

The European Union's IPA Civil Society Facility Programme 2012:
Support to Civil Society Organizations (CSOs)
CHILDREN'S ROLE FOR A STRONG CIVIL SOCIETY

RESEARCH ON THE STATUS OF CHILDREN'S RIGHTS & ACCESS TO JUSTICE IN BiH

FINAL REPORT



Project implemented by:



EPLO
European Public Law
Organization

The project is funded
by the European Union

This publication has been produced with the assistance of the European Union.
The contents of this publication are the sole responsibility of the implementing
partners and can in no way be taken to reflect the views of the European Union.

INSTRUMENT FOR PRE-ACCESSION ASSISTANCE 2012
CIVIL SOCIETY FACILITY PROGRAM 2012
CHILDREN'S ROLE FOR A STRONG CIVIL SOCIETY

**RESEARCH ON THE STATUS OF CHILDREN'S RIGHTS AND
ACCESS TO JUSTICE IN BiH**

FINAL REPORT

EUROPEAN PUBLIC LAW ORGANIZATION (EPLO)

JUNE 2014

The research report is part of the project “Children’s Role for a Strong Civil Society”.
The project is implemented by



EPLO
European Public Law
Organization



The project is co-funded by the European Union



Data collection team:

- Andrea Puhalic
- Dimitra Soulele
- Dragan Vujanovic
- Emir Prcanovic
- Tatjana Jankovic

Author of the report: Dimitra Soulele

This research was conducted within the framework of the project “Instrument for pre-accession assistance 2012 - Civil society facility program 2012 ‘Children’s role for a strong civil society’” of the European Commission. The contents of this publication do not necessarily reflect the views of the European Commission nor do they imply endorsement of the views expressed herein. The final text and any mistakes remain the sole responsibility of the author.

EXECUTIVE SUMMARY

Bosnia and Herzegovina (BiH) has three constituent peoples, two autonomous entities, a third region, a central government and several local governments, presidents and parliaments, ten cantons and numerous municipalities. Thus, it is inevitable for its complex political and administrative structure to be reflected on the enforcement and implementation of the law, especially when it comes to the legal protection of children. Social protection policies are adopted at an entity level. Nevertheless, the responsibility for their implementation is transferred to lower levels of local community government. At the same time, poverty has always plagued the country. According to recent data, more than 15% of the population lives below the poverty line, while families with three or more children are often the ones suffering the most. This raises serious concerns that the number of children living in poverty is continuously increasing. Additionally, many children are exposed to discrimination, especially in the fields of education and social protection, as well as to various forms of abuse and exploitation -an ascending trend is also identified with regard to domestic violence. Among the most vulnerable groups are children of displaced persons, unaccompanied and children without parental care, children belonging to minority groups, and children with disabilities.

Therefore children's living conditions and experiences, as determined mainly by origin, family, social and economic background, may increase risks, threats and vulnerability factors. In the context of the current research, it is firstly aimed to identify the common attributes of the children living in vulnerable situations, so as to indicate the need for an inclusive and holistic approach to childhood, aiming to reduce the categorization factors that likely lead to discrimination and stigmatization and strengthen their rights' realization and access to justice. According to research findings on the living conditions of children, particularly those belonging to vulnerable groups, population overlaps exist. Most children's lives are affected by a wide variety of vulnerability factors. Therefore, despite the categorization of children (e.g. poor, without family, institutionalized, victims of abuse, etc.), there are many common characteristics and behaviors. Considering, for example, a very common situation experienced by many children: a child may live in poverty, be a victim of domestic violence and a victim of discrimination at school.

Based on research findings, among the key indicators for children's legal protection participants prioritize, is the legally based, coordinative, monitoring mechanisms. The lack of a coherent monitoring and coordinative body, with increased and mandatory powers, is considered to be of great significance; especially when taking into account the political and administrative structure of the country. The aforementioned absence results in inconsistencies and disparities both on a law enforcement and law implementation level. This does not only violate children's rights and hinders their access to justice, but also contributes to additional inequalities and discriminations against children, since they are obviously legally unequal. The main identified legal gaps are related to their civil status (birth registration and citizenship) that consequently results in restrictions to the realization of many other rights (health, education, etc.),

the social protection system, and the guardianship system.

Acknowledging that access to justice is not only a right, but the means to ensure the realization of other rights, the legal protection of children is considered in conjunction with the provisional and implementation framework pertaining to children's access to justice. Based on research findings, among the key factors for ensuring in practice children's access to justice are: a) to firstly ensure the provision of legal protection (based on the evaluation of the abovementioned key indicators), b) the safeguarding of children's legal representation, and c) the legal aid system for children. Despite the fact that the right to representation is legally preserved, in practice, the limited capacities of parents and the defects of the guardianship system may constitute a serious obstacle, preventing children from accessing justice. Additionally, there is no comprehensive legal framework on a national level, providing for a legally based aid system, that would safeguard the unobstructed access to justice. Additionally, the required criteria, along with the bureaucratic procedure that shall be followed for accessing the system, usually discourage children (and their parents) from applying for free legal aid.

The legislative framework concerning children's rights and legal protection, as well as the key features and problems faced by children, should be taken into consideration towards a combined rights-based and needs-based approach, along with the respect to the individuality of each child. Towards this direction, main core issues related to the effective implementation of children's legal protection should be considered, i.e.: a) the cooperation and coordination, monitoring and evaluation of key actors and agencies in the general structural and administrative context, b) the performance and capacity level in conjunction with the allocation of material, and the development of human resources in the field of children's rights, c) the level of awareness (public and beneficiaries'/legal awareness) in conjunction with consultation, participatory processes and advocacy issues with regard to the promotion of children's rights. Based on research findings, the low indicators concerning the first two issues (a, b) are among the main factors related to serious implementation gaps with regard to children's protection. At the same time, the issue of legal awareness should be highlighted. Despite the legislative efforts on a central level and the initiatives on a local level, children's awareness remains extremely poor, especially among those living in socially excluded groups.

With regard to the general context and on the basis of research findings, it is highly suggested -on a legislative and administrative level- to proceed to the establishment of a central coherent monitoring mechanism for children's protection and access to justice, whose powers shall be applied nationwide. Additionally, a combined approach for the identification of children will be suggested, based on the evaluation of their living conditions, as well as their claims and needs. The categorization of children on the basis of social, ethnical and other relevant criteria may result to further discrimination; it may also result in underestimating the population overlaps and the need for a coherent and inclusive approach towards children's protection. Last but not least, for any activity or initiative related to the strengthening of children's legal awareness, not

only the content, but also the context should be taken into account. Meaning that apart from schools, more activities should be organized on a regular basis within institutions, children's communities, etc. Simultaneously, special awareness campaigns should be organized, targeting on children belonging to vulnerable groups.

CONTENTS

01.	EXECUTIVE SUMMARY	07
02.	INTRODUCTION	13
03.	PART 1	17
	GENERAL OVERVIEW OF THE CURRENT SITUATION: FOCUSING ON CHILDREN POPULATION	
04.	PART 2	
	LEGAL PROTECTION OF CHILDREN: THE LEGISLATIVE AND POLICY FRAMEWORK PERTAINING TO CHILDREN'S RIGHTS AND ACCESS TO JUSTICE	25
	A. CHILDREN'S RIGHTS LAW IN BiH: GENERAL OVERVIEW	25
	B. PROVISIONS FOR THE PREVENTION AND PROTECTION AGAINST CHILDREN'S RIGHTS VIOLATIONS: FOCUSING ON THE PROTECTION OF CHILDREN IN THE MOST VULNERABLE SITUATIONS	30
	C. ACCESS TO JUSTICE	40
	C.1 Legal capacity and representation, guardianship and procedural safeguards as prerequisites for children's access to justice	40
	C.2 Children in contact with the law	41
	C.3 Legally defined system of legal aid	46
05.	PART 3	49
	THE IMPLEMENTATION FRAMEWORK PERTAINING TO CHILDREN'S RIGHTS AND ACCESS TO JUSTICE	
	A. ADMINISTRATION – COORDINATION – COOPERATION: KEY ACTORS AND AGENCIES FOR CHILDREN'S PROTECTION	49
	B. ALLOCATION OF MATERIAL AND DEVELOPMENT OF HUMAN RESOURCES: PERFORMANCE AND INDIVIDUAL CAPACITIES TOWARDS THE IMPLEMENTATION OF CHILDREN'S PROTECTION	52
	C. CONSULTATION – INCLUSIVE PARTICIPATION OF CHILDREN: LEGAL AWARENESS AND ADVOCACY TOWARDS CHILDREN'S PROTECTION	55
06.	CONCLUSIONS AND RECOMMENDATIONS	58
07.	MAIN SOURCES	61
08.	ANNEX 1	64

INTRODUCTION

About the Project

The Project aims to contribute to the development of a more dynamic civil society, actively participating in the public debate on human rights and social inclusion. Within this context, the main objective is to support the competent actors in BiH towards the improvement of their capacities in the area of justice and security, especially with regard to the promotion and protection of children's rights. Towards this direction, the legislative framework pertaining to children's rights and access to justice is examined in a holistic way, both on a provisional and an implementation level, so as to formulate coherent conclusions on the current situation and recommendations for further improvement of the relevant legislative and policies responses.

The overall duration of the project was 19 months, starting in January 2013, and it is based on the cooperation between local and EU experts. The main activity included an 8 month research on the status of children's rights and access to justice in BiH. The monitoring and empirical research is developed, retrospectively, through the valuable input from competent state and non-state stakeholders, as well as from the direct interaction with children through the implementation of special workshops. The findings of this research are shared and discussed in the context of a final workshop where the participating stakeholders are acquainted with the outcomes, enabled to better understand the current state of affairs, and urged to support the effective implementation of children rights, especially by emphasizing on the required safeguards for children's access to justice.

Rationale – key questions - core concepts

It is acknowledged that the mere adoption of children's rights and protection legislation does not automatically safeguard the actual and proper implementation of the related provisions. The UN Convention on the Rights of the Child is the most widely ratified international instrument and the most coherent legal tool supporting the protection of children, although it is also one of the most commonly violated treaties worldwide. BiH has ratified the Convention, along with other international instruments and norms on children's rights. However as it derives from state and alternative monitoring reports, there are still several gaps documented on the implementation level.¹

It is also acknowledged that *access to justice is a fundamental right in itself and an essential prerequisite for the protection and promotion of all other human rights.*

Therefore, *it is not just a right, but also a key means to defend other rights*, including children's rights²

1 Indicatively see: Committee on the Rights of the Child - Consideration of the reports submitted by States parties under article 44 of the Convention - Combined second to fourth periodic reports of States parties due in 2009, Bosnia and Herzegovina, [24 February 2010], CRC/C/BIH/2-4, 14 June 2011.

2 United Nations, Access to justice for children, Report of the United Nations High Commissioner for Human Rights, A/HRC/25/35, 16 December 2013, see also UNPD, Programming for Justice: Access for All, A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice, 2005, UNICEF Common Approach to Justice for Children, 2008

According to the above, the main objective of the current Project is to support the competent actors in BiH towards the improvement of their capacities in the area of justice and security, especially with regard to the promotion and protection of children's rights. Towards this direction, the legislative framework pertaining to children's rights and access to justice is examined in a holistic way, both on a provisional and an implementation level, so as to formulate coherent conclusions on the current situation and recommendations for further improvement of the relevant legislative and policies responses.

Within the objective of the Project, the Research questions are formulated as follows:

- ❖ To examine the current status of children in BiH, particularly those who are in most vulnerable situations and run the highest risk of victimization
- ❖ To examine children's rights law and access to justice in the general context of the legislative framework
- ❖ To focus on the legislative and practical safeguards for the legal protection of children and their access to justice
- ❖ To identify the implementation gaps and the determinant factors for these gaps

The legal protection of children³ as preserved in the Convention on the Rights of the Child and access to justice is the main guiding compass for the analysis. It refers to "the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards, including the Convention on the Rights of the Child".⁴ It applies to "civil, administrative and criminal spheres of national jurisdictions, including customary and religious justice mechanisms, international jurisdictions, as well as alternative and restorative dispute resolution mechanisms, and covers all relevant judicial proceedings, affecting children without limitation, including children alleged as, accused of, or recognized as having infringed the penal law, victims and witnesses⁵ or children coming into contact with the justice system for other reasons, such as regarding their care, custody or protection."⁶ It requires "the legal empowerment of all children. Children should be enabled to access relevant information and to effective remedies to claim their rights, including through legal and other services, child rights education, counselling or advice, and support from knowledgeable adults".⁷

3 The Convention on the Rights of the Child defines a child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier" (article 1).

4 UNICEF, Common Approach to Justice for Children, 2008 p. 4.

5 Note that "Child victims and witnesses" denotes children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders; Economic and Social Council resolution 2005/20, article 9 (a).

6 United Nations, Access to justice for children, Report of the United Nations High Commissioner for Human Rights, A/HRC/25/35, 16 December 2013.

7 UNICEF, Common Approach to Justice for Children, 2008 p. 4.

Methodology – target groups - limitations

The Research combines the qualitative with the methodological approach, while more than two methods and technical tools are used to conduct it (triangulation).

A desk research (at initial stage) was followed by an empirical research, using different technical tools: a) a questionnaire and a semi-structured interview guide (for competent participating stakeholders and key actors) and b) a special workshop with children.

The targets groups:

- BiH children, with a special focus on unaccompanied minors, disabled children, Roma, children affected by poverty and children living in institutions
- Competent state (local and national) and non-state (CSOs) stakeholders and professionals directly involved in children's protection and access to justice, i.e. in the fields of law enforcement and justice, social/welfare protection, health and education

Participants were selected so as to ensure:

- Geographical balance (both entities/10 cantons, Brčko district)
- Representation of state and non-state sector
- Covering all fields and relevant aspects of the research questions
- Direct input from children

Data selection was made by a team on a local level:

- 111 questionnaires were distributed
- 35 interviews were scheduled
- 2 workshops were organized (with the participation of 29 children)

Limitations:

The findings of this research have to be interpreted in the light of the limitations that are brought to the analysis. It should be outlined that a) not all the questionnaires were thoroughly completed, mainly because some of the participants thought that some questions were not related to their own field, which however could be considered as research finding itself, b) data from some interviews were quite poor, mainly due to limited time, c) conflicting information coming from professionals working in different services and areas. The latter could be considered as a research finding, since it reflects the disparities on administration and services on a local level.

PART 1

A. GENERAL OVERVIEW OF THE CURRENT SITUATION: FOCUSING ON CHILDREN POPULATION IN BiH

The current State of Bosnia and Herzegovina (BiH) was established in 1995 under the Dayton Peace Agreement. Bosnia and Herzegovina is comprised of two autonomous entities: the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS), and a third region, the Brčko District, which is locally governed. The Federation of Bosnia and Herzegovina consists of 10 federal cantons. The country has three constituent peoples -Serbs, Croats and Bosnians- and a three-member Presidency, representing each major ethnic group. There is a central government, while entities have their own governments, presidents and parliaments, as well as executive, legislative, and judicial bodies.⁸ Social protection policies are adopted at an entity level. However, the responsibility for their implementation is transferred to lower levels of local community government. The complex political and administrative structure is reflected on the enforcement and implementation of the law, especially when it comes to the legal protection of children. It should also be noted that BiH became member of the Council of Europe (2002), is a founding member of the Mediterranean Union (2008), a potential candidate for membership to the EU and a candidate for NATO membership since April 2010.

Poverty has always plagued the country, and is one of the basic problems for children, since “every second resident of this country is socially disconnected.”⁸ “Poverty as a side-effect of circumstances prevailing in (the) society and the entire social and economic situation in the country has a direct impact on children population.”⁹ According to recent data, 17.8% of the population live below the poverty line, with another third living close to this line, mainly due to high unemployment rates. Moreover, it is also found that families with three or more children live below the poverty line.¹⁰ This raises serious concerns that the number of children living in poverty is continuously increasing. It is noted that “almost one in fifty children (3%) under 5 years of age in the Federation of BiH are malnourished.”¹¹ This percentage is quite higher amongst Roma children -up to 24,2%.¹²

8 Informal Network of NGOs “Stronger voice for children”, ALTERNATIVE REPORT ON CHILD RIGHTS SITUATION IN BiH FOR THE PERIOD 2005-2011 - With the support of Save the Children Norway.

