

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

HUMAN RIGHTS COMMITTEE 88TH SESSION BOSNIA AND HERZEGOVINA, INITIAL REPORT

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Information submitted to the Committee

Bosnia and Herzegovina submitted their initial report¹ to the Human Rights Committee (the Committee) regarding the implementation of the *International Covenant of Civil and Political Rights* (ICCPR). The Committee provided a list of issues and the delegation responded with written replies.² The delegation was made up of eleven members, led by Mr. Maksim Stanisic, Assistant Minister in the Ministry for Human Rights and Refugees.³ NGO submissions included a written statement from the Balkan Investigative Reporting Network (BIRN) that criticised the prison system, noted the ability of judges from the State courts to accept or reject information from the International Criminal Tribunal for the Former Yugoslavia (ICTY) and highlighted that key trials at Bosnia's War Crime Chamber were closed to the public. Briefings with

¹ CCPR/C/BIH/1, 24 November 2005. Bosnia and Herzegovina informed that the drafting of the report was announced in national newspapers to invite NGOs and others to participate. The report was written with the aid of the Office for Human Rights in Sarajevo, the State Ombudsman, and the Gender Equality Centre. The State report, list of issues as well as written replies are available on the OHCHR website at <http://ohchr.org/english/bodies/hrc/hracs88.htm>.

² CCPR/C/BIH/Q/1, 27 September 2006 (List of Issues). The written replies exceeded the length allowed by the UN and as a result could only be translated into one of the UN official languages (English). It is presented on the OHCHR website without reference number.

³ The full list of the delegation of Bosnia and Herzegovina is available at <http://ohchr.org/english/bodies/hrc/docs/AdvanceDocs/bihdelegation.doc>

NGOs and specialised agencies were held prior to the examination of the State. The Organization for Security and Co-operation in Europe (OSCE) submitted their own report on the situation in Bosnia and Herzegovina.⁴ In the briefing with NGOs and specialised agencies, the OSCE criticised the official report and claimed that the Government had failed to comply with the ICCPR on a number of issues and highlighted implementation as a specific cause for concern.⁵

Themes and Issues⁶

General measures of implementation

The Committee repeatedly raised concerns over effective implementation of the law, particularly at the lower court level. In particular, the Committee asked for clarification on the relationship between the three Criminal Codes in Bosnia and Herzegovina and the scope of application of each code; the delegation admitted the need for 'harmonisation'. The Committee asked about the roles and powers of jurisdiction of the three Ombudsmen (representing the three constituent peoples) as well as more information on the Ombudsman's Office.⁷ In response Bosnia and Herzegovina stated that the mandate of the Ombudsman specifically included protection of the rights of children and of religious minorities. The Ombudsman would begin to implement the draft *Law on Human Rights Ombudsman* on 1 January 2007.

Gender equality and family violence

The Committee asked about the Government's work to promote gender equality; in their opening presentation Bosnia and Herzegovina highlighted that a definition of discrimination was included in their *Law on Gender Equality* and that they had continued to work with gender agencies.⁸ They specified that this work included the review of labour legislation and the representation of women in the media. They also pointed out that the quota system was a form of positive discrimination to benefit women. In the recent elections women had been encouraged to vote and run for election.⁹ However, the delegation admitted that there were a limited number of women working in the upper levels of government (currently 16%) and that this was a cause for concern. In its concluding observations, the Committee recommended harmonisation of the quota system of the *Election Law* with the requirements of the *Law on Gender Equality*.¹⁰

The Committee raised concerns over lack of assistance for victims of domestic violence and the delegation described that over the past two years Bosnia and Herzegovina has drafted two pieces of legislation to protect women against domestic violence. They however admitted that there were insufficiencies in monitoring implementation due to lack of funds. The Committee suggested training of judges, prosecutors and law enforcement officers as well as hospital staff on the law. The delegation informed them that training had taken place in recent years and that doctors and teachers were obliged to consult the police when they suspected violation of the Criminal Code. In its concluding observations, the Committee also asked for the introduction of standard procedures for the collection of medical evidence of domestic violence and enhancement of victim assistance programmes.

⁴ The OSCE also held a private meeting with Committee members to present their report and several members referred to their work during the session.

