Brcko District. The main industry in which migrant workers were employed was the retail trade, followed by real estate. The main country of origin was Serbia, followed by Turkey; there were some 20 countries of origin in all.

10. Around 1,400 of the migrants issued with work permits had completed higher education; over 800 had secondary education; some 230 were unskilled seasonal and agricultural workers; approximately 180 were skilled, 175 were semi-skilled and just over 30 were highly skilled; while 16 had no education at all. Most of the migrant workers (740 men and 180 women) were in the 18-to-35 age group, about 230 men and 35 women were aged between 36 and 59 years and some 140 men and 135 women were over the age of 60. Just 15 per cent of the workers concerned were women. Almost identical proportions had been seen in 2017. The Government had made it easier to apply for the extension of a work permit, and repeat extensions were now permissible, provided that the set quotas were respected. Other authorities also compiled statistics on migration.

11. **Mr. Kedić** (Bosnia and Herzegovina) said that, as part of the reforms to the visa system, the authorities were required to produce and publish an annual Migration Profile that contained data not only on migrant workers, but also on all other migration issues, such as detentions and deportations. Information was provided by a range of authorities at the State and Entity levels. While the data were reliable, there were shortcomings in the system used to gather them, for example the omission of certain migrant categories. The system had been upgraded thanks to joint work by a number of stakeholders, and the new system, which was currently in the final testing phase, would provide more precise and detailed information.

12. The current system had, nevertheless, provided accurate data for the year so far, revealing that almost 1,900 migrants had been granted temporary residence, and 82 per cent of work permits had been issued to men and 18 per cent to women. In terms of countries of origin, work permits had been issued to Turkish nationals (375 men and 180 women), 77 Croatians and around 60 Chinese nationals; the figures were similar to those seen in 2018. It should be noted that migrants who were not required to obtain work permits, for example

those who had been granted permanent residence or those engaged in certain types of work, were not included in the data. They were, however, reflected in the Migration Profile.

13. **Ms. Đuderija** (Bosnia and Herzegovina) said that, although unemployment was high in the State party, migrants who wished to work and establish businesses there enjoyed the same rights as citizens.

14. **Mr. Ünver** (Country Rapporteur), commending the considerable progress made by the State party in its compliance with the Convention, said that the needs of the labour market should be addressed using a targeted approach to migration that was based on migrants' education, skills and experience. Given the size of the State party's diaspora and its potential to assist in the country's development, bilateral agreements with neighbouring or European countries and circular or temporary migration schemes could also play a role. He asked whether any attempt had been made to introduce such a targeted approach.

15. **Mr. Taghi-Zada** (Country Rapporteur) asked why only a relatively low proportion of the diaspora had participated in the elections and where those who had participated were based. He said he would like information on the problems faced by the State party's citizens who had emigrated. The Committee could assist the State party in supporting its nationals who encountered problems abroad by liaising with other treaty bodies, given that, even if many of the countries of destination were not parties to the Convention, they had acceded to other international human rights instruments.

16. **Mr. Soualem**, noting that the State party's geographical location meant that it had become a country of transit, said that he would like to know whether the arrests made for trafficking in human beings related to foreign criminal networks or to citizens of Bosnia and Herzegovina who had assisted migrants during their passage through the country. He would be interested to hear whether the State party had signed readmission agreements applicable to migrants crossing its territory or labour agreements for its own citizens who wished to settle abroad, particularly with Western European countries, and whether it had entered into a cooperation agreement with the International Organization for Migration aimed at resettling migrants in third countries or moving them towards the border nearest to their countries of origin. He would like to know whether an agreement was in place with the European Union to provide capacity-building for border guards, if there had been any capacity-building for humanitarian agents involved in detentions and whether funding was received from the European Union to help curb migration. Lastly, he asked whether the diaspora was represented by a council or in the Parliamentary Assembly.

17. **Mr. Frasheri** said he would like to know whether the Government had adopted any measures to promote growth and development in the State party, thereby addressing a root cause of outward migration. He would welcome more detailed information on the working relationships between the State party and the European Union, in particular whether European Union Member States pressured the State party to address both the transit of migrants across its territory and the emigration of its own citizens to the European Union. He wished to know whether any action plans or strategies had been implemented to involve the country's diaspora in its economic and social development, including through the transfer of skills and knowledge acquired abroad to persons still living in the country.

18. **Mr. Tall** said that he would like to know what had been done during the reporting period to implement the Committee's previous recommendation on harmonizing legislation between the different Entities to ensure that migrant workers fully enjoyed their rights to employment, education and social security. He wondered whether the bill that had been under consideration in 2012, on amendments to the Law on the Movement and Stay of Aliens and Asylum, had been adopted and, if so, what improvements it had brought to the lives of migrant workers in the State party. He wished to know what had been done to harmonize anti-discrimination legislation to ensure an effective remedy for migrants. He would appreciate information on any complaints filed by migrants with the judicial authorities or the Ombudsman and the decisions that had been issued in those cases. Finally, he wished to know whether the jurisprudence of the European Court of Human Rights on the rights of migrant workers had ever led to changes in national legislation or practice.

