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**REPORT SUBMITTED BY BOSNIA AND HERZEGOVINA  
PURSUANT TO ARTICLE 25, PARAGRAPH 1  
OF THE FRAMEWORK CONVENTION FOR  
THE PROTECTION OF NATIONAL MINORITIES**

(Received on 20 February 2004)

Bosnia and Herzegovina  
Council of Ministers

## **R E P O R T**

**OF BOSNIA AND HERZEGOVINA ON LEGAL AND OTHER  
MEASURES ON IMPLEMENTATION OF THE PRINCIPLES  
DETERMINED IN THE FRAMEWORK CONVENTION FOR  
THE PROTECTION OF NATIONAL MINORITIES**

**Sarajevo, December 2003**

# PART I

## INTRODUCTION

### I LAND AND PEOPLE

1. Bosnia and Herzegovina is situated in the western part of the Balkan Peninsula. It is bordered by the State Union of Serbia and Montenegro to the east and southeast, and by Republic Croatia to the north, west and south.

Bosnia and Herzegovina has a total area of 51.209,2 square kilometres.

Land: 51,197 sq. km.

Sea: 12.2 sq.km.

Climate: mainly continental, harsh continental on mountains, and Mediterranean on the south.

2. According to 1991 census, Bosnia and Herzegovina had 4,377,033 inhabitants, within 1,537 kilometres-long borders. Fertile cultivable land includes 2,531,000 ha or 49.5% of overall territory, which gives various possibilities for agriculture and food production in favorable and various climate conditions (from harsh continental to mild Mediterranean climate). Various types of forest cover some 46% of the territory. This country is well known for its hydroenergetic and thermoenergetic capacities, for its water potentials and coal reserves.

3. During 1991 Bosnia and Herzegovina reached a very favorable state of affairs in regards to household number and housing units' number. As per 1991 census, it had 1,207,693 housing units in 6,823 settlements. Average housing unit had 60.45 square metres per a household, or 16.68 m<sup>2</sup> per inhabitant.

In 1991 Bosnia and Herzegovina was at the level of middle-developed industrial country, with gross national income of some US \$ 2,000 per capita, with some 1.7 million of BiH inhabitants (39% of overall number of inhabitants) living in urban areas.

4. Bosnia and Herzegovina is well known for its various ethnic groups and national minorities. As per 1991 census, population of Bosnia and Herzegovina consisted of Bosniaks (43.5%), Serbs (31.2%), Croats (17.4%), Yugoslavs (5.5%) and Others (2.4%). The category of "others" was composed of members of 17 national minorities, although notions nationality and ethnic groups were used during the census, which was sanctioned by recently adopted law (1 April 2003), the Law on the Protection of National Minorities. The following dominant monoteistic religious denominations coexist in Bosnia and Herzegovina: Islam, Orthodoxy, Catholicism i Judaism, as well as other religious groups and sects. According to the Constitution of Bosnia and Herzegovina, all its citizens have equal rights and freedoms concerning demonstration of religion and other convictions.

5. Percent of participation of certain age groups in overall population of Bosnia and Herzegovina in 1991 was the following: 0-6 years of age - 11.1%; percent of those aged 7-17 was 13%; percent of those aged 15-19 was 8.4%; percent of those aged 20-64 was 61.5% and those aged 65 and more 6%. Fertility rate was 52 ‰, while mortality rate was 7.4 ‰ for males and 6.5‰ for females in year 1990.

a) Statistics: Population of Bosnia and Herzegovina per censuses

Census year	Area in sq. km	Household number	Population			Population density – persons per 1 sq. km
			Total	Male	Female	
1879	51,246	...	1,158,440	607,789	550,651	22.6
1885	51,246	226,699	1,336,091	705,025	631,066	26.1
1895	51,246	257,493	1,568,092	828,190	739,902	30.6
1910	51,200	310,339	1,898,044	994,852	903,192	37.1
1921	51,200	....	1,890,440	966,209	924,231	36.9
1931	51,564	398,238	2,323,555	1,185,040	1,138,515	45.1
1948	51,189	498,116	2,564,308	1,236,932	1,327,376	50.1
1953	51,221	565,212	2,847,459	1,385,559	1,461,900	55.6
1961	51,197	706,107	3,277,948	1,599,665	1,678,283	64.0
1971	51,197	848,545	3,746,111	1,834,600	1,911,511	73.2
1981	51,197	1,030,689	4,124,256	2,050,913	2,073,343	80.6

b) Statistics: population as per 1991 census

Area sq. km	Household	Population			Density population – persons per 1 sq. km	Number of persons per a household	Number of females on 1,000 males
		Total	Male	Female			
51,129	1,207,098	4,377,033	2,183,795	2,193,238	85.6	3.63	1,004

c) Bosnia and Herzegovina's population by age and sex

	1971			1981			1991		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
<b>Total</b>	<b>3,746,111</b>	<b>1,834,600</b>	<b>1,911,511</b>	<b>4,124,256</b>	<b>2,050,913</b>	<b>2,073,343</b>	<b>4,377,033</b>	<b>2,183,795</b>	<b>2,219,328</b>
Years									
0-4	405,505	207,129	198,376	365,332	186,494	178,838	332,422	170,535	161,887
5-9	442,665	225,726	216,939	375,765	192,284	183,481	347,379	177,988	169,391
10-14	442,199	225,066	217,133	393,024	201,313	191,711	347,590	177,932	169,658
15-19	411,387	209,215	202,172	433,304	222,406	210,898	360,008	185,292	174,716
20-24	319,317	162,073	157,244	404,751	211,100	193,651	359,991	188,724	171,267
25-29	225,727	109,724	116,003	357,773	184,730	173,043	371,776	194,041	177,735
30-34	289,810	140,952	148,858	294,502	150,178	144,324	361,854	186,643	175,211
35-39	280,482	139,035	141,447	216,718	107,411	109,307	334,569	172,024	162,545
40-44	243,016	118,781	124,235	280,137	138,850	141,287	276,412	139,433	136,979
45-49	166,241	70,017	96,224	267,657	133,616	134,041	201,165	98,993	102,172
50-54	101,840	41,069	60,771	230,515	112,499	118,016	257,382	125,380	132,002
55-59	114,629	48,828	65,801	157,374	63,861	90,513	241,011	116,919	124,092
60-64	112,727	53,087	59,640	90,131	35,365	54,766	198,647	92,924	105,723
65-69	79,808	37,590	42,218	92,274	37,922	54,352	124,752	48,102	76,650
70-74	53,549	23,136	30,413	77,597	34,744	42,853	62,922	22,893	40,029
75 and over	42,986	16,166	26,820	80,495	33,300	47,195	96,691	37,257	59,434
Unknown	14,223	7,006	7,217	9,907	4,840	5,067	102,462	48,715	53,747

## A) Bosnia and Herzegovina from 1992 to 1995

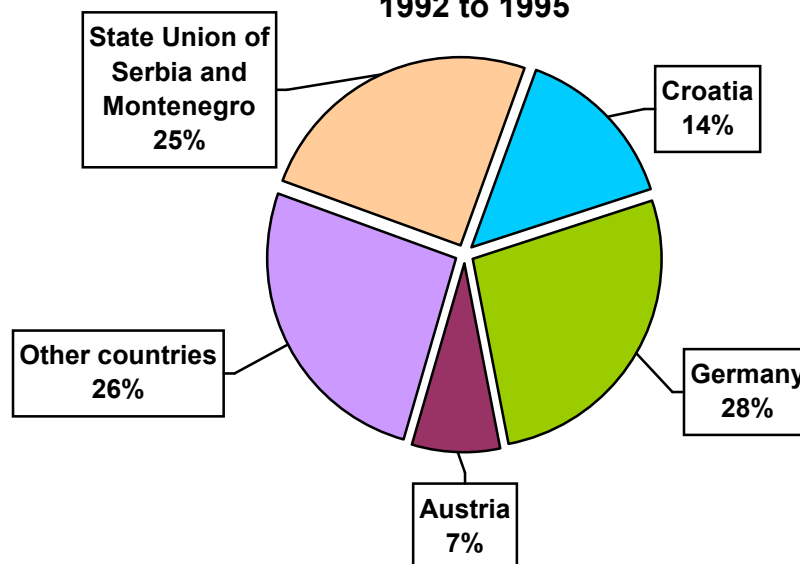
1. Bosnia and Herzegovina has been internationally recognised on 6 April 1992. It continued its legal existence as an independent state within the administrative borders of the Republic of Bosnia and Herzegovina. The present administrative borders have been recognized internationally.

2. The tragic conflict in the region, how the Constitution of Bosnia and Herzegovina defines war destructions from 1992 to 1995, left enormous direct consequences on demographic picture of Bosnia and Herzegovina. Some 250,000 people were killed, while some 17,000 persons were officially reported as missing ones.

3. From the beginning of the war to the signing of DPA, some 2,200,000 persons were moved from their home, which makes over 50% of prewar domicile population. Out of that number, some 1.2 million persons sought refugee protection in over 100 countries around the world; while in the same period close to one million persons were displaced within Bosnia and Herzegovina.

4. Countries of the region: the State Union of Serbia and Montenegro and Republic Croatia have sheltered almost 40% of refugees from Bosnia and Herzegovina, while Germany and Austria offered asylum to majority of BiH refugees outside the region. These four countries sheltered almost 80% of refugees from Bosnia and Herzegovina who fled the country.

**The most important countries of reception of BiH refugees from 1992 to 1995**



5. As a consequence of the 1992 to 1995 conflict, close to 1 million persons have been displaced in Bosnia and Herzegovina. Almost one-third of the displaced persons are displaced within their domicile municipalities.

6. A huge number of refugees, upon returning from abroad, haven't returned to their prewar homes. In this way they basically changed their status from refugee into IDP.

This refers, first of all, to persons forcibly returned to BiH, as well as to a huge number of persons who had returned to BiH following cancellation of hospitality by host countries. In this way, some 60-65% of returnees from Germany have been relocated.

7. As per data from the paper "Strategy of Urban Planning of the Federation of Bosnia and Herzegovina, Phase 1", economic damage, including lost incomes, has been assessed to US \$ 50-70 billion. According to the World Bank assessments, the economic damage has been evaluated to US \$ 15 to 20 billion. Industrial production during the war years reached only 5% of prewar production.

The country suffered from massive destruction of urban and rural housing structures, memorial and religious sites and buildings, infrastructure facilities and other. Some 80% population subsisted on humanitarian aid.

More than 1/3 of housing facilities in Bosnia and Herzegovina were destroyed, out of which 18% of housing capacities were completely destroyed. Forest resources of Bosnia and Herzegovina were heavily damaged by illegal felling of trees, setting fire and illegal getting hold of forest area. A total of 24% of prewar medical facilities have been entirely destroyed, while the percent of damage is over 40%.

One of the worst war consequences for Bosnia and Herzegovina are some 2 million remaining mines and some 3 million other UXOs, which have not been demined yet.

8. Demographic changes in Bosnia and Herzegovina compared to data of 1991 census result from war cataclysm, ethnic cleansing and consequent mass exodus of civilian population. Decrease of birth-rate and negative trends of growth of population in Bosnia and Herzegovina are due to the war consequences, such as killings, extra judicial executions, enforced disappearances, displacement of population and others.

## **B) Bosnia and Herzegovina after 1996**

1. As a result of the efforts of the International Community to bring to an end the war in Bosnia and Herzegovina, the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) signed in Paris on 14 December 1995 the Dayton-Paris General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter DPA).

Besides ending the war, the Peace Agreement precisely defines the obligations of the States Parties to the Agreement – Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) – toward the bringing an end to the conflict in the region, and promoting an enduring peace and stability. According to the Article 1 of Annex 4 of DPA (the Constitution of BiH), the Republic of Bosnia and Herzegovina, the official name of which should be "Bosnia and Herzegovina", had continued its legal existence under international law as a state, with its internal structure modified as provided by therein and with its at that time internationally recognized borders". Bosnia and Herzegovina consists of the two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska. The capital of Bosnia and Herzegovina is Sarajevo. The official languages are Bosnian, Croatian and Serbian.

The Brčko District has been established as a single administrative unit of local self-government existing under the sovereignty of Bosnia and Herzegovina, in accordance with the Final Award of the Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brčko Area of 5 March 1999.

## C) Population of Bosnia and Herzegovina after 1996

**Remark:** There was no census carried out in BiH in last ten years, so there are no official data on population figures in Bosnia and Herzegovina. The following text presents available data published in "**Study on Human Development of Bosnia and Herzegovina**", which are founded on research and available data of Bureaus of Statistics of the Entities.

### 1. Demographic changes per Entities, from 31 March 1991 to 31 March 2001

	Bosnia and Herzegovina	Federation of Bosnia and Herzegovina	Republika Srpska
Population number as of 31 March 1991	4,377,033	2,783,711	1,593,322
Rate population growth (+)	144,202	117,910	26,292
Return of refugees (+)	373,400	346,140	27,260
Killed, missing persons (-)	269,810	149,860	119,950
Refugees from BiH (-)	1,168,000	735,000	433,000
Post-Dayton emigration	92,000	64,400	27,600
Population as of 31 March 2001	3,364,825	2,298,501	1,066,324
Composition			
1991	100	63.6	36.4
2001	100	68.3	31.7

### 2. Demographic changes per ethnic groups

	Total	Bosniaks	Croats	Serbs	Others
Population number as of 31 March 1991	4,377,033	2,012,718	805,892	1,447,384	111,000
Rate population growth (+)	144,202	96,538	20,307	26,765	592
Return of refugees (+)	373,400	261,960	70,970	37,200	3,270
Killed, missing persons (-)	269,810	157,313	31,831	73,921	6,745
Refugees from BiH (-)	1,168,000	539,000	333,000	264,000	32,000
Post-Dayton emigration	92,000	48,060	12,860	30,480	600
Population number as of 31 March 2001	3,364,825	1,626,843	519,478	1,142,948	75,556
Composition					
1991	100	46.0	18.4	33.1	2.4
2001	100	48.3	15.4	34.0	2.3

## D) Refugees and displaced persons

1. Return of refugees and internally displaced persons in/to Bosnia and Herzegovina started immediately after signing of DPA. **A total of 985,003 returns in/to Bosnia and Herzegovina were registered** since the signing of DPA to 31 December 2003, out of which 438,415 are refugees and 546,588 are displaced persons.

**Review of Returns in/to BiH from DPA to 31 December 2003**

period	National structure	Federation of BiH			Republic of Srpska			Brcko	Bosnia and Herzegovina			% per Entity		
		Refugees	DPs	Total	Refugees	DPs	Total		Total	Refugees	DPs	Total	F BiH	RS
1996	Bosniaks	76.385	101.266	177.651		136	136		76.385	101.402	177.787	99,92	0,08	
	Croats	3.144	447	3.591		58	58		3.144	505	3.649	98,41	1,59	
	Serbs	552	1.179	1.731	7.925	61.613	69.538		8.477	62.792	71.269	2,43	97,57	
	Others	33	21	54		21	21		33	42	75	72	28	
	<b>TOTAL</b>	<b>80.114</b>	<b>102.913</b>	<b>183.027</b>	<b>7.925</b>	<b>61.828</b>	<b>69.753</b>		<b>88.039</b>	<b>164.741</b>	<b>252.780</b>	<b>72,41</b>	<b>27,59</b>	
1997	Bosniaks	74.552	38.821	113.373	204	626	830		74.756	39.447	114.203	99,27	0,73	
	Croats	33.495	10.163	43.658	73	28	101		33.568	10.191	43.759	99,77	0,23	
	Serbs	2.849	3.971	6.820	8.287	4.481	12.768		11.136	8.452	19.588	34,82	65,18	
	Others	754	205	959	66		66		820	205	1.025	93,56	6,44	
	<b>TOTAL</b>	<b>111.650</b>	<b>53.160</b>	<b>164.810</b>	<b>8.630</b>	<b>5.135</b>	<b>13.765</b>		<b>120.280</b>	<b>58.295</b>	<b>178.575</b>	<b>92,29</b>	<b>7,71</b>	
1998	Bosniaks	77.310	9.041	86.351	1.279	6.765	8.044		78.589	15.806	94.395	91,48	8,52	
	Croats	22.930	4.040	26.970	257	285	542		23.187	4.325	27.512	98,03	1,97	
	Serbs	4.307	6.059	10.366	2.458	3.080	5.538		6.765	9.139	15.904	65,18	34,82	
	Others	1.453	300	1.753	6		6		1.459	300	1.759	100	0,34	
	<b>TOTAL</b>	<b>106.000</b>	<b>19.440</b>	<b>125.440</b>	<b>4.000</b>	<b>10.130</b>	<b>14.130</b>		<b>110.000</b>	<b>29.570</b>	<b>139.570</b>	<b>90</b>	<b>10,12</b>	
1999	Bosniaks	17.359	14.320	31.679	1.081	10.587	11.668		18.440	24.907	43.347	73	26,92	
	Croats	5.960	5.747	11.707	339	1.013	1.352		6.299	6.760	13.059	89,65	10,35	
	Serbs	4.370	9.649	14.019	1.962	1.666	3.628		6.332	11.315	17.647	79	20,56	
	Others	491	219	710	88	184	272		579	403	982	72,3	27,7	
	<b>TOTAL</b>	<b>28.180</b>	<b>29.935</b>	<b>58.115</b>	<b>3.470</b>	<b>13.450</b>	<b>16.920</b>		<b>31.650</b>	<b>43.385</b>	<b>75.035</b>	<b>77,45</b>	<b>22,55</b>	
2000	Bosniaks	4.815	9.638	14.453	2.818	22.461	25.279	4.845	7.633	36.944	44.577	32,42	56,71	10,87
	Croats	3.498	6.660	10.158	1.336	456	1.792	663	4.834	7.779	12.613	80,54	14,21	5,26
	Serbs	5.164	13.811	18.975	139	362	501	2	5.303	14.175	19.478	97,42	2,57	0,01
	Others	569	172	741	268	277	545	0	837	449	1.286	57,62	42,38	0,00
	<b>TOTAL</b>	<b>14.046</b>	<b>30.281</b>	<b>44.327</b>	<b>4.561</b>	<b>23.556</b>	<b>28.117</b>	<b>5.510</b>	<b>18.607</b>	<b>59.347</b>	<b>77.954</b>	<b>56,86</b>	<b>36,07</b>	<b>7,07</b>
2001	Bosniaks	1.966	9.058	11.024	2.676	34.952	37.628	4.032	4.642	48.042	52.684	20,92	71,42	7,65
	Croats	2.285	4.890	7.175	1.959	471	2.430	599	4.244	5.960	10.204	70,32	23,81	5,87
	Serbs	9.108	24.794	33.902	47	611	658	329	9.155	25.734	34.889	97,17	1,89	0,94
	Others	542	343	885	110	93	203	0	652	436	1.088	81,34	18,66	0,00
	<b>TOTAL</b>	<b>13.901</b>	<b>39.085</b>	<b>52.986</b>	<b>4.792</b>	<b>36.127</b>	<b>40.919</b>	<b>4.960</b>	<b>18.693</b>	<b>80.172</b>	<b>98.865</b>	<b>53,59</b>	<b>41,39</b>	<b>5,02</b>
2002	Bosniaks	3.341	6.791	10.132	9.119	29.511	38.630	5.341	12.460	41.643	54.103	18,73	71,40	9,87
	Croats	2.080	4.632	6.712	2.107	351	2.458	2.082	4.187	7.065	11.252	59,65	21,85	18,50
	Serbs	18.079	21.108	39.187	134	585	719	1.529	18.213	23.222	41.435	94,57	1,74	3,69
	Others	290	624	914	99	106	205	0	389	730	1.119	81,68	18,32	0,00
	<b>TOTAL</b>	<b>23.790</b>	<b>33.155</b>	<b>56.945</b>	<b>11.459</b>	<b>30.553</b>	<b>42.012</b>	<b>8.952</b>	<b>37.023</b>	<b>72.660</b>	<b>109.683</b>	<b>51,92</b>	<b>38,30</b>	<b>8,16</b>
2003	Bosniaks	897	9.356	10.253	4.343	11.803	16.146	719	5.257	21.861	27.118	37,81	59,54	2,65
	Croats	1.183	1.858	3.041	1.609	123	1.732	346	2.852	2.267	5.119	59,41	33,83	6,76
	Serbs	5.430	14.963	20.393	50	440	490	622	5.482	16.023	21.505	94,83	2,28	2,89
	Others	230	145	375	191	7	198	0	421	152	573	65,45	34,55	0,00
	<b>TOTAL</b>	<b>7.740</b>	<b>26.322</b>	<b>34.062</b>	<b>6.193</b>	<b>12.373</b>	<b>18.566</b>	<b>1.687</b>	<b>14.012</b>	<b>40.303</b>	<b>54.315</b>	<b>62,71</b>	<b>34,18</b>	<b>3,11</b>
DIMS-31 Dec 2003	Bosniaks	256.625	198.291	454.916	21.520	116.841	138.361	14.937	278.294	329.920	608.214	74,80	22,75	2,46
	Croats	74.575	38.437	113.012	7.680	2.785	10.465	3.690	84.061	43.106	127.167	88,87	8,23	2,90
	Serbs	49.859	95.534	145.393	21.002	72.838	93.840	2.482	70.870	170.845	241.715	60,15	38,82	1,03
	Others	4.362	2.029	6.391	828	688	1.516	0	5.190	2.717	7.907	80,83	19,17	0,00
	<b>TOTAL</b>	<b>385.421</b>	<b>334.291</b>	<b>719.712</b>	<b>51.030</b>	<b>193.152</b>	<b>244.182</b>	<b>21.109</b>	<b>438.415</b>	<b>546.588</b>	<b>985.003</b>	<b>73,07</b>	<b>24,79</b>	<b>2,14</b>



