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Human Rights Watch Concerns and Recommendations on Bosnia and Herzegovina

Submitted to the United Nations Human Rights Committee in Advance of its Second Periodic Review of Bosnia and Herzegovina

This memorandum, submitted by Human Rights Watch in advance of the United Nations Human Rights Committee's ("the Committee") review of Bosnia and Herzegovina's ("BiH") compliance with the International Covenant on Civil and Political Rights ("the Covenant"), addresses several areas of concern raised by the Committee in its List of Issues to be Taken up in Conjunction with the Consideration of the Second Periodic Report of BiH ("List of Issues"): the non-implementation of the European Court decision in *Sejdic and Finci v Bosnia and Herzegovina* on December 22, 2009, and the related issue of the potentially discriminatory effects of the 2013 census questionnaire on national minorities, in particular Roma. In our contribution we aim to elaborate and provide updated information on developments in these areas, and put forward measures the BiH government should be encouraged to take to address them.

In addition, this submission also highlights one further area of concern not specifically addressed in the List of Issues and which we wish to bring to the Committee's attention: the revocation of citizenship and unlawful detention in national security cases.

We hope the information provided will inform the Committee's upcoming examination of BiH's compliance with the ICCPR.¹

¹ For more on Human Rights Watch's work on Bosnia and Herzegovina, please see: <http://www.hrw.org/europecentral-asia/bosnia-and-herzegovina>

Implementation of *Sejdic and Finci v Bosnia and Herzegovina* (arts. 2, 25, 26 and 27)

Paragraph 3 of the List of Issues queries the government of BiH about measures taken to reform the constitution and electoral law to comply with the judgment by the European Court of Human Rights in its December 22, 2009 decision in *Sejdic and Finci* concerning ethnic discrimination for representation in the institutions of BiH for persons who do not belong to one of the three “constituent peoples” (Bosnian Muslims, Croats, and Serbs). To date, the government of BiH has failed to take necessary steps to bring its constitution and electoral law in compliance with the court ruling. No concrete amendments to the constitution or the electoral law have been made to eliminate the discriminatory effect for persons not belonging to one of the three constituent peoples to work in public institutions. The failure by the BiH government to meet the August 31 deadline on constitutional and electoral reforms needed to advance in the EU membership application process is further evidence of non-compliance with the *Sejdic and Finci* judgment.

As described in the April 2012 Human Rights Watch report, “[Second Class Citizens – Discrimination against Roma, Jews, and Other National Minorities in Bosnia and Herzegovina](#),” the constitutions of the Federation and Republika Srpska mandate ethnic quotas for employment in public institutions. These quotas are based on population estimates from the last census, conducted in 1991. A new census is scheduled to be conducted in 2013.

The 1991 census undercounted Roma and other national minorities, with the result that they are disproportionately excluded from civil service positions. According to the last census in 1991, there are only 8,864 self-identified Roma living in Bosnia and Herzegovina, primarily because many Roma self-identified as Yugoslav. A recent Federal Ministry of Human Rights survey found that 25,000-30,000 Roma live in BiH, although Romani activists put the figure between 60,000 and 100,000.²

The allocation of seats in municipal governments in the election law also depends on census data, with each national minority designated seats in any municipality government where it makes up at least three per cent of the municipal population. Because there has not been a census since 1991, and in light of the subsequent population shifts resulting from the war and other factors, the data used to determine where national minorities should have designated seats is grossly inaccurate. Similarly, some provisions of the

² Bosnia and Herzegovina, “Action Plan of Bosnia and Herzegovina for Addressing Roma Issues in the Field of Employment, Housing and Healthcare – Introduction,” p. 1. Available at: <http://www.romadecade.org/files/downloads/Decade%20Documents/Introduction%20-%20Decade%20National%20Action%20Plan%20BiH.pdf>

entity constitutions mandate that positions in public institutions be distributed in proportion with the ethnic makeup of the population.

The lack of an accurate census means that Roma, Jewish, and other national minority interests are underrepresented in the local governments and institutions that provide basic services: those of the entities, cantons, and municipalities in Republika Srpska and the Federation. In this regard the scheduled 2013 census is a positive step in obtaining an accurate count of the population in BiH, particularly national minorities.

Recommendations for steps the Committee should urge the government of BiH to take:

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

Status of the 2013 census questionnaire (arts. 2, 25, 26, and 27)

The impending census is linked to the issues of constitutional and electoral reform as employment in public institutions is dependent on ethnic quotas. As noted, in light of the fact that the latest census in 1991 is grossly misleading and undercounted national minorities, the scheduled 2013 census is a welcome step.

In its current state, however, questions 24, 25, and 26 of the census questionnaire may have a discriminatory effect on national minority groups, particularly Roma, and persons who would self-declare as multilingual, multi-ethnic, or multi-religious, which could affect national minorities being properly represented in government and public institutions in BiH. Of 46 questions, three can be linked to, or can stand as proxy for, determining ethnic characteristics. Two are optional, whereas the third, concerning language, is compulsory for respondents.

International recommendations and standards on census taking give clear guidance on how to collect data on ethnicity, religion, and language. According to EU regulations on

censuses³ such data is non-compulsory and should be optional for respondents to answer. EUROSTAT stresses the importance of “free and open declaration of the respondents.”⁴

The problematic questions use pre-defined categories which will further entrench the division of BiH citizens into the three ‘constituent peoples’ and the so-called ‘Others’, with the latter group having second-class status. Even when such questions are in theory voluntary, the use of pre-defined categories both encourages persons to define themselves according to predetermined groups, and the results of the census will be used to continue the division of BiH into three constituent peoples and “Others”.

Recommendations for steps the Committee should urge the government of BiH to take:

- Amend questions 24, 25, and 26 of the census questionnaire to ensure all three are non-compulsory and in line with European standards;
- Ensure that data on ethnicity and nationality appear as separate and open questions; ensure that all three questions contain an open answer box, allowing respondents to enter one, multiple, or a combination of answers and a box for those who wish not to declare; ensure that no suggested answers are given;
- Consult with civil society stakeholders, including representatives for minority groups, on the design and implementation of public awareness campaigns on the importance of the census;
- Include civil society stakeholders, including representatives of minority groups, in the education, training, and monitoring of enumerators.

Revocation of citizenship and unlawful detention (art. 2, 9, 14, and 27)

In 2005, as part its counterterrorism policy, BiH established a special commission mandated to review decisions to grant citizenship by naturalization and to revoke BiH citizenship without fair hearings. To date, the commission has stripped at least 300 people of their BiH citizenship through hearings which take place in secret and where reasons for

³ Regulation (EC) No 763/2008 of the European Parliament and of the Council. Adopted July 9, 2008. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0014:0014:EN:PDF>

⁴ Ibid., p. 95.

revocation are not given. Some of those affected have left BiH, some are liable for deportation.

In addition, BiH passed a law in 2008 which allows for indefinite detention of non-citizens on national-security grounds. BiH authorities detained six men under the law in October 2008 and June 2009 of which three remain in detention. None of the men has been charged with a crime and neither they nor their lawyers know the reason for their detention as evidence is secret. One of the detainees, Imad Al-Husin, detained in 2008, lodged a complaint with the European Court of Human Rights, which on February 7, 2012 in a ruling blocked Al-Husin's deportation back to Syria. Despite the court decision, Al-Husin has at the time of writing not been charged with a crime or released and is therefore detained unlawfully.

Recommendations for steps the Committee should urge the government of BiH to take:

- Immediately release Imad Al-Husin and others who are unlawfully detained under the 2008 law permitting indefinite detention;
- Revoke the 2008 law permitting indefinite detention.