

**ALTERNATIVE REPORT TO THE COMMITTEE ON THE ELIMINATION OF  
RACIAL DISCRIMINATION (CERD)**

**MINORITY RIGHTS GROUP INTERNATIONAL**

**REVIEW OF THE PERIODIC REPORT OF BOSNIA AND HERZEGOVINA**

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Minority Rights Group International (MRG) is an international non-governmental organisation working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. MRG works with over 150 organisations in nearly 50 countries. MRG has consultative status with the United Nations Economic and Social Council, observer status with the African Commission on Human and Peoples' Rights, and is a civil society organisation registered with the Organization of American States.



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## I. PURPOSES OF THIS SUBMISSION

1. This report is submitted by Minority Rights Group International (MRG) in advance of the review of the periodic report of Bosnia and Herzegovina (BiH) by the Committee on the Elimination of Racial Discrimination (CERD) at its 86<sup>th</sup> session.<sup>1</sup> It addresses two crucial areas of minority rights: participation in political life and protection from discrimination. It summarises MRG's observations on the progress and shortcomings of Bosnia and BiH in relation to the implementation of relevant articles of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and recommendations issued by CERD in 2010, in particular those that relate to removing discriminatory provisions from the Constitution, protecting minority returnee and Roma communities from discrimination, and taking effective measures to prevent, combat and eradicate racial discrimination. This report also includes MRG's recommendations on how CERD should encourage the government of BiH to address these issues.

## II. BACKGROUND AND FRAMEWORK

### A. INTRODUCTION

2. Racial discrimination is deeply embedded in the political, legal, educational and social framework of BiH and has remained the main generator of human rights violations over the past few years. Legitimised by the political system itself, ethnic divisions have pervaded all spheres of public life, and the discrimination inherent in the political structure reinforces discrimination against minorities<sup>2</sup> in access to education, employment, health care, housing and other social and public services.
3. Racial discrimination as well as other forms of discrimination are clearly prohibited by the state and entity constitutions and Law on Prohibition of Discrimination (*Official Gazette of BiH* 59/09) and laws protecting human and minority rights have been enacted at state, entity and cantonal levels. However, the implementation of these laws remains weak and is hampered by issues of coordination and lack of clarity in the division of competencies among the authorities concerned at different levels. Moreover, there is lack of a systematic and comprehensive approach on the state level to address racial discrimination.

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<sup>1</sup> Some parts of the report were prepared with the assistance of DLA Piper, a global law firm. We also acknowledge that some issues raised in the report have been comprehensively covered and some sections were already included in previous MRG submissions to CERD, the Directorate General for Enlargement of the European Commission and UPR working group of the UN Human Rights Council as well as in MRG's joint submissions with Cardozo Law School and Human Rights Watch to the Committee of Ministers of the Council of Europe regarding the implementation of the *Sejdić and Finci vs Bosnia and Herzegovina* judgment (22 December 2009) and to the European Court of Human Rights in the case of *Pilav vs Bosnia and Herzegovina* (Application no. 41939/07).

<sup>2</sup> In MRG's view, minority rights in BiH not only relate to the recognised 17 national minorities but are also relevant for Constituent peoples when they find themselves in *de facto* minority situations in the regions (entities and cantons) where they live and experience significant challenges in realising their rights. This interpretation is also in line with the view of the UN Special Rapporteur (formerly UN Independent Expert) on Minority Issues and the Advisory Committee of Framework Convention of National Minorities.

## B. CONSTITUTIONAL FRAMEWORK

4. The political system of BiH is structured in a way that promotes ethnic domination by territory. According to its Constitution, the country is divided into two main entities: the Federation of Bosnia and Herzegovina (Federation) – predominantly Bosniak and Croat – and the Republika Srpska (RS) – predominantly Serb. The Federation is further divided into ten cantons where usually either Croats or Bosniaks form a numerical majority.<sup>3</sup>
5. The Constitution of BiH also explicitly differentiates between and assigns different rights to ‘Constituent peoples’ – citizens identifying as Bosniaks, Croats and Serbs – and ‘Others’. The category of ‘Others’ is used to designate non-constituent citizens of BiH, including persons belonging to national minorities and other others persons who do not identify themselves as belonging to one of the three ‘Constituent peoples’. ‘Others’ are not entitled to stand and vote for certain high offices, seriously hampering their ability to participate and be represented in the political and democratic process.
6. The Constitution of BiH and the Electoral Law establish that membership in the three-person elected Presidency of BiH and the House of Peoples (HoP), the upper house of the BiH Parliamentary Assembly, is strictly limited to the ‘Constituent peoples.’ Thus, persons falling outside of – or not identifying themselves with – the main three ethnic groups are legally barred from holding a position in these high political offices. Moreover, ‘Constituent peoples’ themselves are victims of similar limitations when they live in the “wrong” administrative entity. Serbs residing in the Federation and Bosniaks or Croats residing in the RS are not eligible to the tripartite Presidency or HoP of BiH.<sup>4</sup>
7. The Constitution and Electoral Law of BiH have been successfully challenged twice at the European Court of Human Rights (ECtHR). In 2009, in the case of *Sejdić and Finci vs Bosnia and Herzegovina* (22 December 2009), the Court ruled that the exclusion of citizens not belonging to the three ‘Constituent peoples’ from being elected to the Presidency and the HoP violated Protocol No. 12 and Article 14, taken in conjunction with Article 3 of Protocol No. 1 of the European Convention on Human Rights (ECHR). While the decision

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<sup>3</sup> The north-eastern district of Brčko, hotly contested during the war in the early 1990s, belongs to neither entity and is under separate administration.

