



# Economic and Social Council

Distr.: General  
7 November 2013

Original: English

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## Committee on Economic, Social and Cultural Rights

### Fifty-first session

#### Summary record (partial)\* of the 30th meeting

Held at the Palais Wilson, Geneva, on Monday, 4 November 2013, at 3 p.m.

*Chairperson:* Mr. Kedzia

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\* No summary record was prepared for the rest of the meeting.

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

**Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights**

*Submissions by national human rights institutions and non-governmental organizations*

*Bosnia and Herzegovina*

1. **Ms. Dzumhur** (Bosnia and Herzegovina Ombudsman for Human Rights) said that Bosnia and Herzegovina lacked a national human rights action plan; the many documents relating to specific groups were insufficient, overlapping in some areas and failing to address others. The independence of the office of the Ombudsman for Human Rights had been threatened by the Government; its budget had been reduced to an extent preventing it from fulfilling its mandate, which the Government had recently extended. As one of three ombudspersons, she had submitted observations to the Committee in her name only and the ombudspersons' opinions on rights violations often differed. However, the Opinion of the Venice Commission had recommended the appointment of a head Ombudsman and several deputies, and she hoped that the Committee would recommend that the Government implement the Opinion. A lack of procedure and weak institutions meant that discrimination was not prevented and the ombudspersons saw increasing numbers of cases.
2. Victims of the civil war represented a particularly vulnerable group, and torture victims were not recognized in domestic legislation. While a small number of victims of sexual violence enjoyed rights in the Federation of Bosnia and Herzegovina, they had not been recognized in the Republika Srpska because of the division of the legislation system. Such constitutional divisions strongly affected the realization of economic, social and cultural rights. She urged the Committee to recommend a constitutional amendment empowering State authorities to coordinate and supervise the enjoyment of those rights. Currently, the State was unable to prevent violations at the municipal level or implement international standards, leading to, for example, violations concerning health care for people with mental disabilities and for detainees.
3. **Mr. Mancisidor** asked why Bosnia and Herzegovina lacked a national human rights action plan and what work was being done concerning post-conflict memory in the State party.
4. **Ms. Shin** asked whether it was correct that the three previous ombudsman institutions had merged and that there was currently one head Ombudsman and many deputies; how were they appointed and did they come from different backgrounds? She asked how disagreements within the ombudsman's Office were settled and what threats to its proper functioning existed, beyond the lack of funding mentioned in the written replies to the list of issues.
5. **Mr. Abdel-Moneim** asked to what extent the international community had fulfilled its commitment to assist the reconstruction of the country and whether it had made an effective contribution.
6. **The Chairperson** asked whether difficulties in preventing rights violations stemmed from the federal authorities' lack of competence in that area.
7. **Ms. Dzumhur** (Bosnia and Herzegovina Ombudsman for Human Rights) said that there was no comprehensive approach to reparations and the absence of a law recognizing victims meant that they could not be assisted. In some cantons, torture victims received financial aid, but in others they did not. The Committee should pay particular attention to victims' inability to hold memorials, which represented an important part of reconciliation.

A national human rights action plan should be drafted after analysis of the human rights situation in the country, setting out the responsibilities of different bodies; the matter was connected to the role of international organizations, which did not take a comprehensive approach when working in the country. Their efforts had been more comprehensive before 2001, since when they had stagnated. Without a serious approach from international partners, the situation in Bosnia and Herzegovina could not improve.

8. The Opinion of the Venice Commission had indeed stated that the three previous ombudsman institutions should merge and a head Ombudsman be appointed, with several deputies. The second phase had not yet been carried out because of a lack of political will and agreement between the entities, and an intermediate solution was being applied. The Government was determined to make political appointments, despite the establishment of a parliamentary ad hoc committee to deal with the matter, comprising representatives of non-governmental organizations (NGOs) and international bodies. In its written replies to the list of issues, the Government had omitted to mention that, while the budget of the Ombudsman's Office had decreased, the budgets of other bodies had increased.

9. The Dayton Peace Agreement had been drafted to bring an end to the war; however, neither it nor the resultant Constitution had been approved by Parliament or through a referendum. The Constitution was a source of conflict because it upheld international standards promoting individual rights, yet its preamble promoted collective rights.

