



**ALTERNATIVE REPORT OF THE INSTITUTION OF THE HUMAN
RIGHTS OMBUDSMAN OF BOSNIA AND HERZEGOVINA ON THE
IMPLEMENTATION OF UN CONVENTION ON THE RIGHTS OF THE
CHILD FOR THE PERIOD 01.06.2009 TILL THE END OF 2011**

Banja Luka, 2011

INTRODUCTION

Pursuant to Law on Human Rights Ombudsman of Bosnia and Herzegovina, in June 2009 Department for protection of the rights of the child commenced its work. The Department is a national mechanism envisaged to ensure harmonization of the approaches to the enjoyment and protection of the rights of the child on the whole territory of BiH.

Complaints lodged to the Department reveal that respondent parties in most cases complained of social welfare centers, courts, schools, and, not so much of educational institutions/inspections and relevant ministries in charge of social and child care and education.

In addition to individual complaints processing, the Department for protection of the rights of the child took a series of activities and measures to promote the rights of the child to mention only research on the rights of the children, education sessions in schools, preparation of special reports, participation in expert meetings concerned with children rights, providing of opinions and suggestions during the preparation of legislation, strategies and like.

It is a general opinion of the Ombudsman that children rights in Bosnia and Herzegovina are mostly violated due to poor economic and social situation within the state. Budget funds enabling realization of the most of the guaranties rights pursuant to the law and the applicable by-laws are allocated from the local communities (towns and municipalities) budgets. However, it should be emphasized that funds allocated for children are far less than the funds allocated to the other categories of population such as veterans, civil victims of war, disabled war veterans and like. General poverty in BiH has a direct impact to the respect of the rights of children. In BiH Non-existence of statistical data, analyses, procedures, standards and normative based on professional principles pose a problem in BiH. For that reason it is very difficult to create a picture of a real status of children rights in BiH. In the opinion of the Ombudsman, it could be stated that there is a gap between the legislation and its implementation and lack of budgetary funds allocated to children and realization of their rights.

RECOMMENDATION

- State should do keep working on affirmation of UN Convention on the Rights of the Child and insist on its implementation in domestic legislation, which, inter alia, comprises continuous sensitization of wider public and experts to act in accordance with the Convention and advocating for direct implementation of international and EU standards on the protection of the children rights.
- to provide additional funds for the programs involving children and increase budget allocations of local communities for realization of the rights pertaining social and child care
- to increase capacities of the relevant services dealing with social, family and child care

In accordance with general comment no.2 of the Committee on the rights of the child, having in mind importance of independent institutions dealing with human rights protection, the Institution of the Human Rights Ombudsman of BiH is hereby submitting this **Report** on children rights situation in Bosnia and Herzegovina for the period from 01.06.200 till the end of 2011 in order to offer a complete and impartial insight on children rights situation and implementation in

Bosnia and Herzegovina. Report is absolutely independent with regard to the domestic and international NGOs and report on the same issue submitted by the state.

1. RESPONSIBILITY OF THE STATE

IMPLEMENTATION OF THE RIGHTS (ARTICLE 4)

During 2009 the Ombudsman Institution in co-operation with the Save the Children Norway prepared a document under the title „Analysis of harmonization of the legislation of Bosnia and Herzegovina and UN Convention on the Rights of the Child” with the main objective of showing disparity between the BiH legislation in all the areas related to children rights and to ensuring the implementation of international standards set out in UN Convention on the Rights of the Child through the implementation of recommendations of the UN Committee on the Rights of the Child.

The Ministry of Human Rights and Refugees of BiH has initiated harmonization of domestic legislation with the UN Convention on the Rights of the Child. To this end this Ministry formed a Working group including also representatives of the Institution of the Ombudsman to ensure implementation of the Ombudsman’s recommendations presented in the Analysis of harmonization of the applicable legislation in Bosnia and Herzegovina with the UN Convention

Ombudspersons think that the state makes certain efforts for the best interest of children to be understood and appropriately included in legislation. However, it is not enough. According to the opinion of the Ombudsman what raises concerns is the fact that professionals/experts working with children or issue court or administrative decisions are not familiar with basic notions related to the human, that is, children rights and fundamental freedoms protection. UN Convention on the Rights of the Child is a constituent part of the Constitution of Bosnia and Herzegovina which guaranties to every child the rights to harmonious and full development. Ombudspersons in all their recommendations call upon the relevant institutions to implementation of UN Convention on the Rights of the Child in all the cases involving the rights of children, particularly in the absence of domestic legislation. Issue of direct implementation of the Convention initiates different opinions and theories, but it is also a practical issue. Ombudspersons think that the authorities and relevant bodies are not only obligated to implement UN Convention, but to implement it in their daily work and daily operation.

Establishment of the Children Council within the Ministry of Human Rights and Refugees would be an encouraging step in better implementation of children rights in BiH. In the period from 2002 to 2007 the Children Council acted in the direction of establishment of a better legal framework for the child protection, support to the relevant ministries and inclusion in preparation of different programs and legislation.¹ The BiH Council of Ministers (period from 2006 on) failed to

¹ The Children Council is established at the end of 2002 with an aim to follow up the implementation of the National Action Plan for children in the period 2002-2010. From its establishment the Children Council in its activities promoted close monitoring of the

establish BiH Children Council for having not achieved consensus between the entities on criteria for the election of the Children Council's members. The entity of the Republic of Srpska has established the Children Council of the Republic of Srpska. Fact the BiH failed to comply with recommendation of the Committee related to the strengthening of the Children Council through human and financial resources is raising concerns of BiH Ombudspersons.

On 13.07.2011 the BiH Council of Ministers passed decision on the adoption of the Action Plan for children of Bosnia and Herzegovina for the period from 2011 to 2014. Adoption of new Action plan for children is very important for the BiH children, and it could be said that special objectives and measures are very well defined, obligations and mandates allocated between the relevant institutions for the achievement of general and special objectives. Action plan comprises health care, education, social care, children from vulnerable groups and special forms of children protection.

A database to allow for following up of the children situation in BiH is still lacking. Its existence would facilitate definition of problems related to children, but as long as there is no census, this database will not be created. The last census was conducted in 1991, and by now it became clear that it would not be organized in 2011 as planned since political consensus has not been achieved on wording of relevant legislation. From the aspect of children rights it results in limited availability of statistic data.

The Ombudsman holds that relevant institutions do not pay enough attention to the protection of children rights. Reform of the Ombudsman institutions in BiH that was finished after the appointment of new ombudspersons of BiH in December 2008, as well as changes in its policy course enabled significant progress in the area of children rights since reform included the establishment of the Department for the protection of the rights of the child with a very wide mandate defined in Law on BiH Human Rights Ombudsman. This Department has two employees, and its operation is in its most part supported by the Save the Children Norway. In this regard, the state would have to strengthen capacities of the Department for the protection of the rights of the child and its material resources. In any case, it is important that merger of Ombudsman institutions in BiH into one unified Institution has been finished. Ombudspersons have adopted internal documents necessary for the operation which includes operation of the Central office in Banja Luka, and regional offices of Sarajevo, Brčko, Mostar and Livno. In addition to that, so-called duty days are organized in Tuzla. Based on the citizens demands and addresses Ombudspersons are convinced that there is need for more regional offices (Tuzla, Bijeljina, Bihać, Trebinje). However, as the authorities have not been established yet on the state level since the last elections, Ombudspersons are not able to create pre-conditions for the establishment and functioning of such regional office.

It should be emphasized that in the entity of the Republic of Srpska, based on the Law on the Ombudsman for Children of the Republic of Srpska, the mentioned Institution dealing only with children rights protection was created in that entity and it only covers its territory.

Certain positive developments took place in BiH in the field of strategic documents creation since these documents have more impact to the rights of children than the other legislation. However, in 2011 a backlash could be noticed in this field as well for non existence of the state-level authorities.

A significant development took place in the promotion of the Convention and its Concluding remarks and recommendations of the Committee by the BiH Ministry of Human Rights and in co-operation with UNICEF. Unfortunately, such promotion of the rights enshrined by the Convention it was not followed by the engagement of lower authority levels. Communication system, exchange of information and co-operation between the different authority levels on vertical and horizontal level has not been established in satisfactory fashion, but is mostly coming as a result of individual efforts.

