Elite Social Contract vs. Everyday Social Contract in Bosnia and Herzegovina

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■ Two social contracts exist in Bosnia and Herzegovina today: an ›elite social contract‹ which exploits core conflict issues in order to maintain the status quo and preserve the power of a relatively small clique; and an ›everyday social contract‹ which involves citizens trying to make sense of and manage a social and economic environment heavily disrupted by the 1992–1995 war.

■ Over the last decade, the country has witnessed the emergence of a few grass-roots initiatives aimed at addressing the socio-economic concerns of the population shared across the ethnic spectrum. These initiatives, along with diaspora and some segments of economy challenge the elite social contract and are setting a stage for a resilient national social contract.

■ Despite the political stalemate in BiH, there are a number of avenues which can be taken to facilitate the three drivers of resilient social contract.

   ■ To move towards a more inclusive political settlement (Driver 1) anti-corruption initiatives should be encouraged, particularly those aimed at enabling independent judiciary.

   ■ To have effective, fair and inclusive institutions (Driver 2) attention should be given to grass-roots initiatives aimed at accountability and service delivery of institutions.

   ■ To strengthen social cohesion (Driver 3) multi-ethnic parties can play an important role by focusing on issues shared across the ethnic spectrum — such as workers' rights — together with trade unions and diaspora groups which focus on fair terms of employment.

Contents

Abstract

This briefing provides a summary analysis of findings from a case study on Bosnia and Herzegovina (BiH), as part of an eleven-country research and dialogue project considering what drives a resilient national social contract in countries that are affected by conflict, fragility, or are in transition. It argues that two different kinds of social contracts — an »elite social contract« and an »everyday social contract« exist in BiH. The elite social contract perpetuates rather than addresses core conflict issues and works against the drivers of a resilient social contract — particularly in terms of efficiency and inclusivity of institutions, but also attempts to broaden and deepen social cohesion. By contrast, the everyday social contract shows the potential for facilitating these drivers. Pressing economic and social needs challenge interpersonal and intergroup differences among the population; create opportunities for social cohesion; and contest the existence of the elite social contract. Policy recommendations focus on ways to support the forging of one national social contract, which can help transform the current dynamics and positively influence the drivers of a resilient social contract. In particular, grass-roots activism, multi-ethnic political parties, trade unions, as well as the diaspora have high potential for supporting the gradual development of a resilient national social contract.

1. Introduction

The 1992–1995 war in Bosnia was ended with the Dayton Peace Agreement (DPA), which aimed at managing tensions between the three main ethnic groups — Bosniaks, Croats, and Serbs, who are identified in the Constitution as the country's Constituent Peoples — by preserving the territorial integrity of the state while endorsing the internal separation, mainly along ethnic lines.[1] The implementation of the agreement introduced one of the most wide-ranging peacebuilding interventions the world had seen to that point. A wide array of international organisations – led by the Office of the High Representative (OHR) — imposed laws, removed democratically elected officials, transformed the legal sys-

tem, and overhauled the country's economy. However, 22 years into the implementation of the agreement, the country has not witnessed the creation of a resilient national social contract. Instead, two competing social contracts have been created in BiH — an »elite social contract« and an »everyday social contract«.

The elite social contract encompasses political elites from the three main ethnic groups, along with the international community, business elite, the judiciary, and some segments of civil society. This contract exploits core conflict issues — different conceptions of territorial boundaries among the main ethnic groups and the ethnically structured governance — in order to maintain the status quo,[2] that is, to preserve their power and accommodate the interests of a relatively small clique.

The everyday social contract involves citizens trying to make sense of and manage a social and economic environment heavily disrupted by the 1992–1995 war. The manifest limitations of the elite social contract in delivering jobs, educational and health services, and in general in addressing citizens' demands has led many Bosnians to assign less weight to group differences, and to rely largely on themselves and/or informal networks to meet their needs and to access services and opportunities. This way, they are pressuring institutions for greater socio-economic inclusivity, which influences vertical and social cohesion in the country.

