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Meaningful and Comprehensive Constitutional Reform: The Way Forward in Bosnia and Herzegovina

Coalition of Individuals and Organizations Supporting Bosnia and Herzegovina

I write to you as your concerned constituent, to seek your support in solving the dire political situation in Bosnia and Herzegovina (“Bosnia”). The U.S. spearheaded the international community’s efforts that ended the war in Bosnia in 1995 and is once again the only country that can help solve the current political crisis in Bosnia.

The 1992-95 war in Bosnia was the most violent armed conflict on European soil since the end of World War II. After nearly four years of warfare and a significant loss of human lives, the Dayton Peace Accords finally ended the war in 1995. A key feature of the peace agreement was Bosnia’s new constitution.

While the peace agreement successfully ended the war, the new constitution created a complex framework of governance that protects the rights of constituent ethnic groups, instead of its citizens. This has resulted in numerous undemocratic and discriminatory outcomes, including that no member of any minority ethnic group (whether Jewish, Roma, Albanian, Montenegrin or otherwise) can ever hold political office at the state or entity level or get elected to the House of People. Ironically, even citizens who declare themselves as Bosnians cannot run for office in any of the above-mentioned levels of government. Only members of constituent people, namely Bosniaks, Serbs and Croats, can be elected to those offices in government.

The above referenced constitutional provisions have led to further ethnic divisions and were challenged in European courts on numerous occasions. Over the years, the European Court of Human Rights has ruled 395 times against these provisions, and such rulings have never been implemented by the state or entity level governments.

In addition, the recent enactment of a law prohibiting genocide denial and the glorification of war criminals led to the complete withdrawal of Bosnian Serbs from all state-level government institutions. Emboldened by Russian support and influence in the region, these actions, along with inflammatory nationalist rhetoric, have created a political crisis that is pushing the country to the brink of another full-scale armed conflict.

The only viable course of action, to avoid further division of the country, is to adopt meaningful and comprehensive constitutional reform based on democratic principles of government that protect fundamental human rights. Unfortunately, given the current political stalemate in Bosnia, this can only be achieved with the unwavering support from the U.S. and its allies, where the U.S.

once again plays a key leadership role in such endeavor. Furthermore, resolving the crisis in Bosnia is of vital national interest to the U.S. because it would counterbalance the increasing influence of Russia's anti-democratic forces in the region, which has the potential to destabilize Europe and the rest of the world.

A number of Bosnian non-governmental organizations ("NGOs"), which include representatives from Bosnia's various ethnic groups, including Bosniaks, Croats and Serbs (details in "Signatories" section below), have adopted six guiding principles that should form the foundation for any meaningful and comprehensive constitutional reform process in Bosnia. Among them, Mr. Jakob Finci, the president of the Jewish community in Bosnia, who successfully challenged the discriminatory provisions of Bosnia's existing constitution before the European Court of Human Rights, expressed his open support on behalf of the Jewish community in Bosnia for these guiding principles. These six principles are based on the following democratic ideals:

- The elimination of systemic and systematic discrimination in the political and electoral system. The judgments of the European Courts oblige the state to remove existing widespread discrimination;
- The cessation of entity-based voting and elimination of ethnic veto provisions, as per findings and recommendations by the Venice Commission;
- Reform of the judicial system to ensure independent courts based on the rule of law, who operate with the same principles, rather than separate systems which often reach conflicting rulings;
- Sanction the denial, trivialization, justification or condonation of the Holocaust, genocide and crimes against humanity;
- Define the rights considered to be of vital national interest and that would be protected by the national veto at the state and lower levels of government; and
- The dismantling of the various layers of government which lead to the weakening of state-level governmental institutions and create political and legislative gridlock.

In light of the foregoing, I kindly ask you to:

- Review and provide your support with respect to the proposed principles and encourage your colleagues in Congress and the U.S. Department of State to do the same;
- Urge the State Department to send a team of legal experts to Bosnia to work on meaningful and comprehensive constitutional reform rather than any limited or partial solutions such as limited electoral reform; and
- Decelerate the haste to simply implement electoral reform at the expense of other key constitutional provisions that require revisions. Any constitutional amendment process should be comprehensive, deliberate and must include input from a wider cross section of Bosnia's citizens, including members of academia, experts from diaspora and various NGOs, rather than just the political representatives from the three main ethnic parties.

Bosnia and all of its citizens, regardless of ethnicity, deserve a prosperous country that is governed peacefully based on democratic principles and free of external interference. This is why meaningful and comprehensive constitutional reform is the only viable option that will put Bosnia back on the path of membership in NATO and the European Union.

Thank you for your attention to this urgent and critical matter.

Drafters and Signatories of the guiding principles:

Stipe Prlić, President of HNV (Croatian National Council)

Zoran Jovanović, President of SGV PzR (Serbian Civic Council)

Miro Lazović, President of Forum parlamentara BIH (Parliamentarian Forum)

Nedžad Mulabegović, President of VKBI (Council of the Congress of Bosniak Intellectuals)

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