RECOMMENDATIONS

- To conduct census in Bosnia and Herzegovina and then establish a unified database on children and realization of their rights
- Reaffirm the operation of the Children Council of BiH
- Strengthen the operation of Department for the protection of the rights of the child within the Human Rights Ombudsman of BiH
- to adopt necessary strategic documents including lower authority levels in the entities (cantonal, town's and municipal authorities) while the state should enable realization of the objectives defined in these documents by appropriate funds planned within the budgets

AWARENESS RISING OF THE CONVENTION AMONG CHILDREN AND ADULTS (ARTICLE 42)

This is the third year in a row that the BiH Ombudsman with support of the organization Save the Children Norway implements educative workshops in primary and secondary schools in the whole BiH in order to raise awareness of the Convention and the Institution of the Ombudsman. The Department staff realized that children lack awareness of their rights. Rare are examples of schools where children's comments revealed directly or indirectly that their particular school has been continuously and systematically working on introduction of the principles set out in the Convention. The state of Bosnia and Herzegovina in its last periodic report on the implementation of the Convention informed on significant efforts made for making children and the public familiar with the Convention. However, experience of the Department for the protection of the rights of the child cannot confirm that experts and the wider public know enough on issues related to the rights of children and mechanisms of their protection and even less are their skills and courage to actively seek their protection or affirmation.

RECOMMENDATIONS

- to create and enable implementation of the education programs for children, parents and teachers on UN Convention on the Rights of the Child and methods of realization of the rights of the child in educational and upbringing institutions at all the levels starting from pre-school education. Contents involving UN Convention on the Rights of the Child should be introduced in regular program and out-curricular activities.
- to seek establishment of better and more quality co-operation of authorities and NGOs in awareness raising activities on necessity of children rights implementation;
- strengthen and support governmental and non-governmental institutions dealing with children's rights using networking for exchange of experience with neighboring countries and countries which had achieved higher degree of human and children rights implementation in order to use their best practices in social context of Bosnia and Herzegovina.

2. DEFINITION OF A CHILD

Maturity limit in BiH has been set at 18 years, when legal capacity is acquired, although positive legislation covering different areas provide for many exemptions. For instance, criminal legislation or employment related legislation, then in cases involving marriage or parenthood prior to maturity age etc. Such exemptions are mostly inherited from ex-Yugoslavia.

In the opinion of the Ombudsman, the state is obligated to harmonize domestic legislation with the Convention, which is a time-consuming process. However, exemptions are always possible, but care should be taken of methods of determination of such exemptions, their implementation and monitoring should always be defined by law.

3. GENERAL PRINCIPLES

NON-DISCRIMINATION (ARTICLE 2)

In the opinion of the Ombudsman, especially endangered and vulnerable in BiH are children of refugees and displaced persons, returnees, national minorities (particularly Roma children), children with special needs/impairments in their psycho-physical development and children living in rural areas. Children from Roma families are in much worse situation than other kids, and it is important to underline that they are the largest and most vulnerable national minority. Most of Roma children are not registered in birth registration books, so they do not have personal documents, which hinder their access to the rights, primarily the right to education and health and social care. Such Roma children status puts them in vulnerable position and makes them exposed to exploitation by the adults (begging, prostitution, pornography, trafficking in body parts and like).

Funds available for child benefit payment are limited and their use not harmonized and not co-ordinated in BiH. While administration of the child benefit payments is centralized in RS, in FBiH it is only given in 4 out of a total of 10 cantons. Most of municipal social welfare centers have limited funds and human resources. In Brčko District, the Law on Child Care provides under which conditions a child can enjoy this right, and according to our research activities done so far, and our individual cases registered, this payment in Brčko District is regular. This non-harmonized system of child care related rights enjoyment

causes the emergence of cases involving false residence registration on the territories of the administrative units where child benefit payments are foreseen by law so that parents could get such allowances. This is especially characteristic for the region of Brčko District of BiH.

Based on both individual complaints and *ex officio* investigations, we often establish discrimination committed by the relevant authorities, particularly toward children with special needs/impairments in their psycho-physical development. This was a reason for the Ombudsman to prepare a special report and present it to the public and relevant authorities in November 2010. With regard to children with special needs, in this Special report the Ombudsman held that despite the relevant legislation that is in place, there is a problem of non-existence of appropriate mechanisms and procedures necessary for its implementation, especially in the field of their inclusion in regular education process.

RECOMMENDATIONS

- to strengthen Department for the protection of the rights of the child within the Ombudsman so it can effectively protect the rights of children either by processing the individual complaints filed or acting out of duty and promoting the children's rights through information and awareness-raising campaigns;
- act in direction of harmonization of the children's rights in the whole BiH through coordinated activities of the BiH Ministry of Civil Affairs and the BiH Ministry of Human Rights and Refugees, relevant entity and cantonal ministries, the Government of the Brčko District of BiH, and with the assistance of international organizations, NGOs operating in BiH and active engagement of the Children's Council of BiH;
- In order to harmonize the rights of children on the whole territory of Bosnia and Herzegovina, it is necessary to found a public fund for children's rights in the Federation of BiH since it exists in the Republic of Srpska and the Brčko District of BiH. Children benefit payment should be provided for all the children meeting conditions for such a type of social care entitlements, trying to harmonize the amounts of these benefit payments on the whole territory of BiH, as well as budgets earmarked for children in local communities.

BEST INTEREST OF THE CHILD (ARTICLE 3)

Implementation of the principle of the best interest of the child in BiH is still not satisfactory, primarily for its non-understanding, especially if the right of the child is closely linked to the rights of the parents since there is a conviction that parents know the best what is in their child's best interest. Investigations conducted by the Ombudsman related to the cases lodged within the Institution including the fact finding and contacts with relevant social services and other administrative bodies, as well as the assessment of their arguments offered on the Ombudsman inquiries, revealed that the rights of the child have been violated often, that all the available efforts and measures were not taken in order to find out and establish the best interest of the child.

For instance, in the field of enjoyment of benefits falling within the social, child or family care, it happens at the entity level that there is a conflict of mandates between the social welfare centers and their headquarters in different entities. Conflict of mandates is very often in practice since the realization of the individual rights not rarely involves certain payments, which can be

challenging when the beneficiaries change places of residence and go from an entity to another. According to the applicable legislation there is no a body in place to resolve so emerged conflict of mandates and this could be especially problematic in cases involving internally displaced persons returning to their original places of residence. Ombudspersons asked the state ministry acting as a coordinating body to co-operate with entity and cantonal ministries and take appropriate measures to solve this long lasting problem in the best interest of children according to the Convention.

RECOMMENDATIONS

- The state should keep taking measures to include the best interest of the child's principle in the BiH legislation and to ensure that mechanisms guarantying the efficient implementation of this principle are in place, which means a high level of awareness and skills of the professionals and officials taking decision concerning children in addition to provision of necessary funds for the implementation of the decisions taken;
- To ensure professional training in all system services dealing with the child care on basic principles of the UN Convention on the Rights of the Child and its practical implementation in context of the child care system of Bosnia and Herzegovina;
- To pay close attention to sensitizing and training of media in order to take care of the best interest of the child while reporting on individual cases and to adopt codes of conduct in co-operation with governmental and non-governmental organizations dealing with media field.

THE RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT (ARTICLE 6)

Most of the problems in BiH emerge when parents are unable to take adequate care of their children for different reasons and the state takes on. Very often social welfare centers or other institutions do not have capacity and necessary skills to face daily challenges and problems facing some families. This problem is especially highlighted for lack of adequate programs for training and education of healthy parenthood and empowering the family. As an example we can mention situation when a child is sent to a child care institution and their family left alone instead of putting efforts to strengthen their parental capacity in order to accept the child back to the family. Only recently we saw some discussions on the importance of taking preventive measures to empowering the family in order to prevent cases of children with no adequate parental care. The fact that there are situations when children are sent to institutions due to the poverty or social need status is raising many concerns. Entities in BiH have strategic documents in the field of care of children with no parental care. Unfortunately, the Ombudsman thinks that there are many children settled in child care institutions only for poverty. The Ombudsman thinks that poverty should in no case be the reason behind any child's sending in institution. What raises even more concerns is likelihood that only more developed municipalities and towns in near future will be able to work out the appropriate mechanisms to improve situation of children with no parental care and prevent children to leave their families. In any case the Ombudsman think that the authorities must build capacities of the relevant social welfare centers in their local self-government units so they can work on the empowerment of the families through the different

programs earmarked for that purpose comprising children facing risk of losing their families. Such programs should have as a main objective realization of the natural interest of the child to remain in their families as the best environment for their development to the highest degree possible.