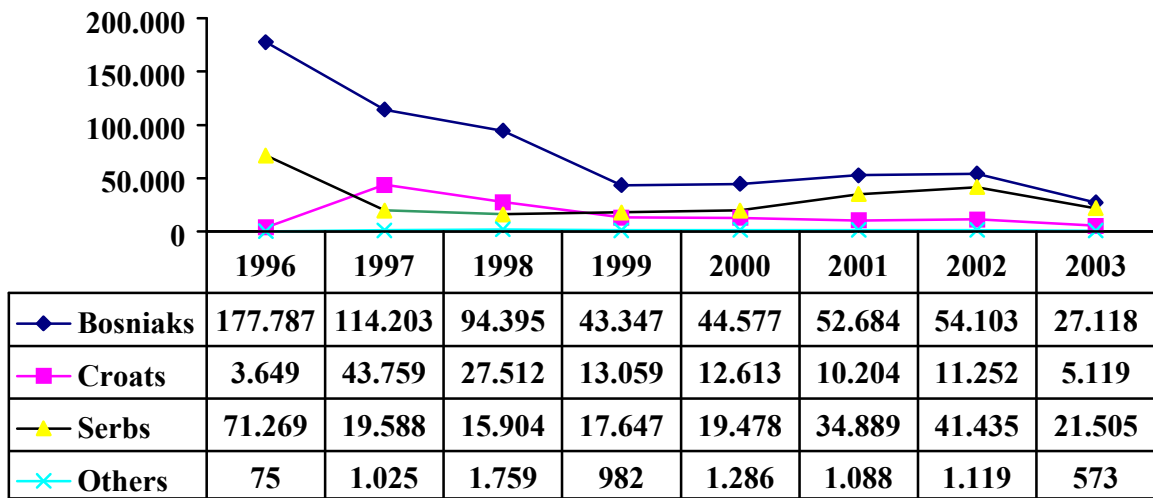
**“Minority returns ”<sup>1</sup> In Bosnia and Herzegovina From DPA To 31 December 2003<sup>2</sup>**

<b>YEAR</b>	<b>National structure</b>	<b>F BiH</b>	<b>RS</b>	<b>District of Brčko</b>	<b>TOTAL BiH</b>	<b>F BiH %</b>	<b>RS %</b>
<b>1996-1997</b>	Bosniaks	11.200	966		<b>12.166</b>	92,06	7,94
	Croats	24.647	159		<b>24.806</b>	99,36	0,64
	Serbs	8.551			<b>8.551</b>	100	-
	<b>TOTAL</b>	<b>44.398</b>	<b>1.125</b>		<b>45.523</b>	<b>97,53</b>	<b>2,47</b>
<b>1998</b>	Bosniaks	9.177	8.044		<b>17.221</b>	53,29	46,71
	Croats	13.062	542		<b>13.604</b>	96,02	3,98
	Serbs	10.366			<b>10.366</b>	100	-
	<b>TOTAL</b>	<b>32.605</b>	<b>8.586</b>		<b>41.191</b>	<b>79,16</b>	<b>20,84</b>
<b>1999</b>	Bosniaks	5.631	11.668		<b>17.299</b>	32,55	67,45
	Croats	8.337	1.352		<b>9.689</b>	86,05	13,95
	Serbs	14.019			<b>14.019</b>	100	-
	<b>TOTAL</b>	<b>27.987</b>	<b>13.020</b>		<b>41.007</b>	<b>68,19</b>	<b>31,81</b>
<b>2000</b>	Bosniaks	5.765	25.226	4.845	<b>35.836</b>	16,09	70,39
	Croats	9.139	1.789	663	<b>11.591</b>	78,85	15,43
	Serbs	18.850		2	<b>18.852</b>	99,99	-
	Others	623	543		<b>1.166</b>	53,43	46,57
	<b>TOTAL</b>	<b>34.377</b>	<b>27.558</b>	<b>5.510</b>	<b>67.445</b>	<b>50,97</b>	<b>40,86</b>
<b>2001</b>	Bosniaks	5.497	37.627	4.032	<b>47.156</b>	11,66	79,79
	Croats	6.565	2.423	599	<b>9.587</b>	68,48	25,27
	Serbs	33.901		329	<b>34.230</b>	99,04	-
	Others	885	203		<b>1.088</b>	81,34	18,66
	<b>TOTAL</b>	<b>46.848</b>	<b>40.253</b>	<b>4.960</b>	<b>92.061</b>	<b>50,89</b>	<b>43,72</b>
<b>2002</b>	Bosniaks	5.355	38.682	5.341	<b>49.378</b>	10,84	78,34
	Croats	6.358	2.458	2.082	<b>10.898</b>	58,34	22,55
	Serbs	39.187		1.529	<b>40.716</b>	96,24	0,00
	Others	914	205		<b>1.119</b>	81,68	18,32
	<b>TOTAL</b>	<b>51.814</b>	<b>41.345</b>	<b>8.952</b>	<b>102.111</b>	<b>50,74</b>	<b>40,49</b>
<b>2003</b>	Bosniaks	1531	16122	719	<b>18372</b>	8,33	87,75
	Croats	2.847	1731	346	<b>4924</b>	57,82	35,15
	Serbs	20.377		622	<b>20999</b>	97,04	0,00
	Others	375	198		<b>573</b>	65,45	34,55
	<b>TOTAL</b>	<b>25.130</b>	<b>18.051</b>	<b>1.687</b>	<b>44868</b>	<b>56,01</b>	<b>40,23</b>
<b>DPA to 31 December 2003</b>	Bosniaks	44.156	138.335	14.937	197.428	22,37	70,07
	Croats	70.955	10.454	3.690	85.099	83,38	12,28
	Serbs	145.251	0	2.482	147.733	98,32	0,00
	Others	2.797	1.149	0	3.946	70,88	29,12
	<b>TOTAL</b>	<b>263.159</b>	<b>149.938</b>	<b>21.109</b>	<b>434.206</b>	<b>60,61</b>	<b>34,53</b>

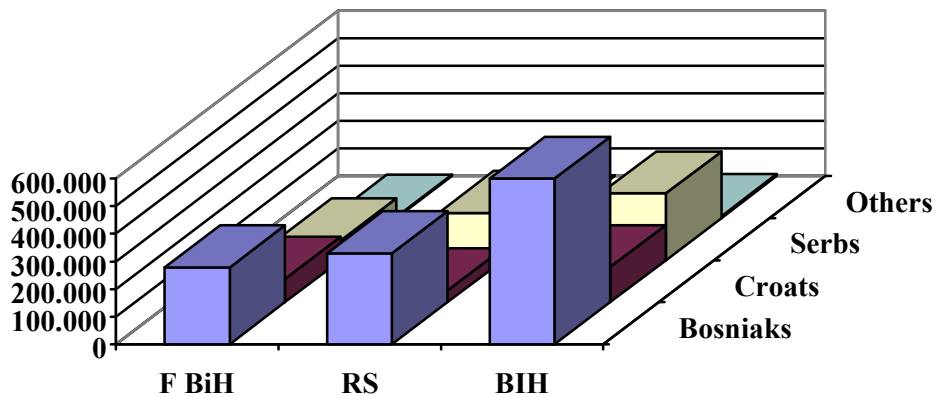
<sup>1</sup> The expression “minority return” relates to the category of persons who returned to the places of their pre-war residence where, due to the conflict, they represent a minority in comparison to the current national structure of the population.

<sup>2</sup> SOURCE OF DATA: UNHCR Statistics

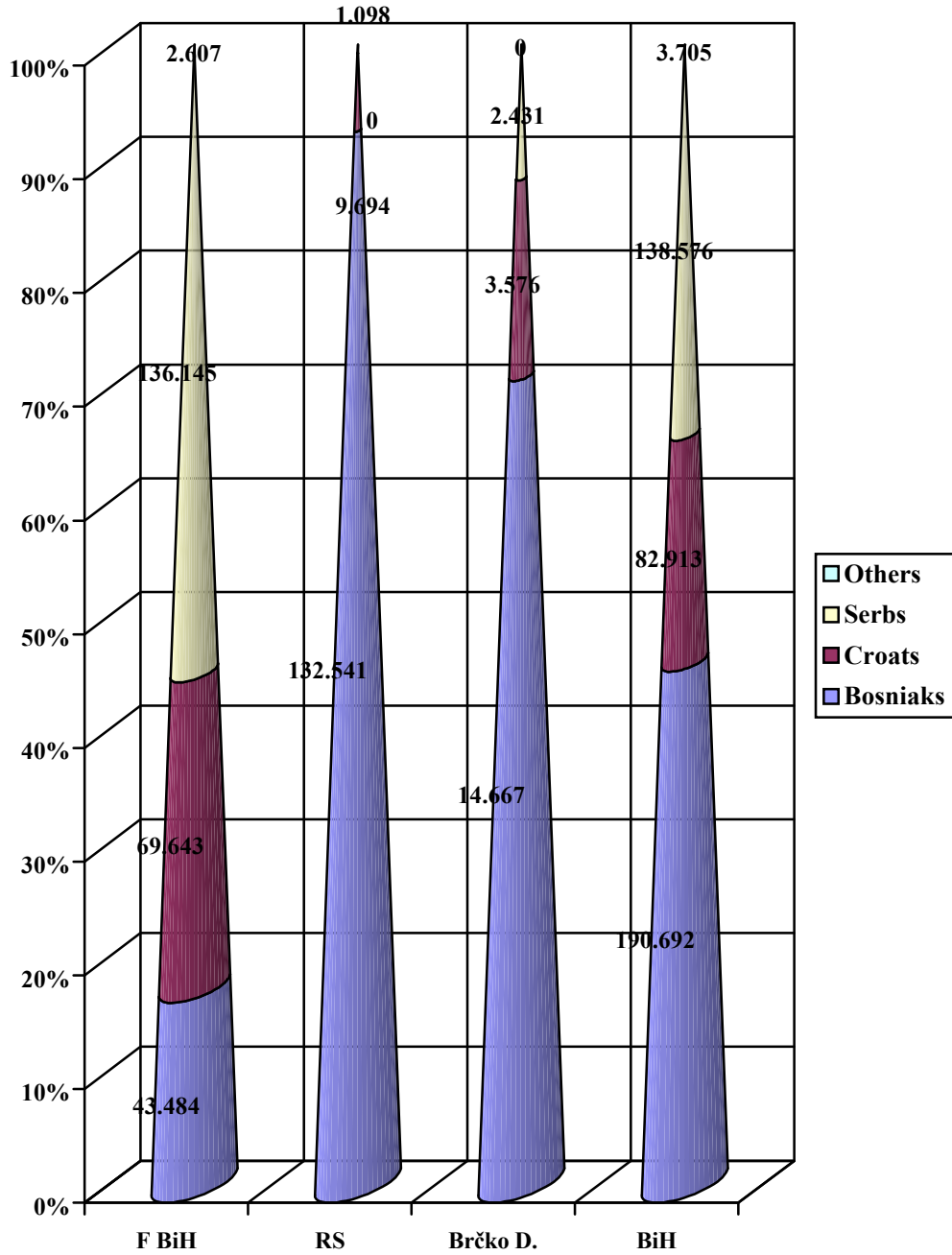
**Total return in BiH - per National Structure and Years**



**National Structure of Returnees in BiH**



### National Structure of Minority Returns in BiH



## E) Employment

1. In the middle of 1990, as per 1991 Statistical Yearbook of Bosnia and Herzegovina, 1,054,000 persons in Bosnia and Herzegovina was registered as employed. A total of 85% is employed in industry, while 15% is employed in public sector.

### a.) Active population per sex

	1971	1981	1991
<i>Total</i>	2,205,536	2,675,096	2,857,092
<i>Male (15-64 years)</i>	1,092,781	1,360,016	1,500,378
<i>Female (15-59 years)</i>	1,112,755	1,315,080	1,356,719
<i>Participation of active population in overall population in %</i>	58.9	64.9	65.3

A total of 633,860 employed persons were registered at the end of 2001 – 75 percent in industrial and 25 percent in public sector.

### b.) Assessment of unemployment in Bosnia and Herzegovina at the end of 2002

<i>Description</i>	<i>Federation of Bosnia and Herzegovina</i>	<i>Republika Srpska</i>	<i>Bosnia and Herzegovina</i>
Population assessment	2,400,000	1,450,000	3,850,000
Assesment of active population per age (15-64)	1,650,000	970,000	2,620,000
Overall manpower	940,000	560,000	1,500,000
Official employment	412,805	228,834	641,639
Registered unemployment	267,934	153,264	421,198
Narrow unemployment rate (5/3x100)	28.5%	27.4%	28.1%
Unemployment rate	42.9%	44,7%	43.6%

### c.) Unemployment as per age structure

<b>Age</b>	<b>Unemployment in %</b>
<b>19-24</b>	<b>34.8</b>
<b>25-49</b>	<b>13.4</b>
<b>50-60</b>	<b>9.7</b>
<b>TOTAL</b>	<b>16.1</b>

*Source: Living Standard Measurement Study (LSMS May 2002) and Report on Human Development of Bosnia and Herzegovina*

2. In 1996 in the Federation of Bosnia and Herzegovina a total of 34.68% females were unemployed, while 37% females were unemployed in the Republika Srpska. It is estimated that ca. 36% females were unemployed in Bosnia and Herzegovina in 1996.

Taking into consideration increase of overall unemployment of population and increase of female unemployment from 1996 to 2002, it is estimated that female unemployment rate has reached ca. 50%.

3. The economic recovery of Bosnia and Herzegovina has started after the end of the war. The introduction of the uniform currency on the whole territory of Bosnia and Herzegovina has endorsed a stable functioning of the Central Bank of Bosnia and Herzegovina and its monetary policy. Overall gross domestic product in 1996 was

US\$ 830 per capita, while GDP in 2001 was US \$ 1,255. However, an expected economic recovery of Bosnia and Herzegovina in transition period has not been at the satisfactory level.

4. Assessment of living standard in Bosnia and Herzegovina has been carried out, demonstrated that 19 to 25% population live in poverty, while approximately 40% population live in insecure economic and almost unbearable living conditions.

d). *Percent of population in Bosnia and Herzegovina living below poverty line as per areas*

<b>AREA</b>	<b>Urban</b>	<b>Mixed</b>	<b>Rural</b>	<b>Average</b>
<i>Bosnia and Herzegovina</i>	14.5	22.4	19.4	19.1
<i>Federation of Bosnia and Herzegovina</i>	15.3	13.5	16.9	15.6
<i>Republika Srpska</i>	12.3	30.5	24.3	24.8

Source: LSMS 2001 – Poverty, May 2002

## II GENERAL POLITICAL STRUCTURE

1. Pursuant to Article 1 of the Constitution of Bosnia and Herzegovina:

"The Republic of Bosnia and Herzegovina, the official name of which shall henceforth be "Bosnia and Herzegovina", shall continue its legal existence under international law as a state, with its internal structure modified as provided herein and with its present internationally recognized borders. It shall remain a Member State of the United Nations and may as Bosnia and Herzegovina maintain or apply for membership in organizations within the United Nations system and other international organizations".

