



**ALTERNATIVE REPORT  
ON THE IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE  
PROTECTION OF NATIONAL MINORITIES  
IN BOSNIA AND HERZEGOVINA  
SUBMITTED BY  
'Independent' – Institution for protection of human rights**

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## General Information

Bosnia and Herzegovina is substantive, sovereign, independent and democratic country, with parliamentary system of the governmental constitution.

Bosnia and Herzegovina has a total surface of 51.209,00 km<sup>2</sup>. It is located in the Balkan Peninsula, at north, west and southeast it borders on the Republic of Croatia, the Republic of Serbia and the Republic of Montenegro. Bosnia and Herzegovina has an exit to the Adriatic Sea 13 km of the coast line.

Population of Bosnia and Herzegovina is a multiethnic and multi-confessional. According to 1991 census, Bosnia and Herzegovina (BiH) had 4,377,033 inhabitants, and population consisted of Bosniaks (43,5%), Serbs (31,2%), Croats (17,4%), Yugoslavs 5,5% and Others (or unknown) (2,4%).<sup>1</sup> According to newer information (estimated population as per available statistical data in 2006) out of 3,816,785 inhabitants 48,3 % are Bosniacs, 34,0 % are Serbs, 15,4 % are Croats, and 2,3 % Others. The category of "others" includes members of national minorities, as well as those who do not wish to declare their ethnical affiliation.

There are 17 legally recognized national minorities<sup>2</sup> in BiH, of which Roma are the largest. It is estimated that there are between 30,000 to 60,000 Roma in the country. This figure was determined during a joint fact-finding project by the OSCE High Commissioner on National Minorities and the Council of Europe.

By signing of the Dayton Peace Agreement (DPA), Bosnia and Herzegovina has accepted the Constitution of BiH as the Annex IV to the DPA. According to this Constitution the state consists of the two Entities, the Federation of Bosnia and Herzegovina (organized in 10 Cantons) and the Republika Srpska (5 regions). There are 148 administrative units (municipalities or cities); 84 in Federation of BiH, 63 in Republika Srpska; and the Brčko District that has been established as a single administrative unit of local self-government with the special status (governed by the International Supervisor).

The official languages are Bosnian, Croatian and Serbian.

Sarajevo is the capital of Bosnia and Herzegovina. Population is around 500.000 citizens.

Bigger cities in Bosnia and Herzegovina are: Tuzla, Zenica, Banja Luka, Mostar and Doboj.

The power in Bosnia and Herzegovina is divided on Legislative, Juridical and Executive.

The Presidency of Bosnia and Herzegovina consists of three Members: one Bosniac and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of Republika Srpska. Chair of the presidency rotates every eight months, over the period of four years. Each member of the Presidency, by virtue of the office, has civilian

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<sup>1</sup> Data from Statistical bulletin no. 234, issue of National Statistical Agency of Republic of BiH.

<sup>2</sup> Namely: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks, and Ukrainians.

command authority over armed forces. All armed forces in Bosnia and Herzegovina operate consistently with the sovereignty and territorial integrity of Bosnia and Herzegovina.

The Presidency has responsibility for :

- a) Conducting the foreign policy of Bosnia and Herzegovina.
- b) Appointing ambassadors and other international representatives of Bosnia and Herzegovina, no more than two-thirds of who may be selected from the territory of the Federation.
- c) Representing Bosnia and Herzegovina in international and European organizations and institutions and seeking membership in such organizations and institutions of which Bosnia and Herzegovina is not a member.
- d) Conducting negotiations for concluding international agreements of Bosnia and Herzegovina, denouncing, and, with the consent of the Parliamentary Assembly, ratifying treaties of Bosnia and Herzegovina.
- e) Executing decisions of the Parliamentary Assembly.
- f) Proposing, upon the recommendation of the Council of Ministers, an annual budget to the Parliamentary Assembly.
- g) Reporting as requested, but not less than annually, to the Parliamentary Assembly on expenditures by the Presidency.
- h) Coordinating as necessary with international and nongovernmental organizations in Bosnia and Herzegovina.
- i) Performing such other functions as may be necessary to carry out its duties, as may be assigned to it by the Parliamentary Assembly, or as may be agreed by the Entities.

Decisions related to matters listed above from a) – e) above have to be reached by consensus. Otherwise, the dissenting Member of the Presidency may declare it destructive of a vital interest of the Entity from the territory from which he was elected.

The carrier of the Legislative power is the Parliamentary Assembly of Bosnia and Herzegovina that has two chambers: the House of Peoples and the House of Representatives.

The House of Peoples comprises of 15 Delegates, two-thirds from the Federation (including five Croats and five Bosniacs) and one-third from the Republika Srpska (five Serbs). The designated Croat and Bosniac Delegates from the Federation are selected, respectively, by the Croat and Bosniac Delegates to the House of Peoples of the Federation. Delegates from the Republika Srpska are selected by the National Assembly of the Republika Srpska. Nine members of the House of Peoples comprise a quorum, provided that at least three Bosniac, three Croat, and three Serb Delegates are present.

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. Members of the House of Representatives are directly elected from their Entity in accordance with an election law to be adopted by the Parliamentary Assembly. A majority of all members elected to the House of Representatives comprises a quorum.

The executive power is officiated by Council of Ministers. Chair of the Council of Ministers is nominated by the Presidency, and takes office upon approval of the House of the Representatives. There are nine 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, Ministry of Security, and Ministry of Defence. The Chair nominates ministers who take their offices also upon approval of the house of Representatives. No more than two-thirds of all Ministers may be appointed from the territory of the Federation. The Chair also nominate Deputy Ministers (who shall not be of the same constituent people as their Ministers), who takes office upon the approval of the House of Representatives. 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.

Judicial organs in Bosnia and Herzegovina are the Constitutional Court of Bosnia and Herzegovina and the Court of Bosnia and Herzegovina. Constitutional court has nine members, out of whom four members are selected by the House of Representatives of the Federation, and two members by the Assembly of the Republika Srpska. The remaining three members are be selected by the President of the European Court of Human Rights after consultation with the Presidency. Decisions of the Constitutional Court are final and binding.

### **Principal Economic Indicators**

	<b>2005</b>	<b>2006</b>	<b>2007</b>
Nominal GDP BH (in millions of BAM), current prices	16.928.0	19.121.0	20.950.0
Real GDP (growth rate in percents)	3.9	6.7	6.0
Retail prices growth rate in BH (percent change)	3.8	6.1	1.5
Trade Balance (in Millions of BAM)	-7.749.0	-6.661.0	-8.102.0
Trade Balance (in Millions of US Dollars)	-4.901.0	-4.296.0	-5.141.0
Trade Balance (as a percentage of GDP)	-45.8	-34.8	-38.7

Table: Principal economic indicators (source: Central Bank of BiH, at [www.cbbh.ba](http://www.cbbh.ba))

### **Demographic Situation**

According to last 1991 census, Bosnia and Herzegovina had some 4.3 million people, with average population density of 86.6 persons per a square kilometre.

Almost 40% or 1.7 million persons lived in urban areas. In 1991 Bosnia and Herzegovina had some 1.3 million households, which made average household size of some 3.4 persons.

Percent of participation of individual age groups in the overall population in BiH in 1991 was the following: percent of those aged 0-6 was 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

was 6%. Fertility rate was 52‰, while mortality rate was 7.4‰ for males and 6.5‰ for females in year 1990.

Due to the 1991-1995 war, exile, migration, emigration, poor economy and other related factors demographic changes in Bosnia and Herzegovina compared to data of 1991 census significantly changed. Currently, in many underdeveloped areas of Bosnia and Herzegovina birth-rate is negative (so called white plague). This is particularly indicative at areas of minority return<sup>3</sup> (Drvar, Srebrenica, etc.).

### **Explanatory Note**

This alternative report on the implementation of Framework Convention for Protection of National Minorities contains information collected by January 2008.

