



**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**

**Consideration of the third periodic report  
submitted by Bosnia and Herzegovina under  
article 73 of the Convention, due in 2017\***

[Date received: 1 November 2017]

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\* The present document is being issued without formal editing.



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**List of abbreviations**

BiH	Bosnia and Herzegovina
FBiH	Federation of Bosnia and Herzegovina
RS	Republic of Srpska
BD BiH	Brcko District
MPI	Missing Persons Institute
MHRR BiH	Ministry of Human Rights and Refugees of Bosnia and Herzegovina
MCA BiH	Ministry of Civil Affairs of Bosnia and Herzegovina
MJ BiH	Ministry of Justice of Bosnia and Herzegovina
AGE BiH	Agency for Gender Equality of Bosnia and Herzegovina
OSCE	Organisation for Security and Co-operation in Europe
UNDP	United Nations Development Programme
CEC	Central Election Commission

## Introduction

1. Pursuant to Article 73 of International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families Bosnia and Herzegovina has an obligation to report to UN Secretariat.

2. UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families had held two sessions on 23 and 24 April, 2009. Reviewed and adopted Initial report on implementation of provisions of the International Convention on the Rights of All Migrant Workers and Members of Their Families in Bosnia and Herzegovina for the period 2003–2006. At the end of April 2009, at its 113th meeting, the Committee adopted concluding observations on protection of rights of migrant workers and members of their families.

3. The Committee considered the second periodic report submitted by Bosnia and Herzegovina at its 207th and 208th meetings, held on 11 and 12 September 2012. At its 211th meeting, held on 13 September 2012, the Committee adopted the following concluding observations.

4. During the 2012–2016 period a certain progress was made in terms of better implementation of the Convention, which relates to legal and other measures taken by Bosnia and Herzegovina:

- Amendments to The Law on Prohibition of Discrimination were adopted (“Official Gazette of Bosnia and Herzegovina” No 66/16) from 2016;
- In March 2016, new Migration and Asylum Strategies were adopted, as well as the Action Plan for the period 2016–2020;
- The Law on Aliens was adopted at the end of 2015;
- The Law on Free Legal Aid was adopted, published in the Official Gazette of Bosnia and Herzegovina No 83/16 and came into force on 12 November 2016;
- By the Decision of the Council of Ministers BiH from 2013, the Coordination Body for Migration Issues in BiH was appointed as a permanent body in charge of coordinating activities between competent institutions dealing with migration and asylum issues;
- The Council of Ministers of BiH, once a year since 2008, and as a response to the proposal of the Ministry of Security of Bosnia and Herzegovina, adopts the Migration Profile of Bosnia and Herzegovina, in which the migration trends in/from BiH are described in detail and monitored closely.

5. Below is an overview of legal and institutional framework and of answers to all issues raised in the concluding observations of the Committee for the Protection of the Rights of All Migrant Workers and Members of Their Families.

## I. General measures of implementation of the Convention (articles 73 and 84)

### Legislation and application

#### Recommendation No. 7

**The Committee notes that the State party has not yet become a party to ILO Convention No. 189 (2011) concerning decent work for domestic workers.**

6. Pursuant to Article 9 of the International Labour Organization Constitution (ILO), The International Labour Office submitted to the Ministry of Civil Affairs of BiH the text of the Convention on domestic workers No 189 and Recommendations on domestic

workers No 201, adopted at 100th meeting of the International Labour Conference in Geneva.

7. Ministry of Civil Affairs of BiH has submitted these instruments for consideration and opinion to competent institutions of BiH for the field of labour and employment; Convention to consider possibilities of its ratification and Recommendation to consider possible aligning with the national legislation.

8. Given that there is no consent of the competent institutions from the entities and Brčko District BiH for ratification of the mentioned instruments for the time being, in 2012, the Ministry of Civil Affairs of BiH, through the Ministry of Foreign Affairs, sent to the International Labor Office in Geneva the information that BiH cannot ratify the Convention on Domestic Workers No 189 and adopt Recommendations on domestic workers No 201.

#### **Recommendation No. 8**

##### **The Committee invites the State party to consider ratifying ILO Convention No. 189.**

9. Article 2 of the Constitution of BiH states that both entities shall ensure the highest level of internationally recognised human rights and basic freedoms for their citizens.

10. Given the provision of Article III, item 3 of the Constitution of BiH, entities have governmental functions and authority in the field of labour. In accordance with what is stated in the ratification procedure of this Convention, the opinion of the competent institutions of the Entities and the Brčko District of BiH shall be considered. The Ministry of Labor, War Veterans and Disabled Persons Protection of Republic of Srpska has submitted its opinion that the Labor Code of Republika Srpska is in alignment with the Convention and it supported the ratification of the Convention.

11. Federal Ministry of Labour and Social Policy, in its reply, states that ratification of the Convention and adoption of the recommendation concerned could cause difficulties in their implementation within the legislation of Federation of BiH. Ratification would require significant changes not only in labour legislation, but wider legislative, introducing new labour institutes and practices which currently are not widespread. For these reasons Federal Ministry of Labour and Social Policy is of opinion it should not ratify the Convention nor adopt the Recommendation in question.

12. Based on the above mentioned, on 16 March 2012, through the Ministry of Foreign Affairs of BiH, all the information was submitted to the International Labour Office in Geneva, and hence it was informed that Bosnia and Herzegovina cannot ratify the Convention on Domestic Workers No 189, nor adopt the Recommendation on domestic workers No 201.

13. We also stated that Bosnia and Herzegovina needs help and practical advice from ILO concerning defining effective legal measures to be taken in order to ensure dignified labour for domestic workers, and we made a request for professional help with identifying areas in which it is necessary to make interventions or improvements of legal framework in order to harmonise the legislation.

#### **Recommendation No. 9**

**The Committee notes that the State party has still not made the declarations provided for in articles 76 and 77 of the Convention, recognizing the competence of the Committee to receive communications from States parties and individuals.**

#### **Recommendation No. 10**

**The Committee reiterates its recommendation that the State party make the declarations provided for in articles 76 and 77 of the Convention (CMW/C/BIH/CO/1, para. 14).**

Replies to recommendations 9 and 10

14. In relation to the articles 76 and 77 of the Convention on the Protection of Rights of All Migrant Workers and Members of Their Families, in order for Bosnia and Herzegovina

to consider issuing a statement defined by above mentioned article of the Convention which recognises competences of the Committee to receive and consider applications by and on behalf of individual entities claiming their rights ensured by the Convention, has been violated by a Member State.

15. In accordance with the provisions of the Law on concluding International Agreements and Carrying Out International Obligations, due to its complex system, BiH has conducted a consultations process with the Ministry of Security of Bosnia and Herzegovina competent for the Law on Movement and Stay of Aliens and Asylum, as well as with the Federal Government of BiH, Government of RS and Brcko District BiH and Ministry of Foreign Affairs of BiH on making a foreign affairs assessment of justification of adopting the above mentioned article of the Convention.

16. The final position of the authorities in BiH in relation to Articles 76 and 77 of the Convention on the Protection of All Migrant Workers is that they do not accept the competence of the Committee to receive and consider applications by and on behalf of individual entities claiming that their rights are set out by the Convention.

#### **Recommendation No. 11**

**While noting the complex political structure of the State party, the Committee is concerned about the lack of harmonization in the legislation of the different Entities in certain areas of the Convention, such as employment, education and social security.**

17. Republic of Srpska is competent to regulate the employment of foreign nationals of persons without citizenship and in that direction harmonize regulations on employment of foreign nationals of persons without citizenship with the Law on Foreigners of Bosnia and Herzegovina and binding international and regional documents. However, the possibility of harmonizing the regulations of the entities is not ruled out, although this is not a stipulated obligation.

18. Republic of Srpska legislations in the field of education is in compliance with the Convention on Protection of the Rights of All Migrant Workers and Members of Their Families related to education, which stipulates that every child of a migrant worker shall have a right on education based on equality with the nationals of the State concerned, and access to public preschool educational institutions or schools will not be denied or limited.

19. Federation of Bosnia and Herzegovina is competent to regulate the employment of foreign nationals of persons without citizenship and in that direction harmonize regulations on employment of foreign nationals of persons without citizenship with the Law on Foreigners of Bosnia and Herzegovina and binding international and regional documents. However, the possibility of harmonizing the regulations of the entities is not ruled out.

20. Constitution of BiH determines original competences of Bosnia and Herzegovina. The areas which are not stated under jurisdiction of BiH have been transferred under entity jurisdiction, or BiH. The Constitutions and Legislation of BiH define that entities, together with Brcko District BiH, may agree to transfer some of the areas of life to the state level of BiH, and a special regulation has been passed thereon. Previous activities related to the subject areas listed in the Conclusion did not result in the area becoming one of the competencies of BiH, but an effort has been invested to reach a certain level of compliance with the regulations which define this area. Taking into account the fact that Brcko District BiH is closely related to the entities, we are of the opinion that the regulations of Brcko District BiH do not significantly deviate from the regulations of the other two entities individually.

#### **Recommendation No. 12**

**The Committee recommends that the State party encourage the Entities to harmonize their legislation in order to ensure that migrant workers in the State party fully enjoy the rights enshrined in the Convention, especially in the areas of employment, education and social security.**

21. Taking its constitutional jurisdiction to independently regulate employment of foreign nationals, stateless persons and to align the regulations on the employment of

foreign nationals and stateless persons with the Law on Foreigners and binding international and regional documents, as a starting point Republic of Srpska ensures the same rights for migrant workers and for nationals in the field of employment. The rights are guaranteed by Article 2 paragraph 3 of the Law on Labour of RS (“Official Gazette of RS”, No 1/16) as it states that provisions of this Law apply on foreign nationals and stateless persons unless otherwise defined by special law and Article 3 paragraph 3 of the Law on Employment of Foreign Citizens and Stateless Persons of RS under which migrant workers have the same rights and obligations as the employed citizens of Republic of Srpska.

22. Regulations on education of Republic of Srpska allow migrant workers and their family members to enjoy rights guaranteed by the Convention related to in terms of education. Regulations in this field guarantee every child equal rights and opportunities in education and education without discrimination on any grounds.

23. Starting from the constitutional jurisdiction of Federation BiH to regulate employment of foreign nationals and stateless persons, steps are being taken to align the regulations on the employment of foreign nationals and stateless persons with the Law on Foreigners of BiH and binding international documents.

24. In the previous period, by filling in the EU questionnaire, it was noticed that the issue of migrant workers in Brecko District BiH is mainly in line with the EU regulations which are harmonised with the Convention.

#### **Recommendation No. 13**

**The Committee notes that, in April 2012, a new draft law amending the Law on Movement and Stay of Aliens and Asylum was submitted by the Council of Ministers to Parliament for adoption.**

#### **Recommendation No. 14**

**The Committee urges the State party to ensure that the new draft law amending the Law on Movement and Stay of Aliens and Asylum fully complies with the provisions of the Convention and to adopt it without delay.**

Reply to recommendations 13 and 14

25. On 22 October 2012, The Parliamentary Assembly of BiH adopted the Law on Amendments to the Law on Movement and Stay of Aliens and Asylum (“Official Gazette of BiH”, No 87/12). In November 2015, The Parliamentary Assembly of BiH adopted the Law on Foreigners (“Official Gazette of BiH” No 88/15) which is to a large extent harmonised with the international standards of the European Union.

#### **Data Collection**

#### **Recommendation No. 15**

**The Committee notes the State party’s efforts to improve data collection on migration related issues such as the preparation of Migration Profiles by the Ministry of Security, the compilation of data on illegal border crossings and the information provided by the delegation on the Government’s decision to conduct a new census of the population. However, the Committee is concerned about the lack of data on the number of Bosnian citizens working abroad. In addition, it regrets the lack of comprehensive information and statistics on the number, employment situation and access to basic services of migrant workers and members of their families in an irregular situation. The Committee recalls that such information is indispensable to an understanding of their situation in the State party and an assessment of the implementation of the Convention.**

#### **Recommendation No. 16**

**The Committee recommends that the State party pursue its efforts to ensure that the data collection system takes into account all aspects of the Convention and collect**

**information and statistical data, disaggregated by sex, age, nationality Decision on the obligation to submit statistical data on migration and international protection and fields of occupation. In particular, it recommends that the State party include in its next periodic report disaggregated information on the number of Bosnian citizens working abroad, as well as migrant workers and members of their families, including those in an irregular situation, who are living in the State party; on the fields and conditions of employment of migrant workers; and on the enjoyment of their rights under the Convention. When precise information is not available, the Committee would appreciate receiving data based on studies or estimates.**

Reply to recommendations 15 and 16

26. On 24 September 2009, the Council of Ministers adopted Decision on the obligation to submit statistical data on migration and international protection to the Ministry of Security (“Official Gazette of BiH” No 83/09). This Decision defines the type and structure of statistical data on migration and international protection and obligations of the institutions of BiH to, within their competences, collect and submit the data to the Ministry of Security in order for it to create Migration Profile. Statistical data on migration and international protection shall be submitted by: Ministry of Foreign Affairs of BiH, Ministry of Human Rights and Refugees of BiH, Ministry of Civil Affairs of BiH, Labour and Employment Agency of BiH, The Service for Foreigners’ Affairs, Border Police of BiH, Ministry of Security of BiH — Sector for Immigration and sector for Asylum. Migration Profile of BiH is updated on annual basis. The statistics data provided in the Migration Profile show that the data are not classified separately on data on migrant workers (and members of their families) and data on other migrants. Migrational Profile is available on [www.msb.gov.ba](http://www.msb.gov.ba).

