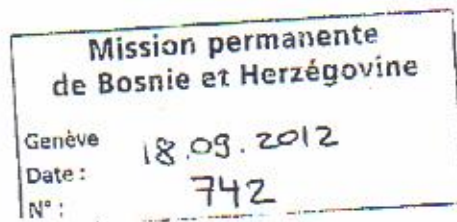


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Distr.: General
13 September 2012

Original: English

ADVANCE UNEDITED
VERSION

**Committee on the Protection of the Rights of All
Migrant Workers and Members of Their Families**
Seventeenth session
10–14 September 2012

Consideration of reports submitted by States parties under article 74 of the Convention

Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Bosnia and Herzegovina

1. The Committee considered the second periodic report of Bosnia and Herzegovina (CMW/C/BIH/2) at its 207th and 208th meetings (CMW/C/SR.207 and SR.208), held on 11 and 12 September 2012. At its 211th meeting, held on 13 September 2012, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's comprehensive second periodic report and appreciates the frank and constructive dialogue held with the delegation. The Committee thanks the State party for its detailed replies to the list of issues and the additional information provided by the delegation.

3. The Committee notes that the countries in which most Bosnian migrant workers are employed are not yet parties to the Convention, which constitutes an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

B. Positive aspects

4. The Committee notes with appreciation the adoption of the following legislative measures:

(a) The amendments of Articles 186 and 189 of the Criminal Code on the definition of human trafficking and smuggling of migrants, in 2010; and

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(b) The Law on Prohibition of Discrimination, in 2009, which shifts the burden of proof on the defendant in civil proceedings where the claimant has established a prima facie case.

5. The Committee welcomes the adoption of the new Strategy on Migration and Asylum and the related Action Plan for the period 2012-2015, in June 2012.

6. The Committee notes with satisfaction the ratification by the State party of the following international treaties:

(a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, in 2010;

(b) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, in 2012;

(c) The Convention for the Protection of all Persons from Enforced Disappearance, in 2012;

(d) ILO Convention No. 181 (1997) concerning Private Employment Agencies, in 2010.

C. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

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

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

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

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

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

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

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

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

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Data collection

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

16. The Committee recommends that the State party pursue its efforts to ensure that the data collection system takes into account all aspects of the Convention and to collect information and statistical data, disaggregated by sex, age, nationality and fields of occupation. In particular, it recommends that the State party include in its next periodic report disaggregated information on the number of Bosnian citizens working abroad, as well as migrant workers and members of their families, including those in an irregular situation, who are living in the State party; on the fields and conditions of employment of migrant workers; and on the enjoyment of their rights under the Convention. When precise information is not available, the Committee would appreciate receiving data based on studies or estimates.

Training on and dissemination of the Convention

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

18. The Committee recommends that the State party:

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

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

2. General principles (arts. 7 and 83)

Non-discrimination

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

20. The Committee recommends that the State party accomplish the harmonization of its anti-discrimination legal framework within a clearly defined

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timeframe, and to include in its next periodic report detailed information on the application of the Law on Prohibition of Discrimination in relation to migrant workers.

Right to an effective remedy

21. The Committee is concerned at the reportedly limited access by migrant workers and members of their families who are victims of discrimination in the State party to effective remedies. In this regard, it notes the very low number of complaints by migrant workers received by the Institution of the Ombudsman.
22. The Committee urges the State party to:
- (a) Ensure that migrant workers and members of their families, including those in an irregular situation, have equal opportunities as nationals of the State party to file complaints and to obtain effective redress in the courts in case that their rights under the Convention have been violated; and
 - (b) Inform migrant workers and members of their families, including those in an irregular situation, about the judicial and other remedies available to them.
3. Human rights of all migrant workers and members of their families (arts. 8-35)
23. The Committee is concerned about the lack of information provided by the delegation on the policies in place to ensure the implementation of the Agreement between the European Community and the State party on the readmission of persons residing without authorisation, and about the lack of procedural guarantees for migrant workers covered by the Agreement.
24. Taking into account article 22 of the Convention, the Committee requests the State party to:
- (a) Ensure that current and future readmission agreements concluded between the State party and host countries include appropriate procedural guarantees for migrant workers; and
 - (b) Implement the Agreement with the European Community in accordance with the provisions of the Convention and provide the Committee with information on its implementation in its next periodic report, which should also include examples of individual cases and statistical data on migrant workers readmitted under this Agreement.
25. The Committee is concerned about the lack of procedural safeguards concerning decisions on detention ("placement under supervision") under the Law on Movement and Stay of Aliens and Asylum, in particular:
- (a) The fact that the Law on Movement and Stay of Aliens and Asylum provides for an extension of the length of detention beyond 180 days in exceptional cases, and the absence of a time-limit in the Law for administrative detention of migrant workers;
 - (b) The possibility of issuing detention orders placing migrant workers under supervision during appellate proceedings against decisions rejecting an application for a residence permit;
 - (c) The fact that residence permits are not extended until a final decision on the legality of the stay of a migrant worker has been taken, which places the migrant worker concerned in a situation of irregularity and vulnerability;
 - (d) The limited accessibility of information and legal aid to appeal detention orders against migrant workers or members of their families; and

