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Dayton and the Political Rights of Minorities: Considering Constitutional Reform in Bosnia and Herzegovina after the Acceptance of its Membership Application to the European Union

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Abstract

The Dayton Accords are the peace agreement that ended the three-and-a-half-year war in Bosnia and Herzegovina. The agreement was reached at Wright-Patterson Air Force Base near Dayton, Ohio in November 1995, and was formally signed in Paris on 14 December 1995. While the Dayton Accords ended the war, they had another function and purpose as well; they sought to construct a country that all warring factions (Croats, Bosniaks, and Serbs) could call home. The Dayton Accords created the consociationalized political, governmental, and judicial structures in Bosnia as we know them today. The constitutional system designed by Dayton has effectively stopped the country from slipping back into war, but is viewed by scholars and experts as very flawed and as a major factor as to why Bosnia and Herzegovina has still not moved on from ethnic discord twenty-three years after the war. One of the major concerns that remains is that the Dayton constitution requires that the seats in two key institutions, the three-member presidency and the parliamentary House of Peoples, be equally divided amongst the constitutive peoples of Bosnia and Herzegovina (Bosniaks, Croats and Serbs). This legally disallows members from the country's 17 officially recognized minority groups from holding office. The

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European Court of Human Rights has issued three rulings on this matter, citing that these limitations are violations of human rights and that Bosnia and Herzegovina must change its constitution to enfranchise minorities politically, which still has not happened. This paper explores the overall impact of the disenfranchisement of the country's consociationalized system on its minorities, why the constitution has not changed, and what may happen soon as Bosnia and Herzegovina has had its application accepted for European Union membership.

Keywords: Political Rights, Minorities, Human Rights, Justice, Reform, Consociationalism

Introduction

The Constitution of Bosnia and Herzegovina, like that of any other state, is regarded as the highest source of law in the land. In its twelve articles, the Bosnian Constitution lays out a myriad of functionalities of the state from its preambles that pitch respect for basic human rights principles to the breakdown of the how the consociationalized political system is based on ethnic federalism. Consociationalism is a model of democratic governance that is based on power sharing arrangements, particularly for states that have diverse populations consisting of different ethnic, racial, linguistic, or religious groups. Ethnic federalism can be described as a form of consociationalism where the units of the state are federated by ethnicity. Lijphart (2004) maintains that for divided societies that have concentrated communal groups, a federalist system is a perfect way to afford these groups their own autonomy. It is not unusual for local and international actors to try and develop political structures that mitigate underlying triggers of conflict in the post-conflict state building process. Therefore, it is reasonable to utilize power sharing mechanisms such as ethnic federalism in divided societies like Bosnia and Herzegovina (BiH).

Power sharing efforts have been utilized across many post-conflict societies, including Lebanon and South Africa. McEvoy (2015) maintains that power sharing is a type of government that is suggested for deeply divided societies where majority rule would not be fair, it also serves as a tool to promote lasting peace and cooperation between groups who were once in conflict. Sisak (2013: para.3) similarly explains that "power-sharing solutions are designed to marry principles of democracy with the need for conflict management in deeply divided societies". While

consociationalism has been hailed by some scholars as the best power sharing option for states with diverse populations, especially after conflict, others have leveled major criticisms. Some have argued that it is irreparably flawed because such political systems inevitably exclude some groups at the expense of others (Hodžić,2013). Often human rights in consociationalized arrangements favor some groups over others via constitutional engineering. McCrudden and O’Leary (2013: 484) maintain that there are two particular aspects of human rights that seem to be challenged by consociationalized arrangements—first the right to be treated on the basis of a particular set of characteristics (such as race and ethnicity) is violated; and second, an individual’s right to participate in the same political process as others on an equal basis is also violated.

The institutionalized power sharing system in Bosnia and Herzegovina, developed through the Dayton peace process, continues to draw ire and frustration from both locals and international experts. Both groups seek constitutional reform because the constitution’s design is inherently exclusionary and discriminatory towards those who do not fall within the spectrum of the three constitutive peoples (Bosniaks, Croats, and Serbs) of Bosnia and Herzegovina, as it relates to political participation. In this system, we can see present the two main human rights concerns noted by McCrudden and O’Leary.

Beyond the three constitutive people, Bosnia and Herzegovina officially recognises 17 national minorities (nacionalne manjine). Minorities in Bosnia and Herzegovina are often referred to as the “Others” (Ostali). According to the 2013 Census these minority groups collectively total 2.7 percent (or 96,539 persons) of the entire population of the country (Agency for Statistics of Bosnia and Herzegovina, 2016). The 2003 Law on the Protection of Rights of Members of National Minorities states that “a national minority is considered to a part of the population-citizens of BiH that does not belong to any of the three constituent peoples and it shall include people of the same or similar ethnic origin, same or similar tradition, customs, religion, language, culture, and spirituality and close or related history and other characteristics”. This includes in particular groups such as: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Romas, Romanians, Russians, Rusins, Slovaks, Slovenians, Turks, Ukrainians. Those born of mixed marriages, who choose not to identity as one of the three constitutive groups are considered in the category of “Others”.

Moreover, there have been calls for constitutional reform based on two other key factors. First, the constitutional system devised by the Dayton process continues to enforce ethnic divisions among the country's three main groups both socially and politically. This hampers the country from finally moving beyond the dark shadows of its violent past. This factor is one that Aroussi, De Feyter, and Vaneginste (2013:179) use as an example to illustrate why scholars are skeptical of power sharing arrangements as a tool of building peace for post conflict states. They argue that these systems operate at the great risk of reproducing, institutionalizing, and furthering ethnic divisions. The second factor being that the system is just too complex and is not conducive for real change. Bosnia and Herzegovina's political system is arguably one of the most complicated in the world. Arvanitopoulos and Tzifakis (2008:17) explain that Bosnia and Herzegovina is designed as a loose asymmetrical confederation with multiple power-sharing mechanisms executed at different layers of executive and legislative power. These different levels of power sharing often (local, cantonal, entity, and federal) make it extraordinarily difficult to actually accomplish a reform agenda, not to mention the staggering costs of maintaining such a massive administrative and bureaucratic system.

What particularly makes the Dayton system even more complex is that it entrenches ethnicity into every aspect of the political structure. This has also led to the creation of ethno-political parties, where leaders seek to appease their constituents by promoting an agenda that is attractive to their own particular ethnicity. This often leads to gridlock as ethno-political elites squabble over which programs and laws will be beneficial to their ethnicity. I argue this is one of the key reasons why constitutional reform has not progressed in Bosnia and Herzegovina. Political elites are seemingly unwilling to compromise in scenarios where they will lose power and control over some territory.

