



**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

SUMMARY RECORD OF THE 1737th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 23 February 2006, at 3 p.m.

Chairman: Mr. de GOUTTES

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Initial to sixth periodic reports of Bosnia and Herzegovina (continued)
(CERD/C/464/Add.1; HRI/CORE/1/Add.89/Rev.1)

1. At the invitation of the Chairman, the members of the delegation of Bosnia and Herzegovina resumed their places at the Committee table.
2. Mr. NAGRADIC (Bosnia and Herzegovina) said that while there were no official statistics on the size of each of the 17 legally recognized national minorities, it was estimated that in total those minorities made up about 2 per cent of the population. Despite sharing the language and religion of the Serbs, the Montenegro minority had now been recognized as a national minority.
3. The largest national minority was the Roma. According to estimates, there were between 30,000 and 40,000 Roma, although NGOs tended to over-estimate their number. Most of the Roma living in the Federation of Bosnia and Herzegovina were Muslim. The majority of those living in the Republika Srpska practised the Orthodox religion, while a small proportion were Muslim. For most Roma living in the Federation or in the former Yugoslav republics, however, religious affiliation was less important than it was for other national minorities.
4. The Roma were the most vulnerable national minority in social terms. While some Roma were extremely rich, many lived in poverty. Few of them had regular jobs, since they had no qualifications. They did not usually complete compulsory education, and large numbers of Roma did not attend school. In 2005, however, enrolment of Roma children had increased to 80 per cent in some regions, thanks to the provision of school transport, meals and equipment. The current problem was the lack of teachers who had been trained to teach in the Roma language; some primary schools, particularly in Tuzla Canton, did provide that teaching, but many more qualified staff were needed. Many Roma parents kept their children out of school, but some local authorities were also guilty of not enforcing the law to ensure that those children attended school.
5. In 2002, the Roma Board had been established as an advisory body to identify problems affecting that community and to refer issues to the competent bodies. Some 40 NGOs currently worked to protect the rights of the Roma, and the nine members of the Roma Council had been freely elected to work with the Council of Ministers. In 2005 that Council had adopted a strategy on Roma issues which had been published in the Official Gazette and published as a brochure. The strategy identified a number of problem areas, and action plans would be prepared on housing, employment and education for the Roma population. Despite its best efforts, the Government recognized that there were insufficient resources to ensure that the Roma adequately enjoyed their rights.

6. Many civil servants, academics, politicians and other professionals were members of national minorities. The electoral law was being amended to ensure that those minorities were represented, and the House of Representatives would include at least three members of national minorities.
7. At the beginning of 2006, the Parliamentary Assembly had begun consideration of a legislative amendment that would merge the entity-level offices of the ombudsman and the State Ombudsman into a single human rights Ombudsman's Office. While that process was under way, the Government was aware that the current priority was to raise awareness of the existence and mandate of the Ombudsman.
8. Since the country currently included three constituent peoples and 17 national minorities, creating a nation State was a complex issue. The "others" referred to as bearers of sovereignty in the preamble to the Constitution were people other than the constituent peoples. They were the members of all national minorities and the 0.1 per cent of the population who were members of neither a constituent people nor a national minority.
9. Ms. DJUDERIJA (Bosnia and Herzegovina) said that cantonal and municipal courts were now fully independent. The Independent Judicial and Prosecutorial Council was responsible for monitoring the work of newly appointed judges and prosecutors. Independent centres in both entities provided human rights training for judges and prosecutors. They cooperated with the relevant ministries and other institutions in an attempt to ensure that all members of the judiciary upheld human rights in accordance with domestic and international legislation.
10. In 2004, the mandate of the Human Rights Chamber had been taken over by the Human Rights Commission, working within the Constitutional Court. The Commission had about 20,000 cases pending. The Constitutional Court, as the highest judicial instance, could hear appeals relating to human rights violations.
11. Roma women and girls were often forced to beg and were sexually abused. Steps had been taken to inform them of their rights and to empower Roma women. While the custom of buying and selling girls for marriage still existed, several women's organizations were now working to eradicate the practice.
12. Ms. TARABA (Bosnia and Herzegovina), referring to a question raised in the Amnesty International report, said that an agreement had been signed by the representative of the Aluminij aluminium factory in Mostar, the Prime Minister and four other ministers. That agreement had yet to be approved by the House of Peoples of the Parliament in order to become binding.
13. Equal opportunity of employment was encouraged in all spheres of the public sector. She confirmed that a number of civil service employees belonged to the group categorized as "the others". As requested, she provided an example of a previously mono-ethnic private enterprise in central Bosnia, where the majority of the population was Croat. The current workforce at that enterprise consisted of 25 per cent Bosnians, and 15 to 20 per cent Jews, Serbs and Roma. Her