27. Regarding the recommendation on the integration of data on illegal border crossings, we note that the Decision on Determination of Border Crossings in BiH (“Official Gazette of BiH”, No 39/12) determines border crossings in BiH, categories and working hours of border crossing points, and competent bodies which, in accordance with their jurisdiction, conduct controls at the intended crossing of the state border. There is no record of illegal border crossings.

28. The field of employment in BiH is regulated by entity regulations. The Law on Foreigners and the Rulebook on Entry and Stay of Aliens (“Official Gazette of BiH”, No 25/16) stipulate the conditions under which the stay in BiH can be regulated. In case of paid work, a stay can be regulated as a stay based on working with a work permit and a stay based on work without a work permit. The legislation of BiH does not provide possibility of granting residence to foreign nationals staying illegally in Bosnia and Herzegovina (except in case of a humanitarian stay).

29. In accordance with the competences of the Agency and the signed Agreement and Arrangement on employment of workers from BiH, the Agency may provide information on the number of employed BiH citizens in Republic of Slovenia and Federal Republic of Germany from 2013 until 2016 when the projects started.

30. Labour and Employment Agency of BiH, in cooperation with the Entity Employment Bureaus and Employment Bureau of BD BiH, and based on the Agreement on Mediation in the employment process of workers from Bosnia and Herzegovina in the Federal Republic of Germany (nurses) for a limited period of time, implemented through two procedures: Triple Win project in cooperation with GIZ (Deutsche Gesellschaft für internationale Zusammenarbeit), which implies interviews with candidates, taking German language course and professional preparation for work in the Federal Republic of Germany, and procedures for a known employer — through which candidates have found employers in Germany, in the period from 2013 to the end of 2016 mediated in the employment process of 2,526 workers. Out of this number, 2,438 workers were employed through this programme by a known employer.

- In 2013 — 186 persons (178 known employer and 8 triple win),
- In 2014 — 566 persons (463 known employer and 103 triple win),



- In 2015 — 870 persons (806 known employer and 64 triple win),
- In 2016 — 1,079 persons (991 known employer and 88 triple win).

31. Since the start of the implementation of the Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Republic of Slovenia on Employment of Citizens of Bosnia and Herzegovina in the Republic of Slovenia, from 1 March 2013 until the end of 2016, the Labour and Employment Agency of BiH received a total of 7,514 job advertisements for the employment of 15,572 persons. Out of that, 10,713 contracts of employment were signed and 9,986 work permits were issued to Bosnia and Herzegovina nationals.

<i>Year of the implementation of the agreement</i>	<i>Job advertisements received</i>	<i>Received based on number of job vacancies</i>	<i>Signed contracts of employment</i>	<i>Issued work permits</i>
2013	624	1 465	1 023	661
2014	1 344	2 748	1 994	1 870
2015	1 921	4 434	3 061	2 677
2016	3 625	6 925	4 635	4 778
<b>Total</b>	<b>7 514</b>	<b>15 572</b>	<b>10 713</b>	<b>9 986</b>

32. Total number of employed Bosnia and Herzegovina nationals, based on the implementation of the Agreement on Employment with the Republic Slovenia and Arrangement on Mediation in Temporary Employment of Workers from Bosnia and Herzegovina in the Federal Republic of Germany from 2013 until the end of 2016 is 12,512.

33. Based on the data the Labour and Employment Agency of BiH received from the Entity Employment Bureaus and the Employment Bureau of Brcko District BiH, the total number of work permits issued to foreign nationals in Bosnia and Herzegovina in 2012 was 2,573, in 2013 2,563, in 2014 2,197, in 2015 2,465 and in 2016 2,682 work permits. Over the past two years, there has been a trend of the increase in issuing work permits to foreign nationals, but despite their great number, that still has no great significant impact on the labor market of Bosnia and Herzegovina.

34. Out of a total of 2,628 issued work permits in 2016, 1,052 were work permits included in the quota and 1,576 work permits were issued independently of the set quota. 1,605 work permits were issued in the Federation of BiH (61.07%), out of which 562 were counted in the quota and 1,043 issued independently of the set quota. In Republic of Srpska, total of 890 work permits were issued (33.86%), of which 483 are counted in the quota and 407 were issued independently of the set quota, and 133 work permits were issued in Brcko District (5.07%), 7 counted in the quota and 126 issued independently of the set quota. This ratio of the issued work permits between the Entities and the Brcko District BiH was present in the previous years as well.

35. Based on the countries of origin, the majority of foreign nationals working in BiH in 2016 came from: Serbia, Turkey, Croatia, China and Italy. Following the trend of changes over the past five years, there has been a constant trend in reducing the number of work permits issued to the citizens of China, and a constant increase in number of work permits issued to citizens of Italy, Kuwait, Syria, and Saudi Arabia.

36. Based on the qualification structure, in 2016, the highest number of employed foreigner nationals had a university degree — 1,171 (44.56%), followed by 720 (27.40%) with a high school degree, and 276 (10, 88%) without a high school degree, which was almost the same as in previous years.

37. Based on the standard classification of businesses, the highest number of work permits issued in 2016 was in the following sectors: trade 608 (23.1%), manufacturing 430 (16.4%), real estate 278 (10.6%) and education 246 (9.4%), which represents 59.5% of the total number of issued work permits. This has also been a trend for a long time, apart from the real estate sector, which recorded boom, a growth of 72.67% in 2016.

38. If we compare the number of issued work permits with the proposed quota in 2016, it is evident that the quota for total issued work permits to foreign nationals in BiH is 67%, which is the same trend as in the previous year. In 2014, the quota was 51%.

39. The percentage of employed foreign nationals in BiH on annual basis and in relation to the average number of employed persons in BiH in the last five years ranged from about 0.3% to 0.4%, hence we can conclude that the employment of foreign workers has no quantitative impact on the labor market in Bosnia and Herzegovina.

40. The highest number of work permits issued in 2016 was in the following sectors: trade 608 (23.1%), manufacturing 430 (16.4%), real estate 278 (10.6%), and education 246 (9.4%), which is 59.5% of the total number of issued work permits.

41. Comparing the number of issued work permits with the proposed quota in 2016, it is evident that the quota for total issued work permits to foreign nationals in BiH is 67%, of which 99% are new work permits.

#### **Number of employed BiH citizens through mediation on LEA in Slovenia and Germany**

	<i>Total</i>	<i>In Republic Slovenia (Agreement on employment between BiH and Republic Slovenia)</i>	<i>In FR Germany (Arrangement between BiH and FR Germany on mediation in employment of workers from BiH in FR Germany)</i>
2015	3 301	2 431	870
2016	5 875	4 778	1 079

#### **Training on and dissemination of the Convention**

##### **Recommendation No. 17**

**The Committee notes that the State party provides training for public officials on migration and human trafficking, including on the application of the provisions of the Convention. However, the Committee reiterates its concern about the lack of measures taken to disseminate information and promote the Convention among certain agencies and other relevant stakeholders, in particular Migrant Service Centres and civil society organizations (CMW/C/BIH/CO/1, paragraph 17).**

##### **Recommendation No. 18**

**The Committee recommends that the State party:**

(a) **Take the necessary steps to ensure access by migrant workers and members of their families to information about their rights under the Convention; and**

(b) **Continue cooperating with Migrant Service Centres and civil society organizations in promoting and disseminating the Convention among all relevant stakeholders.**

Reply to recommendations 17 and 18

42. In order to provide necessary information to foreign nationals who come to BiH to work, the “Information for Foreigners” has been set up on the website of the Ministry of Security, which provides sufficient information on the conditions for entry, movement and stay in BiH. Based on the Migration and Asylum Strategy and the Action Plan 2012–2015, The Ministry of Security has implemented the training programme in the field of immigration and asylum (2012–2015), which was created based on the need for professional training of state and police officers and staff of the Ministry of Security — Sector for Immigration and Sector for Asylum, Border Police of BiH, The Service for Foreigners’ Affairs and the Ministry of Foreign Affairs. Training programme on immigration and asylum (2012–2015) envisaged the following topic “Realizing the Right of Foreign Nationals to Stay in BiH” (Topic 14) which included the training on the

Convention on the Rights of All Migrant Workers and Members of Their Families, which was not realized due to insufficient financial resources.

43. In order to fulfil obligations of Bosnia and Herzegovina related to the implementation of the World Human Rights Programme in Bosnia and Herzegovina, in accordance with the resolution of the UN Human Rights Council No. 15/11 and 24/15, and based on the Conclusions of the Council of Ministers of BiH No. 05-07-1-3558-18/13 from 18 December 2013, the Ministry of Human Rights and Refugees of BiH has drafted Human Rights Education Guidelines which are the basis for creating the Action Plan for Journalists and Media Professionals in Bosnia and Herzegovina.

44. These Guidelines direct BiH authorities to create in accordance with their constitutional jurisdiction:

1. Action plans for education in the field of human rights in primary, secondary and higher education;
2. Action plans for civil servants, law enforcement officers and military personnel;
3. Action plans for education in the field of human rights for journalists and media professionals; and
4. Action plans for education in the field of human rights of persons with disabilities.

45. In February 2017, the Council of Ministers of BiH adopted the Action Plan for the training in the field of human rights for journalists and media professionals for the period 2016–2019.

46. In order to inform general public, the Ministry of Human Rights and Refugees of BiH regularly publishes on its official website initial and periodic reports based on the international documents which fall under the competences of this Ministry, including the Concluding Observations and Recommendations of the competent UN Committees.

## II. General Principles (articles 7 and 83 of the Convention)

### Non-discrimination

#### Recommendation No. 19

**The Committee notes with concern that the Law on Prohibition of Discrimination adopted in 2009 has not been fully harmonized with the relevant laws and provisions at entity, district and municipal levels, as required by article 24 of the Law, which may adversely affect the equal enjoyment by migrant workers and members of their families of their rights under the Convention. The Committee also reiterates its concern about the insufficient information on the implementation of the principle of non-discrimination, as enshrined in the existing legal framework (CMW/C/BIH/CO/1, paragraph 19).**

#### Recommendation No. 20

**The Committee recommends that the State party accomplish the harmonization of its anti-discrimination legal framework within a clearly defined time frame, and to include in its next periodic report detailed information on the application of the Law on Prohibition of Discrimination in relation to migrant workers.**

Reply to recommendations 19 and 20

47. Amendments to the Law on Prohibition of Discrimination were adopted at the Parliamentary Assembly of Bosnia and Herzegovina (“Official Gazette of BiH”, No 66/16) and the unofficial consolidated text of the Law on Amendments to the Law on Prohibition

of Discrimination is on the official website of the Parliamentary Assembly of Bosnia and Herzegovina.

48. The Law on Prohibition of discrimination has been, through amendment process, aligned with the *acquis communautaire* and international human rights standards to the fullest extent.

49. The Law on the Prohibition of Discrimination (“Official Gazette of BiH”, No 59/09) was amended with the following grounds for discrimination: disability and age. The formulation in the Law relating to sexual expression or orientation was replaced by sexual orientation, gender identity and sexual characteristics.

50. After the adoption of the Law on Amendments to the Law on Prohibition of Discrimination, better conditions for protection of migrant workers and members of their families have been created in accordance with the aforementioned legal solutions.

## **Right to an effective remedy**

### **Recommendation No. 21**

**The Committee is concerned at the reportedly limited access by migrant workers and members of their families who are victims of discrimination in the State party to effective remedies. In this regard, it notes the very low number of complaints by migrant workers received by the Institution of the Ombudsman.**

51. In the course of one year, the Institution of the Ombudsman receives a number of complaints regarding the exercise of the rights of foreign nationals who are to a certain degree under the international protection.

