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WATCH

## SECOND CLASS CITIZENS

Discrimination Against Roma, Jews, and Other National Minorities  
in Bosnia and Herzegovina



# **Second Class Citizens**

**Discrimination against Roma, Jews, and Other National  
Minorities in Bosnia and Herzegovina**

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# Map of Bosnia and Herzegovina



Map No. 3729 Rev. 6 UNITED NATIONS  
March 2007

Department of Peacekeeping Operations  
Cartographic Section

Source: United Nations

Bosnia and Herzegovina, Map No. 3729 Rev.6, March 2007





## Summary

Twenty years after the start of wars in the Western Balkans, Bosnia and Herzegovina remains a country deeply divided along ethnic lines, based on lingering animosities between former warring factions but also constitutionally mandated separation by ethnicity in political and public life.

The warring factions in Bosnia consisted principally of the three main ethnic groups, Bosniaks, Croats, and Serbs, which the constitution refers to as the “constituent” people. They are the only people whom the constitution—an annex to the Dayton Peace Accords from 1995—states can serve as president or in the upper house of the national parliament, and were granted veto power over any legislation that they viewed as threatening their ethnic group’s interests. The interests of these three main ethnic groups are also protected in the constitutions of Bosnia’s two main political entities, Republika Srpska and the Federation of Bosnia and Herzegovina, which both have significant powers of self-government.

This protection does not extend to national minorities, groups that Bosnia’s constitution does not identify as belonging to one of the country’s three main ethnic groups and refers to as “Others.” These minorities—estimated to constitute around three to five percent of Bosnia’s four million people—include Roma, Jews, Ukrainians, and people from other Southeast and Eastern European countries. The European Court of Human Rights has found that their exclusion from politics and public institutions at the highest levels of national and local politics constitutes unlawful ethnic discrimination.

Roma, who are by far the largest national minority in Bosnia and Herzegovina, suffer disproportionately from ethnic discrimination. The direct discrimination against Roma inherent in Bosnia’s political structure reinforces the indirect discrimination they often face in the provision of services like housing, health care, education, and employment. Despite efforts by Bosnia’s national government to develop plans and policies to improve the lives of Roma, little has been done, and even less responsibility has been taken, to make government services more accessible.

This report details constitutional discrimination against Roma, Jews and other national minorities in public life, and how this ethnic discrimination carries over into daily life for

Roma in particular by limiting access to necessary basic services, such as housing, healthcare, education, and employment. It shows how Bosnia's Roma, Jews, and other national minority groups face constitutionally-grounded ethnic discrimination that flies in the face of international human rights commitments—including those intended to specifically address some of the problems that Roma face—as well as international pressure to carry out legislative reforms.

## **Discrimination in Politics and Public Institutions**

The constitutional provisions that reserve political positions for Bosniaks, Croats, and Serbs and give them veto power over any legislation they viewed as threatening to their ethnic group's interests may have at one time helped maintain peace in Bosnia. But today the resulting ethnic politics are causing more harm than good, with Serbs and Croats threatening secession from Bosnia and political deadlock that delayed the formation of a national government by more than a year after elections were held in Bosnia. And they have left Roma, Jews, and other national minorities largely excluded and invisible in politics.

In December 2009, the European Court of Human Rights ruled that Bosnia's constitution violated the European Convention on Human Rights (ECHR) by discriminating against leading members of the Jewish and Roma communities in political life solely based on their ethnicity. In the landmark case *Sejdic and Finci v. Bosnia and Herzegovina*, the court found the constitution and electoral laws to be discriminatory, following which the other Council of Europe (CoE) states mandated urgent implementation of the court's decision to ensure that a national election scheduled for October 2010 would not constitute another rights violation.

The October election passed without constitutional changes, and 18 months later no action has been taken to bring about needed reforms. On March 15, 2012, Bosnia's parliament once again missed a CoE deadline to propose constitutional reforms to end ethnic discrimination in the constitution against Roma and other national minority groups.

Direct discrimination against Roma, Jews, and other national minorities does not end with politics; it is also entrenched in the civil service. The constitutions for the Federation and Republika Srpska both mandate ethnic quotas for employment in public institutions, based on population estimates from the last census, conducted in 1991 before the wars. The 1991

census notoriously undercounted Roma and therefore the total number of national minorities, meaning that they are disproportionately excluded from civil service positions.

Even offices like the Ombudsmen for Human Rights, which is supposed to protect against discrimination against national minorities, are by law discriminatory in structure, requiring the appointment of three representatives from the three main ethnic groups to serve as ombudsmen with no room for Roma, Jews, or other national minorities.

In July 2009, Bosnia passed an anti-discrimination law with the goal of providing equal rights for all people in Bosnia, including national minorities. Although the provisions of this law are strong, national minorities have brought very few cases under the law, possibly because there is also a general lack of understanding among the judiciary and the public about the laws prohibitions on both direct and indirect discrimination. Some of this confusion may stem from the fact that the law seems to directly contravene constitutional provisions that favor the three main ethnic groups, creating confusion about where and how the anti-discrimination law can be applied.

## **Discrimination against Roma in Daily Life**

All national minorities in Bosnia and Herzegovina suffer from constitution-mandated discrimination. But Roma—who have trouble accessing public services in most of Europe due to policies and practices that fail to address their needs and public discrimination rooted in negative attitudes and stereotypes—suffer disproportionately from indirect discrimination because of high unemployment rates and poor education levels and living conditions. In particular, they have trouble accessing housing, health care, employment, and education and other social services. Few work in the public sector.

In 2008, Bosnia joined the Decade of Roma Inclusion 2005-2015, a program designed to encourage action to improve the lives of Roma across Europe. As part of this program, Bosnia developed action plans to address issues of housing, employment, and health care for Roma, and reinvigorated an action plan on education for Roma from 2004. Although the actions detailed in these plans could go a long way to ensuring respect for the human rights of Roma, to date most have not had a significant effect on alleviating daily discrimination against them.

### *Problematic Registration*

According to informal estimates from civil society organizations, as many as 100,000 Roma live in Bosnia and Herzegovina. The United Nations High Commissioner for Refugees estimates that approximately 10 percent of Roma in Bosnia and Herzegovina are not listed on the birth registries there or elsewhere in the region. Without birth registration and a birth certificate, Roma often cannot access public services, like schools, employment bureaus, or health care services.

Although the number of unregistered Roma is decreasing, there are also other registration barriers to Roma accessing basic services. Many Roma have moved from the area in which they were born to other areas of the country, either because of war, family, or economic opportunities, and are not registered as residents of these new areas where they live. Since many services are provided locally, and only to people who are registered as residents of the particular municipality, canton, or entity, the many Roma who are not registered cannot access them.

The process of re-registering in a new place of residence is often financially onerous and time-consuming or requires a permanent address, something many Roma, who often live in informal housing, cannot establish.

### *Access to Housing*

As the Roma Decade Action Plan on Housing recognizes, many Roma in Bosnia and Herzegovina live in informal settlements that lack stability and security for their families. Forced evictions are an ever present danger for Roma in these settlements, and there is no policy on providing adequate alternative housing for those who are evicted. For example, Roma evicted (some of them twice) from informal settlements in the southern city of Mostar were not given alternative housing options and have been left to build new informal settlements that put them at further risk of eviction.

Few Roma living in these or other settlements have basic services at home, like electricity and running water. Even those who own the land on which they live struggle to obtain these services, which they often borrow from neighbors by paying high fees.

Although a housing program for Roma exists as a result of the Action Plan, its promised €3 million by 2015 has to date only resulted in €300,000 in housing programs, and is dependent on the willingness of municipalities and international donor organizations to provide land and additional funding to construct permanent apartments.

### *Access to Health Care*

The Roma Decade Action Plan for Health Care aims to ensure that all Roma, whether employed or not, have health care. But in reality, current laws and regulations provide free health care only to some vulnerable groups—young children, pregnant women, and the elderly—while allowing others who are unemployed to receive health insurance by registering with employment bureaus, which deal with unemployment issues rather than health care.

Provision of health care is decentralized, with the entities of Republika Srpska, the Federation, and smaller administrative areas within the Federation called cantons (which encompass several municipalities) providing most services and doing most of the monitoring. This decentralization has led to inconsistent delivery.

The canton of Herzegovina-Neretva in the Federation, which encompasses the city of Mostar, did not fund health care for the most vulnerable groups through the middle of 2011. In the Federation as a whole, in order to receive health care through the employment bureaus, individuals must register with the bureaus within 30 days of losing work or graduating from school, a rule that many Roma learn of only after the deadline has passed. Those not registered where they live or are not at all also do not have health care. Most Roma still have to pay for their own care, which they cannot afford. As a result, they do without.

### *Access to Education*

There have been some improvements in access to education for Roma in Bosnia since the Action Plan for Roma Education was adopted in 2004. While few Roma attended school at all in Bosnia in 2002, the situation has since improved, and awareness has grown within Roma communities about the importance of educating their children. Almost all Roma families that Human Rights Watch interviewed said they sent their children to school, and few Roma students complained of harassment or overt discrimination.

But problems remain. Roma students can be reluctant to attend school because they do not have adequate clothes to wear, or because the free textbooks they receive are outdated. Sometimes their families cannot afford to send them because they cannot afford clothing or transportation, which are usually not covered by the state even though the Roma Education Action Plan calls for their provision.

Students in schools are generally not given meals, and many Roma children cannot afford to buy or bring their own, putting them at a disadvantage compared to other students. Those who make it through primary and secondary school find upon graduation that they still cannot find productive jobs, a problem for many Bosnian youth, but particularly prevalent in Roma communities because of indirect discrimination they face in employment.

Roma students are also sometimes excluded from school in other ways. Human Rights Watch documented cases of Roma children being sent to a special education school for children with intellectual disabilities in Mostar. Of the 80 total students who attended this school, 20 were Roma. None of them had intellectual disabilities, although they were allowed to attend the school because of the so-called “social disabilities” they faced. They received the same curriculum designed for children with intellectual disabilities, in a school segregated from mainstream education.

### *Access to Employment*

Almost all Roma in Bosnia are chronically unemployed, and civil society groups estimate that less than five percent are engaged in formal employment. Among individuals interviewed by Human Rights Watch in Bosnia, only three were employed outside of Roma-led NGOs: one as a social worker in Banja Luka, and two as garbage collectors for the city of Gradiska. Instead, most Roma make their living by collecting and recycling scrap metal and other secondary materials, or begging in cities.

Employment bureaus throughout Bosnia are designed to help individuals find employment and support them with health care and other services. As part of the Roma Action Plan for Employment, these bureaus have been given national government funding to co-finance Roma employment with businesses in their cities. This program has had some success to date, employing 88 people. But the reality is that thousands of unemployed Roma are not

registered with the bureaus, whose employees report that those who are registered often lack the education and skills to do the work that comes their way.

The constitutions of the Republika Srpska and the Federation of Bosnia and Herzegovina specifically stipulate that employment in public institutions should be proportional, based on population established in the 1991 census, which undercounted Roma in Bosnia.

## **Ending Ethnic Discrimination in Bosnia and Herzegovina**

The ethnic discrimination in Bosnia against Roma, Jews, and other national minorities directly violates Bosnia's commitments under international and European human rights law.

The first and most necessary step to ending ethnic discrimination in Bosnia is to remove it from the national constitution. This will begin the process of inspiring change in Bosnia's entities and cantons by showing that discrimination based on ethnicity is no longer acceptable in the public sphere and will give courts the clear legal power to strike down discriminatory provisions at all levels.

Bosnia must also implement its commitments under the Roma Decade and ensure that Roma can access basic services, such as housing, employment, health care, and education, without barriers imposed by indirect discrimination. Bosnia is the most recent country to join the Roma Decade and as such only has six years to live up to the commitments therein. However, if it is to meet its commitments under the Decade, which ends in 2015, the new government appointed in February 2012 must take immediate steps to end direct and indirect discrimination against Roma in Bosnia. Bosnia should also take the initiative to continue its commitment under the Roma Decade beyond 2015 for initiatives that cannot reasonably be completed by that date.

Another significant step in resolving the issue of Roma, Jewish, and other national minority representation in public sector employment will be conducting an accurate 2013 census of Bosnia and Herzegovina, which Bosnia's newly formed government committed to do in February. The government needs to ensure that special efforts are made to reach out to national minority communities in Bosnia, including employing Roma and others in conducting the census and allowing individuals to confidentially identify their ethnicity. Civil registration, upon which access to many services depends, must be reviewed and

simplified to make these services accessible to Roma on an equal basis. Heavy investment is necessary in home infrastructure in order to ensure security and basic dignity for Roma, and more done to legalize Roma settlements, prevent their eviction, and provide them with adequate alternative housing in the limited cases when evictions are necessary.

Action also needs to be taken to increase Roma children's access to education, and to stop the practice of placing Roma children in special schools—which constitute unacceptable exclusion from mainstream education that violates the European Convention. Government officials must ensure they are hiring Roma to provide basic services that so many Roma need, creating an atmosphere of inclusion.

Although Bosnia remains primarily responsible for ensuring these changes, the United States, European Union, and Council of Europe must also play an active role in pressing for constitutional amendments and ensuring access to basic services. Bosnia's political life already receives attention from the EU and US, which through their roles in negotiating the end of the war both played a significant role in creating the ethnic politics that persists in the country through their initial support for the constitution and the electoral laws. The EU in particular must continue to insist on constitutional amendments to end ethnic discrimination before Bosnia can begin negotiations to join the union, and it must condition EU entry on ending widespread discrimination against Roma, Jews, and national minorities, both in law and in practice.

Without constitutional amendments to end ethnic discrimination against Roma, Jews, and other national minorities in politics and public life, and without adequate steps to counter the indirect discrimination many Roma see in their daily lives, Bosnia will remain a country defined and divided by ethnicity and discrimination.

As was seen in 2011, the resulting instability will not help maintain the peace but will instead undermine the many gains Bosnia has made since the end of the wars in 1995. This is a fate that Bosnia's new government, as well as the US, EU, and Council of Europe, cannot and should not accept. It is also a situation that will not change without their immediate and concerted action.



## Key Recommendations

### To the Parliamentary Assembly and Government of Bosnia and Herzegovina

- Immediately amend the Bosnian National and Entity Constitutions to remove discrimination on the basis of ethnicity in politics and public employment. Amend the laws on national elections to ensure that Roma, Jews, and other national minorities can run for national and local public office on an equal basis with all other Bosnian citizens.
- Amend health care legislation to ensure that everyone in Bosnia, regardless of ethnicity, age, or employment status, can access health insurance. De-couple provision of state-provided health care for adults from registration at employment bureaus.
- Ensure that Roma are not forcibly evicted without access to adequate housing by creating protocols for providing housing to individuals who are forcibly evicted from informal settlements, particularly the elderly and children. Create in law, and implement a right that no one in social housing should be evicted without the guarantee of housing of at least an equivalent standard.
- Ensure through affirmative action that Roma are employed in providing basic services, such as those related to housing, employment, education, and health care, and that Roma views are incorporated into all projects that affect provision of these services.
- As per Bosnia's commitments in the Roma Education Action Plan, provide inclusive educational opportunities and ensure that there is access to free education, starting at the elementary level, including providing free transportation, books, and meals for all students who cannot afford them and eliminating other de facto compulsory charges to families when these charges pose significant barriers to school attendance.

For full recommendations, see p. 58.

## Methodology

This report focuses primarily on the experience of Roma, both due to the disproportionate discrimination they face, as well as the fact they are the largest minority group in Bosnia—some 100,000 live in Bosnia and Herzegovina according to informal civil society estimates.

The Jewish population, which has a long history in Bosnia, numbers around 500 people and is well organized compared to other minority groups. One of the plaintiffs in the European Court of Human Rights case, Jakob Finci, that served as the basis for this report also came from the Jewish minority. The experience of its members is noted in the report where relevant information exists.

Discrimination against other significant minorities, which number more than 30,000 according to the 1991 census, is similarly included where relevant information exists.

