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The Permanent Mission of the Republic of Bulgaria to the United Nations and other international organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and referring to the latter's Note with reference LW/UH/is dated 18 February 2010, has the honour to transmit information provided by the competent authorities of the Republic of Bulgaria in connection with Human Rights Council resolution 12/6 entitled "Human Rights of Migrants: Migration and the Human Rights of the Child". The information could be made available on the OHCHR website.

The Permanent Mission of the Republic of Bulgaria avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Annex: in accordance with the text – 12 pages



Office of the United Nations High Commissioner for Human Rights

Republic of Bulgaria

Implementation of the international framework for protection of the Rights of the Child in the context of migration (HRC resolution 12/6 “Human Rights of Migrants: Migration and the Human Rights of the Child”)

Child development and protection of the rights of the child is a national priority of the Republic of Bulgaria which requires common efforts and pooling of resources, steady political and public attention and maximum coordination of national policies.

Existing Bulgarian legislation in the sphere of protection of the rights of the child, including migrant children, conforms to the international standards in this field and is consistent with the leading practices. The principal statutory instrument regulating this subject matter is the Child Protection Act. The statutory framework also includes the Aliens in the Republic of Bulgaria Act, the Asylum and Refugees Act, the Combating Trafficking in Human Beings Act, the Bulgarian Citizenship Act, particular provisions of the Bulgarian Personal Documents Act (as well as the Regulations for Issuing of Bulgarian Personal Documents), the Health Act, the Public Education Act, instruments of secondary legislation etc.

1. Challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration, including in relation to:

a) The situation of separated and unaccompanied migrant child:

Bulgaria strictly abides by the provisions of the **United Nations Convention on the Rights of the Child**, including Article 22. Article 10 of the **Child Protection Act** affirms the right of every child *“to protection with a view to his or her normal physical, intellectual, moral and social development and to protection of his or her rights and interests. There shall be no limitations of rights, nor any privileges, based on race, nationality, ethnic background, sex, origin, property status, religion, education and convictions or disability.”* The Bulgarian legislator does not draw a distinction between a Bulgarian child and a migrant child. Within the meaning given by the Child Protection Act, “child” is “any natural person who has not attained the age of 18 years”.

The national bodies ensuring child protection are the **State Agency for Child Protection** and the **Ministry of the Interior**. According to the Child Protection Act, the State protects and guarantees the fundamental rights of the child in all spheres of public life for all

groups of children according to age, social status, physical, health and mental development, by providing all with an appropriate economic, social and cultural environment, education, freedom of expression and security.

An unaccompanied alien who is an infant (i.e. has not attained the age of 14 years) or a minor (i.e. has attained the age of 14 years but has not attained the age of 18 years), who is seeking or has been granted protection, is represented in the proceedings by the competent Social Assistance Directorate unless a tutor or a guardian, as the case may be, has been appointed thereto, according to Article 15 (7) of the Child Protection Act. In each administrative or judicial proceeding which affects the rights or interests of a child, the child is mandatorily given a hearing if he or she has attained the age of 10 years, except where this would harm his or her interests.

In the cases where officials of the Chief Directorate Border Police detect unaccompanied or accompanied migrant children of the so-called "risk groups" and groups with "specific needs" within the 30 km border area, they provide immediate police protection within 48 hours, immediately notify the State Agency for Refugees with the Council of Ministers, and escort the children for accommodation at the Refugee Registration and Reception Centres of the State Agency for Refugees. The minor is offered the assistance and support of social workers and, if necessary, a legal counsel as well.

The **Asylum and Refugees Act** provides for an opportunity to permit an extension of the stay within Bulgarian territory of an alien who has not attained the age of 18 years, who has lawfully entered the country unaccompanied by a parent or another adult who, by law or custom, is responsible for that person, or accompanied by such an adult who has abandoned him or her and has not sought protection under the Asylum and Refugees Act. In such cases, the State Agency for Child Protection temporarily provides such persons with the necessary material support and care to meet their basic necessities of life, medical care and due guardianship, including legal advice and representation by counsel, as well as access to free education at Bulgarian state and municipal schools until a final settlement of the question of their stay in the country. If they are not permitted an extension of the stay within the territory of the Republic of Bulgaria, they are returned to their country of origin, to a third country which is ready to admit them, or to a country which is obligated to admit them by virtue of an agreement on transfer and readmission with the Republic of Bulgaria – subject to the condition that their life and freedom are not endangered there and they are not exposed to the risk of persecution, torture or inhuman or degrading treatment.