Government would provide more precise details on equal opportunity and diversity in the labour market in future, but wished to emphasize that it supported enterprises' efforts to create jobs throughout Bosnia and Herzegovina by, inter alia, facilitating the issuance of permits and licences.

14. Ms. RADIC (Bosnia and Herzegovina) explained that the Action Plan for children with special needs defined a comprehensive strategy to eliminate the obstacles impeding the participation of children at all levels of education and society at large. The objectives of the Action Plan included systemic changes aimed at enhancing methodologies to accommodate children, the elimination of administrative obstacles throughout the system, and participation and coordination between parents, educational institutions and community organizations.

15. She mentioned the work under way to eliminate potentially offensive content from textbooks through a systematic procedure of modernization and innovation of school curricula. In addition, special guidelines had been drafted for authors of textbooks, particularly in more sensitive subjects such as history and geography.

16. In response to a question by Mr. AMIR on racial propaganda and incitement of hatred, she said that her delegation was not aware of any registered organizations that used racially insensitive language. She welcomed the fact that the matter had been raised, and reassured the Committee that her Government would remain vigilant in that area.

17. Lastly, addressing the apparent discrepancy in the regulation of the media to which Mr. YUTZIS had alluded, she said that regulation was applied to both the electronic and print media. The data provided in the report were, for the most part, still valid in the case of the print media, but it would perhaps take some time before self-regulation became fully operational.

18. The CHAIRMAN said that the discussions with the delegation had provided the Committee with a better grasp of the institutional complexities and specificity of the situation of the constituent peoples and minorities of Bosnia and Herzegovina. Given the recent tragic history of the country, it was clear that major challenges remained to be resolved, including the difficulties involved in reintegrating returnees into society, as well as more practical aspects such as their access to housing and employment.

19. He noted that certain aspects of legislation, particularly those relating to electoral provisions, were not in line with the requirements of the Convention, but he was confident that the Government was keen to make the necessary improvements. He wished to pay special tribute to the delegation's declaration of commitment to the establishment of a just and lasting peace in Bosnia and Herzegovina as a matter of priority.

20. Mr. BOYD, Country Rapporteur, said that Bosnia and Herzegovina had laudably faced up to its challenges since the end of the armed conflict. Referring to advances in the implementation of the provisions of the Convention, he said the Committee was pleased that international treaties, including the Convention, had been incorporated into domestic law and therefore held primacy. It was particularly significant that those treaties were used by the Human Rights Chamber and constitutional courts as precedents, on a par with constitutional

provisions, and could be applied in judicial proceedings as a basis for decisions. The Committee would have welcomed more information on the specific provisions of the Convention that were used by the competent authorities or aggrieved private parties in seeking legal redress for acts of racial discrimination.

21. The high level of expertise possessed by the members of the delegation reflected the Government's serious intent to effectively implement the provisions of the Convention. In addition, he was impressed by the candour with which the delegation acknowledged shortcomings and the need for reform, and its frustration at the slow pace of progress in certain important areas. He assured the delegation that the country's performance would be assessed in terms of progress made rather than the level of perfection achieved.

22. He highlighted some notable points raised by the delegation in the course of the discussion, including the challenges to human rights practitioners in reconciling the apparent differences in the approaches to implementation of human rights principles taken by European legal experts, on the one hand, and their Anglo-American counterparts on the other.

23. He also appreciated the admission of incompatibility between the existing constitutional structure of Bosnia and Herzegovina and the provisions and goals of the Convention. In its quest to achieve the overriding goal of national peace, the Government had recognized the importance of initiating constitutional reform. He underscored the value of assigning rights among all political, ethnic and social constituencies.

24. In that regard, the delegation had mentioned the symbolic and substantive need for agreements in principle to introduce amendments to the Constitution in order to eliminate the ethnically-based system of eligibility to stand for election. Although the process was not yet complete, that was a laudable development, especially since the drafters of those amendments felt there was an urgent need to complete the task.