The report is based on field and desk research conducted between June 2011 and March 2012. During trips to Bosnia in July and August, Human Rights Watch visited Roma communities in five municipalities in Bosnia and Herzegovina and interviewed 20 Roma community residents and 8 Roma rights activists throughout the country. Human Rights Watch interviewed Roma living in different circumstances in many regions of the country to try to capture an accurate picture of their lives.

In addition to interviewing other experts, Human Rights Watch also reviewed laws, policies, official Roma Decade Action Plans, and reports by academics, international organizations, and European Union, Council of Europe, and United Nations agencies.

Human Rights Watch conducted interviews with Roma and Roma rights leaders in both of Bosnia's two main self-governing entities, the Federation of Bosnia and Herzegovina and Republika Srpska. We spoke with Roma rights leaders and visited Roma communities in five of the largest municipalities in Bosnia and Herzegovina including Sarajevo, Mostar, and Tuzla in the Federation, and Gradiska and Banja Luka in Republika Srpska, out of a total of 142 municipalities. These districts were chosen because of their large populations of Roma or because of efforts reported by civil society, government, or media to improve the human rights situation of Roma in those communities.

Human Rights Watch also interviewed three Jewish community leaders in Sarajevo and Mostar.

Human Rights Watch conducted interviews individually and in small family groups. All group interviews involved between two and five individuals. More than half of the Roma interviewees were women. Most visits were conducted with international and local NGOs that frequently interact with these communities, and these organizations also assisted Human Rights Watch in identifying individuals and families to interview. Interviewees also referred other potential interviewees to Human Rights Watch.

Before each interview, Human Rights Watch explained the purpose of the interview and the overall research, the kind of issues that would be covered, the ways in which the interview would be used and its voluntary nature. Individuals were told that they could decline to answer questions, take a break, or end the interview at any time.

Interviews were carried out in Bosnian with the help of an interpreter. All interviews were conducted by Human Rights Watch researchers and consultants.

Interviewees did not receive any material compensation and Human Rights Watch made it clear at the start of each interview that it could not provide individual support or services. When relevant, Human Rights Watch directed individuals to legal and other services.

Human Rights Watch also interviewed representatives of local general human rights organizations, international organizations, UN agencies, and the heads of the state and entity-level Councils of National Minorities, the head of the Central Election Commission, and government officials at the state, entity, and municipal levels. Human Rights Watch also attended an EU-hosted conference hosted, in which representative of Roma rights NGOs, international organizations, and Bosnian government agencies spoke about their activities. Some information in this report is drawn from that conference and has been verified with NGOs and government agencies whenever possible.

This report uses Bosnia's currency, the convertible mark (KM), and the euro (€) when reporting on budgets and other financial commitments. One convertible mark is equal to 0.5 euros, or approximately 0.68 dollars.

# I. National Minorities in Bosnia and Herzegovina

According to informal estimates, Bosnia's "non-constituent" peoples (referred to in the constitution as "the Others," in other contexts as "national minorities," and in this report as "national minorities") make up about three percent of the four million-strong population.<sup>1</sup> National minorities in Bosnia include Roma, Jews, and a number of other Southeastern and Eastern European ethnic groups.

The general consensus is that Roma are the largest national minority in Bosnia, although estimates vary as to how many actually live in the country.<sup>2</sup> According to the last census in 1991, there are only 8,864 self-identified Roma living in Bosnia, primarily because many Roma self-identified as Yugoslav.<sup>3</sup> A recent Ministry of Human Rights survey found that 25,000-30,000 Roma live in Bosnia, although Roma activists put the figure between 60,000 and 100,000.<sup>4</sup> Roma live in most of the larger Bosnian cities and are especially concentrated in and around Tuzla and Zenica/Kakanj in the northern part of the Federation and Gradiska in Republika Srpska.<sup>5</sup>

There is also a small Jewish population in Bosnia and Herzegovina, remnants of Sephardi migration to the area during the Spanish Inquisition in the 15th and 16th centuries and Ashkenazi Jews from the Austro-Hungarian Empire in the 19th century. The Jewish population in Bosnia was once as high as 14,000, but following persecution during World

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<sup>1</sup> Federation of Bosnia and Herzegovina, Population of Bosnia and Herzegovina by Ethnicity 1961-1991, <http://www.fzs.ba/Dem/Popis/NacStanB.htm> (accessed March 13, 2012); Central Intelligence Agency, World Factbook: Bosnia and Herzegovina, <https://www.cia.gov/library/publications/the-world-factbook/geos/bk.html> (accessed March 13, 2012). The last official census, conducted in 1991, indicated that about two percent of the population was national minorities, although national minorities were notoriously undercounted in this census as many identified as Yugoslav. A population estimate from 2000 indicated that national minorities made up 0.6 percent of the population.

<sup>2</sup> Bosnia and Herzegovina, "Action Plan of Bosnia and Herzegovina for Addressing Roma Issues in the Field of Employment, Housing and Healthcare – Introduction," p. 2, <http://www.romadecade.org/files/downloads/Decade%20Documents/Introduction%20-%20Decade%20National%20Action%20Plan%20BiH.pdf> (accessed December 13, 2011).

<sup>3</sup> *Ibid.*, p. 1.

<sup>4</sup> Kali Sara Roma Information Center: Decade Watch, "Report on the Implementation of the Bosnia and Herzegovina Action Plan for Addressing Issues Faced by Roma in the Field of Employment, Housing, and Health Care," p.3, 59, <http://www.romadecade.org/files/downloads/General%20Resources/Decade%20Watch%20BiH%202009-2011%20final%20EN.pdf> (accessed December 14, 2011).

<sup>5</sup> Human Rights Watch phone interview with Dervo Sejdic, Roma NGO leader in Sarajevo, May 31, 2011.

War II and Israel's airlift of many of them out during the 1990s wars, there are now only about 500, primarily in Sarajevo.<sup>6</sup>

Interviews with Jewish leaders in Bosnia revealed little indirect discrimination against this population in Bosnia (indeed, in 2011 Jews served in some of the higher diplomatic and civil service offices in the country). However, those who self-identify as Jewish face restrictions participating in national and local elected public offices.

There are 15 other recognized national minorities in Bosnia and Herzegovina, including Albanians, Montenegrins, Czechs, Italians, Hungarians, Macedonians, Germans, Poles, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks, and Ukrainians.<sup>7</sup> The largest minority besides the Roma include other Southeast Europe ethnic groups, such as Albanians and Macedonians, totaling about 19,000 according to the 1991 census.<sup>8</sup> Groups from Central and Eastern Europe accounted for about 8,000 people as of 1991, the largest of which was Ukrainian.<sup>9</sup> In 1991, there were also more than 30,000 people who did not declare an ethnicity or who were classified as "other."<sup>10</sup>

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<sup>6</sup> Human Rights Watch interview with Elma Kaunitz, president of the Jewish community in Sarajevo, June 23, 2011.

<sup>7</sup> Law on the Protection, of Rights of Members of National Minorities, 2003, art. 3, <http://www.ombudsmen.gov.ba/odjeli/Zakon%20o%20zastiti%20oprava%20nacionalnih%20manjina%20-%20Sl.%20glasnik%20BiH%2012-03.pdf> (accessed March 21, 2012).

<sup>8</sup> Federation of Bosnia and Herzegovina, Population of Bosnia and Herzegovina by Ethnicity 1961-1991, <http://www.fzs.ba/Dem/Popis/NacStanB.htm> (accessed March 13, 2012).

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

## II. Constitutional Discrimination against National Minorities in Political Life

We don't want to achieve our human rights by violating anyone else's.

—Nedžad Jusić, president of the Council of National Minorities of Bosnia and Herzegovina

### Bosnia's Constitution

Bosnia's Constitution, drafted with US and EU oversight as part of the international peace agreement that ended the 1992-1995 war, established a political system that gave priority to former warring ethnic factions of Bosnian society, with the justification that ethnically-based politics were needed to maintain peace.<sup>11</sup>

The constitution created a political system that is still primarily based on rigid ethnic identity and that discriminates against national minorities, such as Roma and Jews, who were not among the warring factions.

It establishes a federal system in Bosnia, with a weak central government and two entities, Republika Srpska (predominantly ethnic Serb) and the Federation of Bosnia and Herzegovina (predominantly ethnic Bosniak (Bosnian Muslim) and Croat) that have strong powers of self-government. The constitution also establishes three "constituent" peoples (hereafter "three main ethnic groups") in Bosnia: Bosniaks, Croats, and Serbs.<sup>12</sup>

The three main ethnic groups have special privileges under the law at the national level. There is a tri-partite presidency, for instance, in which each seat is designated for one of the three main ethnic groups.<sup>13</sup> The House of Peoples, one of the two houses of the parliament, is also solely reserved for the three main ethnic groups.<sup>14</sup> All pieces of

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<sup>11</sup> General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 4, [http://www.ohr.int/dpa/default.asp?content\\_id=380](http://www.ohr.int/dpa/default.asp?content_id=380) (accessed February 27, 2012).

<sup>12</sup> Constitution of Bosnia and Herzegovina, 1995, Preamble, [http://www.ccbh.ba/public/down/USTAV\\_BOSNE\\_I\\_HERCEGOVINE\\_engl.pdf](http://www.ccbh.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_engl.pdf) (accessed December 13, 2011).

<sup>13</sup> *Ibid.*, art. V.

<sup>14</sup> *Ibid.*, art. IV(1).

legislation are required to pass both the House of Peoples and the House of Representatives, the other house of the Bosnian parliament.<sup>15</sup>

The three main ethnic groups are then given a vital interest veto, meaning their delegations in the House of Peoples can prevent the passage of any laws that they consider threaten their ethnic group's interests.<sup>16</sup> Political parties that have developed in Bosnia since 1995 have largely matched this ethnic politics; except for a few multi-ethnic parties, most political parties strongly identify with one of the three main ethnic groups.

Under the constitution, there are no seats set aside for national minorities in the Bosnian presidency, or in the House of Peoples. Unlike the three main ethnic groups, members of national minorities also do not have the power to veto legislation that goes against their "vital interests." As a result, Roma, Jews and other national minorities have little power in national politics. As a Roma NGO in Bosnia has pointed out:

... [I]t seems fair to assume that each of them will work primarily for the benefit and the status of the group he or she belongs to, and only then for the common interest. In that sense, we cannot but ask the question of who is to represent and advocate the interests and welfare of ethnic minorities if they may not take an active part in serving on the BiH Presidency.<sup>17</sup>

About a decade after peace was established in Bosnia, the US, EU, and Office of the High Representative in Bosnia began pushing the government to amend the constitution, including ridding it of ethnic discrimination in politics. This push came from some of the same actors who had been involved in drafting the constitution and electoral law in the 1990s that had entrenched discrimination.

These new efforts culminated in two particular processes aimed at making constitutional amendments, including removing discriminatory constitutional

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<sup>15</sup> Ibid., art. IV(3)(e).

<sup>16</sup> Ibid., art. IV(3)(e).

<sup>17</sup> Kali Sara Roma Information Center: Decade Watch, "Report on the Implementation of the Bosnia and Herzegovina Action Plan for Addressing Issues Faced by Roma in the Field of Employment, Housing, and Health Care," April 2011, <http://www.romadecade.org/files/downloads/General%20Resources/Decade%20Watch%20BiH%202009-2011%20final%20EN.pdf> (accessed December 14, 2011).

provisions. Led by the US and EU, and referred to as Butmir I (2006) and II (2009), these efforts were unsuccessful.<sup>18</sup>

One of the main problems was that the constitution established by the Dayton agreement had no sunset clause—a legal provision that would have made some of these problematic articles invalid by a certain date. Instead, it requires Bosnia’s parliament to vote to amend the constitution, including a two-thirds vote of the House of Representatives, without any of the three main ethnic groups invoking the national interest veto.<sup>19</sup> In effect, it requires the politicians elected under the existing system to vote to abolish it.

Today, it is the constitution itself that threatens peace in Bosnia. The system of politics that it established has contributed to political deadlock. The main Croat parties spent 2011 arguing that the person elected to the Croat seat of the Bosnian presidency did not represent their interests, and the Serb leader of Republika Srpska threatened to reject national war crimes institutions because of resentment over the prosecution of Serbs, while both groups threatened secession.<sup>20</sup>

Bosnia spent 2011 without a government, as political parties had trouble in this atmosphere establishing a ruling majority in parliament, although a government was finally appointed in February 2012.

### *Sejdic and Finci v. Bosnia and Herzegovina*

Even as it enshrines political discrimination, the constitution also sets out to align Bosnia with human rights standards prevalent in the rest of Europe, specifically stating:

[T]he rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall

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<sup>18</sup> Human Rights Watch interview with Xavier Oleiro Ogando, EU Junior Expert, Political, Press and Information Section, Sarajevo, June 23, 2011; Erin Hodzic and Nenad Stojanovic, *New/Old Constitutional Engineering?: Challenges and Implication of the European Court of Human Rights Decision in the case of Sejdic and Finci v. BiH*, (Sarajevo: Analitika, 2011), pp. 41-42, <http://analitika.ba/files/NEW%20OLD%20CONSTITUTIONAL%20ENGINEERING%20-%2007062011%20za%20web.pdf> (accessed March 2, 2012).

<sup>19</sup> Constitution of Bosnia and Herzegovina, art. X.

<sup>20</sup> Ian Traynor, “Bosnia in worst crisis since war as Serb leader calls referendum,” *Guardian*, April 28, 2011, <http://www.guardian.co.uk/world/2011/apr/28/bosnia-crisis-serb-leader-referendum> (accessed March 2, 2012); Human Rights Watch, *Justice for Atrocity Crimes: Lessons of International Support for Trials before the State Court of Bosnia and Herzegovina*, pp. 36-39, March 2012, [http://www.hrw.org/sites/default/files/reports/bosnia0312\\_o.pdf](http://www.hrw.org/sites/default/files/reports/bosnia0312_o.pdf) (accessed March 15, 2012).



apply directly in Bosnia and Herzegovina. *These shall have priority over all other law.*<sup>21</sup>

Protocol No. 12 of the European Convention on Human Rights (ECHR) states:

The enjoyment of any right set forth by law shall be secured without 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.<sup>22</sup>

In 2003 Bosnia and Herzegovina ratified the protocol, which entered into force in April 2005. Article 14 of the ECHR also prohibits discrimination based on characteristics such as race, national or social origin, or association with a national minority in ensuring the rights in the ECHR.

In 2006, the Constitutional Court of Bosnia and Herzegovina decided several cases on the status of the ECHR as law in Bosnia and Herzegovina, as well as whether constitutional provisions that addressed ethnicity in politics were valid given Protocol No. 12 of the ECHR.

In March 2005, the Constitutional Court issued an opinion on a case filed by Ilijaz Pilav, a Bosniak who wanted to run for the national presidential representative in Republika Srpska, a seat the constitution reserves for a Serb. The court decided that the provision barring Pilav from running for the presidential representative from Republika Srpska did not violate Protocol No. 12 of the European Convention on Human Rights because the discrimination based on nationality:

[S]erve[s] a legitimate aim, that they are reasonably justified and that they do not place an excessive burden on the appellants given that the restrictions imposed on the appellants' rights are proportional to the objectives of general community in terms of *preservation of the established peace.*<sup>23</sup>

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<sup>21</sup> Ibid., art. II(2) (emphasis added).

<sup>22</sup> Protocol No. 12 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, CETS No.: 177, entered into force April 1, 2005, art. 1.

<sup>23</sup> *Party for Bosnia and Herzegovina and Ilijaz Pilav*, Constitutional Court of Bosnia and Herzegovina, Case No. A-2678/06, September 29, 2006, para. 22 (emphasis added); Erin Hodzic and Nenad Stojanovic, *New/Old Constitutional Engineering?*

Based on Protocol No. 12 of the ECHR, Dervo Sejdic and Jakob Finci, leading members of the Roma and Jewish communities respectively in Bosnia and Herzegovina, brought separate complaints (in July and August 2006) to the European Court of Human Rights (ECtHR) claiming that the Bosnian constitution's provisions with regard to the presidency, House of Peoples, and vital interest veto were discriminatory on the basis of race, religion and association with a national minority.

