



**Economic and Social
Council**

Distr.
GENERAL

E/C.12/2005/SR.41
21 November 2005

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirty-fifth session

SUMMARY RECORD OF THE 41st MEETING

Held at the Palais Wilson, Geneva,
on Monday, 14 November 2005, at 3 p.m.

Chairperson: Ms. BONOAN-DANDAN

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS (continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Initial report of Bosnia and Herzegovina (E/1990/5/Add.65; E/C.12/Q/BIH/1; HR/CESCR/NONE/2005/7; HRI/CORE/1/Add.89/Rev.1)

1. At the invitation of the Chairperson, Mr. Nagradić, Ms. Džasić, Ms. Hadžibegić, Mr. Čegar, Mr. Kličković and Ms. Bera (Bosnia and Herzegovina) took places at the Committee table.

2. Mr. ČEGAR, introducing the initial report of Bosnia and Herzegovina (E/1990/5/Add.65), said the preparation of the report had been carefully planned. The Ministry for Human Rights and Refugees, the body responsible for preparing all reports of Bosnia and Herzegovina to treaty monitoring bodies, had established a working group representing all levels of Government and several State agencies. The various ombudsman's offices and gender centres, as well as the Gender Equality Agency, had made important contributions. Non-governmental organizations (NGOs), too, had provided significant input in response to a broad and well-publicized invitation issued by the working group.

3. The report had been submitted at various stages of drafting to public debate and to several government agencies and ministries, and had been duly adopted by the Council of Ministers in May 2004. It had been translated into English and the three local languages.

4. The CHAIRPERSON invited Committee members to put questions to the delegation.

Articles 1-5 of the Covenant

5. Mr. ATANGANA, referring to the State party's written reply to question 1 in the list of issues (HR/CESCR/NONE/2005/7), asked whether all the provisions of the Covenant could be directly invoked before the courts. If so, was there any established case law in that regard?

6. According to the Committee's information, there was a high degree of dysfunction at all levels of the judicial system. If that was indeed the case, what was the Government doing to rectify the situation?

7. In its reply to question 4 in the list of issues, the State party acknowledged that there was discrimination against displaced persons but made no reference to any measures it might be taking to address the problem. He would appreciate more information on that subject.

8. Mr. PILLAY said that an independent and impartial judiciary was indispensable for the protection of human rights. Citing reports of, inter alia, partiality in the State party's judicial system, inequality in access to justice and legal aid and lack of gender and human rights training for judges, he wondered whether the ongoing reforms had yet brought about any improvements.

9. Mr. TIRADO MEJÍA said the State party's reply to question 2 in the list of issues was not entirely satisfactory, implying as it did that because the points in the 1993 Vienna Declaration and Programme of Action were being incorporated into domestic law, there was no necessity for a national action plan on human rights. Such legislative advances did not amount to compliance with the Vienna Declaration and Programme of Action. He would like to know whether the State party had established any national human rights institutions in accordance with the 1993 Paris Principles.
10. In respect of article 3, he would like more information on the numbers of women in senior positions in State bodies, the judiciary and universities, for example, in order to make it possible to assess the effectiveness of the State party's gender-equality legislation.
11. Mr. ABDEL-MONEIM said the current status of Bosnia and Herzegovina was defined under the Dayton Agreement. It was important to know how that situation impacted on the enjoyment of economic, social and cultural rights: how free was the State party to amend its Constitution in order to comply with the Covenant, for example; and what impact did the extensive powers of the office of the High Representative for Implementation of the Peace Process in Bosnia and Herzegovina have on efforts to implement economic, social and cultural rights?
12. Ms. BARAHONA RIERA said the written replies made no mention of gender discrimination. She would appreciate some information on that subject, and particularly on gender discrimination as an aspect of ethnic discrimination.
13. Clearly the State party faced difficulties in fulfilling its obligations in the aftermath of a war which had seen innumerable violations of the human rights of vulnerable groups such as women and children. She would like to know, however, what had been done in recent years for the victims of such violations, especially the victims of sexual violence. What measures of reparation had been taken by the State party and what status was accorded to the victims? Were women still able to apply to be considered as victims of war in order to benefit from such measures?
14. There were reports that women who had been raped during the war had been denied the status of internally displaced persons and had been sent back to the very places where the offences had been committed, despite being in no psychological condition to return. She would appreciate some clarification of their status.
15. Did women heads of household encounter discrimination in such areas as access to work or to property? She wondered what their legal position was and how that compared with their situation in practice.
16. Lastly, she asked whether former child soldiers encountered any form of discrimination and what support was provided to help them reintegrate with their families.