Bearing all of this in mind, one major question comes to the forefront of this research: now that Bosnia and Herzegovina's application has been accepted for European Union (EU) candidacy, will this status drive constitutional reform? Is the promise of joining the EU and its benefits enough for everyday Bosnians and political elites across all ethnic groups to come together to push for constitutional reform? Whether minorities will be actively involved in the process are perennial questions that this paper seeks to ultimately explore.

To this end. I first discuss the current political system of Bosnia and Herzegovina, then I briefly explore the Dayton Peace Process and the development of the Bosnian Constitution, then I present an analysis of the role ethnic politics has played in constitutional reform thus far. Next, I examine Bosnia and Herzegovina's constitution and its implication for political and human rights and its impact on minorities. Then finally, I ruminate on whether or not EU membership can serve as an incentive for constitutional reform in Bosnia and Herzegovina.

1. The Current Political Structure in Bosnia and Herzegovina

The country's governance structure is divided into two main entities: The Federation and the Republika Srpska. It also contains the self-governing District of Brčko. Both entities have a prime minister and 16 ministries each. The Federation is also divided into 10 local cantons with each having its own level of autonomy, whilst the Republika Srpska only has a single, 83-member parliament. The country also boasts a tripartite presidency that must include members from each of the three main ethnic groups and a parliament that includes 42 members of the House of Representatives and 15 Members in the House of Peoples. These seats are also broken down into an ethnic stratification that divides power between the three main constitutive people, in particular, in the House of Peoples, where only individuals belonging to one of the three ethnic groups can hold office. These aspects prompted the European Court of Human rights (ECtHR) to issue rulings stating that the current Constitution of Bosnia and Herzegovina's violates the political and human rights of minorities.

I would argue that since the constitution of Bosnia and Herzegovina is discriminatory and does not extend full political rights to its citizens that the country should not actually be considered a democracy, but instead a transitional government/ hybrid regime. The Economist Intelligence Unit (2015) explains that in transitional government/hybrid regimes, elections usually have major irregularities which prevent them from being both free and fair, and have serious weaknesses in terms of political culture, functioning of government and political participation. Along these lines, Wheatley (2002) contends that democracy is beyond the will of the majority, adding that no state may give preferential treatment regarding rights to political participation to one group of citizens

over another. He further argues that a democratic state must be as inclusive as possible (Wheatley, 2002:16). The overall point to extract from Wheatly's statements in relation to Bosnia and Herzegovina's political system, is that the key democratic principle of inclusion of all citizens in the political process, regardless of ethnicity is missing and henceforth adds to the notion that the country is not yet a democratic State.

2. The Dayton Process and the Constitution of Bosnia and Herzegovina

The current political structure and situation in Bosnia and Herzegovina cannot be understood without discussing the key historical aspects regarding the war's end and the subsequent negotiations that took place during the Dayton Accords Process. The General Framework Agreement for Peace, known as the Dayton Accords was reached on 21 November 1995 and ended the almost four-year war in Bosnia (Ozturk, 2012). The preambles of the Agreement state that it was drafted in recognition of the need for a comprehensive settlement to bring an end to the conflict in the region and to promote an enduring peace and stability. Another key part of the Dayton Agreement was to create a "unifying structure". However, this "unifying structure" for governing all of Bosnia and Herzegovina was based on the recognition of the warring ethnic groups as the only active parties (Ahmetašević, 2015).

It's important to note that powersharing was not an alien concept in Bosnia and Herzegovina. Before the Dayton process a form of power sharing existed in Socialist Bosnia and Herzegovina when it was still a part of Yugoslavia. One key apparatus that emerged from the communist leadership in Bosnia and Herzegovina was the "National Key". The "National Key" emerged as an informal power sharing mechanism that aimed at guaranteeing proportional representation of the three main ethnic groups and minorities (Pearson, 2015). Unfortunately, this system disappeared in post-1995 Bosnia and Herzegovina, since the Dayton process focused on placating the three warring factions. In this instance, minorities' rights, needs, and interests were neglected as plans for country's post war future developed.

However, the Dayton system was also intended to be a temporary solution that provided all warring parties a government and political structure that addressed their needs and interests, so that the country could transition from war and develop a more functional system over time. However, these warring factions never actually disappeared; rather they are now legally and politically entrenched in Bosnia and Herzegovina's political system. So, the "unifying structure" that was developed as a means of moving the country forward has done very little unifying at all. To the contrary, it has created more divisions and has led to continued systemic discrimination.

3. Ethnicity, Politics, and Constitutional Reform

There have been calls for constitutional reforms amongst certain political elites, these processes have been complicated and unsuccessful. Constitutional reform has been discussed publicly in Bosnia and Herzegovina by the international community, local politicians, civil society organizations, and human rights activists for some time now. In 2016, some political parties sought to postpone the 2016 local elections until politicians could agree on several unresolved questions, namely the implementation of the ECtHR decisions in the *Sejdić-Finci* (2009) and *Azra Zornić* (2014) cases, as well as changes to the Law on Elections. With no clear consensus on these issues, the elections were held as scheduled (Jahić, 2017).

Prior to this, the international community led or supported three initiatives: the 2006 April Package, followed by the Prud and Butmir Processes, which all completely failed. First, the "2006 April Package" was led by United States Institute of Peace and other NGOs. This process brought together eight ruling parties to discuss amendments to the constitution and other needed political reforms. The amendments were initially accepted by some and then rejected by others. In the end, it failed to be adopted in the parliament assembly by just two votes in early 2006 (Perry, 2015b). The second effort was known as the Prud Process; a homegrown initiative that took place from 2008 until 2009. The initiative was sparked by key leaders across ethnic lines such as the then Prime minister and current president of the Republika Srpska, Milorad Dodik, Sulejman Tihić, a Bosniak member of the House of Peoples, and the Croat member of the Presidency and current leader of the Croatian Democratic Union of Bosnia and Herzegovina, Dragan Čović. This meeting

took place in the village of Prud in the northeastern municipality of Odžak (Koneska, 2014). In particular, the parties sought to align Bosnia and Herzegovina's Constitution with key international treaties such as the European Convention for Human Rights (ECHR). Disappointingly, however, nothing emerged from the talks despite the Office of the High Representative and EU Representative's efforts to push the process forward (Office of High Representative, 2006). Zdeb (2016) explains that the process did not foster the implementation of any major reforms, however, it did help address several problems and built consensus on answering a variety of questions. The third and final attempt was the Butmir Process which took place at the Camp Butmir Military base in 2009. This effort was in many ways an extension of the Prud process, but this time driven by the international community, led by the EU and the U.S. The Butmir meetings consisted of six parties, but were marred by complete deadlock and disagreement from the beginning and eventually failed (Zdeb, 2017).