<sup>4</sup> *Article IV.1 of the Constitution of BiH reads as follows:*

The House of Peoples shall comprise 15 Delegates, two-thirds from the Federation (including five Croats and five Bosniaks) and one-third from the Republika Srpska (five Serbs).

*Article V of the BiH Constitution reads as follows:*

The Presidency of Bosnia and Herzegovina shall consist of three members: One Bosniak and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of the Republika Srpska.

*Article 8.1, Paragraphs 1 and 2 of the Election Law of Bosnia and Herzegovina reads as follows:*

The members of the Presidency of Bosnia and Herzegovina directly elected from the territory of the Federation of Bosnia and Herzegovina – one Bosniak [sic] and one Croat shall be elected by voters registered to vote for the Federation of Bosnia and Herzegovina. A voter registered to vote in the Federation may vote for either the Bosniak or Croat Member of the Presidency, but not for both. The Bosniak [sic] and Croat member that gets the highest number of votes among candidates from the same constituent people shall be elected.

The member of the Presidency of Bosnia and Herzegovina that shall be directly elected from the territory of Republika Srpska (RS) - one Serb shall be elected by voters registered to vote in the RS. Candidate who gets the highest number of votes shall be elected.

of the Court prompted a series of high-level meetings and discussions, the government still has not implemented the decision by removing the discriminatory provisions from the Constitution and the Electoral Law.

8. In the case of *Zornić vs Bosnia and Herzegovina* (15 July 2014), the ECtHR ruled also in favour of the applicant, a Bosnian citizen who is prevented from standing for high office because she refuses to declare affiliation to any particular ethnic group. The Court reaffirmed that it is unacceptable in present-day Bosnia to have a political system granting special rights to particular ethnic groups “to the exclusion of minorities or citizens,” and ruled that Bosnia’s Constitution and the Electoral law of BiH violate fundamental human rights and must be changed without any further delay and called for “speediest and most effective resolution of the situation.”

### III. HUMAN RIGHTS VIOLATIONS

#### A. Constitutional discrimination and other laws granting certain important privileges in the political sphere on the basis of ethnic affiliation

*Relevant ICERD Articles: 1(4), 2(1) (c) and 5(c).*

*Relevant CERD recommendations: The Committee reiterates its recommendation that the State party proceed with amending the relevant provisions of the State and entities’ constitutions and the election laws, with a view to removing all discriminatory provisions and, in particular, to ensuring the equal enjoyment of the right to vote and to stand for elections by all citizens irrespective of their ethnic background.*

#### Non-implementation of the European Court of Human Rights’ decision in the case of *Sejdić and Finci vs Bosnia and Herzegovina*

9. As described above, Articles IV.1 and V of the Constitution of BiH and Article 8.1 Paragraphs 1 and 2 of the Election Law of BiH do not guarantee the right to vote and to stand for election on the basis of universal and equal suffrage in the sense of Article 5(c) of ICERD, since they do not ensure equal treatment for all citizens of BiH in the exercise of their voting rights and right to stand for election.
10. The right to participate in elections to the Presidency and the HoP is inextricably linked to ethnicity, which in turn is linked to territory, and the current electoral system bars people from standing for high office solely on account of their ethnicity and forbids whole communities the right to participate fully in the country's political system. Indeed, citizens voting rights in both entities are restricted on the basis of ethnicity in that an individual may only vote for candidates of specified ethnicities. Until the Constitution and the Electoral Law

are amended to comply with the judgment of the ECtHR in the *Sejdić and Finci* case, minorities will continue to be excluded from representation in the tripartite Presidency and the HoP.

11. Despite declared commitments from the Bosnian government that it will take the necessary steps to implement the judgment<sup>5</sup>, and repeated calls from the international community to take such steps, to date Bosnia's political leaders have failed to reach a consensus and to amend the Constitution and the Electoral law to bring them in compliance with the judgment.
12. Neither the Working Group set up by the Council of Ministers of BiH with the aim of executing the judgment nor the *ad hoc* Joint Commission of both Houses (Commission) established by the Bosnian Parliament for the same purpose yielded any concrete results. The last meeting of the Working Group was held in June 2010; in March 2012, the Commission also temporarily suspended its activities until a multi-party political agreement is reached on the implementation of the judgment.
13. Following repeated and strong calls from the Council of Europe<sup>6</sup> and the European Union<sup>7</sup> on the Bosnian authorities to launch a serious institutional process before the October 2014 elections to remove discriminatory provisions from the Constitutions and the Electoral Law, Bosnia's main political parties agreed in Brussels on 1 October 2013 to take forward the implementation of the judgment and 'tentatively agreed' in Prague on 2 December 2013 on the composition and method of the selection of delegates for the HoP. However, they failed reach a consensus on all elements necessary to execute the judgment, and on 12 October 2014 a second set of national elections took place since the ECtHR issued its judgment.
14. The delay in the implementation of the judgment perpetuates an unacceptable political system that is considered fundamentally discriminatory by the ECtHR and hinders the development of minority rights within BiH. Until the Constitution is amended, non-constituent Bosnians will continue to be excluded, solely based on their ethnicity, from the offices of the Presidency or the HoP. The political marginalisation of non-constituent citizens entrenched in the Constitution of BiH also leaves minority communities with limited decision-making power in the government and with less access to social and economic opportunities in their day-to-day lives. Therefore, it is imperative that the Bosnian authorities move forward with amending the Constitution and the Electoral law by removing the discriminatory provisions.