Protection of migrant children is also covered by the **National Strategy for Children 2008-2018**. A special section of the Strategy affirms the commitment of responsible institutions *“to continue the measures for more effective application of legislation guaranteeing the protection of unaccompanied children, refugee children or immigrant children, and their access to health care, education and social support.”* The Strategy prioritizes Objective 3 *“Improving the effectiveness of the protection of unaccompanied children, refugee children and immigrant children”*.

b) Access to social services (ensuring, inter alia, protection of the right to health, housing, education, water and access to sanitation), including for migrant children in an irregular situation:

- Protection of the right to housing

In accordance with the multilateral international instruments ratified by the Republic of Bulgaria, the **Child Protection Act** guarantees all children (Article 10), including migrant children, access to social services within Bulgarian territory and provides for specific measures.

The effective **Asylum and Refugees Act** provides special protection to migrant children: *“a tutor or a guardian, as the case may be, shall be appointed to any unaccompanied alien infant or minor who is seeking or has been granted protection and whose whereabouts are within the territory of the Republic of Bulgaria under the terms and according to the procedure established by the Child Protection Act and the Family Code”* (Article 25). Unaccompanied alien infants or minors are placed until they attain majority: with the immediate or extended family; with a foster family; at a specialized institution; at other placement facilities with special conditions for infants and minors (Article 29 (7) of the Asylum and Refugees Act).

The **State Agency for Refugees** provides financial and material support equivalent to the support provided to adult aliens seeking protection, as well as exercises control for the protection of children from physical or mental torture, cruel, inhuman or degrading treatment.

- Protection of the right to health

According to the Health Act, each Bulgarian citizen has the right to affordable medical care under the terms and according to the procedure established by the Health Act and by the Health Insurance Act. Aliens (including children) who have been permitted permanent residence in the Republic of Bulgaria can use medical care on an equal footing with Bulgarian citizens and have the right to affordable medical care (Article 81 and Article 82).

Article 82 (1) and (2) of the **Health Insurance Act** says that beyond the scope of compulsory health insurance, medical services are provided in connection with emergency medical care, preventive examinations and tests in obstetric care for all women who do not have compulsory health insurance, in-patient psychiatric care, provision of blood and blood products, organ, tissue and cell transplantation, as well as use of vaccines and compulsory immunizations and re-immunizations, specially indicated vaccines and emergency vaccines, specific serums, immunoglobulins and other bioproducts related to the prevention of contagious diseases, as well as the technical devices for their administration, a full range of epidemic-control activities, access to health activities included in national, regional and municipal programmes. Children admitted to medical treatment facilities are furthermore entitled to free medical and social care for the account of the Executive Budget.

The Health Act (Article 125a) obligates medical specialists working at medical-treatment facilities or medical offices to notify the Ministry of the Interior and the Social Assistance Directorate of each child victim of violence who has been admitted to the medical-treatment facility or who has visited the medical office.

The right to affordable medical care is exercised through application of the principles of timeliness, sufficiency and quality of medical care; non-discrimination upon provision of medical care with priority on children, pregnant women and mothers of children aged under one; cooperation, consistency and coordination of the activities between medical-treatment facilities; respect for patients rights.

The **Health Insurance Act** lists as persons covered by compulsory insurance all Bulgarian citizens, as well as all foreign citizens or stateless persons who have been permitted permanent residence in the Republic of Bulgaria; all persons who have been recognized refugee status or humanitarian status or who have been afforded a right of asylum; all persons who stay in the Republic of Bulgaria and in respect of whom the rules for coordination of social security schemes of the EU apply. Persons who have not attained the age of 18 years and older, if attending school as full-time pupils, until completion of secondary or higher education, are health-insured for the account of the Executive Budget.

