



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination

### Eighty-sixth session

#### Summary record of the 2332nd meeting

Held at the Palais Wilson, Geneva, on Friday, 1 May 2015, at 10 a.m.

*Chairperson:* Mr. Calí Tzay

## Contents

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

*Combined ninth to eleventh periodic reports of Bosnia and Herzegovina* (*continued*)

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*The meeting was called to order at 10.10 a.m.*

**Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)**

*Combined ninth to eleventh periodic reports of Bosnia and Herzegovina (continued)*  
(CERD/C/BIH/9-11 and CERD/C/BIH/Q/9-11)

1. *At the invitation of the Chairperson, the delegation of Bosnia and Herzegovina took places at the Committee table.*
2. **Ms. Duderija** (Bosnia and Herzegovina) said that she expected that her country would make a declaration under article 14 of the Convention, on the competence of the Committee to receive individual communications, as it had done in relation to other treaty bodies. The Brčko District of Bosnia and Herzegovina had been established by the International Court of Arbitration in March 2000. It was a small part of the country located at a strategic cross-roads near the borders with Serbia and Croatia, with a population of about 95,000. Three languages, Bosnian, Croatian and Serbian, were all used on an equal footing in the District, which was a demilitarized zone. It was a self-governing administrative unit under the sovereignty of Bosnia and Herzegovina.
3. The Law on Prohibition of Discrimination was an excellent instrument for protecting against discrimination, and she expected that the data on cases of discrimination would show an improvement following its adoption. A discrimination data-collection system had been established, and software would soon be installed to help automate the exchange of information. The number of cases filed against Bosnia and Herzegovina before the European Court of Human Rights had risen dramatically, reaching about 1,000 in 2008, but had subsequently declined to 871 cases in 2013. Most cases concerned savings kept in old foreign currency, though a growing number were related to lengthy delays in court proceedings. The State had paid about 6 million euros in compensation ordered by the Court.
4. The Constitutional Court had heard more than 4,500 cases in 2013. The majority of those cases concerned the right to a fair trial, while only one case concerned the general prohibition on discrimination. Most of the complaints of discrimination lodged with the judicial authorities had concerned mobbing, including violations of labour and employment rights. Several cases had involved discrimination on multiple grounds, which might have included the ground of race or ethnicity.
5. All citizens were entitled to file complaints of discrimination, and non-governmental organizations (NGOs) could also file collective complaints on behalf of individuals. Pursuant to the Law on Prohibition of Discrimination, the burden of proof in such cases lay with the accused. Any party to a judicial case could file an objection alleging discrimination, in which case the proceedings could be temporarily suspended while the complaint was investigated. A number of organizations, including Vaša Prava, provided legal assistance to vulnerable persons who believed that they had suffered discrimination, including displaced persons, asylum seekers and refugees. Bosnia and Herzegovina did not attract very many asylum seekers, but those persons who did apply for asylum received social assistance from the Ministry of Human Rights and Refugees. Immigrants in an irregular situation could not be expelled if there was a risk that they would be sentenced to death in their country of origin. Bosnia and Herzegovina was equipped with a fairly modern migrant holding centre that could accommodate whole families.
6. The number of reports of attacks against journalists and human rights defenders had risen to 45 in 2013, with many of those cases involving threats and pressure exerted on the victims. Unemployment was highest among young persons, particularly young women.

Women's representation in the parliament was relatively low, and it was hoped that the rate of women's participation in politics would reach the European average in the coming years.

7. In addition to ensuring that the laws adopted were in line with regional and international standards, parliamentary committees also received complaints from individuals or groups of citizens. Poverty was on the rise as a result of world economic trends, but it was hoped that the new parliament would work to carry out economic reforms and strategies to benefit vulnerable groups. The Ministry of Human Rights and Refugees issued recommendations and guidelines for the drafting of strategies and plans that would help to protect vulnerable groups such as children and the Roma.

8. **Mr. Toni Šantić** (Bosnia and Herzegovina), providing an overview of data from the High Judicial and Prosecutorial Council on the number of cases involving hate speech and hate crimes, said that unfortunately that data did not cover all jurisdictions and was not disaggregated by sex or ethnicity. As an aspiring member of the European Union, Bosnia and Herzegovina was working to reform its judiciary, including by improving the technology used to manage cases.