2. Recalling the Basic Principles agreed in Geneva on 8 September 1995 and in New York on 26 September 1995, the Preamble of the Constitution of Bosnia and Herzegovina stipulates: "Bosniacs, Croats and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina..." , that consists of the two Entities: the Federation of Bosnia and Herzegovina and the Republika Srpska. The Federation of Bosnia and Herzegovina covers 51%, and the Republika Srpska 49% of Bosnia and Herzegovina`s territory.

The Federation of Bosnia and Herzegovina is administratively sub-divided into 10 Cantons. Cantons are divided into 84 municipalities.

The Republika Srpska is administratively organised into 63 municipalities.

The District Brčko (the town of Brčko and its prewar municipality territory) has been governed by the International Supervisor of Bosnia and Herzegovina in accordance with its Statute.

The capital of Bosnia and Herzegovina is Sarajevo. Bosnia and Herzegovina has its coat of arms, flag and anthem.

3. According to the Article IV of the Constitution, the Parliamentary Assembly of Bosnia and Herzegovina has two chambers: the House of Peoples and the House of Representatives.

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

The House of Representatives comprises 42 Members, two-thirds elected from the territory of the Federation, one-third from the territory of the Republika Srpska.

4. The Presidency of Bosnia and Herzegovina consists of three Members: one Bosniak and one Croat, each elected directly from the territory of the Federation, and one Serb elected directly from the territory of the Republika Srpska.

Each member of the Presidency has a civilian command authority over armed forces. The members of the Presidency select a Standing Committee on Military Matters to coordinate the activities of armed forces in Bosnia and Herzegovina. The Members of the Presidency are members of the Standing Committee.

According to the recently adopted Decision of the Presidency of Bosnia and Herzegovina, the Standing Committee on Military Matters consists of nine (9) members: three members of the Presidency of BiH, Chair of the Council of Ministers of BiH, Minister of Foreign Affairs of BiH, Minister of Defence of BiH, Minister of Security of BiH, President or Vice-President of of the Republika Srpska, President or Vice-President of the Federation of Bosnia and Herzegovina.

5. According to the Article VI of the Constitution of Bosnia and Herzegovina the Constitutional Court of Bosnia and Herzegovina has nine members – four selected by the House of Representatives of the Federation, and two selected by the Assembly of the Republika Srpska. The three members are selected by the President of the European Court of Human Rights and are not citizens of Bosnia and Herzegovina or of any neighbouring state.

5. (bis). The Court of Bosnia and Herzegovina. The Court of Bosnia and Herzegovina has been established in accordance with the Law on the Court of Bosnia and Herzegovina.

6. According to the Article V (4), the Presidency nominates the Chair of the Council of Ministers, and the Chair nominates the Ministers of the Council of Ministers. Their nominations are consequently approved by the House of Representatives of BiH. According to the Law on the Council of Ministers of Bosnia and Herzegovina, the Council of Ministers consists of eight Ministries: Ministry of Foreign Affairs, Ministry for Communications and Transport, Ministry of Civil Affairs, Ministry for Human Rights and Refugees, Ministry of Finance and Treasury, Ministry for Foreign Trade and Economic Relations, Ministry of Justice and Ministry of Security. The Ministers operate the Ministries. Each Minister has his/her Deputy Minister, who replaces the Minister in case of absence or prevention of his/her presence. Each Ministry also has its Secretary who performs his/her duties and tasks in accordance with the Law on Civil Service in the Institutions of Bosnia and Herzegovina. The Council of Ministers of Bosnia and Herzegovina carries out the policies and decisions of Bosnia and Herzegovina in accordance with the Article III of the Constitution. The Council of Ministers takes up decisions with more than half of the Council of Ministers' members being present at the sessions, out of which at least two representatives of each of three constituent peoples.

7. Other institutions and organs of Bosnia and Herzegovina are: Ombudsman for Human Rights of Bosnia and Herzegovina, Directorate of European Integrations and Independent Administrative Organizations, the Office for Auditing of Financial Operations of the Institutions of Bosnia and Herzegovina, the Central Bank of Bosnia and Herzegovina, the Permanent Election Commission of Bosnia and Herzegovina, Agency for Promotion of Foreign Investments in Bosnia and Herzegovina, Institute for Crediting of Bosnia and Herzegovina, Institute for Standards, Metrology and Intellectual Property, Agency for Statistics of Bosnia and Herzegovina.

Bosnia and Herzegovina is in the process of establishing the Ministry of Defence of BiH, according to the Law on Defence of Bosnia and Herzegovina adopted by the Parliament of Bosnia and Herzegovina in December 2003.

## **RESPONSIBILITIES AND RELATIONS BETWEEN THE INSTITUTIONS OF BOSNIA AND HERZEGOVINA AND THE ENTITIES (Article III of the Constitution of Bosnia and Herzegovina)**

1. **The Institutions of Bosnia and Herzegovina** are responsible for foreign policy; foreign trade policy; customs policy; monetary policy; finances of the institutions and for the international obligations of Bosnia and Herzegovina; immigration, refugee and asylum policy and regulation; international and inter-Entity criminal law enforcement, including relations with Interpol; establishment and operation of common and international facilities; regulation of inter-Entity transportation; and air traffic control.

All responsibilities, which are not the responsibility of the Institutions of Bosnia and Herzegovina, are the responsibility of the Entities.

The Presidency of Bosnia and Herzegovina may decide to facilitate inter-Entity coordination on matters within the responsibilities of Bosnia and Herzegovina, unless an Entity object in any particular case. Bosnia and Herzegovina assumes responsibility for other matters as are agreed by Entities; or are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina.

The international standards for the protection of human rights and fundamental freedoms, notably, the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols apply directly in Bosnia and Herzegovina. These have priority over all other law.

According to the Partial Decision of the Constitutional Court of Bosnia and Herzegovina on Constituency of All Three Peoples at the Whole Territory of Bosnia, the Entities have to have to harmonize their Constitutions with the Constitution of Bosnia and Herzegovina and to change organization of the legislative and executive organs providing the participation of all constituent peoples and Others in a public life.

2. **The Federation of Bosnia and Herzegovina** is one of two Entities of Bosnia and Herzegovina. It is organized in 10 Cantons. The Federation of Bosnia and Herzegovina has its Constitution.

Legislative authority in the Federation of Bosnia and Herzegovina are the House of Representatives and the House of Peoples.

The House of Representatives has ninety-eight (98) representatives, with at least four members of a constituent people represented in the House.

The composition of the House of Peoples has parity representation, every constituent people has the same number of representatives. The House is composed of fifty-

eight (58) representatives, each constituent people has 17 representatives, while "Others", elected among the representatives of national minorities, have seven (7) representatives. In this way the representation and political and civil rights of «Others» are legally guaranteed. Representatives of the House of Peoples are selected among the Cantonal Assemblies` representatives, proportionate to national structure of population.

The Federation has its President and two Vice-Presidents appointed by the President and confirmed by the House of Peoples of the Parliamentary Assembly of the Federation of Bosnia and Herzegovina, one representative of each constituent people.

The Prime Minister of the Federation is appointed by the President and two Vice-Presidents of the Federation, and is confirmed by the Parliamentary Assembly of the Federation of BiH.

Judiciary authorities of the Federation of Bosnia and Herzegovina are the Constitutional Court, the Supreme Court, and the Misdemeanor Council.

The Federation of Bosnia and Herzegovina has the Government, composed of the Prime Minister and 16 ministers.

Cantons of the Federation of Bosnia and Herzegovina have their Constitutions, as well as their Assemblies as the highest legislative organ. Executive organ of the Canton is the Government of the Canton, composed of ministries. Judicial authority of Cantons is organized in ten (10) Cantonal Courts. The Cantons are organized in municipalities with municipal courts and Magistrates` Courts.

The Federation of Bosnia and Herzegovina has 84 municipalities as the lowest administrative level of administrative organization. All municipalities have their councils – municipal Parliaments and municipal administrative service, run by the mayor.

**3. The Republika Srpska** has the President and two Vice-Presidents, one from each constituent people. They represent the Republika Srpska in expressing unity of power.

*The National Assembly of the Republika Srpska* is the highest legislative organ, composed of 83 members.

*The Council of Peoples of the Republika Srpska* is selected by the Parliamentary Groups of the National Assembly of the Republika Srpska. The Council has 28 members - 8 members representing each of three constituent people and 4 members representing national minorities and others.

*Judicial organs* of the Republika Srpska are the Constitutional Court of the Republika Srpska, the Supreme Court of the Republika Srpska, first instance courts and magistrates` courts.

The Government of the Republika Srpska has the Prime Minister and 16 ministers.

The Republika Srpska is organized within 63 municipalities, which have their municipal assemblies and municipal administrative services, run by mayors.

**4. The Brčko District of Bosnia and Herzegovina** has been established on 9 March 1999 according to the Final Award of the Arbitral Tribunal of Dispute over Inter-Entity-Boundary in Brčko on 5 March 1999. The Brčko District extends along the Sava River and has an area of 493 square kilometres. As per recent assessments, the District has some 85,000 inhabitants, out of which 40,000 live in town.



The Brčko District has its Statute; the highest legislative authority is the Assembly, composed of 29 representatives. The Mayor leads the Government of the District. Judicial authority of the Brčko District consists of the First Instance Court and Appellate Court. Impartiality of the courts is assured through the work of the Judicial Commission.

**5. Independence of the judicial authorities of Bosnia and Herzegovina:** Judicial organs are independent. Their independence has been reinforced by the establishment of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina and High Judicial Councils of the Federation of Bosnia and Herzegovina and the Republika Srpska. The High Representative has a temporary authority to appoint the members of the Councils. The essential aim of giving this temporary authority to the High Representative has been to improve the implementation of the international and European standards by establishing legal framework for restructuring of the courts and prosecutor's offices. Furthermore, it should insure the impartiality of selection of judges at this very stage of restructuring process. The same principle has been applied in the process of the appointment of prosecutors at the level of BiH, its Entities and Cantons.

**6. Participation of national minorities in legislative and executive organs:** According to the Amendments to the Entity and Cantonal Constitutions, minorities have rights to be represented in legislative and executive organs. The Electoral Law of Bosnia and Herzegovina guarantees a right of representatives of national minorities to take part in the conduct of public affairs, to vote and to be elected in legislative and executive organs of Bosnia and Herzegovina at all levels. The Law on the Protection of National Minorities, adopted by the Parliament of Bosnia and Herzegovina on 1 April 2003, determines the obligation for the Entities, Cantons, municipalities and towns in Bosnia and Herzegovina, to fully harmonise their legislation with the dispositions of the above-mentioned Law and to provide for more effective inclusion of members of national minorities in legislative and executive organs at all levels. According to the Law and with the understanding that the Romas are the largest national minority in Bosnia and Herzegovina, the Council Ministers of Bosnia and Herzegovina has established the Roma Committee.

**7. Function of the Office of the High Representative:** General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 10 Article V (Agreement on Civilian Implementation), determines the mandate and competencies of the High Representative as the final authority in BiH regarding interpretation of the implementation of the civilian aspects of the peace settlement. The High Representative facilitates, as he judges necessary, the resolution of any difficulties arising in connection with civilian implementation. Under the Conclusion of the Conference on Peace Implementation, held in Bonn on 9 and 10 December 1997, the High Representative could use his authority in Bosnia and Herzegovina, for resolution of any problem, by passing of binding decisions, as he judges necessary. This authority includes passing the laws and decisions that are the competence of executive bodies, as well as specific regulations on appointment and dismissal of public servants. The High Representative has also authority to undertake necessary measures for implementation of the Peace Agreement at the whole territory of Bosnia and Herzegovina and its Entities.

### III GENERAL LEGAL FRAMEWORK FOR HUMAN RIGHTS PROTECTION

1. The Article II (1) of the Constitution of BiH specifies that BiH and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. Furthermore, paragraph (2) stipulates that the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto shall apply directly in Bosnia and Herzegovina. These international human rights instruments have priority over all other laws.

2. Article II 3 of the Constitution of Bosnia and Herzegovina, enumerates the following human rights:

- a. The right to life.
- b. The right not to be subjected to torture or to inhuman or degrading treatment or punishment.
- c. The right not to be held in slavery or servitude or to perform forced or compulsory labor.
- d. The rights to liberty and security of person.
- e. The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.
- f. The right to private and family life, home, and correspondence.
- g. Freedom of thought, conscience, and religion.
- h. Freedom of expression.
- i. Freedom of peaceful assembly and freedom of association with others.
- j. The right to marry and to found a family.
- k. The right to property.
- l. The right to education.
- m. The right to liberty of movement and residence.

Bosnia and Herzegovina and both its Entities have committed themselves to ensure the highest level of protection of the economic, social and cultural rights through the implementation of domestic and international regulations.

3. The Constitutions of Bosnia and Herzegovina and both Entities prohibits discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (the Constitution of Bosnia and Herzegovina, Article II. 4.)

4. **Civil and political rights and freedoms of citizens** – serving a military obligation. The laws, under which all adult male citizens of Bosnia and Herzegovina are subject to military service, regulate restrictions of these rights and freedoms in cases of protection of national security and public order, public health and morals or the rights and freedoms of others. All persons aged 18 to 60 are subject to military conscription. Military service lasts 6 months. The Entities` Laws on Military Service

provide a possibility of civilian service by males and voluntarily military service by females.

Persons subject to military conscription can be mobilized only in case when a competent body declares state of war, state of war threat or state of emergency and in case of natural disaster. Males are exempted from military service in case of incapacity of serving a military obligation, while females are not subject to military conscription, and could be mobilized only for compulsory work order in case of state of war threat or state of emergency and in case of natural disaster. Females and self-supporting parent (male or female) with children under age of 7 years old are exempted from this obligation.

**5. Right to liberty and security of person** are assured by the police forces within the State, the Entities` and the Cantonal Ministries of Interior. Police should transfer anyone who is deprived of his liberty by arrest or detention on criminal charge to the competent Prosecutor Office within 24 hours.

These rights and liberty cannot be subject of any restrictions except those, which are provided by the Law on Execution of Criminal Sanctions, notably on the basis of the Decision of the competent Court. The liberty of ill persons for the reason that there is a risk to endanger their own or someone`s other life can be restricted. Referral to health-care institutions is exclusively carried out on the basis of a diagnosis made by the competent medical board, that is health-care institution, which is competent for issuing of such medical findings. Work of such commissions is regulated by special regulations.

**6. Freedom of movement:** There is no restriction regarding the right of citizens of Bosnia and Herzegovina to liberty of movement and freedom to choose his residence within the territory of the State of Bosnia and Herzegovina, and they can also freely choose place of their permanent residence. The lawful stay in Bosnia and Herzegovina requests an appropriate identification documents indicating permanent residence address.

**7. Economic, social and cultural rights** are also guaranteed by the Constitution of Bosnia and Herzegovina and both Entities, and are regulated by individual laws. Because of the war consequences in Bosnia and Herzegovina and in accordance with the DPA, a particular attention has been given to legal regulations of right to repossession of the pre-war property, right to return to the pre-war places of residence, as well as a right to education, right to work, and right to have an access to health care and social welfare.

**8. Free and equal access to the labour market:** Since Bosnia and Herzegovina is a country in transition, a new policy of market economy has been introduced and, consequently a new legal framework regulating this field has been adopted at the Entity levels. The State Labour Law is currently in the parliamentary procedure. Bosnia and Herzegovina ratified several international conventions relating to labour issues. Some of the instruments are currently under consideration and will be shortly signed and ratified. According to the Article I of the Constitution, Bosnia and Herzegovina has maintained membership of the Republic of Bosnia and Herzegovina in all international organizations including the International Labor Organization (ILO). Bosnia and Herzegovina signed and ratified 65 ILO conventions, including the ILO ten fundamental conventions. Since labour, employment, health and social welfare

policies are the competence of the Entities, these issues are regulated by Entity Laws. However, some of them have not yet been harmonized in line with dispositions of the relevant ILO Conventions signed and ratified by Bosnia and Herzegovina.

**9. Freedom of choice of profession**, right to equal remuneration for work of equal value without distinction of any kind, in particular distinction of sex (males and females). The laws regulating the labour rights in Bosnia and Herzegovina and in the Entities and Cantons do not make any distinction between males and females in regards to a highest possible realization of the right to work and workers` rights deriving from it. The only exception are the legal privileges granted to mothers during and after childbirth. The present economic situation in Bosnia and Herzegovina has a negative impact on the full realization of workers`rights deriving from just and favourable conditions of work. Due to high unemployment rate and slow economic recovery there is outstanding problem of realization of workers`rights.

**10. Right of anyone to the enjoyment of the highest attainable standard of physical and mental health** in Bosnia and Herzegovina is realized at the Entity and Cantonal level. The social welfare and health care legislation is regulated by Entity and Cantonal laws. Realization of these rights is difficult due to lack of resources in the budgets of the Entities and Cantons, which are obliged to secure resources for this purpose. Laws regulating this field are still not harmonized with the conventions Bosnia and Herzegovina is obliged to apply.

**11. Right to freedom of assembly and association** is determined by the Constitution of Bosnia and Herzegovina, which in Article II (3) determines that citizens of Bosnia and Herzegovina have right to freedom of peaceful assembly and association with others. These freedoms are regulated by numerous laws at the State and Entity levels. According to the laws, the organizer of assembly has to announce intention of assembly to the competent authority. Practice, however, shows that there are situations in which there are attempts to prevent the assembly of citizens, or restrict it in another way. In the other hand, organizers of assembly contentedly misuse their right to freedom of peaceful assembly for the purpose of carrying out some other aims, not reported in explanation of reasons for assembly.

**12. Education:** Bosnia and Herzegovina has committed itself to carry out necessary reforms of educational system, in accordance with fundamental principals and shared values of the common social and cultural space of the European countries laid down in the Joint Declaration of European Ministers of Education adopted in Bologna, in June 1999. Basic condition for achieving these objectives is adoption and harmonization of legislation on primary, secondary and higher education that will prevent any kind of discrimination. Bosnia and Herzegovina committed itself to finalize these reforms by the end of 2003. Since the education policy is at this point competence of the Entities and Cantons, a relevant legislation has been passed at the Entity and Cantonal levels but it is not fully harmonized with the principles set forth within/in international conventions, signed and ratified by Bosnia and Herzegovina. However, on 30 June 2003, the Framework Law on Primary and Secondary Education in Bosnia and Herzegovina was adopted on the State level and the process of harmonization of Entities` and Cantonal laws in underway.