- Protection of the right to education

Educational policy targeting migrant children is relatively new to the Republic of Bulgaria, owing to an intensification of migration processes in recent years. The experience of the EU Member States is tapped.

The principal statutory instruments regulating migrant children's right to education in Bulgaria are the **Public Education Act** and the **Asylum and Refugees Act**.

The **Public Education Act** guarantees the right to education and the opportunity to upgrade one's qualification without any limitations or privileges based on race, nationality, sex, ethnic and social background, religion and social status. Education in the Republic of Bulgaria is secular and tuition is free of charge at the state and municipal schools, and school attendance is compulsory until attainment of the age of 16 years.

The Asylum and Refugees Act guarantees the alien infants and minors who are seeking protection a right to education and vocational training under the terms and according to the procedure applicable to Bulgarian citizens. The institutions responsible for the implementation of these activities are the **Agency for Refugees** and the **Ministry of Education, Youth and Science**.

The Public Education Act was amended in accordance with Council Directive 77/486/EEC so as to ensure an opportunity for the children of migrant workers to attend Bulgarian schools under the same conditions as the Bulgarian children. A Bulgarian language curriculum has also been developed for teaching of migrant pupils at the primary education stage, taking account of the different degree to which the migrant pupils have command of standard Bulgarian. The pupils are helped to master the official language so as to achieve better learning outcomes for the purpose of a successful future socialization and integration. Preparations are in progress for the creation of a database on the scope and learning outcomes of migrant children countrywide (mainly from third countries). No data are available about negative phenomena such as early school leaving, segregation in particular forms or schools. Migrants are taught Bulgarian as a subsidiary subject, as an extra-curricular activity, and tuition is free of charge. Financing is provided by the Ministry of Education, Youth and Science.

c) Legislative framework and practice in the context of detention and repatriation, including mechanisms to ensure protection from refoulement and to ensure family unity:

The principal statutory instruments in this sphere are the **Asylum and Refugees Act** and the **Aliens in the Republic of Bulgaria Act**.

In the cases where any persons are not permitted an extension of their stay within the territory of the Republic of Bulgaria, they are returned to their country of origin, to a third country which is ready to admit them, or to a country which is obligated to admit them by virtue of an agreement on transfer and readmission with the Republic of Bulgaria – subject to the condition that their life and freedom are not endangered there and they are not exposed to the risk of persecution, torture or inhuman or degrading treatment. In all cases, upon

imposition of coercive administrative measures, due account is taken of the duration of the alien's residence within the territory of the Republic of Bulgaria, his or her family status, as well as the existence of family, cultural and social ties with the person's country or origin.

An opportunity is provided for to permit an extension of the stay within Bulgarian territory of an alien who has not attained the age of 18 years, who has lawfully entered the country unaccompanied by a parent or another adult who, by law or custom, is responsible for that person, or accompanied by such an adult who has abandoned him or her and has not sought protection under the Asylum and Refugees Act. In such cases, the State Agency for Child Protection temporarily provides such persons with the necessary material support and care to meet their basic necessities of life, medical care and due guardianship, including legal advice and representation by counsel, as well as access to free education at Bulgarian state and municipal schools until a final settlement of the question of their stay in the country.

Bulgarian legislation provides for a possibility to permit permanent residence to infants and minors who are children of a permanent resident alien, where the said children have not married. Only by way of exception, where the accompanied and unaccompanied infants or minors have no established identity or obstruct the implementation of the measure or where there is a risk of them going into hiding, they are placed at a special facility for a period of up to three months. The special facilities have separate premises for accommodation of alien infants and minors in conditions suitable for their age and needs.