For collection of information following resources have been used:

- Minority NGOs (Association of National Minorities in Republika Srpska – Banja Luka, Romano Centro - Zenica, Roma women Association – Zavidovići, Roma Association – Zavidovići; etc.)
- Inter-Religious Council in BiH
- Members of Roma Council of BiH
- Members of national minorities (Italians, Macedonians, Roma, Slovenians, etc.)
- Other NGOs (Human Rights Office - Tuzla; Independent - Zenica; Be my friend - Sarajevo; Centre for Promotion of Civil Society – Sarajevo; Initiative 21 - Tuzla)
- International organisations (UNDP; Open Society Fund; OSCE; Minority Rights Group International)
- Governmental Institutions (Directorate for Economic Planning; Ministry of Human Rights and Refugees; Central Electoral Commission; Ministries of Education, Centres for Social work, Employment Agencies, etc.)
- Relevant Statistical Bulletins
- Texts of various laws related to principles enshrined in the FCNM
- Various reports, analysis and studies, that deals with rights of national minorities in BiH, anti-discrimination
- Relevant web sites, media, etc.

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<sup>3</sup> 'minority return' refers to persons who returned to the pre-war places of residence, where they represent a minority in comparison to the current national structure of the population.

## Section I

### Article 1

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

In the area of protection of the national minorities and rights and freedoms of persons belonging of those minorities, Bosnia and Herzegovina cooperates with following international organisations: United Nations (UN), Organisation for Security and Co-operation in Europe (OSCE), Council of Europe (CoE), UNESCO, etc.

Bosnia and Herzegovina has signed and ratified the following international documents, which are in relation to the protection of national minorities:

1. European Convention for the protection of Human Rights and Fundamental Freedoms and its protocols 1, 2, 3, 4, 5, 8, and 11  
Ratified 12 July 2002 / entered into force 12 July 2002  
Protocol 12  
Ratified 29 July 2002 / entered into force 1 April 2005  
Protocol 13  
Ratified 29 July 2002 / entered into force 1 November 2003  
Protocol 14  
Ratified 19 May 2006 / not yet into force
2. Framework Convention for the Protection of National Minorities  
Ratified 24 February 2000 / entered into force 1 June 2000
3. European Cultural Convention  
Ratified and entered into force on 29 December 1994
4. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its protocols 1 and 2  
Ratified 12 July 2007 / entered into force 1 November 2002
5. European Charter of Local Self-Government  
Ratified 12 July 2002 / entered into force 1 November 2002
6. Convention on the Prevention and Punishment of the Crime of Genocide  
Succeeded on 29 December 1992
7. Convention on Non-Compliance with Statutory Restrictions at War for Crimes Against Humanity  
Succeeded on 1 September 1993
8. International Convention on the Prevention and Punishment of the Crime Pertaining to Apartheid  
Succession on 1 September 1993
9. International Convention on the Prevention of Racial Discrimination in Sport  
Succeeded on 1 September 1993
10. International Covenant on Economic, Social and Cultural Rights (CESCR)  
Succeeded on 1 September 1993

11. International Covenant on Civil and Political Rights (CCPR)  
Succeeded on 1 September 1993
- First Optional Protocol to the CCPR  
Ratified on 1 March 1995
- Second Optional Protocol to the CCPR, aimed at the abolition of the death penalty (CCPR-OP2-DP)  
Ratified on 16 March 2001
12. International Convention on the Elimination of All Forms of Racial Discrimination (CERD)  
Official Gazette of R BiH 25/93,  
Succeeded on 16 July 1993
13. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)  
succession on 1 September 1993  
Optional Protocol (CEDAW-OP)  
Ratified on 4 September 2002
14. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or  
Punishment (CAT)  
Succeeded on 1 September 1993
15. Convention on the Rights of the Child (CRC)  
Succeeded on 1 September 1993  
Optional Protocol to the CRC (CRC-OP-C) on Participation of Children in Armed Conflicts  
Ratified on 10 October 2003  
Optional Protocol to the CRC (CRC-OP-SC) on the Sale of the Children, Child Prostitution  
and Child Pornography  
Ratified on 4 September 2002
16. International Convention on the Protection of the Rights of all Migrant Workers and  
Members of Their Families (MWC)  
Acceded on 13 December 1996
17. 1951 Convention relating to the Status of Refugees  
Succeeded on 1 September 1993
18. 1967 Protocol Relating to the Status of Refugees  
Succeeded on 1 September 1993
19. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and  
Children, supplementing the UN Convention against Transnational Organized Crime  
Ratified on 27 March 2002
20. Protocol Against the Smuggling of Migrants by Land, Air and Sea, supplementing the UN  
Convention against Transnational Organized Crime  
Ratified on 27 March 2002
21. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and  
Children, Supplementing the UN Convention against Transnational Organized Crime  
Ratified on 27 March 2002

Bosnia and Herzegovina (BiH) joined the Council of Europe (CoE) on 24 April 2002.

According to Article II of the Constitution of BiH, the state (and both Entities) *'shall ensure the highest level of internationally recognized human rights and fundamental freedoms.'*

Human rights and fundamental freedoms referred to in the Article 2 of the Constitution include: (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 labour, (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, and (m) The right to liberty of movement and residence.

Same article defines that the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols applies directly in Bosnia and Herzegovina. These have priority over all other law.

Further, Annex I "Additional Human Rights Agreements To Be Applied In Bosnia And Herzegovina" are an integral part of the Constitution of BiH, namely:

1. 1948 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

The enjoyment of these rights and freedoms or in the international agreements listed above are to be 'secured to all persons in Bosnia and Herzegovina without 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'.

European Charter for Regional or Minority Languages is pending for signature and ratification.

Considering this one can conclude that the constitution of Bosnia and Herzegovina provided the highest international standards for protection of human and minority rights. However, as it will be shown in this report, other provisions of the Constitution of Bosnia and Herzegovina are quite contradictory to standards set forth in the Article II.

## **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 co-operation between States.**

The Preamble of the Constitution of Bosnia and Herzegovina contains a basic principle under which: "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...".

The term 'Others' is used in the BiH Constitution and laws to describe all those not included in the constituent peoples. These groups are classified as national minorities, and children of mixed marriages or citizens who do not wish to identify with one nation. By using the same term for all these groups, members of national minorities are put in the same position as those who do not wish to identify themselves according to national identity. Further, it refers to something marginal, and of less importance.

The constitution provides that BiH is a democratic state operating under the rule of law, with free and democratic elections and provides for a highly decentralized State. At the same time, the state and entity institutions are structured not to represent citizens directly but to ensure representation of "constituent" peoples. In BiH the "constituent" peoples are comprised of three ethnic groups in BiH – namely –Bosniacs, Croats and Serbs.

Division along ethnic lines forms the basis of the BiH constitution (which is elaborated further in this report), so that the whole system - state-level institutions, entities, cantons, municipalities, even Brčko District – is structured in such a way that the sole precondition for the functioning of these institutions, and for the protection of human rights, is based upon ethnic affiliation.

The political system in BiH is structured in such a way that its component parts are different. Thus the centre of gravity of institutions in Republika Srpska lies at the level of Entity and municipality, but in the Federation of BiH, the key level is that of the ten cantons, while institutions in the municipalities and Entity do not play any significant role.

At its core, the system promotes ethnic domination by territory. This, more than any other factor within BiH, generates both alienation and discrimination. All parts of the system are based on an ethnic matrix, functioning within virtually mono-ethnic territories.

The European Union's Venice Commission in 2004 found that the constitution in parts violates human rights and therefore must be changed as part of BiH's accession process. However, although all-party talks have been held on constitutional amendments, so far little headway has been made. Since the Bosnia and Herzegovina Parliamentary Assembly rejected a package of proposed constitutional amendments in April 2006, no further attempts have been made to amend

the constitution. Wide disagreement between the political parties on the scope of the future constitutional reform continues.