17. Mr. MARCHAN ROMERO requested clarification of the terms “national minority” and “ethnic minority”, as inconsistent terminology in the report had given rise to confusion. Of the 17 minorities mentioned in the written replies to question 4 in the list of issues, he wondered which had the status of national minority, and what the reasons for granting such status were. Despite the establishment of the Roma Board, there continued to be discrimination against the Roma minority in terms of the right to education and social security, for example. He wondered what the Roma’s current legal status was. In that context, he would be interested to learn what proactive measures were being taken by the Government to promote tolerance among all ethnic groups.

18. Ms. GHOSE asked whether efforts were being made to construct a Bosnia-Herzegovinan identity, or whether identity continued to be based along ethnic lines, such as Bosnian-Serb or Bosnian-Croat. In that context, it appeared that the media had a tendency to stereotype certain minorities, emphasizing divisions between ethnic groups, rather than promoting national unity.

19. She noted that many of the displaced persons and returnees were women heads of household. Given that it was accepted that there was discrimination against displaced persons, especially in the areas of employment, education, health and social protection, those women must be in a particularly disadvantageous situation. She would be interested to learn whether the Government had special programmes in place to support those women.

20. She would welcome further information on the functioning of the Agency for Gender Equality, established in 2004. According to the written replies, there were no reported cases of direct violations of the right to equal payment for work of equal value, but women were the majority in lower paid jobs. The Government was therefore clearly aware of the problem, but she would be interested to learn what specific action was planned to remedy the situation.

21. As regards sexual harassment, according to the written replies, that form of discrimination was only vaguely known about, as participants in a research project had refused to talk about it. She would be interested to hear what the Government proposed to do in that regard, as, without any information on what was actually happening, it would become an increasingly difficult problem to deal with.

22. Mr. SADI, noting that there were several human rights institutions in Bosnia and Herzegovina, including the Ombudsman for Human Rights, the Ministry for Human Rights and the Commission for Human Rights, wondered whether they all dealt with the rights set forth in the Covenant, and, if so, he would be interested to hear some examples. He wondered how relevant the Covenant was to the reconstruction process, and to what extent it was taken into consideration by the ministries concerned. He would also welcome information on the Government’s priorities under the Covenant at the current stage in development, and what difficulties arose in meeting obligations arising from the Covenant.

23. Mr. RIEDEL expressed concern with regard to affordable justice. According to various sources, the justice system was inaccessible to many vulnerable groups, such as rural populations, the elderly and the Roma, many of whom must travel long distances to reach the nearest municipal court. He would welcome information on measures to improve that situation.

24. Ms. BRAS GOMES said that the basic legislative framework required by the Covenant appeared still not to be functioning in Bosnia and Herzegovina. One of the major problems appeared to be the complexity of the various decision-making levels and the lack of coordination between them. There seemed to be legislative gaps, resulting in a lack of equal treatment of people, which had a particularly negative impact on vulnerable groups, which were either unaware of their rights or lacked the skills or tools necessary to demand their materialization. She wondered what measures were envisaged to improve the legislative framework and whether there were any plans to streamline the decision-making levels so as to establish a clearer division of responsibilities. It was obvious that the Government could not undertake all the necessary reforms simultaneously, and she therefore wondered whether priorities had been established.

25. Regarding discrimination, it was often stated that economic constraints did not allow for the enjoyment of the rights enshrined in the Covenant. However, she wondered whether those constraints could justify ethnically motivated violations of rights. In 2001, the Special Representative of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia had stated that the dysfunctional economy was to a large extent the consequence of policies of ethnic division. She would be interested to hear the delegation's comments.

26. It appeared that there were still major discrepancies between legislation and practice in terms of equal treatment of men and women. She wondered whether there were adequate mechanisms to assess the adverse effects of policies designed to ensure equal enjoyment of economic, social and cultural rights on women and girls.

27. Mr. KERDOUN asked whether the issue of demining was a particularly important aspect of the development strategy of Bosnia and Herzegovina. He would welcome information on the approximate number of mines and the demining process. He wondered whether Bosnia and Herzegovina had ratified the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction and if it was receiving any international assistance in the demining process.