The latest amendments to the Aliens in the Republic of Bulgaria introduce a grace period for voluntary departure from the country so as to support children and prevent their dropping out of school through imposition of coercive administrative measures like "withdrawal of the entitlement to reside in the Republic of Bulgaria" and "forcible escort to the border of the Republic of Bulgaria" – Items 1 and 2 of Article 39a (New, *State Gazette* No. 42 of 2001). These amendments were introduced taking into consideration circumstances such as: duration of the residence, existence of children attending school and other family and social ties. The voluntary return programmes are exceedingly suitable for migrants of vulnerable groups and children and are implemented in accordance with the *Memorandum on Assisted Voluntary Return and Reintegration of Foreigners to their Countries of Origin*, signed with the International Organization for Migration.

d) Criminalization of irregular migration:

The existence and effective application of mechanisms for the assertion of human rights and the prevention of all forms of violence and exploitation is among the key priorities of Bulgarian legislation. Trafficking in human beings is an exceedingly grave violation of

human rights, related to various forms of exploitation: sexual, labour, removal of organs or holding in servitude. Bulgarian legislation pays particularly serious attention to the more vulnerable groups, such as women and children.

The principal statutory instruments in this sphere are the **Criminal Code of the Republic of Bulgaria**, the **Combating Trafficking in Human Beings Act** (*State Gazette* No. 46 of 2003), the **Rules of Organization and Operation of the National Commission for Combating Trafficking in Human Beings**, the **Regulations for Shelters for Temporary Housing of Victims of Human Trafficking and the Centres for Protection and Support of Victims of Human Trafficking**, the **Act for Protection of Persons Threatened in Relation to Criminal Proceedings** and the **Criminal Assets Forfeiture Act**, drafted in accordance with the United Nations Convention against Transnational Organized Crime and the supplementing Protocols thereto.

The act of “trafficking in human beings” is regulated by the provisions of the **Criminal Code**. The essential elements of the criminal offence of “trafficking in human beings,” according to Bulgarian legislation, are: recruitment, transportation, transfer, harbouring or receipt of persons for the purpose of sexual exploitation, forced labour, removal of organs and servitude. The offence is criminalized regardless of whether it was committed with the consent of the victim. Harsher penal sanctions are provided for where the act is committed against a person who has not attained the age of 18 years; by means of use of coercion, deception; abduction or arbitrary deprivation of liberty; use of a position of vulnerability; by abuse of power; promising, giving or receiving benefits, where the offence is committed against a pregnant woman for the purpose of selling her child or by contract, or implementing a decision of an organized criminal group.

Legislative amendments in 2009 increased the sanctions that can be imposed for the particular qualifying elements of trafficking, including a criminalization of the deliberate use of a victim of trafficking in human beings for lewd acts, for forced labour, for removal of organs or for holding in servitude regardless of his or her consent (in accordance with the Council of Europe Convention on Action against Trafficking in Human Beings). The idea is to improve the effectiveness of the suppression and criminal prosecution of trafficking by addressing the problem with the “demand for” and “use of” the services of the victims of this type of criminal offence. The Bulgarian Criminal Code draws a distinction between “trafficking in human beings” and “smuggling of migrants”.

The **Combating Trafficking in Human Beings Act** also regulates the interaction between central-government and municipal authorities, between those authorities and the

international and non-governmental organizations for the formation of a national policy in this sphere. A **National Commission for Combating Trafficking in Human Beings** with local structures has been established, along with shelters for temporary housing of victims of human trafficking and specialized centres for protection and support of victims of human trafficking.

Special provisions are made for protection and support of children victims of trafficking in accordance with the requirements of international law and EU law. Where the person has not attained the age of 18 years, he or she is automatically regarded as a victim of trafficking in human beings. Where a child victim of trafficking is identified, the Ministry of the Interior and the State Agency for Child Protection, as well as the Social Assistance Directorate exercising competence over the residence of the child, are mandatorily notified. The *Coordination mechanism for referral, care and protection of unaccompanied minors and children victims of trafficking returning from abroad*, which is under implementation, applies to children who are not Bulgarian citizens as well.

e) Access to the right to identity, including birth registration:

The National Strategy for Children (2008-2018), along with other fundamental rights, guarantees the right to cultural, ethnic and religious identity.