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 and Ruthenians have their kin states. Further, it needs to be considered that in reference to relations with neighbouring countries (Serbia, Croatia and Montenegro), Croat and Serbs in Bosnia and Herzegovina are regarded as constituent peoples, and Montenegrins are regarded as a national minority.

### **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.**

#### Paragraph 1

As it has been shown in previous section, the constitution does not consider its peoples as citizens but rather as Serbs, Croats, Bosniaks or 'Others'. The issue of social, collective and individual freedom was constitutionally solved by incorporating all the most relevant international conventions and declarations on human rights and fundamental freedoms into the constitution. Yet, those who do not declare themselves as Serbs, Croats or Bosniaks, and those who do not want to declare themselves as 'Others' have fewer political rights. They cannot stand as a political candidate nor participate in public life. In reality, they are unlikely to take on any key positions, as most appointments remain under control of the political parties.

Such ethnically-based constitutional structure is felt in many spheres but most crucially in education (as will be elaborated further in this report), management of the returns process and of service delivery.

According to available data (UNHCR, 2006) a total of 1,014,340 returns in/to BiH have been registered, out of which 442,352 refugees and 571,988 displaced persons. Almost 45% of returns (i.e. 456,370) of the overall return are the so-called minority returns. The number of returnees comprises approximately 10% of the population (in both Entities). However, one must be aware that these quantitative indicators do not reflect the reality on the ground; many returnees have re-possessed their pre-war property, immediately sold it and then returned to a part of the country where they are in the majority ethnic group. The reasons for this are numerous, from employment problems and discrimination within employment and education, to personal and social insecurity, and a basic sense of alienation. In reality, little has changed since the end of the war.

An illustrative example in regard to creating conditions for sustainable return has been given in the study 'Anti-xenophobia in BiH' (carried out by the NGO Centre for promotion of civil society in 2007) that shows how various levels of authorities (such as entity governments) work on this

matter. Budgetary allocations are used to support return of pre-war inhabitants of other entity. In other words, government of Federation of BiH support return of Bosniaks and Croats in Republika Srpska and vice versa. In such way both entities create an illusion on fulfilment of their commitments, but on the other hand they directly contribute to sustaining of discriminatory practices in their 'own' settings.

Local authorities all too often place low priority on the needs of returnees and minority communities. This is reflected in poorer and unresponsive service provision from local and cantonal (FBiH) or regional (RS) agencies. As a result, minority communities are not merely psychologically or politically excluded but also deprived in a direct and material sense.

For example, during last 5 years (that should be years of 'sustainable return') in Sarajevo Canton, out of total 35.000 employed (through the Employment Agency) only 1.662 are Croats and 992 Serbs (is unknown how many of these are returnees). Similar situation is in other cantons, as well as in municipalities of Republika Srpska where is number of employed people (through employment agencies) of non-majority ethnicity rather symbolic. Moreover, there are poor cases, like Employment Agency in Goražde (FBiH) or Telecom Srpske in Bijeljina (RS) where 100% of employees are respectively Bosniaks and Serbs.

Similarly, in the economic sphere employment and business opportunities are weakened not merely by pervasive discrimination but also by the legal and institutional mechanisms.

Ethnic division resulting from population movement and legitimized by the political system itself, is being further consolidated year by year. It not only directly excludes people living in those areas in which they are now a minority but also distances the collective ethnic groups from one another. This is pervasive in all areas of public life and can be viewed as a form of exclusion - ethnic separation which excludes citizens from the greater whole.

## Paragraph 2

The highest body of legislative power in BiH (as well as entities) operates on the principle of ethnicity and territory and not on the basis of citizenship regardless of ethnicity or place of residence. The ethnic dimension is represented in the House of Peoples (where delegates are elected on the grounds of ethnicity), while the territorial dimension is embodied in the House of Representatives.

In BiH a citizen who asserts his membership in a national minority experiences political disenfranchisement precisely because minority populations within BiH are not afforded the same participatory rights as those citizens of BiH who are designated as 'constituent peoples.' The 'Others' remain unrepresented at Presidency level. A similar situation applies to the voting rights for the House of Representatives of the BiH Parliamentary Assembly. From the 42 representatives, two-thirds are elected from the territory of FBiH, and one-third from RS. The election process in the BiH House of Peoples (15 delegates in total) is also discriminatory, where five Bosniaks and Croats each are elected solely from FBiH, while five Serbs are elected from RS (*see Articles IV and V, BiH Constitution*).

Further, the Constitution and Election Law also pose serious disadvantages to those among the constituent peoples who are living in 'the wrong place' or/and unwilling to declare themselves as solely Serb, Croat or Bosniac. For example, Croats and Bosniaks living in RS do not have an active right to vote for the Croat or Bosniak member of the BiH Presidency, since these can only be elected from within the territory of FBiH. Following the same logic, Croats and Bosniaks living in RS cannot be elected to the post. The situation relating the rights of Serbs living in FBiH is identical (*see Article IV, BiH Constitution*).

Some say that a member of a national minority or a person of mixed ethnicity can gain access to public office reserved for the 'constituent peoples' simply by declaring himself/herself as a Bosniac, Serb or Croat. Such assertion, however, directly contravenes Article 3(1) of the FCNM which guarantees that no disadvantage shall come from choosing to be identified as a national minority.<sup>4</sup>

Established within a new Constitution and fully implemented in practice minority rights will provide all citizens with equal rights, including rights of political participation, and an equal stake in society - crucial to a future of Bosnia and Herzegovina. Long-overdue reform of segregated electoral system is vital to triggering a process of gradual political and social cohesion. A new constitution and reformed electoral system would significantly improve position of all minority groups – including national minorities, constituent people in areas where they are less in numbers (particularly in areas of minority return), and those who choose to be treated otherwise.

## **Section II**

### **Article 4**

**1 The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.**

**2 The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.**

**3 The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.**

#### Paragraph 1

Article II of the Constitution relates to guarantees of enjoyment of human rights and freedoms to '*all persons within the territory of Bosnia and Herzegovina*'. However, as it is presented in previous section, many provisions of the Constitution and electoral law seriously violates rights

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<sup>4</sup> *The Non-Constituents: Rights Deprivation of Roma in Post-Genocide Bosnia and Herzegovina*, Country Reports Series No. 13, February 2004, European Roma Rights Center (Taken from: Alternative Report Submitted to the UN Committee on the Elimination of All Forms of Racial Discrimination (CERD), February 2006, Submitted by the Benjamin N. Cardozo School of Law Human Rights and Genocide Clinic and Minority Rights Group International (MRG), London, UK)

of equality before the law and of equal protection of the law. It is inevitable that a significant number of individuals within BiH are thus forced to choose between publicly negating part of their identity or otherwise accepting the consequent political exclusion. The former is a violation of key principle relating to minority rights, whilst the latter is a clear case of discrimination.

In reference to discriminatory provisions of the Electoral Law, three applications have been submitted so far to the European Court of Human Rights in Strasbourg. Applicants are members of national minorities as well as Bosniak living in Republika Srpska, all candidates for the elections for some of posts exclusively reserved for members' constituent people. Court of BiH has been refused one of the complaints on the decision of Central Election Commission, justifying that *'it is not a case of any discrimination'*. Constitutional court of BiH recognized that the applicant has been *'treated differently before the law'*, but also that such discrimination is *'reasonable and justified'*.

### Paragraph 2 and 3

In May 2004 the Law on Amendments to the Electoral Law of BiH have been adopted. Pursuant to Article 13.14. (on participation of members of national minorities at local elections) members of all national minorities in BiH have right to choose their representatives in local municipality councils/assemblies. Further, whereas of all national minorities, comprise in overall population of a municipality up to 3%, they shall be guaranteed at least one seat at the local council/assembly. If this percentage is over 3%, than they shall have guaranteed two seats. Number of seats guaranteed to members of national minorities is to be set forth by a statute of a municipality, 'on the basis of last census carried out by the state of Bosnia and Herzegovina'. This process is underway, and it is expected that members of national minorities will have their candidates for forthcoming local elections in October 2008.