RECOMMENDATION

- to enable, as much as possible, realization of objectives set out in strategic documents related to the enjoyment of the children's rights including monitoring and follow up of these objectives implementation;
- to enable relevant service to organize and conduct education and training in their local communities earmarked to young couples on family planning, responsible parenthood (matrimonial and family counseling and like) strengthening at the same time preventive aspects in the activities of the relevant institutions in order to identify children facing risk of losing their parental care and empower the family in general;
- relevant authorities of the entities, cantons and the Brčko District should take additional measures to ensure keeping the children in their families;

THE RIGHT TO PARTICIPATION (ARTICLE 12)

The Ombudsman conducted an empiric analysis concerning the implementation of children participation principle in school environment. Obtained results were presented and included in a Special report on child participation and participation of adults in the interest of children in school environment. According to the results of this research children in school do not know enough of their representatives in the Student's Council and the election of these representatives has not always been conducted with their consent, but the adults make it for them, as well as they prepare programs and action plans for these councils, the mentioned adults being teachers supposed to coordinate work of this body, and children's participation there is reduced to a minimum.

Results of another empiric research of the BiH Ombudsman on children awareness of their rights, the most frequent forms of these rights violation and mechanisms to their realization revealed that children think that their right to be heard is the most infringed right since they are not asked while adopting important decisions neither in school nor in family.

Yet another special report was made on the right to pre-school education. This report will be presented on the occasion of the Universal Children's Day to indicate that a lot of children is excluded from this form of education. It is especially worrying that legal requirement according to which every child has to undergo pre-school education a year prior to the enrollment in school is not implemented. Different treatment of children in urban and rural areas is also present.

RECOMMENDATIONS

- to strengthen efforts and better inform the children and teachers, through the appropriate school programs, on the role and importance of Student Councils in process of decision-making in the interest of children and sensitize children and adults for better cooperation with this body;

- to create different programs and workshops to motivate children as much as possible to actively get included in preparation of programs and action plans of Student Councils, to create prerequisites in schools, primarily material ones, (adequate premises, basic material etc.) for work of Student Councils, Parent Councils and representatives of local community and NGO sector through the partnership in the activities in the interest of children
- relevant ministries should provide for participation of the Student Councils in the work of schools;
- relevant authorities in the field of education in BiH must ensure implementation of legal provisions related to the enjoyment of the right to pre-school education, particularly in a year preceding the enrollment.

4. CIVIL RIGHTS AND FREEDOMS

THE RIGHT TO NAME AND NATIONALITY (ARTICLE 7 AND ARTICLE 8)

A lot of Roma children are not registered in birth registration books and even more of them are coming from socially vulnerable and poor families. In its reports and recommendations addressed to the authorities in BiH the Ombudsman highlights all the negative consequences arising from non-registration of a child. For instance, in one of their recommendations Ombudspersons recommended to the relevant internal affairs body having obtained the consent of the Ministry of Civil Affairs to make a subsequent entry into birth registration books of a mother and her two children. Namely, during the survey this mother and her children were found in a violence victims shelter held by a humanitarian organization since the second half of 2009 with no any documents, no identity cards, not registered in BiH nationality books. The problem was brought to the public attention when children had to go to school and could not present necessary documents. Recommendation of the Ombudsman in this case was fully complied with.

RECOMMENDATIONS:

- to support work of NGOs dealing with Roma and other NGOs, particularly in areas largely populated by Roma members in order to form mobile teams for periodical controls and registration of newborns into the birth registration books;
- to strengthen capacity of the relevant social welfare centers and other institutions (hospitals, health centers, mental health centers) so they can organize awareness-raising campaigns among parents to make them familiar with their obligation to register their newborn children and to simplify administrative and technical aspects of subsequent registration of both children and adults in addition to a clear definition of the parent's liability for the child's registration.

THE RIGHT TO FREEDOM OF ASSOCIATION (ARTICLE 15)

The Ombudsman think that satisfactory legal framework in BiH is in place providing procedures and methods of realization of this right. However, it is necessary for governmental and

non-governmental sector to work in synergy so that children get support and incentive to form associations.

RECOMMENDATION:

- The state should strengthen efforts to support and initiate children's forming the associations through the existing and new programs, training sessions organized by GO and NGO sector, international organizations and the Department for the protection of the rights of the child.

THE RIGHT TO PROTECTION OF THE CHILD'S PRIVACY (ARTICLE 16)

The Ombudsman Institution conducted monitoring of six daily newspapers and four magazines published on a regular basis in BiH in a two-month period (July/August 2009). It turned out that printed media in BiH, daily newspapers and magazines, are not sensitized for the rights of the child, since events and topics involving children are treated as any other news, without any previous analysis as to the consequences of such reporting and trying to obtain opinion of relevant actors. It is not rare that an article reveals the identity of a child or other data describing, classifying or marking a child intruding that way into the child's privacy, family, home and attacking the child's honor and dignity. There is a Press Council in BiH, as well as the Code of Ethics for journalists in addition to the Law on Personal Data Protection, all at the state level. However, the Ombudsman thinks that all these pieces of legislation have certain faults so it cannot provide efficient protection of the child in media, and that stress should be put on sanctioning all the cases of abuse in the best interest of the child.

RECOMMENDATION:

- To create appropriate legal and legislative framework in the area of reporting of children, to involve appearance of children in commercial adverts, so that maximum caution be exercised while reporting of children irrespective whether they were victims or perpetrators of criminal activities, acts of abuse or other forms of violence in order to provide high level of protection of their right to privacy and sanction media behavior detrimental to children.

THE RIGHT TO ACCESS TO APPROPRIATE INFORMATION (ARTICLE 17)

Enjoyment of this right, in the opinion of the Ombudsman is one of pre-requisites for the implementation of the right to participation and expression of the opinion, the right to freedom of association (Article 13) and freedom of thought, conscience and religion, all of it for the sake of enjoyment in one of the four basic principles of the Convention – participation and respect for the views of the child, which was already mentioned in this report.

Activities taken for the promotion of the rights of the child by the Department for the protection of the rights of the child include research activities and surveys on the rights of children in school, education sessions held in schools, issuance of special reports, participation in expert meetings discussion the rights of children and like, all in order to give to the children a better

insight in their rights and activities of the Ombudsman Institution so they can regard it as a mechanism assisting in realization and enjoyment of their rights.

Recommendations for Article 12 of UN Convention on the Rights of the Child have implications to Article 17.

THE RIGHT NOT TO BE SUBJECTED TO TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT AND PUNISHMENT (ARTICLE 37a)

From the Ombudsman's experience a negative example involving two girls from rural area who suffered degrading physical and psychological violence by their father and step mother. The Ombudsman asked the relevant local authority bodies to react promptly and take concrete necessary steps. Such unfortunate examples show how all protection mechanisms which are in place can fail in a local community so that, in concrete case, authorities dealt with the consequence although the violence lasted for a long period.

According to criminal legislation in BiH, juvenile criminal offenders can be punished with educational recommendations, monetary fines, and exceptionally juvenile prison (depending on offender's age). Juvenile prison sentence is served in closed, semi-open and open juvenile detention/confinement and rehabilitation institutions. Other related legislation, such as laws on criminal sanctions, detention and other measures execution provide for separation of juvenile and adult offenders so that juveniles remain in specialized institutions where they can stay up to their age of 25 as a maximum. However, non-systematic approach is present in this area as well, which results in practice that different categories of sentenced and detained persons be settled together with juvenile delinquents.

