

Collateral Damage of the Dayton Peace Agreement: Discrimination Against Minorities in Bosnia and Herzegovina, Twenty Years On

Key findings

- Despite the landmark ruling of the European Court of Human Rights (ECtHR) in the case of *Sejdić and Finci v. Bosnia and Herzegovina (Sejdić and Finci)* on 22 December 2009, members of minority communities are still prevented from fully participating in political and democratic processes in Bosnia and Herzegovina (BiH). Due to the failure of authorities to implement the judgment, minorities continue to be constitutionally barred from standing for election to the collective Presidency and the second house of the Parliament.
- Moreover, discrimination entrenched in the state constitution trickles down to local constitutions and national public institutions, where important seats are explicitly and implicitly reserved for the main ethnic groups. Hence minority communities are also not represented in other important high offices and institutions, including, *inter alia*, the national human rights institution.
- Due to their limited participation in decision making processes, the needs of minorities are seldom considered as a priority and often completely ignored. This, combined with complicated institutional structures, makes the complex task of effectively protecting human rights virtually impossible, perpetuating entrenched discrimination against vulnerable minority communities in almost all areas of life.
- While some steps have been taken by BiH authorities to address discrimination, the legal and institutional framework to combat discrimination needs to be further strengthened. There is a need for targeted measures which aim to remove legal and practical barriers to minorities' access to justice. In addition, the funding, capacity and structural problems of the Institution of Human Rights Ombudsman of BiH, including its problematic composition, should be adequately addressed so it can effectively fulfil its mandate.

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Executive summary

The peace agreement that put an end to the 1992-1995 Bosnian war was negotiated 20 years ago in November 1995 at Dayton and was formally signed in Paris on 14 December 1995. The Dayton Peace Agreement, together with its precursor, the Washington Agreement, is responsible for the current constitutional order of BiH.

The Washington and Dayton peace agreements might have helped to stop the conflict but created a discriminatory and dysfunctional institutional framework that entrenched the marginalization of minority communities and led to broad deprivations of their rights. The constitutional system grants special privileges to the three main ethnic groups and disenfranchises members of minority communities based solely on their ethnicity. In its judgment in the *Sejdić and Finci* case the European Court of Human Rights (ECtHR) affirmed that exclusion from political representation based on ethnicity should have no role in a contemporary democratic society, and declared that the Constitution of BiH violates fundamental human rights.

However, the implementation of the *Sejdić and Finci* judgment has not been a high priority for the country's political leaders. Indeed, some proposals put forward by political leaders mainly aimed to maintain the privileged positions of the main ethnic groups; some proposals were even intended to ensure that each dominant ethnic group would gain a separate electoral constituency, which would further entrench ethnic divisions in the country. Moreover, the voices of minorities, whose participation the judgment seeks to protect, have been side-lined in the consultation process related to the implementation.

The Washington and Dayton peace agreements also created a complex, highly fragmented, multi-layered

institutional framework, where powers are devolved to political and administrative units controlled largely by the interests of local dominant ethnic groups. The briefing discusses how issues of coordination, lack of clarity in the division of competencies among authorities at different administrative levels, combined with a lack of appropriate enforcement and supervisory powers, have undermined the system. Specific case studies also illustrate how this defective institutional framework has made minority communities especially vulnerable to discrimination and human rights violations.

This briefing outlines the key areas of discrimination experienced by Roma communities and minority returnees in realizing their social, economic and cultural rights. In particular, they often live in inadequate housing conditions, usually in segregated settlements without proper infrastructure and far from accessible basic services. They are significantly challenged in finding employment and are often deprived of their rights to accessible and appropriate education that reflects specific aspects of their culture. They also face difficulties in receiving adequate health care; in extreme cases, discrimination can have severe, even deadly, health implications for marginalized minorities.

Finally, this briefing highlights the need for constitutional, legal, institutional and policy reforms to address the systematic discrimination of minority communities in BiH, and outlines some steps in the conclusion and a series of recommendations that are essential for ensuring that members of minority communities are no longer treated as second-class citizens in their country, 20 years after the signing of the peace agreement that created the conditions for their present situation.

Introduction

Discrimination is deeply entrenched in the political, legal, educational and social framework of BiH and continues to be one of the key causes of human rights violations against minority communities.¹ This briefing paper provides an analysis of the discrimination faced by members of ethnic and national minorities in BiH, and describes the challenges and setbacks related to addressing it, many of which can be traced back to the constitutional and political system set up by the Washington and Dayton peace agreements.

While these agreements are often credited for ending the Bosnian war, they also created a discriminatory and dysfunctional institutional framework hindering the development of minority rights in BiH. They established a political structure based on special privileges for the main ethnic groups – Bosniaks, Croats and Serbs – leading to the marginalization and exclusion of minorities from important public offices. Moreover, they created a complex, highly fragmented, multi-layered institutional framework that impedes the effective protection of the human rights of all its citizens and makes minority communities particularly vulnerable to discrimination.

There are 17 officially recognized national minorities in BiH: Albanians, Czechs, Germans, Hungarians,

Italians, Jews, Macedonians, Montenegrins, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenes, Turks and Ukrainians.² However, in the view of Minority Rights Group International (MRG), minority rights in BiH are not only pertinent to these national minorities, but are also relevant for Bosniaks, Croats and Serbs when they find themselves in *de facto* minority situations in the territories and administrative units.³

This paper draws on a desk review of existing materials, together with media monitoring related to implementation of the ECtHR's *Sejdić and Finci* judgment, first-hand field research, analysis of cases reported to MRG in the past two years via anti-discrimination points set up in 25 minority communities across the country,⁴ interviews conducted with members of minorities, as well as discussions with public officials, representatives of the international community and civil society organizations. The paper begins with a brief assessment of the constitutional and political system, followed by specific examples of discrimination faced by minority communities. It concludes with recommendations addressed to the authorities of BiH for improvement.

Dayton's exclusivist power-sharing system

The 1995 General Framework Agreement for Peace in BiH, also known as the Dayton Peace Agreement, established a political and constitutional system following the end of the Bosnian war that combines elements of both territorial and group-based arrangement for collective political participation and power-sharing between the three dominant ethnic groups - Bosniaks, Croats and Serbs – who were also parties to the conflict.

According to the Constitution of BiH, contained in Annex 4 of the Dayton Peace Agreement, the country is divided into two main entities: the Federation of Bosnia and Herzegovina (FBiH) (predominantly Bosniak and Croat) and the Republika Srpska (RS) (predominantly Serb).⁵ FBiH is further divided into ten cantons where usually either Croats or Bosniaks form a numerical majority.⁶ Article III of the Constitution of BiH gives all powers 'not expressly assigned' to state institutions to the entities. These include, *inter alia*, responsibilities for human rights, education, health care, housing and social welfare policies.

The Constitution of BiH also explicitly makes a distinction between and assigns different rights to 'Constituent Peoples' – Bosniak, Croat and Serb citizens of BiH – and 'Others'. The category of 'Others' refers to non-constituent citizens of BiH, including persons identifying themselves as belonging to members of national minorities and other non-constituent ethnic groups and persons who do not identify themselves as belonging to an ethnically defined community, instead identifying themselves as citizens of Bosnia and Herzegovina. 'Others' are not entitled to run for certain public offices, meaning their right to full participation in the political and democratic process is denied.

