



## **OSCE/ODIHR Submission of Information for the Universal Periodic Review Process**

### **Bosnia and Herzegovina, 20<sup>th</sup> Session, (Oct-Nov 2014)**

#### **Background**

Bosnia and Herzegovina is a participating State in the Organization for Security and Co-operation in Europe (OSCE) and has thus undertaken and reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE documents.<sup>1</sup> The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) has been mandated by OSCE participating States, including Bosnia and Herzegovina to assist them in implementing their human dimension commitments. OSCE/ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Bosnia and Herzegovina and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms.

#### **Overview of this Submission**

This submission contains references to the findings and recommendations issued from the Electoral Observation Mission to the General Elections of October 2010; recommendations contained in reports on legislative reviews conducted by ODIHR; the Annual Hate Crime Report compiled by ODIHR; and the Second Status Report on the implementation of the Action Plan for Improving the Situation of Roma and Sinti within the OSCE Area. Links to the full reports/reviews/opinions are provided in footnotes

#### **Election-related activities**

Following an invitation from the Central Election Commission (CEC) of Bosnia and Herzegovina (BiH), and based on the findings and conclusions of ODIHR's Needs Assessment Mission (NAM) conducted from 20 June to 2 July 2010, the OSCE/ODIHR deployed an Election Observation Mission (EOM) on 26 August to observe the 3 October general elections.

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<sup>1</sup> Compendium of OSCE Human Dimension Commitments, vol 1 and 2

The OSCE/ODIHR EOM was led by Ambassador Daan Everts and consisted of a 15-member core team, based in Sarajevo, and 20 long-term observers (LTO) throughout the country. Core team members and LTOs were drawn from 20 OSCE participating States. For election-day observation, a total of 307 short-term observers were deployed, including 237 OSCE/ODIHR short-term observers, a 39-member delegation from the OSCE Parliamentary Assembly (OSCE PA), a 26-member delegation from the Parliamentary Assembly of the Council of Europe (PACE) and a 5-member delegation from the NATO Parliamentary Assembly (NATO PA). In total, observers came from 39 OSCE participating States.

According to the mission's final report "*the 2010 elections were the second general elections to be fully administered by the BiH authorities. They were generally conducted in line with OSCE and Council of Europe commitments, but certain key areas require further action. While the legal framework provides a satisfactory basis for the conduct of democratic elections overall, it contains ethnicity-based limitations to the right to stand. This is in violation of the European Convention of Human Rights and a legally binding decision of the European Court of Human Rights (ECtHR), as well as OSCE commitments.*" The full report, together with its recommendations, is annexed.<sup>2</sup>

### **Legislation reviewed by ODIHR**

Upon request by authorities of an OSCE participating State, an OSCE field operation or another OSCE institution, the OSCE/ODIHR reviews draft or enacted legislation of OSCE participating States on topics relating to the human dimension of security for its conformity with OSCE commitments and other international standards. The legal reviews and opinions, often produced in co-operation with the Council of Europe's Commission for Democracy through Law (Venice Commission), are available at [www.legislationline.org](http://www.legislationline.org). Basic information about the constitutional system and human dimension-related legislation of the Federation of Bosnia and Herzegovina is available. In 2010-2013, the following legal opinions were issued:

*Joint OSCE/ODIHR-Venice Commission Opinion on the Act on Public Assembly of the Sarajevo Canton, adopted by the Venice Commission at its 83<sup>rd</sup> Plenary Session on 4 June 2010.*<sup>3</sup> This Opinion on the existing Act on Public Assembly of the Sarajevo Canton, requested by the Minister of Internal Affairs of the Canton of Sarajevo in March 2010, was prepared with the aim of assessing the current law and identifying tentative deficiencies that could be addressed in future reform efforts in this field. The Act, while enouncing correctly principles governing freedom of peaceful assembly, did not appear to reflect the presumption in favour of holding assemblies in the appropriate manner and presented a certain number of shortcomings. It was found that its implementation could result in the infringements of the fundamental right to peaceful assembly guaranteed by the Constitution of the Federation of Bosnia and Herzegovina and the European Convention of Human Rights. The Act regulates in much detail the conditions for exercising the constitutionally guaranteed right of assembly, especially where its exercise would pose no threat to public order and where necessity does not in fact demand state intervention. It was recommended to ensure that in principle, every public space be seen fit to host a peaceful assembly, discrimination between nationals and non-nationals in enjoying this right be abandoned, and to enshrine the principles of the presumption in favour of holding assemblies, of the state's duty to protect peaceful assembly

<sup>2</sup> <http://www.osce.org/odihhr/74612>

<sup>3</sup> [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)016-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)016-e)

and of the proportionality of state responses in the Act. It was further proposed to narrow down the reasons for banning or terminating assemblies to cases involving a threat to public safety or to clear and imminent danger of substantial disorder, and to ensure that the organizers are not held liable for damage and violations inflicted by others, especially if they made reasonable efforts to prevent them.

