



Генеральная Ассамблея

Distr.: General
11 March 2024
Russian
Original: English

Совет по правам человека**Пятьдесят пятая сессия**

26 февраля — 5 апреля 2024 года

Пункт 3 повестки дня

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

Посещение Боснии и Герцеговины

**Доклад Специального докладчика по вопросу о поощрении
и защите прав человека и основных свобод в условиях борьбы
с терроризмом Фионнуала Ни Аолэйн^{*}, ^{**}**

Резюме

Специальный докладчик по вопросу о поощрении и защите прав человека и основных свобод в условиях борьбы с терроризмом Фионнуала Ни Аолэйн посетила Боснию и Герцеговину с официальным визитом с 13 по 20 января 2023 года, чтобы оценить соответствие ее законов в области борьбы с терроризмом и политики и практики борьбы с насильственным экстремизмом ее международным обязательствам в области прав человека. Она оценила правовую базу, касающуюся терроризма, насильственного экстремизма и финансирования терроризма, судебное преследование по делам, связанным с терроризмом, в постконфликтном контексте, а также положение с репатриацией, реинтеграцией и реабилитацией граждан с северо-востока Сирийской Арабской Республики.

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

^{**} Настоящий доклад был представлен конференционным службам после установленного срока, с тем чтобы отразить в нем новейшую информацию.



Приложение

Доклад Специального докладчика по вопросу о поощрении и защите прав человека и основных свобод в условиях борьбы с терроризмом Фионнуалы Ни Аолэйн о посещении ею Боснии и Герцеговины

I. Introduction

1. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, conducted an official visit to Bosnia and Herzegovina from 13 to 20 January 2023 to assess its counter-terrorism laws, policies and practices measured against its international human rights obligations.

2. She commends the constructive way the Government facilitated her visit, enabling a frank and open dialogue on multiple issues. She particularly thanks the Ministry of Security for its well-organized engagement with her mandate and its solid support in preparation for and throughout her visit. In particular, she commends the cooperative approach of all authorities and entities at the State level and their readiness to accommodate emerging requests. She also thanks the Office of the United Nations Resident Coordinator, the United Nations Development Programme (UNDP) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Bosnia and Herzegovina for their excellent support during and following her visit.

3. The Special Rapporteur began her visit by meeting with the Minister for Foreign Affairs of Bosnia and Herzegovina. At the State level, she met with representatives of the Ministry of Security, the State Investigation and Protection Agency, the Intelligence-Security Agency, the Border Police, the Parliamentary Assembly, the Office of the Prosecutor, the High Judicial and Prosecutorial Council, the Constitutional Court of Bosnia and Herzegovina and the Court of Bosnia and Herzegovina. The Special Rapporteur also met with the Human Rights Ombudsmen of Bosnia and Herzegovina. In the Republika Srpska, she met with representatives of the Ministry of Interior, the Ministry of Justice and the National Assembly. At the federal level, she met with representatives of the Ministry of Interior, the Ministry of Justice, the Ministry of Finance, the Ministry of Labour and Social Policy, parliament and the interdepartmental working group of the Government of Bosnia and Herzegovina for the prevention and fight against terrorism.

4. In addition, the Special Rapporteur met with a wide range of civil society organizations, activists, academics, lawyers and human rights experts, the United Nations country team and other representatives of the international community. She also met with representatives of the Office of the High Representative of the Organisation for Security and Co-operation in Europe (OSCE) and held constructive meetings with the Ambassadors of the European Union, the United States of America and the Russian Federation.

5. The Special Rapporteur visited the State Prison and the penal correctional institutions in Zenica (Bosnia and Herzegovina) and in Foča (Republika Srpska). She also visited the Delijaš asylum centre and the social welfare centre in Hadžići (Sarajevo canton). She thanks the Government for providing unhindered access to those locations and acknowledges the transparency and constructive nature of those visits.

6. She met with detainees in the three prisons, as well as with individuals who have returned from Iraq and the Syrian Arab Republic and with families of individuals who remain arbitrarily detained and subject to sustained human rights and humanitarian law violations in

the north-east of the Syrian Arab Republic,¹ including the families of women and children who are alleged to have had links to designated terrorist groups.

A. General context: a complex legacy of conflict

7. Twenty-nine years after the end of the four-year armed conflict (1992–1995) that followed the declaration of independence of Bosnia and Herzegovina from the former Yugoslavia,² the country remains a post-conflict society, bearing deep divisions resulting from the enduring legacy of an armed conflict marked by mass atrocity crimes. The conflict was characterized by sustained and profound violations of international law, including war crimes, crimes against humanity and genocide against Bosniak men and boys. Gender-based violence, including systematic rape, reproductive harms and sexual violence, further defined the conflict, harming thousands of women, girls, men and boys.³ During the war, 104,732 people died and over 30,000 people went missing.⁴ In addition, more than two million people were displaced.

8. The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 was established by the Security Council in 1993 and domestic accountability processes were initiated approximately a decade later. Some transitional justice measures were introduced with the implementation of the peace process, including multiple efforts to address missing persons, institution-building, partial vetting processes and attempts at truth recovery related to atrocity crimes. Echoing the findings of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence from his country visit in December 2021,⁵ the Special Rapporteur finds that comprehensive transitional justice has been lacking and that the implementation of measures to embed/address this essential aspect of the agreement should be an absolute priority for local and international stakeholders. Endorsing those findings, she reminds all relevant actors that the human rights obligations of Bosnia and Herzegovina, including to comprehensively and effectively address the legacy of its past, are incumbent on the State and all its constitutive parts (comprising all branches of government at the federal, entity and local levels): “These obligations are not subject to bartering, as they are set in the treaties to which the country is party”.⁶ She stresses that contemporary political practices driving insecurity, heightening volatility, stigmatizing other communities and turbo-charging antagonism between ethnic and social groups, primarily driven by nationalist political elites, engage emerging global prohibitions on violent extremism and violent extremism conducive to terrorism.⁷ The charged domestic environment has a direct and symbiotic relationship with the failure to implement reparations and accountability and to maintain adherence to the obligations contained in the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement), which enabled the end of the armed conflict, as well as a systematic failure on the part of Bosnia and Herzegovina to comply with its obligations under international law on respecting and promoting human rights.

9. The Dayton Peace Agreement, which brought about the end of violence between the protagonists to the conflict, facilitated the development of State and entity institutions,

¹ Technical visit to the north-east of the Syrian Arab Republic (July 2023) (see <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>).

² A/HRC/51/34/Add.2, para. 5.

³ See jurisprudence of the International Tribunal on the Former Yugoslavia, including: Tadić (sexual violence against men); Mucić et al. (rape as torture); Furundžija (systematic rape of Bosnian women); Kunarac et al. (sexual enslavement/ rape as a crime against humanity); and Krstić (relationship between sexual violence and ethnic cleansing) (<https://www.icty.org/en/features/crimes-sexual-violence/landmark-cases>).

⁴ A/HRC/16/48/Add.1, para. 21; see also <https://www.icty.org/sid/322>.

⁵ A/HRC/51/34/Add.2, paras. 91–121.

⁶ Ibid., para. 92.