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<sup>5</sup> For instance, political leaders and institutions undertook this commitment in the June 2012 Roadmap for BiH's EU membership application, and most recently in the declaration signed by the political leaders on 1 October 2013.

<sup>6</sup> See for example decisions of Ministers Deputies at the 1164<sup>th</sup>, 1170<sup>th</sup>, 1172<sup>th</sup>, 1179<sup>th</sup> 1186<sup>th</sup> meeting (CM/Del/Dec(2013)1164/6; CM/Del/Dec(2013)1170; CM/Del/OJ/DH(2013)1172/6; CM/Del/OJ/DH(2013)1179/4; CM/Del/OJ/DH(2013)1186/6).

<sup>7</sup> See for example Joint statement by High Representative/Vice President Catherine Ashton and Commissioner for Enlargement Štefan Füle at <http://www.europa.ba/News.aspx?newsid=5781&lang=EN>; Statement of Commissioner for Enlargement Štefan Füle [http://ec.europa.eu/commission\\_2010-2014/fule/headlines/news/2013/04/20130411\\_2\\_en.htm](http://ec.europa.eu/commission_2010-2014/fule/headlines/news/2013/04/20130411_2_en.htm); Council conclusions on Bosnia and Herzegovina, adopted on 21 October 2013, European Parliament resolution of 23 May 2013 on the 2012 Progress Report on Bosnia and Herzegovina (P7\_TA(2013)0225).

Concerns about discussions related to the selection of the members of Presidency and the delegates of the House of Peoples

15. It should be noted that while political leaders failed to reach an agreement on proposals executing the judgment, some proposals have been publicly circulated. However, most of them were offered directly from political parties without multi-party consensus, and some of them are manifestly not in accordance with the requirements of the ECtHR decision.<sup>8</sup> Indeed, some of the solutions suggested to implement the judgment would not only maintain the positions of the ‘Constituent peoples’ in the political system but also further entrench ethnic division in the country.<sup>9</sup>
16. Moreover, while leaders could not agree on all elements necessary to execute the judgment, multi-party agreements were reached on certain aspects of the implementing the decision. MRG is concerned about some elements of these agreements as well as about the process by which they have been being reached as it does not appear to have involved any consultation with minorities: those whose participation the ECtHR’s judgment seeks to protect.
17. On 1 October 2013, at the third round of the High-Level Dialogue on the Accession Process with the European Commission, the leaders of Bosnia’s main political parties signed a seven-principle declaration, which includes *inter alia* the provision that the Bosnian Presidency should consist of three directly elected members, two from the Federation according to the model to be agreed and one from RS. MRG is concerned that whilst such a solution would remove the *de jure* discrimination of ‘Others’, it is likely to *de facto* secure one seat for the Serbs and at least one seat for the Bosniaks in the Presidency.<sup>10</sup> Furthermore, Bosniaks and Croats from RS as well as Serbs from Federation would continue to have no realistic possibility to elect a candidate of their preference.
18. Bosnia’s political leaders also agreed that they would reach a consensus “by 10 October, on electoral modalities that will meet the legitimate concerns of the ‘Constituent peoples’ and ‘Others’, while meeting international standards ... [and that] the method of election of the

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<sup>8</sup> On various proposals and institutional options to execute the Sejdic and Finci decision, see Edin Hodzic and Nenad Stojanovic, *New/Old Constitutional Engineering: Challenges and Implications of the European Court of Human Rights Decision in the Case of Sejdic and Finci v. BiH* (Sarajevo: Analitika, 2011).

<sup>9</sup> Before the high-level talks in Brussels on Bosnia’s accession to the European Union, the main Croat and the main Bosniak party had reached an agreement ([Tihic-Čović agreement](#)) regarding the election of the members of the Presidency. In MRG’s view, while the proposed amendments would remove the ethnic requirement, they would create a system guaranteeing the *status quo* by setting up a complicated electoral arrangement that would ensure that one president is elected from the Serb-dominated RS and the other two presidents are elected from two new electoral units that would basically divide up the Federation into a Bosniak-majority and a Croat-majority region. Indeed, some concerns have been expressed that such a “system would ensure that Croats can choose their member of the Presidency without the influence of Bosniak voters” and that such a solution would only “deepens division in BiH on ethnic lines and could even lead to a creation of a third entity in the future.” See: <http://www.oslobodjenje.ba/daily-news/valentin-inzko-on-tihicovic-agreement-we-support-everything-constructive>

<sup>10</sup> In order to prevent two Bosniaks being elected from the Federation, it could be provided that not more than one member of the Presidency may belong at the same time to the same Constituent People or the group of ‘Others’. However, this would mean that a candidate who obtained more votes might be barred from the Presidency in favour of a candidate who obtained fewer votes. See also the European Commission for Democracy through Law (the ‘Venice Commission’), Opinion on different proposals for the election of the Presidency of Bosnia and Herzegovina (CDL-AD(2006)004). Moreover, some proposals in the past suggested that a system be designed to guarantee that one seat is always a Croat but this would appear to entrench discrimination against ‘Others’.

two Presidency Members from Federation through constitutional amendments, should, in addition to the Strasbourg Court ruling, prevent imposing the outcome of election results on any ‘Constituent peoples’ or ‘Others’.”<sup>11</sup> It should be noted that this could lead to proposals involving redrawing of electoral boundaries (for instance by creating new electoral units within the Federation) or other reforms which would have an impact on minority participation. In MRG’s view, any agreement that might remove the direct discrimination but would result in a system that continues to guarantee the representation of the three Constituent Peoples in the Presidency would not comply with the ECtHR’s judgment and would continue to violate human and minority rights standards.

