

# Human rights shortcomings of the Dayton Peace Agreement

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**When a peace agreement guarantees the rights of certain groups but not all, limitations to the enjoyment of human rights are inevitable.**

The Dayton Peace Agreement which ended the war in Bosnia and Herzegovina (BiH) established the rights of the country's 'constituent peoples': Bosniaks, Croats and Serbs. The result of this has been that anyone who does not identify themselves with these groupings is highly limited in their exercise of rights, leading to the marginalisation of specific categories of the population.

The United Nations (UN) Committee on the Elimination of Racial Discrimination highlighted this in 2006, expressing its concern that "the State and Entity Constitutions allocate certain authority to, and confer specific rights exclusively on, members of the 'constituent peoples' (Bosniaks, Croats and Serbs), and that persons not belonging to one of these ethnic groups are formally referred to as 'Others'." The Committee urged "that the State Party ensure that all rights provided by law are granted, both in law and in fact, to every person on the territory of the State Party, irrespective of race or ethnicity."<sup>1</sup>

The country is still witnessing a number of returns, yet there are continued concerns for the security situation of 'minority returnees';<sup>2</sup> with allegations of harassment, intimidation and other forms of violence, including murder.<sup>3</sup> Politicians also continue to use nationalist rhetoric, often directed against minority returnees.

## Annex 6 and equality of access

Annex 6 of the Dayton Peace Agreement established a Commission on Human Rights comprising a Human Rights Chamber and an Office of the Ombudsman. Together, these two are obliged to investigate:

*a) alleged or apparent violations of human rights as provided in the European Convention for the*

*Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, or*

*b) alleged or apparent discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements... where such violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority of such official or organ.*

The institution of the Ombudsman works to provide equal accessibility for all vulnerable, marginalised groups, and its annual reports indicate that IDPs still have difficulties accessing social protection and welfare, creating obstacles to their sustainable return.<sup>4</sup> The division of responsibilities among different levels of government (state, entity, canton and municipality) in the area of economic and social rights obstructs access to those rights, with a lack of clarity as to where responsibility lies. The consequence is that progress in the protection of human rights, in establishing rule of law and in improving governance and economic development has remained static in BiH.

At the same time, although the difficult economic situation in BiH affects the country as a whole, it has a more severe impact on vulnerable groups such as minority returnees, the Roma and female-headed households. The lack of sustainable solutions for IDPs and returnees continues, as does widespread discrimination on the grounds of ethnicity, gender and political affiliation. Furthermore, post-war reforms of governance instruments

September 2015

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and national legislation have been undertaken with little or no public and expert consultation and without sensitivity to the needs of vulnerable groups, including IDPs. Laws have often been pushed through without sufficient budgetary planning, with the result that rights are *de jure* prescribed but not able to be realised in practice.<sup>5</sup> There is concern that many of the measures undertaken have actually resulted in an increase in poverty and slower economic development, which again will have more serious consequences for the most vulnerable groups.

### Inadequate protection for vulnerable groups

Various UN treaty bodies (charged with monitoring implementation of the core international human rights treaties) have pointed out – in regard to access to economic and social rights by vulnerable groups – the lack of direct application of Conventions; the lack of programmes for reduction of unemployment, particularly among women; and inadequate mechanisms for monitoring and redress. Their recommendations, however, have not been taken into serious consideration by the BiH government. As a result, injustice and inadequacies in protection and fulfilment of the rights of these groups remain one of the main challenges in transitional justice in BiH.

Victims of torture, including survivors of sexual violence, are granted only minimal protection under the umbrella category of ‘civilian victims of war’ in entity laws. Female victims of sexual violence are even more vulnerable, and face serious economic, housing, social and psychological issues; their often multiple vulnerabilities are not adequately recognised by laws (e.g. on health care, IDPs, social protection, etc) nor addressed in practice.

