

The status of constituent peoples and minorities in Bosnia and Herzegovina

Background to the workshop¹

In October 1995, the Dayton Peace Agreement put an end to the four and a half years of war in the former Yugoslavia, and, in particular, in Bosnia and Herzegovina. It established the demarcation lines of a new state with a constitutional framework and set of laws. In its new form, the independent Bosnia and Herzegovina (BiH) became a single state comprised of two Entities: the Federation of Bosnia and Herzegovina (the Federation) and Republika Srpska (RS).

Considerable progress has been made in restoring normal life since the fighting stopped. Nevertheless, Bosnia and Herzegovina does not have a genuinely stable and permanent population for a number of reasons: the ethnic composition of the war-struck areas has changed dramatically; relatively few refugees who left their homes during the fighting have returned and it is highly unlikely that the pre-war ethnic composition of the population can be restored through repatriation. The pre-war population, according to 1991 census figures, was 4,377,000; up to 60 per cent became refugees and internally displaced persons (IDPs) and between 258,000 and 269,800 people were killed or went missing during the war.²

In today's Bosnia and Herzegovina, there are essentially three ethnically based political orders in place, and the viability of the state is still in question. Many political leaders capitalize on the lack of trust between the ethnic communities, thus deepening existing ethnic and political divisions and challenging the integrity of the state. In social and economic terms, Bosnia and Herzegovina has some of the lowest human development indicators in Europe.

Besides these problems, the legal system in Bosnia and Herzegovina is complex and difficult to implement. The supreme law is the Dayton Constitution, which is based on the principles of equality and non-discrimination, and on the international system for human rights protection, as well as on the system of constituent peoples inherited from former Yugoslavia. The state Constitution delegates most powers to the two Entities, each of which has its own

Constitution. Republika Srpska, where the majority of Serbs live, has a centralized state administration, while the Federation of Bosnia and Herzegovina, where the majority of Bosniacs and Croats live, is decentralized along ethnic lines, and comprises ten cantons, each with its own Constitution, legislature, government and bureaucracy. The international community has had substantial political, military and judicial powers in Bosnia and Herzegovina since its inception. The highest authority in Bosnia and Herzegovina is the High Representative, appointed by the United Nations (UN) Security Council, and the Organization for Security and Cooperation in Europe (OSCE) has a presence through its numerous field missions.

Many citizens are excluded from participation in economic and political life, and from receiving social protection, because they do not belong to an ethnic group which is dominant in the area where they live or wish to return to, regardless of whether the group they belong to has constituent status or not. Some think that progress towards reconciliation and democratic consolidation has been disappointingly slow. The time factor is a key element in securing peace and strengthening the rule of law in Bosnia and Herzegovina. Many believe that the longer displaced people are unable to return to their homes, the less likely they are to return at all; the longer the economic system inherited from former Yugoslavia is in place, the more difficult it is to make the transition to a market economy; and the longer there is no trust between communities, and in institutions and politicians, the more this will become the norm, making it harder to change.

Much analysis and action in today's Bosnia and Herzegovina – by both international and domestic actors – rests on the implicit assumption that the status quo before 1991 ought somehow to be restored in ethnic relations, and that, in terms of economics and the legal system, the old Yugoslav dispensation should be replaced by a market economy and the rule of law. The sociological realities of Bosnia and Herzegovina must be analysed in relation to these assumptions, otherwise policies built on them are likely to

fail. It is important to be realistic about what can be regarded as solutions, and what the different actors, particularly the influential 'international community',³ are prepared to do around such central issues as the return of refugees and internally displaced. Effective solutions cannot be imposed from outside and must rely on the existing norms and aspirations of the people of Bosnia and Herzegovina.

All actors in Bosnia and Herzegovina, both local and international, need to act quickly. They should implement the Dayton Constitution in a coordinated way, change and frame lower-level legislation, and put in place an efficient institutional framework, as well as implementing economic and social reforms. The ending of nationalistic regimes in the Federal Republic of Yugoslavia and Croatia in the last couple years is important, and opens up possibilities for action both within Bosnia and Herzegovina and at the regional level.

