



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### **Concluding observations on the second periodic report of Bosnia and Herzegovina, adopted by the Committee at its 106th session (15 October–2 November 2012)**

1. The Committee considered the second periodic report submitted by Bosnia and Herzegovina (CCPR/C/BIH/2) at its 2934th and 2935th meetings (CCPR/C/SR.2934 and CCPR/C/SR.2935), held on 22 and 23 October 2012. At its 2945th meeting (CCPR/C/SR.2945), held on 31 October 2012, it adopted the following concluding observations.

#### **A. Introduction**

2. The Committee welcomes the submission of the second periodic report of Bosnia and Herzegovina and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies to the list of issues (CCPR/BIH/Q/2/Add.1) which were supplemented by the oral responses provided by the delegation.

#### **B. Positive aspects**

3. The Committee welcomes the following legislative and other steps taken by the State party:

- (a) The enactment of the Law on Prohibition of Discrimination in 2009;
- (b) The adoption by the Parliamentary Assembly of a resolution on the fight against domestic violence (Official Gazette of Bosnia and Herzegovina, No. 15/08) in 2008;
- (c) The adoption of the National War Crimes Prosecution Strategy in 2008;
- (d) The adoption of a revised strategy for the implementation of annex 7 (the Framework Programme for the Return of Refugees and Internally Displaced Persons) in 2010.

4. The Committee welcomes the ratification by the State party of the following international instruments:

- (a) The International Convention for the Protection of All Persons from Enforced Disappearance on 30 March 2012;

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

(c) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on 18 January 2012; and

(d) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 24 October 2008.

### C. Principal matters of concern and recommendations

5. While noting that the Office of the Ombudsperson has been accredited with “A” status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and that the State party intends to designate it as a national mechanism to prevent torture under the Optional Protocol to the Convention against Torture, the Committee is concerned at the Office’s lack of financial autonomy and the recent budget cuts that threaten the full implementation of its mandate in the promotion and protection of human rights in the State party (art. 2).

**The State party should strengthen its efforts to ensure that the Office of the Ombudsperson enjoys financial autonomy and is provided with adequate financial and human resources commensurate with the additional activities conferred upon it.**

6. The Committee recalls its previous recommendation (CCPR/C/BIH/CO/1, para. 8) and expresses its regret that the Constitution and Election Law of the State party continues to exclude persons who do not belong to one of the State party’s “constituent peoples”, namely Bosniaks, Croats and Serbs, from being elected to the House of Peoples and to the tripartite Presidency of Bosnia and Herzegovina. The Committee particularly regrets that, notwithstanding its previous recommendations and the judgment of the European Court of Human Rights in the case of *Dervo Sejdić and Jakob Finci*, application Nos. 27996/06 and 34836/06, handed down on 22 December 2009, efforts to amend the Constitution have stalled such that the law continues to exclude citizens from certain groups from participating in elections that were held in October 2010 (arts. 2, 25 and 26).

**The Committee reiterates its previous concluding observations (CCPR/C/BIH/CO/1, para. 8) that the State party should adopt an electoral system that guarantees equal enjoyment of the rights of all citizens under article 25 of the Covenant, irrespective of ethnicity. In this regard, the Committee recommends that the State party, as a matter of urgency, amend its Constitution and Election Law to remove provisions that discriminate against citizens from certain ethnic groups by preventing them from participating in elections.**

7. While appreciating efforts to deal with war crime cases such as the implementation of the National War Crimes Processing Strategy, the Committee remains concerned at the slow pace of prosecutions, particularly those relating to sexual violence, and the lack of support to victims of such crimes. The Committee is also concerned at the lack of efforts to harmonize jurisprudence on war crimes among entities and that entity-level courts use the archaic Criminal Code of the former Socialist Federal Republic of Yugoslavia that does not, inter alia, define crimes against humanity, command responsibility, sexual slavery and forced pregnancy. The Committee is concerned that this might affect consistency in sentencing among entities (arts. 2 and 14).