9 Committee on the Rights of the Child, Consideration of the reports submitted by States parties under Article 44 of the Convention - Combined second to fourth periodic reports of States parties due in 2009, Bosnia and Herzegovina, [24 February 2010], CRC/C/BIH/2-4, 14 June 2011.

10 Council of Ministers of Bosnia and Herzegovina, ACTION PLAN FOR CHILDREN of Bosnia and Herzegovina (2011–2014), Sarajevo, July 2011.

11 Committee on the Rights of the Child, *ibid*

12 Informal Network of NGOs *ibid*

At the same time, children are “exposed to discrimination, which is a consequence of social status, and, as such, suffer various forms of discrimination at school by their fellow classmates, and often by teachers as well.” According to the UN Committee on the Rights of the Child, racial discrimination remains serious and widespread. This fact is mainly reflected on the education field, as well as on the violation of rights of Roma children, on children with disabilities, and generally on vulnerable groups.¹³ It is indicative that 93% of these children haven't been included in any pre-school programs at all. Moreover, in many schools, the conditions are very poor and inappropriate in terms of educational, living and safety standards.¹⁴ According to recent data¹⁵, BiH is below the international average line, considering the number of students that claim to “be happy to be in school”. Furthermore, many pupils and teachers argue that discrimination does exist, while many students often avoid interaction with children of different nationalities¹⁶. According to “data from the RS Ministry of education and culture, 206 primary school students during the 2006/2007 school year did not attend classes. Children mostly leaving school are Roma.”¹⁷

Based on previous research findings, it is estimated that “children are exposed to various forms of abuse: domestic violence (15.10% in 2004 and 22% in 2009); physical punishment of children in general (23.50% in 2004 and 21% in 2009). This data also shows how the problem of abuse on the streets (23.30% in 2004 and 37% in 2009) and at schools (25.40% in 2004 and 11% in 2009) is evident.”¹⁸ Additionally, an ascending trend is identified with regard to domestic violence.¹⁹ The economic exploitation of children, especially through child labor and begging (defined as one of the worst forms of child labor), should be also highlighted. Around 6% of children between the ages of 5 and 14 are engaged in some sort of labor outside their home, while 5% in the family business. Moreover, it is stated that “100-200 children between the ages of 1 and 15 are exposed to economic exploitation on a daily basis in large city environments.” Most of them are Roma.²⁰ It should also be noted that, among the trafficking victims identified, most come from poor or dysfunctional families. “NGOs consider that the

13 Committee on the Rights of the Child -Concluding observations on the consolidated second to fourth periodic reports of Bosnia and Herzegovina, adopted by the Committee at its sixty-first session (17 September–5 October 2012),CRC/C/BIH/CO/2-4,29 November 2012.

14 Informal Network of NGOs *ibid*.

15 TIMS-trends in international Mathematics and Science Study,2007.

16 Research “Discrimination of children at BiH school“, Save the Children Norway SEE.

17 “The poor coerced to leave the school”, Nezavisne novine, 28.12.2008 in Informal Network of NGOs “Stronger voice for children”, *ibid*.

18 The research regarding the status of child rights at primary and secondary schools (first and second grade of secondary school), carried out by the NGOs “Our Children“ and “Hi Neighbor“ in BiH in 2004 and retest conducted in 2009 in Informal Network of NGOs “Stronger voice for children”,*ibid*.

19 Agency for Statistics, Social Protection, Sarajevo, 2002 – 2007, Survey “Domestic Violence – Development Study in BiH” .Institute of Criminology and Safety Studies of in Sarajevo 2005.

20 Data from the Office of the State Coordinator for fight against trafficking referred in Informal Network of NGOs “Stronger voice for children”, *ibid*.

real number of these victims is much higher”.²¹ A recent report on Violence against Children showed that only the registered children victims of violence are “650 (amongst them, 66 children under the age of 4), that children are the victims of various forms of violence, usually emotional (33.7%) and physical (21.8%), and that both boys and girls are equally exposed to violence.”²²

Among the most vulnerable groups are children of displaced persons, unaccompanied and children without parental care, children belonging to minority groups, and children with disabilities. Indicatively, it is noted that:

- “Even 16 years after the war, the issue of refugees and displaced people still hasn’t been resolved.” Out of the total number of displaced persons, around 17% are children (of returnees), living in harsh conditions.²³
- There are no exact data neither on the number of migrant minors nor on unaccompanied children, mainly due to the continuing migration flows (BiH still being transiting route and not a destination country) and since minors, unaccompanied or not, usually leave Bosnia and Herzegovina before they are located by authorities. According to data provided by the Ministry of Security (collected in 2009 and 2010), movement trends of asylum seekers in the country are changing, indicating an increase in the number of international protection seeker requests for unaccompanied minors²⁴, while, a number of unaccompanied minors are detained in the Immigration center under conditions that are not adapted to their age and needs.²⁵
- The number of children without parental care, who are accommodated in state and

21 Country Report presented at the Multiple Indicator Cluster Survey and research conducted by “The land of children”, research conducted by the BiH Ombudsman in 2009, referred in Informal Network of NGOs “Stronger voice for children”, ALTERNATIVE REPORT ON CHILD RIGHTS SITUATION IN BIH FOR THE PERIOD 2005-2011 - With the support of Save the Children Norway.

22 Report on Violence against Children in the Republic of Srpska, 2014 (the Report is the result of applying the Protocol on the procedure in the case of violence, abuse or negligence of Children, which was, on the recommendation of the Ombudsman for Children, signed by relevant ministries - the Ministry of Education and Culture, the Ministry of Health and Social Welfare, the Ministry of Family, Youth and Sports and the Ministry of Internal Affairs of the Republic of Srpska on 20th November 2012).

23 Informal Network of NGOs “Stronger voice for children”, ALTERNATIVE REPORT ON CHILD RIGHTS SITUATION IN BIH FOR THE PERIOD 2005-2011 - With the support of Save the Children Norway.

24 Ministry of Security of Bosnia and Herzegovina, Strategy in the Area of Migrations and Asylum and the Action Plan for the period 2012–2015, Sarajevo, June 2012, available at <http://www.msb.gov.ba/PDF/Strategy%20and%20Action%20Plan%202012-2015,%20engleski.pdf>.

25 Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) from 5 to 14 April 2011, Strasbourg, 26 April 2012, CPT/Inf (2012)15.

non-state institutions is estimated to be around 1111²⁶. Out of them, children without parental care (around 60%) were under foster care.²⁷

- Roma children “do not have equal opportunities to access health, nutrition, education and social protection services”, and, at the same time, they are “exposed to stereotypes and prejudices that expose them to violence and aggression in their local communities and at mainstream schools.” There are at least 10,500 Roma children living in BiH, but this figure could be as high as 21,000²⁸. Furthermore, 4.2% of Roma children under the age of 5 had not yet had their births registered²⁹. Over 80% are living in poverty, many live in houses that lack basic facilities³⁰, while almost 80% have no access to education.

- “Children with various forms of disability in the Republic of Srpska have no sort of compensation at all (they depend on the goodwill of some local communities, which have made decisions to provide specific forms of assistance).” Their most common problem is their lack of access to health and social care.

KEY FINDINGS PART A Children Population

The following findings focus on children population; particularly those children who experience social exclusion and who a) participated in the conducted workshops, b) belong to the target groups of the Services (social, judicial, police, educational) where the professionals that participated in the research work.

In the context of the current research, it is primarily aimed to identify the common attributes of the children living in vulnerable groups, so as to indicate the need of an inclusive and holistic approach to childhood, in order to reduce the categorization factors that are likely to lead to discrimination and stigmatization.

According to this Research, the findings on the profiles and the main common attributes of children population are presented below:

- ✓ Main common factors determining children’s living conditions
- ✓ Main common characteristics and behaviors of children
- ✓ Main key persons in children’s lives
- ✓ Main forms of abuse and rights’ violations

26 Statistical annual report of FBiH Institute for Statistics, Sarajevo 2008. g.; Social protection in Brčko District BiH 2004-2008, in 2009.

27 Informal Network of NGOs “Stronger voice for children”, ALTERNATIVE REPORT ON CHILD RIGHTS SITUATION IN BIH FOR THE PERIOD 2005-2011 - With the support of Save the Children Norway.

28 UNICEF, The Status of Roma Children and Families in Bosnia and Herzegovina, Sarajevo, 2013 available at http://www.unicef.org/bih/roma_families-en-final.pdf.

29 Ibid, referring to source The Ministry for Human Rights and Refugees of Bosnia and Herzegovina et al., Multiple Indicator Cluster Survey (MICS) 2011– 2012, Bosnia and Herzegovina: Roma Survey, Final Report, op. cit., 76–77.

30 See The Roma in Central and Eastern Europe/Bosnia and Herzegovina, available at http://www.romachildren.com/?page_id=691.

Population overlap: Most children's situation may be simultaneously determined by a wide variety of vulnerability factors. Therefore, despite the categorization of children (e.g. poor, without family, institutionalized, victims of abuse, etc.), many common characteristics and approaches are identified. Considering, for example, a very common situation experienced by many children: a child may live in poverty, be a victim of domestic violence and a victim of discrimination at school.

Among the findings, population overlaps should be highlighted:

Factors determining children's living conditions

Poverty:

- ✓ *Almost all children live in poverty, apart from a small number of juvenile offenders.*
- ✓ *Poverty is mainly related to violations of children's rights that include material deprivation (food, housing, health).*
- ✓ *Poverty combined with malfunctions in the family often results in the abuse and even further to the institutionalization of children.*
- ✓ *Poverty combined with social background factors (especially children in minorities) often results in the discrimination of children.*

Family:

- ✓ *In the vast majority of cases only one or none of the parents are employed; often the main source of income for the family is welfare benefits.*
- ✓ *Dysfunctions in the family usually result in distressed and/or aggressive behavior of children, while often children end up either in social work centers (majority of cases) or in the penal system (juvenile delinquency).*

Education:

- ✓ *Almost all children have been enrolled to school.*
- ✓ *The vast majority of them (approximately 90%) demonstrate a quite low school performance, while over 65% face difficulties in reading and writing, with their literacy level being quite low compared to the class they attend.*
- ✓ *In some cases, juveniles with a "disturbing" behavior are discouraged by educators to attend school and persuaded to stop.*
- ✓ *Disabled children may drop out and few of them are supported to complete their primary education, mainly because: a) they are not offered the required facilities in school, b) their parents want to avoid the child's stigmatization, or c) their parents neglect them.*

Health:

- ✓ *Many children are deprived of adequate health services and welfare benefits, due to lack of official documentation on their civil and financial status.*
- ✓ *For many disabled children and children with other health related problems that live in institutions, separation from the family could have been avoided if their family had received adequate social and health support at home.*

Main characteristics and behaviors

- ✓ *Almost all children from dysfunctional families (regardless of their economic status) feel discontent, distant, insecure, discouraged and unsupported (especially institutionalized children).*
- ✓ *On the contrary, children that live within a functional family environment, regardless of poverty conditions and social origin, are joyful and more open to participation in various extracurricular activities. However, when it comes to school attendance and formal educational activities, their participation and performance is extremely poor.*
- ✓ *Almost all children are negative towards school attendance and without desire to progress.*
- ✓ *Almost all children living in institutions feel stigmatized by their institutionalization, and many of them declare they feel different from other children. Institutionalization, according to views expressed by children, is a fact "they cannot hide" and when it becomes known, it automatically indicates their background and, in a way, exposes their personal life and personal data.*
- ✓ *Most juvenile offenders do not show any interest in schooleducation, express disrespect for authorities and try to heighten their self-esteem through the acknowledgment of older offenders (suggestibility, manipulative, low tolerance to frustration). Most offenders come from families where parents are poor and unemployed. However there is a significant number of children coming from families with a higher economic status.*

Main key persons in children's lives

- ✓ **Parents:** *In dysfunctional families, parents are mainly to be accused for the victimization of children (almost 50% of the children have been victims of domestic violence, physiological or corporal). Parents of disabled children, especially those living in harsh economic conditions, cannot care for their children at home; therefore institutionalization seems to be the only solution for them.*
- ✓ **Guardians** (for children without family): *In practice, they mostly carry out bureaucratic and administrative activities related to the child, and usually do not come in direct (constant) contact with the child, either due to work overload or/and due to the geographical distance from the child's residence.*
- ✓ **Teachers** play a key role:
 - a) *By monitoring the child's family life and any violation of rights within the family.*
 - b) *Teachers in institution are the main persons to whom minors refer (and rely on), since apart from teaching, in practice they take up the role of daily care providers due to the understaffing of institutions. It could be stated that teachers, in many cases, "fill" the aforementioned gaps of the guardianship system..*

Main forms of abuse and rights violations

- ✓ *Children's rights violation related with family environment may be (mainly) identified as a) negligence, domestic violence against children by other family member (usually parents) and/or as b) discrimination, stigmatization of the child due to social or other prejudices that are related with the family's situation.*
- ✓ *The vast majority of children who have been financially exploited (e.g. child labor, begging, etc.) have been prior victims of domestic violence and negligence.*
- ✓ *In some cases, children are exploited and used by adults for committing criminal activities.*
- ✓ *Many children (especially Roma) are financially exploited by other member(s) of the family (child labor, begging).*
- ✓ *Many children, originating from minorities groups or living in institutions, have been -at least once- victims of discrimination during their school life (including abuse by other children of the same age).*
- ✓ *Among the most commonly violated rights are the ones to social protection and education.*

PART 2

LEGAL PROTECTION OF CHILDREN: THE LEGISLATIVE AND POLICY FRAMEWORK PERTAINING TO CHILDREN'S RIGHTS AND ACCESS TO JUSTICE

A. CHILDREN'S RIGHTS LAW IN BiH: A GENERAL OVERVIEW

The legislation on the rights and protection of children is framed under a multifarious set of legal provisions based on federal and supranational law. The protection and promotion of children's rights are safeguarded by the Constitution of Bosnia and Herzegovina; while, several legal provisions have been enacted towards this direction and in line with international Conventions and European level norms. On the basis of the constitutional mandate³¹, all citizens living in the country shall enjoy full protection of their human rights without discrimination on any ground, such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. This principle is also preserved by the Constitutions of both entities.³²

Furthermore, the provisions of the International Conventions and Agreements, as of the time they were sanctioned and became operative, according to their respective conditions, become an integral part of domestic law and shall prevail over any contrary provision of the law.³³ Therefore, the provisions of the ratified Conventions may be directly applicable by Courts under the invocation of the constitutional provision. More specifically, Annex I to the Dayton Peace Agreement recognizes the applicability of 15 Human Rights treaties. Accordingly, Bosnia and Herzegovina shall ensure the enforcement of the internationally recognized human rights and

31 Constitution of Bosnia and Herzegovina: Article II on Human rights and Fundamental Freedoms, Annex I (international Conventions and Agreements).

32 Federation of Bosnia and Herzegovina (see Sub-Chapter VII on Human Rights and Fundamental Freedoms) and the Republika Srpska (see Sub-Chapter II on Human Rights and Freedoms), as well as under the Statute of the Brčko District of Bosnia and Herzegovina (see Articles 13-17).

33 Article 3 and 4, Sub-Chapter VII on International Relations of the Constitution of the Federation of BiH. Note that the agreements with other states and international organizations are to be signed and ratified by the Federation's President on behalf of the Federation. They shall be reinforced in the Federation only if approved by the Federation Assembly, with the previous agreement of the BiH Assembly, except if the Federation Assembly or the BiH Assembly have not prescribed by their laws that such international agreements do not need ratification.

Note also that Bosnia and Herzegovina became a member of the Council of Europe in 2002, and signed a Stabilization and Association Agreement with the European Union in 2008. It became a Party to the European Convention on Human Rights and Fundamental Freedoms in 2002.

fundamental freedoms.³⁴The Convention on the Rights of the Child is included among the aforementioned treaties. The Convention is highlighted among the major legal instruments for safeguarding children's rights.³⁵ Every child within the territory, regardless of origin and nationality, is entitled to the rights and protection acknowledged by the Convention, while the State is legally bound to it. Accordingly, the provisions of the Convention should be directly applicable when the national law is contrary to them. In order to ensure the efficient implementation of the Convention, BiH undertook several necessary actions, namely, "The Action Plan for Children of BiH for the Period 2002 – 2010", which was adopted in June 2007, with the objective to strengthen the position of children in BiH³⁶, the "new Action Plan for children for the period from 2011 to 2014", which was adopted in 2011, focusing on health, education and social security rights of children, with a special emphasis on children belonging in vulnerable groups, as well as "The National Strategy for Combating Violence against Children" (2012-2015), which was adopted by the Council of Ministers (November 28, 2012) and defines all forms of violence against children and sets concrete objectives and measures aimed at the prevention of violence against children. It should be also noted that Bosnia and Herzegovina has withdrawn its reservation to Article 9 of the Convention on the Rights to the Child³⁷and afterwards the Ministry of Human Rights and Refugees formed a group whose purpose was to adjust the regulations of domestic legislation with the Coalition of child rights.

