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BOSNIA-HERZEGOVINA

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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people. As well as having ECOSOC consultative status with the United Nations (registered name 'Alliance Defending Freedom'), ADF International has accreditation with the European Commission and Parliament, the Organization of American States and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why Bosnia-Herzegovina must revise its laws and policies in order to meet its obligations under its own laws and international law to protect religious freedom and the right to life.

a) Religious Freedom

3. Ethnicity and religion are strongly tied in Bosnia-Herzegovina. Slightly more than half of the population (50.1%) is Bosniak. Muslims make up 50.7% of the population. Members of the Serbian Orthodox Church (SOC) are the next largest religious group with 30.7% of the population. Most SOC adherents are Serbs who identify with the Republic of Srpska. Serbs comprise 30.8% of the population. Roman Catholics make up 15.2% of the population and live mostly in communities of Croats, who make up 15.4% of the population. Bosnia-Herzegovina also has .11% of the population who identify as atheist or agnostic and 1.2% who identify as Other, including Jews and Protestants.
4. Ethnic cleansing during the 1992-1995 war caused internal displacement, which largely segregated the population into separate ethnoreligious areas. As a result, the majority of SOC adherents live in the Republic of Srpska, while the majority of Muslims and Catholics reside in The Federation of Bosnia and Herzegovina (The Federation). Within The Federation, the Muslims and Catholics have retained distinct communities. Smaller minority religious groups, like Jews and Protestants, have their largest communities in Sarajevo.
5. A result of the country's political history and the close ties between ethnicity and religion is that a majority of the population (54%) says religion is very important in their lives.¹ Only four percent said it was not at all important.
6. The Dayton Peace Agreement serves as the overarching Constitution for Bosnia-Herzegovina, and Annex IV of the Agreement provides for freedom of thought, conscience, and religion.
7. Article 2 of the Constitution of The Federation says it will ensure the application of "the highest level of internationally recognized rights and freedoms provided in the documents listed in the Annex." In particular, it states that all individuals shall have freedom of thought, conscience, and belief, freedom of religion, including public and private worship, and freedom from discrimination based on religion or creed. Religion is defined as a vital national interest of constituent peoples.
8. The Constitution of the Republic of Srpska establishes the Serbian Orthodox Church as "the Church of the Serb people and other people of Orthodox religion," while also guaranteeing equal legal protection for all citizens irrespective of religion. Article 28 of the Constitution establishes that religious communities are to be equal before the law and free to manage their religious affairs, hold religious services, open religious

¹ 'Religious Belief and National Belonging in Central and Eastern Europe', *Pew Research*, [website], 2017, http://assets.pewresearch.org/wp-content/uploads/sites/11/2017/05/09154356/Central-and-Eastern-Europe-Topline_FINAL-FOR-PUBLICATION.pdf, (accessed 12 December 2018).

schools, and conduct religious education in all schools, and engage in commercial activities. Like in The Federation's Constitution, religion is defined as a vital national interest of constituent peoples.

