

Preliminary findings of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on her visit to Bosnia and Herzegovina from 13 to 20 January 2023

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. The Special Rapporteur commends the constructive way in which the Government facilitated her visit, enabling a frank and open dialogue on multiple issues. She particularly thanks the Ministry of Security for their well-organized engagement with her mandate and the solid support in preparation for and then throughout her full visit. She particularly commends the cooperative approach of all authorities at State level as well as entities and the readiness to accommodate emerging requests. She also thanks the Office of the United Nations Resident Coordinator, the United Nations Development Programme and in particular the Office of the High Commissioner for Human Rights in Bosnia and Herzegovina for the excellent support provided during the visit.
3. The Special Rapporteur began her visit meeting with the Minister of 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 Agency, the Border Police, the Parliamentary Assembly of Bosnia and Herzegovina, 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 the Human Rights Ombudsmen of Bosnia and Herzegovina. In Republika Srpska, the Special Rapporteur met representatives of the Ministry of Interior, Ministry of Justice and of the Republika Srpska National Assembly. At the level of the Federation of Bosnia and Herzegovina, the Special Rapporteur met with representatives the Ministry of Interior, Ministry of Justice, Ministry of Finance, Ministry of Labour and Social Policy, the Parliament and the Interdepartmental Working Group of the Government of the Federation of Bosnia and Herzegovina for the prevention and fight against terrorism.
4. During her mission, the Special Rapporteur visited the State Prison of Bosnia and Herzegovina, the Penal Correctional Institutions in Zenica (Federation of Bosnia and Herzegovina) and Foča (Republika Srpska). She also visited the Delijaš Asylum Centre and the Social Welfare Centre Hadžići. She thanks the Government for providing unhindered access to these locations and acknowledges the transparency and constructive nature of those visits
5. The Special Rapporteur also met with the High Representative of Bosnia and Herzegovina. She met a wide range of civil society organizations, activists, academics, lawyers and human rights experts, the UN Country Team and other representatives of the international community. She met with detainees in the three prisons, as well as with returnees and families of individuals still detained in north-east Syria, including women and children with alleged links to designated terrorist groups.

Legacy of conflict, peace building, violence and security

6. Bosnia and Herzegovina is a post-conflict society, with an enduring legacy of divisive and deeply harmful armed conflict (1992-1995) initiated by the disintegration of the Former Yugoslavia. The armed conflict was characterized by sustained and profound violations of international law including war crimes, crimes against humanity and genocide. An international criminal tribunal, the International Criminal Tribunal for the Former Yugoslavia, was established by the UN Security Council in 1993, and parallel domestic accountability was initiated. Some transitional justice measures accompanied peace process implementation including multiple efforts to address missing persons, partial vetting processes, and attempts at truth recovery related to genocide and crimes against humanity. Comprehensive transitional justice has been lacking and should be a matter of priority for local and international stakeholders.