*Comments on the Law on Political Party Financing of Bosnia and Herzegovina (Opinion Nr.: POLIT-BiH/196/2011(LB), issued on 6 December 2011)*. These Comments were prepared based on the request by the OSCE Mission to Bosnia and Herzegovina in view of plans of the BiH authorities to revise this piece of legislation towards the end of 2011. The process of formulating amendments had commenced through the establishment of a working group in the country, which was tasked with revising this law. The opinion was officially presented and discussed at the roundtable attended by the legislature and the executive branch. However, the law adopted in November 2012 did not address a number of ODIHR recommendations. In the Comments, ODIHR noted that political party membership fees should constitute a part of the total contributions and should thus be included in the overall donation limit provided in this law. It was recommended to clearly and comprehensively outline what the public funding of political parties shall be used for, while explicitly stating that party leaders and members be prohibited from converting their public and private party funds into personal use. The possibility of receiving public funding should be extended also to parties that do not have seats in the parliament. It was further advised to introduce into the law specific penal provisions regulating applicable sanctions, to be imposed in accordance with the principle of proportionality. Moreover, it was recommended to consider extending the applicability of this law to all forms of political associations at the state level and to closely co-ordinate the revision of this law with other regulations on financing political activities, taking into consideration the particular constitutional setup of Bosnia and Herzegovina.

### **Tolerance and non-discrimination issues, including incidents of and responses to hate crime**

OSCE participating States have made a number of commitments to promote tolerance and non-discrimination and specifically to combat hate crime, and the OSCE/ODIHR supports states in their implementation of those commitments. In this context, the OSCE/ODIHR produces an annual report on hate crime – *Incidents and Responses* – to highlight the prevalence of hate crimes and good practices that participating States, inter-governmental organizations and civil society have adopted to tackle them. It also helps participating States to design and draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating States’ criminal justice systems and the law-enforcement officials, prosecutors and judges that staff them; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of civil society to monitor and report hate crimes.

The report relies mainly on information and statistics provided by governments, since such data collection is primarily the responsibility of states, as is the responsibility to respond to hate crimes. As of 2012, 55 of the 57 OSCE participating States had appointed National Points of Contact on Combating Hate Crimes, to support ODIHR in its task of serving “as a collection point for information and statistics collected by participating States”. The bulk of information for the report was gathered through the completion of an online questionnaire by National Points of Contact. The questionnaire for 2012 contained questions about the

following areas: data-collection methods; legislation; reported hate crime data; and policies and initiatives.

For the 2012 report<sup>4</sup>, the National Point of Contact from Bosnia and Herzegovina did not submit the questionnaire to ODIHR. Additionally, ODIHR sent requests for information on hate crime incidents in Bosnia and Herzegovina to inter-governmental organizations and to international and local non-governmental organizations. One organization reported two incidents of physical assaults against people related to biases against their sexual orientation. The OSCE Mission to Bosnia and Herzegovina reported 24 incidents against people related to biases against their ethnicity, two incidents against Roma, 18 incidents targeting Islamic symbols or sites, 24 incidents targeting Christian symbols or sites, and one physical assault against a gay man. Another participating State, the Holy See, reported for Bosnia and Herzegovina a physical assault against a nun, eleven incidents targeting Christian symbols, sites or property, and one case of threat against Christians.

### **Roma and Sinti issues**

The OSCE/ODIHR has a specific mandate to assist participating States in implementing the OSCE Action Plan for Improving the Situation of Roma and Sinti within the OSCE Area.<sup>5</sup> A second Status Report on implementation of the Action Plan was issued by ODIHR in 2013<sup>6</sup>. It contains findings and recommendations on areas such as Roma strategies, racism and discrimination, housing and living conditions, health care, unemployment, access to education, participation in public and political life, and post-crisis situations.