19. On 1-2 December 2013, at a meeting in Prague, while still could not reach an agreement on all elements for the election of the members of the Presidency, Bosnia’s leaders ‘tentatively agreed’ on the composition and method of the selection of delegates for the HoP.<sup>12</sup> It should be noted that whilst the expansion of membership of the HoP to also incorporate ‘Others’ might go some way to address the judgment, the retention of the vital interest veto without changing the competencies of this chamber would likely result in continuing discrimination against ‘Others’.
20. Simply adding a fourth (or even fifth) caucus to the HoP, composed of 3-5 members from the rank of ‘Others’ with a veto power clearly limited to the issues of ethnicity, language, culture and religion, is likely to be unworkable in practice and may also result in further discrimination. It would appear that this would again place the ‘Others’ in one group, consisting of all ethnic groups apart from ‘Constituent peoples’, and those who do not declare their identity. This would still be differential treatment as opposed to the ‘Constituent peoples’, who would each retain veto power, and it would be impossible for the ‘Others’ to have a united interest.

#### Concerns regarding the lack of meaningful minority participation in the consultation process

21. The lack of meaningful minority representation in the political consultation process regarding the implementation of the *Sejdić and Finci* judgment is also of great concern. The Parliamentary Commission tasked with preparing amendments to implement the judgment consisted of delegates from political parties, representing only ‘Constituent peoples.’ Although a representative from the Council of National Minorities of BiH could attend the Commission’s sessions and present their proposals, they lacked any role in decision-making of the Commission. They could not ensure that their proposals would be considered, and they had no power to block the acceptance of proposals that are detrimental to their interests.
22. In March 2012 the Commission temporarily suspended its activities until a multi-party political agreement is reached on the implementation of the judgment. It seems that since the suspension of the activities of the Commission, there has been no participation of, or

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<sup>11</sup> See [http://europa.eu/rapid/press-release\\_MEMO-13-840\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-840_en.htm)

<sup>12</sup> See [http://ec.europa.eu/commission\\_2010-2014/fule/headlines/news/2013/12/20131203\\_en.htm](http://ec.europa.eu/commission_2010-2014/fule/headlines/news/2013/12/20131203_en.htm)

consultation with, minority communities affected by the proposed amendments in any of the high-level political consultations, which have involved only the main political parties representing the ‘Constituent peoples’.

23. The lack of meaningful minority participation in the work of the Commission and complete lack of minority representation during the subsequent political consultations on the implementation of the judgment are contrary to international and regional standards of minority rights protection<sup>13</sup> and also a further manifestation of the problem of discrimination and exclusion from access to political decision-making addressed in the ECtHR’s judgment.
24. It should be emphasised that to implement the judgment, amendments to the Constitution and the Electoral Law of BiH are necessary. Both the Constitutional design of a state and the design of the electoral systems, including any changes in administrative and constituency boundaries, can have a significant impact on the effective participation of minorities. Therefore, it is essential that minorities are not excluded from the consultation process and can effectively participate in the process of proposing changes to the Constitution and Electoral Law.
25. Indeed, the delineation of electoral district boundaries may distort the distribution of voters and may result in gerrymandering and/or discriminatory effect on a particular group, including minority communities.<sup>14</sup> Therefore, when considering any reforms of the Constitution or the Electoral law leading to administrative and constituency changes, it is imperative not only to duly consult minority communities but also to pay particular attention to ensure that the changes “do not undermine the opportunities of persons belonging to national minorities to be elected.”<sup>15</sup>

#### Other Special Privileges of the Constituent Peoples in the public sphere

26. In addition to removing the discriminatory provisions from the Constitution and the Electoral Law, local laws and constitutions that extend similar special privileges provided in the state Constitution to the ‘Constituent peoples’ in the governments and public institutions at national, entity and cantonal levels must reviewed and also be amended if necessary to bring them in line with the judgment. Based on a preliminary study, in addition to the state

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<sup>13</sup> The right of everyone to participate in the conduct of public affairs is outlined in Article 25 of the International Covenant on Civil and Political Rights (ICCPR). The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities elaborates on ICCPR Article 25 by stating that ‘persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life’ (Article 2(2)) and the right to ‘participate effectively in decisions on the national, and where appropriate, regional level concerning the minority to which they belong or the regions in which they live’ (Article 2(3)). Furthermore, Article 15 of the Council of Europe’s Framework Convention for the Protection of National Minorities (FCNM)<sup>13</sup> explicitly requires states “to create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in the public affairs, in particular those [matters] that affect them.”

<sup>14</sup> Human Rights Council (2009), Forum on Minority Issues, Second Session, Geneva 12-13 November 2009, Background document by the independent expert on minority issues (“IEMI”), Gay McDougall, on minorities and effective political participation, 9 October 2009 (A/HRC/FMI/2009/3), para. 32.

<sup>15</sup> Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (“Advisory Committee”), commentary on the effective participation of persons belonging to national minorities in cultural, social and economic life and public affairs, adopted on 27 February 2008 (ACFC/31DOC (2008)001), paras. 88-89.