Juvenile prison sentence execution problem that lasted for years has finally resolved by the establishment of juvenile prison in the Republic of Srpska in form of the Juvenile Department for Corrections within the Kula Correctional Facility. There is Education and Rehabilitation Center for juveniles where they can continue their education since many of them have not finished primary or secondary school. In Tuzla Canton region in April 2010 Disciplinary Juvenile Center was opened as a first of a kind in BiH, established by the Government of Tuzla Canton, which is earmarked for juvenile delinquents first offenders or serving for second, but minor offence.

The Ombudsman very often intervenes in situation of child protection from physical and psychological abuse, and what needs to be stressed in this regard is the fact that BiH legislation does not prohibit corporal punishment explicitly.

It is necessary to stress that the state of BiH has an obligation to establish national preventive mechanism (NPM) pursuant to the provisions of the Optional Protocol to Convention the for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Until the end of 2011 BiH is obligated to adopt its final decision as to the most efficient model for the establishment of the NPM, one of the suggestions being that it be the Ombudsman Institution together with NGO sector.

RECOMMENDATIONS

- To prepare and adopt a Strategy for Combating the Violence against Children for the period between 2011 and 2014 and provide all necessary pre-requisites for the implementation of strategic goals and objectives
- It is necessary to provide monitoring over the implementation of all strategic documents in BiH related to the implementation of children's rights, with emphasis to the necessity of co-operation between the NGOs and government authorities in carrying out of such monitoring and preparation of concluding observations, objections etc.

5. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

RIGHTS, RESPONSIBILITIES AND OBLIGATIONS OF PARENTS (ARTICLES 5, 18 – paras 1 and 2)

Family law in BiH provide for the obligation of both parents to equally and consensually carry out their parental rights and obligations. There are differences, such as the rights of parents according to the labor law, for instance in the area of maternity leave after the third child, where Labor Law of RS foresees 18 months in such cases and in FBiH it is 12 months, and possibility that fathers take maternity leave, which is then paternity leave.

RECOMMENDATION:

- To take measures to harmonize BiH legislation governing the rights, obligations and responsibilities of parents, and other relevant legislation.

SEPARATION FROM PARENTS (ARTICLE 9)

During 2010 the Ombudsman Institution conducted a survey on the rights of children accommodated in care institutions for children with no parental care with socially unacceptable behavior and partially institutions for children with difficulties in their development. This survey comprised 2000 children in the age from a couple of days to 18 years in 33 institutions. Violations of the rights of these children were established and reasons include uncertain funding of these institutions, non-existence of monitoring over these institutions, restricted access to health care, rare communication with biological parents and relatives, big size institutions are not adjusted to the needs of children, children stay in these institutions too long, locations are

The most spread form of care of children with no parental care in BiH is still their accommodation in institutions although the experts in the area of social and child care think that large institutions of such kind should be transformed, but they are still reality in BiH.

RECOMMENDATION:

- It is necessary to intensify transformation of the institutions taking care of children deprived of parental care and adopt Action plan for such transformation. In general, and in addition to that, it is necessary to realize measures defined in a document entitled „Protection of children with no parental care and families under risk of separation in BiH 2006-2016“

- In order to implement strategic documents entities in BIH should adopt clearly defined action plans in the field of protection of children deprived from parental care and families risking separation
- To further strengthen fostership.

Recommendations for Article 6 of UN Convention on the Rights of the Child have implications to Article 9.

FAMILY REUNIFICATION (ARTICLE 10)

The Department received complaints of parents who cannot maintain contacts with their children since they live abroad with the second parent. In all individual cases we inform the complainants on all legal aspects of help as we provide them with legal advice on procedure before the competent bodies. The largest number of complaints lodged within the Department is related to impossibility of maintaining contacts with the child or other close family members. Parents often feel that their parental rights are violated by the social welfare centers since they think that they failed to duly establish the best interest of the child. Parents are given explanations on the role of social welfare centers as first-tier guardianship authorities. It is absolutely clear that the biggest responsibility for children lay on their parents, but the state is obligated to create legislative and other conditions to help the parents in realization of the their rights and obligations, primarily those related to children. Since the establishment of the Department till the date many recommendations were issued to the social welfare centers recommending them to put more efforts in concrete cases in order to realize children's rights. Decisions of social welfare centers are very often not complied with since the applicable mechanisms for decision implementation are not sufficient. In some case these mechanisms are in place, but are ignored by the parties and the officials of the centers (monetary fines are not charged according to the law, or assistance of the police is not asked for, or relevant ministry is not informed and like).

RECOMMENDATIONS:

- Relevant bodies through the social welfare centers should enable adequate mechanisms for maintaining and continuous initiating and keeping contacts and emotional links of children without adequate parental care with their parents, or relatives in case of children deprived from parental care or their places of origin.
- It is necessary to provide more efficient sanctioning for non-enforcement of social welfare centers' decision and other documents, particularly in cases involving denial to allow contacts with child to other parent and relatives or other related rights.

ILLICIT TRANSFER AND NON-RETURN OF CHILDREN FROM ABROAD (ARTICLE 11)

The Hague Convention on the Civil Aspects of International Child Abduction, or Hague Abduction Convention is aimed to ensure urgent return of children illegally removed or retained from or in a contracting nation and to provide respect for the established right to custody and

access rights in another contracting nation. Contracting State designates a central authority to discharge the duties which are imposed by the Convention upon such authorities. In BiH is the Ministry of Justice which co-operates with the entity ministries of justice and Judicial Commission of the Brčko District of BiH. BiH legislation defined sanctions for child abduction which is sufficiently stringent legal mechanism to prevent child abduction.

PROTECTION FROM ABUSE AND NEGLECT (ARTICLE 19)

Both entities and the Brčko District of BiH have taken a series of legal measures and adopted legislation intended to the protection of children from domestic violence and abuse in general. It has already been mentioned that corporal punishment in family and in institutions has not expressly been prohibited in BiH, but from the other hand, relevant NGOs in co-operation with international organizations did a lot, and are still doing a lot to raise awareness of the public to necessity to prevent and eradicate violence against children and promote non-violent means to discipline children with full respect of their views, at the same time raising awareness of negative consequences of corporal punishment.

There are not rehabilitation or similar centers in BiH for children victims of physical or sexual abuse. However, it is particularly important that there are so-called SAFE HOUSES where victims of violence (mostly women with children) are offered direct physical protection, psychological support, therapy and consultant support, legal protection and advice, empowerment of violence and abuse victims to be economically independent etc. There is 9 (nine) safe houses in BiH established by various NGOs. Funding of safe houses is a challenging issue since there is no any regulation in place to govern this issue. Namely, funding for safe houses is mostly provided by local communities budgets (towns, municipalities) or cantonal and entity budgets. In addition to that, NGOs apply for different projects providing voluntary contributions for limited time periods. In the opinion of the Ombudsman, safe houses in BiH are relevant indicator of potential of NGO sector and its capabilities to contribute to the promotion of women and children rights protection.

The Ombudsman Institution dealt with peer bullying on which it issued a recommendation to the relevant bodies in the Federation of BiH and Brčko District of BiH to take all necessary measures and activities to ensure that children in school be disciplined in a way consistent with human dignity of the child including legal definition of procedure to be applied in cases of peer bullying in order to have equal treatment of all the children in Bosnia and Herzegovina. Namely, in 2008 the Republic of Srpska adopted a document (Protocol) defining procedures to be followed in cases involving peer bullying in school, while this issue has not been defined at all in the Federation of BiH and Brčko District.

RECOMMENDATIONS:

- Strictly prohibit corporal punishment of children in BiH, and keep working on awareness raising on negative consequences of corporal punishment;
- Put efforts to strengthen capacities of social welfare centers and professional training of its employees, and encourage use of the applicable legal mechanisms to protect children in all the situations from abuse and neglect (institute of deprivation from parental rights and

other protective measures pursuant to the legislation governing the protection from domestic violence and like).

PROTECTION OF PARENTLESS CHILDREN (ARTICLE 20) AND ADOPTION (ARTICLE 21)

Family Laws in BiH define issues of family and relations within it, which particularly applies to relations between parents and children, adoption, guardianship for parentless children and procedures by competent organs related to mentioned relations. Although legislation in all its segments particularly stresses criteria of protection of the best interest of the child, some provisions of existing legislation are not applied in practice.

