



**International Convention
On the Elimination
Of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Sixty-eighth session
20 February – 10 March 2006

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE
9 OF THE CONVENTION

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

BOSNIA AND HERZEGOVINA

1. The Committee considered the initial to sixth periodic reports (the “Report”) of Bosnia and Herzegovina due from 1994 to 2004, respectively, and submitted in one document (CERD/C/464/Add.1), at its 1735th and 1736th meetings (CERD/C/SR. 1735 and 1736), held on 22 and 23 February 2006. At its 1754th and 1755th meetings (CERD/C/SR.1754 and 1755), held on 8 March 2006, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Bosnia and Herzegovina and the opportunity thus offered to open a constructive dialogue with the State party. It regrets, however, that, according to the State party, insufficient financial and human resources were available for the preparation of the Report, which was submitted more than one year after its completion in 2004, and that only a limited number of non-governmental organizations were consulted during the preparation process. The Committee nevertheless appreciates and is encouraged by the frank, detailed, and often self-critical answers the delegation gave in response to the Committee’s many questions.

3. While acknowledging the constraints faced by the State party in the aftermath of the armed conflict on its territory from 1992 to 1995, the Committee notes that the Report was more than ten years overdue when submitted. It invites the State party to make every effort to respect the deadlines for the submission of its future reports.

B. Factors and difficulties impeding the implementation of the Convention

4. The Committee notes that the structure of the current Constitution of Bosnia and Herzegovina allocates certain important rights on an explicit ethnic basis. The Committee recognizes that this structure arises out of the Dayton/Paris Peace Agreement and that it may have been necessary, on an interim basis, to secure peace in the aftermath of the armed conflict. However, the Committee also notes that the Constitution's current assignment of important rights based expressly on ethnicity may impede the full implementation of the Convention.

C. Positive aspects

5. The Committee appreciates the delegation's assurances concerning the State party's willingness to proceed with meaningful legislative and institutional reforms aimed at eliminating racial discrimination and, in this context, to engage in a constructive dialogue with the Committee, with a view towards ensuring equality between and among all ethnic groups within the territory of the State party. More specifically, the Committee notes that in its dialogue with the Committee, the State party itself recognized the need to amend its Constitution and Election Law to implement the Convention. To that end, the State party represented to the Committee that it already has taken specific measures to do so.

6. The Committee notes with satisfaction that the State party has ratified all of the core United Nations human rights treaties, that the International Convention on the Elimination of all Forms of Racial Discrimination (the "Convention") is incorporated into the domestic law of the State party, that the Convention has the same standing as the Constitution of the State party, and that the Convention can be directly applied in the State party's courts.

7. The Committee welcomes the progress made by the State party in reducing the number of incidents in which attempts to return to pre-armed conflict residences have been impeded by force, violence, or threats of force or violence, in particular the State party's prosecutions and punishment of the perpetrators of such acts under sections 145 and 146 of the Criminal Code of Bosnia and Herzegovina.

D. Concerns and recommendations

8. The Committee is concerned about the lack of updated statistical data on the ethnic composition of the population, as well as on the number and nature of reported acts of racial discrimination within the territory of the State party. It notes that the last census was conducted in 1991, that is, before the armed conflict which caused significant demographic changes within the territory of the State party. In the absence of such statistical information, the Committee finds it difficult to assess the extent of ethnic discrimination within the territory of the State party.

The Committee recommends to the State party that it endeavour to collect disaggregated statistical data on the ethnic composition of its population and establish adequate mechanisms for monitoring acts of ethnically motivated discrimination and violence among its different ethnic groups.

9. The Committee notes with concern reports about the lack of adequate funds for, and the lack of financial autonomy of the Human Rights Ombudsman of Bosnia and Herzegovina, as

well as reports that the effectiveness and efficiency of the institution are diminished by its tripartite structure.