Any further talks about constitutional reform beyond these three initiatives have gone nowhere. Perry (2015a:15) maintains that "expectations for comprehensive reform have receded to the point where it is rarely even discussed in public at current". People have become so discouraged with the process that nobody even really seeks to talk about it anymore. The ECtHR has issued at least three rulings on the need for constitutional change, finding that the limitations placed on minorities and access to political inclusion are violations of minorities' human rights. The EU has made implementing these rulings a key condition as part of the accession criteria for Bosnia and Herzegovina, maintaining it must take active strides in reforming its political system if it wants its candidacy to advance.

The difficult part of this process is that discussions about constitutional reform have largely been held among leaders of the three constitutive peoples behind closed doors, without much input from minorities. Considering the entrenched power ethno-political elites have within the current governmental system, why would minority groups and their rights be of their interest? I argue that minorities would be of no interest. The 17 minority groups that make up 2.7 percent of the population are of little benefit to the existing political elites and their parties, which draw their support from their own ethnic partisans. Džankić(2015) echoes this by asserting that any amendment of the Dayton Constitution changes the power structure among the three major ethnic communities. As a consequence of this, she argues that ethnic elites are reluctant to alter the current system due to its ethnicization (p.2). The ethnicization the author refers to goes beyond Bosnia and

Herzegovina's political system of ethnic quotas, she also refers to the current party system which is inextricable from ethnicity.

Along these same lines, Hulseley (2015) explains that political parties continue to hold as much sway in Bosnian political life as they did immediately after the war. Each ethnic group is represented by two or three parties that often alternate in government (Beterlsmann Stiftung, 2016). For example, the Alliance of Independent Social Democrats (SNSD) and Serb Democratic Party (SDS) are active in Serb-majority areas; the Croatian Democratic Union of Bosnia and Herzegovina (HDZ) and Croatian Democratic Union 1990 (HDZ1990) are active in Croat-majority areas; and in Bosniak-majority areas, the Party for Democratic Action (SDA) dominates, with the Union for a Better Future (SBB) as a competitor (Beterlsmann Stiftung, 2016, p.33).

There are some parties that seek to transcend ethnic lines such as the Social Democratic Party (SDP) and the Democratic Front (DF) (Husley, 2015). Another newcomer to the table has been Our Party (NS) who have also been working to accomplish a multi-ethnic program of reform locally in Sarajevo as well as nationally. One reason as to why there are many political parties is the sense of intra-ethnic competition, which has emerged regarding the various political factions and demands within the different ethnic groups. Zdeb (2016:3) explains that in political situations such as Bosnia and Herzegovina, "political elites have been constrained by competition from rival elites from the same group which consequently limits their behavior at the inter-ethnic arena". She also goes on to add that if elites compromise across ethnic lines, they are subjected to within-bloc competition. "Rivals are keen to 'outbid' the incumbent leadership in asserting their legitimacy as the rightful representatives, often describing them as 'sell-outs' and open for their new political leadership" (Zdeb, 2006:3).

Moreover, with the breakdown of parties so entrenched along lines of ethnicity, the process of including minorities might lead to a perceived loss of power among the country's three constitutive groups. Džankić (2015) notes in particular two major impacts that constitutional reform will have on Bosnia and Herzegovina's ethnic elites. First, she argues "that by allowing the possibilities of minorities and "Others" to affect the political decisions, the elites representing Bosniaks, Croats, and Serbs would lose some of the power captured through the tri-paritate institutionalization of the party system" (Džankić, 2015:2). Second, she also points out that "any

constitutional change would loosen the ethno federal mode and the support for political parties whose programmes are based on nationalist agendas would decrease” (Džankić, 2015:2).

Constitutional change by political elites in Bosnia and Herzegovina has not seemingly been for the sake of the country; for human rights, fairness, or fostering democratic institutions. Rather, talks have been concerned about how much power each ethnic group would gain or lose from a new constitution and political order. I believe it is important to view the current struggle for constitutional reform within the context of scarcity. Scarcity is a major factor in maintaining a conflict, even if it still remains only in the political realm. For a society still divided along ethnic lines and dealing with the legacy of a war that was fought for territory and power, the concern for maintaining self-interests is relevant. Discussions about dividing power and the political structure even further makes it a limited and scarce resource. Pruitt and Kim (2004) maintain that as the perception of scarcity increases, the desire for limited resources becomes stronger and that aspirations become higher and more ridged.

The next few paragraphs of this article discuss the notion of constitutional reform by looking at the sentiments on constitutional reform from the perspective of each major ethnic group. One of the main factors that hampers real constitutional change is the lack of a common vision—none of the major ethnic groups share a common vision. These differing visions have fostered an unproductive level of inter-ethnic competition. Moreover, Bosniaks want a more centralized state (Arvanitopoulos and Tzifakis, 2008), and perhaps are the least likely to question the constitutional structure since, in principle, it benefits them the most (Beterlsmann Stiftung, 2016). A more unified country would mean absorbing the Republika Srpska and the Federation into one federal entity. I argue that we can attribute this to ethnicity, where Bosniaks view their culture, ethnic, and linguistic ties to Bosnia and Herzegovina solely, while the other two groups maintain cultural and historic ties to Croatia and Serbia respectively.

According to UN Polling data from 2013, over 90% of Bosniaks, Croats, and Serbs in Bosnia and Herzegovina expressed their pride in their ethnicities (Bosniaks 94%, Croats 92%, and Serbs 92%) (Beterlsmann Stiftung, 2016). Interestingly, when asked if they had pride in their Bosnian citizenship, 91 percent of Bosniaks respondents noted that they were proud, compared to only 60 percent of Croats and 46 percent of Serbs. (Beterlsmann Stiftung, 2016). Ultimately, Bosniaks want a national state that caters to Bosniaks interests and needs. One of the other key

controversial aspects of the Republika Srpska is how the entity came to be. Many Bosniaks cite the genocide in Srebrenica and the ethnic cleansing campaigns in Eastern Bosnia as one of the reasons why the entity should not exist, essentially arguing that it was gained through genocide and bloodshed. Moreover, Serbs would like to maintain their own autonomy, but as of late, some Bosnian Serb politicians have been calling for a complete separation from Bosnia and Herzegovina altogether. Milorad Dodik alarmed the international community in late 2016 by holding a referendum over whether to maintain the Republika Srpska statehood day of January 9th, a day which the constitutional court in Sarajevo had ruled was discriminatory because it fell on a Serbian orthodox religious holiday. Dodik and other politicians in the Republika Srpska angered Bosnia and Herzegovina and the international community more generally when they threatened to hold a referendum in 2018 for total independence from Bosnia and Herzegovina. Dodik and other leaders have continually questioned the legitimacy of the constitutional system in Bosnia and Herzegovina.