34 Specifically, Article II (1) provides that "BiH and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. "The same article of the Constitution of Bosnia and Herzegovina, sub-paragraph (2), provides, inter alia, that: "the rights and freedoms set forth in the European Convention for Protection of Human Rights and Fundamental Freedoms and its Protocol shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law."

Annex I to the Constitution of BiH has introduced an obligation for Bosnia and Herzegovina to apply in its territory some additional Human Rights Agreements such as the Covenant on Economic, Social and Cultural Rights (1966), the Universal Declaration on Human Rights (1948); the International Covenant on Civil and Political Rights (1966), and its corresponding additional Optional Protocols (1989); the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), and the Convention on the Rights of the Child (1989).

35 The Convention initially came into force for Bosnia and Herzegovina in 1991, as a result of ratification by the Socialist Federal Republic of Yugoslavia; Bosnia and Herzegovina became a State Party by succession in 1993.

36 The implementation monitoring of the Action Plan for that period was under the authority of the BH Council for Children that played a significant role towards the promotion of children's protection.

37 "During the course of 2007, the request to withdraw reservation from Article 9 of the CRC was accepted and it was forwarded to adoption procedure. At the end of May 2008, the Bosnia and Herzegovina Council of Ministers withdrew reservation on this Article, which points at an inadmissible tediousness of the administration." Informal Network of NGOs "Stronger voice for children", ALTERNATIVE REPORT ON CHILD RIGHTS SITUATION IN BiH FOR THE PERIOD 2005-2011

Furthermore, many other framework policies and action plans were enacted for the improvement of the children's living conditions.³⁸ The initiative of the Ministry of Human rights and Refugees to proceed with the signing and ratification of the Convention on the International Recovery of Child Support and other Forms of Family Maintenance,³⁹ the European Council's Convention on Contact Concerning Children and the European Council's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse should be also highlighted.⁴⁰

The legal recognition of fundamental rights -including those of children-, i.e. right to food-nutrition⁴¹, housing and social care⁴², health⁴³, education, family (parental care and responsibilities-guardianship)⁴⁴, protection of minorities⁴⁵, is primarily preserved on a constitutional level. The legislation also provides for the additional protection of children in vulnerable situations, and several acts have been enacted within the last years in line with relevant international norms. Among them the legislative

38 Specifically, focusing in the last five years:

- Framework policies for improving early growth and development of children in Bosnia and Herzegovina, in March 2012;
- The Action Plan for Children of Bosnia and Herzegovina (2011–2014);
- The National Strategy for Narcotic Drugs Control, Prevention and Suppression of Abuse of Narcotic Drugs in Bosnia and Herzegovina (2009–2013);
- The National Action Plan to Combat Trafficking in Human Beings (2008–2012);
- The Implementation Plan for the Strategic Guidance of the Development of Education in Bosnia and Herzegovina (2008–2015);
- The National Strategy to Combat Violence against Children (2011–2014);
- The Revised Action Plan on the Educational Needs of Roma of 2010

It is noted that the Republika Srpska adopted the Policy for promotion of early growth and development of children in the Republika Srpska, for the period 2011–2015. The goal of the Policy is to improve early growth and development, striving for the highest standards of the community, to create optimal conditions for proper growth and development of children, so that every child, regardless of their own society and individual capabilities, have the conditions for a healthy start in life and to achieve their full potential. Furthermore, the Action Plan for the Children of Bosnia and Herzegovina 2010–2014 was adopted in July 2011, aiming to strengthen institutional capacity, coordination and cross-sectoral cooperation at all levels of government.

39 Convention entered into force on the 2nd of February 2013.

40 CoE Conventions entered into force on the 1st of March 2013.

41 Recognized under Article 2p), Sub-Chapter VII on Human Rights and Fundamental Freedoms Constitution of the Federation of BiH.

42 Recognized under Article 2n)q), Sub-Chapter VII on Human Rights and Fundamental Freedoms Constitution of the Federation of BiH Article 43, Sub-Chapter II on Human Rights and Freedoms Constitution of the Republika Srpska.

43 Recognized under Article 2o), Sub-Chapter VII on Human Rights and Fundamental Freedoms Constitution of the Federation of BiH Article 37, Sub-Chapter II on Human Rights and Freedoms Constitution of the Republika Srpska.

44 Recognized under Section 3f), Sub-Chapter II on Human Rights and Fundamental Freedoms Constitution of Bosnia and Herzegovina Article 2j), Sub-Chapter VII on Human Rights and Fundamental Freedoms Constitution of the Federation of BiH Article 36, Sub-Chapter II on Human Rights and Freedoms Constitution of the Republika Srpska.

45 The right to protection of minorities and vulnerable groups is recognized under Article 2r), Sub-Chapter VII on Human Rights and Fundamental Freedoms Constitution of the Federation of BiH.

developments referring to the arrangement of the civil status of children, to combat discrimination and to protect children belonging to minorities should be underlined.⁴⁶

It should be noted that the legislation on registry books harmonizing civil registration in the entire country was adopted by both Entities.⁴⁷ Nevertheless, there are gaps with regard to birth registration and access to free legal aid for civil registration. This issue is directly related to the risk of statelessness faced by many children, leading to the deprivation of citizenship rights.⁴⁸ The latter, in conjunction with other factors, also affects children's school enrolment and attendance, since registration is a precondition for accepting children at school. Furthermore, within the social welfare system, the level of social benefits depends on the beneficiary's residence and this automatically results in serious restrictions to the social protection of Roma children.

A special emphasis is given to the right to education and health, considering that in BiH a) "children's rights concerning education, and the proper care and welfare for their physical and mental health and safety in schools and other places where they receive education, have primacy over any other rights",⁴⁹ and b) the particular vulnerabilities of children, especially of those living in poverty and those living in institutions, are related to the educational and welfare/health field. More specifically: the Constitution of BiH defines that all persons on the territory of Bosnia and Herzegovina have the right to education, and the establishment of this right falls under the jurisdiction of the entities. In accordance with the Constitution of the Federation of Bosnia and Herzegovina⁵⁰, the cantons in the Federation of Bosnia and Herzegovina have the responsibility to define education policies and bring rules on education to ensure it. Similarly, educational

46 Specifically:

-The Law on Birth Registration in the Federation of Bosnia and Herzegovina, in July 2011;

-The Law on the Protection and Treatment of Children and Juveniles in Contact with the Law in the RepublikaSrpska, in January 2011;

-The Law on Health Care of the Federation of Bosnia and Herzegovina, in 2010, which is aimed at regulating the health protection of national minorities;

-Legislation on birth registration in the RepublikaSrpska, in October 2009;

-The Law on Prohibition of Discrimination, in July 2009.

47 Commission staff working document, Bosnia and Herzegovina 2012 PROGRESS REPORT, p. 20, available at http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ba_rapport_2012_en.pdf.

48 UNICEF, The status of Roma children and families in Bosnia and Herzegovina, Sarajevo, 2013, available at http://www.unicef.org/bih/roma_families-en-final.pdf

49 Article 5, Framework Law on Primary and Secondary Education in Bosnia and Herzegovina, Pursuant to the Article IV 4.a) and II 4 of the Bosnia and Herzegovina Constitution, adopted by the Parliamentary Assembly of Bosnia and Herzegovina, during the session of the House of Representatives held on 2003 and the House of Peoples held on 2003; According to Article 1: "This Law regulates the principles of preschools, elementary and secondary education and upbringing, adult education and the establishing and functioning of institutions providing services in education in Bosnia and Herzegovina, as well as supplementary education for the children of BiH citizens abroad".

50 The Official Gazette of the Federation of BH, No. 1/94, 13/97, 16/02, 22/02, 52/02, 60/02, 18/03, 63/03.

institutions of all levels must contribute to the creation of culture in which human rights and basic freedoms of all citizens, as defined by the Constitution and other documents in the field of human rights, signed by BH, are respected. Moreover, parents (or legal guardians) are legally obliged to register and send their children to school. One of the main objectives of education is “ensuring equal possibilities for education and the possibility to choose in all levels of education, regardless of gender, race, nationality, social and cultural background and status, family status, religion, psycho-physical and other personal characteristics.”⁵¹ Among the core principles, unhindered access and the possibility to participate in the educational process, without discrimination on whatever grounds, are ratified, ensuring that the child will develop its inborn and potential intellectual, physical and moral abilities, at all levels of education.⁵² Towards this direction and the improvement of inclusive education, the ratification of the Convention on the Rights of Persons with Disabilities (March 2010) should also be highlighted. Moreover, within the last years, various strategies were adopted in the field of education, such as the Strategy for the Development of Vocational Education and Training (2007-2013), the Strategy for the Development of Preschool Upbringing and Education, the Strategic Guidance of the Development of Education, as well as the Implementation Plan (2008-2015) and the Revised Action Plan on Roma Education.

As far as the health system is concerned, there is no coherent legislative framework on a federal level, and the health protection lies on the responsibility and regulations issued by the parliaments of the Entities and Brčko District. A federal law adopted in 2008 (and enacted in 2009) provided for a mandatory health insurance and free access to health care for children up to the age of 15, unless they are already covered by an insured person in their family. Children between 15-18 years of age are not covered by the aforementioned provision, unless they attend school. According to the legislation, the health protection may be compulsory or voluntary.⁵³ In the first case, all insured persons under the compulsory health insurance are granted with the rights safeguarded by the primary health insurance system. The latter is based on the principles of mutuality, solidarity and quality, meaning that all health services are available to all persons regardless of their gender, age and religion, provided that they fulfill their insurance obligations. In the context of voluntary insurance, supplementary,

51 Article 3, Framework Law on Primary and Secondary Education in Bosnia and Herzegovina.

52 Article 4, Framework Law on Primary and Secondary Education in Bosnia and Herzegovina. Additionally, according to Article 35, paragraph 1, the school must not execute any discrimination in access of children to education or their participation in the education process, based on race, color, gender, language, religion, political or other opinion, national or social background, or because they are children with developmental difficulties, or any other basis.

53 The Law on Health Insurance of the RS (the Official Gazette of the Republika Srpska, No. 18/99, 51/01, 70/01, 51/03, 57/03, 17/08, 01/09, 01/09, 106/09); Law on Health Insurance of the Federation of BiH (the Official Gazette of the FBiH, No. 30/97, 7/02 and 70/08); Law on Health Insurance of the Brčko District of BiH (the Official Gazette of the Brčko District of BiH, No. 1/02, 7/02 19/07 2/08 and 34/08).

additional and private insurance is recognized.⁵⁴Therefore, health protection depends on the prior social insurance and constitutes a part of it through the funds' investments by the citizens.⁵⁵

On entity/cantonal level the implementation of the aforementioned law was hindered. "The system of health protection is centralized in the RS, while it is decentralized in the FBH, since the responsibility of the federal and cantonal authorities is distributed in the sphere of health.[...] All citizens, including persons with disabilities, are guaranteed the inalienable right to receive health protection, i.e. the right to accessible health service of standard quality and equal content for all."⁵⁶ For the improvement of the system, several policy and legislative interventions took place within the recent years, mainly focusing on the protection of children's right to health.⁵⁷ However, there are many obstacles (mainly budgetary) that prevent the full enactment of the protective provisions for children.⁵⁸

B. PROVISIONS FOR THE PREVENTION AND PROTECTION AGAINST CHILDREN'S RIGHTS VIOLATIONS: FOCUSING ON THE PROTECTION OF CHILDREN IN THE MOST VULNERABLE SITUATIONS

According to the ratified Convention on the Rights of the Child, every child "by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."⁵⁹

In several cases, however, additional and specific protection is required, due to the various situations experienced by children. Such circumstances, *inter alia*, may:

a) occur in case of specific violations against children's rights in the context of certain

54 In the case of supplementary insurance, the difference to the full value of the right to health protection based on the primary health insurance is borne by the insured person themselves, including the persons with disabilities: The Law on Health Protection of RS (the Official Gazette of the RS, No. 106/09); Law on Health Protection of the Federation of BiH (the Official Gazette of the FBiH, No. 29/97); Law on Health Protection of the Brčko District of BiH (the Official Gazette of the Brčko District of BH, No. 2/01, 19/07 and 2/08).

55 REPORT ON THE IMPLEMENTATION OF THE UNITED NATION'S CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES IN BOSNIA AND HERZEGOVINA under Article 35, paragraph 1 of the Convention on the Rights of Persons with Disabilities, par. 151.

56 *ibid* par.140; "The federal authority has the right to define the politics and bring laws related to this field, while the cantons have the right to define the policy and implement the laws in accordance with the requirements of the responsibility in the sphere of health, and are realized by cantons, in coordination from the federal level of authority".

57 Among them are: The Law on Health Care of the Federation of Bosnia and Herzegovina (2010), which aims at regulating the health protection of national minorities, Framework policies for improving early growth and development of children in Bosnia and Herzegovina, (March 2012), The National Strategy for Narcotic Drugs Control, Prevention and Suppression of Abuse of Narcotic Drugs in Bosnia and Herzegovina (2009–2013).

58 Indicatively, the extremely low sources of the Solidarity Fund in Federation of BiH in comparison to actual needs.

59 International Convention on the Rights of the Child.

incidents or/and

b) formulate in the context of certain living conditions, and constitute a continuing offense and violation against the child.

Therefore children's living conditions and experiences, as determined mainly by origin, family, social and economic background, may increase risks, threats and vulnerability factors. The latter raise the risk of children's victimization and make them more vulnerable than others. It is noted that the term 'vulnerability' is vague and not clearly defined in the context of domestic legislation.

Specifically, regarding the main legally recognized forms of abuse, negligence, maltreatment, exploitation against children:

- In case of sexual, physical or other violation against a child, a legal duty to immediately inform the competent authorities or prosecutor is established, binding any person responsible for the child's protection (i.e. healthcare officials, teachers, caretakers, parents, guardians, adopters and others).⁶⁰The Strategy to Combat Violence against Children (2011-2014) should also be highlighted.

- Children's rights violations -mainly those referring to serious forms of abuse and exploitation- constitute punishable crimes within the context of criminal law (i.e. sexual abuse, child pornography).

- Special protection is also provided if such criminal offenses, and any other form of abuse, violence, exploitation and negligence occur within the family environment and when children are subjected to domestic violence. The Strategy against domestic violence (2009-2010) and the law enacted in 2005 are significant developments towards the protection of children. The law stipulates among others that corporal punishment at schools and home is unlawful and punishable (even for "disciplining" children). In case of domestic violence, parents (or the legal guardians) may be deprived of their parental/custody rights under the provisions of the family law.⁶¹What raises alarming concern, with regard to the phenomenology of the crime, is pedophilia within the family environment since "the abusers are often people from close vicinity- parents, close family members, neighbors, religious teachers, teachers and trainers."⁶²

60 Article 213(2) of the Code of Criminal Procedure of BiH; Article 228(2) of the Code of Criminal Procedure of FBiH; Article 213(2) of the Code of Criminal Procedure of RS; Article 213(2) of the Code of Criminal Procedure of Brčko District of BiH.

61 Article 127 of Family law of FBiH; Article 110 of Family law of Brčko District of BiH, Article 154 of the Family law of FBiH; Article 136 of Family law of Brčko District of BiH; Article 106 of the Family law of RS.

62 Informal Network of NGOs "Stronger voice for children", ALTERNATIVE REPORT ON CHILD RIGHTS SITUATION IN BIH FOR THE PERIOD 2005-2011 - With the support of Save the Children Norway. See also Report on situation in BiH in relation to sexual violence against children, Regional project "Pandoras box", Sarajevo, July 2011.

- The legislation protecting children from economic exploitation⁶³ and worse forms of child labor (including forced begging) is regulated at an entity level. It should be noted that child labor is regulated under special laws providing for the additional protection of children, while entity governments are responsible for their enforcement. However, there is no special inspection system for the violations of child labor laws.⁶⁴

Specifically, with regard to children in vulnerable situations:

Among the most vulnerable groups are children belonging to minorities, children with disabilities, children without parental care, unaccompanied or separated and displaced children, who, among others, experience poverty and, often, institutionalization.

