



Economic and Social Council

Distr.: General
16 December 2013

Original: English

Committee on Economic, Social and Cultural Rights

Concluding observations on the second periodic report of Bosnia and Herzegovina*

1. The Committee on Economic, Social and Cultural Rights considered the second periodic report of Bosnia and Herzegovina on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/BIH/2) at its 37th and 38th meetings, held on 8 November 2013 (E/C.12/2013/SR.37-38), and adopted, at its 68th meeting held on 29 November 2013, the following concluding observations.

A. Introduction

2. The Committee notes with satisfaction the timely submission of the second periodic report of Bosnia and Herzegovina (E/C.12/BIH/2) and the replies to its list of issues (E/C.12/BIH/Q/2/Add.1). It notes with appreciation that the State party's delegation consisted of experts from several ministries and was gender balanced. The Committee appreciates the State party's informative and constructive interactive dialogue and engagement with the Committee.

B. Positive aspects

3. The Committee welcomes the State party's ratification of the Optional Protocol to the International Covenant on Economic Social and Cultural Rights, on 18 January 2012.

4. The Committee also welcomes the State party's ratification of the following other international instruments:

(a) Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on 24 October 2008;

(b) Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 12 March 2010;

(c) Convention for the Protection of All Persons from Enforced Disappearance, on 30 March 2012.

* Adopted by the Committee at its fifty-first session (4-29 November 2013).



5. The Committee further welcomes the State party's cooperation with the Special Rapporteur in the field of cultural rights during her visit to the State party in May 2013.

6. The Committee takes note with appreciation of the State party's efforts to promote economic, social and cultural rights, which included:

(a) The adoption, in 2009, of the Law on the Prohibition of Discrimination;

(b) Amendments, in 2009, to the Law on Gender Equality (2003), which provides protection against gender-based discrimination by according the possibility of recourse to legal mechanisms;

(c) Amendments, in 2010, to the Criminal Code of Bosnia and Herzegovina, which include a definition of trafficking in line with international standards (art. 186);

(d) The adoption, in 2010, of the Revised Strategy for the Implementation of Annex VII of the Dayton Peace Agreement;

(e) The accession to the Decade of Roma Inclusion 2005-2015;

(f) The continuous implementation of the Bosnia and Herzegovina Mine Action Strategy (2009-2019) to clear mines.

C. Principal subjects of concern and recommendations

7. The Committee regrets that the State party was not able to provide information about the cases of direct applicability of the Covenant before the courts in the State party.

The Committee requests that the State party include in its next periodic report specific information on the justiciability of the rights enshrined in the Covenant, including the cases of direct application of the Covenant before domestic courts as well as information on the available remedies for individuals claiming a violation of their economic, social and cultural rights, as contained in the Covenant. In this respect, the Committee draws attention to its general comment No. 9 (1998) on the domestic application of the Covenant. The Committee recommends that the State party improve its human rights training programmes so as to promote better knowledge, awareness and application of the Covenant, in particular among the judiciary, law enforcement officials and other actors responsible for the implementation of the Covenant, as well as among the rights holders.

8. The Committee is concerned about the lack of a common human rights approach by the different levels of administration in the State party.

The Committee recommends that the State party adopt a national comprehensive action plan on human rights with time-bound measures as an instrument to foster a common human rights approach by the different levels of administration.

9. The Committee is concerned about the lack of independence and inadequate financial and human resources allocated to the Ombudsman's institution.

The Committee recommends that the State party ensure the independence and impartiality of the Ombudsman's institution in compliance with the principles relating to the status of national institutions (Paris Principles) and provide it with sufficient financial and human resources for the effective implementation of its mandate.

10. The Committee is concerned that the complex system of administration in the State party has resulted in disparities in the level of enjoyment of economic and social rights, in particular regarding social protection, social services and access to health care between Republika Srpska, the Federation of Bosnia and Herzegovina and the Brčko District, as well as between Cantons within the Federation (arts. 2, para. 2; 9 and 12).

The Committee urges the State party to intensify its efforts to address disparities in the level of enjoyment of economic and social rights, in particular social protection, social services and access to health care between Republika Srpska, the Federation of Bosnia and Herzegovina and the Brčko District, as well as between Cantons within the Federation.

11. The Committee is concerned that refugees and internally displaced persons, especially those belonging to ethnic minorities, are still facing discrimination resulting in difficulties in access to economic, social and cultural rights, thereby impeding their sustainable return despite the State party's efforts in elimination of discrimination against returnees, especially in terms of restitution of property (arts. 2, para. 2; 6 and 9-14).

The Committee urges the State party to intensify its efforts, including through the adoption at State level of the draft law on amendments to the Criminal Law of the Federation of Bosnia and Herzegovina, which expands the definition of a hate crime, to ensure the sustainable return of refugees and internally displaced persons to their home communities by ensuring their equal enjoyment of Covenant rights, especially in the field of social protection, health care, education and employment.

