



UPR Submission

Bosnia and Herzegovina

March 2014

This submission highlights Human Rights Watch's concerns in Bosnia and Herzegovina (BiH), including with respect to progress or lack thereof since the first UPR BiH underwent in 2009. Outstanding concerns include ethnic and religious discrimination in the political system; impediments to returns of refugees and internally displaced persons (IDPs); obstacles to fair and effective war crimes trials before cantonal and district courts; inadequate safeguards in national security expulsions; and impediments to freedom of assembly and expression.

1. Ethnic and Religious Discrimination in the Political System

During the previous UPR in 2010, BiH had accepted to implement recommendations "to eliminate discriminatory provisions from the Constitution (...)," to "move forward with constitutional reform, giving all peoples the equal right to run for elected office and the equal right to participation in the political system," and to "amend the Constitution and election laws to permit the members of communities other than the Bosniaks, Serbs and Croats to run for the Presidency or become members of the House of Peoples." However to date, the government of BiH has failed to take necessary steps to bring its constitution and electoral law in compliance with the 2009 European Court of Human Rights (ECtHR) ruling on *Sejdic and Finci v Bosnia and Herzegovina* and remove ethnic discrimination for representation in the institutions of BiH for persons who do not belong to one of the three "constituent peoples" (Bosnian Muslims, Croats, and Serbs). No concrete amendments to the constitution or the electoral law have been made to eliminate the discriminatory effect for persons not belonging to one of the three constituent peoples to work in public institutions. The failure by the BiH government to meet several EU deadlines on constitutional and electoral reforms risks meeting with non-recognition of the upcoming October 2014 elections and impedes advancement of BiH's EU membership application process. Despite EU efforts to facilitate an agreement, the BiH government in October 2013 failed to find a solution to the implementation of the *Sejdic and Finci* ruling, causing a loss of substantial pre-accession assistance, further hampering the country's EU aspirations.

As described in the April 2012 Human Rights Watch report "[Second Class Citizens](#)", the constitutions of the Federation and Republika Srpska mandate ethnic quotas for employment in public institutions. These quotas are currently still based on population estimates from the 1991 census.

The 1991 census undercounted Roma and other national minorities, with the result that they are disproportionately excluded from civil service positions.

The allocation of seats in municipal governments in the election law also depends on census data, with each national minority designated seats in any municipality government where it makes up at least 3 percent of the municipal population. Because, up until 2013, there had not been a census since 1991, and in light of the subsequent population shifts resulting from the war and other factors, the data used to determine where national minorities should have designated seats is grossly inaccurate. Similarly, some provisions of the entity constitutions mandate that positions in public institutions be distributed in proportion with the ethnic makeup of the population.

In this context, the October 2013 census that aimed to address the grossly inaccurate population data could be a positive development. Preliminary results of the census from November 2013 indicated a population decrease. Final results will not be available until the end of 2014.

The Government of Bosnia and Herzegovina should be recommended to:

- Without delay amend the constitution to remove discrimination on the basis of ethnicity in politics and public employment in line with the European Court of Human Rights judgment in *Sejdic and Finci v Bosnia and Herzegovina*;
- Amend the laws on national elections to ensure that Roma, Jews, and other national minorities can run for national and local public office on an equal basis with all other BiH citizens.

2. Discrimination against National Minorities, particularly Roma

During the previous UPR in 2010, BiH had accepted the recommendations “to strengthen the protection of persons against statelessness; and to adopt measures to guarantee universal birth registration under all circumstances, including for Roma children” and to “guarantee that the Roma ethnic minority has access to identity documentation, without mentioning their ethnic group.” Discrimination against Roma, Jews, and other national minorities affect their everyday lives, particularly in the case of Roma. Many Roma are still not on the national public registry that record births, deaths, and marriage, obstructing their access to public services. Roma continue to face problems accessing health care due to registration restrictions, have lower education enrollment than other groups, and face discrimination in employment. Many Roma, particularly refugees and internally displaced persons, including from Kosovo, remain in informal settlements, vulnerable to forced evictions.

During its previous UPR in 2010, BiH had accepted the recommendation to “take all steps necessary to remove ethnic segregation from schools, in order to encourage greater understanding among young people of different ethnicities” and to “combat racial and ethnic discrimination, in particular through programmes promoting tolerance in public education.” While the majority of Roma pupils in Mostar have been transferred to mainstream education programs, nine Roma children still remain in special education. The segregation of children, including Roma children, in schools for children with mental or intellectual disabilities in BiH remains a concern.