52. Migrant workers do have the possibility as all other individuals to initiate proceedings for the purpose of protection from discrimination and there are no legal obstacles in this regard.

53. Better legal aid by authorities, as well as the NGO sector, would significantly increase the protection.

54. The Law on Labour of Republic of Srpska (“Official Gazette of RS”, No 1/16) regulates labor relations, rights, obligations, and responsibilities arising from employment and other relations based on work in Republic of Srpska, unless otherwise defined by special laws. In relation to the former law, the provision of Article 2, paragraph 3 is new, since it prescribes that the provisions of this law shall apply to foreign nationals and stateless persons, unless otherwise defined by a special law. Migrant workers have the same access to legal remedies in Republic of Srpska as domestic workers and there are no differences between them in that regard. The provision of Article 3, paragraph 3 of the Law on Employment of Foreign Citizens and Stateless Persons, according to which migrant workers have the same rights and obligations as employed nationals of Republic of Srpska, also emphasises equality of migrants and domestic workers.

55. The Law on Labour of F BiH regulates conclusion of contracts of employment, working hours, salaries, termination of the employment contract, exercise of rights and obligations arising from employment, conclusion of collective agreements, peaceful resolution of collective labor disputes and other issues from employment, unless otherwise specified by another law or international agreement/treaty. Pursuant to this provision, as well as the provisions of the Law on Employment of Foreign Citizens of F BiH, migrant workers have the same rights and obligations as employed nationals of Federation of Bosnia and Herzegovina.

56. The Law on Labour of BD BiH, the Law on Employment and the Rights during Unemployment of BD BiH, do not make difference between domestic and migrant workers.

57. The prerequisites for the migrant workers are set in the form of obtaining a work permit, which is presumed to fulfill the conditions prescribed by the Law on Foreigners of BiH. The Brcko District BiH has no influence on the BiH policy on the movement, residence, etc. in the area prescribed by the aforementioned law.

58. Institutions for the protection against discrimination of workers are also named in the provisions of the Law on Labor of the Brčko District BiH, which prohibits any form of discrimination against workers.

**Recommendation No. 22**

**The Committee urges the State party to:**

(a) **Ensure that migrant workers and members of their families, including those in an irregular situation, have equal opportunities as nationals of the State party to file complaints and obtain effective redress in the courts in case that their rights under the Convention are violated; and**

59. Amendments of the Law on Prohibition of Discrimination (“Official Gazette of BiH”) No 59/09 and 66/16) from 2016, among others, have extended the deadline for initiating anti-discrimination procedure to three years, allowed for electable local authority, as well as situational testing. All these elements shall certainly contribute to better protection against discrimination of all persons, including migrant workers and members of their families.

(b) **Inform migrant workers and members of their families, including those in an irregular situation, about the judicial and other remedies available to them.**

60. Running a campaign or another form of informing or familiarizing migrant workers of a permanent character (for example, setting up a website for this purpose) has certainly contributed to better understanding of all migrant workers and their family members about their rights to justice and other remedies available to them.

61. Pursuant to the Law on Foreigners, an appeal may be filed against decisions of the first instance, and an administrative dispute may be initiated against the final administrative acts (against decisions of second instance bodies) by filing lawsuit to the Court of Bosnia and Herzegovina. In all first-instance and second-instance decisions, instructions on legal remedies are mandatory.

### **III. Human rights of all migrant workers and members of their families (arts. 8–35)**

**Recommendation No. 23**

**The Committee is concerned about the lack of information provided by the delegation on the policies in place to ensure the implementation of the Agreement between the European Community and the State party on the readmission of persons residing without authorization, and about the lack of procedural guarantees for migrant workers covered by the Agreement.**

**Recommendation No. 24**

**Taking into account article 22 of the Convention, the Committee requests the State party to:**

(a) **Ensure that current and future readmission agreements concluded between the State party and host countries include appropriate procedural guarantees for migrant workers; and**

(b) **Implement the Agreement with the European Community in accordance with the provisions of the Convention and provide the Committee with information on its implementation in its next periodic report, which should also include examples of individual cases and statistical data on migrant workers readmitted under this Agreement.**

Reply to recommendations 23 and 24

62. Ministry of Security of BiH has competence over the procedure of acceptance of persons based on an international agreement on cooperation and acceptance of persons

whose residence is illegal (readmission), which BiH concluded with other countries. The Sector for Immigration of the Ministry of Security is responsible for the acceptance of BiH citizens, while the Service for Foreigners' Affairs is responsible for the acceptance of foreign nationals who return to BiH under these agreements. In the readmission procedure, the provisions of international agreements concluded by BiH with other countries are applied. These agreements, as well as the accompanying implementation protocols, specify the procedures for surrender and acceptance of persons whose stay is illegal, and give sufficient guarantees for respecting the rights of persons who are the subject of readmission, whether it is a readmission of migrant workers or another category of foreign nationals or BiH citizens. Regarding the recommendation to provide information on the implementation of the Agreement with the European Community, which should include examples of individual cases as well as statistics on migrant workers who are readmitted under this Agreement, we need to emphasise that records are kept on persons who have been accepted under this Agreement, with an emphasis on the number of foreign nationals who have been sent back and the number of BiH citizens who have been sent back, without the division to migrant workers and possibly other categories. Data on persons sent back to BiH under the agreements on readmission are in the BiH Migratory Profile, which is updated every year.

#### **Recommendation No. 25**

**The Committee is concerned about the lack of procedural safeguards concerning decisions on detention (“placement under supervision”) under the Law on Movement and Stay of Aliens and Asylum, in particular:**

- (a) **The fact that the Law on Movement and Stay of Aliens and Asylum provides for an extension of the length of detention beyond 180 days in exceptional cases, and the absence of a time limit in the Law for administrative detention of migrant workers;**
- (b) **The possibility of issuing detention orders placing migrant workers under supervision during appellate proceedings against decisions rejecting an application for a residence permit;**
- (c) **The fact that residence permits are not extended until a final decision on the legality of the stay of a migrant worker has been taken, which places the migrant worker concerned in a situation of irregularity and vulnerability;**
- (d) **The limited accessibility of information and legal aid to appeal detention orders against migrant workers or members of their families; and**
- (e) **Reports that, in practice, migrant workers apprehended without a valid permission to enter, to stay and to engage in a remunerated activity in the State party are often detained, contrary to information provided by the delegation during the dialogue.**

#### **Recommendation No. 26**

**In accordance with article 16 of the Convention, the Committee recommends that the State party:**

- (a) **Amend the Law on Movement and Stay of Aliens and Asylum to define the maximum length of administrative detention that is not derogable, with a view to preventing prolonged or indefinite detention;**
- (b) **Consider extending residence permits for the period during which an appeal against a decision of the Service for Foreigners' Affairs on the legality of a migrant's stay is pending before the competent administrative or judicial authorities;**
- (c) **Ensure that detention orders against migrant workers, including those in an irregular situation, are only taken as a last resort, on a case-by-case basis, and strictly in compliance with applicable international standards;**
- (d) **Ensure timely access by detained migrant workers to effective legal remedies.**

Reply to recommendations 25 and 26

63. The Law on Foreigners determines the maximum length of monitoring in immigration centres not longer than 18 months continuously (Article 119 paragraph 6). In the ongoing procedure on appeal against the decision on expulsion, a foreign national cannot be deported because the appeal against the decision on expulsion postpones the execution of the decision. A decision on expulsion may be executed only if an appeal is not declared or is rejected by a decision of the second instance body, and the foreign national does not leave the country within the time limit for the voluntary execution of the decision. Decision on expulsion can set the time limit for voluntary execution of the decision, not shorter than 7 and longer than 30 day, but in certain cases it can be shortened or prolonged. Compulsory expulsion of a foreign national from BiH shall not be done if case the foreign national decides to leave BiH within the time limit for voluntary departure, either individually or with the help of international governmental or non-governmental organisations, and provides an appropriate guarantee. Initiating an administrative dispute at the Court of BiH against the decision of the second instance body does not delay the execution of the decision on expulsion.

64. A foreign national can be assigned detention by being placed to an immigration centre during the appeal procedure against the decision on refusing a residence permit application only if the Service of Foreigners' Affairs prior to placing one in detention had issued a decision on expulsion and a decision on the assignment of supervision by placing one in an immigration centre.

65. Detention by placing in an immigration centre is determined only if the conditions prescribed by the Law on Foreigners (Article 118, paragraph 3) are met. An appeal against the decision on placing one in detention to an immigration centre may be filed within three days of the date of delivery of the ruling. The appeal does not delay the execution of the decision. Against the decision of the second instance body, a foreign national can initiate an administrative dispute by filing a lawsuit before the Court of BiH. Legal aid is provided to foreign nationals who have been assigned a detention by being placed in an immigration centre.

66. For reasons of issuing expulsion order (Article 106, paragraph 1), as well as for the reasons of detention order by placement in an immigration centre (Article 118, paragraph 3) prescribed by the Law on Foreigners, it can be noticed that the difference is not made whether the person in question is a foreign national who comes to BiH to work (a migrant worker), a foreign national who comes to BiH for another reason, or a foreign national whose BiH citizenship has been taken away. The procedure is to assess whether a foreign national has violated any of the provisions of the Law on Foreigners, which may result in the deportation measure and detention order by placing in an immigration centre, without discriminating or otherwise acting against foreign nationals who are migrant workers or foreign nationals whose BiH citizenship has been taken away in relation to other foreign nationals. The Law on Foreigners applies equally to all foreign nationals.

**(e) Ensure that migrant workers have access to legal aid and information on available remedies to appeal decisions ordering their detention, and provide information thereon in its next periodic report, including examples of cases where migrant workers in an irregular situation have received legal aid.**

67. The Law on Free Legal Aid was published in the "Official Gazette of BiH" No 83/16 and came into force on 12 November 2016.

68. The aim of aforementioned law is to ensure every private entity efficient and equal access to justice in proceedings before bodies and institutions of BiH, before which their individual rights, obligations and interests are exercised and protected.

69. The body competent for providing free legal aid is the Office of Ministry of Justice of BiH, established by the Law to provide free legal aid.

70. Article 13 of the Law on Free Legal Aid defines users of free legal aid:

(a) Citizens of Bosnia and Herzegovina and other private entities with the residence on the territory of Bosnia and Herzegovina;

(b) Private entities on the territory of Bosnia and Herzegovina under international protection in compliance with the international standard, especially asylum seekers, refugees, persons under subsidiary or temporary protection, persons under procedure of deportation, stateless persons, human trafficking victims, in compliance with the obligations Bosnia and Herzegovina has with regard to the international conventions;

(c) Persons whose rights are protected by the provisions of the Convention on Civil Aspects on the International Child Abduction, the Convention on Realisations of Alimentation Requests Abroad, the Convention on Civil and Legal Proceedings and the Convention on Facilitating International Access to Justice.

71. Taking the aforementioned into consideration, legal preconditions have been created to ensure that migrant workers have access to free legal aid and information on available remedies to appeal against decisions on their detention. Since the Law has been in force for not more than five months, and the Office of the Ministry of Justice is being established to provide free legal aid, we have no examples of free migrant workers receiving free legal aid in an irregular situation.

#### **Recommendation No. 27**

**The Committee reiterates its concern at information about prolonged detention of migrant workers whose citizenship has been revoked (CMW/C/BIH/CO/1, para. 21) and about their expulsion to countries where they may face a serious risk of being subjected to ill-treatment. It further notes with concern the lack of information received by the Committee on their access to legal remedies.**

#### **Recommendation No. 28**

**The Committee recommends that the State party ensure that migrant workers who have been deprived of their citizenship have access to effective legal remedies to submit the reasons why they should not be expelled to a third country, in particular when they would face a risk of ill-treatment upon return to that country.**

Reply to recommendations 27 and 28

72. The Law on Foreigners prohibits discrimination against foreign nationals on any basis (Article 9). This law stipulates that a foreign national shall not be deported from BiH contrary to the principle of non-refoulement (Article 109). Existence of the conditions not to deport a foreign national to a country where there is a risk of ill-treatment after the return is established through the procedure after the application for asylum, to a foreign national whose asylum application is legally denied or the refugee status not granted or the status of subsidiary protection has been refused, and for whom it is established that they cannot be deported for reasons set out by the Restitution Principle, the Office of Foreigners' Affairs upon request of a foreign national, and on the basis of the recommendation of the competent authority for asylum, issues a certificate of stay permitting them to stay in BiH until the conditions for return are secured and the certificate serves as an identification document. The certificate is issued for a period of up to one year which can be extended at the request of a foreign national under the conditions it was issued and with the recommendation of a competent body for asylum (Article 110, paragraphs 5 and 6).