The ECtHR Grand Chamber heard these cases together in June 2009 and came down with a decision in an expedited ruling on December 22, 2009, almost a year before the next scheduled national elections in Bosnia. Bosnia has yet to implement the judgment, as discussed in detail below.

The ECtHR found Bosnia had violated Protocol No 12 and article 14 of the convention, because of the ethnic discrimination enshrined in its constitution. The Parliamentary Assembly of the Council of Europe called for immediate implementation of the court's decision before the October 2010 election.<sup>24</sup> The ECtHR did not rule on whether the exclusion of national minorities from political office served a legitimate aim at the time it was done, but ruled that in 2009 these provisions lacked proportionality and therefore were not justified and amounted to discrimination.<sup>25</sup>

Numerous international and regional bodies have pointed out the constitutional deficiencies outlined in the *Sejdic and Finci* case, even prior to this ruling. These include the UN Committee on the Elimination of All Forms of Racial Discrimination;<sup>26</sup> the UN Human Rights Committee;<sup>27</sup> two advisory bodies to the Council of Europe, the European

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*Challenges and Implication of the European Court of Human Rights Decision in the case of Sejdic and Finci v. BiH* (Sarajevo: Analitika, 2011), pp. 25-26, <http://analitika.ba/files/NEW%20OLD%20CONSTITUTIONAL%20ENGINEERING%20-%2007062011%20a%20web.pdf> (accessed March 2, 2012).

<sup>24</sup> Parliamentary Assembly of the Council of Europe, "Resolution 1701: Function of Democratic Institutions in Bosnia and Herzegovina," January 26, 2010, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1701.htm> (accessed March 14, 2012).

<sup>25</sup> European Court of Human Rights, *Sejdic and Finci v. Bosnia and Herzegovina*, Application nos. 27996/06 and 34836/06, judgment of December 22, 2009, para.46-50, available at [www.echr.coe.int](http://www.echr.coe.int).

<sup>26</sup> UN Committee on the Elimination of all forms of Racial Discrimination (CERD), "Concluding observations on Bosnia and Herzegovina," 2006, para.11, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=sejdic&sessionId=87534985&kin=hudoc-en> (accessed March 2, 2012).

<sup>27</sup> UN Human Rights Committee, "Concluding observations on Bosnia and Herzegovina," 2006, para. 8, <http://www.ohchr.org/en/countries/enacaregion/pages/baindex.aspx> (accessed March 2, 2012).

Commission for Democracy through Law (known as the “Venice Commission”) and the European Commission Against Racism and Intolerance (ECRI);<sup>28</sup> and the Organization for Security and Cooperation in Europe.<sup>29</sup> All have acknowledged that Bosnia and Herzegovina’s constitution blatantly contravenes European and international human rights standards and show that Bosnia has been aware that its constitution violated human rights law since at least 2004.

In October 2010, Bosnia and Herzegovina held a national election for the houses of parliament and presidency. It proceeded without the constitutional amendments that the European Court of Human Rights mandated to end ethnic discrimination in politics. Roma and other national minorities continued to be prohibited in Bosnian law and in fact from running for the presidency or the House of Peoples.

Little has been done since to amend Bosnia’s Constitution to eliminate the ethnic discrimination identified by the European Court of Human Rights. This inaction can be partly explained by the political stalemate that persisted in the country from the general elections until a government was finally formed in February 2012: no national government meant, by definition, no constitutional amendments. But even in the months between the European Court of Human Rights ruling in December 2009 and the elections in October 2010, the national government took few significant steps to implement this decision.

According to interviews with government officials involved in these negotiations and with international actors who have pressed Bosnia for constitutional changes, the first step the government took in March 2010 to implement the European Court decision was to adopt an action plan for implementation and form a working group made up of the national Council of Ministers—a body composed of the heads of each national ministry and representatives of the main political parties—to propose amendments by the end of March 2010.<sup>30</sup>

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<sup>28</sup> European Commission for Democracy Through Law (Venice Commission), “Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative,” March 11, 2005, [http://www.venice.coe.int/docs/2005/CDL-AD\(2005\)004-e.pdf](http://www.venice.coe.int/docs/2005/CDL-AD(2005)004-e.pdf) (accessed March 2, 2012); European Commission against Racism and Intolerance, “Report on Bosnia and Herzegovina,” June 25, 2004, para. 8, [http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/BIH-CbC-III-2005-2-ENG.pdf](http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle_03/03_CbC_eng/BIH-CbC-III-2005-2-ENG.pdf) (accessed March 2, 2012).

<sup>29</sup> Organization of Security and Cooperation in Europe, “General Elections 1 October 2006: OSCE/ODIHR Election Observation Mission Final Report,” October 1, 2006, p. 16-17, <http://www.osce.org/odihr/elections/bih/23945> (accessed March 2, 2012).

<sup>30</sup> Parliamentary Assembly of the Council of Europe, “Report: The urgent need for constitutional reform in Bosnia, and Herzegovina,” April 27, 2010, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12222.htm> (accessed March 2, 2012).

The working group met up until October 19, 2010, but resulted in no consensus amendment.<sup>31</sup> The group met again in November 2011 prior to a November 30, 2011 deadline from the Council of Europe for compliance with the *Sejdic and Finci* ruling, but again failed to reach a consensus.<sup>32</sup> Bosnia also missed a March 15, 2012 deadline set at the January session of the Parliamentary Assembly of the Council of Europe.<sup>33</sup> No members of the Bosnian working group were members of national minorities.

In May 2010, the Council of National Minorities, a national body established by the government and composed of members of national minorities (but with only advisory powers), proposed a constitutional amendment that would have eliminated ethnic discrimination in politics enshrined in the constitution. The head of the Council of National Minorities, Nedžad Jusić, told Human Rights Watch that its proposal was ignored—a claim confirmed by several groups.<sup>34</sup> The meetings in November 2011 included the Council of National Minorities, but only as an observer without powers to propose or approve amendments.<sup>35</sup>

In May 2011, Bosnia was required to report to the Council of Europe about its progress in implementing the ECtHR decision. The Committee of Ministers at the Council of Europe, the body charged with ensuring European Court decision implementation, received a document from Bosnia with several proposed constitutional amendments, one from each political party.<sup>36</sup> It did not include the proposal from the Council of National Minorities.

As most political parties are aligned with one or other main ethnic group, the constitutional amendments proposed often aligned with their own interests, and did not ultimately resolve the problems that the European Court of Human Rights had identified of ethnic discrimination in politics.<sup>37</sup> Regardless, little has been done to try to pass any of these amendments.

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<sup>31</sup> Bosnia and Herzegovina, “Submission to the Council of Europe on Implementation of the *Sejdic and Finci* decision,” May 27, 2011.

<sup>32</sup> “Minorities in BiH wait for better times,” *Southeast Europe Times*, December 14, 2011, [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2011/12/14/feature-01](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2011/12/14/feature-01) (accessed March 2, 2012).

<sup>33</sup> “Bosnians Fail to Agree Sejdic-Finci Changes,” *Balkan Insight*, March 12, 2012, <http://www.balkaninsight.com/en/article/bosnian-leaders-fail-agreement-on-human-rights-ruling> (accessed March 13, 2012).

<sup>34</sup> Human Rights Watch interview with Nedžad Jusić, president of Council of National Minorities, Tuzla, July 5, 2011.

<sup>35</sup> “Bosnia: A Move to End Discrimination,” Human Rights Watch news release, November 2, 2012, <http://www.hrw.org/news/2011/11/02/bosnia-move-end-discrimination> (accessed March 21, 2012).

<sup>36</sup> Nada Zukic, public law consultant for the Council of Europe, ““An Analysis of Laws on Health Insurance in Bosnia and Herzegovina (Entity, Brcko District and Cantonal where applicable) in Order to Identify Differences Between Them and the Existing EU Principles,” [www.coe.int/t/dg3/sscssr/Source/Legal\\_bh.doc](http://www.coe.int/t/dg3/sscssr/Source/Legal_bh.doc) (accessed March 2, 2012).

<sup>37</sup> Bosnia and Herzegovina, “Submission to the Council of Europe on Implementation of the *Sejdic and Finci* decision,” May 27, 2011, Appendix.

Lack of meaningful consultation with national minorities, including Roma and Jews, threatened the legitimacy of the process of reform. Regardless, however, the end of November deadline was not met, and by March 2012 there was still no sign that any consensus amendment had been proposed in parliament, let alone adopted.

Since the ECtHR ruling, the international actors active in Bosnia and Herzegovina have backed away from strongly pushing political reform. Although the EU and US were both very involved in the Butmir processes before the court ruling, these governments now insist that Bosnia take the lead in resolving the constitutional amendments.<sup>38</sup>

The EU and US may be somewhat justified in this stance, as even with their interventions in the Butmir process ultimately nothing was accomplished. However, it is also important that both actors actively press for political changes that would ensure the elimination of ethnic discrimination in politics, particularly as the US and EU states were primarily responsible for the discriminatory constitution in the first place. Indeed, the EU has stated that the *Sejdic and Finci* ruling must be implemented before Bosnia can progress on its path towards accession to the union.<sup>39</sup>

***Sejdic and Finci v. Bosnia and Herzegovina: Failure to Implement, Impact***  
Bosnia's failure to implement the ECtHR's decision has far reaching consequences for the country's national minorities.

The Universal Declaration of Human Rights states that "Everyone has the right to equal access to public service in his country."<sup>40</sup> But ethnic discrimination mandated by law means that Roma, Jews, and other national minorities are dramatically underrepresented in the public sector and in the basic services that most affect their lives.

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<sup>38</sup> Human Rights Watch interview with Xavier Oleiro Ogando, EU junior expert, Political, Press and Information Section, Sarajevo, June 23, 2011; Human Rights Watch interview with Elise Kleinwaks, political counselor, Embassy of the United States, Sarajevo, June 27, 2011.

<sup>39</sup> Human Rights Watch interview with Xavier Oleiro Ogando, EU junior expert, Political, Press and Information Section, Sarajevo, June 23, 2011. "EU links Serbia's candidate status to Kosovo talks," *European Voice*, October 12, 2011, [http://www.ccbh.ba/eng/p\\_stream.php?kat=518](http://www.ccbh.ba/eng/p_stream.php?kat=518) (accessed March 14, 2012).

<sup>40</sup> Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 21(2).

## *National Level*

Not only does ethnic discrimination in the constitution affect national politics in Bosnia; it also trickles down to national public institutions. Today, national minorities cannot even be represented in the highest levels of institutions like the Human Rights Ombudsmen, a body intended to defend the human rights of all Bosnia and Herzegovina's citizens.

There are three ombudsmen—one Bosniak, one Croat, and one Serb. Although the law establishing the Ombudsmen's office goes on to say that this "does not preclude the possibility of appointing an ombudsman from the ranks of 'others,'"<sup>41</sup> it is hard to understand how in practice this would be possible when the law also states that the ombudsmen "shall be appointed" from the three ethnic groups.<sup>41</sup>

According to the Roma Decade Action Plans, the Ombudsperson's office should establish an advisory body made up of national minorities.<sup>42</sup> Although the office has an internal division for national, religious and other minorities, as of March 2012 the advisory body had not been established, nor did the office have information on when or how it might be.<sup>43</sup>

The Election Act of 2001 states that candidate lists from political parties for election in Bosnia must contain the following information: "the name, surname of every candidate on the list, their personal identification number (JMBG number), permanent residence address, *declared affiliation with a particular constituent people or group of "Others"*, valid ID card number and place of issue, signature of the president of the political party or presidents of the political parties in the coalition."<sup>44</sup>

Declaring an affiliation with a main ethnic group or a national minority is considered a requirement for certain offices, at both the national and local levels.<sup>45</sup> If a candidate does

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<sup>41</sup> Law on Amendments to the Law on the Ombudsmen for Human Rights of Bosnia and Herzegovina, March 26, 2007, art. 2(7), <http://www.ombudsmen.gov.ba/materijali/o%20noma/lawonlawomb.pdf> (accessed March 15, 2012).

<sup>42</sup> Bosnia and Herzegovina, "Action Plan on the Education Needs of Roma and Other National Minorities" (Education Action Plan), February 17, 2004, p. 5, <http://www.romadecade.org/files/downloads/Decade%20Documents/Action%20Plan%2000%20Roma%20Education%20BiH.pdf> (accessed December 13, 2011).

<sup>43</sup> Human Rights Watch e-mail exchange with Edin Ibrahimfendic, spokesperson for Bosnia Ombudsperson's Office, March 14-15, 2012.

<sup>44</sup> Election Law of 2001 Official Gazette of Bosnia and Herzegovina, 2001, as amended in 20-9 art. 4.19, para. 5 (emphasis added), [http://www.izbori.ba/documents/ENG/Law/BH\\_Election\\_Law.pdf](http://www.izbori.ba/documents/ENG/Law/BH_Election_Law.pdf) (accessed August 10, 2011).

<sup>45</sup> *Ibid.*, art. 4.19, para. 6.

not do so it is considered “a waiver of the right to an elected or appointed office for which the declaration of affiliation with the particular constituent people or as a non-constituent is a condition.”<sup>46</sup>

In practice, candidates who do not declare an ethnic affiliation for the offices that require one are disqualified, as was the case for Dervo Sejdic in both 2006 and 2010 when he tried to run for president.<sup>47</sup> A recent case from the European Court of Human Rights found a similar practice, having identity cards indicate religious beliefs, inherently discriminatory against national minorities in violation of article 9 of the European Convention.<sup>48</sup>

In July 2009, Bosnia passed an anti-discrimination law with the goal of providing “equal rights and opportunities to all persons in BiH.”<sup>49</sup> The law defines discrimination as “every different treatment including every exclusion, limitation or preference based on real or assumed features towards any person or group of persons,” based on several different grounds, such as connection to a national minority, “with a purpose or a consequence to disable or endanger recognition, enjoyment or realization, of rights and freedoms in all areas of public life.”<sup>50</sup>

Although the provisions of this law are strong, national minorities have brought very few cases under the law, possibly due to a general lack of understanding among the judiciary and the public of the law’s prohibitions on both direct and indirect discrimination.<sup>51</sup> Some of this confusion may stem from the fact that the law seems to directly contravene provisions of the constitution that favor the three main ethnic groups, creating confusion about where and how the anti-discrimination law can be applied.

### *Local Level*

Lack of implementation of the European Court’s decision also affects politics and public employment at the local level.

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<sup>46</sup> Ibid., art. 4.19, para. 7.

<sup>47</sup> Human Rights Watch interview with Dervo Sejdic, Sarajevo, July 11, 2011.

<sup>48</sup> European Court of Human Rights, *Sinan Isik v. Turkey*, Application nos. 21924/05, judgment of February 2, 2010, [www.echr.coe.int](http://www.echr.coe.int).

<sup>49</sup> BiH Law on Prohibition of Discrimination, Official Gazette 59/09, August 5, 2009, art.1, <http://www.unhcr.org/refworld/pdfid/4d302a9f2.pdf> (accessed March 14, 2012).

<sup>50</sup> Ibid., art. 2.

<sup>51</sup> Human Rights Watch interview with Jaminka Dzumhur, Bosniak representative of the Human Rights Ombudsmen of Bosnia and Herzegovina, Sarajevo, June 27, 2011.

Bosnia is subdivided into two main entities, Republika Srpska and the Federation of Bosnia and Herzegovina. Each entity has its own government with extensive powers, including in the areas of education, employment, health care, and social protection. The Federation is further subdivided into cantons, which take primary responsibility for providing services such as education and health care. This means that provision of basic services, such as housing, health care, education, and employment, are regulated and implemented by local, rather than national, government divisions.