28. There were a great number of individual laws in the area of environmental protection, which might lead to complications in implementation. He wondered whether it would not be preferable to have a single framework law.

29. Mr. RZEPLINSKI noted that there were a number of international civil and military institutions based in Bosnia and Herzegovina, and wondered to what extent the money they spent in the country contributed to the country's gross national product (GNP). Those institutions also employed a significant number of Bosnian employees, and he wondered whether they provided similar protection of the economic, social and cultural rights of their personnel to other institutions.

30. He also requested clarification on Bosnia and Herzegovina's three official languages.

The meeting was suspended at 4.15 p.m. and resumed at 4.35 p.m.

31. Mr. ČEGAR (Bosnia and Herzegovina) said that the majority of the questions on the judiciary were related to the International Covenant on Civil and Political Rights, and Bosnia and Herzegovina had recently submitted its report on the implementation of that instrument. The implementation of economic, social and cultural rights depended on the level of development of the country and required time in addition to State action.

32. Ms. HADŽIBEGIĆ (Bosnia and Herzegovina) said that the Covenant, along with 19 other international human rights instruments, was an integral part of the Constitution, and, as such, if the protection of a particular right was not defined in domestic legislation, the relevant provision of the Covenant was directly applicable at all levels. The Covenant had already been invoked by the courts, but information on specific cases was not currently available.

33. With the assistance of the international community, a major reconstruction of the judiciary was under way. A State agency had been established to provide judicial training, and most serving judges had undergone training, with an emphasis on the protection of human rights and the direct applicability of international treaties. In order to guarantee the highest degree of independence of the judiciary, the salaries of judges had been increased considerably, and they were now in fact disproportionately high compared with those of most members of the executive. The process of judicial reform was ongoing.

34. The question of displaced persons and returnees was one of the most painful aspects of the post-war situation. As a result of the war, more than half of the population had either fled or been expelled from their pre-war homes to many different countries. On returning to Bosnia and Herzegovina those people had been granted the status of displaced persons or returnees if they returned to their pre-war address. The issue was dealt with by the Ministry for Human Rights, in accordance with the Law on Displaced Persons and Refugees-Returnees. It could not be denied that there had been discrimination against returnees and displaced persons, particularly at the end of the war. However, the security of returnees, particularly in the light of the forthcoming police reforms, was improving continuously. Nonetheless, returnees faced other problems, such as education of children, poverty, and difficulties in accessing social services, health care and employment, although the situation was improving. More than 80 per cent of the total number of refugees and displaced persons had been able to repossess their pre-war property, although a major problem was the damage caused to those houses. The international community had provided assistance in the construction of housing for returnees. Expenditure for such purposes was increasingly being allocated from the State's own resources, and, according to the most recent estimates, 2.5 billion convertible marks (BAM) was required to provide minimum repairs to the damaged property of returnees.

35. Mr. ČEGAR (Bosnia and Herzegovina) said that there was a tradition of women holding managerial positions, particularly in the health and education sectors. The State Court currently had a female president. Although detailed statistics had not been collected, the number of women at school and university and in employment had increased since the adoption of the Law on Gender Equality and the establishment of gender centres. In order to increase women's political participation the Government had set a minimum target of 30 per cent female representation in the forthcoming elections, to be held in 2006.

36. The Office of the High Representative for Bosnia and Herzegovina had made a substantial contribution to progress and development during the post-war period, particularly in the adoption of legislation. The High Representative had acted in the place of political leaders, and the decisions taken by his Office had automatically been made law. The national authorities were now more firmly established. A strong awareness of the need for the Government to assume full authority and responsibility meant that steps were being taken to make the transition from the dualistic system of power.

37. Ms. HADŽIBEGIĆ (Bosnia and Herzegovina) said that the issue of torture and sexual exploitation of women during the war was particularly sensitive. The International Criminal Tribunal for the former Yugoslavia had judged that many of the human rights violations that had taken place at that time had been premeditated. NGOs had made a substantial contribution to the provision of psychological support for the victims of such violations. Following an NGO campaign, the Government had amended the Law on Social Protection of Civilian Victims of War and Protection of Families with Children to include that category of victims. The amended law would enter into force in the near future.

38. Ms. DŽAJIĆ (Bosnia and Herzegovina) said that until 1990 Serbo-Croat had been the official language in Bosnia and Herzegovina. After the war, three official languages had been recognized: Serbian, Croatian and Bosnian. The differences between the three languages were minor. The vast majority of the population understood all three languages and could read and write both Cyrillic and Latin scripts. All persons had the right to use the language and script of their choice.