In 2000, the Constitutional Court of Bosnia and Herzegovina made progress towards establishing a multi-ethnic and democratic Bosnia and Herzegovina by issuing a key decision on the constituent status of peoples. This helped to interpret the Dayton Constitution and was a move towards effective equality in law of the three main ethnic groups across the state of Bosnia and Herzegovina: Bosniacs, Croats and Serbs. Effective equality with regard to the three major ethnic groups, and minorities and their framework for protection emerge as key topics in the process of state-construction and democracy in Bosnia and Herzegovina.

Objectives, methodology and participants

In September 2001, the Human Rights Center of the University of Sarajevo, Centre for Euro-Atlantic Initiatives and Minority Rights Group International (MRG) co-organized a workshop, 'The Status of Constituent Peoples and Minorities in Bosnia and Herzegovina'. The objectives of the workshop were to: (1) develop a deeper understanding of the key issues in the effective protection of the rights of constituent peoples and minorities in Bosnia and Herzegovina, and to consider ways forward both in law and practice; and (2) to identify strategies for effective implementation of the Constitutional Court of Bosnia and Herzegovina's Decision on the Constituent Status of Peoples of July 2000, and publicize these strategies. The workshop took the form of a series of facilitated discussions. There were 32 participants, mostly from Sarajevo: judges, academics, lawyers, NGO activists, Members of Parliament, members of intergovernmental organizations and minority rights specialists. This report tries to present the different views and key points made by the participants, although it is not a compilation of all the issues raised and comments made.⁴

Decision of the Constitutional Court on the constituent status of peoples⁵

The Dayton Constitution of Bosnia and Herzegovina (Annex 4, Dayton Accords) recognizes that Bosnia and Herzegovina is a state under international law, which is composed of two Entities: the Federation of Bosnia and Herzegovina and Republika Srpska. The Dayton Constitution states that 'Bosniacs, Croats and Serbs, as constituent peoples (along with "Others")⁶ and citizens of Bosnia and Herzegovina hereby determine ... the Constitution of Bosnia and Herzegovina ...' (Preamble). However, the Entity Constitution of the Federation recognized only Bosniacs and Croats as constituent peoples in the Federation and the Entity Constitution of Republika Srpska recognized only Serbs as constituent people in RS. Although the two Entity Constitutions and laws take different approaches to equality and participation in government structures at different levels, *de facto*, Serbs and 'Others' are under-represented in the Federation, while Croats, Bosniacs and 'Others', are under-represented in Republika Srpska. This imbalance of power and lack of equal participation slows down, and in many cases prevents, so-called 'minority returns', that is, the return of Bosniacs, Croats and Serbs, in particular, to Entities/areas where they would be numerically fewer.⁷ Those who have returned could not, and in many cases still cannot, participate on an equal footing in public life.

On 12 February 1998, Mr Alija Izetbegovic, in his own name but in conformity with limited constitutional jurisdiction, brought a case (U 5/98) to the Constitutional Court asking the Court to evaluate the consistency of the Entity Constitutions of RS and the Federation with the Constitution of Bosnia and Herzegovina in several key areas, including clarifying the status of the three constituent peoples of the state of Bosnia and Herzegovina in Entities where they form a numerical minority, and clarifying official language(s) and script(s) across Bosnia and Herzegovina. The Constitutional Court issued four partial decisions in regard to this case; in July 2000, the Constitutional Court passed a key partial decision (U 5/98-IV) stating that Bosniacs, Serbs and Croats are constituent peoples across the state of Bosnia and Herzegovina, and in both its Entities and Entity Constitutions, and that laws should be amended to comply with the Dayton Constitution, as interpreted by the Constitutional Court, within three months.⁸ By September 2001, the Entity Constitutions had not been harmonized with the Bosnia and Herzegovina Constitution; however, some work on draft amendments had been done by Constitutional Commissions of both Entities.⁹ Implementation of this decision is crucial for effective equality of the three constituent groups and the reconciliation process in Bosnia

and Herzegovina; but implementation has been slow, mainly because of lack of political will. When laws have been harmonized with the Constitutional Court's decision, a full implementation schedule with clear deadlines should be set up. One participant suggested that the High Representative dismiss those who obstruct the implementation of the decision. Several seminar participants said that there is relatively little awareness of this decision and its implications among citizens. While not questioning the need to implement the Constitutional Court's decision, several participants also stressed the need to clarify what exactly constituent status means and what specific rights follow from it. Action is also needed to ensure that citizens who cannot or do not wish to classify themselves as members of one of the three main ethnic groups also have their rights protected.