Limitations applied on the occasion of adoption of a child are set forth by relevant pieces of legislation: there are obstacles related to adoption of children by persons living in other entity. (Family Law of RS envisages that only citizen of RS may adopt a child), obstacles related to child's age (in FBiH children older than 10, that is, 5 in RS have not got right to full adoption, although majority of adopters prefer exactly this), insufficient application of possibility of deprivation of parental rights in cases where neglecting of children take place, etc. Lack of unique data base and cooperation between social work centers at all State levels also causes a small number of adoptions. Roma's children are adopted very rarely by BiH citizens, including children with difficulties in development, due to which these groups of children are additionally discriminated.

The Ombudsmen are of the position that representatives of social work centers in BiH should intensify visits and generally pay more attention to concern care regarding children placed in institutions. As a holder of social care in municipalities/cities the authorities should ensure and enable that children placed in institutions exercise of numerous rights from the area of social and children's protection, which requires a number of activities, including time devoted, financial resources, will, etc. Nevertheless, we are of the opinion that all what is needed for visits to children placed in institutions is just a little bit more of good will by representatives of social work centers because it is the fact that following accommodation of a child in institution and completion of legal and formal procedure concerning determination of guardian, payment of accommodation, etc, very frequently such child is forgotten.

The Ombudsmen draw attention that BiH is not party to the Hague Convention on protection of children and cooperation in respect of inter-country adoption of 1993, although it is contained in the report provided by the Government that it considers possibility of accede to the Convention.

RECOMMENDATIONS:

- Competent organs should urgently prepare data base of children waiting to be adopted and submitted requests for adoption to eliminate any possibility that due administrative procedure a child remains deprived of life in a family and to prevent misuse springing from disrespect of adoption procedure.
- The measures concerning harmonization of legislation prescribing limitation of upper age of the child related to adoption should be taken, as well as accede to the Hague

Convention on protection of children and co-operation in respect of inter-country adoption.

PERIODICAL EXAMINATION OF ACCOMMODATION (ARTICLE 25)

Financing of social protection institutions in FBiH is not defined by the Law on taking over of the rights and obligations of the founders of social protection institutions in FBiH, which is a great problem for such institutions. The Law on basic social protection, protection of civil victims of war and protection of families with children in FBiH determines that organ taking decision on accommodation of a child in other family or institution should monitor such family or treatment of a child in institution.

The Law on social protection of RS stipulates obligation of the Ministry of Health and Social Protection to monitor professional work of institutions for accommodation of children, and monitoring is further prescribed by additional appropriate by-laws.

The Law on social protection of BD BiH stipulates monitoring of the work of the institutions providing social protection and mentioned monitoring is carried out by Department of health, public security and other services of the Government of BD BiH.

Through their visits to institutions providing accommodation of the children of different categories in 2010 the Ombudsmen concluded that monitoring of accommodation of the children and conditions in which they live are inadequate and insufficient. The big problems are institutions that are registered as humanitarian organizations or associations, since they legally are not covered by monitoring by competent institutions. The Ombudsmen are of the opinion that additional efforts are needed concerning systematic periodical examination of accommodation and that it would be particularly important to ensure independent monitoring of the work of all institutions where the children are accommodated. If the State strengthens capacities of the Department for protection of the rights of the child of the Ombudsmen institution, from the aspect of protection of children's rights, it would be very acceptable and justified that monitoring is performed by the Ombudsmen, i.e. the Department.²

RECOMMENDATIONS:

- Information on implementation of measures determined in document „Protection of children without parental care and families under risk of splitting in BiH 2006-2016“ should be prepared with special focus on development of Action plan for transformation of institutions for children without parental care and establishment of minimum social services envisaged as short-term task.
- Through adequate legislative reform there should be ensured that rights and obligations of institutions' founders become clearly defined as rights of users bearing in mind suggestions and opinions of representatives of social work centers according to whose decisions the children are most frequently accommodated in the institutions.
- Independent examination of accommodation should be ensured.

² Special report on rights of children accommodated in the institutions is available on website of the Institution: www.ombudsmen.gov.ba

6. HEALTH AND SOCIAL PROTECTION

CHILDREN WITH DIFFICULTIES IN DEVELOPMENT (ARTICLE 23)

Children with difficulties in development are frequently isolated, which could be viewed through direct relation with poor quality and quantity of supporting services. It makes negative impact on already vulnerable psychical and social situation. Overcoming of segregation and discrimination is one of the basic factors for inclusive education today. Interdisciplinary approach is required for resolving of this problem. This issue is not only problem of health sector, which is responsible for prevention and treatment, but also education, and life-long learning and professional training.

Complaints registered in Department for protection of the rights of the child of BiH Ombudsmen Institution are clear indicators that exercise of children's right is most frequently conditioned by general poverty, unemployment, political establishment, lack of education, lack of statistical data and adequate development strategies, as well as by the fact that, although the children are not priority of Ombudsmen Institution, the Institution performed evaluation of the situation of rights of children with difficulties in development resulting in Special report on situation of the rights of children with difficulties in psycho physical development. Main problems springing from the Report are the problems of inclusion in practice, process of categorization and problems met by children in autistic spectrum.

RECOMMENDATIONS:

- Efforts should be done on rising of awareness of professional and broader public on the rights and needs of the children with special needs and decrease prejudices;
- Enable education and psycho-social assistance to parents through establishment of Counseling centers for parents in order to provide them with adequate professional assistance as early as possible, including guidelines for care and socialization of children;
- Process of categorization of children with special needs/difficulties in psycho-physical development should be performed in uniform way in entire territory of BiH, that is, to enable standardization of instruments and procedures of observation and evaluations of child's abilities;
- Strengthen capacities of professionals in commissions for categorization and in this way enable the process of categorization is truly multidisciplinary process;
- Ensure that primary and secondary schools become more accessible for children with psycho-physical development damages, and in this respect to adjust school entrances (entrance ramp for the disabled according to existing regulations and respect for determined standards), toilets, halls and classrooms, as well as to consider needs and possibilities for mounting elevators for persons with moving problems;
- Increase number of mobile professional teams or permanently employed professionals to provide support to implementation of inclusion process and be focused on continual assistance to teaching staff in preparation and realization of individual programs for work with children.

HEALTH AND SOCIAL PROTECTION (ARTICLE 24)

In BiH legislation from this area is not harmonized with the Convention on the rights of the child and other international standards and this is a key problem, due to which it is necessary to take measures and harmonize regulations with the Convention. In RS right to free health protection belongs to children of full 15, regardless of whether their parents are insured, which means that that only a child of full 15 is indirectly treated as a child. In FBiH rights to exercise health protection is frequently linked to contributions paid by their parents, which indirectly sends the message that where parents are not insured their children encounter problems in exercise of this right. Through adoption of the law on Amendments to the Law on Social Insurance of FBiH the situation has become better so that the children are allowed to obligatory health insurance and free health care (the Law entered into force on 01.01.2009), yet unfortunately in some cantons lacks implementation of this Law, since necessary by-laws are not adopted and there are not specific budgetary resources for this purpose. Competent governmental organs still have to do a lot to implement Committee's recommendations from this area and harmonize legislation with the Convention before all concerning legislative framework and approach, and the Ombudsmen stress that in forthcoming period they shall pay more attention to this issue.

RECOMMENDATIONS:

- To harmonize legislation from area of health and social protection with the Convention to enable children up to full 18 to enjoy access to free health protection and free health insurance.
- To ensure application of the Law on health protection in all cantons of FBiH.
- Through competent institutions for health care to initiate examination, monitoring and following up of pregnant women and the newborns because of suspicions expressed by professionals that in postwar BiH, in comparison with prewar BiH, there are evidently increased number of children born with special needs.
- To create conditions for work of dentists specialized to work with children with special needs.
- To ensure faster provision of orthopedic supplies and simplify competent organs procedures.
- The State should enable establishment of mechanism for early detection and definition of diagnosis of the children from autistic spectrum and undertake measures for establishment and building of system for identification and monitoring of children suffering from autism.