The elite social contract still perseveres in setting the parameters within which the everyday social contract develops and evolves. Citizens cultivate their relationships, views, and expectations within a context dominated by the nationalist-driven, status quo-oriented elite social contract. Non-nationalistic forms of agency and citizenship claims exist, but they are sidelined and their manoeuvring space is significantly limited. During the last decade, however, the country has witnessed the emergence of a few grass-roots initiatives to challenge the elite social contract through protests, informal citizens' councils (plenums), as well as various other initiatives aimed at addressing the socio-economic needs of the population shared across the ethnic spectrum. This policy brief examines how these and other elements of the

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1. Two semi-independent entities were created: the Federation of BiH (FBiH), predominantly populated by Bosniaks and Croats; and the Republika Srpska (RS), predominantly populated by Serbs. FBiH was established earlier by the Washington Peace Agreement, which ended the violence between Croats and Bosniaks. The agreement was signed on 18 March 1994.

2. Roberto Belloni and Bruce Hemmer (2010): Bosnia-Herzegovina: Constructing Civil Society Under a Semi-Protectorate, in: Thania Paffenholz (ed.), *Civil Society and Peacebuilding: a Critical Assessment*. Boulder: Lynne Rienner: 129ff.

Project Background and Methodology

This case study and overarching eleven-country research and policy dialogue[3] project is informed by a conceptual framing and methodology[4] that investigates what drives a *resilient national social contract* — that is, a dynamic national agreement between state and society, including different groups in society, on how to live together. This includes how power is distributed and exercised, and how different demands, conflict interests, and expectations around rights and responsibilities are mediated over time through different spheres and mechanisms. Three postulated »drivers« of such a contract — constructed through and deeply rooted in evidence-based research and dialogue within the project working group — are that:

1. Political settlements are increasingly inclusive and responsive to »core conflict issues;[5]
2. Institutions (formal, customary, and informal) are increasingly effective and inclusive and have broadly shared outcomes that meet societal expectations and enhance state legitimacy;
3. Social cohesion is broadening and deepening, with formal and informal ties and interactions binding society horizontally (across citizens, between groups) and vertically (between citizens/groups and the state).

The value of these proposed drivers and their interactions to support such a contract are assessed in this research, and the implications for attaining and sustaining peace.

»Social contract-making« spheres and related institutional mechanisms — central to the study framing and findings — are conceptualised as follows: *peacemaking*, peace agreement or political agreement; *transitional*, sequenced dialogues, commissions, truth and reconciliation processes); *governance-related*, including formal mechanisms (codified structures of government, formal institutions, national development plans, devolution frameworks/policies) and hybrid mechanisms (where religious/customary/non-state actor and state mechanisms interact); and everyday, citizen actions or practices, norms, mores. In this study, the *everyday* sphere also serves as a litmus test of the extent to which higher-level, formalised agreements or processes represent wider societal views.

Figure 1: Three Drivers of Resilient Social Contracts
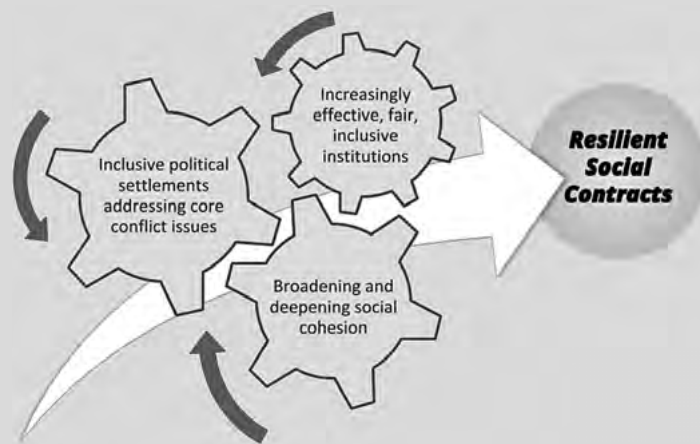
The research is based on findings from three focus groups held in Jajce, Doboj, and Tuzla between January and February 2017. To triangulate findings, twelve semi-structured interviews were conducted with officials from international organisations, as well as representatives from state-level institutions, non-governmental organisations and grass-roots actors and a workshop with representatives from the local academic expert community was organised in June 2017. Opinion polls, reports, and secondary literature were also considered.

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3. http://www.socialcontractsforpeace.org/

4. For full project framing, see Erin McCandless (2018): *Reconceptualizing the Social Contract in Contexts of Conflict, Fragility and Fraught Transition.* Working Paper, Witwatersrand University; http://www.wits.ac.za/news/sources/wsg-news/2018/reconceptualizing-the-social-contract---in-contexts-of-conflict-fragility-andfraught-transition.html (last accessed on 12.11.2018).

