

Universal Periodic Review of Bosnia and Herzegovina “Stakeholder’s submission”

Constitutional order

Bosnia and Herzegovina has made firm pledges to the effect that the attainment of full respect for human rights, in particular the elimination of all forms of discrimination, shall be an unconditional goal of the sustenance of peace. Commitments made with the OSCE Human Dimension for Security as well as the solid human rights framework incorporated in the Constitution are attributes of this circumstance. However, significant numbers of individuals belonging to minorities, women in socially vulnerable conditions, school aged children in displacement, persons with disabilities, victims of crime and others do not yet enjoy full protection of their human rights.

In this respect, there is a growing concern that inflammatory political rhetoric by representatives from the Entities or lower level governments, invoking preservation of local interests at the cost of coordinated approaches, affects the sustainability of reforms. For instance, in 2008, the adoption of new strategies in the fields of social protection, return, administration of justice and national human rights institutions, were blocked, or the implementation delayed. This is partially an effect of another key feature of the Dayton Peace Agreement, by which Entities have assumed the primary competencies for many social, economic and legal affairs.

In prospective relief, a comprehensive and in several aspects progressive law on the prohibition of discrimination entered into effect in August 2009. This law, to be seen as an intermediary between, on the one hand, the Constitution’s clause on protection against discrimination and, on the other, sector specific instruments as governed by State institutions or the Entity governments, reinforces the equality principle as a superior standard in public administration and foresees the harmonization of laws and procedures across the entire territory of the country.

Recommendation:

- It is imperative that the executive and judicial branches appreciate the full potential of the Law against Prohibition of Discrimination for addressing general human rights concerns. Effective strategies for its progressive implementation in the fields of civil, cultural, economic, political and social rights should be developed and supervised at the highest level of government.

Equality and non-discrimination

Inadequate social and living conditions are salient features in Bosnia and Herzegovina, affecting several distinguishable groups of society. The maintenance of a preferential treatment of social rights for individuals affiliated with the warring factions of the war is only one illustration of these disparities. Fundamentally, social assistance for disabled war veterans, families of fallen soldiers or civilian victims of war are up to ten times higher on an individual basis than for other groups with similar needs, persons with disabilities and elderly without family support being cases in point. Similarly left outside the Entities’ firmest social protection standards are internally displaced persons, even though their social needs are

intrinsically linked with the events of the war as well. In conjunction with a fear of discriminatory treatment relating to access of employment in their pre-war communities, return and reintegration are also hampered by such challenges as the lack of sustained support for housing renovation and reconstruction, and the absence of de-mining.

Equally serious concerns requiring removal remain for children, particularly in the field of the right to education. Several thousands of the country's population – some four to six percent of the entire school-age population – do not attend primary school. As main reasons, parents of the affected children point to the cost of books and travel, to their inadequate living conditions, to their child's special needs and troubled background. Suffice to say, there is no comprehensive system ensuring that every child is in school. Regular coordination among the bodies involved is rare, and no systematic reporting and follow-up procedures exist.

However, ethnically coloured curricula affect even larger groups of pre-school and school-aged children. Children are separated along ethnic lines since the temporary solutions previously employed to facilitate access for returnee children to education, namely 'two-schools-under-one-roof' and the 'national group of subjects' have become quasi-permanent features of the system. Increasingly, parents go out of their way to enrol children in schools which cater exclusively to their particular ethnic group. Ultimately this leads to distrust and ignorance for the child about other ethnic groups and beliefs, which in turn threatens cohesion and viability of Bosnia and Herzegovina as a multi-ethnic and multi-religious State.

National minority groups, such as the Roma, find themselves being persistently marginalised. They do not enjoy political rights in parity with the majority of the population *de jure*. They can neither run for the Presidency of the State, nor be appointed as delegates of an Entity to the House of Peoples of Bosnia and Herzegovina. In addition to such political curtailments, Roma face significant social challenges, particularly when it comes to housing assistance, adequate living conditions, access to education and healthcare.