Two of the causes are the absence of state-level legislation regulating the rights of victims, and the lack of harmonisation of those relevant laws that do exist. Access to health care for survivors of torture, including sexual violence, is limited to basic services (in the Federation) or connected to IDP status (in the Republika Srpska) but in both

entities the specific needs of these categories are almost entirely neglected. Psychosocial support and counselling are only provided by the NGO sector, which is not able to cover all the needs. Monthly support allowances can be shamefully low, and for some this can be a source of re-victimisation.

The situation of the group labelled ‘women war victims of sexual violence’ illustrates how multiple vulnerabilities are not adequately dealt with and thus how the state is failing to provide adequate reparations to victims. These are women who are additionally disadvantaged as female heads of household and IDPs and who were or are facing eviction from accommodation they were provided as IDPs. Due to the provisions of the Law on Refugees from BiH and Displaced Persons in BiH they were (or are) under pressure to return to their pre-war places of residence – where they may be exposed to additional trauma, including the possibility of having to face the perpetrators.<sup>6</sup>

The burden is placed on IDPs to show they have grounds for refusing to return, since the Law prescribes that they lose their IDP status if the conditions exist for safe and dignified return to the pre-war place of residence. However, the law does not define conditions for safe and dignified return, nor does it take into consideration that safe and dignified return for survivors of torture can require significantly different conditions from those for IDPs not suffering from multiple vulnerabilities. Moreover, every time the survivors face a new eviction they are additionally re-traumatised, and their marginalisation is reinforced.

### Conclusion

There is a pressing need for a comprehensive assessment of the effects of implementation of the Dayton Peace Agreement on IDPs, with particular attention paid to the implementation of the recommendations of the UN treaty bodies and the Universal Periodic Review.<sup>7</sup> A human rights-based approach should be used in all spheres of life in BiH, focusing on the needs of vulnerable groups and ensuring that returnees can access their rights relating

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to social protection, health care, education, housing, employment and security.

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1. Report of the Committee on the Elimination of Racial Discrimination, 2006. Supplement No 18 A/61/18, para 31. [www.refworld.org/pdfid/45c30ba90.pdf](http://www.refworld.org/pdfid/45c30ba90.pdf)
2. Displaced persons returning to areas of origin where their ethnic group is now in the minority.
3. OSCE (November 2012) *Tackling Hate Crimes: An analysis of bias-motivated incidents in Bosnia and Herzegovina with*

*recommendations* [www.oscebih.org/documents/osce\\_bih\\_doc\\_2012111310235235eng.pdf](http://www.oscebih.org/documents/osce_bih_doc_2012111310235235eng.pdf); European Commission against Racism and Intolerance (February 2011) *ECRI Report on Bosnia and Herzegovina (fourth monitoring cycle)* [www.coe.int/t/dghl/monitoring/ecri/country-by-country/bosnia\\_herzegovina/BIH-CBC-IV-2011-002-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/bosnia_herzegovina/BIH-CBC-IV-2011-002-ENG.pdf)

4. (March 2015) *Annual Report on the Results of the Activities of the Institution of the Ombudsman for Human Rights of Bosnia and Herzegovina for 2014* [www.ombudsmen.gov.ba/Dokumenti.asp?id=27&tip=1&lang=En](http://www.ombudsmen.gov.ba/Dokumenti.asp?id=27&tip=1&lang=En)
5. The best example for this assertion is the Gender Law (text at <http://tinyurl.com/BiH-Gender-Law-2003>), which states that: “competent authorities shall undertake appropriate measures on all levels in order to implement provisions of the Gender Law,” including “the adoption of planned measures designed to achieve gender equality in all fields and at all levels of governance”. This has not happened yet.
6. [www.brookings.edu/about/projects/idp/laws-and-policies/bosnia](http://www.brookings.edu/about/projects/idp/laws-and-policies/bosnia)
7. [www.ohchr.org/EN/HRBodies/UPR/Pages/BASession20.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/BASession20.aspx)