Bulgarian citizenship and the other legal institutes related thereto are regulated by the **Constitution of the Republic of Bulgaria** and by the **Bulgarian Citizenship Act**. The Constitution defines descent as a fundamental principle for acquisition of citizenship. In the cases where this principle cannot be applied, the principle of acquisition of citizenship by birth applies, according to which any person born within Bulgarian territory is a Bulgarian citizen unless acquiring another citizenship by descent. If, for example, both parents are citizens of a State which regards the principle of birth as fundamental and the child does not acquire citizenship by descent by virtue of the legislation of that State, the child will acquire Bulgarian citizenship by birth.

Stateless persons may furthermore acquire Bulgarian citizenship by naturalization, if they satisfy the eligibility requirements referred to in Article 14 of the Bulgarian Citizenship Act.

The **Bulgarian Personal Documents Act** specifies the types of documents issued to resident aliens in Bulgaria, including aliens who have not attained the age of 18 years, depending on their status.

f) Protection of children left behind in countries of origin:

2. Examples of best practice in the implementation of the international framework for the protection of the rights of the child in the context of migration, with particular regard to:

a) National legislation, policies and practice, including mechanism to assess and address challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration:

- National legislation:

This subject matter is regulated mainly in the Child Protection Act and the Regulations for Application of the Child Protection Act. The legal framework in this sphere also includes the Constitution of the Republic of Bulgaria, the Aliens in the Republic of Bulgaria Act, the Asylum and Refugees Act, the Combating Trafficking in Human Beings Act, the Bulgarian Citizenship Act, the Bulgarian Personal Documents Act, the Criminal Code etc. The framework is consistent with the effective international instruments (the United Nations Convention on the Rights of the Child; Resolution 1624 (2008) of the Parliamentary Assembly of the Council of Europe; the Lucca Declaration (2003); the Council of Europe Convention on Action against Trafficking in Human Beings etc.)

The Child Protection Act regulates the rights, principles and measures for child protection, the central-government and municipal authorities and their interaction in implementing child protection activities, as well as the participation of legal and natural persons in such activities. Child protection is based on the following principles: recognition and respect for the child's personality; raising the child in a family environment; ensuring the best interests of the child; special protection of children at risk; encouragement of voluntary participation in child protection activities; selection of persons directly involved in child protection activities in accordance with their personal qualities and social communication abilities and with care as to their professional qualification; temporary nature of restrictive measures; immediacy of child protection steps; care in accordance with the needs of the child; ensuring the development of children of prominent talent; encouragement of responsible parenthood; support for the family; preventive measures for child safety and protection; control of the effectiveness of measures undertaken.

The National Strategy for Children (2008-2018), on the basis of which annual programmes are adopted, defines the priority areas and actions for improvement of child welfare in Bulgaria. It prohibits any limitation of rights or privileges based on race, nationality, ethnic background, sex, origin, property status, religion, education and convictions or disability.

A National Action Plan against Commercial Sexual Exploitation of Children has been adopted and is implemented; a National Referral Mechanism for Trafficked Persons is being developed.

- Best practices:

A contribution to the assertion of best practices in Bulgaria has been made by the *Coordination mechanism for referral, care and protection of unaccompanied minors and children victims of trafficking returning from abroad* (including migrant children), which was adopted in 2005. The Coordination mechanism has been developed on the basis of practical experience, of the achievements and identified problems in the work of the separate institutions. The Coordination mechanism clearly formulates the rights and responsibilities of institutions, international organizations and non-governmental organizations engaged in child protection in the sphere of trafficking in children, migrant children and unaccompanied children or, as they are more frequently referred to, children at risk. The guiding principle is ensuring the best interests of the child.

The State Agency for Child Protection has also developed *Best Practice Guidelines for the Implementation of National Anti-trafficking Response Documents*, which provides a basis to share and exchange positive practices.

Here are some good examples of the practices of implementation of the policy of placement of alien infants and minors:

- Between January and December 2009, a total of 101 children aged from 0 to 18 years were accommodated at a Special Facility for Temporary Accommodation of Aliens in the City of Sofia (none of them were migrant children). A right to medical treatment was ensured to all children accommodated at the Special Facility. In medical examinations, the children were given priority before the rest of the aliens accommodated at the Facility. Interviews and meetings were held with the parents, psychologists worked systematically with the children and the adults accompanying them. Special child food was provided, along with very good hygienic conditions, essential sanitary materials and clothing. A TV room, a quiet games room, sports grounds and apparatus are provided for use. Arrangements are made for meetings and consultations with representatives of non-governmental organizations, such as the Bulgarian Red Cross, the Bulgarian Helsinki Committee, the Assistance Centre for Torture Survivors (ACET) and CARITAS-Bulgaria.

