

# HUMAN RIGHTS COUNCIL

34<sup>th</sup> SESSION OF THE WORKING GROUP ON THE UNIVERSAL PERIODICAL REVIEW

Submission on the Human Rights situation in

BOSNIA AND HERZEGOVINA

By

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*See recommendations on page 4*

## 0. ABOUT US

0. The Croatian National Assembly of Bosnia and Herzegovina (CNA) is a non-governmental organization that assembles members and individuals of different organizations, including human rights defenders, which contribute to the protection and promotion of civic, political and human rights of Croats of Bosnia and Herzegovina (B&H). Croats are the less numerous of the three constituent peoples in B&H (Bosniaks, Croats and Serbs), which puts them in a precarious situation regarding their civic, political and human rights, compared to the other two more numerous constituent peoples - Bosniaks and Serbs.

## 1. BOSNIA AND HERZEGOVINA

### *Constituent peoples and entities*

1. Bosnia and Herzegovina (B&H) is a Southeast European country, with 3.5 million inhabitants. According to its Constitution, B&H is composed of two territorial-administrative entities: **Federation of B&H** and **Republika Srpska**; and of **three constituent peoples: Bosniaks, Croats and Serbs**. *De iure*, they all have equal political, civic and constitutional rights.

2. The Federation of B&H is composed of Bosniaks (1.500.000, 70% of the population), Croats (500.000, 22%), Serbs (2%) and Others, while *Republika Srpska* is composed of Serbs (83%), Bosniaks (12%) and Croats (2%).

### *Institutions*

3. State level:

*Presidency of B&H* – three members: a **Bosniak**, a **Croat** (both elected from the Federation of B&H as one electoral constituency) and a **Serb** member (elected from *Republika Srpska*).

*Parliament of B&H* – bicameral, House of Representatives; House of Peoples (Bosniaks and Croats elected by the House of Peoples of the Federation; Serbs by the National Assembly of *Republika Srpska*).

*Government of B&H* – three Bosniak, three Croat and three Serb members.

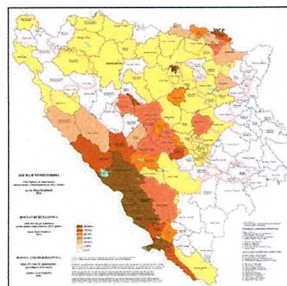
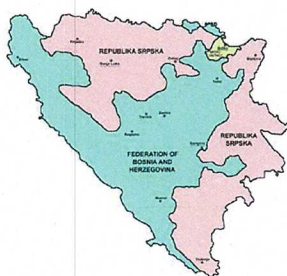
4. Federation of B&H level:

*Parliament of Federation of B&H* – bicameral, House of Representatives; House of Peoples (17 Bosniaks, 17 Croats, 17 Serbs and 7 Others, all elected by 10 cantonal assemblies).

*Government of the Federation of B&H*.

## 2. CROATS OF BOSNIA AND HERZEGOVINA

5. Before the war in B&H, in 1991, the share of Croats in the total population of B&H was 760.852 (17.38%). Today, it is at 544.780 (15.43%) - **the least numerous constituent people of B&H**. Currently, according to the 2013 census, 91% of them live in the Federation of B&H, while just 5.4% and 3.2% live in *Republika Srpska* and Brčko District, respectively. Together, Croats and Bosniaks formed the Federation of B&H on the basis of the Washington Agreement (1994). However, their political, civic and human rights have deteriorated. In fact, the largest constituent people's representatives have done everything to centralize the power, without respecting provisions of the Washington and Dayton agreements.



*Share of Croats in municipalities (2013 census)*

### 3. HUMAN RIGHTS SITUATION OF CROATS IN BOSNIA AND HERZEGOVINA

#### *Civic and political rights*

6. Civic and political rights of Croats of B&H, as guaranteed by the Constitution of B&H, **are not being respected**. Croats **cannot elect their own political representatives**, and therefore, cannot have an equal say in B&H's executive and legislative institutions.

7. Through electoral loopholes and refusal to implement Constitutional Court's rulings, the Bosniaks, outnumbering Croats by three to one in the Federation of B&H (one of the two entities in B&H), have elected the Croat member of the executive tripartite Presidency of B&H **three times** (in 2006, 2010 and 2018). In fact, two of the three Presidents are elected in the Federation of B&H as one constituency, which clearly makes it very difficult for Croats to elect their own president.

8. Moreover, in 2001 and 2011 Bosniaks have formed the Federation's government without legitimate Croat representatives by completely **removing Croat's legitimate and elected representatives from all political positions** that belong to them according to the B&H's Constitution.

9. In this regard, the Constitutional Court of B&H took two decisions in 2016 (U-23/14)<sup>i</sup> and 2017 (U-3/17)<sup>ii</sup> that proclaimed articles 10.12.2. and 20.16.2.(a-j) of the state's Election Law for the election of delegates to the House of Peoples of the Parliament of the Federation of B&H **unconstitutional**. These articles are also crucial for the composition of the state's parliament and the Government of B&H, since the House of Peoples of the Federation of B&H nominates the delegates to the state's House of Peoples. The state's House of Peoples then nominates the state's Government members and it has full legislative powers.