7. The end of hostilities was enabled by political agreement among multiple parties to the conflict and guarantor States in the form of the Dayton Peace Agreement. The Agreement institutionalized a consociational form of power-sharing. The State is composed of two entities (the Federation of Bosnia and Herzegovina, and the Republika Srpska), responsible for overseeing most government functions and bestowed with their own constitutions as well as executive, legislative and judicial powers, as well as the Brčko District. The peace agreement and complex institutional framework enabled the end of violence between conflict protagonists facilitating the development of State and entity institutions, facilitated some meaningful criminal accountability, as well as allowing degrees of normal life for significant parts of the population. Despite meaningful progress by some measures, Bosnia and Herzegovina remains at risk of conflict stasis as conflict forms have transmuted. Progress towards a fully functional democracy is stalled. Challenges of corrosive corruption, opportunistic political blockages, and divisive ethno-nationalist political practice undermine the delicate balance of conflict ending and actively work against the broader interests of individuals and constituent peoples to thrive in a fully functional rule of law state, grounded in human dignity, non-discrimination and meaningful economic opportunity.
8. The Special Rapporteur's mandate pays particular attention to the forms and pathways of violence that (re) emerge in post-conflict societies.¹ . The long-term maintenance of peace in transitional societies requires close and ongoing commitment to peacebuilding, sustaining peace, delivering justice, as well as conflict prevention and resolution. Tending to peace means paying unceasingly attention to the conditions conducive to violence. Sites of unresolved conflict can, in her view, provide ripe conditions for violent extremism conducive to terrorism as well as terrorism. She is deeply attuned to the ways in which revisionism, denialism, polarisation, and institutional impasse are present and take hold in post-conflict settings where conflict drivers remain in place or are exacerbated by the failure to address the conditions conducive to violence. In addressing the pathways conducive to extremism and violent extremism conducive to terrorism she underscores the vulnerability of post-conflict societies to violent extremism and new forms of violence. She affirms that unresolved accountability and institutional stasis provide fertile ground for such political and social extremity. Bosnia and Herzegovina as a transitional state, supported by the international community must attend directly to the legacies of conflict to prevent this continuum.
9. Numerous observers shared their concerns with the Special Rapporteur regarding the prescient danger that violent extremism as well as insidious and unaddressed forms of incitement to violence and hatred pose in Bosnia and Herzegovina. The United Nations Global Counter-Terrorism Strategy and the 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 to life, the right to equality and non-discrimination and the right to participate in public affairs, religious freedom, as well as economic, social and cultural rights. With the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence she expresses alarm at persistent nationalistic rhetoric and divisive political discourse. She confirms the ways in which broader regional instability is enabling and, in some contexts, being directly leveraged to provoke tensions and "extremist" actions and rhetoric in Bosnia and Herzegovina. She holds that political leaders have a direct responsibility to address such rhetoric and actions and take official initiatives to prevent them. At the same time, she affirms the vibrancy and importance of involvement of local communities and grass root peace-building initiatives.

Evaluation of the threat of terrorism

10. The threat of terrorism in Bosnia and Herzegovina is generally assessed as very low, being amongst the countries with the lowest score given by the Global Counter-Terrorism Index. While there have been a number of terrorist attacks in the last two decades, including a bomb attack near a police station in Bugojno in 2010, a gun attack on the US Embassy in Sarajevo in 2011, a gun attack at a police Station

¹ A/77/345

in Zvornik in 2015, and a gun attack against a betting shop in Rajlovać in 2015, there have been no terrorist attacks since 2016.

11. After a delay of more than a year, the Bosnia and Herzegovina Strategy for Preventing and Combating Terrorism 2021-2026 was adopted by the Council of Ministers of Bosnia and Herzegovina on 22 November 2022. The indicators of threat identified include (1) the return and departure of citizens from the battlefields of Syria/Iraq and Ukraine, respectively; (2) money laundering and terrorist financing; (3) the presence of ultra-conservative religious groups; (4) the presence of ethnic/national ‘extremism’ connected with religious narratives and symbolism and the rise of right-wing movements, who use ‘hate speech’ and offensive nationalist content that, 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+ population, combined with an inadequate institutional response, impunity, deepened divisions, institutional normalization, lack of trust in institutions and undermining of the rule of law; (5) an inadequate response to the fluctuation of migrants, allowing it to be viewed as a terrorism challenge.
12. The Special Rapporteur welcomes the Strategy’s customised assessment of threat - which aims to adequately reflect the unique situation of a post-conflict and divided society – and was consensually agreed and recognised at State-level. Yet she is uneasy that this threat assessment, undertaken through the prism of terrorism and violent extremism, predominantly responds to the priorities of the international security agenda and the presence of powerful donors, and does not take full account of the broader post-conflict landscape. In her view, this provides an inadequate picture of the serious security challenges posed by the political settlement in which fundamental aspects of the conflict remain profoundly unresolved and undermines other security and rights priorities that should be at the apex of the national and international agenda. She records a number of issues raised in earnest by many interlocutors and which she also observed, including a deepening ethnic divide entrenched by polarised and sectarian politics following increasingly nationalistic agendas, heightened intolerance, attempts at offsetting the security risks posed by ‘the other’, 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 and illegal funding for groups aimed at the destruction of fundamental rights and freedoms, unaccounted-for foreign security investment, porous borders that allow for organised crime, plus lack of sufficient, independent and transparent accountability for the security, including intelligence, sector.