The laws and constitutions of Republika Srpska and the Federation of Bosnia and Herzegovina extend the same special privileges provided in the national constitution for the three main ethnic groups to government at the entity and local levels. In both entities, the three main ethnic groups are allowed a vital interest veto from their representatives in both Houses of Peoples, which could affect every piece of legislation passed the bicameral parliaments. This power does not extend to national minorities.<sup>52</sup> These vital interests include education, religion, participation in government, and public information, and can be expanded by a two-thirds vote of that main ethnic group.<sup>53</sup>

While the presidency of each entity is not restricted by ethnicity, rules for electing the president indicate that one of the three main ethnic groups is always expected to win, as both constitutions call for two vice-presidents who should come from the two main ethnic groups not represented in the presidency.<sup>54</sup> There are, however, some seats set aside in the Houses of Peoples in both entities for national minorities, although they have far less representation than the three main ethnic groups and are grouped together as “Others.”<sup>55</sup>

According to election laws, national minorities can be designated seats in any municipality governments where that particular national minority makes up at least three percent of the

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<sup>52</sup> Constitution of Republika Srpska, Official Gazette of Republika Srpska, 6/92, 8/92, 15/92, 19/92, 21/92, 28/94, 8/96, 13/96, 15/96, 16/96 and 21/96, 1992, art. 5; Constitution of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of Bosnia and Herzegovina, 1/94, 13/97, 16/02, 22/02, 52/02, 60/02, 18/03, 63/03, 1994, section IV, arts. 17-18.

<sup>53</sup> Constitution of Republika Srpska, art. 70; Constitution of the Federation, section IV(A), arts. 17-18.

<sup>54</sup> Ibid., art. 80; Constitution of the Federation, section IV(B), art. 1.

<sup>55</sup> Constitution of Republika Srpska, art. 71; Constitution of the Federation, section IV, art. 6. The Constitution of the Federation allows for 7 delegates from amongst “the Others” while each of the main ethnic groups is permitted 17 delegates. The Constitution of Republika Srpska allows for four delegates from amongst “the Others” and eight from each of the three main ethnic groups.



municipal population.<sup>56</sup> In mid-2011, there were 35 national minorities sitting in 32 of 142 total municipal governments.<sup>57</sup>

But this is likely still an underrepresentation. Because there has not been a census since before the wars—a census that likely undercounted many ethnic minorities—and since people have likely moved since and as a result of the wars, data used to determine where national minorities should have designated seats is extremely inaccurate.

Some provisions of the entity constitutions mandate that positions in public institutions be distributed in proportion with the ethnic makeup of the population. The Republika Srpska Constitution specifically states that “[c]onstituent peoples and members of the group of Others shall be proportionally represented in public institutions in Republika Srpska,”<sup>58</sup> and that:

[I]n the municipal authority bodies the representation of the members of the constituent peoples and Others shall be provided in proportion to the ethnic composition of the population based on the last census and composition of the Municipal Assembly.<sup>59</sup>

The federation has similar provisions for proportional representation in public institutions,<sup>60</sup> cantonal governments,<sup>61</sup> cantonal courts,<sup>62</sup> and municipal governments,<sup>63</sup> also based on the 1991 census data. The national law on protection of the rights of national minorities also states that:

Members of national minorities ... are entitled to representation in government and other public services at all levels in proportion to their percentage participation in the population according to the last census in BiH.<sup>64</sup>

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<sup>56</sup> Human Rights Watch interview with Irena Hadziabdic, president of the Central Election Commission, Sarajevo, July 12, 2011.

<sup>57</sup> Ibid.

<sup>58</sup> Constitution of Republika Srpska, art. 97.

<sup>59</sup> Ibid., art. 102.

<sup>60</sup> Constitution of the Federation, section IX. art. 11a.

<sup>61</sup> Ibid., section V, art. 8.

<sup>62</sup> Ibid., section V, art. 11.

<sup>63</sup> Ibid., section VI, art. 1.

<sup>64</sup> Law on the Protection of the Rights of Members of National Minorities, 2003, art. 19, <http://www.ombudsmen.gov.ba/odjeli/Zakon%20o%20zastiti%20oprava%20nacionalnih%20manjina%20-%20Sl.%20glasnik%20BiH%2012-03.pdf> (accessed March 21, 2012).

The lack of an accurate census means that Roma, Jewish, and other national minority interests are inherently underrepresented in the governments and institutions that provide basic services: those of the entities, cantons, and municipalities in Republika Srpska and the Federation. If a person does not identify as one of the three main ethnic groups, it can be extremely difficult to participate and have their interests represented in government or to find employment in public institutions.

On February 1, 2012, the newly-formed government adopted a law to conduct a new census of Bosnia in 2013.<sup>65</sup> If done accurately to reflect the Roma population across Bosnia, it will be a very important first step in resolving the issue of Roma representation in public sector employment. The government needs to ensure that special efforts are taken to reach out to national minority communities in Bosnia, including employing Roma and others in conducting the census and allowing individuals to confidentially identify their ethnicity.

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<sup>65</sup> “Bosnia passes laws key to EU bid, Muslims agree to census,” Reuters, February 3, 2012, <http://www.reuters.com/article/2012/02/03/us-bosnia-laws-eu-idUSTRE81221T20120203> (accessed March 2, 2012).

### III. Lack of Access to Basic Services for Roma

This country does not have the capacity to help even the constituent people, let alone the Roma.

—Damir Dizdarevic, assistant minister of work and employment, Ministry of Civil Affairs

Although all national minorities face discrimination in politics in Bosnia, Roma are the poorest, the least educated and employed, and face the most discrimination in accessing basic services that they need to survive. To remedy this problem, which is exacerbated by their political isolation, Bosnia in September 2008 signed on to the Decade of Roma Inclusion 2005-2015 (Roma Decade), a commitment by countries throughout Europe to improve the well-being and inclusion of Roma living within them, with a particular focus on housing, education, employment, health care, and discrimination.<sup>66</sup> It is the most recent country to join the Roma Decade and as such only has six years to live up to the commitments therein.<sup>67</sup>

As a member of the Roma Decade, Bosnia and Herzegovina created action plans related to housing, employment, and health care, and applied a previous action plan on education for Roma and other national minorities.<sup>68</sup> These set out specific benchmarks for several institutions in Bosnia, including national, entity, and local-level institutions, to meet in order to tackle the worst problems for Roma in Bosnia and Herzegovina. It also calls for Bosnia to provide €40 million to this effort every year (although in the last year with a specific budget, 2009, it only provided €2.7 million.<sup>69</sup> There was no budget allocation for this program in 2011 due to the lack of central government to pass such a budget during the year, endangering possible progress.

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<sup>66</sup> Decade for Roma Inclusion, “Declaration,” [http://www.romadecade.org/decade\\_declaration](http://www.romadecade.org/decade_declaration) (accessed August 15, 2011).

<sup>67</sup> Ibid.

<sup>68</sup> To view the Action Plans, see [http://www.romadecade.org/decade\\_action\\_plans](http://www.romadecade.org/decade_action_plans) (accessed August 22, 2011). Bosnia and Herzegovina has neglected to create action plans specifically for Roma discrimination and gender issues, which are recommended by the Roma Decade.

<sup>69</sup> Kali Sara Roma Information Center: Decade Watch, “Report on the Implementation of the Bosnia and Herzegovina Action Plan for Addressing Issues Faced by Roma in the Field of Employment, Housing, and Health Care,” pp. 8, 10. Note that there was no budget for 2011, as there was no central government, and the new government had no passed a budget as of the beginning of March 2012.

This report uses the definition of indirect discrimination as provided by the Bosnian anti-discrimination law of 2009:

Every situation, in which, an apparently neutral provision, criteria or practice has or would have the effect of putting a person or group of persons into an unfavorable or less favorable position comparing to other persons.<sup>70</sup>

## Civil Registration as a Barrier to Accessing Services

Problems with civil registration significantly contribute to the barriers that Roma in Bosnia and Herzegovina face accessing housing, education, health care, and employment services.

Traditionally, many Roma in Bosnia migrate between municipalities throughout the year, and others do so to follow work or opportunities to collect and sell scrap metal. Many Roma in Bosnia have also moved to different parts of the country and former Yugoslavia in the past two decades because of the 1990s wars that displaced hundreds of thousands of people.

The Bosnian Constitution emphasizes that all people have the right to liberty of movement and residence on a non-discriminatory basis.<sup>71</sup> This concept is modeled on the European Convention, which sets out the right to liberty of movement within a state and freedom to choose one's residence.<sup>72</sup> Article 14 of the ECHR prohibits discrimination on the basis of such characteristics as race, national or social origin, or association with a national minority in ensuring the rights in the ECHR, including the right to liberty of movement.<sup>73</sup> Registration of Roma as citizens has been a significant problem in many countries, particularly following the wars in the western Balkans. Those who are not registered on birth registries are at risk of being stateless. In Bosnia, many Roma were not registered at birth, although this practice seems to be diminishing, and many more Roma did not register as residents of Bosnia following the wars.

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<sup>70</sup> BiH Law on Prohibition of Discrimination, Official Gazette 59/09, August 5, 2009, art.3, <http://www.unhcr.org/refworld/pdfid/4d302a9f2.pdf> (accessed March 14, 2012).

<sup>71</sup> Constitution of Bosnia and Herzegovina, arts. 3,4, [http://www.ccbh.ba/public/down/USTAV\\_BOSNE\\_I\\_HERCEGOVINE\\_engl.pdf](http://www.ccbh.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_engl.pdf) (accessed December 13, 2011).

<sup>72</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), 213. U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively, ratified by Bosnia and Herzegovina on April 24, 2002, art. 2(1).

<sup>73</sup> *Ibid.*, art. 14.

Over the past decade the UN High Commissioner for Refugees and its partner legal services organization Vasa Prava have worked to ensure that Roma are placed on birth registries, and the number of unregistered Roma is currently 10 percent of the Roma population in Bosnia.<sup>74</sup>

But even when Roma are on the birth registries in Bosnia, they still face registration-related barriers, such as registering in municipalities where they live or have moved. Registering in a new municipality requires de-registering from the previous place of residence and re-registering in the new one. Although this process sounds simple, Roma said there can be complications.

Nihad Besic lives with his family in a small abandoned hospital in Mostar, which is about four hours by bus from Zenica. The abandoned hospital is one story tall with an open courtyard, on the outskirts of the city, and the Roma families have adapted the rooms in the hospital into small apartments. Neither Besic nor his wife has a job; instead they get money by collecting and recycling scrap metal.

In order to get his primary school-aged son's birth certificate and register him in Mostar so he could attend school, Besic had to travel to Zenica, where his son was born, in person. The bus trip to Zenica, which is about 60 kilometers from Mostar, takes about 4 hours by bus to travel through mountainous terrain. But upon returning to Mostar with the birth certificate, Besic learned that he also needed his son's unique identification number for registration, which is also held in Zenica. Although at the time we met him, Besic had already gone back to Zenica to get this number, he forgot to bring his son's proof of citizenship with him, a requirement for getting the number. It will thus have taken three trips to and from Zenica, each taking at least a full day, and three bus fares totaling about 130 KM (€65) in order to begin the process of registering his son in Mostar, imposing a significant financial burden on a family that lacks regular employment, formal housing, or a consistent income.<sup>75</sup>

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<sup>74</sup> Human Rights Watch interview with Scott Pohl, senior protections officer, United Nations High Commissioner for Refugees, Sarajevo, June 24, 2011.

<sup>75</sup> Human Rights Watch interview with Nihad Besic, Sarajevo, July 1, 2011.

Also, authorities report that to register in a new municipality, one must have an address where one lives legally and permanently.<sup>76</sup> But people who live in informal settlements, like many Roma do, by definition do not have legal addresses to report in these new municipalities. This can keep Roma who move to a new part of the country from accessing the services that might even help them find homes they need to have a legal address. Those who are settled often do not have the resources to follow unnecessarily onerous bureaucratic procedures for re-registration.

For instance, many Roma living in an informal settlement in the Bisce Polje district of Mostar are not registered as Mostar residents, although they claim to have lived in the city for several years.<sup>77</sup> Municipal authorities have also displaced them at least twice in the past two years.<sup>78</sup> Until they establish a permanent address, which is difficult for those displaced multiple times, it is hard to see how they could register as city residents.

When asked about whether any accommodations had been made for Roma regarding civil registration, Ministry of Civil Affairs officials responded that Roma needed to take responsibility for registration themselves.

“There is a lack of will from Roma people to integrate into Bosnia, become Bosnian, and live the way Bosnians do,” said Damir Dizdarevic, the assistant minister for work and employment.<sup>79</sup> ”

“There are no laws excluding Roma. They have to do the same things everyone else has to do,” said Drazenka Malicbegovic, the assistant minister of health in the Ministry of Civil Affairs.<sup>80</sup>

While stating that Roma should be treated just like everyone else in Bosnia and should take responsibility for their own civil registration, these officials also pointed out some significant differences between Roma and others—lack of knowledge about services,

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<sup>76</sup> Human Rights Watch interview with Drazenka Malicbegovic, assistant minister for health, Ministry of Civil Affairs, July 11, 2011.

<sup>77</sup> Human Rights Watch interviews with residents of Bisce Polje settlement, Mostar, July 1 and August 10, 2011.

<sup>78</sup> See Housing section below.

<sup>79</sup> Human Rights Watch interview with Damir Dizdarevic, assistant minister for work and employment, Ministry of Civil Affairs, July 11, 2011.

<sup>80</sup> Human Rights Watch interview with Drazenka Malicbegovic, assistant minister for health, Ministry of Civil Affairs, July 11, 2011.

lack of education, and, for many, the desire to move from place to place within Bosnia and Herzegovina—which would justify making exceptions and providing accommodations for this population.<sup>81</sup>

By not providing reasonable accommodation to address clear and documented disadvantages towards members of a particular group caused by official registration requirements, Bosnian lawmakers and officials are engaging in indirect discrimination.

There is no doubt that civil registration, both on birth and local resident registries dramatically impacts the ability of Roma to access or be denied services. And because of the way they are affected by the often particularly onerous burden of registering and re-registering, Roma disproportionately face these restrictions.

Although some non-state resources are dedicated to registering Roma who do not exist on birth registries in Bosnia, far too many who remain unregistered, and little attention is paid to those who might be registered somewhere in Bosnia but not in the place where they currently live.

If access to basic services is going to be dependent on registration, the state needs to mandate accommodation, both in the law and in the power given to officials, and review and simplify the procedure to make registration fully accessible to Roma on an equal basis.

## Housing

Human Rights Watch found that despite efforts to build better housing for Roma through a program established by the Roma Housing Action Plan, the vast majority of Roma remain in informal settlements, leaving them vulnerable to forced eviction by municipal authorities, or in homes that lack basic utilities. In most regions, people living in the least physically and legally secure homes also reported the least access to health care and the lowest rates of unemployment and education for themselves and their children. Those subject to forced evictions and displacement were particularly vulnerable.

The right to adequate housing is enshrined in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which enumerates a right “of everyone to

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<sup>81</sup> Ibid.

an adequate standard of living for himself and his family, including adequate food, clothing and housing.”<sup>82</sup>

According to the UN Committee on Economic, Social, and Cultural Rights (CESCR), the right to housing “is of central importance to the enjoyment of all other economic, social, and cultural rights”<sup>83</sup> and consists of two central concepts: first, that housing must be available and second, that it must be adequate. The right to housing should thus be construed as “the right to live somewhere in security, peace and dignity” and “should be ensured to all persons irrespective of income or access to economic resources.”<sup>84</sup>

European human rights law echoes these principles. With the right to adequate housing in mind, the revised European Social Charter, which Bosnia ratified in 2008, stipulates that states parties must:

[U]ndertake to take measures designed:

- 1) to promote access to housing of an adequate standard;
- 2) to prevent and reduce homelessness with a view to its gradual elimination; and
- 3) to make the price of housing accessible to those without adequate resources.<sup>85</sup>

While the right to adequate housing is a right of progressive realization, and thus dependent on the available resources of a given country, “many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices” such as forced evictions, “and a commitment to facilitating ‘self-help’ by affected groups,” such as legalizing informal settlements.<sup>86</sup> The concept of available resources is intended to include available assistance from international sources.<sup>87</sup>

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<sup>82</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, ratified by Bosnia and Herzegovina on September 1, 1993, art. 11.

