

INITIATIVE FOR MONITORING THE  
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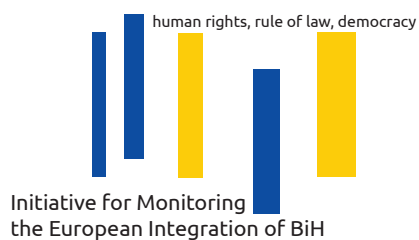
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Proposal for the Improvement of the Institutional Framework  
for the Protection and Promotion of Human Rights:

## MODEL LAW ON THE INSTITUTION OF HUMAN RIGHTS OMBUDSMAN OF BIH

Summary translation of the model law drafted in Bosnian/Croatian/Serbian



## INTRODUCTION

The Institution of Human Rights Ombudsman of BiH is a central, independent institution for the protection and promotion of human rights. Having in mind that there are no other institutions of ombudsman nature in Bosnia and Herzegovina (e.g. thematic ombudsman), nor other institutions for human rights, such as foundations or government offices for the promotion of civil society, the importance of the Institution of Human Rights Ombudsman of BiH is even greater.

In order to:

- Ensure the greater independence of the institution,
- Improve the institutional efficiency in carrying out its mandate of protection and promotion of human rights,
- Enable a greater presence of the institution among the citizens in the field and to increase the trust in the institution,
- Reinforce the institutional financial independence,
- Advance the internal structure of the institution,
- Reinforce the cooperation of the institution and the representatives of the civil society organizations, the academia and the professionals,
- Finally regulate the issue of the National Preventive Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and to
- Create the conditions for the accreditation of the Institution of Human Rights Ombudsman in “A” status,

drafting and adopting a new Law on Human Rights Ombudsman of Bosnia and Herzegovina is of key importance.

The Initiative for the monitoring of European Union Integration of Bosnia and Herzegovina, as an informal coalition of thirty civil society organizations which contribute to monitoring of the reforms and overseeing the application of EU policies, laws and standards, with the focus on the issues of democratization, rule of law, and human and minority rights, has recognized that this is an issue of high importance, and wants to be involved in the reform process through the suggestions it makes.

The model law has been drafted based on:

- the recommendations of the International Coordination Committee (ICC) towards Bosnia and Herzegovina and other countries,
- the recommendations of the Venice Commission towards Bosnia and Herzegovina and other countries,
- legislative solutions from Croatia, Serbia, Montenegro, Sweden and other European countries.

We hope that we are providing an adequate support to the process by proposing the model law, and that the aforementioned propositions will be recognized by the competent institutions.

August 25th 2015

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of Bosnia and Herzegovina  
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<p style="text-align: center;"><b><u>MODEL LAW ON THE INSTITUTION OF HUMAN RIGHTS OMBUDSMAN OF BIH</u></b></p>	<p style="text-align: center;"><b><u>ARGUMENTATION OF THE MODEL LAW:</u></b></p>
<p><b>Chapter I – GENERAL PROVISIONS</b></p> <p><b>Article 1 (Scope)</b> This law shall regulate the functions and powers, composition, appointment and dismissal of ombudsmen, and financing, position and method of functioning of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina.</p> <p><b>Article 2 (Nature of the Institution)</b> The Institution of Human Rights Ombudsman of Bosnia and Herzegovina shall be an independent institution established by the Parliamentary Assembly of Bosnia and Herzegovina, aimed at the promotion and protection of the rule of law and human rights and freedoms defined by international legal documents in the field of human rights and freedoms, and by the Constitution of Bosnia and Herzegovina and its laws.</p> <p><b>Article 3 (Terms)</b> In the context of this law, the term:</p> <ol style="list-style-type: none"> <li>a) “Institution” shall mean the Institution of Human Rights Ombudsman of Bosnia and Herzegovina,</li> <li>b) “ombudsman” shall mean one of the four ombudsmen,</li> <li>c) “ombudsmen” shall mean the four ombudsmen,</li> <li>d) “authorities” shall include all authorities, bodies, institutions and other legal entities within the government of Bosnia and Herzegovina (state, entity, Brčko District BiH, cantonal, city, municipal levels), and legal entities exercising public functions,</li> <li>e) “Collegium of the Institution” shall mean the managing body of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina, comprising the four ombudsmen and the secretary general of the Institution.</li> </ol> <p><b>Article 4 (Gender Neutral Language)</b> Gender specific words and terms, be it in masculine or feminine gender, shall apply to both masculine and feminine genders.</p> <p><b>Article 5 (Seat and Offices)</b> (1) Pursuant to Annex 6 of the Dayton Peace</p>	<p><b>Chapter I – GENERAL PROVISIONS</b></p> <p>In these articles the proposal offers an explanation of the basic terms used in the law, including the instruction on the use of gender-neutral language. The proposals also state that the headquarters of the Institution is in Sarajevo (in line with the Annex 6 of the Dayton Peace Accords), while the regional offices are in Banja Luka, Mostar and Brčko.</p> <p>The Institution may also establish field offices beyond the headquarters and regional offices. This opens the possibility for the Institution to set up field offices in order to ensure availability of the Institution in the entire region of BiH, in line with the perceived need, based on the population, the number of complaints, or on the estimated prevalence of human rights violations, as well as on the budgetary means.</p> <p>Such regulation is in line with the recommendations of the Venice Commission that the Institution should be allowed the freedom to set up additional offices, determining their number and structure, in order to carry out their mandate in a suitable manner, without the participation of the legislative authority in the making of such decision.<sup>1</sup></p> <p>The Institution should be allowed the freedom to decide about its internal structure (number and type of units), without defining this by law.</p>

<sup>1</sup> CDL-AD(2009)043 – Opinion on the draft amendments to the law on the Protector of Human Rights and Freedoms of Montenegro, adopted by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009), par. 9 and 14.

<p>Agreement, the Institution shall be seated in Sarajevo.</p> <ol style="list-style-type: none"><li>(2) The Institution shall have regional offices in Banja Luka, Mostar and Brčko District BiH.</li><li>(3) The Institution may establish field offices outside of the Institution's seat and regional offices. Field offices shall report to regional offices.</li><li>(4) The Institution shall introduce „open office days“ in order to operate in municipalities and cities where it does not have an office established.</li><li>(5) Ombudsmen may have their own offices in the seat or in regional offices.</li><li>(6) In view of the nature of the Institution's work, the Council of Ministers of BiH shall provide adequate premises for the Institution's seat, regional and field offices.</li><li>(7) Premises used by the Institution shall be inviolable.</li><li>(8) In its Rules of Procedure, the Institution shall specify in details the issues of central office, regional offices, field offices and open office days, as well as the issues of organizational units and internal organization.</li></ol>	
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**Chapter II –  
FUNCTIONS AND POWERS**

**Article 6  
(Functions)**

- (1) Pursuant to international legal acts in the field of human rights and freedoms, the Institution shall perform four main functions:
  - a) human rights protection,
  - b) human rights promotion,
  - c) preventive mechanism,
  - d) body for the protection of equality and prevention of discrimination.
- (2) The Institution may also exercise other functions and competences defined by other laws.
- (3) In the performance of its functions, the Institution shall cooperate with the authorities, civil society organizations, international organizations and bodies, and other relevant stakeholders.

**Article 7  
(Human Rights Protection)**

- (1) The Institution shall protect human rights and freedoms and the rule of law by reviewing complaints about the existence of unlawfulness and irregularities in the work of the authorities and, if separate laws stipulate such possibility, it shall also handle complaints pertaining to other legal and natural entities.
- (2) The Institution shall act upon receiving a complaint or self-initiatively (*ex officio*).
- (3) The Institution shall not consider complaints pertaining to decisions, facts or events that took place before December 15, 1995.
- (4) The Institution shall be authorized to process complaints about alleged violations of human rights and freedoms by military authorities.

**Article 8  
(Human Rights Promotion)**

The Institution shall promote human rights and freedoms by monitoring the state of affairs and indicating the need for their protection, it shall conduct research and analytical work, document human rights violations, develop and maintain database of complaints, actively and regularly maintain cooperation with civil society organizations, international organizations and bodies, professional bodies and the academia, timely and regularly inform the public and stakeholders, implement educational, informative and awareness raising activities, and initiate harmonization of laws and other regulations with the international and

**Chapter II –  
FUNCTIONS AND POWERS**

*The Paris Principles* relating to the status of national/state institutions for the promotion and protection of human rights (hereinafter: the Paris Principles), adopted in 1993 by the United Nations General Assembly, represent the minimal international standards for the establishment of the state institutions for human rights. The Principles stipulate that the institutions for human rights should have “*as broad a mandate as possible*”, which should be “set forth in a constitutional or legislative text”, and which should stipulate “*the promotion and protection of human rights*”, with the stating of the particular responsibilities the Institution should have.<sup>2</sup>

*The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights* and its subcommittees (the ICC) have offered additional explanations regarding this standard. Thus, regarding Bosnia and Herzegovina, in November 2009, the ICC has recommended, in the process of re-accreditation of the Institution of the Ombudsman of BiH, that the *mandate of the Institution* of the Ombudsman of BiH is reinforced by including the *promotion of human rights* in its scope, thereby referring to the General Observations of the ICC regarding the issue of the mandate of the institutions for the human rights, which represent the authoritative interpretation of the Paris Principles. Namely, these observations<sup>3</sup> point out that all the state institutions for the promotion of human rights should have a legally assigned mandate both for *the protection and promotion of human rights*.

Thereby, the *promotion includes*, according to the aforementioned interpretation of the Paris Principles, the functions needed for the creation of the society with the widespread respect for the human rights and understanding of them, which can be achieved through the functions of education, training, counselling, and communication with the public and through advocacy. By contrast, the *protection of human rights* is achieved through the functions of responding to the committed human rights violations, or through their prevention. This includes the functions of monitoring, inquiry, conducting investigations, reporting on the violations, as well as the management of individual complaints. The broad set of the mandate of the Institution of the Ombudsman, both for the protection and promotion of human rights, is in line with the recommendations of the Venice Commission.<sup>4</sup>

The aims of the proposals for the new institutional

<sup>2</sup> Paris Principles, Section A.1 and A.2., as well as A.3

<sup>3</sup> The updated version from 2013. G.O. 1.2 Human Rights Mandate.

<sup>4</sup> CDL-AD(2004)041 - Joint Opinion on the Draft Law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe adopted by the Venice Commission at its 61st Plenary Session (Venice, 3-4 December 2004), par. 7 and 13.

European standards in the field of human rights and freedoms.

**Article 9  
(Preventive Mechanism)**

- (1) In accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Institution shall act as a preventive mechanism to prevent torture and other cruel, inhuman or degrading treatment or punishment.
- (2) Representatives of civil society organizations registered for activities in the field of human rights protection and representatives of academia must participate in the preventive mechanism's work.
- (3) Representatives of civil society organizations and academia who participate in the preventive mechanism's work shall enjoy equal rights as the Institution and its representatives while performing such duty, as well as the right to protection from external interference in their work.
- (4) The Institution may, at any time and without prior announcement, examine locations where persons deprived of freedom are kept, places accommodating persons with limited freedom of movement and places where certain groups stay. The Institution shall have the right to examine all premises in the bodies where such inspection is conducted.
- (5) Annual Report on Human Rights and Freedoms, which is drafted and published by the Institution, dedicates separate chapter to the issue of torture and other cruel, inhuman or degrading treatment or punishment and fulfillment of the preventive mechanism's function in general.
- (6) In a separate Rulebook, the Institution shall regulate activities and powers of the preventive mechanism, method and conditions of the selection and method of work of included representatives of civil society organizations and the academia, as well as reporting on the preventive mechanism's work. The Rulebook shall be adopted not later than 180 days following the ombudsmen's appointment.