⁵ These issues included juvenile justice, healthcare, witness protection, forced evictions, enforcement of sanctions and the treatment of mentally incapacitated.

⁶ Press releases from all of the Committee's meetings can be found on the UNOG website at http://www.unog.ch/unog/website/news_media.nsf.

⁷ According to 2000 data from the CIA World Factbook, Bosnia and Herzegovina is ethnically 48% Bosniak, 37.1% Serb, 14.3% Croat, 0.6% Other.

⁸ The Gender Agencies are the 'Gender Centre of Federation of Bosnia and Herzegovina' and 'Gender Centre of Republika Srpska'.

⁹ 30% of parliamentary slots were reserved for women in the recent elections (refer to Table 2 in the report).

¹⁰ The concluding observations of the Committee are contained in document CCPR/C/BIH/CO/1, 10 November 2006, available at <http://ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR.C.BIH.CO.1.pdf>.

Accountability

The Committee asked the delegation to outline measures taken to strengthen the cooperation with the ICTY. Bosnia and Herzegovina said in their written reply that this cooperation hinges on the *Law on Implementation of Appropriate Measures for Effective Implementation of ICTY Mandate and Other International Restrictive Measures*. As an important measure, the delegation pointed to the establishment of a 'War Crimes Department' within the Court of Bosnia and Herzegovina, to which five cases had been referred by the ICTY. They made specific reference to the cases of Radovan Karadžić and Ratko Mladić and highlighted that the authorities in cooperation with international representatives had carried out a number of actions to locate and arrest these indicted persons. The delegation also underlined the adoption of the new Criminal Code and the new Criminal Procedure Code. The former expanded the competences of the state-level Court of Bosnia and Herzegovina, whereas the latter aimed at streamlining criminal procedures between state- and entity-level.¹¹ Regarding the Srebrenica Commission, the delegation described that the *Committee for Finding Out the Truth About the Events In and Around Srebrenica* had issued a report; this had led Republika Srpska to take responsibility for the events. In its concluding observations, the Committee stated that sufficient financial and human resources should be allocated, and that the effective application of the State and Entity laws on protection of witnesses has to be ensured.

The Committee also enquired about initiatives to promote reconciliation as well as the implementation of the *Law on Missing Persons*. The Committee members particularly focussed their follow-up questions on the failure of the Parliament to establish a Committee on Truth and Reconciliation.¹² On the issue of missing persons the Committee asked what efforts had been made to generate the necessary political will and enquired when the Institute for Missing Persons would be functional.¹³ The delegation admitted that Bosnia and Herzegovina was lagging behind with the implementation of the *Law on Missing Persons* but announced that the Institute would be fully operational by January 2007.¹⁴ In its concluding observations, the Committee stressed that immediate steps must be taken to investigate the unresolved cases of missing persons. In particular, it recommended that the central database of missing persons be finalised and that payments to families of missing persons should commence as soon as possible.

Treatment of prisoners

The delegation gave a detailed account of the proceedings for detention.¹⁵ However, the Committee repeatedly asked for clarification of the permitted period of time by which those arrested or detained on a criminal charge must be brought before a judge or judicial authority, the possibility of bail and arbitrary detention. It underlined that unlawfully detained persons are compensated. The delegation also stated that pre-trial units were full and that they faced budgetary problems to rectify this. The Committee also enquired about how detainees were informed of their rights; Bosnia and Herzegovina responded that at all court levels the detainee must be fully informed of the charges against them as well as their right to an attorney. A detainee

¹¹ Bosnia and Herzegovina is comprised of two 'entities': the 'Federation of Bosnia and Herzegovina' and the 'Republika Srpska'.

¹² The delegation then specified that victims-rights associations had opposed the bill, because they felt it would not address the victims' needs. They nevertheless assured the Committee that the bill was not completely abandoned and that the parliament continued to work on it.

¹³ The written replies supply data from the ICRC that details a total of 21,374 requests for search for missing persons filled by families of persons missing in Bosnia and Herzegovina received by November 1, 2005.