<sup>83</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4, The right to adequate housing, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003), para. 1.

<sup>84</sup> CESCR, General Comment 4, para. 7.

<sup>85</sup> European Social Charter, CETS No. 163, entered into force July 1, 1999, ratified by Bosnia and Herzegovina on October 7, 2008, art. 31.

<sup>86</sup> CESCR, General Comment 4, para. 10.

<sup>87</sup> Ryszard Cholewinski, “Economic and Social Rights of Refugees and Asylum Seekers in Europe,” *Georgetown Immigration Law Journal*, vol. 14 (2000), pp. 709-55, 714-19.



According to the Roma Decade Action Plan on Housing (Housing Action Plan), which was adopted in 2008, Bosnia will provide adequate housing for Roma through a program to legalize informal settlements, ensure basic utilities, and rebuild homes when necessary. A total of 3 million KM (€1.5 million, at the rate of 2 KM per euro) was promised for the remainder of the Roma Decade, which ends in 2015.<sup>88</sup>

### *Forced Evictions and Informal Settlements*

In Bosnia and Herzegovina, many Roma live in groups in informal settlements on land that they do not own or legally rent. Human Rights Watch found informal settlements and irregular occupation of homes in at least three of the five municipalities visited: Sarajevo, Mostar, and Tuzla.

The UN defines “informal settlements” as:

- Residential areas where a group of housing units has been constructed on land to which the occupants have no legal claim, or which they occupy illegally;
- Unplanned settlements and areas where housing is not in compliance with current planning and building regulations (unauthorized housing).<sup>89</sup>

On the outskirts of Sarajevo, right on the border with Republika Srpska, about 10 Roma families live in a strip of houses abandoned by Serbs during the 1992-1995 war. Some have managed to purchase their homes and the land on which they sit from the former owners, but most people in the settlement—where the main source of income comes from collecting scrap metal or, occasionally, social assistance—live illegally in these homes. If the owners of these houses were to try to reclaim them, a realistic possibility given that refugees from the wars throughout the region are still returning to their former homes, the Roma living there now would have to leave.

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<sup>88</sup> Roma Housing Action Plan, <http://www.romadecade.org/files/downloads/Decade%20Documents/Decade%20National%20Action%20Plan%20BiH%20oHousing.pdf> (accessed August 17, 2011).

<sup>89</sup> United Nations, Department of Economic and Social Affairs, Commission on Sustainable Development, “Indicators of sustainable development. Frameworks and methodologies,” ninth session 16-21 April 2001, New York, [http://www.un.org/esa/sustdev/csd/csd9\\_indi\\_bp3.pdf](http://www.un.org/esa/sustdev/csd/csd9_indi_bp3.pdf) (accessed August 17, 2011).

Fadulla Shala and his family are in this situation. Shala is a refugee from Kosovo who has lived with his wife and 9 of his 10 children in a small home on this strip of land for more than 10 years. The family's total monthly income is 125 KM (€62.50) in social assistance. "With nine children, I can't buy anything except milk for the kids," he said. This assistance does not even get his family, which lives on the outskirts of Sarajevo near the Republika Srpska border, through the month. Because he cannot find a formal job, he supplements this social assistance by helping out informally at a nearby garbage dump.<sup>90</sup>

In Mostar, the situation is dire for Roma living in two informal settlements. In 2010, municipal authorities evicted a dozen Roma families from the homes they had built for themselves without permission on a piece of land privately owned by someone else behind a shopping center in the neighborhood of Bisce Polje, so that the company that owned the land could build on it.<sup>91</sup> No alternative accommodation was provided.

About 25 of these individuals, including Nihad Basic, a 30-year-old man with a wife and four children, moved to an abandoned hospital nearby. Basic reports that after he and the others were "chased away" from the shopping center, Mostar municipality said it would provide other housing within six months. At time of writing, that housing had not been provided.

The hospital provides a solid structure for their home, with two rooms—one for sleeping and one for cooking and eating—and windows that let in sunlight and keep out the elements. But Basic's situation is precarious. The city told him that he would soon have to leave the land, as the hospital wanted to rebuild. Basic expected that he would have to move again in December 2011 because of the construction on the hospital. "You never know what is going to happen or when we will have to go," he said.<sup>92</sup>

Others who were evicted from behind the shopping center moved to a strip of land owned by the municipality nearby, behind a gas station and on the banks of the Neretva River, which runs through Mostar. Around 100 people lived in this settlement in the Bisce Polje neighborhood, but they were forced to leave in October 2011 to make room for the building of new apartments to house other Roma.

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<sup>90</sup> Human Rights Watch interview with Fadulla Shala, Sarajevo, June 29, 2011.

<sup>91</sup> Human Rights Watch interview with Ajdin Duvnjak, lawyer at Vasa Prava-Mostar, July 1, 2011.

<sup>92</sup> Human Rights Watch interview with Nihad Basic, Mostar, July 1, 2011.

According to Mustafa Delic, the officer in charge of housing issues in the municipality in Mostar, these Roma families left the settlement voluntarily and have since built other informal settlements elsewhere in Mostar, putting them at risk of further eviction.<sup>93</sup> They were not given alternative housing.<sup>94</sup>

Additionally, none of the displaced Roma were slated to benefit from the new apartments, as state and local authorities claim that most of these Roma are not registered as residents of Mostar, or had moved to the city specifically to benefit from the housing program, despite many telling Human Rights Watch that they have lived in Mostar for several years and sometimes decades.<sup>95</sup> Neither claim was possible for Human Rights Watch to verify.

### Forcing Eviction

Human Rights Watch spoke to several Bisce Polje residents in July and August 2011, prior to their eviction, about their lives in Mostar and the effect eviction would have on them.

Fika Ahmetovic says that she has lived in Mostar since 1991, when she was 12-years-old. Now 31, she has four children who all live in makeshift housing in the Bisce Polje settlement. She and her family used to live behind the Interex shopping center before they were forcibly evicted in 2010, and before that lived in a settlement near the Mostar bus station. Her two older children both attend school in Mostar, at Los Rosales, a special education school near the settlement, where she and her family live year-round. She said they did not know what they would do if they were once again evicted from their homes. <sup>96</sup>

Halil Salkanovic, 42, also lives with his wife and three children in the Bisce Polje settlement. Salkanovic says he has lived in Mostar for 10 years, but his wife Senija has been in Mostar since 1982. He reports that his entire family is registered as Mostar municipality residents, and that his children go to the local school. He says he will not

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<sup>93</sup> Human Rights Watch phone interview with Mustafa Delic, December 2, 2011.

<sup>94</sup> Ibid.

<sup>95</sup> Human Rights Watch interviews with residents of Bisce Polje settlement, Mostar, July 1 and August 10, 2011; Human Rights Watch interviews with Salihda Duderija, Sarajevo, July 12, 2011, Human Rights Watch phone interview with Mustafa Delic, December 2, 2011.

<sup>96</sup> Human Rights Watch interview with Fika Ahmetovic, Mostar, August 10, 2011.

leave if they try to evict him. “The only way I am leaving is if they give me something back in return.”<sup>97</sup>

Fikreta Salkanovic, 51, is originally from Visoko, but says she has lived in Mostar for more than 17 years. She built the small trailer in which she lives with her young daughter, whom she sends to school by recycling scrap metal. She does not consider herself from Visoko, and when evicted, did not want to return there. “I like my trailer more than all of Visoko,” she told Human Rights Watch.<sup>98</sup>

Drazana Mihalic, 28, was born and raised in a town just outside of Mostar called Rodoc and has four children, two of whom she says suffer from severe health problems, as does her husband. She says her family has been living in the Bisce Polje settlement for four years. Because of her family’s health problems, Mihalic was particularly concerned about having to move, because it might require her to re-register in another place and potentially lose her health insurance.

In a March 2011 report, the European Commission for Racism and Intolerance (ECRI), a Council of Europe body, similarly found that a number of Roma were subject to forced eviction from informal settlements without alternative accommodation and had to create new “illegal homes” elsewhere. These Roma were without adequate shelter, a fact, the ECRI said, “which is of concern not only in itself but also because it has a serious impact on the life chances of Roma, including their health status and their chances of obtaining an adequate education and subsequently finding employment.”<sup>99</sup>

International and European human rights law sets out standards for forced evictions. According to the CESCR, in order for housing to be considered “adequate” under the right to adequate housing, it must be secure, including legal protections against forced evictions.<sup>100</sup> The Universal Declaration of Human Rights provides further protection, stating

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<sup>97</sup> Human Rights Watch Interview with Halil Salkanovic, Mostar, August 10, 2011.

<sup>98</sup> Human Rights Watch interview with Fikreta Salkanovic, Mostar August 10, 2011.

<sup>99</sup> European Commission on Racism and Intolerance (ECRI), Report on Bosnia and Herzegovina (March 2011), para.113, [http://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) (accessed March 2, 2012).

<sup>100</sup> CESCR General Comment 4, para. 8.

that “everyone has the right to own property alone as well as in association with others” and “no one shall be arbitrarily deprived of his property,”<sup>101</sup> including housing.

Protocol 1 of the European Convention on Human Rights also states that:

Every natural or legal person is entitled to peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided by law and by the general principles of international law.<sup>102</sup>

According to Bosnia’s Constitution, the ECHR provisions and its protocols directly apply and “shall have priority over all other law.” The constitution also specifically cites the right to property as a fundamental right guaranteed to Bosnia and Herzegovina citizens.<sup>103</sup>

Bosnia’s Housing Action Plan confirms these human rights norms, stating that Bosnia will work to “legalize illegally constructed buildings” and “allocate compensatory locations in accordance with local development plans for the purpose of providing permanent housing where relocation is necessary.”<sup>104</sup>

However, to date there has been seemingly little action to enforce these commitments. According to Saliha Duderija, an assistant minister at the Ministry of Human Rights and Refugees charged with overseeing the Roma Decade, there is no policy in place for providing adequate alternative housing for those forcibly evicted from their homes, particularly the most vulnerable populations such as children and older persons.<sup>105</sup> This puts Roma at risk of repeated forced evictions from their homes, as Human Rights Watch observed in Mostar, and jeopardizes their rights to other basic services.

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<sup>101</sup> Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 17.

<sup>102</sup> Protocol 1 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 1.

<sup>103</sup> Constitution of Bosnia and Herzegovina, arts. II(2) and II(3)(k), [http://www.ccbh.ba/public/down/USTAV\\_BOSNE\\_I\\_HERCEGOVINE\\_engl.pdf](http://www.ccbh.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_engl.pdf) (accessed March 2, 2012).

<sup>104</sup> Roma Housing Action Plan, <http://www.romadecade.org/files/downloads/Decade%20Documents/Decade%20National%20Action%20Plan%20BiH%20Housing.pdf> (accessed August 17, 2011).

<sup>105</sup> Human Rights Watch interview with Salihda Duderija, assistant minister, Ministry of Human Rights and Refugees, July 12, 2011.

Even those individuals who own the land on which their homes are built still often live in conditions that endanger their health and security. In almost all Roma settlements visited in Bosnia, Human Rights Watch witnessed living conditions that do not meet basic standards for adequate housing. Very few homes for Roma that Human Rights Watch visited had even basic utilities.

Azra Kadiric is a 60-year-old woman who lives with her 20-year-old son in a Roma community on Zlatana Mesica Street in the hills surrounding Tuzla. The house is only accessible by a steep, clay hill that becomes very slippery during the rain, as it was when Human Rights Watch visited. Kadiric built the two-room house herself after being evicted from an apartment in the middle of Tuzla after the wars. She owns the land on which the house is built, giving her some security. However, in place of a roof there is only a tarp. As we visited her she was concerned that her house would flood again due to the impending rain, which happens regularly. Her home also lacks electricity, and Kadiric receives water from a better-off neighbor.<sup>106</sup>

Kadiric's neighbor, Semska Cukatic, 22, and her husband Zlatan live next door with their three children, one of whom has cerebral palsy and requires constant care, in two rooms without hookups for water or electricity. They sometimes buy electricity from a neighbor, if they can pay the 30 KM (€15) each month that their neighbors ask for.<sup>107</sup> Neither of them work and they mainly rely on a pension they receive from the state to take care of their daughter who has a disability, but they try to pay their neighbor for electricity as often as possible.

Zurafeta Toska lives in a home damaged during the war in Sarajevo. Before the war, she says she and her husband were very proud of this house, which is three stories tall, can house the whole family, and is beautifully placed in the hills surrounding Sarajevo. But now there is a hole in the roof where water leaks through. Water damage has ruined the top and second floors, and there is a strong smell of mold. Because neither she nor her husband has had a job since the war, there is no income to fix the house. "I woke up this morning at 5:30 and cried because there wasn't even food for the children," of which there are seven and three grandchildren, she said. Toska said that she and her husband have applied to the municipality for reconstruction assistance but have not received it. In Mostar, the people living in the Bisce Polje settlement on the Neretva River all lack basic

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<sup>106</sup> Human Rights Watch interview with Azra Kadiric, July 5, 2011.

<sup>107</sup> Human Rights Watch interview with Semska Cukatic, July 5, 2011.

services, such as electricity, sewage, and water. They use water from the gas station. Families of usually about four or five people live in small, makeshift trailers, susceptible to flooding during the rains because they lack roofs or sturdy walls.<sup>108</sup> There is no heat in the winter, when temperatures often dip below freezing, according to residents. The winter of 2011-2012 was particularly harsh in and around Mostar, where extreme snowfalls and record cold conditions, requiring Bosnian official to declare a state of emergency and to helicopter in needed supplies.<sup>109</sup>

### *Bosnia's Roma Housing Program*

The Housing Action Plan mandates that Bosnia provide 3 million KM (€1.5 million) towards adequate housing by the end of the Roma Decade in 2015.<sup>110</sup> A program for Roma housing has been up and running since 2009 to distribute this funding.

Despite this housing program, however, some of the worst housing situations for Roma in Bosnia remain. Many Roma still live in informal settlements, occupying land without a legal right to do so, while even more lack even basic utilities such as running water, sewage, and electricity.<sup>111</sup>

In implementing the housing program, the Ministry of Human Rights partners with municipalities and local Roma associations, which are charged with proposing plans for permanent housing units.<sup>112</sup> In practice, municipalities must also contribute funds to building new housing, and local Roma associations must find international donors to contribute funds and identify those most in need of housing.<sup>113</sup> According to the leader of the Roma association in Mostar, finding international donors proved a challenge and significantly delayed the government funding of a housing project in Mostar, and he was

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<sup>108</sup> Human Rights Watch visit to Bisce Polje settlement, July 1, 2011.

<sup>109</sup> "Winter tightens icy grip across Europe," Voice of America, February 8, 2012, <http://www.voanews.com/english/news/europe/Winter-Tightens-Icy-Grip-Across-Europe-138939654.html> (accessed March 2, 2012).

<sup>110</sup> Roma Housing Action Plan, <http://www.romadecade.org/files/downloads/Decade%20Documents/Decade%20National%20Action%20Plan%20BiH%20Housing.pdf> (accessed August 17, 2011).

<sup>111</sup> ECRI, 2006 Bosnia Report, para. 113.

<sup>112</sup> Statements by Mario Nenadic, assistant minister, Ministry of Human Rights and Refugees, European Union Conference on Roma Rights in Bosnia, Sarajevo, July 4, 2011.

<sup>113</sup> Human Rights Watch interview with Semsi Supanj, head of "Neretva" Roma Association, Mostar, July 1, 2011; Statements by Mario Nenadic, Assistant Minister, Ministry of Human Rights and Refugees, European Union Conference on Roma Rights in Bosnia, Sarajevo, July 4, 2011.

still in search at the time of the interview of a donor organization to help provide kitchen appliance and bathroom fixtures for the apartments once built.<sup>114</sup> Construction of these permanent homes for Roma is thus dependent on the willingness of local municipalities and non-state donor organizations to contribute to, and participate in, the program.

