

BOSNIA HERZEGOVINA

**NGO
PROGRESS REPORT
ON THE FOLLOW-UP
OF THE CONCLUDING OBSERVATIONS
(CCPR/C/BIH/CO/1)
OCTOBER 2008**

**Helsinki Committee for Human Rights
in Bosnia and Herzegovina**

NON EDITED VERSION

BOSNIA - HERZEGOVINA

Status:

Concluding observations adopted in October 2006

State replies due in October 2007

State replies submitted in December 2007

CCPR/C/BIH/CO/1/Add.1

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Concluding observations selected for the follow-up procedure

Paragraph 8

8. The Committee is concerned that after the rejection of the relevant constitutional amendment on 26 April 2006, the State Constitution and Election Law continue to exclude "Others," i.e. persons not belonging to one of the State party's "constituent peoples" (Bosniaks, Croats and Serbs), from being elected to the House of Peoples and to the tripartite Presidency of Bosnia and Herzegovina. (arts. 2, 25 and 26)

The State party should reopen talks on the constitutional reform in a transparent process and on a wide participatory basis, including all stakeholders, with a view to adopting an electoral system that guarantees equal enjoyment of the rights under article 25 of the Covenant to all citizens irrespective of ethnicity.

Comments from Helsinki Committee for Human Rights in Bosnia and Herzegovina

After rejection of the proposed constitutional amendments in April 2006, the talks concerning amendments of the existing Constitution of Bosnia and Herzegovina have ensued. The main characteristics of these talks are the following:

- The key political leaders, who are focused on protection of collective human rights of the three constituent peoples in the Constitution of Bosnia and Herzegovina through the mechanisms of entity-based and ethnic voting in the Parliament of Bosnia and Herzegovina, participate in the constitution change process
- Individual human rights have been neglected in concrete constitutional provisions
- Attitude of total neglect of the political system towards groups that represent "others".

Without changes of the Constitution of Bosnia and Herzegovina, the widely spread violations of individual human rights through entity and cantonal constitutions cannot be removed. The Dayton Constitution has directly discriminated non-constituent peoples. For a citizen who does call him/herself a Croat, Serb or a Bosniak, the possibility of voting or being voted for is non-existent (collective Presidency and mandates in the House of Peoples).

- Proportional representation should not exclude the minorities, but this still happens at the state level.

Example: In the House of Peoples and the Presidency, which are based on the idea of "*representation of constituent peoples following the principle of parity*", members of other ethnic groups and those who refuse to declare their ethnicity cannot be candidates for MPs or members of the Presidency (Articles 2, 25, 26).

It is, however, a positive development that, after adoption of the new Election Law, the Central Election Commission of Bosnia and Herzegovina, for the first time verified a list of independent candidates (ethnic minorities) for participation in the 2008 Local Elections.

NB: As the Law entered into force on 17 May 2004, and the deadline for registration for participation in the elections expired two days before that date, the Local Elections of 2 October 2004 did not include representatives of minorities.

A specific problem is the non-implementation of the section of the Election Law by which every ethnic minority is guaranteed a mandate in municipal councils in their municipalities. This guarantee stems not from the election results, but from the fact that a minority lives in a certain municipality. This section of the Law was not implemented at the past local elections in October 2004 (see NB above) due to insufficient alertness of certain levels of authority to build this into the electoral system. Furthermore, the Election Law of Bosnia and Herzegovina has foreseen that associations of ethnic minorities may propose their lists of candidates if

they have up to 3 per cent representation in the population of one municipality. If their numbers are higher than 3 per cent, as is the case in Prnjavor, Banja Luka and Prijedor, they are entitled to two seats in the local parliament.

In the state and entity authorities, the minority communities are represented as part of the category of "others" and have almost no rights in relation to the three constituent peoples. Among all states that had emerged following the break-up of Yugoslavia, only Bosnia and Herzegovina does not have the category of "ethnic minorities" in its constitution, but the category of "others". This means, as stated before, that representation of minorities has not been foreseen for any body of government. It should be stressed that it is estimated that Bosnia and Herzegovina has several tens of thousands of people who refer to themselves as members of one of 17 ethnic minorities, the Roma minority being the most numerous.