5. As defined in this study, these are overt drivers of conflict and discord — either historical, or contemporary in nature — broadly agreed by the main parties to drive conflict and discord, which are being disputed in the policy arena nationally, over time, and have resonance for most, if not all of the population. They are ideally reflected in formal agreements or mechanisms, and enable examination of how state and society address conflict (McCandless 2018).

everyday social contract could help unravel the elite social contract and aid the everyday social contract's transformation into a resilient national social contract.

2. Summary and Analysis of Key Findings

Through the prism of three »drivers« of a social contract, described in the box above, and with particular attention to progress in addressing what we refer to as the two »core conflict issues«, the case study examines the DPA — the most recent and comprehensive attempt at political settlement in BiH — to assess progress towards a resilient social contract. As the case illustrates, the DPA resulted from a compromise between the warring parties. It established the OHR to oversee the civilian implementation of the agreement, representing the countries involved in the DPA through the Peace Implementation Council. The OHR tried to facilitate a social contract-making (Driver 1), even through the adoption of binding decisions when local parties proved unable or unwilling to act. However, this implementation mechanism did not undermine the power of domestic elites, who coalesced into an unwritten elite social contract to maintain the status quo through the exploitation of communal fears and patronage — particularly the control of employment in the public sector. This guaranteed a level of social peace, despite the fact that national and local bureaucracies perform poorly in terms of service delivery (Driver 2).

While the overall context is unsuitable for the emergence of civic identity and non-nationalist forms of mobilisation, Bosnian citizens have managed to preserve some aspects of their historical tradition of coexistence. This is particularly evident in interactions at the everyday level. Economic needs and self-interest make such dealings frequent and help create forms of social cohesion (Driver 3). The economy offers opportunities for interethnic cooperation, which are also significantly supported by the Bosnian diaspora through investments, knowledge transfer, and remittances. Grass-roots and informal citizen groups may further contribute to long-term shifts in civic consciousness by redirecting the public's attention from ethnic issues to socio-economic concerns shared across the ethnic spectrum.

It is against this background that the three drivers of a resilient social contract are addressed in the following section.

2.1 »DRIVER 1«: Political Settlements Addressing Core Conflict Issues

Our study found that the DPA was backward in addressing institutional social contract-making mechanisms and spheres in order to carry forward and implement the agreement, because it was driven by the imperative of ending the war rather than building a viable state. First, although the agreement preserved the country's unity, it divided BiH into two administrative units organised along ethnic lines. Additionally, the institutionalisation of ethnicity at all levels of governance guaranteed the post-war prominence of the same political parties and individuals who conducted the war, thus laying the path for the establishment of the elite social contract.

The peace agreement paid no attention to the functionality of the soon-to-be established institutions. The complex institutional structure created by the DPA went hand in hand with the creation of an unwieldy administrative apparatus. The existence of various levels of governance and overlapping competencies across state, entity, cantonal, and municipal levels resulted in frequent ethnic outbidding, policy paralysis, the creation of informal networks, and corruption. Not only has this system created an inefficient and corrupt economy, but it has also handed over the control of jobs in the blotted public sector to nationalist political parties and established a large bureaucracy loyal to them. Pervasive clientelism further contributes to demobilising political and social opposition.

»Gdje je puno baba, kilava su djeca«
(with many midwives, children will be feeble).

A focus group participant in Tuzla commenting on the complex institutional structure of the country.

One of the exceptional institutions established by the DPA, in that it occasionally addresses core conflict issues, is the Constitutional Court. It is the main hybrid institution in the country, composed of six local judges — two Bosniaks, two Croats, and two Serbs — and three international judges selected by the European Court of Human Rights. Its composition has resulted in a balanced approach to ethnic-based issues, and its decisions are generally seen as being adopted for the benefit of all citizens living in the country, regardless of their ethnic background. This has been particularly evident in the Court's rulings addressing ethnic discrimination

issues. Most notably, in its 2002 »Constituent Peoples Case«, the Court ruled against institutional segregation and national discrimination and thus opened the way for the representation of all three constituent peoples in both administrative entities.[6]

The ethnically structured governance imposed by the DPA was challenged by two Bosnian citizens with minority backgrounds — an ethnic Jew and an ethnic Roma — who claimed that they were marginalised by provisions of the peace agreement preventing them from running for public office. Their case, known as »the Sejdić & Finci v. Bosnia and Herzegovina«, was brought before the European Court of Human Rights in 2009. The Court found that national minorities do not enjoy the right to compete for certain offices and thus urged Bosnia to amend its constitution with regard to the election of the members of the House of Peoples and the Presidency.