Key issues in human and minority rights protection and ways forward

Individual vs collective rights: balance and protection

According to the Dayton Constitution, Bosnia and Herzegovina is a state of Bosniacs, Croats, Serbs and 'Others'. The system is based on the notion of 'constituent people', which means that each constituent group, as a collective entity, has equal rights to participate in governing the state. This system is a legacy of former Yugoslavia. The Dayton Constitution is also based on the European Convention on Human Rights (ECHR), which is directly applicable in Bosnia and Herzegovina and takes precedence over all other laws. The ECHR guarantees strong protection for individual human rights. So, while the former Yugoslavia/Bosnia and Herzegovina system is based on protection and equality of groups, the international human rights system is based on individual human rights,¹⁰ and both systems are enshrined in the Dayton Constitution. There appear to be contradictions within the Constitution: non-discrimination and effective equality must apply to all persons within Bosnia and Herzegovina, according to the ECHR and hence the Dayton Constitution. This includes the right of each citizen to participate in elections (vote and stand for office); however, the joint Presidency of Bosnia and Herzegovina and two-thirds of the seats in the House of Peoples are closed, both in terms of voting and in terms of standing for office, to any citizen who does not declare themselves as Bosniac, Croat or Serb.

The Dayton Constitution includes an amendment procedure, which may have to be used to remove the contradictions or clarify some concepts/entitlements and advance the processes of healing and stabilization of the

state. In Bosnia and Herzegovina, two crucial questions are how to find an appropriate balance between group and individual rights, and how to organize legal, judicial and executive power to ensure participation of all groups, including minority groups.

All people have individual and collective identities. Individuals with rights must respect the rights of others and of communities (majority and minority) to impose norms on their members and set bounds on the rights. Citizens' individual human rights are guaranteed, including in the legal system of Bosnia and Herzegovina, although implementation is a key problem. But currently it is not clear what specific rights follow from having constituent status, with the exception of the reserved Presidency and seats in the House of Peoples. Some participants felt that constituent status, at least in the areas where one belongs to a constituent group which is in the numerical majority, *de facto* means much more than that in practice; it can mean access to jobs, education and other opportunities, to the exclusion of members of other ethnic groups. In too many cases human rights protection and non-discrimination in law does not translate into practice.

According to international law, persons have the right to self-identification with a group. The Framework Convention for the Protection of National Minorities states in Article 3.1:

1. *Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.*

A person's identity is a private matter (although it necessarily has a public dimension); many people have a multiplicity of identities, and identities are fluid and can change over time. But in Bosnia and Herzegovina there are problems with the implementation of this right. Some workshop participants stressed that many people want to declare themselves as Bosnian, but they are constantly asked to declare as Bosniac, Croat, Serb or Other, despite the fact that they are indeed all Bosnian citizens (unless they do not have citizenship). This affects registration for elections and applying for some jobs in the civil service. Some people want to identify as Bosnian either because they feel themselves to be citizens of Bosnia and Herzegovina first and as belonging to an ethnic community second, or because they do not want to choose one ethnicity over another – there is a high proportion of children of mixed marriages in Bosnia and Herzegovina. Other people would like to be treated simply as equal to all citizens on the basis of their citizenship, and see their

ethnic belonging as a private matter. In the case of minorities, some people feel they cannot identify openly with their community for fear of discrimination. This is particularly the case for the Roma.

Whatever group they belong to, all citizens of Bosnia and Herzegovina are entitled to participate effectively in the political processes. Citizenship itself is an issue, however, and some participants were concerned that citizenship of the state of Bosnia and Herzegovina depends on Entity citizenship. However, the state has considerable discretion in how citizenship is conferred, although the requirements and procedure must not be discriminatory in purpose or effect. Parliament is responsible for deciding a model of participation – whether it is to be on the basis of citizenship or of group-belonging – but this model must not be discriminatory and must not lead to ethnic domination and segregation.¹¹ One participant stressed that the link between the quota system and parliamentary veto (a minority vote can lead to the veto of any decision) must be broken.

