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Research Article

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# The 2013 Bosnia and Herzegovina Census: Waiting for Results and Counting the Questions

Valery Perry\*

Bosnia and Herzegovina held its first post-war census in autumn 2013, over two decades after the final 1991 Yugoslav census, following a war that displaced nearly half of the population, and killed approximately 100,000 people. The long delay was related to several reasons including the post-war reconstruction, the efforts to either support or obstruct the return of persons to their pre-war homes as guaranteed in the Dayton peace agreement, and pervasive ethno-political agendas. Such agendas were often based on the practical reality of who, from what constituent group, lives where. As of August 2015, the results have not been released. This article therefore reviews BiH's experience in the recent census, and poses a number of policy relevant questions about how the data could be used.

**Keywords:** Bosnia and Herzegovina, census, state-building, nation-building, power sharing

## Introduction

Bosnia and Herzegovina (BiH) held its first post-war census in 2013, after years of controversy and delay. The technical process rolled out over two weeks in October, and the subsequent data processing has continued through early 2015. While there had been some anticipation – and concern – that the results would be ready around the same time as the 2014 October general elections, it appears that the final results will not be announced until late-2015.

In the absence of anything other than the most preliminary data shared to date, as of August 2015 it is impossible to discuss the results that might be released. However, there are significant policy questions looming in terms of how the data may be used to make or affect public policy. It is not clear how the results will be used; how several non-mandatory questions will be analyzed or utilized; or whether independent researchers and analysts will have access to the data for independent study. Further, as of the time of writing it is unclear how contradictory references in many laws that refer to the census might be interpreted or implemented. Only once the results are fully and officially released, and once these policy questions are answered, will the lasting impact of the 2013 census be known.

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This article will briefly review BiH's contentious recent census history and the broad conduct of the 2013 census,<sup>1</sup> and will then focus on the potential impact of laws that alternately require policy to be based on the 1991 census or the "last" census.

### Why Count?

The author recalls a comment from friends sometime in 2004 mocking a commercial for laundry detergent that asserted that a very specific number of washing machines broke down each year due to using soaps that led to build-up. They scoffed, "how would anyone know that when we do not even know how many people live in this country?" While this was a joke, it demonstrated a certain truth – Bosnia had not had a census since before the war. Countries need to know how many people live in it to make policy decisions. The U.S. constitution – the world's shortest (excluding amendments) – includes a requirement for a decennial census (Article 1, Section 2), while this is supplemented by many other data collection methods, a proper census is still held every ten years, and forms the basis for important congressional seat allocation decisions. The EU also requires that its members collect census data, with the last census round held in member states – and some prospective member states – in 2011.

Data on a country's individuals and households, potentially including basic economic data, family size, employment status, educational attainment, agricultural data and other information – can help to inform a range of public policy decisions ranging from urban and infrastructural planning, school construction/expansion, social service provision and legislative re-districting. Some countries are beginning to move away from regular, broad-based, interview-style censuses, instead aggregating data from other existing public databases of information. For example, Slovenia now gathers information in this way<sup>2</sup>, as do a number of other countries.

While talking about statistics cause many people's eyes to glaze over, some elements of data collection can be quite controversial, as they can influence the distribution of public resources, or can establish the number of various groups of citizens in a society according to racial, ethnic, religious or linguistic affiliations. The questions posed, the manner in which they are asked (or not asked) and the coding and aggregating of data all allow for differences in interpretation, analysis and presentation. The technical can quickly become political.

This has particularly been the case in colonial and post-colonial regions, in fragile, heterogeneous societies, and in countries rebuilding in the wake of war and population displacement.<sup>3</sup> The way in which former colonial masters or new domestic leaders seek to categorize their populations has not only had contemporaneous implications, but lasting historical consequences as well.

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<sup>1</sup> A review of key issues in BiH's recent census history can be found in Valery Perry. 2013. *The 2013 Census in Bosnia and Herzegovina: A Basic Review*. *Democratization Policy Council Policy Note 3*. October 2013 (accessed: 30 October 2015).

<sup>2</sup> See Josipovic, this volume.

<sup>3</sup> Kertzner, David I. and Dominique Arel (eds.). 2002. *Census and Identity: The Politics of Race, Ethnicity, and Language in National Censuses*. Cambridge University Press.

Anderson has noted, “The fiction of the census is that everyone is in it, and that everyone has one – and only one – extremely clear place. No fractions.”<sup>4</sup> In some cases being counted is seen by various groups as the priority, while in others *not* participating in the count is viewed as preferable in terms of long-term policy options. While the role of groups in mobilizing can have significant implications, such processes diminish the space for individuals and their own possibly complex and layered identities, subsuming what might be considered as a personal choice into a social statement.