Provisions of the Law on Civil Service of Federation of BiH and Law on Service in Public Administration determine the obligation of proportional representation in public services of Federation BiH and its Cantons, Republika Srpska, and municipalities and towns. These provisions impose duty on respective authorities to supervise implementation of these provisions. According to given legislation, agencies for public service in both entities are responsible to carry out honest and fair treatment in all aspects of personnel policies, regardless to ethnicity, social, entity, or residential background, as well as religion, political and other beliefs. As the constitutional principle, proportional representation is founded on 1991 census, until full implementation of the Annex VII of the Dayton Peace Agreement (The agreement on refugees and displaced persons).

However, considering an issue of 'proportional representation' it is needed to bear in mind that according to 1991 census 'Yugoslavs' the comprised 5,5% of overall population in BiH. On the local level this percentage is in some cases significantly higher, like for example in Tuzla (16,7%), Bosanski Brod (10,73%), or Banja Luka (8,27%).<sup>5</sup> It would require more detailed and comprehensive analysis to observe how this issue has been regarded at the various levels, before the next census.

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<sup>5</sup> After a break-off former Yugoslavia and declaration of independence of Bosnia and Herzegovina, 'Yugoslavs' no longer exist as a legal category.

In November 2007, NGO Centre for promotion of civil society launched a study on 'Anti-xenophobia in BiH'. Research results confirmed that discrimination permeates all areas of social life – right to education (and its content), access to employment under equal conditions, health insurance, social benefits, personal security, etc. Further, results showed that current situation carry a strong message of ethnic discrimination, which is publicly manifested in right to access to public offices and rights to employment at public institutions. Explicit constitutional and other legislative provisions on proportional representation in public services are disregarded in most of the cases and situation reflects serious violation of these rights. Research sample included 22 municipalities and all Cantons in Federation of BiH, and 15 municipalities in Republika Srpska, as well as public institutions (i.e. Employment agencies, governing boards of public companies, educational institutions, etc.). However, it failed to identify any of good practice in institutions that had been subject of this study.

As an example, we will present (randomly chosen) municipality of Hadžići (in FBiH) and Derventa (in RS). According to 1991 census, population of Hadžići (24.200 inhabitants) comprised of 63,6% Bosniaks; 26,9% Serbs; 3,08% Croats; 3,48% Yugoslavs and 3,55% others. Municipality (public administration) currently employs 83 servants, out of which 98,8% are Bosniaks and 1,2% others. In Derventa, as per 1991 census out of 56.489 inhabitants 12,54% were Bosniaks; 40,61% Serbs; 38,86% Croats; 5,93% Yugoslavs; and 2,06% others. Out of 83 servants that municipality currently employs 95,18% are Serbs, 2,41% Croats and 2,41% of others.

There are also (yet, very few) examples of good practice of inclusion of minorities in public offices. Within the Department for Social Services, Social Assistance, Displaced Persons and Refugees, Municipality of Zenica employs an officer for Roma issues (a young Roma girl), and Ministry of Education of Tuzla Canton also employs a graduated Roma as an advisor. Head of the state's Agency for Public Services is a member of the Jewish national minority.

As the last local elections (2004) showed that hardly any municipalities have more than 10% of another ethnic group, the only exceptions being Tuzla, Sarajevo Centre Municipality, and Livno. This situation, a direct outcome of the war, is the cause of further ethnic division both within the system and of lifestyles.

The effects of ethnic division are felt most acutely in the returns process. As a consequence of poorly integrated return to pre-war residences, national minorities are one of the most distinctly socially excluded groups. This is reflected not only in their limited political participation and access to service provisions, but also in terms of alienation from regular social processes in the areas where they live.

Bosnia and Herzegovina has adopted the Law on Protection of Members of National Minorities in April 2003. This law 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. The Law was amended and specifications were added in June and October 2005. The additions included state-level financial support earmarked for national minorities, relations with the media, promoting positive discrimination in employment, quality education for the children of national minorities and, importantly, a legal requirement of 60 days (no later than January 2006) to establish the Council

of National Minorities in BiH to oversee implementation of this Law. Further, Article 26 of this law stipulates that both entities shall adopt entity laws as well as other legal acts on protection of members of national minorities within six months from its effective date. Republika Srpska adopted this Law on December 2004. Adoption of this Law in the Federation of BiH has been on the agenda in September 2006 when Parliamentary Assembly of the FBiH rejected the proposed law. (Recently, several local NGOs who are dealing with minority and human rights took initiative to amend disputed law and to submit it into procedure. It is expected that the draft law will be approved in the beginning of 2008.)

According to the Law and with the understanding that the Roma is the largest national minority in Bosnia and Herzegovina, the Council Ministers of Bosnia and Herzegovina has established the Roma Council. It is an association which (new composition as of June 2006) gathers representatives of majority Roma NGOs in BiH. Ministry for Human Rights and Refugees of BiH, in cooperation with the Roma Council, has prepared a document named "Strategy of BiH for addressing the Roma problems". It contains a review of measures and activities to be undertaken in addressing problems of Roma population in BiH. Various social and state structures have been involved in the preparation of three new action plans (employment, housing and healthcare), and reviewing of 2004 action plan on education. These documents are pending at the Council of Ministers for approval.

Council of National Minorities (an advisory body to the Parliamentary Assembly of BiH), has been established in March 2007, and it has been confirmed by the state Parliament in October 2007. Members of ten national minorities (out of 17 recognized by Law on NM). have been nominated to the Council on 8 October 2007. They are: Albanians, Czechs, Italians, Jews, Macedonians, Roma, Ukrainians, Hungarians, Poles, and Slovenians. In order to be operational, NM Council needs to be confirmed by the state Parliament, which happened in early days of 2008. Seven national minorities do not have their representatives in the Council (Montenegrins, Germans, Slovaks, Romanians, Russians, Rutheranians, and Turks).

In Republika Srpska, Council of National Minorities (an advisory body to the Peoples Assembly of Republika Srpska) has been established in beginning of 2007. It comprises of 15 members – representatives of 11 national minorities. Larger groups have by 2 representatives each, such as (Czechs, Ukrainians, Roma, Slovenians). Other members are representatives of Jews, Hungarians, Italians, Macedonians, Germans, and Slovaks. This Council has become operational and in 2007 contributed with suggestions on matters related to national minorities that were on the agenda (such as budgetary allocations of Republika Srpska for support to minority associations and their activities, etc.).

The “Action Plan on educational needs of Roma and other national minorities in BiH”, has been adopted in February 2004, as a part of Educational Reform Strategy. It is further elaborated under article 12.

## **Article 5**

**1 The Parties undertake to promote the 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 or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.**

### Paragraph 1

National minorities of BiH place much in preservation of their cultural heritage. Both Laws on protection of members on national minorities (state and entity of Republika Srpska) have included provisions for promotion of culture, traditions, and language of national minorities. Example of good practice is town of Banja Luka, which has allocated in its budget for 2007 financial means for support of minority associations seated in its territory (this also includes the Association of minority NGOs of Republika Srpska – an umbrella organisation seated in Banja Luka. Further, in 2004 Banja Luka has been provided premises for the Association and for Roma NGO 'Veseli brijeg' in areas where Roma in Banja Luka are traditionally inhabited.

### Paragraph 2

The Law on Protection of Rights of Members of National Minorities forbids assimilation, except if a member of a national minority allows it, i.e. when he/she does not require to be treated as a member of the minority.

## **Article 6**

**1 The Parties shall encourage a spirit of tolerance and intercultural 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 or religious identity, in particular in the fields of education, culture and the 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 or religious identity.**

### Paragraph 1

Pursuant to the Article 8 of the state Law on protection of members of national minorities the state, entities, cantons, municipalities and towns have duty to secure financial means for realization of rights of national minorities resulted from respective laws. Article 5 of the related Law in Republika Srpska, stipulates that the entity, towns and municipalities shall allocated in their respective budgets financial means for support of national minority NGOs for the purpose of realisation of the rights regulated by the law.