Refugees, returnees and Internally Displaced Persons

Six years after the end of war, in December 2001, the United Nations High Commission on Refugees (UNHCR) estimated that there were still 438,500 IDPs (210,000 in the Federation and 206,500 in Republika Srpska),¹² and 213,000¹³ persons from Bosnia and Herzegovina remained as refugees abroad. Return, or at least the real possibility of return, is a pre-condition for reconciliation. Annex 7 of the Dayton Accord requires the immediate establishment of conditions necessary for return, and participants stressed that this should be implemented effectively. Return, particularly minority return and return to cities, has been slower than expected, mainly because of lack of political will, lack of clarity about the legal status of returnees and how to protect them, lack of trust among communities, and problems with property restoration, access to social rights (healthcare and pensions) and economic opportunities. Non-discrimination in access to employment is a key issue. Through its Decision on the Constituent Status of Peoples, the Constitutional Court has clarified the legal status of potential and actual returnees. If the decision is implemented effectively, this could have a big impact in facilitating return. It is necessary to inform the displaced about this decision, stressing the right to effective equality, participation and legal protection.

Many problems remain unresolved. With moderate parties having lost power across Bosnia and Herzegovina in the October 2002 elections, it is unlikely that many authorities who were elected will either facilitate return or have the confidence of potential returnees. The ' interna-

tional community' has contributed to reconstruction – which is necessary for people to consider returning – but it has not reconstructed houses that were completely destroyed, partly because of problems with titles to socially owned housing. After return, people face problems over access to education, employment, pensions and health insurance. Although NGOs provide some help, legal advice/representation and counselling, the help is not adequate at the reintegration stage of the return process, which is key if returnees are to remain in their pre-war localities. And although minority returns have been especially supported by the international community, members of the constituent peoples who have returned to areas where they are in the numerical minority face especially difficult problems. Annex 7 provided for the establishment of a fund with the Central Bank to help returnees, but so far this has not materialized.

The problems are compounded by the fact that ethnicity is often a requirement for access to jobs, which is in contravention to international law (see International Convention on the Elimination of All Forms of Racial Discrimination, Articles 1, 2).

1. *In this Convention, the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*
2. *States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:*
 - (a) *Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.*

Strong coordinated action among authorities at all levels – from key actors in the international community to local NGOs – is necessary to create the conditions for return. The implementation of the Constitutional Court's Decision on the Constituent Status of Peoples and removal of discrimination in law and in fact are necessary. One strategy is to focus on economic and social issues: investing in the local economies so that returnees can get jobs, restoring and returning properties, making inter-Entity agreements on social protection issues (pensions and health care). Focusing on local development projects

which address key practical issues for all groups living in the area – infrastructure, environment, employment opportunities – might be a first step to cooperation between different ethnic communities on the basis of common local needs. Cooperation for a specific purpose might help begin rebuilding trust and lead to dialogue on other, more contentious issues. Any effective strategy would also have to have a regional component; one reason that displaced persons from Bosnia and Herzegovina cannot return is that their homes are occupied by displaced persons from neighbouring countries. Mechanisms for effective/equal political participation would have to be developed. Concrete actions with visible outcomes would improve the situation on the ground, and would likely help to increase the confidence of the displaced, which is necessary if they are to have a proper choice of whether to return.

Returning home can be as much a symbolic issue as a practical one: some people do not want to go back, but they have a strong need for recognition of the trauma they have suffered, and a restoration of the security they have lost. This should not be understood simply as financial compensation; it also means finding a way to acknowledge people's suffering, to enable them to move on. If the international actors, working with domestic actors, cannot secure the physical return of refugees, the need for symbolic compensation becomes all the more important.

Constituent peoples – effective equality in law and practice

Clarifying that Bosniacs, Croats and Serbs are constituent peoples of Bosnia and Herzegovina across the whole state of Bosnia and Herzegovina was a significant step towards improving the confidence of members of the three main ethnic groups. However, to be effective, the decision and its implications must be publicized widely across Bosnia and Herzegovina and implemented at the state and Entity levels. Mechanisms will have to be found to ensure that persons belonging to any of the three groups whose community is in a numerical minority in a given locality, can participate effectively in political processes. Here, international instruments and practical arrangements that have been developed to ensure participation of minorities in other countries might be a useful frame of reference. These include the Lund Recommendations on the Effective Participation in Public Life, which were developed at the request of the OSCE High Commissioner on National Minorities, and the Framework Convention for the Protection of National Minorities (FCNM).¹⁴ Effective participation presumes prior respect for fundamental rights, such as security and integrity of persons, non-discrimination, freedom of association, assembly,

thought, belief, information and expression, and the right to return.

