



International Committee for Human Rights

Submission from the International Committee for Human Rights (ICHR), the Internal Displacement Monitoring Centre (IDMC) and the Minority Rights Group to the Human Rights Committee



I. Introduction

In view of the consideration of the initial report submitted by Bosnia and Herzegovina, four different organizations have decided to join forces and to submit to the attention of the UN Human Rights Committee a series of issues that they wish the UN Human Rights Committee to raise with the relevant authorities of Bosnia and Herzegovina when the report will be considered. The organisations have deep and direct knowledge both of their specific topics and of the situation in Bosnia and Herzegovina as it evolved in the course of the last ten years in the difficult post-conflict recovery. A brief profile of the organisations is attached.

II. Profile of the organisations

International Committee for Human Rights (ICHR): the International Committee for Human Rights is a Human Rights NGO registered in Spain with its main office in Sarajevo. It brings together human rights experts and professionals with an extensive experience in monitoring and protecting human rights in international missions. In Bosnia and Herzegovina its members have been involved in human rights monitoring, advocacy and strategic litigation in the context of regional return of displaced persons and refugees. For more information about ICHR: www.ichr-law.org

Internal Displacement Monitoring Centre (IDMC): The IDMC, established in 1998 by the Norwegian Refugee Council, monitors conflict-induced internal displacement worldwide. The Geneva-based centre runs an online database providing comprehensive and regularly updated information and analysis on internal displacement in 50 countries. Through its work, the IDMC contributes to improving national and international capacities to protect and assist the millions of people around the globe who have been displaced within their own country as a result of conflicts or human rights violations.

The information provided by IDMC below is drawn from the Bosnia and Herzegovina country profile and overview which can be accessed through the following link: www.internal-displacement.org

Minority Rights Group (MRG):

Minority Rights Group International (MRG) is a nongovernmental organization working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. Activities are focused on international advocacy, training, publishing and outreach. MRG works with over 130 organizations in nearly 60 countries and has consultative status with the United Nations Economic and Social Council (ECOSOC). www.minorityrights.org

Benjamin N. Cardozo School of Law Human Rights and Genocide:

The Benjamin N. Cardozo School of Law Human Rights and Genocide Clinic supports international litigation and advocacy on a cross-section of issues implicating international human rights law, minority rights law international criminal law. A special focus is also accorded to research and analysis of human rights protection mechanisms in post-conflict countries.

III. Background information:

Bosnia and Herzegovina's recovery after the three and a half year of conflict has been relatively difficult. The Dayton Peace Agreement, signed in November 1995, proved to be successful in terminating the conflict, but by making concessions to the different warring parties, created a very peculiar state, composed of weak central institutions, two entities with a large degree of independence and state-like powers, and an independent district. This specific constitutional structure, the initial weakness of the central institutions and the permanence in power of warlords and persons responsible for war crimes resulted in a very difficult initial phase of the peace implementation process. The situation was a constant threat to peace and forced the international community to assume an increasingly active role, through the Office of the High Representative, which led many observers to conclude that Bosnia and Herzegovina was *de facto* a semi protectorate. As a result, the respect for individual rights improved, the central institutions were strengthened and the overall situation markedly improved, but given the extent of the initial problems, the country is still struggling with the legacy of the war time years and with the systemic discrimination resulting from its constitutional structure.

Eleven years after the signing of the Dayton Peace Agreement, there are still some 182,000 people internally displaced in Bosnia and Herzegovina. One million internally displaced people (IDPs) and refugees have returned to their homes since the end of the conflict in 1995, representing half of those displaced during the war. But state institutions are still divided along ethnic lines and the political debate is dominated by ethnic issues. This perpetuates an environment of widespread discrimination in virtually all areas of public life, which in turn constitutes a serious obstacle to return. As a result, the access of IDPs to employment, education, social and economic rights and justice in return areas remains affected by their ethnicity. The present constitutional arrangement is now proving to be an obstacle to further reconciliation and the building of a state developing and implementing policies that benefit all citizens regardless of their ethnicity. The current concentration of competences at the entity level also directly affects the displacement situation, as it leads to an ethnic bias in key policy areas such as defence, education and police, which constitutes a serious obstacle to minority returns. The lack of harmonized entitlements to social and economic rights also affects return and freedom of movement, equal treatment of victims of war violence.

The period ahead will be crucial for Bosnia and Herzegovina to verify the sustainability of the structures created at the state level as the international community has already announced its withdrawal. Integration in European Union structures will be a key factor for the stability of the country.