Constitution, at least 20 laws and regulations would also need to be amended in accordance with the *Sejdić and Finci* judgment.<sup>16</sup>

27. The current Law on the Ombudsman for Human Rights of BiH (*Official Gazette of BiH, 19/02, 35/04, and 32/06*) deserves special attention. It stipulates that that the Ombudsmen are “appointed from the ranks of the three Constituent peoples” but that this “does not rule out the possibility of appointing persons from the ranks of Others”.<sup>17</sup> Although the law does not automatically exclude non-constituents citizens, it also says that that the institution is to be composed of three Ombudsmen,<sup>18</sup> so if they need to be selected from the three ‘Constituent peoples’, it is unclear as to how someone from the category of ‘Others’ might secure a role as Ombudsman.<sup>19</sup>
28. Currently, there are three Ombudsmen, one Bosniak, one Croat and one Serb. There is no hierarchy between them; they cooperate in exercising their functions, and all decisions issued by the institution need to be co-signed by all of them. It seems that the provisions of the Ombudsman law in effect establish a tripartite body of three Ombudspersons, one from each constituent people, excluding ‘Non-constituents’. It is particularly concerning that in the main state institution responsible for protecting human rights, which is also “the central institution competent for the protection against discrimination,”<sup>20</sup> key positions are reserved, even if implicitly, for particular ethnic groups at the expense of excluding members of other groups solely based on their ethnicity.

**Therefore, MRG requests the Committee to make the following recommendations to Bosnia and Herzegovina:**

29. Move forward with adopting measures necessary to implement the *Sejdić and Finci* judgment and removing discriminatory provisions from the Constitution and the Electoral law.
30. Make all necessary amendments to local constitutions, laws and regulations to end ethnic discrimination in political participation against minorities.
31. Ensure that amendments to the Constitution and other relevant laws will enhance the participations of all citizens of BiH and will not further entrench ethnic divisions in the country.
32. Ensure that minority groups in BiH have the opportunity for effective participation in the consultation process aiming to find solutions to implement the *Sejdić and Finci* judgment and to carry out necessary legal reforms to remove ethnic discrimination in political participation.

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<sup>16</sup> Nedim Kulenovic et al., „Presuda Sejdic i Finci protiv Bosne i Hercegovine: Konkretnе posljedice – prvi pregled“ [The Decision in Sejdic and Finci v. Bosnia and Herzegovina: Concrete Consequences – Initial Overview], 1-2 Sveske za javno pravo (2010) 18.

<sup>17</sup> Law on the Ombudsman for Human Rights of BiH, *Official Gazette of BiH 19/02, 35/04, and 32/06*, Article 8.6.

<sup>18</sup> *Ibid.*, Article 8.1.

<sup>19</sup> One possible interpretation of these seemingly conflicting provisions is that a person from the rank of Others could be appointed as an Ombudsperson if and only if a person appointed as an Ombudsperson from the rank of Constituent peoples gives up his/her position. Not only this is very unlikely in practice, but also it would still constitute differential treatment of ‘Others.’

<sup>20</sup> The Law on the Prohibition of Discrimination in BiH, *Official Gazette of BiH 59/09*, Article 7.

**B. Problems of sustainable return of minority refugees and internally displaced persons to their places of origin**

Relevant ICERD Articles: 5 (c) (d) (i), (e) as well as 3, 5(e) and 7).

Relevant CERD recommendations:

*The Committee encourages the State party to continue implementing measures to accelerate the sustainable return of refugees and internally displaced persons to their places of origin, inter alia by improving their reception conditions. The Committee recommends that further activities be devised to improve the socio-economic integrating of those who have returned, and by ensuring equal enjoyment of their social, economic and cultural rights, especially in the field of social protection and pension, health care, equal employment and equal education. Returnees should receive appropriate assistance or compensation, as the case may be, in order to prevent a further worsening of their human rights situation.*

*The Committee reiterates its recommendation to the State party to end the segregated system of mono-ethnic schools and to ensure that the same basic curriculum be taught to all children, promoting tolerance among the different ethnic groups in the country and appreciating their specificities.*

33. It should be noted that the Constitution of BiH not only discriminates against “Others” as the ECtHR ruled in the *Sejdić and Finci* case but also disenfranchises *de facto* minorities – including minority returnee communities – i.e. Serbs living in the Federation and Bosniaks and Croats living in the RS. According to the current system, unlike Croats and Bosniaks residing in the Federation, their counterparts residing in RS have no right to be elected to the tripartite Presidency and the HoP; the situation of Serbs living in the Federation is identical.<sup>21</sup>
34. Effectively, these minority returnee communities have no representation of their own in the Presidency or the HoP. This not only raises issues about discriminatory treatment in the right to vote and be elected, but it also has the effect of thwarting the principle of refugee return. If minority returnees are not able to effectively vote upon their return to their rightful homes because of voting inequalities based on ethnicity and location, they will be discouraged from returning home, where they would be second-class citizens.
35. The limited political representation of minority returnee communities perpetuates entrenched discrimination against them in all areas of life and is inextricably linked with broad deprivations their rights. Minority returnee communities visited by MRG in 2013 and 2014 claimed that their needs receive little attention in comparison to other communities. They noted that lack of proper infrastructure and access to basic services are enduring problems for them while other ethnic communities in the same area do not face the same issues. Many minority returnee communities lack access to running water, proper roads,

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<sup>21</sup> Another case on this particular problem is pending before the ECtHR (*Pilav vs. BiH*, Application no. 41939/07).

public lightning and sewage-system, and some of them live in segregated settlements far from accessible schools, work opportunities, health and other emergency services.<sup>22</sup> Due to high levels of discrimination they often face difficulties in realising their rights to education, health, social security and pensions, and above all their right to work.