Minorities – issues in effective protection

Outlined above are problems with the implementation of the principles of non-discrimination and effective equality for the three constituent peoples. The problems are even greater for minority groups, who are classified as 'Others' in the Dayton Constitution. One issue is discrepancy between the non-discrimination and equality principles and the fact that, according to the Constitution, minority groups or 'Others' are prevented from participating equally in elections for some elected offices, such as the Presidency and two-thirds of the seats in the House of Peoples, on grounds of ethnicity. Only 'constituent peoples' are eligible for these positions. The groups that make up 'Others' are usually ignored by politicians and international actors because they are numerically small and not seen as important. Roma are the largest and the poorest minority group, lacking access to education, health care and housing. Two important steps have been taken to protect the rights of minorities: (1) Bosnia and Herzegovina acceded to the FCNM, therefore the state has an obligation to take concrete measures to protect minority rights; and (2) the Ministry for Human Rights and Refugees has set up a task force to draft a law on national minorities. Several participants felt that this is not enough. Mechanisms for effective political participation for minorities in a system which *a priori* excludes them will also have to be developed. International instruments provide minimum standards and arrangements in other countries can be looked to as a source of reference.

Coexistence

Participants stressed that Bosnia and Herzegovina has always been a multi-ethnic society with high levels of coexistence and interaction between different communities. One participant said that it is international actors who insist that there was a civil war in Bosnia and Herzegovina, while in fact Bosnia and Herzegovina was a victim of aggression. Some 'Others' stressed that, although ethnic difference was imposed by those who waged war, there was some resonance within Bosnian society because there were inter-ethnic killings. Even now, a quarter of the population remains displaced and many are afraid to return because of ethnicity. One participant stressed that some of the patterns are not unique to Bosnia and Herzegovina: cultural insecurity affects different communities at different times and all have to find ways of coping. Collective identities are subject to insecurity; the fact that patterns in Bosnia and Herzegovina are not unique means that Bosnia and Herzegovina's citizens can look at other contexts to see how to improve the situation.

A necessary condition for restoring security and co-existence is a democratic system which, at a minimum, must be based on a just legal order and the protection of human rights. Conditions necessary for a democratic system, or rule by consent, include: civic norms; impersonal public space which is not based on ethnic lines; the rule of law, which would help make power controlled, predictable and legitimate; and implementation of laws – all of which have to be sustained by the state. In one participant's view one should consider whether Bosnia and Herzegovina can conform to the above conditions, and if so when? Perhaps this might create new insecurities. There is also a question of whether the concept of constituent peoples helps or hinders transition to a democratic system. In any attempt to change attitudes there must be dialogue and rules cannot be imposed. Democratic decision-making implies effective political participation by all citizens and an equal voice for all members of society.

Another reason that the rule of law is important that has particular relevance in the Bosnian context, is that if there is a substantial discrepancy between legal norms and implementation, or the declared values and daily lives of people, there is a danger that people will seek other ways to address problems.

One obstacle to developing trust within and among communities is that many war criminals have not been brought to justice and are at large. Some participants saw this as a key issue of immediate urgency. Also, a way has to be found to restrain a small proportion of individuals from all communities who are very aggressive and instil fear in people.

Developing a democratic multi-ethnic state in a post-war context will take time but is possible. In the meantime, cooperation between parallel societies on practical common issues might be one way of dealing with conflict.

Economic and social rights

The war has devastated the economy of Bosnia and Herzegovina. Unemployment is currently estimated at 40 per cent, among the highest in Europe,¹⁵ and it is higher in RS than in the Federation. Economic growth was down from 20 per cent in 1998 to 7 per cent in 1999, and Bosnia and Herzegovina received more aid than any other European country.¹⁶ Foreign direct investment is low and the economy stagnant, partly because there is no appropriate legal framework.¹⁷ Equality of access to education, employment and social protection is crucial to restore normal life. However, social provision is inadequate and, in practice, access to employment and social protection is often on the basis of ethnicity. Legal obstacles include, for example, the fact that there is no inter-Entity agreement enabling citizens to collect pensions and access health care across both of Bosnia and Herzegovina's

Entities. Non-legal obstacles, including discriminatory attitudes of many who are in decision-making positions, are countless. Participants stressed that access to resources and opportunities was a pre-condition for return of displaced persons, and that equal protection of social and economic rights was necessary for the well-being of all citizens. Some expressed regret that, despite the fact that all human rights are indivisible and interdependent, more attention is being paid to civil and political rights than to social, cultural and economic rights.