According to the Constitution of BiH and country's electoral law, only candidates identifying themselves as members of one of the 'Constituent Peoples' are allowed to stand for election to the three-member Presidency and the second house of the BiH Parliamentary Assembly, the House of Peoples, where vital interest veto is also exercised.⁷ Thus, persons not identifying themselves with the three main ethnic groups are constitutionally barred from holding a position in these high political offices.

The Constitution, together with the electoral law, has been successfully challenged twice at the ECtHR. In 2009, in the *Sejdić and Finci* case of the ECtHR ruled that the exclusion of citizens not belonging to the three 'Constituent Peoples' from being elected to the Presidency violated Protocol No 12, which provides for equal treatment without discrimination. The ECtHR also ruled that their exclusion from the House of Peoples violated Article 14 of the European Convention on Human Rights

(ECHR), taken in conjunction with Article 3 of Protocol 1, which prohibits discrimination with regard to the right to free election.

In the case of *Zornić v. Bosnia and Herzegovina* (*Zornić*), the ECtHR, ruling in favour of a Bosnian citizen who refused to declare affiliation to any particular ethnic group, reaffirmed that granting special political rights to particular ethnic groups 'to the exclusion of minorities or citizens' has no role in a contemporary democratic society, reiterated that the Constitution of BiH violates fundamental human rights and called for the 'speediest and most effective resolution of the situation'.⁸

The Constitution of BiH not only treats 'Others' differently, but also disenfranchises *de facto* minorities, including minority returnee communities. According to the current system, Serbs living in the FBiH and Bosniaks and Croats residing in the RS are also constitutionally barred from the collective Presidency and the House of Peoples.⁹

Such an exclusion of *de facto* minorities' right to stand for election, as well as vote for a member of their communities in the high offices, undermines fundamental democratic principles.¹⁰ Moreover, it has the effect of 'thwarting the principle of refugee return': if minority returnees are 'not able to effectively vote upon their return to their rightful homes because of voting inequalities based on ethnicity and location, they are discouraged from returning home'.¹¹

It should be emphasized that there are also a number of local constitutions, laws and regulations that grant similar special privileges to the 'Constituent Peoples' in the governments and public institutions at national, entity and cantonal levels.¹² Therefore, it is imperative that all relevant legislation and regulations granting such privileges should be reviewed and amended if necessary to bring them in line with the judgments of the ECtHR in the cases of *Sejdić and Finci* and *Zornić*.

Indeed, relying on these ECtHR cases, the Constitutional Court of BiH in case number U14/12 already ruled on 26 March 2015 that provisions of entity constitutions requiring the President and the Vice-Presidents of the entities to come from among the 'Constituent Peoples' are discriminatory and violate Article II (4) of the Constitution of BiH and Article 1 of Protocol No. 12 to the ECHR. The Court decided, though, not to quash the aforementioned provisions of the entity constitutions and linked the harmonization of these provisions with the state constitution and the ECHR to the implementation of the *Sejdić and Finci* and *Zornić* judgments.

Another example is the Law on the Institution of Ombudsman for Human Rights of BiH (*Official Gazette of BiH, 19/02, 35/04, and 32/06*) which stipulates that the

three Ombudsmen are to be ‘appointed from the ranks of the three “Constituent Peoples”’ although it also states that this ‘does not rule out the possibility of appointing persons from the ranks of “Others”’.¹³ While the law does not automatically exclude non-constituent citizens, these provisions taken together implicitly reserve these positions for the ‘Constituent Peoples’, as it is difficult to see how someone from the category of ‘Others’ might secure a role as Ombudsman, if they need to be selected from the three ‘Constituent Peoples’.¹⁴

It seems that the provisions of the Ombudsman law in effect establish a tripartite body of Ombudspersons, one from each ‘Constituent People’, excluding ‘Others’. There are three Ombudspersons: one Bosniak, one Croat and one Serb. There is no hierarchy or division of duties among them; they make all decisions by consensus. It is particularly concerning that in the national human rights institution, which is also ‘the central institution competent for the protection against discrimination’,¹⁵ the main positions are reserved in practice for the three dominant ethnic groups.¹⁶

In this regard, the United Nations (UN) Committee of Elimination of Racial Discrimination (CERD) noted in its latest conclusions on BiH that the current law ‘implicitly gives priority to the three “Constituent Peoples” and may hamper the Institution’s mandate to protect against discrimination of national minorities’ and recommended eliminating ‘references to ethnicity of the Ombudsmen in the law of the Ombudsman of Human Rights, taking into account the principle of neutrality of such institutions and their missions to protect human rights for all’.¹⁷

The European Commission for Democracy through Law (Venice Commission) also expressed concerns about ‘issues of pluralism and discrimination’ in the present system and noted that ‘Others’ – including national minorities – have so far been excluded from the composition of the Institution.¹⁸ It also stressed that decision-making based on consensus not only makes the adoption of decisions complicated and difficult, but also results in politically sensitive human rights issues, including, *inter alia*, the issue of segregated education being avoided completely, and that this leads to denial of justice which undermines ‘the prestige of the Institution as well as the public confidence in its ability to address more controversial issues impartially’.¹⁹

Non-implementation of ECtHR judgments and lack of participation of minorities in the consultation process

While the implementation of the decision of the ECtHR in the *Sejdić and Finci* case is a necessary step to end exclusion from political representation based on ethnicity and to

guarantee that minorities are no longer treated as second-class citizens, BiH authorities have still not executed the judgment despite repeated declarations and assurances,²⁰ as well as continuous pressure from the international community to take such steps.²¹

While political leaders failed to reach an agreement on the electoral modalities for execution of the judgment, several proposals have been put forward and publicly circulated. Most of these were directly proposed by individual political parties without multi-party agreement, and some were clearly not in accordance with the requirements of the ECtHR decision.²² Indeed, some of the proposals to execute the judgment not only seek to maintain the privileged positions of the ‘Constituent Peoples’ in the political system, but also ensure that each ‘Constituent People’ would gain a separate electoral constituency which would further entrench ethnic divisions in the country.

For instance, before the high-level talks in Brussels in October 2013 on BiH’s accession to the European Union, Sulejman Tihić, the leader of the Bosniak Party of Democratic Action (SDA), and Dragan Čović, the leader of the Croatian Democratic Union BiH (HDZ), reportedly reached agreement regarding the election of the members of the Presidency. A close examination of the media accounts of the agreement²³ revealed that, although the proposed amendments would remove the ethnic requirement, they would ensure the *status quo* by creating a complicated electoral system guaranteeing that one president is elected from the Serb-majority RS and the other two presidents are elected from two new electoral districts, in effect dividing up the FBiH into a Bosniak-majority and a Croat-majority region.

The continuing failure to amend the state Constitution in accordance with the *Sejdić and Finci* and *Zornić* judgments of the ECtHR means that persons belonging to national minorities, as well as other persons who do not identify themselves as belonging to the three main ethnic groups, are still deprived of the possibility of running for certain high offices, and their fundamental right to vote and stand for election – a basic principle of democratic governance – continues to be violated.