As it is acknowledged, children without parental care are perhaps the most vulnerable of all.⁶⁵ They are entitled to the right to care and protection according to the UN Convention on Child Rights.⁶⁶ It should be underlined, as already mentioned, that BiH has withdrawn

63 Law on labor in RS, FBiH and Brčko District; Criminal law of FBiH, RS and Penalty Law of Brčko district; Public peace and order in FBiH, Public peace and order law in the RS, Public peace and order law in the Brčko District., RS, FBiH and Brčko District Family Law.

64 On an entity-level and the Brčko District labor laws restrict child labor. The minimum age for children employment is 15 years of age (in the federation and the Republika Srpska). Minors over 15 years old may work under certain provisions (i.e. valid health certificate to work, not performing hazardous labor or “night work” except in exceptional circumstances). It should be noted though that there are no inspectors competent for child labor inspections, and no special researches or reviews have been conducted on the violation of child labor laws (i.e. on children working in family farms). Despite that, labor inspectorates reported that they had not found significant violations of child labor laws. It is also noted that no data are collected with regard to child labor (BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 2010 Human Rights Report: Bosnia and Herzegovina, 2011, available at <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154416.htm>).

65 Children and Institutions in Bosnia and Herzegovina, First Report Capacity Building Research: Unaccompanied Children and Children at Risk of Being Institutionalized in Bosnia and Herzegovina, Sarajevo, March 2003, available at http://www.ceecis.org/child_protection/PDF/B&Hinsitut.pdf.

66 Article 9 “

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with the applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or negligence of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of this article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.”

its single reservation with regard to Article 9 of the Convention.⁶⁷In the context of the current legislation, there is no common definition for children without parental care, while varying approaches do exist. According to the approaches within entity laws, a child without parental care is considered as a child:

- without any parents
- with unknown parents
- with parents (fully or partially) deprived of parental rights
- that has been abandoned by parents

According to family law, a guardian may be appointed for the child in case the parents had died or are missing or absent or are unknown or deprived of parental rights or of legal capacity and are not able to fulfill their parental duties. The competent Social Welfare Center is responsible for proceeding with the appointment of the guardian. A ten year policy has been adopted (for the period 2006-2016) for the children deprived of parental care or at risk of separation in the Federation of BiH. Despite the regulative system of residential care (institutions), and the complexities and gaps in adoption law, the underdevelopment of alternative care sets additional obstacles to the protection of children.

Especially with regard to unaccompanied children, it is noted that according to the General Comment No 6 by the United Nations Committee on the Rights of the Child, protection shall be provided to all unaccompanied or separated children.⁶⁸The legal framework with regard to their protection in Bosnia and Herzegovina seems to be “in line with international standards and the minimum standards of the EU.”⁶⁹The law on movement and stay of aliens and asylum (LMSAA), regulating on asylum and immigration issues, provides for the protection of unaccompanied minors.⁷⁰Unaccompanied minors are legally defined as foreign nationals below the age of 18, who arrive in the territory of the State accompanied by an adult responsible for them whether ex lege or by power of attorney, and for as long as they are not effectively taken into the care of such a person. It also includes minors who are left unaccompanied after they entered the territory of the state.⁷¹

67 The reservation stated that the Republic of Bosnia and Herzegovina reserves the right not to apply paragraph 1 of Article 9 of the Convention since the internal legislation of the Republic of Bosnia and Herzegovina provides for the right of competent authorities (guardianship authorities) to determine on the separation of a child from his/her parents without a previous judicial review.

68 General Comment No 6 (GC6)36 General Comment No 6 (2005) – Treatment of Unaccompanied and Separated Children outside Their Country of Origin, United Nations Committee on the Rights of the Child, CRC/GC/2005/6.

69 Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to Bosnia and Herzegovina on 27-30 November 2010, CommDH (2011)11 Original version, par.98 available at: <https://wcd.coe.int/ViewDoc.jsp?id=1766837>.

70 Law on Movement and Stay and Movement of Aliens and Asylum in BiH regulates: conditions and procedure for entry of aliens in Bosnia and Herzegovina, including the visa and non-visa regime; travel documents for aliens; stay of aliens in BiH; removal of aliens from the country; admission of aliens and placement of aliens under supervision; international and temporary protection in case of mass influx of aliens; as well as competency of authorities relevant for the implementation of this Law, as well as other issues related to stay of aliens in BiH. (Official Gazette of BiH N'I 36/08 of 6th of May 2008; Amendments to the LMSAA Published in the “Official Gazette of BiH”, No 87/12 of 5th of November 2012).

71 Article 5 of the LMSAA (Definitions).

Officials, authorized to control the State border crossing, shall exercise special caution while controlling an alien younger than 18 years old (minor) who intends to cross the BiH State border, as well as the persons accompanying the minor.⁷² Safeguards are also provided against the forcible removal of minors, especially the unaccompanied ones.⁷³ More specifically, unaccompanied minors shall be hosted and protected in a minors' institution, while the competent center for social work shall be immediately informed so as to proceed with the appointment of a temporary legal guardian. After that, any decision concerning the return of the minor shall be based on the prior assurance of certain safeguards (best interests of the child). In line with the European Convention on Human Rights, under no circumstances an unaccompanied minor shall be returned to a country that would violate his/her rights.⁷⁴ Additionally, minors may be granted with a temporary residence on humanitarian status if they are victims of organized crime, or abandoned or without parental care or left unaccompanied for any other reason.⁷⁵ However, undocumented unaccompanied minors, mainly due to the lack of

72 An alien of less than 14 years old holding personal travel documents may cross the BiH border only if accompanied by his/her parents, legal representative or custodian, or the person authorized to accompany the minor by an authorization signed and certified by the parents, legal representative or custodian, or must have the parental or legal representative's consent if traveling unaccompanied (LMSAA Article 17 (3), Amendments to Article 17 of the LMSAA (Collective or group travel documents and special attention to minors), in paragraph (3), number "18" is replaced with number "14", and the word "(minor)" is deleted.)

73 For justified reasons Service for Aliens Affairs will not enforce removal order and may approve postponement of the procedure of enforcing the measure of expulsion by reason of lack of guaranties that an unaccompanied minor will be received by a family member, authorized person or legal guardian in the country to which he/she is returning (Article 94 par 5 (c)).

74 Article 139 of LMSAA (Protection of rights of minor and other aliens) stipulates that the competent authorities in BiH are obliged to treat minor aliens with particular attention and respect and treat them in accordance with the Convention on Children's Rights and BiH regulations pertaining to the care and protection of minors. A minor alien who has illegally entered BiH and is not accompanied by his/her parents or legal representative or has been deprived of the presence of those persons upon entering BiH and whom the Service cannot immediately return to the country he/she came from or turn him over to the representatives of the country of his/her citizenship, the Service shall temporarily accommodate him/her in the section of the institution specialized for minors, in which event they shall inform the responsible Social Welfare Center, which shall immediately appoint a temporary guardian in accordance with the Law. (4) A minor referred to in the paragraph (3) of this Article shall not be sent back to the country of his/her habitual residence or the country willing to receive him/her prior to the provision of parental care or legal representation or representation of the responsible authorities in the country of return. An unaccompanied minor must under no circumstances return in a manner violating the European Convention on Human Rights and Fundamental Freedoms and this Law.

75 LMSAA Article 53 - General conditions for granting temporary residence; Article 28 of the law on Standards of functioning and other issues relevant for operating an Immigration Center (IC) stipulates, that decision about whether to have minor admitted/accommodated in Immigration Centers is issued by the respective body in the presence of the parents or guardians. Admission to the IC is conducted under the supervision of the parents, legal guardians or the Social Welfare Center. Unaccompanied minors will be placed in the IC if it is in their best interest. While staying in the IC, minors are separated from adults who are not their family. The IC will provide minors with food accommodated to their need, and subject to availability, and facilities for play and education appropriate for their age.

procedural safeguards during the identification and age assessment procedure, may be detained on the grounds of illegal entry to the territory, as provided by migrant law, and they may be treated as illegal migrants. Often, in practice, the detention decision is not appropriately announced to the minor, while many minors may be subjected to the detention procedure prior to the appointment of a legal guardian. It should be noted that those children who do not apply for international protection (asylum) may be detained for a longer period (up to several months).

Among unaccompanied children, those who are victims of trafficking are entitled to special protection, treatment and assistance provided under the responsibility of the Ministry of Security of BiH.⁷⁶ The anti-trafficking legislation along with the establishment of the State Coordinator for the prevention of trafficking in human beings and illegal immigration and the coordinative Task Force at State and Entity levels, provide for the combating of child trafficking and the protection of children victims.⁷⁷ Especially with regard to victims' protection, Action Plans have been enacted (for the period 2005-2007, 2008- 2012), and a mandatory document has been adopted by the Council of Ministers on "Standardized procedures in dealing with children as victims and victims as witnesses of human traffic in BiH". At the same time, various projects have been implemented mainly with the support of international NGOs and organizations. Respective authorities are obliged to inform the temporary guardian on every issue concerning the child victim. The procedures aiming to the child's protection shall be conducted promptly and appropriately, with respect to the personality and privacy of the child and without posing a risk of revealing personal data, unless it is necessary in extraordinary circumstances and with the sole aim to find members of the child's family or to secure a child's best interests. In case an age assessment is needed or there are doubts about the child's age, or if a person claims that he/she is a minor and there are founded doubts about their age, the person should be considered and treated as a minor victim and should be entitled to special protection (benefit of a doubt). Children victims shall be accommodated in shelters, where they shall stay until the identification procedure is complete, and all the necessary information is collected and evaluated regarding their safe return (or non-return).

Especially with regard to unaccompanied children in need of international protection/asylum seekers, it is reminded that Bosnia and Herzegovina is a state party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. "According to UNHCR, the asylum system in Bosnia and Herzegovina is reasonably well developed. However, there are several concerns about its full and proper implementation." The latter are mainly related, among others, to the lack of procedural safeguards and

76 LMSAA Article 56; articles 19, 20 and 21 of the Baylaw on Protection of Aliens victims of human trafficking, published at Official Gazette of BiH number 49/2013 dated 24.06.2013. Available at <http://www.msb.gov.ba/PDF/pravilnik.o.zastiti.stranaca.ztlj.pdf>.

77 See also: The National Action Plan to Combat Trafficking in Human Beings (2008–2012), ratification in January 2008 of Convention on Action against Trafficking of Human Beings, Council of Europe 2005.

limited reception conditions.⁷⁸The Law on Movement and Stay of Aliens and Asylum provides for the appointment of a legal guardian responsible for the representation of the minor throughout the asylum procedure, while the minor shall be transferred to a specialized facility service. However, such service has not been established yet, and children are admitted to an open Asylum Reception Center. Once admitted to the Asylum Reception Center, a superintendent is responsible for their daily care. Children have access to free legal aid, may freely exercise their religious duties and also have access to education.⁷⁹ Within the context of the Strategy in the Area of Migrations and Asylum and the Action Plan for the period 2012–2015, strategic goal 2 provides for the international and temporary protection (asylum) determined to the great extent by the harmonization of the national legislation and practices in BiH with the adopted international standards. The realization of this strategic goal is directly linked to specific measures that would additionally develop the right and practice of asylum granting in Bosnia and Herzegovina. Towards this direction measures taken to meet the minimum standards of the European Union in the area of international protection and the harmonization of national legislation are planned. The focus is on the development of institutional capacities, i.e. with regard to the Center for Reception of International Protection (Asylum) Seekers, focusing, inter alia, on unaccompanied minors, single mothers with children etc.⁸⁰

Amongst the most marginalized groups in the country are Roma children, who face a multitude of challenges related to birth registration, housing, poverty and discrimination.⁸¹As already mentioned all persons living in the country shall enjoy full protection of their human rights without discrimination, while the provisions of the UN Convention on the Rights of the Child shall prevail over any contrary provision of the law. Nevertheless, the Constitution does not accept minority groups, including Roma, as citizens of equal terms with Bosnians, Croats and Serbs.⁸²Despite the relevant 2009 ruling of the European Court of Justice that condemns the Constitution as inherently discriminatory, there is no amendment in line with the European Convention on Human Rights. On a legislative level, the anti-discrimination law includes several exceptions that undermine its scope, while the exercise of the provided legal remedies is not widely disseminated among Roma population.

78 Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to Bosnia and Herzegovina on 27-30 November 2010, CommDH (2011)11 Original version, par.98. Available at: <https://wcd.coe.int/ViewDoc.jsp?id=1766837>.

79 LMSAA article 119 provides that Bosnia and Herzegovina is obliged to provide for the appropriate conditions for education to international protection/asylum seekers (amendments of the LMSAA no. 87/12 stipulates that international protection/asylum seekers have a right to access education system), while article 40, par. 1, point d) of the Bylaw on the International Protection stipulates all international protection/asylum seekers to have right to an education.

80 Ministry of Security of Bosnia and Herzegovina, Strategy in the Area of Migrations and Asylum and the Action Plan for the period 2012 – 2015, Sarajevo, June 2012, available at: <http://www.msb.gov.ba/PDF/Strategy and Action Plan 2012-2015 english.pdf>.

81 “The Roma in Central and Eastern Europe/Bosnia and Herzegovina” available at http://www.romachildren.com/?page_id=691 (accessed at 20 April 2014).

82 Citizens who do not belong to one of the constituent peoples (Bosnians, Serbs and Croats) are prevented from standing as candidates for the Presidency and the House of Peoples of the Parliamentary Assembly.

Bosnia and Herzegovina participates in the Roma Decade of Inclusion since 2008, while four Action Plans (on housing⁸³, health, employment and education⁸⁴) under the Roma Strategy have been enacted. The revision of the aforementioned Actions Plans, in line with the recommendations of the Roma Inclusion Seminar of July 2011, has been launched, while “implementation, in particular proper budget allocation, remains to be thoroughly assessed.”⁸⁵ The Social Inclusion Strategy (2008–2013) includes Roma in the priority target groups. However, this has not been implemented yet by all state institutions, despite the fact that it has been adopted in the Brčko District and the Federation of Bosnia and Herzegovina (FBiH) (the Republika Srpska is developing its own Strategy). It should be noted, however, that the “participation of Roma representatives in the decision-making process remains low.”⁸⁶

Acknowledging that children with disabilities are among those who are the most vulnerable to abuse, exploitation and the violation of their rights, legislative efforts and policy interventions are implemented so as to safeguard their protection and address their needs. More specifically, the Convention on the Rights of Persons with Disabilities and its Optional Protocol was ratified (March 2010), followed by the adoption by the Entities of the Strategies on Rights of Persons with Disabilities (September 2010)⁸⁷ and a decision by the Council of Ministers of BiH on establishing a council for persons with disabilities in the country.⁸⁸ The legislation provides for the unhindered access to accommodation, public places and services so as to safeguard

83 Special emphasis should be given on the Housing Action Plan towards the efforts to address “the complexity of Roma housing issues in BiH – urban development of Roma settlements and legalization of individual housing units and buildings; training and raising society’s and Roma’s awareness of the need to address housing issues; and planning and constructing new housing through social, donor and credit programs” (UNICEF, *The status of Roma children and families in Bosnia and Herzegovina*, Sarajevo 2013, available at http://www.unicef.org/bih/roma_families-en-final.pdf).

84 An Action Plan on the Educational Needs of Roma and Members of Other National Minorities was adopted in 2004, while a new revised Action Plan on Education was adopted in 2010.

85 Commission staff working document, *Bosnia and Hercegovina 2012 PROGRESS REPORT*, p. 20, available at http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ba_rapport_2012_en.pdf.

86 UNICEF, *The status of Roma children and families in Bosnia and Herzegovina*, Sarajevo, 2013, available at http://www.unicef.org/bih/roma_families-en-final.pdf.

87 The Entity of Federation of Bosnia and Herzegovina shortly after adopting Strategy for the equalization of opportunities for Persons with Disabilities 2010–2014. This strategy is based on the areas of action listed in the Council of Europe Action Plan and aims to promote the rights and the full participation of persons with disabilities in the society. In 2010, the Republika Srpska adopted a Strategy for improving the social status of persons with disabilities, including all parameters that will improve the position of children with disabilities, particularly in the fields of social and health care, education, and child protection.