25. Much remained to be done in order to fully implement the terms of the Convention. Nevertheless, the authorities had taken significant first steps towards reconciliation, both within and among the peoples of Bosnia and Herzegovina, and reconciliation between domestic legislation and the international treaties it had ratified, including the ICERD.

26. He further emphasized the need to ensure that the constitutional structure and electoral law provided genuine and equal access and responsibilities for all, at all levels, including the national minorities referred to as "the others".

27. The Committee appreciated the delegation's candid acknowledgement of the existence of 56 ethnically-segregated schools, the Government's discomfort with the status quo, and its desire to move towards a more inclusive model. The abolition of segregation in schools must be followed by greater and active integration, particularly in primary education. Improvements in the social, economic and security situation would contribute to the delivery of a more inclusive educational system. Integration would be further enhanced through a standardized curriculum that included intercultural elements, focusing on tolerance and active engagement based on shared values among people of varied ethnicities. He also mentioned the legacy of the armed

conflict and the potentially offensive connotations associated with ethnic flags and symbols. Bosnia and Herzegovina must find a way to retain minority children in primary and secondary education. The report that only 10 to 15 per cent of Roma children attended school constituted a national emergency with potentially dire future consequences.

28. He echoed Mr. Kjaerum's hope that the enhanced effectiveness and capacity of the Ombudsman's Office would be supported by adequate financial means.

29. In conclusion, he applauded the country's progress from a situation of armed conflict to the present, highlighting the tremendous work the Government had undertaken to bring about improvements. He believed the level of effort already displayed augured well for the future development of Bosnia and Herzegovina.

30. The CHAIRMAN thanked the delegation for its participation.

31. Mr. NAGRADIC (Bosnia and Herzegovina) said that his delegation appreciated the warmth with which it had been received and thanked the Committee for its comments, which would provide valuable guidance to his Government in tackling the remaining challenges. His delegation wished to assure members of its commitment to the prompt implementation of the recommendations they proposed.

The meeting was suspended at 4.25 p.m. and resumed at 4.40 p.m.

FOLLOW-UP TO THE WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (agenda item 10) (E/CN.4/2005/20; E/CN.4/2004/WG.21/10)

32. Ms. JANUARY-BARDILL gave a brief overview of the activities of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action since its creation in 2002. At the request of the Working Group, the Committee on the Elimination of Racial Discrimination had submitted its written views on the implementation and effectiveness of (a) the substantive provisions of the Convention and (b) the Committee's procedures (E/CN.4/2004/WG.21/10) at the Group's third session. In that connection, she drew attention to paragraphs 50 and 51 of the Group's report (E/CN.4/2005/20), which summarized the comments made by Committee members concerning the document. She also reminded the Committee of the Group's recommendations on complementary standards, which were contained in chapter VI, paragraphs 25 to 36, of the report. In paragraph 36 of its recommendations, the Group had requested OHCHR to convene a high-level seminar within its fourth session to address the work identified in paragraphs 22 and 35 of the recommendations; the seminar had been held from 16 to 20 January 2006.

33. Mr. PILLAI said that the main topics discussed at the high-level seminar had been racism and the Internet, and complementary international standards. The Committee's participation had been largely limited to the deliberations on complementary standards; its written views on the implementation and effectiveness of (a) the substantive provisions of the Convention and (b) the Committee's procedures submitted at the Working Group's previous session had been discussed at length.

34. Participants in the seminar had made repeated reference to the provisions of the Convention, in particular articles 4, 9 and 14. There had been extensive debate on the scope of article 1 in the context of contemporary forms of racism. Article 2 had been mentioned with reference to affirmative action. Article 4 had been discussed in relation to issues such as freedom of expression and cybercrime; the idea of an optional protocol on racism and the Internet had also been considered. In connection with article 5, participants had discussed the advisability of adopting an international instrument on cultural rights defining the context of those rights. Article 6 had been invoked in relation to proposals to rethink the burden of proof placed on victims of racial discrimination seeking remedies under that article. Participants had also underlined the importance of article 7; emphasized the need to create enhanced awareness of the Convention and its provisions; and discussed reporting procedures in the framework of article 9. Broad discussions had taken place on article 14, in particular in relation to States' reluctance to make a declaration under that article, and follow-up to the recommendations and comments made by the Committee concerning communications received.