- In the 2008-2009 school year, the Ministry of Education and Science financed, on a project basis, the teaching of classes in Bulgarian as a foreign language to children of foreign citizens resident in Bulgaria. The teachers received methodological guidance and short-term

training by experts of the rectorate of the Academy of Creteil, France. In 2007 the Sofia City Regional Education Inspectorate also organized a project entitled “European Practices of Organizing the Enrolment and Instruction of Children of Migrant Workers.”

b) Joint efforts and strategies available at the bi-lateral and international levels to assess and address challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration:

Other key statutory instruments, national strategies and programmes directly or indirectly related to child protection in Bulgaria are: Strategy for Ensuring Equal Opportunities for People with Disabilities 2008-2015, the Joint Memorandum on Social Inclusion of the Republic of Bulgaria and the National Strategy Report on Social Protection and Social Inclusion of the Republic of Bulgaria for the 2006-2008 Period, Operational Programme Human Resources Development (2007-2013), the National Programme for Development of School Education and Pre-school Upbringing and Preparation (2006-2015), the Action Plan for Reducing the Number of Pupils of Compulsory School Age who Are Not Covered by or Leave the System (2007-2008) and the National Plan for Integration of Children with Special Educational Needs and/or Chronic Diseases into the Public Education System.

A National Action Plan against Commercial Sexual Exploitation of Children and a Code of Conduct for prevention of trafficking in children and sexual abuse in tourism have been adopted and are implemented. A Transnational Referral Mechanism for Trafficked Persons in South-Eastern Europe has been adopted, and a National Referral Mechanism for Trafficked Persons is being developed.

Within the framework of international cooperation, Bulgaria aspires to present Bulgarian legislation, its experience and the partnerships built.

c) The work of National Human Rights Institutions and other relevant stakeholders:

The responsible institution in Bulgaria is the State Agency for Child Protection. It is a public-financed legal person which directs, coordinates and controls child protection. The Chairperson of the Agency is designated by the Council of Ministers.

A **National Council for Child Protection** with consultative and coordinating functions has been set up with the State Agency for Child Protection. The Council comprises representatives of the Ministry of Labour and Social Policy, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Education, Youth and Science, the Ministry of Health, the Ministry of the Interior, the Ministry of Finance, the Ministry of Culture, the State

Agency of Youth and Sports, the Agency for Social Assistance, the National Commission for Combating Trafficking in Human Beings, the National Council on Narcotic Substances, the National Statistical Institute, the National Social Security Institute, the Central Commission for Control of Juvenile Anti-social Behaviour and the National Association of Municipalities in the Republic of Bulgaria.

Other institutions responsible for the implementation of the national policy in this sphere are: the **Agency for Social Assistance with the Ministry of Labour and Social Policy**, the **Ministry of the Interior**, the **Ministry of Education, Youth and Science**, the **Regional Education Inspectorates with the Ministry of Education, Youth and Science**, the **Ministry of Foreign Affairs – through the consular protection mechanism**, the **Ministry of Justice**, and the **State Agency for Refugees**.

At the **regional and local level**, child policies are monitored by the Social Assistance Directorates and the child commissions which function within the municipal administrations and which include representatives of the municipal administration, the Regional Directorate of the Ministry of the Interior, the Regional Education Inspectorate, the Regional Health Care Centre, the Local Commission for Control of Juvenile Anti-social Behaviour etc.

The process also involves **not-for-profit legal entities** whose objects are child protection and which apply for obtaining the status of licensed providers of social services (most often non-governmental organizations: societies, associations, foundations). The most active NGOs include the Bulgarian Red Cross, the Bulgarian Helsinki Committee, the Assistance Centre for Torture Survivors (ACET), CARITAS-Bulgaria and the Animus Association Foundation, to mention but a few.