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تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير الخبرة المستقلة المعنية بقضايا الأقليات، ريتا إسحاق

إضافة

البعثة إلى البوسنة والهرسك*

موجز

في البوسنة والهرسك، تتمتع بحقوق الأقليات عدة جماعات تشمل ١٧ جماعة من الأقليات الوطنية المعترف بها. بيد أنه يتمتع بها أيضاً، من بين الشعوب المكونة للبوسنة والهرسك - أي البوسنيون والكروات والصرب - في أعقاب التراع الذي امتد من عام ١٩٩٢ إلى عام ١٩٩٥، أولئك الذين وجدوا أنفسهم في أوضاع مماثلة لأوضاع الأقليات بوصفهم جماعات قليلة في المناطق التي يعيشون فيها، وهم يواجهون تحديات جسيمة ويتعرضون لحالات حرمان وتمييز على الصعيدين الاجتماعي والاقتصادي. والقوانين المعتمدة لمنع التمييز وحماية الأقليات الوطنية وإنشاء هيئات استشارية، بما في ذلك المجالس الوطنية للأقليات هي خطوات إيجابية تلقى الترحيب. ومع ذلك فإن التنفيذ لا يزال منعزلاً إلى اليوم، ويلزم اتخاذ تدابير لإذكاء الوعي بين الأقليات، والمجتمع الأوسع نطاقاً، والمسؤولين الحكوميين.

* يُعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق هذا الموجز فيُعمم باللغة التي قُدِّمَ بها فقط.

وتضطلع الحكومة ونظراؤها على مستوى الكيان في اتحاد البوسنة والهرسك وجمهورية صربسكا بمسؤولية ضمان حقوق الأقليات والتعايش السلمي بين هذه الفئات. ويشمل ذلك تعزيز المساواة وعدم التمييز والاندماج الإيجابي لجميع الأشخاص الذين يشتركون في حمل جنسية البلد والعيش على إقليمه الوطني، بمن فيهم الأقليات. والتقسيمات القائمة في المجتمع، بما في ذلك في الحياة السياسية والعامة وفي التعليم، على المستويات الإثني والديني واللغوي، أدت إلى عرقلة الجهود المبذولة لتحقيق الوحدة والتماسك الاجتماعي والهوية الوطنية. ولا تمهد هذه البيئة الاجتماعية والسياسية المتباينة للإصلاح أو لحماية وتعزيز حقوق الأقليات والجماعات العائدة بشكل كامل. وتقيّد الأحكام التمييزية في الدستور الأقليات في مجال الترشح لبعض المناصب السياسية العالية، وهي تقتضي الإصلاح.

وتمثل طائفة الروما، من بين الأقليات الوطنية، الجماعة الأكثر تعرضاً للحرمان والتمييز. وفي إطار مبادرة عقد إدماج الروما للفترة ٢٠٠٥-٢٠١٥، وُضعت خطط عمل في مجالات التعليم والعمالة والرعاية الصحية والإسكان. بيد أن تلك الخطط تحصل على تمويل ضعيف، ولم تؤد الأنشطة المضطلع بها في إطارها وتأثيراتها حتى اليوم إلى تسوية ملحوظة للمشاكل الأساسية لهذه الجماعات أو إلى تحسين حالة الكثير من أفراد الروما. ومعدلات توظيف الروما والتحاق الروما بالتعليم منخفضة بصورة مقلقة. ويُظهر التقدم الإيجابي المُحرز في بعض المناطق أن الحلول ممكنة عندما توجد الإرادة السياسية والموارد الكافية والمشاركة البناءة بين هذه الجماعات والسلطات القائمة.

Annex

[English only]

Report of the Independent Expert on minority issues on her mission to Bosnia and Herzegovina (17–25 September 2012)

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I. Introduction

1. The Independent Expert conducted an official visit to Bosnia and Herzegovina between 17 and 25 September 2012. She thanks the Government for extending an invitation to her and for its cooperation in the preparation and conduct of her visit. She also thanks the senior Governmental representatives and representatives of the international community whom she met for their time and information. She further thanks the numerous non-governmental organizations (NGOs), both national and international, academic institutions, and others working in the field of minority issues who provided valuable information.

2. The most recent census was conducted in 1991, at which time the population was 4.4 million, consisting of 44 per cent Bosniaks, 31 per cent Bosnian Serbs, and 17 per cent Bosnian Croats. Due to the impact of the 1992 to 1995 war, these figures and the distribution of each population group within the country have changed markedly. Each population speaks a separate although closely related language: Bosnian, Croatian or Serbian. These languages are mutually intelligible in most respects and prior to the war were collectively categorized as Serbo-Croat. Serbian uses Cyrillic, one of two official alphabets. Generally, most Bosniaks are Muslim, Croats are Roman Catholic and Serbs are Orthodox Christians. Ethnicity, religion and language are prominent group markers and dividing lines in society, which were accentuated by the conflict and subsequent segregation of communities into separate ethno-religious areas.

3. The 1995 General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Agreement, created separate autonomous regions—the Federation of Bosnia and Herzegovina, the Republika Srpska and Brčko District—and largely divided the country along ethnic, religious and linguistic lines. Most Bosniaks and Croats live in the Federation while most Serbs live in the Republika Srpska. The Constitution of Bosnia and Herzegovina, contained in annex 4 of the Dayton Agreement, established and categorized the three population groups that had also been the warring parties in the conflict as “constituent peoples”. A category of “others” was created to capture groups who are not constituent peoples, including national minorities.

4. There are 17 recognized national minorities: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenes, Turks and Ukrainians. In the 1991 census, these minorities constituted less than 1 per cent of the population; however, 5.5 per cent identified as “Yugoslavs”, and 1.5 per cent are listed as “other”, “undecided” or “unknown”. It is acknowledged that the census significantly undercounted the Roma, many of whom are thought to have identified as Yugoslavs. Only 8,864 self-identified as Roma despite estimates that their actual number may now be as high as 100,000.

5. The Independent Expert emphasizes that minority issues have regional and local as well as national dimensions. A group that may constitute a dominant majority or a significant proportion of the population nationally or in a particular region may be numerically smaller and non-dominant in another region. In the politically, ethnically and geographically divided context of Bosnia and Herzegovina, minority rights protections must also be applied fully for those constituent peoples—Bosniaks, Croats or Serbs—who find themselves in the situation of being *de facto* minorities in the autonomous entities or cantons in which they live and where they face significant challenges and marginalization, often as returnee communities.

6. The Independent Expert visited Sarajevo and different regions where minority and returnee communities live, including Banja Luka, Brčko District, Mostar and Srebrenica. She visited Croat returnee communities in Derventa (Republika Srpska), Bosniak returnees in Kotor Varos (Republika Srpska), and Serb returnees in the villages of Ortijes and

Laksevine near Mostar (the Federation). She consulted Roma communities in Kakanj, near Sarajevo, and Banja Luka. She sought the views of young people, including in Srebrenica, to hear their perspectives and learn about youth initiatives to build bridges between communities.