IV. Proposed list of issues to be taken up in connection with the consideration of the initial periodic report of Bosnia and Herzegovina (CCPR/C/BIH/1)

Article 7

Failure to grant the right to know to families of the disappeared

There are concerns about the lack of implementation of the decisions of the Human Rights Chamber/Commission and Constitutional Court with regard to missing persons and enforced disappearances. The number of individual applicants (family members of persons

who disappeared during the conflict) who have applied to these human rights bodies totals around 500 persons grouped in several applications. The Human Rights Commission and Constitutional Court found violations of the right not to be subjected to cruel and inhuman treatment because of the mental suffering inflicted upon the families of the applicants. Domestic authorities were ordered to carry out investigations on the fate of the missing persons and to provide reparations to the families. In the overwhelming majority of cases the authorities failed to ensure the families' right to know and to conduct full and throughout investigations in these cases. *Ad hoc* investigative bodies with a focus on particular cases have been created, but they did not solve the problem for most other cases throughout the country. As a result, the families of the missing/disappeared continue to live in a state of mental anguish, comparable to previous cases analyzed by the Human Rights Committee (*Elena Quintero Almeida v Uruguay*). The state law on missing persons, which provides support for families of the missing, remains largely unimplemented because of lack of adequate funding. At the same time, the perpetrators who are responsible for such violations are still walking around freely as no investigations have been carried out.

The State Party is invited to describe the necessary steps taken or planned to ensure the implementation of all the provisions contained in each decision by the domestic institutions and in particular aimed at putting an end to the mental suffering of the families of the missing.

Lack of remedies for victims of torture

The initial report submitted by Bosnia and Herzegovina should be examined in the light of the Concluding Observations of the Committee Against Torture (CAT/C/BIH/CO/1/CRP.1). Item 10 of the conclusions in particular, points at the failure of the Bosnian authorities to adopt and implement legislation affording remedies to the victims at the state level. Laws related to civilian victims of the conflict exist, but only at entity and cantonal level and the constant lack of funding seriously affect their implementation. Such laws also discriminate amongst different war invalids: former combatants enjoy disproportionately more privileges than civilian victims of the conflict.

The state Party is invited to describe the steps taken or planned to enact adequate legislation for civilian victims of war and ensure that it is supported by appropriate funding.

Torture as a result of extradition/expulsion/refoulement

The State of Bosnia and Herzegovina makes reference to the so called "Algerians' case" in a rather succinct manner. In this specific case, 6 Bosnian citizens, of Algerian origin were stripped of their citizenship by urgent procedure and handed over to US Forces that eventually transferred them to Guantanamo, where they are currently held.

The State Party is respectfully invited to elaborate further on this episode and to update the UN Human Rights Committee on the current situation of this whole episode.

Article 12

Freedom of movement hampered by lack of harmonisation of rights and education curriculum at state level

As a result of their weakness, state level institutions are unable to guarantee equal social and economic rights throughout the country. The lack of harmonised entitlements to social and economic rights and limited cooperation between entities affects freedom of movement since displaced persons might be reluctant to return to an entity where they will receive a lower pension or limited access to health care.

Under the current agreement between the two pension funds of the country (one in Republika Srpska and one in the Federation), a displaced person returning to his entity of origin will keep receiving the amount given by the pension fund in his place of displacement. Since pension entitlements are higher in the Federation than in Republika Srpska (RS), this has a significant impact on the decision of IDPs to return from the RS to the Federation. IDPs, being usually poorer than the rest of the population, are particularly affected by the relative loss of income that the low RS pension would represent in the Federation where the cost of living is clearly higher.

The inter-entity agreement on health insurance provides that returnees can, upon registration, have access to health services and benefit from health insurance in their area of return. However, several elements hamper access of returnees to health services in their area of return. Many returnees who are in a minority situation in their entity of return feel uncomfortable to be treated there for fear of discrimination and prefer to travel back to their area of displacement. The complexity of the system results in difficulty to transfer coverage from one entity to another and even from one canton to another within the Federation. In addition, the non-payment of contributions by employers into the different health funds limits the financial possibility to meet their obligations. The difficulty to access adequate health care in the area of return acts as a deterrent to return especially for elderly displaced persons.

Bosnia and Herzegovina still has 52 so-called “two schools under one roof” where children are segregated based on their ethnicity, and are taught different curriculum. The adoption of a common core curriculum only concerns a common basis which should appear in all curricula. This leaves room for ethnically coloured elements to be added to the curriculum which can make members of a minority group uncomfortable. As a result, many families of displaced persons have split, with one parent returning and the children staying in the place of displacement to be able to follow the curriculum corresponding to their ethnicity. Or else, children would return with their parents and travel long distances by bus to attend school for the same purpose.