73. The Ministry of Civil Affairs is not aware of cases of deprivation of citizenship of migrants by the competent authorities of Bosnia and Herzegovina.

74. In any case, at any decision in administrative proceedings before the competent authorities at the state level, the parties are enabled to use legal remedies without exception, and in that sense no violations of that right have been registered.

75. Please note that the provision of Article 15 of the Law on Citizenship of Bosnia and Herzegovina ("Official Gazette of BiH" No 4/97, 13/99, 41/02, 6/03, 14/03, 82/05, 43/09, 76/09 and 87/13) stipulates that "citizenship cannot be lost if the person concerned is stateless, except in the case set out in Article 23 paragraph 1 of the Law on Citizenship of BiH. Thus, Bosnia and Herzegovina ensures that the person does not lose citizenship, and



in any case the possibility of using legal remedies for all decisions in the administrative procedure is envisaged.

**Recommendation No. 29**

**The Committee is concerned that children of migrant workers are being placed in the Lukavica Immigration Centre and that this facility is not adapted to their needs.**

**Recommendation No. 30**

**The Committee recommends that the State party give priority to alternatives to the placement of children of detained migrant workers in immigration centres and ensure that custodial measures are only taken as a last resort, when non-custodial measures are unavailable to uphold the right to family life.**

Reply to recommendations 29 and 30

76. The Law on Foreigners (član 123) stipulates that the competent authorities in BiH are obliged to treat foreign national minors with special care and respect and in accordance with the Convention on the Rights of the Child and regulations in BiH related to the care and protection of minors.

77. Families with minor children are detained in the immigration centre only as a last resort for as short period of time as possible. A foreign national minor who has entered BiH illegally and is not accompanied by a parent or legal representative, or a legal guardian, or has remained unaccompanied by those persons upon entry into BiH, and whom the Service for Foreigners' Affairs cannot immediately return to the country which he/she came, nor give him/her to the representatives of the country of origin, the Service shall temporarily place him/her in a department specialised for minors, and shall notify the competent centres for social work that shall immediately appoint a temporary guardian in accordance with the law. Unaccompanied minors stay in the immigration center exceptionally, only as a last resort and for as short period of time as possible. A foreign national minor must not be returned to the country of residence or to a country that is ready to accept him/her until it is ensured that they will be waited by a parent or a legal representative, or a legal guardian or a representative of the competent authority in the country of return. Unaccompanied minors under no circumstances can be returned in a way it would violate the European Convention on Human Rights and Fundamental Freedoms and the Law on Foreigners (Article 123 of the Law on Foreigners). For vulnerable categories of foreign nationals accommodation can be provided in partnership with the non-governmental sector. The Ministry of Security has signed protocols on cooperation with non-governmental organisations regarding the accommodation of unaccompanied minors and victims of human trafficking.

78. In 2010, at the Immigration Centre building a special department for families with children was set up, an apartment pavilion in which the right on family life and the stay of a child with a guardian is ensured.

79. In cases where the detention order is determined by placement in an Immigration Center for unaccompanied individuals for whom during the procedure the information on age is nonexistent, and based on the physical appearance it cannot be determined if the individual is a minor, immediately after learning and confirming that he/she is a minor, the Service for Foreigners' Affairs, with the appropriate procedures of the competent centres for social work, transfers the individual to the unit of the institution specialised for minors.

**Tabular presentation of the placement of accompanied minors by an Immigration Centre and unaccompanied minors in accommodation facility under an agreement with a non-governmental organization, classified by age**

<i>Year</i>	<i>Immigration Centre (accompanied minors)</i>	<i>Accommodation Facility — NGO (unaccompanied minors)</i>
2012	36	3
2013	19	3

<i>Year</i>	<i>Immigration Centre (accompanied minors)</i>	<i>Accommodation Facility — NGO (unaccompanied minors)</i>
2014	10	6
2015	23	1
2016	37	0

**Recommendation No. 31**

**While noting that, under the Law on Movement and Stay of Aliens and Asylum, an appeal automatically stays a decision on expulsion, the Committee is concerned about the short time-limit for migrant workers to lodge appeals against such decisions, particularly when they are based on article 88 of the Law, in which case they must be appealed within 24 hours.**

**Recommendation No. 32**

**The Committee recommends that the State party uphold all the procedural safeguards contained in article 22 of the Convention and consider extending the time limit for lodging appeals against decisions on expulsion.**

Reply to recommendations 31 and 32

80. Article 105, paragraph 7 of the Law on Foreigners, stipulates that an appeal against the decision of the Service for Foreigners' Affairs on the expulsion of a foreign national from BiH may be submitted to the Ministry of Security within eight days from the date of delivery of the decision.

81. The deadline for the appeal is 24 hours upon delivery of the decision only in the case of the decision on expulsion issued against a foreigner who was accepted under the international agreement on cooperation on surrender and acceptance of individuals whose residence is illegal and whose stay in BiH is not approved.

82. The appeal filed against the decision on expulsion postpones the execution of the decision. The Ministry of Security shall issue a decision on the appeal and deliver it to the party in the shortest time period possible, and at the latest within 15 days from the date of receiving the appeal.

**Recommendation No. 33**

**The Committee is concerned about the lack of measures taken to protect migrant domestic workers, including those in an irregular situation, particularly women, who are regularly exposed to exploitation and abuse.**

83. In November 2013, Bosnia and Herzegovina ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul Convention, which is the first legally binding instrument in Europe in this field that aims to create a legal framework for the prevention of violence against women, protection of victims of violence and punishment of perpetrators of violence. It is necessary to emphasize that the Convention insists on a series of non-discriminatory grounds for the prevention of violence, the protection of victims of violence and the punishment of perpetrators, including sex, gender, race, colour of the skin, language, religion, political or other opinion, ethnic or social origin, belonging to a national minority, birth, sexual orientation, gender identity, age, health, disability, marital status, migrant or refugee status, or any other status.

84. Framework Strategy for the Implementation of the Istanbul Convention in BiH was created in BiH for the 2015–2018, and the Council of Ministers of BiH issued a decision on adoption.<sup>1</sup> It is certain that insufficient and inadequate information on the availability of protection mechanisms is a particular problem in case of vulnerable or marginalised groups,

<sup>1</sup> Adopted at 16th meeting of the Council of Ministers of BiH held on 23 July 2015, and published in "Official Gazette of BiH" No 75/15.

among which are certainly female migrants. They are most often excluded from the mainstream society or live in isolation, far from big centres, and have no opportunity to learn about their rights and to seek protection in case of violence.

85. Groups that are difficult to reach and that way they become more and more excluded and left by themselves and the closest environment.

86. Women belonging to ethnic, religious and sexual minorities, women with disabilities, and women with immigrant status, both legal and illegal can be particularly at risk. Such cases are usually unreported and invisible.

87. Entity laws on prevention of domestic violence are in force in BiH, and their provisions protect, among others, individuals under the jurisdiction of BiH.

#### **Recommendation No. 34**

**In line with article 25 of the Convention, the Committee recommends that the State party:**

(a) **Ensure that labour inspections monitor the working conditions of migrant domestic workers;**

(b) **Increase fines and other penalties for employers exploiting migrant domestic workers or subjecting them to forced labour and abuse, especially in the informal economy; and**

(c) **Ensure that migrant domestic workers have access to effective mechanisms for bringing complaints against employers, and prosecute and punish those responsible for abuses against them, in line with the Committee's general comment No. 1 (2010) on migrant domestic workers.**

88. In Republic of Srpska, the Law on Labour regulates domestic work by provisions of Article 46 which states:

- (1) "Employment can commence for housework performed by auxiliary staff.
- (2) The employment contract referred to in paragraph 1 of this Article may stipulate a payment of part of the fee in kind as well, which refers to accommodation and food, that is, providing accommodation and food.
- (3) The value of in kind portion of payment needs to be defined in money value.
- (4) The minimum percentage of salary compulsory calculated and paid in cash is determined by the employment contract and cannot be lower than 50% of the salary of the worker.
- (5) If the salary is contracted partly in cash, and partly in kind, during the absence from work, the employer is obliged to pay the salary to the employee in cash."

89. In accordance with these provisions these jobs can be performed by migrant workers as well, and it ensures the same right based on this work and the same mechanisms of protections in case of a litigation which includes lawsuit to a competent court, which is in line with the provision of Article 2, paragraph 3 of the Law on Labour.

90. The provision of Article 3, paragraph 3 of the Law on Employment of Foreign Citizens and Stateless Persons, according to which migrant workers have the same rights and obligations as employed nationals of Republic of Srpska, also refers to equality of migrants and domestic workers.

91. Furthermore, the provision of Article 47 of the Labor Law created the obligation for this contract to be registered with the competent authority of the local self-government in manner and through the procedure determined by the Minister in competence of the field of labor, which is one aspect of insight into the performance of household work.

92. In Federation of Bosnia and Herzegovina household work is not regulated as a separate type of employment.

93. Labor inspection has general jurisdiction, in this specific field as well. There are no restrictions on certain types of work. The Labor Law and the regulations adopted on the basis thereof prohibit all forms of discrimination and exploitation of workers. Not mentioning on this occasion the regulations adopted at the state level, every individual in Brcko District BiH has unhindered access to the courts in Brcko District of BiH. Valid identification document is not superseded by citizenship or something like that.

94. The Criminal Code of the Brcko District of BiH stipulates that criminal offense is any kind of abuse or exploitation of individuals by, among others, economically more powerful individuals. Relevant international agreements relating to human trafficking, slavery and the prohibition of human exploitation have been included in this law.

#### **Recommendation No. 35**

**The Committee is concerned that children of migrant workers, including Roma children and children of migrant workers in an irregular situation, are often not registered at birth and issued personal identity documents, which impedes their access to health care, social benefits and education.**

95. Legal framework for registering individuals in the registers of birth and citizens of Bosnia and Herzegovina is defined by the Law on Citizenship of BiH and entity laws on citizenship, and laws on registers of Republic of Srpska, Federation of BiH and Brcko District of BiH.

96. Ministry of Human Rights and Refugees of BiH, competent entity ministries, the Government of Brcko district of BiH and the Ministry of Civil Affairs of BiH, have been for a significant period of time engaged in raising awareness on importance of registering children at birth.

97. In this regard, significant progress has been made and the number of individuals not registered in the BiH registry has been significantly reduced, and in each case, special attention is paid to enable parties to exercise their right to own personal documents.

98. Survey conducted by the Ministry on Human Rights and Refugees 2009/2010, when the needs of Romani people were listed, and 16,000 members of Romani population in BiH were visited (out of total Romani population number around 35,000, estimated by the MHRR), showed that around 4,500 individuals do not have citizenship and by that are at risk of statelessness. After that, in cooperation with the NGO Vaša prava BiH (Your Rights BiH) and the representatives of Romani NGOs, as well as 11 mediators hired by UNHCR through the NGO BH inicijativa žena (BH Initiative of Women), 256 of Romani communities in BiH were visited during 2013 and 2014. On that occasion, 427 persons were identified who were not registered in the register of birth and register of citizens. Parallel to visits to Romani communities by UNHCR with NGO Vasa prava and Romani mediators and identification of persons who are not registered in the register of birth, free legal aid was provided through NGO Vasa prava. UNHCR supported development of the legal framework in FBiH and, in cooperation with the Federal Ministry of Internal Affairs, supported the training of registrars, social workers and representatives of Cantonal Ministries of Internal Affairs. Trainings of representatives of Romani NGOs as well as mediators were also organised. Approximately 700 civil servants and representatives of Romani NGOs attended these trainings in previous years. Since the middle of 2009 until today, through the NGO Vasa prava, free legal aid has been provided and over 1,600 persons have been registered in the registers of birth and citizens. By the end of July of current year, 64 persons were registered in the registers of birth and citizens, persons at risk of statelessness. Although this number is not high, it is necessary to remove the remaining flaws in the Law on Registry Books in the FBiH, as well as to improve the practice and facilitate the process of registering in register of birth to ensure that all persons are registered in registers of birth and citizens. It is necessary to establish a sustainable system of prevention and reducing the risk of statelessness, identification of persons without documents in order to start the registration process and provide them with free legal assistance when registering. It is necessary to ensure that every child is registered immediately after birth, i.e. within the deadline for registration (30 days), which would ensure that each child has a birth certificate. During this year, UNHCR, together with the

NGO Vasa prava, has organized a series of workshops with Free Legal Aid Institutes, registrars and representatives of the Centres for Social Work on the topic of registration in registers of birth, citizens and free legal aid to persons at risk of statelessness — they have no documents and hence are legally invisible. Up to now, ten workshops have been conducted in FBiH, one in RS and one in BD BiH.