39. The media had played a significant role in the process of democratization. Although in the past the media influence had been negative, since it had exacerbated ethnic division and increased discrimination, the situation was beginning to change. A law regulating public broadcasting had been adopted, but had not yet entered into force. The Government was currently in the initial stages of establishing a single State media agency, and a central agency had been established to allocate frequency ranges to radio broadcasters. The independent media still tended to focus on diversity, rather than on promoting equality.

40. Mr. KLIČKOVIĆ (Bosnia and Herzegovina) said that although basic remuneration rights were guaranteed under collective agreements and labour legislation, which provided for equal pay for work of equal value, there was still evidence of discrimination against women. The Agency for Gender Equality was investigating the situation. Cases of sexual harassment in the workplace were seldom reported, since victims were often afraid to speak out. All local authorities were responsible for defining sexual harassment in their by-laws, and for identifying and punishing cases.

41. Ms. BERA (Bosnia and Herzegovina) said that the presence of mines on 4 per cent of the territory of Bosnia and Herzegovina had a direct impact on the lives of many people. It had not been possible to meet the initial demining targets, and, as a result of the Government's appeal for

international assistance, the United Nations Bosnia and Herzegovina Mine Action Centre had been established to create the necessary structures and capacity for demining. The presence of unexploded mines had a negative impact on the number of people able to return to the country, the development of agriculture and the development of tourism. Over 300 children had been seriously injured by landmines since the end of the war. Demining was an urgent government priority.

42. On the environment, the Government acknowledged that separate laws on water management and the environment should be brought together under an umbrella law on ecological issues. The Government intended to adopt such a law, and to establish an environmental agency. A national environmental protection plan had recently been adopted.

43. Mr. KLIČKOVIĆ (Bosnia and Herzegovina) said that persons working for international organizations and institutions who spent their income in Bosnia and Herzegovina contributed indirectly to GNP, since they contributed to the economy. Those institutions and organizations also employed a considerable number of citizens of Bosnia and Herzegovina. In the past, the employees of international institutions had not been eligible for social welfare, since they had not been registered with any social welfare funds, and many had not paid voluntary contributions for social security, health care and pensions. That situation had recently begun to change, and several institutions, including the Office of the High Representative and the World Bank, had begun to pay social welfare contributions for all of their employees who were citizens of Bosnia and Herzegovina.

44. Mr. NAGRADIĆ (Bosnia and Herzegovina) said that Bosnia and Herzegovina could be said to have a triangular structure, in that it had three languages, three constitutive peoples, and three monotheistic religions. However, there were also 17 national minorities, as defined under the 2003 law on the protection of national rights of minorities of Bosnia and Herzegovina, which was in full compliance with the European Framework Convention for the Protection of National Minorities. The term “national minority” could be considered to be a synonym for the term “ethnic minority”: it denoted any population group that had a separate culture or tradition. In the former Socialist Federal Republic of Yugoslavia, a distinction had been made between the term “national minority”, which had been used to denote minorities from neighbouring countries, and the term “ethnic minority”, which had been used to denote groups such as the Roma. The 2003 law had abolished that distinction.

45. All national minorities in Bosnia and Herzegovina enjoyed the same status, regardless of the number of individuals who belonged to that minority. However, in practice, not all national minorities were in the same position: for example, the socio-economic position of the Roma people, who were de facto but not de jure the largest national minority in Bosnia and Herzegovina, was inferior to that of the Jewish minority, one of the smallest national minority groups in Bosnia and Herzegovina. All individuals had the right to declare themselves to be members of a minority, and the State was obligated to treat all self-declared minorities as national minorities and guarantee their rights, such as access to education and health services, protection of their cultural heritage and participation in political life. The 2003 law on the protection of national rights of minorities had not resolved all the issues: the election law had needed to be revised in order to allow national minorities to participate directly, rather than through political parties, in local and national representative government, so as to ensure adequate representation of national minorities in politics.

46. Bosnians, Serbs and Croats comprised 97 per cent of the population of Bosnia and Herzegovina; national minorities comprised 2.5 per cent. All persons, regardless of any national identity with which they might also identify, were citizens of Bosnia and Herzegovina.