The case of the Croats must also be considered. Out of the three constitutive groups, they are ones most adamantly calling for constitutional reform (Perry 2015b). Croats are the smallest group of the three major ethnicities in Bosnia and Herzegovina, comprising only 15.43% of the population. Due to the population disadvantage, they are often concerned that their needs and interests will be ignored relative to Bosniak and Serb interests. As far as constitutional reform, Croats particularly are petitioning for a third entity to be created under Croat-administration. Some Croats argue that they were forced into settling for the Washington Agreement, which was the cease fire agreement signed in 1994 between Bosniaks and Croats ending warfare between two sides and that led to the creation of the Federation entity of Bosnia and Herzegovina.

Another thing that has dominated the conversation from the Croat side has been the creation of a “Croat electoral unit or similar mechanisms to ensure that only real Croats can vote for the Croat representative on the presidency, and that non-Croats in the Federation cannot strategically exert electoral influence on Croat representation” (Perry, 2015b:6). Part of this is due to the election of Željko Komšić, a Croat politician who was elected to the Croat presidency by a Bosniak majority. Komšić was seen as a politician who advocated for a more centralized Bosnian state and did not necessarily tout Croat interests.

While there remains competition among key political parties who represent the interests of the three constitutive ethnic groups, there are parties as mentioned above that are working to

accomplish a multi-ethnic program to benefit all Bosnians. However, as of late, reform-oriented politicians are increasingly being marginalized and their abilities to push for change are significantly constrained in the government (Beterlsmann Stiftung, 2016:33). As a result, the differences between reformist and nationalists have started to become increasingly unclear (Beterlsmann Stiftung,2016). I would argue that this goes back to what Zdeb explains above about competition for different political agendas—appealing to nationalism to gain votes. Touting the support and interests of Bosniaks over Croats and Serbs, or Croats over Bosniaks, etc. has been very successful in maintaining the current political system.

The leaders at the national level have yet to develop a concrete plan to actively include minorities in the process of constitutional reform or the overall constitutional framework. At the entity level, there has been some recognized need to address the issue. The parliament of the Federation of Bosnia and Herzegovina surmised in June of 2013 that the Entity's Constitution needed amending and that the recommendations of an expert group should be accepted as a basis for the change (Jukić, 2013). This expert group, the Constitutional Commission of the Federation, was created with the task of making recommendations that will ultimately make the entity more functional and economically sustainable (Jukić, 2013). One of the key recommendations that the group made was that the category of “Others” should be deleted from the Entity’s Constitution and that references to Bosnia's three constituent peoples should be a reference to “those who do not declare themselves members of constituent peoples or members of national minorities”. However, I could not find any definitive data or proof on whether or not these recommendations have been implemented, the last amendment to the Constitution of the Federation of Bosnia and Herzegovina was in 2003.

4. Bosnia and Herzegovina’s Constitution and its Implication for Political and Human Rights

To better understand the situation of minorities (and their lack of rights) in Bosnia and Herzegovina, let us explore how the constitution and political system falls short of recognizing, protecting, or promoting the political and human rights of those who are not classified as one of three constitutive peoples. The Bosnian Constitution itself has several clear contradictions throughout its twelve articles. There are also contradictions and violations of key international

agreements that Bosnia and Herzegovina has acceded. In addition to the three rulings from the ECtHR, these violations also resulted in continuous reviews and recommendations from various United Nations treaty bodies on how to improve access to political rights for minorities.

Articles IV and V of Bosnia and Herzegovina's Constitution detail how the Parliament (The House of Peoples and the House of Representatives and Presidency of Bosnia and Herzegovina) are to operate. Article IV (1) states that the House of Peoples shall consist of 15 delegates, two-thirds from the Federation (including five Croats and five Bosniaks) along with one-third from the Republika Srpska (five Serbs). Article IV(2) notes that the 42 members elected to the House of Representatives must also be elected, with two-thirds elected from the Federation and one-third elected from the Republika Srpska. Article IV (2) does not lay out any specific ethnic criteria to be elected. Meanwhile, Article V states that the Presidency of Bosnia and Herzegovina shall consist of three Members: one Bosniak and one Croat, each directly elected from the Federation, and one Serb directly elected from the territory of the Republika Srpska.

However, these articles which detail how the Bosnian parliament and presidency should be split along ethnic lines, contradict Article II; the entirety of Article II lays out the Human Rights and Fundamental Freedoms that will directly apply in the territory of Bosnia and Herzegovina. Article II (1) states that; "Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms". Article II (2) states that International Standards, the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law. What is even more confusing outside of this contradiction is that the constitution also has no provisions explaining how a person's ethnicity is determined for holding office (McCrudden and O'Leary, 2013). McCrudden and O'Leary (2013:482) explain that the self-classification of ethnicity by the individual is sufficient and that there stands no objective criterion, such as belonging to a specific religious or linguistic group, as a requirement. The authors also maintain that there is also no acceptance needed by other members of an ethnic group to which the person has identified themselves.

It is hard to deny that Bosnia and Herzegovina's ethnically devised political system is in direct violation of the ECHR. Despite the platitudes stating the opposite in Article II, Article 14 of the ECHR states that the enjoyment of all rights as laid forth in the covenant, shall be secured for

without discrimination on any grounds including association with a national minority. However, these are not the only articles that Bosnia's political system violates; Article 3 of Protocol No.1 states that contracting parties must hold free elections at reasonable times by secret ballot, under conditions which ensure the freedom of the opinion of the people in the choice of the legislature. It is these violations that have led the ECtHR to issue rulings in three cases condemning what it deemed to be institutionalized discrimination.

Sejdić and Finci v. Bosnia and Herzegovina was the first challenge to the structure of the Bosnian political system brought to the court by Jacob Finci and Dervo Sejdić. Finci being Jewish and Sejdic of Roma ethnicity, argued that Articles IV and V of Bosnia and Herzegovina's constitution was discriminatory and barred them from seeking membership of both the Parliament's House of the Peoples and the Presidency because they did not belong to one of the three constitutive groups. In December of 2009, the court ruled that based on the articles outlined above (Article 14, Article 3 of Protocol No.1, and Article 1 of Protocol No. 12), that Bosnia's constitution was indeed discriminatory and violated the human and political rights of these two men, and it should be changed (European Court of Human Rights, 2009).