It can be seen from above that almost none of the articles of the Law on Protection of Rights of Ethnic Minorities have been implemented in practice.

It is a fact that citizens have been excluded from the process of constitution change, without any possibility to present their proposals and have their proposals taken into account in the final decision-making. Citizens can hear about the overall process and the solutions proposed only through the radio or TV or the front pages of daily newspapers featuring statements of political leaders.

With the goal of overcoming of these problems, it is necessary for the State of Bosnia and Herzegovina to create a mechanism to enable citizens to active participate, through public debate, in creation of a new constitution of Bosnia and Herzegovina.

- Changes with the aim of affirmation of a citizen – an individual and his/her individual rights are recommended. The assumption for this is consistent respect for ethnic equality and equality of citizens on the whole territory of Bosnia and Herzegovina;
- It is necessary to change provisions of the Constitution of Bosnia and Herzegovina that deprive any citizen of Bosnia and Herzegovina of passive voting rights, regardless of his/her place of residence. It is also necessary to change provisions which reserve positions of chairs and their deputies in the two houses of the Parliamentary Assembly of Bosnia and Herzegovina for members of the three constituent peoples only;
- Changes guaranteeing rights of members of ethnic minorities, as well as those citizens who do not belong to constituent peoples or ethnic minorities, need to be incorporated into the Constitution of Bosnia and Herzegovina.

To sum up, violations of rights guaranteed by the Convention are still evident.

Paragraph 14

14. The Committee notes with concern that the fate and whereabouts of some 15,000 persons who went missing during the armed conflict (1992 to 1995) remain unresolved. It reminds the State party that the family members of missing persons have the right to be informed about the fate of their relatives, and that failure to investigate the cause and circumstances of death, as well as to provide information relating to the burial sites, of missing persons increases uncertainty and, therefore, suffering inflicted to family members and may amount to a violation of article 7 of the Covenant. (arts. 2(3), 6 and 7).

The State party should take immediate and effective steps to investigate all unresolved cases of missing persons and ensure without delay that the Institute for Missing Persons becomes fully operational, in accordance with the Constitutional Court's decision of 13 August 2005. It should ensure that the central database of missing persons is finalized and accurate, that the Fund for Support to Families of Missing Persons is secured and that payments to families commence as soon as possible.

Comments from Helsinki Committee for Human Rights in Bosnia and Herzegovina

According to the International Commission for Missing Persons (ICMP), around 30,000 citizens went missing during the war in Bosnia and Herzegovina, while 13,500 have been found so far.

Almost a decade after the families of missing persons had requested its formation, the Institute for Missing Persons started to operate in June 2007 by holding the first session of the Steering and Supervisory boards. It took the Council of Ministers almost two years after it had approved formation of the Institute to appoint its top officials. It should be stressed that the establishment of the Fund and the Institution is foreseen by the Law on Missing Persons, which had been adopted by the Parliament of Bosnia and Herzegovina in October 2004.

Some of the key actions of this Institute included preparation of the exhumations plan for Bosnia and Herzegovina, establishment of a single database of missing persons, and securing of assistance to families of missing persons and burial of victims. The Institute is still not working in its full capacity.

It is necessary to establish a better cooperation of governmental and non-governmental institutions and organizations for detection and identification of persons whose faith remains unknown so many years after the war.

Regardless of the fact that the Institute for Missing Persons should ensure equal treatment of missing persons, prevent manipulation with the number of missing persons, unfortunately, this has not been achieved yet. The ethnic, religious or national background of victims still features high in search for missing persons. The search for and identification of missing persons has been delayed, which represents, among other things, violation of human rights of members of their families. The Law on Missing Persons has not been implemented fully yet.

The entity governments have not yet agreed and set up the method for financing of the Fund for assistance to families of missing persons, which should ensure aid for families, among whom some live on the poverty line.