As demonstrated by the articles in this special issue, censuses have garnered particular controversy and interest in the countries of former Yugoslavia. It is not a coincidence that those countries that experienced the most difficult violent conflict and displacements, and which even at peace exhibit many looming questions about who “belongs”, have experienced the most census angst. Several of these cases are explored by Visoka and Gjevori, who review the 2011 census processes in several Western Balkan countries (Albania, Kosovo, Macedonia, Montenegro and Serbia), assessing whether they can be considered a full or partial success, or, in the case of Macedonia, a failure.<sup>5</sup> As BiH’s census results have not been released as of the time of writing, it is too soon to definitively determine whether the 2013 census can be considered a success. However, the long period of time without a census, the failure to organize one in 2011, the continued controversy concerning the sensitive questions and the lack of agreement, not to mention the adopted policies on how to use census data, once again reflects the problems that pervade every aspect of BiH political, social and even economic life: The lack of agreement on the state, the nature of the state, the nature of citizenship and a common vision for the present and the future.

### **Controversial Counting in BiH**

For nearly two decades after the war, BiH continuously relied on census data from the 1991 census – the final count in Yugoslavia – which itself was often read together with previous censuses conducted in the 19<sup>th</sup> and 20<sup>th</sup> centuries in the Ottoman Empire, the Kingdom of Serbs, Croats and Slovenes, and socialist Yugoslavia.<sup>6</sup> Throughout the 20<sup>th</sup> century, Bosnia has faced census challenges and constraints related (among other factors) to the presence of the three main groups in the territory, the competing claims regarding the notion of ethnicity, nationality and religious affiliation, as well as language/mother tongue.

The other contributions in this collection confirm the controversies about one’s proclaimed ethnicity, nationality, and what this might mean for a polity. In Bosnia, one of the key issues of contention for decades has been on how to categorize and count Bosnia’s Muslims; the categorization of Croats and Serbs has

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<sup>4</sup> Anderson, Benedict. 1991. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London: Verso, (Excerpt from Chapter 10, Census, Map, Museum,) 244-5.

<sup>5</sup> Visoka, Gezim and Elvin Gjevori. 2013. Census politics and ethnicity in the Western Balkans. *East European Politics*, 479-98.

<sup>6</sup> Raible, Elizabeth. 2008. *Dilemmas of the Projected 2011 Census of Bosnia and Herzegovina: Enumerating Ethnic Cleansing, Refugee Return, and National Identity*. MA/MPA thesis, Indiana University.

been in comparison rather straightforward. Miller describes the approach of the Communist Party during the inter-war and wartime periods, noting measures that began to recognize this group as a group in their own right; measures likely taken in part to secure support for the party by this important demographic: "...although in 1948 Muslims were only allowed to register on the census as Muslim-Serbs or -Croats, they were able to register with organizations (such as the Communist Party or Women's Anti-Fascist Front) as Muslims. In 1953 Muslims did not have qualified options on the federal census either, leading many to register as Yugoslavs, but by 1961, a category for "Muslim in the ethnic sense" (*Musliman u etničkom smislu*) was made available. Though not granting full national affirmation, the category was popular, drawing approximately 842,200 individual registrants in Bosnia alone (25.7% of the republic's population). Analysis of the statistical shifts between the two censuses suggests that a large portion of these had likely chosen Yugoslav in 1953. In the 1971 census, the category "Muslim (in the national sense) first appeared as an option on the Yugoslav census, with 1,482,430 people (39.6%) in Bosnia selecting it as the best description of their national identity."<sup>7</sup> In the last Yugoslav census in 1991, the option "Muslim" (*Musliman*) was also available (selected by 43.38% of the population in Bosnia), as was "Yugoslav" (selected by 5.5%). Other variants of responses, including the label "Bosniak," were varied and rare (reflecting fewer than 0.04% of respondents as Muslim-Bosniak," or "Bosniak- Muslim").<sup>8</sup> This issue remained a foremost concern among some activists in the run-up to the 2013 census, as there were fears that Bosniaks might respond that they are "Bosnian" or "Muslim," in either case decreasing the number in the category of "Bosniak."<sup>9</sup>

While historically and politically interesting, for policy purposes in general, and in the wake of the massive wartime displacement in particular, the need for a census in BiH was appreciated for years.<sup>10</sup> During the three-and-a-half year war, approximately 100,000 people were killed and 2 million (half of the entire population) were internally displaced or refugees.<sup>11</sup> The returns process was uneven, with people alternately deciding to either reclaim their property and stay, or to reclaim their property and sell, building their lives in a new post-war location. There have been many efforts to estimate the impact of the war, ranging from ad hoc assessments based on voter registers, informal confirmation of mostly homogenous communities and other "finger in the wind" approaches. Political parties and politicians follow such population trends as it helps them to target their generally monoethnic campaigns. Scholars have also developed their own models.<sup>12</sup> Government agencies and the civil service, very often bound by positive discrimination hiring regulations aimed at ensuring

<sup>7</sup> Miller, Brenna. 2014. *Competing Muslim Identities in the 1971 Yugoslav Census*. Paper presented at the Association for the Study of Nationalities World Convention. Columbia University, New York.