99. The goal is to create a network of all institutions at the local level, and to ensure visits to the Romani community, the identification of persons who are not registered in the registers, to direct them to the process of registration in registers and to provide them with the free legal aid. Laws on free legal aid at cantonal levels do not include these persons as users, so it is necessary to amend these laws. By the end of the year, we shall conduct several more workshops where we shall advocate for the necessary changes of the law as well as improvement of the practice of registering in the registers.

### **Recommendation No. 36**

**The Committee recommends that the State party:**

- (a) **Intensify its efforts to ensure that all children of migrant workers are registered at birth and issued personal identity documents;**
- (b) **Provide training to the relevant law enforcement officers on the systematic birth registration of all children of migrant workers; and**
- (c) **Raise awareness on the importance of birth registration among migrant workers and members of their families, especially those in an irregular situation.**

100. Registration in the registers in Republic of Srpska is regulated by The Law on Registry Books (“Official Gazette of RS” No 11/09 and 43/13). This law enables all children, including the children of migrants born on the territory of Republic of Srpska, to be registered in the register of birth in Republic of Srpska. In addition, the law completed the procedure of registration in registers and the manner of determining the identity of a newly born child, it is stipulated who is obliged to register and determine the name of a newborn child. If persons who are authorised to determine the first name of a child do not do so, ultimately, the name of the child is determined by the competent guardian authority. This allows children to be registered in the registers, and therefore obtain a birth certificate as a prerequisite for exercising other rights.

101. The Ministry of Administration and Local Self-Governance, in accordance with its personnel and financial capacities, periodically conducts trainings on the implementation of the regulations on registers, attended by the employees from registry offices competent for registration in the registers of birth. Assistance with registration in registers is provided by legal aid services, alongside employees in registry offices, in municipalities/towns/cities, which is also free of charge.

102. In addition to the aforementioned, Republic of Srpska adopted the The Law on Citizenship of RS (“Official Gazette of RS”, No 59/14), which created the preconditions for refugees to acquire citizenship by naturalization and on this basis a certain number of Romani people living on the territory of Republic of Srpska with the recognized status of refugees and who fulfill the statutory conditions acquired citizenship of BiH — Republic of Srpska.

103. So far, no major problems have been noted in this field. Data on persons born on the territory of Brcko District of BiH are ex officio delivered to the registry offices where these persons are in timely manner recorded and registered in the registers.

### **Recommendation No. 37**

**The Committee is concerned about the lack of information on access to education for children of migrant workers in the State party. It is further concerned by the exclusion of children of migrant workers from certain mono-ethnic schools based on their ethnicity.**

104. All children in Republic of Srpska have equal rights and equal opportunities in terms of upbringing and education without discrimination on any basis. Information that children

of migrant workers are separated in mono-ethnic schools is false. Even if such mono-ethnic schools do exist it is because those schools are in mono-ethnic communities and are not a result of ethnic, racial or other division.

105. All children in Federation BiH have equal rights and equal opportunities in terms of upbringing and education without discrimination on any basis. Upbringing and education in Federation BiH is under jurisdiction of the Cantons, as well as municipalities when preschool and primary education is in question.

106. All children in Brcko District of BiH have equal rights and equal opportunities in terms of upbringing and education without discrimination on any basis. Information that children of migrant workers are separated in mono-ethnic schools is false. Even if such mono-ethnic schools do exist it is because those schools are in mono-ethnic communities and are not a result of ethnic, racial, or other division.

### **Recommendation No. 38**

#### **The Committee recommends that the State party:**

(a) **Ensure that all children of migrant workers have access to primary and secondary education on the basis of equality of treatment with nationals of the State party;**

107. In compliance with the Law on Foreigners, education is one of the prerequisites for granting temporary residence. A foreign national can regulate their residence in BiH based on primary, secondary, or higher education.

108. Children who have been granted temporary stay as victims of human trafficking have the right to access to education.

109. All children in Republic of Srpska have equal rights and equal opportunities in terms of upbringing and education without discrimination on any basis, including the children of migrant workers.

110. All children in Federation BiH, including the children of migrant workers, have equal rights and equal opportunities in terms of upbringing and education.

111. On the territory of the Brcko District of BiH, the distinction between the children who enter the education system is not made. It is not known whether anyone has been denied this right. In accordance to the available data, it is not known whether the records are kept or data collected on whether a child is a child of a migrant worker or a national.

(b) **Take measures to eliminate discrimination against children of migrant workers in the educational system; and**

112. When it comes to Discrimination in the education system, this phenomenon is not present with children of migrant workers.

(c) **Include in its next periodic report information on the measures taken in that regard and on the enrollment rates of children of migrant workers, including those in an irregular situation.**

113. All children in Republic of Srpska have equal rights and equal opportunities in terms of upbringing and education without discrimination on any basis, including the children of migrant workers. The Ministry of Education and Culture of RS has not reported any case of discrimination against children migrants.

114. Since the upbringing and education in Federation BiH is under jurisdiction of the cantons, the Government of FBiH does not have information on reported cases of discrimination against children migrants.

115. All children in Brcko District of BiH have equal rights and equal opportunities in terms of upbringing and education without discrimination on any basis, including the children of migrants. There are no data available on reported cases of discrimination against children migrants.

#### **IV. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36–56)**

##### **Recommendation No. 39**

**The Committee regrets that only a small amount of the large number of Bosnian nationals working abroad exercised their voting rights during the last elections held in the State party.**

##### **Recommendation No. 40**

**In the light of the next general elections to be held in 2014, the Committee recommends that the State party increase its efforts to facilitate the exercise of voting rights of Bosnian nationals working abroad.**

Reply to recommendations 39 and 40

116. Article 3.15, paragraphs 1 and 2 of the Election Law of Bosnia and Herzegovina (“Official Gazette of BiH”, No 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 33/08, 37/08, 32/10, 18/13, 7/14, 31/13), stipulates that citizens of Bosnia and Herzegovina who temporarily reside abroad and those who have the status of refugees from BiH need to apply with Central Election Commission of BiH for voting every election year in order to be on the voter list.

117. Within the framework of its legal obligations, and as set out in Article 2.9 paragraph 1, item 12 of the Election Law of BiH, Central Electoral Committee of BiH, in an effort to ensure the right of all citizens of BiH who reside abroad to vote, and in accordance with the Action Plan for the implementation of the Law, publishes all necessary information on electoral process in BiH, and all the necessary information voters can find on the official website of the CEC BiH [www.izbori.ba](http://www.izbori.ba).

118. Within the regular procedure during the election year, citizens of BiH have at their disposal, beside registered forms and the Guide to Postal Voting, phone numbers and e-mail address of the CEC for all the questions regarding registration. Also, persons submitting a postal voting application can check the status of their application on the website of the Central Election Commission of BiH. In order to provide more complete information to voters in BiH, voters who live outside BiH, and to provide them with timely information on all relevant segments of the electoral process, as well as with the aim of maximising their going to the polls at the upcoming elections. In connection to the aforementioned, the following informational, educational and motivational campaigns are conducted, and in the public and private electronic and print media in BiH TV videos, printed ads and radio ads are published for the following campaigns: Campaign “The Choice of Voters” Campaign “How to Vote”, a motivational campaign aimed for the following target groups — women, young people, people with disabilities, older people, members of national minorities, and a general motivational campaign.

119. Also, based on the Decision on Implementation of Education and Informing Voters outside BiH, prior to every elections the Central Election Commission of BiH organises and conducts trainings and informs voters outside BiH, in the countries where there is a significant number of citizens of BiH, i.e. refugees and persons residing outside BiH.

120. For the 2012 elections, the delegation of the Central Election Commission of BiH paid visit to the Embassy of BiH in Zagreb, consulates of BiH in Norway, Sweden and Denmark, Ljubljana, Vienna, Berlin and Prague, the Consulate General of BiH in Chicago, the Embassy of BiH in Washington.

121. In line with the plan and the programme of training of election authorities for the 2014 elections, the representatives of the CEC visited and conducted trainings of members of voting committees in diplomatic and consular representative offices of BiH in the Embassies of BiH in Vienna and Berlin and consulates general of BiH in Munich, Stuttgart and Frankfurt.

122. In line with the current practice, visits and trainings were continued for 2016 local elections. For that occasion, the CEC organized and conducted educational campaign and informed voters outside BiH in 11 countries and 20 cities: Zagreb, Ljubljana, Vienna, Graz, Salzburg, Oslo, Stockholm, Malma, Atlanta, Copenhagen, Washington, Munich, Stuttgart, Frankfurt and Strasbourg.

123. The Central Election Commission of BiH adopted a Decision on Determination of Polling Stations in Diplomatic Consular Representative Office of BiH in accordance with which voting of nationals of BiH was conducted at the five polling stations in the DCRO BiH (Vienna, Graz, Munich, Stuttgart and Belgrade) for 2016 Local Elections.

124. In addition to that, the Central Election Commission of BiH, through the Ministry of Foreign Affairs of BiH, diplomatic and consular missions of BiH, clubs and associations of citizens of BiH abroad, as well as the offices of governmental and non-governmental organisations dealing with refugees and migration issues, forwards all the necessary elections forms and Voting Guides outside BiH with notices on manner and time frame for the registration of voters in the Central Election Voters List outside BiH in the official languages of BiH.

## **V. Provisions applicable to particular categories of migrant workers and members of their family (arts. 57–63)**

### **Recommendation No. 41**

**While noting the State party’s efforts to negotiate bilateral agreements with neighbouring countries to improve the protection of migrant workers and seasonal workers, the Committee notes with concern that no data is available on the number of seasonal workers employed in the State party and that seasonal workers continue to face violations of fundamental labour rights, as acknowledged by the State party. The Committee therefore reiterates its concern that the absence of legislation protecting seasonal workers employed in the State party makes them particularly vulnerable to unjust and exploitative conditions of work (CMW/C/BIH/CO/1, para. 33).**

### **Recommendation No. 42**

**The Committee requests the State party to:**

- (a) Collect data on the number of seasonal workers in the State party;**
- (b) Expedite the adoption of the amendment of article 84 of the Law on Movement and Stay of Aliens and Asylum, establishing a system of registration of seasonal workers;**
- (c) Monitor employment practices, in particular in the construction industry, agriculture and domestic work, as well as the working conditions of seasonal workers employed in the State party, including by strengthening labour inspections;**

Reply to recommendations 41 and 42

125. The field of work and employment of foreigners is under jurisdiction of entities (issuing work permits, labor rights, etc.) and is regulated by entity laws on employment of foreign nationals and other regulations in the field of labor and employment. The Law on Foreigners took over the Directive 2014/36/EU of the European Parliament and of the Council from 26 February 2014 on conditions for entry and stay of third-country nationals for the purpose of employment with the status of seasonal workers and Articles 69 and 77 paragraph 1, item m) of the Law on Foreigners define the means of regulating temporary residence and residence with a certificate of registration of seasonal workers. As the Law on Foreigners was adopted at the end of 2015, statistics on seasonal worker are not yet available.

126. Pursuant to Article 14 of the Law on Employment of Foreign Citizens and Stateless Persons (“Official Gazette of Republika Srpska”, No 24/09 and 117/11). The Republic Labour Inspectorate supervises the implementation of the provisions of this Law, mainly,



controlling work permits of foreign nationals and stateless persons, as well as controlling the work of those foreign national who are exempt from the obligation to obtain work permits.

127. The Law on Employment of Foreigners of Federation of Bosnia and Herzegovina stipulates that the supervision of the implementation of this law, i.e. employing foreigners in all sectors, as well as the regulations issued based on it, is performed by the federal or cantonal labour inspector. Within the Public Administration Reform, the capacity of labour inspections shall be strengthened both at federal and cantonal level.

128. The Law on Labour does not define institution of seasonal workers. There is only a category of temporary and occasional jobs under Article 166 of the Law on Labour, where the contract on performing temporary and occasional work can be concluded provided that the temporary and the occasional jobs are determined by the collective agreement or the rules of operations are temporary and do not represent jobs for which an employment contract is concluded for a limited or unlimited period during a calendar year. For persons performing temporary and occasional work a break is ensured working under the same conditions as for workers in employment and other rights, in accordance with the retirement and disability insurance regulations.

129. The competent services of the Employment Bureau have information on all seasonal workers employed in Brcko District of BiH. Taking into consideration that this is one of the categories set as a norm by the Law on Labour of Brcko District of BiH, the Labor Inspectorate monitors this form of employment as well.