When it comes to concrete measures to implement the decision, one possible solution was suggested by the Venice Commission, which proposed concentrating executive power within the Council of Ministers [i.e. cabinet] as a collegiate body in which all peoples are represented and have a single President as Head of State, indirectly elected by the Parliamentary Assembly with a majority.²⁸ The proposal also envisioned moving the exercise of the vital interest veto to the House of Representatives and abolishing the House of Peoples, adding that exercise of the veto by any group should also be clearly restricted to issues of language, education and culture.²⁹

It should be noted that there are various possibilities for eliminating the discrimination found by the ECtHR. The

The importance of minority participation in implementation of the ECtHR rulings

The Tihjić-Čović agreement was made without any consultation with minorities. While the agreement failed to gain the required multi-party support, lack of participation of national minorities in reaching the agreement is of great concern as it reflects the systematic failure of BiH's political leaders to provide them with the opportunity for effective participation in the consultation process.

In both the 2010 working group and the joint inter-parliamentary commission tasked with preparing amendments to execute the *Sejdić and Finci* judgment, the Council of National Minorities of BiH lacked any decision-making role.²⁴ Moreover, following the suspension of the joint commission in March 2012, there was a complete lack of minority representation in any of the high-level political meetings related to implementation of the judgment.

Limited minority participation during the consultation process related to the implementation of the judgment is 'not only a further manifestation of the problem of discrimination and exclusion from access to political decision-making addressed in the Court's judgment but also

contrary to international and regional minority rights standards', requiring states to ensure effective participation of minorities in public affairs, in particular those matters that affect them.²⁵

To implement the *Sejdić and Finci* and *Zorić* judgments, amendments to the Constitution and the Electoral Law of BiH are necessary. Changes to the constitutional design of BiH and reform of its electoral system can have a major impact on the political participation of minorities. For example, if the ethnic requirement for the election to the Presidency is removed, alteration of administrative and constituency boundaries could strengthen but also undermine the opportunities for persons belonging to national minorities to be elected. For instance, the demarcation of electoral district boundaries may alter the distribution of voters, enable gerrymandering and have a discriminatory impact on minority communities.²⁶ Therefore, it is imperative not only to meaningfully consult minority communities, but also to ensure that any changes do not have a detrimental impact on their participation.²⁷

decision related to the manner in which the judgment is executed ultimately belongs to BiH itself, but whatever arrangement is agreed by BiH authorities must end ethnic discrimination, take into account the concerns of minority communities and lead to the effective participation in elected bodies and public offices by all citizens of BiH.

On 8 September 2015, the Council of Ministers adopted an action plan on implementation of the ECtHR rulings in the *Sejdić and Finci* and *Zorić* judgments, and a new working group in charge to draft amendments is being established. It remains to be seen whether this development will lead to any concrete result for minorities.

Dysfunctional institutional framework

Both the state and entity constitutions protect against discrimination; moreover, a comprehensive anti-discrimination law, the Law on Prohibition of Discrimination (*Official Gazette of BiH* 59/09) (hereinafter LPD) was enacted in 2009. In addition, other laws, regulations and policies related to protection of human and minority rights have been adopted at state, entity, and cantonal levels. However, their implementation remains weak and is hindered by high fragmentation, issues of coordination, as well as ambiguity regarding the division of responsibilities resulting in different interpretations of these competencies among relevant authorities at different administrative levels.³⁰

Article III of the Constitution of BiH gives all powers ‘not expressly assigned’ to state institutions to the two entities. Responsibilities for education, health care, housing and social welfare policy have been completely devolved to them and are managed according to their political organization. In the RS, authority is concentrated in the relevant ministries, with some municipal participation;³¹ in the FBiH, these competencies are either jointly shared between the entity governments or have been devolved to the 10 cantons, and in certain cases further devolved to municipalities, with limited participation by the entity government.³²

Fragmentation and devolution of responsibilities in the FBiH deserves a particular mention. The FBiH was created by the Washington Agreement, a ceasefire agreement signed in March 1994 ending two years of fighting between the Croatian Defence Council and the mainly Bosniak Army of the Republic of Bosnia and Herzegovina. The FBiH was later also accepted and recognized as an autonomous entity by the Dayton Peace Agreement. The FBiH is divided into 10 cantons, each having its own constitutions, and further divided into 79 municipalities. Administrative responsibility is divided between federal, cantonal and municipal levels, each of the three levels having executive, legislative and judicial powers.³³

Many responsibilities in the FBiH are shared by two or more levels, often resulting in confusion and overlap between

different administrative levels. Instead of jointly exercising these duties and clarifying which administrative level is responsible for developing, adopting and implementing legislation, each administrative level develops its own policies and laws, resulting in conflicting jurisdictions and frequently inconsistent regulations.³⁴ This creates additional difficulties in implementing policies, including those related to human and minority rights protection.

The complicated institutional structure of the state is a major barrier to the effective protection of human rights. Fragmentation and a lack of political will at different administrative levels to cooperate makes state-level coordination nearly impossible, exacerbated by budgetary limitations, understaffing, and lack of enforcement and supervisory power at the central level. As a result, national and entity laws and policies related to human rights are often simply not implemented. This in turn constitutes a serious obstacle to the fulfilment of these rights and frequently leads to direct or indirect discrimination of minority communities, in particular Roma and minority returnees. For example, many members of the Roma community still live in inadequate housing conditions, often in informal and illegal settlements, and are significantly challenged in realizing their rights to health, employment and education.

Moreover, despite the efforts of the Constitutional Court of BiH to create collective equality among the three main groups everywhere in the country,³⁵ Serbs in the FBiH and Croats and Bosniaks in the RS, as well as Croats and Bosniaks in cantons where they constitute a numerical minority, still continue to experience significant challenges in realizing their rights. *De facto* minority communities visited by MRG between 2013 and 2015³⁶ claimed their needs are being ignored by local authorities. Due to high levels of discrimination they are unable to find work, live in segregated settlements without proper infrastructure or services, and often face difficulties in receiving education that reflects specific aspects of their culture.

Ignored and neglected: Vrbica’s Serb returnee community

MRG visited a small Serb returnee settlement in the village of Vrbica in Livno municipality. This isolated community of mainly elderly people lacks proper access to health care, emergency services and public amenities such as sanitation and street lighting. Lack of running water is of particular concern for the community as it significantly affects their livelihood, since they mainly depend on farming and keeping animals for their survival. Residents also

complained that police often fail to adequately respond to their calls and that crimes against their properties remain uninvestigated. They also pointed out that while other elderly communities in the municipality receive regular visits by the nurse, they are only visited occasionally, and when they request home visits they are often refused service due to difficulties attributed to poor quality roads leading to their village.

Education

Education falls under the remit of the Ministry for Civil Affairs of BiH at the state level; the ministry is responsible for ‘coordination of activities, harmonization of plans of the entity authorities and definition of international level strategy in the area of education’.³⁷ However, its power is devolved to entity and cantonal level ministries of education, each having its own education policy and budget. Indeed, the responsibilities for education can be further devolved in the FBiH, where cantons are required to confer their responsibilities to municipalities if ‘the majority of the population in the municipality is other than the canton as a whole’.³⁸

This fragmentation is often a major obstacle to full enjoyment of the right to education. Coordination and cooperation between the ministries is weak or non-existent, and the state-level ministry does not have the necessary power *vis-à-vis* entity ministries, nor does the entity ministry in the FBiH have the authority *vis-à-vis* cantons to properly carry out its mandate.³⁹ Consequently, there is a lack of coordinated and coherent education policies, leaving ample room for ethnic and religious bias, meaning minorities often struggle to access education that also promotes knowledge of their culture, history and religion.