II. Methodology

7. The Independent Expert's evaluation is based on the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and other relevant international standards, from which she identifies four broad areas of global concern: (a) the protection of a minority's survival, by combating violence against them and preventing genocide; (b) the protection and promotion of the cultural identity of minority groups and their right to enjoy their collective identity and to reject forced assimilation; (c) the guarantee of the rights to non-discrimination and equality, including the ending of structural or systemic discrimination and the promotion of affirmative action when required; and (d) the right to effective participation of minorities in public life and decisions that affect them.

8. The Independent Expert focuses her work on national, ethnic, religious and linguistic groups whose generally non-dominant, disadvantaged positions within society require measures to allow them to exercise all their rights, including minority rights, to the fullest. She notes that the existence of minorities is not for the State alone to decide or limited only to those officially recognized minorities, but should be based on objective and subjective criteria and the principle of self-identification.

III. Non-discrimination and equality—legal, political and institutional framework

9. The Constitution of Bosnia and Herzegovina is contained in annex 4 of the Dayton Agreement, which ended the 1992-1995 war. The 1992 Declaration on Minorities is explicitly mentioned in the preamble, which provides an important constitutional recognition of the rights of minorities. The right to non-discrimination is provided for under article 2 of the Constitution, which prohibits discrimination on a wide range of grounds, including association with a national minority. The separate constitutions of the Federation and the Republika Srpska also guarantee the protection of minorities, equality and freedom of religion.

10. The category of "others", which captures population groups who do not identify as belonging to constituent peoples, is broad and ambiguous and remains problematic, open to interpretation and possible misuse. While including 17 recognized national minorities, it also implicitly includes those belonging to other national, ethnic, religious and linguistic groups, those of mixed ethnicity who do not identify as belonging to one ethnic group, and those who identify as "Bosnian". Cases have been reported of individuals falsely claiming "others" status to gain access to reserved seats.

11. International human rights instruments to which Bosnia and Herzegovina is a party take precedent over domestic law; several of those instruments are listed in the Constitution, including the 1992 European Charter for Regional or Minority Languages and the 1994 Framework Convention for the Protection of National Minorities. Bosnia and Herzegovina is a party to United Nations human rights instruments relevant to minority issues, including the International Covenant on Civil and Political Rights, the International

Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

12. The national Law on the Prevention of All Forms of Discrimination entered into force in August 2009. The law is applicable to all public bodies at the State, entity and canton levels and in Brčko District, and to municipal institutions.¹ The list of protected grounds is comprehensive and includes race, skin colour, language, religion, ethnic affiliation, national or social origin, connection to a national minority and “every other circumstance”. The national Law on Religious Freedom prohibits any form of discrimination against any religious community and regulates the licensing and legal status of religious groups and places of worship.

13. The 2003 State Law on the Protection of the Rights of Persons Belonging to National Minorities includes provisions for the protection of the cultural, religious, education, social, economic and political rights of national minorities. It names 17 minority groups (see para. 4 above), however it is not restrictive and article 3 states that “a national minority ... shall be a part of the population-citizens of BiH that does not belong to any of three constituent peoples and it shall include people of the same or similar tradition, customs, religion, language, culture and spirituality and close or related history and other characteristics”. The law established the State-level Council of National Minorities—an advisory body to the Parliamentary Assembly—which took up its functions in 2008. In 2004 the Republika Srpska adopted an entity-level law on protection of the rights of national minorities and the Federation adopted its own legislation in 2008. Both entities established their own Council of National Minorities—the Republika Srpska in 2007 and the Federation in 2009.

14. The State-level Council of National Minorities currently has 12 members from different minority groups; the current Chair is from the Roma community. The Council represents the interests of all national minorities. Members are nominated by NGOs and minority associations following a public call. A new public call for nominations from unrepresented minority groups was made in November 2011, and the intention is that all minorities will be represented. Members have expressed frustration over delays to the appointment of new members, which they suggested were caused by political parties favouring their own party members for appointment to the Council. The potential to expand the Council exists, and additional groups, including Austrians, Bulgarians and Greeks, have been approved for membership.

15. Council members stated that, although it is an advisory and consultative body, the Council does not have direct access to the Parliamentary Assembly; rather, its reports and opinions are first vetted by the Human Rights Committee of the Assembly. The Council recommends that more defined duties and powers be accorded to it in order to enable it to have real impact and ensure that it is not a symbolic body. It had submitted opinions and recommendations for implementing the *Sejdić and Finci* judgement (see para. 27 below), but was informed that it was not competent to suggest Constitutional amendments. Members emphasized the need to build the capacity of the Council, since members often lack political or advisory experience.

16. Like the State Presidency, the institution of the Human Rights Ombudsman, created by law in 2004, is a tripartite body of three Ombudspersons, one from each constituent people. The law establishing the institution, as amended in 2006, states that: “Ombudsmen shall be appointed from the ranks of the three constituent peoples ... which does not preclude the possibility of appointing an ombudsman from the ranks of ‘others’”.²

¹ European Commission against Racism and Intolerance, “ECRI Report on Bosnia and Herzegovina (fourth monitoring cycle)” (8 February 2011), p. 20.

² Law on Amendments to the Law on Ombudsman for Human Rights in Bosnia and Herzegovina.

The law is unclear as to how someone from this category might secure a role as Ombudsman and whether a fourth Ombudsman might be appointed.

17. Despite the creation of a department for national minorities, the Ombudsmen stated that few cases—only nine in 2011—were received relating to minorities. They acknowledged that the actual number of issues involving minorities, and in particular Roma, is much higher. The department’s activities are restricted by staffing and finance limitations and it is reactive rather than proactive in its work. The Ombudspersons highlighted that a more proactive approach would allow for greater promotion of minority rights, awareness-raising activities and consultations. Recent budget cuts threaten to further restrict the Ombudsman institution’s ability to fully implement its mandate.

18. The Government highlighted the 2010 amendments to the national Criminal Code, which, *inter alia*, introduced the criminal offence of “provoking ethnic, racial and religious hatred, conflicts and intolerance”, punishable by a prison sentence of up to three years. The criminal codes of the Federation of Bosnia and Herzegovina (art. 163), the Republika Srpska (art. 390) and the Brčko District (art. 160) also have provisions defining such acts as criminal offences.³

Census and statistics

19. A new census is due to be held in April 2013. The previous census was conducted in 1991 just prior to the war, which had a massive and lasting impact on all population groups and their distribution and numbers within the country. Huge population movements took place, both forced and voluntary, and many persons became internally displaced or left the country permanently or temporarily—an estimated two million people were displaced by the conflict. There is a lack of accurate data on the number of persons who have permanently returned to their pre-war homes, and the demographic picture of many localities has changed considerably.

20. Nevertheless, consultations suggest that in the absence of recent, reliable data, the 1991 census data continues to be used and to affect and influence aspects of policy, programmes and political life in Bosnia and Herzegovina. A significant challenge therefore exists due to the current lack of accurate statistical data on the number and socioeconomic situation of minorities and returnees. Government and civil society actors have acknowledged that the 1991 census included inaccurate data for some groups, for example significantly undercounting the Roma population, many of whom identified as Yugoslav.