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(c) Reports that, in practice, migrant workers apprehended without a valid permission to enter, to stay and to engage in a remunerated activity in the State party are often detained, contrary to information provided by the delegation during the dialogue.

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

(a) Amend the Law on Movement and Stay of Aliens and Asylum to define the maximum length of administrative detention that is not derogable, with a view to preventing prolonged or indefinite detention;

(b) Consider extending residence permits for the period during which an appeal against a decision of the Service for Foreigners' Affairs on the legality of a migrant's stay is pending before the competent administrative or judicial authorities;

(c) Ensure that detention orders against migrant workers, including those in an irregular situation, are only taken as a last resort, on a case-by-case basis, and strictly in compliance with applicable international standards;

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

(e) Ensure timely access by detained migrant workers to effective legal remedies.

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

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

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

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

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

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

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

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

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

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

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

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

36. The Committee recommends that the State party:

(a) Intensify its efforts to ensure that all children of migrant workers are registered at birth and issued personal identity documents;

(b) Provide training to the relevant law enforcement officers on the systematic birth registration of all children of migrant workers; and

(c) Raise awareness on the importance of birth registration among migrant workers and members of their families, especially those in an irregular situation.

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

38. The Committee recommends that the State party:

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

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

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

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

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

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

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5. Provisions applicable to particular categories of migrant workers and members of their family (arts. 57-63)

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

42. The Committee requests the State party to:

- (a) Collect data on the number of seasonal workers in the State party;
- (b) Expedite the adoption of the amendment of article 84 of the Law on Movement and Stay of Aliens and Asylum, establishing a system of registration of seasonal workers;
- (c) Monitor employment practices, in particular in the construction industry, agriculture and domestic work, as well as the working conditions of seasonal workers employed in the State party, including by strengthening labour inspections; and
- (d) Ensure that seasonal workers enjoy the rights protected in part IV in the Convention that can be applied to them by reason of their presence and work in the State party, taking into account that they do not have their habitual residence in the State party;
- (e) Pursue its efforts to sign further bilateral agreements.

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

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

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

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

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

47. While acknowledging the State party's efforts to combat trafficking in persons and commercial sexual exploitation of migrant workers, the Committee is concerned that the Criminal Codes of both Entities and of Broko District have not yet been harmonized with

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the amended provisions of the State Criminal Code, including the new definition of trafficking in Article 186 of the State Criminal Code. It is particularly concerned about the high number of migrant children who are victims of trafficking and about remaining gaps in the enforcement of anti-trafficking laws, in light of the absence of convictions and prosecutions at State level in 2011.

48. The Committee recommends that the State party:

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

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

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

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

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

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

7. Follow-up and dissemination

Follow-up

49. The Committee requests that the State party include in its third periodic report detailed information on measures taken to follow up on the recommendations made in the present concluding observations. The Committee also recommends that the State party take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government, Parliament and the Judiciary, as well as to the relevant authorities at the State, Entity, district and local levels.

50. The Committee encourages the State party to intensify its efforts to involve civil society organizations in the preparation of its third periodic report.

Dissemination

51. The Committee likewise requests that the State party disseminate the present concluding observations widely, including to the judiciary, non-governmental organizations and other members of civil society, and to take steps to make them known to Bosnian migrant workers, domestic and foreign migrant workers living or in transit in the State party.

8. Next periodic report

52. The Committee requests the State party to submit its third periodic report by 1 October 2014.