There is concern that unequal access to social and economic rights impedes return and we would like to invite the state of Bosnia and Herzegovina to elaborate on the measures taken to improve harmonization of pension entitlements. Similar information would be required regarding efforts of the state party to improve the implementation of the inter-entity agreement on health, encourage recruitment of multi-ethnic staff providing health services, and sanction non-payment by employers of their social contributions.

It is suggested that the State Party describes the measures planned and the timeline to end the situation of ethnic segregation existing in the so-called “Two schools under one roof”.

Status of implementation of Sarajevo declaration

Under Article 12 of the Covenant the state of Bosnia and Herzegovina makes reference to the so-called “Sarajevo Declaration”, signed by Bosnia and Herzegovina, Croatia, Serbia and Montenegro. This declaration commits the parties to solve all pending displaced persons and refugee issues by the end of 2006. In June 2006, it appears to be evident that this Declaration will not be implemented and that negotiations have come to a dead end. One of the reason for this is the lack of progress on the issue of the former “occupancy rights holders”, persons, overwhelmingly Croatian Serbs, who lost their socially owned apartments in Croatia during the war. According to Croatian legislation they are not allowed to repossess those flats and therefore they do not have a place to return to, and are currently displaced in Bosnia and Herzegovina and in Serbia. Croatia is the only country in the region that has not allowed for repossession of occupancy rights. Therefore Bosnia-Herzegovina and Serbia have a role to play in exerting diplomatic pressure to ensure a consistent approach throughout the region and the respect of the freedom of movement for Croatian Serb refugees currently living in Bosnia.

The State Party is encouraged to elaborate on the future steps it intends to take towards Croatia on the issue of occupancy rights for Croatian Serb refugees in the framework of the Sarajevo Declaration.

Article 14

Implementation of decisions of the Human Rights Chamber, Human Rights Commission or Constitutional Court

The report refers to both the Human Rights Commission and the Human Rights Chamber and the large number of cases that were **taken considered** in these years and some reference is made also to the number of cases that were decided. However, the statistics about the caseload could be clearer and more updated and they should provide information about the number of cases currently decided. What remains obscure is the number of decisions issued by these bodies, Human Rights Commission, Human Rights Chamber and Constitutional Court (under its appellate division), which to date have not been acted upon, i.e. implemented by the domestic bodies. It can not be considered that once a decision is issued, domestic actors will indeed implement it. On the contrary, domestic authorities tend to generally avoid implementation of those decisions. Applicants are thus placed in the situation where they have a decision in their favor, but they do not know what steps to take in order to have it implemented.

The State Party is invited to provide information on the actual number of decisions of the domestic human rights bodies that have been implemented and on the measures taken by the authorities to provide information to their citizens on the steps required to obtain implementation of these decisions.

Article 16

Recognition before the law

Roma persons and in particular Roma displaced persons often lack birth and identity documents which bars access to a wide range of rights from health care to education including the right to vote. Since many of them live in informal settlements, they cannot provide a proof of residence which is another requirement to access other rights such as the right to vote.

The state party is invited to describe the measures taken to facilitate access to documents of Roma displaced persons and to provide quantitative elements illustrating the impact of those measures on civil registration of Roma people and displaced persons.

Article 17

Interference with privacy and home

While almost all of property claims have been solved in Bosnia and Herzegovina, Roma, in particular displaced persons, face difficulties to return to their homes or to receive adequate housing. Since 50 to 70 percent of Roma live in informal settlements (CERD/C/BiH/CO/6, 11 April 2006, par.115) many never had a property title which impedes reconstruction and put them at risk of eviction without provision of alternative accommodation.

The State Party is invited to elaborate on possible plans at the national level to legalise informal settlements or provide alternative accommodation for Roma.

Article 20

T-shirts and posters showing support for ICTY indictees

The authors of the submission would like to draw the attention of the Human Rights Committee to the fact that on several occasions demonstrations and public gatherings were held in Republika Srpska where people were wearing T-shirts portraying persons who have been indicted by the International Criminal Tribunal for Former Yugoslavia, mostly Radovan Karadzic and Ratko Mladic, who are indicted for the crime of genocide and are currently still at large. Persons wear those T-shirts as a sign of support to the two fugitives and their deeds, crimes committed on an ethnical basis, thus comparable to portraying and stimulating national hatred.

There is no information whether the authorities of Republika Srpska have undertaken any measures to prevent or punish those actions. Also it seems that domestic legislation does not cover the issue of support to persons indicted for war crimes. The State Party is invited to elaborate on this specific issue.