88 Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Bosnia and Herzegovina on 27-30 November 2010, Strasbourg, 29 March 2011, CommDH(2011)11 Original version, par.48 available at <https://wcd.coe.int/ViewDoc.jsp?id=1766837>.

the rights of persons with disabilities including children.⁸⁹ Despite the fact that a social minimum has been introduced with the aim to harmonize the social support systems, the social support and welfare benefits continue to be legally defined on the basis of status and not on needs. This legislative approach leads to the deprivation of adequate benefits for many disabled persons, including many children.⁹⁰

In the education field⁹¹, the Framework Law on Primary and Secondary Education⁹² provides for a needs' assessment adapted to the child's possibilities and abilities, while any specific issues shall be regulated more closely by entity, canton and the Brčko District of Bosnia and Herzegovina legislation, in accordance with the principles and standards defined by this Law.⁹³ The same approach is adapted by the Framework Law on Preschool Education that provides for the participation of children in preschool institutions with programs adjusted to their individual needs.⁹⁴ Access to efficient health protection is ensured under the ratified Standard Rules on Equalization of Opportunities for Persons with Disabilities.⁹⁵ The competent authorities shall establish various programs, including the participation of multi-disciplinary teams of experts with the purpose of early detection, diagnostics and treatment of impairments. "Such programs should ensure full individuality in participation of persons with disabilities at a level of planning treatment methods and their valuation."⁹⁶

According to the analysis on the Report on the Implementation of the UN's Convention on the rights of persons with disabilities, it is concluded that on a national level, -despite the legislative differences and the fact that the system in RS is centralized, while in BiH is de-centralized-, "the persons with disabilities are provided with the basic forms

89 Towards this direction in the Republika Srpska, an Interdepartmental Body for the Assistance to and Protection of Persons with Disabilities has been established. At the same time, in the Federation of BiH, the Law on Urban Planning and Use of Land was enacted in 2009 (followed by the introduction of the Decree on Spatial Standards, Zoning Technical Conditions and Standards for Prevention of Architectural and Town-planning Obstacles for persons with Reduced Physical Abilities).

90 EUROPEAN COMMISSION, COMMISSION STAFF WORKING DOCUMENT BOSNIA AND HERZEGOVINA, 2013 PROGRESS REPORT, Brussels, 16.10.2013 SWD(2013) 415 final, p.18.

91 There are three special schools in the RS: for children with hearing impairment, for those with sight impairment and for children with mental retardation. In FBH, there are nine special schools.

92 Article 19, Framework Law on Primary and Secondary Education.

93 The issue of access to primary education at an entity level is defined by the Law on Primary Education in the RS and in the Federation BiH, within 10 cantons (The Official Gazette of the RS, No. 74/08, 71/09 and 104/11). The entities passed the laws on secondary education in RS and the Federation of BiH on the cantonal level, too (The Official Gazette of the RS, No. 74/08, 106/09 and 104/11).

94 Article 20, Framework Law on Preschool Education.

95 Council of ministers of BiH, ratification of Standard Rules on Equalization of Opportunities for Persons with Disabilities, The Official Gazette of BH, No. 41/03, Rule 2 (Health Protection).

96 REPORT ON THE IMPLEMENTATION OF THE UNITED NATION'S CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES IN BOSNIA AND HERZEGOVINA under the Article 35, paragraph 1 of the Convention on the Rights of Persons with Disabilities, October 2012, par. 138.

of protection”, while the enforced laws are largely harmonized.⁹⁷ At the same time, Centers for Mental Health and Centers for Physiotherapy have also been established within healthcare facilities. At a primary health care level, health protection may be provided in the institutions of social protection, covering the required costs. The latter especially provides for the children belonging to vulnerable groups. At a secondary health care level, access to sanatoriums and other healthcare institutions is legally ensured.

KEY FINDINGS PART B
Children's Legal Protection

Key indicators on children's legal protection (as they are prioritized by research's participants):

- Development of coherent central monitoring mechanisms
- Development of framework policies - Coherent and effective approaches to childhood and children's rights
- Guiding international instruments and norms within the context of domestic law
- Increased protection and attention to the treatment of children's rights violations and to children in vulnerable situations
- Development of a Justice System for children

Considering the evaluation of the aforementioned indicators by the research participants:

The vast majority of the participants argued that on a state (central) level the legislative framework:

- Is efficient and that there are no legislative gaps (over 80%)
- Is in line with international norms pertaining to children's rights law (over 90%)
- Lacks of a centralized coordinative and monitoring mechanism (over 40%)
- Lacks of official/legal based budgetary allocations targeted to children protection (over 40%)

The vast majority of participants (over 65%) argued that on an entity/canton level:

- There is not unified approach towards the harmonized application of children's rights law
- The aforementioned fact results in: a) The ineffective implementation of international acts signed by BiH, and the b) Unequal and discriminatory treatment of children

⁹⁷ *ibid*, par. 142; “A Solidarity Fund was established within the Institute of Health Insurance and Re-insurance of Federation of BiH, with the aim to achieve equal conditions for implementation of the compulsory health insurance, specifically on the territory of the Federation of BiH, for all cantons for certain priority programs of health protection and provision of the prioritized, most complex forms of health protection from within specialist fields. The Fund ensures additional funds intended for specialist treatment. The system in the RS is centralized; thus, there is no difference in the scope of protection.”

The main law fields where serious legal gaps are identified on an entity level are highlighted by the research's participants as following:

- Social and health protection - access to welfare benefits, health insurance (over 85%)
- Civil rights – arrangement of civil status – birth registration (over 60%)
- Education – especially with regard to the safeguarding for unhindered school attendance by disabled children (over 55%)
- Guardianship – standards and safeguards with regard to guardianship and legal representation of children deprived of parental care (over 50%)
- Domestic violence – especially with regard to the fact that the law does not cover all forms of domestic violence and the lack of coherent provisions on victims protection (over 50%)
- Juvenile criminal law system – especially with regard to the lack of special courts and mostly with regard to the detention conditions/social support/shelters/programs for the rehabilitation of offenders (over 40%) [note that almost all participants emphasized on the amendment of the criminal code as a significantly progressive step]

C. ACCESS TO JUSTICE

C.1 Legal capacity and representation, guardianship and procedural safeguards as prerequisites for children's access to justice

In the context of the current legislation, a child is a person below 18 years of age.⁹⁸ Furthermore, as stipulated by all laws, on a federal and entity level, persons under 18 do not have a full legal capacity, as this can be obtained at the age of 18. Provided that the minor is at least 16 years old, he/she may be acknowledged with full legal capacity in case of marriage or parenthood. The latter shall be decided by court's decision, after taking into consideration the mental maturity of the minor. Especially with regard to the criminal capacity of children, it is provided that a person under 14 years of age cannot be subject to criminal sanctions. According to the criminal code, persons over 14 years old are referred to as juveniles and have limited criminal capacity.⁹⁹

Limited legal capacity is associated with the litigation capacity of children, and is immediately connected to their legal representation in the context of legal, administrative and judicial proceedings. Appropriate legal representation is a key element for safeguarding children access to justice; while special procedural safeguards

⁹⁸ As defined in the Framework Law on Primary and Secondary Education, and according to the ratified Convention on the Rights of the Child.

⁹⁹ As it is stipulated by the Criminal Codes of BiH, FBiH, and the BDBiH Note that such a distinction (children – juveniles) is not made in the context of RS Criminal Code; only persons over 14 years of age are subject to criminal actions. See Criminal Code of Bosnia and Herzegovina, Articles 8–9; Criminal Code of the Republika Srpska, Article 64; Criminal Code of the Federation of Bosnia and Herzegovina, Articles 9–10.

shall ensure that their treatment by any authority or third party in the aforementioned proceedings is in line with the children's rights standards and the general principles of participation, non-discrimination, and best interests of the child.

In accordance with the aforementioned principles, the national legislation, including criminal and family laws, recognizes the right of children to express their views in relevant legal proceedings, as safeguarded in the ratified Convention on the Rights of the Child. In case a child has no parents or is not placed under guardianship, particularly in child protection cases, a special guardian shall be appointed by the court or by the guardianship authority. Note that the latter has also the power to dismiss a guardian. The guardianship authority/body (Center for Social Work) is responsible for a wide range of duties concerning the protection of children. Additionally, in custody cases it shall care for the interests of the child and provide to court all the necessary information.¹⁰⁰ It is underlined that the guardian is authorized to give the power-of-attorney to lawyers offering free legal aid.

It should be reminded that a guardian may be appointed for the child in case their parents are dead or missing or absent or unknown or deprived of parental rights or their legal capacity and are not able to correspond to their parental duties. In these cases, along with the appointment of the guardian, children are placed in alternative care, without determining however about whether they are permanently or temporarily separated from their family of origin or according to the reasons of the separation from the family. There is no specific legal provision regulating on the differentiated treatment of the aforementioned possibilities. The two forms of alternative care are residential and family-based care (foster care). In the latter, it is not clearly defined by law whether the foster parents have guardianship status (and to what extent).

C.2 Children in contact with the law

Minors victims of criminal offenses and witnesses:¹⁰¹

The laws on the criminal procedure provide for general rules on the compensation applicable to all victims of crimes, including children.¹⁰² According to these laws, a "claim under property law that has arisen because of the commission of a criminal offense shall be deliberated on the motion of authorized officials in criminal proceedings". The claim may "pertain to reimbursement of damage, recovery of items, or annulment of a particular legal transaction".

100 Family Law of the Bosnian Federation.

101 See also Rules of Procedure on the Protection of Witnesses, adopted pursuant to Article 22 of the Law on the Court of Bosnia and Herzegovina (Official Gazette of BiH 29/00, 16/02, 24/02, 03/03, 37/03, 42/03, 04/04, 09/04, 35/04 and 61/04) and Article 25 of the Law on the Protection of Witnesses Under Threat and Vulnerable Witnesses (Official Gazette of BiH 21/03 and 61/04), upon the proposal of the President of the Court, the Court of Bosnia and Herzegovina, in plenary session, held on 29.09.2008).

102 Section XVII of the Code of Criminal Procedure of BiH, Code of Criminal Procedure of FBiH, Code of Criminal Procedure of Brčko District of BiH; Section XIV of the Code of Criminal Procedure of RS.

The person authorized to pursue such a claim is the same person that would be authorized to pursue it in the context of a civil action, under the provisions regulated in the Code of Criminal Procedure.¹⁰³ Therefore, the legal representative of the child shall commence and proceed with the claim.

Even though there is no general provision stipulating that the victimization of a minor shall be considered as “aggravating circumstances”, harsher punishment may be imposed in case the victim of a crime is a minor (e.g. kidnaping, domestic violence, etc.). Special protection is also provided under the harmonized Laws of BiH, FBiH, RS, and the Brčko District with regard to the protection of witnesses under threat and vulnerable witnesses.¹⁰⁴ During the course of the examination of a minor witness, the following also apply in case of vulnerable witnesses:

- “in particular, if the minor was victimized by the criminal offense, the participants in the proceedings shall be obligated to act with circumspection in order not to have an adverse effect on the minor’s mental condition. If necessary, the minor shall be heard with assistance of a pedagogue or other professional.” The age, physical and mental condition of the minor shall be taken into consideration during the hearing, while, if needed, the witness may be examined using technical means,¹⁰⁵ while in case the minor is not capable of understanding the significance of the right not to testify is not obliged to testify.¹⁰⁶

-Personal data and intimate life of the victim and the protection of a minor witness shall be safeguarded, while the publicity of the proceedings may be denied.¹⁰⁷

-In case the victim is under 16 years of age, and if there are grounds the minor cannot be examined at the main trial, the examination may be recorded.¹⁰⁸ It is also noted that any summoning of a minor under 16 as the witness shall be done through the parents or the legal representative, except in cases this is not possible due to a need to act urgently, or other circumstances.¹⁰⁹

103 Article 193, article 194, article 195 Criminal Procedure Code of Bosnia and Herzegovina.

104 According to Article 3(2) of the Law on protection of witnesses under threat and vulnerable witnesses of BiH, a vulnerable witness is defined as the person who is seriously physically or psychologically traumatized by the circumstances under which the criminal act was perpetrated or who suffers from a serious psychological disorder that makes him particularly vulnerable, as well as the child and minor. Also, the protective measures are applied only with the consent of the witness. They include the provision of psychological, social and expert help, particular rules regarding their examination, including the possibility of testifying through technical devices for transfer of image and sound if necessary, concealment of identity and similar.

105 Article 86 of the Code of Criminal Procedure of BiH; Similar provisions in Article 100(4) of the Code of Criminal Procedure of FBiH; Article 150(4) of the Code of Criminal Procedure of RS; Article 86(4) of the Code of Criminal Procedure of the Brčko District of BiH.

106 Article 82(1)(d) of the Code of Criminal Procedure of BiH; Article 96 (1)(d) of the Code of Criminal Procedure of FBiH; Article 146(1)(g) of the Code of Criminal Procedure of RS; Article (82)(1)(d) of the Code of Criminal Procedure of the Brčko District of BiH.

107 Article 235 of the Code of Criminal Procedure of BiH; Article 250 of the Code of Criminal Procedure of FBiH; Article 243(1) of the Code of Criminal Proceedings of RS; Article 235 of the Code of Criminal Procedure of the Brčko District of BiH.

108 Article 90 of the Code of Criminal Procedure of BiH; Article 104 of the Code of Criminal Procedure of FBiH; Article 154 of the Code of Criminal Procedure of RS; Article 90 of the Code of Criminal Procedure of the Brčko District of BiH).

109 Article 81(2) of the Code of Criminal Procedure of BiH; Article 95 (2) of the Code of Criminal Procedure of FBiH; Article 145(2) of the Code of Criminal Procedure of RS; Article 81(2) of the Code of Criminal Procedure of the Brčko District of BiH.

Juvenile offenders:¹¹⁰

Unfortunately there are no comprehensive data and monitoring on children in conflict with the law. In the context of the Strategy against Juvenile Offending (2006-2010), draft laws were prepared in 2005 and 2008. Finally a law was enforced in the Republika Srpska (2011),¹¹¹ while in the Brčko District a relevant law was adopted in 2012. Considering the previous legislation, the laws on the Protection and Treatment of Children and Juveniles in Contact with the Law should be considered as a significant and positive step.

It is reminded that there are no special courts for juveniles. The relevant laws provide that in the existing court of first and second instance, as well as in the police, there is a special department for juveniles with staff specifically authorized for handling minors.¹¹²

In case of arrest and/or criminal prosecution, certain legislative and procedural safeguards shall be ensured for juvenile offenders.¹¹³ The child's needs shall be ensured by authorities during the criminal proceedings.¹¹⁴ More specifically:

- The immediate notification of the juvenile's parents or guardians, defense attorney and Center for Social Work.¹¹⁵ During the main trial the defense attorney, parent/guardian of the accused or an appointed representative of the social welfare authority shall be present.¹¹⁶
- Safeguarding the access to a defense attorney who will represent the minor through the criminal

110 Note that the Republika Srpska has adopted a special law on position of minors in criminal proceedings ("Law on protection and treatment of children and juveniles in criminal proceedings"), and the same was followed in the Federation of BiH in early 2014.

111 "Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings" („Law on Protection and Treatment“), enacted in February 2010 and enforced in January 2011.

112 Article 16 of the Law on protection and treatment of children and juveniles in criminal proceedings of FBiH, Brčko District BiH and RS; Article 19 of the Law on protection and treatment of children and juveniles in criminal proceedings of FBiH, Brčko District BiH and RS. Specifically, any cases involving juveniles shall be tried before judges for juveniles and appeals shall be heard by "panels for juveniles" composed of three judges [e.g. Code of Criminal Procedure of Bosnia and Herzegovina, Article 351 and Code of Criminal Procedure]. The new legislation on juvenile justice specifies that each trial court must have a juvenile justice department composed of one or more specialized 'judges for juveniles' and a 'panel for juveniles' [Law on Protection and Treatment, Articles 16–17; see also draft law on juvenile criminal offenders, Article 8(1)]; by the same token, 'juvenile panels' of appellate courts must include at least one member who is a juvenile judge or has 'special expertise' in the area of child rights and juvenile offending [Law on Protection and Treatment, Article 17; see also draft law on juvenile criminal offenders, Article 10(3)]. (UNICEF Regional Office for Central and Eastern Europe/Commonwealth of Independent States, ASSESSMENT OF JUVENILE JUSTICE REFORM ACHIEVEMENTS IN BOSNIA AND HERZEGOVINA, February 2011 available at http://www.unicef.org/ceecis/UNICEF_JJBosnia_2011_web.pdf).