**Article 10  
(Body for the Protection of Equality  
and Prevention of Discrimination)**

- (1) The Institution shall perform tasks of a body for the protection of equality and prevention of discrimination.
- (2) Unless otherwise specified by law, exercise of this function and related obligations shall be regulated by the Anti-Discrimination Law.

**Article 11  
(Autonomy and Independence)**

- (1) The Institution and ombudsmen shall enjoy autonomy and independence in their work. Any

framework, in terms of the legal specification of the combination of different types of the Institution's powers, are directed towards the Institution of Ombudsman ensuring the effectiveness of the protection of human rights.

Articles 6-13 clearly define the competences of the Ombudsman Institution: human rights protection, human rights promotion, national preventive mechanism, and body for the protection of equality and prevention of discrimination, giving the Institution also the right for legislative initiatives and the rights for initiatives for the abstract control of constitutionality.

***Legislative initiatives***

In order to overcome the restrictions related to the *legislative initiative* of the Institution and the inconsistencies in the current Law, the proposal stipulates the possibility for the Ombudsman to propose an initiative for the new law or for the amendments to the existing laws and regulations to any legislative body in BiH, when he/she deems it necessary during the monitoring of the situation in regards to his/her scope of work and with the aim of improving the protection of human rights in BiH and/or harmonization with the international standards and BiH Constitution. The proposal stipulates the possibility for the individual Ombudsmen to propose such initiative, while considering the need of the effective performing of the Institution's mandate and of the specialized expertise of certain Ombudsmen for particular issues in regards to human rights protection.

The current Law narrows down the ability of Ombudsmen to propose the amendments to the Law and other regulations when he/she finds it fit, exclusively to the annual or special report of the Institution. Additionally, it is unclear from the current position of the stipulation in the item of the Law related to the treatment of cases whether the initiative for the amendments to the Law is possible regardless of the particular case in question. Finally, the legislative initiative is limited to the amendments to the Law, and it does not provide the possibility of initiative for drafting new laws and other regulations.

Unlike the aforementioned, the proposed solution allows for the legislative initiative, including the initiative for the drafting of the new laws or other regulations, as well as the amendments to them, at any given time, *regardless of the annual or special reports*, and regardless of any particular case, or treatment of any particular complaint. It also stipulates the mandatory consideration of the proposal by the body it was addressed to. Finally, this stipulation introduces the possibility for the Ombudsmen, in the process of proposing regulations to the bodies working on them (the ministries or legislative bodies), to provide opinions in relation to the issues of importance for the protection of human rights, and to participate in the work of the commissions of the legislative bodies in

<p>form of influence on the work of the Institution and ombudsmen shall be prohibited. The Institution and ombudsmen shall not receive directions or orders from authorities in BiH.</p> <p>(2) The Institution shall only report to the Parliamentary Assembly of Bosnia and Herzegovina.</p> <p>(3) In the performance of their functions and work, the Institution and ombudsmen shall act in accordance with constitutional and legal provisions and international acts on human rights and freedoms.</p> <p>(4) The Institution shall enjoy organizational, administrative and financial independence and autonomy.</p> <p>(5) The Institution and ombudsmen shall follow principles of fairness, equality and morality in their work and act impartially and in accordance with good management standards.</p> <p>(6) The Institution and ombudsmen shall not terminate their work during the time when legislative bodies are not in session because such bodies were dissolved or their term of office expired.</p> <p><b>Article 12 (Legislative Initiative)</b></p> <p>(1) Ombudsmen shall follow compatibility of laws and other regulations with the provisions of the Constitution of Bosnia and Herzegovina and international legal acts.</p> <p>(2) When the ombudsman finds it necessary in the performance of his/her functions and powers, he/she shall have the right to initiate with legislative bodies the enactment or amendments to laws or other regulations, and it may warn about the need for harmonization of laws and other regulations with the Constitution of Bosnia and Herzegovina and international legal acts.</p> <p>(3) Competent legislative body at the state, entity or cantonal level shall consider the initiative submitted by the ombudsman and inform him/her about the results.</p> <p>(4) During the process of development of a piece of legislation, the ombudsman shall have the right to give opinions on proposed laws and other regulations, if they regulate issues of importance for the protection of human rights and freedoms.</p> <p>(5) The ombudsman may participate in the work of legislative bodies' committees and attend sessions of legislative bodies when they discuss issues of</p>	<p>BiH and to attend the sessions of these bodies if the issues under the jurisdiction of the Institution are being considered.</p> <p>The proposed amendments represent a significant step towards the harmonization of the jurisdictions of the Institution of Ombudsman with the Paris Principles, who see the state institutions for the protection of human rights responsible for guiding the Government, the Parliament and other relevant bodies on the issues related to human rights. It is a requirement for these institutions to promote and provide the laws which will incorporate or transform the international standards to the domestic legislature. In this respect, the Paris Principles require of these institutions to examine the current laws and other regulations, as well as the proposals and drafts in the procedure, and to issue recommendations they deem necessary for the provision of their harmonization with the fundamental principles of human rights and with the international instruments binding the state, including the recommendations for the amendments to the existing laws or the adoption of new laws and other regulations.<sup>5</sup></p> <p>Such solutions, related to the legislative initiative and to the mechanisms of consultations of these bodies in the process of drafting the laws and in the work of the legislative bodies are also in force in the neighbouring states of Serbia, Croatia and Montenegro. The Venice Commission supports such solutions in its recommendations.<sup>6</sup></p> <p><b><i>Initiatives for the abstract control of constitutionality</i></b></p> <p>The Ombudsmen, the focus of whose work is on the promotion and protection of human rights are in a very good position to notice the regulations which are not harmonized with the BiH Constitution and with the international standards of human rights protection, and which are a cause of common and systematic violations of human rights. Thus, the European standards, as well as the recommendations of the Venice Commission emphasize the desirable and logical nature of giving the institutions for the protection of human rights the jurisdiction to initiate the abstract evaluation of the constitutionality of laws and other regulations when they deal with human rights and fundamental freedoms.<sup>7</sup> <i>The Venice Commission</i> states that in doing so, the Ombudsman should be provided with the possibility of initiating the evaluation of constitutionality at his/her own initiative or as a</p>
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<sup>5</sup> Paris Principles, A. Competence and responsibilities, 3. (a) and (b).

<sup>6</sup> See e.g. the opinions adopted in regards to Serbia and Azerbaijan: CDL-AD(2004)041 - Joint Opinion on the Draft Law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe adopted by the Venice Commission at its 61st Plenary Session (Venice, 3-4 December 2004), par. 21 and 32.; CDL(2001)083 - Consolidated Opinion On the Law on Ombudsman in the Republic of Azerbaijan (Strasbourg, 7 September 2001), par. 6,7 and 18 (see CDL(2001)PV 47, par. 6).

<sup>7</sup> CDL-AD (2010)039rev – Study on individual access to constitutional justice adopted by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010), par. 64.

<p>importance for the protection of human rights and freedoms.</p> <p><b>Article 13</b> <b>(Initiative for Abstract Control of Constitutionality)</b></p> <p>(1) In accordance with his/her functions and powers, the ombudsman may initiate evaluation of compatibility of constitutions or laws with the Constitution of Bosnia and Herzegovina with the authorized proponents specified in Article VI/3 subparagraph a) of the BiH Constitution.</p> <p>(2) The body that received the initiative referred to in paragraph 1 of this Article shall issue an opinion on the initiative.</p>	<p>response to an individual complaint addressed to the Institution.<sup>8</sup></p> <p>In the context of Bosnia and Herzegovina, this possibility would require an amendment to the BiH Constitution, and as such is recommended by the Venice Commission in its opinions regarding the mandate of the Ombudsman of the Federation of BiH in relation to the Constitutional Court of Federation of BiH.<sup>9</sup> The state institutions for the protection of human rights in all the countries of the region (Serbia, Croatia, Montenegro, Slovenia and Macedonia) are provided with the possibility of initiating the procedure before the Constitutional Court, with the aim of evaluating the harmonization of laws and other regulations with the Constitution and the international treaties.</p> <p>With the aim of amending the laws in order to approach these standards and the comparative practice, two alternatives of the amendments have been proposed: the first which would provide the Ombudsman with the possibility to initiate the procedure of abstract control of the constitutionality before the Constitutional Court of BiH, which would require the amendments to the Constitution of BiH in terms of extending the circle of the authorised proponents, and the second alternative which would provide the Ombudsman to initiate the procedure before the authorized proponents, provided that it would be mandatory for them to consider it.</p> <p>In respect to both proposals, with the aim of effective functioning of the Institution, the authorization for the initiative proposal is assigned to particular Ombudsmen.</p>
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<sup>8</sup> CDL-AD(2007)020 - Opinion on the possible reform of the Ombudsman Institution in Kazakhstan adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007), par. 14 and 19.

<sup>9</sup> CDL-INF(2001)007 (English only) – Memorandum on the Organic Law on the Institution of the Ombudsman of the Federation of Bosnia and Herzegovina, approved by the Venice Commission at its 46th Plenary Meeting (Venice, 9-10 March 2001), par. 7.; CDL-INF(2000)9 – Opinion on Locus Standi of the Ombudsman of the Federation of Bosnia and Herzegovina before the Constitutional Court of Bosnia and Herzegovina, approved by the Venice Commission at its 43th Plenary Meeting (Venice, 16 June 2000).



**Chapter III –  
COMPOSITION, APPOINTMENT AND  
TERMINATION OF OFFICE**

**Article 14**

**(Composition)**

- (1) The Parliamentary Assembly of BiH shall appoint four ombudsmen.
- (2) One ombudsman may be appointed from each constituent peoples and from Others.
- (3) Discrimination on any grounds shall be prohibited in the appointment of ombudsmen, in accordance with the European Convention on Human Rights and the Anti-Discrimination Law of Bosnia and Herzegovina.
- (4) In the appointment of ombudsmen, equal representation of both sexes shall be taken into account, in accordance with the Gender Equality Law of Bosnia and Herzegovina.