35. The debate on procedural issues had focused on timely reporting; areas and quality of reporting; follow-up to the Committee's comments and recommendations; new procedures; States parties' reluctance to make a declaration under article 14; and the absence of communications from certain States parties that had made such a declaration years before.

36. The Committee's views on the implementation and effectiveness of the Convention had received broad support. Particular attention had been given to: the need to promote ratification of the Convention; efforts to encourage States parties to review their reservations, especially those concerning article 4; the request for States parties to fulfil their reporting obligations; the importance of strengthening OHCHR's capacity to provide technical assistance in the drafting of reports; the request that the General Assembly should devote greater attention to the Committee's annual reports; and the call for allocation of sufficient resources to enable the Committee to fulfil its mandate.

37. Mr. DOUGAN-BEACA (Chief, OHCHR Anti-Discrimination Unit) said that the Anti-Discrimination Unit provided secretarial support to the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action, the Working Group of Experts on People of African Descent; and the group of five eminent experts. It had also been mandated to compile a database of good practices in addressing racism, racial discrimination, xenophobia and related intolerance; work on the database would commence in 2006. In that context, efforts would also be made to identify less well-known or new manifestations of racism with the aim of finding ways to combat such phenomena in the framework of existing anti-discrimination action.

38. At the sessions of the Intergovernmental Working Group, it had transpired that there was a need for OHCHR to enhance its assistance to States parties in formulating anti-discrimination legislation; the formulation of model provisions to be included in domestic legislation had been considered useful in that regard. In response, the Anti-Discrimination Unit planned to review and update the first draft of such provisions prepared in 2002; the results would be submitted to member States for consideration.

39. There had been broad support for the work of the Committee; its views on the implementation and effectiveness of the Convention mentioned by Mr. Pillai had been incorporated in the Group's recommendations. The Group had further invited the Committee to prepare a document on ways to improve its procedures and close existing gaps in the implementation of the Convention, in particular with regard to the scope of article 1 and the implementation of article 4. In addition, the group of five independent eminent experts had been requested to undertake a study on gaps in the implementation of existing international anti-discrimination legislation. The study and the document submitted by the Committee would be considered jointly at the Group's next session.

40. The unprecedented level of participation in the Group's fourth session was encouraging, although the number of high-level dignitaries attending the seminar had been rather low owing to time and resource constraints. Among other conclusions, the outcome document currently being drafted identified the Internet as a useful tool for promoting universal ratification of international instruments. Broad consensus had been reached on: certain issues relating to complementary standards, including the importance of implementing existing instruments; the relevance of the ICERD in combating racism; and the key role of the Committee in monitoring the implementation of international standards pertaining to anti-discrimination.

41. The CHAIRMAN said that cooperation between the Anti-Discrimination Unit and the Committee was indispensable. The Committee should take advantage of Governments' perception that racial discrimination was becoming an increasingly pertinent issue and that the Convention was the principal instrument to deal with it. He invited members to reflect on what steps the Committee could take in order to respond to contemporary forms of discrimination. At previous meetings on the subject, it had been suggested that improving the Committee's working methods would be more effective in that regard than drafting complementary standards. Discussion had taken place on the notion of an additional protocol to combat racism on the Internet. That had given rise to the question whether such a protocol should be linked to the Convention or whether it should be a separate instrument.

42. Mr. AMIR requested clarification of the mandate of the Anti-Discrimination Unit. He favoured the idea of drafting an additional protocol to the Convention as that would make the provisions of the Convention more explicit for States parties, which were often not fully aware of their implications. It was important to know which reforms would ultimately be made to the treaty body system in order to determine what action the Committee should take to improve the effectiveness of implementation of the Convention.

43. Mr. VALENCIA RODRÍGUEZ said that the Durban Declaration and Programme of Action constituted an excellent response to the scourge of racial discrimination that existed in many countries. The inter-ethnic conflicts and tribal struggles currently affecting certain regions of the world were reminders of the need to take decisive action in fulfilling the provisions of that instrument. Renewed efforts should be made to strengthen the political will of States parties to comply with the Committee's recommendations. In considering whether to draft an additional protocol to the Convention to combat racism on the Internet, Committee members should determine whether such a protocol would strengthen the scope of article 4 of the Convention.