10. She gave two examples illustrating how the State lacked mechanisms to prevent violations of economic, social and cultural rights. In one case, Bosnian children in Republika Srpska were unable to attend school because the authorities had refused to provide education in their language and ensure equitable representation of their parents on school boards, despite legislation providing for such measures. In another case, a woman in the Federation of Bosnia and Herzegovina who was applying for custody of her child after a divorce was unable to bypass the Centre for Social Welfare, whose employees had private connections with her husband, because the Federation Ministry of Social Welfare could not address conflicts of responsibility.

11. **Mr. Sadi** asked to what extent the State party's shortcomings could be ascribed to the fact that it was a new country, and whether such strong criticism was premature.

12. **Ms. Dzumhur** (Bosnia and Herzegovina Ombudsman for Human Rights) said that her criticisms reflected citizens' frustrations. Bosnia and Herzegovina was not a new State; it had been a republic under the Socialist Federal Republic of Yugoslavia. While the end of the war had clearly been a positive development, unequal access to services and high levels of corruption remained. Difficulties in tackling rights violations often stemmed from the 13 different Constitutions in force in the country.

13. **The Chairperson** said that criticism was welcome; it helped the Committee advise the State party. Ms. Dzumhur's comments had reflected trends in the general discourse on power-sharing, which occasionally caused difficulties in the management of State affairs.

14. **Ms. Turner** (Internal Displacement Monitoring Centre, Norwegian Refugee Council) said that she wished to highlight the plight of internally displaced persons (IDPs) in Bosnia and Herzegovina. Some 20 years after the end of the war, over 100,000 people were still displaced. In 2012 few IDPs had gone back to their place of origin. In four towns particularly, hate crimes had targeted returning IDPs. Segregated schools remained a critical issue in both parts of the country. Although pensions and social benefits were the main source of income for many IDPs, entitlements could vary from one area to another because legislation in the Republika Srpska and in Bosnia and Herzegovina had not been harmonized. Legislation recently adopted by the cantonal Parliament of Sarajevo, which provided for the continuation of pensions and health care for IDPs returning to their pre-war home, should serve as an example of best practice and be expanded to cover the whole

country. Progress had been made in respect of adequate housing provision and access to social protection for the most vulnerable groups. Her organization encouraged the Government of Bosnia and Herzegovina to improve the situation with regard to the employment, education and social benefits of IDPs.

*Belgium*

15. **Mr. Eggen** (Food First Information and Action Network (FIAN), Belgium), speaking on behalf of a broader coalition of human rights, development and environmental organizations, drew the Committee's attention to a recent change in Belgian legislation that had increased the minimum biofuel content of petrol and diesel and, in their opinion, constituted a threat to the right to food. Research had amply demonstrated the negative impact of increased biofuel usage, and the United Nations Special Rapporteur on the right to food had recently called for a reduction in incentives for food crop-based biofuel production. Furthermore, the legislative amendment ran counter to current debate in the European Union and had been adopted using a non-transparent, fast-track procedure without adequate civil society consultation or a prior impact assessment. He urged the Committee to call upon Belgium to review its biofuel legislation and align its policy with its obligations under the Covenant.

16. The worrying situation of small-scale farmers was another threat to the right to food. Since 1980, Belgium had lost 63 per cent of its agricultural land. There had been an even greater reduction in the number of smallholdings and the number of young farmers, and suicide rates in the sector were high. The Committee should call on Belgium to implement the voluntary guidelines of the Food and Agriculture Organization of the United Nations (FAO) on the right to food and those relating to responsible governance of tenure and to adopt specific measures to support small-scale farmers.

17. Belgium had not supported a recent resolution of the United Nations Human Rights Council concerning the preparation of a draft declaration on the rights of peasants and other people working in rural areas and had not participated in the working group established for that purpose. The Committee should ask the delegation of Belgium to clarify its position, which appeared to be at odds with the Government's policy of support for family farmers.

18. **Mr. Lambert** (Human Rights League, Belgium) said that the concerns about the lack of social housing in Belgium and rising private-sector rents raised in the Committee's previous concluding observations (E/C.12/BEL/CO/3) remained valid. The State party was still failing to guarantee the right to adequate housing, especially in the Brussels region. The concerns raised about restrictions on the right to strike had been addressed in part. There had been positive developments in jurisprudence and some courts had applied the Committee's recommendations, but legislative amendments that prevented employers from unilaterally banning certain strike-related activities were still required.

