

Advance Unedited VersionDistr.: General
15 May 2015

Original: English

Committee on the Elimination of Racial Discrimination**Concluding observations on the ninth and eleventh periodic reports of Bosnia and Herzegovina***

1. The Committee considered the combined ninth, tenth and eleventh periodic reports of Bosnia and Herzegovina (CERD/C/BIH/9–11), submitted in one document, at its 2331st and 2332nd meetings (CERD/C/SR.2331–2332), held on 30 April 2015 and 1 May 2014. At its 2341st and 2342nd meetings, held on 7 and 8 May 2015, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the timely submission of the combined ninth, tenth and eleventh periodic reports of the State party, which included responses to the concerns raised in the Committee's previous concluding observations (CERD/C/BIH/CO/7-8). In the same way the Committee welcomes the presentation given by the State party's high level delegation and expresses its appreciation for updated information that the delegation provided verbally to complement the report, taking into account the list of themes identified by the Rapporteur. It also appreciates the frank and constructive dialogue with the State party.

B. Positive aspects

3. The Committee welcomes:
- (a) The amendments made to the Law on Citizenship in 2013;
 - (b) The amendments made to the Law on Movement and Stay of Aliens and Asylum in 2012;
 - (c) The adoption of the Law on Basic Registries in the Federation of Bosnia and Herzegovina, which provides for birth registration of all persons

* Adopted by the Committee at its eighty-sixth session (27 April – 15 May, 2015).

including persons belonging to national minorities and persons with specific needs, in 2012;

(d) The amendments made to the Criminal Codes of Republika Srpska and Brčko District related to hate crimes in 2010;

(e) The adoption of the Revised Action Plan for Addressing Roma Issues in the Field of Employment, Housing and Healthcare of Bosnia and Herzegovina in 2013;

(f) The adoption of the Revised Strategy of Bosnia and Herzegovina for the implementation of Annex 7 of the Dayton Peace Agreement in 2010; and

(g) The adoption of the Revised Action Plan of Bosnia and Herzegovina on Roma Educational Needs in 2010.

4. The Committee takes note of the holding of the long awaited census in 2013, and that the final results are expected for June 2015.

C. Concerns and recommendations

Discrimination of citizens not declaring affiliation with one of the three ‘Constituent Peoples’

5. The Committee notes with concern that the law prevents citizens who do not declare themselves as one of the three ‘Constituent Peoples’, i.e. Bosniaks, Croats or Serbs, from standing as candidates for the Presidency and the House of Peoples. The Committee furthermore regrets that:

(a) ‘Constituent Peoples’ are granted veto power over any legislation they view as threatening their ethnic group’s interests, and benefit from special privileges within the respective constitutions of Republika Srpska and the Federation of Bosnia and Herzegovina, and within a number of other local laws and regulations;

(b) The Parliamentary Commission in charge of preparing amendments to implement the judgments by the European Court of Human Rights *Sejdić and Finci v. Bosnia and Herzegovina* (2009), declaring the differential treatments in terms of electoral rights in breach of the European Convention on Human Rights, consists of delegates from political parties, representing ‘Constituent Peoples’ only (arts. 1 (4), 2 (1) (c), and 5 (c)); and

(c) A Bosniak or a Croat residing in Republika Srpska and a Serb residing in the Federation of Bosnia and Herzegovina, despite forming part of the three ‘Constituent Peoples’, cannot stand as candidate for the Presidency, thus hampering their political participation (arts. 1 (4), 2 (1) (c), and 5 (c)).

The Committee urges the State party to make all necessary efforts to reach an agreement on constitutional changes as well as changes to the Electoral Law to abolish every discriminatory treatment based on

ethnicity, and to amend the constitutions of the entities as well as local laws and regulations accordingly. In undertaking these measures, the Committee recommends that the State party ensure that representatives from all minority groups are integrated at all stages of the consultation processes.