12. The Committee is concerned that Roma continue to face difficulties in equal access and enjoyment of rights in the area of employment, social and health protection (arts. 2, para.2 ; 6; 9 and 11-12).

The Committee recommends that the State party revise the current Action Plan of Bosnia and Herzegovina for addressing issues of Roma in the area of employment, housing and health care in order to better reflect the needs of the Roma population. The Committee also urges the State party to comprehensively implement the Roma Health Care Action Plan. The Committee further urges the State party to continue its efforts in the registration of all Roma and issuance of identity documents, including those in refugee camps.

13. The Committee is concerned about the limited human and financial resources of the Gender Equality Agency and the Gender Centre of the Entities impeding implementation of the Law on Gender Equality of Bosnia and Herzegovina and the Gender Action Plan (art. 3).

The Committee recommends that the State party strengthen the Gender Equality Agency's involvement in the assessment of legal documents, from a gender equality perspective, proposed for the adoption by the State party's Council of Ministers. The Committee also recommends that the State party provide the national machinery in the field of gender equality with the necessary human and financial resources to improve its effective functioning.

14. The Committee is concerned about the low employment rate of women, a disproportionately high rate of unemployment of women and the prevalence of occupational segregation by gender, both horizontal and vertical, which all reflect the stereotypical perception of roles of men and women in the family and society. The Committee is also concerned about the underrepresentation of women in the elected national and local government bodies (arts. 3 and 6).

The Committee urges the State party to effectively enforce gender equality legislation, in particular to implement article 15 of the Law on Gender Equality, which provides

for State authorities at all levels and local self-government bodies to ensure and promote equal participation of women in administration, decision-making processes and representation. The Committee also urges the Government to undertake comprehensive reform to empower women through gender-sensitive labour policies aiming at hiring of women in non-traditional professions, enhancing their access to vocational and technical education and ensuring equal conditions of work. In this respect, the State party is encouraged to analyse determining factors of women's entry and stay in the labour market, including in the informal economy, and sociocultural factors affecting women's professional choices.

15. The Committee reiterates its concern about high unemployment in the State party, which disproportionately affects members of marginalized groups including minorities, Roma and persons with disabilities (art. 6).

The Committee urges the State party to reduce unemployment through additional measures of active employment policy such as requalification, local employment initiatives, incentives and tax benefits to employers, including targeted programmes aimed at reducing unemployment of disadvantaged and marginalized groups.

16. The Committee is concerned that persons working in the informal sector are sanctioned by still having their registration with the employment bureaux suspended for a period of six months (art. 6).

The Committee recommends that the State party take measures to repeal the sanction imposed on persons working in the informal sector, i.e. the suspension of their registration with the employment bureaux for a period of six months.

17. The Committee is concerned that, despite the guarantee of the principle of "equal pay for work of equal value" in the Law on Gender Equality in Bosnia and Herzegovina, this principle is not applied in practice (art. 7).

The Committee recommends that the State party put in place mechanisms to ensure effective implementation of the principle of equal pay for work of equal value provided for in the Law on Gender Equality in Bosnia and Herzegovina.

18. The Committee notes with deep concern that, due to the difficult economic situation in the State party, employers fail to respect their legal obligations towards their employees, namely by arbitrarily dismissing employees or by failing to pay their salaries or social contributions on time. The Committee is also concerned that employers disregard their legal obligations towards pregnant women and women who are on maternity leave. The Committee further notes with concern the increased number of labour-related accidents and injuries in the workplace (art. 7).

The Committee reiterates its recommendation that the State party take effective measures to ensure that employers abide by their legal obligations towards their employees, namely by paying their salaries or social security contributions in time and by refraining from arbitrary dismissal, in particular, in relation to pregnant women and women who are on maternity leave. The Committee also reiterates its recommendation that the State party ensure that labour inspection units are sufficiently staffed and resourced.

19. The Committee is concerned that the amount of the minimum wage is not adjusted to the cost of living, as well as at the fact that the set minimum wages differ between the Entities (art. 7).

The Committee requests that the State party take measures to ensure that the minimum wage is regularly adjusted to the cost of living and that it enables employees and their families to enjoy a decent living, in accordance with article 7 (a) (ii) of the

Covenant. The Committee also recommends that the State party take the necessary steps to eliminate differences in the amount of the minimum wage between the Entities.

20. The Committee is concerned about the interference by employers in the right of employees to form or join trade unions, as well as about the fact that employees are not protected from retaliatory action following union involvement (art. 8).

The Committee recommends that the employees' right to form and join trade unions, as guaranteed by the Constitution of the State party and by the Covenant, is duly ensured and monitored by the State party's labour inspection units.