Most of minority associations across Bosnia and Herzegovina organize numerous cultural activities, such as: festivals, concerts, exhibitions, etc. Most of these activities are supported by relevant ministries (education and culture, etc.) of both entities (and Cantons in Federation of BiH), but also by embassies of kin-states (i.e. Czech Republic, Italy, Slovenia, etc.). Some of minority associations even have established libraries, and collection of movies in native languages.

## Paragraph 2

In addition to international treaties that relates to freedom from discrimination, there is anti-discrimination legislation in several areas. Article II.4 of the Constitution of Bosnia and Herzegovina, stipulates that

'the enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution *shall be secured* to all persons in Bosnia and Herzegovina *without 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.'

Similar provisions are in the Constitutions of both entities.

The State Law on protection of members of national minorities re-affirms provisions stipulated in Criminal Codes of both entities which prohibits discrimination and provide sanctions for any acts of discrimination, urging to, organisation or support to any action that may endanger existence of a national minority, provoke hate among nationalities, lead to discrimination or bring national minority at disadvantaged position.

Most of cases in relation to inter-ethnic intolerance, hostility and violence still have been reported in relation to those among groups of 'constituent peoples' and at mainly in areas of minority return.

## Article 7

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

The state's Law on Associations and Foundations provides for very liberal conditions for establishment of associations and foundations (at least three legal and physical persons or their combination as sufficient number of persons for voluntary association).

The Association activity can be any purpose in line with the 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 Constitutional order or directed towards its forcible violation or spreading of national, race and religious hatred or law-forbidden discrimination.

According to available information, very few national minorities (i.e. Montenegrins, Russians, Romanians, Turks) have not founded formed associations. Others, according to the size of the group at the certain area, have registered minority associations on municipality, cantonal, entity or state level. Some of them also have umbrella organisations, such as Association of National Minorities in Republika Srpska.

There are no known cases that any of national minorities have been denied these rights.

## **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 state has regulated this matter by the Law on freedom of religion and legal position of churches and religious communities in Bosnia and Herzegovina (adopted in 2003). This Law guarantees to every individual 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.

Confessions in Bosnia and Herzegovina are Islam, Orthodoxy, Catholicism and Hebrew religion. There are also smaller religious communities, such as: Greek-catholic church (Uniate), Adventists, Jehovah witnesses, Lutherans, Christian reformists, sects etc.

Religious members of national minorities are free to manifest his/her religion or belief, and to establish religious institutions, organisations and associations. There are no known cases that any of national minorities have been denied rights to establishment of religious institutions, organisations and associations.

In 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. The Inter-religious Council in BiH (IRC-BiH) has been in existence since 1997 through joint commitments by Reisu-l-ulema Mustafa ef. Cerić, Islamic Community in BiH, Metropolitan Nikolaj of Dabar-Bosna, Serbian Orthodox Church, Vinko Cardinal Puljić, Archbishop of Vrhbosna-Sarajevo, Roman Catholic Church and Mr. Jakob Finci, Jewish Community of Bosnia and Heregovina.

In 2007 the Inter-religious Council began with issuing of regular Annual reports on violation of rights on freedom of thought, conscience, and religion. It will also report on attacks at religious clericals, buildings and cemeteries, as well as on other forms of violation of these rights. According to 2007 report, such incidents took place in areas of minority returns.

For example, attacks at clericals and objects of:

- Islamic community in Banja Luka, Mrkonjić Grad, Višegrad, Gradiška and Vlasenica (all in Republika Srpska);

- Orthodox community in Visoko, Kakanj, Tuzla, Novo Sarajevo, Martin Brod (all in Federation of BiH), and one incident in Prijedor (Republika Srpska). For the latest one police found perpetrators.
- Catholic community in Vogošća, Kakanj, Bihać, Sarajevo (in Federation BiH) and Banja Luka (Republika Srpska).

Reports on attacks at Jewish community have not been reported. Report noted that *'sometimes these acts were committed with theft as a motive, but more often motives are spreading of interethnic and inter-religious intolerance.'* Often these clerks, buildings and cemeteries have been seen as representatives of an ethnic group, and by committing such acts perpetrators which to provoke a community as a whole. Role of police forces is recognised as of extreme importance, to identify perpetrators, and judiciary institutions to decide on appropriate sanctions for such acts. However, regardless total number of incidents, police succeed to identify perpetrators in very few cases.

## 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. The 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 the media.**

**2 Paragraph 1 shall not prevent Parties from requiring the 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 the 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 systems, 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.**

Paragraphs 1, 3 and 4

The Constitution of Bosnia and Herzegovina guarantees freedom of expression 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.

The legislation on protection of national minorities (both, state level and entity) stipulate rights to establish own media, but also 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.

According to programme principles set forth at Article 26 of the Law on public broadcasting services of BiH (adopted on October 2005), public broadcasters shall consider national, regional, tradition, religious, cultural, linguistic and other features of constituent peoples and all citizens of Bosnia and Herzegovina. Programme shall also affirm cultural and other needs of national minorities in Bosnia and Herzegovina'. Further, 'public broadcasters shall consider rights of all constituent peoples and others, and shall be edited equally on *three official languages* and two types of writings.' [Latin and Cyrillic]. There is also provision on equal representation of program contents that respond to traditional heritage of 'all three peoples' as well as adequate representation of others'<sup>6</sup>

It is indicative that the mentioned provisions of the Law on public broadcasting services are not harmonised with the state's Law on protection of national minorities, in regard to obligations of public broadcasters for special programme – once a week, and on languages of national minorities. Inconsistent and (at the certain extend) improper wording in these provisions (underlined above) as reference to 'constituent people' and 'others' as defined by the constitution is very confusing.

However, activities of national minorities in regard to access to media took place even before adoption of the Law on public broadcasting services. (Non-existence of the law did not prevent such efforts). Similar situation is also at level of both entities. Currently, there are 5 permanent programs on national minorities<sup>7</sup>

Media	Program Title	Schedule	Duration
RTRS -Television	Morning program	Every Wednesday	10-15 min.
RTRS -Television	Bona homo	Every 2nd Thursday	45 min.
RTRS - Radio	Korijeni (Roots)	Every Saturday	60 min.
BH Radio 1	About national minorities	Every 1st Monday	55 min.
BH Television	Bona homo	Every 2nd Saturday	45 min.

Printed media also publish articles about national minorities. These are mainly related to information on cultural events, and other manifestations (i.e. important dates, etc.), or socio-economic situation (of Roma).

In regard to own activities, associations of Czechs, Ukrainians, Hungarians, and Slovenians publish own newsletters, on their own languages, that are distributed through their associations in the country.

Earlier, the Association of National Minorities in Republika Srpska also published regularly newsletters (in official languages). However, this has been component of a project that ended two

<sup>6</sup> Source: <http://www.pbsbih.ba/onama/zakon.html>

<sup>7</sup> 'Status of national minorities in Republika Srpska and implementation of the Law on protection of national minorities of Republika Srpska: Opinions and recommendations' (Association of national Minorities of Republika Srpska, May 2007)

years ago. The NGO 'Budi moj prijatelj' (eng. 'Be my friend') quarterly publish the Newsletter 'pROMjene' (eng. Changes) in official languages. It is distributed by post and electronically to many NGOs in BiH. This is also component of a project.

Occasionally (depending on provided support) few other Roma NGOs publish their own newsletters (official languages), such as 'Romano Centro', seated in Zenica. But this at the great extend depends on support from local authorities (i.e. Cantonal Ministry of Education).

## **Article 10**

**1 The Parties undertake 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 a 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 relations 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 for his or her arrest, and of the 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 an interpreter.**

### Paragraph 1

There are several laws which define this matter.