**Article 15**

**(Appointment Procedure)**

- (1) Ombudsmen shall be appointed by the Parliamentary Assembly of Bosnia and Herzegovina for a period of six years with a possibility of one re-election. The House of Representatives and the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina shall adopt a decision on the appointment by two-third majority, in accordance with the Rules of Procedures.
- (2) Appointment procedure shall be initiated and lead by the Joint Committee on Human Rights of the Parliamentary Assembly of Bosnia and Herzegovina. The procedure shall be regulated by special Rules of Procedure to be adopted by the Joint Committee on Human Rights.
- (3) The Joint Committee on Human Rights shall establish a candidate list based on the public vacancy call, the submitted proposal of the concept of Institution's functioning, the interview and the completed procedure. The candidate list, with a rationale and biographies, shall be submitted to the Parliamentary Assembly of BiH for further action.
- (4) The Joint Committee on Human Rights shall issue a public call to involve representatives of civil society organizations, international organizations and bodies, professional and academic bodies working on protection and promotion of human rights and freedoms into its work and the conduct of the procedure.
- (5) The procedure shall be transparent and open to the public.
- (6) Not later than six months before the expiry of an ombudsman's term of office, or 30 days after the

**Chapter III –  
COMPOSITION, APPOINTMENT AND  
TERMINATION OF OFFICE**

*The Ombudsman Appointment Procedure* is one of the most significant issues which need to be considered in order to guarantee the independence of the human rights institutions, on the one hand, and to promote pluralism on the other, as the two principles which represent the corner of these institutions, in line with the international standards.

***Ensuring pluralism in the composition of the Institution***

The proposal stipulates that the Institution consists of four Ombudsmen, as well as that *the maximum of one Ombudsman shall be appointed from the ranks of each of the constituent peoples or from the ranks of the Others*. Apart from that, the proposal stipulates the prohibition of discrimination, on any basis, and the consideration of the *equal representation of both sexes*, in line with the Law on Gender Equality of BiH.

In line with the Paris Principles, there are different models of ensuring pluralism in the composition of national institutions for human rights. One of the important items in this regard is that the members of these bodies represent different segments of the society, and that, in line with that, the criteria which unduly narrow down and limit the diversity and pluralism in the composition of institutions should be avoided.<sup>10</sup> The requisite of pluralism, in the sense of Paris Principles, is directly related to the requisite of independence, credibility, efficiency and availability, and it implies the broad representation of the entire society within the framework of the Institution of Ombudsman, including the gender representation, ethnicity and national minorities.

With the proposed solution we achieve the consent between the ruling political principle of national tripartite and the guarantee of equal treatment of all persons, regardless of their ethnicity, including the members of national minorities or those who refuse to identify as members of one of the three constituent peoples (the constitutional category of the *Others*). The number of the Ombudsman is increased from 3 to 4, in order to ensure that, apart from the representatives of the three constituent peoples, a representative from the ranks of 'Others' will participate in the work of the Institution. At the same time, the proposed solution provides the guarantee of the protection from the domination of one of the groups (constituent peoples or the *Others*) over the others, which is standardized in the manner that the maximum of one Ombudsman can be nominated from the ranks of any of the constituent peoples or the *Others*.

<sup>10</sup> General Observations of the ICC/the updated version from 2013. G.O. 1.7 Ensuring pluralism of the National Human Rights Institution.

<p>termination of office for other reasons, the Joint Committee on Human Rights shall launch a procedure to appoint the ombudsman.</p> <p>(7) When an ombudsman's position becomes vacant for reasons other than expiry of term of office, ombudsmen in office shall perform his/her tasks and duties temporarily until the appointment procedure for a new ombudsman is completed. The ombudsman appointed to the vacant position shall perform the duty until the end of term of office and may be re-elected once.</p> <p>(8) Appointment procedure referred to in paragraph (7) of this Article shall not be conducted if less than 180 days remain before the expiry of the term of office.</p> <p><b>Article 16</b> <b>(Requirements for Appointment)</b> Ombudsmen may be persons meeting the following requirements:</p> <ol style="list-style-type: none"> <li>citizenship of Bosnia and Herzegovina,</li> <li>no convictions,</li> <li>not a political party member,</li> <li>degree in social sciences,</li> <li>fluency in at least one of the official languages of the United Nations,</li> <li>state judicial exam or a master's degree/degree of MA in social sciences,</li> <li>at least 10 years of professional experience in protection of human rights and freedoms and at least 3 years of experience at managerial functions,</li> <li>renowned expert of high moral principles perceived by the public as protector and promoter of human rights and freedoms and the rule of law.</li> </ol> <p><b>Article 17</b> <b>(Termination of Office)</b></p> <p>(1) Ombudsmen's office shall be terminated in case of:</p> <ol style="list-style-type: none"> <li>expiry of the term of office,</li> <li>resignation,</li> <li>death,</li> <li>the occurrence of circumstances under which the requirements for appointment are no longer met,</li> <li>inability to perform duties for a period longer than six months,</li> <li>failure to perform duties in accordance with this Law.</li> </ol> <p>(2) In case of circumstances referred to in paragraph 1, items d), e) and f), The House of Representatives and the House of Peoples of the Parliamentary of Bosnia and Herzegovina shall adopt a decision on the termination of office and a decision on the vacancy by a two-third majority, in accordance with the Rules of Procedures of both houses and with prior opinion of the Joint</p>	<p>Namely, the current legislature proposes the <i>representation of the three constituent peoples</i>, as stipulated in Article 8, Law on Ombudsman: "(1) The Institution of the Ombudsman shall consist of three persons, who shall be, in line with Article 7, appointed from the ranks of the three constituent peoples (Bosniak, Croat and Serb)". Although the Law later stipulates that this does not "exclude the possibility of appointing an Ombudsman from the ranks of the Others", which is used as a declarative distancing from the formal exclusion of the persons from the ranks of the Others from this public function, <i>this regulation has a discriminatory effect</i>, as there is a total of three positions, as it is stipulated that the three positions should be occupied primarily by the members of each of the three constituent peoples. Thus, it is not clear in which manner could one or more representatives from the ranks of the Others be appointed to this position. This is proven by the fact that the Institution of the Ombudsman has consisted of <i>the three Ombudsmen from the ranks of the three constituent peoples: Bosniak, Croat and Serb peoples for the last two mandates</i>. To date, there has been no situations that someone from the ranks of the Others would be in the race for the Ombudsman, even in the situation when the Ombudsman from the ranks of Croatian people Ivo Bradvica has vacated the position in 2009, when the <i>ad hoc committee which started the procedure of appointing an Ombudsman from the ranks of Croatian people</i> was formed.</p> <p>Since the adoption of this legal solution, envisioned at the time so that it would ensure the distribution of functions following the ethnic principle inherent to the consociational democracy as it is present in BiH, there has been a substantial change in the public opinion as well as the multiple court verdicts regarding this form of discrimination in regards to the availability of different public functions, when it comes to the citizens who are members of national minorities, or when they refuse to identify themselves with a particular constituent people. In this regards, the most significant are the verdicts of the European Court of Human Rights in the case of <i>Sejdić and Finci v. BiH</i> and in the case <i>Zornić v. BiH</i>, as well as the other verdicts of the BiH Constitutional Court, and other documents and recommendations of the international and domestic bodies condemning any form of discrimination against the citizens who belong to the ranks of the 'Others'. In the context of the problematic composition of the Institution of Ombudsman, among other things, the Venice Commission has recommended that the "stipulation of the draft Law stating that the Ombudsman and the two assistant ombudsmen shall be elected from the ranks of the 'three constituent peoples (Bosniak, Croat and Serb)' should be amended to ensure that the persons from the rank of the "Others"</p>
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<p>Committee on Human Rights.</p> <p>(3) The ombudsman whose termination of office referred to in paragraph 2 of this Article is subject to decision-making, shall upon request have the right to address the House of Representatives and the House of Peoples of the Parliamentary of Bosnia and Herzegovina.</p> <p>(4) Once the decision on vacancy of an ombudsman's position is adopted, the appointment procedure shall be initiated and lead by the Joint Committee on Human Rights, in accordance with provisions of Article 15 of this Law.</p> <p>(5) Ombudsmen whose terms of office have expired shall perform their duties until the completion of the procedure for the appointment of the new ombudsmen.</p> <p>(6) An ombudsman who worked as a civil servant prior to this position shall have to right to return to the previous service once his/her term of office expires.</p> <p><b>Article 18 (Immunity)</b></p> <p>(1) An ombudsman may not be criminally prosecuted, arrested or held detained nor be held accountable in a civil proceeding for opinions provided or for decisions adopted within his/her official duties.</p> <p>(2) Immunity shall not prevent or postpone an investigation in a criminal or civil proceeding when it is lawfully lead against an ombudsman in a given matter.</p> <p><b>Article 19 (Conflict of Interest and Incompatibility)</b></p> <p>(1) Ombudsmen may not perform any other public or professional duty, with the exemption of lecturing or assisting in teaching at higher education institutions.</p> <p>(2) Ombudsmen may do scientific, cultural, academic or humanitarian work provided that it is not contrary to their duties and shall not threaten timely and effective performance of their regular tasks in the Institution.</p> <p>(3) Ombudsmen may perform other functions based on authorization of the Parliamentary Assembly of Bosnia and Herzegovina. Authorizations shall be granted by the Joint Committee on Human Rights.</p> <p>(4) Ombudsmen may not be members of a political party.</p> <p>(5) Ombudsmen shall, within 10 days following their appointment and prior to entering their service, leave any incompatible duty; should they fail to do so, it shall be taken as their rejection of the</p>	<p>are not disabled from being appointed Ombudsman or assistant ombudsmen.”<sup>11</sup> Apart from that, as a part of the last examinations for the accreditation of the Institution of Human Rights Ombudsman of BiH, in November 2012, the ICC has pointed out the need of a more participatory and transparent Ombudsman selection process, with a particular emphasis on the fact that the direct referring to the appointment of Ombudsmen from the ranks of the three constituent peoples in the Law does not appear to be in line with the broad interpretation of the principle of pluralism other than in regards to ethnicity.</p> <p><i>The suggested solution would thus be the harmonization with the Paris Principles and the compliance with the recommendations of the Venice Committee, as well as the consistent implementation of the principle of the prohibition of discrimination in BiH.</i></p> <p>In this respect, it should be noted that it is also necessary to ensure the equal representation of both sexes in the Institution of Ombudsman, in order to meet the requirement of pluralism emphasized in the Paris Principles and in the international standards of human rights protection. Hence, it is recommended that the equal representation of both sexes is taken into consideration when appointing Ombudsmen, in line with the Law on Gender Equality in Bosnia and Herzegovina.</p> <p>A balanced representation of women and men in positions of social influence and power is a prerequisite of democratic decision-making with regards to the equal representation of these two groups in the society. The domination of persons of one sex in the positions of social influence despite the fact that the other sex represents 50% or more of the population is a reflection of the structural discrimination based on sex. The balanced representation promotes the probability that the Institution will be willing to pay attention to the problems and interests of women and men alike. The requisite of balance encourages the bodies responsible for the selection to appeal to a higher number of persons of both sexes which increases the pool of possible candidates and promotes the probability that the best candidate will be selected. A balanced representation also contributes to breaking of the traditional gender specific stereotypes regarding persons of either sex.</p> <p><i>The mandate of six years with the possibility of re-election</i></p> <p>The proposal stipulates the appointment of Ombudsmen to a period of six years, with the possibility of a single re-election. The conduct of the Ombudsman duty should still be limited to the maximum of two mandates</p>
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<sup>11</sup> CDL-AD(2004)031 Opinion on the Draft Law on Amendments to the Law on Ombudsman for Human Rights in Bosnia and Herzegovina adopted by the Venice Commission at its 60th Plenary Session (Venice, 8-9 October 2004), par. 14 and 29.