21. The Independent Expert stressed the importance of the upcoming census and urged that delays be avoided. Civil society organizations have protested that some proposed questions relating to ethnicity and religion distort or lead to preconditioned responses due to the nature of the questions and the answer options. They stress the need not to restrict respondents’ answers, for example by allowing them to identify only as one of three constituent peoples or “other” in response to a question relating to nationality. European standards require questions on ethnicity and religion to be optional and not to include pre-defined responses, allowing free and open declaration.

22. Civil society groups stressed that, to produce accurate results, the census needed to include methodologies and processes that encourage individuals to freely and correctly identify themselves, particularly in the post-conflict environment where ethnic and religious identity have historically been sensitive. An accurate reflection of the Roma population is considered particularly important due to the historic undercounting of Roma.

³ Replies of Bosnia and Herzegovina to the list of issues relating to its second periodic report under the International Covenant on Civil and Political Rights (CCPR/C/BIH/Q/2/Add.1), para. 57.

23. The implications of the undercounting of any community may be considerable, particularly in view of legislation allowing for the allocation of seats in municipal governments for any minority with at least 3 per cent of the municipal population. Similarly, employment in some public institutions is dependent on ethnic quotas based on the size of the population in a locality.⁴ Accurate population statistics and detailed data relating to socioeconomic situations disaggregated by ethnicity and gender are also essential, in order to reveal problems facing particular communities and localities and to facilitate policy, resource and programme responses.

24. In 2007, a United Nations Development Programme (UNDP) report stated that 22 per cent of the populace experienced some form of extreme exclusion and 47 per cent were at risk of long-term social exclusion. Groups such as minority returnees, Roma, the elderly, youth, children, and people with disabilities were not only at the highest risk of income poverty and unemployment, but also had far more difficulty gaining access to public services and participating in political life.⁵ While recent data on social inclusion is scarce, NGOs consulted noted that the situation of social exclusion of certain groups, including Roma and returnees, has not markedly improved.

IV. National minorities in Bosnia and Herzegovina

25. The Independent Expert met with the State Council for National Minorities and the Republika Srpska Council for National Minorities, as well as with several representatives of minorities and civil society groups. It was broadly acknowledged that, with the exception of the Roma minority, those belonging to the recognized national minorities are well integrated into society and enjoy most of their civil, political, economic, social and cultural rights in relative equality with others, both at the State and entity levels. Representatives reported general satisfaction with the legal and institutional frameworks in place for the protection of minority rights, but noted continuing problems relating to implementation of laws in practice.

26. Challenges were identified relating to the effective participation of minorities in political life. Under the Constitution, “others” are restricted from standing for election as a member of the State Presidency or House of Peoples. Only constituent peoples are eligible for election to such positions. The Constitution therefore discriminates against many citizens, including those who identify as national minorities and who may have lived in Bosnia and Herzegovina for generations. Under current constitutional provisions and electoral laws only a Serb may run for the Presidency in the Republika Srpska and only a Bosniak or Croat in the Federation, disenfranchising some minorities and constituent peoples living in the entities.

27. The current provisions contravene European and international non-discrimination law, including the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. In 2009, the European Court of Human Rights issued a landmark judgment in *Sejdić and Finci v. Bosnia and Herzegovina*⁶ (concerning a complaint brought by a Bosnian Roma and a Bosnian Jew), finding that the ineligibility of “others” to stand for election is a violation of article 14 (on discrimination) of the European Convention for the Protection of Human

⁴ Human Rights Watch concerns and recommendations on Bosnia and Herzegovina, submitted to the Human Rights Committee in advance of its second periodic review of Bosnia and Herzegovina (2012), second page.

⁵ UNDP, *National Human Development Report: Social Inclusion in Bosnia and Herzegovina* (2007), p. 9.

⁶ Applications No. 27996/06 and No. 34836/06, judgement of 22 December 2009.

Rights and Fundamental Freedoms, taken in conjunction with article 3 of Protocol No. 1 to the Convention, which protects free elections to the legislature. This was the first judgement under Protocol No. 12 (on discrimination) to the Convention.

28. The Court's decision is binding and requires an amendment to the Constitution and electoral law. Despite numerous national and international proposals for reform and the establishment of a joint committee of the Parliamentary Assembly to prepare amendments to the Constitution, to date no concrete measures have been agreed nor has action been taken to amend the Constitution or the electoral law. Regrettably the Government failed to adhere to a deadline for reform (31 August 2012) imposed by the European Union in order to advance European Union membership discussions.

29. Ethno-political agendas and the consequent political "gridlock" are widely cited as reasons for the lack of progress in removing discriminatory provisions and practices affecting minorities. In a 2012 policy briefing, the International Crisis Group stated that a "crisis of governance" existed, and observed that any attention given to implementing the decision of the European Court of Human Rights had focused on a solution that cemented party leaders' already extensive hold on power. It added that the Government and its politicians "are not only unable to resolve the problems; they have become a key problem themselves".⁷ Civil society groups have expressed desire for a process of political dialogue and reconciliation that would achieve progress.

30. Seats are reserved for "others" within the House of Peoples in the Federation and in the Council of Peoples in the Republika Srpska. The Federation allocates 17 seats for each of the main ethnic groups and reserves 7 seats for "others". In the Republika Srpska the Constitution allows four delegates from among "others", and eight seats for each constituent people. There is no constitutional barrier to "others" standing for the entity-level Presidency. Under election laws, where a minority constitutes 3 per cent of the population of a municipality they are designated seats in that municipality's government.⁸ Minority representatives noted that some municipalities provide seats for minorities who do not meet that threshold, but also claimed that some seats for "others" are taken by party candidates falsely registering as such.

31. While the high profile case of *Sejdić and Finci* has gained considerable national and international attention, minority representatives emphasized that problems of minority political participation require wider attention at every level and that minorities should have greater opportunities in municipal and local government. One representative stated: "We are building a house from the roof down. Minorities care more about who represents them locally than who is President." In reality, political parties prefer candidates from their own ethnic groups. It was claimed that minorities who do achieve government posts often follow clearly defined party platforms and do not fully represent the interests of minorities.

32. Issues relating to freedom of religion for religious minorities and for Catholics, Muslims and members of the Serb Orthodox Church who find themselves in minority situations in the regions where they live continue to be a cause for concern, and reports of discrimination persist. Acts of vandalism against religious sites, and the targeting of religious symbols, clerics and property were reportedly frequent and have affected all non-

⁷ International Crisis Group, "Bosnia's Gordian knot: Constitutional reform", Europe Briefing No. 68 (12 July 2012), pp. 1 and 2. Available from [www.crisisgroup.org/~media/Files/europe/balkans/bosnia-herzegovina/b068-bosnias-gordian-knot-constitutional-reform.pdf](http://www.crisisgroup.org/~/media/Files/europe/balkans/bosnia-herzegovina/b068-bosnias-gordian-knot-constitutional-reform.pdf).