SOCIAL PROTECTION (ARTICLE 26)

In both BiH entities work in the area of social protection is done through social protection centers/services at the level of local community. In the District of Brčko social and children's protection is in competency of Sub-department for social protection in the District of Brčko.

Numerous levels of the authorities are competent for issues from social and health protection, education, fiscal policy, including State-level, two entity-levels, the District of Brčko, ten cantons and 137 municipalities with more than 30 competent ministries and institutions with

more than 20 different pieces of legislation regulating area of children's protection, which results in different position and level of protection of the children in BiH. Financing of forms of social and children's protection in cantons of FBiH is associated with serious difficulties due to lack of cantonal budgetary resources, and cantons, according to the Constitution, share competencies with FBiH in the area of social protection according to which competencies for implementation of social and children's protection, i.e., ensuring of resources, is in exclusive competencies of cantons, that is, municipal organs.

RECOMMENDATION:

- Harmonization of rights from the area of social and children's protection in BiH, regardless of the place of living of a child.

INSTITUTIONS, CAPACITIES AND SERVICES FOR CHILDREN'S PROTECTION AND CARE (ARTICLE 18, PARAGRAPH 3)

In BiH there are 114 social work centers. Introducing into practice standards and norms of professional social work and services would adequately resolve staffing of the centers, standardization of services harmonization of payments for beneficiaries at the level of entities/state, as well as establishment of uniform evidence and following up of beneficiaries. Today this area is differently organized and different standards are applied. RS adopted by-law, however, some social work centers, due to lack of staff, are not in possibility to ensure application of regulations. RS adopted norms and work standards, as well as evidence of children without parental care, including reasons for separation of child from its family.

RECOMMENDATIONS:

- To strengthen capacities of social work centers,
- To insist on adoption, i.e., application of uniform standards and norms regarding professional staff and work in the centers.

STANDARD OF LIVING (ARTICLE 27, PARAGRAPHS 1-3)

Poverty is considered to be one of important causes of children's rights violations in BiH. Poverty leads to social exclusion of children, which means non-accessible education, health protection, insufficient affirmation of children's potentials, impossibility of employment of their parents which could lead to trans-generations poverty, i.e., reproduction of poverty within the same family.

Through day-to-day work on individual complaints very frequently we remind competent courts that their work on marriage disputes should be faster, as well as concerning executive procedures following final decisions, since in BiH decision on a part of contribution for fostering of a child by a parent who does not live with a child are taken by courts, and which is very important for standard of living of a child.

As to implementation of Article 55 of the Committee related to standard of living, the Ombudsman are of the opinion that the State should provide additional efforts to financial support to the families that live in poverty, as well as to elaborate programs for the most poor families to ensure children's right to adequate level of standard of living.

RECOMMENDATION:

- Through adequate programs within system of social protection to support families, including financial assistance as well.

7. EDUCATION, REST, FREE TIME AND CULTURAL ACTIVITIES (ARTICLE 28; ARTICLE 29; ARTICLE 31)

PRESCHOOL EDUCATION AND BREEDING

Framework Law on Preschool Education and Breeding in BiH organize preschool education and breeding as integral part of educational system in BiH. The entities and the District of Brčko have obligation to harmonize their legislation on preschool education with the Framework Law.

RS legislation on preschool education, related to obligatory one year of preschool education, is not harmonized with the Framework Law which prescribes this right as an obligatory right, while in RS this right is prescribed as facultative right. The District of Brčko completely harmonized its legislation with the Framework Law, which is also the case with cantons of FBiH that adopted their preschool education legislation. Unfortunately, 3 cantons still have not adopted preschool education legislation although it should have been completed 6 months following adoption of the Framework Law (2007). Additionally, curricula of preschool education should be free of charge for all children, yet, unfortunately, in practice there are numerous problems in application of the Law, particularly regarding legal provision related to programs for obligatory preschool education. Education authorities explain such situation by lack of finances, spaces, professional staff, etc. This form of education and breeding is not equally accessible to all children in BiH particularly not in rural regions, to children whose families are socially marginalized and to children with special needs.

Staff of the Department for protection of the rights of the child, in cooperation with Save the Children Norway, has started preparation of the Analyze of the situation of children's rights and their exercise in the area of preschool education and breeding, and until end of 2011 this paper shall be distributed to competent organs and the (professional) public, i.e., comprehensive Special report on rights of the children to preschool education and breeding shall be presented.

RECOMMENDATIONS:

- To strengthen the efforts to increase the children covered by preschool education;
- Through responsible ministries to initiate that all local communities elaborate Action plans for children with a view to increase more children in the system of preschool education and breeding.

- Usage of existing capacities in rural areas and suburbs (adjustment of spaces, in schools and local community facilities, trained cadres), to enable children from rural areas and suburbs to exercise their right to preschool education through curricula for preschool children if they are not covered by same form of preschool education and breeding.
- Strengthen breeding role of schools through creation of necessary preconditions for continual realization of additional programs of preventive, cultural and artistic character, as well as of scientific and research character, including sport, too (and other pedagogic) work with children.

PRIMARY AND SECONDARY EDUCATION

According to the Law primary education is free and obligatory for all children. Secondary education is accessible to all, in accordance with success accomplished in primary schools, personal interests and abilities. According to the Law secondary education in public institutions is free. The children and youth with special educational needs, according to the Law, get education in ordinary schools and through curricula adjusted to their individual needs. Individual curricula should be adjusted to children's abilities and skills, prepared for each pupil, with obligatory determination of its special education and speech and language status, and if it is not possible to provide adequate education in ordinary schools, the children should be educated in special education and breeding institutions.

Financial situation of schools is very poor. School equipment is of very low level and a number of schools never provided significant resources for this purpose since before the war. In BiH a number of schools are without gym, so physical training is performed in inadequate conditions. In several such cases the Ombudsmen forwarded recommendations to competent organs.

Phenomena of „two schools under one roof“ is still present in BiH. The children are separated according to ethnic curricula and attend schools in different shifts. The schools generally pay less attention to breeding and there are not enough programs of prevention of socially deviant forms of children's behavior, that is, attention is not paid to strengthening of mental health and healthy styles of life in schools.

INCLUSION IN EDUCATION

Adoption of the Framework Law on Primary and Secondary Education in 2003 the schools have opened their doors for children with psycho-physical damages in development, who can follow ordinary curricula. However, creation of legal framework was only a starting point for process of inclusion. Although seven years have passed, with regard to exercise of rights of children with special needs, their position is still not bright. A lot of things envisaged by the Law is still not implemented in practice, and prejudice of grown persons and children without special needs are still present, since no one systemically acted with a view of prevention. One of the key problems is lack of professional support to school's teaching staff. Most of the schools never had

organized forms of training for teaching staff regarding inclusive education nor additional assistance and support by personal assistance and other forms of assistance for the work with children with special needs. Additionally, in main number of schools conditions for uninterrupted access and work of the children with psycho-physical development invalidity does not exist.

RECOMMENDATIONS:

- Modernize schools concerning financial and technical means (equip classrooms, for teaching, strengthen information equipment of schools, fill school libraries, etc.);
- Enable adequate realization of physical training (construction of new gyms, rehabilitation of existing gyms and sport fields);
- Enable as much as possible that children get textbooks for free and organize school transports, and for socially vulnerable categories ensure on meal during the teaching process daily;
- Enable practice of prolonged stay in schools in all municipalities where need for this exists;
- Encourage Roma children regularly to attend obligatory primary schooling, as well as secondary schooling;
- Special attention should be paid to inclusion of children with special educational needs (removal of physical obstacles and make schools technically accessible to this population of children; ensure sufficient number of professionals, assistants in teaching process and didactic materials; educate teaching staff for work with children with special educational needs, decrease prejudices of children and grown men regarding needs and abilities of the children with development difficulties, etc.)

REST, FREE TIME AND RECREATION

Although legal framework defined competency of the State, in practice very little is realised concerning exercise of children's rights to sport, recreation and cultural manifestations. Sport activities, competitions and similar events are randomly organized in cooperation of schools and local authorities, most frequently on the occasion of significant dates and as a part of some more comprehensive manifestation. Nevertheless, there lacks long-term investments to improve situation existing in school premises for sport activities, renewal of sport requisites and other equipment for children's safety during sport activities. In local communities there is similar situation, particularly in rural areas. Insufficient budgets and other social priorities do not leave room for affirmation of sport and health.

