

UNHCR Key Messages on Asylum and Statelessness in Bosnia and Herzegovina

UNHCR works closely with the authorities in Bosnia and Herzegovina (BiH) to ensure access to a fair and efficient asylum procedure, ending statelessness and that durable solutions are found for those in need of international protection. UNHCR advocates for the following priorities to strengthen the asylum system in the country and end statelessness:

- **Among all the persons who cross into Bosnia and Herzegovina irregularly, the authorities should identify as early as possible those who are genuinely interested in pursuing asylum in the country and those who are vulnerable, and their cases should be treated with priority.** To access the assistance provided in the Temporary Reception Centres, the current practice is for all individuals who enter irregularly to register an “intention to seek asylum” upon arrival. This step is done through a quick interview during which general biodata is captured and an attestation of expressed intention to seek asylum is issued. At that stage, the reasons for leaving the country of origin are not recorded. This practice overburdens the asylum system since only a small minority of those who express an intention actually intend to apply for asylum in BiH, which should change. There should be a differentiated approach that allows for the early identification of persons in need of international protection and wish to seek asylum in the country. For this reason, UNHCR supports the authorities in establishing a mechanism in line with the BiH legal framework by which the vulnerable individuals who are likely in need of international protection and with a real interest in pursuing asylum in the country, will be identified at the earliest opportunity and channelled to priority asylum processing.
- **The authorities should ensure access to the asylum procedure at any point in time for persons in need of international protection and who wish to pursue asylum in Bosnia and Herzegovina.** Many asylum-seekers face obstacles in (re)initiating the asylum procedure within the legal timeframe. This is due to a number of circumstances, including trauma due to past experience, feelings of insecurity or language problems, as well as misinformation and false promises made by migrant smugglers and traffickers who exploit their vulnerability. Moreover, even the fact that an asylum-seeker has attempted or effectively moved onward but was returned to BiH should not affect his or her right to treatment in conformity with international refugee law. The authorities should ensure access to the asylum procedure in all circumstances.
- **Asylum-seekers should be able to request registration of their asylum claims on their own initiative.** Currently, access to the asylum procedure is only possible upon invitation by the authorities. Occasional long waiting times and unequal access, in respect of their residence, result in additional barriers for those in need of international protection and thus motivating those who may intend to apply for asylum in BiH to pursue onward movement. UNHCR advocates to leave the initiative to asylum-seekers so that they have responsibility over their asylum claim. Applying for asylum is a heavy decision with far-reaching consequences including relinquishing one’s passport and potentially renouncing the right to ever return to one’s country of origin.
- **The authorities must guarantee fair and efficient asylum procedures and ensure that persons who meet the legal definition of a refugee are granted refugee status rather than subsidiary protection.** The Law on Asylum in BiH recognizes two different statuses for persons in need of international protection: refugee and subsidiary protection status. Subsidiary protection status is granted to individuals who do not fit the legal definition of a refugee but who nonetheless face a real risk of serious harm due to

general violence in the country of origin. It is thus problematic to grant subsidiary protection to someone who likely fits the definition of a refugee as it does not provide him or her access to family reunification, travel documentation and a path to naturalization. UNHCR considers that many persons who deserve refugee status were instead granted subsidiary protection status, denying them access to a durable solution. Subsidiary protection is a default option that should only be considered after concluding that the person does not meet the refugee criteria.

- **The authorities should create the conditions for the integration of persons granted subsidiary protection.** Under the current legal framework, individuals with subsidiary protection status are not entitled to family reunification, travel documents, permanent residency and ultimately naturalization, regardless of how long they remain with this status. As a result, many remain in an indefinite precarious position, requiring the regular review and renewal of the status, which inhibits their ability to integrate fully in BiH.
- **The authorities should develop a procedure for considering asylum applications at international airports.** There is currently no adequate mechanism in place which ensures that all individuals with potential international protection needs are properly identified and channeled to the asylum procedure on arrival at one of the country's international airports. As a result, some persons wishing to apply for asylum have been denied access to the procedure, which puts them at risk of *refoulement* and is contrary to the country's international obligations. The authorities must thus establish a mechanism whereby persons denied entry to the territory have, at minimum, access to a lawyer who can advise and counsel them accordingly.
- **The appeal procedure following a negative decision at the first instance should include a hearing of the applicant by a judge who can decide on the merits of the asylum claim.** Currently, the Court of BiH only reviews appeals via written procedures, denying the applicant the ability to clarify any misunderstandings, discrepancies or missing information. Additionally, the Court does not use its competences as a second instance body in the asylum procedure to make a judgement on the merits of a claim, although it has the power to do so, rather only intervening on procedural grounds which sends the application back to the first instance body which often comes to the same assessment as in the first instance. Such a direct judgement would save time and efforts for both the authorities and the applicant, and improve the overall quality and efficiency of the asylum procedure.
- **The capacity of the authorities to provide free legal aid should be enhanced** to ensure that asylum-seekers, persons granted international protection and stateless persons can access quality legal services. The current governmental free legal aid system is unable to respond to the needs, thus the authorities should strengthen support in terms of financing, staffing, expertise and interpretation to ensure the sustainability and effectiveness of the national free legal aid system.
- **Bosnia and Herzegovina must resolve remaining issues related to risks of statelessness in law and practice.** While BiH has significantly reduced the number of people at risk of statelessness over the years, remaining gaps in law and practice need to be resolved to prevent reoccurring circumstances which place persons at risk of statelessness. The risk of statelessness is often caused by a person's inability to prove his or her nationality due to excessive requirements to registering birth or confirming citizenship. To end statelessness by the end of 2024, and prevent new cases from appearing, the authorities of BiH should respect the basic premise that any child must be registered immediately upon birth, without administrative impediments. The authorities must also support vulnerable persons, some of whom are not able to register their address, to obtain identity documents.