⁸ Human Rights Watch, *Second Class Citizens: Discrimination against Roma, Jews, and Other National Minorities in Bosnia and Herzegovina* (2012), pp. 24-25. Human Rights Watch reports that in mid-2011, there were 35 national minorities sitting in 32 of the 142 municipal governments (ibid., p. 24).

dominant religious communities. Minority religious communities reported difficulties in obtaining permits for the building of places of worship, and reports suggest inconsistencies relating to the application of the law in regard to construction and property restitution.⁹ The Inter-Religious Council was established to promote dialogue between leaders of the four traditional religious communities.

V. The situation of the Roma minority

33. No accurate data exists on the number of Roma in Bosnia and Herzegovina, however, NGO estimates range between 80,000 to 100,000 persons and suggest that the numbers are increasing, making Roma the largest national minority.¹⁰ For centuries Roma have existed on the margins of society and they continue to be the most disadvantaged and socially excluded minority, with particular challenges in education, employment, health, housing and access to social security. Discriminatory attitudes towards Roma in society persist. A 2009 study assessing the degree to which people are open to contact with minorities found that by far the highest levels of prejudice were directed towards Roma.¹¹

34. The Independent Expert met with a number of Roma representatives, NGOs working on Roma issues and community members in, inter alia, Sarajevo, Kakanj and Banja Luka. All noted that some positive practices existed with respect to attention paid to Roma issues by governmental bodies and NGOs, and that the situation of Roma in some localities had consequently improved, particularly in terms of housing. However they emphasized that significant challenges remained.

35. Bosnia and Herzegovina joined the Decade of Roma Inclusion (2005 to 2015) initiative on 4 September 2008, making it one of the last countries to join. The Council of Ministers has adopted “Roma action plans” in education, employment, health care and housing. Roma NGOs note that over 100 contributors participated in drafting the action plans, including 21 representatives of Roma organizations. Action plans outline a comprehensive set of aims and measures relating to each field. NGOs report a heavy reliance on external sources of funding and implementation of projects by international NGOs as defining features of the implementation efforts.

36. Countries participating in the Decade are required to provide financial resources adequate for the implementation of the action plans, expected to amount to the equivalent of 40 million euros per year. The funding provided by Bosnia and Herzegovina each year since joining the initiative has fallen far short of required levels. Since 2009 the budget allocated to the Ministry for Human Rights and Refugees has been about €1.5 million each year. These levels of funding are only a fraction of the levels considered adequate for full implementation.

37. A positive practice was the appointment in 2011 of four regional Roma coordinators and one Roma coordinator within the Ministry for Human Rights and

⁹ United States Department of State, *July-December 2010 International Religious Freedom Report* (2011), pp. 7 and 8. Available from www.state.gov/j/drl/rls/irf/2010_5/168300.htm.

¹⁰ Kali Sara Roma Information Center, “Report on the implementation of the Bosnia and Herzegovina Action Plan for Addressing Issues Faced by Roma in the Fields of Employment, Housing and Health Care”, p. 1. Available from www.romadecade.org/files/downloads/General%20Resources/Decade%20Watch%20BiH%202009-2011%20final%20EN.pdf.

¹¹ B. Salaj, *Socijalno povjerenje u Bosni i Hercegovini / Sozialer Zusammenhalt in Bosnien und Herzegowina* (Friedrich Ebert Stiftung, Sarajevo, 2009), cited in UNDP, *The Ties that Bind: Social Capital in Bosnia and Herzegovina* (2009), p. 31.

Refugees. Coordinators support the implementation of national action plans. They work with communities and authorities to help inform and influence policy and programmes, to raise awareness within communities, and assist in the implementation of projects. There is also a Roma Board within the Council of Ministers, comprised of members from Roma associations. A “Roma Census” was begun in November 2009 to provide a needs assessment, establish a database of Roma, and inform activities under the action plans. Data was collected on issues relating to citizenship and registration, health care, education, employment and housing. NGOs noted flaws in the data collection and a lack of incorporation of findings into action plan programmes. They called for the survey to be continued.

38. Many Roma lack identity and other documentation required for access to services and social assistance. Many children have not been registered due to factors such as home births and lack of information. Human Rights Watch reported that Roma displaced by the war or who have moved for economic reasons are often not registered in the localities where they live, leaving them unable to gain access to services that require registration in a canton or municipality. According to estimates from the Office of the United Nations High Commissioner for Refugees (UNHCR), up to 10 per cent of Roma are not in the public registry.¹² Lack of a permanent address is a barrier to registration for those in informal settlements. UNHCR estimates that 5,000 people, mainly Roma, are at risk of statelessness and face obstacles to effective citizenship and access to their rights and entitlements.¹³

A. Education

39. Access to quality education remains a significant concern for Roma. Despite education being key for Roma inclusion, the Action Plan on the Education Needs of Roma was finalized and adopted only in 2010. Its objective is to provide Roma with equal access to quality education at all levels. Evidence indicates that Roma access to education is uneven, with some localities achieving higher enrolment and retention rates and others demonstrating very little Roma inclusion in education. Information provided by UNICEF reveals that enrolment rates for Roma are comparatively low: only 2 per cent at preschool level, compared to 13 per cent for non-Roma; 69 per cent at primary school level, compared to 98 per cent for non-Roma; and only 23 per cent at secondary school level, compared to 92 per cent for non-Roma.

40. Roma representatives commonly expressed concern about high drop-out rates from primary and secondary schools. While few reliable statistics exist, evidence suggests negative rather than positive trends in some localities. Roma representatives in Kakanj, for example, noted that in 2010/11 a total of 146 Roma children were in school. In 2012 the total was 104; much of the decrease was due to drop-out. Attendance in secondary schools is particularly poor for Roma. In 2011, 11 children were in secondary school, while in 2012 the figure had dropped to only 3, according to community representatives.

41. Roma cite poverty and their poor socio-economic conditions, exacerbated by the general economic decline, as significant factors in falling enrolment levels. Roma representatives emphasized that the costs of education are restrictive and that assistance in the form of free transport to school, school meals and scholarships are essential and should form part of a revised education action plan. Despite Government assurances that free

¹² Cited in Human Rights Watch, “Bosnia and Herzegovina”, country summary (January 2012). Available from www.hrw.org/sites/default/files/related_material/bosnia_2012.pdf.

¹³ “2012 UNHCR country operations profile – Bosnia and Herzegovina”. Available from www.unhcr.org/pages/49e48d766.html.

textbooks are available to Roma, representatives of Roma in Kakanj stated that free books had not been made available to them.

42. Government and school representatives acknowledged challenges and deficiencies on the part of authorities to ensure that Roma children attend school according to legal requirements. However they emphasized that problems also stem from within communities themselves, traditional practices such as early marriage, and a lack of importance being attributed to education, especially for Roma girls. UNICEF surveys have found the incidence of early marriage of Roma girls to be 48 per cent.

43. Roma in Banja Luka described more positive experiences in education, reporting that most children attend school and that the high drop-out levels common in other localities are not the case for their community. They described good cooperation with school principals, who call parents when a child does not attend school. They noted efforts to promote the value of education within the community. Nevertheless, few people in the community work and it was acknowledged that improved educational outcomes are not yet leading to improved opportunities for formal employment.