Hodžić (2013) maintains that the court's decision "brought important and instructive nuances in a human rights analysis of power sharing arrangements, overcoming the often under-elaborated black and white visions of consociational democracies in the perspectives of human rights scholars. Claridge (2010:121) argued that the impact of this ruling was expected to have a huge impact on Bosnia and Herzegovina. She maintained that this ruling could have really helped break down ethnic and religious barriers throughout the country, while at the same time promoting social cohesion and encouraging political participation and representation.

Optimism such as Claridge's was short lived, when in 2014 another case was brought against Bosnia and Herzegovina by Azra Zornić who claimed her rights were also violated because she refused to identify as one of the three constitutive groups and therefore was not eligible to hold a position in the Parliament's House of the People or the Presidency (European Court of Human Rights,2014a). The court found that the case was identical to the previous cases and maintained that the new case was a direct result of Bosnia and Herzegovina's authorities' failure to implement constitutional and legislative changes to reflect the ruling of Sejdić-Finci (European Court of Human Rights, 2014b).

The third and most recent case that was ruled upon occurred in 2016 after Ilijaz Pilav sought to become a member of tripartite Presidency from the Republika Srpska and was denied. Pilav sued Bosnia and Herzegovina for not allowing him to stand for the Presidency because he was a Bosniak living in the Serb dominated territory (Toe, 2016). If we revert back to Article V of Bosnia and Herzegovina's constitution discussed above, it states that one member of the Presidency must be a Serb elected from the Republika Srpska. This disallows Bosniaks and Croats from being elected as president of Bosnia and Herzegovina from the Republika Srpska. The court found that the circumstances of Pilav's case were identical to the previous cases and therefore ruled in his favor (European Court of Human Rights, 2016). This case is important because it showed that Bosnia and Herzegovina's constitution even has the capacity to discriminate against members of the three major ethnic groups.

Bosnia and Herzegovina's constitution also states that it recognizes several other international human rights instruments, but, like the ECHR, it struggles to implement them effectively. For instance, Article II (4) outlines the principle of non-discrimination and states that the enjoyment of the rights and freedoms provided for in the constitution or international agreements, shall be secured to all persons in Bosnia and Herzegovina without discrimination.

However, Articles IV and V of the constitution restrict the House of People's and the Presidency to only the three constitutive groups. This is a major failure of Bosnia and Herzegovina to meet its obligations under international law. For instance, if we look at Articles 2 and 25 of the International Covenant on Civil and Political Rights (ICCPR) that was mentioned above, we can see where the country falls short of meeting its obligations. Article 2 states that; State parties Covenant must undertake to respect and to ensure to all individuals within its territory and the rights recognized in the present Covenant, without distinction of any kind. While Article 25 maintains that every citizen shall have the equal right and opportunity to: take part in the conduct of public affairs, directly or through freely chosen representatives; vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; have access, on general terms of equality, to public services in one's country.

The issues concerning Bosnia and Herzegovina's Constitution were a major point of discussions during the country's most recent Universalistic Period Review in 2015. During its

review, Bosnia and Herzegovina received 167 recommendations from the Report of the Working Group and its delegation accepted 128 of those. The Working Group's report had several recurring recommendations, as it relates to how Bosnia and Herzegovina implemented real constitutional and legislative changes to meet its international obligations. For instance, the Czech Republic;

...recommended that the Government of Bosnia and Herzegovina and the entity governments join forces to amend the constitution to ensure the full participation of all citizens at all levels of governance, regardless of their nation and ethnic origin, and take further steps towards the implementation of the Sejdić and Finci decision of the European court of Human Rights, including stabling an implementation time line (UPR Info,2015:9).

Along these lines, Germany also recommended that the country amend the national constitution and the electoral law, in order to bring them in line with the ECtHR's Rulings on the Sejdic-Finci case. The Netherlands, France, Brazil, and a host of other countries in this Working Group made similar recommendations (UPR Info, 2015). However, Bosnia and Herzegovina's track record on protecting the rights of minorities is not as poor as it appears. As recently as March 2015, the constitutional court declared that the system of ethnic federalism in both entities violated both constitutional and international legal requirements where it pertains to discrimination and political rights (Dicosola, 2015). However, the court decided to suspend the effects of its decision, citing the complexities of constitutional reform in Bosnia and Herzegovina, noting that it will not impede on the existing constitutional provisions of the entities or the election laws until the national legal system has adopted constitutional and legislative measures to remove current inconsistencies (Dicosola, 2015: 9).

According to Human Rights Watch (2012), in July 2009, Bosnia and Herzegovina's parliament passed an anti-discrimination law aimed at providing equal protection for all citizens. While the provisions of the laws seem strong, very few minorities have invoked the laws or pursued cases in Bosnia and Herzegovina's courts. Perhaps because there may not be enough understanding from the general public or legal experts about what exactly is and is not discrimination, and how it relates to the constitutional provisions that allow quotas for the three constitutive groups (Human Rights Watch, 2012). Interestingly enough, even the law on the Ombudsman for Human Rights of Bosnia and Herzegovina stipulates that the three ombudsman must be appointed from the ranks of the three constitutive people (Parliamentary Assembly of Bosnia and Herzegovina, 2004). So

this robs minorities of the opportunity to even advocate on behalf of their own human rights concerns.

In 2003, Parliament passed the Law on the Protection of Rights of Members of National Minorities. This law outlines rights for minorities to protect their cultural, religious, education, social, economic, and political rights (Parliamentary Assembly of Bosnia and Herzegovina, 2003). While both these laws were hailed as a major achievement and proof that the authorities of Bosnia and Herzegovina were making legitimate attempts to include national minorities, these laws nonetheless do not supersede the constitution. It is important to consider the notion that if these laws were actually effective, cases such as *Sejdić-Finci* and those thereafter would not have needed to have been heard before the ECtHR. The laws essentially do not change the discriminatory constitutional structure.

5. Impact of Constitutional Discrimination on Minorities

Currently, national minorities continue to have a limited presence and participation in politics, public policy debates, and the media (European Commission, 2016a:27). The State of Bosnia and Herzegovina currently has no clear quantified number of minorities who serve in both local and national government positions. While conducting research for this paper, I contacted The Council of National Minorities of Bosnia and Herzegovina in Sarajevo to ask if any report existed that quantified the number of minorities currently serving in key government positions, such as the House of Peoples or in other positions throughout in the country's two entities. I was told by the secretary of the Council that no such report actually exists. This is despite the fact that under its commitments to the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM), Bosnia and Herzegovina has instituted two mechanisms to actively include minorities in political life and reserved seats for minorities in local government and national minority consultancy councils.