BiH has made some progress in terms of content and curriculum by moving from three distinct curricula (Bosniak, Croat and Serb) to a common core curriculum supplemented by a ‘national group of subjects,’ so that language, history, geography, religion and music education is different for each main ethnic group. However, the existing common core curriculum is not applied properly throughout the country and the national subjects are frequently offered only to the dominant ethnic groups.⁴⁰ In response, minority communities often send their children to a school outside the catchment area that serves their needs and reflects specific aspects of their culture, resulting in mono-ethnic schools even in ethnically-mixed areas.⁴¹

Moreover, in many schools in the FBiH, ‘the-two-schools-under-one-roof’ phenomenon – i.e. schools operating a separate and completely parallel system of classes for Croat and Bosniak pupils – still exists. In 2014, the Supreme Court of the FBiH ruled that the ‘two-schools-under-one-roof’ system constituted segregation based on ethnicity violated the anti-discrimination law and hence must be abolished.⁴² However, the school unification process is meeting severe resistance, particularly from Croat officials, who often advance arguments related to

protection from assimilation in defence of the current segregated education system.

Several international human rights institutions and monitoring bodies, including the Advisory Committee of the Framework Convention on Protection of National Minorities (AC FCNM) and CERD, also expressed concerns about the continued existence of segregated schools that ‘perpetuate non-integration, mistrust and fear of the “other”’⁴³ and the existence of separate national groups of subjects that are ‘detrimental to the dialogue and interaction of all children’.⁴⁴

Due to entrenched ethnic divisions, prejudice, stereotyping and discrimination, it is imperative to promote interaction and dialogue among the different communities to foster social cohesion. Therefore, an integrated educational system based on a common curriculum that respects the principles of multiculturalism and intercultural education, but where instruction also reflects the perspectives and identities of minorities, would be preferable.⁴⁵ Such a system would promote constructive interactions among students and teachers of different communities, while also enabling minorities to preserve their own culture and promoting greater knowledge of minority cultures among majority children.

The lack of accessible, culturally adapted education also remains a significant concern for Roma communities. Roma families visited by MRG identified poverty, housing conditions, lack of pre-school education, prejudice and discrimination as key factors contributing to difficulties in realizing their right to education,⁴⁶ particularly as many families live in segregated and poorly serviced settlements outside main residential areas. Moreover, many families lack the necessary financial resources to send their children to school and often cannot afford to pay for school materials, clothing, food and transport. Furthermore, some parents maintained that they were reluctant to send their children to school as a way of protecting them from bullying by their peers and some teachers.

Indeed, some parents also claimed that for financial reasons they had no other choice but to send their children to schools for children with special needs, where meals, books and school materials and transportation are often provided at no cost.⁴⁷ It is of great concern that in these cases, the placement of their children into special schools is not linked to the child’s learning difficulties, physical disabilities or behavioural problems, but is rather a direct response to their poverty and social exclusion.⁴⁸

Housing

Many members of the Roma community still live in substandard and overcrowded housing conditions, often in informal and illegal settlements, in makeshift dwellings that do not provide adequate protection against the cold, heat, rain, wind and other weather conditions. These settlements, besides frequently lacking basic services such as potable water, electricity and waste removal, are often cut off from employment opportunities, health care, schools and child care services, including preschool and kindergarten.⁴⁹

De facto minority communities, minority returnee communities in particular, also face similar problems, with many living in isolated settlements without proper infrastructure or public services such as water or street lightening. They complain that, since local political leaders tend to be selected based on their ethnic affiliation, they often serve as *de facto* representatives of their ethnic groups, so the needs of minorities are seldom considered as a priority. Indeed, some communities claim that their segregation is a result of a deliberate ethnic bias in local political decision-making.⁵⁰

Moreover, it seems that the apparently 'neutral' practices related to financing infrastructure projects particularly disadvantage some vulnerable minority communities, resulting in indirect discrimination. For example, certain municipalities have the policy of financing

only 50 per cent of the infrastructural projects and expect the remaining funds to be raised separately. While this policy might seem impartial, it is likely to have prejudicial effects on marginalized minority communities, who face difficulties in realizing their social and economic rights, above all their right to work. This makes them far less likely to be in a position to secure the funds that would enable them to benefit from these projects.⁵¹

In some cases, housing projects targeting marginalized communities further their segregation and isolation. For example, some Roma housing projects rely on local authorities to allocate municipal land: because of protests from residents who do not want Roma in their neighbourhoods, as well as a lack of political will among local authorities, this has led to some housing projects being delayed despite the availability of funding. Indeed, in certain instances, housing units need to be constructed on underserved and isolated sites, resulting in further disadvantages for these communities. Moreover, in some cases due to tight schedules implementing organizations not only settle for inappropriate land sites but also pressure families to move out from their homes during the winter so they can start the construction of new housing without providing appropriate alternative accommodation, leaving them exposed to harsh weather conditions.⁵²

The relocation of the ADA Roma community in Čapljina

Most members of the ADA Roma community live in shacks by a rubbish dump – the primary source of income for many members of the community – in a flood-prone area near Čapljina, without access to water, basic sanitation, adequate drainage and electricity.

To improve the housing conditions of the community, new housing units are planned with the financial assistance of the Ministry of Human Rights and Refugees and an international donor. However, the site the municipality has allocated for the housing project currently lacks basic infrastructure and is in an isolated location far from education, emergency services and employment opportunities.

The closest settlement, almost a kilometre away, is a Bosniak returnee community also living in a segregated location far from public services. They protested against the allocation of a land plot to the Roma close to their village, citing human rights considerations and also expressing their frustration with the mayor's policy towards them in particular, and minority communities in general.

MRG sent a letter of concern to the Mayor on 3 March 2014, requesting further information. While receipt of the

letter was acknowledged, no response has been received at the time of writing.

Following time-consuming negotiations between the municipality, implementing organizations, representatives of the ADA Roma community and members of the Bosniak community, construction finally began this year and has been recently completed. Despite its poor location, the Roma community accepted the land as they felt they had no other option and were concerned that, if they rejected the offer, they would not be provided with any alternative. However, they asked to be provided with a vehicle as well as proper infrastructure and public utilities. As agreed, the community has received a vehicle with help from the implementing organizations but they are still lacking some necessities, including running water. While the municipality promised that it would build proper roads and water supply for the community, it still remains to be seen whether the municipality will in fact invest the funds to build the necessary infrastructure.

Furthermore, some housing projects are planned and carried out without meaningful consultation with minority communities. While Roma representatives – although not necessarily Roma representatives of the local Roma community – might have participated in the selection of beneficiaries, these housing projects are often implemented without adequate consultation of the affected local Roma communities, resulting in housing that does not adequately address the needs of these communities.⁵³

Nevertheless, it should be acknowledged though that some positive developments have been achieved in relation to the right to housing for the most vulnerable Roma families through construction or reconstruction of housing units under the Action Plan on Roma Housing, and some municipalities are making serious efforts to address the housing situation of Roma communities.

New housing for the Varda Roma settlement – the importance of political will

Under the leadership of the current mayor, the Kakanj municipality initiated a feasibility assessment in order to regularize the Varda Roma settlement. Consisting of around 130 households, it was originally built without a construction permit in the 1980s on a land site that was created by long-term disposal of coal waste materials. Some families on the settlement live in substandard housing conditions without electricity or water, and some of the housing units are badly damaged due to poor soil conditions.