RECOMMENDATION:

- Competent institutions in cooperation with the NGOs should prepare comprehensive analysis concerning access of BiH children to rest and recreation and on base of such Analyses to undertake concrete measures for improvement of exercise of this right, which would indirectly protect health of the children.

8. SPECIAL MEASURES OF PROTECTION

a) Children in state of emergency

CHILDREN REFUGEES (ARTICLE 22)

It is quite obvious that even following a number of years following the war in BiH the issue of return of refugees and displaced persons are not fully resolved. To support this we provide data that a certain number of complaints registered in Ombudsmen Institution is still related to violation of human rights and fundamental liberties referred to in Annex 7 of General Framework Agreement on Peace in BiH.³ Provisions of Annex 7 closely link issue of return of refugees and displaced persons to issue of protection of private property in the spirit of European Convention. For many years now application of property laws is accompanied by obstruction and citizen's rights violations, which above all relates to displaced persons and refugees, by all levels of the authorities. Investigating complaints or *ex officio*, the Ombudsmen learned about numerous human rights violations, among which is violation of right to home and property. Even after 15 years real situation in implementation of Annex 7 is still not satisfying. Formally and legally property is repossessed, while real return is accompanied with a number of negative occurrences. The issue of reconstruction is not fully and clearly defined by procedures, which leaves space for possible misuses. Lately, there appeared significant problem of returnees because they lose their property due to their impossibility to compensate investments by temporary occupants, and courts frequently evaluates such compensations in bigger amount than returnees' property worth. In this way a returnee has nowhere to stay and loses right to home. In BiH there are still a lot of collective and alternative centers, existence of which is directly connected exercise of children's rights, since there is a number of children live in these centers. Unresolved housing issues, unemployment of parents, economic vulnerability, lack of money for schooling inevitable result in social exclusion of children growing up in collective/alternative centers.

RECOMMENDATIONS:

- It is needed that the State undertake additional efforts for resolving existence of collective/alternative refugees centers through adequate programs and support provided by competent governmental organs finally to close up all collective centers in BiH.
- Also to undertake measures with a view to ensure consistent implementation of Annex 7 of Dayton Peace Agreement, and it is particularly necessary to define role of municipalities, cantons and entities, i.e., the State.

³ Article 1: All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored (...)

CHILDREN IN ARMED CONFLICTS (ARTICLE 38)

In December of 2009 Ombudsmen Institution prepared Report on Application of Facultative Protocol attached to the Convention on the Rights of the Child concerning their participation of children in armed conflicts, which is submitted to the UN CRC. However, I remind the Committee that following 2005 by Agreement between FBiH and RS on transfer of competencies from the area of defense, for purpose of establishment of uniform system of defense, in BiH and integration of BiH in euro-atlantics integrations in accordance with the Constitutional Court of BiH, all entity defense competencies are transferred to BiH institutions.

The army is professionalized through the Law on Defense of BiH, so military service is regulated by entity laws and abolished in entire BiH since 1 January 2006. The Law set forth that condition for army service is that a person younger than 18 or older than 27 can not serve the army. Based on analyses of BiH legislation related to Articles 1 and 2 of Facultative Protocol it could be concluded that there exist general prohibition of direct participation in combats and recruitment of persons younger than 18.

In adequate way BiH legislation regulates provision of psychical and social aid to children hurt by explosions, remaining mines, or those who suffer from consequences of the war in BiH. The Ombudsmen are of the opinion that the State should invest additional efforts to resolve this problem and that it is necessary to ensure implementation of Demining Strategy in order to remove all remaining mines until 2019.

Restructuring of BiH Ombudsmen Institution established the Department for protection of the rights of the child and it created a strong national mechanism for protection of children's rights including protection of the children against participation in armed conflicts, yet it is quite obvious that BiH has not take adequate measures and activities to pay more attention to this issue. Department for protection of the rights of the child has commenced a number of projects and activities, yet there are not financial and human resources eventually to prepare Analyses of the situation in this area or to undertake certain concrete actions.

RECOMMENDATIONS:

- It is necessary that the State ensures implementation of provisions related to psychological and social assistance to children hurt by explosions of remaining mines or those who suffer from consequences of the war in BiH.
- To ensure implementation of Demining Strategy in BiH.

b) Children, administrative system and judiciary

JUVENILE DELINQUENCY (ARTICLE 40)

In BiH there are not special, separated courts, but significant improvement of judiciary are laws *lex specialis* that prescribing procedures of protection and treatment of the children in criminal proceedings.

In January 2011 new Law on protection and treatment of children and minors in criminal proceedings entered into force in RS, which constitutes a great breakthrough for ensuring of

children's rights in the area of juvenile judiciary. Whenever possible, Ombudsmen Institution shall request competent organs to ensure full implementation of this Law. The Law stipulates that in first instance courts there should be established special department for minors, which should be consisted by one or more judges and professional advisors, and in prosecutors offices there should be formed juvenile departments consisted of one or more prosecutors and one or more professional advisors. Great news is that it is prescribed that courts and prosecutor's offices, as a rule, should have professional advisors: social pedagogues-teachers of speech, social workers and psychologists. With regard to criminal sanctions, only exceptionally and older minors can be sentenced to juvenile prison.

With regard to FBiH, at the time of preparation of present report there is ongoing public discussion on Draft Law on protection and treatment of children and minors in criminal proceedings, and Ombudsmen Institution forwarded certain suggestions and opinions to competent ministry. Namely, in a case initiated *ex officio* the Ombudsmen recommended the first instance court conducting criminal proceedings against committers of criminal offence damaging several minors to consider possibility to use already recorded hearings of children by prosecutor as evidence in favor of prosecution to avoid additional traumas of children/victims, all of it in the best interest of the child and in conformity with the Convention and regardless of this fully to apply domestic procedural and material provisions and to take lawful, proper and just decision based on evidence presented, explaining valid and significant reasons for presentation of evidence through reading of statements of witnesses, avoiding re-hearings of children/victims or witnesses. The first instance court did not accept ombuds-recommendation and the Ombudsmen prepared Special report drawing attention of the Parliament and competent ministry of justice that it is necessary to adopt the Law on protection and treatment of children and minors in criminal proceedings, and to consider opinion and suggestions by the Ombudsmen contained in recommendation forwarded to court.

Despite completed reform of criminal legislation, as well as reform of criminal sanctions execution legislation, the Ombudsmen unfortunately have to state, this area is not significantly improved, which was also in their reports stressed by Council of Europe Committee for prevention of torture and inhuman and degrading treatments (CPT). This problem is strongly highlighted by Ombudsmen in their Special report on the situation in the institutions for execution of criminal sanctions in BiH published in September of 2009. There is not adequate system of monitoring of execution of juvenile prison sentences, although here should be said that the State is obligated before end of 2011 to establish NPM (national preventive mechanism) in conformity with Optional Protocol to the Convention against Torture (OPCAT). In BiH different bodies with different competencies are still established for evaluation of the situation in prisons without any mechanism of coordination in this process, and not a single one of these bodies do meet criteria set forth by OPCAT⁴. Moreover, in BiH evidently lacks work on rehabilitation of minors following serving of the sentences, as well as preventive program and activities in this area.

⁴ OPCAT – as an international agreement contains explicit provisions according to which establish standards of independent monitoring. This is the most comprehensive and elaborated international agreement dealing with this issue. Apart from international body for visits, Sub-committee for prevention of torture (SPT), OPCAT requires every member state to establish national (domestic) preventive mechanism.

RECOMMENDATIONS:

- To work on establishment and form mechanism for investigations, studies, and evaluation regarding preventive activities in this area;
- To work on elimination of defects in alternative measures for detention and adequate forms of rehabilitation of children in conflict with law;
- Improve material conditions in objects for detention of persons deprived of liberty and younger than 18;
- Ensure implementation of the Law on Protection of Minors and Children in Criminal Proceedings in RS and in FBiH (in forthcoming period such law should be adopted).

c) Children belonging to minorities or indigenous groups

ETHNIC MINORITIES

The Ombudsmen assess that the issue of rights of minorities and indigenous groups is regulated by a number of laws, yet there still exists concerns due to discrimination of minorities in BiH, i.e. non-implementation of legislation.