**The State party should expedite the prosecution of war crime cases. The State party should also continue to provide adequate psychological support to victims of sexual violence, particularly during the conduct of trials. Furthermore, the State party should ensure that the judiciary in all entities strongly pursues efforts aimed at harmonizing jurisprudence on war crimes and that charges for war crimes are not**

**brought under the archaic Criminal Code of the former Socialist Federal Republic of Yugoslavia, which does not recognize certain offences as crimes against humanity.**

8. The Committee is concerned that the Strategy on Transitional Justice that aims at ensuring access to justice and reparation for all civilian victims of war including survivors of sexual violence has not been adopted. The Committee is also concerned that a draft law on the rights of victims of torture and civilian victims of war that aims at ensuring that all civilian victims of war in the State party have equal access to social benefits has not been adopted. The Committee further recalls its previous recommendation (CCPR/C/BIH/CO/1, para. 15) and remains concerned that personal disability benefits received by civilian victims of war are significantly lower than those received by war veterans in entities and respective cantons (arts 2, 7 and 26).

**The State party should take practical measures to ensure that survivors of sexual violence and torture have access to justice and reparations. Furthermore, the Committee reiterates its previous recommendation (CCPR/C/BIH/CO/1, para. 15) and urges the State party to harmonize disability benefits among entities and cantons so that personal disability benefits received by civilian victims are adjusted to ensure they are in line with the personal disability benefits received by war veterans.**

9. The Committee recalls its previous recommendations (CCPR/C/BIH/CO/1, para. 14) and regrets the slow progress that has been made to find persons who went missing during the armed conflict between 1992 and 1995. The Committee is also concerned at the budget cuts for the Missing Persons Institute that adversely affect the implementation of its mandate (arts. 2, 6 and 7).

**The Committee reiterates its previous concluding observations (CCPR/C/BIH/CO/1, para. 14) and recommends that the State party should expedite the investigation of all unresolved cases involving missing persons. Furthermore, the State party should take all necessary measures to ensure that the Missing Persons Institute is adequately funded and able to fully implement its mandate with a view to completing the resolution of these cases as soon as possible. The State party should also continue to provide adequate psychological support to families of missing persons during the conduct of exhumations.**

10. The Committee recalls its previous recommendations (CCPR/C/BIH/CO/1, para. 11) and regrets that despite the introduction of quotas in the Election Law that require political parties to nominate at least 30 per cent of women candidates and incentives for parliamentary funding for political parties with women representatives in the Parliamentary Assembly, women remain under-represented in legislative and executive bodies at all levels of Government (arts. 2, 3 and 26).

**The Committee reiterates its previous concluding observations (CCPR/C/BIH/CO/1, para. 11) to strengthen its efforts to increase the participation of women in the public sector through appropriate temporary special measures to give effect to the provisions of the Covenant.**

11. While noting the State party's efforts to reconstruct and refurbish places of deprivation of liberty in order to improve conditions, the Committee is concerned that overcrowding in detention centres and prisons continues to be a problem in the State party. The Committee is also concerned at reports of cases of inter-prisoner violence in prisons (arts. 6 and 10).

**The State party should take urgent measures to address overcrowding in detention centres and prisons, including through increased resort to alternative forms of punishment, such as electronic monitoring, parole and community service. The State party should take practical measures to prevent inter-prisoner violence. In this regard, the State party should continue to ensure that all cases of inter-prisoner**

**violence, especially those leading to deaths, are thoroughly investigated and that the perpetrators are prosecuted and punished with appropriate sanctions.**