In coordination with local Roma leaders and organizations, the municipality officials carried out a full assessment of all the houses except those where the families did not grant permission. Following a careful assessment, the municipality invested efforts to secure financial resources to regularize the

settlement and undertake improvements to bring it to a minimum standard of adequacy. They also developed a plan for the settlement in consultation with local Roma representatives and organizations.

During the assessment process, it was decided that some of the houses were in such a dire condition that they would have to be demolished and replaced with new apartments. The municipality started implementing a housing project to build new apartment units for the families living in the houses awaiting demolition, and offered to pay for their temporarily accommodation. Since many Roma families survive by collecting raw materials, the municipality also decided to try to separately fundraise for a storage unit to be built next to the apartment building.⁵⁴

Health care

In spite of some positive measures aiming to ensure access to health care for vulnerable groups, budgetary constraints, decentralization and lack of adequate staffing of relevant ministries and institutions means that access to health care remains problematic throughout the country, and particularly affects the Roma community. While it is a problem in both entities, it remains a particular concern in the FBiH, despite targeted programmes implemented by the Federal Ministry of Health to improve health care for the Roma community, including closely working with Roma health mediators.⁵⁵

Similar to many other countries, access to health insurance in the BiH is closely linked with employment or educational attendance. However, it is estimated that 95-99 per cent of Roma are unemployed and 46 per cent of Roma children drop out at some point from primary school, with only 22 per cent attending secondary school.⁵⁶ This low employment and school attendance rate, combined with strict registration deadlines to obtain health insurance and non-implementation of regulations by cantons providing basic cover for uninsured vulnerable groups, leaves many members of the Roma community without adequate health care in the FBiH.

In both entities, those who are unemployed or leave school are required to register with the local employment bureau in order to receive state health insurance. However, the FBiH has a 30-day registration rule stipulating that 'anyone who does not register with the employment bureau within 30 days of finishing school, losing a job, or moving to a new canton becomes ineligible for the health insurance.'⁵⁷ In spite of some awareness-raising activities by the Federal Ministry of Health, international organizations and civil society, a large number of Roma still do not know

about this rule or have only become aware of it after the deadline has passed.⁵⁸ Since they are also unlikely to secure employment or return to school, they may remain ineligible for state health insurance in the FBiH.

Both entity governments have taken positive steps to provide health care for uninsured vulnerable groups, including, *inter alia*, children, pregnant women and women during maternity leave. However, responsibility for health issues in the FBiH is jointly shared between entity and cantonal authorities. While relevant regulations aimed at securing basic health cover for uninsured persons have been passed at the entity level in the FBiH, many cantons failed to implement them in part due to budgetary constraints.⁵⁹ Given that, as described above, members of the Roma community are disadvantaged in accessing state health insurance, weak implementation of federal regulations on health care for uninsured persons has a disproportionately negative effect on the Roma community – and may constitute indirect discrimination.

Despite the fact that regulations in both the FBiH and RS provide for free pregnancy care regardless of the mother's health insurance status, a number of cases have been reported relating to delay or denial of urgent prenatal care to Roma women, mainly in the FBiH. This raises the issue of intersectional (direct and/or indirect) discrimination and illustrates the clear need for special measures to address this issue. The case of Senada Alimanović, a Roma woman denied emergency medical care after a miscarriage because she lacked medical insurance and could not afford to pay for the operation, was widely reported in the Bosnian media and has become the theme of an award-winning documentary film.⁶⁰

Death as a result of systematic failures – the case of Jasminka Bjelić

In extreme cases, systematic failures can have severe, even deadly, health implications for marginalized minorities. Jasminka Bjelić, a Roma woman from Zavidovići who neither had health insurance nor money to pay for a pregnancy-related exam, received a potentially life-saving treatment too late for her or her baby to survive.

According to the recollection of Jasminka's partner, Jasminka arrived at Zavidovići health centre with heavy bleeding and excessive pain; however, she was informed that she could not be treated unless she paid 50 KM (25 EUR). She was then told to go to the private doctor's office where she had been treated from the beginning of her pregnancy for free. She was carried in her partner's arms to his office where she was examined, and it was determined that she was in a serious condition. The private doctor then called the director of the health centre requesting them to admit and immediately treat her. Once accepted, it was decided that she needed to be transported to the cantonal hospital in Zenica. However, Jasminka was the only patient who was waiting for transportation; as a result, she had to wait for other patients to be transported for budgetary reasons. After her arrival at the cantonal hospital in Zenica, she had two surgeries but passed away 10 days later.

According to the relevant regulation in FBiH, both pregnancy and urgent care should be provided free regardless of the insurance status of the person, so it is unclear why Jasminka was asked to pay for an exam that should have been provided for free and was sent away when she first visited the health centre.

When MRG requested information from the Federal Ministry of Health on whether Zenica-Doboj Canton implemented the relevant entity regulations, the Ministry in its official response stated that they did not have information on this as the cantonal ministries by law are required to report on this issue only to the relevant cantonal governments.

When MRG visited the Ministry of Health of Zenica-Doboj Canton regarding the case, it became clear that the Ministry had only limited information both on the case and on the implementation of the relevant FBiH regulation by health institutions falling under its jurisdiction due to serious understaffing issues. MRG was informed that the Ministry has only three employees, including the Minister, and this seriously hampers its capacity to monitor the implementation of relevant laws and regulations.⁶¹

Lack of access to justice

The adoption of the comprehensive anti-discrimination law, LPD, in July 2009 represented an important step toward the protection of minorities from discrimination in BiH. However, without access to justice, it cannot be translated into reality; it is therefore imperative that specific measures are implemented to remove the legal, social, economic and cultural barriers currently obstructing access to justice for members of minority communities.

Access to justice related to discrimination cases is hampered by both legal and practical obstacles. On the practical side, an absence of trust in authorities and justice institutions, inadequate access to legal aid and fear of victimization have been cited by minority communities and civil society organizations as major barriers.⁶² Moreover, general public, including members of minority communities, do not properly understand the concept of discrimination so they are often unable to identify instances of discrimination. Even when they do, victims tend to take no action to redress the violation as many of them are unaware of the available judicial and quasi-judicial remedies.

However, it appears that no state-level study has been carried out to evaluate the exact nature and scale of the obstacles faced by minority communities – including minority women and other members of minority communities who might be subjected to intersectional discrimination – that could serve as a basis for a comprehensive strategy to improve access to justice for minority communities.

The capacity to effectively address discrimination against marginalized minority communities is also undermined by certain legislative provisions, including *inter alia* the strict deadlines for filing an anti-discrimination lawsuit and lack of clarity regarding shifting the burden of proof, especially related to claims of discrimination in ongoing court and administrative proceedings.⁶³ The objective 1-year and subjective 3-month deadline⁶⁴ is simply too restrictive. It is not in line with best practice in the field and particularly problematic if legal aid in discrimination cases is not readily accessible and where understanding of the concept of discrimination is limited, as it is the case in BiH.