<sup>8</sup> Zavod za Statistiku Republika Bosne I Hercegovine. 1991. *Etnicka Obilježja Stanovništva. Rezultati za Republiku* (accessed: 01 November 2015), 10.

<sup>9</sup> Perry, *The Census in Bosnia and Herzegovina*.

<sup>10</sup> Perry, *The Census in Bosnia and Herzegovina*.

<sup>11</sup> Toal, Gerald and Carl T. Dahlman. 2011. *Bosnia Remade: Ethnic Cleansing and its Reversal*. Oxford University Press.

<sup>12</sup> See for example, Bochsler, Daniel. 2013. *The Distribution of Ethnic Identities in Post-War Bosnia and Herzegovina: A New Estimation Approach*. CIS Working Paper 81.

some staffing heterogeneity, have continued to use the 1991 census as their benchmark (see below).

In 2002 and 2003 a counting exercise in the Federation (FBiH) provided a foreshadowing of the dynamics of counting exercises, in terms of process, politics and social pressures. A “Federation-wide social mapping exercise” was held in 2002 in the Federation’s ten cantons, organized by the Federation government. It is interesting to note that this experiment is known by few, and the results seem to have been quickly shuffled aside. Markowitz studied this exercise looking both at these results as well as the information provided in marriage registers. She notes in particular the choices made in providing respondents with options on how they would like to declare themselves; rather than semi-open response options that could allow for a wide range of responses (as in 1991), “the FBiH population was now grouped into four categories only,” the three constituent peoples and the Others.<sup>13</sup> She relates anecdotes of enumerator pressure on respondents to elicit the “right” identity responses, and assesses the exercise as an exercise in hardening the identities according to the new post-war politics and reality: “the FBiH population survey, administered under government auspices only six years after the end of a war waged on the principle of ethnic cleansing, pushed familiar but slippery notions into fixed categories so that citizens (were) identified in the census along the exclusivistic, tripartite scheme agreed upon by their (nationalist) leaders and inscribed as the constitutional base of the state.”<sup>14</sup> While it was clear that in the preparation and conduct of the 2013 census there would be a similar potential for subtle persuasion or overt manipulation, beyond some civic discussions on the matter of the sensitive questions,<sup>15</sup> there was little effort by the BiH authorities or international supporters/donors to engage in de-escalating these issues. It was evident through interviews with technical experts and others that the main priority was to simply organize a census, and that the decisions on the sensitive questions would be left to the local level, and based on a commitment to “local ownership”.<sup>16</sup>

While an imperfect exercise in the Federation entity, the country as a whole still needed to capture this basic data. The United Nations Development Program (UNDP) and the Delegation of the European Commission in BiH drafted a paper in 2005 sketching out many issues that were seen as imperative in a BiH census. At the time, there were hopes that with proper planning and preparation, a census could be held in or around 2010. There was particular appreciation for practices and rules allocating certain political representation rights to groups according to pre-war data, to provide for “positive discrimination” aimed at taking steps to promote return and try to reverse the results of ethnic cleansing. “The key threat remains the impact of the results on the proportion-

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<sup>13</sup> Markowitz, Fran. 2007. Census and Sensibilities in Sarajevo. *Comparative Studies in Society and History* 49(1), 40-73, 45.

<sup>14</sup> Markowitz, *Census and Sensibilities*, 47.

<sup>15</sup> See Perry, *The Census in Bosnia and Herzegovina*.

<sup>16</sup> Author interviews and discussions in Sarajevo, 2013. This myopic focus on the technical played out in Macedonia as well. Friedman recounts his interaction with international observation mission members who “told me they were quite surprised when they discovered that they were embroiled in highly charged political issues, as opposed to a mechanical statistical exercise,” in Friedman, Victor A. 2001. *Observing the Observers: Language, Ethnicity, and Power in the 1994 Macedonian Census and Beyond*. *New Balkan Politics* 3/4 (accessed: 01 November 2015).

ality guarantees embedded in the Dayton Accords and subsequent agreements, and the associated domestic political reaction. It should be noted, however, that the 2002 ‘Agreement on the Implementation of the Constituent Peoples’ Decision of the Constitutional Court of Bosnia and Herzegovina’ specifically enshrines representation of the constituent peoples in the members of the Government after the completion of Annex 7”.<sup>17</sup> Neither then, nor today, was there agreement on a set of objective and agreed upon indicators that would conclusively enable parties to agree that Annex 7 was completed.