36. It should be also noted that certain ‘seemingly neutral’ policies related to financing infrastructure projects adopted by local authorities appear to disproportionately disadvantage vulnerable minority communities. For example, the practice of particular municipalities to finance only 50% of the infrastructural project and expecting the remaining 50% of the funds to be raised by the communities themselves is likely to have a disproportional negative impact on vulnerable and marginalised minority groups such as minority returnee and Roma communities, who are already struggling with realising their socio-economic rights and hence they are much less likely to be able to secure the necessary funds enabling them to become beneficiaries of these municipally-financed projects.
37. Integrated education also remains a concern for most minority returnee communities. Some attend segregated schools—either mono-ethnic schools or ethnically segregated schools under the ‘two-schools under one roof system’—significantly hindering their integration. On the other hand, those who attend unified schools often find that they cannot learn their own minority language or be taught based on a *curriculum* that also promotes the knowledge of their culture, history and religion.<sup>23</sup>

**Therefore, MRG requests the Committee to make the following recommendations to Bosnia and Herzegovina**

38. Ensure sustainable return of minority returnees by removing discriminatory provisions from the Constitution limiting their right to political participation and by intensifying efforts to combat direct and indirect discrimination against minority returnees;
39. End ethnic segregation in schools and promote integrated education that respects the principles of multiculturalism and intercultural education and international minority rights standards.

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<sup>22</sup> For example, in January 2014, MRG visited a small Serb returnee community of mainly elderly people in the village of Vrbnica of Livno municipality. The community complained that they lack access to running water, proper roads, public lightning and sewage-system, while the majority Croat community do not face the same problem. They claimed that police often fail to respond to their calls and the crimes they report remain uninvestigated. While a nurse regularly visits other elderly communities (i.e. Croat), they receive visits only occasionally, and when they call the ambulance or when they request home visits by their doctors, they are often denied service, citing difficulty of accessing their village due to poor quality roads.

<sup>23</sup> This issue led to a series of protests in 2013 by Bosniak parents from Konjević Polje in the RS demanding their children to be taught their own national subjects. For further details, see <http://www.sarajevotimes.com/children-parents-konjevic-polje-appeal-european-court-human-rights/> and <http://www.transconflict.com/2013/11/two-roofs-one-school-511/>

### **C. Discrimination against Roma in the field of housing, employment, education and health care**

Relevant ICERD Articles: 2, 3, 5 (e)

Relevant CERD recommendations:

*The Committee reiterates its recommendations to the State party, with reference to its general recommendation No. 27 (2000), to continue to endeavour to combat prejudices against Roma, and to ensure that all Roma have access to personal documents that are necessary for them to enjoy their civil and political rights, as well as their economic, social and cultural rights. The Committee recommends also that the State party fully implement its various Roma strategies and action plans in line with the declaration and programme of work of the Decade of Roma Inclusion 2005-2015, with action mainly devoted to ensuring adequate housing, health care, employment, social security and education for Roma people.*

40. The Roma community in BiH continues to face difficult living conditions and discrimination in spite of some progress achieved in improving their situation due to the implementation of Roma Action Plans. Many members of the Roma community still live in inadequate housing conditions, often in informal and illegal settlements that lack security, infrastructure and access to basic services and employment opportunities.
41. Some positive developments have been achieved in relation to the right to housing of the most vulnerable Roma families through construction or reconstruction of housing units under the Action Plan on Roma Housing. It should be noted though that some of these construction projects are poorly planned and not implemented according to international human and minority rights standards. Some constructions are carried out without proper consultation with minority communities and on land sites without basic infrastructure often located in isolated areas. While Roma representatives seemed to have participated in the selection of beneficiaries, these housing projects are often implemented without adequate consultation of the affected local Roma communities.
42. Moreover, these projects frequently rely on local municipalities to allocate land to construct new housing units. This has been proven to be a serious barrier due to strong resistance from residents who do not want Roma in their neighbourhoods as well as a lack of will on the part of municipal authorities to allocate appropriate land for the constructions. As a result, some housing projects have been delayed despite the availability of funding. Indeed, in cases the housing units might need to be constructed on a land site in a segregated area that currently lacks proper infrastructure and is far from accessible education, emergency services and employment opportunities.<sup>24</sup>

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<sup>24</sup> For example, the land spot the Čapljina Municipality Council is planning to allocate for a Roma housing project currently lacks basic infrastructure and it is in a segregated location far from accessible education, emergency services and employment opportunities. The proposed site is more than 4 km away from the main road, more than 10 km away from the first elementary school and health centre, and there is no public transportation to reach the land from the main road. The site is 17 km away from

43. Lack of access to education also remained a significant concern for Roma communities.<sup>25</sup> Roma families interviewed by MRG identified poverty and their poor housing conditions as the main factors contributing to low school enrolment rates. Many Roma families live in settlements outside main residential areas and often without proper infrastructure; as a result they face adverse geographical boundaries in accessing schools. Moreover, they lack the necessary financial resources to afford the costs of school materials, clothing, food and transport. Indeed, some parents also said that for these reasons, they had chosen to send their children to special schools as some of these schools provide free meals, books and school materials as well as transportation. It is alarming that in these cases, the parents' acceptance of the placement of their children into special schools is a direct response to their poverty rather than having any relation to the child's abilities.
44. High levels of unemployment, severe poverty, deprivation, lack of access to education and other basic services, substandard housing conditions and poor living conditions without access to adequate water and sanitation facilities contribute to the poor health situation of the Roma community. Furthermore, in spite of some progress in this area, many Roma claim that they are still unable to obtain appropriate health insurance mainly due to registration problems and thus do not have access to proper health-care services.
45. Access to health care for Roma communities is problematic in both entities but it is of a particular concern in the Federation, where strict registration deadline to obtain health insurance through the unemployment office and weak implementation of the regulations providing basic cover for the uninsured persons leaves Roma in a vulnerable situation.
46. Access to health insurance in the BiH is closely linked with employment or education in BiH, and this places members of the Roma community at a clear disadvantage. It is estimated that 95-99% of Roma are unemployed and 46% of Roma children drop out at some point from primary school, and only 22% attend to secondary school.<sup>26</sup> Those who are unemployed must register with the local employment bureau in order to receive health insurance- but the Federation has a 30-day registration rule, and "anyone who does not register with the employment bureau within 30 days of finishing school, losing a job, or moving to a new canton becomes ineligible for the health insurance."<sup>27</sup> However, a high number of Roma are not aware of this rule or become aware of this rule only after the deadline had passed. Given that Roma are also very unlikely to get re/employed, or go back to school, if they missed this deadline, they will likely to remain ineligible to access state health insurance in the Federation.