9. The definition of constituent peoples has led Jews and Romas to report that they have been excluded from holding political office. The Constitution requires candidates for the Presidency and for the House of Peoples to be from one of the three constituent ethnic groups. The three ethnic groups align with the three largest religious groups, but members of other religious communities are not being represented in public office. In 2009, and again in 2014 and 2016, the European Court of Human Rights ruled that this aspect of the Constitution discriminates against minorities who are outside the "constituent peoples."² As of the most recent election in 2018, the Constitution had not been changed and no Jew or Roma person holds a political office.
10. The 2004 Law on Freedom of Religion and Legal Position of the Churches and Religious Communities in Bosnia and Herzegovina provides for freedom of religion, ensures legal status, affirms the right to religious education (run and taught by church representatives), and prohibits discrimination on the basis of religion. The 2004 law only recognises four traditional religious communities (the Islamic Community, Serbian Orthodox Church, the Roman Catholic Church, and the Jewish Community), and requires all religious groups to register. Religious communities must have 300 adult citizens to be legally registered.
11. Article 18 of the Universal Declaration of Human Rights (UDHR) and Article 18 of the International Covenant on Civil and Political Rights (ICCPR) guarantee the right to freedom of thought, conscience, and religion for everyone.
12. Cases from the International Criminal Tribunal of Yugoslavia establish that wanton destruction of religious institutions and monuments is barred by the laws of war in recognition of the rights of groups to establish and have access to places of worship and to have symbols of their belief.³
13. Bosnia-Herzegovina has failed to resolve conflicts over religious property. The 1994-1995 war was characterised by the nationalization and significant destruction of religious property. Municipal authorities in Banja Luka have refused to return many of the Catholic church's properties that were nationalized, despite returning most of the SOC's seized properties.⁴ Government authorities have been unfair in issuing permits to reconstruct or start new construction for religious buildings. In Sarajevo, government authorities have granted permission for the construction of mosques, but not for Christian churches.⁵ The Mostar Evangelical Church reported it has decided to sell its property rather than try to rebuild the church because of long delays and government obstruction in obtaining the necessary reconstruction permits. Bishop Franjo Komarica reported in an interview on May 2, 2018 that the mayor of a town in his diocese told him they could not build a church there, even though a Catholic parish had been there

² L. Kurasinska, 'Uncertainty Dominates as Bosnian Elections Announced', *Kosovo 2.0*, 5 October 2018, <https://kosovotwopointzero.com/en/uncertainty-dominates-as-bosnian-elections-announced/>, (accessed 11 January 2019).

³ *Judgment of Kordić and Čerkez Case*, IT-95-14/2, [website], 26 February 2001, http://www.icty.org/x/cases/kordic_cerkez/tjug/en/kor-tj010226e.pdf, (accessed 12 December 2018).

⁴ 'Bosnia-Herzegovina Religious Freedom Report', *Aid to the Church in Need*, 2017, <https://religious-freedom-report.org/report/?report=162>, (accessed 10 January 2019) citing Bljesak.info, 'Župa Drvar kupuje zemljište za crkvu', Drvar Parish wants to buy a land for the Construction of the New Church, Bljesak, 12 January 2018, <https://www.bljesak.info/kultura/vjera/zupa-drvar-izgra-dnju-porusene-crkve-ce-pomoci-zupljani/224151>.

⁵ 'Bosnia-Herzegovina Religious Freedom Report', *Aid to the Church in Need*, 2017, <https://religious-freedom-report.org/report/?report=162>, (accessed 10 January 2019).

before the war.⁶ Bishop Komarica filed a complaint, which was rejected by the higher authority. The Representative of the Organization for Security and Co-operation in Europe (OSCE), which is responsible for coordinating the reconstruction process, supported the judicial authority's decision. Bishop Komarica said he was repeatedly told, "You Catholics need to get out of this country!"

14. Cardinal Vinko Puljić, Archbishop of Vrhbosna, reported that 10,000 Catholics are leaving Bosnia-Herzegovina every year.⁷
15. Bosnia-Herzegovina is failing to identify and prosecute perpetrators of attacks on religious adherents and religious sites. The Interreligious Council of Bosnia and Herzegovina reported that out of 198 attacks since 2010, police have identified perpetrators in only 55 cases and courts prosecuted in only 23 of the cases.

b) Right to Life

16. Bosnia-Herzegovina has a shrinking and aging population. In 2014, for the first time in its history, the country had more people over age sixty-five than under age four.⁸ According to the World Bank, the birth rate was 9.158 in 2016.⁹
17. Article 11 of the Constitution of the Republic of Srpska states "Human life shall be inviolable."
18. Article 2 of The Federation's Constitution ensures the right to life. Yet, in The Federation, a 1977 law that was passed while Bosnia-Herzegovina was part of Yugoslavia technically still governs. The 1977 law says, "it is a human right to decide on the birth of children."
19. The Republic of Srpska passed the Law on Conditions and Procedures for Abortion in 2008, which superseded the 1977 law. It allows for abortions at the request of the woman during the first ten weeks of pregnancy. After ten weeks, an abortion may be obtained in cases of threat to life or health of the mother, severe fetal impairment, pregnancy resulting from a crime, and when there are psychosocial indications. During this period, a committee must approve the abortion. Counseling and the provision of information are required before an abortion is performed. After twenty weeks, abortions are allowed only "to save the life or health of the mother."
20. Under the 2008 law, pregnant women under the age of sixteen must have parent or guardian approval to have an abortion. Women over the age of sixteen, who are earning their own living, are considered competent to decide whether to have an abortion.