In a recently-approved housing project under the Ministry of Human Rights' housing program, the ministry is contributing one-third of the funds to build 15 new apartments for Roma in Mostar. The municipality and a Catholic donor organization, Caritas, will also contribute money.<sup>115</sup> According to the Roma association leader in Mostar, it took nine years for the Ministry of Human Rights to approve the project for construction, and only after it dramatically lowered the costs and found outside donor organizations, Caritas and the Swiss Agency for Development and Cooperation, to contribute.<sup>116</sup> The project, which began construction in November 2011, is potentially an important step to resolving some of the dire housing situations for Roma in Mostar.<sup>117</sup> The first stage of the project, which will provide 15 apartments for Roma families, is due to be completed by the end of September 2012.

In order to ensure that the housing program is successful, Bosnia must do much more to legalize Roma settlements, prevent evictions of Roma, provide them with adequate alternative housing in the limited cases when evictions are necessary, and find stable sources of funding for building them adequate new homes.

## Health Care

Roma in Bosnia persistently lack health insurance coverage and cannot otherwise afford the cost of health care. Since health insurance in Bosnia is primarily provided by employers, and the unemployment rate among Roma is so high, most Roma must rely on the state for health insurance. Gaps in state coverage, however, are significant, and have a disproportionate effect on Roma who cannot find health insurance through employment.

Article 12 of the ICESCR provides “the right of everyone to the enjoyment of the highest

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<sup>114</sup> Human Rights Watch interview with Semsi Supanj, head of “Neretva” Roma Association, Mostar, July 1, 2011.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Human Rights Watch phone interview with Mustafa Delic, chief of the Department for Social and Housing Affairs, Healthcare, Refugees and Displaced Persons, municipality of Mostar, December 2, 2011.



attainable standard of physical and mental health.”<sup>118</sup> However, since states have different levels of resources, international law does not mandate the kind of healthcare to be provided. To this end, article 12 provides that states parties must take certain steps to “achieve full realization of this right.”<sup>119</sup> While the right to health is considered a right of progressive realization, states parties have a “specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of [the right].”<sup>120</sup> The concept of available resources is intended to include available assistance from international sources.<sup>121</sup>

The Committee on Economic, Social and Cultural Rights (CESCR), the body charged with monitoring compliance with the ICESCR, has held that there are certain core obligations inherent in the right to health that are so fundamental that states must fulfill them. The committee has identified amongst the core obligations the right of access to health facilities, goods, and services on a non-discriminatory basis, especially for vulnerable or marginalized groups. While resource constraints may justify only partial fulfillment of some aspects of the right to health, the committee has observed that “a State party cannot, under any circumstances whatsoever, justify its non-compliance with the core obligations ... which are non-derogable.”<sup>122</sup>

European human rights law reaffirms the right to health. The revised European Social Charter, which Bosnia ratified in 2008, states that:

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co-operation with public or private organizations, to take appropriate measures designed inter alia: 1) to remove as far as possible the causes of ill-health, 2) to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health; 3) to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.<sup>123</sup>

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<sup>118</sup> ICESCR, art. 12(1).

<sup>119</sup> Ibid. art. 12(2).

<sup>120</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14, The right to the highest attainable standard of health, U.N. Doc. HRI/GEN/1/Rev.6 at 85 (2003), para. 30-31.

<sup>121</sup> Ryszard Cholewinski, “Economic and Social Rights of Refugees and Asylum Seekers in Europe,” *Georgetown Immigration Law Journal*, vol. 14 (2000), pp. 709-55, 714-19.

<sup>122</sup> CESCR, General Comment No. 14, para. 12(b).

<sup>123</sup> European Social Charter, art. 11.

The Roma Decade Action Plan on Health Care (Health Action Plan) undertakes a number of activities to try to resolve the gap in health care coverage for Roma in Bosnia, where health care provision is primarily the responsibility of entity, cantonal, and municipality officials. According to the Ministry of Civil Affairs, the ministry plays only a coordinating and monitoring role in this provision and no role in monitoring compliance with the Health Action Plan.<sup>124</sup> This means no one is identifying and addressing discriminatory practices, including indirect discrimination, in the provision of health care in Bosnia.

For adults, access to health care is specifically linked to employment, putting Roma at a clear disadvantage. Employers are required to give long-term employees health care. Those who are unemployed must register as unemployed with the local employment bureau in order to receive health care. But in the Federation, there is a rule limiting access to health care through this method: 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.<sup>125</sup> Many Roma interviewed by Human Rights Watch became aware of this rule only after the 30-day deadline had passed.

There seems little justification for this rule, and an employment official in the Federation admitted that the link between health care and registration at Employment Bureaus was problematic.<sup>126</sup> Republika Srpska does not have the 30-day registration rule with seemingly little difference in the provision of health care services.

Amira Rizvanovic, a 26-year-old living in Tuzla, and her family fell afoul of the 30-day registration rule. She told Human Rights Watch that neither she nor anyone in her family has a medical card. She only learned it was necessary to register with the employment bureau within 30 days of ending school, turning 18, or losing a job in order to get state-provided health insurance, after the time period had expired. As a result, her family now has to pay for all medical care themselves, including a normal checkup for her six-year-old son, which costs about 20 KM (€10), and an ultrasound when she was pregnant with her that cost 40 KM (€20). But when her son was recently sick, the visit was going to cost 90 KM (€45), and

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<sup>124</sup> Human Rights Watch interview with Drazenka Malicbegovic, assistant minister for health, Ministry of Civil Affairs, July 11, 2011; see also Constitution of Republika Srpska, art. 37.

<sup>125</sup> Human Rights Watch interviews with Omer Korjenic, officer of Federation of Bosnia and Herzegovina Employment Bureau, Sarajevo, July 11, 2011.

<sup>126</sup> *Ibid.*

they could not afford it. “No one here has money to pay for that,” she said.

The decentralization of health services and link between health insurance and employment in Bosnia has historically led to confusion for anyone seeking care. For Roma, accessing health care in a complicated and multifaceted system often proves difficult. Indeed, a legal analysis of the laws in the Federation and Republika Srpska published by the Council of Europe in September 2010 also recognized this difficulty:

Such decentralized and heterogeneous health care and health insurance systems in Bosnia and Herzegovina present a major difficulty preventing equal access to health services and health insurance for all citizens of Bosnia and Herzegovina.<sup>127</sup>

One goal of the Health Action Plan is to ensure that, despite the decentralization of state-provided health care in Bosnia, legislation across entities and cantons is aligned such that practices in providing health care are uniform throughout the country.<sup>128</sup> The Health Action Plan also promises to require entities and states to provide health care to all Roma who are not otherwise insured. Recognizing the importance of civil registration to receiving benefits, the Health Action Plan seeks to ensure that Roma are registered on birth records at birth, and that those who are not yet registered receive such registration.<sup>129</sup>

The laws on health care in both the Federation and Republika Srpska state that all individuals aged 17 and under or 65 and older should have free health care if they are registered as citizens of Bosnia and in the entity or canton in which they seek care.<sup>130</sup>

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<sup>127</sup> Nada Zukic, Public Law consultant for the Council of Europe, ““An Analysis of Laws on Health Insurance in Bosnia and Herzegovina (Entity, Brcko District and Cantonal where applicable) in Order to Identify Differences Between Them and the Existing EU Principles,” September 2010, [www.coe.int/t/dg3/sscssr/Source/Leganal\\_bh.d](http://www.coe.int/t/dg3/sscssr/Source/Leganal_bh.d)  
[http://www.coe.ba/web2/en/dokumenti/cat\\_view/210-regional-projects/213-social-security-co-ordination-and-reforms.html?limit=10&order=name&dir=ASC](http://www.coe.ba/web2/en/dokumenti/cat_view/210-regional-projects/213-social-security-co-ordination-and-reforms.html?limit=10&order=name&dir=ASC) (accessed March 2, 2012).

<sup>128</sup> Roma Health Care Action Plan, <http://www.romadecade.org/files/downloads/Decade%20Documents/Decade%20National%20Action%20Plan%20BiH%20Health.pdf> (accessed December 13, 2011), Section 1.3.

<sup>129</sup> Ibid.

<sup>130</sup> Nada Zukic, Public Law consultant for the Council of Europe, ““An Analysis of Laws on Health Insurance in Bosnia and Herzegovina (Entity, Brcko District and Cantonal where applicable) in Order to Identify Differences Between Them and the Existing EU Principles,” September 2010, [www.coe.int/t/dg3/sscssr/Source/Leganal\\_bh.d](http://www.coe.int/t/dg3/sscssr/Source/Leganal_bh.d)  
[http://www.coe.ba/web2/en/dokumenti/cat\\_view/210-regional-projects/213-social-security-co-ordination-and-reforms.html?limit=10&order=name&dir=ASC](http://www.coe.ba/web2/en/dokumenti/cat_view/210-regional-projects/213-social-security-co-ordination-and-reforms.html?limit=10&order=name&dir=ASC) (accessed March 2, 2012); Human Rights Watch interview with Drazenka Malicbegovic, assistant minister for health, Ministry of Civil Affairs, Sarajevo, July 11, 2011.

Although this means the legislation throughout Bosnia is aligned, it still falls short of the goal outlined in the Health Action Plan “to ensure right to health care for all members of Roma national minority that are not insured on some other grounds.”<sup>131</sup> This is because it does not take into account Roma in the Federation who become ineligible for health care due to late registration at the Employment Bureaus.

But as Human Rights Watch observed, even this unsatisfactory legislation is inconsistently applied in different areas of the country. This inconsistency combined with problems Roma face with registration in the cantons in which they live, means that application of the right to health care in Bosnia and Herzegovina is far from uniform or adequate.

School-aged children who are registered as citizens of Bosnia but not necessarily the municipality where they live are still eligible for free health insurance. For instance, in the Bisce Polje settlement in Mostar, the children who attend the mainstream schools receive health insurance. They are sometimes the only members of the family to do so, despite the fact that many are not registered as residents of Mostar.<sup>132</sup>

But in Herzegovina-Neretva canton, which encompasses the city of Mostar, state-provided health care is not available at all to children below school age. Although the canton is obligated by law to provide free health care services to children below school age, pregnant women, and persons older than 65,<sup>133</sup> the canton has not funded this program since 2009, according to an NGO that works with Roma in the canton.<sup>134</sup> A representative from the Herzegovina-Neretva cantonal Ministry of Health, Salko Colakovic, said in a statement to Human Rights Watch the canton had made a decision to fund this health care at a meeting in July 2011, but provided no further details as to the lack of funding in practice prior to this time. A report by the Bosnian Centers for Civil Initiatives noted that the canton did not adopt a budget in both 2010 and 2011 until mid-April,<sup>135</sup> leaving vital services like health care unfunded.

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<sup>131</sup> Health Care Action Plan, Section 1.4, <http://www.romadecade.org/files/downloads/Decade%20Documents/Decade%20National%20Action%20Plan%20BiH%20oHealth.pdf> (accessed December 13, 2011).

<sup>132</sup> Human Rights Watch interviews with residents of Bisce Polje settlement, Mostar, July 1 and August 10, 2011.

<sup>133</sup> Nada Zukic, public law consultant for the Council of Europe, ““An Analysis of Laws on Health Insurance in Bosnia and Herzegovina (Entity, Brcko District and Cantonal where applicable) in Order to Identify Differences Between Them and the Existing EU Principles,” [www.coe.int/t/dg3/sscsr/Source/Leganal\\_bh.doc](http://www.coe.int/t/dg3/sscsr/Source/Leganal_bh.doc) (accessed March 2, 2012).

<sup>134</sup> Human Rights Watch interview with Ajdin Duvnjak, lawyer at Vasa Prava-Mostar, July 1, 2011.

<sup>135</sup> Centers for Civil Initiatives, "Government Monitoring: Herzegovina-Neretva Canton (for the period of 01.01.11-12.31.11," January 2012, pp. 5-6, (accessed March 29, 2012).

The lack of funding to implement this law disproportionately affects Roma, who are less likely than others to have health insurance for their families through another source, such as employment. Colakovic did not acknowledge that lack of state funding for health care for otherwise uninsured persons might constitute indirect discrimination against the Roma. Instead, he said that

According to article 19 of this law, everyone in the canton is insured according to their work and tax status, not on the basis of nationality, race, ethnicity or sex, because any exclusion on this basis would be discriminatory.<sup>136</sup>

Sometimes a lack of health of insurance can be a matter of life and death, as Fika Ahmetovic, the 31-year-old who has four children who all live in makeshift housing in Mostar's Bisce Polje settlement, knows only too well.

Her youngest child, Fadila, who is three-years-old, was born with heart problems and is too young to attend school where she would automatically receive health insurance. Although required to do so by Federation law, the Herzegovina-Neretva canton, the local government that would distribute the funds for this health care coverage, chose for much of 2011 not to fund health care for uninsured young children, pregnant women, and older persons.

As a result, Fadila's family must pay for her care out of its own very limited funds or buy expensive private health insurance, which they cannot afford. Ahmetovic reported that the tests Fadila requires to monitor her heart can cost 130 KM (€65), a sum that the impoverished family is rarely able to provide. Her parents also lack formal employment, meaning that her only option is to receive state-provided health

Despite some progress registering Roma as residents and citizens of Bosnia, as noted above, there are still significant gaps in ensuring their registration in the particular cantons or entities where they live. In the Federation, where health care is primarily provided by individual cantons, civil registration and thus access to health care for Roma can be a particular problem.

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<sup>136</sup> Ibid.

Top health officials in Bosnia are aware of the problems with access to health care for Roma that stem from registration in their cantons and decentralization of services.<sup>137</sup> But instead of trying to adapt laws and policies to accommodate the situation, they blame Roma. “When someone roams around, that’s their problem—they need to take their lives as their own responsibility,” said Drazenka Malicbegovic, assistant minister for health in the national Ministry of Civil Affairs. She added that when someone changes residences and has not re-registered, he or she can still get emergency medical care.<sup>138</sup>

## Education

Despite some improvement in the attendance rate of Roma children in schools in Bosnia and Herzegovina, from almost no enrollment to in 2002 to reportedly nearly universal enrollment in some areas of Bosnia, and an Action Plan for Education that has been in place since 2004, Roma children continue to face financial and attitudinal barriers to exercising their right to education in Bosnia and Herzegovina.

Fees for school attendance, textbooks, and transportation to school, plus the lack of free meals provided to low-income students in school, often make school unaffordable for Roma children. Human Rights Watch also documented a case of discrimination against Roma children in Mostar who are permitted to attend a special school without justification.

The right to education is first mentioned in the Universal Declaration of Human Rights, which states that everyone has the right to free elementary compulsory education.<sup>139</sup> The Convention on the Rights of the Child (CRC) obliges state parties to “recognize the right of the child to education,” to progressively ensure that primary education is available, compulsory, and free to everyone, and to ensure school attendance and reduce drop-out rates, amongst other tasks.<sup>140</sup> The International Covenant on Economic, Social and Cultural Rights (ICESCR) further states that “education shall be directed to the full development of human personality and the sense of dignity, and shall strengthen the respect for human rights and fundamental freedoms.”<sup>141</sup>

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<sup>137</sup> Human Rights Watch interview with Drazenka Malicbegovic, assistant minister for health, Ministry of Civil Affairs, Sarajevo, July 11, 2011.

<sup>138</sup> Ibid.

<sup>139</sup> UDHR, art. 26.

<sup>140</sup> Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Bosnia and Herzegovina on September 1, 1993, art. 28.

<sup>141</sup> ICESCR, art. 13.

The European Convention on Human Rights states that “no person shall be denied the right to education.”<sup>142</sup> In addition to the right to education provided by the ECHR, the Bosnian Constitution also specifically guarantees a right to education, without discrimination based on any grounds, including membership in a national minority.<sup>143</sup> In 2004, prior to joining the Roma Decade, Bosnia created the Action Plan on the Educational Needs of Roma and Members of Other National Minorities in Bosnia and Herzegovina (Education Action Plan). The overarching goal of the Education Action Plan is:

[T]o improve the access of Roma in Bosnia and Herzegovina to the mainstream education system through addressing the variety of obstacles currently faced—namely practical, systemic and wider issues, while enhancing Romani communities' participation in and commitment to their children's school enrolment and completion.<sup>144</sup>

Of the action plans aimed at improving the lives of Roma in Bosnia, this is by far the most comprehensive and has also had the most opportunity for implementation, as it has been in effect since 2004.