The problem of missing persons is still one of the key issues related to human rights in Bosnia and Herzegovina.

Paragraph 19

19. The Committee is concerned about the poor conditions of detention in Entity police establishments and prisons which are frequently overcrowded, understaffed, insufficiently equipped, and offer inadequate out-of-cell activities and exercise. It is also concerned about poor material and hygienic conditions, lack of qualified staff and inadequate, pharmacotherapy-based treatment of mental health patients and inmates, in particular at Zenica Prison Forensic Psychiatric Annex and also at Sokolac Psychiatric Hospital. (arts. 7 and 10).

The State party should improve the material and hygienic conditions in detention facilities, prisons and mental health institutions in both Entities and ensure sufficient staffing levels, as well as regular exercise and out-of-cell activities for inmates, and adequate treatment of mental health patients. It should transfer all patients from Zenica Prison Forensic Psychiatric Annex and, to that end, ensure that Sokolac Psychiatric Hospital meets international standards.

Comments from Helsinki Committee for Human Rights in Bosnia and Herzegovina

The Detention and Correctional Facility Zenica is the only closed-type prison in the Federation of Bosnia and Herzegovina. This is a prison for men. There is no department for women. The fact that the prison was built in 1886 – 122 years ago, says enough about the conditions in which convicts are serving sentences. The ideal capacity of the prison is 500 convicts, while the maximum capacity is 650.

1. Information on the visit of the Mission of the Helsinki Committee of Bosnia and Herzegovina to the Zenica Prison on 2 July 2008.

- On the day of the visit, the prison accommodated the total of 839 prisoners. This number suggests overcrowding and the impossibility of compliance with the prescribed standards. The number of staff in the prison is not in line with the systematisation of work posts either, let alone the real needs. Currently, the staff is 353, while 514 are required. The Treatment Sector employs 11 staff – treatment officers, which is an insufficient number.
- It is concerning that the Security Sector also lacks 63 staff, which leads to the Pavilion 1 which is the biggest and accommodates around 360 prisoners, having only one security guard at each of the three levels. Guards who are not carrying bats are able to watch only the hall between the dormitories. Video surveillance covers only some spaces, which does not allow for efficient control. All guards are being exhausted by overtime work.
- Fights among prisoners are everyday features of the prison life. They often lead to serious injuries. There have recently been two attacks against the prison guards. There are different motives behind the fights. Most frequently these are unresolved issues from the life before prison and complicity. The most dangerous conflicts and threats are those against the war crimes convicts. With the current number of prisoners, this number of guards, the existing technical equipment and the state of the facilities, these incidents cannot be effectively prevented.
- The prison has an in-patient clinic, which is now better equipped, has more staff and is more apt to serve its purpose than it had been during the previous mission. Two doctors are employed full time in the Health Care Sector. Two psychiatrists come to the prison three times a week, the dentist and his assistant come two times a week, while the physiotherapist, surgeon, internist, dermatologist, urologist, psychiatrist, X-ray specialist, otolaryngologist, ophthalmologist, casualty surgeon and physiotherapist come once a week. According to their work contracts, all of them are obliged to come more frequently, if needed. The Juvenile Department in the Zenica Penitentiary is absolutely unacceptable due to the fact that it is impossible to make the pronounced measure useful, that it is impossible to prevent contact of this group of convicts with those convicted for the most serious criminal acts. This department, just like the Forensic Department, was established as a provisional solution, as an institution for juvenile offenders does not exist on the territory of the Federation.

- The Detention Department should be mentioned as, as this department should not be located on the premises of the Zenica prison. This department was established here because the courts (from the cantonal to the state level) do not have established and equipped detention units, or not a sufficient number of them.

Insufficient staff, technical resources and overcrowding of the prison are the results of insufficient commitment by the Government of the Federation of Bosnia and Herzegovina.