Not only was this ruling not implemented — because this would have challenged the ethnic governance system sustaining nationalists' power — but it failed to mobilise ordinary people, who typically remain either uninterested or disillusioned with regard to constitutional issues and more broadly in the political sphere. Citizens' lack of interest is reflected in a noticeable decline in voter turnout over the years, signalling low vertical social cohesion in the country (see 2.3).[7] A significant portion of those still voting are embedded in political parties' patronage networks, and thus exercise their right to vote in order to maintain or gain employment opportunities and other benefits. In addition, there is a growing number of cases in which voting ballots are invalidated by citizens who refuse to vote for candidates on the list and add their own candidates or write messages expressing contempt for political elites.[8]

»It pains me to hear people saying, ›this is our fault, we choose them in elections‹, this can't be true because around 50 per cent of the population doesn't vote in the elections, people are simply disillusioned with the system.«

A participant in the Jajce focus group.

2.2 »DRIVER 2«: Institutions Delivering Effectively and Inclusively

Inclusion viewed through the lens of three Constituent Peoples being institutionally represented is high. Bosniaks, Croats, and Serbs are all represented in government and state bureaucracies, while local institutions tend to be dominated by Bosniaks and Croats (in the FBiH) or Serbs (in the RS). Nevertheless, this ethnic inclusivity fails to adequately translate into state legitimacy, because of the poor performance of institutions at all levels.

»Everywhere we turn, all doors are closed for us.«

A closing statement of a participant in the focus group in the town of Jajce, referring to the performance of public institutions.

Institutions are widely perceived as inefficient, unfair, and unpredictable — especially when compared with the pre-war, Yugoslav institutions that provided social security and universal healthcare. The perception of the performance of public institutions and services in BiH is below the regional average on all indicators, including transparency, treatment of citizens, time required for getting information and obtaining services, as well as the price of public services.[9]

The shift from the pre-war extensive social security and healthcare to a pervasive ambiguity with regard to the responsibilities for welfare has pushed citizens to rely increasingly on *štela*[10] — a culturally embedded practice of having strong links in society, a network of connections used in many aspects of public life, and involving a broad spectrum of behaviours from small favours to more blatant forms of corruption. Bosnian citizens have relied on these connections mainly to fill the void that was created

6. Christopher McCrudden & Brendan O'Leary (2014): *Courts and Consociations.* Oxford University Press: 86f. Notably, the ruling was not implemented in all institutions in the country.

7. Stalni pad izlaznosti birača u FBiH: Sarajevo primjer sve veće apstinencije (2016): *mojportal.ba* (4.10.2016); http://www.mojportal.ba/novost/234618/Stalni-pad-izlaznosti-biraca-u-Federaciji-Sarajevo (last accessed on 20.10.2016). For example, in central Sarajevo municipality only 43 per cent of the electorate voted in the 2016 elections.

8. Rama-Prozor Info (2014): Smiješna strana izbora: Što su birači pisali po listićima (13.10.2014); https://www.rama-prozor.info/clanak/smijesna-strana-izbora-sto-su-biraci-pisali-po-listicima/9749 (last accessed on 30.04.2018).

9. Regional Cooperation Council (2016): *Balkan Barometer 2016*, Sarajevo: 105ff.

10. Čarna Brković (2015): Management of Ambiguity: Favours and Flexiblity in Bosnia and Herzegovina, Social Anthropology 23 (3): 268ff.

by the failure of public institutions' transition to democracy, especially in terms of service provision and employment opportunities.

According to a UNDP report, an astounding 95 per cent of over 1,600 respondents believed that štela is required to access healthcare, education, employment, and documents.

In addition to being inefficient, services are also provided on the basis of ethnic criteria, thus perpetuating societal divisions and hindering the development of a resilient national social contract. Notably, the educational system is de facto divided into three separate curricula, while pupils are separated on the basis of their declared nationality. In some parts of the federation, education is organised according to the principle of »two schools under one roof«,[11] with schools divided into Croat and Bosniak sections. Even in cases where Bosniak and Croat children attend the same school, they are exposed to »their own« national curriculum.