The Committee recommends to the State party that it ensure the financial autonomy and functional effectiveness of the Office of the Ombudsman, in accordance with the Paris Principles of 1993,¹ and that in the event of a merger among the Ombudsman Offices of the State and its constituent entities, such consolidation proceed with a view towards ensuring a unitary rather than ethnically divided approach to defending fundamental human rights.

10. The Committee is concerned that the catalogue of human rights and fundamental freedoms contained in Article II (3) of the Constitution of Bosnia and Herzegovina, which are covered by the prohibition of discrimination in Article II (4), does not include all civil, cultural, economic, political and social rights protected under Article 5 of the Convention (Art. 2 (1) (c)).

The Committee recommends that the State party take the necessary legislative measures to ensure that the prohibition of ethnic discrimination contained in Article II (4) of the Constitution of Bosnia and Herzegovina applies with respect to the enjoyment of all of the rights and freedoms set forth in Article 5 of the Convention.

11. The Committee is deeply concerned that under Articles IV and V of the State Constitution, only persons belonging to a group considered by law to be one of Bosnia and Herzegovina's "constituent peoples" (Bosniaks, Croats, and Serbs), which group also constitutes the dominant majority within the Entity in which the person resides (*e.g.*, Bosniaks and Croats within the Federation of Bosnia and Herzegovina, and Serbs within the Republika Srpska), can be elected to the House of Peoples and to the tripartite Presidency of Bosnia and Herzegovina. The existing legal structure therefore excludes from the House of Peoples and the Presidency all persons who are referred to as "Others," that is persons belonging to national minorities or ethnic groups other than Bosniaks, Croats, or Serbs. Although the tripartite structure of the State party's principal political institutions may have been justified, or even initially necessary to establish peace following the armed conflict within the territory of the State party, the Committee notes that legal distinctions that favour and grant special privileges and preferences to certain ethnic groups are not compatible with Articles 1 and 5 (c) of the Convention. The Committee further notes that this is especially true when the exigency for which the special privileges and preferences were undertaken has abated. (Arts. 1 (4) and 5 (c)).

The Committee urges the State party to proceed with amending the relevant provisions of the State Constitution and the Election Law, with a view to ensuring the equal enjoyment of the right to vote and to stand for election by all citizens irrespective of ethnicity.

12. The Committee expresses its concern that the State and Entity Constitutions allocate certain authority to, and confer specific rights exclusively on members of the so-called

¹ GA Res. A/48/134 of 20 December 1993

“constituent peoples” (Bosniaks, Croats and Serbs), and that persons not belonging to one of these ethnic groups are formally referred to as “Others” (Article 2 (1) (c)).

The Committee urges that the State party ensure that all rights provided by law are granted, both in law and in fact, to every person within the territory of the State Party, irrespective of race or ethnicity. The Committee strongly recommends that the State party review and remove all discriminatory language from the State and Entity Constitutions, and from all legislative and other domestic law texts, including especially, but not limited to, distinctions between so-called “constituent peoples” and “Others.”

13. While noting with favour the existence of several criminal law provisions punishing acts of racial discrimination, the Committee is concerned about the absence of comprehensive anti-discrimination legislation, including especially legislation and regulations in the civil and administrative fields, which make unlawful acts of racial discrimination that may not constitute criminal offences (Art. 2 (1) (d)).

The Committee recommends that the State party enact comprehensive administrative, civil and/or criminal anti-discrimination legislation, which prohibits acts of racial discrimination in employment, housing, healthcare, social security (including pensions), education and public accommodations.

14. The Committee is concerned about information that the Roma Council, which was established in 2002 and is composed of non-governmental organizations representing the interests of the Roma population, does not have sufficient funding or resources to fulfil its mandate, and is rarely consulted by the Council of Ministers of Bosnia and Herzegovina (Art. 2 (1) (e)).