21. The Committee is deeply concerned that the allocation of benefits under the social welfare scheme is fragmented throughout the State party, leading to disparities in the level and amount of benefits between the Entities and within the Cantons of the Federation. The Committee is also concerned that the amount of the benefits is not sufficient to ensure an adequate standard of living for the beneficiaries. The Committee is further concerned that social welfare centres are still inadequately funded and understaffed to effectively carry out their functions (art. 9).

The Committee urges the State party to take the necessary steps, including by adopting adequate laws and a national action plan, to ensure a comprehensive and harmonized approach to the social protection system at the State level in order to eliminate existing disparities in the available social protection and assistance benefits between the Entities and between the Cantons and to reduce poverty taking into account the real needs of beneficiaries. The Committee also reiterates its recommendation to ensure that adequate funds from the overall resources of the Entities, Cantons and municipalities are allocated to the social welfare centres and that these centres are adequately staffed in order to ensure effective functioning.

22. The Committee is concerned that the right to social assistance of certain categories of persons, such as war veterans, is established in ad-hoc laws that are not included within the group of general laws on social protection, thereby resulting in disparities in the level of protection and discrimination against other categories of victims. The Committee is also concerned that the existing legal framework has been deepening discrimination of persons with disabilities of all categories (art. 9).

The Committee urges the State party to ensure a more equitable allocation of existing funds for social protection, in particular of disabled war veterans, civilian war victims and of persons with disabilities in general, with a view to reducing discrepancies between the allocated budgets for each of the categories mentioned.

23. The Committee is deeply concerned that wartime victims of sexual violence are not recognized as an eligible category for social assistance in the State party (art. 9).

The Committee recommends that the State party amend all relevant criminal codes to include definition of wartime sexual violence, including rape, as a war crime and crime against humanity. The Committee urges the State party to grant, in the legislation on a social protection system at the level of State and the Entities, wartime victims of sexual violence the recognition and status of an eligible category of persons for social protection and various forms of social assistance as deemed necessary.

24. The Committee is concerned about the continuing absence of an inter-Entity agreement on pension rights and the failure of the Entities to implement the existing inter-Entity agreement on health insurance (art. 9).

The Committee reiterates its recommendation that the State party promote the adoption of an inter-Entity agreement on pension rights and to ensure the

implementation of the inter-Entity agreement on health insurance with a view to guaranteeing access to pension benefits and health care by persons who move from one Entity to another.

25. The Committee remains concerned that the activity under the National Action Plan to Combat Trafficking in Bosnia and Herzegovina for 2008-2012 in relation to internal harmonization of criminal legislation at the level of State, Entities and Brčko District has still been delayed. The Committee is also concerned that no statistical data are available concerning a number of cases where charges were brought against law enforcement officials involved in trafficking, and on sentences imposed (art. 10).

The Committee recommends that the State party promote the harmonization of legislation in the field of criminalization of trafficking in human beings at all levels of the State. The Committee also requests the State party to provide statistical data on the number of cases where charges were brought against law enforcement officials involved in trafficking, and on sentences imposed.

26. The Committee is concerned that victims of trafficking are not recognized in the State party's legislation as potential recipients of social protection assistance (art. 10).

The Committee recommends that the State party develop and adopt amendments to the Laws on Social Protection and Labour in order, in accordance with international standards, to recognize victims of trafficking as an eligible group for social protection assistance.

27. The Committee is concerned about the still existing practice of early marriage before the legal age, particularly within the Roma community (art. 10).

The Committee recommends that the State party take the necessary steps to raise awareness of the legal age to enter marriage in the State party and conduct widespread educational campaigns, especially among the Roma community, on the harmful effects of early marriage.

28. The Committee is concerned about unavailability of statistical data demonstrating the impact of the numerous measures on reducing domestic violence in the State party (art. 10).

The Committee requests the State party to provide information and statistical data in its next periodic report on the impact of the criminalization of domestic violence, as well as of the adoption of Strategy to Prevent and Combat Domestic Violence in Bosnia and Herzegovina, and of the measures taken for combating domestic violence.

29. The Committee is deeply concerned about the extent of poverty in the State party, in particular among displaced persons, minority returnees, children without parental care, pensioners, persons with disabilities, the Roma people and families with two or more children (art. 11).

The Committee reiterates its previous recommendation and urges the State party to:

(a) Develop the official determination of the poverty line and its yearly adjustment;

(b) Address extreme poverty faced in particular by members of marginalized groups, including minorities, and to ensure, on a priority basis, that adequate social assistance be provided to individuals and groups living below the poverty line;

(c) Assess the impact of any laws and policies on the enjoyment of economic, social and cultural rights by individuals and groups living in poverty on the basis of regularly updated data, disaggregated by sex, age, ethnic background, social status

and other relevant criteria, and that effective monitoring mechanisms be adopted and implemented to that effect;

(d) Develop strategies to address the regional disparities that affect the equal enjoyment of economic, social and cultural rights; and

(e) Allocate sufficient funds for the implementation of these strategies, drawing attention to the Committee's statement on poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10), adopted by the Committee on 4 May 2001.