In Ombudsmen Institution there is specialized department for protection of rights of national, religious and other minorities. Relatively low number of complaints registered by this Department, in comparison with numbers of complaints registered in other departments, springs from a number of factors among which, here should be said, is the reason that members of national minorities are still not acquainted with existence of this Department and that a number of complaints regarding violations of minorities' rights is registered by Department for prevention of all forms of discrimination, since frequent violations also contents allegations on discriminatory behavior. Members of minorities also filed complaints requesting protection of their rights in area of social insurance, health care, while in these complaints there are not allegations regarding violations based on belonging to minority, and these complaints are registered by Department for protection of economic, social and cultural rights. Ombudsmen find that problems encountered by Romas, directly or indirectly, are in connection with right of Roma's children from Roma families.

RECOMMENDATIONS:

- Enable consistent application of law
- Establish measures of promotion and prevention of minorities rights

d) Establish measures aimed to enable prevention of exploitation of children.

ECONOMIC EXPLOITATION OF CHILDREN (ARTICLE 32)

Ombudsmen Institution analyzed the problem of begging as one of the forms of exploitation of children. Empiric research, presented in Special report on problem of begging by the children in BiH, revealed existence of this problem in BiH, i.e., comprehensive analyses of this situation in the field in municipalities Sarajevo, Banja Luka, Tuzla, Mostar and the District of Brčko.

Results of conducted study were concerning and reveal failures in systemic resolution of problems of begging children in BiH. Apart from the Analyses and highlighted systemic failures, Special report contains guidelines for competent organs for further activities in best interest of a child suffering from this form of exploitation. The Department for protection of the rights of the child advocates establishing day centers for children happened to be caught in begging, as well as the receiving centers for the children and youth happened to be caught in drifting and begging in all BiH municipalities in which this occurrence is of significant measure. Apart from issued concrete recommendations to competent ministries, through media, professional gatherings, organization of the round tables the Department tries to affirm experience of those institutions and the NGOs that gained well results in suppression and prevention of begging by the children and youth and to stress examples of good cooperation of governmental and non-governmental sectors in protection of children's rights, mainly at local level.

Finally, results and answers and encouragement to further work of the Ombudsmen in this area, we stress that in April of 2011, within the NGO „The new generation“ in Banja Luka started to work Day Center for children in risk (children-witnesses or victims of all forms of violence, victims of work and sexual exploitation, children living in the streets, etc.). The work of this Center in Banja Luka is financed by Save the Children Norway. In Sarajevo, too, there is Day Center for children for children working in the streets and this is result springing from partnership between public institution „Cantonal social work center Sarajevo“ as performer of this activity and Save the Children Norway as a donor. Three-years-long project emerged due to necessity to assist realization of children's rights to protection against any form of violence, harassment and exploitation of children living in the streets, so-called invisible children or children at risk. In the end, in August of 2011, fruitful cooperation between the NGO „Medica“ Zenica and social work center Zenica, Day Center and the Receiving Station for street living and working children has been opened.

RECOMMENDATION:

- The state should undertake concrete steps to ensure that in all municipalities and cities, wherever it is necessary, establish day centers for children happened to be caught in begging of reception facility for the children and youth happened to be caught in drifting or begging.

SEXUAL EXPLOITATION AND HARASSMENT OF CHILDREN, KIDNAPPING AND TRAFFICKING IN CHILDREN AND OTHER FORMS OF EXPLOITATION (ARTICLES 34, 35 AND 36)

The Ombudsmen express concerns that that there are still not taken effective measures for prevention of this for children socially harmful occurrence.

So, for instance, in investigation commenced *ex officio*, initiated by addressing of certain NGO on the occasion of sexual harassment and exploitation of a girl, ombudsmen procedure revealed that a child-victim return to its place of residence where violation took place (from safety house to dysfunctional family) Ombudsmen Institution addressed to competent social work center and investigation was exclusively targeted on competent authorities (before all to social work center) in order to see whether they did all, what is their obligation in accordance with domestic

and international regulations, to prevent violent behavior by the individual, and particularly to whether the child-victim was provided with professional assistance following harassment and exploitation committed with respect to all problems met by centers in their day-to-day work (lack of staff, financial difficulties, prejudice by environment, etc.). From the aspect of children's rights the Ombudsmen assessed that it is particularly important to accommodate the girl in the institution and there, apart from every day existential needs, to enable her work with professionals to psycho-physical rehabilitate the child as much as possible. Only following intervention by Ombudsmen competent prosecutor's office informed the Ombudsmen that the girl is accommodated in safety house.

Institution of Human Rights Ombudsman of BiH is a member of network of Ombudsmen for children of South East Europe Institucija (CRONSEE network). Common conclusion of network members for 2010 are that, *inter alia*, it is needed that states further develop their legislative frameworks and it would be particularly important that the states that did not do so ratify Council's of Europe Convention of 2007 on protection of children against sexual exploitation and sexual misuses.

Bosnia and Herzegovina did not ratify this international document and it would be very important for additional protection of children and further development of legislative framework that would recognize all risks and consequences of children's rights violation.

In forthcoming period of their work in the area of the rights of the child the Ombudsmen shall put efforts as much as possible to implement common conclusions of mentioned Network (from calculating the statute of limitations for criminal prosecution of children's rights violations, which would enable the children following acquiring a majority and their growing up, when they overcome the fear and shame and when they are able independently from their parents or other legal guardians, decide themselves whether they would initiate procedure against those who ruined their childhood and left permanent consequences for the rest of their lives. There should also be established evidence of committers of mentioned criminal offences (data base), strengthened efforts to assist the children-victims in physical and psychical direction and further to insist on education of children regarding risks of sexual exploitation, how to recognize them, on the right to assistance and support and stricter penal policy, etc.).

In December of 2009 the Ombudsmen prepared Submission for UN Committee on the rights of the child and implementation of Facultative Protocol to the Convention on the Rights of the Child related to trafficking in children, and children's prostitution and pornography. We remind that conclusion of the Ombudsmen is that in BiH there are certain improvements in implementation of the Protocol however they are more linked to exclusively for prosecuting of criminal offence of trafficking in human beings, which is result of several-years-long activities on ensuring of UN Convention on Transnational Organized Crime and its Protocols. Consequently, implementation of Protocol to the Convention on the Rights of the Child significantly lacks resulting in the fact that actions prohibited by this Protocol are not adequately legally covered in BiH, which should be of priority due to situation in the field and increasing number of cases of exploitation of children through children pornography, etc. BiH should continue activities on improvement of protection of victims and prevention through dissemination of information of children's rights set forth by the Convention and its Protocols. This particularly applies to need for

undertaking of measures targeted to removal of weaknesses in system resulting in unequal rights in area of health care, education and social protection.

RECOMMENDATIONS:

- Undertake further activities on elimination of failures in system for prevention of trafficking in human beings
- There should be taken measures for effective suppression of begging and it should be treated as a form of criminal offence of trafficking in human beings and responsibilities for neglecting and misuses of children should be determined.
- In addition to strengthen efforts directed to full implementation of Optional Protocol to the Convention on the Rights of the Child related to trafficking in children and children's pornography.
- To ratify Council's of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Misuses.

e) Children's rehabilitation (Article 39)

This area is not covered by BiH legislation. Ombudsmen see that in BiH measures undertaken in promotion of conclusive reviews and recommendations by UN Committee, including application of relevant Article of the Convention, which particularly applies to the Ministry of Human Rights and Refugees, strongly supported by the UNICEF, Save the Children Norway, High Commissariat for Human Rights and the Ombudsmen as well. Still, the Ombudsmen are of the opinion that more effective measures for ensuring of implementation of Committee's recommendations lack.

RECOMMENDATIONS:

- In BiH it is necessary to create public opinion related to importance of implementation of internationally taken over obligations, both in order of building of dignity of the State and ensuring of implementation of rights set forth by international standards taken over.
- Long-term strengthening of institutions with mandate to promote and protect human rights, such as BiH Ombudsmen Institution is, is necessary.