19. His organization was also concerned about changes to the welfare system which affected the calculation of social integration income in particular. In common-law partnerships, while heads of household, who were usually male, would continue to receive the full entitlement, the other cohabiting partner, who was usually female, would receive a reduced entitlement. Because the tendency to "individualize" entitlements was more often detrimental to women than to men, it constituted a form of indirect discrimination against them.

20. **Ms. Charles** (Human Rights League, Belgium) said she wished to draw the Committee's attention to changes in social welfare eligibility criteria that were excluding a growing number of foreign nationals from social assistance in Belgium. The Constitutional Court had ruled that the 1992 law by which foreign nationals in an irregular situation were excluded from such assistance was not only correct but also served to encourage respect for

orders to leave Belgian territory. As a result, many foreign citizens living in an irregular situation in Belgium had been refused all forms of social welfare apart from emergency medical aid.

21. More recently the restrictions had been extended to include certain foreign nationals in a regular situation, including asylum seekers whose applications were still being processed, European Union nationals residing in Belgium for less than three months and foreign nationals whose status had been regularized for labour reasons. The right to emergency medical aid was also withheld from persons in the latter two categories. Furthermore, whereas social assistance had previously been granted to families with children irrespective of the parents' status, in application of the principle of the best interests of the child, in certain cases families in an irregular situation were henceforth entitled to such assistance for a maximum of 30 days only and subject to prior acceptance of a voluntary return order. She invited the Committee to consider whether the practice of restricting fundamental rights such as access to housing and health care and using them as tools to force the voluntary return of foreign nationals was compatible with the Covenant.

22. **Mr. Kerdoun** asked whether Government policy favoured biofuels over fossil fuels. If so, did the population support that preference or was increased biofuel usage being pursued simply as a means to reduce dependence on marketed fossil fuels?

23. **Mr. Sadi** asked whether Belgium had other sources of safe, renewable energy that could be used in preference to biofuels, whether the crops used to produce biofuels were home-grown or imported, and in what specific ways biofuel usage affected the right to food in Belgium. Noting that for economic and practical reasons States were sometimes under pressure to make a distinction between regular and irregular migrants in relation to welfare eligibility, he asked whether the Human Rights League was advocating equal treatment for all. Lastly, he asked whether the stock of affordable social housing was generally insufficient in Belgium.

24. **Ms. Bras Gomes** requested clarification as to whether social integration income was calculated on the basis of individual income or household income and whether a switch from one calculation method to another was at the root of the recent changes. She would also appreciate more information about eligibility criteria, including, in particular, whether beneficiaries must be legally resident in Belgium. Turning lastly to the dramatic decline in subsistence agriculture in Belgium, she asked what activities had replaced small-scale farming. Had there been a move towards services or rather to other types of agriculture?

25. **Mr. Ribeiro Leão** asked whether the 30-day restriction on the availability of social assistance and the precondition of agreement to voluntary return were expressly established in a specific law or bill.

26. **Mr. Schrijver** asked how exactly the difficulties being experienced by small farmers in Belgium were affecting the right to food and the right to labour, noting that large-scale farming was increasingly replacing small-scale farming throughout the world but that in many cases alternative employment opportunities were available and, in Europe at least, food supply remained adequate. With regard to eligibility for social welfare, the case law of the Court of Justice of the European Union provided a useful body of reference on the status of third-country nationals and the distinction between regular and irregular aliens. The Court had ruled in a number of judgements that undocumented migrants should have the right to medical care and that their children should have the right of access to education. Thus, if the Government of Belgium was denying those rights, it was in violation of that jurisprudence.

27. **Mr. Mancisidor**, noting that 2014 had been designated the International Year of Family Farming by FAO, asked whether the Government of Belgium had expressed support for that initiative and whether any special events were planned to mark the occasion.

28. **Mr. Eggen** (Food First Information and Action Network (FIAN), Belgium) said that, in Belgium, the price of agricultural produce and land had risen substantially as a result of European Union Directive 2009/28/EC, which required that 10 per cent of the energy used in the transport sector should come from renewable sources by 2020. That target could, however, be reached by using non-biofuel sources which raised fewer human rights issues. His organization therefore recommended that priority should be given to a more intelligent mobility policy aimed at reducing consumption rather than replacing fossil energy at any price. Second- and third-generation biofuels might also offer an alternative. Currently Belgium was unable to grow a sufficient quantity of biofuel to reach the above-mentioned 10 per cent target. Reports showed that in Europe 65 per cent of oil-producing plants were being used for biodiesel instead of food.