Youth face a lack of employment opportunities. The high level of unemployment, estimated by local institutions at 43 per cent, along with the majority of opportunities for employment being situated in the public sector controlled by political elites have further affected citizens' views of their institutions. Furthermore, the increase in the abuse of workers' rights — because labour law violations are often not processed by the judiciary — has not helped. The diaspora plays a useful role by investing resources and creating employment opportunities and by sharing new ways of conducting business based on professional standards applied abroad.[12]

Forms of political and social protest exist, but are challenged by fear of government reprisals. In February 2014, major demonstrations took place in different parts of the FBiH, reflecting grievances with regard to social justice issues shared across ethnic groups. This led

to the formation of Plenums (informal citizens' councils) requesting socio-economic reforms from political authorities.[13] As a result of these initiatives, five cantonal governments resigned and cantonal assemblies had some of their privileges revoked. Despite the fact that the anti-government momentum was difficult to maintain, some groups that emerged from the Plenums continue to challenge political elites.[14] If the economy continues to stagnate, social peace through patronage may be difficult to sustain. While citizens embedded in the nationalists' patronage networks will likely remain »loyal« to institutions, others will have to choose between »exit« or »voice«.[15] Continuing migration expresses the citizens' exit from a political and economic system unable to address their needs. At the same time, new voices among those remaining are being heard. For example, throughout 2016 and 2017 students in Jajce protested repeatedly against school divisions along ethnic lines,[16] while protests against political elites and the judiciary — led by the fathers of two young males whose murders were allegedly covered by the police — erupted throughout 2018.[17]

»… we simply give up halfway through. We become satisfied with small concessions that authorities gave us. We were not persistent.«

A participant in the focus group Jajce, criticising persistence of protesters from 2014.

2.3 »Driver 3«: Social Cohesion Broadening and Deepening

Bosnian nationality does not constitute an identity for all citizens, which along with the poor performance of institutions hinders vertical social cohesion. This attitude reflects the continuing influence of the first core con-

11. See A.D.Tveit, D.L.Cameron, and V.B. Kovač (2014): »Two Schools under one Roof« in Bosnia and Herzegovina: Exploring the challenges of group identity and deliberative values among Bosniak and Croat students, in: *International Journal of Educational Research* vol. 66: 103ff.

12. Sebina Sivac-Bryant (2016): *Re-Making Kozarac: Agency, Reconciliation and Contested Return in Post-War Bosnia,* London: Palgrave Macmillan: 175ff.

13. See Roberto Belloni, Stefanie Kappler, and Jasmin Ramović (2016): Post-Liberal Peace Transitions: Between Peace Formation and State Formation, in: Oliver P. Richmond and Sandra Pogodda (eds.), *Post-Liberal Peace Transitions*, Edinburgh: Edinburgh University Press.

14. See for example http://1grad1borba.org.

15. Albert O. Hirschman (1970): *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations, and States.* Cambridge and London: Harvard University Press.

16. See Bosnian school pupils reject ethnic divisions, BBC, (7.9.2016); http://www.bbc.com/news/blogs-news-from-elsewhere-37295574 (last accessed on 9.6.2017).

17. Agence France- Presse (2018): In Bosnia, young man's death stirs nationwide protest (7.07.2018); https://www.rappler.com/world/regions/europe/206713-bosnia-nationwide-protest-david-dragicevic (last accessed on 21.8.2018.).

flict issue, which is perpetuated through three competing official memory narratives. Potential alternatives to non-nationalist narratives — such as the antifascist narrative or one based on a Bosnian identity — are either too weak or formulated as one part of the dominant ethnonational approaches.[18]

At the same time, segments of horizontal cohesion seem to be surviving despite the pervasiveness of the two core conflict issues in public life, the media in particular. BiH has a rich history of coexistence and tolerance across groups, which is still partly visible and reflects the desire for bridging ethnic divisions imposed by the war and restoring social cohesion. Even in Dayton Bosnia, with its prevalent focus on ethnic categories, there are many examples of people crossing ethnic boundaries and demonstrating their willingness to continue the tradition of peaceful coexistence. One of the most notable recent examples is the students' protests in Jajce mentioned above.

Horizontal social cohesion — and to some extent vertical, too — is evident through bottom-up economic and social cooperation not only in BiH, but even among former Yugoslav states, and which Tim Judah called »Yugosphere«.[19] Processes of economic development facilitate forms of constructive interaction and even sharing, despite the difficult economic condition. Some companies in BiH hire citizens of different ethnic backgrounds, providing opportunities for interaction and exchange, particularly for the younger generations who grew up primarily in mono-ethnic communities.