<p>appointment.</p>	<p>of six years, primarily in order to <i>ensure the independence of the Institution</i>, and to allow the criticism of the executive government in relation to the Parliament. It is necessary to ensure that the mandate of the Institution of Ombudsman is in no way <i>related to the duration of a mandate of the Parliament</i>. At the same time, it is necessary in order to ensure that the Institution has a motivated and ambitious leadership familiar with the most recent trends of human rights protection at any given time, on the one hand, and in order to prevent the personification of the position with the person, it is necessary to limit the possibility of re-election to the maximum of two mandates.</p> <p>The proposal also stipulates that the Joint Committee on Human Rights of the Parliamentary Assembly of Bosnia and Herzegovina should start the procedure for the appointment of Ombudsman, at least six months before the expiration of the mandate of the Ombudsman, at latest, or 30 days following the vacation of the post due to other reasons. This solution is in line with the recommendations of the Venice Committee, in order to ensure the continuity in the work of the Institution<sup>12</sup>, and it is also available in the comparative practice (e.g. Croatia).</p> <p><b><i>Role of the Joint Committee on Human Rights of the Parliamentary Assembly of Bosnia and Herzegovina in the appointment process</i></b></p> <p>Having the key role it has in the protection of fundamental human rights and in combating discrimination, the selection of ombudsmen is extremely significant for the democratic life of a society, and cannot be limited to a small circle of representatives of the most represented political parties or to be reserved for the political elites. In this sense, the procedure of appointing ombudsmen <i>should not be managed by an ad hoc committee</i> which does not deal with the field of protection of human rights in a systematic manner, and it should be managed by a standing parliamentary body which should include a proportional number of the representatives of the ruling and the opposition parties.</p> <p><i>The Venice Commission</i> has issued a recommendation in one of its previous opinions on the Institution of Ombudsman of Bosnia and Herzegovina<sup>13</sup> that the Law should be amended in the manner that the joint committee of the two houses of Parliament is tasked with the appointment of ombudsmen. As recommended by the Venice Commission, the composition of the committee should be stipulated <i>ab initio</i> in the Law itself or in the Rules of Procedure. As specified, it would be harmful for the transparency of the procedure</p>
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<sup>12</sup> Joint opinion on the law on the protector of human rights and freedoms of Montenegro by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011), par. 21.

<sup>13</sup> The opinion in question was regarding the Ombudsman at the level of Federation of BiH, but as desirable, this solution can be applied to the Parliamentary Assembly of BiH as well.

	<p>- and thus for the credibility of the institution - to determine the composition of the committee <i>ad hoc</i> aimed at determining the proposition for the appointment for each of the mandates of the Ombudsmen.<sup>14</sup></p> <p>Having in mind the aforementioned arguments, the most suitable body for performing this important task is <i>the existing Joint Committee on Human Rights</i> of the Parliamentary Assembly of BiH. On the one hand, it represents the body of both houses of the Parliamentary Assembly of BiH, and its members are the representatives of the ruling and the opposing political powers, with respect to the territorial representation<sup>15</sup>. On the other hand, it would be perfectly natural to assign the procedure of the selection of the candidates for the Institution of Ombudsman to this body, as it already deals with the issue of the protection of human rights in a systematic manner and since it collaborates with the Institution of Ombudsman.<sup>16</sup> Thus, the jurisdiction of the existing Joint Committee on Human Rights of the PA BiH includes, among other things, the consideration of the “issues related to the implementation of the human rights and fundamental freedoms guaranteed by the Constitution of BiH and the BiH legislature, by the state bodies, public institutions and organizations with public powers, in cases presented by the Institution of Ombudsman of BiH, the citizens and the entities, and notifying the houses.”<sup>17</sup> Such solution would also be in line with the pluralist representation of the social groups included in the promotion and protection of human rights, as stated in the Paris Principles.</p> <p><b><i>Two-thirds majority regarding the selection</i></b></p> <p>In the aforementioned opinion<sup>18</sup>, the Venice Commission has in regards to BiH recommended that the Law is amended in the manner that the <i>two-thirds majority is required in both houses</i> when appointing Ombudsmen, which would definitely contribute to ensuring the pluralism regarding the appointments, as defined by the Paris Principles. The Venice</p>
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<sup>14</sup> CDL-INF(2001)007 (English only) – Memorandum on the Organic Law on the Institution of the Ombudsman of the Federation of Bosnia and Herzegovina , approved by the Venice Commission at its 46th Plenary Meeting (Venice, 9-10 March 2001), par. 2.

<sup>15</sup> Permanent committees have nine members. The committees receive the members in proportion with the size of the clubs of the representatives in the House, two-thirds of members are appointed from the territory of Federation of BiH, and one-third from the territory of Republika Srpska.

<sup>16</sup> In this respect, the Venice Commission has, in the opinion regarding Serbia in 2004, recommended the engagement of the Constitutional Commission in the procedure of the appointment of Ombudsmen, due to the fundamental importance of this institution for the state, and due to the fact that the Constitutional Commission deals with the issues of human rights protection. See CDL-AD (2004)041 - Joint Opinion on the Draft Law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe. (Strasbourg, 6 December 2004), par. 12.

<sup>17</sup> This is stipulated in the Rules of Procedure of both houses of the Parliamentary Assembly of BiH.

<sup>18</sup> CDL-INF(2001)007 (English only) – Memorandum on the Organic Law on the Institution of the Ombudsman of the Federation of Bosnia and Herzegovina , approved by the Venice Commission at its 46th Plenary Meeting (Venice, 9-10 March 2001), par. 2.

	<p>Commission has determined that the notion of the simple majority in both houses is not suitable, assessing that it does not guarantee a broad consensus of all powers in the houses, and that the appointment of Ombudsmen without such a consensus might compromise the credibility of the Institution. As the Venice Commission has stated, the only way of ensuring the recognition of the impartiality of the Institution as an objective fact, recognized by all the citizens, is making sure to reach the broadest possible consensus regarding the persons in question.<sup>19</sup></p> <p>The Venice Commission underlines such solution as desirable in relation to the appointment and dismissal of duties in the institutions for human rights protection <i>in other states of the Council of Europe</i>, such as Bulgaria, Serbia, Macedonia, Montenegro, Armenia and Kazakhstan. Thus it has stated in its opinion that it was needed for the securing of “politically and socially broad base for the appointment of Ombudsmen”, “for the reasonable consensus to be reached”, “so that the public trust in the independence of Ombudsmen would ensured”, and it has underlined that “the greater the majority of representatives, the greater independence and public authority of the Ombudsmen”.<sup>20</sup> The significance given to this solution by the Venice Commission is also visible from the fact that it has, in regards to Montenegro in 2007, underlined the need for the Constitution to stipulate the qualified majority as necessary for the appointment of Ombudsmen by the Parliament.</p> <p>In the context of Bosnia and Herzegovina, <i>the decision-making by two-thirds majority is not common in the Parliamentary Assembly of BiH</i>, and it is limited to making decision of great importance, such as amendments to the Constitution of BiH. However, it should be underlined that the two-thirds majority for the appointment of Ombudsmen <i>was already stipulated for the appointment of Ombudsmen in the 2002 Law on Ombudsman for Human Rights</i>, until the Law was amended in 2006 and this provision was removed. We should also note the fact that the two-thirds majority is still stipulated in Article 12, paragraph 2 of the current Law, which relates to the decision-making process</p>
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<sup>19</sup> CDL-INF(99)10 - Report of the Working Group of the Venice Commission and the Directorate of Human Rights on Ombudsman institutions in Bosnia and Herzegovina

<sup>20</sup> CDL-AD(2008)009 – Opinion on the Constitution of Bulgaria adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008), par. 81.; CDL-AD(2007)020 - Opinion on the possible reform of the Ombudsman Institution in Kazakhstan adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007), par. 11.; CDL-AD(2004)041 - Joint Opinion on the Draft Law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe.(Strasbourg, 6 December 2004), par. 8.1 and 11.; CDL-AD(2003)007 - Opinion on the Draft Law on the Public Attorney of “The former Yugoslav Republic of Macedonia” adopted by the Venice Commission at its 54th Plenary Session (Venice, 14- March 2003), B.II Article 5.1.; CDL-AD(2003)006 - Opinion on the Draft Law on the Human Rights Defender of Armenia adopted by the Venice Commission at its 54th Plenary Session (Venice 14-15 March 2003), II Article 3.; CDL-AD(2011)034-e, Joint opinion on the law on the protector of human rights and freedoms of Montenegro by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011), par. 16.

	<p>regarding the vacant position of Ombudsmen under certain circumstances.</p> <p>Lastly, regardless of whether the two-thirds majority vote will be selected as a preferred solution in the houses of PABiH, following the detailed debate on the issue, it is also important to ensure other procedural guarantees that the selection and appointment of Ombudsmen will be conducted in line with the Paris Principles and the recommendations of the Venice Commission. In this sense, the Venice Commission had stated, e.g. in the opinion in relation to Serbia in 2004, that it would be necessary to seek out other possibilities which would ensure the same result, with such modality guaranteed in the legislature, in case that the constitutional regulations make the meeting of this requirement impossible.</p> <p>In this context, an important possibility available to Bosnia and Herzegovina, and which represents the minimum which needs to be met is the aforementioned engagement of the Joint Committee on Human Rights of the PA BiH. The management of the selection of the candidates who meet the requirements for the selection of Ombudsman set by this body, with the adequate participation of the representatives of the civil society, would help meet the requirement stipulated in the Paris Principles, which states, in line with the interpretation of the ICC, that this procedure should be “controlled by an independent and trustworthy body” in order to ensure pluralism, independence and efficiency, as well as the public trust in the Institution.<sup>21</sup></p> <p><b><i>Appointment Criteria</i></b></p> <p>The proposal includes a partial amendment of the requirements an individual needs to satisfy in order to be appointed an Ombudsman.</p> <p>The institutional capacities as a pre-requisite of the effective protection of fundamental human rights depend primarily on the expertise and professionalism of the human resources, particularly of those in managerial positions. In this sense, and in line with the Paris Principles, the pre-requisites of the participation in the procedure of Ombudsman selection need to be specifically defined in the legislature, available to the public, and they need to be discussed through the means of consultations with all stakeholders, including the civil society, at the time of their adoption.<sup>22</sup></p> <p>As elaborated by the ICC in its General Observations, “the evaluation of the candidates based on the basis of pre-selected, objective and publicly available criteria, promotes the appointment of candidates based on their merit, limits the possibility of unjustified interference in the selection process and serves the ensuring of</p>
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<sup>21</sup> The updated version from 2013. G.O. 1.8. Selection and appointment of the decision-making body of National Human Rights Institutions

<sup>22</sup> General Observations of the ICC/the updated version from 2013. G.O. 1.7 Ensuring pluralism of the National Human Rights Institution;