⁷ General Assembly resolution 77/298, paras. 11 and 13–19; see also General Assembly resolution 70/254.

allowed for some meaningful criminal accountability and permitted a degree of normal life for significant parts of the population. The agreement institutionalized a consociational form of governmental power-sharing, which configured the State into two entities (Bosnia and Herzegovina and the Republika Srpska), which are responsible for overseeing most governmental functions and are bestowed with their own constitutions and executive, legislative and judicial powers, as well as the Brčko District. Bosnia and Herzegovina is composed of 10 cantons, to which many of the powers of the federal Government have been devolved.

10. Regrettably, the Dayton Agreement has also contributed to the consolidation of the ethnic cleansing that had taken place during the war and has contributed to entrenched discrimination. Despite meaningful progress by some measures, Bosnia and Herzegovina remains highly politically unstable due to the persistent dominance of identity-based politics, which fuels distrust and divisions and is at an ever-increasing risk of paralysis in the conflict resolution process. Contestation and other forms of conflict have transmuted and found additional grounding in negative agendas aiming at regional reconfiguration, threats of secession and entrenched alignment along ethnic and nationalist lines. Regrettably, the role of some neighbouring countries in buoying divisive agendas has contributed to undermining peacebuilding and reconciliation efforts. Progress towards a fully functional democracy is not only stalled but appears to be backsliding, notwithstanding the sustained efforts of many ordinary citizens at the local level to advance non-discrimination and functional governance. The Special Rapporteur emphasizes that any changes to the fragile consociational balance of power in the Dayton Agreement and developed in the post-conflict years cannot be undertaken unilaterally and that respect for the rule of law and fulfilment of the State's international and regional human rights obligations is essential to protect its functionality and integrity. The challenges of divisive ethno-nationalist political practices, including the glorification of convicted war criminals, corrosive corruption and opportunistic political blockages, as well as political, paramilitary and economic links with third-State actors, all undermine the delicate balance in the country, thus actively working against the broader interests of individuals across Bosnia and Herzegovina who desire to thrive in a fully functional rule-of-law State, grounded in human dignity, non-discrimination and meaningful economic opportunity.

11. The mandate of the Special Rapporteur draws particular attention to the forms and pathways of violence that may (re)emerge in post-conflict societies.⁸ The long-term maintenance of peace in transitional societies requires a close and ongoing commitment to peacebuilding, sustaining peace, delivering justice and conflict prevention and resolution. Tending to peace means paying constant attention to conditions conducive to violence. Sites of unresolved conflict can, in her view, provide ripe conditions for the growth of forms of violent extremism that are conducive to terrorism. She is deeply attuned the ways in which revisionism, denialism, polarization and institutional impasse are present and can take hold in post-conflict settings where the driving forces of conflict remain in place or are exacerbated by the failure to address conditions conducive to violence.

12. In addressing the pathways conducive to “extremism”,⁹ violent extremism and violent extremism conducive to terrorism, the Special Rapporteur underscores the vulnerability of post-conflict societies to violent extremism and new forms of violence. She affirms that unresolved accountability and institutional paralysis provide fertile ground for such political and social extremities. Bosnia and Herzegovina, as a transitional State supported by the international community, must attend directly to the legacies of conflict to prevent such an outcome. Numerous observers shared their concerns with the Special Rapporteur regarding the danger that violent extremism, as well as insidious and unaddressed forms of incitement to violence and hatred, pose in Bosnia and Herzegovina. The Global Counter-Terrorism Strategy and Secretary-General's Plan of Action to Prevent Violent Extremism affirm a global commitment to prevent the spread of violent extremism conducive to terrorism. Violent extremism undermines a plethora of fundamental human rights, including the right

⁸ See [A/77/345](#).

⁹ Regarding the challenges of terminology, see [A/HRC/43/46](#), paras. 13 and 14 (when operative as a criminal legal category, “extremism” is irreconcilable with the principle of legal certainty and can be open to abuse leading to human rights violations).

to life, the right to equality and non-discrimination, the right to participate in public affairs, the right to religious freedom and to economic, social and cultural rights. Along with the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, the Special Rapporteur expresses alarm about persistent ethno-nationalistic rhetoric and divisive political discourses. Her visit, as well as events of the past year, including the destabilization of the Western Balkans in the shadow of the armed conflict in Ukraine, confirm the ways in which broader regional instability is enabling and, in some contexts, is being directly leveraged to provoke tensions and “extremist” and separatist speech and actions in Bosnia and Herzegovina. She holds that political leaders are directly responsible for addressing such rhetoric and actions and for taking official initiatives to prevent them. In parallel, she affirms the vibrancy and importance of the involvement of local communities and grassroots peacebuilding initiatives. She remains encouraged by evidence of sustained inconspicuous peace and coexistence in many parts of Bosnia and Herzegovina and by the desire of many ordinary citizens to live in a country that serves their economic, educational, health and social needs and in which their children will want to live in the future.

B. Evaluation of the threat of terrorism

13. The threat of terrorism in Bosnia and Herzegovina is generally assessed as very low. The country ranks 93rd on the Global Terrorism Index,¹⁰ among other countries with the lowest scores. While there have been a small number of terrorist attacks in the last two decades, including a bomb attack near a police station in Bugojno in 2010 and three gun attacks (1 on the United States Embassy in Sarajevo in 2011, 1 at a police station in Zvornik in 2015 and 1 against a betting shop in Rajlovać in 2015), there have been no terrorist attacks since 2016.

14. After a delay of more than a year, the Bosnia and Herzegovina Strategy for Preventing and Combating Terrorism 2021–2026 was adopted on 22 November 2022 by the Council of Ministers of Bosnia and Herzegovina. The identified indicators of terrorist threat include: (a) the return and departure of citizens from the battlefields of Iraq, the Syrian Arab Republic and Ukraine; (b) money-laundering and terrorist financing; (c) the presence of ultra-conservative religious groups; (d) the presence of ethnic and/or national “extremism” connected with religious narratives and symbolism and the rise of right-wing movements that use hate speech and offensive nationalist content, which, under the guise of patriotism, express, promote, spread and incite national, religious and racial hatred and intolerance, as well as bigotry and intolerance towards the LGBT+ persons, combined with an inadequate institutional response, impunity, deepened divisions, institutional normalization, lack of trust in institutions and an undermining of the rule of law; (e) inadequate response to the movement of migrants, allowing migrant flows to be viewed as a possible basis for terrorist activity.

15. The Special Rapporteur welcomes the fact that the 2021–2026 strategy was agreed upon by consensus and recognized at the State level. She notes that it is an improvement over previous versions, notably through its customized assessment of threats, which aims to adequately reflect the unique situation of a post-conflict and divided society, and its express reference to the definition of terrorism included in Security Council resolution 1566 (2005). Nevertheless, she remains uneasy that the threat assessment in the strategy is seen through the prism of terrorism and violent extremism, which predominantly responds to the priorities of the international security agenda and the presence of influential donors and fails to take full account of the broader post-conflict threat landscape. In her view, this provides an inadequate picture of the severe security challenges posed by the political settlement, in which fundamental aspects of the conflict remain profoundly unresolved and undermine other security and rights priorities that should be at the centre of the national and international agenda. The Special Rapporteur records several issues raised in earnest by many interlocutors and which she also observed, including a deepening ethnic divide, entrenched by polarized and sectarian politics following increasingly nationalistic agendas, heightened intolerance,

¹⁰ Institute for Economics & Peace, *Global Terrorism Index 2022, Measuring the Impact of Terrorism* (Sydney, March 2022).

attempts at offsetting the security risks posed by “the other(s)”, numerous provocations aiming at undermining the existence of the State, entrenched corruption, the physical presence on some parts of the territory of foreign non-State armed groups, illegal funding for groups aimed at the destruction of fundamental rights and freedoms, unaccounted for foreign security investments, porous borders that allow the activities of organized crime plus an evident and continuing lack of sufficient, independent and transparent accountability for the security and intelligence sector.

16. Pending revision of the strategy, the Special Rapporteur encourages the Government to observe best practices in updating or replacing it and to pay attention to the following critical matters in its current implementation. First, she urges the mainstreaming and prioritizing of the respect and promotion of human rights and the rule of law as essential and non-negotiable aspects in order to address the conditions conducive to preventing and managing terrorism and violent extremism. In this regard, she encourages the Government to seek the technical advice and assistance of OHCHR. Second, consistent with the Secretary-General’s Plan of Action to Prevent Violent Extremism,¹¹ she encourages particular focus and practical programming focused on seven priority areas: (a) dialogue and conflict prevention; (b) strengthening good governance, human rights and the rule of law, (c) engaging communities (d) empowering youth, (e) addressing gender equality and empowering women, (f) advancing education, skills development and employment facilitation, and (g) strategic communication, including the Internet and the media.¹² Given the lived realities of instances where evidenced threats from violent extremism exist in Bosnia and Herzegovina, the revised strategy should focus on the precise social, economic and political factors most likely to give rise to violence in society as grounded in the lived realities of the population. Third, and relatedly, the Special Rapporteur stresses that a sharpened implementation process for the counter-terrorism strategy should be established, which aligns with broader economic and social goals in view of the decision of the European Council, in December 2023, to grant candidate status to Bosnia and Herzegovina.¹³ In particular, dovetailing the strategy with the 14 priorities established in the opinion of the European Commission of 2019¹⁴ will provide necessary synergies between meeting accession criteria and simultaneously addressing long-standing conflict grievances, thus ensuring accountability and advancing good governance.¹⁵

C. Legal framework relating to terrorism

17. Terrorism offences, like many other crimes, are considered as the most serious under international law, including core international crimes and serious crimes such as organized crime, are regulated by the Criminal Code of Bosnia and Herzegovina. A terrorist act is defined in article 201 (1) of the Criminal Code as having “the aim of seriously intimidating the population or unduly compelling the Bosnia and Herzegovina authorities, the government of another State or an international organization to perform or abstain from performing any act, or with the aim of seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of Bosnia and Herzegovina, of another state or international organization” and carries sentences ranging from one to 10 years (art. 201 (1)–(4)). Acts of terrorism are defined by reference to the commission of several listed crimes, including illegal imprisonment and restrictions to freedom of movement (art. 201 (5) (c)),

¹¹ See [A/70/674](#).

¹² See https://www.un.org/sites/www.un.org.counterterrorism/files/plan_action.pdf.

¹³ See https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/bosnia-and-herzegovina_en.

¹⁴ Communication from European Commission to the European Parliament and Council, Commission opinion on the application of Bosnia and Herzegovina for membership in the European Union (<https://neighbourhood-enlargement.ec.europa.eu/system/files/2019-05/20190529-bosnia-and-herzegovina-opinion.pdf>) (2019).

¹⁵ The Special Rapporteur highlights the need to ensure alignment of the legislation with principles of public administration reform, judicial reform, fighting corruption and organized crime, strengthening administrative capacity, providing adequate resources for effective enforcement of fundamental rights and advancing reconciliation, including the processing of the backlog on outstanding war crime cases, in line with the communication mentioned in footnote 14 above.

damaging public and private property or the transport system (art. 201 (5) (d)) and the threat of committing such acts (art. 201 (5) (i)).

18. The Special Rapporteur notes that this definition does not, in all aspects, meet the threshold of seriousness internationally required for such acts, notably that the intent is to cause death or serious bodily injury. She underscores that adding “lethal means” as an element of a definition of terrorism compliant with international law means that not every act, regardless of its degree of violence, can be considered as terrorist. The lack of specificity of the definition also constitutes an infringement of the principle of legal certainty and does not comply with the principle of legality enshrined in article 15 of the International Covenant on Civil and Political Rights. The Special Rapporteur notes that those provisions go beyond acts that are genuinely terrorist in nature, as included in the 19 United Nations conventions on terrorism offences, Security Council resolution 1566 (2004), the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism approved by the General Assembly in 1997, as well as in the model definition of the mandate of the Special Rapporteur.¹⁶

19. At the State level, there are also five separate offences of terrorism included in article 202 (a)–(d) of the Criminal Code that relate to financing of terrorism, public incitement to terrorist activities, recruitment to terrorist activities, training for carrying out terrorist activities and organizing a terrorist group, including membership and participation. The Special Rapporteur notes, at the outset, that although these offences fall under the category of terrorism, they relate to several acts unrelated to terrorism in the Criminal Code, such as piracy and misuse of telecommunications signs, rendering them overly broad. Article 202 (a) criminalizes the offense of public incitement to terrorist activities, defined as “publicly, through the means of information, distributing or in any other way sending a message to the public whose goal is to encourage another to commit a criminal offense”. The Special Rapporteur notes that the concept of incitement under international law has a high threshold, with a six-part test that includes taking into account the social and political context; the status of the speaker; the intent to incite the audience against a target group; the content and form of the speech; the extent of the dissemination; and the likelihood of harm, including imminence.¹⁷ She notes that, in addition to referring to offences that go beyond acts that are genuinely terrorist in nature, article 202 (a) has a much lower threshold, which cannot, under international law, qualify as incitement.

20. The Criminal Code of Bosnia and Herzegovina was amended in 2014 to include article 162 (b) (2), which criminalizes joining a foreign paramilitary or foreign parapolice formation in any way, including training, equipping or mobilizing them. The Special Rapporteur was informed that the article was included to implement the provisions of Security Council resolution 2178 (2014) relating to addressing what the Council qualified as “foreign terrorist fighters”.

21. In addition to State-level provisions, there are definitions and offences of terrorism in the Criminal Codes of Bosnia and Herzegovina, the Republika Srpska and the Brčko District, with different sentences, including longer ones in the Republika Srpska. The Special Rapporteur highlights that many interlocutors stressed that these varying provisions could lead to the disingenuous application of legislation to address varying terrorism threats and priorities in both entities. She further notes the adoption of a law on critical infrastructure in the Republika Srpska alone, which appears to have minimal reference to protecting human rights in that security context.

22. Considering the increasing threat of cyberattacks across the region, the Special Rapporteur recommends that integrated, comprehensive and human rights-compliant strategy and legislation to counter cybercrimes be developed by Bosnia and Herzegovina. She warns, however, of the risk that cybercrime regulation may unduly restrict certain human rights, drawing attention to those that are related to Internet content. She underlines that regulations that criminalize disrespect for authority, insults, defamation of State authorities and obscenity

¹⁶ A/HRC/16/51, para. 28.

¹⁷ Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4, appendix).

or pornographic material may unduly restrict the exercise of certain human rights. The procedural provisions of cybercrime laws, including for countering terrorism, enable the use of tools and tactics during cybercrime investigations that facilitate the interception of communications and electronic surveillance and may also unjustifiably restrict the exercise of human rights, such as the right to privacy.¹⁸ The Special Rapporteur therefore encourages the Government to use the substantive technical knowledge and capacity of the United Nations Office on Drugs and Crime (UNODC) and OHCHR to provide support for future legislative action.

D. Prosecution of terrorism-related cases

23. During her visit, the Special Rapporteur was informed that, as at 2023, the State Court of Bosnia and Herzegovina had pronounced sentences amounting to 200 years imprisonment for individuals in 44 terrorism-related cases, including 28 cases against individuals returning from conflict zones in the Syrian Arab Republic. In none of those cases had the issue of jurisdiction and competency been disputed to the State Court. She notes that in all domestic terrorism cases, the State-level terrorism-related provisions had been used. In cases relating to individuals who had returned from the Syrian Arab Republic, article 202 (d) of the Criminal Code relating to membership and participation had been used when offences had been committed prior to the entry into force of the 2014 amendments and had been used variously under article 162 (b) thereafter. The Special Rapporteur highlights the principled approach, in line with legal certainty attached to the use of terrorism-related offences linked with the designations by the Security Council of certain terrorist groups active in the conflict in the Syrian Arab Republic, and stresses the difficulties in ensuring that the Government speaks with one voice and expresses one position on the issue of terrorist and violent extremist groups in the country. She expresses further concern that, while there appears to be a willingness on the part of the authorities to prosecute, in a full and non-discriminatory manner, individuals who are and will continue to return from other conflict zones,¹⁹ such prosecutions will likely lead to increased jurisdictional challenges between the entities, which may prevent equal use of the provisions in both entities beyond the implementation of Security Council designations. Maintaining consistency in the application of the law regarding travel to all conflict zones, including regional conflicts, will be critical in the context of ongoing travel and participation in conflicts abroad.

24. The Special Rapporteur commends the individualized, tailored prosecutorial strategy, which is far from an unproductive blanket approach to prosecution for terrorism offences, including membership, travel and association, that she has seen in other States. She found it regrettable that, during her engagement with some interlocutors from the international community, it was highlighted that individuals returning from conflict zones had received relatively short sentences, absent relevant and broader reflection on the checks, balances and contextual use of the domestic criminal law for a range of serious international crimes. She found this view oddly disconnected from any apprehension or urgency about outstanding prosecutions for war crimes and crimes against humanity and the lack of progress on the fate of outstanding missing persons from the 1992–1995 conflict. This highlights, in her view, a misplaced understanding of the ongoing drivers of violent extremism and the perpetuation of conditions conducive to violence in Bosnian society, as well as an absence of a granular and contextual approach to the specific threat of terrorism and violent extremism by some members of the international community. In her view, the approach of Bosnia and Herzegovina to the prosecution of terrorism offences is clearly explained by the following contextual elements: the time frame of the presence of individuals in conflict zones; the total length of their stay; their level of association and participation in non-State armed groups;

¹⁸ See Human Rights Committee, general comment No. 34 (2011), para. 15; Human Rights Council resolution 42/14, in which the Council affirmed that the “same rights that people have offline must also be protected online”; and General Assembly resolution 68/167 and Human Rights Council resolutions 20/8 and 38/75. See also <https://www.unodc.org/romena/en/cybercrime.html>.

¹⁹ Three investigations were initiated against Bosnian citizens suspected of having served in paramilitary or parapolice units in Ukraine. One case resulted in first-instance acquittal; criminal charges against another individual were later dropped.

and plea-bargaining agreements. Without entering the details of the cases, such contextual elements can appropriately mitigate the length of prison sentences. Overall, she viewed the approach of the Government as more likely to lead to positive reintegration than not.

E. Financing of terrorism

25. Article 202 of the Criminal Code criminalizes the financing of terrorist activities. The Special Rapporteur was informed that there has not been a single case of successful prosecution strictly relating to the financing of terrorism in the country. The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism adopted its fourth-round mutual evaluation report of Bosnia and Herzegovina in 2015, recognizing positive improvements in the Anti-Money Laundering and Combating Financing of Terrorism framework and removing the country from its grey list. However, the report also identified strategic challenges, including with respect to the criminalization of terrorist financing, protections for non-profit organizations identified as vulnerable to terrorist financing abuse, deficiencies in the banking sector, money transfer services and real estate, as well as targeted financial sanctions. Regrettably, the Committee of Experts has paid less attention than warranted to the potential and practice of misuse of measures to counter terrorism and combat the financing of terrorism in Bosnia and Herzegovina and elsewhere in the Western Balkans. An effective and cooperative asset recovery office and a registry of beneficial owners have yet to be established across both entities and no law has been adopted on virtual currencies. Draft legislation on the prevention of money-laundering and terrorist financing harmonized with European Union directives and regulations has yet to be passed by the Parliamentary Assembly.

26. Bosnia and Herzegovina was removed from the European Union list of high-risk countries in 2020, following several regulatory changes. The country is again undergoing a mutual evaluation process by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism. The Committee paid a site visit in the autumn of 2023. The report on the visit will be adopted by the Committee plenary in the spring of 2024. Without substantial progress on existing shortcomings, Bosnia and Herzegovina again risks a “grey” listing by the Committee and the Financial Action Task Force. In late December 2023, the House of Representatives of the Parliamentary Assembly adopted a proposed law on the prevention of money-laundering and financing of terrorist activities, which is pending endorsement by the House of Representatives at the time of writing. The Special Rapporteur continues to press her concerns that this law will have substantial adverse effects on the capacity of civil society organizations to operate in the country. She notes her unrelenting concern at the limited engagement by the Government with non-profit organizations in the drafting and adoption of the law, as well as the underlying national risk assessment. This lack of civil society engagement should be a matter of direct concern to the Committee of Experts. The Special Rapporteur underscores the importance of meaningful civil society participation, in line with the right of every citizen to participate in public affairs in this area, and highlights that a lack of engagement with civil society undermines the stated purpose of harmonization with the standards of the Committee of Experts and the Financial Action Task Force that are articulated as justification for the adoption of the above legislation. She understands that a new law countering the financing of terrorism, which regulates non-profit organizations, is being drafted and she emphasizes the importance of a finely tuned risk-based approach in accordance with the international law requirement of proportionality, as well as recommendation 8 of the Financial Action Task Force.

27. The Special Rapporteur has also formally communicated with the Government regarding draft legislation by the Republika Srpska on the special registry and publicity of the work on non-profit organizations.²⁰ The Special Rapporteur has found that the proposed

²⁰ In June 2023, the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights published a joint opinion articulating concerns related to the substance of the draft law (OL BIH 3/2023) (see [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)016-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)016-e)). See also: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?Id=28581>.

draft law, addressing, inter alia, “foreign agents”, would place undue restrictions that are inconsistent with international human rights standards, especially the right to freedom of association, freedom to participate in public affairs, freedom of expression and full access to economic and social rights for persons working in the non-profit organizations sector. She considers that this proposed legislation may negatively impact the free and effective functioning of non-profit organizations in the Republika Srpska. The draft law appears to violate fundamental freedoms and be incompatible with the requirements of recommendation 8 of the Financial Action Task Force, as the law is not “focused and proportionate”. The law was drafted without any meaningful or inclusive consultation with associations and their members, as recommended by the Task Force.²¹ The Special Rapporteur considers that the draft law constitutes a “blanket measure” that puts the existence and effectiveness of the non-profit sector at risk.

F. Violent extremism

28. International practice that addresses the challenges of “violent extremism” and “violent extremism conducive to terrorism” is firmly acknowledged in the Secretary-General’s Plan of Action to Combat Violent Extremism and the Global Counter-Terrorism Strategy.²² The Special Rapporteur notes that human rights treaty bodies have strongly articulated their concerns relating to the use of the term “extremism” in broad and general terms, which her mandate shares. She finds that the term “extremism” has no purchase in binding international legal standards and, when operative as a criminal legal category, is irreconcilable with the principles of legal certainty, proportionality and necessity and is, per se, incompatible with the exercise of certain fundamental human rights. The Special Rapporteur thus welcomes the fact that “extremism” is not a criminal legal category in Bosnia and Herzegovina, as this terminology raises serious concerns in law and practice.²³ She nevertheless recognizes the clear challenge that violent extremism and violent extremism conducive to terrorism pose in Bosnia and Herzegovina, particularly in the unique post-conflict context highlighted above and the need for consistent, targeted and human rights-compliant regulation of those phenomena.

29. In November 2022, the Council of Ministers of Bosnia and Herzegovina adopted the Strategy for Preventing and Combating Terrorism 2021–2026. While action plans for each entity still need to be developed and coordinated,²⁴ the Special Rapporteur notes that the strategy has been significantly altered from its previous security-repressive approach and provides broadly defined mechanisms for preventing terrorism, violent extremism²⁵ and radicalization leading to terrorism at all levels of government. Notably, the strategy also considers gender roles in this context.

30. While violent extremism could cover a broad range of violent acts, throughout her visit the Special Rapporteur found that, in practice, consideration of recognizing and regulating the phenomenon was often limited to thoughts and ideas, mostly of a religious nature, with limited application to extreme right-wing practices and ideologies. For example, indicators used in the strategy overwhelmingly include physical and behavioural elements, which, in her view, fall within the realm of the right to freedom of religion and the absolute right of belief.²⁶ By way of further illustration, in her discussions of indicators used to identify violent extremism in prisons, she was disappointed to find that State prison officials seemed indifferent to the phenomena of far-right and ethnocentric nationalist violent extremism, nor did they appear to have suitable assessment procedures and practices in place to regulate it. She views this as highly problematic because the indicators, which she finds to be nebulous,

²¹ Human Rights Committee, general comment No. 34 (2011), para. 18.

²² [A/70/674](#).

²³ [A/HRC/31/65](#), para. 21.

²⁴ Republika Srpska has developed its own action plan 2023–2026.

²⁵ The strategy defines violent extremism as acts of violence justified by, or associated with, an extremist religious, social or political ideology, noting that the term encompasses any type of violence as long as its motive is considered extremist and recognizing that there are various forms of violent extremism, including ideological, religious, ethno-nationalist, far-right and far-left.

²⁶ [A/73/362](#), para. 10. See also [A/HRC/31/65](#).

are not only used as the basis for numerous forms of interventions, such as surveillance, monitoring and “treatment”,²⁷ but also fail to capture what she finds are the most pressing security imperatives and threats emergent in the country. She believes further investment in expertise and capacity-building in addressing such manifestations is necessary.

31. The Special Rapporteur is particularly attuned to specific incidents which raise alarm about the level of hatred and cynicism permeating society and can lead to violent reactions. She recalls that in Bosnia and Herzegovina, virulent and hate-laden advocacy along ethnic lines can trigger the worst and most atrocious crimes. While she is well aware that properly balancing freedom of expression and the prohibition of incitement to hatred is no simple task, she recalls that the question of distinguishing those forms of expression that should be defined as incitement to hatred, and thus be prohibited, is contextual and that the individual circumstances of each case, such as local conditions, history, cultural and political tensions, must be taken into account. She warns against using soft or unjudicial measures to prevent and counter violent extremism as a placeholder for the clear prosecution of acts that amount to incitement to hatred as described under international law²⁸ and in article 145 (a) of the Criminal Code of Bosnia and Herzegovina. She welcomes prompt political responses to incitement to hatred and encourages its continuation. An independent judiciary is a vital component in the process of effectively adjudicating cases related to incitement to hatred. The Special Rapporteur also notes, in this respect, the fundamental responsibility of the media.

G. Repatriation

32. The Special Rapporteur has previously addressed the situation of Bosnian nationals arbitrarily detained in the north-east of the Syrian Arab Republic,²⁹ noting the extremity of the current situation in the territory. Along with 13 other special procedure mandate holders and two working groups, the Special Rapporteur has found that multiple human rights violations are experienced by mothers and children held in Al-Hol and Al-Roj camps, including Bosnians, specifically torture, inhuman and degrading treatment, including: sexual violence and reproductive harm; arbitrary detention; right to life infringements; freedom of movement restrictions; erasure of the right to family life; fundamental infringements on right to health; abrogation of the right to education; denial of the right to non-discrimination; lack of the right to clean and safe water; and multiple violations of the rights of the child. In her statement³⁰ and her report to the General Assembly³¹ following her technical visit to the north-east of the Syrian Arab Republic, she highlighted the widespread arbitrary detention of children, boys and girls, including Bosnian nationals, in various types of facilities, premised on their, or their parents’, alleged prior links to Da’esh as constituting core crimes under international criminal law, from which other core crimes follow. These include the systematic practice in the camps of separating boys who have reached adolescence from their mothers. This practice, which is done, in particular, with third-country nationals, including Bosnian boys, causes irreparable harm. In the Al-Hol Annex, which functions as a prison within a prison, women and children, including Bosnians, are vulnerable to trafficking, sexual violence, obstetric and other forms of violence, as well as profound material deprivation. In the Gweiran Sina’a/Panorama prison, Bosnian men and children, detained without any legal process, are subjected to incommunicado detention and disappearances and risk death from inadequate food, starvation and exposure to widespread tuberculosis without available treatment, which constitute core international crimes. In all places of detention, Bosnian nationals are at risk of being subject to the commission of core crimes under international criminal law and their urgent repatriation is the only solution to the humanitarian and human rights catastrophe they face.

²⁷ Including in school and prison settings that may hold a range of individuals, including children.

²⁸ See Rabat Plan of Action (A/HRC/22/17/Add.4, appendix); see also A/HRC/22/17/Add.4.

²⁹ AL BiH 1/2021 (see <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25935>).

³⁰ See <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>.

³¹ A/78/520.

33. The European Court of Human Rights has qualified these profound concerns for the material situation of people in the camps as constituting “a real and immediate threat to their lives and physical well-being, on account of the living conditions and safety concerns in the camps, which are regarded as incompatible with respect for human dignity, and of the health of those family members and the extreme vulnerability of the children, in particular, in view of their age”.³² The Court has requested member States of the Council of Europe, including Bosnia and Herzegovina, to ensure that robust procedural safeguards are in place to avoid arbitrariness when it comes to examining repatriation requests and, where minors are involved, that “due account” be given to the children’s best interests together with their particular vulnerability and specific needs.

34. According to the figures provided by the authorities, between 2012 and 2016, approximately 250 to 300 Bosnian nationals went to Iraq and the Syrian Arab Republic to join groups, including Da’esh, that have been designated as terrorist groups by the United Nations.³³ According to figures gathered by the Special Rapporteur during and since her visit to the north-east of the Syrian Arab Republic in July 2023, there are still 100 Bosnian women and children (with a Bosnian parent) arbitrarily detained in Al-Hol and Al-Roj camps: 36 women, including 3 over the age of 60; 5 children aged between 3 and 4; 41 children between the ages of 5 and 11; and 18 children between the ages of 12 and 17. According to the Government, this includes 24 children whose Bosnian fathers have died and who are in the camps with their non-Bosnian mothers and 1 unaccompanied 8-year-old Bosnian child. There are also, according to the Government, 22 men held in prisons or other detention sites, 1 minor in detention and 10 women, 18 men and 11 children in the region of Idlib. The Special Rapporteur stresses that these figures remain exceptionally high. She pleads with the Government to pay particular attention to the situation of these very vulnerable children, including those unaccompanied or in prison, as well as of the older population in the camps, and to commence their repatriation as a matter of extreme urgency.

35. Thus far, while several people have returned individually, 26 individuals (8 men, 6 women and 12 children) returned in 2019 through organized repatriation operations with the assistance of the United States of America.³⁴ Several men and women were returned while their family members (husbands, wives and children) remained in detention in the north-east of the Syrian Arab Republic. During her visit, the Special Rapporteur was informed that Bosnia and Herzegovina intends to repatriate the remaining men, women and children from the camps, which was affirmed at the highest level of government through the conclusion of the Presidency of Bosnia and Herzegovina of 22 December 2022.³⁵ She deeply regrets that, thus far, no further repatriation has taken place. She recalls that highly vulnerable individuals have now been detained for at least five years in unconscionable circumstances. Following her technical visit to the north-east of the Syrian Arab Republic in July 2023, where she observed first-hand the conditions of confinement in camps, prisons and other places of detention, the Special Rapporteur stresses, with compelling urgency, the absolute and abhorrent conditions in which citizens of Bosnia and Herzegovina and their families are being held, a situation which amount to core crimes under international law, and the urgent need to bring them home.³⁶

36. The Special Rapporteur acknowledges the expertise and role of the Ministry of Labour and Social Policy of Bosnia and Herzegovina. She was highly impressed by the intersectional, multidisciplinary and nuanced understanding of the causes, experiences and needs of those repatriated. The model of social welfare centres is a good one, if adequately

³² European Court of Human Rights, *H.F. and Others v France*, Applications Nos. 24384/19 and 44234/20, Judgment, 14 September 2022, para. 213.

³³ That figure might be higher, above 360 individuals: 192 men, 67 women and 104 children.

³⁴ One man was repatriated to Kosovo in April 2019; all others were repatriated directly to Bosnia and Herzegovina in December 2019. References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

³⁵ The decision (01-50-4169-29/22) set out the need to ensure a safe return as well as the reintegration of citizens living in very difficult conditions in camps and detention units in Iraq and the Syrian Arab Republic.

³⁶ See <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>; see also A/78/520.

funded with an expert and well-remunerated staff. She commends the Government for prioritizing the integration and social welfare of the returned women and children. Specifically, she sees evidence of best practice regarding returnees reflected in the expertise of social work and psychological care applied at the child-centred social welfare centre in Hadžići. Such expertise and practice are rarely found in global responses to repatriation, and she notes positive exchanges with other countries. She highlights that Bosnia and Herzegovina is one of the few countries that has fulfilled its international obligations and has returned not only women and children but also men from conflict zones.

37. The Special Rapporteur met with several returnees, both women and men, most of whom had experienced significant conflict trauma. Upon return, all eight men were criminally convicted. Prison officials told her that the imprisoned men had comported themselves well and appeared to be well-suited to reintegrate back into society. Some men had completed their prison sentences and returned to their communities. None of the returning women were charged with criminal offences and all had benefited from the privileged status that allowed them to refuse to testify against their spouses and to protect their identities. The Special Rapporteur welcomes this humane and legally sound prosecutorial strategy, which does not aim to indiscriminately give lengthy prison sentences to all those who were in the conflict zones, absent evidence of their roles in non-State armed groups, the possibility of coercion, in particular for the women and children, and which, at the same time, takes into consideration the best interest of the children to remain with their mothers upon return, a key element of successful reintegration.

38. At the same time, given the crucial experience of Bosnia and Herzegovina in the prosecution of war crimes and other core international crimes after 1995, the Special Rapporteur is troubled that limited efforts seem to have been advanced to address broader criminal accountability commensurate with available evidence and fair trial procedures for the very serious violations of international law that Bosnian nationals in Iraq and the Syrian Arab Republic may have committed. She understands the challenges of outstanding caseloads relating to war crimes from the country's armed conflict. Nonetheless, with ongoing support from the international community, the country is uniquely situated to help fill the impunity gap related to crimes that occurred in Iraq and the Syrian Arab Republic.³⁷

39. The Special Rapporteur was made aware that the initial unplanned repatriation of 2019 had posed several challenges, in particular difficulties for women registering the birth of their children and to provide them with legal status, thereby enabling access to medical, social and educational services, which involved lengthy and expensive legal and judicial processes in which the authorities were described as being overly formalistic, given the exceptional circumstances. While those deficiencies have been corrected for this initial group, the Special Rapporteur urges the authorities to ensure that future returnees do not face similar problems in providing legal existence to their children. She recommends greater support to and information-sharing with the Ministry of Social Welfare, as well as with the social welfare centres, by the security authorities, notably regarding the disaggregation of gender, age and precise places of detention. She also supports significant investment in the capacity for child trauma support to sustain the forthcoming repatriation.

40. In 2022, Bosnia and Herzegovina adopted a national repatriation and reintegration plan to address the reception of individuals who will be repatriated from camps in Iraq and the Syrian Arab Republic. The Special Rapporteur recognizes the intense inter-agency consultation on the development of the plan and the role of the inter-agency coordinating body in overseeing repatriation efforts. Concrete action on that plan is now imperative. She was surprised to find that there was limited substantive consultation with the families of those currently detained in the north-east of the Syrian Arab Republic. She remains disappointed that since her visit, few efforts appear to have been made to engage and support such families. She underscores the positive and necessary contribution that families can make to enabling and supporting successful repatriation and reintegration. She is concerned that families and

³⁷ See <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/20230713-eom-germany-macedonia-srct-en.pdf>.

local communities continue to be kept at “arms’ length” from the planning for repatriation.³⁸ She recommends the Government at the State and entity levels, view families as partners in the repatriation process. She also recommends that the Government ensure family unity in repatriation and that mothers and children return together. She recommends that family status and nationality be adjusted to achieve that end.

41. The Special Rapporteur commends positive planning, but stresses that it is not a substitute for actual repatriation, which must be urgently undertaken. The fact that there have been no returns since her visit in January 2023 underscores the lack of progress on this issue, with the lives of Bosnian nationals, primarily children, at extreme and actualized risk of profound harm. Despite the thoughtful and well-designed plans being developed for reception, it now appears that there are no concrete plans to advance repatriation. Such plans would include concrete engagement with family members, preparation of the community, sharing of information with relevant authorities and security actors and, as has occurred in other countries, enabling medical, psychosocial and child experts from Bosnia and Herzegovina to engage with the relevant authorities or those facilitating repatriation in the north-east of the Syrian Arab Republic. She validates the special protection for the child in the Constitution of Bosnia and Herzegovina and considers these domestic obligations to be a complement to the prescient international law obligations in respect of return and repatriation. She urges repatriation as a matter of urgency, decency, fairness and dignity for Bosnian nationals and their families who remain in the north-east of the Syrian Arab Republic.

H. Penal and correctional facilities

42. The Special Rapporteur visited three penal and correctional facilities during her visit and she thanks the authorities for their excellent cooperation and openness to her visit. She is aware of a past history of overcrowding and took note of on-record violations of fundamental human rights for incarcerated persons in the territory of Bosnia and Herzegovina. She observes the significant efforts that have been made, with substantial support from the Council of Europe, to modernize and ensure the physical suitability of the prison infrastructure, as well as the ongoing training of prison staff. Those efforts are visible in the operation of prisons visited. The Special Rapporteur highlights the significant degree of professional expertise, the humane approach and the positive thinking on the rehabilitation of prisoners and their long-term re-entry into society, particularly in the Zenica and Foča prisons. She confirms that the new State prison in East Sarajevo meets all international standards regarding space, facilities and staffing levels and commends its structural inclusion for disabled prisoners. She encourages international support to ensure the upkeep of the new prison, given the limited resources available to the State and the serious infrastructural needs of other prisons. In addition, she encourages national authorities to use experience obtained in older prisons to train its young staff.

43. The Special Rapporteur interviewed several returnees in State and entity penal and correctional facilities. She highlights the integrated, individually centred approach to prisoner rehabilitation adopted by all prisons and recognizes its positive effect on the prisoners she interviewed. She affirms significant experience in dealing with serious criminal offences at the entity level in penal and correctional facilities. Overall, she commends the individualized approach to the assessment of prisoners upon their incarceration, the recognition of vulnerability following sentencing, the focus on incentives for positive progression in the prison facilities and the possibilities for developing work skills and engaging in clubs and exercise opportunities. She was particularly mindful that the State prison has a unique caseload, involving both a large number of persons convicted of war crimes and persons convicted of terrorist offences. Hard gained experience with prisoners in the former category gives significant skills to the management of prisoners in the latter.

³⁸ The Special Rapporteur highlights the case of Adela Dolamić and her three children: despite ongoing openness and cooperation by family members, the birth of one of the three concerned children in Bosnia and Herzegovina and multiple assurances to family members, return has regrettably not been facilitated.

44. The Special Rapporteur notes that, unlike for most other crimes and offences, including core international crimes, under the relevant legislative provision in State law, no reduction in sentencing for prison compliance can be applied to traffic for terrorism-related offences.³⁹ She highlights the fundamental discrepancy in sentencing guidelines whereby prisoners charged with the most serious international crimes may receive a diminution in sentencing for positive behaviour but those convicted of terrorist offences cannot. She heard multiple views that this exceptional position works against positive reintegration and diminishes incentives for positive outcomes in prisons. She recommends a change to the law to ensure that the benefits of a progressive incentivized carceral model apply equally to all prisoners. The Special Rapporteur also highlights the lack of a probation system in Bosnia and Herzegovina. In respect of the criminal offences related to terrorism, extremism, hate crimes and incitement, she underscores the importance of a probation system, both as a support to prisoners returning to communities and also in terms of its valuable role in the prevention and reduction of recidivism. She strongly recommends that such a system be adopted at both the State and entity levels and encourages ongoing investment in prison management capacity through probation.

45. The Special Rapporteur notes that meaningful access to independent oversight of torture, inhuman and degrading treatment in penal and correctional facilities is limited by the failure to put a national preventative mechanism in place. The adoption of amendments to the Law on the Institution of Human Rights Ombudsman of Bosnia and Herzegovina, designating the institution as the national preventive mechanism, in August 2023, is a positive step. Current financial impediments in activating the mechanism undermine the country's human rights treaty obligations: it is critically important that it be implemented as a matter of urgency.

I. Civil society

46. During her visit, the Special Rapporteur met with a broad range of extremely active and engaged members of civil society. She was utterly dismayed to hear of the increasing difficulties faced by members of civil society throughout the country. She remains extremely concerned that civil society in the Republika Srpska is under sustained attack, practising self-censorship in order to survive. She regrets that, contrary to the recommendations of the Financial Action Task Force, the civil society sector has been assessed as "high risk" by the Government, apparently through risk assessments in which limited consultation with the NPOs sector took place. It has been suggested that the high risk classification results from the incomplete nature of the central register of civil society organizations held at the State level (where only 15,000 out of 27,000 entries were accounted for). Civil society actors highlight the risk that these unaccounted actors place on them. The Special Rapporteur is convinced that the authorities cannot make civil society organizations carry the weighty burden of this classification, which is clearly the result of a failure on the part of the State.

47. More broadly, the intersecting challenges faced by civil society include lack of funding, as national and international funding in the transitional context has dried up (when it is most needed); profound fatigue and burn-out; harassment and targeting of civil society actors (online and off); and increased administrative regulations on grounds that appear designed to make the daily functioning of organizations arduous. The Special Rapporteur recalls that a healthy and supported civil society is essential to the country's future prosperity and stability. Supporting civil society is an insulator from violence, including violent extremism and terrorism.

48. The Special Rapporteur further notes extremely worrying developments that could, wittingly or unwittingly, result in the restriction of civic space in Bosnia and Herzegovina. In the Republika Srpska, developments include legal cases against a range of civil society actors in what can only be qualified as judicial harassment and smear campaigns, the adoption of legislation criminalizing defamation, disinformation and hate speech and, as highlighted above, the human rights violations implicated in the proposed law on the special registry and

³⁹ The Special Rapporteur highlights this is not the case in the Republika Srpska.

publicity of the work on non-profit organizations. At the federal level, she notes that a law on the financing of civil society organizations is being drafted.

49. The Special Rapporteur acknowledges the concern of NGOs that their experience is of being used, and they are being disenfranchised, by large international actors. Fundamentally, the commodification of NGOs means that they are not treated as agents of change but merely as “on-call” service providers or being outrightly excluded from large-scale projects directly implemented by international actors, including the United Nations, the European Union, OSCE, donors and other regional actors. She recalls that civil society is essential to an effective post-conflict transition and that, as affirmed in the Global Study on the Impact of Counter-Terrorism Measures on Civil Society and Civic Space, is at the heart of preventing the conditions that produce violence, extremism and terrorism in society.⁴⁰ Meaningful partnerships must be strengthened by international and local actors. The Special Rapporteur highlights the positive role of the United Nations country team and the European Union can play in this regard.

J. Institutional matters

50. The Special Rapporteur highlights the necessity for robust independent oversight of intelligence entities. Acknowledging the existence of parliamentary oversight committees, she notes their limited independent capacity and working relationships, which prevent detached oversight from the intelligence sector. Political stalemate has also meant that oversight bodies have been stymied in their work. She calls for substantial State investment in independent and resourced intelligence oversight capacity.⁴¹

51. Judicial independence is essential to ensure the adequate functioning of the legal system and is also critical in order to fully and adequately regulate terrorism and violent extremism. Actions by one entity (the Republika Srpska), which call for constitutional judges to resign and the adoption of a law decreeing that Constitutional Court decisions would not be implemented, undermines the integrity and effective operation of the Constitutional Court and must be rescinded.⁴² The need for a root-and-branch reform of the judicial system, including merit-based appointments, without exception, systematic and equal performance appraisals for all judges and prosecutors and consistent high quality judicial training throughout the country, advances vital security and human rights interests of Bosnia and Herzegovina. The Special Rapporteur affirms that the integrity of judicial reform must be maintained, even in the face of resistance and competing external pressures to the sustaining of momentum in this area.