The lack of clarity on the questions that should be asked, and the ways that data might be formally or informally used, led to continued political delays on census organization in BiH. Serb politicians were most interested in moving forward with a count including identity-based questions, to presumably demonstrate the post-war “facts on the ground” in terms of demographic shifts. Bosniak and Croat parties were for years less supportive of such a process, with Bosniaks fearing the publication of any data that might be used as justification to “end” return, and Croat concerns about likely declines in their population throughout the country.<sup>18</sup> Positions on the issue remained polarized and deadlocked for years, like many policy and reform concerns. In 2011, the EU decided to connect the unfreezing of BiH’s EU Stabilization and Association Agreement (SAA) and the country’s ability to formally apply for EU candidacy status, to three goals: the adoption of a Law on State Aid, (adopted in February 2012); demonstration of credible progress in making the constitutional reforms needed in light of the European Court of Human Rights decision in the *Sejdic and Finci vs. Bosnia and Herzegovina* case;<sup>19</sup> and the adoption of a state law on census.

The *Law on the Census of Population, Households and Dwellings in Bosnia and Herzegovina in 2013* was ultimately adopted on February 3, 2012, without public consultation or a public comment period. It was quickly made clear that a political compromise had been worked out, which, while politically expedient, could be difficult to translate in terms of implementation and practical policy implications. To balance concerns regarding the sensitive identity issues, questions on “ethnicity/nationality” and “religion” were included as *non-obligatory* questions, while a question on “mother tongue” – a potential proxy for identity – was included as an obligatory question.

It is important to point out that relevant EU guidelines for member states or prospective member states clearly delineate that such subjective questions *are not required*, ultimately the decision to include these questions was made solely by BiH’s politicians.<sup>20</sup> The United Nations Economic Commission for Europe

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<sup>17</sup> *BiH Census: Proposed Way Forward*. A paper by the United Nations Development Programme (UNDP) and the Delegation of the European Commission (EC) to Bosnia and Herzegovina, July 2005.

<sup>18</sup> Zvijerac, Predrag. 2015. Nakon popisa – kaos. *Dnevni List*, 11 January 2015, 8-9.

<sup>19</sup> This was in fact actually dropped from the list of requirements to unfreeze the SAA in autumn 2014. Bassuener, Kurt / Perry, Valery / Vogel, Toby and Bodo Weber. 2014. [Retreat for Progress in BiH? – The German-British Initiative](#). *Democratization Policy Council Policy Paper*, November 2014 (accessed: 01 November 2015).

<sup>20</sup> There is a detailed EU legislative framework on census data collection, including: Regulation (EC) No. 763/2008; Regulation (EC) No. 1201/2009; Regulation (EU) No. 519/2010; and Regulation

(UNECE), in cooperation with EUROSTAT drafted the non-binding *Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing*.<sup>21</sup> This UNECE/EUROSTAT guidance includes recommendations for the organization and conduct of censuses that suggest that certain “non-core topic areas” reflecting ethnic/national/cultural characteristics (e.g., ethnicity, language, and religion) should be handled in an appropriately sensitive manner. Additional guidance is related to data monitoring and protection, with particular attention to minority groups, and the engagement of various minority groups in census preparations to build confidence in the process.<sup>22</sup> In addition, the Statistical Committee of the UN published guidelines entitled, *Principles and Recommendations for Population and Housing Censuses, Rev. 2*, in 2008 to assist the many countries organizing censuses in 2010 and 2011. Their recommendations also urged maximal flexibility of response in the event a country decides to ask identity-related questions. On issues related to language, countries are urged to collect data with a focus on functionality; for example, asking about the language one spoke at home in one’s early childhood; the language most frequently spoken in one’s home at the time of the census; and the ability to speak multiple languages; guidance aimed at measuring linguistic functionality, and to avoid the use of language as an oversimplified proxy for ethnicity.<sup>23</sup>

Following the adoption of the Law, planning, logistics and technical support efforts moved forward. A budget of 46,489,665 KM was allocated, with funds coming from BiH, the EU and various donors.<sup>24</sup> A slogan was agreed (“My Step to the Future”) after considerable debate among the entities as there was opposition by the Republika Srpska to including “BiH” or “Bosnia and Herzegovina” in the census slogan. In light of the work that needed to be done, initial plans to hold the census in April 2013 were scrapped, and October 2013 set as the new census date. The BiH and entity statistics agencies were engaged to begin intensive planning and coordination. An International Monitoring Operation (IMO) was established by the European Commission, the Council of Europe and the BiH Council of Ministers to monitor all phases of the census operation to ensure quality and public confidence in the process.

It quickly became clear that any hopes that the census would be more technical than political were unfounded. Nearly all attention fell squarely on the three sensitive identity questions. The intense focus on these issues reflects the role of census data in constructing and solidifying identities, “the ways in which the census is used to divide national populations into separate identity categories: racial, ethnic, linguistic or religious”.<sup>25</sup> The development of the census questionnaire was contentious, as initial plans envisioned limited “closed” questions

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(EU) No 1151/2010; and an Annex to Regulation No. 763/2008 that provides a list of required census topics. Eurostat’s, *EU Legislation on the 2011 Population and Housing Censuses — Explanatory Notes* provides further guidance.