Patterns of discrimination also include systematic underrepresentation of women in public life, the failure of public authorities to pay due regard to domestic violence and a failure to adequately recognise and compensate for crimes of war-related rape. Politicians and other leaders of society need to play a more active role in the protection against these and other forms of horizontal discrimination. Numerous incidents where they actively refuse to take appropriate or consistent action to prevent further victimisation of hate crimes and intolerance against non-heterosexual groups have occurred. Weak systems of monitoring and reporting need to be strengthened, in addition to the raising of public and judicial awareness of what constitutes such a violation.

Recommendations:

- Entity governments should work in conjunction with each other and the Council of Ministers for a social protection system that is entirely needs-based and ignorant of assistance seekers' social status and residence.
- The education sector should adopt affirmative measures and monitoring systems for children in rural communities and from poor households which ensure their attendance in primary and secondary school. Ethnically coloured segments must be removed from school curricula.

- Responsible State and Entity level ministries, in conjunction with the units of self-government should ensure the sustained implementation of the four Roma Action plans on housing, health, education and employment.
- Politicians and community leaders should acknowledge the important role of women in public life and condemn all forms of domestic violence and hate crimes.

The administration of justice

Following completion of the ICTY's mandate, Bosnia and Herzegovina will assume full State responsibility for the remainder of the open war crimes caseload, estimated to be several thousands of suspects. However, there are four national jurisdictions, those governed by the State, the two Entities and Brčko District, respectively. They apply different civil and criminal substantial and procedural laws and, as a corollary, clear instances of proof exist that this circumstance seriously undermines equal protection of the law, as well as the equality before the law in war crimes trials and in other proceedings before the courts. This lack of direction is further exacerbated by the fact that there is no supreme judicial body with the authority to issue practice directions or guide all courts towards a uniform application and interpretation of domestic standards. As one noticeable result, there is no consistent application of standards which shall have priority over other domestic law, such as the right to a fair trial and freedom from arbitrary deprivation of liberty. Further, there is still disagreement on the feasibility of strategic reforms, unified funding for the judiciary and the adoption of single criminal and civil codes.

A more recent challenge for the justice sector is posed by the unjustified intense campaign of attacks, mainly carried out by political representatives from the Republika Srpska, against judges and prosecutors of the State level judiciary, accusing them of lacking integrity and professionalism. These statements call into question not only the work of the State level judiciary, but also the very constitutionality of the existence of the Court of Bosnia and Herzegovina and the State Prosecutor's Office, as well as the sustainability of the judicial reforms undertaken.

Ultimately, the fragmented legal framework and the uncoordinated administration of justice will have repercussions on the ability of individuals to obtain justice for gross violations of their rights, as well as for suspects and offenders of crime. Notably, a comprehensive assessment of responses to trafficking in human beings demonstrated how a series of human rights violations can be attributed to the lack of a fully coordinated criminal justice sector. In particular, a dysfunctional investigation stage, inappropriate qualifications of the crime and arbitrary sentencing policies affect the process by which victims are supposed to get satisfaction, especially in cases concerning child victims originating from Bosnia and Herzegovina.

These sector-specific concerns reflect systemic challenges in the entire criminal justice system, the effective prosecution of war crimes cases not the least. The long-delayed preparation of a national strategy for their continued prosecution, finally adopted in December 2008, has already been marred by failure to implement it in a sincere and timely fashion. Efforts to map the large caseload of unresolved war crimes remain incomplete, while legal reforms necessary for efficient distribution of case files have yet to be passed into law. Other elements of the new strategy call for initiatives to reform the witness protection system and improve regional cooperation on war crimes processing, but these have not been taken up with urgency.