**13. National minorities:** The Law on the Protection of National Minorities of Bosnia and Herzegovina has created obligation for Entities, cantons, municipalities and towns in Bosnia and Herzegovina to set up an adequate legislation and to regulate legal obligations at all levels to protect and promote minority rights stemming from this Law. Moreover, the Electoral Law of Bosnia and Herzegovina has provided for the possibility of participation of representatives of national minorities in legislative bodies of Bosnia and Herzegovina at all levels. These legal requirements and regulations have enabled Bosnia and Herzegovina to move towards a better protection of its national minorities.

**14. Freedom of religion:** The Constitution of Bosnia and Herzegovina and Constitutions of the Entities prohibit any kind of discrimination on the ground of religious belief. The Law on Freedom of Religion and Legal Position of Churches and Religious Communities and in Bosnia and Herzegovina is in parliamentary procedure. This law has been prepared in accordance with dispositions of the international human rights instruments, signed and ratified by Bosnia and Herzegovina. Highly ranked religious clericals representing different religion communities in Bosnia and Herzegovina are organized into Inter-religious Council of Bosnia and Herzegovina, working on prevention of discrimination on the ground of religion or belief. This Council fully cooperates with the authorities of Bosnia and Herzegovina and international institutions and organizations in BiH. In close cooperation with the authorities of Bosnia and Herzegovina, the Inter-religious Council carries out activities aiming at better protection and promotion of the right to freedom of religion, as well as improvement of legal position of churches and religious communities in Bosnia and Herzegovina.

**15. Rights of women and child:** The Law on Gender Equality in Bosnia and Herzegovina legally bind all kind of discrimination of women on any grounds. Accordingly, the State Plan of Action to Combat Discrimination against Women will soon be adopted and the Gender Equality Agency of Bosnia and Herzegovina will be established. Adoption of the above-mentioned Law, as well as the State Plan of Action, and establishing of the Agency, would enable authorities of Bosnia and Herzegovina to prevent all forms of discrimination against women. The rights of the child in Bosnia and Herzegovina are guaranteed by the Constitution of Bosnia and Herzegovina and the Constitutions of the Entities, as well as by the laws adopted at the level of Entities, the Brčko District and cantons in BiH. Laws protecting the rights of the child are related to number of measure in the area of social welfare, family and child protection, education, and health care. The Council of Ministers of Bosnia and Herzegovina has adopted the Action Plan for Children 2002-2010, and has established the Council for Children of BiH, as an advisory body to the Council of Ministers. The Council is responsible for the implementation of the Action Plan, and its activities are directed towards prevention of discrimination against children.

**16. Stabilisation and Association Process:** Comprehensive process of harmonization of laws in BiH is underway. There are three reasons for this: harmonization with determined principles in presented international documents, inclusion of Bosnia and Herzegovina into the flows of the European integration processes, and preparation of feasibility study for the Stabilisation and association Process towards the European Union.

Effective production of human rights requires more efficient state functioning, as well as appropriate means for its implementation. There are legal instruments which act in the direction of building of Bosnia and Herzegovina as democratic country with the rule of law and human rights and freedoms of all its citizens. At the same time, this presents a challenge accepted by Bosnia and Herzegovina. However, considering economic situation and level of mechanisms developed in BiH, further assistance in efficient development of the State and continuation of the started processes is required.

***Bosnia and Herzegovina has ratified the following UN international on human rights instruments:***

- a) Convention on the Prevention and Punishment of the Crime of Genocide  
– *Official Gazette of R BiH 25/93, succession on 29 December 1992*
- b) Convention on Non-Compliance with Statutory Restrictions at War for Crimes Against Humanity  
– *Official Gazette of R BiH 25/93, succession on 1 September 1993*
- c) International Convention on the Prevention and Punishment of the Crime Pertaining to Apartheid  
– *Official Gazette of R BiH 25/93, succession on 1 September 1993*
- d) International Convention on the Prevention of Racial Discrimination in Sport  
– *Official Gazette of R BiH 25/93, succession on 1 September 1993*
- e) International Covenant on Economic, Social and Cultural Rights (CESCR)  
– *Official Gazette of R BiH 25/93, succession on 1 September 1993*
- f) International Covenant on Civil and Political Rights (CCPR)  
– *Official Gazette of R BiH 25/93, succession on 1 September 1993*
- g) Optional Protocol to the International Covenant on Civil and Political Rights (CCPR-OP1) – *ratification on 1 March 1995*
- h) Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty (CCPR-OP2-DP) – *signed on 7 September 2000, ratified on 16 March 2001*
- i) International Convention on the Elimination of All Forms of Racial Discrimination (CERD)  
– *Official Gazette of R BiH 25/93, succession on 16 July 1993*
- j) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)  
– *Official Gazette of R BiH 25/93, succession on 1 September 1993*
- k) Option Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP)  
– *Signed on 7 September 2000, ratified on 4 September 2002*
- l) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)  
– *Official Gazette of R BiH 25/93, succession on 1 September 1993*
- m) Convention on the Rights of the Child (CRC)  
– *Official Gazette of R BiH 25/93, succession on 1 September 1993*
- n) Optional Protocol to the Convention on the Rights of the Child (CRC-OP-C) on Participation of Children in Armed Conflicts

- *Signed on 7 September 2000, ratified on 10 October 2003*
- o) Optional Protocol to the Convention on the Rights of the Child (CRC-OP-SC) on the Sale of the Children, Child Prostitution and Child Pornography
  - *Signed on 7 September 2000, ratified on 4 September 2002*
- p) International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (MWC)
  - *Accession on 13 December 1996*
- q) 1951 Convention relating to the Status of Refugees
  - *Succession on 1 September 1993*
- r) 1967 Protocol Relating to the Status of Refugees
  - *Succession on 1 September 1993*
- s) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime
  - *Official Gazette of BiH 3/02, ratification on 27 March 2002*
- t) Protocol Against the Smuggling of Migrants by Land, Air and Sea, supplementing the UN Convention against Transnational Organized Crime
  - *Official Gazette of BiH, no. 3/02, ratification on 27 March 2002*

**ILO human rights instruments signed and ratified by Bosnia and Herzegovina:**

- a) Forced Labour Convention, 1930 (No. 29),
- b) Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87),
- c) Right to Organize and Collective Bargaining Convention, 1949 (No. 98),
- d) Equal Remuneration Convention, 1951 (No. 100),
- e) Social Security (Minimum Standards) Convention, 1952 (No. 102),
- f) Discrimination (Employment and Occupation) Convention, 1958 (No. 111),
- g) Employment Policy Convention, 1964 (No. 122),
- h) Minimum Age Convention, 1973 (No. 138),
- i) Worst Forms of Child Labour Convention, 1999 (No. 182) and other.

**International human rights instruments of the Council of Europe, signed and ratified by Bosnia and Herzegovina:**

- a.) Convention on the Protection of Human Rights and Fundamental Freedoms
  - *Signed on 24 April 2002, ratified on 12 July 2002 – entered into force on 12 July 2002,*
- b.) Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms,
  - *Signed on 24 April 2002, ratified on 12 July 2002 – entered into force on 12 July 2002,*
- c.) Protocol No. 2 to the Convention on the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions,

- *Signed on 24 April 2002, ratified on 12 July 2002 – entered into force on 12 July 2002,*
- d.) Protocol No. 3 to the Convention on the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention,
  - *Signed on 24 April 2002, ratified on 12 July 2002 – entered into force on 12 July 2002,*
- e.) Protocol No. 4 to the Convention on the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the First protocol thereto
  - *Signed on 24 April 2002, ratified on 12 July 2002 – entered into force on 12 July 2002,*
- f.) Protocol no. 5 to the Convention on the Protection of Human Rights and Fundamental Freedoms, amending Article 22 and 44 of the Convention
  - *Signed on 24 April 2002, ratified on 12 July 2002 – entered into force on 12 July 2002,*
- g.) Protocol no. 6 to the Convention on the Protection of Human Rights and Fundamental Freedoms, pertaining the abolition of the death penalty,
  - *Signed on 24 April 2002, ratified on 12 July 2002 – entered into force on 1 August 2002,*
- h.) Protocol no. 7 to the Convention on the Protection of Human Rights and Fundamental Freedoms,
  - *Signed on 24 April 2002, ratified on 12 July 2002 – entered into force on 1 October 2002,*
- i.) Protocol no. 8 to the Convention on the Protection of Human Rights and Fundamental Freedoms,
  - *Signed on 24 April 2002, ratified on 12 July 2002 – entered into force on 12 July 2002,*
- j.) European Convention on Protection Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
  - *Signed on 12 July 2002, ratified on 12 July 2002, entered into force on 1 November 2002,*
- k.) Protocol no. 11 to the Convention on the Protection of Human Rights and Fundamental Freedoms,
  - *Signed on 24 April 2002, ratified on 12 July 2002, entered into force on 12 July 2002,*
- l.) Framework Convention on the Protection of National Minorities,
  - *Ratified on 24 February 2000, entered into force on 1 June 2000.*

**International human rights instruments of the Council of Europe, signed by Bosnia and Herzegovina:**

- a.) Protocol no. 12 to the Convention on the Protection of Human Rights and Fundamental Freedoms, signed on 24 April 2002,
- b.) Protocol no. 13 to the Convention on the Protection of Human Rights and Fundamental Freedoms, signed on 3 May 2002.



## **INSTITUTIONS IN BOSNIA AND HERZEGOVINA FOR THE PROTECTION OF HUMAN RIGHTS**

Under State and Entity laws, at the moment there are seven institutions with mandate for promotion and protection of human rights at the State and Entity level.

At the State level:

1. the Constitutional Court of Bosnia and Herzegovina,
2. the Court of Bosnia and Herzegovina,
3. the Commission on Human Rights consists of the Human Rights Chamber and the Office of the Human Rights Ombudsman of Bosnia and Herzegovina established in accordance with the Annex 6 of the DPA,
4. The Ministry for Human Rights and Refugees of Bosnia and Herzegovina.

At the Entity level:

1. Office of the Human Rights Ombudsman of the Federation of Bosnia and Herzegovina,
2. Office of the Human Rights Ombudsman of the Republika Srpska.

### **1. The Constitutional Court of Bosnia and Herzegovina**

The Constitutional Court of Bosnia and Herzegovina has an exclusive jurisdiction to decide any dispute arising under the Constitution of Bosnia and Herzegovina between two Entities, or between Bosnia and Herzegovina and one or both Entities, or between institutions of Bosnia and Herzegovina. The Constitutional Court of Bosnia and Herzegovina has appellate jurisdiction over issues under the Constitution arising out of a judgement of any other court in Bosnia and Herzegovina. Furthermore, the Court has jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is comparable with the Constitution, with the European Convention on Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina; or the existence of or the scope of a general rule of public international law pertinent to the court's decision (Article 6 of the Constitution).

Decisions of the Constitutional Court are final and binding.

The Constitutional Court has nine members - four selected by the House of Representatives of the Federation of Bosnia and Herzegovina, two by the National Assembly of the Republika Srpska and 3 by the President of the European Court of Human Rights after consultation with the Presidency. Initially appointed judges are serving for a period of five years and are not eligible for reappointment. Judges subsequently appointed are serving until age 70, unless they resign or are removed for cause by consensus of the other judges.

### **2. The Court of Bosnia and Herzegovina**

The Court of Bosnia and Herzegovina ensures better protection and respect of human rights, as well as the rule of law. The Court of Bosnia and Herzegovina was established according to the dispositions of the Law on the Court of Bosnia and Herzegovina, entered into force in July 2002. The court has fifteen judges. Impartiality of the selection of judges is assured by the Commission for Nomination of

the Judges, while the independence of the judge is assured by incompatibility of their function with any political function.

The Court should comprise three chambers: Penalty Chamber, Administrative Chamber and Appeal Chamber. The Court has appellate jurisdiction over the issues on implementation of the State laws and international agreements upon the appeal of any Entity court or any court of the Brčko District, entrusted with application of State laws; over the issues related to the conflict of jurisdiction between Entity courts; to resume criminal proceedings; over the issues arising out of the final administrative decisions/acts of the institutions of Bosnia and Herzegovina; over issues arising out of a judgement on legality of individual and general acts passed on the basis of State laws; over the property disputes between the State and the Entities and the Brčko District, etc. The decisions of the Court are final and binding.

### **3. The Commission on Human Rights**

The Commission on Human Rights has been established in accordance with the Annex VI of the DPA (Human Rights). It consists of two parts: the Office of the Ombudsman and the Human Rights Chamber that are entrusted to consider alleged or apparent violations of human rights as provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto; or alleged or apparent discrimination on any grounds or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to the Annex 6, where such violation is alleged or appears to have been committed by the State and/or the Entities, including by any official or organ of the State, Entities, Cantons, Municipalities, or any individual acting under the authority of such official or organ.

#### **3.1. Human Rights Chamber**

The Human Rights Chamber is composed of fourteen members. The Chamber receives by referral from the Ombudsman on behalf of an applicant, or directly from the State or the Entity or person, non-governmental organization, or group of individuals claiming to be the victim of a violation by State or Entity or acting on behalf of alleged victims who are deceased or mission, for resolution or decision applications concerning alleged or apparent violations of human rights within its mandate.

Decisions of the Chamber are final and binding. The Article XIV of the Annex 6 of the DPA foresees the transfer of competence of the Chamber to the BiH authorities.

Since the competencies of the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina are overlapping, the proposal on modalities of merging of these two institutions is still under consideration, though the mandate of the Chamber expired on 31 December 2003.

It should be recalled that the Human Rights Chamber had been established under Annex 6 of the DPA at a time when BiH was not a member of the Council of Europe and its judiciary was incapable of handling human rights cases. Given that Bosnia and Herzegovina ratified the European Convention on the Protection of Human Rights and Fundamental Freedoms and Protocols thereto on 12 July 2002, and accordingly, accepted the jurisdiction of the European Court for Human Rights, future existence and work of the Human Rights Chamber should be reconsidered.

There are still diverging legal positions on transfer of competence from Human Rights Chamber to the Constitutional Court of BiH. Nevertheless, final decision on this issue should be taken by the Parliament of Bosnia and Herzegovina, upon the proposal by the Council of Ministers of Bosnia and Herzegovina.

Human Rights Chamber has already stopped receiving the cases. Therefore, pending decision on transfer of its mandate could affect the final decision on its status and could have impact on length of process of transfer of its competence.

While modalities of the transfer require more discussion and time, the transfer plan must provide effective protection of human rights in BiH. Accomplishment of this task requests full engagement of domestic and international institutions.

### **3.2. Office of the Human Rights Ombudsman for Bosnia and Herzegovina**

Office of the Human Rights Ombudsman for Bosnia and Herzegovina has authority to investigate alleged violations of human rights and to issue findings and conclusions promptly after concluding an investigation. The Office of the Ombudsman may investigate, either on its own initiative or in response to an allegation, while its efforts are directed at peaceful settlement of disputes. Ombudsman investigates claims on human rights violations, immediately announces findings and conclusions, and informs the competent official or institution on its findings and conclusions. Ombudsman can initiate proceedings before the Human Rights Chamber at any stage. Furthermore, he is authorized to forward his conclusions and recommendations to the High Representative in case of non-compliance of the competent government organ or official. He has access to and may examine all official documents.

According to the Article IV of Annex 6, the Ombudsman was appointed by the Chairman-in-Office of the Organization for Security and Cooperation in Europe (OSCE) and could not be a citizen of Bosnia and Herzegovina or of any neighbouring state. On December 12, 2000, the High Representative imposed the Law on the Human Rights Ombudsman for Bosnia and Herzegovina, enabling transfer of responsibilities to the authorities of Bosnia and Herzegovina.

Later on the Law has been approved by the Parliamentary Assembly of Bosnia and Herzegovina, by which the first important condition for transfer of competence on Bosnia and Herzegovina has been achieved. The term of the Ombudsman appointed by the Chairman-in-Office of the OSCE has expired on 31 December 2003. The Presidency of Bosnia and Herzegovina has appointed new State Ombudsmen – one Bosniak, one Croat and one Serb. They took over their responsibilities on January 6, 2004.

### **4. Ministry for Human Rights and Refugees**

The Ministry has been established in 2000, in accordance with the Law on the Council of Ministers of Bosnia and Herzegovina then in force. In accordance with the Law on Ministries and Other Organs of Administration of Bosnia and Herzegovina, the Ministry for Human Rights and Refugees of Bosnia and Herzegovina is responsible for: monitoring and implementation of international conventions and other human rights instruments; promotion and protection of individual and collective human rights and freedoms; coordination in preparation of reports on carrying out the obligations of Bosnia and Herzegovina under international human rights instruments, as well as coordination in preparation to the competent domestic bodies and

institutions; development and implementation of activities on fulfilment of obligations towards the accession of BiH to Euroatlantic intergrations, particularly the activities enabling implementation of European Convention on Human Rights and Fundamental Freedoms and Protocols thereto; monitoring, preparation and dissemination of information on human rights standards, achievements and activities cooperation with religious communities, cooperation with national minorities and their associations; cooperation with institutions and organizations in charge of tracing activities on missing persons in BiH; cooperation with the Red Cross of BiH and the International Committee of Red Cross and humanitarian organizations; questions related to asylum and rights of refugees in BiH, implementation of Annex 7 of the General Framework Agreement for Peace in BiH, as well as supervision over its implementation; creation and implementation of BiH policy in the field of return of refugees and displaced persons in/to BiH, reconstruction projects and providing for other conditions needed for sustainable return; coordination, management and supervision of the Entities` activities and other relevant institutions of Bosnia and Herzegovina within the Commission for Refugees and Displaced Persons; all other activities regulated by law or those resulting from implementation of Annexes 6 and 7 of the DPA; collecting, processing and storing of all data relevant for Ministry, in accordance with all legal standards on data protection; coordination with non-governmental sector on issues under the competence of this Ministry; creation of asylum and immigration policies in BiH; creation of BiH emigration policy; collection, classification, publishing and distribution of all data within the Ministry`s competence.

#### **5. Office of the Human Rights Ombudsman of the Federation of Bosnia and Herzegovina**

Office of the Human Rights Ombudsman of the Federation of Bosnia and Herzegovina is composed of three persons: a Bosniak, a Croat and a Serb. Office operates through its head office in Sarajevo and eleven local offices. Ombudsman can investigate any institution in the Federation of Bosnia and Herzegovina, Cantons or municipality.