Legal Framework relating to terrorism

13. Terrorism offences, like many other crimes considered as the most serious under international law, including core international crimes and serious crimes such as organised crime, are regulated by the State-level Criminal Code of Bosnia and Herzegovina. Terrorist acts are defined in article 201(1) as having “the aim of seriously intimidating the population or forcing the authorities of Bosnia and Herzegovina, the government of another country or an international organization to do or not do something, or with the aim of seriously destabilizing or destroying basic political, constitutional, economic or social structures of Bosnia and Herzegovina, other countries or international organizations” have sentences ranging from one to ten years (article 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 (201 (5) (c)), damaging public and private property or the transport system (201 (5) (d)), and the threat of committing such acts (201(5)(i)).
14. The Special Rapporteur notes that this definition does not, in all its aspects, meet the threshold of seriousness 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 an international law-compliant definition of terrorism means that not every act, regardless of its degree of violence, can be considered as terrorist. The lack of specificity also constitutes an infringement to the principle of legal certainty and does not comply with the principle of legality enshrined in Article 15 of the ICCPR. The Special Rapporteur notes that these provisions go beyond the acts that are genuinely terrorist in nature as included in the 19

UN Sectoral Conventions on terrorism offences, Security Council Resolution 1566 (2004) and 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, and the model definition of the Special Rapporteur's mandate.²

15. At 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 organising a terrorist group, 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 that themselves are unrelated to terrorism in the Criminal Code, such as piracy and misuse of telecommunications signs, rendering them overly broad. Article 202(a) criminalises 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 incitement under international law has a very 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 the form of the speech; the extent of the dissemination and the likelihood of harm, including imminence.³ The Special Rapporteur 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.
16. The Criminal Code of Bosnia and Herzegovina was amended in 2014 to include Article 162(b)(2), which criminalises joining a foreign paramilitary or foreign parapolic formation in any way, or training, equipping or mobilising them. The Special Rapporteur was informed that this was included in the Criminal Code to implement the provisions included in Security Council resolution 2178 (2014) relating to addressing what the Security Council qualified as Foreign Terrorist Fighters. In addition to State level provisions, there are definitions and offences of terrorism in the Criminal Code of the Federation of Bosnia and Herzegovina, of Republika Srpska and in the District of Brčko, with different sentences, including longer ones provided for in Republika Srpska. Positively, in referring to terrorism, the 2021-2005 Strategy refers to the ‘definition’ of terrorism included in UN Security Council resolution 1566 (2005). The Special Rapporteur notes the adoption of a law on critical infrastructure in the Republika Srpska only, which appears to have minimal reference to the protection of human rights in this security context. Further, in light of the increasing threat of cyber-attacks across the region, the Special Rapporteur recommends that a comprehensive and human rights compliant strategy and legislation to counter cyber-crimes be developed at State level.

Prosecution of terrorism-related cases

17. During her visit, the Special Rapporteur was informed that as of 2023, the State Court of Bosnia Herzegovina had pronounced sentences amounting to 200 years of imprisonment in 44 terrorism-related cases, including 28 cases against individuals returning from the conflict zone in Syria. In none of these cases had the issue of jurisdiction and competency been disputed to the State-level Court. She notes that in all the domestic terrorism cases, the State-level terrorism related provisions had been used. In cases relating to individuals who had returned from Syria, article 202(d) relating to membership and participation had been used when the offence had been committed prior to the entry into force of the 2014 amendments, while it had been used variously with article 162(b) thereafter. She 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 Syria.

² A/HRC/16/51, para. 28.

³ Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf.

18. She expresses concern, however, that while there appears to be willingness from the authorities of Bosnia and Herzegovina to fully prosecute - in a non-discriminatory manner - the individuals who are and will continue to return from other conflict zone,⁴ such prosecutions are likely to lead to increased jurisdictional challenges with the Entities which may prevent equal use of these provisions in non-terrorism-related cases. Maintaining consistency in the application of the law regarding travel to conflict zones will be critical in the context of ongoing travel and participation in conflicts abroad.
19. The Special Rapporteur welcomes the individualised, tailored prosecutorial strategy of the government that is far from an unproductive blanket approach to prosecution for terrorism offences (including membership, travel and association) that she has seen in so many States. Although it was often highlighted to her by interlocutors from the international community that many of the individuals had received relatively short sentences, in her view this is well explained by the time-frame of their stay in the conflict zones; the length of their stay; their level of association and participation in the non-State armed groups and plea-bargaining agreements, which, without entering the details of the cases, can in her view mitigate the sentences.