In addition, analysis of court practice in BiH indicates that judges often misinterpret or fail to fully comprehend the principle of shifting the burden of proof.⁶⁵ According to regional and international standards, in discrimination cases once the complainant establishes a *prima facie* case – i.e. that the case, on its first face, amounts to discrimination – the burden of proof shifts to the alleged perpetrator to prove that discrimination was not the reason for their treatment of the complainant. Nevertheless,

judges in BiH still often set the threshold that has to be reached in order to shift the burden of proof too high or simply apply the general rule of burden of proof set out in the Code of Civil Procedure, thus requiring the complainants to prove that discrimination occurred.⁶⁶

Furthermore, despite the fact that strengthening national human rights institutions is increasingly identified as a principal strategy in reducing access to justice barriers, the Institution of Human Rights Ombudsman of BiH continues to be significantly challenged by lack of financial resources, capacity problems, and non-implementation of its recommendations – a situation exacerbated by its problematic selection and appointment process.⁶⁷ Due to lack of funds and resulting understaffing,⁶⁸ access to the Institution is rather limited and the office is unable to properly carry out its mandate or fulfil essential functions such as public awareness-raising about the provisions of the LPD, research and legislative reform on matters relating to discrimination.⁶⁹

A careful examination of recommendations and thematic and annual reports published by the Institution since 2009 reveals that some of these documents are not drafted to an adequate standard. Moreover, *ex officio* investigations carried out by the Institution often lead to the closure of cases without recommendation being issued, despite strong evidence suggesting that direct or indirect discrimination may have occurred.⁷⁰ This suggests that staff drafting documents and carrying out investigations may have limited capacity or insufficient support from the Institution to examine these issues thoroughly.

When examining possible discrimination cases, inadequate attention is devoted to determining discriminatory intent or collecting data that would assist in establishing a *prima facie* case of discrimination or investigating whether a seemingly ‘neutral’ regulation, policy or practice puts certain national or ethnic communities at a disadvantage compared to other groups. Instead, the emphasis often appears to be on whether the letter of the law was correctly applied, without examining whether that particular law or policy is in line with international and regional human rights standards.⁷¹

The fact that the lack of funds and capacity issues significantly affect both the Institution’s promotional activities and its policy-making role is particularly problematic since the Institution has an essential role to play through awareness-raising and promoting tolerance towards ethnic differences. Regularly assessing, evaluating and amending relevant legislation, as well as designing new policies aiming to advance the situation of minority communities, is central to the development of a comprehensive minority policy.⁷²

Conclusions

The political marginalization of non-constituent citizens embedded in the constitutional system created by the Dayton Peace Agreement has left minorities with limited representation in public offices. Until the Constitution and the electoral law are amended to comply with the ECtHR's judgments cases of *Sejdić and Finci* and *Zornić*, minorities will continue to be excluded from representation in the collective state Presidency and House of Peoples. Indeed, the continuing failure of the Bosnian authorities to amend the Constitution and the electoral law in accordance with these judgments has far-reaching consequences, including the legal barring of national minorities from running for other high offices and their exclusion from certain public institutions based on their ethnicity.

Moreover, *de facto* minorities also have no representation of their own in the Presidency or the House of Peoples. According to the current system, unlike Croats and Bosniaks residing in the FBiH, their counterparts residing in RS have no right to be elected to the Presidency and second house of the parliament; the situation of Serbs living in the FBiH is identical. This not only raises issues of discrimination in relation to the right to vote and stand for election, but also has the effect of undermining the principle of refugee return.

The limited political representation of minority communities, combined with the complex and dysfunctional political and administrative system, has contributed to their social and economic marginalization. Roma and minority returnee communities often live in inadequate housing conditions in isolated settlements with poor access to public services, and face challenges in realizing their rights to accessible and appropriate education that respects specific aspects of their culture while also promoting their integration. While the adoption of the comprehensive anti-discrimination law in July 2009 represents an important step towards the effective protection of minorities from discrimination in BiH, existing legal and practical barriers to minorities' access to justice must be removed so it can be translated into reality.

Since the main challenges to addressing discrimination against minority communities in BiH can be traced back to the political system established by the Dayton Peace Agreement, the 20th anniversary of its signing could help catalyze a meaningful discussion about these much-needed constitutional and institutional reforms, and serve as a starting point for BiH authorities to commit seriously to the protection of minority rights.

Recommendations

To the authorities of BiH

Governance

- Adopt, without delay, the measures necessary to implement judgments in the cases of the *Sejdić and Finci* and *Zornić* of the ECtHR.
- Ensure that minority groups in BiH have the opportunity to participate effectively in the consultation process to find the best way to execute these judgments and to end ethnic discrimination in political participation against minorities.
- Remove discriminatory provisions from the Constitution that limit the right to political participation of de facto minority communities and ensure sustainable reintegration of minority returnees by intensifying efforts to combat direct and indirect discrimination against them.
- Carry out necessary legal reforms to remove ethnic discrimination in political participation from state, entity, and cantonal constitutions, laws and regulations.
- Ensure all levels of government are in full compliance with international human rights standards, coordinating with each other and harmonizing their approaches to ensure implementation of human rights.
- Undertake constitutional reforms to grant stronger supervisory and enforcement powers to the state *vis-à-vis* entity authorities, and entity *vis-à-vis* cantonal authorities, and where necessary clarify the allocation of their individual responsibilities.

Public Services

- End ethnic segregation in schools and promote integrated education that respects the principles of multiculturalism, intercultural learning and international minority rights standards.
- Abolish policies related to infrastructure development that may disadvantage minority communities, replacing them with needs-based programmes.
- Recognize the need for temporary special measures to address indirect discrimination against particularly disadvantaged groups, such as Roma.
- Ensure that Roma Action Plans are designed and fully implemented in meaningful consultation with Roma communities.
- Adopt measures to improve Roma housing conditions, ensuring that housing projects are implemented in accordance with international human rights standards and in consultation with affected communities.

- Improve access to education of Roma communities, including Roma girls. Measures should also be undertaken to increase their access to adult education, including vocational training.
- Pay particular attention to addressing the needs of minority women when developing human rights and anti-discrimination policies. Develop in consultation with minority women specific measures aiming to enhance their participation in decision making as well as economic, social and cultural life.
- Improve the access of Roma to health care, removing registration barriers to state health insurance and ensure implementation of regulations on access to free health care for the most vulnerable communities.

Effective Implementation of the Anti-Discrimination Law

- Promote effective implementation of the LPD by educating the public and the legal community about discrimination, urging relevant authorities to provide adequate protection against victimization and ensuring that violators comply with recommendations issued by the office of the Institution of Human Rights Ombudsman of BiH.
- Make necessary amendments to the LPD to remove barriers to access to justice and to develop, adopt and fully implement a national plan against ethnic discrimination, including intersectional discrimination, either as a separate state level action or as part of a general state-level anti-discrimination strategy.
- Implement relevant recommendations contained in the Report of the Committee on Equality and Non-Discrimination of the Council of Europe on equality and non-discrimination in the access to justice, including recommendations addressing intersectional discrimination.
- Ensure appropriate financial and staff resources to enable the Institution of Human Rights Ombudsman of BiH to fulfil its mandate, with particular attention paid to its promotional and legislative functions and policy-making role.
- Reform the Institution addressing issues raised by the Venice Commission and CERD, effectively involving minorities in the consultation process and increasing the potential of the Institution to protect minorities. Where relevant, this can be done with reference to the Guide to Good Practice related to Ombudsman Institutions and Minority Issues prepared by experts at the European Centre of Minority Issues.