The Committee recommends that the State party strengthen the role of the Roma Council by providing sufficient funds for the Council to effectively carry out its mandate, and that the Council be consulted in connection with any decision-making processes that impact the rights and interests of the Roma population, in accordance with the Committee’s General Recommendation 27.²

15. The Committee notes with concern that the National Strategy for Roma reportedly fails to identify specific measures, allocate sufficient funds, or identify competent bodies to which responsibility for implementing the strategy is assigned. (Article 2 (2)).

The Committee recommends that the State party review the National Strategy for Roma to ensure that it identifies specific measures, establishes adequate budgetary allocations, and identifies the bodies responsible for its implementation.

² CERD, 57th session (2000), General Recommendation No. 27: Discrimination against Roma, at para. 43.

16. The Committee notes with concern reports about the lack of effective implementation of criminal law provisions, such as Articles 145 and 146 of the Criminal Code of Bosnia and Herzegovina, punishing acts of racial discrimination (Arts. 4 (a) and 6).

The Committee urges that the State party ensure the effective implementation of all legal provisions aimed at eliminating racial discrimination, and that it provide in its next report updated information concerning the application by courts within Bosnia and Herzegovina of criminal law provisions punishing acts of racial discrimination, in particular Articles 145 and 146 of the Criminal Code of Bosnia and Herzegovina; such information should include the number and nature of cases brought, convictions obtained and sentences imposed, and any restitution or other remedies provided to victims of such acts.

17. The Committee is deeply concerned about the difficulties that many Roma experience in obtaining personal documents, including birth certificates, identification cards, passports and documents related to the provision of health insurance and social security benefits (Art. 5 (e)).

The Committee urges the State party to take immediate steps, e.g. by removing administrative obstacles, to ensure that all Roma have access to personal documents that are necessary for them to enjoy, *inter alia*, their economic, social and cultural rights, such as employment, housing, health care, social security and education.

18. The Committee notes with concern that the claims of many workers belonging to certain ethnic minority groups who during the armed conflict were dismissed from their jobs and/or placed on waiting lists because of their ethnicity have not yet been resolved, and that workers whose cases have been resolved by the Entity and cantonal Commissions established under Article 152 of the Republika Srpska Labour Law and Article 143 of the Labour Law of the Federation often have not received any compensation. (Art. 5 (e) (i)).

The Committee urges the State party to ensure that the claims of all workers who were dismissed from their jobs and/or placed on waiting lists during the armed conflict because of their ethnicity are resolved expeditiously and that the recommendations of the Entity and cantonal Commissions are implemented promptly and in good faith.

19. The Committee is concerned about the low representation of ethnic minorities, in particular Roma, in the labour market (Art. 5 (e) (i)).

The Committee recommends that the State party improve the employment of ethnic minorities, including in particular the Roma, in the public and private labour sectors, by implementing strategies that include offering training to qualify such persons for jobs in the labour market, providing incentives to employers for hiring such persons, and establishing an independent mechanism at the State level to address discrimination in the hiring and promotion practices in the public and private employment/labour sectors.

20. The Committee is deeply concerned that many people of different ethnic origin, especially the Roma, are unable to return to their pre-armed conflict homes because of the lack of legal title to their property or because of the authorities' failure to evict and punish temporary occupants who often vandalise or loot the homes before relinquishing possession of them. The Committee is also concerned about reports that many informal settlements in which Roma lived prior to the armed conflict have been destroyed, and that Roma continue to be evicted from their informal settlements, without adequate alternative accommodation being provided, and in view of the fact that Roma are frequently unable to rent private accommodation because of racial discrimination and/or poverty (Art. 5 (e) (iii)).

Referring specifically to General Recommendation 27,³ the Committee urges the State party to facilitate the return of all people of different ethnic origin, especially the Roma, to their pre-armed conflict homes, to ensure their ability to occupy and reside in informal Roma settlements legally and safely, and where necessary, to provide adequate alternative housing or compensation for displaced Roma, including to pre-armed conflict tenants who have been evicted from their settlements or whose homes have been destroyed.