Constitutions of both entities, Federation BiH and Republika Srpska incorporate same provisions (official languages are 'Bosnian, Croatian, and Serbian language' but also that 'other languages may be in use as communication and educational tool'). The Constitution of BiH does not specify which language(s) are officially used in the state.

Legislation on protection of national minorities recognizes the right of every member of national minorities to freely use its own language and writing, in private or in public, orally and in writing.

### Paragraph 2

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.

### Paragraph 3

The right to use own language in court proceedings is regulated by Criminal Procedure Code of BiH. If person does not understand one of official BH languages (Bosnian, Croatian or Serbian) 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.

Requests of national minorities for use of language in public services, social and health care institutions or any other institutions were not observed/reported.

### 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 in his or her minority language signs, inscriptions and other information of a private nature visible to the public.**

**3 In 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 indications intended for the public also in the minority language when there is a sufficient demand for such indications.**

### Paragraph 1

The right of a person belonging to a national minority 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.

### Paragraph 2

Current legislation in Bosnia and Herzegovina (entities, cantons, municipalities/towns) guarantees rights to use of languages, display of symbols, inscriptions and other information in public. Yet, there were no restrictions on this matter, even before the legislation in question has been adopted. Laws only imposes obligation to members of national minorities to display symbols of Bosnia and Herzegovina along with those of national minorities. According to available information from both entities, there is no data that would indicate on violation these rights. Representatives of national minorities are unanimous in judgement that 'there are no problems with that', and that they may freely use and publicly display symbols of their identity, what they actually do.<sup>8</sup>

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<sup>8</sup> Annual analysis of the implementation of the state's Law for protection of national minorities (NGO Human Rights Office - Tuzla, 2007). Data collected at: Mostar, Sarajevo, Tuzla, and Zenica (in Federation of BiH), Doboje, Bijeljina, Prnjavor, and Banja Luka (In Republika Srpska), and Brčko District.

### Paragraph 3

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

There are some areas in Bosnia and Herzegovina that are 'traditionally inhabited' by members of national minorities (i.e. Roma settlements, smaller villages with majority population of a national minority). However, according to representatives of Association of National Minorities in Republika Srpska in this entity (and similarly in Federation of BiH) none of municipalities and towns has been regulated this matter in their respective statutes. Due to lack of newer census data (than those of 1991), it is not possible to properly establish which localities would be treated as defined by legislation. Requests in regard to minority languages are mainly related to education (in terms of providing for additional classes of minority languages). Use of minority languages are mainly noted in private (within their families), during religious rites, cultural events, and sometimes in media (within programs on national minorities).<sup>9</sup>

### 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 the 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.**

### Paragraph 1

Education system in BiH is highly fragmented, with education having been devolved to the entities.<sup>10</sup> In the Republika Srpska (RS) education is the responsibility of the entity<sup>11</sup>, whereas in the Federation of BiH (FBiH), education has been further devolved from the entity level to the 10 cantons.<sup>12</sup> Education also falls under the responsibility of The Brčko District<sup>13</sup>. At the state level, education is under the remit of the Ministry for Civil Affairs, yet the power is devolved. There are 13 additional Ministries of Education<sup>14</sup>, with varying remits.

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<sup>9</sup> Ibid.

<sup>10</sup> Articles III.1 and III.3(a) of the Constitution of BiH.

<sup>11</sup> Article 68 of the Constitution of the RS.

<sup>12</sup> Article III.4 of the Constitution of the FBiH.

<sup>13</sup> Article 9, Statute of the Brčko district of BiH.

<sup>14</sup> For the 10 cantons, Brčko district and the two entities.

There are three incompatible models of education (with different curricula, syllabi, and textbooks) for each of the constituent peoples. Separate education, in addition to creating and sustaining distances between groups, often requires boys and girls of a minority background to travel long distances for schooling, and/or to attend separate educational institutions (so called 'two schools under one roof'). They are therefore disadvantaged and isolated from their peers of a different ethnic background.

Yet, extremely high fragility of inter-ethnic tolerance in has been demonstrated recently in Žepče (where are 'two schools under one roof'), when several 20-26 old young men (Bosniaks) have beaten a young secondary school student (Croat). Secondary school students (Croats), who wanted to express their bitterness and to support their colleague, organized a peaceful gathering. As respond to this other group of students (Bosniaks) organized another protest wearing posters and shouting messages, that were extremely deterrent and insulted.

The "Action Plan on educational needs of Roma and other national minorities in BiH", has been adopted in February 2004, as a part of Educational Reform Strategy. The Action Plan proposes steps to ensure that BiH schools respect the language and culture of all national minorities. It calls for the incorporation of aspects of national minorities' culture, history and literature into the curricula; systematic action to ensure equal access to education for all; and action to ensure national minorities' educational needs are met. Its aims for the Roma are: to improve their access to the mainstream education system; and to address the obstacles they face (including financial and administrative barriers to their school enrolment and completion), while enhancing Roma communities' participation in, and commitment to, their children's school enrolment and completion. As with other national minorities, the focus is on inclusion of their history, culture and literature within the mainstream curricula, and the preservation of their identity, culture and language.

In 2006, we carried out a study to assess to what extent the Action Plan reflects the educational needs of Roma and other minorities. Research findings confirmed that the Action Plan is generally in line with the educational needs of national minorities in BiH. However, there is a lack of participative processes in its development and promotion. Implementation of laws and agreements is generally problematic in Bosnia and Herzegovina, which is also the case with education. The main area of implementation has been in the removal of financial and administrative barriers to Roma children's school enrolment and completion. Yet, even here, improvements are sporadic, rather than systematic. Roma children are not integrated within mainstream schools, and they still lack access to the full range of educational options. Inclusion of the history, culture and literature of Roma and other national minorities within the mainstream curricula has to be part of education reform, and this has wide community support<sup>15</sup>. As it is elaborated further in the next section, recent developments indicate that efforts need to be made to ensure that curricula taught in schools throughout BiH address the needs of all constituent peoples and national minorities, and provide for an inclusive and non-discriminatory education system.

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<sup>15</sup> A survey showed that 70 per cent of respondents believe that children should learn the history and literature of all constituent peoples and others, 'Survey on public attitudes toward education reform in BiH', OSCE Mission in BiH, press statement, 17 January 2006.

## Paragraph 2 and 3

Due to constitutional constraints by which education falls under competencies of both entities (and cantons at Federation of BiH), as well as Brčko District, Framework Law on Primary and Secondary Education has very modest scope on this matter.

The Law on Protection of National Minorities, regulates rights of national minorities in field of education, respecting the constitutional competence of Entities. Therefore it restricted its provisions to determine the basic rights of national 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. Within its education programme (pre-school, primary and secondary school), their duty is to 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 required so by parents, as additional education. Further, authorities are obliged to provide for teachers, financial resources, premises and textbooks.

Entity Laws on primary education regulate that 'when school has in same class at least 15 pupils – members of national minority ... teaching for them is carried out in their native language'.

Republika Srpska has adopted specific Regulation on education of children of members of national minorities. There are provisions that schools according to their personnel capabilities enable respect of language and culture of national minorities, and in compliance with Framework Convention for the Protection of National Minorities. Further, if there are at least 15 children members on a national minority within a school, schools have to provide, if requested so by children's parents, classes of language, literature, history and culture on their own languages, within additional curricula.

Some of cantonal Ministries of education (for example Tuzla Canton, in July 2005) also adopted regulations/by-laws on national minority children's education. Regarding the Roma, by-laws deal with regular and systematic data collection on enrolment and school completion rates; accelerated learning programmes; provision of school books, supplies and transport; additional teachers' help for learning; provision of scholarships, etc. Regulations again emphasized the importance of pupils' education in their native languages. Further, these affirmative measures state that if requested by an interested member of minority group (e.g. a parent), a school is obliged to provide native language instruction in a class, group or individually. To provide appropriate educational standards, teachers need to have the necessary qualifications, both professional and linguistic, to also teach in minority languages. Curricula and selection of textbooks are to be made in consultation with children's parents. Ministries of education are obliged to inform members of national minorities on their rights regarding education. These policies are in the line with objectives of the Action Plan on educational needs of Roma and other national minorities in BiH.