9. All judicial officials and prosecutors received training on the importance and application of the Law on Prohibition of Discrimination, and human rights protection was covered in the training offered through a capacity-building project financed by both State and donor funds. In the past year, between 600 and 700 judges and about 200 prosecutors had received compulsory training in human rights protection. All newly appointed judges were required to attend training on the protection of human rights and fundamental freedoms.

10. **Mr. Povlakić** (Bosnia and Herzegovina) said that the Communications Regulatory Agency issued sanctions ranging from fines to the permanent revocation of licences, in accordance with the Law on Communications. Initial decisions were taken by the Director-General and could be appealed to the Agency's Council. A judicial review of the Council's decisions could be requested by filing a complaint with the national courts. The Agency did not have direct control over finances, as fines were paid into a joint budget. The Ministry of Finance had previously overruled a decision by the Director-General to promote an employee. The Agency oversaw electronic and audiovisual media, while a different body was responsible for the press and online media.

11. **Ms. Popović** (Bosnia and Herzegovina) said that a trial census had been conducted to test the methodology that would later be used in the actual census. The materials had been made available in all three languages, though for technical reasons the Serbian-language materials had been printed in Latin script only, and not in Cyrillic script. The trial census had been conducted through one-on-one interviews and monitored by international observers. By law, respondents could exercise their right not to answer questions on their ethnicity, religion or mother tongue, but they must clearly state that they did not wish to answer those questions; the census taker could not simply make assumptions or leave those answers blank. There had been no complaints of census takers not applying the law or the appropriate methodology.

12. In the processing of the census data, each response would be coded separately, and all data made available from the database would be accompanied by an explanation of how the results had been reached. National minorities and persons who chose not to declare their ethnicity were treated as two distinct groups. The data would be made available to the public through a website, and the authorities would intervene in the event that the data was misinterpreted or misused. The final data would be published in mid-June 2015.

13. **Ms. Šantić** (Bosnia and Herzegovina) said that a number of European countries had declared the period 2005–2015 to be the Decade of Roma Inclusion. Bosnia and Herzegovina had joined the initiative in 2008 and had since then made considerable

progress for the inclusion of the Roma. It had adopted national action plans to address problems faced by the Roma in the fields of education, unemployment, housing and health care. More than 12 million euros had been invested in housing projects for the Roma in more than 60 municipalities. Each year, about 100 housing units for the Roma were built or renovated.

14. More than 1,000 Roma families had benefited from repairs to sanitation infrastructure. Any evictions of Roma families that might have occurred would have been carried out in compliance with Annex 7 to the Dayton Peace Agreement. Persons subject to eviction should apply to the relevant ministry for alternative accommodation. While unemployment was widespread in the country, the Roma were particularly vulnerable. They were included in projects carried out by employment offices. However, the Government was aware that a more integrated approach was needed, for example by linking housing benefits with employment for at least one family member.

15. The Government recognized that the loss of the right to health care could increase the vulnerability of the Roma community and had introduced a new system whereby the Roma could enjoy full access to health-care services, provided they were employed and registered with a health-care centre. The Roma Council had been established in 2002 as the advisory body competent to address all issues relating to the Roma Strategy of Bosnia and Herzegovina and to monitor its implementation. The Council was composed of 11 government officials and 11 representatives of the Roma community, 6 of whom were women.

16. The 2012 Law on Civil Registers provided a comprehensive legal framework for dealing with birth registration issues. Local authorities, with the assistance of the Office of the United Nations High Commissioner for Refugees (UNHCR) and NGOs, attempted to register the births of all Roma children systematically. In addition, more than 50 Roma mediators had received training through the joint Council of Europe and European Commission initiative known as the ROMED Programme – Intercultural mediation for Roma. Annex 7 of the Dayton Framework Agreement concerning the return of refugees and displaced persons applied to all those residing in Bosnia and Herzegovina. However, members of the Roma community were often more difficult to rehouse on account of the fact that their previous dwellings had often been illegal to begin with.

17. **Ms. Smajevic** (Bosnia and Herzegovina) said that the Government, responding to a recommendation made by the Committee in its previous concluding observations, had begun the process of amending the Law on the Ombudsman for Human Rights to ensure the effective independence and autonomy of the Office of the Human Rights Ombudsman, in accordance with the Paris Principles. Following a round of consultations with the relevant stakeholders, a number of recommendations had been made aimed at ensuring that the Office would have the human and financial resources and the capacity necessary to fulfil its mandate. A working group composed of government representatives and NGOs had been set up to oversee the amendment process and to ensure implementation of those recommendations. To date, none of the Ombudsmen had been from an ethnic minority, but the working group was looking into ways of increasing the representation of the country's ethnic minorities within the Office. The Office, which had been accorded "A" status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, could receive and investigate complaints of human rights violations and prepared statistical reports for consideration by the parliament. Those reports detailed the number and nature of the complaints received and set out the Office's recommendations for addressing them. The Office's recommendations were subsequently submitted to the competent authorities, who were required to take appropriate action and submit written observations within a given time frame.