<sup>21</sup> See also Pieter Everaers contribution in this issue.

<sup>22</sup> United Nations Economic Commission for Europe (UNECE). 2006. *Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing*. *United Nations*, 95-6.

<sup>23</sup> *Principles and Recommendations for Population and Housing Censuses, Rev. 2* (2.156).

<sup>24</sup> See [BiH Agency for Statistics](#).

<sup>25</sup> Kertzer and Arel, *Census and Identity*, 2.



for the sensitive questions, rather than an open-ended response option. A semi-open compromise option was ultimately adopted for the final form, as a result of pressure by civic groups and others.<sup>26</sup> Quite late in the process, a question related to the issue of one's entity citizenship was added (though respondents could opt to not declare); the purpose or possible implications of this question were not explained.<sup>27</sup> A pilot census was held from 1-15 October 2012, leading to immediate "leaks" focused solely on the questions regarding the respondents' identity declarations. While unfounded, this even further increased the politicization of the census environment, and a number of efforts to influence, shape or direct respondent responses to the three sensitive questions were initiated by the three constituent communities. Such efforts were particularly active among Bosniak activists, who feared that Bosniaks might be especially prone to respond instead as "Bosnian", demonstrating that the census was, as throughout the 20<sup>th</sup> century, still the most complicated for the country's Bosniaks – let alone for Bosnians or those citizens who rejected any identity labels.<sup>28</sup> Diaspora groups also became involved seeking a counting process that would include non-resident BiH citizens as well.<sup>29</sup> At no point was a clear public statement made by anyone in the international community – including the EU or individual members states funding the census – noting that the three controversial questions *were not required* by BiH to meet EUROSTAT standards or potentially secure future EU-related funding; nor was there an international statement clearly noting the international standards in this regard. The appropriate BiH institutions and authorities also failed to explain to citizens that the focus on the subjective identity questions had absolutely nothing to do with BiH's "EU path".

While campaigns aimed at influencing citizen responses to the identity questions were well underway throughout 2013, the absence of a widespread, official information campaign by the statistics agencies allowed for misinformation to spread. The IMO noted this in its 14<sup>th</sup> assessment report: "Unfortunately, these campaigns and rumors were not contradicted by an efficient official communication campaign and systematic official relations."<sup>30</sup> In fact, several IMO reports had noted concerns about the lack of preparation for public outreach. The public campaign only began in the weeks before the census was to begin, and made no effort to actively counter the abundant misinformation, or to educate citizens on their rights with regards to responding to sensitive questions. Some NGOs sought to fill this gap in the period just before the census began, through the launch of a website to facilitate irregularities during enu-

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<sup>26</sup> Perry, *The Census in Bosnia and Herzegovina*.

<sup>27</sup> Perry, *The Census in Bosnia and Herzegovina*.

<sup>28</sup> Perry, *The Census in Bosnia and Herzegovina*.

<sup>29</sup> N. N. 2013. Ticic: Diaspora Will Not Be Enumerated. *FENA*, 22 February 2013 (accessed: 01 November 2015).

As a compromise, a supplemental form was available online for Diaspora respondents to print, fill in and mail (form P-11N), but this was separate from the official census process, and not considered a part of the official census. This is not unique to BiH; the articles on Kosovo and Macedonia in this volume explore this issue as well.

<sup>30</sup> Steering Committee of the International Monitoring Operation (IMO) on the Population and Housing Censuses in Bosnia and Herzegovina. *Thirteenth Assessment Report*, 27 September-18 October 2013, 7.

meration, and the publication of booklets and a policy paper.<sup>31</sup> As reports of pressure, problems, and questionable planning and training grew, on 2 October (one day after the start of the count) the coalition *Jednakost* called for a boycott.<sup>32</sup> However, calls for boycotts or delays went unheeded, and the census went ahead as scheduled.

Broadly speaking, the October census unfolded relatively smoothly, and there was no “Macedonia scenario” that might have completely undermined or shut down the process.<sup>33</sup> While BiH officials, international community representatives and census experts generally viewed the 2013 enumeration process as a success, some voices have assessed it as questionable at best, and botched at worst. The IMO concluded that while there were some problems, the enumeration had been conducted largely in accordance with international standards: “In conclusion, the SC [Steering Committee] considers that despite some external pressure, the census enumeration was carried out smoothly and in accordance with the international standards”.<sup>34</sup> However, there were immediately voices who pointed out irregularities, either systematically or anecdotally. (There was no “script” used in the enumeration interview process, leading to many different interview experiences.) The NGO ‘Zasto Ne?’ reported that they had received more than 850 complaints online (Popismonitor.ba) or by telephone from 45 municipalities throughout the country. Complaints ranged from pressure to declare in one way or another on the sensitive questions, improper handling and storage of forms, and enumerator behavior that either indicated poor training or a concerted effort to manipulate data.<sup>35</sup> Unfounded speculation on the numbers of the country’s various ethno-national groups began promptly, with politicians and activists alike claiming data proving one point or another.<sup>36</sup>