Situation of returnees

6. The Committee appreciates the efforts made under the Revised Strategy for the Implementation of Annex 7 of the Dayton Agreement to facilitate the reintegration of returnees, including the reconstruction of a large number of housing units. However, the Committee is concerned that many persons remain unable to return as they are still awaiting reconstruction of their houses or because landmines have not yet been cleared from their pre-war villages. Furthermore, the Committee is concerned about:

(a) Many returnees, in particular minority returnees and Roma IDPs suffering from inadequate infrastructure, such as limited access to running water, public lighting and sewage-systems, and having limited access to social services, including health care and education, as well as very few employment opportunities;

(b) Reported discrimination of minority returnees and Roma IDPs regarding the allocation of return assistance; and

(c) Several cases of court rulings requiring returnees to reimburse squatters for investments incurred, a sum which is reported to be frequently higher than the property value (arts. 1 (4), 2, 5 (c) (d) (i), (e)).

The Committee, recalling its general recommendation No. 22 (1996) on article 5 of the Convention on refugees and displaced persons, recommends that the State party intensify its efforts to ensure the sustainable reintegration of returnees and to combat direct and indirect discrimination against minority returnees, inter alia by accelerating the implementation of the Revised Strategy for the Implementation of Annex 7 of the Dayton Agreement, through a more coordinated approach at all levels. The Committee recommends that the State party:

(a) **Improve access to adequate infrastructure by returnees, as well as remove all legal and practical barriers hampering their full access to social services, and ensure non-discriminatory allocation of return-assistance;**

(b) **Consider offering extra-judicial settlements to temporary users of occupied properties for investments made to those, and ensure that settlements reached are in line with the *Principles on Housing and Property Restitution*, Principle 17 on secondary occupants; and**

(c) Adopt the draft revised law on displaced people and returnees, and the draft law on anti-mine action.

Ombudsmen

7. The Committee notes with concern that the Institution of Human Rights Ombudsman of Bosnia and Herzegovina lacks the necessary resources to efficiently fulfil its mandate. The Committee is furthermore concerned that the law on the Ombudsman for Human Rights stipulates that the Ombudsmen are “appointed from the ranks of the three Constituent Peoples” but that this “does not rule out the possibility of appointing persons from the ranks of Others” (article 8. 6), which implicitly gives priority to the three ‘Constituent Peoples’ and may hamper the Institution’s mandate to protect against discrimination of national minorities (arts. 1 (4), 2 and 6).

In the light of its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee recommends that the State party allocate to the Institution of Human Rights Ombudsman of Bosnia and Herzegovina all the necessary human, technical and financial resources to efficiently carry out its mandate, and eliminate references to the ethnicity of the Ombudsmen in the law on the Ombudsman for Human Rights, taking into account the principle of neutrality of such institutions and their mission to protect human rights for all.

Socioeconomic situation of Roma

8. The Committee welcomes the adoption of the *Law on Basic Registries* in the *Federation of Bosnia and Herzegovina*, which has led to a significant increase in the birth registration of Roma. The Committee also appreciates the efforts taken to eliminate discrimination against Roma in the fields of housing, employment, education and health care. The Committee however regrets that many Roma still suffer high levels of poverty, significant levels of unemployment, forced evictions, in some cases without appropriate alternative accommodation being provided, lack of identity documents, and lack of access to basic services. The Committee is furthermore concerned about:

(a) The low school attendance of Roma children, and their overrepresentation in special schools, because of alleged “social disabilities”, or because these will oftentimes be the only schools providing support such as free meals, books or transportation, which many Roma families depend on to send their children to school;

(b) Strict registration requirements to be eligible for health insurance, and insufficient implementation of regulations guaranteeing free healthcare for non-insured vulnerable groups, such as children and pregnant

women, including denial of services, which has a particular negative effect on Roma; and

(c) Discrimination and violence suffered by Roma women and reported cases of denial of assistance (arts. 2, 3 and 5 (e)).