Moreover, Article 15 of the FCNM states that parties to the convention must create the conditions necessary for the effective participation of minorities in cultural, economic, social, and public affairs. Hodžić and Mraović (2015) point out, that in 2008 Amendments to the Electoral

Law of Bosnia and Herzegovina prescribed an obligation for all local governments where the percentage of the minority population was above 3% to reserve at least one seat in the local assemblies for representatives of national minorities. According to Article 61.1 of the Electoral law, the above 3% aspect stems from the reported total population of all minorities in Bosnia and Herzegovina dating from the last widely recognized census in 1991 (Parliamentary Assembly of Bosnia and Herzegovina, 2008).

Furthermore, the aforementioned Council of National Minorities of Bosnia and Herzegovina is a unique advisory body of the Parliamentary Assembly of Bosnia and Herzegovina, also inaugurated in 2008. It provides opinions, advice and proposals to the assembly on all matters concerning the rights, status and interests of national minorities in Bosnia and Herzegovina (Parliamentary Assembly of Bosnia and Herzegovina, 2016). This body is composed of one representative from each of the legally officially recognized national minority groups. Bosnia and Herzegovina's Parliamentary Assembly appoints the members of the Council, on the proposal of the Joint Committee on Human Rights which must consult the national minorities, national minority associations or other NGOs in the process of the selection of candidates (Parliamentary assembly of Bosnia and Herzegovina, 2016). There are also national minority advisory bodies on the Entity level as well.

However, the effectiveness of these particular institutions has been questioned both domestically and by the international community. A report by the Sarajevo-based research organization Analitika (2011) maintained that reserved seats for minority representatives in local assemblies/councils have generally not been used for the promotion and protection of the rights and interests of national minorities, while consultations, as a very important mechanism of participation of minorities, are completely ignored at the local level. Similarly, the European Commission has also maintained that; "the effectiveness and impact of national minority councils at the state and entity levels is hindered by insufficient resources and lack of political leverage in decision-making, as well as having a politicized and complex appointment procedure that also undermines the legitimacy of the councils to operate properly".(European Commission, 2016a). As far as the reserved seats are concerned, Hodžić and Mraović (2015:430) explain that while reserved seats has had an effect on the increase in minorities' political mobilization and political awareness, the actual implications regarding the capacity of minorities to influence decision-making processes

are still limited. The authors also note that the degree of influence on decision-making processes does not seem to be significantly different when compared to the period prior to the introduction of reserved seats.

So what is the overall impact of minorities not having access to full political rights at all levels? When minorities are excluded from political participation and key decision-making bodies, both minorities and the state are impacted. Orlović (2015:48) further buttresses this point by arguing that higher participation increases the level of minority representation in relevant bodies and organs. This increases their integration into the existing society and facilitates the protection of their interests. For the state, robust levels of minority participation reduces and prevents national conflicts. It also increases the legitimacy of democracy .

In addition to this, minority participation provides a new, diverse set of narratives and ideas for social and political change. The lack of diversity in Bosnia and Herzegovina's governance system is something that many scholars have argued has been a major hindrance to lasting progress. The essential goal of consociationalism is to include a variety of factions in power-sharing so that minorities, along with the majority, can have a seat at the decision-making table. Orlovic (2015) posits that the advancement of minority statuses in a country should be taken as an indicator of democratic achievement.

Moreover, the impact of Bosnia and Herzegovina's constitution can certainly be seen in other aspect of life outside of political realm for those who classify or identify as "Other". "Others" also often lack access in terms of employment, especially with regard to civil service jobs and even registration for elections. Constitutions for both Entities lay out mandated criteria for employment in public institutions that are based on ethnic quotas (Human Rights Watch, 2012). One of the main issues with this system is that some in Bosnia and Herzegovina choose not to identify themselves as one of the three ethnic groups; they may simply want to just identify as 'Bosnian.' Also, as previously mentioned, many people living in Bosnia and Herzegovina come from mixed marriages and do not want to be forced to identify as one or the other (Minority Rights Group International, 2003). Another main issue is that state employment quotas are based on the 1991 census prior to the war, in all most every part of Bosnia and Herzegovina accept the Sarajevo Canton. In the 1991 census, the Roma were severely under-represented and therefore are disproportionately excluded from civil service jobs (Human Rights Watch, 2012). A new census was conducted in 2013, with

the results finally being released in 2016 after much controversy about how and where the census was collected. Some Serb politicians in the Republika Srpska are still debating the accuracy of the results even now in 2018.

Next to the issue of employment, violence and discrimination against minorities in Bosnia and Herzegovina remains unaddressed in a coherent and systematic way. Many of the media outlets remain ethno-politicized and cater to the news and media interests of their own particular ethnic group. Lalić and Francuz (2016) note that hate crimes or violence committed against or amongst the three constitutive ethnic groups receives a considerable amount of media coverage, while those committed against minorities do not. The author also contends that data on crimes against minorities remains scant. He notes that police in Bosnia and Herzegovina do not keep separate records on specific crimes committed against ethnic minorities; therefore, it is not possible to quantify the types of crimes that are committed against ethnic minorities or what problems ethnic minority communities face (Lalić and Francuz, 2016:166). Despite the current institutions mentioned earlier, without properly allocated resources, these areas of concern cannot be properly studied. This is where substantive decision-making power becomes important; if minorities had a more visible and active role in national institutions, perhaps more financial and human resources would be dedicated to studying and producing facts on violence and discrimination against minorities across Bosnia and Herzegovina. Reverting back to what I said earlier, minorities can often provide different perspectives and viewpoints that maybe overlooked or misrepresented by those representing the majority.

Furthermore, other problems faced by ethnic minorities have also been in the realm of language and cultural heritage preservation (Lalić and Francuz, 2016). Lalić and Francuz (2016) maintain that irregular funding at the State, Entity, or Local level represents a major problem for the associations of ethnic minorities and therefore active political engagement. Many believe that irregular funding has nothing to do with the socio-economic factors of Bosnia and Herzegovina, but rather the unwillingness of governing bodies to solve the problem of sustainability of ethnic minority groups. Hodžić and Mraović (2015) maintain similar sentiments and present that access to funding for minority organizations is quite complex and varies from municipality to municipality.

