



**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 1735th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 22 February 2006, at 3 p.m.

Chairman: Mr. de GOUTTES

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The meeting was called to order at 3.15 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 (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 took places at the Committee table.
2. Mr. NAGRADIC (Bosnia and Herzegovina), introducing his country's initial to sixth periodic reports (CERD/C/464/Add.1), said that more than a year had passed since the completion of the report. Since then, the environment for the promotion and protection of human rights in Bosnia and Herzegovina had changed, leading to an overall reduction of discrimination in many spheres of life. Progress had been achieved in the following areas: the drafting of new legislation; greater awareness of human rights and discrimination; strengthening of human rights mechanisms; strengthening of the NGO sector; greater attention to the needs of vulnerable groups; and development of strategies, plans of action and reforms in all areas of the social spectrum. Those achievements were attributable, in part, to the cooperation received by Bosnia and Herzegovina from various international governmental and non-governmental organizations, which had organized numerous conferences, round tables, workshops and scientific colloquiums on issues pertaining to discrimination.
3. From the standpoint of the implementation of the Convention, the main problem was not so much racial discrimination as other forms of discrimination, primarily those related to ethnic and national diversity. That diversity was a factor that made efforts to combat discrimination extremely complex. Another factor was the ongoing process of rehabilitation and reconciliation that had followed the inter-ethnic civil strife of only a decade earlier. As a result, progress was still slow. Some of the challenges that lay ahead were: to promote human rights education and raise awareness of the Convention, to expand public knowledge concerning the elimination of existing forms of discrimination, and to prevent new forms of discrimination from emerging. It was time to shift emphasis from protecting the rights of displaced persons and returnees, and to turn it towards the protection of vulnerable groups, including children with disabilities, war victims and pensioners. Strengthening the cultural identity of national and religious minorities and guaranteeing their access to information were two additional priorities.
4. Ms. TARABA (Bosnia and Herzegovina) said that the Convention (ICERD) had entered into force in her country in 1993 and been incorporated into the Constitution; its provisions could be invoked directly in the courts. As was the case with other international treaties, such as the European Convention on Human Rights, the provisions of the ICERD had primacy over domestic legislation.
5. Given that Bosnia and Herzegovina was a complex State with highly individual characteristics, and that the values of tolerance and coexistence had been gravely threatened during the war of 1992-1995, the report contained only information on progress made following the war during the period from 1996 to 2004. The report had been prepared on the basis of data

collected by State-level ministries and administrative bodies, entity-level ministries (i.e. those of the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District), and NGOs and academic institutions that dealt directly with the issues described in the report.

6. One of the major problems facing the Ministry of Human Rights and Refugees in the preparation of the report had been the lack of a unified data collection system. Since the most recent census had been conducted in 1991, the figures contained in the report were out of date. While her Government recognized that the social and ethnic structure of the country had altered since 1991, it had been impossible to gather updated statistics and thus give accurate replies to many of the Committee's questions. Insufficient financial and material resources had also hindered preparation of the report. The Government was aware that increased cooperation from NGOs would have improved the final document.

7. Mr. BOYD, Country Rapporteur, said that a decade after the end of the armed conflict in the State party, the Committee welcomed the opportunity to consider the Government's implementation of the Convention together with the delegation. While the report provided much information and addressed many issues germane to the Convention, it contained insufficient evidence of the State party's efforts to implement the rights embodied in key provisions, particularly those in article 5. If no statistics were available, the Committee would welcome some practical examples of the implementation of those rights.

8. The Committee welcomed the assertion that the provisions of the United Nations instruments ratified by the State party and the European Convention on Human Rights were directly implemented and prevailed over all domestic legislation, pursuant to article 2 of the Constitution. The delegation should clarify, however, which of the international instruments had been incorporated in the Constitution by specific reference and what the practical impact of such incorporation had been in State and entity-level domestic courts.

9. It was unclear whether constitutional violations committed on grounds of race could be brought before any courts, tribunals or administrative bodies. It would be useful to learn about the scope and range of remedies that could be employed, and whether any such cases of racial discrimination had been heard. Information should be provided on the number of cases, who had brought them, which court had adjudicated in the matter, in what geographic region the hearing had taken place and what the outcomes had been. Was that information disaggregated by race, ethnicity, nationality or religion?

10. It would be useful to know how long the prohibition against officials denying rights or granting privileges on a discriminatory basis had been part of the Criminal Code (under chap. XV, art. 14). Had there been any prosecutions under that law, and had any officials been convicted? Was there any civil equivalent to that article, and if so, which courts and administrative or executive bodies had authority to hear such cases? What remedies were available to those courts to provide redress? The Committee would be grateful for any examples of relevant cases.

11. It was difficult to understand how the Convention was compatible with the Constitution of Bosnia and Herzegovina and the constitutions of its constituent entities which had resulted from the Dayton Peace Agreement. The Constitution of the Republika Srpska recognized Serbs

as the dominant constituent people in that area, and the Constitution of Bosnia and Herzegovina recognized Bosniaks and Croats as the dominant constituent peoples in the Federation. That recognition had granted special status to the Serbs, Bosniaks and Croats. It seemed to create a system in which ethnicity was the determining factor for participation in the election process, and therefore in people's access to political power.

12. Under article 5 of the Constitution, members of national minority groups appeared to be excluded from the process of electing members to the presidency, as were constituent peoples living in an entity in which they were not the dominant constituents. Similarly, voters could choose between Bosniaks and Croats only in the Federation, and choose only Serbs in the Republika Srpska. Moreover, members of each constituent group could be elected only from the territory in which they had preferential status under the Constitution. Equally prescriptive rules were applicable to elections to the House of Peoples of the Parliament. Restrictions on self-identification excluded individuals of mixed ethnicity who refused to choose one constituent people identity over another. Was the result not that national minorities and constituent peoples living in an entity where they were not recognized as such were effectively disenfranchised? While the existing constitutional framework had undoubtedly been one of the prices of peace at Dayton, significant constitutional reform would now seem necessary. It would be useful to hear the delegation's reaction to that suggestion.

13. Furthermore, it would be interesting to hear the delegation's views on the apparent links between that participation based solely on ethnicity, and other discriminatory practices relating to access to employment, health care and education. Was it true to say that there was a tangible link between political power, which was ethnically assigned by law, and the lack of enjoyment by ethnic minorities of the rights provided for under article 5 of the Convention? Could such exclusion partially explain the entrenched poverty endured by some national minorities, particularly the Roma, and also the mono-ethnic character of many neighbourhoods and the increasing concern over the existence of segregated schools with separate curricula?

14. As to the statutory framework for anti-discrimination laws, it would be useful for the Committee to have additional information on the Law on the Protection of National Minorities. He wished to know what specific requirements existed within that Law concerning the mandate and responsibilities of the national authorities and the resources at their disposal. He further asked the delegation to provide examples of action taken by the authorities pursuant to the Law. He was also interested in knowing what were the rights and duties of members of national minorities with respect to their ethnic, cultural, linguistic and religious identities, as set out in article 1 of the Law.

15. Turning to the role of the Ombudsman, he said that although paragraphs 26 and 77 of the report described the purpose of the establishment of the Office of the State Human Rights Ombudsman, he was still uncertain about the scope of the Ombudsman's mandate. Similarly, it was not clear whether investigations by the Ombudsman were limited to violations committed by government officials, or whether the conduct of private individuals was also liable to such investigation. From the perspective of article 2 of the Convention, he wondered what were the precise constitutional rights and freedoms that the Ombudsman was empowered to protect. He noted that rights involving non-discrimination in the housing and employment sectors had not

been addressed in that context, and asked the delegation to indicate which aspect of domestic law granted protection of such rights. He stressed that the issue was of particular relevance to the Committee's assessment of the reporting State's compliance with articles 2, 5 and 6 of the Convention.

16. According to paragraph 146 of the report, the Ombudsman had no authority to represent citizens in court proceedings. However, it had come to the attention of the Committee that there had been instances in which an Ombudsman had brought civil actions on behalf of victims of racial or ethnic discrimination. He therefore wondered if there were in fact counterparts to the Ombudsman at the entity level who might be authorized to represent victims of discrimination. In the event that the Ombudsman had no such authority, he wished to know whether other departments within the Government at State or entity level, apart from a criminal prosecutor, were empowered to seek legal redress for victims of discrimination.

17. The Committee was interested in quantitative and qualitative feedback on the work of the Ombudsman to date. It would like to know how many complaints had been lodged, what the nature of such complaints had been and how they had been resolved. Were there available data disaggregated by race, ethnicity, nationality or religious affiliation of the complainants, victims and alleged defendants? Likewise, he asked whether there were any governmental bodies with the authority to seek or provide redress for victims of discrimination related to the rights contained in article 5 of the Convention.

18. As a general comment on reporting procedure, he said it would be helpful in future for the delegation to provide information on the number, nature and location of criminal prosecutions brought by State authorities, pursuant to articles 145 and 146 of the Criminal Code, on the identity of perpetrators, and on victims and decisions handed down.

19. He invited the delegation to elaborate on the work of the Human Rights Chamber and its successor, the Commission for Human Rights. More specifically, information was needed on the nature of complaints of racial or ethnic discrimination brought before the Commission. He was curious about the processing of complaints and outcomes, including findings and remedies granted.

20. In view of the numerous allegations that threats had been made against members of national minorities returning to their former homes, he wished to know what enforcement mechanisms existed to implement the law on refugees and displaced persons and amendments thereto, under which such returnees were protected. He also wondered whether those mechanisms were well publicized, whether there were sufficient resources to monitor compliance, and what government agency held such responsibility. He further asked whether any complaints or criminal charges had been lodged in that regard, and if so, whether the delegation could provide some idea of the results obtained. In addition, he was curious to know what link existed between that legislation and article 146 of the Criminal Code, which criminalized the use of force, or threat of force, by anyone to prevent or dissuade displaced persons from returning to their homes.

21. Mr. SICILIANOS praised the Government of Bosnia and Herzegovina for the important advances it had made in terms of domestic legislation and international treaties, while taking due account of the specific nature of the situation in the country and striving to ensure recognition of genuine democratic Bosnian citizenship.

22. He noted the proposed adoption of comprehensive civil and administrative legislation to combat direct and indirect discrimination based on ethnic or national origin, and asked the delegation to elaborate on action taken thus far. On the question of alleged ethnic discrimination concerning social security and retirement benefits, he stressed that such entitlements must be guaranteed by the State, which must dismantle current obstacles to their enjoyment. The adoption of such measures would greatly enhance the smooth return of refugees and displaced persons.

23. In addition, he stressed the need to provide education within a system that accommodated the various ethnic and linguistic needs and, in that way, prevent the entrenchment of prejudice and animosity over several generations.

24. Mr. KJAERUM, commending the delegation for its frank and self-critical presentation of the report, acknowledged the magnitude of the obstacles the Government had confronted. He asked whether the Government had had fewer resources available for the preparation of the present report to the Committee than it had had for reporting to other treaty bodies.

25. He was also interested to know more about the difficulties the Government had encountered in its interaction with civil society while compiling the report. Emphasizing the importance of input from NGOs both at the reporting stage and again at the stage of implementing the Committee's recommendations, he asked the delegation to comment on the obstacles it had encountered.

26. Drawing attention to the systematic use of the term "others" as opposed to "constituent peoples", he asked whether the concept of "others" referred exclusively to members of national minorities, or whether it encompassed all persons who did not wish to be associated with one of the three groups of constituent peoples. Several representatives of national minorities had indicated that they found the use of that expression offensive and that it implied social exclusion.

27. On the subject of employment, he asked whether any form of affirmative action had been taken to increase the representation of "ethnic" returnees in the workforce, and whether there were administrative mechanisms in place for handling complaints regarding discrimination in the labour market.

28. Turning to paragraph 11 of the report, which mentioned the establishment of the advisory body, the "Roma Board", he noted that the Board had not been truly effective for a number of reasons, including a scarcity of resources, and had not often been consulted by relevant ministries. He was therefore curious to know how the Government perceived the role of the Board and the strengthening of integration of the Roma community into society at large. He drew attention to the appallingly low rate of attendance of Roma children at the primary school level, and noted that the report had not indicated what action was planned to remedy that

situation. He suggested that the Government might be able to learn from the abundant experience of neighbouring countries that had dealt successfully with the issue of education in Roma communities.

29. Mr. VALENCIA RODRÍGUEZ said that the concept of minorities had indeed emerged from the multi-ethnic nature of Bosnia and Herzegovina, and placed an obligation on the State to ensure protection for them. He noted that a number of NGOs and political groups had been established by, and on behalf of, those minorities, and wondered whether such mobilization had come about as a consequence of the war. He also wished to know what concrete measures had been taken to improve the standard of living of national minorities, pursuant to article 2 of the Convention.

30. In connection with article 4, the report stated that adequate measures had been taken to satisfy requirements under article 4 (b) on the characterization of the promotion of intolerance and racial discrimination as a punishable offence. The Committee would, however, welcome more information on any administrative or judicial initiatives that had been taken to secure compliance with the provisions of article 4 (a).

31. He noted the imprecise documentation of minorities, particularly the Roma population, and asked for further comments on the extent of reprisals against minorities and the level of political representation achieved by those communities. He further asked whether investigations had been conducted into cases of forced expulsion based on ethnic affiliation and blatant racial discrimination against returnees, and what action had been taken to bring the perpetrators of such violations to justice.

32. Following up on questions asked by the Country Rapporteur, he also stressed the need for clarification on the role of the Ombudsman, specifically on the types of cases that the Ombudsman was empowered to handle. In conclusion, he sought confirmation of the primacy of the Convention vis-à-vis domestic legislation and information on the procedure whereby individuals could bring cases of racial discrimination directly before the national courts.

33. Mr. AVTONOMOV requested the delegation to supplement the information provided in the report on the election of minority representatives. Clarification was also needed concerning the extradition of naturalized citizens mentioned in paragraph 17 of the report; he failed to understand how naturalization was different from citizenship. He enquired whether the Draft Law on Primary and Secondary Education referred to in paragraph 157 had been adopted, and whether it contained equal opportunity and non-discrimination provisions. It was unclear whether acts of discrimination were governed by federal legislation or by legislation in force in the two political entities that composed the Republic of Bosnia and Herzegovina. He also wished to know which criteria were used to distinguish the residents of Montenegro from the group described as “the Czarna Gorá minority”.

34. Mr. YUTZIS said it was regrettable that information provided in the report on the media seemed to concentrate on issues relating to freedom of expression and press freedom, while little was said about the dissemination of ideas based on racial superiority or hatred. Paragraphs 209 and 210 suggested that racist propaganda did indeed exist, but said nothing about measures to combat the phenomenon. He asked the delegation to comment.

35. The report stated that the return of displaced Roma to their homes and the restitution of their property were crucial to their enjoyment of fundamental rights. At the same time, it indicated that the vast majority of Roma currently lived in informal settlements without any clear ownership status and might be subject to forcible evictions. He asked whether State party legislation safeguarded citizens' right to housing and whether Roma families could be evicted from property they themselves owned. The delegation should explain why Islam was deemed to contribute to the loss of language, culture and traditions of the Roma population, as suggested in paragraph 112 of the report. He asked whether ethnic separation, intolerance, segregation and discrimination in the education system were prohibited by law. If so, the delegation should explain what impeded the effective implementation of the relevant provisions.

36. Mr. AMIR asked whether the dissemination of racist propaganda was criminalized. If not, he wished to know what the Government intended to do to close that legal gap. The delegation should also describe the measures taken to identify and prosecute human traffickers and protect refugees.

37. Mr. LINDGREN ALVES said that the disparity between the Constitution of Bosnia and Herzegovina and the Convention was a serious impediment to the implementation of the latter. Sustained efforts were required to establish ways to monitor discrimination, which appeared to be all-pervasive, and to protect and compensate the victims. Additional information was required on the reasons for the underrepresentation of Roma children in education, and on the extradition of naturalized persons described in paragraph 17.

38. Mr. SHAHI said that, given the difficulties posed by the Constitution in force, the commitment voiced by Bosnian, Serb and Croat leaders to embark on constitutional reform was encouraging. He deduced from the information provided in the report that national minorities had been granted participation in the political life of the country; it was unclear, however, whether any minority groups were excluded and how the State party ensured consistency with the principles of non-discrimination at all stages of the electoral process.

39. The delegation should describe the avenues of redress and compensation available to victims of discrimination, especially those who had been most affected by the conflict. He wished to know what additional measures had been taken to ensure that the remaining 180,000 displaced persons could return home in safety and dignity based on the principle of non-discrimination. The disparity in pensions in different parts of the country constituted a serious obstacle to the return process. What measures had been taken to equalize pensions throughout Bosnia and Herzegovina so as to prevent ethnic discrimination? The delegation should explain how the State party ensured equal access to education, employment and health-care services.

40. The lack of identity documents among members of the Roma community impeded their enjoyment of fundamental rights; he would therefore welcome information on steps taken to reduce the number of unregistered Roma. He enquired what progress had been made in the implementation of the National Strategy for Roma adopted in July 2005.

41. He was pleased to learn that over 80 per cent of the recommendations made by the Ombudsman for Human Rights were implemented by the authorities concerned. However, the reported underfunding of the institution threatened to undermine its effectiveness. Given the

Ombudsman's role of defending the human rights of all citizens, mandate-holders' reported partiality in favour of a given ethnic group, which resulted from the institution's tripartite structure, was also a cause for concern.

42. Mr. THORNBERRY noted with satisfaction the wide range of legislative provisions relating to national minorities. However, the scope of both civil and criminal legislation concerning other forms of discrimination was comparatively limited. Minority legislation was not a substitute for broader non-discrimination legislation, and he encouraged the State party to take measures to remedy those shortcomings. Measures should also be taken to integrate the concepts of intercultural learning into educational curricula.

43. He, too, was concerned at the discrimination embodied in the State party's current political structure. While the Convention provided for temporary derogation from the principle of non-discrimination, such a measure could not be prolonged indefinitely and steps should be taken to introduce the necessary changes. However, rather than placing excessive emphasis on existing incompatibilities with the principles of the Convention, it would be more constructive to aim for gradual approximation on a case-by-case basis.

44. Mr. TANG asked what administrative and legislative measures had been taken to facilitate the resettlement of Roma in regions other than Brčko district. He also enquired whether specific provisions existed to ensure the return of property and compensation for displaced persons.

The meeting rose at 6 p.m.