Notes

- 1 See MRG's Alternative report to CERD for the review of the periodic report of BiH, 86th session of CERD, 27 April-15 May 2015. Moreover, some issues discussed in this briefing have been also covered in MRG's submissions to the Directorate General for Enlargement of the European Commission and Universal Periodic Review Working Group of the UN Human Rights Council, as well as in MRG's joint submissions with Cardozo Law School and Human Rights Watch (HRW) to the Committee of Ministers of the Council of Europe regarding the implementation of the Sejdić and Finci judgment and to the ECtHR in the case of *Pilav v. Bosnia and Herzegovina* (Application no. 41939/07).
- 2 It should be noted that the list of protected groups defined by Article 3 of the 2003 Law on the Protection of Rights of Persons belonging to National Minorities (*Official Gazette of BiH 12/03 and 76/05*) is not an exhaustive one.
- 3 This interpretation is also in line with the view of the UN Special Rapporteur on Minority Issues and AC FCNM. Moreover, minority rights protection is also relevant to religious minorities in BiH; however, it is beyond the focus of this briefing paper.
- 4 MRG is implementing a 3-year programme *Supporting Minority Victims of Discrimination in Accessing their Human Rights* funded by the European Union (EU). The project aims to strengthen capacity and networks among minority community representatives, civil society organizations, experts, private and public sector lawyers, and other relevant human rights and socio-economic actors, so they can more effectively advocate for the implementation of anti-discrimination legislation and protection of minority rights in BiH. As part of this project, MRG set up 25 anti-discrimination points across the country that function as legal and advocacy advice centres.
- 5 The north-eastern district of Brčko, hotly contested during the war in the early 1990s, is a condominium of two entities in accordance with Amendment 1 to the Constitution of BiH, with a separate administration and its own rules defined by the Statute of Brčko District.
- 6 In Tuzla Canton, Una-Sana Canton, Zenica-Doboj Canton, Sarajevo Canton and Bosnia-Podrinje Canton, Bosniaks form a numerical majority; in Posavina Canton, Canton West Herzegovina and Canton Livno, Croats form a numerical majority; and Central-Bosnian Canton and Herzegovina-Neretva Canton are mixed cantons.
- 7 See Articles IV.1 and V of the Constitution of BiH and Article 8.1 Paragraphs 1 and 2 of the Election Law.
- 8 *Zornić v. Bosnia and Herzegovina*, Application no. 381/06, 15 July 2014.
- 9 Another case concerning this particular problem is pending before the ECtHR: *Pilav v. BiH*. CERD already expressed concerns regarding this issue in its latest conclusion on BiH: 'A Bosniak or a Croat residing in Republika Srpska and a Serb residing in the Federation of Bosnia and Herzegovina, despite forming part of the three "Constituent Peoples", cannot stand as candidate for the Presidency, thus hampering their political participation.' See CERD, *Concluding Observations on the Ninth and Eleventh Periodic reports of Bosnia and Herzegovina*, CERD/C/BIH/CO/11, 15 May 2015.
- 10 *Amicus curiae* submitted by HRW, MRG, Benjamin N. Cardozo School of Law to the ECtHR in the case of *Pilav v. BiH*.
- 11 *Ibid.*
- 12 Based on a preliminary study, in addition to the state Constitution, at least 20 laws and regulations would also need to be amended in accordance with the *Sejdić and Finci* judgment. Nedim Kulenovic *et al.*, *Presuda Sejdići Finci protiv Bosne i Hercegovine: Konkretno posljedice – prvi pregled* [The Decision in *Sejdić and Finci v. Bosnia and Herzegovina: Concrete Consequences – Initial Overview*], 1-2 Sveske Za Jvno Pravo (2010).
- 13 Law on the Ombudsman for Human Rights of BiH, *Official Gazette of BiH 19/02, 35/04, and 32/06*, Article 8.6.
- 14 One possible interpretation of these seemingly conflicting provisions is that a person from the category of 'Others' could be appointed as an Ombudsperson if and only if a person appointed as an Ombudsperson from the rank of Constituent peoples gave up his or her position. Not only is this very unlikely in practice, but it would also still constitute differential treatment of 'Others'.
- 15 The Law on the Prohibition of Discrimination in BiH, *Official Gazette of BiH 59/09*, Article 7.
- 16 MRG also noted this issue in its Alternative report to CERD, *supra* 1.
- 17 CERD, *Concluding Observations on the Ninth and Eleventh Periodic reports of Bosnia and Herzegovina*, CERD/C/BIH/CO/11, 15 May 2015.
- 18 Venice Commission, *Opinion on the Draft Law on the Ombudsman for Human Rights*, CDL-AD (2015)034, 26 October 2015, para 38 .
- 19 *Ibid.*, para 39.
- 20 By ratifying the Stabilization and Association Agreement with the EU in 2008, BiH committed itself to amending its electoral laws to ensure full compliance with the ECHR within two years. Political leaders and institutions also undertook this commitment, inter alia, in the June 2012 Roadmap for BiH's EU membership application, in the declaration signed by the political leaders on 1 October 2013, and most recently on 8 September 2015 by adopting a new national action plan.
- 21 For example, in 2013, the EU reduced the initially foreseen Instrument for Pre-Accession Accession grant funds for the 2013 programme by 54 per cent due to non-implementation of the judgment.
- 22 See Edin Hodžić and Nenad Stojanović, *New/Old Constitutional Engineering: Challenges and Implications of the European Court of Human Rights Decision in the Case of Sejdić and Finci v. BiH* (Sarajevo: Analitika, 2011).
- 23 Oslobođenje, 'Details of the Tihčić-Čović agreement on election of BiH presidency members', 18 September 2013.
- 24 While their representative was able to attend the sessions and present their proposals, there was no guarantee that their proposals would be considered, and they also lacked the power to veto proposals detrimental to their interests.
- 25 Submissions under rule 9 of the Committee of Ministers by HRW and MRG related to the Execution of Judgment *Sejdić and Finci v BiH* (27996/06 & 34836/06), February 2014, paras 19 and 21.
- 26 *Ibid.*, para 24.
- 27 Human Rights Council, Forum on Minority Issues, Second Session, Geneva 12-13 November 2009; *Background Document by the Independent Expert on Minority Issues ('IEMI')*, Gay McDougall, on *Minorities and Effective Political Participation*, A/HRC/FMI/2009/3, 9 October 2009, para. 32; AC FCNM, *Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and Public Affairs*, ACFC/31DOC (2008)001, 27 February 2008, paras. 88-89.
- 28 The Venice Commission notes that a rule on rotation can be added requiring that the newly elected President may not belong to the same ethnic group as his or her predecessor.
- 29 Venice Commission, *Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative*, CDL-AD (2005)004, 11 March 2005.
- 30 MRG, Alternative Report to CERD, *Supra*. Note 1.
- 31 Article 68.12 of the constitution of RS states that the entity is responsible for 'labour relations, safety in workplace, employment, social security, and other forms of social care, health care, war veteran and disability benefits, child and youth welfare, education, culture, and preservation of cultural heritage, physical education and sports'.