44. He requested updated information on the efforts of the independent eminent experts on the implementation of the Durban Declaration and Programme of Action in relation to possible gaps that might exist between the Convention and its practical implementation.
45. Ms. DAH asked whether the additional protocol being discussed would address only article 4 of the Convention, or whether it would refer to issues dealt with in other international human rights treaties. She wished to know how the proposed protocol would relate to the imminent reform of the human rights treaty body system. Would a decision regarding the scope of the proposed protocol be taken immediately or following the reform?
46. Mr. SICILIANOS said that given the transitional stage in which the treaty body system currently found itself, the present was not the best time to introduce complementary standards. Moreover, the Committee had already expressed the view at the third session of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action (E/CN.4/2004/WG.21/10) that the scope of article 1 of the Convention was adequate to address contemporary forms of discrimination. Efforts made by the Committee in recent years had allowed a broader interpretation of the already broad definition of racial discrimination contained in the Convention; hence, there was no need to develop a complementary instrument. However, an additional protocol to the Convention, especially one modelled on the Additional Protocol to the Convention on Cybercrime of the Council of Europe, was worth considering. Since both the Convention on Cybercrime and its Additional Protocol were open to signature by non-members of the Council of Europe, and given the universal nature of the Internet, it might be useful for technical and legal reasons to consider promoting universal accession to those instruments.
47. Regarding the issue of country visits, the Committee had expressed the view that such visits would further the objectives of the Convention and would have the additional advantage of increasing the Convention's visibility. The incorporation of the Committee's existing early warning and urgent action procedure into an additional protocol to the Convention would help to strengthen its effectiveness by giving it a more solid foundation.
48. Mr. SHAHI said that drafting an additional protocol to the Convention was more desirable than developing new standards in the area of racial discrimination since States parties were already finding it difficult to fully implement the existing ones. Efforts to curb cybercrime were necessary, given the great potential for harm to relations between peoples and nations that could come from defamatory comment on the Internet, which was subject to the rule of law as the print media. Greater efforts should be made to ensure that aggrieved communities could take advantage of access to justice provided by national systems of law, thereby enabling them to channel their anger constructively. He suggested that the OHCHR secretariat should consider conducting an expert study on the Convention on Cybercrime of the Council of Europe.
49. The CHAIRMAN said that any action relating to the development of an additional protocol would have to await the outcome of proposed reforms to the human rights treaty body system. However, that did not prevent the Committee from considering new ways to strengthen the effectiveness of the Convention. He recalled that, in its views on the implementation of the Convention and its effectiveness, which had been submitted to the third session of the Intergovernmental Working Group, the Committee had expressed reservations about adopting a new instrument or drafting an additional protocol, considering that article 4 already constituted

an adequate basis for dealing with racism on the Internet. However, it had also said that visits were important for strengthening dialogue with States parties and that those could be carried out either within the framework of its early warning or other existing procedure or through the adoption of an additional protocol. Additional consideration would have to be given to all those issues.

50. Mr. DOUGAN-BEACA (Chief, OHCHR Anti-Discrimination Unit) said that the mandate of the Unit was to follow up on implementation of the Durban Declaration and Programme of Action, and to deal with all questions relating to racial discrimination. That included assisting the Committee in ensuring that States parties acted on its concluding observations after consideration of their periodic reports.

51. At the high-level seminar on racism and the Internet and on complementary international standards for combating racism, which had been held within the fourth session of the Intergovernmental Working Group, most of the delegations present had initially been in favour of adopting an additional protocol. However, in the second part of the seminar, which had dealt with complementary international standards, the consensus had been that an additional protocol was not necessary and that the Committee's interpretation of the provisions of the Convention were adequate to deal with the problem of combating racism on the Internet. Reference had also been made to promoting increased accession to the Council of Europe's Convention on Cybercrime as an alternative to developing new standards. The seminar had concluded with a request that a group of experts should be established in order to propose future action on the issue. It was most likely that, following submission of the experts' report, the discussion concerning complementary standards would continue for several months before a final decision was reached.

52. The CHAIRMAN said that Ms. January-Bardill and Mr. Pillai, who represented the Committee on the Intergovernmental Working Group, would undoubtedly take note of the views expressed.

The meeting rose at 6.05 p.m.