Recalling its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party continue to endeavour to improve the situation of Roma, inter alia by strengthening the implementation of its national strategy and other action plans for Roma and removing all barriers which may hamper their enjoyment of human rights. The Committee further recommends that the State party:

(a) Facilitate access to mainstream education for Roma children, inter alia by providing support including school meals, books, clothing and transportation;

(b) Refrain from forcibly evicting individuals, and, in cases where eviction or relocation is considered to be justified, ensure that it is carried out in strict compliance with the relevant provisions of international human rights law;

(c) Increase access of Roma to health care, by inter alia removing registration barriers in accessing health insurance and ensuring that laws and regulations providing for access to free health care are always and fully implemented; and

(d) Increase the number of shelters for women and establish programmes on ending violence against women and girls as well as place a particular focus on adopting gender-responsive budgets and policies.

Awareness of the prohibition of racial discrimination

9. The Committee welcomes the establishment of a database on adjudicated cases of discrimination. However, the Committee notes with concern that provisions of the law on prohibition of discrimination are rarely invoked in the courts, and that awareness of this law is limited, both among the general public, as well as among judges, lawyers, prosecutors and law enforcement officials (arts. 2, 6 and 7).

The Committee recommends that the State party provide for adequate initial and regular in-service training for judges, prosecutors, lawyers and law enforcement officials on the provisions of the law on prohibition of discrimination, and provide an evaluation of such training in the next periodic report Furthermore, the Committee recommends that the State party conduct awareness-raising campaigns at all levels on the law on prohibition of discrimination and on how to report cases of racial discrimination to the Ombudsmen and other relevant authorities, and on how to bring such cases before courts.

Citizenship law

10. The Committee, acknowledges the amendments made to the Law on Citizenship, but regrets that the legislation of the State party's entities on citizenship is not yet in line with them. Thus, different requirements regarding naturalization of refugees and stateless persons apply, depending on their place of residence. Furthermore, the Committee notes with concern that:

(a) Grounds for denying citizenship, stipulated in Article 9 (2) are vague and may lead to discriminatory application; and

(b) According to Article 9 (1) 6, obtaining citizenship requires the prior renunciation of foreign citizenship, which may expose individuals to the risk of statelessness (arts. 2 and 5).

The Committee recommends that the State party fully harmonize the legislation of its entities on citizenship with the latest amendments to the Law on Citizenship of Bosnia and Herzegovina. Furthermore, the Committee recommends that the State party enact safeguards to prevent statelessness and the discriminatory application of Article 9 of the Law on Citizenship.

Segregation in education

11. The Committee appreciates the establishment of multi-ethnic schools in Brčko District, where pupils are taught on the basis of the same curriculum. However, the Committee remains concerned about the significant ethnic segregation within the educational system in the State party's entities, such as the practice of "two schools under one roof", and reiterates its concern that segregated education in the territory of the State party perpetuates non-integration, mistrust and fear of the "other" (CERD/C/BIH/CO7-8, para.11).The Committee is furthermore concerned about the development of national groups of subjects, which are frequently offered to the dominant ethnic groups only, and which thus forces children of minorities to follow a curriculum which does not respect their cultural specificities. Taking into account the intersectionality between religion and ethnic origin, the Committee regrets that religious education taught in public schools frequently covers the majority religion of the municipality only, and that children who do not attend religious education because they belong to a different faith, or no faith are reportedly disadvantaged academically (arts. 2, 3, 5 (e) and 7).

The Committee recommends that the State party take all necessary measures to ensure that the system of "two schools under one roof" is not leading to segregation in education, and to increase the number of administratively and physically unified schools, where pupils are taught together on the basis of the same basic curriculum, while respecting their own language and cultural specificities. The Committee furthermore recommends to fully ensure freedom of religion and

conscience, including at school, and that no child is disadvantaged in any way for not attending religious education.

Hate speech and hate crimes

12. While noting that racially motivated crimes against returnees have decreased, the Committee is concerned that physical attacks against minority-returnees continue to occur. The Committee furthermore regrets the rising incidence of hate speech in the media and political discourse (arts. 4, 6 and 7).