21. The Committee notes that although pension benefits are significantly higher in the Federation than in the Republika Srpska, pensioners who previously received their pensions in the Federation, but who were internally displaced to the Republika Srpska, continue to receive pensions from the Republika Srpska Pension Fund upon their return to the Federation. Furthermore, most internally displaced persons returning to their pre-armed conflict Entity of residence keep their health insurance status in the Entity where they resided while displaced because of complicated registration procedures and fear of discrimination in the places of their pre-armed conflict residence, despite the significant financial burdens imposed on them by virtue of having to commute between Entities to receive treatment or, alternatively, to bear the full costs of health services in the Entity to which they have returned (Art. 5 (e) (iv)).

The Committee requests that the State party ensure that pension and health care benefits are provided on a non-discriminatory basis, without regard to ethnicity, especially where minority returnees are involved. The Committee further recommends that the State party review the deployment of its pension benefits and health care services and, for the time being, implement the Inter-Entity Agreement on health care.

22. The Committee is gravely concerned about the extremely low rates of primary and secondary school attendance by Roma children which, according to reports, are due primarily to the lack of means of most Roma families to finance clothing, transportation to school and learning materials for their children (Art. 5 (e) (v)).

The Committee urges the State party to implement effectively the recommendations contained in the Action Plan on Educational Needs

³ CERD, 57th session (2000), General Recommendation No. 27: Discrimination against Roma, at para. 31.

of Roma and Other National Minorities (2004), and to combat discrimination against Roma children and children belonging to other ethnic minority groups by teachers, school authorities, and classmates and their families.

23. The Committee is deeply concerned about the existence of mono-ethnic schools within the territory of the State party, and about the continued existence of 52 schools within the Federation which are characterized as being “two schools under one roof” wherein children of different ethnic backgrounds are physically segregated and taught different curricula (Arts. 3 and 5 (e) (v)).

The Committee strongly urges the State party to end public school segregation, that is, that it eliminate mono-ethnic schools and schools that are structured as “two schools under one roof” as soon as possible. The Committee recommends that competent authorities within the State party unify previously segregated schools under one administration, intensify their efforts to remove ethnically discriminatory elements from textbooks, remove mono-ethnic or mono-religious symbols and flags from all schools, and implement a modernized common core curriculum for all schools within the territory of the State party, which is sensitive to the diverse cultural attributes of the various ethnic groups within the territory of the State party.

24. The Committee expresses its deep concern about the persistence of ethnic divisions within the society of the State party, which reinforce structural discrimination and institutionalised prejudice and intolerance (Art. 7).

The Committee encourages the State party to actively support programmes that foster inter-cultural dialogue, and emphasize tolerance and understanding with respect to the culture and history of different ethnic groups within Bosnia and Herzegovina. The Committee further encourages the State party to promote such programs in public education, and in political and media symposia, with a view towards fostering greater respect for, and appreciation of the role of diversity in forging a stronger sense of national unity in the context of a common, multi-ethnic concept of Bosnian citizenship.

25. The Committee recommends that the State party take into account the relevant provisions of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, particularly as regards Articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

26. The Committee notes that the State party has not made the optional declaration provided for in Article 14 of the Convention, and recommends that it consider doing so.

27. The Committee strongly recommends that the State party ratify the amendments to Article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the

Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this regard, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment, and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

28. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized, in all official languages of the State party, as well as in the languages of national minorities of Bosnia and Herzegovina.

29. Pursuant to Article 9, paragraph 1, of the Convention, and Article 65 of the Committee's rules of procedure, as amended, the Committee requests that the State party inform it of its implementation of the recommendations contained in paragraphs 11, 18, 20, 22 and 23 above, within one year of the adoption of the present conclusions.

30. The Committee recommends to the State party that it submit its seventh and eighth periodic reports in a single report, due on 16 July 2008.