Article 25

Right to vote and to be elected

Constituent Peoples: The current Constitution of Bosnia and Herzegovina conditions the right to be elected to the ethnicity of the voter or candidate. The Bosnian Constitution recognizes three Constituent Peoples: Bosniaks, Croats and Serbs. Under article IV and V of the State Constitution, only Constituent Peoples can be elected to the House of Peoples and to the tripartite Presidency of Bosnia and Herzegovina. Non-Constituent Peoples known as “Others” such as Roma are thus constitutionally excluded from participating in these capacities. Individuals of mixed Constituent Peoples heritage are also excluded unless they opt for one identity over another. Individuals who simply refuse to identify as any ethnicity altogether are also restricted in their right to vote or stand for election to the House of Peoples and to the Presidency. In addition, the current system **directly links political rights to territory and territory to ethnicity**; only people belonging to the dominant majority within the Entity can be elected (a Serb in Republika Srpska and a Bosniak or Croat in the Federation).

The State party should elaborate on the measures taken to ensure that all citizens of Bosnia and Herzegovina including “Others” can be elected to the House of Peoples and to the Presidency irrespective of their ethnicity.

Restrictions on the exercise of Article 25 are no longer justified

Derogation from Article 25 is permitted during a time of “public emergency,”¹ and the BiH Constitution was indeed forged in the aftermath of a disastrous genocide and civil war.² This electoral procedure is now over a decade old, however, and the authors are concerned that its emphasis on ethnically-based residency patterns and political accountability exclusively to one’s own ethnic group may actually create further divisions and conflicts among BiH’s various nationalities, especially its minorities, who lack adequate political influence and representation.

The State party should elaborate on future steps to amend the Constitution and the electoral law. The State party is also invited to elaborate on concrete proposals to bridge political co-operation between the three Constituent Peoples, as well as co-operation between these groups and “Others”.

Article 26

No distinction based on national origin is permitted under Article 26 if it “has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise by all persons, on an equal footing, of all rights and freedoms.”³ Moreover, whether under article 2 or 26 - even in the case of a national emergency - derogation from the principal of non-discrimination

¹ ICCPR, at art. 4(1).

² For further discussion on the BiH Constitution and its interim nature, see appended *Alternative Report*, at paras. 3-7.

³ General Comment 18, at para. 7.

may not be done “solely on the ground of race, colour, sex, language, religion or social origin.”⁴

The State Party should specify what reasonable and objective criteria it relies on to legitimise distinctions made on the basis of ethnicity within its electoral system and Constitution. The State party should also be invited to clarify how the aim in question is to achieve a purpose legitimate under the Covenant.

Article 27

Protection of minorities under the ICCPR

A fundamental principle enshrined in Article 27 of the Covenant is that the existence of an ethnic, religious or linguistic minority in a given state party to the ICCPR does not depend on recognition by the State but must be determined by objective criteria.⁵ An additional subjective criterion, which Bosnia and Herzegovina is bound to respect under applicable international and regional treaties, is the *principle of self-identification*.⁶ This principle requires that membership of a particular minority is a matter of individual choice and no disadvantage may result from an individual’s decision to affiliate or not to affiliate himself/herself with a given minority.⁷

Furthermore, international standards including Article 27 of the Covenant and the UN Declaration on the Rights of Persons Belonging to National Minorities (“UNDM”) and regional standards including the Framework Convention for the Protection of National Minorities (“FCNM”) impose *positive obligations* upon states to protect minority identities and to encourage the conditions necessary for the promotion of those identities.⁸ As is recognised by the aforementioned standards, a prerequisite for a minority group to promote its identity is its *effective participation in public life*.⁹

As previously highlighted, persons in Bosnia and Herzegovina who do not identify as Serb, Croat or Bosniac are banned from membership of key components of the legislative and executive branches of government.¹⁰ This not only diminishes the effectiveness of the participation of such minorities in public life but also indirectly undermines the capacity of those minorities to conserve and promote their distinct minority identity in contravention of the aforementioned international standards.

⁴ Id., at para. 2.

⁵ Human Rights Committee, General Comment 23 on Article 27 of the ICCPR, at para. 5.2.

⁶ Such standards include Article 1, paragraphs 1 and 4 of International Convention on Racial Discrimination (CERD) and Article 3 of the Framework Convention for the Protection of National Minorities (FCNM). See the appended *Alternative Report*, at paras. 62-65, for further analysis of the Constitution of Bosnia and Herzegovina from the perspective of the principle of self-identification.

⁷ See FCNM, at art. 3.

⁸ See *Alternative Report*, at paras. 62-65.

⁹ See ICCPR, at art. 25, UNDM, at art. 2.2 and FCNM, at art. 15.

¹⁰ *Supra*, footnotes 4, 5 and 6. See *Alternative Report*, at paras. 58-61 for further analysis of the Constitution of Bosnia and Herzegovina from the perspective of the right to effective political participation of persons belonging to minority groups.

The State party should elaborate on measures taken to ensure the promotion and protection of minority groups' identity, both within and beyond the political context.