12. The Committee is concerned that article 21 of the Law on the Rights of Defenders and Members of their Families, applicable in the Federation of Bosnia and Herzegovina, provides that, in order for the family members of missing persons to accede to or maintain a monthly pension, they have to commence proceedings to declare the missing person deceased within two years of the law coming into force. Furthermore, the Committee is concerned that in the Republic Srpska, municipal courts require the production by family members of evidence in the form of a death certificate that their relative has been subjected to enforced disappearance when assessing a request for a disability pension under article 25 of the Law on the Protection of Civilian Victims of War and article 190 of the Law on Administrative Procedure. The Committee is concerned that this practice raises issues under articles 2, 6 and 7 of the Covenant, as missing persons and those subjected to enforced disappearance are presumed dead when efforts are being made to find them (arts. 2, 6 and 7)

**The State party should abolish the obligation in cases of disappearance which makes the right to compensation dependent on the family's willingness to have the family member declared dead. The State party should ensure that any compensation or other form of redress adequately reflects the gravity of the violation and the harm suffered.**

13. While taking note of efforts to provide protection for witnesses of war crimes in the State party, such as the establishment of the Witness Prosecution Unit in the Office of the Prosecutor, the Committee is concerned at the prevailing deficiencies in the implementation of the witness support programme in entities where war crime cases have been transferred, such as the lack of adequate psychological support and that witnesses have been made to confront accused persons in and outside courts. The Committee is concerned that this affects the willingness of witnesses to provide testimony during trials (arts. 6 and 14).

**The State party should take practical measures to increase the effectiveness of the witness protection programme to ensure the full protection of witnesses. The State party should also ensure that witnesses continue to receive adequate psychological support in entities where war crimes have been transferred. The State party should further ensure that authorities fully investigate cases of suspected intimidation of witnesses to put an end to the climate of fear that stifles efforts to prosecute war crimes at the entity level in the State party.**

14. While appreciating the efforts made by the State party to protect the right of persons against refoulement, the Committee is concerned that persons subject to removal on national security grounds are subjected to indefinite detention based solely on the discretionary decisions by the security organs of the State. The Committee is also concerned that the appeals submitted to courts by asylum seekers that are ordered by administrative authorities have no suspensive effect and that information on countries of origin provided by relevant international organizations and agencies is not always sufficiently taken into account (arts. 7, 9 and 10).

**The State party should revise the law that provides for the detention of persons who are subject to removal from the State party on grounds of national security to ensure that full legal security is guaranteed and that such persons are not held indefinitely. In this regard, the State party should also consider introducing other methods of surveillance in place of indefinite detention. The State party should also ensure that, in all cases involving refoulement, all appeals to courts have suspensive effect and all relevant information on the situation in the country of origin is duly taken into account by competent administrative and judicial organs.**

15. The Committee recalls its previous recommendation (CCPR/C/BIH/CO/1, para. 18) and remains concerned that article 132 (d) of the Code of Criminal Procedure, which

provides that persons suspected of criminal offences can be placed in pretrial detention if the alleged offence is punishable by a prison sentence exceeding 10 years, solely on the ground that the judge finds that reasons of public security or security of property warrant such detention, remains on the statute book (art. 9).

**The Committee reiterates its previous concluding observation (CCPR/C/BIH/CO/1, para. 18) and recommends that the State party should consider removing from the Code of Criminal Procedure of the State party the ill-defined concept of public security or security of property as a ground for ordering pretrial detention of individuals that are considered a threat to public security or property.**

16. The Committee recalls its previous observations (CCPR/C/BIH/CO/1, paras. 20 and 21) and remains concerned that a considerable number of refugees, returnees and internally displaced persons have still not been resettled and continue to reside in collective centres (art. 12)

**The Committee reiterates its previous recommendations (CCPR/C/BIH/CO/1, paras. 20 and 21) and recommends that the State party should expedite efforts for the resettlement and return of refugees, returnees and internally displaced persons in order to complete the phasing-out of collective centres. In this regard, the State party should continue to take practical measures aimed at providing adequate alternative housing to the residents of collective centres and the creation of the necessary conditions for sustainable returns and resettlement.**

17. The Committee recalls its previous observations (CCPR/C/BIH/CO/1, para. 22) and notes with concern the challenges in the registration of births and the provision of birth certificates, particularly for the Roma, which affect their access to health insurance, social security, education and other basic rights (arts. 16 and 24).