	<p>adequate management and efficiency of the state institution”.<sup>23</sup></p> <p>In this respect, in order to ensure the quality management of the state institution responsible for the protection of human rights, the proposition stipulates the degree in social sciences, the passed Bar exam or a Master degree in social sciences, at least 10 years of professional experience in the field of human rights and at least 3 years in the managerial positions. Besides that, it is also stipulated that he/she is an esteemed expert, recognized by the public as a protector and promoter of human rights and freedom, and of rule of law, and as a person of a high moral stature, as well as that he/she has an excellent knowledge of at least one foreign language. Apart from the general professional experience, a requisite currently stipulated in BiH, it would be of a great significance for the position to add the particular experience in the field of the protection of human rights, which is, among other things, in line with the recommendations of the Venice Commission<sup>24</sup>, and experience of being in managerial positions. Through the process of standardizing the requisites which prove the competence in the field of protection of human rights and in the management of the Institution, we ensure the quality basis for the effective and efficient work of the Institution, In this context, a significant possibility is that the process of candidate selection also considers the concept of work of the Institution, as envisioned by the candidates, as the amendments stipulate that it is mandatory to submit it. In the context of ensuring the public trust, and with the aim of ensuring independence, the proposal, following the example of the solution adopted in Croatia in regards to the Ombudsman, stipulates that an individual is not a member of a political party.</p> <p>In the end, all of these criteria support the public trust in the work of the Institution of Ombudsman.</p> <p><b><i>Participation of civil society organizations in the appointment of Ombudsmen</i></b></p> <p>The proposed amendments include the participation of the representatives of the civil society organizations, international organizations, and of the professional and academic communities, in the selection of Ombudsmen, who are engaged with the procedure through an open call.</p> <p>Guided by the highest standards of the democratization of a society, by the <i>acquis communautaire</i>, the Paris Principles, and by the particular recommendations of the ICC, it is necessary and useful that the civil society organizations who work in the field of the promotion and protection of human rights be actively engaged in</p>
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General Observations of the ICC /the updated version from 2013. G.O. 1.8 Selection and appointment of the decision-making body of National Human Rights Institutions;

<sup>24</sup> Joint opinion on the law on the protector of human rights and freedoms of Montenegro by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011), par. 19.



	<p>the entire process of the appointment of Ombudsmen.</p> <p><i>The Paris Principles</i>, chapter B.1 “<i>Composition and guarantees of independence and pluralism</i>”, call on the United Nations member states to regulate the composition and appointment of the national institutions of human rights, in case of BiH - the appointment of human rights ombudsmen, in a procedure which will ensure all necessary guarantees for the pluralist representation of the social groups (the civil society) engaged in the promotion and protection of human rights.</p> <p>According to the <i>General Observations of the ICC</i>, there are several ways of ensuring pluralism, including the participation of the civil society in the appointment procedure and other ways of efficient cooperation with the civil society. It is stated that the election procedure must be open and transparent, in order to ensure independence and efficiency, as well as the public trust in the Institution. In order to achieve that, the procedure needs to be under the control of an independent and trustworthy body, and it needs to include open and fair consultations with the NGO and civil society. Thereby, it is acknowledged that the expertise and experience of the non-governmental organizations and the civil society lead to a greater public legitimacy of the institutions of human rights. The ICC has recognized that the ensuring of the extensive consultations and participation in the process of applying, reviewing the applications and the selection, promotes transparency, pluralism and public trust in the entire procedure, as well as in the selected candidates, and finally, in the Institutions itself.<sup>25</sup></p> <p>In this context, it needs to be noted that the ICC, i.e. its subcommittees researching the institutional harmonization with the Paris Principles, has issued recommendations specifically in relation to the BiH state in order to formalize the participation of the civil society in the process of the appointment of Ombudsmen. The ICC has in November 2009, in relation to Bosnia and Herzegovina, in the process of re-accreditation of the Institution of Ombudsman of BiH, established that the civil society and other groups have not been included in the process of appointing Ombudsmen and that there is a need for a more transparent and participatory process of appointing Ombudsmen. In November 2010, the ICC has, among other things, recommended the re-accreditation of the Institution of Ombudsman in A status, particularly due to the fact that the Institution has stated their intentions propose the amendments to the legislature in order to ensure pluralism and independence of the Institution through a suitable process of selection and appointment.</p> <p>In November 2012, the ICC has once more, in relation to BiH, underline the need for a “clear, transparent and</p>
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<sup>25</sup> The updated version from 2013. G.O. 1.7 Ensuring pluralism of the National Human Rights Institution; G.O. 1.8. Selection and appointment of the decision-making body of National Human Rights Institutions

	<p>participatory selection process, which promotes the selection based on merit, which ensures pluralism, promotes the independence and the public trust in the management of the state institution of human rights”. In this context, the ICC has called for the formalization of the selection process through the relevant regulations, and through the implementation of public tenders, rating the candidates based on the pre-selected, objective and publicly available criteria, as well as through the extensive consultations with the civil society and/or their participation in the process of applying to the tender, evaluation and the selection of the candidates.</p> <p><i>The comparative experiences of the neighbouring Republic of Croatia</i> regarding the appointment of attorney general and of the Ombudswoman, as well as the practice of other states in the European Union, have shown that the civil society organizations can contribute significantly to the quality of the appointment process, by being included in the process of evaluation of each of the candidates, interviewing the candidates, and finally, through the suggestion of the best candidates for the appointment by the Parliament.</p>
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**Chapter IV –  
DIVISION OF TASKS, MANAGEMENT AND  
INTERNAL STRUCTURE**

**Article 20**

**(Division of Tasks)**

- (1) Not later than 30 days of the appointment, ombudsmen shall divide areas of work and tasks among themselves. In accordance with the functions of the Institution, each ombudsman shall take over one of the following four positions:
  - a) **gender equality ombudsman** shall cover tasks that relate to equality and discrimination on grounds of gender, sex, sexual orientation and gender identity, as well as related grounds, gender based violence and domestic violence, right to private and family life, and all other related tasks,
  - b) **equality of peoples and minorities ombudsman** shall cover tasks that relate to equality and discrimination on grounds of race, ethnicity and nationality, religion, political and other beliefs, as well as related ground, rights of children, rights of persons in third age, rights of persons with disabilities, rights of national minorities, and all other related tasks,
  - c) **civil and political rights ombudsman** shall cover tasks that relate to the right to life, right to integrity of person, right to personal freedom and safety, prohibition of torture and inhuman or degrading treatment or punishment, trafficking in human beings, right to asylum, right to an effective legal remedy and just trial, freedom of movement and residence, and all other related tasks, and
  - d) **democracy and social solidarity ombudsman** shall cover tasks that relate to the right to good governance, right to access documents, protection of personal data, environment protection, freedom of expression, information and the media, freedom of assembly and association, freedom of science and art, right to education, freedom of ownership, right to work, fair and just working conditions, right to social and health protection, elective rights, and all other related tasks.
- (2) Tasks arising from other functions and competences stipulated by other laws shall be assigned to one of four ombudsmen.
- (3) The division of tasks shall be regulated in more details by the Rules of Procedure of the Institution.

**Article 21**

**(Collegium of the Institution)**

- (1) The Collegium of the Institution comprising the ombudsmen and the secretary general shall manage its operation.
- (2) Coordination of tasks of the Collegium of the

**Chapter IV –  
DIVISIONS OF TASKS, MANAGEMENT AND  
INTERNAL STRUCTURE**

The past experience of the Institution of Ombudsman has shown that often it is not clear which Ombudsman is responsible for what, which meant that the decisions on many issues, including such simple issues as a decision on who will be a guest speaker at a round table, had to be made at the level of the three Ombudsmen. The principle of joint decision-making often slows down the decision-making process, and sometimes it stops it fully. In order to solve this issue, and to make the work of the Institution more effective, it is extremely important that there is a division of labour between the appointed Ombudsmen. Similar division of labour is also present in the comparative practice. For example, the Institution of Ombudsman in Sweden also has four Ombudsmen, each of whom works on different matters, in line with their responsibilities, i.e. the functions the Institution performs. The four Ombudsmen in BiH can distribute the responsibilities among themselves in a similar manner. One of the models which enables each of them to undertake certain responsibilities stems from the functions of: 1. Protection of human rights, 2. Promotion of human rights, 3. National prevention mechanism, and 4. Combating discrimination.

Another model of division of labour would be, as proposed in this model law:

1. gender equality ombudsman (working on issues related to: discrimination and equality based on gender, sex, sexual orientation and gender identity; gender-based violence and domestic violence; the right to private and family life),
2. equality of peoples and minorities ombudsman (performing the duties related to: discrimination and equality based on race and ethnicity, religious, political, and other beliefs; the children's rights, the rights of the elderly, the rights of the persons with disabilities),
3. civil and political rights ombudsman (working on issues related to: the national preventive mechanism; fundamental rights; asylum; right to an effective legal procedure and to a fair trial), and
4. democracy and social solidarity ombudsman (the right to good governance, access to documents, personal data protection, environmental protection, freedom of expression and information, freedom of assembly and association, the right to education; freedom of ownership; right to work; social and health care).

This manner of labour division would enable the specialization of Ombudsmen and the supporting staff in regards to particular issues, which would eventually lead to the improving of the expertise of the body.

In regards to performing the joint duties, such as the budget and the Institutional financing, or devising agendas, strategies, collaboration with the civil society

<p>Institution shall be lead by one of the ombudsmen for a period of 18 months for which he/she shall be the chair ombudsman.</p> <p>(3) Unless otherwise stipulated by the Rules of Procedure, ombudsmen shall chair the Collegium in the alphabetical order of their last names.</p> <p>(4) Exceptionally and by authorization, assistant ombudsman may replace the ombudsman who was unable to attend the work of the Collegium for objective reasons.</p> <p>(5) Members of the Collegium shall cooperate and strive to compromise in decision-making. In case of conflict or misunderstanding in the decision-making process under the competence of the Collegium, the decision shall be deemed adopted when supported by at least three ombudsmen.</p> <p>(6) In case it is unclear which ombudsman is to receive the complaint pursuant to Article 29, the decision shall be made thereon by the chair ombudsman.</p> <p><b>Article 22</b> <b>(Competences of the Collegium)</b></p> <p>(1) The Collegium shall be competent to consider and adopt decisions of importance for the operation of the Institution.</p> <p>(2) The Collegium shall have the following authorizations:</p> <ul style="list-style-type: none"> <li>a) to adopt annual work plans and budget proposals,</li> <li>b) to adopt the annual report and special reports,</li> <li>c) to adopt initiatives for amendments to laws and other regulations,</li> <li>d) to adopt initiative for abstract control of constitutionality,</li> <li>e) to approve the application of accelerated procedures,</li> <li>f) to secure adequate and efficient investigation procedures in individual cases and, upon proposal of the competent ombudsman, to discuss particularly complex cases of human rights violations,</li> <li>g) to adopt the Rules of Procedure and other internal acts,</li> <li>h) to adopt the strategy of the Institution.</li> </ul> <p><b>Article 23</b> <b>(Rules of Procedure)</b></p> <p>(1) The Rules of Procedure of the Institution shall regulate the internal structure of the Institution, the number, set-up and operation of regional offices and field offices, operation of the Institution and work of individual ombudsmen, division of tasks among the ombudsmen, work of the Collegium of the Institution, planning, performance and monitoring of tasks, complaints procedure, investigation of violations of human rights, framework methodology for drafting annual and</p>	<p>or the drafting of the annual reports, all four Ombudsmen collaborate and reach decisions on these issue at the level of the Collegium of the Institution. In regards to performing the administrative and technical duties, a separate service will be opened, managed by the General Secretary of the Institution. Ombudsmen are always seeking to find a compromise, and in case of any potential disagreement, the final decision is in hands of the Chairman of Ombudsman Institution. The Rules of Procedure determine which issues will be considered at the Collegium level, and which by the Ombudsmen themselves.</p> <p>Each of the Ombudsmen appoints his/her assistant, whose mandate is linked to the mandate of the Ombudsman in question. The Rules of Internal Organization and Systematization regulate other issues related to the staff of the Institution of Ombudsman.</p>
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special reports, remit of the standing advisory body, as well as the number of its members and their election, and other issues of importance for its operation.