Yet, out of the 17 recognized national minority groups, the Roma population of Bosnia and Herzegovina continues to be the most vulnerable and widely discriminated against minority group. While other minority groups may be politically (and to some degree economically) disenfranchised due to the civil service employment quota discussed above, the disenfranchisement of the Roma is on a completely different level. The Roma population in Bosnia and Herzegovina suffer from rampant homelessness, high unemployment, lack of education, and a myriad of other social problems. From one end of Sarajevo to the other, it is not uncommon to see Roma children begging and panhandling for change at a very early age instead of attending school. The Roma remain ostracized and stereotyped as lazy, criminal, and violent. This stereotype permeates every aspect of their lives. There is often a mutual mistrust between Roma people, local and national authorities, and other general members of society, including other minority groups.

Bosnia and Herzegovina joined the Roma Decade 2005-2015 in 2008. This initiative was championed by the European Union to spur more inclusion of Roma throughout Europe. There was progress made on implementing the Roma action plan on housing, however the Roma still struggled to gain access to adequate health care services and the job market (European Commission, 2016a). The lack of reliable data on the Roma has also hindered policy-making (European Commission, 2016a). When we consider these factors, it underlines why Roma participation in political and civic life at all levels in Bosnia and Herzegovina is extremely important. How can the country actually live up to its commitment on Roma inclusion, if the Roma themselves are not fully included in the processes of transforming their communities and their stake in the country?

6. The EU's Potential impact of Constitutional Change in Bosnia and Herzegovina

Bosnia and Herzegovina officially became a candidate for EU accession in September 2016. Following the decision to accept Bosnia and Herzegovina's application after several rejections, the EU commission sent a questionnaire to the country with thousands of questions aiming to assess whether the country is ready for EU membership or not. In particular, the questions seek to assess the Bosnian economy, the state of democracy in the country, its adherence to the rule of law and human rights, and its ability to respect the obligations of EU membership (Cerkez, 2016). One of

these key aspects relating to human rights, democracy, and the fulling EU membership criteria, of course, is whether or not Bosnian leaders are willing and able to actually seriously negotiate constitutional reform. Moreover, the EU has played an active role in urging constitutional reform in Bosnia and Herzegovina, even before accepting its application for membership. In the three constitutional reform processes mentioned earlier (2006 April Package, Prud, and Butmir), the EU played a major role in facilitating dialog and offering solutions to leaders across Bosnia and Herzegovina.

The EU has also repeatedly offered solutions beyond these three processes, for instance in October of 2017, senior EU and US officials presented a package of proposed constitutional changes to Bosnia and Herzegovina's most influential leaders in Sarajevo (Alic, 2018). The new proposal, symbolically called "Dayton Two", offered measures to end Bosnia's status as an international protectorate and to initiate constitutional changes to help make it a viable candidate for the EU and NATO (Alic, 2018). However, some Bosnian leaders deemed the proposed changes to the constitution too drastic, while others thought they were simply cosmetic (Alic, 2018).

The path to EU integration for Bosnia and Herzegovina has been a very long process and they have been tasked with fulfilling a number of criteria and conditions. The country was identified as a potential candidate for EU membership during the Thessaloniki European Council summit in June 2003 (European Commission, 2016b). Since then, a number of agreements between the EU and Bosnia and Herzegovina have entered into force, including the Stabilisation and Association Agreement (SAA), which has been ratified and entered into force on 1 June 2015. Article 5 of the general principles of the agreement states that, human rights and the respect and protection of minorities are central to the Stabilisation and Association process.

However, Bosnia and Herzegovina has yet to fill many of the conditions set forth by the EU's Copenhagen Criteria, the set of rules for accession. One of these conditions has been to reform the country's constitutional system to be in line with EU human rights standards of non-discrimination. The Copenhagen Criteria's Political Criteria calls for States to have implemented laws and policies that reflect key human rights instruments such as the FCNM and the ECHR, which seek to promote the human and political rights of minorities.

The EU commission has made it clear in its last two reports on Bosnia and Herzegovina that minority rights remain a huge concern in relation to the country's accession process. Both the 2016 and 2018 reports of the European Commission note that the country must implement the decision of the ECtHR in the Sejdić-Finci and related cases. The EU has also made it clear that minority rights are a key priority by aiding Bosnia and Herzegovina with technical assistance funds. From 2007 to 2013, the EU provided close to € 6,3 million under the Instrument for Pre-Accession Assistance and the European Democracy Instrument for Human Rights (EIDHR), to support socio-economic inclusion and integration of Roma in Bosnia and Herzegovina (Delegation of the European Union to Bosnia and Herzegovina, 2015). However, the EU has not been the only European institution that has called for reform of Bosnia and Herzegovina's political system. In early 2005, the Council of Europe's Venice Commission (2005:25) called for a major overhaul of the constitution and noted that Bosnia and Herzegovina must change its emphasis from a state based on the equality of three constituent peoples, to a state based on the equality of citizens remaining desirable in the medium and long term. The Commission's opinion also noted key changes that the EU would want to see if Bosnia and Herzegovina wanted to further its candidacy bid.

However, despite the lack of comprehensive constitutional reform, accepting Bosnia and Herzegovina's application for candidacy was seen by some EU officials as a possible incentive for the country's leaders to come together to work for the common goal of EU membership. Unfortunately, this has not been the case; Bosnian Serb leaders in the Republika Srpska continue to call for more autonomy, defying key state institutions and perhaps even moving towards seeking independence. Additionally, as mentioned before, Bosnian Croat leaders have also been pining for a third entity administrated separately from Bosniaks and Serbs. There was even fierce debate between both Entities as to how the EU questionnaire should be answered, whilst the Republika Srpska prepared it's own answers.

Moreover, to highlight how the dysfunction of Bosnian politics has delayed Bosnia's EU progress, Bieber (2010:1) argues that the "cumbersome political structure is not to blame for the delays in EU integration and the slow pace of reforms; the political disputes between the different political parties are". To further this point, Perry (2015a) argues that constitutional reform has been difficult because there is no political will driving change—several entrenched parties are content

with the status quo. Keeping that status quo in place, is very relevant even for everyday Bosnian citizens. The status quo means that pensioners get their money, people have access to healthcare, and that there is at least some semblance of a working government, although it may not be perfect. Many people are afraid to challenge this in fear of what might replace it. In this regard, how do you make people interested in expanding human rights when their needs are being met in a fragile state like Bosnia and Herzegovina? This is a major quagmire that has no easy solution.