30. The Committee notes with deep concern that, 18 years after the war and signing of the Dayton Peace Agreement, many returnees and displaced persons in the State party are still out of their pre-war homes. In this context, the Committee is also concerned about the continued existence of collective housing despite the fact that these collective housing centres were designed as a temporary solution to address the acute housing situation (art. 11).

The Committee recommends that the State party continue its efforts to ensure the sustainable return of refugees and internally displaced persons to their pre-war houses by facilitating the reconstruction of housing units, infrastructure and continued clearance of mines. The Committee urges the State party to duly implement the Joint Declaration on Resolving Protracted Displacement in Bosnia and Herzegovina which addresses, inter alia, the issue of collective centre residents and according to which all collective centres are expected to be closed by the end of 2014 and current occupants placed in adequate housing units with significantly improved living conditions.

31. The Committee is deeply concerned that access to safe drinking water is not ensured in all parts of the State party (art. 11).

The Committee recommends that the State party take the necessary steps to implement the Water Management Strategy of the Federation of Bosnia and Herzegovina. It also urges the State party to promote the speedy adoption of the Framework Plan for the Development of Water Resources in Republika Srpska by the National Assembly of Republika Srpska. In this regard, the Committee invites the State party to take into account its general comment No. 15 (2002) on the right to water.

32. The Committee is concerned that access to adequate health-care services is not sufficiently ensured for marginalized groups, especially returnees, asylum seekers, Roma and persons with disabilities. The Committee is also concerned at the high number of teenage pregnancies in the State party (art. 12)

The Committee recommends that the State party intensify its efforts to ensure that disadvantaged and marginalized groups have equal access to health-care services and adequate health insurance throughout the State party, including through harmonizing its health-care system. The Committee also recommends that the State party raise awareness of contraceptive methods, with age appropriate education on sexual and reproductive health and rights, in the school curricula, with the aim of preventing early pregnancies.

33. The Committee is concerned about the continued existence of "two schools under one roof" in some parts of the State party. The Committee is also concerned that the Criteria on Names and Symbols of Schools has not been implemented at all levels of the State party, thereby creating an environment that impedes access to education by children belonging to a minority in a particular area (arts. 13-14).

The Committee urges the State party to:

(a) Effectively implement the “Recommendations aimed at discontinuation of segregated or divided structures in educational institutions in the Federation of Bosnia and Herzegovina”;

(b) Adopt and sign at the cantonal level the Provisional Agreement on Meeting Special Needs and Rights of Returnee Children Implementation Plan;

(c) Promote the adoption and implementation, by all ministries of education, of rulebooks/instructions on implementation of Criteria on Names and Symbols of Schools, as a prerequisite for establishing a positive environment for all pupils; and

(d) Promote and facilitate the cooperation of cantons of the Federation of Bosnia and Herzegovina in implementing the criteria mentioned.

34. The Committee is concerned about the high percentage of Roma children not receiving compulsory primary education and the relatively high dropout rates among Roma pupils (arts. 13-14).

The Committee urges the State party to promote cooperation among municipal institutions, centres for social work, Roma associations and schools in order to obtain information on Roma children that should be enrolled in primary education. The Committee also urges the State party to allocate adequate financial resources for the implementation of the Revised Action Plan on the Educational Needs of the Roma and Other Ethnic Minorities. The Committee further recommends that the State party adopt a systematic approach to providing disadvantaged pupils with schoolbooks and meals at school.

35. The Committee is concerned that cultural rights as guaranteed by the Covenant are not equally accessible to all persons, in particular in rural areas. The Committee is also concerned about the closure of a number of cultural institutions due to financial constraints, in particular in the Federation of Bosnia and Herzegovina (art. 15).

The Committee recommends that the State party adopt a comprehensive national action plan on the promotion, protection and enjoyment of cultural rights by all at the State level, while at the same time observing cultural diversity. The Committee also calls upon the State party to address the important role of ensuring the enjoyment of cultural rights by all in the post-conflict peacebuilding process. The Committee further recommends that the State party allocate the necessary funds for cultural institutions in order to prevent their closure and to maintain their functioning, as well as to reopen the ones which have been closed due to financial constraints.

36. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, particularly among government officials, parliamentarians and judicial authorities, and to inform the Committee on all steps taken to implement them in its next periodic report. It also encourages the State party to engage non-governmental organizations and other members of civil society in the process of implementation of the present concluding observations, prior to the submission of its next periodic report.

37. The Committee requests the State party to submit its third periodic report, prepared in accordance with the revised reporting guidelines of the Committee, adopted in 2008 (E/C.12/2008/2), by 30 November 2018.