- (2) The Rules of Procedure of the Institution shall be adopted by the Collegium of the Institution not later than 45 days following the appointment of ombudsmen.
- (3) The Rules of Procedure shall enter into force after its publication in the Official Gazette BiH.

#### **Article 24**

##### **(Administrative Service)**

An administrative service of the Institution shall be established to perform professional, research, promotional, administrative, financial and other affairs. The secretary general shall manage the administrative service.

#### **Article 25**

##### **(Assistant Ombudsman)**

- (1) Each ombudsman shall appoint assistant ombudsman in his/her respective area. The term of office of assistant ombudsmen shall be linked to the term of office of ombudsmen and these shall be terminated together.
- (2) Persons who may be appointed assistant ombudsmen must have a university degree in law, fluency in at least one of the official languages of the United Nations and at least five years of professional experience in human rights protection.
- (3) When the ombudsman's position becomes vacant for reasons other than the expiry of term of office, the term of office of assistant ombudsman shall be terminated with the appointment of the new ombudsman to that position.

#### **Article 26**

##### **(Staff)**

- (1) The Institution shall adopt a Rulebook on Internal Organization and Systematization to regulate the number of employees required for the performance of tasks with an indication of their basic tasks, assignments, professional requirements necessary for the performance of tasks, their authorizations and responsibilities, salary levels and other benefits, as well as other issues of importance for the work and performance of staff.
- (2) The Institution shall adopt Rules on Work.
- (3) The Rulebook on Internal Organization and Systematization and the Rules on Work shall be adopted not later than 60 days following the appointment of ombudsmen.
- (4) The Rulebook on Internal Organization and Systematization and the Rules on Work shall enter into force after their publication in the Official Gazette of BiH.

<p>(5) Staff of the Institution shall be recruited and dismissed by the Institution.</p> <p>(6) Recruitment of staff in the Institution shall be based on a public vacancy call, in accordance with the Labor Law of Bosnia and Herzegovina and internal regulations.</p> <p>(7) Term of office of assistant ombudsmen shall expire once the Parliamentary Assembly of Bosnia and Herzegovina appoints new ombudsmen. Assistant ombudsmen may be reappointed.</p> <p>(8) Assistant ombudsmen coming from the Institution shall enjoy the guarantee of re-admission to the Institution or other positions in the civil service of BiH.</p> <p><b>Article 27</b> <b>(Strategy)</b></p> <p>(1) The Collegium of the Institution shall adopt a multi-annual strategy of the Institution. The strategy of the Institution shall define goals of work, manner of implementation, monitoring and evaluation.</p> <p>(2) Special focus in the strategy will be on activities related to the function of promoting human rights.</p> <p>(3) The standing advisory body shall participate in strategy drafting and implementation. The remit of the strategy shall be linked to the term of office of ombudsmen.</p> <p>(4) The strategy shall be adopted not later than 180 days following the ombudsmen's appointment.</p> <p><b>Article 28</b> <b>(Other Acts)</b></p> <p>(1) The Institution may adopt other acts needed for its operation in accordance with this Law and the Rules of Procedure.</p> <p>(2) Other acts shall enter into force after their publication in the Official Gazette of BiH.</p>	
<p><b>Chapter V –</b> <b>COMPLAINTS AND PROCEDURES</b></p> <p><b>Article 29</b> <b>(Submission of Complaints)</b></p> <p>(1) Any person who deems that his/her human rights and freedoms have been threatened or violated may submit a complaint to the Institution to launch an investigation procedure.</p> <p>(2) The Institution may launch an <i>ex officio</i> procedure in order to investigate individual or frequent repeated violations of human rights and freedoms.</p> <p>(3) The work of the Institutions shall be free of charge for any person who contacts the Institution and shall not require assistance of councils or attorneys.</p> <p>(4) The Institution shall not review anonymous complaints.</p> <p>(5) Exceptionally, the Institution may launch the procedure <i>ex officio</i> if it deems that an anonymous complaint contains grounds for investigation.</p>	

- (6) No person may be prevented to submit a complaint to the Institution or be put in a less favorable position or subjected to other consequences or sanctions for addressing the Institution.
- (7) Submission of complaints, time limits, procedure, complaint form, complaints records, issuing of recommendations and all other issues pertaining to complaints and investigation of violations of human rights and freedoms shall be regulated in details in the Rules of Procedure of the Institution and in other acts of the Institution, if necessary.
- (8) Persons deprived of freedom shall submit complaints and receive responses in closed envelopes without any restrictions to or supervision of the contents.
- (9) The Institution may regulate special procedures for receiving and reviewing complaints submitted by children, national minorities, asylum seekers and persons with disabilities.

#### **Article 30**

##### **(Time Limit for Submission of Complaints)**

The Institution shall not consider complaints pertaining to circumstances that took place more than three years ago unless it finds that the case is of particular interest for the protection of human rights and freedoms, i.e. if its consequences are still ongoing.

#### **Article 31**

##### **(Complaint Form and Electronic Database)**

- (1) Complaints are generally submitted using a complaint form, but may also be submitted verbally with minutes or by electronic mail.
- (2) All submitted complaints and *ex officio* procedures shall be recorded in the electronic database of complaints of the Institution.
- (3) In case the complaint is incomplete, the complainant shall be obliged to complete it.

#### **Article 32**

##### **(Application of Regular Legal Remedies)**

The Institution shall instruct the complainant about the possibility to launch adequate legal proceedings, if available.

#### **Article 33**

##### **(Actions in Cases Subject to Court Proceedings)**

- (1) The Institution shall not act in cases subject to court proceedings, except in cases of unnecessary delays or evident abuse of power.
- (2) A person who submitted a complaint to the Institution and then lodged an appeal to the court shall be obliged to inform the Institution thereon in writing.
- (3) Should the Institution establish a violation of human rights and freedoms by the court, the recommendation shall also be submitted to the

High Judicial and Prosecutorial Council of Bosnia and Herzegovina.

- (4) The Institution may also appear as a friend of the court (*amicus curiae*) in court proceedings related to human rights.

**Article 34  
(Discretion)**

- (1) The Institution shall have the discretion to decide if it will review the complaint and to what extent.
- (2) In case the complaint is not accepted, the Institution shall inform the complainant on the reasons for rejecting it. The decision to accept or reject the complaint shall be made within thirty (30) days of the day of submission.

**Article 35  
(Accelerated Procedure)**

The Institution can adopt a decision to review a complaint without conducting an investigation when the facts stated in the complaint and generally known facts, i.e. official data available to the Institution, can be used to establish whether rights and freedoms of the complainant have been threatened or violated.

**Article 36  
(Investigation Procedure)**

- (1) Individual ombudsmen shall lead the complaint procedure autonomously within their respective areas.
- (2) During the investigation procedure, the Institution shall request a statement from the authority named in the complaint as the entity that violated human rights.
- (3) The Institution shall have the right to request necessary information, data, explanations, acts and other documentation from the authorities. The authorities shall ensure availability of acts and other documentation pertaining to the submitted complaint, i.e. shall provide necessary assistance to the Institution in accordance with its request.
- (4) The Institution shall have the access to any authority for the purpose of verifying requested information, personal conversations and interviews, and consideration of needed acts and documents.
- (5) The Institution must have access also to those acts and documents classified as confidential or secret in accordance with the law.
- (6) The Institution shall set the time limit in line with the circumstances of the case within which authorities shall be obliged to submit statements and responses. The time limit may not be shorter than (8) eight days or longer than (30) days.
- (7) If the authorities fail to ensure availability of information or fail to submit the requested data, acts and other documentation within the set time limit, the Institution shall inform thereon the body



competent for the supervision over the relevant authority.

- (8) The Institution shall keep secret all information and data it receives and processes and shall not make them available to the public. The obligation of keeping official secret shall remain after the termination of office or employment.
- (9) If there are indications during the investigation procedure of elements of a criminal offense, the Institution shall inform the competent prosecutor's office thereon.

#### **Article 37**

##### **(Closing of Procedure during Investigation)**

- (1) The Institution may close the procedure during the investigation, provided that
  - a) it finds that human rights and freedoms have not been violated,
  - b) the authority eliminated the violation of human rights in the course of the procedure,
  - c) the complainant failed to complete the complaint following the request of the Institution,
  - d) the complainant requested a suspension of the procedure, or
  - e) the case has been solved in a different manner, according to the request of the complainant.
- (2) Once the procedure is closed, the Institution shall adopt a decision and inform the complainant and the authority thereon.

#### **Article 38**

##### **(Issuing Recommendations)**

- (1) Once the investigation procedure is finalized, the Institution shall issue a recommendation to the competent authority and shall also deliver it to the complainant.
- (2) The investigation procedure and issuance of the recommendation must be finalized not later than 120 days from the day of submission of the complete complaint.
- (3) The Institution shall propose in the recommendation the manner in which the threatening or the violation of the right can be eliminated.
- (4) Individual ombudsmen shall autonomously adopt recommendations pertaining to complaints submitted within their respective areas of work.
- (5) The authorities shall inform the Institution on measures taken pertaining to the recommendation within the time limit specified in the recommendation.
- (6) If the authority fails to inform the Institution within the stipulated time limit on measures taken or fails to act in accordance with the recommendation, the Institution shall inform thereon the body competent for the supervision over the relevant authority.
- (7) In its annual report, the Institution shall inform legislative bodies on all individual

<p>recommendations that have not been implemented.</p> <p>(8) Appeals shall not be allowed against the recommendations of the Institution.</p> <p>(9) If the recommendation is not deemed confidential or secret by its nature, it shall be published on the website of the Institution.</p> <p>(10) The Institution may decide to publish the recommendation in the Official Gazette of BiH.</p>	
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**Chapter VI –  
COOPERATION AND PROMOTION**

**Article 39  
(Consultations)**

- (1) The Institution shall actively and regularly cooperate with civil society organizations, international organizations and bodies, professional bodies, and the academia.
- (2) With the purpose of promoting its work, as well as further improvement of certain areas of protection and promotion of human rights and freedoms, the Institution shall hold regular and thematic consultations with civil society organizations, international organizations and bodies, professional bodies, and the academia.