19. **Mr. Charef** said that he would like to know what the Government had done to address the cost of remittances. He would be interested to hear about any measures taken to include

migrants as stakeholders in local, regional and national development plans. He would also welcome information on the state of immigration research in the State party and the links between the immigration authorities and relevant research institutions.

*The meeting was suspended at 11.25 a.m. and resumed at 11.55 a.m.*

20. *Mr. Tall took the Chair.*

21. **Ms. Đuderija** (Bosnia and Herzegovina) said that the Central Election Committee could accommodate those citizens living abroad who wished to participate in elections; however, it lacked resources to promote such participation. Some nationals of Bosnia and Herzegovina who lived in European countries travelled back to vote, which meant that the official statistics on their participation might not reflect reality. The newly established Department for the Diaspora had a website that included a contact form, but had received only a small number of complaints about violations of the rights of migrant workers from the diaspora, most of them concerning readmission to or expulsion from other countries. The majority of the diaspora lived in countries with a solid legal framework and were well integrated. It was estimated that approximately 500,000 persons had renounced their citizenship of Bosnia and Herzegovina and many others had dual nationality. Many different diaspora associations existed across the world and they did not have a unified position. An initiative on participation by the diaspora in the electoral process had been put forward and would be considered by the Government.

22. A diaspora policy had been adopted in 2017, with the aims of improved cooperation with the country's nationals abroad and increased transfer of knowledge from diaspora members who had prominent roles in their host countries. Many meetings and events had been held to encourage participation in the programme. One project organized pursuant to the policy in cooperation with the Government of Switzerland was intended to encourage members of the diaspora to invest in their home towns and create jobs. The flow of remittances was monitored and the Central Bank had issued regulations to ensure security and prevent money-laundering. The Government participated in the World Bank-led Project Greenback 2.0, in which the habits of remittance senders and recipients were analysed. In the city of Gradačac, the analysis had shown that awareness-raising on financial services was needed to ensure that remittances reached the intended recipients and contributed to the country's development.

23. The Government did not have a strategic framework to reduce outward migration by reducing unemployment. In addition to government funding for the migration process, Bosnia and Herzegovina received international support from various sources. The One United Nations programme and budgetary framework would expire in 2020, after which a new programme for cooperation with international agencies would be agreed. The country also received support through its membership of the International Organization for Migration and funds from the European Union, through the Instrument for Pre-accession Assistance programme, and the International Committee of the Red Cross. The Government aimed to develop its network of consular assistance abroad, especially in countries with large numbers of its nationals. As set out in the diaspora policy, the Ministry of Human Rights and Refugees was adopting a new approach in which it would provide local communities with funds to establish offices where members of the diaspora could obtain information about investment opportunities and assistance with civil registration. It was hoped that the diaspora could help with promotion of the tourist industry.

24. National legislation was not discriminatory against migrants. Migrants with a residence or work permit had access to the same judicial remedies and the same rights to legal aid as nationals of Bosnia and Herzegovina, with interpreters provided in legal proceedings if necessary. After the exhaustion of domestic remedies, migrants could also apply to the European Court of Human Rights. There had been no cases brought by migrants working in Bosnia and Herzegovina before either the national courts or the European Court, although there had been some administrative complaints.

25. **Mr. Kličković** (Bosnia and Herzegovina) said that the Labour and Employment Agency had found that the best way to provide legal protection for the country's citizens working abroad was through the conclusion of intergovernmental agreements. However, it could not prevent workers leaving the country to seek employment on their own initiative,

without the protection of the Agency. A bilateral agreement had been concluded with Slovenia and others were being negotiated with Croatia and Montenegro. There were also specific agreements with Germany on the employment of medical personnel and with some Middle Eastern countries such as Kuwait on temporary employment.

26. Since the agreements with Slovenia and Germany had been concluded in 2013, there had been a dramatic increase in the number of work permits issued by both countries. In Slovenia, the figure had risen from about 660 in 2013 to over 16,000 in 2018 and, in Germany, from just under 200 in 2013 to 1,000 in 2018. In total, over 4,500 citizens of Bosnia and Herzegovina had found employment through the Agency in Germany, while the equivalent figure for Slovenia was over 35,000. In addition to the agreements signed, the Agency also encouraged potential migrants to use the Danube Compass website, which provided information on seeking employment in eight countries of the Danube region.