Roles of central/local government, the international community and civil society

The Bosnia and Herzegovina government plays a key role in moving reconciliation processes forward, protecting human rights, and implementing laws and economic/fiscal/social policies. But, the government is diverse and its power variable. Several participants criticized the weakness of the central government in relation to Entity governments and the international community. According to the Constitution, Bosnia and Herzegovina's state-level government, the Council of Ministers, is responsible for human rights protection, but most competencies for protecting human rights lie with the Entities, which are largely responsible for judicial and legislative issues. An exception is the Constitutional Court which, some participants suggested, might be used more often to decide on the constitutionality of laws. However, it would be a challenge to ensure that these decisions were implemented in practice. Squeezed between the Entity governments and the role of the international community in governing Bosnia and Herzegovina, the federal government of Bosnia and Herzegovina is accountable but has little or no power.

The international community has played a crucial role in ending the war and has been a key actor in post-war Bosnia and Herzegovina. While many participants said that a continued contribution from the international community, in terms of foreign investment, financial aid and substantial involvement, including its role in implementing Dayton Accords, is important, they criticized the majority of international actors for the ways in which they have been involved. Some participants said that, in 1992, when war broke out, the international community should have intervened earlier. Some participants maintained that many international actors do not know South-East Europe, do not coordinate their efforts, do not work with local actors (both governmental and non-governmental) as partners, and have short-term goals and, in some cases, hidden agendas. There also seems to be competition in Bosnia and Herzegovina among international actors. Help from the international community should respond to local needs. International actors should:

- facilitate return and reintegration of displaced persons;
- help recruit and train a multi-ethnic police force;
- help establish an independent judiciary;
- raise awareness of human rights among judges, lawyers and public officials;
- facilitate bringing war criminals to justice; and
- strengthen capacities of NGOs.

Several participants said that the international community saw Bosnia and Herzegovina as some kind of experiment; for example, the Constitution is an Annex to an international treaty, which is unique and degrading for Bosnia and Herzegovina's citizens. The imbalance of power between the international community and the state of Bosnia and Herzegovina makes Bosnia and Herzegovina seem like an international protectorate, but the international community does not admit this. If Bosnia and Herzegovina is a protectorate, then what is the role of elected government? Another key issue is lack of accountability and transparency among both international actors and local actors.

One example illustrating the complexity of some of these issues is the role the High Representative has played in harmonizing Entity laws and regulations with the Constitutional Court's Decision on Constituent Peoples. One participant stressed that it was Entities' Parliaments' job to harmonize laws and the High Representative should only be involved as a last resort, while some 'Others' stressed that his task is not only to interpret laws but also to provide assistance where it is needed. Furthermore, the High Representative became involved through the Venice Commission process, and, according to some participants, the Venice Commission did not treat both Entities equally; in their view the Federation came under more scrutiny than Republika Srpska. While

some local authorities are not taking sufficient responsibility, there were cases where local authorities passed laws and the High Representative changed them, which is disempowering. Following the Bonn Concluding Document of the Peace Implementation Council, the High Representative's mandate includes the right to impose laws. Participants agreed that, although the external contribution could be useful, any sustainable way forward would have to have the support of citizens of Bosnia and Herzegovina and could not be imposed from outside.

Civil society can play a key role in post-conflict reconciliation, but is often ignored by authorities at all levels, and by international actors, although some NGOs try to enter into dialogue and partnerships. Some participants stressed that NGOs have played a crucial role in facilitating return and will continue to do so, and that they can make a meaningful contribution to implementing the Constitutional Court's Decision on the Status of Constituent Peoples. One problem is that many citizens do not know about their rights so a first step would be to carry out a public awareness campaign on the content and implications of the decision. Some NGOs have the expertise, knowledge of local issues, and respect of many citizens and therefore should be considered as serious partners by local and international decision-makers. But NGOs also need to strengthen their capacity and obtain substantial financial support. Too often, they are used as convenient agents by international donors and intergovernmental organizations to implement their own agendas and programmes at low cost, when in fact intergovernmental organizations and other donors should be responding to the needs and democratic initiatives of local civil society. Awareness and support of civil society is necessary for international human rights standards and domestic laws to be implemented and monitored effectively.