The Government of Bosnia and Herzegovina should be recommended to:

- Ensure that everyone in BiH can access public services, including health care and education, without discrimination, in particular, regardless of ethnicity, age, or employment status;
- Ensure that all Roma children have access to public schools on a non-discriminatory basis.

3. Refugees and Internally Displaced Persons

During its previous UPR in 2010, BiH had accepted the recommendations to “accelerate the sustainable return of refugees and internally displaced persons to their places of origin, by improving their reception conditions” and to “ensure the sustainable return of returnees to their home communities, by ensuring their

equal enjoyment of their social, economic and cultural rights, especially in the field of social protection, health care and education.”

Implementation of a 2010 strategy to support the return of refugees and IDPs to their pre-war homes remains slow. Although a housing project to promote return to pre-war communities was launched in April 2013, the number of such returns declined, with only 104 refugees and 96 IDPs returning to their areas of origin in the first half of 2013, according to the United Nations High Commissioner for Refugees (UNHCR).

As of October 2013, there were 103,353 registered IDPs in BiH. Lack of economic opportunities and lack of adequate housing (including access to electricity and water) continue to be the main impediments to returns. Political tensions and ethnic divisions in BiH make the climate for returns even less favorable. Access to health care, pensions, and welfare to returnees continues to be difficult.

Roma refugees in BiH, the majority of who come from Kosovo, remain vulnerable and dependent on periodic extensions of their temporary status.

The Government of Bosnia and Herzegovina should be recommended to:

- Provide adequate, safe housing for IDPs;
- Ensure access to health care, pensions, and livelihoods for returnees;
- Assist Roma refugees from Kosovo in obtaining necessary documentation and protected status.

4. Accountability for War Crimes

In 2013, the State Prosecutor’s Office signed a cooperation agreement on the prosecution of war crimes, crimes against humanity, and genocide with its counterparts in Serbia and Croatia that could help overcome impunity arising from non-extradition of nationals by facilitating prosecution in the country of citizenship.

In spite of having accepted during its previous UPR in 2010 the recommendation to “increase its efforts to fight impunity for war crimes,” “adopt further measures to provide victims of war crimes with effective remedies,” and “establish a comprehensive witness protection scheme for cases involving war crimes,” BiH has shown slow progress on war crimes prosecutions in State, cantonal, and district courts due to a backlog of cases, insufficient witness protection, and lack of harmonization of penal code versions used in war crimes trials. The implementation of the national war crimes strategy is slowed due to insufficient capacity and funding, particularly at the local level. Obstacles faced by local courts in their efforts to prosecute war crimes cases include: a lack of witness protection capabilities and witness support in most courts; insufficient staffing; a lack of harmonization of the legal codes used in war crimes trials at the state and entity levels; limited cooperation between prosecutors and police, as well as between police across entity lines; and a lack of trust between some victims and prosecutors, exacerbated by insufficient outreach.

In July 2013, the European Court of Human Rights ruled that in genocide and war crimes cases, defendants should be able to benefit from the criminal code of the former Yugoslavia, which offers more lenient sentences for these crimes than the state-level criminal code. By the end of 2013, the State Court began hearing cases that had been quashed by the Bosnian Constitutional Court following the European Court of Human Rights ruling, and ordered the release of a number of defendants pending retrial.

The Government of Bosnia and Herzegovina should be recommended to:

- Ensure that justice systems in the Federation and Republika Srpska are equipped with adequate, trained prosecutors, judges, and staff to fairly and efficiently process war crimes cases in cantonal and district courts within a reasonable time frame;
- Improve witness protection and support services within the entity justice systems;

- Harmonize the criminal code applied in war crimes cases and revisit verdicts as necessary to ensure the timely retrial of convicted war criminals in cases where the July 2013 European Court of Human Rights ruling applies.

5. **Revocation of citizenship and unlawful detention**

In 2005, as part of its counterterrorism policy, BiH established a special commission mandated to review decisions to grant citizenship by naturalization and to revoke BiH citizenship, but without fair hearings. To date, the commission has stripped at least 300 people of their BiH citizenship through hearings that have taken place in secret and where reasons for revocation were not given. Some of those affected have left BiH, some have been subject to deportation proceedings.