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the Čapljina town centre, thus moving the community to the site would mean that they would be located far from employment opportunities and their main source of income, the Ada waste dump, which is located close to the town centre.

<sup>25</sup> It should be noted though that Roma access to education seems to be uneven, with some localities achieving high enrolment rates including secondary schools while in other communities most children do not even attend primary school.

<sup>26</sup> [http://www.ba.undp.org/content/bosnia\\_and\\_herzegovina/en/home/mdgoverview/overview/mdg2.html](http://www.ba.undp.org/content/bosnia_and_herzegovina/en/home/mdgoverview/overview/mdg2.html)

<sup>27</sup> Law on Health Insurance of Federation of Bosnia and Herzegovina, Official Gazette FBiH 30/97, 7/02, 70/08, 48/11.

47. According to relevant regulations in the Federation and the RS, basic health care should be provided for uninsured vulnerable groups, including *inter alia* children, pregnant women and women during maternity leave. However, in the Federation the competence in health matters is shared between entity and cantonal authorities, and the provisions related to basic health cover for uninsured persons have not been implemented by all cantons, which has a disproportional negative effect on members of the Roma community and might constitute indirect discrimination.
48. It is concerning that in spite of the fact that regulations in both entities provide for free pregnancy care regardless of health insurance status, numerous cases have been reported concerning denial or delay of urgent pregnancy care to Roma women, mainly in the Federation. The case of Senada Alimanović, a Roma woman who was refused emergency medical care after a miscarriage because she could not afford to pay for it and had no medical insurance was widely reported in the Bosnian media.<sup>28</sup> Moreover, MRG is currently investigating a case concerning the death of a pregnant Roma woman who was allegedly denied an exam by doctors at the Zavidovići health centre which led to delays in receiving an urgent and potentially life-saving treatment.

**Therefore, MRG requests the Committee to make the following recommendations to Bosnia and Herzegovina**

49. Ensure that Roma Action Plans are adequately funded and fully implemented in consultation with Roma communities.
50. Continue to undertake measures to improve the housing conditions of Roma community and step up efforts to ensure that housing projects are implemented in line with international human rights standards and in consultation with affected communities.
51. Devote increased attention to improve access to education of Roma communities – including Roma girls– in consultation with Roma communities. Measures should be also undertaken to increase access of Roma to adult education including vocational training.
52. Increase efforts to improve the access of Roma to health care, including removing registration barriers in accessing state health insurance and ensure proper implementation of laws and regulations focusing on access of free health care for the most vulnerable communities.

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<sup>28</sup> Her story has also become the theme of an award winning documentary film *An Episode in the Life of an Iron Picker* (2013), directed by Danis Tanović. <http://ff.hrw.org/film/episode-life-iron-picker?city=4>

#### **D. Measures taken to prevent, combat and eradicate racial discrimination**

*Relevant ICERD Articles: 2, 6, 7*

*Relevant CERD recommendations:*

*The Committee recommends the State party to take the relevant political, professional, financial, technical and other measures to ensure effective independence and autonomy for the Office of the Human Rights Ombudsman in accordance with the Paris Principles of 1993 (A/RES/48/134 of 20 December 1993), and to enable the effective and efficient work of local national minorities' councils.*

*In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order.*

53. The adoption of the comprehensive anti-discrimination law<sup>29</sup> (ADL) in July 2009 represents an important step toward the protection of minorities from discrimination in BiH; however, it is concerning that to date only very limited measures have been taken to ensure its effective and proper implementation. While discrimination faced by members of minority communities is widespread in BiH, minorities have brought very few cases under the law.<sup>30</sup>
54. The weak implementation of the ADL is partly due to the general lack of understanding among the judiciary, relevant administrative authorities, the public and minority communities of the law's provisions; the lack of adequate protection from victimisation as well as capacity issues affecting the work of the Ombudsman of BiH.
55. NGOs working with minority communities and engaging in litigation of discrimination cases note the difficulty of identifying suitable cases as the general public, including members of minority communities, do not properly understand the concept of discrimination and thus interpret any human rights violation as an instance of discrimination. Moreover, when discrimination occurs, since victims are often unaware of the judicial and quasi-judicial remedies available to them, they take no action to redress the violation.
56. Furthermore, the lack of proper protection from victimisation of participants in the proceedings is of a great concern. There have been several instances when victims of discrimination were subjected to harassment or disciplinary proceedings for making a complaint or an allegation of ethnic discrimination, and relevant bodies failed to take proper

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<sup>29</sup> Law on Prohibition of Discrimination, *Official Gazette of BiH* 59/09.