**Article 40  
(Standing Advisory Body for Cooperation with Civil Society)**

- (1) The Institution shall establish a standing advisory body for cooperation with civil society which shall consider and propose strategic directions in protection and promotion of human rights and freedoms, ensure continuous cooperation in the field of human rights and freedoms between the Institution, civil society organizations, the academia, the media, and the profession, and shall consider other issues of importance for the Institution in the field of human rights and freedoms.
- (2) The standing advisory body shall participate in the drafting of the Institution's strategy and shall support its implementation.
- (3) The standing advisory body shall be established not later than 180 days following the ombudsmen's appointment.
- (4) Members of the standing advisory body shall be appointed by the Collegium of the Institution from the ranks of civil society organizations, the academia, the media, and the profession. The appointment process shall be public and transparent.
- (5) Members shall not receive any form of compensation for their work in the standing advisory body.

**Article 41  
(Cooperation with the Media)**

- (1) For the purpose of performing its human rights promotion function, the Institution shall cooperate with public broadcasters at the level of Bosnia and Herzegovina and the entities.

**Chapter VI –  
COOPERATION AND PROMOTION**

The Paris Principles relating to the working method of the national/state institutions for human rights have determined that they should develop relations with the non-governmental organizations devoted to the promotion and protection of human rights, to the economic and social progress, combating racism, protecting particularly vulnerable groups (primarily children, migrant workers, refugees, persons with mental and physical disabilities) and with the non-governmental organizations working in specialized fields.<sup>26</sup>

According to the *General Observations of the ICC*, pluralism, as one of the fundamental requisites in the work of the national/state institutions for human rights, can be ensured in several ways, without being limited solely to the composition of the Institution's management, or the participation of the civil society in the appointment procedure, but also in relation to other ways of effective collaboration with the civil society in the implementation of the activities.<sup>27</sup>

In order to fully respect the Paris Principles, the ICC states that a "regular and constructive cooperation with all relevant stakeholders is essential for the effective fulfilment of the mandate of national institutions for the protection of human rights (...)". In this respect, it is recommended that the Institutions "develop, formalize and maintain regular, constructive and systematic work relations with other domestic institutions established for the promotion and protection of human rights (...)", including, among others, "civil society organizations and non-governmental organizations".<sup>28</sup>

As it is stated in the *General Observations*, this interaction can include the exchange of knowledge, including the research studies, the best practice, education programs, the statistical data and the general information of the implemented activities.

It is emphasized that the effectiveness of a state institution for the human rights in implementing its mandate of protection and promotion of human rights is very dependant on the quality of its work relations with other bodies, including the organizations of the legal profession, the media and the civil society organizations. Through the collaboration, these institutions can, as it is specified, achieve better understanding of the issues in relation to the human rights throughout the country, and also on the room for their improvement. It is acknowledged that the certain groups of the civil society have developed a particular expertise, due to their specialized mandate, which enables them to provide the institutions with the

<sup>26</sup> Paris Principles, C. Methods of operation, (g).

<sup>27</sup> General Observations of the ICC/the updated version from 2013. G.O. 1.7 Ensuring pluralism of the National Human Rights Institution; G.O. 1.8. Selection and appointment of the decision-making body of National Human Rights Institutions

<sup>28</sup> General Observations of the ICC/the updated version from 2013. G.O. 1.5 Cooperation with other human rights bodies.

<p>(2) Public broadcasters and the Institution shall jointly decide on television and radio content produced and broadcasted for this purpose.</p> <p>(3) The Institution shall also cooperate with other electronic, print and online media.</p> <p><b>Article 42</b> <b>(Other Forms of Cooperation)</b></p> <p>(1) The Institution and other bodies for the protection and promotion of human rights at all levels of government in BiH shall cooperate and regularly exchange information.</p> <p>(2) The Institution shall cooperate intensively with international and regional organizations and bodies for the protection and promotion of human rights and freedoms.</p> <p>(3) The Institution shall network with related institutions internationally and strive for active membership in international and European networks of institutions and bodies for the protection and promotion of human rights and freedoms.</p> <p><b>Article 43</b> <b>(Activities Serving Human Rights Promotion)</b></p> <p>The Institution, autonomously or in cooperation, shall promote human rights and freedoms by:</p> <ol style="list-style-type: none"> <li>a) research activities,</li> <li>b) documenting violations of human rights,</li> <li>c) publishing activities,</li> <li>d) organizing public events,</li> <li>e) educational, informative, and awareness raising activities or campaigns,</li> <li>f) cooperating with the media.</li> </ol>	<p>valuable advice on the basic problems in regards to human rights the vulnerable groups face throughout the country. In this respect, the ICC encourages the national institutions to consult the civil society regularly, at all stages of planning and implementing the programs, and adopting the policies, in order to ensure that the institution's activities are a reflection of the public problems and priorities. Building the effective relationships with the mass media is also stated as an important means for education human rights.</p> <p>In addition, the ICC believes that such collaboration is necessary in order to ensure the full realization of human rights throughout the state. In this manner, we can ensure the increased availability to all the categories of citizens who are distanced due to geographical, political or social reasons, as these organizations work closely with the vulnerable groups in the field and as they have a greater network than the institutions themselves. In this sense, the institutions for the protection of human rights can use the civil society as a mechanism of gaining access to the vulnerable groups.</p> <p>In order to ensure regular and constructive work relations and the transparency of the state institutions for the protection of human rights with others, it is of particular importance to emphasize the formalization of clear and manageable work relations with the civil society and other bodies for the protection of human rights.<sup>29</sup></p> <p>Additionally, in regards to the state of Bosnia and Herzegovina, the ICC has, in November 2009 within the process of the re-accreditation of the Institution of the Ombudsman if BiH, welcomed the Institution's efforts to implement the regular consultation mechanism with the civil society organizations. However, at the same time, it was emphasized that this collaboration needs to be formalized.</p> <p>In order to ensure the greater transparency and democracy of the work of the Institution of Ombudsman, and to provide the Ombudsmen with better information regarding the trends in everyday life, the Law, as proposed, would establish a Permanent advisory body of the civil society for human rights, which would compose of the appointed representatives of the civil society organizations, the academic community, the media and the professionals, whose engagement in the body would be voluntary. The model for this is the existing practice in the neighbouring Croatia.</p>
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<sup>29</sup> General Observations of the ICC/the updated version from 2013. G.O. 1.5 Cooperation with other human rights bodies.

**Chapter VII –  
REPORTS**

**Article 44  
(Annual Report on Human Rights and Freedoms in  
Bosnia and Herzegovina)**

- (1) The Institution shall draft the Annual Report on Human Rights and Freedoms in Bosnia and Herzegovina.
- (2) In the Annual Report, the Institution shall present its activities from the previous year, provide an overview of the protection and violations of human rights in Bosnia and Herzegovina, propose specific amendments to laws, public policies and other legal acts, propose adoption of new laws, public policies and other legal acts, and provide a review of all previously adopted recommendations that have not been implemented.
- (3) The Annual Report devotes special chapters to issues arising from the functions of preventive mechanism and body for equality. Special chapters may be devoted to commitments and issues arising from other laws.
- (4) The Annual Report shall be published by March 31 for the previous calendar year, and it shall be notified to the Parliamentary Assembly of Bosnia and Herzegovina, the National Assembly of Republika Srpska, the Parliament of the Federation of Bosnia and Herzegovina, and the Assembly of Brčko District of Bosnia and Herzegovina.
- (5) Legislative bodies shall organize debates pertaining to the Annual Report and shall acknowledge the report as a notification. Based on the debate, the said bodies may adopt conclusions that shall be submitted to other competent and responsible bodies, if necessary.
- (6) The Joint Committee on Human Rights of the Parliamentary Assembly of Bosnia and Herzegovina shall organize a thematic session pertaining to the Annual Report and shall adopt conclusions that may be submitted to competent and responsible bodies, if necessary.
- (7) The Joint Committee on Human Rights shall particularly focus on the recommendations of the Institution aimed at elimination of systemic violations of human rights and on previously adopted recommendations that have not been implemented.
- (8) Not later than September 30, the Council of Ministers of BiH shall define the specific measures to be taken in order to terminate the violation of human rights identified for the previous calendar year in the Annual Report and to improve their protection.

**Chapter VII –  
REPORTS**

The Paris Principles require that the state institutions for the human rights to report to Parliament, the Government and other competent bodies, in regards to all issues related to the protection and promotion of human rights. It is emphasized that there reports should state the recommendations regarding the adoption or amendments to any legal or other regulations, including proposals and drafts; the data on all situations of human rights violations, on the issue of human rights in general, or on some more specific issues; and the recommendations for eliminating human rights violations, as well as the opinion of the institution on the proposals and the state response in regards to these situations.<sup>30</sup>

The General Observations of the ICC regarding the Paris Principles<sup>31</sup> offer guidance on the aforementioned requirements, stating that the annual, special and thematic reports serve the purpose of presenting the key progress and trends regarding the human rights in a particular state; offer the platform for the public evaluation of the effectiveness of the state institutions for human rights; and present the tools the Ombudsmen can use to deliver the recommendations regarding the protection of human rights to the authorities, as well as for monitoring the respect for the human rights. Thus, it is stated that they should contain the outline of the activities of the Institution with the aim of implementing its mandate, as well as the stipulations on its opinions, recommendations and proposals in response to all worrisome issues regarding the human rights and actions undertaken by the authorities in response to those recommendations.

The General Observations particularly emphasize the importance of publishing and wide distribution of the annual reports with the aim of educating the public on the state regarding the human rights in the state, as well as on the transparent work of the Institution. Of great importance is also the requirements put before the legislative bodies to debate and consider the reports of the Institution, with the aim of ensuring that its recommendations are considered by the relevant and competent bodies in a suitable manner.

In the light of these standards, it is necessary for Bosnia and Herzegovina to carry out the requirement of reporting to the Parliament on the respect of human rights in BiH, through submitting the annual Report aimed at *presenting the state of human rights in the state*; identifying the systematic violations of fundamental rights in BiH; evaluating the harmonization of the national legislature and practice with the requirements stemming from the European

<sup>30</sup> Paris Principles, section A.3(a)

<sup>31</sup> General Observations of the ICC/the updated version from 2013. G.O. 1.11 Annual Reports of National Human Rights Institution.