Ombudsman of the Federation of Bosnia and Herzegovina is authorized to protect human rights and interests of all persons, as the Constitutions of Bosnia and Herzegovina and the Constitution of the Federation of Bosnia and Herzegovina explicitly guarantee it.

Ombudsman may not interfere with the functions of the courts in matters related to resolution of legal issues before them.

#### **6. Office of the Ombudsman of the Republika Srpska**

The National Assembly of the Republika Srpska adopted the Law on the Office of the Ombudsman of the Republika Srpska on 9 February 2000. The Office is composed of three members: a Croat, a Bosniak and a Serb. Office of the Ombudsman of the Republika Srpska has its head office in Banja Luka and four field offices. Ombudsman of the Republika Srpska is authorized to protect human rights and interests of all persons, as it is explicitly guaranteed by the Constitution of Bosnia and Herzegovina and by the Constitution of the Republika Srpska. Main competence of the Office of the Ombudsman of the Republika Srpska is monitoring of work of government administration in terms of their impartiality and legality.

Ombudsman may not interfere with the functions of the courts in matters related to resolution of legal issues before them.

All citizens of Bosnia and Herzegovina can freely request the assistance of all above-mentioned institutions for the protection and promotion of human rights and fundamental freedoms. Although many problems and unsettled cases are still pending before these organs, an overall situation of human rights in Bosnia and Herzegovina has significantly improved, bearing in mind gravity of human rights violations during the past war and difficulties that Bosnia and Herzegovina had faced in first post-war years.

Once the case has been concluded before the procedure has been completed by the competent organ or court, a citizen can appeal to the Human Rights Chamber of Bosnia and Herzegovina. As Bosnia and Herzegovina ratified the European Convention, the citizens make a complaint to the European Court for Human Rights. Citizens of Bosnia and Herzegovina also have the possibility of extraordinary re-investigation of the decision in terms of agreement with the Constitution of Bosnia and Herzegovina and international conventions Bosnia and Herzegovina is obliged to apply.

The State guarantees the right of all citizens to submit a request, petition or complaint to all institutions for protection of human rights. All the above-mentioned institutions have to issue recommendations or binding decisions within their jurisdiction. Unfortunately, instruments for the execution of the recommendations and decisions are not fully efficient so far.

#### **IV INFORMATION AND PUBLICITY**

Wide range of activities of the Council of Ministers of Bosnia and Herzegovina has been undertaken to provide necessary conditions for the rule of law and fulfil international organizations of Bosnia and Herzegovina through better work and functioning of the authorities in Bosnia and Herzegovina, in particular the Entity ones. Priorities of the work of the Council of Ministers of BiH in last few years were return of refugees and displaced persons, property repossession by refugees and displaced persons, implementation of property laws, carrying out necessary reform and harmonization of legislation aiming at full compliance with international standards set up in international human rights treaties, protection of children, prevention of trafficking in human beings Bosnia and Herzegovina, protection of national minorities and gender equality.

Several significant projects and activities have been realized in the framework of the mentioned activities.

Constitutional documents in Bosnia and Herzegovina:

- The Constitution of Bosnia and Herzegovina,
- The Constitution of the Federation of Bosnia and Herzegovina,
- The Constitution of the Republika Srpska,
- The Constitution of the Brčko District of Bosnia and Herzegovina,

- The Constitution of the Federation of Bosnia and Herzegovina, Amendments,
- The Constitution of the Republika Srpska, Amendments.

## **LAWS OF BOSNIA AND HERZEGOVINA**

### **A) Laws at the level of Bosnia and Herzegovina;**

1. The Election Law of Bosnia and Herzegovina
2. Rulebook of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina
3. Rulebook of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina
4. Law on Filling Vacancy for a Member of the Presidency of Bosnia and Herzegovina
5. Law on the Council of Ministers of Bosnia and Herzegovina
6. Law on Ministries and Other Organs of Administration of Bosnia and Herzegovina
7. Law on Civil Service in the Institutions of Authority of Bosnia and Herzegovina
8. Law on the Court of Bosnia and Herzegovina
9. Law on Prosecutor`s Office of Bosnia and Herzegovina
10. Law on Court Police
11. Decision on Court Observers
12. Decision on Establishment of Independent Judiciary Commission and Decision on New Mandate of the Independent Judiciary Commission
13. Penal Code of BiH
14. Criminal Procedure Act of BiH
15. Law on Witness Protection
16. Law on Attorney`s Office of Bosnia and Herzegovina
17. Law on Administrative Procedure
18. Law on Administrative Dispute
19. Law on Statistics of Bosnia and Herzegovina
20. Law on Human Rights Ombudsman for Bosnia and Herzegovina
21. Law on Conflict of Interests in the Institutions of Authority in Bosnia and Herzegovina
22. Law on Ministerial, Council of Ministers and Other Appointments
23. Freedom of Access to Information Act
24. Law on Associations and Foundations
25. Law on Protection of Consumers
26. Law on Protection of Members of National Minorities
27. Law on Gender Equality in BiH
28. Law on Immigration and Asylum
29. Law on Displaced Persons in Bosnia and Herzegovina and Refugees from Bosnia and Herzegovina.

## **PART TWO**

### **Article 1**

**"The protection of national minorities and of the rights and freedoms of persons belonging to those national minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation".**

By signing of the Dayton Peace Agreement (DPA) Bosnia and Herzegovina has accepted the Constitution of Bosnia and Herzegovina as one of the Annexes of DPA. "Additional Human Rights Agreement to be applied in Bosnia and Herzegovina" forms an integral part of the Constitution. These are as follows:

1. 1984 Convention on the Prevention and Punishment of the Crime of Genocide
2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto
3. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
4. 1957 Convention on the Nationality of Married Women
5. 1961 Convention on the Reduction of Statelessness
6. 1965 International Convention on the Elimination of All Forms of Racial Discrimination
7. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto
8. 1966 Covenant on Economic, Social and Cultural Rights
9. 1979 Convention on the Elimination of All Forms of Discrimination against Women
10. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
11. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
12. 1989 Convention on the Rights of the Child
13. 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
14. 1992 European Charter for Regional or Minority Languages

## 15. 1994 Framework Convention for the Protection of National Minorities.

Besides direct application of the international human rights instruments, the High Representative of the International Community, as well as numerous missions of all relevant international institutions have a significant role in the implementation of the whole DPA, and the Constitution of BiH. As per powers vested in the High Representative by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, the High Representative is the final authority in theatre regarding interpretation of DPA. By the additional conclusions of the Peace Implementation Conference, held in Bonn on 9 and 10 December 1997, the High Representative was vested with powers to make binding decisions, as he judges necessary, in order to facilitate the resolution of any difficulties arising in connection with civilian implementation.

Powers of making binding decisions in practice has been applied to: adoption of amendments to the Constitutions of BiH Entities; passing of the laws at the State level; dismissal of the members of BiH Presidency; dismissal of the Presidents of the Entities; taking away of deputy mandates in the assemblies at all levels; dismissal of Entity and Cantonal ministries; dismissal of mayors, public enterprises managers, municipal officials, as well as other decisions under the competency of the organ of authorities. The High Representative has powers to suspend or to stop execution of acts of authorities at all organisational levels. Besides the High Representative, representatives of the International Community participate in making decisions. By the end of 2003 Human Rights Chamber and Ombudsman of BiH operated in BiH. From the beginning of 2004 competencies of the Human Rights Chambers have been taken over by the Constitutional Court of BiH and the Court of Bosnia and Herzegovina, while Human Rights Ombudsman would be BiH citizen. UN monitored law enforcement affairs by the end of 2002. Since 2002 EU Mission, Mission of OSCE, UNHCR, Council of Europe, European Commission and specialised agencies of the above-mentioned organisations have been monitoring all processes in Bosnia and Herzegovina. We may state that protection of national minorities, rights and freedoms of persons belonging to national minorities, as well as all other areas of functioning of authorities, social, economic and political life in Bosnia and Herzegovina, are an integral part of the international protection of human rights and international cooperation of BiH.

### **Article 2**

**"The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and cooperation between States".**

The Preamble of the Constitution of Bosnia and Herzegovina states that BiH has been "Inspired by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as other human rights instruments".



These principles may be realised through mutual cooperation and development of principles of good neighbourliness, friendly relations and cooperation between the States. By respect of international norms in relations between the States and full respect of principles of territorial integrity and sovereignty of other States, BiH is trying to develop good and useful relations with its neighbours, international organisations, particularly with the States of the European Union, the membership of which is the ultimate goal of BiH.

Bosnia and Herzegovina is bordered by the Republic of Croatia, Serbia and Montenegro. As per regulations of the Law on the Protection of Rights of Persons Belonging to National Minorities in Bosnia and Herzegovina, Montenegrins in BiH belong to national minority, whose kin state is Montenegro.

Croats and Serbs originating from neighbouring countries are considered members of the constituent peoples in BiH.

**Article 3**

**"1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.**

**2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present Framework Convention individually as well as in community with others".**

There are three constituent peoples in Bosnia and Herzegovina: Bosniaks, Croats and Serbs. Members of numerous national minorities live in Bosnia and Herzegovina, as well. Their status as members of national minorities has been recognised by the Law on the Protection of Rights of Persons Belonging to National Minorities. The said Law was adopted on 1 April 2003, and went into force on 14 May 2003 (BiH Official Gazette, No. 12/03).

Position of national minorities before tragic conflict in Bosnia and Herzegovina had not been regulated through separate domestic legislation at the level of ex-SFRY. Therefore, there has been no continuity concerning validity of legal regulations, including status of national minorities. This has been a reason for preparation of completely new Law on the Protection of Rights of Persons Belonging to National Minorities. Having started the process of ethnic identification of members of minorities, Bosnia and Herzegovina has decided to accept ethnic, cultural and linguistic (as well as religious) identities of persons belonging to national minorities in BiH. It has also decided to accept last 1991 census carried in ex-SFRY as exact information, although it *de facto* does not contain completely exact information. One more reason for such approach is freedom of expression on census, as well as the possibility for citizens to use his/her right to declare belonging to a national minority – minority group. As per last census carried out in 1991, the number of persons belonging to certain national minorities in Bosnia and Herzegovina is as follows:

National minority	Numbers of persons
Albanians	4,922

Montenegrins	10,048
Czechs	590
Italians	732
Jews	426
Hungarians	893
Macedonians	1,596
Germans	470
Poles	526
Roma	8,864
Romanians	162
Russians	297
Ruthenians	133
Slovaks	297
Slovenians	2,190
Turks	267
Ukrainians	3,929

It is clear from the 1991 census that there are minorities that could be called "traditional ones", and conditionally said, "new" minorities which are the result of disintegration of ex-SFRY (Montenegrins, Macedonians and Slovenians). Regardless the origin of the minorities, their numerousness (from 133 to 10,048 persons), Article 3 of the Law on the Protection of Rights of Persons Belonging to National Minorities stipulates that the national minority in a sense of this Law "is a part of the population – citizens of BiH that does not belong to one of three constituent peoples of BiH (Bosniaks, Croats and Serbs), and it consists of the people of the same or similar ethnic origin, same or similar tradition, customs, religion, culture, and spirituality, and close or related history and other features".

The fact that almost 2 million persons were moved from their homes during tragic conflict in BiH has to be taken into consideration in current review of the number of persons belonging to national minorities. They became refugees (some 1,200,000) outside BiH or displaced persons in BiH. The number of those who permanently stayed or who still have not returned from the third countries is assessed to be some 800,000 persons. This is almost one-fifth of pre-war population of BiH. It could be supposed that proportional number of persons belonging to national minorities is included into this figure. Therefore, statistical review of persons belonging to national minorities is conditional one, until acquiring conditions for the first census to be carried out in BiH after it gained independence. It may be reasonably supposed that there would be significant difference in certain cited figures of minorities as compared to pre-war census.

This statement on change, particularly in part related to decrease of number of persons belonging to national minorities, as compared to 1991 census, would certainly not refer to BiH Roma in full. There are two reasons for this. During 1991 census Roma population to a great degree declared themselves as Muslims, now Bosniaks. This statement is expressed by a range of Roma nongovernmental organisations and associations. According to their assessments at least 50,000 Roma lived in BiH in 2003. When assessing a number of Roma in BiH, the fact that should be taken into consideration is that Roma refugees who fled to third countries were to a greater degree forcibly returned from host countries after the end of the

conflict, namely signing of the Dayton Peace Agreement. As compared to other refugees from BiH, Roma had more difficulties with integration in reception countries, as well as with procedures for obtaining of permit of permanent stay or resettlement into overseas countries. Pending carrying out of regular census and due to lack of accurate information on the number of Roma population, BiH Ministry for Human Rights and Refugees (MHRR) has taken certain measures in 2003. Through special request of MHRR almost 70 municipalities in BiH (in which Roma were registered during 1991 census) have been asked to submit a number of Roma living at the territory of their municipalities (based on the records of social work centres, enrolment to school, etc).

Out of 70 municipalities to which the request was directed, only one-third answered the request by MHRR and submitted required data on the number of Roma living at their territories. Information from this poll submitted to MHRR has showed that number of Roma living in BiH is significantly higher than a number expressed in 1991 census. Indeed, the mentioned one-third of the polled municipalities submitted information on some 8,000 Roma. Therefore, it may be reasonably assessed that at least 20,000 Roma are living in BiH. Accurate number would be ascertained through regular census, with all additional measures of preparation, informing and education of polltakers, as well as minority groups. Possible deviation may be expected, since Roma population have tendency for accepting characteristics of majority people in the environment in which they live.

Assessment of the number of persons belonging to other minority peoples has been carried out through associations or clubs acting as NGOs at the territory of BiH. There is a conclusion that their number has decreased proportionally to number of refugees which have not returned to BiH after the end of the war.

During 1991 census persons belonging to all national minorities in BiH had lawful possibility and right to freely declare if and to which national minority they belong. Use of this right was particularly expressed during tragic conflict in BiH from 1992 to 1995, because belonging to a minority whose kin state is outside BiH had given a possibility for asking assistance and protection from that state. Persons belonging to certain minority community were spared from ethnic exile in many situations during conflict between Bosniaks, Serbs and Croats, due to fact that they do not belong to any of the three constituent peoples in BiH. During the war period numerous persons belonging to national minority communities formed associations (NGOs) for obtaining of humanitarian assistance or education of their members from vulnerable areas, as well as receiving adequate protection from their kin states or from strong international associations offering assistance to persons belonging to certain minority.<sup>3</sup>

In certain minority communities this *de facto* represented the beginning of identification of persons belonging to national minorities, as well as their assembling into organised groups. After the end of tragic conflict, these groups continued their activities concerning preservation of ethnic characteristics of their communities, preservation of the tradition, customs, beliefs, language, culture and spiritual closeness. Connection with their kin states through diplomatic and other

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<sup>3</sup> Associations of Jews, Slovenians, Macedonians, Czechs, Italians, Hungarians, Germans, Ukrainians, etc were particularly active in this field.

representatives, as well as adequate expert and financial assistance have created a basis for permanent forms of preservation of mentioned particularities.

A joint characteristic of all minority groups is establishment of appropriate associations of their members (citizens' associations, clubs, cultural societies and some other forms of assembly) and their registration as NGOs. Roma are the only exceptions to this. Besides 32 associations registered as NGOs, they have formed a political party. Democratic Party of Roma was formed at the beginning of 2003, after elections held in October 2002, in which they did not participate. Elections for municipal authorities scheduled for October 2004 would be the first opportunity for checking the soundness of this political party. Although Montenegrins are the most numerous minority in BiH as per 1991 census, there are the only national minority in BiH which have neither registered nor established any form of organised assembly. There are two reasons for inactivity of Montenegrin minority community in BiH. These are as follows: (1). In the Federation of BiH reason lies in the consequences of tragic conflict, when Serbia and Montenegro were treated as enemies. The majority of Montenegrins left their homes or were expelled from their homes, while post-war normalisation and return are slow, and there are no conditions for their identification and assembly. (2). In the Republic of Srpska, a great part of Montenegrins went to FRY (now Serbia and Montenegro). Besides this, reason for lack of particular identification of Montenegrins lies in spiritual closeness, which means almost complete ethnic identification with Serbs, as constituent people, since there is a rooted understanding that it is one people with two names.

As per information available to MHRR, Initial group for forming of Association of Montenegrins (NGO) assembled in October 2003 in Sarajevo. This would be the first organisation for the protection of interests of persons belonging to Montenegrin national community in BiH. However, by the final editing of the present report, this process has not been finished from the legal point of view, which means that organisation has not been registered with competent ministry.

Besides mentioned forms of assembling of national minorities, there is the Association of National Minorities in Banja Luka (the Republic of Srpska), including associations of Czechs, Italians, Jews, Hungarians, Macedonians, Roma, Slovenians and Ukrainians, whose members live in this region.

It is necessary to mention that Bosnia and Herzegovina has not concluded any bilateral agreement on the protection of persons belonging to national minorities living in BiH, although, conditionally speaking, all minority communities except Roma have their "kin" states. There have been no initiatives from other states towards BiH concerning conclusion of agreements on the protection of persons belonging to national minorities. BiH had initiative for adequate agreements with Republic of Slovenia on mutual obligations in the protection of Slovenian national minority in BiH, as well as the protection of BiH Bosniaks, Serbs and Croats in Slovenia. This initiative is still in the phase of preliminary discussions, but for now there has been no adequate understanding in the Republic of Slovenia. This remark is given to explain that BiH takes its obligations on the protection of rights of national minorities from the Constitution of BiH, the Law on the Protection of Rights of Persons Belonging to National Minorities, as well as international instruments which BiH has adopted and ratified after it had been recognised as an independent state. Should agreements on

the protection of rights of minorities with any state whose compatriots live in BiH as a minority are concluded, they will be additional sources and instruments in the protection of minorities. It has to be emphasised that BiH as a state is open for conclusion of such agreements.