**The Committee reiterates its previous concluding observations (CCPR/C/BIH/CO/1, para. 22) and recommends that the State party should increase its efforts to improve birth registration and the provision of birth certificates, particularly among the Roma, through appropriate interventions such as awareness-raising programmes aimed at changing mindsets regarding the need to register births or obtain birth certificates.**

18. The Committee regrets reports and the admission by the State party that the Communications Regulatory Authority, which is, inter alia, mandated to investigate improper conduct in the media and hate speech cases, is not independent, as it is subjected to economic and political pressure (art. 19).

**The Committee recalls its general comment No. 34 (2011) on freedoms of opinion and expression and urges the State party to ensure that the Communications Regulatory Authority's independence is fully respected. The State party should, therefore, desist from any acts of influence over the conduct of affairs by the Communication Regulatory Authority to ensure that it undertakes its mandate independent of any external influence from any person or body.**

19. The Committee is concerned at reports of restrictions on freedoms of expression and assembly in Prijedor town, where the Mayor on 9 May 2012 prohibited public commemorations for the twentieth anniversary of mass atrocities which had been organized by local non-governmental organizations. The Committee is concerned at reports that public announcements were made that any failure to comply with the prohibition and the use of the term "genocide" when referring to the crimes committee in Omarska would be prosecuted (arts. 19 and 21).

**The State party should ensure that restrictions on freedoms of expression and assembly comply with the strict requirements of articles 19 and 21 of the Covenant respectively. In this regard, the State party should conduct investigations regarding**

**the legality of prohibitions to conduct commemorations in the town of Prijedor in May 2012.**

20. While welcoming the State party's efforts to prosecute acts of hate speech and the perpetration of racist attacks, particularly against the Roma, the Committee is concerned at continued reports of racist attacks. The Committee is also concerned at the lack of a specific law that prohibits the establishment of associations that instigate hatred and racist propaganda (arts. 2, 19, 20, 22 and 27).

**The State party should strengthen its efforts to combat hate speech and racist attacks, particularly against the Roma, by, inter alia, instituting awareness-raising campaigns aimed at promoting respect for human rights and tolerance for diversity. The State party should also strengthen its efforts to ensure that alleged perpetrators of racist attacks are thoroughly investigated and prosecuted and, if convicted, punished with appropriate sanctions, and that the victims are adequately compensated. Furthermore, the State party should enact a law that prohibits the formation of associations that are founded on the promotion and dissemination of, inter alia, hate speech and racist propaganda**

21. The Committee recalls its previous recommendations (CCPR/C/BIH/CO/1, para. 24) and reiterates its concern regarding the de facto discrimination of the Roma. The Committee is particularly concerned that Roma children continue to be subjected to the segregated system of mono-ethnic schools, and that they lack opportunities to receive instruction in their languages. The Committee is also concerned at the poor indicators of the Roma in areas of, inter alia, access to housing, health care, employment and participation in the conduct of public affairs (arts. 26 and 27).

**The Committee reiterates its previous concluding observations (CCPR/C/BIH/CO/1, para. 24) that the State party should take necessary measures to give effect to the linguistic and education rights of the Roma as protected under the Law on the Protection of Rights of Persons Belonging to National Minorities. The State party should strengthen efforts to ensure that Roma children can receive education instruction in their mother tongue. The State party should also take practical measures to improve the rights of the Roma with regard to access to housing, health care, employment and their participation in the conduct of public affairs.**

22. The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, the text of the second periodic report, the written responses that it has provided in response to the list of issues drawn up by the Committee and the present concluding observations so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also suggests that the report and the concluding observations be translated into the other official language of the State party. The Committee also requests the State party, when preparing its third periodic report, broadly consult with civil society and non-governmental organizations.

23. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 6, 7 and 12 above.

24. The Committee requests the State party, in its next periodic report, due to be submitted on 31 October 2016, to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole.