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## BOSNIA AND HERZEGOVINA

Vaša prava BiH  
European Network on Statelessness

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European  
Network on  
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# **BOSNIA AND HERZEGOVINA**

## **Introduction**

1. Vaša prava BiH and the European Network on Statelessness (ENS) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Bosnia and Herzegovina (BiH).
2. This submission focuses on the prevention and reduction of statelessness, and the protection of the rights of stateless people in BiH, including in particular:
  - I. The right to a nationality and birth registration for children born abroad to Bosnian citizens
  - II. The right to birth registration for children born in BiH whose parents do not have a regulated residence status in BiH (children of undocumented migrants)
  - III. The requirement to register residence as a means to realise rights
  - IV. Statelessness determination procedure for migratory stateless populations
  - V. The right to free legal aid for stateless people, people with undetermined or unknown citizenship, and undocumented people
3. Annex II provides information about the co-submitting organisations.

## **Bosnia and Herzegovina's International obligations**

4. Bosnia and Herzegovina acceded the 1954 Convention Relating to the Status of Stateless Persons in 1993 and acceded to the 1961 Convention on the Reduction of Statelessness in 1996. Bosnia and Herzegovina has international obligations to protect the right to a nationality and protect the rights of stateless people on the basis of other UN and regional treaties to which it is a party. These include, among others:<sup>1</sup>
  - International Covenant on Civil and Political Rights (see Article 24.3)

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<sup>1</sup> See: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang= en>.

- International Covenant on Economic, Social and Cultural Rights (see Articles. 2.2 and Article 3)
- Convention of the Rights of the Child (see Articles 2, 3, 7, and 8)
- Convention on the Elimination of All Forms of Discrimination against Women (see Article 9)
- International Convention on the Elimination of All Forms of Racial Discrimination (see Article 5(d)(iii))
- Convention on the Rights of Persons with Disabilities (see Article 18)
- International Convention for the Protection of All persons from Enforced Disappearance (see Article 25.4)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (see Article 29)

Furthermore, the right to a nationality is enshrined in Article 15 of the Universal Declaration on Human Rights.

5. BiH is a party to other relevant regional treaties, including the European Convention on Human Rights and the European Convention on Nationality. However, it is not party to the European Convention on the Avoidance of Statelessness in Relation to State Succession.
6. In October 2019, Bosnia and Herzegovina made several pledges at the UNHCR High Level Segment on Statelessness.<sup>2</sup> These included a commitment by 2023 to “improve birth registration of all children regardless of their status or status of their parents or lack of identity documents through changes to the legislation on civil registration and through improvement of birth registration practice,” both for children born abroad to BiH citizens and children born in BiH to undocumented parents (asylum seekers and migrants). By 2022, BiH pledged to ensure the “issuance of nationality documents to persons who are entitled to nationality under the law but cannot acquire documentary proof” and “create a mechanism for regulating status of persons in situation of displacement who stay in BiH for a long time (citizens of former SFRY) and who never registered residence.” By 2020, BiH pledged to “develop a state action plan for ending statelessness by 2024 in cooperation with all relevant stakeholders.” BiH also pledged to establish a statelessness determination procedure and provide rights to stateless people in accordance with the 1954 Convention by 2022.
7. Whilst BiH may be on track to end known cases of statelessness, gaps in law and practice remain, which mean that cases of statelessness may be identified or arise in future. There have been no changes to the civil registration regulations nor improvement of birth registration practice since these pledges were made. Neither has BiH established a statelessness determination procedure. Moreover, the procedures to regulate the status of citizens of the former SFRY who did not have a formally registered residence have not yet been harmonised and these are still resolved on a case-by-case basis. Furthermore, BiH’s pledge to develop an action plan to end statelessness by 2024 has not yet been fulfilled.
8. In addition to the pledges made at the UNHCR High Level Segment on Statelessness, BiH made two pledges at the OSCE-UNHCR Regional Conference on Access to Civil Documentation and Prevention of Statelessness in South-Eastern Europe held in

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<sup>2</sup> See <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>.

Skopje in October 2023. In the context of the 2023 Global Refugee Forum<sup>3</sup>, Albania, BiH, Croatia, Montenegro, North Macedonia, and Serbia jointly made the pledge to “make all necessary efforts, independently and collectively, to resolve, without delay, all known cases of statelessness within their territories, including by granting citizenship to or confirming the citizenship of existing in situ stateless populations when relevant legally required conditions, as set out by the Statelessness Conventions, are met, and undertake the law reforms, that may be needed, to ensure that no child is born stateless.”<sup>4</sup>

## **Snapshot of Statelessness in Bosnia and Herzegovina**

9. Government institutions in Bosnia and Herzegovina do not have comprehensive official data and statistics on the number of stateless people and people with undetermined or unknown nationality within their territory. According to the last census conducted in 2013, there were 254 individuals with unknown citizenship, but this data is outdated. According to the information from Vaša prava BiH and UNHCR, as of April 2024, there are 20 stateless people and people with undetermined or unknown citizenship.<sup>5</sup> This excludes 30 cases of stateless people and people with undetermined or unknown citizenship for which Vaša prava BiH has ceased its assistance due to the individuals being uncontactable or unavailable. The largest number of people with undetermined or unknown nationality are members of Romani communities.<sup>6</sup> Moreover, one stateless person with humanitarian stay in the process of residence approval has been determined to be stateless.<sup>7</sup> Given the lack of any recent comprehensive mapping or reliable data collection, it is very likely that there are more cases of stateless individuals and people with undetermined nationality in the community that are yet to be identified.
10. Regarding people with undetermined or unknown nationality (mostly part of Romani communities), one group consists of people born in BiH and abroad, including children of BiH citizens, who are not registered in the birth registry and who therefore have issues proving their connection to the State. Multiple procedures are necessary for them to acquire BiH citizenship. Another group consists of citizens of one of the former SFRY republics or their children who have resided in BiH for an extended period and who meet the requirements to acquire citizenship under the laws of BiH, but who cannot acquire BiH citizenship due to the lack of adequate proof of residence on the territory of BiH during a specific period. Among this category, former citizens of the SFRY born on the territory of the former Autonomous Province of Kosovo face particular issues.
11. The procedures to regulate the status of citizens of the former SFRY who did not have a formally registered residence have not yet been harmonised and their status is still resolved on a case-by-case basis. In some cases (mostly in Republika Srpska), judicial

<sup>3</sup> Global Compact on Refugees: <https://globalcompactrefugees.org/about/global-refugee-forum/global-refugee-forum-2023>.

<sup>4</sup> Moreover, the OSCE Office for Democratic Institutions and Human Rights and the OSCE High Commissioner on National Minorities pledged to “build capacity and exchange good practices on addressing statelessness in OSCE participating States over the next five years by, inter alia, organizing one annual joint activity on addressing statelessness together with UNHCR.”

<sup>5</sup> This is the number of cases that Vaša prava BiH is working on. See also UNHCR, Bosnia and Herzegovina monthly update - April 2024: <https://data.unhcr.org/en/documents/details/108705>.

<sup>6</sup> Action plan for the social inclusion of Roma and Roma women for the period 2021-2025: <https://ekonsultacije.gov.ba/legislationactivities/downloaddocument?documentId=1014882>.

<sup>7</sup> Vaša prava BiH casework.

proceedings determining continuous residence have been successfully concluded, while in other cases, courts have refused to conduct these procedures on the ground that the Ministry of Interior in Republika Srpska is responsible for conducting the procedure and not the courts.<sup>8</sup>

12. Children born in BiH after the entry into force of the Constitution who would otherwise be stateless or whose two parents are unknown, of unknown citizenship, or stateless, are granted BiH citizenship upon application.<sup>9</sup> Moreover, children are registered immediately upon birth based on their parent's place of residence or birth, but children born abroad to BiH citizens who are asylum seekers and children born in BiH whose parents do not have a regulated residence status in BiH face obstacles. More information is provided on these challenges under Issues 1 and 2 respectively.
13. In February 2021, the Federation of Bosnia and Herzegovina adopted the Law on Amendments to the Law on Extrajudicial Procedure, which allows individuals who are not registered in the birth registries and who cannot prove their date and place of birth in the manner prescribed by the regulations governing the keeping of civil registries, to initiate an extrajudicial procedure (i.e., a non-contentious procedure before the court) determining the date and place of birth. Thus, instead of improving registration through an administrative procedure, every "disputed" case (i.e. complicated cases where applicants do not have the required documents and therefore registry offices cannot conduct the registration procedure) must be resolved through an extrajudicial or a judicial procedure. In December 2023, Vaša prava BiH submitted an initiative to amend the Law on Extrajudicial Procedures to facilitate the procedure of determination of the date and place of birth, access to free legal assistance, and the avoidance of any expenses for medical examinations by the court-appointed experts and the actual costs of court proceedings.<sup>10</sup>
14. Registering one's residence remains one of the most important factors for the enjoyment and exercise of many rights in BiH, and strict registration requirements have particularly affected people who are stateless or with undetermined nationality and those who do not have registered residence and any form of identification documents, including Romani individuals living in informal settlements. More information is provided on these challenges under Issue 3.
15. There is no dedicated statelessness determination procedure leading to a dedicated statelessness status, but there are other procedures in which statelessness can be identified and other routes through which stateless migrants and refugees can regularise their stay and access their rights. More information is provided on these challenges under Issue 4.
16. Laws on free legal aid are mostly enacted at local level and eligibility of stateless people, people with undetermined or unknown citizenship, and people without identification documents is limited. More information is provided on these challenges under Issue 5.

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<sup>8</sup> Vaša prava BiH practice and casework.

<sup>9</sup> Article 7 of the Law on Citizenship of Bosnia and Herzegovina; Article 6 of the Law on Citizenship of the Federation of Bosnia and Herzegovina; Article 9 of the Law on Citizenship of the Republic of Srpska.

<sup>10</sup> ENS, Submission to inform the European Commission 2024 Enlargement Package, April 2024, p. 4:

<https://www.statelessness.eu/sites/default/files/2024-04/ENS%20submission%20DG%20NEAR%20Enlargement%20April%2024.pdf>.

17. Positive reforms in recent years have included the adoption of the 2021-2025 Action Plan for Social Inclusion of Roma in BiH, including the goal of adopting a "Roadmap for stopping the risk of statelessness of Roma in Bosnia and Herzegovina".<sup>11</sup> However, this Roadmap was never adopted as an official document.<sup>12</sup> Moreover, international organisations, such as the OSCE, UNHCR and UNICEF, and NGOs used to conduct informational campaigns in the 2000s to promote civil registration, including birth registration, mainly among Romani communities and registration officers to register all children born in BiH.<sup>13</sup> However, the government does not currently have any programmes in place to promote civil registration.

## Issue 1: The right to a nationality and birth registration for children born abroad to BiH citizens

18. Every child has the right to a nationality and to be registered immediately after birth.<sup>14</sup> These are core principles of international law which, if applied in a comprehensive and non-discriminatory manner, would end childhood statelessness.<sup>15</sup> States should have provisions in law to prevent statelessness at birth, including for children born to nationals abroad, foundlings, in the context of adoption, and provisions to grant nationality to all children born on the territory who would otherwise be stateless.<sup>16</sup> Moreover, the International Convention on the Elimination of All Forms of Racial Discrimination obliges Contracting States to prohibit and eliminate racial discrimination and guarantee to everyone the right to equality before the law, including the right to nationality.<sup>17</sup> The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families states that every child of a migrant worker shall have the right to a name, to registration of birth, and to a nationality.<sup>18</sup>

19. The Constitution of Bosnia and Herzegovina establishes that both the Federation of Bosnia and Herzegovina and the Republika Srpska ensure the highest level of internationally recognised human rights and fundamental freedoms, that the rights and freedoms specified in the European Convention of Human Rights and its protocols are directly applicable in Bosnia and Herzegovina and take precedence over all other law.<sup>19</sup> The enjoyment of these rights and freedoms shall be secured to all people in Bosnia and Herzegovina, without discrimination on any grounds such as sex, race, color, language, religion, political or other opinion, national or social origin, membership association with a national minority, property, birth, or other status.

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<sup>11</sup> Action plan for the social inclusion of Roma and Roma women for the period 2021-2025:

<https://ekonsultacije.gov.ba/legislationactivities/downloaddocument?documentId=1014882>.

<sup>12</sup> ENS, Submission to inform the European Commission 2024 Enlargement Package, April 2024, p. 4:

<https://www.statelessness.eu/sites/default/files/2024-04/ENS%20submission%20DG%20NEAR%20Enlargement%20April%2024.pdf>.

<sup>13</sup> Report on informative birth registration campaign for Roma: <https://www.osce.org/files/f/documents/4/7/110222.pdf>;

Guidelines for improvement of the position of Romani children in BiH - social exclusion:

[http://www.mhrr.gov.ba/ljudska\\_prava/djeca\\_bih/Smjernice%20BOSANSKI.pdf](http://www.mhrr.gov.ba/ljudska_prava/djeca_bih/Smjernice%20BOSANSKI.pdf).

<sup>14</sup> UN Convention on the Reduction of Statelessness, 1961, Articles 1 and 4; International Covenant on Civil and Political Rights, 1966, Article 24(2); Convention on the Rights of the Child, 1989, Articles 3 and 7; European Convention on Nationality, 1997, Article 6; Convention on the Rights of Persons with Disabilities, 2006, Article 18; UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Action 7; UN Sustainable Development Goal 16.9.

<sup>15</sup> See Article 7 of the UN Convention on the Rights of the Child, read in conjunction with Articles 2 and 3.

<sup>16</sup> See, e.g., UN Convention on the Reduction of Statelessness, 1961: Articles 1-4. European Convention on Nationality, 1997: Articles 2 and 6.

<sup>17</sup> For more information see Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination.

<sup>18</sup> For more information see Article 29 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

<sup>19</sup> For more information see Article II.2 of the Constitution of Bosnia and Herzegovina:

<https://www.paragraf.ba/propisi/bih/ustav-bosne-i-hercegovine.html>.

20. Children born after the entry into force of the Constitution to Bosnian citizens abroad acquire Bosnian citizenship.<sup>20</sup> However, casework<sup>21</sup> has demonstrated that children born abroad to BiH citizens who are asylum seekers encounter administrative difficulties when seeking to register in the birth registries in BiH. If parents do not possess extracts from the birth registry in the country of birth on an international form or a domestic form that is apostilled, or if there is an error in the foreign extract, authorities require parents to obtain the prescribed extracts from abroad. If they are unable to do so, their only option is to initiate an extrajudicial procedure in the competent court in BiH to determine the date and place of birth in accordance with the Law on Extrajudicial Procedure of the Federation of Bosnia and Herzegovina<sup>22</sup> and the Law on Extrajudicial Procedure of the Republika Srpska.<sup>23</sup> This procedure is longer, more complicated, and more expensive than the administrative procedure for birth registration. There is no free legal aid in this extrajudicial procedure and, in some cases, applicants must also bear the costs of medical expertise to determine the child's age, which has a deterrent effect and represents an obstacle that often leads applicants deciding not to initiate this procedure.
21. There are specific challenges with the birth registration of children who are presumed BiH citizens born on the territory of Kosovo, since Bosnia and Herzegovina does not recognise documents issued by the authorities of Kosovo and the registry books for certain areas in Kosovo were destroyed or are inaccessible to the authorities of Serbia. These people, who were citizens of the SFRY, cannot obtain proof that they were indeed citizens of the SFRY because the regulations on the procedure, means of evidence and method of enrolment of citizenship of the Federation of Bosnia and Herzegovina<sup>24</sup> specify that proofs of SFRY citizenship (citizenship certificate, passport, ID card, and military card) are required, and a request for citizenship will be denied failing presentation of any of the prescribed proofs.

## **Issue 2: The right to birth registration of children born in BiH whose parents do not have a regulated residence status in BiH (children of undocumented migrants)**

22. Every child has the right to be registered immediately after birth regardless of race, colour, sex, national or social origin, birth or other status.<sup>25</sup>

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<sup>20</sup> Law on Citizenship of BiH ("Official Gazette of BiH", No. 22/2016:

[https://www.ecoi.net/en/file/local/1155041/1930\\_1394635526\\_53171f604.pdf](https://www.ecoi.net/en/file/local/1155041/1930_1394635526_53171f604.pdf)

<sup>21</sup> Vaša prava BiH, case work and Legal analysis of the application of the Institute entry in the register books of births in Bosnia and Herzegovina, available at: [https://storage.googleapis.com/strapi-vasaprava/Analiza\\_upisa\\_u\\_maticne\\_knjige\\_96416082e4/Analiza\\_upisa\\_u\\_maticne\\_knjige\\_96416082e4.pdf](https://storage.googleapis.com/strapi-vasaprava/Analiza_upisa_u_maticne_knjige_96416082e4/Analiza_upisa_u_maticne_knjige_96416082e4.pdf).

<sup>22</sup> Law on Amendments to the Law on extrajudicial procedure of the Federation of Bosnia and Herzegovina ("Official Gazette of the Federation of Bosnia and Herzegovina 11/21): <https://fbihvlada.gov.ba/bosanski/zakoni/2021/Zakoni/7-7h.htm>.

<sup>23</sup> Law on extrajudicial procedure of Republika Srpska ("Official Gazette of the Republic of Srpska 36/2009, 91/2016, 16/2023 i 27/2024): <https://www.paragraf.ba/propisi/republika-srpska/zakon-o-vanparnicnom-postupku.html>.

<sup>24</sup> For more information see article 34 of the Rulebook on the Procedure, Means of Evidence and Method of Enrolment of Citizenship of the Federation of Bosnia and Herzegovina in the Register of Births and Citizens to the Federal Ministry of Interior (Federation of Bosnia and Herzegovina Official Gazette FBiH 38/22, 85/16 i "108/12).

<sup>25</sup> UN Convention on the Reduction of Statelessness, 1961, Articles 1 and 4; International Covenant on Civil and Political Rights, 1966, Article 24(2); Convention on the Rights of the Child, 1989, Articles 3 and 7; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 29; European Convention on Nationality, 1997, Article 6; Convention on the Rights of Persons with Disabilities, 2006, Article 18; UNHCR, Global Action Plan to End Statelessness 2014-24 (2014); Action 7; UN Sustainable Development Goal 16.9.

23. There are issues with current practices in registering children born in Bosnia and Herzegovina, whose parents are asylum seekers or undocumented migrants, in particular those who have expressed the intention to apply for asylum or who have irregular residence status. The Federation of Bosnia and Herzegovina's Instructions on Manner of keeping the registry books<sup>26</sup> ('Instructions') explicitly list the documents that individuals who benefit from international protection, asylum seekers, or holders of temporary residence for humanitarian reasons may provide when registering a child. According to section 85 of the Instructions, parents may submit a refugee card, a card for asylum seekers, a card for beneficiaries of subsidiary protection, or an identity certificate for stateless people.

24. However, many individuals in these situations do not have a formally registered residence status according to the Law on Foreigners, nor the status of asylum seeker according to the Law on Asylum, but have merely expressed an intention to apply for asylum. These individuals either have no documents issued by the authorities in Bosnia and Herzegovina or only possess a certificate of expressed intention. Since the certificate of expressed intention is not mentioned as a relevant document in the Law on Registry Books, the Instructions, or other subordinate acts based on the Law on Registry Books, these individuals face administrative obstacles when registering the birth of their children. In most cases, registration cannot be performed immediately after birth, and these cases are referred to social work centres for further processing.

25. While Article 8 of the Bylaw on the Child's Birth Registration Form and Death Certificate<sup>27</sup> exceptionally allows oral statements as means of evidence, in line with the Law on Administrative Procedure, this provision is not applied in practice where the child's parent does not have identification documents specified in this Article,<sup>28</sup> especially if they are undocumented migrants. This practice by the competent authorities prevents children from registering in the registry books within the regular period, and, according to the Law on Personal Name of the Federation of Bosnia and Herzegovina,<sup>29</sup> these cases are referred to social work centres for further processing. There have been difficulties in the procedures for determining a personal name by social work centres due to issues in determining jurisdiction, since the centres' jurisdiction is determined by the child's mother's officially registered residence. Since these individuals often do not have a formally registered residence and stay at temporary reception centres, they can only confirm their residence through a card issued by the centre rather than a formal residence registration card. Therefore, the social work centres of the mother's place of stay often refer the application to the social work centre of the child's place of birth, which unduly prolongs the procedure.

### **Issue 3: The requirement to register residence as a means to realise rights**

26. Permanent residence remains one of the most important factors for the enjoyment and exercise of many rights in BiH, including to civil registration, identity documents,

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<sup>26</sup> For more information see Article 85 of the Instructions on Manner of keeping the registry books of the Federation of Bosnia and Herzegovina, ("Official Gazette of the Federation of Bosnia and Herzegovina 51/2013, 55/2013, 82/2013 and 6/2015").

<sup>27</sup> For more information see Article 8 of the Bylaw on the Child's Birth Registration Form and Death Certificate, ("Official Gazette of the Federation of Bosnia and Herzegovina "68/12, 83/14).

<sup>28</sup> See paragraohs 1 and 2 of Article 8 of the Bylaw on the Child's Birth Registration Form and Death Certificate.

<sup>29</sup> For more information see article 6 of the Law on personal name ("Official Gazette of the Federation of Bosnia and Herzegovina"7/2012).

healthcare, social welfare, and travel documents.<sup>30</sup>

27. The strict requirements of the Law on Permanent and Temporary Residence of Citizens of Bosnia and Herzegovina,<sup>31</sup> under which only BiH citizens or foreigners with a permanent stay permit may register their residence, especially affect people in vulnerable circumstances, in particular those who do not have registered residence and any form of identification documents, including Romani individuals living in informal settlements. Moreover, stateless people and those with undetermined nationality are excluded from the legislation.<sup>32</sup> These populations may be unable to access birth registration procedures within regular deadlines. Indeed, civil registration for children born in the Federation of Bosnia and Herzegovina is based on the mother's place of residence, or on the child's place of birth where the mother does not have a registered residence, and the determination of the local jurisdiction is a long procedure. For children born abroad to BiH citizens, civil registration is based on the document of the foreign authority in the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District of BiH, and is conducted based on the parents' last known registered residence, or their place of birth in the absence of a registered residence.
28. The Law on Amendment to the Law on Permanent and Temporary Residence of Citizens of Bosnia and Herzegovina (in force since June 2015) made the conditions and criteria for registering the residence of BiH citizens stricter, so every BiH citizen is obliged to present proof that they have a valid legal basis for registering at a specific address. A valid legal basis means a land registry extract, title deed, lease agreement or real estate use agreement, as well as a statement of the owner of the real estate indicating that they agree for the person to register at their address. These conditions mostly affect marginalised individuals in vulnerable circumstances who cannot obtain evidence that they have a valid basis for registering their residence. Many people, due to lack of property, have difficulties when registering their residence, and sometimes dozens of people may be registered at a single address. It is also reported that some property owners request payment in order to give their consent for someone to register at their address.
29. Consequently, in the Federation of Bosnia and Herzegovina, due to the lack of a registered residence, children cannot be register within the regular deadline and these procedures are conducted with the assistance of social welfare centers, which can last for several months. During this time, children are unable to exercise their rights to social welfare and health care. Moreover, adults cannot obtain an identity card which is a pre-condition for exercising all other rights.

#### **Issue 4: Statelessness determination procedure for migratory stateless populations**

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<sup>30</sup> ENS, Submission to inform the European Commission 2024 Enlargement Package, April 2024, p. 4-5: <https://www.statelessness.eu/sites/default/files/2024-04/ENS%20submission%20DG%20NEAR%20Enlargement%20April%202024.pdf>.

<sup>31</sup> Law on permanent and temporary residence of citizens of Bosnia and Herzegovina (Official Gazette of BiH no. 32/01, 56/08, 58/15).

<sup>32</sup> ENS, Submission to inform the European Commission 2024 Enlargement Package, April 2024, p. 4-5: <https://www.statelessness.eu/sites/default/files/2024-04/ENS%20submission%20DG%20NEAR%20Enlargement%20April%202024.pdf>.

30. In contrast to the situation of *in situ* stateless populations (i.e. populations who have long-established ties to the countries where they are living), in the case of stateless migrants or refugees, States should first identify who is stateless on their territory, formally determine their statelessness (giving primacy to any asylum claim), and then grant them an adequate protection status and rights in line with the 1954 Convention and international human rights law. The determination of statelessness is best fulfilled through a dedicated statelessness determination procedure (SDP) that is fair, efficient, and easily accessible, in line with UNHCR guidelines.<sup>33</sup> Statelessness status should include a residence permit, access to economic, social, civil, and political rights, the right to administrative assistance, exemption from requirements they cannot meet because they are stateless, and other rights protected by international law. States should also establish a facilitated route to naturalisation so stateless people can acquire a nationality and resolve their statelessness.<sup>34</sup>

31. There is no dedicated statelessness determination procedure leading to a dedicated statelessness status in BiH, but there are other procedures in which statelessness can be identified and other routes through which stateless migrants and refugees can regularise their stay and access their rights. While most cases of statelessness that have been identified in BiH are *in situ* stateless individuals, the absence of a dedicated statelessness determination procedure prevents stateless refugees and migrants from being identified and accessing protection.

32. Despite the lack of a dedicated statelessness status, statelessness can be identified in procedures for temporary stay on humanitarian grounds, asylum, and temporary protection.<sup>35</sup> There is limited information available to applicants on how to claim their rights and there is no clear guidance nor country of origin information relating to statelessness available to decision-makers on how to identify statelessness. The burden of proof is primarily on the applicant, while the competent authority verifies the information, including by contacting the applicant's country of origin. Some procedural safeguards are in place, including a deadline to issue a decision on the application and the right of appeal.

33. Once identified, stateless people have access to the right to work, education, and healthcare,<sup>36</sup> and more rights if they are asylum seekers, including a right stay in the country.<sup>37</sup> People granted temporary stay on humanitarian grounds can stay in the

<sup>33</sup> UNHCR, Handbook on Protection of Stateless Persons, 2014: <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>. See also European Court of Human Rights, *Hoti v. Croatia* (application no. 42321/15), 26 July 2018, holding that a State has a positive obligation to provide an effective and accessible procedure enabling applicants to have their issues of further stay and status determined, paragraph 32; Statelessness Index, Statelessness Determination and Protection in Europe: Good Practice, Challenges, and Risks, 2021: <https://index.statelessness.eu/resources/statelessness-determination-and-protection-europe>.

<sup>34</sup> UNHCR, Handbook on Protection of Stateless Persons, 2014: <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>. See also European Court of Human Rights, *Hoti v. Croatia* (application no. 42321/15), 26 July 2018, holding that a State has a positive obligation to provide an effective and accessible procedure enabling applicants to have their issues of further stay and status determined, paragraph 32; Statelessness Index, Statelessness Determination and Protection in Europe: Good Practice, Challenges, and Risks, 2021: <https://index.statelessness.eu/resources/statelessness-determination-and-protection-europe>.

<sup>35</sup> Law on Foreigners of Bosnia and Herzegovina ("Official Gazette of BiH", no. 88/2015, 34/2021 and 63/2023): <http://www.msb.gov.ba/PDF/Zakon%20o%20strancima%20H.pdf>; Amendment Act and supplement of the Law on Foreigners ("Official Gazette of BiH", number 63/23): <http://www.sluzbenilist.ba/page/akt/0SqRdMx8RS0>; Law on Asylum ("Official Gazette of BiH, No. 11/2016): <https://sps.gov.ba/dokumenti/zakoni/Zakon%20o%20azilu.pdf>; Correction of the Asylum Act ("Official Gazette Bosnia and Herzegovina", No. 16/2016): <https://grapol.gov.ba/data/documents/pdf/Ispravka%20Zakona%20o%20azilu.pdf>.

<sup>36</sup> The Law on Foreigners of Bosnia and Herzegovina (" Official Gazette of the Bosnia and Herzegovina ", no. 88/2015, 34/2021 and 63/2023): <http://www.msb.gov.ba/PDF/Zakon%20o%20strancima%20H.pdf>.

<sup>37</sup> Law on Asylum (" Official Gazette Bosnia and Herzegovina ", No. 11/2016): <https://sps.gov.ba/dokumenti/zakoni/Zakon%20o%20azilu.pdf>

country for a period of up to one year, which is renewable, and are issued a travel document under certain conditions.

34. Nonetheless, in the absence of a formal statelessness determination procedure, there is no comprehensive mechanism by which BiH can assure the rights and protections due to all stateless migrants and refugees on its territory under the 1954 Convention Relating to the Status of Stateless Persons.

## **Issue 5: The right to free legal aid for stateless people, people with undetermined or unknown citizenship, and undocumented people**

35. The right of access to justice, as an element of the right to a fair trial, is a fundamental human right, and is guaranteed by numerous international and national norms and good practices.<sup>38</sup> Moreover, the Council of Europe provides important guidelines in legal aid systems in Member States. The Committee on Legal Co-operation (CDCJ) issued Guidelines of the Committee of Ministers on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law<sup>39</sup>.
36. Therefore, Bosnia and Herzegovina is obliged under international norms to establish and enable effective, smooth, sustainable and equal access to justice through the system of free legal aid for the most vulnerable individuals and communities. As a member State of the Council of Europe,<sup>40</sup> BiH has the obligation to nurture and improve the democratic values and standards of the Council of Europe and must ensure the minimum legal standards of the European Convention on Human Rights and the case law of the European Court of Human Rights,<sup>41</sup> and according to its obligations under the Stabilization and Association Agreement.<sup>42</sup>
37. In BiH, legislation both at national and local level, must be harmonised in line with the international obligations of the State, according to international standards and best practices. BiH should therefore create an efficient and effective system of free legal aid.
38. Of the 12 laws on free legal aid in force in Bosnia and Herzegovina, nine are at the cantonal level. The others are the Law on Free Legal Aid of Republika Srpska, the Law on Free Legal Aid of Brčko District, and the Law on Free Legal Aid of Bosnia and Herzegovina. Only the Law on Free Legal Aid of Una-Sana Canton<sup>43</sup> recognises stateless

<sup>38</sup> Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; Convention on the Rights of the Child, Article 40(2); 1954 Convention Relating to the Status of Stateless Persons, Article 16; European Convention on Human Rights and Fundamental Freedoms, Articles 6 and 13; ECtHR, *Dewer v. Belgium*, application no. 6903/75, and ECtHR, *Kart v. Turkey*, application no. 8917/05 (civil disputes); ECtHR, *König v. Germany* (application no. 6232/73) (administrative dispute); UN Sustainable Development Goal 16.3: <https://sdgs.un.org/2030agenda>. It provides for the need to "build peaceful, just, and inclusive societies which provide equal access to justice and are based on respect for human rights" and highlight the importance of ensuring "access to justice for all" in achieving sustainable development.

<sup>39</sup> Council of Europe, European Committee on Legal Co-operation (CDCJ) Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law, 1400th meeting, 31 of March 2021.

<sup>40</sup> BiH became a member state of the Council of Europe on the 24.04.2002.

<sup>41</sup> See, eg., ECtHR, *Pudarić v. Bosnia and Herzegovina* [Committee], no. 55799/18, § 27, 8 December 2020.

<sup>42</sup> Stabilization and Accession Agreement between the EU and BiH, 1 June 2015:

[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_15\\_5086](https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5086).

<sup>43</sup> For more information see Article 13.1.i) of the Law on the provision of legal aid of the Una Sana Canton, ("Official Gazette of Una Sana Canton" 22/12, 03/16, and 7/2024).

people, people with undetermined or unknown citizenship, and people without identification documents as groups of people eligible for free legal aid, while other laws do not recognise these groups. Under the other laws, people with undetermined or unknown citizenship, and people without identification documents are not entitled to free legal aid, but stateless people whose statelessness has been identified are eligible, although no such case has been reported.

39. Stateless people may benefit from free legal aid during the asylum procedure but not during the procedure for temporary stay on humanitarian grounds, although they can benefit from free legal assistance from NGOs and possibly state free legal aid centres (although state free legal aid centre have not had any such cases so far).<sup>44</sup>
40. Regarding free legal aid for registration in civil registries, although the Law on Registry Books of the Federation of Bosnia and Herzegovina prescribes that free professional assistance is ensured for registration in the birth and death registries for socially vulnerable individuals and members of national minorities, the current practice of the competent authorities has shown that this provision of the Law on Registry Books is not applied. At the same time, the Law on Registry Books of Republika Srpska and the Law on Registry Books of Brčko District of Bosnia and Herzegovina do not contain provisions on the obligation to provide legal or professional assistance to people with undetermined or unknown citizenship. Given that, following the adoption of the Law on Amendments to the Law on Extrajudicial Procedures, all "disputed" cases are resolved in judicial rather than administrative proceedings. As such, it is evident that stateless people, people with undetermined or unknown citizenship, and people without identification documents do not have systematically guaranteed access to free legal aid.

## Recommendations

41. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Bosnia and Herzegovina:
  - I. The Government of Bosnia and Herzegovina should align its domestic regulations with international standards to ensure that every child born on its territory is registered in the registry books immediately after birth, regardless of their citizenship, documentation or immigration status, or that of their parents.
  - II. The Government of Bosnia and Herzegovina should remove legal obstacles in the Law on Registry Books of the Federation of Bosnia and Herzegovina and the Law on Registry Books of Brčko District of Bosnia and Herzegovina, and its accompanying bylaws, to allow registration in the registry books based on other available evidence where it is not possible for children born abroad to BiH citizens to obtain the required documents<sup>45</sup> to register their birth in BiH.
  - III. The Government of Bosnia and Herzegovina should amend the Law on Permanent and Temporary Residence of Citizens of Bosnia and Herzegovina to

<sup>44</sup> The Law on Foreigners of Bosnia and Herzegovina (" Official Gazete Bosnia and Herzegovina ", no. 88/2015, 34/2021 and 63/2023): <http://www.msb.gov.ba/PDF/Zakon%20o%20strancima%20H.pdf>; Amendment Act and supplement of the Law on Aliens ("Official glasnik BiH", number 63/23): <http://www.sluzbenilist.ba/page/akt/0SqRdMx8RS0=;> Law on Asylum (" Official Gazette Bosnia and Herzegovina ", No. 11/2016,): <https://sps.gov.ba/dokumenti/zakoni/Zakon%20o%20azilu.pdf>.

<sup>45</sup> For more information see Article 49.2 Law on registry books of the Republic of Srpska ("Official Gazette of Republic of Srpska 111/2009, 43/2013 i 66/2018).

allow people who do not meet the conditions prescribed in Article 8 to register their residence, by including the possibility to be registered by the competent authority of the Ministry of Interior at the address where they live or through social welfare centres in case of a lack of a formal address or homelessness. It should also ensure that registration is accessible in practice without any discrimination, irrespective of documentation or citizenship status, so that people can fully enjoy their rights.

- IV. The Government of Bosnia and Herzegovina should conduct programmes to promote civil registration, including birth registration, among Romani communities and other minoritised communities. Moreover, registration officers should register all children born in BiH on an equal basis, including those born to minoritised communities without discrimination or delay.
- V. The Government of Bosnia and Herzegovina should conduct outreach programmes to improve connections and relationships and build engagement and trust between national and international authorities and agencies and affected communities. The Government of Bosnia and Herzegovina should also reinforce training and strengthen capacity of frontline service providers to identify and address and prevent statelessness and tackle antigypsyism.
- VI. The Government of Bosnia and Herzegovina should establish a dedicated statelessness determination procedure and protection status in law and in line with good practice to give full effect to the rights enshrined in the 1954 Convention to stateless migrants and refugees in the country.
- VII. The Government of Bosnia and Herzegovina should ensure the right to free legal aid for stateless people, people with undetermined or unknown citizenship, and people without identification documents in all laws concerning the provision of free legal aid in Bosnia and Herzegovina.
- VIII. The Government of Bosnia and Herzegovina and international agencies should strengthen the collection and monitoring of disaggregated data (including by ethnicity, age, and gender) and conduct a comprehensive mapping of statelessness and undetermined nationality including among minoritised communities in order to identify and resolve all remaining cases.