44. Some positive examples in enrolment and attendance of Roma children provide evidence that progress is possible where dedicated attention and targeted policies and programmes are in place. However, these positive examples are in marked contrast to the experiences in some other localities. Roma representatives and international bodies informed the Independent Expert that in some localities, including Bijeljina and Mostar, attempts to increase Roma school attendance have largely failed and levels are extremely low.

45. Roma children are likely to be more motivated to attend class if they have Roma teachers and assistants, but a lack of Roma teachers has been identified and is indicative of a wider problem that negatively affects Roma education. Roma lack opportunities to learn or receive instruction in Romani languages. For example, staff at the Fifth Primary School in Brčko District, which has an ethnic mix of teachers, reported that although their pupils included 54 Roma children, no Roma teacher had been found for the school. School staff noted that a further 36 Roma children had dropped out. In Banja Luka, Roma requested a Romani language teacher and received a positive response, however no teacher could be identified.

46. Additional concerns require investigation by competent authorities. Roma are disproportionately represented in schools for children with special educational needs. Some Roma parents reportedly place their children in these schools not on the basis of identified learning disability, but rather on the basis of social factors, perceiving them to offer a more welcoming environment as more Roma children attend. Allegations were also made that some mainstream schools enrol Roma children as required but fail to provide them with the levels of teaching and attention provided to other children.

B. Employment and social protection

47. Surveys and reports by national bodies, such as the Directorate for Economic Planning, and international organizations, such as Human Rights Watch, consistently estimate unemployment among Roma communities to be above 80 per cent and frequently approaching 100 per cent, a point confirmed in meetings with Roma.¹⁴ Most Roma earn small incomes from informal activities such as collecting scrap materials, seasonal

¹⁴ See, for example, Human Rights Watch, *Second Class Citizens* (footnote 8 above), p. 51.

agricultural labour, or begging.¹⁵ Lack of education and training remains a major obstacle to Roma employment and is also cited by potential employers.

48. Community representatives explained the difficulties that Roma face in finding employment, citing widespread discrimination as well as poor education. The Independent Expert was concerned that communities seemed resigned to unemployment as a fact of life, which has many implications, including for children, who lack working role models and see little advantage to remaining in school. In some communities, almost no one has formal employment; there, families survive on social support and what little they can earn in informal low-income occupations.

49. Some positive results have been achieved through action plans. In 2009/10 the Roma Employment and Self-Employment Programme was created, aimed at providing employers with incentives to recruit unemployed Roma and provide training, as well as at creating an environment conducive to Roma self-employment. A public call for applications from prospective employers and Roma was made, and selected applicants received grant funds. A review revealed that in the Federation, the project resulted in the employment of 98 people: 33 found jobs and 65 became self-employed. In the Republika Srpska the project resulted in the employment or self-employment of 18 people.¹⁶

50. Roma NGOs have proposed a number of recommendations to improve Roma access to employment, including strengthened programme development in partnership with employment agencies, enhanced outreach to communities, specialist training aimed at specific labour markets, and efforts to overcome stereotypes among the non-Roma community and potential employers. Despite gender mainstreaming being required in action plans, few activities have specifically related to Roma women; in the area of employment, none has been implemented in practice. More attention should be dedicated to the employment of Roma women.

51. Some Roma receive social assistance; however, such assistance is reliant on inclusion in the civil registry. Since many Roma are not registered they are not eligible for social assistance and do not appear on employment agency lists;¹⁷ this also has implications for access to health-care assistance. While the country spends significant funds on social protection generally, funds often do not reach the poorest communities, notably Roma. Also, the level of child protection differs from canton to canton.

C. Health

52. High and persistent levels of poverty, lack of education and employment, and poor housing and living conditions without access to adequate water and sanitation facilities contribute to poor health situations for Roma relative to other population groups. Many Roma reportedly remain unable to gain access to needed health-care services and appropriate health insurance due to registration problems. In this regard, the Roma Health-Care Action Plan was established, with the core aims of insuring access to health care by Roma, raising awareness of health care, and ensuring and implementing preventive measures aimed at improving Roma health.

¹⁵ In its *Trafficking in Persons Report 2012*, the United States Department of State reports that a significant number of Roma children are forced into begging, and that forced begging is often linked to trafficking and exploitation of children by organized crime groups. See www.state.gov/j/tip/rls/tiprpt/2012/192366.htm.

¹⁶ Kali Sara Roma Information Center, "Report", pp. 13-21.

¹⁷ *Ibid.*, p. 12.

53. The NGOs appointed to monitor implementation of the action plans report that, with the exception of measures to improve immunization of Roma children and some programmes to respond to specific local issues, the planned activities of the Roma Health-Care Action Plan “have unfortunately not been realized”.¹⁸ The Ministry for Human Rights and Refugees was required to establish an expert group to implement the Action Plan, but did not do so; this omission had negative consequences for planning, implementation and monitoring.

54. The NGOs also raised concerns relating to the accuracy of reports by health-care agencies on the implementation of this Action Plan, which cast doubt on their validity. While reported expenditure on activities countrywide was KM 135,000, most was apparently spent on immunization programmes for Roma children. The NGOs note that immunization should be free for all children in Bosnia and Herzegovina and falls under the responsibility and budget of ministries of health. Therefore, funds under the Action Plan should have been used for other health-related purposes and initiatives for Roma communities.

55. Ensuring provision of health insurance is a measure called for in the Roma Health-Care Action Plan, as is developing a database of Roma with health insurance. Civil society reports indicate that many Roma lack medical insurance. Employers are expected to provide insurance for their long-term employees. This route to acquiring health insurance is closed to the many Roma who lack formal employment, and who consequently must rely on the responsible authorities. Under the State’s extremely decentralized governmental system, health insurance and health care provision fall under the responsibility of the entity, canton and municipal authorities.

D. Housing

56. Positive developments have been achieved in the provision of housing units in some localities, for which the Government is commended. Implementation of the Action Plan on Roma Housing, adopted in July 2008, began in 2009. Of the €1.5 million allocated in 2009 to the Ministry for Human Rights and Refugees for activities under the Decade of Roma Inclusion, €1 million were disbursed on Roma housing. The Ministry disburses funds each year following an annual public call for the submission of Roma housing projects and a review and selection process conducted by a commission under the Ministry.

57. Priority has been given to the construction and reconstruction of houses, improvement of living conditions and infrastructure, and improvement of the housing situation of the most vulnerable families. Roma representatives participated in the project selection process and the selection of beneficiaries. The Government noted that it could invest funds only for families who had had their property status resolved, and that it was necessary for a municipality to allocate land to construct new housing units for homeless families, which had been a barrier in some cases.