### **Country-specific ODIHR monitoring, assessment, co-operation and assistance activities (other than elections)**

#### *Bosnia and Herzegovina as a targeted jurisdiction of the War Crimes Justice Project Phases I and II*

In 2011, ODIHR completed the EU funded War Crimes Justice Project (WCJP) Phase I, in partnership with the International Criminal Tribunal for the former Yugoslavia (ICTY), the United Nations Interregional Crime and Justice Research Institute, and the OSCE field operations in the Western Balkans. The project aimed to enhance sustainable peace and security in the countries of the former Yugoslavia, including Bosnia and Herzegovina, to end impunity and deliver justice to victims of the 1990's conflict. Specifically, the project contributed to enhancing the capacity of institutions for prosecuting and adjudicating war crimes cases, facilitated exchange of experience between justice actors from the region and the ICTY; transferred relevant material from the ICTY to the region; and fostered regional cooperation between legal professionals.<sup>7</sup> The WCJP Phase II, launched in July 2012, further strengthened the institutional capacity of training institutions and other legal practitioners, through regional peer-to-peer meetings gathering justice actors from the entire region and targeted training based on expertise and curriculums developed under Phase I of the project.<sup>8</sup>

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<sup>4</sup> <http://tandis.odihhr.pl/hcr2012/>

<sup>5</sup> <http://www.osce.org/odihr/17554>

<sup>6</sup> <http://www.osce.org/odihr/107406>

<sup>7</sup> <http://www.osce.org/odihr/74803>

<sup>8</sup> <http://www.osce.org/odihr/108426>

Despite Bosnia and Herzegovina's efforts to tackle the important backlog of war crimes cases, including through the National War Crimes Strategy adopted in 2008, ODIHR prioritized its intervention to assist BiH justice sector actors to process the remaining war crimes cases in the country, amounting to over 1300 at the end of 2013. Hence, BiH's legal training academies, specialized courts, prosecutor's offices, lawyer community and court staff throughout the country (at state and entity levels) were involved in the project's in-country activities, while these institutions nominated representatives to attend all regional events. In 2013 alone, Bosnian representatives participated in four project activities, including one joint training for judges, prosecutors and defence counsel on trial advocacy skills in war crimes cases (in May in Sarajevo) and three regional peer-to-peer meetings for judges (in November in Sarajevo), defence counsel (in April in Podgorica) and witness support providers (in June in Skopje).

### **Other assessments and recommendations contained in ODIHR reports on thematic human issues**

In Bosnia and Herzegovina, ODIHR provided policy advice and assistance in building the capacities of democratic institutions to help them become more responsive, responsible to and representative of their citizens.

- In 2012, in the framework of the ODIHR project '*Strengthening Parliamentary Structures for Women in the OSCE Region*', Bosnia and Herzegovina took part in a survey aimed at identifying the present/past existence of dedicated parliamentary structures for women Members of Parliament. Five women Members of Parliament from Bosnia and Herzegovina, representing the national Parliamentary Assembly of Bosnia and Herzegovina (House of Peoples and House of Representatives).
- ODIHR's *A Comparative Study of Structures for Women MPs in the OSCE Region*, published in 2013, contains a case study on the women's caucus in Parliament of the Federation of Bosnia and Herzegovina, established in March 2013.
- ODIHR's publication *Background Study: Professional and Ethical Standards for Parliamentarians* contains a case study on the Parliamentary Assembly of Bosnia and Herzegovina's efforts to develop a code of conduct for parliamentarians. The case study highlights challenges in developing a code, including difficulties in establishing complaints procedures in line with domestic legislation and in achieving cross-party support for adoption of the code.
- The Human Rights Ombudsperson of Bosnia and Herzegovina participated in the Regional Expert Workshop on National Human Rights Institutions (NHRIs) and Gender Equality, held in Sarajevo in December 2012. The event brought together 25 NHRI experts from South-East Europe to discuss institutional efforts to protect and promote women's rights and gender equality, and share good practices as contained in ODIHR's *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality* (available at: <http://www.osce.org/odihr/97756>). The Office of the Human Rights Ombudsperson of Bosnia and Herzegovina also contributed to the development of the above study, by submitting a detailed survey response and contributing to a Workshop for NHRIs on Gender Equality, held in Prague in March 2011.