18. A special framework programme had been adopted to facilitate the effective implementation of Annex 7 of the Dayton Peace Agreement. The aims included the sustainable return and reintegration of all refugees and the construction of sufficient housing units to accommodate them. The Government attached great importance to finding durable solutions for internally displaced families currently residing in collective centres. To that end, it had submitted a project to the Council of Europe Development Bank, which, if approved, would result in the country receiving a loan worth approximately 80 million euros for the construction of further housing units. Furthermore, a joint regional programme on durable solutions for refugees and internally displaced persons had been adopted at a donor conference held in 2012. That programme encompassed a regional housing programme that would provide housing for some 27,000 families and that had received pledges of around 300 million euros.

19. **Ms. Šantić** (Bosnia and Herzegovina) said that the Law on Gender Equality guaranteed equal opportunities for men and women in both the public and private spheres. Moreover, a commission for gender equality had been established in the House of Representatives, and similar commissions and gender focal points had been appointed at the cantonal, town and municipal levels. An important development in 2013 had been the introduction of a policy on gender-sensitive language in the parliament of Bosnia and Herzegovina. The Gender Equality Agency was responsible for monitoring the representation of women in municipal and district councils and in electoral lists.

20. **Ms. Jurić** (Bosnia and Herzegovina) said that there was no State ministry of education, as each canton had its own education authority. The Ministry of Civil Affairs was responsible for coordinating and overseeing the implementation of the State education policy. A number of laws on primary, secondary and higher education had been adopted or harmonized as part of the reform of the education system. One such law was the Framework Law on Primary and Secondary Education. Moreover, a special body had been set up to design a common core curriculum for primary and secondary schools. The quality of teaching varied across communities, with marked disparities between rural and urban areas. Special indicators had been developed to measure student performance in certain subjects. It was hoped that those indicators would help identify the areas where shortcomings were greatest so as to enable the education authorities to take appropriate action.

21. The country's three official languages were mutually intelligible but differed in certain respects. The segregated system of mono-ethnic schools known as "two schools under one roof" was only present in three of the countries' cantons, where Bosnians and Croats lived side by side. Teaching could only be provided in Serbian if students from that ethnic group were present in sufficient numbers. Primary and secondary school students learned both the Latin and Cyrillic alphabets, regardless of their ethnicity. The question of whether a textbook depicting a common history of Bosnia and Herzegovina could be developed with the help of a foreign expert should be put to the Conference of Ministers of Education. The "two schools under one roof" system continued to be a source of controversy. Its advocates maintained that it was the best way to uphold the right of children to be educated in their native language, whereas its opponents argued that it segregated and discriminated against children on the basis of ethnicity. Furthermore, it represented an area of legal uncertainty, as two municipal courts had rendered conflicting rulings in court cases relating to that system. The Council for Children had proposed a number of measures, including the training of teaching staff on the need to foster ethnic diversity at school, to tackle the problem of segregation in education.

22. The revised action plan on the educational needs of the Roma adopted by the Council of Ministers provided for a raft of measures intended to guarantee Roma children equal access to education. Meetings were thus held with the parents of Roma children to

underscore the importance of school attendance, and incentives such as free meals, transport, textbooks and scholarships were provided. In the 2013/14 academic year, the school enrolment rate of Roma children had increased, and the number of dropouts had fallen. Whereas previously there had been a tendency to place Roma children in schools for children with special needs, that practice had since been discontinued, and Roma children were only placed in such schools if they had learning disabilities. There was still a severe shortage of Roma teachers owing to the high dropout rate among Roma students in teacher training colleges.

23. **Ms. Hohoueto** said that the existence of numerous criminal codes could create an opportunity for discrimination, as the legal characterization given to certain crimes and the penalties prescribed were often inconsistent. For example, crimes of rape and other sexual offences reportedly received different treatment under the various criminal codes. The State party should harmonize the provisions of the different criminal codes to ensure the equal treatment of all citizens.