#### **Article 4.**

**Contracting parties undertake to guarantee to national minorities the right to equality before law and to equal legal protection. In that sense, no discrimination against national minority is not allowed.**

**Contracting parties undertake to adopt, where appropriate, relevant measures to promote, in all fields of economic, social, political and cultural life, a full and effective equality between national minorities members and those belonging to national majority. In that respect, a care should be taken on particular circumstances of national minorities.**

*Measures developed under paragraph 2 will not be regarded as an act of discrimination.*

Bosnia and Herzegovina's Constitution, consisted in Annex 4 of the General Framework Agreement on Peace in B-H (Dayton Peace Accords, DPA), signed on December 14, 1995, does not relate explicitly to national minorities. But, national minorities issue in Bosnia and Herzegovina was viewed and interpreted within B-H law and legislation system and as a constitutional term "others". The term "others" is included in B-H Constitution Preamble<sup>2</sup>, where reference as to constitutive peoples, i.e. holders of constitutionality in post-Dayton B-H statehood, is made to Bosniaks, Croats and Serbs.

Namely, instead of term "national minorities" and their enumerating as such in the Constitution, the term "others" is used, leaving it to the legal regulations objective criteria to set methods for identification of national minorities living in B-H and measures to be taken by B-H towards protection and promotion of minorities rights in B-H.

Giving right to the "others", referred to in B-H Constitution Preamble, to determine, together with constitutive peoples, i.e. Bosniaks, Croats and Serbs, the contents of constitutional establishment of B-H further shaped Entity Constitutions stipulations for national minorities and their representatives' election into representation bodies and authorities, which will be further elaborated below. Note should be taken also of the fact that B-H Constitution provides for formation of some state-level authorities in a way to preclude possibility of election of national minorities representatives, save for members of some political parties voicing their particular interests. These peculiarities relate primarily to B-H Parliamentarian Assembly House of People with its 15 seats (five for Croats and five for Bosniaks and five for Serbs from RS, respectively) or to B-H Presidency, comprised of three members: one Bosniak and one Croat elected in Federation of B-H and one Serb elected in Republika Srpska territory.

The Constitution of B-H in its Annex I. Chapter on Additional Human Rights Agreement To Be Applied in B-H mentions under item No. 15 the Framework Convention for the Protection of National Minorities. Bosnia and Herzegovina accepted mentioned Framework Convention a priori by way of signing the DPA in

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<sup>2</sup> Attachment: Constitution of Bosnia and Herzegovina

December 1995, i.e. before it took effect formally on February 1<sup>st</sup>, 1989. The constitution of B-H Article 2 obliges Bosnia and Herzegovina and both Entities to ensure the highest level of internationally recognised human rights and fundamental freedoms. In that sense, in order to ensure the highest human rights standards, the legal system and judicial institutions in B-H set up the Human Rights Commission (Dayton Agreement Annex 6), comprised of Human Rights Chamber and Ombudsman for Human Rights.<sup>3</sup> Additional peculiarity of B-H also included into the Constitution relates to the fact that rights and freedoms under the European Convention for Protection of Human Rights and Fundamental Freedoms and Protocols hereto are “directly implemented in Bosnia and Herzegovina” and that their provisions surpass domestic law. Human rights and fundamental freedoms enjoyed by each and all in B-H include:

- right to life;
- right of individuals not to be exposed to torture or inhumane or degrading treatment or punishment;
- right of individuals not to be kept in slavery or subordination or forced or compulsory labour;
- right to personal freedom and security;
- right to just hearing in civic and criminal matters and other rights related to criminal proceeding;
- right to private and family right, home and correspondence;
- freedom of thought, consciousness and religion;
- freedom of expression;
- freedom of peaceful assembly and association;
- right to marriage and formation of family;
- right to property;
- right to education;
- right to freedom of movement and residence.

The Constitution of B-H Article II Item 4 stipulates as follows: “Exercise of rights and freedoms provided for under the present Article or international conventions referred to in the present Constitution Annex I is ensured for each and all in Bosnia and Herzegovina without discrimination against gender, race, language, religion, political or other opinion, national or social origin, belonging to national minority, property, birth or other status. ”

However, the fact itself that national minorities are referred to in B-H Constitution only scarcely – commitment to protect their rights is not formally stated - imposed an obligation to all-level authorities, starting from state, entity, through canton and municipality authorities, to protect minority rights, affirm their identity, promote their peculiarities, forbid discrimination (all laws regulating the position of an individual emphasise forbidding of discrimination against “gender, race, national origin etc.”).

The mentioned Constitutional provisions together with the Framework Convention for the Protection of National Minorities, as an inseparable part of B-H Constitution (Annex I), form a base for enactment of the Law on Protection of National Minorities’ Rights<sup>4</sup> at B-H level. This law defines rights and obligations of national minorities in B-H, as well as obligations on the part of authorities (all-level) to observe, harbour,

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<sup>3</sup> Encl: DPA Annex 6

<sup>4</sup> Encl: Law on Protection of National Minorities’ Rights (“Official Gazette of B-H”, No. 12/03)

maintain and develop ethnic, cultural, language and religious identity of each and every member of national minority in B-H, as of a BH citizen.

Different rights from different aspects as defined under the Law on Protection of National Minorities' Rights, which took effect on May 14, 2003, will be discussed in separate chapters; however, in this chapter we will deliberate on open possibilities for national minorities' representatives to participate in authorities.

The mentioned Law promoted right of national minorities (17 were enumerated in the Law Article 3) to be represented in authorities and other all-level public services, proportionately to their representation according to last census. The term "proportionately" in law application should be regarded as a minimum participation, while number of representatives can be even higher, as B-H accepted the "positive discrimination" system in its minority rights protection policy.

Criteria and ways of election for national minorities in Parliament should be elaborated in B-H and Entity election laws, as well as in statutes and other regulations of cantons, cities and municipalities. Representation of national minorities in executive and judicial authorities and public services will be arranged by special regulations at all levels of state organisation.

Novelty from this Law concerning the state organisation is the establishment of National Minorities Council within B-H Parliamentarian Assembly, which would include at least one representative from each recognised national minority group in B-H. The Council will provide the Parliamentarian Assembly with its opinions, advises and proposals on all issues relevant to rights, position and interest of national minorities in BH.

The Law provides for the Council of National Minorities to delegate experts to the Constitutional-Legal Commission and Human Rights Commission, which operate as standing bodies in both Parliamentarian Assembly Chambers. This is important thing, because constitutional commission assess adjustment and justifiability of Parliament bills and resolutions with B-H Constitution which guarantees basic human rights and fundamental freedoms, including those of national minorities. The Law further provides for national minorities' councils to be formed with the Federation of B-H Parliament and Republika Srpska National Assembly, which terms of reference are to be determined by Entity regulations.

Final provisions of the Law on National Minorities' Rights set forth that Republika Srpska and Federation of B-H should develop and harmonise their regulations on national minorities rights with the mentioned law, within six months after the law took effect, on May 14, 2003. Deadline for enactment of Entity legislation is November 14, 2003. However, according to information available to B-H Ministry for Human Rights and Refugees, the Entities have not even started required activities yet. Deadline for establishing national minorities councils with the Parliamentarian Assembly and appropriate councils with Entity parliaments is not defined under this law, but is regarded to be November 14, 2003, as no other deadlines were mentioned. The Ministry for Human Rights and Refugees urged both chambers of B-H Parliamentarian Assembly to proceed with establishment of such council.

Since the signing and ratification<sup>5</sup> of the framework Convention, B-H Council of Ministers has had a very active approach to the issues related to the obligation resulting from the accession to the convention. Taking into consideration a specific

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<sup>5</sup> B-H ratified Framework convention on Protection of Minority Rights, on Feb. 24, 2000, and it formally took effect on June 1, 2000.

organisation of the state, decentralised authorities organised in two Entities, with one entity (Federation of B-H) comprised of ten cantons, policy of the Council of Ministers and therefore Ministry for Human Rights and Refugees, under the Law on Council of Ministers of B-H (“Official Gazette of B-H”, 38/02) and Law on Ministries and Other Administrative Bodies of B-H (“Official Gazette of B-H”, No. 5/03)<sup>6</sup> for “cooperation with national minorities and their associations” is directed into two paths: (1) development of proposals of some legal solutions concerning national minorities’ rights protection, and 2) identification, in cooperation with entity Ministries and Governments, associations and groups of national minorities, of issues to be solved.

In early 2001, development of the Law on Protection of National Minorities’ Rights started with support from national minorities’ NGOs’. The Law aims at promotion of general principles of dealing with national minorities issue in B-H. Considering the lack of tradition in ex-state, complexity of state organisation of Dayton B-H, relatively numerous national minority communities, and under-trained competent Ministry staff, the Entity laws and lower authorities regulations are supposed to further concretise rights and protection of national minorities.

The introductory provisions of the Law on National Minorities’ Rights recognise the fact that protection of national minorities’ rights and freedoms is a constituent part of international protection for human rights and as such it is subject to international cooperation. The incorporating above provision from the Framework Convention into domestic laws aims at boosting domestic minority groups to play an active part in identification of and solution finding for their needs. This opportunity was used best by Roma national minority in B-H in terms of forming relevant Roma NGOs network and building proper institutions to deal with Roma issues.

Reason for responsive reaction of Roma NGOs to this incentive lies not only with the fact that Roma national minority is the most numerous one, but rather that members of other national minorities are more or less successfully incorporated into society.

In cooperation with OSCE Mission and Ministry for Human Rights and Refugees, the assembly of Roma NGOs was held on November 9-11, 2001, and adopted a paper titled “Platform for Roma Population in Bosnia and Herzegovina”.<sup>7</sup>

This document produced three core results, it Formed Roma Council in B-H as representative association of Roma NGOs, Council members were elected together with coordinator of activities, and initiative was raised to form the Roma Committee within the Council of Ministers responsible for partnership-based mobilisation of Roma organisations and identification of issues (topics) for political participation and commitment to changes in B-H in the area of education, labour relations, housing and property relations, health care, refugees, displaced persons and returnees, as well as in priority issues for Roma population in B-H.

The B-H Roma Council designated to the Council of Ministers of B-H nine representatives to the Roma Committee and the other half of membership was designated by Ministry for Human Rights and Refugees as delegated from various Entity authority structures responsible for human rights, education, health care, social welfare, statistics and other social activities. This is for the first time that a body within the highest level of executive power includes directly elected Roma representatives. The chairman of this body is a Roma delegate, and vice-chairman is Ministry for Human Rights and Refugees representative. The Roma Committee passed its Rules

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<sup>6</sup> Encl: Law on Council of Ministers and Law on Ministries and Other Administrative Bodies of B-H

<sup>7</sup> Encl: Platform for Roma Population in Bosnia and Herzegovina



of Procedures and Framework Work Plan and Programme of Activities for 2002-2006.<sup>8</sup>

The council of Ministers considered and supported this programme and as such it can be regarded as a part of overall activities of B-H authorities towards current Roma issues. Financially, through its 2002 Budget Rebalance the Council of Ministers supported the Committee with KM 10,000, while in 2003 Budget, it allocated KM 30,000 to fund Roma Committee.

As an independent advisory body, the Roma Committee invokes considerable interest among Roma organisations, because it is seen as the only address in authority structures to refer to in seeking solutions to their problems. As far as its advisory role is concerned, the Committee can initiate and recommend measures to be taken by competent bodies, but is deprived of decision-making powers of its own. In its 2002-2006 Framework Work Plan the committee highlighted priority issues to be dealt with in systematic and diligent manner, if problems are to be overcome. The Roma population in BH is at the margins of public interest. Their integration into social, economic, education, health care and political life requires special effort on the part of state, but due to both objective and subjective reasons, the commitment was not among priorities in the post-war reconstruction period of B-H. To change such picture, it would require all-level activities. The Framework Work Plan and programme for Roma is a long-term document, submitted to the Entity Governments, cantons and municipalities with considerable number of Roma population. The programme envisaged producing of personal documents for Roma population (registration), education issues, health care, employment, social welfare, return of refugees and displaced persons, return of property, housing issues, and media and information.

The Roma Committee developed activities towards NGOs, local authorities and towards international institutions operating in B-H (OHR, OSCE, UN, Council of Europe etc.). The Committee held five sessions thus far, where, other than Roma issues, it considered B-H Development Strategy, prepared by the Council of Ministers. The Committee strongly demanded that the Development Strategy includes chapters devoted to national minorities, with special emphasis on Roma population as the most numerous and most exposed national minority in Bosnia and Herzegovina. According to Roma Committee, measures to implement mentioned Development Strategy should also enable economic integration of Roma population in places they live.

The Committee also dealt with the education reforms issue in its Framework Work Plan, especially in view of Law on Primary and Secondary Education in B-H<sup>9</sup>. It supported provisions of mentioned Law stating that culture and language of every significant national minority will be respected and included into curriculum as much as feasible, in compliance with Framework Convention of Protection of National Minorities. Basic stipulation of the Law that concerns for Roma population is that primary schooling is obligatory and cost-free, and this should imply, according to Roma Committee, further activities of society for provision of textbooks and class aides, transport to school, meal. In addition, the Roma Committee supported the provision for adult education, to be further developed in Entity legislation (Law Article 20), because most Roma adults are without any education whatsoever.

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<sup>8</sup> Encl: Rules of Procedure of the Roma Committee established with B-h council of Ministers and Framework Work Plan for 2002-2006.

<sup>9</sup> Encl: Framework Law on Primary and Secondary Education in B-H

Other than deliberations on system, long-term issues and participation at round tables on Framework Convention issues, the Roma Committee is also concerned with some concrete activities to solve issues and problems and to promote standing of Roma population in B-H society.

Important current Committee activity is development of 23 houses in the Tuzla Canton Lukavac Municipality with numerous Roma population. In the course of 2002, the Federal Ministry for Refugees, supported by the Federal Government, pledged and contracted delivery of construction material for building of 30 houses for Roma families in the Tuzla Canton, and material was delivered for seven houses, while the obligation for 23 houses deliveries was transferred to 2003. With the post-election change of authorities, and deteriorated conditions for funding, the Federal Ministry tried to evade the contracted obligation, so Roma Committee backed 23 Roma families in their demands and continues to exercise pressure on Federal Government and competent Ministry to living-up to their commitments.

This area also saw an incident with features of act of discrimination against national minorities. In town of Kiseljak in Tuzla Canton, a Roma family has for a considerable time tried to build a family home on their own private parcel. The area in question is a residential area with private houses of Bosniak nationality members, who attack physically and threaten this Roma family trying to divert it from its intention, and the sole reason for this being undesirability of Roma population in their area. The Committee urges the Tuzla Canton authorities to solve the problem, for which it received a written support from Minister for Human Rights and Refugees. The Roma Committee, supported by the Ministry for Human Rights and Refugees of B-H and Embassy of Hungary in B-H, arranged football match between Roma selection of B-H and Roma selection from Hungary, in October 2003, which marked beginning of creation of B-H Roma football selection as an association of Roma NGOs assuming the obligation of organisation and staffing.

Since the Republic of Hungary has very strong Roma organisations association, a visit of B-H Roma Committee to Republic of Hungary was agreed with aim at exchange of experiences and establishment of long-term cooperation with Hungarian Roma NGOs. New football match between B-H and Hungarian Roma selection was scheduled for mid 2004.

Constitutional and legal regulation of national minorities issues at Entity level – Federation of Bosnia and Herzegovina and Republika Srpska – is extremely important to gain a proper view of national minorities position in Bosnia and Herzegovina. In distribution of power, the two Entities have a high degree of autonomy in adoption of Constitution and Laws, as well as in exercise of executive and judicial authority and public services. BH institutions competences were defined under BH Constitution Article 3, and these are as follows: foreign policy, finances, constitutional and international obligations of B-H, immigration and asylum policy, international criminal legislation implementation, inter-Entity criminal legislation implementation, including relations with Interpol, establishment and operating joint and international communications, inter-Entity transport regulation and air transport control.

Further, BH Constitution is very precise in demarking competences of B-H institutions and those of Entities, by regulation that “all government functions and authorisations that are not explicitly allocated to B-H institutions, belong to Entities.”

Republika Srpska Constitution<sup>10</sup> is by far direct and explicit in respect to reference to “minorities”. Instead of term “others”, the RS Constitution Article 5 says that RS constitutional arrangement is based on the following:

- Guaranteeing and protection of human freedoms and rights pursuant to international standards;
- Ensuring of national equality;
- Social justice,
- Market economy;
- Multi-party political system;
- Parliamentary democracy and division of power,
- Free elections;
- Local self-administration;
- Protection of rights for ethnic groups and other minorities.

An important constitutional provision in respect to minorities’ position is the SR Constitution Article 31 chapter “Human rights and Freedoms” setting forth that “Political organisation and activity threatening democracy and integrity of Republika Srpska, violating freedoms and rights guaranteed by the Constitution, and igniting of national, racial or religious hatred is forbidden”.

Also, a crucial provision from the RS Constitution Article 10 in respect to national minorities’ position is as follows: “Republika Srpska citizens are equal in their freedoms, rights and obligations, they are equal before the law and are entitled to equal legal protection regardless of race, gender, language, national origin, religion, social religion, birth, education, material condition, political and other beliefs, social position and other personal characteristics”.

The RS Constitution Article 7 reaffirms the right of each and every member of national minorities to use freely without constraints their language, privately and publicly, in written or oral form, also in way that “in areas where other language groups exist, their language and letter are also in official use in way prescribed by the law.”

In Federation of B-H, the position of national minorities should now be viewed in light of Federation of B-H Constitution Preamble<sup>11</sup>, which reads that peoples and citizens of B-H are determined to ensure a full national equality, democratic relations and highest standards of “human rights and freedoms”, so other than constitutive peoples, the group of “others” is introduced, which is also an element to arrange relations within Federation of B-H. Also, human rights and freedoms chapter stipulates an “obligation to protection of minorities and potentially vulnerable groups”. Attention should be paid to Federation of B-H Constitution provisions concerning Ombudsman for Human Rights obligations to investigate, inter alia, cases of negation of human dignity, rights and freedoms, “including cases caused by ethnic expelling and maintaining its consequences.”

Entity Constitutions Amendments, which were necessary to adopt after the B-H Constitutional Court ruling<sup>12</sup> on constitutivity of all peoples in B-H equally thought its territory, regardless of their ethnic origin, were expected to bring about more explicit

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<sup>10</sup> Encl: Republika Srpska Constitution

<sup>11</sup> Encl: Federation of B-H Constitution

<sup>12</sup> Encl: B-H Constitutional Court Ruling

and comprehensive protection of national minorities, especially when in question participation of national minorities representatives in legislative and executive authorities at all levels. Entity Constitution Amendments, imposed by the High Representative, introduced significant changes in legislative and executive authorities in Entities, cantons and municipalities. Even though the B-H constitutional Court ruling concerned primarily the issue of constitutive peoples (Bosniaks, Serbs and Croats) in both Entities, Amendments<sup>13</sup> to Entity Constitution went even further to elaborate provisions on representation of peoples living in B-H. The group of “others”, i.e. mostly national minorities members benefited from the Constitutional Amendments, in formal-normative sense.

