



**European Roma Rights Center
Country Report
February 2004**

**The Non-Constituents:
Rights Deprivation of Roma in Post-Genocide Bosnia and Herzegovina**

EXECUTIVE SUMMARY

There are few countries in which human rights are as richly guaranteed by law as they are in Bosnia and Herzegovina. The Constitution of Bosnia and Herzegovina states, "Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms."¹ The Constitution further gives priority to European human rights law over all other law,² includes non-discrimination provisions and enshrines in the constitutional order a range of other international human rights agreements,³ including some not ratified by any other European state.⁴ These facts notwithstanding, certain provisions of both the Constitution of Bosnia and Herzegovina and the Constitutions of the two Entities *prima facie* discriminate against Roma and other "non-constituent peoples", violating both themselves and international human rights law. The constitutional law of Bosnia and Herzegovina prevents Roma from enjoying a number of fundamental political rights. Bosnia and Herzegovina is the only country in Europe in which Roma are barred by law from holding crucial high political offices, including the Presidency. As members of a second class "non-constituent" people, Romani children in Bosnia and Herzegovina today can only aspire in vain to one day becoming president of their country.

¹ Article II(1) of the Constitution of Bosnia and Herzegovina. All citations from the Constitution in this report are from an official translation available at: <http://www.ccbh.ba/constitution/?lang=en>. Unless otherwise specified, all translations of laws in this report are unofficial by the *ERRC*.

² Article II(2) of the Constitution of Bosnia and Herzegovina states, "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."

³ Article II⁽⁴⁾ of the Constitution of Bosnia and Herzegovina states, "The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex 1 to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

⁴ Bosnia and Herzegovina was, for example, as this report went to press, the only state in Europe to have ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

European Roma Rights Center (ERRC) monitoring of the situation of Roma in Bosnia and Herzegovina has established that Roma in Bosnia and Herzegovina are regularly exposed to abuses of their civil, political, economic and social rights as a result of their official second-class status in Bosnia and Herzegovina, and also because entrenched anti-Romani sentiment in Bosnia and Herzegovina gives rise to endemic racial discrimination and other human rights violations against Roma. In addition to being legally barred from holding high political office, many Roma in Bosnia and Herzegovina are denied basic franchise and cannot vote because they lack one or more personal documents and/or may even be stateless. Lack of personal documents also results in the denial of a number of services crucial for the realisation of a range of fundamental rights, including schooling, public housing, health care and social support services. Many Roma have not been able to repossess their pre-war properties, and, as such, live in very precarious situations, often in informal settlements with substandard conditions in various parts of the country. In addition, instances of violence against Roma by state agents, as well as by non-state actors (i.e., their non-Romani neighbours) have been reported. Incidents of violence against Roma in Bosnia and Herzegovina appeared to be on the rise as this report went to press.

The break-up of the former Yugoslavia and the wars that ensued had a devastating effect on Romani individuals and communities in Bosnia and Herzegovina. Roma were brutally treated by all parties to the conflict, and it is feared that as many as 30,000 Roma were subjected to ethnic cleansing. Many Roma were also detained and severely ill-treated in concentration camps, particularly Serb-run concentration camps. Roma and Romani communities were reportedly particularly targeted in Prijedor and the surrounding villages of Kozarac, Hambarine, Tukovi and Rizvanovici. Horrific atrocities were also committed against Roma from Vlasenica, Rogatica and in Zvornik and surrounding villages. At least seventy Roma were killed in the infamous massacre at Srebrenica in 1995. Romani men were also forcibly conscripted and made to perform slave labour in the armies of all sides to the conflict. Many Romani women were raped and/or forced to perform sex labour. The 1992-1995 war saw the wholesale destruction of a number of Romani communities. To date, justice has yet to be provided to Romani victims of actions during the 1992-1995 war.

In addition, although the majority of Bosnian Roma lived before the war in eastern Bosnia -- in areas of the country today located in the entity known as Republika Srpska -- today most Roma live in the area of Bosnia and Herzegovina known as the Federation, primarily in north-eastern Bosnia, the Tuzla Canton, or central Bosnia (Sarajevo, Zenica). Many thousands of Roma from Bosnia and Herzegovina have not returned to the country. The genocidal civil war fought in Bosnia and Herzegovina fundamentally altered the demography of Romani settlement in Bosnia and Herzegovina. Perhaps more importantly for individuals concerned, vast numbers of Roma have been to date unable to claim pre-war property and have remained without adequate compensation for property confiscated or destroyed during the war.