Preliminary results were released in November 2013 in accordance with the Law. The preliminary results include very basic data on the population, households and dwellings, broken down by municipality, with the caveat that data could be subject to change once full data processing is completed. The total number of people enumerated was 3,791,622; 585,411 fewer than in 1991. Of these, 62.55% responded in the Federation, 35% in the RS, and 2.45% in Breko.<sup>37</sup> At the time of this writing it is unclear when the final results of the census will be publically available. In its 20<sup>th</sup> assessment visit in November 2014, the IMO noted progress in a number of technical areas, such as the elec-

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<sup>31</sup> For example, the NGO Zasto Ne? developed the web site, [www.popismonitor.ba](http://www.popismonitor.ba) to provide basic information on the census, and to provide a mechanism through which respondents’ complaints about the census process could be gathered. The NGO ACIPS published a policy paper on the topic of the census, entitled: *The Purpose of the Census: A Guide for Citizens*.

<sup>32</sup> Jukic, Elvira M. 2013. *Bosnian NGOs Call for Boycott of Census*. *Balkan Insight*, 3 October 2013 (accessed: 01 November 2015).

<sup>33</sup> The 2011 census in Macedonia was stopped during the enumeration process due to ongoing controversies. See Vrgova article in this volume for more information.

<sup>34</sup> Steering Committee, *Thirteenth Assessment*, 8.

<sup>35</sup> N.N. 2013. *Civic Monitoring Reveals Numerous Irregularities in BiH’s 2013 Census*. *Zasto Ne?*, 22 October 2013 (accessed: 01 November 2015).

<sup>36</sup> Irwin, Rachel / Halimovic, Dzenana / Bjelalac, Maja / Hunterer, Drazen and Mladen Lakic. 2013. *Bosnian Census Risks Deepening Ethnic Rifts*. *Institute for War and Peace Reporting*, 6 December 2013 (accessed: 01 November 2015).

<sup>37</sup> The data is available [here](#).

tronic database, but pointed out many tasks that remain if the results are to be finished by mid-2015, as they had hoped.<sup>38</sup> As of this writing (August 2015), there are hopes that the results could be released by the end of the year. However, this could be difficult, as there is fundamental disagreement between the entities on how to define the resident population in BiH, and, in turn, which collected forms should and should not be counted. The RS seeks a narrow definition of resident, insisting on residents living, working and studying in BiH in order to be finally included in the count. The Federation seeks a broader definition of residence, to potentially encompass more people who may live, work or study in another country for certain periods of time.<sup>39</sup> This again reflects an interest in manipulating numbers to get the results desired by policy-makers. In the case of the RS, they favor a restrictive framework that would not include people who have left or who reside outside of that entity more than they reside in it (namely minority returnees). Within the Federation, both Bosniaks and Croats have an interest in a broader count, the Bosniaks to both demonstrate their plurality throughout BiH, and to potentially increase the number of Bosniak returnees counted in the RS, and the Croats to ensure that their final count – as the smallest of the three peoples – is as high as possible, relying if necessary on Bosnian Croats living, working and studying in neighboring Croatia or elsewhere. The impact of the war on displacement, and policy differences related to displacement and return, remain central and core disagreements.

### **Lack of a Consistent and Harmonized Legal Framework**

In addition to ongoing technical, processing and analysis questions, there are a number of outstanding issues related to the future potential influence of the census on public policy.<sup>40</sup> The Law that provided for the census did not include reference to how the data collected might be – or must be – used to develop public policy. This leads to numerous questions: Will responses to optional, non-compulsory questions be used in policy-making? At what levels of government (state, entity, canton, municipality) can/might the data be used in policy-making? Will information on questions be aggregated? If so, how? It is particularly interesting to consider the role that the census data could potentially play in affecting various laws aimed at ensuring a certain “positive discrimination” in hiring practices. Two of these main outstanding questions are considered below.

#### *Which Census?*

First, there are many references to census data in state and entity legislation, and even in the entity constitutions. However, the language used is not consistent, leaving ample room for interpretation.<sup>41</sup> For example, the words “national” (*nacionalni*) and “ethnic” (*etnički*) are seemingly used interchangeably. Of more concern is the use of either “the last census” or “the 1991 census” as a reference point.

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<sup>38</sup> Steering Committee, *Thirteenth Assessment*.

<sup>39</sup> Vukic, Uros. 2015. Rezultata popisa jos ni na vidiku. *Nezavisne Novine*. 25 May 2015, 4.