However, available data<sup>16</sup> showed that there are no visible results in this respect. Among key problems for such situation are difficulties in provision of resources (qualified teachers, appropriate textbooks, financial means, etc.). Additional difficulty with Roma is that their language is not standardised, there is no available textbooks on Roma language, and it is still unknown how teachers would get qualifications for teaching in Roma language.

The efforts on the removal of financial and administrative barriers to Roma children's school enrolment and completion continue. Ministries of education collect data on enrolment of Roma children at schools. Within the capacities of the relevant municipalities, Cantons, and Entities, the students were provided with textbooks, school gear and financial support for transportation and meals. This support is allocated in their respective budgets. In regard to provision of transportation and meals, such support is provided to 'all children, regardless to their ethnicity'<sup>17</sup>. Brief analysis of budgetary allocations also showed that there are other kinds of support (such as scholarships, credits for study, etc.) but it regards to 'support to socially vulnerable people'. Preference criteria (regardless to which kind of support is in question), covers status of war (1991-1995) veterans (if an applicant is a member of a family/household of a war veteran, or is a veteran himself/herself), disability, social status, etc. In general, there is a strong resistance to collection and disaggregating of data according ethnicity (either beneficiaries or providers), so it is difficult to estimate how many beneficiaries belong to national minorities. Service providers mainly justified it by an argument that 'all people in BiH are equal before the law'. On the other side, service beneficiaries have an argument that they are 'fed up of ethnical divisions'. (One can also assume that this may be related to their fear of refusal of their application for benefits, since preference criteria on status of war veterans indirectly imply to ethnic affiliation.)

According to data from the Roma Council, currently some 2000 Roma children attend school in all over Bosnia and Herzegovina. Provision of textbooks for some of them has been late (up to one month upon start of school year), which discouraged some of them to continue with attendance, and they dropped-out of schools.<sup>18</sup> According to relevant Ministry of Education this delay in distribution was due to fact that it was not known which textbooks will be used for which curricula.

Pursuant to the Framework Law on primary and secondary education among key principles in education is social cohesion and development of positive attitudes toward ones own country. Other documents that refers that educational system in BiH has to support democratic development of BiH, system which promotes respect of ethnic and culture diversities as precondition of sustainability and development of society as whole are: Commitments within Educational Reform Strategy, Educational principles of Open Society, and Guidelines for production and writing of history and geography textbooks. In reference to this in October 2007 Open Society Fund, has been launched two comprehensive studies, as a part of the project 'Education in BiH: To what we taught our children?' It comprises of two reports (1) Analysis of contents of textbooks for national groups of subjects, and (2) Parents' and children attitudes on education.

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<sup>16</sup> Different analysis and reports produced by NGOs, Such as Independent – Zenica, Human Rights Office Tuzla, Association of National Minorities in Republika Srpska, etc.

<sup>17</sup> Respond from Ministry of education of Zenica-Doboj Canton (Analysis of the implementation of state's Law on protection of national minorities; Human rights office, Tuzla, 2007).

<sup>18</sup> Roma NGOs at Zenica Doboj Canton.

The analysis of textbooks contents showed that there are some examples that may be used as positive ones for teaching children about affiliation to the BiH, and common heritage of all people who live here. However, textbooks for national group of subjects (145 textbooks for language, history, and geography, as well as religion for primary and secondary schools have been subject of the research) are in its basis single-national and unfriendly toward multiethnic society – which urges segregation among students, and contribute to further segregation in a society as a whole. Further, it severely violates principles set forth in international standards and domestic legislation in regard to education.

Survey of parents' and children's attitudes on education involved over 2000 respondents from all over BiH (of majority/minority<sup>19</sup> belonging). Analysis showed that both, parents and children regardless of their ethnicity strongly support legal principles and reform commitments. However, at the same time they are highly dissatisfied with concrete implementation of these measures in practice. Almost half (46%) of respondents said that the current educational system is single-national – and deals exclusively with teaching and learning of language, history and culture of one ethnicity. Almost one quarter of children respondents and one third of parents said that discrimination practices are present in education. As an issue of particular concern in regard to ethnic segregation in education they noted existence of 'two schools under one roof'. Over 43% of respondent disapprove content of current textbooks for national group of subjects. Out of this percentage the highest rate is among respondents from Brčko District (75%), followed by respondents from Bosniak, Croat and Serb (32%) majority areas. Respondents belong to minority in majority areas more frequently said, than those of majority that content of such textbooks needs to be changed.

## **Article 13**

**1 Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.**

**2 The exercise of this right shall not entail any financial obligation for the Parties.**

Paragraphs 1 and 2

Education, learning and use of own language is basic rights that protect identity of every member of a national minority. Entities and cantons in Federation of BH give right and possibility to members of national minorities 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.

According to available data, there are no such private educational and training establishments.

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<sup>19</sup> 'Minority' refers to respondents from a certain area who are members of one of constituent people, but minor in numbers or members of national minorities.

## Article 14

**1 The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.**

**2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.**

**3 Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.**

### Paragraph 1

As it has been emphasised throughout this report, authorities recognize the right of every person member of a national minority to learn his/her own language.

### Paragraph 2

National minority NGOs organize language courses within their regular activities, but also according to available resources. For some of them such activities are supported by embassies of kin-states. Among those with longest tradition of organisation of language courses are Slovenians (in both, Federation of BiH and Republika Srpska) and Ukrainians (in Republika Srpska). Czechs, Italians, Hungarians, Jews, Poles from Republika Srpska also organized such courses but very occasionally.

However, due to current situation of national minorities in Bosnia and Herzegovina, and absence of updated statistical data, it can be assumed that in a near future such provisions shall not have its real effect. According to available information most of national minorities (with only few exceptions) are struggling for *preservation of their languages*, rather than for its use. Yet not valid, but it worth to mention here some data provided by organisations of national minorities on their memberships<sup>20</sup>: Slovenians: 800 – 1200 (in BiH, mainly inhabited in Sarajevo, Tuzla and Banja Luka); Italians: 300 (65 – 70 in Sarajevo); Macedonians: 200 – 300 in Sarajevo; Jews: 850; Hungarians: 130; Italians: 300 and Ukrainians 40. On the other hand, in reference to learning own language Roma, as the numerous national minority still struggle with high rate of illiteracy (in addition to problems mentioned earlier under comments on article 12. para 2 and 3.)

According to opinion of representatives of Italian national minority, they are in slightly advantaged position, since courses of Italian language are organized within private schools of languages, as well as at the Faculty of philosophy at Banja Luka. Similar is with German national minority.

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<sup>20</sup> Annual analysis of the implementation of the state's Law for protection of national minorities (NGO Human Rights Office - Tuzla, 2007)

## Article 15

**The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.**

According to UNDP 2007 National Human Development Report on 'Social Exclusion', the excluded groups in BiH are foremost the elderly, youth, children, Roma, people with disabilities, and minority returnees. (In general terms, being 'excluded' is understood as being left outside the mainstream and denied access to the social, economic and political rights afforded to others.) Various intersections between these groups exist and give rise to multiple forms of exclusion.

Unsurprisingly, the report proved once again that ethnic division is one of the strongest root causes and manifestation of social exclusion in BiH. This has a three-fold dimension. Firstly, it directly works to exclude minorities within majority areas. Secondly, it compromises the institutional framework's ability to tackle exclusion, and thirdly, it has a malevolent and pervasive effect on social processes. It therefore retards progressive change and continues to alienate the peoples of BiH from one another.

Other major excluded groups experience marginalization in similar ways but their exclusion is not directly driven by the state's political divide and its causes have their roots in other processes. Particularly affected groups include the Roma, the disabled, the elderly, rural dwellers and the young. These excluded groups are not only at the highest risk of income poverty and unemployment, but also have far more difficulty accessing public services and participating in political life.