113 See UNICEF Regional Office for Central and Eastern Europe/Commonwealth of Independent States, ASSESSMENT OF JUVENILE JUSTICE REFORM ACHIEVEMENTS IN BOSNIA AND HERZEGOVINA, February 2011 available at http://www.unicef.org/ceecis/UNICEF_JJBosnia_2011_web.pdf.

114 Code of Criminal Procedure of Bosnia and Herzegovina, Article 42(1); Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 363(2).

115 Law on Protection and Treatment, Article 96(2).

116 Law on Protection and Treatment, Article 110(2); see also draft law on juvenile criminal offenders, Article 83(2)]. According to the new law, during the summary proceedings, the judge has the discretion to proceed in the absence of the juvenile [Draft law on juvenile criminal offenders, Article 82(2)].

proceedings.¹¹⁷ Unfortunately this is often disregarded in practice, unless the case is related to a serious crime.

- Certain procedural time limits shall be respected.¹¹⁸
- In case of pre-trial detention, a minor shall be detained in a special section, separated from adults.¹¹⁹ However, concern is expressed regarding the (extended) duration of the detention, as well as about the fact that in many instances minors may be detained together with adults.
- Criminal proceedings concerning minors are closed to the public (court room procedures behind closed doors).¹²⁰

Within a criminal procedure the competent prosecutor shall collect information on the personality and the mental development of the juvenile, as well as on their living conditions and environment.¹²¹ This may be conferred by expert staff in the prosecutor's office.¹²² If needed, an expert's assessment may be ordered with regard to the mental development, health and personality of the minor.¹²³ Minors are subject to certain criminal sanctions (other than those provided for adults) in accordance with their age, maturity and the severity of the criminal offence.¹²⁴ However,

117 "A juvenile shall be represented by a defense attorney during the first questioning by a prosecutor or an authorized official person [i.e. police officer], as well throughout the entire proceedings." (Article 77 of the Law on Protection and Treatment) see also Code of Criminal Procedure of Bosnia and Herzegovina, Article 343(1); Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 364(1); Law on Protection and Treatment, Article 57.

118 Indicatively: A juvenile in police custody must be brought before a prosecutor "immediately or within 12 hours." Failure to do so requires that he/she shall be released. The prosecutor may decide to interrogate a juvenile suspect personally, or authorize the police to question the suspect. (article 96(6) and draft law on juvenile criminal offenders, Article 71(1)).

119 Specifically, in case of detention prior to and during trial, according to the new legislation [Article 96(6) of the Law on Protection and Treatment; see also draft law on juvenile criminal offenders, Article 71(1)], as already mentioned above a juvenile, if taken into a police custody, must be presented to the prosecutor "immediately or within 12 hours" and decide either to release him/her or request a juvenile judge to order detention or a measure of temporary placement [Law on Protection and Treatment, Article 98(1); see also draft law on juvenile criminal offenders, Article 71(3), establishing a limit of 24 hours]. Pre-trial detention facilities are separate sections located within the prisons that exist in the Federation and in the Republika Srpska, however, the practice shows that juvenile detainees are often kept in the same facilities as adults detained before trial.

120 Code of Criminal Procedure of Bosnia and Herzegovina, Article 365; Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 386(1); Law on Protection and Treatment, Article 111, and draft law on juvenile criminal offenders, Article 65.

121 Law on Protection and Treatment, Article 92(1).

122 Law on Protection and Treatment, Article 92(3) "In addition, any person having relevant information, except the juvenile's parents or guardian, attorney and minister/confessor, is obliged to provide it on request [Law on Protection and Treatment, Article 78]".

123 Law on Protection and Treatment, Article 92(4).

124 The 'criminal sanctions' that may be imposed on juvenile offenders: "educational measures" and "imprisonment" [Criminal Code of Bosnia and Herzegovina, Article 80(1); Criminal Code of the Republika Srpska, Article 69; Criminal Code of the Federation of Bosnia and Herzegovina, Article 84(1)]. However, if the offender was 14 or 15 years old at the time of the offence, only educational measures may be assigned. Imprisonment should be imposed only exceptionally (see UNICEF Regional Office for Central and Eastern Europe/Commonwealth of Independent States, ASSESSMENT OF JUVENILE JUSTICE REFORM ACHIEVEMENTS IN BOSNIA AND HERZEGOVINA, February 2011 available at http://www.unicef.org/ceecis/UNICEF_JJBosnia_2011_web.pdf).

the existing alternative and reformatory measures should be further developed and applied. In the context of the new legislation the “principle of opportunity”, or prosecutorial discretion in cases involving offences punishable by up to three years of imprisonment.¹²⁵ Legal remedies against penalty decisions shall be available to minors.¹²⁶

Minors in civil and family law cases:

In the context of civil law proceedings, a party with no full legal competence (litigation capacity) shall be represented by its legal representative. The latter shall proceed with all necessary actions, unless special authorization is required for certain actions. In civil proceedings, minors must be represented -usually by their parents. A temporary representative must be appointed by the court if, among others, the defendant has no litigation capacity and legal representative by force of law or if a conflict of interests arises between the defendant and their legal representative or if the same legal representative represents both parties. The guardianship body (Center for Social Care) shall be immediately informed by the court requiring for the aforementioned appointment.¹²⁷

Note that the Civil Procedure Code defines those authorized as representatives, so as to ensure the core principles of the litigation proceedings. This fact implies that the representative shall be appropriately trained and qualified. However, in contrary to this, the same code stipulates that the free legal aid service or competent officers may be appointed as representatives, regardless of the organization they belong to, their financing or participation to wider associations.

It should be noted that there are no family courts in Bosnia and Herzegovina, but there are individual councils within civil law sections of courts that specialize in family law issues. Proceedings are always closed during family law disputes. In other civil cases, the possibility of closed doors proceedings is provided, if it is required in the interest of protection of the minor.¹²⁸

125 Specifically, a prosecutor may decide not to prosecute if he/she considers that, although there is evidence that an offence has been committed, “it would not be purposeful to conduct a criminal proceeding against a juvenile in view of the nature of the criminal offence and the circumstances under which it was perpetrated, the minor’s previous life and his personal characteristics.” [Code of Criminal Procedure of Bosnia and Herzegovina, Article 352 and Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 373(1)]. Under the new law adopted in the Republika Srpska, this standard will apply to any offence [Law on Protection and Treatment, Article 89; under Article 68(1) of the 2008 version of the draft law on juvenile criminal offenders, it would apply only to offences punishable by up to five years].

126 See Article 370 of the Code of Criminal Procedure of BiH; Article 391 of the Code of Criminal Procedure of FBiH; Article 376 of the Code of Criminal Procedure of RS; Article 370 of the Code of Criminal Procedure of the Brčko District of BiH.

127 United States Agency for International Development, Bosnia and Herzegovina, CIVIL PROCEDURE CODE, USAID Fostering an Investment and Lender-Friendly Environment, 01 January 2004.

USAID FOSTERING AN INVESTMENT AND LENDER-FRIENDLY ENVIRONMENT (FILE), 01 January 2004.

128 Article 86(1) of the Law on Civil Procedure of BiH; Article 119 of the Law on Civil Procedure of FBiH; Article 119 of the Law on Civil procedure of RS; Article 232 (1) of the Law on Civil Procedure of the Brčko District of BiH.

C.3 Legally defined system of legal aid

Despite the fact that a legal based system has been established in certain areas,¹²⁹ a coherent policy on central level and a systematic harmonized approach to the issue is absent. It is noted that a federal level law regulating free legal aid is pending. Therefore, the system “remains fragmented and unregulated”.¹³⁰ In BiH, several legal aid programs have been implemented throughout the country, mainly with the support of NGOs. The establishment of legal aid web-based network should be highlighted. The latter includes governmental and non-governmental agencies. Alongside several free legal aid agencies set up, mostly by NGOs and mainly supporting civil claims. Legal aid before civil courts is mainly supported by civil society organizations, while with regard to administrative cases little progress has been made. According to the recent enacted laws, primarily the state authorities are to be defined as legal aid service providers, while the contribution of civil society organizations seems to be underestimated, especially within the last years.

As reported,¹³¹ among the main characteristics of the existing legal models, the right to general information, legal advice and assistance, representation (before administrative bodies and institutions, and courts), as well as to mediation is attained. In general, within the context of litigation, criminal and procedures concerning the representation of the injured party are provided. However, in several cases, concerning administrative proceedings and compensation of damages, legal aid is limited or absent. It should also be noted that cases before notary publics are not covered by the system.

There are differentiated criteria for accessing free legal aid in different laws and areas. However, in principle, the main substantial criteria for attaining access to free legal aid are: the financial/property status of the applicant, the existence of a well-founded claim, and conformity with national and international legal norms. The typical criteria are mainly related to the residence of the applicant.

Specifically, it is noted that:

- the required financial criteria are not harmonized across the country (it is noted that criteria of status and property are cumulative in some places)
- in general, access is limited only to residents of the territorial jurisdiction of the law regulating on legal aid
- the documents that must be submitted and the bureaucratic procedure that shall be

129 See also From the View Point of NGOs, Access to free legal aid for displaced persons in the Western Balkans countries; Overview of the situation in Bosnia and Herzegovina, Croatia, Serbia and Montenegro, November 2011, available at http://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report_336.pdf

130 Commission staff working document, Bosnia and Hercegovina 2012 PROGRESS REPORT, available at http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ba_rapport_2012_en.pdf.

131 From the View Point of NGOs, Access to free legal aid for displaced persons in the Western Balkans countries; Overview of the situation in Bosnia and Herzegovina, Croatia, Serbia and Montenegro, November 2011, available at http://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report_336.pdf.

followed may discourage the potential beneficiaries, including children, to apply for free legal aid

- the pre-evaluation of the success's possibility of the claim (for which the legal support is applied) is ambiguous and at the discretion of the decision-making entity/person
- the decision upon access to free legal aid and the remedies against a possible negative decision are not considered to be fully harmonized with the purpose of equal and efficient access to justice¹³²

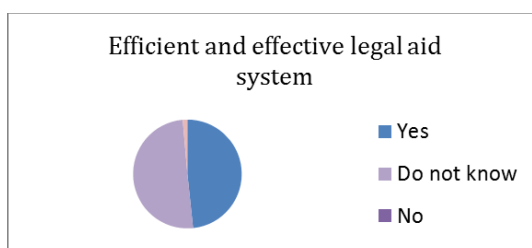
Children are entitled to free legal aid. However, according to the typical criteria, an indirect initiative address is required, meaning that the claim shall be submitted by the legal representative (parent or guardian or other authorized person). The latter, along with the bureaucratic requirements, may hinder children's access to the system.

KEY FINDINGS PART C
Children's Access to Justice

According to research, the following are evaluated as the determining factors for safeguarding in practice children's access to justice:

- ✓ Key indicators of the child's legal protection
- ✓ Legal representation of children
- ✓ Legal aid system for children

It is noted that despite the negative aspects of the legal aid system—highlighted by a significant number of participants (approximately 65%)—, almost half of them stated that the legal aid system is adequately developed (49%).



Legal protection	Evaluation of the key indicators for legal protection (see above “Key findings Part A”)
Legal representation	<p>Positive aspects:</p> <ul style="list-style-type: none"> ✓ Right to representation is legally protected ✓ Right to participation of children is legally protected ✓ Prompt appointment of guardian in cases of children without parental care <p>Negative aspects:</p> <ul style="list-style-type: none"> ✓ Parents: not familiar with the legal procedures – negligence/ignorance ✓ Legal guardians: lack of training and adequate resources – not direct/substantial contact with the children
Legal aid system	<p>Positive aspects:</p> <ul style="list-style-type: none"> ✓ Support of children deriving from financial resources ✓ Gradual development of the cooperation between state and non-state organizations <p>Negative aspects:</p> <ul style="list-style-type: none"> ✓ Absence of coherent harmonized legislation: law on national level ✓ Absence of free legal aid system in certain areas ✓ Low level of support by state – main support by private institutions: not harmonized development on a national level ✓ Bureaucracy – required criteria and documents: children need additional prior (legal aid) support in order to apply for free legal aid ✓ Training of appointed lawyers ✓ Contact and direct communication of a pro bono lawyer with the child: impact on trusting and confident relationships ✓ Not covering every legal procedure (judicial and extra-judicial) ✓ Inadequate support of children to express their views

PART 3

THE IMPLEMENTATION FRAMEWORK PERTAINING TO CHILDREN'S RIGHTS AND ACCESS TO JUSTICE

The legislative framework on children rights and legal protection (Part 2), as well as the key features and problems faced by children (Part 1), should be taken into consideration towards a combined rights-based and needs-based approach for access to justice, with respect to the individuality of each child.¹³³Towards this direction, main core issues related to the effective implementation of children's legal protection should be considered, namely:

- a) the cooperation, coordination, monitoring and evaluation of key actors and agencies in the general structural and administrative context in which they develop their activities for children's protection
- b) the performance and capacity level, in conjunction with the allocation of materials and the development of human resources in the field of children's rights
- c) the level of awareness (public and beneficiaries' legal awareness), in conjunction with consultation, participatory processes and advocacy issues with regard to the promotion of children's rights.

A. ADMINISTRATION – COORDINATION – COOPERATION: KEY ACTORS AND AGENCIES FOR CHILDREN'S PROTECTION

Firstly, it should be noted that on a national state level, among the key actors in the field of children's protection and access to justice, are:

- The Ministry for Human Rights and Refugees, which is mandated to coordinate the implementation of the Convention on the Rights of the Child. It is noted that, in order to implement the Convention on the Rights of the Child and to meet the UN Millennium Development Goals, the Council of Ministers of Bosnia and Herzegovina approved in its session held on 18 July 2002 the Action Plan for Children of BiH 2002 –2010, aiming to strengthen the position of children in BiH. Within this context, a Council for Children was established at a national level in 2002, as an independent body operating within the BiH Ministry for Human Rights and Refugees, and is responsible for monitoring the Action Plan implementation.¹³⁴

133 This approach takes also into consideration the key features for rights-based programming for access to justice in UNPD, Programming for Justice: Access for All, A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice, 2005, UN Common Approach to Justice for Children, March 2008, UN Guidance Note of the Secretary-General, UN Approach to Justice for Children, September 2008, UN Access to justice for children, Report of the United Nations High Commissioner for Human Rights, A/HRC/25/3516, December 2013.

134 Council of Ministers of Bosnia and Herzegovina, ACTION PLAN FOR CHILDREN of Bosnia and Herzegovina (2011. –2014.), 2011, Sarajevo, July 2011.

- The Institution of Human Rights Ombudsman/Ombudsmen of BiH handles complaints related to poor functioning or to human rights violations committed by any organ of Bosnia and Herzegovina, its entities and the Brčko District.¹³⁵ Within it, a Department for Following the Rights of a Child has also been established.¹³⁶ The Republika Srpska has an Ombudsman for Children that follows the implementation of all acts related to the rights and interests of children, advocates for protection and promotion of children's rights. RS has also developed an entity for the protection of children and families, funded by the official budget (e.g. Fund for Child Protection, the Council for Children of Republic of Srpska).¹³⁷

- It is also reminded that the municipal authorities play a major role in the local policy implementation regarding children's issues, particularly through the local centers for social work. Moreover, there are agencies and departments within state services and bodies, with the authorization and responsibility to protect children's rights.

The contribution of Ombudsman/men has been significant in the field of protection of child rights.¹³⁸ Additionally, the initiatives taken by the Council for Children have been significant towards the improvement of the children's living conditions.

Nevertheless, the complexities of the administrative and legal systems in Bosnia and Herzegovina are reflected in the implementation of the law. The decision-making lies on a very large number of entities, districts and cantons.¹³⁹ This limits the influence of the central government in the field of social welfare and children's rights. As it is acknowledged, there are "inconsistencies in the implementation of child rights across the territory, with children in similar situations being subject to variations in the fulfilment of their rights depending on the territory in which they reside".¹⁴⁰ The child protection system "is characterized by systemic gaps requiring substantive legislative and policy shifts in order to ensure integrated, cross-sectoral cooperation.[...] This fragmentation enables and conceals legal and policy frameworks."¹⁴¹ This not only sets obstacles to the implementation of the children's rights laws, but also contributes to the institutional discrimination of children, especially those in vulnerable groups and those belonging to

135 <http://www.ombudsmen.gov.ba/Default.aspx?id=0&lang=EN>.