<sup>40</sup> Perry, Valery. 2014. *How Will the Results of the BiH Census be Used?* *Democratization Policy Council Blog*, 19 December 2014 (accessed: 01 November 2015).

<sup>41</sup> This review is based on a memorandum entitled: *References to the Census in Selected List of State- and Entity Level Laws*, drafted in December 2013. This reference document, together with links to the noted laws, is available [here](#).

A number of state-level laws and institutions reference the “last” census when setting out the needed ethnic demographic structure of each body. The state-level Law on Civil Service in the Institutions of BiH states that, “The structure of civil servants within the civil service shall generally reflect the national structure of the population of Bosnia and Herzegovina in accordance with the last census,” and that, “Civil servants nationality is based on a voluntary declaration in accordance with this Law.” The Law on Administration of BiH similarly notes the requirement for “an appropriate ethnic structure” that reflects the last census, as does the Labor Law in the Institutions of BiH. The Law on the Intelligence and Security Agency of BiH, the Law on Auditing Institutions of BiH, the Law on the Service for Foreigners’ Affairs all reference the “last census” when providing guidance on the needed demographic structure of these bodies.

This is not, however, consistent. The Law on State Border Service references the 1991 census, with a high degree of specificity: “Structure of police officials, civil servants and other employees within the SBS shall in general reflect the national structure of the BiH population according to 1991 census pursuant to the following criteria: Representation of any of BiH constituent peoples at all levels shall in no event constitute more than 2/3 or less than 1/10 of the total number of the SBS staff. This provision shall not apply to the representation of Others, who shall, in any event be entitled to the representation according to 1991 census and the above criteria.” The Law on the Protection of Personal Data similarly notes the 1991 census when noting the employee structure of that Agency. The Framework Law for Primary and Secondary Education also references the 1991 census when considering school board composition. “The composition of the school board must reflect the national structure of students and parents, school staff and local community, as it is recorded at a relevant time, in principle according to the census of the BiH population from 1991.” However, inclusion of the words “in principle” can also potentially provide a certain leeway in interpretation and implementation. The Law on Rights of National Minorities notes that national minorities’ participation in public office and public services should be proportional, based on their representation in the “latest” census data.

A review of a number of laws at the level of the Federation entity shows a tendency to specifically reference the 1991 census, though there are again exceptions. At the highest level, the Federation constitution notes the following: “Published results of the 1991 census shall be appropriately used for all calculations requiring demographic data until Annex 7 is fully implemented.” Several other articles and amendments in the entity constitution repeat this. However, even within this constitution there is inconsistency. Article VI.3, Amendment 104, on issues of municipal governance, notes, “The municipal mayor and the president of the municipal assembly in a municipality or municipal assemblies of multiple national composition may not be from the same constituent group, or the group of others, except in those cases in which one constituent group composes more than 80% of the population, referring to the last census in Bosnia and Herzegovina.”

The Law on Civil Service in the FBiH, the Law on Employees in the Civil Service Organs in FBiH and the Law on Police Officers in FBiH each reference the 1991 census until such time as Annex 7 is implemented. However, in terms of the employment structure foreseen by the Law on Auditing the Institutions of FBiH, the “last census” is referenced.

In the RS, the entity constitution notes the 1991 census, also noting Annex 7 implementation as a benchmark: “As a constitutional principle, such proportionate representation shall be based on the 1991 census until Annex 7 is fully implemented, in accordance with the Civil Service Law of Bosnia and Herzegovina. This general principle shall be further regulated by specific legislation of the Entities.” However the Law on Public Servants, the Law on Local Self-Governance and the Law Regarding the Protection of National Minorities each reference the “last census”.

The District of Brcko, always a unique example, is again unique in its approach to this topic. The Statute of the Brcko District, the Law on Civil Service, the Law on Police Officials, the Law on Elections, and the Law on Public Administration all reference that the structure or composition of the population should be taken into account in employment, without any mention of any census.

This review does not consider every existing mention of the census in laws at any level of government; it is simply indicative of the kind of language used, and the variance that exists. However, by including key laws related to the civil service, elections and national minorities, it does demonstrate the potential for policy disagreements once the results of the census are finalized. In the absence of a harmonized approach to the data, would it be possible for one entity to continue to use the 1991 census as the reference point for civil service hiring goals, while the other uses the 2013 census? Could each entity statistics agency independently manipulate and interpret the data independently, publically issuing different analyses resulting in different policy proposals? Further, it demonstrates the sensitivity of linking public policy to the ill-defined implementation of Annex 7. There is no concrete guidance that will signal when the return process will be “done.” There is also no political agreement on what the “successful fulfillment” of Annex 7 might look like. This guarantees that census numbers will *always* be questioned and contested by those who believe that there is still the potential for more refugee returns – whether this might mean Croats or Bosniaks to the RS, or Serbs to the Federation.