This report is based on extensive field documentation undertaken by the *ERRC*, independently as well as in partnership with the Bijeljina-based non-governmental organisation *Helsinki Committee for Human Rights in Republika Srpska (HCHRRS)*, as well as with other non-governmental organisations (NGOs). Monitoring of the human rights situation of Roma in Bosnia and Herzegovina by the *ERRC* and the *HCHRRS*, has revealed a number of serious human rights concerns, including the following:

1. Exclusion of Roma from the Highest Levels of Political Participation

The Constitution of Bosnia and Herzegovina bars Roma from the offices of the Presidency and the House of Peoples. Only members of the three constituent peoples – Bosniaks, Croats and Serbs – are eligible to participate in the Presidency and the House of Peoples. Therefore, solely on the basis of their ethnicity, Roma are prohibited from even participating as candidates in elections for such offices. Roma are further barred from voting in the election of the representatives to the House of Peoples of the Federation of Bosnia and Herzegovina (an Entity-level institution with a very similar name to the national-level "House of Peoples"),⁵ as only Bosniak and Croat delegates of the House of Peoples of the Federation are empowered to vote for representatives to the House of Peoples. Exclusion from political offices at the highest levels serves to reinforce the vulnerability of the Romani community in Bosnia and Herzegovina.

2. Difficulties in Accessing Personal Documents and Citizenship

Many Roma in Bosnia and Herzegovina lack personal documents and, in extreme cases, citizenship. Instances of statelessness have been reported among Roma in Bosnia and Herzegovina. Roma have encountered difficulties in accessing documents including but not limited to birth certificates, personal identification cards, documents related to the provision of health insurance and social aid, and passports. Barriers arising from a lack of documents can be daunting, and the lack of one document can lead to the inability of a person to access further documents. The lack of access to personal documents and citizenship threatens the ability of Roma in Bosnia and Herzegovina to gain access to services crucial to the realisation of a number of fundamental rights and freedoms, such as the right to vote, the right to adequate housing, the right to social assistance, the right to education and the right to the highest attainable standards of health.

3. Violence against Roma

In the context of persistent ethnic tensions and mistrust in post-war Bosnia and Herzegovina, Roma have found themselves at the mercy of law enforcement agencies in which they have almost no representation. Police officers in Bosnia and Herzegovina have been the perpetrators of violent attacks on Roma; have specifically targeted Roma through ethnic profiling practices; have conducted abusive raids on Romani settlements; have accused Roma of crimes on the basis of little or no evidence; and have failed to adequately investigate crimes committed against Roma. Racially motivated attacks against Roma in Bosnia and Herzegovina have also been documented during and since the end of the 1992-1995 war. Roma have in a number of incidents fallen victim to violent attack by non-Roma, resulting in very serious injuries in some cases. Verbal abuse and threats of violence against Roma are common in Bosnia and Herzegovina.

4. Violations of Housing and Property Rights

Many Roma have experienced difficulties in exercising their property rights and accessing the right to adequate housing in post-war Bosnia and Herzegovina. Indeed, many Roma are still internally displaced within the country for a myriad of reasons. In some cases, Roma have been unable to return to their pre-war homes due to fear and/or impediments to return. The repossession of personal property by Roma has been left to the discretion of local (generally non-Romani) authorities slow to remove temporary occupants from their property. In many of the cases of repossession of personal property by Roma of which the *ERRC* is aware, temporary occupants have vandalised or looted property before leaving. Many of the informal

⁵ The Republic of Bosnia and Herzegovina consists of two entities: the Federation of Bosnia and Herzegovina, which is predominantly Bosniak-Croat (hereinafter referred to as "the Federation"), and Republika Srpska ("The Serb Republic"), where the majority of inhabitants are ethnic Serbs. Throughout this report, the terms "Bosnia", "Bosnia and Herzegovina" and "BiH" shall be used to mean "The Republic of Bosnia and Herzegovina". In some places, the term "Bosnia-Herzegovina" is used, where it would be anachronistic to use other terminology.

settlements in which Roma lived prior to the war have been destroyed and no adequate alternative accommodation has been made available to former inhabitants. Roma who have been able to return to informal settlements often find themselves at the mercy of local authorities eager to allocate their land for industrial or other economic development projects, while at the same time making no plans for the provision of alternative accommodation for Roma displaced through forced evictions. Roma living in informal settlements or who lived in social housing before the war are frequently excluded from the benefits of new property laws and are in many cases ineligible for the aid money that has poured into the country under reconstruction schemes. In such settlements, an adequate standard of living is not available. In extreme cases, very substandard conditions in such settlements have led to the death of vulnerable inhabitants. Further, Roma are frequently unable to rent private accommodation due to racial discrimination or poverty or both.

5. Obstacles to Accessing Other Fundamental Rights

Roma in Bosnia and Herzegovina encounter obstacles to the exercise of their fundamental rights to employment, social aid, the highest attainable standard of health, and education. Roma are frequently blocked on arbitrary grounds from having access to the public services crucial for the realisation of a range of social and economic rights. In a number of cases documented by the *ERRC* and partner organisations, Romani individuals died apparently at least in part as a result of the failure of Bosnian authorities to provide basic services such as rudimentary health care. A very large number of Roma today face serious existential threats because of the extremely poor conditions in which they are forced to live.