58. The Ministry for Human Rights and Refugees notes that in 2009, €3 million were invested in Roma housing projects in 17 municipalities and results surpassed initial plans to construct or reconstruct 195 housing units. In fact, 84 housing units for Roma were newly constructed and 129 were reconstructed. In total, 182 Roma families reportedly benefited from infrastructure projects. In 2010 €1,760,000 were used for additional projects in 13 municipalities, where a total of 61 housing units were constructed and 62 were reconstructed. Infrastructure projects benefited 28 Roma families. The Government notes construction in, inter alia, the municipalities of Jajce, Bijeljina, and Kiseljak.

¹⁸ Ibid., p. 50.

59. Regrettably, in 2011 delays in adoption of the State budget resulted in a lack of funds and project implementation. The ministry responsible for urban planning in the Federation allocated about €125,000 to the Roma housing initiative, from which three projects were funded. Plans exist to construct or reconstruct a further 18 housing units. In view of the country's status as a potential candidate for European Union membership, the Ministry applied for Instrument for Pre-Accession Assistance (IPA) funds. For 2011 to 2012, approved IPA funds amounted to €2,500,000 and for 2013 to 2014 they will amount to €3,800,000. About 80 per cent of the IPA funds will reportedly be used for Roma housing.

60. In total, 364 housing units were constructed or reconstructed (including 10 in Kakanj, 12 in Donji Vakuf and 5 in Tuzla) over the three-year period (2009 to 2011), while 210 Roma families were beneficiaries of infrastructure projects. The Government points to significant success stories, including in Zenica municipality, where the local authorities allocated land in the town center and 28 apartments for Roma homeless were constructed. Mostar municipality and Bihać municipality also allocated land, permitting the construction of new housing units for Roma.

61. Many Roma continue to live in informal and illegal settlements that lack security, stability and access to basic services. Human Rights Watch and national NGOs emphasize that many Roma communities are thus vulnerable to forced eviction and experience extreme poverty, poor health care and almost no access to education and employment. Human Rights Watch notes that there is no policy for providing adequate alternative housing for those who are evicted; they are forced to settle informally once again, constantly facing the threat of eviction.

62. In Kakanj, Roma discussed their challenges, including those relating to the settlement of Varda (140 homes and 645 people), which remains unregularized.¹⁹ The delays in resolving the situation are reportedly due to a failure to allocate an alternate location (the land currently occupied is reportedly in danger of landslide), strong resistance from residents who reject Roma in their neighbourhoods, and the lack of will on the part of municipal authorities, particularly in election periods. Despite the availability of Government funding, no construction projects have begun. Roma representatives acknowledged that consultations and a needs assessment had taken place, but stated "they nod and do nothing".

63. Some Roma experience highly precarious housing conditions. In a settlement near Čapljina, about 35 Roma, including children, live in unhealthy conditions next to a garbage dump without access to basic services, sanitation and electricity. In April 2012 UNHCR expressed its concern regarding this community.²⁰ Despite official requests to the municipality for the allocation of public land for families whose situation had been identified as urgent, the issue had reportedly not been discussed by the authorities. At the time of the Independent Expert's visit the families were still living at the site.

VI. Constituent peoples and returnee communities as de facto minorities

64. The Independent Expert visited returnee communities in Derventa (Croat), Kotor Varos (Bosniak) and the villages of Ortijes and Laksevina near Mostar (Serb) and consulted community members about their situations as de facto minorities. She sought to learn about

¹⁹ Regularization secures the legal status of the community in terms of land, buildings erected or occupied and issues of tenure. For example, the Gorica settlement in Sarajevo Centar was regularized in 2001.

²⁰ See www.delbih.ec.europa.eu/News.aspx?newsid=5292&lang=EN.

their issues and concerns, recognizing that the post-conflict environment entails particular and unique challenges for those from communities formerly at war. In 2010 the Government adopted a revised strategy for the implementation of annex 7 of the Dayton Agreement that provides a framework for resolving outstanding displacement issues.

65. In the communities visited, residents described mostly peaceful relations with the majority population and emphasized that they rarely faced violence or intimidation or experienced serious ethnic or religious tensions. Each community stated that it sought positive relations with other ethnic and religious groups. However, returnee communities also conveyed a sense of isolation and lack of interaction with surrounding majority communities. In some cases, such as in Kotor Varos, they are physically remote. Consequently, barriers to integration and economic, social and political participation exist that result in the relative segregation of some returnees from wider society.

66. Returnees frequently represent just a small fraction of the original, pre-war communities. In the case of Croat returnees to Derventa, the community stated that only 2.8 per cent of the original number had returned on a permanent basis, while many more return irregularly to exercise their rights to land and property or to obtain essential documents. In all communities the majority of those who had returned are older persons with stronger attachment to homes and lands than younger people, who have often only returned in small numbers and who have built new lives abroad. One resident described a “withering, stagnating community”—a sentiment commonly expressed by returnees.

67. Returnee communities emphasized the need for continuing reconstruction support. In Kotor Varos, residents stated that support for reconstruction would encourage greater numbers to return. They claimed that immediately after the signing of the Dayton Agreement some 376 houses were destroyed to prevent Bosniaks from returning. In Ortijes and Laksevine, Serbs stated that 1,160 Serb houses in the region still required reconstruction. In Derventa, the Croat community reported that there were 1,274 outstanding requests for reconstruction, while 1,500 houses had been reconstructed with the assistance of international donations.²¹ Communities expressed frustration that the likelihood of further population return diminished with time.

68. Community members expressed concerns about the sustainability and economic viability of communities with few young people and women. Most communities are heavily reliant on small-scale agriculture. They acknowledged that some assistance, in the form of machinery and seeds, had been provided in order to make neglected land productive. However, incomes from agriculture are low and communities have requested significant additional support. One Serb resident, who earns an income by selling fruit by the roadside, stated: “It is very difficult to get a job. I see no future for my son here.”

69. All communities commented that finding employment was difficult, particularly in the current financial crisis. However, the situation is particularly difficult for returnees, and discrimination plays a role. Returnees described barriers to employment in public bodies and institutions, which tend to hire candidates from majority communities. One person in a Serb community near Mostar stated: “We lost our jobs and now we can’t get them back.” Residents of Kotor Varos described their heavy reliance on social benefits.

70. Communities visited conveyed a perception that their needs receive little attention in comparison to others. While they have access to schools and health services, residents of Derventa, Ortijes and Laksevine described their lack of access to running water as a long-standing problem. Serb returnees said that investment in water provision and irrigation systems had been made for other ethnic communities but not for their villages. A water supply system for Mostar reportedly runs through one village, yet residents of the village

²¹ Figures are based on interviews with community members and have not been verified.

said that they are reliant on wells. Derventa residents also lack water and were informed by authorities and utility companies that they must wait for donations in order to establish a water supply.

71. The European Commission against Racism and Intolerance has stated that “minority returnees continue to face discrimination in all areas of daily life, including difficulties in access to health care, pensions, and other forms of social protection”²² and that “the situation of returnees is compounded by discrimination in access to employment, in both public and private sectors”.²³ National NGOs have called for coordinated strategies to ensure self-sustainable returns, including essential elements of infrastructure development, sustainable economic options, cultural protection and promotion, and social cohesion and inclusion.