136 <http://www.ombudsmen.gov.ba/Default.aspx?id=3&lang=EN>.

137 RS Official gazette, No66, July 2006.

138 It should also be underlined that "The one and only continuous monitoring of child rights in BiH (which joins along with other sources a foundation for this report) was conducted by the organizations "Our children" from Sarajevo and "Hi neighbor" from Banja Luka, in cooperation with 18 schools and with the support of the Save the Children Norway." Informal Network of NGOs "Stronger voice for children", ALTERNATIVE REPORT ON CHILD RIGHTS SITUATION IN BiH FOR THE PERIOD 2005-2011. With the support of Save the Children Norway.

139 Committee on the Rights of the Child. Concluding observations on the consolidated second to fourth periodic reports of Bosnia and Herzegovina, adopted by the Committee at its sixty-first session (17 September–5 October 2012), CRC/C/BIH/CO/2-4, 29 November 2012.

140 Committee on the Rights of the Child. Concluding observations on the consolidated second to fourth periodic reports of Bosnia and Herzegovina, adopted by the Committee at its sixty-first session (17 September–5 October 2012), CRC/C/BIH/CO/2-4, 29 November 2012.

141 UNICEF, THE STATUS OF ROMA CHILDREN AND FAMILIES IN BOSNIA AND HERZEGOVINA, Sarajevo, 2013.

minorities. Taking the aforementioned into account, it becomes evident that the harmonization of entity and cantonal laws with those of the state still remains a great challenge, along with the establishment of a central comprehensive mechanism for the coordination of all those involved. At the same time, frequent political crises may slow down any progressive reform, leading to the delay of decision-making and law enforcement, and also has a serious impact on the effective coordination and cooperation among the competent agencies and stakeholders.

The institutional fragments set by all the above mentioned administrative structures and coordination, as well as the budget allocation limitations, are further reflected on the implementation of the adopted Strategies and Action Plans aiming to children. Indicatively:

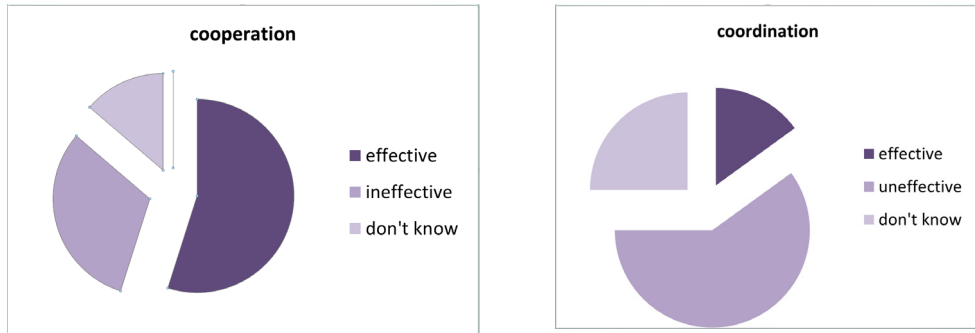
- In the context of the Action Plan for the Children of Bosnia and Herzegovina 2010 – 2014 (adoption July 2011), serious concerns rise referring to the administrative and other relative technical restrictions to the implementation of the Plan's provisions.
- It is noted that the Action Plan on the Educational Needs of Roma was not effectively implemented as a consequence of the aforementioned fragments, "and that Roma children continue to be frequently subjected to widespread and grave discrimination resulting in, inter alia, serious violations of their rights to education and healthcare"¹⁴²

Moreover, the lack of clarity with regard to the division of responsibilities, due to all the aforementioned factors, has a serious impact on data collection and monitoring of the implementation of the legislative framework for children. The lack of reliable and comprehensive statistical data on children population at a state level is also an issue of serious concern. This is strongly related to the fact that a population census has not been conducted yet. With regards to monitoring, some steps were taken within the establishment of the Department for the Protection of Child Rights under the Human Rights Ombudsman of the Entity of the Federation of Bosnia and Herzegovina, and the independent Ombudsman for Children in the Republika Srpska in 2008.

KEY FINDINGS PART D
Administration – Coordination - Cooperation
Among Key Actors for Children's Protection

Over 55% of the participants declared that the level of "cooperation" among the competent stakeholders and professionals on a national level is satisfactory and effective; whilst the level of "coordination" is estimated to be low and ineffective (over 60%). It is also stated (by over 40%) that the latter often has a negative impact on addressing children's cases. It is also reflected on the disharmonized legislative policies on a national level, and mainly on the ineffective and limited application of Strategies and Actions Plans with regards to children protection. It is noted that almost all participants claimed that the Action Plans are not effectively or completely implemented.

142 Committee on the Rights of the Child -Concluding observations on the consolidated second to fourth periodic reports of Bosnia and Herzegovina, adopted by the Committee at its sixty-first session (17 September–5 October 2012),CRC/C/BIH/CO/2-4,29 November 2012.



Considering the significant gap between the estimations on the level of cooperation and coordination, retrospectively (and in conjunction with the data referring to the level of legal protection and the data referring to material and human resources), it is evident that:

- ✓ The claimed effective cooperation among competent state stakeholders mainly refers to the transaction of administrative and bureaucratic procedures with regard to children cases (within a typical referral system among Services)
- ✓ The cooperation (especially on lower administrative levels) has been significantly improved with the support of NGOs (signing of Protocols of cooperation)
- ✓ The coordination is hindered not only on a state level (due to legislative inconsistencies), but also in the lowest administrative levels (municipalities/cantons) due to
 - a) the reflection of the aforementioned inconsistencies
 - b) lack of hierarchy in services staff and proper task/responsibilities' division

B. ALLOCATION OF MATERIAL AND DEVELOPMENT OF HUMAN RESOURCES: PERFORMANCE AND INDIVIDUAL CAPACITIES TOWARDS THE IMPLEMENTATION OF CHILDREN'S PROTECTION

The state budget allocations devoted to social protection are significant; however, the proportions devoted to children care, particularly to those in vulnerable groups, are limited. Simultaneously, due to the lack of a harmonized legal based budgeting and monitoring process, several discrepancies are identified in social and health support (e.g. social benefits and allowances) in the different areas of the country, resulting in inequalities to the treatment of children needs, particularly those living in harsh socio-economic conditions and children living in institutions.¹⁴³ It is highlighted that the financial allowances, including those for children and families, depend on the financial capacity of the municipality (or canton) where

¹⁴³ For example, as indicated "After 2008, the Cantonal Ministries have provided insufficient funds for Safe houses in Mostar, Bihac and Zenica. The competent ministry is the only one that has been financing the Safe houses since 2001 covering their expenses up to 60%. This financing model often faces problems related to backlog payments and insufficient funds." (in the Informal Network of NGOs "Stronger voice for children", ALTERNATIVE REPORT ON CHILD RIGHTS SITUATION IN BIH FOR THE PERIOD 2005-2011 – With the support of Save the Children Norway)."

the centers are located. The children's welfare system in BiH is under-financed.¹⁴⁴ Indicatively, it is mentioned that "When speaking of social welfare and child protection, it is a handicap that 50% of the contributions for social welfare refer to contributions for civilian victims of the war and disabled veterans, so it reduces the participation of other vulnerable categories and children."¹⁴⁵

On a municipality level, social work centers have quite limited financial and human resources considering their wide range of tasks and responsibilities. Due to this, and to other functional reasons, the centers mostly focus on administrative and bureaucratic aspects (e.g. registration of beneficiaries, checking of legal criteria for social support), while the provision of social services is undervalued in practice. It should also be noted that centers for social work and healthcare are not adequately equipped and prepared to support children within the family environment and this results in the institutionalization of many children, particularly of those with disabilities. There has been an increase in the staff number few years ago, however, the employees' number cannot cover the increasingly rising needs for social services. Due to this, the staff has to correspond to a variety of demands of different population categories and there are no teams exclusively working with children. The cooperation among the centers and non-state organizations at a local level is fairly satisfactory, although further support is required on a state level.

Training activities are mainly based on the actions of the non-governmental sector with the support of international donors. Although these efforts do not correspond to the current training needs and do not adequately cover all the competent sectors in the country, unless the involvement of the state becomes broader, regular and systematic. Training and education activities have taken place in the previous years for stakeholders and professionals involved in the judicial, law enforcement and civil service fields. In the education field, teachers, despite their adequate formal education, have not been efficiently supported during their education, so as to demonstrate professional competence. Consequently, it is difficult for them to correspond to the demands of the current needs and reforms.¹⁴⁶ With regards to inclusive education, it is noted that "there are no competent staffs at schools, such as: defectologists, speech therapists and psychologists; which all result in the frustration of school teachers, parents of children with disabilities, as well as of parents of children without disabilities."¹⁴⁷

144 Report "Situation Analysis on Allocation of Funds From the Budget for Children of Bosnia and Herzegovina".

145 Informal Network of NGOs "Stronger voice for children", ALTERNATIVE REPORT ON CHILD RIGHTS SITUATION IN BIH FOR THE PERIOD 2005-2011 - With the support of Save the Children Norway.

146 UNICEF, Analyses of teachers needs in terms of professional education, 2007.

147 Informal Network of NGOs "Stronger voice for children", ALTERNATIVE REPORT ON CHILD RIGHTS SITUATION IN BIH FOR THE PERIOD 2005-2011 - With the support of Save the Children Norway.

KEY FINDINGS PART E
Material and Human Resources
(budgets, staffing, training)

Field	Indicative Findings
Social protection services	<ul style="list-style-type: none"> ❖ Extremely limited number of staff members in key protection services (mainly in institutions/residential care for children) – Teachers usually have to de facto take up the role of social workers or psychologists ❖ Lack of staff exclusively focused on the protection of children's rights – currently staff in social work centers is overloaded with a wide range of different tasks ❖ Volunteers and students often provide support ❖ Lack in training, especially in the field of children's alternative care (mainly foster care) ❖ Required budget allocation for social welfare benefits – serious budget gaps ❖ Lack in infrastructures in terms of a) capacity b) appropriate equipment ❖ Low levels of staffing often result in low quality performance with a direct impact on the handling of children's cases (especially when the cooperation with other services and authorities is required)
Law enforcement and judicial authorities	<ul style="list-style-type: none"> ❖ There is no significant lack in staffing (adequate number of staff members) ❖ Additional needs for training, especially with regards to the treatment of juvenile offenders ❖ Improvement of the infrastructures (special rooms adequately equipped), especially with regards to the implementation of the provisions for minor victims and witness, as well as for the detention of minors
Other services	<ul style="list-style-type: none"> ❖ Need for lawyers specialized in children's rights law ❖ Need for equipped teams of professionals at schools (psychologist, speech therapist, special education teacher and advisors)

C. LEGAL AWARENESS AND ADVOCACY TOWARDS CHILDREN'S PROTECTION: CONSULTATION – INCLUSIVE PARTICIPATION OF CHILDREN

Increasing public and advocacy awareness is important for all policy and legislative areas concerning children's rights law, and especially for the ones on the protection of the vulnerable groups. Alongside legal awareness—defined as the “degree of people's knowledge of the possibility of seeking redress through the justice system,¹⁴⁸- the capacity building and the active participation of beneficiaries (children) are key factors for the implementation of access to justice.

It is acknowledged that in BiH the level of public awareness is low and “the public is not informed enough and is not sensitive to the status and problems of children, prejudices and stereotypes are present, cultural and traditional influences are emphasized, etc.”. This is indicative of the fact that children's rights are not properly implemented.¹⁴⁹ At the same time, media engagement is limited. Although in the recent years progress has been made, it should be reminded that “some media are often inclined towards a somewhat different approach that is not in compliance with the ethical recommendations and legal framework in BH”.¹⁵⁰

On the other hand, NGOs made numerous efforts towards this direction, especially through the cooperation with education institutions, as well as through outreach activities in local communities. Indicatively: the campaign “Violence is not a School Subject” (2008), the awareness and training program “Prevention and education”, the project “Strengthening the Capacities of Professionals for the Application of the National Strategy for Protection of Children from Violence, Abuse and Neglect” and the training organized in its context etc. NGOs role is continuously growing, and in some cases they take the role of filling the gaps of state policies; however their dependence on (private) foreign donors, the taxation system, as well as the lack of institutionalized framework with regards to their funding, function and support, is a matter of concern. The state shouldn't underestimate its obligations towards children's protection and rely (merely) upon the non-state entities. Following the adoption of the Ljubljana Declaration (2008), there is a state commitment to enhance consultation and cooperation with NGOs and civil society. Currently, there are many protocols of cooperation among NGOs and state/governmental institutions. It is also noted that in 2011 in RS a law was adopted on volunteering, encouraging the development of the civil society under certain regulations.

According to the UN Convention on the Rights of the Child, any measure or decision concerning the child shall be made in consideration with the child's best interest and well-being, while their opinion should be also considered and assessed in accordance with their age and maturity. It is reminded that, on a constitutional level, the Convention has priority over all other laws of the

148 UNPD, Programming for Justice: Access for All, A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice, 2005.

149 Committee on the Rights of the Child, Concluding observations on the consolidated second to fourth periodic reports of Bosnia and Herzegovina, adopted by the Committee at its sixty-first session (17 September–5 October 2012), CRC/C/BiH/CO/2-4, 29 November 2012.

150 Informal Network of NGOs “Stronger voice for children”, ALTERNATIVE REPORT ON CHILD RIGHTS SITUATION IN BIH FOR THE PERIOD 2005-2011 - With the support of Save the Children Norway.

country. The national legislation, including family laws and other relevant legislation, recognizes the right of children to express their views in legal proceedings and provide for children's consultation (including guardianship cases). Introduction and improvement of children's participation at a community level has been supported by the Social Protection and Inclusion System for Children program initiated in 2009¹⁵¹. However, "a large number of children and their parents are not deeply aware of children's rights and how they can be implemented. These conditions create disparities in the free enjoyment of rights and lead to consequences such as child poverty, violence, social exclusion and other risks. The abovementioned categories of minors find the access to justice extremely difficult due to the lack of information on the rights at their disposal; consequently this information gap affects their ability to be effectively represented." Additionally, in the education field, the views of the child are rarely taken into account, and children are not adequately encouraged to express them.¹⁵²

Although the right of children to participate is legally regulated, the active participation of children should be regarded in conjunction with the role of the parents, educators and teachers, as well the professionals who come in contact with children (e.g. social workers, psychologists, etc.). With regards to the participation of children at a local community level, it is noted that it has a passive, mediate and non-active character. The Council of Pupils at schools should be underlined as a progressive step, despite the fact that participation is still low.¹⁵³ According to recent data, pupils rarely or never get the chance to influence the curricula or the quality of teaching through opinions and proposals.¹⁵⁴

KEY FINDINGS PART F¹⁵⁵

Children's Legal Awareness – Consultation – Participation

Legal awareness:

The legal awareness of children is quite limited or totally absent

151 Committee on the Rights of the Child. Concluding observations on the consolidated second to fourth periodic reports of Bosnia and Herzegovina, adopted by the Committee at its sixty-first session (17 September–5 October 2012), CRC/C/BIH/CO/2-4, 29 November 2012.

152 Children and Institutions in Bosnia and Herzegovina. First Report Capacity Building Research: Unaccompanied Children and Children at Risk of Being Institutionalized in Bosnia and Herzegovina.

153 Children and Institutions in Bosnia and Herzegovina. First Report Capacity Building Research: Unaccompanied Children and Children at Risk of Being Institutionalized in Bosnia and Herzegovina.

154 Research on the status of the rights of the child in BiH, NVO Our children, Sarajevo and Hi neighbour, Banja Luka, 2004 and 2009.

155 Based on the analysis of data from children workshops compared with questionnaires and interview data. Children's profile to whom the findings refer to: over 13 years of age - attend or have attended school for at least 3 years - half of them live in institutions (without parental care), half of them are Roma (and live with their family).