working to secure the rights of minorities and indigenous peoples

Notes

- 1 This workshop was part of Minority Rights Group International's Southeast Europe: Diversity and Democracy Partnership Programme, which aims to promote minority rights and cooperation between communities. For more information, please contact MRG.
- 2 *The Transition to Development – Challenges and Priorities for UN Development Assistance to Bosnia and Herzegovina. Common Country Study.* United Nations, Bosnia and Herzegovina, Office of the Resident Coordinator for Development Operations, December 2001, p. 10.
- 3 During the workshop, there was some discussion of the term 'international community' which was problematic for some participants. It was recognized that the term 'international community' represents a complex range of actors with different and sometimes competing agendas; the term seems to exclude the dynamics between and among the actors, and there seems to be lack of accountability.
- 4 After discussion with some participants, it was decided to organize a second complementary workshop in Mostar on 'The Interrelation between the Constitutional Court's Decision on the Constituent Status of Peoples and the Return Process', because of the importance of this issue. The second workshop was co-organized by MRG and the Association of Citizens for Human Rights Protection – ZGP Mostar; it was held in November 2001.
- 5 A paper entitled 'Constituent Peoples and/or Minorities in Dayton Bosnia and Herzegovina' was presented by Mr Ahmed Zilic, Center for Euro Atlantic Initiatives, as background to discussion. This section includes some of the key issues raised in the paper, which is available from MRG.
- 6 The term 'Others' is used in the Dayton Constitution to describe national minorities in Bosnia and Herzegovina. The term 'Others' is used in this workshop report because it is the official term; however, MRG fully recognizes that this term is problematic.
- 7 For an in-depth analysis see Marko, Joseph, 'Bosnia and Herzegovina – Multi-Ethnic or Multinational?', in *Societies in Conflict: The Contribution of Law and Democracy to Conflict Resolution*, Science and Technique of Democracy No. 29, Council of Europe 2000.
- 8 The Constitutional Court of Bosnia and Herzegovina is made up of nine judges, including two Bosniacs, two Croats, two Serbs and three foreigners. The decision was passed by five to four votes, with Bosniac and foreign judges for and Serb and Croat judges against. One judge from RS issued a dissenting opinion. Participants saw the voting as indicative of what the international community expects Bosnia and Herzegovina to do.
- 9 Further progress has been made with the 28 March 2002 Agreement on Implementation of the Constituent Peoples' Decision of the Constitutional Court of Bosnia and Herzegovina.
- 10 This includes minority protection. According to international instruments, minority rights are also individual in the sense that the right holders are persons belonging to national, ethnic, religious or linguistic minorities not groups as such, although clearly minority rights include a collective dimension.
11. In most cases citizenship is decided centrally; however, there are exceptions, such as Switzerland where citizenship of the state is dependent on citizenship of the Cantons.
- 12 *Estimate of Refugees and Displaced Persons Still in Need of Durable Solutions in South Eastern Europe.* UNHCR, 31 December 2001. In 2002, a further 67,667 internally displaced and 37,134 refugees returned, according to UNHCR's *Summary of Recorded Return of Displaced Persons within Bosnia and Herzegovina in 2002*, and *Summary of Recorded Repatriation of Refugees to Bosnia and Herzegovina in 2002*, respectively.
- 13 *UNHCR's Position on Categories of Persons from Bosnia and Herzegovina in Continued Need of International Protection.* UNHCR, September 2001.
- 14 Members of any constituent group who are in a numerical minority in an area, are protected by the provisions of the FCNM.
- 15 *The World Fact Book 2002.* Washington, DC, Central Intelligence Agency.
- 16 *The Transition to Development – Challenges and Priorities of UN Development Assistance to Bosnia-Herzegovina. Common Country Study.* United Nations Office of the Resident Coordinator for Development Operations. December 2001, p. 3.
- 17 For an analysis see *Why Will No One Invest in Bosnia and Herzegovina? An Overview of Impediments to Investment and Self-Sustaining Economic Growth in the Post-Dayton Era*, International Crisis Group Report No. 64, April 1999.

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Minority Rights Group International is a non-governmental organization (NGO) working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC) and observer status with the African Commission on Human and Peoples' Rights. MRG is registered as a charity, no. 282305, and a company limited by guarantee in the UK no. 1544957.

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