

**FOLLOW-UP
INFORMATION IN RESPONSE TO THE UN CAT'S RECOMMENDATIONS -
CONCLUDING OBSERVATIONS OF THE COMMITTEE AGAINST TORTURE,
NOVEMBER 2010**

The UN Committee against Torture considered the periodic report of Bosnia and Herzegovina at its 961st and 962nd meetings, held on 4 and 5 November 2010 and adopted concluding observations at its 978th meeting (CAT/C/SR.978).

After a presentation of the periodic report before the Committee against Torture, acting in its capacity as coordinator, the Ministry of Human Rights and Refugees (hereafter: MHRR) transmitted the concluding observations of the UN Committee against Torture to the Council of Ministers of BiH for information and it acknowledged the concluding observations, and recommendations of the UN Committee against Torture at the 140th meeting held on 12 January 2011.

At the same time, the Ministry of Human Rights and Refugees transmitted the concluding observations of the UN Committee against Torture to all authorities in Bosnia and Herzegovina, whose representatives made up the BiH delegation at the presentation of the periodic report before the Committee against Torture in Geneva on 8 and 9 November 2011, i.e. to the BiH authorities the concluding observations having bearing on.

Paragraph 28 of concluding observations of the UN Committee against Torture requests the State party to provide, within one year, follow-up information in response to the Committee's recommendations contained in paragraphs 9, 12, 18 and 24 of the document.

In relation to point 9 - War crimes of sexual violence, a letter has been sent to the BiH Ministry of Justice Criminal Code Implementation Assessment Team, while, in relation to point 12 - Impunity, a letter has been sent to the Supervisory body for monitoring the implementation of War Crimes Prosecution Strategy, which was appointed by the Council of Ministers of Bosnia and Herzegovina.

Please find below comments and questions under points 9, 12, 18 and 24 of concluding observations of the UN Committee against Torture and answers to questions, comments and requests for information made by the UN Committee against Torture to BiH authorities - relevant to responsible authorities of Bosnia and Herzegovina.

War crimes of sexual violence

9. The Committee expresses its serious concern that the definition of war crimes of sexual violence in the Criminal Code is not consistent with the definition in international standards and in jurisprudence of international courts and that, in particular, articles 172

and 173 of the Criminal Code may result in impunity for such crimes. In addition, the Committee remains concerned at the lack of accurate and updated data on the number of victims of war-time rape and other acts of sexual violence (arts. 1 and 4).

The Committee recommends that the State party amend the Criminal Code to include a definition of sexual violence in accordance with international standards and jurisprudence related to the prosecution of war crimes of sexual violence and remove the condition of "force or threat of immediate attack" from the present definition. Also, the State party should include in its next report the statistical data on the unresolved cases related to war-time rape and other sexual violence.

Answering the question above, the BiH Ministry of Justice Criminal Code Implementation Assessment Team informed MHRR that this recommendation, along with other initiatives for Bosnia and Herzegovina Criminal Code amendments, was submitted to CCIAT for consideration and would be considered at the next CCIAT meeting. Namely, given the large number of initiatives for Bosnia and Herzegovina Criminal Code amendments, all initiatives will be compiled, considered and passed jointly.

Impunity

12. The Committee notes the adoption of the Strategy for Dealing with War Crimes Cases and some progress made in the prosecution of those responsible for acts of torture committed during the 1992-1995 conflict including war-time rape and other acts of sexual violence. However, the Committee is gravely concerned that, taking into account the number of such war-time crimes, the number of cases prosecuted so far by the Bosnia and Herzegovina judiciary is extremely low and local courts still face serious obstacles in prosecuting war crimes cases. In addition, the Committee expresses its serious concern that a significant number of judgments made by the Constitutional Court are not implemented even several years following their adoption and most of non-implemented decisions by the Constitutional Court are related to cases of human rights violations, mainly the cases of missing persons (arts. 2, 9 and 12).

The Committee urges the State party to fight impunity by ensuring prompt and effective investigation into all allegations of war-time crimes and prosecuting and punishing the perpetrators with appropriate penalties commensurate with their grave nature. In that regard, the State party is encouraged to provide mutual judicial assistance in all matters of criminal proceedings and to continue to enhance cooperation with the International Criminal Tribunal for the Former Yugoslavia. Furthermore, it is necessary to fully implement the Constitutional Court's judgments without further delay, in particular with regard to cases on enforced disappearances, and to prosecute failure to comply with such judgments.