Indicatively:

- Many children have never even heard of the word “right” and/or about the Convention on Child’s Rights (over 97%)
- Almost none of the children was aware of the competent authority/agency that they should address to in case they are in danger or victimized
- In such case, as shown in the graph below, children stated that they would address for support to:
 - a) no one (approximately 60%)
 - b) an older friend (approximately 25%)
 - c) their school teacher (approximately 10%)

Consultation:

The views and opinions of almost all children that have been previously involved in a legal or judicial process have not been heard or considered

Ask for support from**Participation:**

Children’s participation at school or outreach activities on a community level is quite restricted or absent

Indicatively:

- Many children are unaware or not fully aware of the reasons and procedures followed concerning their involvement in a legal or judicial process (over 90%)
- Many children are not fully explained/ informed by their legal representative on their rights concerning their involvement in a legal or judicial process (over 90%)
- Almost all children have difficulties/limited capacity in verbally expressing their views (and feelings) mainly due to (cumulatively):
 - lack of appropriate information
 - low capacity/illiteracy
 - lack of self-esteem
 - distrust/disrespect towards authorities and legal representatives

Consultation:

The views and opinions of most all children that have been previously involved in a legal or juridical process have not been heard

Indicatively:

- Children are not well informed and aware of activities in which they could participate
- Some children have never participated in a team (extracurricular) activity
- Most children are eager to participate in group/community activities; although they feel discouraged mainly due to self-perception as “stigmatized”

CONCLUSIONS AND RECOMMENDATIONS

1. Children's profile and needs: Combined approach for the identification

Living conditions and life experiences are in fact those leading to the characterization of children as “unaccompanied”, “Roma”, “without parental care”, “institutionalized children”, etc. Under certain (social) circumstances –combined with public and legal awareness-, these characterizations are likely to result in the stigmatization of children and to the further cultivation of prejudices, and in some cases, this categorization results in discrimination; despite the initial intention to protect the children.

It would be important to firstly identify the common attributes of the children living in vulnerable situations, so as to indicate the need of an inclusive and holistic approach to childhood, aiming to reduce the categorization factors that are likely to lead to discrimination and stigmatization; towards the strengthening of their rights and access to justice.

From this perspective, the aim is to categorize the needs and claims of children, accordingly to their living conditions and context, and not to categorize the children themselves.

Therefore:

Any description of children population and characteristics should be based on the prior identification of the actual, social and legal factors that set the children's living background.

These factors may require a greater emphasis on certain aspects with regards to children needs and claims (needs/claim-based approach).

While the response to these needs is examined through the level of legal protection for children, based on their acknowledged and protected rights (human rights-based approach).

The combined application of the two latter approaches should be adjusted and applied with respect to the unique personality of each child on an individual basis, taking into consideration the fact that common/same needs (may) require special/different treatment (individual-based approach).

2. Legal protection and access to justice: Bridging the gap between provisions and implementation

Key indicators on the level of children's legal protection should be identified in line with the international norms and prioritized mainly based on the input from local key actors in the field of children's protection (bottom-up approach); taking into account the disparities and inconsistencies of the administrative and legislative levels in the country.

Among the key indicators on the level of children's legal protection, the development of a central monitoring and coordinative mechanism should be highlighted, while past experiences and initiatives by the Council for Children should be further explored and utilized.

The aforementioned mechanism should, inter alia:

- be enhanced by mandatory binding powers applied on a national level
- be directly linked with judicial, law enforcement and independent authorities (Ombudsman/men)
- consist of representatives from key state and local level actors
- include an advisory body with increased powers, consisted of key civil society representatives and representatives from students' councils
- include movable teams, so as to ensure direct feedback from the field and the establishment of coherent communication framework among the competent stakeholders (encouraging networking)
- special attention should be paid to specific and appropriate qualifications and the tenure of its members

Main legal gaps and inconsistencies (i.e. social protection, guardianship, legal aid system, etc.) are followed by implementation gaps. The reasons are mainly attributable to: low level of coordination, and limited material and human resources.

Considering the high poverty and unemployment rates in the country, as well as the limited budgetary potentials, special emphasis should be given to the management of disposed financial resources along with the establishment of comprehensive coordinative framework (see mechanism above) and the development of human resources.

**3. Raise legal awareness and participation of children:
Strengthening the perspectives towards
the implementation of children's rights and access to justice**

Considering the findings on children's status in conjunction with the evaluation of the key indicators for their legal protection and access to justice, the following should be taken into account for strengthening legal awareness for children.

Targeting on children who come in contact with the law:

- qualified staffing and training of the authoritative stakeholders
- legally based standards for the development of the guardianship system, so as to ensure that the appointed guardian is appropriately qualified to represent the child before the authorities
- provision for special parents counselling and support in case they have limited knowledge and capacities to fulfil their role as legal representatives of the child
- monitor the compliance of the procedures with children's rights
- the child should have the right to appeal in case of inappropriate legal representation that resulted in the infringement of its rights, and to ask for the appointment of a new legal representative; if the child is deprived of the possibility to appeal during childhood, the time limits for appealing should be extended for a period after they become adults, especially in case the aforementioned infringement affects their future life.

Targeting on children who live under vulnerable situations:

- Organizing activities for and with children and emphasizing equally on the content and the context of these activities, i.e.: a) Informing and consulting with children on their life experiences, particular interests and concerns, on their rights and access to justice; Following a standard based procedure that would enhance children skills, knowledge and capacities(content), b) With regards to context, ensuring the place (extra-curricular/outreach activities and special workshops in schools, within institutions, and communities) and time of these activities (continuity and regularity)
- organizing public awareness campaigns specially targeted to children

MAIN SOURCES

BiH, REPORT ON THE IMPLEMENTATION OF THE UNITED NATION'S CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES IN BOSNIA AND HERZEGOVINA under Article 35, paragraph 1 of the Convention on the Rights of Persons with Disabilities, October 2012

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 2010 Human Rights Report: Bosnia and Herzegovina, 2011, available at <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154416.htm>

Council of Europe, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to Bosnia and Herzegovina on 27-30 November 2010, CommDH (2011)11, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1766837>

Council of Ministers of Bosnia and Herzegovina, ACTION PLAN FOR CHILDREN of Bosnia and Herzegovina(2011–2014), 2011, Sarajevo, July 2011

Commission staff working document, Bosnia and Hercegovina 2012 PROGRESS REPORT, available at http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ba_rapport_2012_en.pdf

Council of Ministers of Bosnia and Herzegovina, ACTION PLAN FOR CHILDREN of Bosnia and Herzegovina (2011–2014), Sarajevo, July 2011

EUROPEAN COMMISSION, COMMISSION STAFF WORKING DOCUMENT BOSNIA AND HERZEGOVINA, 2013 PROGRESS REPORT, Brussels, 16.10.2013 SWD(2013) 415 final

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) from 5 to 14 April 2011, Strasbourg, 26 April 2012, CPT/Inf (2012) 15

From the View Point of NGO, Access to free legal aid for displaced persons in the Western Balkans countries; Overview of the situation in Bosnia and Herzegovina, Croatia, Serbia and Montenegro, November 2011, available at http://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report_336.pdf

Informal Network of NGOs “Stronger voice for children”, ALTERNATIVE REPORT ON CHILD RIGHTS SITUATION IN BIH FOR THE PERIOD 2005-2011 – With the support of Save the Children Norway, October 2011

Ministry of Security of Bosnia and Herzegovina, Strategy in the Area of Migrations and Asylum and the Action Plan for the period 2012 – 2015, Sarajevo, June 2012, available at <http://www.msb.gov.ba/PDF/Strategy%20and%20Action%20Plan%202012-2015,%20engleski.pdf>

NVO Our children, Research on the status of the rights of the child in BiH, Sarajevo and Hi neighbour, Banja Luka, 2004 and 2009

Institute of Criminology and Safety Studies, Survey “Domestic Violence – Development Study in BiH”, Sarajevo 2005

UN Committee on the Rights of the Child - Consideration of the reports submitted by States parties under Article 44 of the Convention - Combined second to fourth periodic reports of States parties due in 2009, Bosnia and Herzegovina, [24 February 2010], CRC/C/BIH/2-4, 14 June 2011

UN Common Approach to Justice for Children, March 2008

UN Committee on the Rights of the Child - Concluding observations on the consolidated second to fourth periodic reports of Bosnia and Herzegovina, adopted by the Committee at its sixty-first session (17 September–5 October 2012), CRC/C/BIH/CO/2-4, 29 November 2012

UN, Common Approach to Justice for Children, March 2008

UN, Guidance Note of the Secretary- General, UN Approach to Justice for Children, September 2008

UN, Access to justice for children, Report of the United Nations High Commissioner for Human Rights, A/HRC/25/35, 16 December 2013

UNICEF BiH, Children and Institutions in Bosnia and Herzegovina - First Report Capacity Building Research: Unaccompanied Children and Children at Risk of Being Institutionalized in Bosnia and Herzegovina, Sarajevo, March 2003, available at http://www.ceecis.org/child_protection/PDF/B&Hinsitut.pdf

UNICEF Regional Office for Central and Eastern Europe/Commonwealth of Independent States, ASSESSMENT OF JUVENILE JUSTICE REFORM ACHIEVEMENTS IN BOSNIA AND HERZEGOVINA, February 2011 available at http://www.unicef.org/ceecis/UNICEF_JJBosnia_2011_web.pdf

UNICEF, The status of Roma children and families in Bosnia and Herzegovina, Sarajevo, 2013, available at http://www.unicef.org/bih/roma_families-en-final.pdf

UNICEF, Roma Children, country Bosnia and Herzegovina, “The Roma in Central and Eastern Europe/Bosnia and Herzegovina” available at <http://www.romachildren.org>

com/?page_id=691

UNPD, Programming for Justice: Access for All, A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice, 2005, available at http://fr.unrol.org/files/Justice_Guides_ProgrammingForJustice-AccessForAll.pdf

USAID Bosnia i Herzegovina, Civil Procedure Code USAID FOSTERING AN INVESTMENT AND LENDER-FRIENDLY ENVIRONMENT (FILE), 01 January 2004

ANNEX 1 WORKSHOP WITH CHILDREN - METHODOLOGY

By **Andrea Puhalic**

Specific objectives of the workshop within the local context

1. **Collection of the research data about children rights issues from the perspective of the child:**

- Level of children's awareness about their rights, factors that influence the information they have, the meaning of particular rights for them, the way of understanding the system of children rights protection and access to justice, feelings that children have about local authorities as the children rights protection holders in local community.
- Finally, all this information helped determining the weaknesses of access to justice for children in BiH.

2. **Psychosocial empowerment of children**

- Children are informed about their rights and access to justice in BiH (children have better knowing and understanding of their rights, the cases of their violation, and the formal mechanism of the access to justice).
- Children have experience of group work based on the respect of children's basic rights: respect for the uniqueness and diversity of each child, equal access to every child, ethics of participation - child as an expert from experience.
- Children have the experience to recon and confirm their power and ability to make a change.

The conducted activities

1. **Work in small groups, creative workshops**

- Presentations of the participants in pairs
- Joint development and illustration of the poster about group rules
- Leading the presentations and group work by the workshop leader
- The application of creative techniques (illustration of cards with the basic rights of the child and the cards with the names of local authorities, role play/access to justice on personal experience violations)

2. **Education**

- Power point presentations
- Projection of short movies about children rights and access to justice
- Presenting and clarifying the written procedure form of access to justice
- Guiding discussions and clarifying of understanding

3. **Movie projection**

4. **Guiding discussions**

- Guided discussion about the education, film projections and work in small groups

5. **Demonstration of respect for the rights of the child**

- Leading creative workshops, work in small groups, presentations and discussions based on children's basic rights

6. **Evaluation**

- Preparation and fulfilment of the evaluation questionnaire

Methodology

1. Establishing the process of group work

- Presentation of the organizers and the manner and content of work
- Joint establishment of the group work rules
- Establishing cooperative relationships with children
(demonstration of respect for the uniqueness and diversity of each child, demonstration of equal access for every child, demonstration of ethics of participation-recognition of the child as an expert by experience, with focus on children's power and ability to make a change)

2. Use of skills focused on child and its basic rights

- The skills of active listening and empathic understanding
- Skills of leading and managing discussion
- Skills of setting in-depth questions
- The skills of helping children to more clearly identify and present their experience
- Focus on the initiative, strength and power of a child
- Skills of closure and evaluation

3. Informing children

- Informing children on their basic rights (from Convention about Children Rights, with focus on the rights that are recognized by children as a particularly significant or in risk of violation)
- Informing children of access to justice in BiH (local authorities and their rules, and formal procedures regarding children rights protection)

4. Assessment of the knowledge, experiences and needs of the children, in relation to their basic rights and access to justice

- Assessment of the children's level of awareness of their rights, focus on personal experience
- Assessment of the children's level of awareness of rights violations, focus on personal experience
- Assessment of knowledge about mechanism of access to justice, focus on personal experience
- Assessment of the attitudes and emotions about local authorities
- Assessment of the difficulties in children rights protection, focus on personal experience
- Assessment of the need to ensure protection of some rights, regarding special categories of vulnerability
- Assessment of the main sources of information that children have, dominant influence on children's personal perception about their rights and access to justice

Respect of the standards of participation

- **Standards of participation defined with the professionals participants:**
 - Consent of the parents or guardians for the participation in the workshop is provided
 - The basic selection criteria are met
 - Professionals respected all group rules, as well as children
 - Professionals respected the dignity and uniqueness of every child participant
 - All children participants voluntarily agreed to participate in the workshop
 - Schedule of activities was checked and confirmed with children participants
 - There was flexibility in responding to the dynamics and needs of every group, given the defined goals and specific resources of every group of children

- **Standards of participation defined within both groups of children:**
 - Respect for the everyone's opinion
 - When somebody talks, the others are listening
 - No taunting or bullying
 - No wrong or correct answers
 - Respect the agreed schedule
 - The right to skip participation
 - The right to participate in different ways
 - The right to recall on group rules

Strengths points/successful factors

- Children are informed about the basic concepts and meanings of their rights (e.g. children did not know what justice or discrimination is, some of them did not even hear about that concepts before, etc.)
- Children are informed about the available ways to protect their rights and obtain access to justice
- Authentic information from the child's perspective about specifics of their knowledge/ignorance and (not) understanding of their rights and access to justice
- Major risks in the system of children rights protection in BiH, with regard to particularly vulnerable categories of children (e.g. illiteracy of Roma parents, who only have access to the justice system to protect the rights of their child, or a large number of children with special needs in Institutions, without adequate professional and legal protection). Also, both groups of children pointed out the helplessness in relation to the prejudices (Roma and children living in institutions), as well as in relation to bullying.
- High children's motivation for the participation
- Children got a positive experience from the workshop interaction which was based on acceptance and respect, as well as from the focus on children's strengths (although initially insecure, children later enthusiastically embraced the perspective of being persons with rights, and enjoyed having the resources to protect them).

Weakness points/critical factors

- Short time frame in which the workshops were held
- Too broadly defined objectives in relation to the time frame of the workshop
- Inability to influence the heterogeneity of every group (the first group mostly included boys and the second mostly girls) - because of the criterion of voluntary participation and factor of unpredictability
- First group was too heterogeneous in terms of specifics of difficulties of the children participating (children with special needs and children with attention deficit disorder represented a challenge for the implementation of all activities foreseen)
- Several children subsequently joined, so they did not participate in all activities

Impact of the activities on the life of the children, their families and communities

- Information about children's basic rights and specific meaning of rights in relation to family, school, and state systems is the first step in ensuring that children recognize themselves as the bearers of rights
- Information about the representatives of the system of children rights protection influences the confidence and security of children in the local community and the society at large
- Recognizing education as a way to raise new competencies to upgrade the existing system of protection of children's rights, or just as a way to protect their rights in a better way, could affect their motivation in learning
- Recognizing the importance of this topic for some future participation in activities related to children's rights and access to justice
- Recognizing the need to organize specific activities through which children will be informed about their rights and access to justice (given the unexpectedly high level of misunderstanding of the meaning of basic concepts and fundamental rights, in relation to their age)

Relevant aspects emerged on the theme of access to justice

- Complicated and unclear procedures of access to justice in Bosnia and Herzegovina
- Children in BiH do not have direct access to justice, but through a parent or a guardian
- Problems arise when parents do not have the capacity to adequately protect the rights of their child (e.g. parents of the Roma population who are illiterate)
- Children from the Roma population who are not registered in the system (they do not have birth certificates, documents, etc.) are generally unable to have access to justice in any formal, legal way
- Problems arise in case of children without parental care that do not enjoy any attention in terms of protection of their rights (high number of children per educator in Institutions; or when the child's legal guardian is a social worker, employed in a city far away, and barely has any contact with the child)
- There is no special, adequate protection for orphaned children with special needs

Contact info:

EPLO Headquarters
Achaïou 16
Athens 106 75
Greece
Tel: +30 210 7258801
Fax: +30 210 7258040
E-mail: info@eplo.eu
Web site: www.eplo.eu

Published by the EPLO



EPLO
European Public Law
Organization