52. The Special Rapporteur is deeply concerned with citizenship-stripping practices on national security grounds, which are not compliant with international law, particularly when they lead to statelessness. She identifies the case of Abu Hamza, a grandfather who was stripped of his citizenship in 2001. He has been subjected to humiliating and degrading treatment, including being held arbitrarily in a migrant centre for seven years until his release in 2016. She finds it unacceptable that he still has no identity documents, cannot access medical insurance, paid employment or banking services and lacks meaningful access to his fundamental rights. She is concerned that pressure by third States in the global “war on terror” was instrumental in his treatment by Bosnian authorities. She urges that his status be adjusted in a human rights-compliant manner to ensure he is treated with dignity and fairness and with respect for his fundamental human rights. Given the egregious nature of his case, it should be addressed as a matter of priority.

53. Consistent with the findings set out in her follow-up report on secret detention practices⁴³ and her 2023 technical visit to the United States and the detention facility at Guantanamo Bay, Cuba,⁴⁴ the Special Rapporteur remains deeply concerned about the

⁴⁰ See [Defendcivicspace.com](https://defendcivicspace.com); see also A/78/520, paras. 67–71.

⁴¹ A/HRC/14/45.

⁴² European Commission, BiH Report, Brussels, 8.11.2023 SWD (2023) 691 final.

⁴³ A/HRC/49/45.

⁴⁴ See <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/2023-06-26-SR-terrorism-technical-visit-US-guantanamo-detention-facility.pdf>.

situation of persons who were rendered to and tortured at black sites and ultimately delivered to the detention facility at Guantanamo Bay with the acquiescence of the Government.⁴⁵ She is unequivocal that those individuals,⁴⁶ survivors of torture, must have their human rights fully respected, be treated medically and legally as torture survivors, not be subjected to unwarranted surveillance and stigma and be compensated for the violations of international law they were subjected to. In particular, she highlights the failure to provide acknowledgement, remedy and rehabilitation to men tortured in Guantanamo Bay and returned to Bosnia and Herzegovina. The failure to do so constitutes an ongoing violation of a jus cogens norm and must be urgently redressed.

54. The Special Rapporteur highlights the importance of an increased United Nations human rights capacity in Bosnia and Herzegovina, including support for transitional justice efforts in a highly complex context and for the issues raised in the present report, through the provision of additional human and financial resources.

II. Conclusions

55. **The protection of human rights in Bosnia and Herzegovina is a litmus test for the need for human rights protections in post-conflict contexts and illustrates that the failure to protect and enforce human rights will force reliving the harms of the past. There must be new impetus on the part of both State-level and local authorities, sustained by the international community, to address the severe challenges raised in the present report, including post-conflict transition, the conditions that produce violence in post-conflict and transitional societies and functional governance, in order to provide accountability for past violations and to deliver justice.**

56. **The international community must renew its commitment and attention to the implementation of the post-conflict settlement in Bosnia and Herzegovina, acknowledge that deep-seated grievances are unresolved, that reparation measures have been inadequate, that justice remains to be done in respect of serious violations of international law committed during the conflict and that, without acknowledging and undoing the abuses of the past, the conditions conducive to violence, ethnic and religious hatred and communal strife will fester.**

III. Recommendations

57. **The Special Rapporteur recommends that authorities at the State and entity levels:**

(a) **Enhance and continue implementation of the post-conflict and transitional measures essential for sustained peace in Bosnia and Herzegovina, including, as a matter of urgency, the implementation of the human rights obligations and undertakings of the Dayton Peace Agreement, remain committed to the implementation of accountability measures, including domestic trials for core international crimes trials, and ensure better support for domestic human rights institutions;**

(b) **Ensure that national counter-terrorism legislation is brought into line with international human rights law, in particular revised definitions of terrorism that are non-compliant with international law;**

(c) **Develop, with support from international partners and UNODC, a probation system for all prisoners, including for those who have served their sentences for terrorism charges;**

⁴⁵ European Court of Human Rights, Application Nos. 38703/06, 40123/06, 43301/06, 43302/06, 2131/07 and 2141/07 (*Boumediene et al. v. Bosnia-Herzegovina*).

⁴⁶ Including, specifically, Tarek Mahmoud El Sawah and Mustafa Ait Idir.

(d) Adjust relevant legislation to enable a reduction in sentence, recognizing positive prison compliance for terrorism-related offences;

(e) Engage civil society organizations as meaningful partners in combating the financing of terrorism and conduct meaningful consultation with the sector, in line with the requirements set out in recommendation 8 of the Financial Action Task Force, and address the evidenced deficits in the central register of civil society organizations;

(f) Advance much-needed judicial independence through concrete measures, including performance reviews and consistent training across entities, including through respect for all judicial institutions, including but not limited to those established by the Dayton Agreement, and promote reform of the judicial and security sectors, strengthening independent oversight;

(g) Repatriate, as a matter of utmost urgency, all Bosnian citizens and members of their families who are still detained in the north-east of the Syrian Arab Republic, with international support, if necessary; special attention should be paid to minors and their mothers, unaccompanied children and boys and men in prison;

(h) Engage all relevant parties in the north-east of the Syrian Arab Republic to ascertain the current health and welfare situation of Bosnian citizens and their relatives and cooperate with all parties prepared to support repatriation;

(i) Fully engage and support the families of the individuals detained in north-east of the Syrian Arab Republic and consider the possibility of organizing an official visit, including to finalize the repatriation process;

(j) Using legal, social and educational measures to address the lack of attention to right-wing extremism, particularly in prisons, with special emphasis on much needed training in the State prison;

(k) Provide enhanced support, including financial support, to assist a broad range of civil society actors and protect civic space; in this regard, particular attention must be paid to preventing the harassment and targeting of civil society actors, unnecessary administrative and other regulations and legislation must be resisted and the proposed law on the special registry and publicity of the work on non-profit organizations should be withdrawn;

(l) Former Guantanamo detainees who reside in Bosnia and Herzegovina must receive rehabilitation treatment for torture suffered, as appropriate to their needs; apology and remedy for the cooperation of Bosnia and Herzegovina in their rendition and torture remains outstanding;

(m) The unacceptable and untenable legal position of Abu Hamza must be addressed and his status must be adjusted to give him full access to rights and protection.

58. The Special Rapporteur recommends that the international community and international organizations consider the following:

(a) Focused policy interventions on current actualized threats, including regional reconfiguration and alignment along ethnic and nationalist lines, stigmatization and hate speech and undermining of the integrity of the Dayton Peace Agreement and mechanisms for its implementation, including of State level institutions, on the protection of rights, human dignity and non-discrimination, as opposed to a top-down focus on implementing international counter-terrorism and violent extremism priorities, which are clearly not the most pressing challenges in the country;

(b) The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism is encouraged to pay due attention to the misuse of counter-terrorism finance laws and practices against civil society actors in its current assessment;

(c) Any counter-terrorism programming by the United Nations must be carried out in full cooperation with the United Nations country team and in full respect of international human rights law and the work of OHCHR in the country;

(d) The United Nations country team should maintain full integration of the OHCHR in all aspects of the work of the Organization at the country level, given the salience of human rights issues to the findings of the present report;

(e) The support of the Council of Europe to ongoing prison refurbishment and updating is positive and should be continued;

(f) The United Nations Office on Drugs and Crime should continue to play a proactive role in future technical assistance in the area of cybercrime, penal policy and other counter-terrorism related technical assistance activities in Bosnia and Herzegovina, including the interface between corruption and the entrenchment of violent extremism, given its clear expertise in this field.