Note should be taken of the fact that the process of election of Federation of B-H president and vice-president, maintained discriminatory solutions, so both president and vice-president can be elected only from the constitutive peoples, and not from the group of “others”. Same applies for the election of president and vice-president of Parliament chambers of the Federation of B-H, and even for three Federal ombudsmen (one ombudsman from each constitutive people), rendering ombudsman position unavailable for citizens from the group of “others”, i.e. national minorities, despite their potential moral, expert and legal authority. Turning to legislative bodies of Entity Parliaments, a conclusion can be made that a strong protection mechanism was formed not only for vital interest of constitutive peoples, but nearly same mechanism is in place for protection of rights of “others”.

Constitutional amendments set forth that the Federation of B-H House of People is comprised of seventeen delegates from each constitutive people and seven delegates from national minorities. Number of “others” in Republika Srpska National Assembly Council of Peoples is four and eight for each of constitutive peoples. The “others” are set to have right to equally participate in majority vote proceedings. By this was of election of Entity parliaments chambers, in which decisions are taken on vital interests of constitutive peoples and “others” living in B-H, created for the first time conditions that Entity parliaments include at least seven, i.e. four delegates from national minorities or the group of “others”. Election Law and other regulations should govern the election of these delegates. Very interesting is a definition of vital national interests of constitutive peoples, provided for in Amendment XXXV as follows:

“Vital national interests of constitutive peoples are defined as follows:

- execution of rights of constitutive peoples to be appropriately represented in legislative, executive and judicial authorities;
- organisation of public authority bodies;
- equal decision-making rights of constitutive peoples;
- education, religion, language, culture, tradition and cultural heritage;
- territorial organisation;
- public information system,

and other issues to be treated as issues of vital national interest, if deemed so by 2/3 of delegates from single club of delegates of constitutive peoples in House of Peoples.”

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<sup>13</sup> Encl: Decision on Changes and Amendments of Constitution of Federation of B-H (“Official Gazette of FBH”, 16/02; 52/02); Decision on Changes and Amendments of Republika Srpska Constitution

In our opinion, and acknowledging complex decision-making procedure, the legislator, unfortunately, failed to admit the rights of national minorities to their “vital national interest”, at least in the area of education, religion, language, culture, tradition, and cultural heritage, which would be fully justifiable from the point of commitments Bosnia and Herzegovina assumed under the Framework Convention for the Protection of National Minorities.

Amendments to Entity Constitutions are provided for constitutive peoples representatives and national minorities representatives to be equally represented in a number of authorities (cantonal, municipal), pursuant to 1991 census until the full implementation of DPA Annex 7 on return of refugees to their pre-war homes. This is a proclaimed aim, which requires gradual implementation. Complexity of political situation in BH has been proven even with the first attempt at application of Amendment on election of delegates in the House of Peoples and Council of Peoples, because it failed to give satisfactory effects of October 2002 election results. In Republika Srpska Council of Peoples, other than “authentic” representatives of three constitutive peoples (Bosniaks, Serbs and Croats), four delegates were elected as follows: one Slovenian, one Ukrainian, one Jew and one “Yugoslav”.

It is beyond any doubt that Montenegrins, Ukrainians and Jews are national minorities in the sense of Law on Protection of National Minorities’ Rights Article 3, however, the situation with “Yugoslavs” is somewhat different. As category of “others”, they had possibility and were subjected to declaration during last census in 1991, in time of existence of common state, the Socialist Federal Republic of Yugoslavia. But, in no other occasion after the break-up of former Yugoslavia, in numerous polls and declarations of B-H citizens for various purposes, the term “Yugoslav” as national origin was not considerably often used, except in individual declarations. They are not mentioned as a legal category, therefore they - Yugoslavs – do not exist. That is why delegating a “Yugoslav” representative in the Council of Peoples can be considered as very questionable in sense of compliance with Constitutional provisions for election of representatives of “others” and office holding as such.

Even more drastic example of circumvention of constitutional position of the House of Peoples happened in early 2003 in Federation of B-H Parliament. Besides the fact that this House of Peoples does not have sufficient number of representatives of a certain constitutive people, but out of seven delegates non is coming from legally recognised national minorities in B-H. In Federal Parliament House of Peoples, the group of “others” is represented by one “Muslim” and six “Bosnians” – a category which did not exist even in 1991 census, and does not so under the Law on Protection of Minority Rights.

By this way of election of national minorities delegates in the House of Peoples, national minorities’ rights are obviously violated. In this concrete case, out of 11 seats reserved for the category of “others”, there are only three (in Republika Srpska National Assembly Council of Peoples) form the category of national minorities for which these seats were reserved in fact. Practically, drastically deprived is Roma national minority as the most numerous one in B-H, which was expected to delegate its representative into the Federal Parliament at first place, and then also in the Republika Srpska Parliament.

The provisions of the Council of Europe Framework Convention on the Protection of National Minorities Article 3, stipulating that: “Every member of national

minority has right to freely elect to be treated as such or not, and he/she will not be brought into predicament on the grounds of such determination of his/hers or execution of rights connected to this determination. National minorities members can, individually or in association with others, enjoy rights and freedoms originating from the principles guaranteed under the Framework Convention.”

The above provision guarantees every member of national minorities freedom to decide whether or not he/she would be treated as such. Every person has right to choose to be subject o protection stemming from the Framework Convention principles. However, this provision does not imply the right of individual to decide simply whether or not he/she belongs to a national minority (to be “Bosnian” or “Yugoslav”). Subjective attitude of an individual does not sufficiently concern objective criteria relevant for his/her identity. The objective criteria are, among others, ethnic, cultural, linguistic, or religious identity, i.e. everything that is a subject of protection under the Framework Convention or Law on Protection of National Minorities’ Rights in B-H Article 3.

The Council of Ministers is not provided with data on representation and employment of national minorities members in lower levels of authority, such as cantons and municipalities, but polls have shown that, except for Roma population, members of other national minorities are represented proportionately to their population percentage, and some of them (Montenegrins, Jews) even more. Only two members of Roma population hold the position of delegate in 167 local parliaments in B-H (one delegate in Tuzla Municipality, and other in Sarajevo Centre Municipality), while in cantonal parliaments they are not represented.

## Article 5

1. The Parties undertake to promote conditions necessary for persons belonging to national minorities to maintain and develop their culture and to preserve the essential elements of their identity, namely, their religion, language, traditions and cultural heritage.
2. **Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies and practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any act aimed at such assimilation.**

Rights from the domain of culture and cultural activities are constitutional responsibilities of the Entities, i.e. cantons in Federation of B-H, where Entity arranges and provides for “... education, culture and protection of cultural goods, and physical culture”.

The State-level intervention in the competences of Entities and cantons was made through the Law on Protection of National Minorities’ Rights, where it was determined that national minority members have right to establish libraries, video shops, culture centres, museums, archives, cultural, artistic and folklore organisations and all other freedoms of cultural expression, and take due care of maintenance of their cultural monuments and cultural heritage. Culture is the area with the most often engagement of NGOs, clubs, and associations of national minorities in B-H. It is the most often ways of maintaining the linkage with parent countries of national minorities.

In that sense it is worthwhile to mention an impressive and monumental bilingual Sreb-Ukrainian anthology of Ukrainian poetry from XVI to XX century titled “In

spite of Winds” published in early 2002 by Banjaluka–based Serbian-Ukrainian Friendship Society from Republika Srpska, and translation and publishing of one of books of contemporary Ukrainian poet Viktor Kordun, by same publisher, in end 2003, by which the Ukrainian minority from Republika Sprska and B-H got an opportunity to connect with the parent country after a long time in sense of updating on its newest cultural developments. Both publishing efforts were financially supported not only by NGOs, but also by the RS Ministry of Education and Culture. Prnjavor Municipality, with the largest number of national minority groups, financially supports national minorities’ cultural institutions and organisations, including Cultural-Artistic Association “Taras Ševčenko” from Prnjavor, Cultural-Artistic Association “Ivan Franko” and NGO “World of Culure” from Potočani, near Prnajvor, and partially Ethnographic Museum of the Ukrainian National Minority, as sole institution of that kind in B-H. Even though the Ukrainian national minority is richest elements of spiritual, cultural, artistic and other expression of their national identity, Prnjavor Municipality also supports financially institutions and organisations of other national minorities, like Italian, Check etc. Similar attitude can be confirmed in case of Banjaluka Municipality, supporting the “Taras Ševčenko” Cultural-Artistic Association, which successfully continues twenty year long tradition, inherited from the ex-state. The same Association is no re-registered into NGO, thus expanding its scope of activities to include already mentioned publishing activities, so it has published third volume of its periodical addressing the issues of relevance to the Ukrainian national minority. Similar cultural activities are organised among other national minorities, primarily NGO “B-H Albanian Community”, and Check Association in B-H “Češka Beseda”, Association of Slovenians in RS and in Federation of B-H, which organised very successful exhibitions, poetry evenings, concert and other performances in Sarajevo and Banjaluka. Each of ethnic minority communities in B-H, having an organised form of association (NGO, Association, Club) includes the cultural element of tis activity. Particulary active in this area are Tuzla and Banjaluka areas. The city of Banjaluka financially supported Roma, Check, Jewish, Ukrainian and Slovenian associations with KM 50,000, among them a special mention should be made of “Club 15-100” cherishing a multiethnic approach, organising joint workshops, chess tournaments, cultural manifestations, picnics and holiday celebrations. The city of Banajluka granted to this Association premises and semi-annual subsistence in amount of KM 3,500. In addition, cultural activities of Slovenians were supported with KM 1,500, Check Association for “Češka Beseda” periodical with KM 500, and Cultral-Artistic association “Taras Ševčenko” with KM 9,000.

Other than support in cultural activities of associations of Italians, Checks and Slovenians, The Tuzla Canton paid special attention to Roma population. Namely, in the Tuzla Canton there are 115 locations with Roma inhabitants, and the projects applied for by “Patrin” Roma Union in B-H and implemented to date are: “We Have Right to Life”, “Save Roma Children”, and “Unique Roam Dictionary”.

The Ministry of Education, Science and Culture and Sport supported and provided for funds for publishing of Roma language dictionary, preparations for which are ongoing. Some activities of Roma associations, such as conferences and seminars, were supported by KM 500. The Ministry budgeted Km 4,000 for coordination and operation of Roma associations. A contract was signed with “Step by Step” Centre for Education Initiatives, which is the organisation that formed a pre-school department for Roam children in Kiseljak, near Tuzla. This

program projected new methods for work with Roma children and their parents. Roma children attended the class successfully and continued further through school. This Department enrolled 38 Roma children, and budget for this is KM 6,000. Upon the "Roma Dream" cantonal association, the Ministry of Health organised a medical examination of 410 Romas, by medical team of ten various specialists. They examined 90 children, and carried out 30 gynaecologist examinations were carried out, together with 21 ophthalmologic, 30 internist, 28 neuropsychiatric examinations and the rest was carried out by general practitioners.

#### Article 6

1. The parties shall encourage the spirit of tolerance and intercultral dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic and religious identity, in particular in the fields of education, culture and media.
2. **The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic and religious identity.**

Under its Constitution (Article 2.2) Bosnia and Herzegovina assumes obligation to cause that the international standards concerning rights and freedoms reaffirmed in the European Convention for Protection of Human Rights and Fundamental Freedoms and Protocols hereto are in direct application in Bosnia and Herzegovina. These act have priority over other legislation. This general principle is further developed in B-H Constitution Article 6 setting forth the responsibility of state of Bosnia and Herzegovina to ensure that its courts, institutions and other authorities directly managed by Entities or operating within the Entities apply human rights and fundamental freedoms pointed at in this general principle. Entity Constitutions also contain measures to protect persons threatened or discriminated against ethnic, cultural, linguistic or religious identity.

NGOs addressing to the Ministry made no objections to the freedoms envisaged in the Framework Convention, but also no special inter-cultural dialogue incentives or mutual confidence-building measures arrived from the B-H level authorities. The reason for this can be found in the B-H level authorities competences and legislation activities priorities, in terms of post-war legal framework development. Entity regulations form the area of culture, copy rights and similar rights are assumed from ex-Socialist republic of Bosnia and Herzegovina, and therefore they are yet to be harmonised with new constitutional and legal system.

Several Roma associations ("Sar E Roma", "Romano Lil") organised seminars on constitutional position of Roma in B-H and Law on Protection of National Minorities' Rights. Also, initiating a publication "Walk by My Side" can be treated as a contribution to dialogue and further acquainting with national minorities issues. The publication was initialled by "Be My Friend" NGO, though special OSCE- funded "Strengthening of Roma Associations" Project.

#### Article 7



**“The Parties shall ensure respect for every person belonging to a national minority to freedom and peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion”.**

Freedom of peaceful assembly and freedom of association is one of fundamental freedoms guaranteed by B-H Constitution. This fundamental right – freedom of association – is regulated by the B-H Law on Associations and Foundations<sup>20</sup> (“Official Gazette of BH”, 32/01) and appropriate Entity laws. The Law provides for very liberal conditions for establishment of associations and foundations. The Law proscribes at least three legal and physical persons or their combination as sufficient number of persons for voluntary association for achievement of joint interest or public interest, but without intention at profit-making to register the association. The Association activity can be any purpose in line with the B-H Constitution and laws. Association independently determines its goals and objectives, and the only limitation is in the provision that programme and activities of the association or foundation cannot be contrary to BH Constitutional order or directed towards its forcible violation or spreading of national, race and religious hatred or law-forbidden discrimination. General provisions concerning associations and foundations equally pertain to all in B-H, not only national minorities. The law also provides for a possibility for an association to gain a status of association of general public interest if its activity exceeds interests of its members only and if it is intended for general public interest of parts thereof, like: health care, science, social welfare, civic society, human rights and minority rights, support to the poor or socially deprived, assistance to disabled persons, children and elders, environmental protection, tolerance, culture, amateur sports, religious freedoms and aid to disaster survivors. The status of association of public interest is determined by Ministry of Civil Affairs of B-H. A registered association of public interest can enjoy tax, customs and other relieves.

B-H national minority members used BH and Entity laws on associations and foundations provisions to register their associations as NGOs. This is the only way of association of national minorities members thus far, save for Roma population, which also organised a political party. The fact is that none among these associations applied for status of association of public interest under the Law Article 13, even though majority are likely to meet criteria as they promote “human and minority rights”.

Among minority groups, Montenegrins, Slovaks, Russians, Russines, Romanians, Turks and Germans do not have formed associations or any other form of gathering of their minority group.

#### Article 8

**“The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations”.**

The constitution of Bosnia and Herzegovina guarantees as a fundamental human right “freedom of thought, conscience and religion”. Numerous churches and religious communities have for centuries worked freely throughout Bosnia and Herzegovina’s territory. In B-H there is no official, state religion, i.e. there is no single religion, but

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<sup>20</sup> Encl: BH Law on Associations and Foundations

several, because, in essence every constitutive people's vast majority belong to one among three major of confessions in B-H: Bosniaks to Islam; Serbs to Orthodoxy; Croats to Catholicism, while national minorities belong to either major religions or smaller religious communities. So, Jewish national minority belongs to Hebrew religion, Ukrainian and Polish national minority group belong in part to Greek-catholic church (Uniate), and among Hungarian, German, Slovak, Check, Slovenians and others there is a large number of protestant denominations and religious communities, like Adventists, Jehov witnesses, Lutherans, Christian reformists, sects etc. On the other side, majority of Albanians living In B-H are of Islam religion, like Roma populations in Federation of B-H, even though in latter case their religious identification is not strongly emphasised. Roma living in RS partially belong to Orthodox Religion, but they do not observe tradition and rites. Majority of Macedonians, as well as a part of Ukrainians, Russians, Rusins, Romanians and Montenegrins belong to Orthodox religion.

Bosnia and Herzegovina regulated this are by the Law on freedom of religion and legal position of churches and religious communities in B-H.<sup>21</sup> This Law was adopted in December 2003, and due to harmonisation procedures between the BH Parliament House of Peoples and House of representatives, it is not published and has no legal effect as yet.

This Law guarantees to every man right to freedom of conscious and religion, in compliance with Constitution and highest human rights standards consisted in international declarations and conventions on freedom of conscious and religion.

In normative framework design, which arranged the legal side of the context for freedom of religion and legal position of churches and religious communities, the starting point was respect for own heritage and traditional values of tolerance and co-existence in centuries old multi-religious character of Bosnia and Herzegovina. In that sense., some of provisions of the new Law on freedom of religion and legal position of churches and religious communities in B-H, if not read carefully and understood critically, might mislead those without sufficient knowledge and understanding of complex confessional B-H tissue to wrong conclusion that the four traditional and oldest, and some of them largest, religious communities in B-H are in privileged position in relation to the so-called small or new religious communities, which include respectable number of national minorities members. However, the Law forbids any discrimination against religion and conviction, every exclusion, limitation, preference, exemption or any other difference making based o religion or conviction, with the aim to reach, directly or indirectly, deliberately or non-deliberately elimination and decrease of equal execution of human rights and fundamental freedoms in civic, political, economic, social and cultural rights. Freedom of enjoyment and confession of faith is absolutely guaranteed and provided for and any discrimination against religion or other conviction is forbidden. This freedom of religion or conviction includes the right of every person or church or religious community to express own religion or conviction, individually, or collectively with others, publicly or privately. The Law also regulates the legal position of churches and religious communities. Churches and religions communities have a status of legal person. The Law reaffirmed the capacity of legal person to historically organised churches and religious communities: Islamic Community of B-H, Serbian Orthodox Church, Catholic Church and Jewish Community of B-H, as well as all other churches and religious communities with recognised capacity of legal person before this Law took effect.