24. **Mr. Vázquez** said that he would be interested to know whether the courts had the power to declare laws that gave rise to human rights violations null and void, or whether they could merely recommend that they should be amended or repealed. In view of the legal uncertainty over the “two schools under one roof” system, he requested the delegation to clarify the central Government’s position vis-à-vis that system. The delegation should provide additional information on cases in which returnees had been obliged to compensate those unlawfully occupying their homes for structural improvements made during their absence.

25. He requested information on the plight of an individual of Arab descent who had been detained and was facing deportation to the Syrian Arab Republic on the grounds that he posed a threat to national security. The fact that an assessment of the risks associated with his refoulement had not been conducted suggested that the State party wished to deport him on the basis of his ethnic origin alone. How was the right to non-refoulement of such individuals guaranteed? Did the law provide for procedures to allow individuals to challenge the legality of their detention? The allowance of around 80 euros per month given to refugees seemed to be insufficient for them to meet their needs. Were refugees able to avail themselves of integration, training and employment schemes? He requested the delegation to comment on reports that UNHCR and its partners had been denied access to facilities where asylum seekers were held. The Committee would also appreciate an update on the new legislation concerning the treatment of asylum seekers and aliens in the State party. Lastly, he wished to know what kind of assistance was given to those returnees who had not owned property before the war and who therefore could not benefit from programmes for returnees who were property owners.

26. **Ms. Duderija** (Bosnia and Herzegovina) said that in order to allow the direct application of the Convention, a supplementary provision prohibiting all forms of discrimination had been added to almost all domestic laws. In case of legal uncertainty, there was a mechanism in place to ensure that the provisions of the Convention prevailed over all domestic legal provisions. The maximum penalties for certain crimes were indeed inconsistent in the different criminal codes, but the minimum penalties for those crimes were aligned. The Government recognized the need to harmonize the provisions concerning rape and other sexual offences.

27. The individual of Arab descent had not been detained because of his ethnicity, but on account of the fact that, following an assessment, he had been deemed by the national security agency to pose a threat. The agency would only take further action if the person engaged in conduct that warranted it. The Government hoped to provide refugees with greater financial assistance in the future. The legislation on the treatment of asylum seekers and aliens in the State party was currently being amended.

28. **Ms. Smajević** (Bosnia and Herzegovina) said that a court had ordered a number of returnees to compensate those unlawfully occupying their homes for structural improvements, but that the order in question had been stayed. The Government was working with UNHCR to resolve a number of similar cases. Returnees who had not owned property before the war had been placed in collective centres until suitable housing was constructed or became available.

29. **Ms. Jurić** (Bosnia and Herzegovina) said that a judgement of the Mostar Municipal Court imposing measures to prevent discrimination against children based on their ethnicity had been upheld by the Supreme Court of the Federation, and those measures were being enforced. In a similar case, a complaint lodged with the Travnik Municipal Court had been rejected, but that decision was being appealed. Discrimination against students who did not participate in religious education was not commonplace. The Office of the Ombudsman for Human Rights was about to publish a report on conditions in schools.

30. **Ms. Đuderija** (Bosnia and Herzegovina) said that the purpose of the Ministry of Human Rights and Refugees was to promote human rights.

31. **Mr. Avtonomov** asked how new national minorities were recognized by the State party. How were the Roma consulted, including through the Roma Council, with regard to the construction of housing? Was there consultation at the State, entity and canton levels?

32. **Mr. Lindgren Alves**, commending the tolerance shown in the State party towards the Roma, asked whether the provisions of Annex 7 of the Dayton Peace Agreement regarding evictions was applied equally to Roma and non-Roma communities. While he did not believe the “two schools under one roof” phenomenon to be discriminatory, it did perpetuate divisions in society. He asked whether those schools existed in Republika Srpska and how schools in the Brčko District operated.

33. **Ms. Đuderija** (Bosnia and Herzegovina) said that the recognition of minorities in law was a complex subject addressed by European and international standards. For a new national minority to be recognized, individuals must declare themselves as members of a specific ethnic group based on criteria including culture, language and religion. Groups of citizens who did not identify as Bosnian, Croat or Serb, the so-called “others”, did not meet those criteria. There was no segregation in schools in the Brčko District; students studied the culture and languages of the three constituent peoples, and teachers came from all three ethnic groups.

34. **Ms. Jurić** (Bosnia and Herzegovina) said that teachers in the Brčko District worked with children from all three ethnic groups and that teaching took place in a single language, although students could speak and study in their mother tongues. In Republika Srpska, an interim agreement on child returnees signed by all the ministries of education was in force, and certain subjects, including history and religious education, were studied in segregated classes.