**(d) Ensure that seasonal workers enjoy the rights protected in part IV in the Convention that can be applied to them by reason of their presence and work in the State party, taking into account that they do not have their habitual residence in the State party; and**

130. Foreigners who legally reside in BiH under the conditions stipulated by this Law enjoy the right on freedom of movement in BiH and the free choice of place of residence, unless otherwise specified by this or another law in special areas for reasons of public interest in a democratic society (Article 8 of the Law on Foreigners).

131. Foreign seasonal workers can be granted temporal residence in BiH for work depending on change of seasons within the framework of the limited employment contract concluded directly by a foreign national and an employer from BiH. Temporary residence is granted based on work permit issued by bodies competent for employment of foreigners in FBiH, RS and BD BiH within determined quotas for work permits for the current year and under Article 64 of the Law on Foreigners. Temporary stay is permitted for 90 to 180 days during the period of 12 months. Upon expiry of that period, the foreign national needs to leave BiH. Temporary residence on this basis may be extended under the same conditions under which the residence is granted, with the maximum stay not exceeding six months in a period of 12 months.

132. Foreign nationals who reside in BiH on a visa, visa-free or pre-approved temporary residence can work in BiH without a work permit up to 90 days of the calendar year if they perform jobs as seasonal workers under a limited employment contract concluded by a foreign national and an employer from BiH fulfilling the conditions set out in Article 69, paragraphs 3 and 7 of the Law on Foreigners.

133. Seasonal migrant workers have the same rights on the basis of work and employment and performing paid work (such as seasonal work) in accordance with the provisions of Article 2 of the Law on Employment of Foreign Citizens and Stateless Persons guaranteed by the Law on Labour. Pursuant to Article 3, paragraph 3 of the Law on Employment of Foreign Citizens and Stateless Persons, migrant workers have the same rights and obligations as the employed nationals of Republic of Srpska.

134. The Law on Labour in FBiH does not define institution of seasonal workers. There is only a category of temporary and occasional jobs where the contract on performing temporary and occasional work can be concluded provided that the temporary and the occasional jobs are determined by the collective agreement or the rules of operations are temporary and do not represent jobs for which an employment contract is concluded for a

limited or unlimited period during a calendar year. Persons performing temporary and occasional work have the same rights as workers in employment.

135. There have been no appeals or complaints so far, and moreover Brcko District of BiH as a local self-governance unit with a special status in BiH, through the activities of the governmental and nongovernmental sector, encourages the more active participation of these and similar categories of persons in the field of cultural, educational, health and other segments of life.

(e) **Pursue its efforts to sign further bilateral agreements.**

136. In line with its competencies, the Agency of Labour and Employment of Bosnia and Herzegovina initiates the conclusion of international agreements in the field of employment and participates in negotiations for conclusion of international agreements in the field of social insurance for unemployment and monitors their implementation in cooperation with the Employment Bureaus from Entities and Brcko District of BiH.

137. The programme of activities of the Agency for 2017 foresees the monitoring of activities on initiated agreements in the field of employment with the Russian Federation and Republic of Turkey as well as participation in negotiations for conclusion of the Agreement between the Council of Ministers of BiH and the Government of Montenegro on the protection of workers from BiH who work in Montenegro and protection workers from Montenegro who work in BiH. It is also planned to conduct research on the number of BiH nationals in the countries of the region and the EU that do not exercise the right on social security based on employment and to initiate agreements with these countries.

## **VI. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64–71)**

### **Recommendation No. 43**

**While noting the continued work of the Coordination Body established in 2009 to monitor the implementation of the new Strategy on Migration and Asylum and the related Action Plan for the period 2012–2015, the Committee reiterates its concern that the lack of coordination between the institutions and services that deal with the various aspects of migration policy at State and Entity levels negatively impact on the implementation by the State party of certain rights protected under the Convention (CMW/C/BIH/CO/1, para. 35).**

### **Recommendation No. 44**

**The Committee recommends that the State intensify its efforts to improve the coordination between ministries and agencies at State and Entity levels for the effective implementation of the rights protected under the Convention as well as the new migration strategy for the period 2012–2015.**

Reply to recommendations 43 and 44

138. The Coordinating Body referred to in the recommendation was established by the Decision of the Council of Ministers of BiH for monitoring the implementation of the Strategy on immigration and asylum and the Action Plan for the period 2008–2011. The Coordinating Body for Monitoring the Implementation of the Strategy on immigration and asylum and the Action Plan for the period 2008–2011 was appointed during the period of enforcement of the mentioned Strategy.

139. By the Decision of the Council of Ministers of BiH from 2013, the Coordination Body for Migration Issues in BiH was appointed as a permanent body in charge of coordinating activities between competent institutions dealing with migration and asylum issues. As a part of the Coordination Body, managing civil servants from the Ministry of Security (Service for Foreigners Affairs, Border Police, State Investigation and Protection Agency, Sectors for Immigration and Asylum), the Ministry of Human Rights and

Refugees of BiH (Department for Emigration and the Department for Refugees, Displaced Persons, Readmission and Housing Policy) and the Ministry of Foreign Affairs (Sector for Foreign Legal and Consular Affairs) were appointed. In case of a crisis in the field of immigration and asylum, the Coordination Body may function as an operational headquarters for migration issues in BiH.

140. The Coordinating Body has competence to continuously monitor the overall situation in the field of migration and asylum, to encourage and ensure interdepartmental cooperation between relevant institutions dealing with migration and asylum issues, to assess future migration movements and propose to the competent institutions measures for improving migration policy, to monitor the implementation of the Strategy on migration and asylum, and to continuously analyse the effectiveness of the implementation of the planned activities defined by the Strategy, to identify and monitor the problems and risks, and in accordance with its competence, undertake activities for their overcoming. The Coordinating Body through the Ministry of Security shall submit an annual report on the work to the Council of Ministers of Bosnia and Herzegovina.

141. The report on the work of the Coordination Body also contains a report on the implementation of the Strategy on migration and asylum and the Action Plan and it is submitted not later than 60 days after the end of the calendar year for which the report is submitted, and, if necessary, it can be submitted more often. The report on the work of the Coordination Body is designed to include data on the activities carried out for the entire four-year period, chronologically according to the years in which the activities were carried out, and thus enables an integrated monitoring and review of the process of implementing activities determined by the Strategy on immigration and asylum and Action Plan. The report of the Coordinating Body is available at: [www.msb.gov.ba](http://www.msb.gov.ba).

142. In the event of a crisis in the field of immigration and asylum, the Coordinating Body may function as the operational headquarters for the migration issue in BiH. The Coordinating Body shall hold regular meetings and report on the work of the Coordinating Body. By establishing the Coordinating Body a progress has been made in the system of coordination between institutions and services dealing with different aspects of migration policy at the state and entity levels of government.

#### **Recommendation No. 45**

**The Committee regrets the lack of information on the support provided by the State party to Bosnian returnees and on measures to facilitate their durable economic, social and cultural reintegration.**

143. From the state and entity budgets and through donations and credit funds in the period 2009–2016, 9,784 housing units were reconstructed, and the number of housing units still under construction is 8,884, which totals in 18,668 units. The project “Closure of collective centers and alternative accommodation through provision of public housing solutions — CEB II” will include 121 collective centres and alternative accommodation in 45 towns/cities and municipalities in Bosnia and Herzegovina. A process of implementation of a number of significant projects is underway (RSP, CEB II, OPEC, SRF and others) which aim at the reconstruction of housing units and other measures of sustainability and support in the implementation of Annex VII DMS. For projects of electrification of housing units for displaced persons and returnees, in the period 2009–2016, 14,899,122 BAM was invested in 79 municipalities in BiH for approximately 2,200 users/housing units. In the past period, the Ministry of Human Rights and Refugees of BiH has conducted activities to determine the needs for reconstruction of communal and social infrastructure for the needs of returnees and displaced persons, as well as to improve the process of providing assistance through open calls to these categories of beneficiaries in BiH. During 2016, 351 projects of reconstruction of communal and social infrastructure were implemented in the areas where displaced persons and returnees live.

144. In 2016, the Council of Ministers of Bosnia and Herzegovina issued a Decision on establishing Coordinating team for monitoring the implementation of Annex VII of the Dayton Peace Agreement at a ministry level. The Coordinating team coordinates activities of monitoring the exercise of the rights set out in Annex VII of the Dayton Peace

Agreement and implementation of strategic activities from revised Strategy of implementation of Annex VII of the Dayton Peace Agreement.

#### **Recommendation No. 46**

**The Committee recommends that the State party take measures to assist in the durable reintegration of returning migrant workers into the economic, social and cultural fabric of the State party, and to inform the Committee thereof in its next periodic report.**

145. Migrations are considered one of the global issues that define the beginning of the twenty-first century, as more and more people are on the move today than ever before throughout the history of mankind. If properly managed, international migrations can contribute to the growth and prosperity of both, country of origin and destination country, as well as the welfare of migrants themselves. IOM, therefore, seeks to exploit the developmental potential of migrations in favor of particular migrants and societies.

146. Program activities in this field include: promoting establishing of policies in the field of migration, strengthening capacities of governments and partners to include migrant populations in development processes in the countries of their origin, encouraging economic and community development in areas prone to economically induced migration, supporting human capital development through labour force migration programs, enhancing the financial impact on development in both countries, the sending and receiving countries, and enabling the return and reintegration of qualified citizens.

147. IOM implements programmes of assistance to governments and migrants related to employment, foreign language learning, cultural orientation prior to departure, pre-consular support service, their arrival and integration, as well as return. These services, tailored for each programme, are ensured at all stages of the process, from providing information and receiving requests, through document reviewing, conducting interviews, health assessment and logistics management to integration assistance which can reduce difficulties in adapting to a new culture, while at the same time ensures social harmony between new and old members of the community.

148. IOM implements programmes to facilitate the process of voluntary return of unsuccessful asylum seekers, deceived persons and other migrants and their reintegration in the countries of their origin, taking into consideration the needs and interests of the local community.

#### **Recommendation No. 47**

**While acknowledging the State party's efforts to combat trafficking in persons and commercial sexual exploitation of migrant workers, the Committee is concerned that the Criminal Codes of both Entities and of Brčko District have not yet been harmonized with the amended provisions of the State Criminal Code, including the new definition of trafficking in article 186 of the State Criminal Code. It is particularly concerned about the high number of migrant children who are victims of trafficking and about remaining gaps in the enforcement of anti-trafficking laws, in the light of the absence of convictions and prosecutions at State level in 2011.**

149. The National Assembly of Republic of Srpska adopted the Criminal Code of Republic of Srpska ("Official Gazette of Republika Srpska" No 64/17) at the 19th Session, which entered into force on 18 July 2017 and is harmonized with all conventions related to the issue of human trafficking. Thus, the Criminal Code defines criminal offense of human trafficking, which states: Human Trafficking, Article 145.

(1) Whoever, by force or threat of force or other forms of coercion, abduction, fraud or deception, abuse of relationship of trust, dependence or vulnerability, difficult circumstances of another person, by giving or receiving of money or other benefits, recruits, transports, transfers, delivers, sells, purchases, intermediates in sale, harbours, receives or keeps a person for the purpose of the use or exploitation of that person's labour, perpetration of a criminal offense, prostitution, use for pornographic purposes, establishment of slavery or similar relationship, forced marriage, forced sterilization, for the

purpose of the removal of organs or body parts, for the use in armed forces or of some other type of exploitation, shall be punished by imprisonment for a term of not less than three years.

(2) Whoever seizes, holds or counterfeits or destroys personal identification documents with the purpose of perpetrating criminal offenses referred to in paragraph 1 of this Article, shall be punished by imprisonment for a term between two and twelve years.

(3) If the criminal offense referred to in paragraphs 1 and 2 of this Article was perpetrated as member of an organized group, the perpetrator shall be punished by imprisonment for a term of not less than five years.

(4) Whoever uses, or enables other person to use sexual services or other forms of exploitation, and was aware that it concerns the victim of the human trafficking, shall be punished by imprisonment for a term between six months and five years.

(5) If the offense referred to in paragraphs 1, 2, 3 and 4 of this Article are perpetrated by an official person in the exercise of duty, shall be punished by imprisonment for a minimum term of eight years.

(6) If due to the criminal offense referred to in paragraphs 1 and 3 of this Article caused grievous bodily harm, serious health damage, or the death of one or more persons, the perpetrator shall be punished by imprisonment for a minimum term of ten years.

(7) The consent of the victim to any form of exploitation referred to in paragraph 1 of this Article shall bear no relevance to the existence of the criminal offense of human trafficking.