Financing of terrorism

20. Article 202 of the State Criminal Code criminalises the financing of terrorist activities. The Special Rapporteur was informed that there has not been a single case of successful prosecution strictly relating to terrorism financing. MONEYVAL adopted its 4th round mutual evaluation report of Bosnia and Herzegovina in 2015, recognizing positive improvements in the AML/CFT framework and removing Bosnia and Herzegovina from the MONEYVAL grey list. However, the report also identified strategic challenges, including with respect to the criminalization of terrorist financing, protections of non-profit organisations identified as vulnerable to terrorist financing abuse, deficiencies in the banking sector, money transfer services and real estate as well as targeted financial sanctions. An asset recovery office has yet to be established.
21. Bosnia and Herzegovina was removed from the EU list of high-risk countries in 2020, following a number of regulatory changes. Now Bosnia and Herzegovina is again undergoing the MONEYVAL mutual evaluation process. The Special Rapporteur notes her concern at the limited engagement with non-profit organisations including with regard to the underlying national risk assessment, and underscores the importance of meaningful civil society participation in line with the right of every citizen to participate in public affairs. She emphasizes the importance of a finely tuned risk-based approach in accordance with the international law requirement of proportionality, as well as Financial Action Task Force Recommendation 8.

Violent Extremism

22. International practice addresses the challenges of “violent extremism”, and “violent extremism conducive to terrorism” and are firmly acknowledged in the Secretary-General’s 2016 Plan of Action to Combat Violent Extremism and the Global Counter-Terrorism Strategy.⁵ The Special Rapporteur notes that human rights treaty bodies have strongly articulated their concerns relating to the use of the term “extremist” activity 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 that ‘extremism’ is not a criminal legal category in Bosnia and Herzegovina, as this

⁴ Three investigations have been initiated against citizens of Bosnia and Herzegovina suspected of having served in para-military or para-police units in Ukraine. One case resulted in an acquittal in first instance, and criminal charges against another individual were later dropped.

⁵ A/HRC/31/65, para. 21.

terminology raises serious concerns in law and practice.⁶ She 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 identified above, and the need for consistent, targeted and human rights compliant regulation of these phenomena.

23. After a delay of more than a year, the Strategy for Preventing and Combating Terrorism 2021-2026 was adopted by the Council of Ministers of Bosnia and Herzegovina on 22 November 2022. While Action Plans for each Entity still need to be developed, the Special Rapporteur notes that this comprehensive has moved away from a security-repressive approach and provides broadly defined mechanisms for the prevention of terrorism, violent extremism⁷ and radicalization leading to terrorism at all levels of government in Bosnia and Herzegovina. Importantly, the strategy also considers gender roles in this context.
24. While violent extremism in Bosnia and Herzegovina could cover a broad range of violent acts the Special Rapporteur found that in fact consideration of recognizing and regulating this 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 that in her view fall in the realm of the right to freedom of religion and the absolute right of belief. By way of further illustration, in her discussions of indicators to identify violent extremism in prisons, she was disappointed to find that State prison officials seemed indifferent to the phenomena of far-right and ethno-centric 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 these nebulous indicators are not only used as the basis for numerous forms of interventions, such as surveillance, monitoring and ‘treatment’⁸— but also fail to grasp what she finds are the most pressing security imperatives emergent in Bosnia and Herzegovina. She believes further investment in expertise and capacity-building in addressing these manifestations is necessary.
25. 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. She is well aware that properly balancing freedom of expression and the prohibition of incitement to hatred is no simple task, but she recalls that the question of distinguishing those forms of expression that should be defined as incitement to hatred and thus 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 clear prosecution of acts that amount to incitement to hatred as described under international law,⁹ and in article 145(a) of the Bosnia and Herzegovina Criminal Code. She welcomes prompt political responses to incitement to hatred and encourages more of it. An independent judiciary is therefore a vital component in the process of effectively adjudicating cases related to incitement to hatred. She also notes in this respect the fundamental responsibility of the media.

Repatriation

⁶ A/HRC/31/65, para. 21.

⁷ 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 recognising that there are various forms of violent extremism, including ideological, religious, ethno-nationalist, far-right and far-left. The document also refers to “radicalisation leading to terrorism” defining it as a dynamic process during which a person is brought into a state of acceptance of terrorist violence as a possible, perhaps even justifiable, action that may lead this person to advocate, support or engage in terrorism.

⁸ Including in school and prison settings that can securitise a range of individuals including children.