35. **Ms. Šantić** (Bosnia and Herzegovina) said that many Roma citizens had been involved in drawing up the action plans addressing the needs of their community. Each year, 1 million euros was earmarked for housing for Roma families and allocated to projects selected by commissions that included two Roma representatives. When projects were approved, the local authorities were required to involve two Roma representatives in their implementation. The Roma actively participated in all projects, and all plans were presented to the Roma Council, which also assisted in defining priorities and drawing up the plans. Funding had been invested in housing for the Roma, and local authorities provided locations for the construction of housing for Roma homeless people. Annex 7 of the Dayton Peace Agreement was applied to all equally. Roma families who had been evicted were offered accommodation in collective and transit centres or alternative accommodation.

36. **Ms. Crickley** asked whether the State party had considered engaging with the European Union Framework for National Roma Integration Strategies. While acknowledging the effort made by the State party to integrate the Roma, she said that her view of the overall progress made was still not very clear and that it would be useful for the delegation to cite specific timelines and targets. She asked whether there was direct engagement with Roma communities at the local level, how the problems faced by Roma women were addressed, especially in respect of double discrimination, and what attempts were made to foster positive attitudes towards the Roma.

37. **Mr. Kemal**, noting that the delegation had stated that certain recommendations on ways to combat discrimination were not implemented throughout the country, asked what kinds of recommendations were in question and how that problem could be addressed.

38. **Mr. Kut** asked about the consequences of the failure to implement the recommendations of the Office of the Ombudsman for Human Rights. The State party's next periodic report should include information about the cases dealt with by the Office of the Ombudsman, including the types of issues addressed and the results achieved.

39. **The Chairperson** asked what nationality was held by "others" if they did not identify as Bosnian, Serb or Croat. If they were stateless, what solution existed?

40. **Ms. Đuderija** (Bosnia and Herzegovina) said that declarations regarding ethnic and religious affiliation did not affect citizenship. The new strategy regarding the Roma aimed to integrate them into society and was fully in keeping with the Europe 2020 strategy. Negotiations were being carried out with the United Nations Development Programme with a view to monitoring and evaluating action plans for the Roma. CARE International had assisted in launching local action plans involving local and Roma communities. Such plans were being piloted in six municipalities and would later be evaluated. There was a high level of coordination between the European Union, international organizations and Roma organizations. However, the Roma communities did not always agree on priorities.

41. The Ombudsman's reports were submitted to the Government and to the parliament. The Ombudsman subsequently issued recommendations for all levels of government and monitored their implementation. The failure of an individual official or institution to comply with a recommendation could constitute a punishable offence, with sanctions depending on the type of infraction and determined by a court. Victims could file charges and could also seek compensation through the civil courts.

42. **Ms. Jurić** (Bosnia and Herzegovina) said that it was the Government's recommendations to eliminate segregation in schools that were not implemented sufficiently. Certain ministries of education refused to follow those recommendations, as they considered that every child had the right to be taught in his or her mother tongue.

43. **Ms. Đuderija** (Bosnia and Herzegovina) said that failure to enforce the judgements of the Constitutional Court was a criminal offence. It was necessary to eliminate segregation in schools while allowing children to receive an education in their mother tongue.

44. **Ms. Šantić** (Bosnia and Herzegovina) said that the Europe 2020 strategy had been applied in the action plan for the Roma, whose deadlines and goals were identical to those of the European strategy, except for the fact that the national action plan would be in force until 2016. Some initiatives that had been part of the Decade of Roma Inclusion would continue, including activities carried out with western Balkan countries with support from the European Union Instrument for Pre-Accession Assistance Fund.

45. **Mr. Yeung Sik Yuen** (Country Rapporteur) said that while the interactive dialogue had been fruitful, there remained outstanding issues in respect of the State party's compliance with the Convention, some of which were recurrent; some of the Committee's

earlier recommendations had not yet been implemented. Nevertheless, the Government's desire to improve compliance was evident. The challenge lay in eradicating divisive tendencies in society that resulted in discrimination on grounds of ethnicity. Lasting peace could be achieved only if there was mutual respect between all sectors of society.

46. **Ms. Đuderija** (Bosnia and Herzegovina) said that the Committee and the State party shared a common goal: to eradicate all forms of discrimination. The Committee's recommendations would be included in the State party's programme of activities and its human rights strategy.

*The meeting rose at 12.55 p.m.*