In addition, BiH passed a law in 2008 that allows for indefinite detention of non-citizens on national-security grounds. BiH authorities detained six men under the law in October 2008 and June 2009 of whom two remain in detention at this writing. None of the men has been charged with a crime and neither they nor their lawyers know the reason for their detention as evidence is secret.

In the case of one detainee, Imad Al Husin, a naturalized Bosnian held in indefinite detention since 2008 on suspicion of terrorism, the European Court of Human Rights in 2012 ordered Bosnian authorities to halt his deportation to Syria and either to charge him, find a safe third country to resettle him, or release him. Despite the court decision, Al Husin has at the time of writing not been charged with a crime or released and continues to be detained unlawfully. Zeyad Khalad Al Gertani, another foreign national security suspect from Iraq, also remains in detention without trial at the time of writing.

The Government of Bosnia and Herzegovina should be recommended to:

- Revoke the 2008 law permitting indefinite detention.
- Charge or release without delay any suspect detained under the 2008 law permitting indefinite detention, and to fulfill the ECtHR order to either charge, resettle to a safe third country, or release Imad Al Husin.
- Ensure that appeals by foreigners challenging their deportation have automatic suspensive effect on their deportation while their cases are decided.

6. **Freedom of Assembly**

Human Rights Watch documented nineteen cases of excessive use of force by police against protesters during street demonstrations and in detention during protests in Bosnia and Herzegovina between 5 and 9 February 2014. Protests, which began in Tuzla on 5 February, are against layoffs, unpaid salaries, and unduly high severance pay for high-ranking company officials following the privatization of several large companies in the town and quickly spread nationwide. Human Rights Watch documented six cases in Tuzla, five of them in the streets and one in detention. The other thirteen were in Sarajevo, eight in detention and five on the streets. The statements by witnesses show clear evidence of excessive force against protesters both on the streets and in detention. Victims include two women and three children.

The Government of Bosnia and Herzegovina should be recommended to:

- Hold to account any police officers involved in violence against protestors.

7. Media Freedom

During its previous UPR in 2010, BiH had accepted many recommendations pertaining to freedom of expression and protection of journalists, including to “intensify its efforts to ensure the full and unhindered exercise of the freedom of expression, particularly in the context of freedom of the press and the media” and to “systematically investigate aggression or threats against journalists and bring to justice those responsible.” In fact, threats and acts of intimidation by political and religious authorities have continued to impede the work of investigative journalists. The National Journalists Association recorded 44 violations of freedom of expression as of November 2013, including 3 physical assaults.

During protests in February 2014, journalists became victims of excessive use of force by police. Several journalists, interviewed by Human Rights Watch, said that they were victims of police abuse while covering demonstrations.

On 5 February, Branislav Pavicic, a cameraman who is an accredited journalist with RTV SLON, a local TV station, was beaten by a police officer while filming inside the Tuzla cantonal government building with his press card visible as demonstrators forced themselves into the building.

Edin Selvic, a 42-year-old accredited freelance journalist in Tuzla who is also a cameraman, said police used force against him as he tried to intervene when he saw older men manhandling a person who appeared to be a child, approximately 15 or 16 years old. Selvic said he was beaten repeatedly and his equipment was destroyed.

The Government of Bosnia and Herzegovina should be recommended to:

- Publicly and unequivocally condemn any attack or intimidation of media representatives, investigate such attacks, and bring those responsible to justice.

8. LGBT Rights

During its previous UPR in 2010, BiH had accepted important recommendations to “take the measures necessary to combat discrimination based on sexual orientation or gender identity” and to “express a strong commitment to protecting and advocating the fundamental human rights of members of the lesbian, gay, bisexual and transgender communities as equal citizens.”

However, discrimination, threats, and attacks against LGBT people and activists remain a concern. The Sarajevo Open Center—a lesbian, gay, bisexual, and transgender (LGBT) rights organization—documented 16 cases of hate crime and 18 cases of hate speech against LGBT people in 2013.

A violent attack interrupted the February 2014 Merlinka film festival in Sarajevo, organized by the Sarajevo Open Center. Police arrived late at the festival venue after the attack had taken place despite an agreement with the organizers that they would be present during the event.

The Government of Bosnia and Herzegovina should be recommended to:

- Publicly and unequivocally condemn any attack, verbal or physical, against LGBT groups and bring those responsible to justice.