¹⁴ The written answers attribute the delay in the search for missing persons to the lack of political will, primarily at entity level and some Committee members said that this lack of will had to be explained in further detail. The delegation went on to explain that the (national) Institute for Missing Persons would be responsible for the improvement and the acceleration in searching for and identifying missing persons. Since it will take over the competencies of the (former) entity level committees there are hopes that it will rectify the discriminatory application of the *Law on Missing Persons*.

¹⁵ Bosnia and Herzegovina explained that a person can be detained for 24 hours by the police and then is handed to the relevant prosecutor who must decide if he or she should be detained for a further 24 hours. The court must then make pre-trial detention order (up to 30 days) and from this point a detainee cannot be kept under police custody.

without funds should be given access to a 'public defender'. As regards to confidentiality the Committee was told that private letters could be sent between prisoners and their attorney. Bosnia and Herzegovina added that a 'Professional Standards Unit' existed in the police service to monitor these provisions.

The Committee enquired on reported cases of police brutality as well as solitary confinement –Sir Nigel Rodley, a member of the Committee pointed out that the statistics in the State report show solitary confinement was the most common means of punishment in Bosnia and Herzegovina even though it is considered one of the most severe according to the Covenant. The delegation did not respond directly to either of these issues.¹⁶

The Committee asked about the arrangements for mentally ill detainees. The delegation informed them that the Sokolac Psychiatric Hospital, destined to replace the old and unsuitable Zenica Prison Forensic Psychiatric Annex, had recently burnt down. This had slowed down the process of moving patients to a more suitable environment than the centre in Zenica. The Committee expressed concern at this news and asked for more information. In its concluding observations, the Committee urged that all patients be transferred and that the Sokolac Psychiatric Hospital meet international standards.

Freedom of movement

The displacement of persons during the war and their return is one of the most prominent problems in Bosnia and Herzegovina. In the process of return, there is a special focus on de-mining. The delegation pointed out the importance of its Mine Action Centre and stressed that the remaining problems were financial rather than political. The report provides some figures showing the progress in both return of persons and the de-mining associated with it. The increasing rates of return were attributed to effective implementation of property legislation, aimed mainly at returning houses to their pre-war owners. While the Committee acknowledged the efforts undertaken it noted that discrimination against returnees still exists and there was a call for practical examples for the care of such returnees. In general, the Committee noted a lack of statistical data including the number of returnees going back to their former residences, the possibilities for re-employment, and the number of returnees belonging to minority groups. In response, the delegation stressed that the context of privatisation posed a special challenge to re-employment of returnees.¹⁷ The Committee accepted that re-employment was difficult in (private) factories, but questioned the very low rate of returnees working in public services. In its concluding observations, the Committee suggested a number of measures to improve conditions for sustainable return, which includes combating discrimination against minority returnees, ensuring the social reintegration and equal access to employment, education and social services, as well as public services such as water and electricity. It also encouraged the State to continue its de-mining efforts.

Trafficking

Confronted with the issue of trafficking in persons, the delegation drew attention to the State Anti-Trafficking Plan¹⁸ and said that trafficking had decreased substantially in recent years. To address deficiencies in the Penal Code, the delegation underlined recent efforts to improve witness protection as well as the need for stronger sentences in cases of trafficking. The Committee expressed concern about repatriation of victims of trafficking, and stressed that this could only be voluntary. It was suggested that the issue become part of the curriculum in primary and secondary schools in order to raise awareness and work on prevention. The delegation said that trafficking in children was often related to forced begging by Roma children and pointed out that the phenomenon was rooted in poverty. The Committee also expressed concern that the budget for combating trafficking in persons is heavily dependent on foreign aid and that this is not sustainable. It

¹⁶ Reference was made to cases found in the 2003 report by the European Commission for the Prevention of Torture.

¹⁷ According to one delegate, the unemployment rate in Bosnia and Herzegovina is around 60%.

¹⁸ See list of answers, question 13.

followed on to ask to what extent Bosnia and Herzegovina is prepared to devote its own resources to this issue. In its concluding observations, the Committee recommended training on the application of anti-trafficking and anti-corruption standards to judges, prosecutors and law enforcement officers. It specifically called for action to be taken to combat the exploitation of children, especially Roma and other ethnic minority children, for the purpose of street begging or other forced labour.

Minorities

Special attention was paid to the participation of minorities in the conduct of public affairs. With specific mention to Roma people, a number of experts asked if voting was compulsory and if there were other measures to encourage minorities' presence in the parliament. They also enquired into measures for greater participation of minorities in public life in general.

The Committee welcomed the government's co-operation with Roma NGOs in birth registration of Roma children and identified it as 'best practice' since the plight of Roma people is common to several countries in Europe.¹⁹ More generally, the delegation mentioned a number of 'action plans' to cater specifically to Roma needs in the fields of education, employment and housing. The Committee was concerned about a high level of prejudice and associated violence against Roma people, not only by the population, but also on the part of the police. In its concluding observations it suggested vigorous public information campaigns to combat this. It also encouraged Bosnia and Herzegovina to remove administrative obstacles and fees in order to ensure that all Roma have access to personal document, including birth certificates, which are necessary for them to gain access to health insurance, social security, education.

The Committee also enquired about the status minorities that are not recognised as one of the 17 'national minorities' under Bosnia and Herzegovina law. However, due to lack of recent census data the delegation was unable to respond.

Other Issues

In response to questions on the right to a fair trial, Bosnia and Herzegovina assured the Committee that judges could not be member to a political party. This is intended to assure independent and impartial tribunals, as required by article 14 of the ICCPR. The delegation added that there were sanctions imposed on judges violating this obligation.

Without going into detail, the Committee commended the existence of some legislation to address abuses of religious freedom in Bosnia and Herzegovina. However, citing the attack on a mosque in Mostar on 10 October 2006, the Committee asked about efforts to combat religious intolerance at the local level to which Bosnia and Herzegovina only replied that action had been taken to prosecute those responsible.

With regard to freedom of expression, Bosnia and Herzegovina accepted that the *Law on Access to Information* lacked equal dissemination throughout the country. It also highlighted the establishment of the Communications Regulatory Agency (CRA) and described that it had a clear mandate that included issuing sanctions and fines on the media for instigating 'hate speech'.²⁰ The delegation further accepted that minority groups are not adequately represented in the media and that the public should be better informed to counter discrimination.

Finally, the Committee raised its dismay that the Covenant had not been translated into all of the Bosnia and Herzegovina official languages and in response the delegation assured the Committee that the Covenant and

¹⁹ These activities include the creation of a national database and plans for a public campaign to raise awareness among parents and to encourage them to register their children.

²⁰ The delegation reported that the CRA had issued 100 sanctions on the media to date.

Optional Protocols would be translated. The Committee asked for the same treatment for the initial report and the concluding observations.

Conclusions and next steps

Overall the Committee was positive about the report and comprehensive written responses. They remarked on the absence of NGO participation in the debate, suggesting the constructive dialogue could have been 'richer' with additions from civil society. Nevertheless, the Chairperson Ms Christine Chanet welcomed the input of civil society in the writing of the state report. Earlier in the debate, some Committee members regretted the absence of a representative from Republika Srpska on the delegation and the delegation responded to say that this was only due to difficulties in finding a competent expert. In their view, the delegation did represent the ethnic diversity of their country.

In her concluding remarks, Ms. Chanet specifically commended the Ombudsman's Office. In addition she highlighted the issues of female war victims, the rights of returnees and the plight of Roma people throughout Europe. In its concluding observations, the Committee asked the State party to provide updated statistical information on the number of victims of mental torture and/or sexual violence receiving disability benefits, disaggregated by sex, age, ethnic group and place of residence as well as on the amount of such benefits in its next report. Speaking of the Roma settlement of Butmir, the Committee in its concluding observations called for reconsideration of the relocation plan as well as alternative solutions to prevent pollution of the water supply. Overall, it insisted that relocation must be carried out in a non-discriminatory manner.

The Committee set 1 November 2010 as the date for the submission of the second periodic report of Bosnia and Herzegovina.

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The *Treaty Body Monitor* forms part of the Human Rights Monitor Series produced by ISHR. It reports on each country reviewed by the seven treaty bodies and provides an overview of every treaty body session. It is currently an online publication that can be found at <http://www.ishr.ch/hrm/TMBs>.

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