10. However, since 2016 Bosniak leaders have boycotted for change in the unconstitutional provisions, which **directly violate civic and political rights of B&H's Croats**. For this reason, after the general elections held in October 2018, the Federation of B&H and the state have not had the possibility to form their respective governments and, moreover, the state's parliament is unfunctional.

#### *Linguistic rights*

11. Since 2000, Croats do not even have a **public RTV broadcasting in their own language**, while Bosniaks and Serbs do. **Pressures by high public officials against Croat journalists have often occurred**. For instance, **Ms. Gloria Lujanović** has been repeatedly attacked by non-Croat public opinion threatened with rape, without positive measures (defence) by public authorities - because she investigates mass killings and war crimes in Central Bosnia.<sup>iii</sup> Therefore, **linguistic rights** of Croats of B&H have been **gravely violated** according to:

- The Universal Declaration of Human Rights (Article 2);
- The International Covenant on Civil and Political Rights (ICCPR, Article 26).
- Other European (regional) linguistic conventions.
- The Constitution of Bosnia and Herzegovina (Article II.4).

#### *War crimes and justice*

12. Unfortunately, B&H has not firmly investigated assassinations and mass killings of Croat civilians during the 1992-1995 war and post-war period. Moreover, cantonal or state's legislative bodies have nominated **persons who allegedly committed war crimes against Croats as directors of public enterprises**.<sup>iv</sup> Moreover, many crimes committed immediately after the war have not been processed until date, as in the case of the murdering of the federal Minister of Interior **Jozo Leutar** on 28 March 1999 killed by a car bomb explosion.

### 4. DECISIONS OF THE CONSTITUTIONAL COURT OF B&H

14. On 1 December 2016, the Constitutional Court of BiH U-23/14 ruling ordered that legitimate representation of **all constituent peoples at all political and administrative levels of B&H must be secured**. This means that the implementation of the principle of the legitimate political representation must be secured through the Election Law of BiH.

15. The Constitutional Court also annulled the relevant provisions of the Electoral Law arguing that:

Para 47. “In this regard, **the connection between those who are represented and their political representatives at all administrative-political levels is actually the one that gives the legitimacy to community representatives.** Therefore, only the legitimacy of representation creates a basis for actual participation and decision-making.”

Para 49. “The Constitution of Bosnia and Herzegovina designated, as the people, **the constituent peoples who together with Others and the citizens of Bosnia and Herzegovina form a community of citizens,** which exercises power equally through its representatives, and **the right to participate in democratic decision-making is exercised through legitimate political representation,** which has to be based on the democratic choice by those represented and whose interests are represented.” ... “**Again this designation in the Preamble must thus be viewed as an overarching principle of the Constitution of Bosnia and Herzegovina which the Entities, according to Article II (3)(b) of the Constitution of BiH, must fully comply with.**”

**16. In short, the Constitutional Court ruled that only legitimate representation of constituent peoples is legal and in conformity with the Constitution of B&H.**

17. Unfortunately, the most numerous constituent people’s representatives are not ready to talk about the implementation of these rulings. In fact, they ignore them, since their implementation would signify to share the power with other constituent peoples and Others, against the centralization of power that they want.

18. Regarding the City of Mostar, the Constitutional Court in its ruling U-9/09, in 2009 has annulled the rule that existed for the election of members of the city’s assembly. According to that judgment, the article 25 of the International Covenant on Civil and Political Rights was violated.<sup>v</sup>

19. In this regard, according to these two judgments, Croats’ representatives have not had the opportunity to be legally and legitimately elected at all political and administrative levels in B&H, as it is the case for Bosniaks and Serbs.

## **5. RECOMMENDATIONS FOR THE UPR OF BOSNIA AND HERZEGOVINA**

**1. Amend the Electoral Law in line with the ruling of the Constitutional Court in order to guarantee full equality of all the constituent peoples at all political and administrative levels.**

**2. Guarantee full use, equality and public RTV broadcasting in all state’s official languages, particularly related to the Croatian language.**

**3. Undertake concrete legal measures in order to guarantee the holding of local elections in Mostar in 2020 in accordance with the International Covenant on Civil and Political Rights as well as domestic laws and legal practice in other cities.**

**4. Undertake major progress in delivering justice to civilian victims of war crimes and their families.**

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<sup>i</sup> Ruling U-23/16: <http://www.ustavnisud.ba/dokumenti/en/U-23-14-1058444.pdf> (In English).

<sup>ii</sup> Ruling U-3/17: <http://www.ustavnisud.ba/dokumenti/en/U-3-17-1081849.pdf> (In English).

<sup>iii</sup> <https://mappingmediafreedom.ushahidi.io/posts/22673>.

<sup>iv</sup> <http://ba.n1info.com/Vijesti/a377066/Enver-Zornic-imenovao-za-direktora-KJKP-Toplane-Sarajevo.html>.

<sup>v</sup> Ruling U-9/09: <http://www.ustavnisud.ba/dokumenti/en/U-9-09-386218.pdf> (In English).