⁶ T. Lehner, 'Bosnia and Herzegovina: "Open War Against the Catholic Church"', *Melbourne Catholic*, 2 May 2018, <http://melbournecatholic.org.au/International-News/bosnia-and-herzegovina-open-war-against-the-catholic-church-1>, (accessed 12 December 2018).

⁷ M. O'Flaherty, 'Catholics 'fleeing Bosnia-Herzegovina' over Discrimination', *Catholic Herald*, 4 January 2018, <https://catholicherald.co.uk/news/2018/01/04/catholics-fleeing-bosnia-herzegovina-over-discrimination/>, (accessed 10 January 2019).

⁸ The World Bank, [website], <https://data.worldbank.org/indicator/SP.POP.0014.TO.ZS?locations=BA>, (accessed 8 February 2019).

⁹ The World Bank, [website], <https://data.worldbank.org/topic/health?locations=BA&view=chart>, (accessed 8 February 2019).

The Right to Life in International Law

21. The preamble to the Convention on the Rights of the Child (CRC) states: “[T]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”
22. Article 1 of the CRC defines a child as “every human being below the age of eighteen years.” This provides an upper limit as to who is a child, but does not provide a lower limit on when the status of “child” attaches. Moreover, Article 6 of the CRC holds, “States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.” Viewed in the context of the preamble, both Articles 1 and 6 of the CRC indicate recognition of, and protection for, unborn life.
23. Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) states, “Every human being has the inherent right to life.” The ICCPR’s prohibition of the death penalty for pregnant women implicitly recognises the right to life of the unborn. Although the ICCPR allows for the death penalty to be imposed on both adult men and women, it explicitly prohibits applying the death penalty to pregnant women. Article 6(5) states, “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.” Under the ICCPR, all other adult women may be subject to the death penalty, therefore this clause must be understood as recognising the unborn’s distinct identity from the mother and as protecting the unborn’s right to life.
24. The travaux préparatoires of the ICCPR explicitly state, “The principle reason for providing in paragraph 4 [now article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to save the life of an innocent unborn child.”¹⁰ Similarly, the Secretary General report of 1955 notes that the intention of the paragraph “was inspired by humanitarian considerations and by consideration for the interests of the unborn child[.]”
25. Bosnia-Herzegovina has a duty both to protect the unborn child and the women who become pregnant while still minors, as defined by international law.

Recommendations

26. In light of the aforementioned, ADFI recommends that Bosnia-Herzegovina:
 - (a) Amend the Constitution to allow persons of any religion/ethnicity to be candidates for the office of the President and to serve in the House of Peoples.
 - (b) Pass legal provisions for the restitution of religious property as other former Yugoslavian countries have done. Such provisions could establish a government agency, whose duty it is to return religious buildings and land to the appropriate religious communities and oversee the fair and equitable approval process for reconstruction and construction of religious buildings.
 - (c) Prioritize prosecution of those who commit crimes against religious adherents or religious buildings because of their religious identity.

¹⁰ A/3764 § 18. Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957.

- (d) Recognise that the State has a duty and obligation to protect and defend the right to life under international law, acknowledging there is no right to abortion under international law.
- (e) Amend or pass new legislation to fix the conflict between the 1977 law and The Federation's constitutional protection of the right to life.
- (f) Encourage the protection of the life of the unborn as a part of increasing birthrates.
- (g) Repeal or revise laws depriving parents or legal guardians of their parental rights over the medical treatment of their minor children.



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