The Committee recommends that the State party ensure that existing criminal provisions on hate speech and hate crimes are implemented appropriately in accordance with the Committee's general recommendation No. 35 on combatting racist hate speech, and continue to carry out awareness-raising campaigns at all levels to promote national unity, understanding and tolerance and the peaceful coexistence of members of various nationalities and religious groups.

Treatment of asylum-seekers, refugees and persons granted subsidiary protection

13. The Committee is concerned about the detention by the Service for Foreigners' Affairs of asylum-seekers who, within the 24 hours following unauthorized entry into the territory, or expiry of authorization, do not express any intention to seek asylum. Furthermore, the Committee regrets:

(a) The issuance of expulsion orders by the Service for Foreigners' Affairs to individuals in detention prior to assessing their asylum applications;

(b) Undue limitation on UNHCR and its legal aid partners' access to foreigners in detention centres who might be asylum-seekers or refugees;

(c) Cases of persons of Arab origin placed in detention and deported or awaiting deportation for alleged threat to national security, without having had a full assessment of the risk of refoulement conducted on their cases, and without having been presented the facts and evidence forming the basis for considering them a threat to national security, thereby preventing them to challenge the legality of their detention;

(d) The frequently limited access by asylum-seekers to basic services, including adequate food, as well as to social services, including education and healthcare; and

(e) The particularly limited financial assistance received by refugees and persons granted subsidiary protection and the lack of any programmes to facilitate their integration (arts. 2, 5 and 6).

The Committee, in light of its general recommendation No. 30 (2004) on discrimination against non-citizens, recommends that the State party find an alternative to detention of asylum-seekers and ensure that if

detention is applied, it is always used as a measure of last resort and is limited by statute to the shortest time reasonably necessary. The Committee furthermore recommends to end the practice of issuing orders of expulsion of asylum-seekers before having assessed their asylum-application, and to:

(a) Allow unhindered access to detention facilities by international organizations, including UNHCR, as well as its domestic legal partners;

(b) Carry out a full and impartial assessment of the risk of refoulement of persons currently detained for alleged threat to national security, and provide them with all the necessary information to challenge the order of expulsion or detention;

(c) Take all necessary measures to ensure asylum seekers' access by law and in practice to education, employment, social welfare, adequate food and healthcare;

(d) Increase financial assistance provided to refugees and persons granted subsidiary protection to an adequate level, and provide integration opportunities, such as language classes, vocational training or employment schemes; and

(e) Finalize and adopt without delay the new law on asylum.

D. Other recommendations

Follow-up to the Durban Declaration and Programme of Action

14. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

International Decade for People of African Descent

15. In the light of General Assembly resolution 68/237 proclaiming the International Decade for People of African Descent for 2015-2024 and resolution 69/16 on the program of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable program of measures and policies. The Committee requests as well that the State party includes in its next report precise

information on the concrete measures adopted in this framework, taking into account its General Recommendation N°34 (2011) on racial discrimination against people of African descent.

Consultations with civil society

16. The Committee recommends that the State party expand its dialogue with civil society working in the area of human rights protection, in particular in combating racial discrimination, including in the preparation of its next periodic report but also outside that context. The Committee also recommends that the State party put in place measures to stimulate the development and strengthen the capacity of a civil society that truly reflects the different groups present in its territory.

Amendments to article 8, paragraph 6, of the Convention

17. The Committee reiterates its recommendation contained in the previous concluding observations that the State party ratify the amendment 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 of 16 December 1992.

Declaration under article 14 of the Convention

18. The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention, recognizing the competence of the Committee to receive and consider individual complaints.

Dissemination

19. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Follow-up to concluding observations

20. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 7, 9 and 12 above.

Paragraphs of particular importance

21. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 5, 8 and 11 above and requests the State party to provide detailed

information in its next periodic report on concrete measures taken to implement those recommendations.

Preparation of the next periodic report

22. The Committee recommends that the State party submit its 12th and 13th periodic reports, in a single document, by June 2017, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of the General Assembly resolution 68/268, the Committee urges the State party to observe the word limit of 21200 for periodic reports and 42400 for the common core document.