72. The Independent Expert met with representatives of associations working with victims of alleged war crimes whose cases have not come before the courts. The representatives reported that restrictions or administrative barriers were imposed on those who seek allowances as “civilian victims” in their places of residence and that laws and treatment by the Federation and the Republika Srpska were inconsistent. Some alleged victims reportedly do not receive the financial or psychological support that they may be entitled to. Restrictions were reported on the rights to freedom of association and assembly, notably for Bosniaks in the Republika Srpska who wish to protest or publicly commemorate certain dates and events, while such restrictions are not imposed on the majority population.

VII. Education issues of national minorities and returnee communities

73. Establishing integrated education remains a significant challenge and an important minority issue. Mono-ethnic schools and the “two-schools-under-one-roof” system remain common and hamper efforts to promote integration and inter-ethnic understanding. Under the two-schools-under-one-roof system, operating in three cantons in the Federation, children from different ethnic groups attend school in the same building but are taught separately, have different curricula and entrances or teaching “shifts” and rarely mix within the school environment. Separate school administrative bodies, school boards and parent bodies also operate.

74. Education remains a concern for some returnee communities, and language issues featured as a source of frustration. In the Bosniak community of Kotor Varos a high percentage of children in the local school are Bosniak, but they are taught in Serbian based on a Serbian curriculum. Community members stated that Bosniaks could not get jobs at the school. Following written requests to the school principal and the Ministry of Education requesting Bosniak language teaching, they were informed that it would not be possible. Serb returnees in Ortijes and Laksevine noted that their children follow a Croatian curriculum but that teachers were sensitive to their issues and needs.

75. In April 2012 the Mostar Municipal Court ruled that the two-schools-under-one-roof system operating in the towns of Stolac and Capljina was illegal and counter to non-discrimination laws. The court ruled that classes in affected schools should be merged by the beginning of the school year (September 2012). The ruling was not complied with. However, the Ministry of Education of the Federation has outlined a plan to end

²² ECRI, “ECRI Report on Bosnia and Herzegovina” (footnote 1 above), p. 8.

²³ *Ibid.*, p. 32.

segregation over two years, from September 2012. Nevertheless, strong political resistance from local officials to unification and multi-ethnic classes remains at the canton and municipal levels, which many consider is likely to hamper progress.

76. The Independent Expert visited the Mostar Grammar School or “Gymnasium”, which, while operating as two schools under one roof for Bosniak and Croat pupils, has made steps towards integration while remaining largely segregated in practice. Progress in this school has included its unification into one legal entity, with a single administrative structure and pupils who attend some classes together. The school principal highlighted that separate Bosniak and Croat curricula hamper unification efforts, but that political rather than pedagogical or language factors present the greatest challenges to full integration.

77. Religious education is taught in public schools, but often covers only the majority religion of the municipality. Despite legal requirements linked to student numbers, religious minorities frequently do not have the option to attend classes in their own religion due to a lack of teachers or failure to apply the law. Few provisions, such as the recruitment of additional religious teachers, have been implemented in the Federation or the Republika Srpska. While religious education classes are theoretically optional, children who do not attend such classes because they belong to a different faith or no faith are penalized academically; consequently, there is a discriminatory impact.

VIII. Conclusions and recommendations

General recommendations

78. **Political divisions and the ethnicization of politics in Bosnia and Herzegovina blocks progress in several areas where political reform is required and perpetuates existing national, ethnic, religious and linguistic divisions. While the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement) established discriminatory provisions, ethnically biased political agendas and a prioritization of party and ethnic interests over the interests of all citizens has perpetuated a polarized and adversarial political environment which is not conducive to reform or the full protection and promotion of minority rights in practice.**

79. **The highly decentralized governance structures create inconsistencies of approach and legal protection of minorities and concerns relating to powers and responsibilities in key areas of minority concern. The Independent Expert on minority issues emphasizes that all levels of government must fully comply with national and international law relevant to minorities, and urges an increase in efforts to harmonize approaches and political cooperation to ensure the implementation of minority rights.**

80. **The adoption of the Law on the Prevention of All Forms of Discrimination and the laws on the protection of the rights of persons belonging to national minorities at the State and entity levels are positive steps. However, while these laws are relatively new, implementation in practice remains poor at all levels. The prevailing perception of minorities and returnee communities is that, while the laws meet international requirements, their implementation in practice remains a low political priority. Public awareness initiatives and training of judges and prosecutors is essential.**

81. **The State Law on the Protection of the Rights of Persons Belonging to National Minorities should not be interpreted in a restrictive manner. Article 3 allows for the protection under the law of other minority groups who meet specified criteria. The Independent Expert was informed about the existence in the country of a number**

of additional groups, and notes that more newly settled national, ethnic, religious and linguistic groups must not be excluded from minority rights protection.

82. Councils of national minorities at the State and entity levels are important advisory and consultative bodies. To fulfil their potential it is essential that the powers afforded to them are appropriate to their status, and that their reports and recommendations are taken fully into account on matters relevant to minorities. Appointment to the councils should not be unduly influenced by political parties but based on a transparent process to appoint candidates who belong to a national minority and who represent the interests of that minority.

83. The Human Rights Ombudsman is an essential independent human rights institution. Consideration should be given to strengthening its role and activities relating to minority issues, including by providing more resources to allow proactive initiatives. Ensuring appropriate representation of minorities is essential. The necessary consultative and legal steps should be taken to enable the appointment of an ombudsperson representing minorities. Such a representative should not be affiliated with the three constituent peoples already represented.

84. Challenges for religious minorities include discrimination and the vandalism and targeting of places of worship. Religious education is commonly only provided in the majority religion. Measures to avoid discrimination are required, including the recruitment of religious teachers to appropriately address the religious education requirements of minorities. No child should be penalized academically or otherwise for not attending religion classes. The Inter-Religious Council constitutes a positive practice and its role in mediating among communities should be strengthened. Efforts should be made to also consult young people, whose views and visions for the future are essential, and to support youth initiatives towards unity and integration.

Census and statistics

85. The absence of accurate demographic and socioeconomic data constitutes a serious challenge to ensuring protection of minority rights. Accurate data will reveal the current picture of national, ethnic, religious and linguistic groups and provide key socioeconomic information. It will facilitate development of policy and programme measures to improve the situation of national minorities and returnee communities. The census should take place according to current schedules in April 2013 and be conducted according to European Union standards.

86. Census questions should allow open and multiple responses that enable respondents to self-identify according to their national, ethnic, religious and linguistic affiliation, including multiple identities. Civil society and councils of national minorities should have a role in outreach, training and monitoring of the census process, including to promote awareness of the importance of accurate responses. Ensuring accurate data for Roma is essential and should be facilitated through outreach and information for Roma communities and training of Roma census collection staff.

Political participation

87. National minorities and those within the category of “others” must have equal rights to stand for any government position. The judgement of the European Court of Human Rights in the case of *Sejdić and Finci v. Bosnia and Herzegovina* is a landmark decision for the rights of minorities, and constitutional reform is necessary to remove discriminatory provisions. This should not be portrayed as a threat to peace or the

rights of any group, but as a positive, necessary process of change for a democratic country seeking European Union membership.