⁹ 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.

26. The Special Rapporteur has previously addressed the situation of Bosnian nationals arbitrarily detained in North-East Syria¹⁰ noting the extremity of the current situation in the territory. With thirteen other Special Procedures mandate holders and two Working Groups, the Special Rapporteur holds that multiple human rights violations are experienced by Bosnian mothers and children held in Al Roj and Al Hol camps, specifically finding 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 alongside multiple violation of the rights of the child. These profound concerns for the material situation in the camps have been qualified by the European Court of Human Rights as constituting “a real and immediate threat to [women and children’s] lives and physical well-being, on account both of the living conditions and safety concerns in the camps, which were 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.”¹¹ She has expressly affirmed the obligations of the government to urgently repatriate its nationals, and the European Court of Human Rights has requested Council of Europe Member States 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” is given to the children’s best interests, together with their particular vulnerability and specific needs.
27. According to the figures provided by the authorities, between 2012 and 2016, approximately 250-300 nationals of Bosnia and Herzegovina went to Iraq and Syria to join UN designated terrorist groups including the Islamic State.¹² The government has confirmed that there currently are 30 women and 66 children deprived of liberty in Al Hol and Al Roj camps in North-East Syria; 24 children whose Bosnian father died and who are in the camps with their non-Bosnian mother; one unaccompanied 8-year-old Bosnian child in the camps, as well as 22 men held in prisons or other detention sites; one minor in detention; and 10 women and 18 men and 11 children in the region of Idlib. Thus far, while a number of individuals returned individually, 26 individuals (8 men, 6 women and 12 children) have returned through organized repatriation operations carried out with the assistance of the United States in 2019.¹³ Several men and women were returned while their family members (husbands or wives and children) remained in detention. She urges the Government to pay particular attention to the situation of these two very vulnerable children.
28. The Special Rapporteur positively acknowledges the expertise and role of the Ministry of Labour and Social Policy of the Federation of Bosnia and Herzegovina. She was 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, and this model is being shared in the region. She commends the government for prioritizing the integration and social welfare of the women and children that have returned. Specifically, she sees evidence of best practice in relation to the applied expertise of the social work, psychological and child-centered Social Welfare Centres with returnees. Such expertise and practice is rarely found in global responses to repatriation and she notes its positive exchange with other countries. She highlights that Bosnia and Herzegovina is one of the few countries that has fulfilled its international obligations and returned not only women and children but also men from the conflict zone.
29. The Special Rapporteur met with several men and women who had returned. Most have experienced significant conflict trauma. On return, all eight men were criminally convicted. Some of the men have completed their prison sentences and have returned to their communities. None of the returning women were charged with criminal offences, and they were all able to benefit from the privileged status that

¹⁰ AL BIH 1/2021.

¹¹ ECtHR, *H.F. and Others v France*, Applications nos 24384/19 and 44234/20, 14 September 2022.

¹² That figure might be higher, up to over 360 individuals: 192 men, 67 women, and 104 children.

¹³ One man was repatriated through a repatriation operation to Kosovo in April 2019, and all others were repatriated directly to Bosnia and Herzegovina in December 2019.

allows them to refuse to testify against their spouse, and to have their identity protected. The Special Rapporteur welcomes this humane and legally sound prosecutorial strategy that does not aim to indiscriminately give lengthy prison sentences to all those who were in the conflict zones, absent evidence of their roles in the non-State armed group, the possibility of coercion, particularly for the women and children, and that at the same time takes into consideration the best interest of the child to remain with their mothers upon return, a key element of successful reintegration. 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, she is troubled that limited efforts seem to be advanced to address broader criminal accountability, commensurate with available evidence and fair trial procedures, for the very serious violations of international law that may have been committed by Bosnian nationals in Syria and Iraq. She understands the challenges of outstanding caseloads relating to war crimes from the country's armed conflict. Nonetheless, Bosnia and Herzegovina with ongoing support from the international community, is uniquely situated to help fill the impunity gap related to crimes which occurred in Syria and Iraq.