#### *Which Questions?*

The second challenge is even more fundamental. Regardless of the language used in the various laws noted above, the intent is clear: to ensure that civil service and specific government bodies (generally) reflect the ethnic or national structure of the population in either the 1991 or the last census. Whether or not the 1991 or 2013 census is used as a reference point, the question remains how such population structure would be measured based on the 2013 data, since the question on ethnicity/nationality was not mandatory. When being enumerated, respondents were not told how this information might be used, or whether it would be used at all. It has been noted that international expert

guidance on such matters recommends that non-mandatory responses on such sensitive matters be used as an explanatory or independent variable.<sup>42</sup>

There is some possibility that the mandatory “mother tongue” question would be used as a proxy for nationality/ethnicity. However, this would be problematic in many ways, most notably because citizens were not told that this data would be used in such a way when compelled to respond. It is also possible to imagine that, in the absence of such clear demographic data on the population structure, the clear results from 1991 would continue indefinitely. However, this has not been stated, and laws have clearly not been revised to reflect such an approach. It is similarly unclear how the question on one’s “entity citizenship” (19.1) might be used, and how this information might influence policy-making (this question was not optional, but did have a “do not declare” option).

### Concluding Remarks

As of this writing it is still unclear when the results will be released. The International Monitoring Operation visited BiH in December 2014 for its 20<sup>th</sup> assessment mission, and urged the authorities to release the data by mid-2015; as with many other hoped-for deadlines, this one has come and gone. There has been some confusion as to whether the results may be published gradually, or in one formal release.<sup>43</sup> Much is uncertain.

There is no doubt that accurate census data is needed in BiH – as in any country – to effectively develop public policies, budgets and other planning mechanisms. Whereas the necessity of a census was certainly clear; it is less clear whether the identity-centered questions were necessary at this stage in the country’s consolidation. The nature of post-war BiH – and the continued squabbling over peoples, quotas and the meaning of constituency and citizenship – means that it is highly improbable that any of the groups will be satisfied with the outcome.

The question remains: how will census data be used in policy-making, of the “mundane,” day-to-day kind, or potentially in the larger constitutional deliberations? There is speculation that efforts by the country main Croat party leaders to seek constitutional protections (in the entity and/or the state) could be motivated in part by a desire to lock in changes prior to the release of data on how many Croats remain in the country. There are uncomfortable ongoing discussions on what it would mean if an aggregated count of the country’s “Others” might be larger than the count of one of the constituent peoples. (These discussions of constituency and citizenship have garnered further energy through some past and pending decisions by the European Court of Human Rights.<sup>44</sup>) Confirmation of Serb majorities in the Republika Srpska (potentially

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<sup>42</sup> See Everaers’ article in this volume.

<sup>43</sup> Dragojlovic, Mladen. 2014. Experts: BiH Census Key to Ease Ethnic Tension, Violence. *SETimes*, 5 December 2014 (accessed: 01 November 2015).

<sup>44</sup> In the now famous *Sejdic-Finci vs. Bosnia and Herzegovina* case, the European Court of Human Rights in 2009 found that the BiH constitution discriminated against the country’s non-constituent peoples (the “Others”) by restricting the ability to run for certain state-level offices to only those who declare as Bosniak, Croat or Serb. In 2014, the Court ruled in the *Zornic vs. Bosnia and Herzegovina* case that the plaintiff was discriminated against for refusing to declare as a member

measured through both the sensitive questions and the entity citizenship response) and relatively low rates of Bosniak return could fuel future secession rhetoric.<sup>45</sup>

The year 2015 stands to be a difficult one for Bosnia and Herzegovina. Nearly a year after the October 2014 general elections, the coalitions at all levels are unstable and, to date, broadly ineffective.<sup>46</sup> The country's economic situation remains dire, as an unfriendly investment atmosphere, together with the high costs of doing business and an overburdened public administration, fuelled patronage, continue to take a financial toll on an already strapped population. While there is much talk of the need to focus on socio-economic issues, the politics of identity remain a constant theme in political discourse and strategy. The census results will be released in this environment, and will contribute to it. Whether or not they play a role in crafting more effective public policies and contribute to social stability and confidence, or are added to the already large toolbox of divisive political rhetoric, remains to be seen.

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of any particular ethnic group, preferring to declare as a citizen of the country. Another case, *Ilijas Pilav vs. Bosnia and Herzegovina*, is pending decision, and again looks at the issue of requirements of declared constituency in standing for public office.

<sup>45</sup> Toal, Gerard. 2014. 'Republika Srpska Will Have a Referendum.' *The Rhetorical Politics of Milorad Dodik*. *Nationalities Papers* 41(1), 166-204.

<sup>46</sup> Keil, Soeren and Valery Perry. 2015. Back to Square One? An Analysis of the 2014 General Elections in Bosnia and Herzegovina. *Electoral Studies* 38, 82-136.

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