27. The Law on Aliens, which had been adopted in November 2015, served as the legal framework for implementation of the provisions of the Convention. The consequent amendments had been made to employment and anti-discrimination legislation to bring it into line with the Law. Migrant workers were thus guaranteed the same rights and legal remedies as citizens of Bosnia and Herzegovina, in all three administrative units of the country. Discrimination was prohibited on any grounds. Following amendments made to the Law on Prohibition of Discrimination in 2016, the deadline to initiate employment discrimination cases had been extended; however, no such cases had been brought by migrant workers. Throughout the country, migrant workers enjoyed the right to both residence-based and employment-based social protection, including unemployment insurance.

28. **Ms. Đuderija** (Bosnia and Herzegovina) said that the Labour and Employment Agency had been established to combat the abuse of migrant workers by private agencies. The Government had also adopted regulations to ensure the compulsory registration and monitoring of such agencies.

29. **Ms. Tanković** (Bosnia and Herzegovina) said that the fundamental legal document between Bosnia and Herzegovina and the European Union governing readmission was the visa facilitation agreement that had entered into force on 1 January 2008. Its effective implementation was one of the conditions that the European Commission had set in the road map for visa liberalization and was also an obligation under the Stabilization and Association Agreement, which governed the country's relationship with the European Union. Bosnia and Herzegovina had also agreed on protocols on the implementation of the agreement with individual member States of the European Union and had bilateral agreements with a number of other countries.

30. Applications for readmission were processed by departments within the Ministry of Security: the Sector for Immigration for nationals of Bosnia and Herzegovina and the Service for Foreigners' Affairs for nationals of other countries. The procedure was smooth and efficient, with all intergovernmental correspondence conducted by email. Once the Sector for Immigration received an application, checks were carried out by the federal and cantonal ministries of internal affairs. Following confirmation of the applicant's citizenship, the person would be permitted to enter the country, with a travel document issued by the embassy in the relevant country if necessary. The Service for Foreigners' Affairs followed the same procedure for foreign nationals, except that the checks were performed by the Ministry of Foreign Affairs.

31. **Mr. Kedić** (Bosnia and Herzegovina) said that, in addition to the One United Nations country programme, the Government also cooperated with international agencies on individual projects with specific goals or time frames. One such programme was the assisted voluntary return and reintegration project supported by the International Organization for Migration, which had been running continuously for 10 years. The Government had also implemented projects to improve border security in cooperation with the European Border and Coast Guard Agency (FRONTEX). Various projects had been launched to provide additional training to law enforcement personnel handling migration under the Instrument for Pre-accession Assistance and in cooperation with the International Organization for Migration and the Office of the United Nations High Commissioner for Refugees.

32. The bill to amend the Law on the Movement and Stay of Aliens and Asylum had eventually been divided into two laws for more effective implementation: the Law on Aliens had been adopted in 2015 and the Law on Asylum in 2016. A major improvement introduced in the Law on Aliens was that the duration of detention in immigration centres, which had previously been unlimited, was now restricted to a maximum of 18 months. The Law had been drafted to ensure harmonization with the European Union acquis, including the right of residence for highly qualified workers with a European Union Blue Card. Some short-term jobs were exempt from the requirement for a work permit and could last for up to 30 days in one year.

33. The only problem that arose with the readmission process concerned foreign nationals who had stayed in another country prior to their arrival in Bosnia and Herzegovina and so should be returned there; if their stay there could not be proven, the other country sometimes refused to accept its obligation to admit them.

34. **Ms. Markovi-Sekulić** (Bosnia and Herzegovina) said that the readmission process for citizens of Bosnia and Herzegovina worked very well. The Ministry for Human Rights and Refugees cooperated with the border police to accept citizens within a short time frame and had admitted over 1,000 persons in 2018. Significant funds were allocated for their readmission and reintegration into society. A project involving 31 local communities had been operating over the previous four years, with the support of the Embassy of Switzerland, providing housing and other services to returning nationals. In the next two years, a similar project would be launched in cooperation with Germany. The Ministry of Human Rights and Refugees had set up a centre where persons subject to readmission and migrants in transit in Bosnia and Herzegovina would be processed.

35. **Mr. Taghi-Zada** said that he would appreciate more detailed information on the type of agreements on pensions that had been signed with other countries and, specifically, which country paid the pensions and whether the amount was discussed between them.

36. **Ms. Đuderija** (Bosnia and Herzegovina) said that Bosnia and Herzegovina had concluded bilateral agreements on pensions with several neighbouring countries, under which pension entitlements were calculated separately in the two countries using the system applicable in each. Years of employment in different countries were added together for the purpose of the calculation. For example, if a person had worked in Germany, he or she would be entitled to a pension in that country and any years of employment in Bosnia and Herzegovina would be taken into account. It was often advantageous for persons to work for their final years in Germany to obtain a higher pension.

37. She wished to thank all the Committee members for the dialogue and was honoured to have had such an exchange with high-profile experts who were assisting her country to protect human rights.

38. **The Chair**, commending the State party for its cooperation during the constructive dialogue, said that he encouraged it to take all necessary measures to implement the recommendations that the Committee would make.

*The meeting rose at 1 p.m.*