- 32 Section III of the constitution of FBiH gives the cantons and the federal government shared responsibility in ‘guaranteeing and enforcing human rights’, (Article 2a), health (Article 2b) and social welfare policy (Article 2e), and gives responsibility to cantons for ‘making education policy, including decisions concerning the regulation and provision of education’ (Article 4b), ‘making housing policy, including decisions concerning the regulation and provision of housing’ (Article 4d), ‘making policy concerning the regulation of public services’ (Article 4e), and ‘implementing social welfare policy and providing social welfare services’ (Article 4 j).
- 33 See International Crisis Group, *Federation of Bosnia and Herzegovina- A Parallel Crisis*, Europe Report No 209, 28 September 2010.
- 34 Interview with member of the Expert Group for Constitutional Reform of FBiH, 21 October 2015.
- 35 Constitutional Court of Bosnia and Herzegovina, Case No. U5/98-III.
- 36 At the request of the communities, location of these communities and the names of their representatives are being kept confidential as they expressed concerns over fears of victimization by local authorities and some members of majority communities.
- 37 Law on Ministries and Other Administrative Bodies in BiH, *Official Gazette of BiH* 5/03, Article 15.
- 38 See Constitution of FBiH, Article V.2 (2).
- 39 Conclusions of Round-table event ‘Promoting Inclusive and Integrated Education’ organized by MRG and its local partners and held in Sarajevo on 22 July 2015.
- 40 This issue led to a series of protests in 2013 by Bosniak parents from Konjević Polje in the RS demanding that their children be taught their own national subjects.
- 41 Interview with government official, Federal Ministry of Education and Science, 31 July 2015.
- 42 Supreme Court of the Federation of BiH, Case No.: 58 0 Ps 085653 13 Rev from 29 August 2014.
- 43 CERD, *Concluding Observations on the Seventh and Eighth Periodic Reports of Bosnia and Herzegovina*, CERD/C/BIH/CO/7-8, 27 August 2010.
- 44 AC FCNM, *Third Opinion on Bosnia and Herzegovina*, ASCFC/OP/III(2013)003, 7 March 2013.
- 45 This, however, should not prejudice the right of minorities to set up and to manage their own private educational and training establishments.
- 46 MRG staff and programme field workers visited Roma communities in Bijeljina, Bugojno, Čapljina, Kakanj, Lukavac, Modriča, Mostar, Prnjavor, Trebinje, Tuzla, Visoko, Vitez, and Zavidovići.
- 47 Interview with a mother of two children living in the Varna Roma settlement in Kakanj, July 2014.
- 48 See also MRG, *Alternative Report to CERD*, *Supra* Note 1.
- 49 *Ibid.*
- 50 Interviews were conducted with minority returnee communities between 2013 and 2015. *Supra* Note 31.
- 51 See also MRG *Alternative Report to CERD*, *Supra* Note 1.
- 52 Interview with Roma community representative, 21 October 2015.
- 53 Interview with Roma representatives and community members in Čapljina, Mostar, Prnjavor, Trebinje, Tuzla, and Zavidovići.
- 54 Interview with government official, Municipality of Kakanj, 1 July 2014.
- 55 Interview with expert advisor, Federal Ministry of Health, 22 October 2015.
- 56 UN Development Programme in BiH, ‘MDGs – Achieve universal primary education’, undated, retrieved on 15 November 2015, http://www.ba.undp.org/content/bosnia_and_herzegovina/en/home/mdgoverview/overview/mdg2.html.
- 57 Law on Health Insurance of Federation of Bosnia and Herzegovina, *Official Gazette FBiH* 30/97, 7/02, 70/08, 48/11.
- 58 Interview with expert advisor, *Supra* Note 52.
- 59 Interview with government official, Federal Ministry of Health, 22 October 2015.
- 60 *An Episode in the Life of an Iron Picker* (2013), directed by Danis Tanović.
- 61 Interview with government official, Ministry of Health of Zenica and Dobož Canton, 27 April 2015.
- 62 Conclusion of networking event ‘More Effective Civil Society Involvement in Combating Discrimination in Bosnia and Herzegovina,’ organized by MRG and local partners and held in Sarajevo on 17 April 2013.
- 63 Interview with member of the expert group for amending the LPD, 20 January 2014. See Conclusions of the Round-table of experts for amending the procedural provisions of LPD organized by the Organization for Security and Co-operation in Europe and held in Sarajevo on 21-22 November 2013. See also Adrijana Hanušić, *Judicial Protection from Discrimination in Bosnia and Herzegovina: Analysis of Laws and Practice Based on Initial Cases in This Field*, Sarajevo, Analitika, 2013.
- 64 The lawsuit must be filed within 3 months of finding out about the violation committed and within one year of date the violation was committed. See Article 13 (4) of LPD.
- 65 *Ibid.*
- 66 *Ibid.*
- 67 See relevant reports of Sub-Committee of Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.
- 68 Due to the lack of proper funding, the staffing of the Ombudsman’s office remained very limited, with only three staff members working for the Department for the Elimination of All Forms of Racism, and one working for the Department for Protection of the Rights of National, Religious and Other Minorities.
- 69 The Institution of Human Rights Ombudsman of BiH, *Annual Report on Occurrences of Discrimination in Bosnia and Herzegovina for 2011*, pp. 24-27; *Annual Report on Occurrences of Discrimination in Bosnia and Herzegovina for 2012*, p. 25; *Annual Report on Occurrences of Discrimination in Bosnia and Herzegovina for 2013*, p. 27; *Annual Report on Occurrences of Discrimination in Bosnia and Herzegovina for 2014*, p. 27.
- 70 These observations are mainly based on cases in which the Institution opened *ex officio* investigations and which have also been examined by MRG’s legal team. The AC FCNM also reached similar conclusions. See AC FCNM, *Third Opinion on Bosnia and Herzegovina*, ASCFC/OP/III(2013)003, 7 March 2013, paras. 54-55.
- 71 *Ibid.* See also MRG *Alternative Report to CERD*, *Supra* Note 1.
- 72 European Centre for Minority Issues, *Ombudsman Institutions and Minority Issues: A Guide to Good Practice*, November 2004.

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Collateral Damage of the Dayton Peace Agreement: Discrimination Against Minorities in Bosnia and Herzegovina, Twenty Years On

The Dayton Peace Agreement, negotiated in November 1995 and formally signed in Paris on 14 December 1995, is widely credited for bringing an end to the 1992-1995 Bosnian war. However, together with its precursor, the Washington Agreement, it is also responsible for setting in place a legal, political and constitutional framework that has served to entrench ethnic divisions. Furthermore, while the constitutional system grants special privileges to the three main ethnic groups, members of minority communities are heavily disenfranchised as a result of their ethnicity. This particularly affects the country's Roma population, as well as many returnees and *de facto* minorities who find themselves in areas dominated by other ethnic groups.

Collateral Damage of the Dayton Peace Agreement: Discrimination Against Minorities in Bosnia and Herzegovina, Twenty Years On highlights the continued marginalization facing minorities and the limited opportunities available for political participation in this discriminatory context. As a result, besides a lack of political representation, these communities struggle to access many basic human rights, including adequate housing, health care, education and employment.

Though the European Court of Human Rights (ECtHR) has affirmed that the Constitution of Bosnia and Herzegovina (BiH) violates fundamental human rights, so far reforming its provisions has not been a high priority for the country's political leaders. This briefing highlights the need for a substantive overhaul of the current legal, institutional and political framework to address the systematic discrimination of minority communities in BiH, bringing it in line with international standards and laying the foundations for a more meaningful and durable peace in the years to come.



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The text does not necessarily represent in every detail the collective view of MRG or its partners. Copies of this study are available online at www.minorityrights.org

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