2. Forensic Department in Zenica Prison

The Forensic Department for execution of security measures of compulsory psychiatric treatment and keeping in a medical institution is a problem that demonstrates the attitude of the authorities towards this group of citizens, but also towards respect for the legislation they themselves passed. Namely, Article 167 of the Federation Law on Execution of Criminal Sanctions from 1998 says that “the security measure of compulsory psychiatric treatment and keeping in a medical institution shall be carried out in a special medical institution established only for these purposes, or a special department of a medical institution”. The law was passed in 1998. The provisional or transitional solution is being implemented until the present day, despite the fact that the measures of accommodation in the special department of the Zenica prison were foreseen for “no longer than three years”.

The mission found 29 persons in the Forensic Department during the visit. They are accommodated in two larger dormitories. During our previous visit, they had been as many in one dormitory only. The Department holds a list of 30 persons, but one convict went home for the weekend a year ago and never came back. One person was found in the solitary confinement of the Department, where he was placed due to aggressive and violent behaviour. Engaging of a bigger number of medical specialists is the only progress with regard to the treatment of these convicts. All other conditions are below standards and are contrary to the Law on Mental Patients.

- Concerning the Sokolac Psychiatric Hospital, no significant progress has been made; the conditions are below international standards and the agreement on accommodation of prisoners who were pronounced the measure of compulsory psychiatric treatment from the whole of Bosnia and Herzegovina has not been reached yet.

It is a positive development that, when compared to the previous report, the entities are allocating much more resources for reconstruction and construction of new facilities, as is the case in Foca and East Sarajevo prisons. Preparations for relocation of the Bijeljina District Prison are in progress, as well as the reconstruction of the Dobož District Prison. Building of a state prison, with the capacity of around 300 will resolve the issue of accommodation for the most serious convictions by the Court of Bosnia and Herzegovina. The question is, however, raised – what about other serious offenders, perpetrators of serious armed robberies, drugs abuse?

Bosnia and Herzegovina is lacking a plan of concrete measures for reform of the prison system at the state level, human resources, and a standardized risk assessment procedure in prisons.

Example: The escape of the war criminal Radovan Stankovic from the Foca prison has demonstrated numerous deficiencies and errors in prison procedures concerning measures for risk assessment for prisoners themselves, towards other prisoners or the prison system.

On the basis of the afore-mentioned, it is necessary to adopt a Strategy for reorganization of the prison system at the level of Bosnia and Herzegovina and a standardised procedure for risk assessment in prisons.

With the goal of addressing the rights of prisoners with measures of compulsory psychiatric treatment and their rights to adequate treatment (Articles 7 and 10), it is necessary:

- the Council of Ministers of Bosnia and Herzegovina to implement the conclusions from June 2008 and speed up the procedure, through the Ministry of Finance, for realization of the Swiss donation of 2.8 million francs for construction and restoration of the “Podromanija” Psychiatric Clinic in Sokolac
- the entities’ governments and “Podromanija” Psychiatric Clinic in Sokolac to sign an agreement on conditions for accommodation of prisoners pronounced the security measure of psychiatric treatment from the whole territory of Bosnia and Herzegovina.

Paragraph 23

23. The Committee notes with concern that the State party intends to forcibly relocate the inhabitants of the Roma settlement at Butmir, purportedly because it lacks the necessary infrastructure to prevent pollution of the water supply, while no such relocation plan exists for the non-Roma families living across the street. It also notes with concern that the relocation plan reportedly lacks any detail as to the legal remedies and compensation available to the Roma families concerned. (arts. 2, 17, 26)

The State party should reconsider the relocation plan for the Roma settlement at Butmir, taking into account the residence entitlements of the inhabitants of the settlement which has existed for 40 years, as well as alternative solutions to prevent pollution of the water supply. The State party is reminded that any relocation must be carried out in a non-discriminatory manner and must comply with international human rights standards, including the rights of individuals concerned to an effective remedy, compensation, and provision of adequate alternative housing.