<p>(9) The Annual Report shall be published not later than March 31 on the website of the Institution.</p> <p><b>Article 45</b> <b>(Special and Other Reports)</b></p> <p>(1) Every year, the Institution shall draft special reports focusing on issues of certain marginalized or deprived groups or certain violations of human rights and freedoms.</p> <p>(2) Upon the request of the Institution, competent committees of legislative bodies shall organize thematic sessions pertaining to special reports and shall adopt conclusions that may be submitted to competent and responsible bodies, if necessary.</p> <p>(3) Special reports shall be published on the website of the Institution.</p>	<p>Convention law and other relevant European and international standards of protecting human rights.<sup>32</sup> With the aim of promotion and protection of human rights in BiH, the report should contain the opinions, recommendations and proposals for removing the human rights violations and/or improving the current state of the human rights protection. A special emphasis, e.g. in a separate chapter, should be devoted to the analysis of the previous recommendations of the Institution, which still have not been implemented, as well as to the problems of the human rights violations which remain unsolved, and the focus should be on the measures which still need to be taken in order to eliminate the systematic shortcomings and irregularities.</p> <p>This solution would go in the direction of the recommendations made by ECRI issued in regards to Bosnia and Herzegovina in the report from 2011: that the authorities in Bosnia and Herzegovina “should take all the necessary steps in order to ensure the respect for all the decisions of the Institution of Ombudsman for Human Rights”. Further, this would be a response to the problems of weak political support for the work of the Institution of Ombudsman and of poor implementation of its recommendations, as they are identified in the progress report of the European Commission in 2014 in relation to Bosnia and Herzegovina.<sup>33</sup></p> <p>The proposal stipulates that the annual report is to be submitted to the state, entity and Brčko District parliaments until March 31, and that the thematic sessions of the Joint Committee on Human Rights of the Parliamentary Assembly of BiH, during which the findings of the report would be discussed, with a particular focus on the Ombudsman recommendations aimed at eliminating the systematic human rights violations and on the previous recommendations which still have not been implemented (including the recommendations regarding the individual cases, as well as the general recommendations formulated in the special reports or as a result of conducted research). Based on the debate, the Joint Committee would adopt the conclusions which would then be sent to the other bodies, those responsible and with the jurisdiction over certain issued of the violation and protection of human rights and which can improve the state of human rights. All interested representatives of the civil society and the media should attend the session, as they can further work on the advocacy for the improving the protection of human rights and on eliminating the problems identified in the annual report. In this manner, a synergy would be created which would make the report a significant tool for the promotion and protection of human rights. At the same time, it would ensure the</p>
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<sup>32</sup> The report will also present the activities of the Ombudsman, the results of the conducted research and the results of work on particular cases.

<sup>33</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-bosnia-and-herzegovina-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-bosnia-and-herzegovina-progress-report_en.pdf)

	wide distribution of the findings of the report in the public, as stipulated in the Paris Principles.
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**Chapter VIII –  
FUNDING OF THE INSTITUTION**

**Article 46  
(Funding of the Institution)**

- (1) Annual funds for the operation of the Institution should be sufficient to enable complete, independent, and effective exercise of the assigned responsibilities and functions.
- (2) In accordance with the provisions of the Law on the Financing of Institutions of BiH, the Institution shall prepare a draft proposal of the annual budget and submit it for adoption to the competent committee of the Parliamentary Assembly of BiH.
- (3) Once the approval of the competent committee is obtained, the Institution shall submit it to the Ministry of Finance and Treasury of BiH the request to incorporate the budget of the Institution into the budget of the institutions of BiH, in accordance with the provisions of the Law on the Financing of Institutions of BiH.
- (4) The Ministry of Finance and Treasury of BiH, the Council of Ministers of BiH and the Presidency of BiH may provide opinions to the draft budget of the Institution, but may not amend the proposal of the budget previously approved by the competent committee of the Parliamentary Assembly of BiH.
- (5) The chair ombudsman shall approve requests for payment of Institution's expenses and forward them to the Ministry of Finance and Treasury of BiH for processing.
- (6) Should the state budget be reduced due to austerity measures or any other reason of financial nature, the Institution's budget item shall not be reduced by more than what is a proportional percentage of reduction of the total budget of the Parliamentary Assembly of BiH.
- (7) Any additional project-based funding by donors and partner organizations for promotion of human rights may not affect the reduction of the annual budget funding for the operation of the Institution.

**Article 47  
(Annual Financial Statement)**

- (1) The Institution shall draft and publish detailed annual financial statements. Financial statements shall be published not later than March 31 for the

**Chapter VIII –  
FUNDING OF THE INSTITUTION**

The financial problems, or the budgetary limitations, to a great extent influence the scope and efficiency of the activities of the Ombudsman of BiH. One of the ways of ensuring the independence of the Institution of Ombudsman is precisely ensuring the financial independence of the Institution of Ombudsman. In this sense, the proposal stipulates the procedural guarantees that the demands of the Ombudsman regarding the budget will be adequately considered. In this regards, in line with the recommendations of the Venice Commission<sup>34</sup>, the proposal stipulates the explicit referral to the need for ensuring the adequate means needed for the efficient and independent work of the Institution and was inspired by the solution adopted in Serbia. The other procedural guarantee which is adopted is that the Institution of Ombudsman submits the draft the budget directly to the competent commission, similar to the solution adopted in Montenegro, with the implementation of the demands of the commission without further interventions from the Ministry of Finances, the Presidency or the BiH Council of Ministers. In order to ensure the financial independence, the additional procedural guarantee is also stipulated, reflected in the principle that the budget of the Institution in comparison to the last year's budget cannot be decreased in terms of percentage than it is the case for the Parliamentary Assembly of BiH. This option is line with the recommendations of the Venice Commission<sup>35</sup>, and a similar solution was predicted for the *Audit Office of the Institutions of BiH*<sup>36</sup>.

The Paris Principles, as interpreted by the ICC in General Observations<sup>37</sup>, stipulate that it is necessary to ensure the suitable amount of funds for the Institution for the protection of human rights to be able to function efficiently, in order to guarantee its independence and the ability to freely determine its priorities and activities. The ICC has, in regards to Bosnia and Herzegovina, in 2009 stated the importance of the issue of the financial independence, both in terms of drafting the budget, and in terms of the financial control. In 2010, during the next examination, the ICC has expressed concerns over the process of ensuring the adequate means, and it has underlined the notion that the Institution needs to be completely independent in

<sup>34</sup> CDL-AD(2004)041 - Joint Opinion on the Draft Law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe adopted by the Venice Commission at its 61st Plenary Session (Venice, 3-4 December 2004), par. 35.; CDL-AD(2007)020 - Opinion on the possible reform of the Ombudsman Institution in Kazakhstan adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007), par. 28 and 30.VI.

<sup>35</sup> CDL-AD(2006)038 – Opinion on Amendments to the Law on the Human Rights Defender of Armenia adopted by the Venice Commission at its 69th Plenary Session (Venice, 15-16 December 2006), par. 80 and 81.

<sup>36</sup> See Law on Revision of the Institutions in BiH, [http://www.revizija.gov.ba/zakoni\\_i\\_akti/zakon\\_o\\_reviziji/Default.aspx](http://www.revizija.gov.ba/zakoni_i_akti/zakon_o_reviziji/Default.aspx)

<sup>37</sup> General Observations of the ICC/the updated version from 2013. G.O. 1.10 Adequate funding of National Human Rights Institutions



<p>previous calendar year and shall be notified to legislative bodies together with the Annual Report on Human Rights and Freedoms in Bosnia and Herzegovina.</p> <p>(2) The financial statement shall also be published on the website of the Institution not later than March 31.</p> <p><b>Article 48</b> <b>(Salaries of Ombudsmen and Staff)</b> Salaries of ombudsmen shall be ranked as salaries of judges of the Constitutional Court of BiH. Salaries of ombudsmen's assistants and other staff shall be proportional to salary grades of staff employed by the Constitutional Court of BiH.</p>	<p>terms of finances, as a separate budgetary item under its full control. In 2012, in relation to BiH, the need that the state to ensure the adequate means for the Institution to perform its mandate was once more <u>underlined</u>.</p>
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**Chapter IX –  
TRANSITIONAL AND FINAL PROVISIONS**

**Article 49**

**(The Procedure to Elect New Ombudsmen)**

- (1) On the day of the entry into force of this Law, the Parliamentary Assembly of Bosnia and Herzegovina shall launch the procedure to elect new ombudsmen.
- (2) Ombudsmen elected in accordance with provisions of the Law on the Human Rights Ombudsman of Bosnia and Herzegovina (Official Gazette of BiH, 19/2002), the Law on Amendments to the Law on the Human Rights Ombudsman of Bosnia and Herzegovina (Official Gazette of BiH, 35/2004), and the Law on Amendments to the Law on the Human Rights Ombudsman of Bosnia and Herzegovina (Official Gazette of BiH, 32/2006) shall remain in office until the election of new ombudsmen.
- (3) Ombudsmen elected in accordance with provisions of the Law on the Human Rights Ombudsman of Bosnia and Herzegovina (Official Gazette of BiH, 19/2002), the Law on Amendments to the Law on the Human Rights Ombudsman of Bosnia and Herzegovina (Official Gazette of BiH, 35/2004), and the Law on Amendments to the Law on the Human Rights Ombudsman of Bosnia and Herzegovina (Official Gazette of BiH, 32/2006) shall be entitled to apply for the position of ombudsman in accordance with this Law, provided that they meet the requirements for appointment stipulated by this Law.

**Article 50**

**(Cessation of Validity)**

By the entry into force of this Law, the Law on the Human Rights Ombudsman of Bosnia and Herzegovina (Official Gazette of BiH, 19/2002), the Law on Amendments to the Law on the Human Rights Ombudsman of Bosnia and Herzegovina (Official Gazette of BiH, 35/2004), and the Law on Amendments to the Law on the Human Rights Ombudsman of Bosnia and Herzegovina (Official Gazette of BiH, 32/2006) shall cease to apply.

**Article 51**

**(Entry into Force)**

This Law shall enter into force on the eighth day of its publication in the Official Gazette of BiH.

### ABOUT THE INITIATIVE

The Initiative for Monitoring the European Integration of Bosnia and Herzegovina is an informal coalition of thirty civil society organizations, which contributes to monitoring of the reforms and overviews the application of EU policies, laws and standards, focusing on the issues of democratization, rule of law, and human and minority rights. Learn more about the Initiative at: <http://eu-monitoring.ba/en/about-the-initiative/>

#### Active member organizations:

Association for Democratic Initiatives, Sarajevo  
BH Journalists, Sarajevo  
Centre for Investigative Reporting, Sarajevo  
Youth Centre KVART, Prijedor  
Centre for Political Studies, Sarajevo  
Foundation Cure, Sarajevo  
Helsinki Citizens' Assembly, Banja Luka  
Youth Initiative for Human Rights, Sarajevo  
Infohouse, Sarajevo  
MyRight - Empowers People with Disabilities, Sarajevo  
Oštra nula, Banja Luka  
Rights for All, Sarajevo  
Transparency International, Banja Luka/Sarajevo  
TRIAL – Track Impunity Always, Sarajevo  
Sarajevo Open Centre  
Vaša prava BiH (Your Rights BiH)  
Zašto ne (Why Not), Sarajevo  
Zemlja djece (Land of Children), Tuzla  
Žene ženama (Women to Women), Sarajevo

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ACIPS, Sarajevo; Association of Students of Tuzla University's Faculty of Law; Banja Luka; Association of Queer Activists (BUKA), Banja Luka; Centre for Socio-ecological Development, Banja Luka; Human Rights Centre of the University of Sarajevo; Crvena (Red), Sarajevo; European Research Centre, Sarajevo; Foundation 787, Sarajevo; Green Council, Sarajevo; Infohouse, Sarajevo; YCC Abrašević, Mostar; Perpetuum Mobile, Banja Luka; Association PEKS, Živinice; Vesta, Tuzla; Foreign Policy Initiative BiH, Sarajevo; Green Neretva, Konjic

**INITIATIVE FOR MONITORING THE EUROPEAN INTEGRATION  
OF BOSNIA AND HERZEGOVINA**

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MODEL LAW ON THE INSTITUTION OF HUMAN RIGHTS OMBUDSMAN  
OF BIH

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