(8) Items, vehicles and facilities used for the perpetration of the offense referred to in this Article shall be seized.

(9) Against the victims of trade offenses in which a perpetrator of a criminal offense is forced to participate in the commission of another criminal offense, criminal offenses will not be conducted if such proceedings were an immediate employer of his status as a victim of trafficking.

150. It also defines criminal act of organizing a group or of an organized criminal group for the purpose of perpetration of criminal offenses of human trafficking or trafficking in minors.

151. Organizing of a Group or of an Organized Criminal Group for the Purpose of Perpetration of Criminal Offenses of Human Trafficking or Trafficking in Minors, Article 147.

(1) Whoever organizes a criminal group, association or organized criminal group for the purpose of perpetration of the criminal offenses referred to in articles 144 and 145 of this Code, shall be punished by imprisonment for a term between three and fifteen years.

(2) Whoever becomes the member of a group or association offenses referred to in paragraph 1 of this Article or otherwise assists the group or association, shall be punished by imprisonment for a term between one and ten years.

152. The Criminal Code of Brcko district of BiH ("Official Gazette of Brcko District of BiH", No 33/13 and 26/16), articles 207a i 207b in particular are in compliance with Article 186 of the Criminal Law of BiH.

153. Connection to reply to recommendation No 48.

#### **Recommendation No. 48**

**The Committee recommends that the State party:**

(a) **Harmonize the Criminal Codes of both the Entities and the Brcko District with relevant State legislation;**

154. See reply to recommendation No. 47

**(b) Criminalize the sale and prostitution of children, including migrant children, in line with the recommendations of the Committee on the Rights of the Child;**

155. Criminal Codes in BiH (the Criminal Code of BiH, the Criminal Code of the Entities and Brcko District) prescribe criminal offenses sanctioning every form of trafficking in minors, child prostitution and child pornography.

156. The Criminal Code of BiH (“Official Gazette of BiH”, No 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15 and 40/15) prescribes criminal offenses sanctioning every form of human trafficking (Article 185, Establishment of Slavery and Transport of Slaves and Article 186 Trafficking in Persons of the Criminal code of BiH).

157. The Criminal Code of Federation of BiH (“Official Gazette of FBiH”, No 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14 and 76/14) prescribes criminal offenses sanctioning every form of ill-treatment of children (Article 180 para. 2) Kidnapping, (Article 207). Sexual Intercourse with a Child, (Article 208) Lechery (Concupiscence), (Article 209) Satisfying Lust in the Presence of a Child or Juvenile, (Article 210) Pandering, (Član 211) Abuse of a Child or Juvenile for Pornography, (Article 212) Introducing Pornography to a Child and (Article 213) Incest.

158. The Criminal Code of Brcko District BiH (“Official Gazette of Brcko District of BiH”, No 33/13, consolidated text) prescribes criminal offenses sanctioning every form of ill-treatment of children, (Article 177 para. 2) Kidnapping, (Article 204) Sexual Intercourse with a Child, (Article 205) Lechery (Concupiscence), (Article 206) Satisfying Lust in the Presence of a Child or Juvenile, (Article 207) Pandering, (Article 207a) Human Trafficking, (Article 207b) Organized Human Trafficking, (Article 208) Abuse of a Child or Juvenile for Pornography, (Article 209) Introducing Pornography to a Child and (Article 210) Incest.

159. The Criminal Code of FBiH has not yet been harmonized with the international standards on human trafficking. Some of the provisions of this Law (Criminal offense “Pandering”) contain only some of the elements of this complex criminal offense focusing exclusively on sexual exploitation. The law ignores other forms of exploitation, and when it comes to persons under the age of 18, evidence is still sought that perpetrators incited, solicited, or forced that person into sexual exploitation. As a consequence of lack of harmonization of federal criminal legislation with the state criminal code, in practice, often the problem is the correct qualification of a criminal offense with elements of “trafficking in human beings” and determining the actual jurisdiction of courts and prosecutors is often the case, which can cause overlapping of jurisdiction between the state and federal prosecutors.

160. The State Coordinator for Combating Trafficking in Human Beings and Illegal Migration submitted to the competent state and entity administrative and legislative bodies the initiative for amendments to criminal legislation in BiH relating to the harmonizing the elements of the human trafficking offense with international standards set out in the Council of Europe Convention on Action against Trafficking and the Palermo Protocol.

161. The amendments would solve the problem of overlapping jurisdiction that came into practice in the prosecution of this type of criminal offense, between state and entity level. In accordance with the EU 2011 Directive on Anti-Trafficking and Human Trafficking, more severe punishments for these crimes and the exclusion of the criminal responsibility of the victim of human trafficking who was forced by the perpetrator to participate in the criminal offense, if their actions are a direct consequence of their status of a victim of trafficking.

162. The aforementioned Criminal Code of Republic of Srpska also stipulates a special criminal offense of child trafficking, which is also harmonized and states: Trafficking in Minors, Article 146.

(1) Whoever recruits, transports, transfers, delivers, sells, purchases, intermediates in sale, harbours, keeps or receives a person younger than 18 years of age with the purpose of use or exploitation of that person’s labour, perpetration of a criminal offense, prostitution or other uses of sexual exploitation, pornography, establishment of slavery or similar relationship, forced marriage, forced sterilization, illegal adoption or

similar relationship, for the purpose of the removal of organs or body parts, for the use in armed forces or of some other type of exploitation, shall be punished by imprisonment for a term of not less than five years.

(2) Whoever perpetrates the offense referred to in paragraph 1 of this Article by use of force, serious threat or other forms of coercion, by deception, abduction, blackmail, abuse of office, OG RS 49/03, 108/04, 37/06, 70/06, 73/10, 1/12, 67/13 abuse of relationship of trust, dependence of vulnerability, difficult circumstances of another person, by giving money or other benefits, shall be punished by imprisonment for a term of not less than eight years.

(3) Whoever uses, or enables other person to use sexual services or other forms of exploitation of a minor, and was aware that it concerns the victim of the human trafficking, shall be punished by imprisonment for a term of not less than five years.

(4) Whoever seizes, holds or counterfeits or destroys personal identification documents with the purpose of perpetrating criminal offenses referred to in paragraphs 1 and 2 of this Article, shall be punished by imprisonment for a term between three and fifteen years.

(5) If the criminal offense referred to in paragraphs 1, 2, 3 and 4 of this Article was perpetrated as member of an organized group, the perpetrator shall be punished by imprisonment for a term of not less than ten years.

(6) If the offense referred to in paragraphs 1, 2, 3 and 4 of this Article are perpetrated by an official person in the exercise of duty, shall be punished by imprisonment for a minimum term of eight years.

(7) If due to the criminal offense referred to in paragraphs 1 and 3 of this Article caused grievous bodily harm, serious health damage, or the death of one or more persons, the perpetrator shall be punished by imprisonment for a minimum term of ten years.

(8) The consent of the minor to any form of exploitation referred to in paragraph 1 of this Article shall bear no relevance to the existence of this criminal offense.

163. This Criminal Code also prescribes criminal offense of sexual abuse and exploitation of a child (Chapter 15) as follows: Sexual Intercourse with a Child Younger than 15 Years of Age (Article 172), Sexual Abuse of a Child Older than Fifteen Years of Age (Article 173), Soliciting a Child to Be Present to Sexual Acts (Article 174), Abuse of a Child or for Pornography (Article 175), Abuse of a Child for Pornographic Plays (Article 176), Introducing Pornography to a Child (Article 177), Abuse of computer network or other technical means of communication for committing criminal offenses of sexual abuse or exploitation of a child (Article 178), Satisfying Lust in the Presence of a Child (Article 179) and Pandering (Article 180).

**(c) Increase its efforts to enforce anti-trafficking laws and train police officers, judges, prosecutors and social service providers on the existing legal framework;**

164. Training centers for judges and prosecutors in both entities organized courses on implementation of the Law on the Prevention of All Forms of Discrimination. However, apart from informational meeting, lawyers did not undergo any training on this Law. In November 2014, 30% of the target group attended that training, and at the beginning of 2016, the number increased to 50%.

165. In 2016, nine trainings were organized for 275 judges and prosecutors in Federation BiH, and three such trainings for 90 participants in RS. We also note that the Law on Prohibition of Discrimination is now a part of the Bar Exam for Lawyers in Bosnia and Herzegovina. The European Convention on Human Rights and Fundamental Freedoms, which is an integral part of the Constitution of Bosnia and Herzegovina and has a priority over the applicable positive regulations (the supremacy principle), is an integral part of the Bar Exam Programme, including Article 14 and Protocol 12 referring to the prohibition of discrimination.

166. By examining the programs of the work of the Entity Centres for Education of Judges and Prosecutors in 2016, several trainings were planned and conducted on the Law on the Prohibition of All Forms of Discrimination and the proper application of criminal code provisions related to racism and racial discrimination (hate crimes). Seminars were conducted as centralized or regional trainings organized by entity centres for the education of judges and prosecutors, independently or in cooperation with domestic and international organizations. About 500 judges, prosecutors and professional associates attended the planned trainings. The mentioned issues were also addressed on other seminars in the context of property rights, domestic violence, discrimination in the workplace, etc. The aforementioned issues were also implemented in previous years.

167. The Centre for Education of Judges and Prosecutors in Republic of Srpska in cooperation with OSCE mission to BiH, in 2016 organized the following seminars:

- On 6 April 2016, seminar for judges on: “The Law on Prohibition of Discrimination and International Standards Related to Discrimination” — 14 participants.
- On 1 June 2016 seminar for judges on: “The Law on Prohibition of Discrimination” — 23 participants.
- On 5 October 2016 seminar for judges on: “The Law on Prohibition of Discrimination” — 14 participants.

168. The educators discussed the material and procedural provisions of the Law on Prohibition of Discrimination. Special attention was paid to international standards in the action against discrimination, and the way in which these standards are implemented in domestic procedures. The educators also introduced the amendments to the Law on the Prohibition of Discrimination to judges, which should solve some of the problems that the judges encounter when implementing this law. Particular attention is paid to mobbing, as a very widespread form of discrimination, in our country as well as internationally.

169. The Centre for Education of Judges and Prosecutors in Republic of Srpska also organized a seminar on: “Criminal Offense of Hate Crime”, on 21 June 2016.

170. On 16 November 2016 — a seminar on “Contemporary Public Relations”, where the role of relation with the media in courts and prosecutors’ offices was discussed, as well as developing relations with the media and journalists, preparing information for the public to use information and respond to crisis situations.

171. In 2015, 153 police officers attended 7 workshops on human rights in accordance with the plan and programme of the Police Academy of Republic of Srpska.

172. In order to raise awareness on the importance of human rights, the Council of Ministers of BiH annually adopts a Program of Marking Significant Human Rights Dates. Bearing in mind the aforementioned, by the Conference entitled “Where Hate Speech Begins Freedom of Speech Ends” the Ministry of Human Rights, supported by the SOCEM project marked December 10 — Human Rights Day. Also, the Day of Disabled and Children’s Week through the Council for Persons with Disabilities, and the Council for Children, independent expert bodies of the Council of Ministers of BiH, was also appropriately marked. Similar events were held in cooperation with the Ministry of Human Rights, the Council of National Minorities and the Romani Committee in order to connect differences and fight discrimination.

173. There is no Centre for Education of Judges and Prosecutors in Brecko District of BiH and the same is conducted in the entity centres.

(d) **Allocate adequate resources to implementing strategies to combat trafficking;**

(e) **Develop effective mechanisms to identify victims of trafficking, especially migrant women and children; and**

(f) **Provide adequate assistance, protection and rehabilitation to all victims of trafficking in human beings, including migrant workers, by funding non-governmental organizations assisting those victims, and ensure that victims of trafficking are informed of their rights under the Convention.**



Reply to recommendation No. 48

174. Due to the complex economic situation, the authorities in BiH still rely on donations when it comes to financing the activities determined in the Action Plan for the Suppression of Trafficking in Human Beings. BiH continues to finance nongovernmental organizations which provide assistance and accommodation to victims of trafficking. Mechanisms for the identification of victims of human trafficking are regulated by the Rules on Protection of Victims and Witnesses of Trafficking in Persons of BiH Citizens (“Official Gazette of BiH”, No. 66/07) and the Ordinance on Protection of Aliens of Trafficking in Persons (“Official Gazette of BiH”, No 79/16).