One ultimate question to consider in terms of EU accession, concerns whether the EU's current approach in dealing with Bosnian leaders is adequate, or whether another approach is needed for achieving constitutional reform? One can argue that the elements discussed above can mean that the EU must move beyond Bosnia's political leadership if it wants to actually foster constitutional reform. The political will to make change in Bosnia and Herzegovina may have to develop amongst other institutions inside the country by fostering other actors and institutions. A recent poll consisting of 1,537 respondents across Bosnia and Herzegovina conducted in early 2017 by the International Republican Institute, found that 49% of Bosnians strongly support Bosnia and Herzegovina's accession to the EU; 29% somewhat supported Bosnia and Herzegovina's accession to the EU, while 9% were somewhat opposed, and 13% were strongly opposed. This poll indicates that the EU and accession means something positive to everyday Bosnian citizens. The EU has some important political capital that could be spent engaging them in discussions and solutions over constitutional change. What this political capital can buy remains an important question; will it be substantial enough to encourage everyday Bosnians to champion constitutional reform politically?

Perry (2015a) notes that perhaps a bottom-up approach is needed. Citizens may need to be more engaged by civil society organizations and higher education institutions. Perry posits an example from 2007-2008, when the Helsinki Committee for Human Rights in BiH in Sarajevo implemented a constitutional reform project that organized roundtables across Bosnia and Herzegovina on the subject of constitutional reform. She notes that the recommendations were rather broad, but called for an inclusive process that included minorities and that met international human rights standards. These recommendations were shared through a variety of sources from conferences to the press, but no follow-up persisted so the traction died. Gaining traction amongst everyday citizens remains a challenge in Bosnia and Herzegovina. Civil society has its role in

promoting many activities, but often times many organizations are weak and activities are not very well coordinated or inclusive of different actors. Perry (2015a) also notes that there are limited financial interests in the international community geared towards political and social reform in Bosnia and Herzegovina. With a looming refugee crisis from Syria and other parts of the Middle East and further concerns about homegrown terrorism, the international interest in Bosnia and Herzegovina has waned considerably in recent times.

The bottom-up approach can be successfully be employed by the EU only if there are willing and able actors in Bosnia and Herzegovina. One of the key aspects the EU has invested in (and must continue to invest in) is fostering a democratic culture where full political participation and inclusion expands to all citizens of Bosnia and Herzegovina, regardless of ethnicity. While the EU can work on public engagement, diplomacy campaigns, fund projects for civil society promoting constitution reform or even programs to promote minority rights in Bosnia and Herzegovina, the only solution for tangible change is for Bosnians to take the initiative and execute constitutional reform on their own accord. This must be done organically otherwise the international community runs into the risk of repeated past failures again in Bosnia and Herzegovina. Bell (2016: para.6) notes that “many scholars debate whether it’s politicians who drive ethnic sentiments into the hearts and minds of everyday Bosnians or that it’s politicians who are reflecting the sentiments of everyday people. Either way, the result has been unproductive and has stifled Bosnia from moving on”. One of the key issues with constitutional reform as it relates to leaders is that there is no real accountability; many Bosnians vote according to their own interests which center around their own ethnic identities. Perry (2015a) argues that despite most efforts, there has been limited public support for constitutional reform as everyday citizens do not necessarily see how this impacts their daily lives.

Moreover, I have come to find that the current Dayton structure, whilst not perfect, represents stability for many Bosnians. Dayton has often come under fire from some everyday citizens and political elites as an imposed solution by the international community. However, the current structure continues to operate, allowing people to go on with their daily lives. Using a 2013 Bosnian representative sample with 1,007 respondents, Morgan-Jones, Loizides and Stefanovic (2015) explored local perspectives on the day and asked the question: “If there had been a referendum today on the Dayton Peace Agreement, how would you vote?”. They found that in

each of Bosnia's three main ethnic groups (Bosniaks, Croats, Serbs) more people would vote for Dayton than against it.

No matter what the EU proposes in terms of constitutional reform, it is all moot if everyday Bosnians do not see the need for immediate constitutional change. Unfortunately, in most societies (developed or developing), citizens usually concern themselves with what is most immediate to them. Despite all its shortcomings, the current constitution of Bosnia and Herzegovina still allows the country to function albeit not very efficiently. Reforming Bosnia and Herzegovina's constitution will be a long and arduous process with no guarantee of EU accession. Bieber (2010) notes that no matter what process takes place, it must be consensual for all parties, no matter how difficult or odious they may be. "All parties" must also include minorities if Bosnia and Herzegovina is ever going to transition towards a full democracy.

The issue of constitutional reform in Bosnia and Herzegovina goes beyond just political rights and legalities; it opens up a larger discussion about Bosnian identity and thus Bosnian citizenship. Bosnians have to have an ontological discussion about who and what they are, what makes them this, and why some have certain rights based on their ethnic identities and others do not. Perhaps the reward of eventual EU accession can eventually help fuel this discussion and foster change to Bosnia and Herzegovina's discriminatory constitution, or maybe unfortunately in the end it will not. Either way it will be a choice that is made by Bosnians and their political elites alone.

Conclusion

The rights of minorities must remain at the forefront of transforming Bosnia and Herzegovina if the country is ever going to be a free and fair society. While Bosnia and Herzegovina has taken several steps towards including minorities through laws and creating institutions, there remains real work to be done if these things will ever actually materialize into tangible political rights. The real work to be done is nothing short of comprehensive constitutional reform. Moreover, the impact of the country's discriminatory constitution and the power it robs minorities of, can be seen in everyday life through employment quotas, the lack of discussion around violence, and the lack of mechanisms for language and cultural preservation, etc.

For constitutional change to actually take place in Bosnia and Herzegovina it will take political will. Where this political will may emerge from remains a key question. If we look, one could say that there has been some sort of political will with the creation of laws and mechanisms. However, this political will is seemingly a facade to placate both domestic and international actors. The “real” political will that I speak of requires more than just ethnic political elites claiming that they want constitutional change and not actually acting on it. It will require state and non-state actors in Bosnia and Herzegovina who want a society that is dedicated to the non-discrimination of all citizens; even if that means losing elections or voting against leaders who do not actively champion constitutional reform.

Needless to say that neither the international community’s presence, nor its incentives, have spurred this type of political will yet. Whether or not EU membership will inspire Bosnia and Herzegovina and its citizens to push for inclusion of minorities in its political institutions remains to be seen too. Only with time will we be able answer this question. Perhaps a new power-sharing agreement where the current confines of ethnicity are broadened, or maybe even lessened to some degree, is a realistic possibility. However, as it currently stands, the sacrifice of human and political rights for minorities in Bosnia and Herzegovina remains a small price for maintaining the status quo for the country’s three constitutive ethnic groups.

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