School enrollment for Roma children still remains well below the national average. According to UN Children’s Fund (UNICEF), 93 percent of children in Bosnia and Herzegovina attend primary school, which is compulsory nationwide, but only one-third of Roma children do so.<sup>145</sup>

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<sup>142</sup> Protocol No. 1 to the European Convention on Human Rights, art. 2.

<sup>143</sup> Constitution of Bosnia and Herzegovina, paras. 3(l) and 4,  
[http://www.ccbh.ba/public/down/USTAV\\_BOSNE\\_I\\_HERCEGOVINE\\_engl.pdf](http://www.ccbh.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_engl.pdf) (accessed December 13, 2011).

<sup>144</sup> Bosnia and Herzegovina, “Action Plan on the Education Needs of Roma and Other National Minorities” (Education Action Plan), February 17, 2004,  
<http://www.romadecade.org/files/downloads/Decade%20Documents/Action%20Plan%20on%20Roma%20Education%20BiH.pdf> (accessed December 13, 2011).

<sup>145</sup> United Nations Children’s Fund (UNICEF), “Bosnia and Herzegovina,”  
[http://www.unicef.org/infobycountry/bosniaherzegovina\\_background.html](http://www.unicef.org/infobycountry/bosniaherzegovina_background.html) (accessed March 2, 2012).

### Positive Example: High Roma School Enrollment in Tuzla

There have been some successes in ensuring the right to education in Bosnia. In 2002 in Tuzla, a city in the northern part of the Federation with a large Roma population, approximately 80 percent of school-age Roma did not attend school. This dismal number, however, still represented the highest enrollment rate for Roma in Bosnia.<sup>146</sup>

According to Roma association leaders in Tuzla, that rate has since improved and is nearing 100 percent enrollment due to increased efforts by Roma organizations to inform communities about the benefits of education and monitor Roma student attendance.<sup>147</sup> There is also wide recognition in the Roma community in Bosnia that children should attend school, and indeed almost every family interviewed by Human Rights Watch in Tuzla reported that their school-age children did so.<sup>148</sup>

Children who are not registered on birth registries are also now permitted to attend school, although they do not receive other benefits, such as free health care.<sup>149</sup>

Roma families interviewed by Human Rights Watch said there are still many barriers to Roma children attending school on a regular basis, particularly beyond primary school. In Mostar, for instance, two of Nihad Basic's children attend school, but he says they do not want to go when the family does not have money to buy supplies, adequate clothes, or lunches—which the school does not provide.<sup>150</sup>

The Education Action Plan acknowledges that:

[A] large majority of Romani children are unable to attend school due to their extremely poor living conditions, which prevent them from being able to afford proper clothing and the necessary schoolbooks and supplies. These factors,

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<sup>146</sup> Education Action Plan, p. 3.

<http://www.romadecade.org/files/downloads/Decade%20Documents/Action%20Plan%2000n%20Roma%20Education%20BiH.pdf> (accessed March 15, 2012).

<sup>147</sup> Human Rights Watch interview with Mehmed Mujic, Sa E Roma association leader, Tuzla, July 5, 2011.

<sup>148</sup> Human Rights Watch interviews with Amira Rizvanovic, Sema Cukatic, and Azra Kadiric, Tuzla, July 5, 2011.

<sup>149</sup> Human Rights Watch interview with Nuqi, Sarajevo, June 30, 2011;

<sup>150</sup> Human Rights Watch interview with Nihad Basic, Mostar, July 1, 2011.



combined with occasional verbal harassment from other students, as well as the mandatory administration and financial costs of schooling have in many cases prevented Roma from accessing schools, despite a willingness of many parents to enroll their children.<sup>151</sup>

The Education Action Plan further calls for increased budgets for transportation, textbooks, and scholarships and for training of teachers in Roma culture and language.<sup>152</sup> But these services have for the most part not been provided to date, or provided inconsistently, in most parts of the country, and fall short of providing incentives, such as free lunches, for parents to send their children to school.

Unaddressed barriers to accessing regular education have effectively forced some parents in Mostar to send their children to special schools. There are 20 Roma among the 80 students who attend the Los Rosales special education school for children with intellectual disabilities. Many of the Roma come from the nearby Bisce Polje informal settlement. According to a teacher, the Roma students do not attend the school because they have an intellectual disability, but rather because of “social disabilities”—disadvantages that keep them from attending the mainstream school.

Although Roma parents choose to send their children to Los Rosales, they in reality have little choice due to the many factors that prevent them from attending mainstream schools. One parent whose children attend the Los Rosales school said she sends her children there because they like it and are treated well.<sup>153</sup> Indeed, Roma students from the Bisce Polje settlement are welcomed at Los Rosales by teachers and administrators in ways they are not in much of the rest of Mostar, and they receive free books and meals. Los Rosales is also a short walk from the informal Bisce Polje settlement, so families do not have to pay additional transportation costs. Unfortunately, the education provided to Roma students at Los Rosales is substantially different from, and likely inferior to, the education received by peers in mainstream schools as the curriculum is adapted for children with intellectual disabilities.<sup>154</sup>

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<sup>151</sup> Education Action Plan, p. 3.

<sup>152</sup> *Ibid.*, p. 6.

<sup>153</sup> Human Rights Watch interview with Fika Ahmetovic, Mostar, August 10, 2011.

<sup>154</sup> Human Rights Watch interview with teacher from Los Rosales school, Mostar, July 1, 2011.

International human rights law mandates that education be accessible and inclusive of everyone, including Roma and children with disabilities, on a non-discriminatory basis. The European Court of Human Rights has found a violation of article 14 in conjunction with article 2, Protocol 1 when Roma children are disproportionately placed in special schools without justification<sup>155</sup> and when Roma children are placed into separate classrooms within regular schools without clear guidelines for returning to mixed classrooms.<sup>156</sup> The court ruled in both cases that this form of indirect discrimination is prohibited by the European Convention on Human Rights.<sup>157</sup>

When Roma children and children with disabilities are placed in separate classrooms or schools from the mainstream, they have very little interaction with other children.<sup>158</sup> This can lead to greater marginalization within the community, entrenching discrimination against both Roma and people with disabilities.<sup>159</sup>

It is unclear whether this problem exists in other parts of Bosnia and Herzegovina. Republika Srpska did not have statistics on the ethnicity of children in special schools,<sup>160</sup> and Human Rights Watch did not encounter reports of other cases in the Federation during its investigation.

The Education Action Plan is silent on the issue of Roma children attending special schools, indicating that there are no concrete steps being taken to address it. But permitting these Roma children to be placed in special schools is a clear violation of the European Convention and only ensures that they will have an inadequate education.

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<sup>155</sup> European Court of Human Rights, *D.H. and Others v. Czech Republic*, Application no. 57325/00, judgment of November 13, 2007, available at [www.echr.coe.int](http://www.echr.coe.int).

<sup>156</sup> European Court of Human Rights, *Orsus and Others v. Croatia*, Application no. 15766/03, judgment of March 16, 2010, available at [www.echr.coe.int](http://www.echr.coe.int).

<sup>157</sup> ECHR, *Orsus and Others v. Croatia*; ECHR, *D.H. and Others v. Czech Republic*. <http://cmiskp.echr.coe.int/tkp197/view.asp?item=4&portal=hbkm&action=html&highlight=D.H.%20%7C%20others&sessionId=87586299&skin=hudoc-en> (accessed March 2, 2012).

<sup>158</sup> UNESCO, "Education: Ten questions on inclusive education," 2011, <http://www.unesco.org/new/en/education/themes/strengthening-education-systems/inclusive-education/10-questions-on-inclusive-quality-education/> (accessed March 16, 2012).

<sup>159</sup> United Nations Human Rights Council, "The Right to Education of persons with disabilities: Report by the UN Special Rapporteur on the Right to Education Vernor Muñoz," February 19, 2007, A/HRC/4/29, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/108/92/PDF/G0710892.pdf?OpenElement> (accessed March 16, 2012).

<sup>160</sup> Human Rights Watch interview with Cvijan Jovanovic, senior officer, Ministry of Education for Republika Srpska, Banja Luka, July 7, 2011.

## Employment

As in many countries, Roma in Bosnia participate in formal employment in very small numbers. Employment rates remain low for Roma of all ages and most education levels, despite increasing education levels in some areas following a large drop in school attendance after the 1990s wars and a program set up by the Ministry of Human Rights and employment offices in the Federation and Republika Srpska to incentivize employers to hire Roma.

While the general unemployment rate in Bosnia was estimated in 2011 to be as high as 40 percent,<sup>161</sup> this rate significantly increases for Roma, for whom the unemployment rate is around 95 percent.<sup>162</sup> The employment rate for Roma in the public sector is also low, with only about three percent of Roma working in public institutions.<sup>163</sup>

The right to work is enshrined in European human rights law. The revised European Social Charter, which Bosnia ratified in 2008, says states parties must ensure the right to work by seeking full employment and providing employment services and vocational training and rehabilitation programs.<sup>164</sup> International human rights law prohibits discrimination in employment. The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) also prohibits discrimination based on race, color, or national or ethnic origin in the right to work, protection against unemployment, and just pay.<sup>165</sup> The International Covenant on Civil and Political Rights (ICCPR) also stipulates<sup>166</sup> the right to protection against discrimination based on race, color, or national or social origin.<sup>167</sup>

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<sup>161</sup> Bosnia and Herzegovina Agency for Statistics, “Registered unemployment, September 2011,” [http://www.bhas.ba/saopstenja/2011/NEZ\\_2010M09\\_001\\_01\\_BH.pdf](http://www.bhas.ba/saopstenja/2011/NEZ_2010M09_001_01_BH.pdf) (accessed December 13, 2011).

<sup>162</sup> Bosnia and Herzegovina, “Roma Employment Action Plan” (Employment Action Plan), <http://www.romadecade.org/files/downloads/Decade%20Documents/Decade%20National%20Action%20Plan%20BiH%20oEmployment.pdf> (accessed December 13, 2011).

<sup>163</sup> Bosnia and Herzegovina, “Action Plan of Bosnia and Herzegovina for Addressing Roma Issues in the Field of Employment, Housing and Healthcare – Introduction,” <http://www.romadecade.org/files/downloads/Decade%20Documents/Introduction%20-%20Decade%20National%20Action%20Plan%20BiH.pdf> (accessed December 13, 2011), p. 2.

<sup>164</sup> European Social Charter, art. 1.

<sup>165</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by Bosnia and Herzegovina on July 16, 1993, art. 5.

<sup>166</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Bosnia and Herzegovina on September 1, 1993, art. 4.

<sup>167</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Bosnia and Herzegovina on September 1, 1993, art. 4.

As part of the Roma Decade, Bosnia developed an action plan for employing Roma. The action plan calls for Bosnia to increase Roma employment by creating programs that incentivize companies—including Roma associations—to hire Roma, support Roma self-employment, and give priority to companies that are run by or employ Roma when developing contracts for implementing other Roma Decade action plans.

It also calls for awareness-raising about employment programs in Roma communities, with the goal of having more Roma registered with the Employment Bureaus (which are the source of unemployment benefits and employment programs), and taking advantage of their services. It also mandates legislation to eliminate discrimination in employment and policies to ensure Roma involvement in developing employment programs.<sup>168</sup>

Of Roma interviewed by Human Rights Watch in Bosnia, the vast majority had no formal employment. Those that did were overwhelmingly employed by Roma rights, self-advocacy, and services NGOs, of which there are more than 60 in Bosnia. The alternative to formal employment for Roma in Bosnia is to collect scrap materials, such as iron and metal fixtures, for resale, or to beg on the streets. Almost all Roma interviewed at home and in informal settlements reported that most of their income came from either or both of these activities.<sup>169</sup>

Few Roma indicated to Human Rights Watch that they faced known discrimination in seeking employment.<sup>170</sup> The fact that many lack education and work experience puts them at a disadvantage. As discussed below, even accounting for disparities in education and work experience between Roma and the general population, it is evident that direct and indirect employment discrimination exists in Bosnia and is often even mandated by law.

Under the Employment Action Plan, the Employment Bureaus run a program of subsidized employment for Roma, which seeks to place them in jobs, co-finances Roma salaries, and

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<sup>168</sup> Employment Action Plan, <http://www.romadecade.org/files/downloads/Decade%20Documents/Decade%20National%20Action%20Plan%20BiH%20oEmployment.pdf> (accessed December 13, 2011).

<sup>169</sup> Human Rights Watch interviews with Amira Rizvanovic, Sema and Zlatan Cukatic, and Azra Kadiric, Tuzla, July 5, 2011; Human Rights Watch interview with Nuqi, Sarajevo, June 30, 2011; Human Rights Watch interviews with Nihad Basic, Fika Ahmetovic, Halil Salkanovic, and Fikreta Salkanovic, Mostar, July 1 and August 10, 2011.

<sup>170</sup> Human Rights Watch interviews with Amira Rizvanovic and Azra Kadiric, Tuzla, July 5, 2011; Human Rights Watch interview with Nuqi, Sarajevo, June 30, 2011; Human Rights Watch interviews with Nihad Basic, Fika Ahmetovic, Halil Salkanovic, and Fikreta Salkanovic, Mostar, July 1 and August 10, 2011.

gives employers monetary incentives for retaining Roma employees. As of August 2011, however, this program which began 2009 had found employment for only 88 people (50 in the Federation and 38 in Republika Srpska).<sup>171</sup>

According to the head of the Roma employment program in Banja Luka, Marina Malinovic, employers are often reluctant to take part in the subsidized employment program regardless of incentives because Roma lack education and prior work experience.<sup>172</sup> Registration of Roma at Employment Bureaus also remains low, despite attempts to reach out to Roma communities, such that many Roma do not have the opportunity to take part in the subsidized employment program. As of July 2011, only 1,200 people who identified as Roma were registered in the Federation, while only 356 Roma had registered in Republika Srpska.<sup>173</sup>

Marina Malinovic told Human Rights Watch that very few Roma take part in the employment program in Banja Luka, and it is often not successful. In total, 109 Roma are registered with the Employment Bureaus in the Banja Luka region, but only 32 take part in the Roma employment program.<sup>174</sup> Of those 32 Roma, only 4 were considered by the Employment Bureau to be “qualified,” meaning they had the education and skills to reasonably expect to find employment.<sup>175</sup> Malinovic claimed she had observed that most Roma registering with the Employment Bureau did so primarily to get health care benefits, as they did not seek to take part in the Roma employment program.<sup>176</sup>

Omer Korjenic, an officer with the Federation Employment Bureau in Sarajevo reported that the Federation tries to improve Roma registration at Federation Employment Bureaus through outreach campaigns, such as posting flyers in Roma neighborhoods.<sup>177</sup> But when employment rates remain low despite registration, many Roma people do not see the point of registering. Indeed, in Tuzla, several Romani residents reported that there was no point

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<sup>171</sup> Statements by Luka Glibo, Employment Bureaus in RS, and Employment Institute of FBiH at Roma Conference at EU, July 4, 2011.

<sup>172</sup> Human Rights Watch interview with Marina Malinovic, expert officer for Roma, Employment Bureau in Banja Luka, July 7, 2011.

<sup>173</sup> Human Rights Watch interviews with Omer Korjenic, officer of Federation of Bosnia and Herzegovina Employment Bureau, July 11, 2011; Human Rights Watch interview with Marina Malinovic, expert officer for Roma, Employment Bureau in Banja Luka, July 7, 2011.

<sup>174</sup> Human Rights Watch interview with Marina Malinovic, expert officer for Roma, Employment Bureau in Banja Luka, July 7, 2011.

<sup>175</sup> Ibid.

<sup>176</sup> Ibid.