Comments from Helsinki Committee for Human Rights in Bosnia and Herzegovina

- Residents of the Roma community in Butmir are living under very difficult conditions, without water, electricity and heating, in improvised constructions, with up to 30 members of a family living in one of such "constructions". There is no accurate data on the number of members of the community, or other related information (health and social map, number of children who (do not) go to school, etc.)
- According to the information of the Sarajevo Canton minister for housing policy of 16 September 2008, construction of apartment blocks at eight different locations will ensue in the coming weeks in order to accommodate 32 Roma families from Butmir in December. Construction permits are being issued, and the selection of contractors is in progress. The procedure is managed by „Caritas“, the financier of this project. The families must be relocated from Butmir because their improvised constructions, without sewage and water supply, are located in the water protection zone of Butmir and Sokolovic kolonija.

Considering the afore-mentioned deadlines, we doubt the possibility of realization and construction of these housing units by the winter, because not all municipalities in the Sarajevo Canton gave consents and identified locations for the construction.

- According to research on implementation of the Action Plan for Education of Roma, only in Butmir, there are 70 children who do not go to school. Concerning inclusion of Roma in the education system, most burden has been placed on the non-governmental sector. Cooperation at the level of local community is lacking, school directors do not cooperate with mayors and there are no estimates about how many Roma children could enrol to school every year.
- Roma organizations stress that even when Roma children do go to school, they frequently suffer bullying of all sorts, with discriminatory treatment even by teachers. Free textbooks for Roma children usually end up with other children. This has been particularly frequent in the Federation of Bosnia and Herzegovina, while the agreement was properly implemented in Republika Srpska.

Estimates about the number of Roma vary, so it is estimated that between 80,000 and 85,000 Roma reside in Bosnia and Herzegovina. Roma organizations' activists claim there are 80,000 to 120,000 Roma. Among the ethnic minorities, their position is the most unfavourable, particularly when it comes to employment, economic status and housing. Only 1.5 per cent Roma who are able to work have jobs, which is compared with 50 per cent before the war. There are some municipalities without a single employed Roma person.

It has been observed that the entity of Republika Srpska has a more organized approach to resolving of issues of this minority, economic issues and education, when it comes both to the entity and the local level, but also the Roma associations.

One of the most dominant problems in the Federation of Bosnia and Herzegovina are big differences, disagreements and disputes between members of numerous Roma associations in approaches and ways of resolving problems.

A great majority of Roma people has not managed to exercise their right to return of pre-war houses and apartments. Only 15 per cent of Roma children are completing their eight-year primary education, with girls, however, interrupting the education in the fifth year in average.

Minority languages, not even the language of the most numerous, Roma community, are used in communication with the authorities, including courts. There have been no examples of minority language classes in schools.

The overall setting is pretty bad, access to health care, education is still limited, as well as the possibilities for employment. Schools do not have classes in culture and history of ethnic minorities, or classes in Roma language.

Some positive developments, however, include:

- The Roma Council has been established as a consultative body, but it has not yet achieved visible results. It is positive that the state government adopted a decision on formation of the Coordination Board for monitoring of implementation of the action plan for Roma issues in employment, housing and health care.
- Action plan for resolving of Roma issues in Bosnia and Herzegovina is adopted. The Ministry for Human Rights will coordinate the activities. Implementation of this action plan requires around 80 million annually. It is anticipated that 30 per cent will be secured from donor funds, and 70 per cent by pooling resources of all levels of authority.
- The Declaration of Bosnia and Herzegovina on Joining the "Decade of Roma Inclusion 2005-2015" was finalised signed on 4 September in Belgrade in the Palace of Serbia (Serbia is chairing the Decade this year). This association implies establishing of relevant standards, methodology and mutual cooperation of states and international organizations and institutions in resolving of Roma issues. This includes the obligation of the executive of Bosnia and Herzegovina to fight poverty of the Roma population, their exclusion and discrimination within the regional framework. Bosnia and Herzegovina also has an obligation to set clear and feasible goals for upgrading the economic and social status of Roma.
- For the first time, the Central Election Commission of Bosnia and Herzegovina verified the list of independent candidates (ethnic minorities) for participation in the 2008 Local Elections, including Roma candidates.