30. The Special Rapporteur was informed that Bosnia and Herzegovina intends to repatriate the remaining men, women and children from the camps and she commends that this has been affirmed at the highest level of government through the Conclusion of the Presidency of Bosnia and Herzegovina of 22 December 2022.¹⁴ In her view, this positive example should be followed by other States. She was made aware that the initial unplanned repatriation of 2019 had posed a number of challenges, in particular important difficulties for the women in registering the birth of their children and giving them legal status to enable them to access medical, social and educational services, involving lengthy and expensive legal and judicial processes in which the authorities were described as overly formalistic given the exceptionality of the circumstance. While these deficiencies have been corrected for this initial group, the Special Rapporteur urges the authorities to ensure that the next group of returnees do not face similar circumstances in which they struggle to give 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 child trauma capacity to sustain the forthcoming repatriation.
31. The Federation of Bosnia and Herzegovina has developed a national Repatriation and Reintegration plan, adopted in the autumn of 2022, to address the reception those individuals who will be repatriated from camps in Syria and Iraq. The Special Rapporteur recognizes intense inter-agency consultation on the development of this plan and the role of the Federation interagency coordinating body to oversee repatriation efforts. She was surprised to find that there was limited substantive consultation with the families of those currently detained in North-East Syria. The Special Rapporteur underscore the positive and necessary contribution that families can make to enabling and supporting successful repatriation and reintegration. She is concerned that families and local returning communities have been kept at 'arms' length' from the planning for repatriation.¹⁵ She recommends the government both at the State and Entities level view families as partners in the repatriation process. She also recommends that the government ensure family unity in repatriation and ensure that mothers and children are returned together. She recommends that family status and nationality be adjusted to this end. They are indispensable to successful reintegration and long-term positive outcomes for this group.
32. The Special Rapporteur commends positive planning but stresses that it is not a substitute for actual repatriation, which must be urgently undertaken to address the particular rights and needs of Bosnian citizens and their families. Despite the thoughtful and well-designed plans being developed for reception, the Special Rapporteur is concerned that there appear to be no concrete plans in place to

¹⁴ Decision 01-50-4169-29/22, to "ensure a safe return ...as well as the reintegration" of citizens "who are currently living in very difficult conditions in the camps and detention units in Syria and Iraq.

¹⁵ She highlights the case of Adela Dolamic and her three children where 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.

concretely advance repatriation. Such indicators would include concrete engagement with family members, preparation of the community, sharing of information with relevant authorities from the relevant security actors, and as has occurred in other countries enabling medical, psycho-social and child experts from Bosnia and Herzegovina to engage with the relevant authorities or those facilitating repatriation in north-east Syria. She validates the special protection for the child in the constitution of Bosnia and considered these domestic obligations compliment the prescient international law obligations in respect of return and repatriation.

Penal and Correctional Facilities

33. The Special Rapporteur visited three penal and correctional facilities during her visit. She thanks the correction and prison authorities for their excellent cooperation and openness to her visit. She is aware of a past history of overcrowding and noted violations of fundamental human rights for incarcerated persons in the territory of Bosnia and Herzegovina. She accepts that significant efforts have been made with substantial support from the Council of Europe on modernization and ensuring the physical suitability of the prison infrastructure, as well as ongoing training of prisoner officers. These efforts are visible in the operation of prisons visited and she highlights the significant degree of professional expertise, humane approach, and positive thinking on rehabilitation of prisoners and their long-term re-entry into society encountered particularly in the Zenica and Foča prisons. She confirms that the new State prison in East Sarajevo meets all international standards in respect of space, facilities and staffing levels, and positively commends the structural inclusion made for disabled prisoners. She encourages international support in ensuring the upkeep of this prison, given the limited resources available to the State and the serious infrastructural needs of other prisons, and national authorities to use the experience that exists in older prisons to train its young staff.
34. The Special Rapporteur interviewed several returnees in the State and Entity penal and correctional facilities. She highlights the integrated, individually centred approach to prisoner rehabilitation adopted by all prisons and acknowledged its positive effect on the prisoners she interviewed. She affirms significant experience with serious criminal offences at the Entity level in penal and correctional facilities. Overall, she commends the individualized approach to the assessment of prisoners once they arrive in the penal and correctional facilities, the recognition of vulnerability following sentencing, the focus on incentives to positive progression in the prison facilities, works skills, clubs and exercise opportunities. In the State prison, Bosnia and Herzegovina has a unique caseload, involving both a large number of persons convicted of war crimes, and persons convicted of terrorist offences. Her gained experience with prisoners in the former gives significant skills to management of the latter category.
35. Under the relevant legislative provision under State law, no reduction in sentence for prison compliance can be applied to tariffs for terrorism related offences.¹⁶ She highlights the fundamental discrepancy in sentencing guidelines whereby prisoners charged of the most serious international crimes, may receive a diminution in sentence for positive behaviour but those convicted of any terrorist offence cannot. She heard multiple views that this position works against positive reintegration and diminishes incentives for positive outcomes in the prisons. She recommends a change to the law to ensure the benefits of a progressive incentivized carceral model apply equally to all prisoners. The Special Rapporteur also highlights the lack of any probation system in place in Bosnia and Herzegovina. In respect of the criminal offences related to terrorism, extremism, hate-crimes, and incitement she underscores the importance of such a system as both a support to prisoners returning to communities, but also the valuable role a probation system plays in prevention and the reduction of recidivism. She strongly recommends that such a system be adopted at both entities and State level and encourages ongoing investment in prison management capacity through probation.
36. 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 in place a national