175. This subordinate regulations regulate the status of a child who is a victim of trafficking as well as the status of adult victims of human trafficking and is treated by all institutions and authorized organizations included in the State Referral Mechanism. Creating indicators for identifying children victims of human trafficking, has made work of professionals in this field easier. Trainings were conducted for professionals from the Border Police of BiH involved in the Regional Monitoring Teams for Combating Trafficking in Human Beings in order to enhance the measures of detection of unaccompanied children and migrants. Action Plan Against Trafficking in Human Beings 2016-2019. Strategic Measure B3 is intended to improve the identification of victims of human trafficking and traffickers in the forthcoming period.

## Annex

## Data of the Agency for Labour and Employment of Bosnia and Herzegovina

Table 1  
Overview of annual quotas for the period 2012–2016

<i>Years</i>		<i>BiH</i>	<i>FBIH</i>	<i>RS</i>	<i>BD BiH</i>
2012	New:	683	280	350	53
	Extended:	1 410	610	550	250
	<b>Total</b>	<b>2 093</b>	<b>890</b>	<b>900</b>	<b>303</b>
2013	New:	700	295	350	55
	Extended:	1 422	622	550	250
	<b>Total</b>	<b>2 122</b>	<b>917</b>	<b>900</b>	<b>305</b>
2014	New:	679	330	300	49
	Extended:	1 270	620	500	150
	<b>Total</b>	<b>1 949</b>	<b>950</b>	<b>800</b>	<b>199</b>
2015	New:	726	380	300	46
	Extended:	1 160	510	500	150
	<b>Total</b>	<b>1 886</b>	<b>890</b>	<b>800</b>	<b>196</b>
2016	New:	611	365	200	46
	Extended:	970	520	400	50
	<b>Total</b>	<b>1 581</b>	<b>885</b>	<b>600</b>	<b>96</b>

Table 2  
Issued work permits to foreign nationals in BiH according to entities and Brcko District of BiH in the period 2012–2016

<i>Years</i>	<i>Bosnia and Herzegovina</i>	<i>Federation BiH</i>	<i>Republic of Srpska</i>	<i>Brcko Distrikt of BiH</i>
2012	2 573	1 233	1 086	254
2013	2 563	1 326	1 024	213
2014	2 197	1 370	634	193
2015	2 465	1 497	818	150
2016	2 628	1 605	890	133

Table 3  
**Issued work permits to foreign nationals grouped by their citizenships for the period 2012–2016**

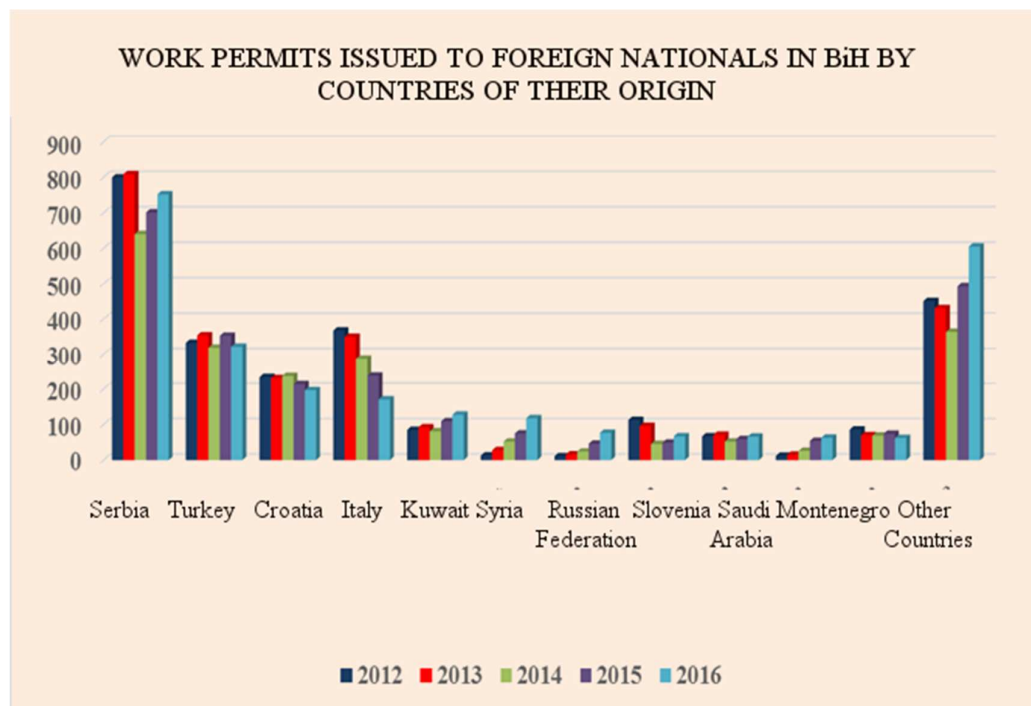


Table 4  
**Work permits issued to foreign nationals grouped by the qualification structure for 2012, 2013, 2014, 2015 and 2016**

WORK PERMITS ISSUED TO FOREIGN NATIONALS IN BIH IN ACCORDANCE WITH THEIR QUALIFICATIONS (share in total number of issued work permits) For period 2012 – 2016										
Qualification structure	2012		2013		2014		2015		2016	
	Number	%	Number	%	Number	%	Number	%	Number	%
UNIVERSITY DIPLOMA	81	3.15	83	3.24	71	3.23	86	3.49	98	3.73
BACHELOR DEGREE	686	26.66	659	25.71	586	26.67	682	27.67	720	27.40
HIGHSCHOOL DIPLOMA	31	1.20	21	0.82	23	1.05	32	1.30	17	0.65
NO HIGHSCHOOL DIPLOMA	8	0.31	9	0.35	2	0.09	13	0.53	22	0.84
HIGHLY QUALIFIED WORKER	283	11.00	304	11.86	229	10.42	211	8.56	197	7.50
SEMIQUALIFIED WORKER	113	6.39	129	5.03	122	5.55	146	5.92	117	4.45
UNQUALIFIED WORKER	121	4.70	149	5.81	196	8.92	212	8.60	286	10.88
<b>TOTAL</b>	<b>2,573</b>	<b>100.00</b>	<b>2,563</b>	<b>100.00</b>	<b>2,197</b>	<b>100.00</b>	<b>2,465</b>	<b>100.00</b>	<b>2,628</b>	<b>100.00</b>

Table 5  
**Work permits issued to foreigners grouped on qualification (trend of change 2016/2015 and 2016/2012) for 2012, 2013, 2014, 2015 and 2016**

WORK PERMITS ISSUED TO FOREIGN NATIONALS IN BIH IN ACCORDANCE WITH THEIR QUALIFICATIONS for the period 2012 – 2016								
Year	QUALIFICATION STRUCTURE							TOTAL
	UNIVERSITY DIPLOMA	BACHELOR DEGREE	HIGHSCHOOL DIPLOMA	NO HIGHSCHOOL DIPLOMA	HIGHLY QUALIFIED WORKER	SEMIQUALIFIED WORKER	UNQUALIFIED WORKER	
2012	1,250	81	31	8	283	113	121	2,573
2013	1,209	83	21	9	304	129	149	2,563
2014	968	71	23	2	229	122	196	2,197
2015	1,083	86	32	13	211	146	212	2,465
2016	1,171	98	17	22	197	117	286	2,628
Changes (+/-) 2013/2012 (%)	-3.28	2.47	-3.94	-32.26	12.50	14.16	23.14	-0.39
Changes (+/-) 201/2013 (%)	-19.93	-14.46	-11.08	9.52	-77.78	-5.42	31.54	-14.28
Changes (+/-) 2015/2014 (%)	11.88	21.13	16.38	39.13	550.00	19.67	8.16	12.20
Changes (+/-) 2016/2015 (%)	8.13	13.95	5.57	-46.88	69.23	-19.86	34.91	6.61

**Structure of work permits based on qualifications for the period 2012–2016**

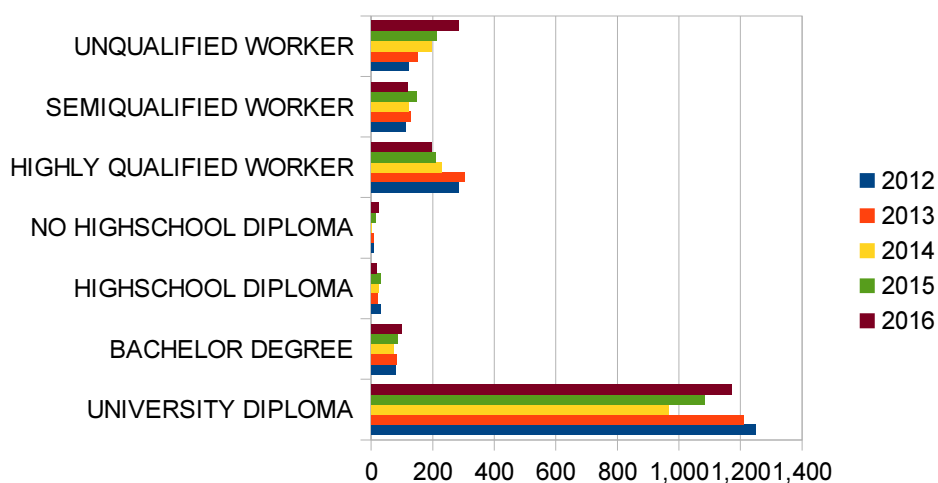
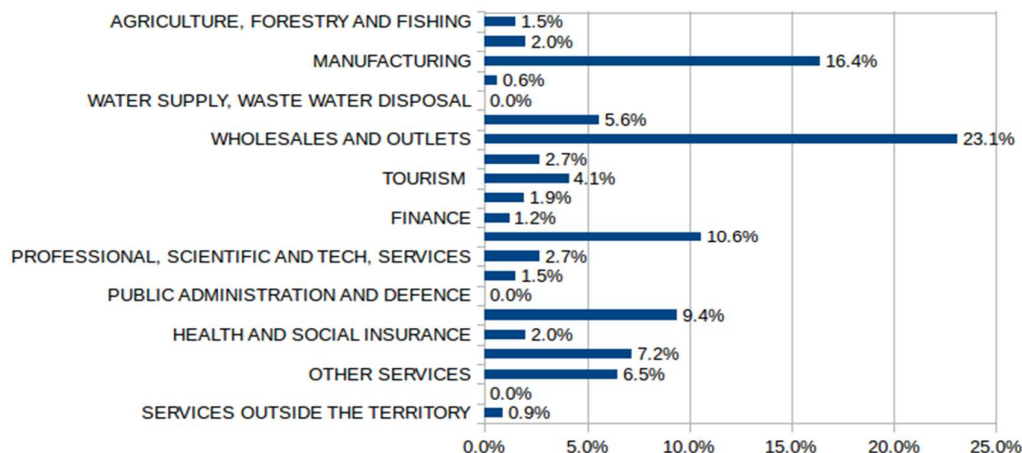


Table 6  
**Work permits issued to foreign nationals based on type of service**



WORK PERMITS ISSUED TO FOREIGN NATIONALS IN BIH BY TYPE OF SERVICES – period 2012 – 2016								
No	CLASSIFICATION Nace Rev 2	2015	2016	2016/2015 (%)	CLASSIFICATION Nace Rev 1.1	2012	2013	2014
2	B	56	52	-7.14	MINING AND STONE EXPLOITATION	0	0	0
3	C	370	430	16.22	MANUFACTURING	36	46	36
4	D	18	17	-5.56	PRODUCTION AND DISTRIBUTION OF ELECTRICITY, GAS, STEAM AND CLIMATIZATION	407	409	331
5	E	5	1	-80.00	WATER SUPPLY, WASTE WATER DISPOSAL, MANAGING WASTE AND ENVIRONMENT CONSERVATION	25	22	26
6	F	119	148	24.37	CIVIL ENGINEERING	135	99	86
7	G	600	608	1.33	WHOLESALES, OUTLETS AND MOTOR VEHICLES REPARATION	736	719	586
8	H	57	70	22.81	TRANSPORT, STORAGE AND CONNECTIONS	59	60	76
9	I	83	109	31.33	HOTELS AND CATERING	52	46	49
10	J	35	49	40.00	INFORMATIONAL TECHNOLOGIES	38	26	15
11	K	20	32	60.00	FINANCE AND INSURANCE	63	89	116
12	L	161	278	72.67	REAL ESTATE BUSINESS	2	0	0
13	M	77	70	-9.09	PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES	425	432	341
14	N	55	52	-5.45	HEALTH AND SOCIAL INSURANCE	14	21	22
15	O	199	189	-5.03	ARTS, ENTERTAINMENT AND RECREATION			
16	P	187	172	-8.02	OTHER SERVICES			
17	Q	3	1	-4.00	HOUSEHOLD SERVICES			
18	R	22	24	4.00	ORGANIZATION OUTSIDE TERRITORY			