In BiH, social exclusion is based on structural, political, economic and social systems and institutions that do not provide equal opportunities to all. Socially excluded groups are invisible in official statistics, as is the case of reports by BiH statistical institutions. There are detailed reports on educational levels and the age of the labour force in individual sectors, as well as income levels, without a break-down by ethnicity/gender. In recent years efforts have been made to improve the visibility of men and women through research and qualitative studies, but disaggregated data based on ethnicity remain an issue.

As regards overcoming of problems which lead to inequality in access to health care, employment, education, and other services there are a series of priority measures set forth in the Poverty Reduction Strategy Paper of BiH (PRSP), adopted by the Council of Ministers and Entity Governments in 2004. The Strategy covers period 2004 – 2007, and it contains 943 measures that should be implemented by end of 2007. According to the report on PRSP implementation, published by Directorate for economic planning of the Council of Ministers, only 60% of measures have been implemented, 31,70% is underway and 8,50% not implemented at all. In regard to sectoral priorities, field of education (which is placed high on government agenda) has the most discouraging results: out of 83 measures 62 have not been implemented at all (either are at early stage of implementation). Educational structure of a labour force is one of key factors for poverty reduction. Out of total labour force in BiH, around 31% is unemployed (i.e. 366.000, out of which 41,3% are woman). Survey on labour force in BiH showed that 49% of labour force in

BiH finished only primary school, 44,5% has finished secondary school, and only 6,5% has higher education.

The Roma population has traditionally faced social exclusion. On the one hand this has been caused by preventing their inclusion on the grounds of racial discrimination and on the other by objective consequences of the previous, self-imposed confinement of the Roma within their own Roma communities. The specific aspects of ethnic relations in BiH, mentioned earlier, further complicate the Roma's position.

The real dimensions of Roma social exclusion are described in the results of a UNDP household survey of October 2004 carried out on Roma, displaced and majority people living in close proximity. Only three percent of Roma have permanent jobs, which is six to ten times less than the figure for the other two surveyed groups. Roma are most often employed in temporary work. In the standard employment sectors, Roma most often work in shops (23%), but in general are employed as unskilled labour.

According to the UNDP survey, illiteracy is largely caused by the non-attendance of Roma children at schools. Seventy-six percent of Roma have never attended or have not completed primary education. Around 18%, or every fifth Roma, finished primary school, and only 7% finished a three-year secondary school course. Two in five Roma never went to school at all. At the time of the survey, 16% of Roma aged six or over attended a school or was in training, which is around a half of the percentage of the majority peoples who live in close proximity to Roma (25%), or of refugees and displaced persons (25%). Roma aged between 6 and 22 years who were not attending any school at the time of the survey, cited high education costs as the main reason, which is twice as many as in case of the majority peoples who live in close proximity to Roma (38%), or of refugees and displaced persons (39%).

In terms of healthcare, Roma with health problems visit doctors one-third less than the other surveyed groups. The percentage of non-immunized Roma (41%) is five to six times higher than the percentage of the majority peoples who live in close proximity to Roma, or of those refugees and displaced persons who are not immunized. In most cases, Roma children have not been immunized because they do not have healthcare cards, i.e. because their health insurance is not regulated. Refugees and displaced persons are in a similar situation. Every fourth respondent of Roma ethnicity stated that they were deprived of medical services because they did not possess adequate documents, which is five to six times higher than in case of other two surveyed groups. Data indicates that the Roma who did have access to medical institutions within hospitals were treated on an equal basis with the other two surveyed groups.

With regards to employment, one in twenty-five Roma is employed or self-employed. Most of the unemployed Roma have been unemployed for five years or longer. Thirty-seven percent of Roma had income from some source in the month before the survey, as had refugees and displaced persons (40%). The most frequent source of income for the Roma includes the sale of secondary raw materials (29%) and begging (19%). In most cases (73%) they did not have paid social insurance based on income.

Employers opt not to employ anyone two to three times more often if their only choice is a member of Roma population, than is the case with the other two surveyed groups. Roma are

victims of racism in employment five to ten times more often than the other two surveyed groups, be they members of majority or minority peoples.

## **Article 16**

**The Parties shall refrain from measures which alter the proportions of the 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.**

There is a special provision in the Constitution of Bosnia and Herzegovina, (Article 2.5) 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 VII 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 re-pressure are null and void.'

Annex VII of the General Framework Agreement guarantee 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.

Real effects of implementation of these provisions on national minorities are further elaborated throughout this report.

## **Article 17**

**1 The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.**

**2 The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.**

Paragraph 1 and 2

There are no restrictive measures (adopted or undertaken) regarding the cooperation or contact of the members of national minorities or their associations with other countries or in activities with non-governmental organisations (at all levels). Contrary, authorities provide support (declaratively or otherwise) to such cooperation.

## **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 the national minorities concerned.**

**2 Where relevant, the Parties shall take measures to encourage transfrontier co-operation.**

Out of 17 national minorities recognized by state's Law on protection of the national minorities, 15 have kin-states. So far, there have no been true initiatives by the state in regard to signing bilateral agreements, or other kind of contracts at regional level. In regard to cooperation with neighbouring countries (Serbia, Croatia and Montenegro), it has to be considered that, Croat and Serbs in Bosnia and Herzegovina are regarded as constituent peoples, and Montenegrins are regarded as a national minority.

### **Article 19**

**The Parties undertake to respect and implement the principles enshrined in the present framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles.**

Provisions of Article 2 of the Constitution stipulate that 'Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms.' (paragraph 1) and that 'The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.' (Paragraph 2).

As this report showed in some cases there is no appropriate measures to implement the principles enshrined in the FCNM. However, in those areas where such measures exist, there is absence of their effective and full implementation. For the following period it will be of particular importance to further analyse capacities of existing councils of national minorities and Roma Council, and their role in cooperation with authorities.

## **Key recommendations**

### **Political representation**

- A new constitution and reformed electoral system would significantly improve position of all minority groups – including national minorities, constituent people in areas where they are less in numbers (particularly in areas of minority return), and those who choose to be treated otherwise. Established within a new Constitution and fully implemented in practice minority rights will provide all citizens with equal rights, including rights of political participation, and an equal stake in society - crucial to a future of Bosnia and Herzegovina.

### **Participation in the public life**

- Processes of sustainable reforms, economic development needs to be complemented by strong provisions of full and effective implementation of human and minority rights, to protect all vulnerable and marginalized groups.
- Public authorities (in particular at local level) should make efforts and consider affirmative measures in order to reduce high under-representation of national minorities in all areas of public life. In reference to that, they need to develop their capacities to deal with issues of all ethnic groups.
- Comprehensive anti-discrimination legislation and related strategies/policies are needed not only declaratively (in a form of a document), but full and effective implementation of such documents (including monitoring and evaluation mechanisms).

### **Education**

- Implementation of the educational reform need to be more intensive. (Elimination of segregation in residential areas and schools, has to be top priority)
- Human and minority rights should pervade all aspects of school activity. Therefore, the state needs to improve the quality of education and training (qualified teachers and in sufficient numbers, updated curriculum, improved quality of textbooks and teaching aids) as a prerequisite for ensuring equal opportunities for all, including pupils from all ethnic groups. Training for teachers, administrators and support staff is needed so that they understand and implement these values.
- Intercultural education should be a part of the state education strategy, so that cultural differences are understood and respected. In that sense, increased cooperation and the development of joint initiatives between governmental bodies, educational institutions and NGOs is needed.
- The regular and intensive consultation of policy makers with local stakeholders is needed to identify the best methods and policies to address minorities' educational needs.
- Minorities' organizations, parents and community representatives should take a more proactive role and fully participate in formulating the education philosophy on the local level. Responsible governments should provide support (not only declaratively, but otherwise) to minorities, for this purpose.