On the basis of the findings of this report, the *ERRC* recommends that the government of Bosnia and Herzegovina (as well as the two Entity governments and, where relevant, municipal and cantonal authorities), adopt the following measures and policies in accordance with their respective competencies:

1. Without delay, amend the Constitution of Bosnia and Herzegovina to enable full and meaningful participation by Roma, and all other non-constituent groups, at all levels of government in Bosnia and Herzegovina.
2. Facilitate access to citizenship of Bosnia and Herzegovina for those Roma residing in Bosnia and Herzegovina who are stateless and provide the necessary legal documents (such as birth certificates and personal identification cards) to all Roma not in possession of such documents.
3. Bring to justice all persons responsible for war crimes committed against Roma during the 1992-1995 war.
4. Ensure that no Romani refugees in Bosnia are returned to their country-of-origin to face persecution. Make available procedures for the full integration of Roma who are third-country nationals in Bosnia and Herzegovina, who have been in Bosnia and Herzegovina for periods of longer than five years, and who wish to become Bosnian citizens.
5. Adopt comprehensive anti-discrimination legislation in compliance with the standards set in the European Council directives 2000/43 and 2000/76 and establish a strong specialised body to ensure its effective implementation.
6. Carry out thorough and timely investigations into all alleged instances of police abuse of Roma, including violence, unlawful searches and seizure of property, malicious investigation of violence against Roma, harassment, and failure to investigate racially motivated crimes and/or protect potential victims of violent attacks. Take all measures

necessary to ensure that Romani victims of police brutality have access to effective remedies and obtain adequate compensation.

7. Promptly bring those responsible for racially motivated crimes and other instances of violent human rights abuse against Roma to justice, and ensure that, when racial animosity motivates or otherwise influences a crime, it receives due judicial recognition.
8. Ensure Roma the right to repossession of pre-war property, including property acquired through *de facto* adverse possession. Take adequate and timely steps to ensure the removal of temporary occupants from Romani property and take appropriate legal action against temporary occupants who vandalise or loot Romani property prior to leaving.
9. Use all appropriate means to protect and promote the right to housing and guarantee protection against forced evictions. Guarantee security of tenure to Romani occupants of houses and land, ensuring, *inter alia*, a general protection from forced evictions. Guarantee due process in line with international standards related to forced evictions. Guarantee non-discrimination against Roma in processes related to forced evictions and the provision of alternate accommodation. Guarantee adequate pecuniary and non-pecuniary civil compensation as well as comprehensive criminal and administrative redress in cases of illegal forced evictions. Ensure that where forced evictions are unavoidable, no individuals are rendered homeless or vulnerable to other human rights abuses by making available adequate alternate housing, resettlement or access to productive land where those affected by evictions are unable to provide for themselves.
10. Order local authorities to provide, without delay, adequate potable water, electricity, waste removal, public transport, road provisions and other public infrastructure to those Romani settlements which presently lack one or more of the above;
11. In the interest of empowering Roma to take control of their own housing fate, provide an executive amnesty for “illegal” Romani settlements, granting title to land and property to persons factually resident on a particular plot, and establishing a “year zero” for the purposes of zoning and future regulation.
12. Allocate adequate resources to social housing projects and ensure that Roma have equal access to social housing.
13. Establish a national fund for Roma and others under the poverty line to have access to grants and/or low-interest loans for the purpose of improving their own housing.
14. In cases of reported abuses in the school system, such as exclusionary practices, physical and verbal assault, humiliating treatment, and failure by teachers and school administrators to protect Romani children from peer abuse, punish the parties responsible and implement measures aimed at preventing further abuse.
15. Undertake all measures necessary to ensure equal access to integrated education to Romani children and particularly Romani girls. Support Romani students in obtaining scholarships, books and travel expenses to attend school.
16. Develop and implement catch-up adult education programmes aimed at remedying legacies of substandard education and non-schooling of Roma.

17. Establish positive action measures to increase the numbers of Roma attending university and ensure that such persons are provided with the support necessary to complete their studies.
18. Develop curriculum resources for teaching Romani language, culture and history in schools, and make them available to all schools, so that all children in Bosnia and Herzegovina can learn of the contributions Roma have made to their society.
19. Adopt policy measures ensuring that Roma, and particularly Romani women, are able effectively to realise rights to employment, health care, and access to social welfare payments and to public goods and services.
20. Provide eligible Roma with equal access to state loans and other benefits for war veterans and members of families of Romani combatants killed in the 1992-1995 war.
21. Ensure that adequate legal assistance is available to victims of discrimination and human rights abuse by providing free legal services to indigents and members of weak groups, including Roma.
22. Proactively recruit Roma for professional positions in administration, the police force, and the judiciary, in order to counter patterns of under-representation and to take steps to remedy the exclusion of Roma from decision-making.
23. Undertake effective measures to ensure that local authorities register all persons factually residing in a given municipality, without regard to ethnicity. Conduct a new population census and undertake adequate measures to ensure full Romani participation in it.
24. Conduct systematic monitoring of access of Roma and other minorities to justice, education, housing, employment, health care and social services, and establish a mechanism for collecting and publishing disaggregated data in these fields, in a form readily comprehensible to members of the wider public.
25. Conduct public information campaigns on human rights and remedies available to victims of human rights abuse, including such public information campaigns addressed to the Romani communities.
26. Conduct comprehensive human rights and anti-racism training for national and local administrators, members of the police force, and the judiciary.
27. At the highest levels, speak out against racial discrimination against Roma and others, and make clear that racism will not be tolerated.