<sup>177</sup> Human Rights Watch interviews with Omer Korjenic, officer of Federation of Bosnia and Herzegovina Employment Bureau, Sarajevo, July 11, 2011.

registering with the employment bureau, especially if they had already missed the registration deadline for receiving free health care, because there was little chance of finding a permanent job through that mechanism.<sup>178</sup>

Formal employment makes a significant difference in the standard of living for Roma in Bosnia. Two families in Gradiska where at least one member of the family had formal employment were able to obtain grants and matching loans to rebuild their houses, creating a safe and secure living environment for their families. The families were able to afford clothes, textbooks, and transportation for all their children to regularly attend primary school, with the expectation that they would also attend secondary school. Additionally, all members of both families had employer-provided health insurance.<sup>179</sup>

But in communities where employment of Roma remains low the situation is very different, as lack of access to employment and employment services has a dramatic impact on accessing other services. As stated above, employment often determines whether an individual has health care, and for those who are unemployed, registration at Employment Bureaus determines whether an individual can get state-provided health care.

Additionally, attitudes towards other important services like education may be changing because of persistent low employment rates. Although Marina Malinovic, head of Roma employment at the Banja Luka Employment Bureau, claimed that a secondary school education was usually enough to find employment in the Banja Luka region,<sup>180</sup> in Tuzla (part of the Federation), Human Rights Watch heard complaints from several residents that youth who had graduated from secondary schools were still almost all unemployed, making families question the value of an education.<sup>181</sup>

If the almost universal unemployment of Roma in Bosnia persists, despite increased levels of schooling, one can expect that attendance in school might also drop.

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<sup>178</sup> See above. In the Federation, individuals must register with the Employment Bureau within 30 days of losing employment or completing school in order to receive health care benefits.

<sup>179</sup> Human Rights Watch interviews with Izeta Kamric and Zuska Talic, Gradiska, July 6, 2011.

<sup>180</sup> Human Rights Watch interview with Marina Malinovic, expert officer for Roma, Employment Bureau in Banja Luka, July 7, 2011.

<sup>181</sup> Human Rights Watch interview with Azra Kadiric, Tuzla, July 5, 2011.

### *Public Sector Employment*

Few Roma are employed in parts of the government that provide basic services to Roma. According to the constitutions of the Federation and Republika Srpska, employment in public institutions is determined by ethnicity in proportion with the local population.<sup>182</sup> But as noted above, because the last census in 1991 undercounted Roma and there has been population movement in most municipalities since then, Roma have fewer opportunities to work in the public sector than their population would warrant according to the law.

Notably, however, the Employment Action Plan lacks provisions to specifically address the situation of underemployment of Roma in public institutions, a situation that could continue to affect their access to other basic services.

The offices that carry out the daily operations that affect the lives of Roma still do not have significant Roma representation. The secretary of the Federation Employment Bureaus, Omer Korjenic, told Human Rights Watch that he was unaware of any Roma who worked in any of the local Employment Bureaus throughout the Federation.<sup>183</sup>

This might help explain why the number of Roma registered at the Employment Bureaus in the Federation remains quite small, despite real efforts by the bureaus to reach out to the Roma population. The Roma Decade Action Plans contain provisions for participation and monitoring of programs that affect Roma, but according to Roma association leaders in Bosnia these provisions have never been implemented.<sup>184</sup>

Even the national office charged with protecting human rights and minority rights, the Human Rights Ombudsmen, does not have significant representation of Roma, Jews, and other national minorities. The laws establishing the Ombudsmen's Office in Bosnia and Herzegovina states there must be three ombudsmen and that they "shall be appointed

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<sup>182</sup> Constitution of Republika Srpska, arts. 97, 102; Constitution of the Federation, section IX, art. 11a, section V, arts. 8, 11, section VI, art. 1.

<sup>183</sup> Human Rights Watch interview with Omer Korjenic, secretary of the Federation Employment Bureau, Sarajevo, July 11, 2011.

<sup>184</sup> Kali Sara Roma Information Center: Decade Watch, "Report on the Implementation of the Bosnia and Herzegovina Action Plan for Addressing Issues Faced by Roma in the Field of Employment, Housing, and Health Care," April 2011, p. 7, <http://www.romadecade.org/files/downloads/General%20Resources/Decade%20Watch%20BiH%202009-2011%20final%20EN.pdf> (accessed December 14, 2011); Human Rights Watch interview with Sanela Besic, head of Kali Sara Roma Information Center, Sarajevo, July 12, 2011.

from the ranks of the three constituent peoples (Bosniaks, Serbs and Croats).”<sup>185</sup>The law goes on to say that this “does not preclude the possibility of appointing an ombudsman from the ranks of ‘others,’”<sup>186</sup> but it is hard to understand how in practice this reconciles with the requirement that the ombudsmen “shall be appointed” from the three ethnic groups. Although the Education Action Plan states the ombudsmen are to set up a national minority advisory body, this does not yet exist.<sup>187</sup>

Human Rights Watch encountered one Roma woman working at the Center for Social Welfare in Banja Luka who, because of her knowledge of available services and the requirements to obtain them, has been able to help the Roma population of Banja Luka, (about 250 people in total) access services. As a result, according to the social worker, almost all children from the Roma community in Banja Luka go to school and have access to school supplies. Banja Luka has also received housing assistance from the national Ministry of Human Rights and Refugees for the Roma population, and most Roma have access to health care. She reports that she is one of the very few Roma people who is employed in Banja Luka at all, and the only one employed in the municipality’s Center for Social Welfare. This massive unemployment still poses a major barrier to the well-being of Roma in Banja Luka.<sup>188</sup>

One of the few public institutions where national minorities have jobs at the highest level is the Central Election Commission. Like other administrative bodies, the commission has a chair that rotates between the three constituent ethnicities. But the rotation also includes a fourth category—“the Others”—who can also take on the chair. In July 2011, the president of the Central Election Commission was indeed the representative of “the Others” of Eastern European decent, and had served in this capacity for two years. She found it ironic that she had to oversee the October 2010 election, in which she would not have been able to run for the highest political offices.<sup>189</sup>

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<sup>185</sup> Law on Amendments to the Law on the Ombudsman for Human Rights of Bosnia and Herzegovina, March 27, 2006, arts. 2(6) and (7), <http://www.ombudsmen.gov.ba/materijali/0%20namera/lawonlawomb.pdf> (accessed March 15, 2012);

<sup>186</sup> *Ibid.*, art. 2(7).

<sup>187</sup> Bosnia and Herzegovina, “Action Plan on the Education Needs of Roma and Other National Minorities” (Education Action Plan), February 17, 2004, <http://www.romadecade.org/files/downloads/Decade%20Documents/Action%20Plan%2000n%20Roma%20Education%20BiH.pdf> (accessed December 13, 2011).

<sup>188</sup> Human Rights Watch interview with Marina Malinovic, expert officer for Roma, Employment Bureau in Banja Luka, July 7, 2011.

<sup>189</sup> Human Rights Watch interview with Irena Hadziabdic, president of the Bosnia and Herzegovina Central Election Commission, Sarajevo, July 12, 2011.



Roma exclusion from service provision at the municipal level in most parts of the country could be partly mitigated if more senior officials took responsibility for ensuring that the needs of Roma are met. But instead, officials at the highest levels of health provision and employment and work in the Ministry of Civil Affairs eschew responsibility for implementing the Roma Decade Action Plans, stating that it is the responsibility of the Ministry of Human Rights and the local officials.

According to Damir Dizdarevic, the assistant minister in charge of employment at the Ministry of Civil Affairs, “In this system, maybe they need to join a political party.” In the meantime, he says, “The rules are as they are. Everyone needs to follow them,” meaning no additional measures will be taken to address the systematic exclusion of Roma from public services.<sup>190</sup>

In August 2011, the national Ministry of Human Rights announced that it had hired five Roma to work on implementation of the Roma Decade Action Plans in Bosnia.<sup>191</sup> This is an important step to ensuring that policies for implementing these action plans align with the needs and desires of Roma in Bosnia and Herzegovina.

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<sup>190</sup>Human Rights Watch interview with Damir Dizdarevic, assistant minister of work and employment, Ministry of Civil Affairs, Sarajevo, July 11, 2011.

<sup>191</sup>Radio Slobodna Evropa, “Strategy for Roma Inclusion in BiH,” [http://www.slobodnaevropa.org/content/strategija\\_ukljucivanja\\_roma\\_u\\_bih\\_drustvo/24304366.html](http://www.slobodnaevropa.org/content/strategija_ukljucivanja_roma_u_bih_drustvo/24304366.html) (accessed August 25, 2011) (translated from Bosnian).

## IV. Full Recommendations

### To the National Government of Bosnia and Herzegovina

- Immediately amend the Bosnian Constitution to remove discrimination on the basis of ethnicity in politics.
- Amend laws on national elections to ensure that Roma, Jews, and other national minorities can run for national public office in all positions open to election, on an equal basis with other Bosnian citizens. Give members of the Council of National Minorities a meaningful role in formulating constitutional and legal amendments.
- Strengthen the constitutional protection of equality by ensuring it prohibits all forms of discrimination, direct and indirect; any law, policy, or other part of the constitution that violates this will be struck down by the Constitutional Court. It should recognize the need for temporary special measures to address indirect discrimination against particularly disadvantaged groups, such as the Roma, as permitted by international and European law.
- Ensure that the forthcoming national census is conducted in a timely way and in line with approved legislation, collecting data disaggregated by ethnicity. Ensure that Roma are adequately represented in the census by mandating the hire of members of the Roma community to conduct the census. Amend legislation on quotas in local elections to align with the data collected from the new census. Ensure the ethnicity category on the census remains confidential by individual, and that this is publicly stated, and that it is clear those completing the census can and should self-identify on ethnicity.
- Amend health care legislation to ensure that everyone, regardless of ethnicity, age or employment status, has access to health insurance. De-couple provision of state-provided health care for Roma adults from registration at employment bureaus.
- Include in budgetary allocations the full promised resources of €3 million to construct and reconstruct homes for Roma. Strengthen the laws and policies against evictions through guaranteeing that evictions will be a last resort, especially for families, and requirement that state authorities ensure that persons/families evicted have access to adequate housing for their needs before being evicted.

## **To the Ministry of Civil Affairs**

- Include Roma in the design, implementation, and monitoring of programs that affect them, including health care and employment, by inviting Roma representatives to participate in all levels of these programs.
- Take a leadership role in implementing the Roma Decade Action Plans for Employment and Health Care by providing guidelines and model policies to entity and cantonal governments.
- Play an active role in overseeing implementation of the Action Plans for Employment and Health Care at the entity and cantonal level by providing meaningful and critical oversight over entities and cantons. Develop consequences for entities and cantons, such as reducing national assistance for mainstream health care and employment programs, for non-compliance with provisions of the action plans.

## **To the Ministry of Human Rights and Refugees**

- Ensure that Roma are not forcibly evicted without access to adequate housing by creating protocols for providing housing to individuals who risk being forcibly evicted from informal settlements, particularly the elderly and children.
- Actively monitor housing projects and the identification of people who will benefit from those projects.
- Intervene in the ongoing Roma housing project in Mostar to ensure that Roma forcibly evicted from their homes in Bisce Polje receive adequate alternative housing.
- Mandate training for employees of the Ministry of Human Rights and Refugees and the Ministry of Civil Affairs, about the national anti-discrimination law, including what constitutes direct and indirect discrimination. Provide training on the discrimination law to judges, lawyers, and NGOs working with national minorities so that they may effectively identify cases of discrimination.

## **To the Governments of Republika Srpska, the Federation of Bosnia and Herzegovina, and its Cantons**

- Amend entity constitutions to end ethnic discrimination in the election of entity, cantonal, and municipality governments.

- Ensure that Roma forcibly displaced from their homes are provided with adequate alternative housing.
- As per Bosnia's commitments in the Roma Education Action Plan, provide inclusive educational opportunities and ensure that there is access to free education, starting at the elementary level, including providing free transportation, books, and meals for all students who cannot afford them and eliminating other de facto compulsory charges to families when these charges pose significant barriers to school attendance.
- End the practice in some areas of allowing Roma to attend special schools for children with intellectual disabilities by ensuring that all Roma children have access to public schools on a non-discriminatory basis. Any school official found to be discriminating or permitting discrimination against Roma should be publicly disciplined by the relevant canton or entity ministry of education.
- Ensure that Roma participate in programs at Employment Bureaus at the entity and cantonal levels, including by hiring Roma to get out the word and seek out other employment opportunities for Roma.
- Provide health care as mandated by law to all young children, pregnant women, and older persons. End the practice of underfunding or not funding health care for these individuals.
- Abolish the Federation rule mandating that individuals must register with Employment Bureaus within 30 days of finishing school, moving to another canton, or losing a job to receive state-provided health care benefits for them and their families.
- Mandate training to entity and cantonal officials about the national anti-discrimination law, including what constitutes direct and indirect discrimination against Roma.
- Ensure through affirmative action that Roma are employed in providing basic services, such as those related to housing, employment, education, and health care, and that the views of Roma are incorporated in all projects that affect provision of these services.

## To the European Union

- Continue to condition the start of Bosnia's negotiations to enter the EU on passage constitutional amendments to end ethnic discrimination in politics.
- Provide support to authorities in Bosnia to ensure an adequate constitutional amendment for the implementation of the *Sejdic and Finci* decision from the European Court of Human Rights with appropriate participation of national minorities.
- Provide development and stabilization funding to Bosnia to support health care, education, employment, and housing program for Roma.
- Train judges, officials, lawyers and activists in the anti-discrimination law and European anti-discrimination standards, and support test cases to challenge discriminatory laws and practices.

## To the Council of Europe Committee of Ministers

- Continue to press Bosnia and Herzegovina authorities to amend the constitution as a matter of urgency in line with the European Court's *Sejdic and Finci* decision.

## To the Organization for Security and Cooperation in Europe Mission to Bosnia and Herzegovina

- Push local authorities in Mostar to provide adequate alternative housing to Roma forcibly evicted, particularly families that include children and older persons.
- Continue to monitor other Roma housing projects to ensure conformance with international human rights standards.

## To the United States and Other Peace Implementation Council Members

- Provide support to authorities in Bosnia to ensure an adequate constitutional amendment for the implementation of the *Sejdic and Finci* ruling, with appropriate participation of national minorities, to eliminate ethnic and religious discrimination in formal political structures.

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# SECOND CLASS CITIZENS

## Discrimination Against Roma, Jews, and Other National Minorities in Bosnia and Herzegovina

In Bosnia and Herzegovina, Roma, Jews and other national minorities are prohibited from participating in the highest levels of national government, and in local government and public institutions that provide important basic services. Much of this discrimination stems from Bosnia's Constitution. Written in 1995 as part of an agreement to end wars in the region, it has created a system of government based on ethnicity that excludes national minorities by granting only people from Bosnia's three main ethnic groups—Bosniaks, Croats, and Serbs—the chance to serve in senior national political offices and to veto legislation that contravenes their interests.

In December 2009, the European Court of Human Rights ruled that Bosnia's Constitution discriminated against Roma and Jews in violation of human rights law. But more than two years after the court's decision, Bosnia has yet to reform the constitution or end discrimination in the political system.

The direct discrimination that minorities experience in Bosnia's political structure reinforces the indirect discrimination that Roma in particular often face accessing services like housing, health care, and education. Very few Roma work in local government agencies that provide these services, and repeated commitments by Bosnian authorities to improve the lives of Roma have proved largely empty.

*Second Class Citizens* highlights persistent ethnic discrimination against Roma, Jews and other national minorities in politics and its impact on the daily lives of Roma in particular. It calls on Bosnia to immediately amend its constitution to remove ethnic discrimination in politics and take positive steps to end all discrimination against national minorities. It also recommends that the United States and European Union, which helped write the 1995 constitution, play an active role in ensuring its timely amendment.



*Dervo Sejdic (right), a Bosnian Roma, and Jakob Finci (left), a Bosnian Jew, successfully challenged their country's discriminatory constitution at the European Court of Human Rights. More than two years later, the Bosnian authorities have yet to end political discrimination against national minorities as the ruling requires.*

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