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<sup>21</sup> Encl: Law on Freedom of religion and legal Position of Churches and Other Religious Communities in B-H

The Law also sets forth that churches and religious communities can enjoy benefits and privileges derived from such status, which are typical of non-profit organisations. Entitlement to benefits and privileges of churches and religious communities and to acquiring and disposal of property is conditioned upon the legal person status of churches or religious communities, i.e. proper registration into a register run by Ministry of Justice of B-H. Inclusion into register is necessary for acquiring the status of legal person (by church or religious community), but not for freedom of confession of faith or conviction. The provision that everybody has right to freedom of faith and conviction, including freedom of free public confession, or non-confession of faith, is not conditioned upon by anything. In the same way, everybody has right to accept or change faith and freedom to individually or collectively, publicly or privately, express in any way his/her religious feelings and convictions by carrying out rites, conduction and compliance with religious rules, observance of religious customs and carrying out other religious activities. The abovementioned right to freedom of faith and conviction, and legal position of church and religious communities belong to all citizens of B-H no matter if they belong to constitutive peoples (Bosniaks, Croats, Serbs) or they are members of one of seventeen minority communities, as identified under the Law on Protection of National Minorities' Rights in B-H. Administrative or other barriers to expression of faith or conviction and right to establish religious institution, organisations or associations in B-H were not registered to have been met by national minorities associations. Incidents involving attacks against religious buildings and religious officials in B-H from the end of tragic conflict (1995) to date were registered in large numbers in all areas and these relate to attacks against buildings and officials of Islamic Community, Serbian Orthodox Church, Catholic Church, and Jewish Community. No incidents involving other religious communities were registered, except for attack against Hare-Krishna in Sarajevo in 1998-1999. Attacks against Islamic religious community, Serbian Orthodox Church and Catholic Church can be certainly attributed to state of affairs in post-conflict relations between the three constitutive peoples (Bosniaks, Serbs and Croats) and a continuation of intolerance in the peace implementation process.

Attacks against Jewish religious and cultural buildings and is more difficult to explain. It is hard to say without thorough research whether it is about a broader context of anti-Semitism still present worldwide, or it is just a reflection of a conflict of Israel with Arab (Muslim) countries, or maybe causes should be looked for in something third, typical of Bosnia and Herzegovina and ex-Yugoslavia.

Normalisation of life, return of refugees, strengthening and professional improvement of police forces and courts have certainly decreased number of incidents and raised the level of inter-religious tolerance, as one of salient features of both Bosnia and Herzegovina and ex-Yugoslavia.

#### Article 9

- 1. The parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. Parties shall ensure within the framework of their legal systems., that persons belonging to a national minority are not discriminated against in their access to media.**

2. **Paragraph 1 shall not prevent Parties from requiring and licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.**
3. **The Parties shall not hinder the creation and use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.**
4. **In the framework of their legal system, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.**

The human rights and fundamental freedoms part of B-H Constitution provides for “Rights List”, and it mentioned under item h) “Freedom of expression” which is secured to all persons without discrimination on any grounds such as gender, race, colour, language, religion, political and other opinion, national and social origin, affiliation with national minority, property, birth and other status. These basic freedoms imply an absolute freedom in receiving and providing of information. The B-H Law on National Minorities’ Rights paid appropriate attention to information of minorities (Article 15 and 16). Member of national minorities in BH have right to establish Radio and TV stations, issue papers and information heralds in their languages. Radio and TV stations, founded by state of BH are obliged to provide for special programmes for national minorities members.

Radio and TV stations as public services are obliged to provide for special information programme at least one a week for national minorities in their language. Entities and cantons will define their obligations under Law Article 1, as per representation of national minorities in their territory.

Also the Law on Basic Public Radio-TV Service and Public Radio-TV Service of B-H<sup>19</sup> (“Official Gazette of BH”, 13/02) in its provisions concerning the programme principles sets forth that “Public Broadcasters programmes will recognise national, regional, tradition, religious, cultural, linguistic and other features of constituent peoples and all citizens of B-H. Public Broadcasters Programme will also affirm cultural and other needs o national minorities in B-H”. Legal obligation to broadcast special programme for national minorities once a week is not complied with. General agreement of Radio BH 1, as a part of Public Radio-TV System, is received for radiocasting special programme for Roma population, but the realisation of this failed.

The Roma Ngo “Be my Friend” initialled in 2003, with support of international association (Open Society Find) an Informer within the “Strengthening of Roma Associations and Organisations” Project. It is a magazine titled “Walk by My Side”, intended for promotion of Roma associations and organisations and topics do interest for Roma population. Although with modest number of copies (500), it is esteemed to have significance among Roma population.

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<sup>19</sup> Encl: Law on Basis of Public radio-TV Service

Other three magazines are published by Check Association - magazine "Češka Beseda", Ukrainian Association - magazine "Taras Ševčenko", and by the NGO "World of Culture" -magazine "Visnik".

#### Article 10

- 1. The Parties oblige to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.**
- 2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relation between those persons and the administrative authorities.**
- 3. The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons of his or her arrest, and of nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of interpreter.**

The B-H Constitution does not define which language(s) are officially used in BH. The BH Constitution Preamble refers to the principles to observe, and stipulates, inter alia, as follows: "...Inspired by the Universal declaration on human rights, international pacts on civic and political rights, and on economic, social and cultural rights, and Declaration on rights of persons belonging to national, ethnic, religious or linguistic minorities, as well as other human rights instruments..." "This implies that Bosnia and Herzegovina in its constitutional arrangement and legal regulations should accept and provide for proper implementation of all international contracts referring to languages of minorities members."

The Entity Constitutions regulated as follows: Official languages in Federation of B-H are: Bosnian language, Croat language and Serb language. Official letters are Latin and Cyrillic letters. Other languages might be in use as communication and education tool"<sup>18</sup>. The identical provision is incorporated into Republika Sprska Constitution. In normative-legal sense, minority languages and use of language are regulated by the Law on Protection of Minorities Articles 11 and 12. These core provisions are directed towards unconditional recognition of right to every member of national minorities in B-H to freely use his/her language and letter, in private or in public, orally and in writing.

The other form of regulation of use of language is the situation in towns and municipalities where minority members represent absolute or relative majority of population. In these situations, the authorities are obliged to ensure that minority language is used between minority members and authority representatives. Also titles of institutions should be written in minority language, including local names of streets and other topographic marks. The Law provided for right to towns and municipalities to regulate under their statutes this right also to national minorities that

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<sup>18</sup> Amandmenet XXXIX of Federation of BH Cosntitution

do not make for absolute or relative majority in a town or municipality, if they number more than one third of population.

Specific post-war political climate in B-H in respect to relations between three constitutive peoples (Bosniaks, Croats and Serbs) and use of official languages (Croat, Serb and Bosnian languages) drew attention of authorities and organised minorities representatives from the execution of this right on the part of national minorities in implementation of Framework Convention and Laws in respect to use of language. Considering deficiencies related to lack of census and identification of towns and municipalities where quoted Law provisions might be applicable, no national minority applied in that sense. Requests in respect to minority languages pertained only to education, in terms of providing for additional classes of minority languages, which was mentioned above in the part concerning education.

Requests of national minorities for use of language in public sector services, social and health care institutions and other institutions were not noted.

The B-H Criminal Procedure Code ("Official Gazette of BH", 3/03) Article 8 provides for protection of participants in court proceeding in sense that they have right to use their language. If person does not understand one of official BH languages (Bosnian, Croat or Serb) it is mandatory to secure interpretation of both oral and written forms. The court is also obliged to instruct the person on this right and register it before the hearing procedure.

#### Article 11

- 1. The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.**
- 2. The Parties undertake to recognise that every person belonging to a national minority has the right to display his or her minority language signs, inscriptions and other information of a private nature visible to the public.**
- 3. In the areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indicators intended for the public also in the minority language when there is a sufficient demand for such information.**

Other than guarantees from Constitution, undertaken from the Framework Convention as a constituent part of BH Constitution, the obligations stemming from this Convention Article are specially highlighted in the Law on Protection of National Minorities' Rights ("Official Gazette of BH", 12/2003). The right of a national minorities member to use his name and surname in minority language and to seek its official usage as such is not challenged. In the practice of giving and using of names in minority languages no complaints were registered. Legal regulation of the matter is on Entities, and implementation is on municipal registration offices.

The Law on Protection of National Minorities' Rights also regulated that in towns and municipalities where minority members represent absolute or relative majority of population authorities are obliged to ensure that minority language is used between

minority members and authority representatives; titles of institutions should be written in minority language, including local names of streets and other topographic marks for the public. The Law provided for right to towns and municipalities to regulate under their statutes this right in cases when national minority represent more than one third of population.

Considering the number of national minorities communities in B-H, no such demands were received by municipalities. This legal provision might be implemented after the census and identification of numbers in some municipalities and inhabited places, where appropriate, but in towns, no national minority account for relative majority.

## Article 12

- 1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.**
- 2. In this context, Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.**
- 3. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.**

Understanding the right to education as one of basic human rights, BH authorities paid particular attention to this issue in its legislation development activities. Modest scope of regulation of the issue in the Framework Law on Primary and Secondary Education in BH can be explained by restrictive constitutional competence of state level for this matter and by simultaneous demand for linking three different education systems/curriculum developed in B-H over the period of tragic conflict in BH. The Law on Protection of National Minorities, as a special law (on minority rights) to regulate minorities rights in education respected the constitutional competence of Entities, and therefore it restricted its provisions to determine the basic rights of minorities which have to be recognised in the education process, and ways of carrying out their rights is also to be regulated by Entity regulations. Entities and cantons in Federation of BH give right and possibility to national minorities members to establish and maintain their own private institutions for education and professional training, to be financed by themselves. Education institutions (schools) established as such, provided that sufficient interest and financial resources exist, have right that their diplomas and graduation certificates are recognised and verified in the education and employment system.

The next important right and obligation on the part of Entities and cantons in Federation of BH (cantons, because education is originally competence of cantons as territorial unit in Federation of BH) is to, within its education programme (pre-school, primary and secondary school), provide for education in minority language in towns, municipalities and communities where minorities account for absolute or relative majority. Regardless of number of national minorities, Entities and cantons are obliged to provide for education in their language, culture, literature and history, if demanded, as additional education. Quality of this provision, in this additional right, is that authorities are obliged to provide for teachers, financial resources, premises and textbooks. As the Law on Protection of National Minorities' Rights took effect on May 14,2003, they are yet to be worked out in cantons and municipalities, but the real

effect is not expected before the census of population takes place, and interest and requirements in this respect are identified. Entity and cantonal education laws have not properly elaborated these rights.

Basic Entity Laws on Primary, Secondary and High Education treat quite scarcely needs of national minorities. The Law on Primary Schools<sup>14</sup> Article 4 regulate that “when school has in same class at least 15 pupils – members of national minority, whose language is not mentioned in this Article (Bosniak, Serb or Croat), teaching for them is carried out in their native language”. Interestingly, this Law also relates to violation of obligations on the part of pupils, like “expression of national or religious intolerance”. Federation of BH has ten cantonal laws on pre-school education, ten laws on primary schools, ten laws on secondary schools and five laws on universities, but as all these laws are identical, Sarajevo Canton regulations can be used as reference<sup>14</sup>. Cantonal education laws do not contain provisions relating to minority rights in this matter.

Execution of national minorities rights in this area set forth by laws of BH state level, entities and cantons can be viewed from two segments: execution of education rights of Roma population and execution of education rights of national minorities that are, conditionally speaking, integrated into economic, social cultural an other structures of society. National minorities members execute this right primarily though organising additional classes for children in native language. Connecting with diplomatic representatives and NGO of parent countries helps this function to be successfully implemented, but this is also organised within NGO association and clubs of economically independent minorities (Slovaks, Jews, Hungarians). Members of national minorities gathered in the National Minorities Alliance of RS (Checks, Italians, Jews, Macedonians, Roma, Slovenians and Ukrainians) pointed their requests for education of minorities children through additional curriculum and plans, with a concrete measures proposed as follows:

- introduction of additional lessons for national minorities pupils with two classes a week;
- in additional classes, pupils would learn their native language;
- other than language, they would learn history and culture of the people;
- teacher has to be of specific national minority origin, with at least BA degree;
- there have to be at least 5 pupils for additional lessons;
- attending the lessons is obligatory for those who registered to it;
- appropriate textbooks and aides must be provided for lessons;
- transport of pupils, if they come form other schools must be provided for.

A dialogue was opened on this issue with representatives of RS Ministry of Education and Culture, and RS Education Bureau, together with diplomatic missions representatives, in order to see to it that appropriate aides are provided for lessons. There are no similar activities in federation of BH.

Roma population position in BH is somewhat different, as is correctly noted by various international organisations included into DPA implementation and dealing with Roma issues. Also BH Ministry for Human Rights and Refugees, together with representatives of Entity Governments included into the Roma Board paid due attention to Roam education isse, within its Framewrok Work Plan for 2002-2006.

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<sup>14</sup> Encl: Law on Primary Schools in RS

<sup>14</sup> Encl: Law on Primary scools in cantons (Sarajevo Canton, Herzegovina-Neretva Canton)



Understanding the seriousness of the problem, OSCE Mission in BH, supported by BH Ministry of Human Rights and Refugees and Entity Education Ministries, formed a special group for educational needs of national minorities and Roma, comprised of relevant authorities representatives and expert institutions, NGOs members and representation sample of schools in areas with Roma population.<sup>16</sup> The Group is responsible to within OSCE-led<sup>15</sup> education reform in BH in 2002 make broad research in order to arrive at “Recommendation of Education Needs for Roma Population”. October 2003 Draft document is currently in the process of final consultations with Entity institutions and relevant NGOs, and it should be adopted by Entity Governments and Council of Ministers so as to include all subjects in the chain of decision-making and law implementation. Draft recommendations is included into the fundamental document “Education reform” by civil forum of BH<sup>17</sup>, signed and publicly represented at Peace Implementation Council on November 21, 2002 in Brussels by BH Ministers of Education.

The essence of “Recommendations for Roma Education in BH” is based on the following:

- ensuring that all children have right to complete elementary education;
- ensuring that all national minorities children, especially Roma children, are included into education system throughout BH;
- ensuring that national minorities, especially Roma population, define their needs and that they are supported by broader community in assessing of requirements for successful education;
- developing flexible plan of implementation covering national minorities children (especially Roma) dealing with education issues in terms of financing, transport etc.

Legal basis for the “recommendations” is identified in Framework Law on Primary and Secondary Education in BH (“Official Gazette of B-H”, 18/03) in its following provisions:

- “every child has equal right of accession and equal opportunities of participation in appropriate education, without discrimination on any basis” (Article 49);
- “equal accession and equal opportunities imply provision of equal conditions for all, for beginning and continuation of education” (Article 4);
- “language and culture of every significant minority in BH will be respected and included into schools as much as possible, in accordance with Framework Convention on Protection National Minorities Rights” (Article 8).

Exact statistics on coverage of Roma children by primary education does not exist in BH. As with the uncertainty about number of Roma living in BH, with more certainty we can say that about 80% of Roma children do not attend schools. Roma and other NGOs data, as well as mentioned report and recommendations by Council of Europe consultant Aleksandra Raykova’s recommendations for OSCE and UNICEF, support this estimation.

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<sup>16</sup> Encl: Recommendation of Education Needs of Roma Population

<sup>15</sup> Encl: Work Group review on education and non-discrimination

<sup>17</sup> Encl: Education Reform

## Article 16

**The Parties shall refrain from measures which alter the propositions to population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present Framework Convention.**

Draft recommendations identified relevant authorities in charge of meeting related political and legal obligations (Ministry for Human Rights and Refugees, Ministry of Civil Affairs, Entity and cantonal education ministries, education bureaus and school institutes.)

Bosnia and Herzegovina is a very specific in the respect of obligations that are subject of this article of the Framework Convention. Tragic conflict in the period from 1992-1995 caused difficult consequences. Over two million of its citizens become refugees out of Bosnia and Herzegovina and displaced persons within the country. Many people were expelled and many of them escaped the war chaos abandoning their homes. This has been explained more in introductory remarks of this Report.

Creators of the Bosnia and Herzegovina Constitution in the chapter "Human Rights and Basic Freedoms" found necessary to put in Article II paragraph 5 special provision on refugees and displaced persons. It is determined that "all refugees and displaced persons have a right on free return to their homes". They have a right, in accordance to Annex 7 of the General Framework Agreement, to reclaim their property they were left without during the conflict since 1991 and to compensate their property, which can not be returned to them. All obligations or statements related to such property, which are given under pressure are null and void.

Annex 7 of the General Framework Agreement guaranteed the freedom of movement and freedom to choose the place for living. It also gave a clear dimension of measures and ways of return of refugees and displaced persons in their pre-war homes.

Implementation of the Annex 7 is a key issue of the DPA where local authorities and international community have been engaged in the last period. The return of refugees have been monitored through the property laws implementation, i.e. reclaim the property to the owners who abandoned it during the tragic conflict. This methodology was determined by OHR, UNHCR, OSCE and local authorities.

According to this methodology situation of the repossessed property at the end of 2003 is following:

Since the population of returnees is not monitored according to their nationality it could be assumed that the return of national minorities is related to their participation in population of pre-war Bosnia and Herzegovina.

After the census or other form of research it will be possible to observe changes in in the minority population in each city, municipality and other places in Bosnia and Herzegovina

#### Article 17

1. *The Parties undertake not to interfere to right of persons belonging to national minorities to establish and maintain free and peaceful contact across frontiers with persons lawfully staying in other states, in particular those which whom they share an ethic, cultural, linguistic or religious identity, or a common cultural heritage.*
2. *The Parties undertake not to interfere to right of persons belonging to national minorities to participate in the activities of NGOs, both at the national and international levels.*

The Council of Ministers, entity governments and other authorities did not adopt or undertake any restrictive measures regarding the cooperation or contact of the members of national minorities or their associations with other countries, i.e. those who share same characteristics. The authorities have specially welcomed and stimulated participation in nongovernmental organizations, within the country as well as on international plan, which has been elaborated more in the above text.

#### Article 18

1. *The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other states. In particular neighbouring states, in order to ensure the protection of persons belonging to national minorities concerned.*
2. **Where relevant, the Parties shall take measures to encourage transfrontier cooperation.**

Since Bosnia and Herzegovina has (recognizes) 17 minority communities, out of which 15 have, conditionally their parent countries, it is very much interested in signing bilateral and multilateral agreements with other countries on the protection of national minorities. No initiatives were addressed to BH for conclusion of contracts for these areas. BH raised initiative towards the Republic of Slovenia and conclusion of contract for protection of minority rights of Slovenians in BH and Bosniaks, Croats and Serbs in Republic of Slovenia, but is still waiting for its implementation.