29. Despite the considerable drop in the number of smallholdings over the previous 30 years, the total agricultural area had remained virtually the same because farms had grown larger and become industrialized in order to withstand cut-throat competition. His organization considered that the trend to replace food production with the manufacture of biofuel and to engage in industrial farming methods jeopardized the right to adequate food and the right to work.

30. Belgian policy was ambiguous because, although the Government supported family farms and would undoubtedly be in favour of the International Year of Family Farming, other trade and agricultural policies ran counter to smallholders' interests.

31. **Mr. Lambert** (Human Rights League, Belgium) said that the social housing shortage was worst in Brussels. Its impact was felt most by vulnerable sections of the population who were not mobile enough to move to other towns or regions. Means-tested family benefits were granted to households. New forms of cohabitation and the spread of precarity meant that more people were concerned by those measures.

32. **Ms. Charles** (Human Rights League, Belgium) said that her organization was not demanding identical social welfare coverage for everyone present in Belgian territory. In practice, recent laws had, however, excluded an increasing number of people from access to vital rights, such as health care. Asylum seekers' children had access to housing and education and other fundamental rights for no more than 30 days while their parents' applications were being processed.

#### *Kuwait*

33. **Ms. Ramamonjisoa** (Secretariat) read out a statement submitted by the Kuwaiti Association of the Basic Evaluators of Human Rights which drew attention to the need to improve cooperation between the Kuwaiti Government and civil society organizations and to expedite the establishment of a national institution to protect and promote human rights in accordance with the Paris Principles. Kuwait should pass legislation banning racial discrimination and protecting freedom of expression. Health services should be made accessible to citizens and expatriates alike. The law should be amended in order to enable Kuwaiti women to pass on their nationality to their non-Kuwaiti husbands. Workers should have the right to strike. A law prohibiting human trafficking should be adopted along with a law abolishing labour sponsorship. Domestic workers and expatriate workers should be afforded greater protection. A law recognizing women's civil and social rights should be adopted forthwith. Legal steps should be taken to address the issues of illegal immigrants and stateless persons.

34. **Mr. Dasgupta** asked whether the fact that a Kuwaiti mother could not pass on her nationality to her children was regarded as a matter of particular concern. He wished to know what kind of human rights abuses resulted from the system of labour sponsorship and from the treatment of domestic workers.

35. **Mr. Marchán Romero** asked whether Act No. 91 of 2013 on human trafficking and migrant smuggling had entered into force in Kuwait.
36. **Ms. Shin** requested information on issues other than nationality which were of importance to Kuwaiti women.
37. **Mr. Sadi** drew attention to the numerous recommendations of treaty monitoring bodies regarding the situation of the *bidoon* and enquired as to the reason for the chronic lack of progress in that respect.
38. **Mr. Abdel-Moneim** asked for information about the shortcomings in coordination between the Government and civil society organizations. He wished to know what kind of provisions should be contained in legislation to protect the *bidoon* and what realistic measures could be taken to prevent compulsory labour by them.
39. **Mr. Alsaquer** (Kuwaiti Association of the Basic Evaluators of Human Rights) said that the *bidoon* had no access to education or health care. As far as women's rights were concerned, his association had focused its comments to the Committee on the inability of Kuwaiti women to pass on their nationality to their children, as women were especially concerned about that issue. Some 600,000 domestic servants were not covered by any law. Cooperation between the Government and his association was weak; his association had not received the second periodic report before it had been finalized and its opinion on the contents of the report had been ignored.
40. **Ms. Parker** (The Advocates for Human Rights) said that the treaty monitoring bodies should start to question Governments about the effective dissemination of human rights information on their websites, because the advent of new technologies and increased Internet usage would make that information readily accessible to all stakeholders in a growing number of countries. She had not found one single country which provided full information on its Government website about State party reports, lists of issues and recommendations from human rights bodies. She suggested that the Committee's concluding observations should be expanded to include a recommendation on that subject.

*The discussion covered in the summary record ended at 5 p.m.*