High unemployment rates and a lack of welfare support from the state have led to a rise in inequality, which in turn has introduced embryonic forms of class politics and mobilisation. Paradoxically, this can have a reconciliatory dimension, because workers across ethnic groups can develop forms of solidarity in the fight for their rights. The case of the BiH Commerce and Services Trade Union involving members from both administrative entities is a good example of this emerging solidarity.[20]

In addition, by ameliorating the economic conditions, generating employment opportunities, and introducing professional standards and better working conditions, the diaspora has played a useful — albeit still marginal — role both in contributing to vertical and social cohesion. Despite its predominantly negative impact on the Yugoslav wars of the 1990s, it has indirectly contributed to intercommunal contacts and cooperation over the last decade.[21]

3. Policy Recommendations

Despite the consequences of the two core conflict issues — competing conceptions of territorial boundaries and loyalties and ethnically structured governance — manifested by the ongoing political impasse in Bosnia, local actors supported by the international community can still find ways to forge a resilient social contract. This section offers some policy recommendation that may facilitate the emergence of such a contract.

Driver 1: Inclusive Political Settlements Addressing Core Conflict Issues

Ideally, a wide-ranging discussion on core conflict issues among all political actors could address DPA's contradictory provisions, which perpetuate the pervasive presence of core conflict issues in public life. Bearing in mind that this is unlikely to happen in the near future, we hereby identify avenues that can be taken to challenge these issues and to move towards a more inclusive political settlement.

- The financing of anti-corruption institutions, which have the potential to uncover the links between political elites, business and judiciary;

- Focusing on ways to minimise or eliminate the executive's interference in the judiciary.

- Understanding and engaging the »everyday social contract« in order to take into account bottom-up concerns and build a sense of participation and ownership around issues of everyday concern.

18. Nicolas Moll (2013): Fragmented Memories in a Fragmented Country: Memory Competition and Political Identity-building in Today's Bosnia and Herzegovina, in: *Nationalities Papers* 41 (6): 910ff.

19. Tim Judah (2009): Yugoslavia is Dead, Long Live the Yugosphere, *LSEE Papers on South Eastern Europe,* London: LSE-Research on South Eastern Europe Institute, November 2009.

20. A talk by union's president Ms Mersiha Beširović, 4 April 2017.

21. Interview with Ms Aiša Telalović, Senior expert associate in the Ministry of Refugees and Displaced Persons, 28 November 2016.

Driver 2: Increasingly Effective, Fair, Inclusive Institutions

In general, promoting democracy is central to achieving inclusive and fair institutions and supporting the evolution of BiH's two social contracts into one national social contract. Those working to promote democracy at all levels should:

- Encourage and support grass-roots activism, particularly initiatives that focus on:

  – Issues shared by the three major ethnic groups who, claiming accountability of institutions, can potentially expose the vicious relationship between political power, business and judiciary.

  – Initiatives (i.e. demonstrations, sit-ins, civil disobedience actions, etc.) that demand that the voice of ordinary people is given a channel for communication with authorities.

- Consider ways of improving the transparency and universality of service delivery in order to better meet societal expectations, which are widely shared by members of the three main ethnic groups, as well as other minorities.

Driver 3: Broadening and Deepening Social Cohesion

Multi-ethnic political parties can play an important role in terms of contributing to more inclusive institutions and strengthening social cohesion. To be more effective, they should:

- Refocus agendas from the rhetorical promotion of their multi-ethnic dimension towards issues which can be appealing to all ethnic groups — i.e., everyday matters such as employment, the fight against corruption, workers' rights, equal opportunities, and universal healthcare.

To address issues of workers' rights, which are widely violated in many parts of the country and across ethnicity ethnic considerations, trade unions should:

- Increase their presence in the public sphere through campaigns aimed at raising workers' awareness of their agency and of legal avenues available to improve their status;

- Work on enlarging and attracting workers from different ethnic groups by focusing on their needs, offering them opportunities for legal assistance and financial support in what are usually prolonged trials by courts in cases where workers demand their rights.

To play a more consistently helpful role in advancing the implementation of the DPA in support of peace, the international community should:

- Work with diaspora groups, particularly those involved in the creation of new business opportunities and in the introduction of higher standards of working conditions.

- Support opportunities for combining business and economic activity with strengthening inter-ethnic cooperation and social cohesion, while guaranteeing adequate minimum wages and workers' rights.

- Not shy away from exposing political elites' use of core conflict issues for instrumental, self-serving reasons.

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