88. Efforts must be intensified to move beyond a political impasse and to implement the *Sejdić and Finci* ruling in full consultation with minorities, the councils of national minorities and other representative and consultative bodies, and the international community, which has a valuable advisory role. The Independent Expert notes her willingness to assist the Government and all relevant parties to achieve a speedy and appropriate solution.

89. The use of the term “others” in the Constitution and electoral laws is inappropriate and implies a lower status given to minorities and persons who identify as Bosnian or not belonging to a constituent people. It is discriminatory in terms of protection of rights, as demonstrated by provisions that exclude “others” from election to certain offices. Revision of the Constitution should replace this term in favour of language in line with the Law on the Protection of the Rights of Persons Belonging to National Minorities.

90. Ensuring that minorities and returnees can participate effectively in political life at the municipal, canton and entity levels remains a challenge. Even where they do not meet the threshold for seats in municipal government, steps are required to ensure that minorities and returnees have a voice in decisions concerning them and their regions. Minority women are particularly poorly represented in political life and measures are required to promote their participation.

The situation of the Roma minority

91. While on paper Roma action plans in education, employment, health and housing provide excellent aims and expected measures, the implementation of projects has been insufficient to date, resulting in a lack of significant impact on the ground. A heavy reliance on international funding and NGO implementation is evident. While recognizing economic challenges facing the country, commitments must be matched by national- and entity-level will, resources and concrete activities to implement measures effectively.

92. Coordinated and strategic approaches must be adopted that recognize the interrelated nature of issues. For example, to be sustainable, progress in housing must be matched by progress in employment and access to social assistance to ensure that Roma can pay rent. In turn, real progress in employment relies heavily on improved education access and outcomes. Adequate housing and security of tenure underpin all efforts to improve education, employment and health outcomes for Roma communities.

93. Many Roma, including children, continue to lack the documentation they require to fully enjoy their rights as citizens and to benefit from services and social assistance. Full registration should be a high priority of authorities at all levels and existing measures should be intensified. Registration should not entail prohibitive costs or restrictive administrative burdens. Positive practices such as outreach to communities and mobile registration units should be utilized and the full registration of children should be a high priority.

94. The revised action plan for Roma education was adopted only in 2010 and therefore key issues of education have not yet received the attention required. Urgent and dedicated attention is required to improve access to education and education outcomes for all Roma children, including outreach to Roma communities and schools and enforcement of national law relating to attendance. The situation of low

enrolment of Roma girls requires measures to address the unique barriers to girls' education, including those that stem from within communities.

95. Local authorities with day-to-day responsibility for education at the school levels must fulfil their responsibilities towards Roma communities to ensure that children are enrolled and attending school and that their education is on a par with other children. Efforts should be stepped up to train and recruit Roma teachers and assistants and to ensure a secure and welcoming environment for Roma children in which they have opportunities to learn their languages and about their cultures.

96. High Roma unemployment reveals systematic discrimination and exclusion from labour markets as well as a failure to provide viable and effective solutions. While efforts have been made, the results demonstrated to date under the action plan on Roma employment have been minimal and efforts should be intensified, including through enhanced outreach to Roma and potential employers. Given the high unemployment rates for Roma, an action plan on social protection would help to ensure safety nets for this vulnerable population.

97. Government at all levels should play a stronger leadership role in promoting and facilitating the employment of Roma. Stronger affirmative action measures should be adopted to improve opportunities for Roma to gain employment in the public sector. Positive steps in the private sector should also be enhanced, including training and engagement with employment agencies and employers. Initiatives targeting Roma women are essential. The Independent Expert notes that investing in the inclusion of Roma results in increased productivity, fiscal contributions and economic growth for States.

Education

98. Segregation in the education system is entrenched and requires compromise and positive steps by all ethnic groups and their political representatives. Some political and community actors present segregation as essential for the protection and promotion of group and language identity. For minority communities and returnees the challenges presented by segregation are particularly acute, and provisions for them to enjoy culturally appropriate education are limited.

99. Education should be the foundation for unity, understanding and acceptance of differences. The existence of mono-ethnic schools and the two-schools-under-one-roof system works counter to such objectives and shapes a society in which divisions are perpetuated and opportunities for community and minority/majority relations to improve are diminished. Efforts should be intensified and measures strengthened at all levels of authority to improve integration within the school system.

100. Integrated State education in which children from different ethnic and religious groups attend the same school and classes and learn and interact together should be the ultimate objective. The possibility of integration is frequently framed as an insurmountable legal, political and practical challenge. A successful process of educational reform may best be achieved via evolutionary rather than revolutionary means, however it must be set in motion without delay.

101. Methodologies that respect and accommodate distinct cultural, linguistic and religious identity in an integrated, tolerant learning environment should be implemented, including school catchment and enrolment policies that promote integration. National consultations should be held towards establishing a single, harmonized and ethnically and religiously neutral State curriculum for all schools. Where the two-schools-under-one-roof system exists, steps to achieve administrative

and classroom integration should be based upon dialogue and confidence-building across communities.

Returnee communities

102. Seventeen years after the war, attention to returnees is fading and communities are struggling to become fully viable. Considerable efforts were made by national authorities and the international community to facilitate the return of many displaced persons. Nevertheless, substantial additional efforts and resources are required to fully implement annex 7 to the Dayton Agreement. The Independent Expert urges the full implementation of the 2010 revised strategy for the implementation of annex 7 and highlights the continuing role of the international community, and urges international donors to continue to provide funding to support sustainable returns.

103. The challenges facing those who remained in or have returned to their pre-war homes are manifested in physical, social, economic and psychological difficulties, exclusion and discrimination. Special attention must be paid by all responsible authorities to the rights and needs of such potentially vulnerable, isolated and marginalized communities. Attention must also be given to the needs of Roma and other non-constituent peoples with legitimate claims to property and reconstruction whose needs have sometimes been overlooked.

104. Evidence indicates that numerous cases of alleged war crimes perpetrated against civilians have not come before the courts, and consequently victims, who are often minorities and returnees, have not received the financial or psychological support they may require or are entitled to. Outstanding cases should be brought to completion without further delay. No undue restrictions or administrative barriers should be imposed on individuals seeking to claim their rights and allowances as “civilian victims” in their places of residence, and laws should be harmonized in favour of victims.

105. Responsible authorities should put in place comprehensive long-term strategies for the improvement and sustainability of returnee communities in compliance with annex 7. Strategies should include key support for economic opportunities, infrastructure projects, enjoyment of cultural life, and social cohesion and inclusion. Returnee communities should be assisted to integrate into wider society, and discrimination, including in employment and service provision, must be rigorously addressed in compliance with non-discrimination laws.

106. Minorities have the right to freely and peacefully associate and assemble and this must be respected in practice. No undue obstacles or restrictions should be imposed, including for constituent peoples and minorities in all localities who wish to peacefully protest or commemorate dates or events significant to them while fully respecting relevant laws relating to peaceful assembly.