<sup>30</sup> For instance, the Department for the Elimination of All Forms of Racism of the Ombudsman of BiH received only 26 complaints in 2012 and 15 in 2013 relating to ethnic discrimination and 3 complaints in both years related to discrimination based on membership to a national minority. (The Institution of Human Rights Ombudsman of Bosnia and Herzegovina, See *Annual Report on Occurrences of Discrimination in Bosnia and Herzegovina for 2012*, p. 14; *Annual Report on Occurrences of Discrimination in Bosnia and Herzegovina for 2013*, p. 16, available from <http://www.ombudsmen.gov.ba/Dokumenti.aspx?id=27&tip=1&lang=EN>)

action against the perpetrators.<sup>31</sup> Therefore, victims of discrimination are often reluctant to take their cases to court or other competent authority due to fear of victimisation.

57. While MRG welcomes the decision to include the ADL as a subject to be covered by the Bar exam in the Federation, it should be stressed that in order to properly address the deficiencies in the capacity and competency of the legal community it is important to provide adequate and continuous training for the judges and other members of the legal profession to improve their understanding of the concept of both direct and indirect discrimination, the rule of shifting the burden of proof, and the application of comparators in anti-discrimination cases.
58. The capacity to effectively address discrimination is also undermined by some legislative provisions, including *inter alia* the absence of elective territorial jurisdiction of courts that would help victims to select the most suitable court to them, lack of clarity regarding shifting the burden of proof in discrimination cases, and inadequate deadlines for filing an anti-discrimination lawsuit.<sup>32</sup> The objective 1-year and subjective 3-month deadline is simply too restrictive. On a positive note, on 21-22 November 2013, an expert working group discussion was held in Sarajevo, and the working group prepared a document summarising its recommendations for amendments to the ADL addressing these problematic issues. Reportedly, the recommendations of the working group will be presented to the Parliamentary Assembly of BiH later this year.
59. At the institutional level, the Ombudsman of BiH continues to be significantly challenged by lack of funding, capacity issues, and non-implementation of its recommendations. Due to lack of funds and resulting understaffing of the office<sup>33</sup>, the citizens' accessibility to the Ombudsman of BiH is rather limited and the office is unable to properly carry out its mandate. In particular, it lacks funds for raising public awareness about the provisions of the ADL, carrying out research in the area of discrimination, and proposing legislative changes.<sup>34</sup>
60. It should be also noted that some recommendations and reports published by the institution are not drafted to an appropriate standard which seems to also suggest that staff drafting these documents have limited expertise and/or capacity. MRG is also concerned that during the investigation of *ex officio* cases and examinations of complaints lodged related to discrimination and violation of rights of minorities, insufficient attention is being paid to properly investigate discriminatory purpose or intent, to request/collect data that would help to establish a *prima facie* case of discrimination, and to examine whether relevant legal

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<sup>31</sup> See, for example, the cases cited in Analitika, *The Ombudsman in System of Protection against Discrimination in Be&H: Situational Analysis and Characteristic Problems* (Sarajevo, January 2013), p. 33.

<sup>32</sup> Analitika: 'Judicial Protection from Discrimination in Bosnia and Herzegovina: Analysis of Laws and Practice Based on Initial Cases in the Field: Policy Brief' (Sarajevo, April 2013). For further information, see Adrijana Hanušić, *Judicial Protection from Discrimination in Bosnia and Herzegovina: Analysis of Laws and Practice Based on Initial Cases in This Field* [Full Report] (Sarajevo: Analitika, 2013).

<sup>33</sup> Due to the lack of proper funding, the staffing of the Ombudsman's office remained very limited, with only 3 staff members working for the Department for the Elimination of All Forms of Racism, and one working for the Department for Protection of the Rights of National, Religious and Other Minorities.

<sup>34</sup> The Institution of Human Rights Ombudsman of Bosnia and Herzegovina, *Annual Report on Occurrences of Discrimination in Bosnia and Herzegovina for 2013*, p. 27.



provisions or policies adopted by authorities have a disproportionately negative impact on some ethnic groups. It appears that the focus instead during these investigations is whether the letter of the law or regulation was correctly applied; sometimes even without examining whether that particular law or regulation is in line with international human rights standards. This often results in closure of cases without issuing recommendation where direct or indirect discrimination may have occurred or discrimination is being missed when they have occurred alongside a violation of another human right.<sup>35</sup>

61. While minority communities remain disproportionately disadvantaged in accessing their socio-economic and political rights and ethnic discrimination, prejudice, stereotyping are features of every-day life in BiH, there is a lack of a sustained and comprehensive approach on the state level to prevent and combat discrimination despite a clear need for a wide range of complementary and mutually reinforcing measures addressing racial discrimination.

**Therefore, MRG requests the Committee to make the following recommendations to Bosnia and Herzegovina:**

62. Promote effective implementation of the ADL by educating the public and the legal community about discrimination, urging relevant authorities to provide adequate protection against victimisation and by creating further mechanisms to exert pressure on violators to comply with recommendations issued by the office of the Ombudsman of BiH.
63. Make necessary amendments to the anti-discrimination law to make it a more effective tool to address discrimination and to develop, adopt and fully implement a national action plan against racial discrimination, either as a separate state level action plan or as part of a general state-level anti-discrimination strategy.
64. Ensure appropriate financial and staff resources to enable the Ombudsman of BiH fulfil its mandate and efficiently and effectively carry out its functions.

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<sup>35</sup> These observations are mainly based on cases in which the Ombudsman of BiH opened *ex officio* investigation and have also been examined by MRG's legal team. The Advisory Committee of the Framework Convention for the Protection of National Minorities [AC FCNM] reached similar conclusions. See AC FCNM, *Third Opinion on Bosnia and Herzegovina*, adopted on 7 March 2013, (ASCFC/OP/III(2013)003), paras 54-55.