¹⁶ She highlights this is not the case in Republika Srpska.

preventative mechanism. The adoption of the Law on Amendments to the Law on the Human Rights Ombudsmen Institution of Bosnia and Herzegovina designating the institution as the national preventive mechanism is pending. It is important that this system is implemented on the ground as a matter of urgency.

Civil Society

37. 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 the increasing difficulties faced by civil society throughout Bosnia and Herzegovina. She notes that contrary to the Financial Action Task Force recommendations, the entire civil society sector has been assessed as “high risk” by the Government, apparently through risk assessment in which limited consultation with the Non-Profit Organisation sector has occurred. It has been suggested to the Special Rapporteur that a key reason for these classifications is the unrepresentative nature of the central register of civil society organisations held at State level (where out of 27,000 entries, only 15,000 are accounted for). However, the Special Rapporteur is clear that authorities cannot make civil society organisations carry the heavy burden of this classification which is clearly the result of the State’s failure. It is worth noting that civil society actors themselves highlight the risk that these unaccounted-for actors make them carry.
38. The Special Rapporteur notes that in Republika Srpska there have been a number of cases taken against a range of civil society actors, in what can only be qualified as judicial harassment and smear campaigns. She notes a number of extremely worrying developments which could, wittingly or unwittingly, result in the restriction of civic space. These include the announcement of legislation that would criminalise defamation, disinformation and hate speech in Republika Srpska, and of a law on the financing of civil society organisations in the Federation of Bosnia and Herzegovina.
39. The Special Rapporteur acknowledges NGOs concerns that their experience is being used and disenfranchised by large international actors. Fundamentally, commodification of NGO’s 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 that are directly implemented by international actors including UN, OSCE and other regional actors. Civil society is essential to effective post-conflict transition, and to prevention of terrorism and violent extremism and meaningful partnerships must be advanced.

Institutional Matters

40. 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 their working relationships, which prevent detached oversight from the intelligence sector. Political stalemate has also meant that these oversight bodies have been stymied in their work. She thus calls for substantial State investment in independent and resourced intelligence oversight capacity.
41. Judicial independence is essential to ensure the adequate functioning of the legal system. It is also critical to regulate terrorism and violent extremism fully and adequately. The need for root and branch judicial reform is also premised on the vital security and human rights interests of Bosnia and Herzegovina.
42. The Special Rapporteur is deeply concerned at practices of citizenship-stripping on national security grounds, which is not compliant with international law, particularly when it leads to statelessness. She identifies the case of Abu Hamza, who was stripped of his citizenship in 2001. She holds it unacceptable that he has no identity documents, cannot access medical insurance, paid employment, or banking services, and lacks meaningful access to any fundamental rights.

43. Consistent with the Special Rapporteur's follow-up report on secret detention practices¹⁷ (A/HRC/49/45), she remains deeply concerned about the situation of persons who were rendered and tortured through black sites and ultimately delivered to the detention facility at Guantanamo Bay, Cuba with the acquiescence of the government of Bosnia and Herzegovina. She is clear that these individuals, survivors of torture, must have their legal status adjusted, must be treated medically and legally as torture victim survivors and must be compensated for the violations of international law they were subjected to.
44. The Special Rapporteur highlights the importance of increased UN human rights capacity, including to support transitional justice efforts, in the highly complex context and for the issues raised in this report, through additional human and financial resources.

¹⁷ A/HRC/49/45