Another interrelated concern is the prison system. Visits conducted in prison locations throughout the country point to the lack of coordinated management and unified regimes. More so, monitors have been met with a number of allegations of ill treatment of detainees and prisoners by the police or prison guards respectively. As the number of investigations and prosecutions thereto continues to be very low, the need to improve mechanisms for investigation of cases of alleged torture and ill-treatment remains. Overcrowding, poor material conditions, inadequate medical treatment and lack of rehabilitation programs for prisoners remain impediments for the establishment of a functioning and human rights compliant penitentiary system. The establishment of proper specialized institutions for women, juvenile and mentally incapacitated offenders is equally necessary.

Recommendations:

- State and Entity Ministries of Justice need to mobilize a renewed commitment and provide the necessary resources for the implementation of the *National War Crimes Prosecution Strategy*.
- State and Entity Ministries of Justice need to provide political and financial support for the *Sector for Strategic Planning, Aid Co-ordination and European Integration* to assume the role foreseen for the implementation of the *Justice Sector Reform Strategy*.
- State and Entity Ministries of Justice, in conjunction with the penitentiary system, must initiate a public discussion process involving civil society in order to determine the best suitable model of a national mechanism for the prevention of torture.
- Mechanisms to safeguard independence of the judiciary, the status the High Judicial and Prosecutorial Council, the Court and Prosecutor's Office of Bosnia and Herzegovina, as well as the State Intelligence and Protection Agency, need to be improved and judicial budgeting considered as a means to improve the integrity of these institutions.

Effective Domestic Remedies

Annex VI of Dayton Peace Agreement sets forth that the constitutionally protected human rights standards should be monitored by an advanced human rights protection mechanism, therein referred to as the Human Rights Commission. Consisting of two legs, one Ombudsman Institution and one Human Rights Chamber, this commission *sui generis* has now completed its tasks and the competencies transferred to national institutions. However, as sincere human rights shortcomings continue to exist, the functional mandate of the mechanism remains as important as ever.

Nonetheless, Entity interests continue to hamper the development of a single national human rights institution in line with the Paris Principles. This is a clear violation of the directions set out in the Law on the Human Rights Ombudsman of Bosnia and Herzegovina, entrenched in the new Law on the Prohibition of Discrimination, whereby the Ombudsman were entrusted the competencies necessary for monitoring and intervening on behalf of human rights victims across the entire territory of the country. But, because of the Entities' failure to adopt and execute laws that would entail the cessation of the current Entity Ombudsmen and the subsequent transfer of their responsibilities, the central institution is not yet fully operational. Namely, Republika Srpska failed to adopt the relevant law whereas the Federation of Bosnia and Herzegovina made implementation of its law and the cessation of activities of its human rights institution conditional upon the adoption of a corresponding law in the other Entity.

More so, there are several cases pertaining to governmental neglect of final judgments of the Constitutional Court, which is the last and highest judicial instance for allegations of violations against the human rights catalogue in the Constitution of Bosnia and Herzegovina. For instance, there is not yet full compliance with the Court's order to remove names, flags and symbols of units of self-governance which have been declared as inflammatory due to their religious or ethnical overtones. In this respect, the lack of a tailored legal remedy for non-implementation of those final decisions has been identified as the major obstacle by the relevant stakeholders, considering that criminal compulsion of persons responsible therefore have proven to be an ineffective tool. This shortcoming in the national human rights machinery has further led to an increased number of complaints lodged before the European Court for Human Rights whereby citizens from Bosnia and Herzegovina seek compensation for non-executed judgments from the Human Rights Chamber.

These two major assaults on the domestic human rights protection machinery are all the more troublesome in light of the weak status of municipal Gender Equality Commissions and the recurrent attacks on the freedom of media.

Recommendations:

- The Entities must adopt and implement laws by which all competencies and pending cases under review by their respective Ombudsmen are transferred to the Human Rights Ombudsman for Bosnia and Herzegovina.
- The Constitutional Court and other concerned stakeholders should consider proposing means for legislation which ensure the timely and correct execution of judgments.
- Entity Gender Centres in conjunction with the Municipalities should adopt measures which strengthen the status and resources of Gender Equality Commissions.
- All political attacks on the freedom of media must cease immediately.

References

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