47. Several important institutions had been established to protect and promote human rights. Three ombudsman institutions existed - the Ombudsman of Bosnia and Herzegovina, the Ombudsman of the Federation of Bosnia and Herzegovina, and the Ombudsman of the Republika Srpska. In 2004, the Human Rights Commission had begun operation within the Constitutional Court of Bosnia and Herzegovina, as the successor institution to the Human Rights Chamber for Bosnia and Herzegovina. Several thousand cases concerning property rights had now been heard, and only a few hundred remained open. Property issues therefore no longer constituted an obstacle to return.

48. There had been massive human rights violations in Bosnia and Herzegovina during the war. Thanks to the support of many different international and non-governmental organizations, the human rights situation in Bosnia and Herzegovina was improving every day, and the level of human rights protection in Bosnia and Herzegovina was already close to that attained in other countries that had passed through transition. While there was greater awareness of human rights, ensuring that human rights values became part of the mindset of all citizens would take many years. With regard to the obligation of the authorities to reinstate employees who had been wrongfully dismissed during the war, he said that anti-discrimination laws not only protected national minorities, but also prohibited discrimination on linguistic, religious, sexual or social grounds.

49. Ms. BARAHONA RIERA reiterated her question about gender discrimination and her request for further information about what the Government was doing to protect the rights of women who had suffered human rights violations, including rape and torture, during the war, as well as of displaced women and child soldiers.

50. Ms. GHOSE said that she had not received a satisfactory answer to her questions about the agency set up to implement the law on gender equality and about discrimination in wages.

51. Mr. SADI asked whether women who had been sexually violated during the war were discriminated against or ostracized because of what had happened to them, and what was being done to reintegrate them into society. He also wished to know what had happened to the children of those women born as a result of the rapes, and the attitude of society towards those children.

52. Mr. RZEPLINSKI asked whether the women who had been the victims of rape during the war had a recognized legal status as veterans of the war.

Articles 6-9 of the Covenant

53. Mr. TEXIER, having expressed regret that the State party's report had not yet been translated into French, said that the high level of unemployment in the State party and the unduly long length of time that it took to find a job in Bosnia and Herzegovina were matters of concern. In that context, he wished to know what specific measures were in place to address youth and long-term unemployment. He also wished to know whether Bosnia and Herzegovina had a

labour inspection regime with which it could monitor the large informal sector, the existence of which resulted in infringements of workers' economic and social rights. He asked what sanctions were in place to deter businesses from failing to respect minimum wages.

54. He noted that Bosnia and Herzegovina did not have a unified labour code applicable to the country as a whole and that no sanctions were imposed on employers who put up obstacles to trade union rights or who discriminated against trade unionists. Moreover, although the right to strike was recognized, the requirement for a strike to be declared in writing and with 10 days' notice was unusually restrictive. He noted that the right to strike in Bosnia and Herzegovina applied universally, with the exception of the armed forces.

55. Mr. SHEN Yongxiang said that although Bosnia and Herzegovina had a sovereign right to opt for privatization as its chosen means of promoting economic development, he was concerned about the protection of rights during the privatization process. He asked whether the new owners of privatized companies were obliged to retain at least some of the existing staff, whether compensation was provided for accumulated years of service in order to alleviate any negative impact of privatization, and whether there were any policies in place to help workers who were laid off as a result of privatization to find new employment or allow those who were approaching the age of retirement to take early retirement. He asked whether, as the term "worker on lay-off" had been officially eliminated in 2000 (E/1990/5/Add.65, para. 108), the 31,000 "workers on lay-off" continued to enjoy the same benefits and employment rights as they had done before the term had been abolished. He asked whether the State party planned to take legislative or other measures to regulate the informal sector, given that the proportion of workers in that sector in Bosnia and Herzegovina was especially high.

56. While, given the historical background, it was understandable that it would take a long time to solve the problems of discrimination against national minorities, he was surprised that the problem existed even in government bodies and public companies; he suggested that the Government should make it a priority to take measures to tackle discrimination in State bodies and public companies, so that such entities might set an example for the rest of society. He asked for clarification as to whether the 30 per cent of women who had not obtained the status of unemployed persons (E/1990/5/Add.65, para. 121) had not done so because they had not registered with employment bureaux, or whether they had been unable to register with employment bureaux because they did not meet the regulatory requirements for registration. He wished to know the conditions that had to be met in order to obtain unemployment status.

The meeting rose at 6 p.m.