The National War Crimes Prosecution Strategy envisages a systematic approach to the issue of resolving a large number of war crimes cases pending at courts and prosecutor's offices in Bosnia and Herzegovina. The document defines time lines, capacities, criteria and mechanisms of war crimes cases management, harmonization of the court practice, the matter of regional co-operation, protection and support to all victims and witnesses and financial aspects and supervision of the Strategy implementation.

The Strategy underlines a need for prosecution of the most complex and top priority war crimes cases within 7 years and other war crimes cases within 15 years. At the level of the Court and Prosecutor's Office of BiH the central records of all war crimes cases pending before the BiH judiciary will be set up. At the same time, they will ensure a functional mechanism of the management of war crimes cases, that is, their distribution between the state-level judiciary and judiciaries of the entities. The most responsible perpetrators of war crimes will be prosecuted as a priority before the Court of BiH, with the help of the case selection and prioritization criteria agreed upon.

The Strategy envisages harmonization of the court practice in war crimes cases in order to ensure legal certainty and equality of citizens before the law.

The Strategy implementation has been launched and, in accordance with agreed criteria, proceedings are transferred to district and cantonal courts in BiH. Further, in order to ensure adequate legislation, amendments to the Criminal Procedure Code ("Official Gazette of BiH", No. 93/09) have been passed and they determine in details the procedure of transfer of proceedings involving crimes against humanity and values protected by international law.

Within IPA 2009, \$ 1.8 million activities are planned, aiming at capacity building of cantonal and district courts to prosecute war crimes cases. The main activities will ensure infrastructure for war crimes prosecution in at least 10 cantonal / district courts and procurement and installation of video equipment for war crimes prosecution in at least 10 Cantonal / District courts.

UNDP, in collaboration with the High Judicial and Prosecutorial Council (HJPC), is implementing a USD 1.4 million project, the main goal being capacity building for investigation, prosecution and trial of war crimes in Bosnia and Herzegovina. Activities under this project include: training of judges and prosecutors in cantonal / district and entity courts and prosecutor's offices in war crimes prosecution, supporting the establishment of a network of witness protection; training of judges and prosecutors of the Court and Prosecutor's Office of BiH; active regional cooperation and issues of ICTY legacy.

At the last meeting held in October 2011, the Supervisory body for monitoring the implementation of measures contained in the National War Crimes Prosecution Strategy ordered to all BiH institutions responsible for implementation of the Strategy to implement program activities, as efficiently as possible, in compliance with the deadlines. After the meeting, an appeal was sent to all relevant authorities to make efforts to harmonize court practice in war crimes prosecution, as well as to guarantee consistent and harmonized court practice fully complying with the European Convention on Human Rights.

It is estimated that the main bottleneck in war crimes prosecution is the Prosecutor's Office of Bosnia and Herzegovina and certain Cantonal and District Prosecutors' Offices. It was concluded that referring war crimes cases among BiH judicial institutions, entity judiciary and Brcko District of BiH is not performed in an effective, expedite and transparent way, and therefore a meeting was scheduled in order to assess achievements and propose measures for the improvement of the implementation of planned strategic activities. It was also emphasized that it is necessary to strengthen capacities of the Federal Police Administration of the Federation of BiH and Cantonal Ministries of Home Affairs, especially in terms of filling the vacant positions of war crimes investigators and introducing new positions in some police agencies.

Regarding the enforcement of judgments of the Constitutional Court, especially those cases involving forced disappearances, as well as initiated criminal proceedings in cases of non-enforcement of these judgments, one should note that decisions of the Constitutional Court are final and binding, but Article VI / 4 of the Constitution of Bosnia and Herzegovina does not provide for mechanisms to enforce decisions of the Constitutional Court. Enforcement of decisions is governed in details by the Rules of Procedure of the Court providing that decisions are final and binding and that all authorities are obliged, within their competences as established by the Constitution and the law, to implement the decisions of the Constitutional Court. However, decisions of this Court are not enforced in pursuance of the rules of enforcement procedure, as decisions of ordinary courts are. This simply means that the Constitutional Court has no enforcement department nor can the police authorities assist it. Unlike the Rules of Procedure of the Constitutional Court of BiH, rules of procedure of constitutional courts of the Entities provide that the Prime Minister (in the Federation) and Government (in the Republika Srpska) ensure the execution of decisions of these courts. The reformed Criminal Code of BiH criminalizes a failure to enforce decisions of the Constitutional Court of Bosnia and Herzegovina in Article 239 and the offence carries a sentence of imprisonment for a term between six months and five years. The Criminal Code criminalizes not only a refusal to enforce a decision but also prevention of enforcement of a decision or helping preventing the enforcement in any way.

The Constitutional Court of BiH forwarded to the Prosecutor's Office the issue of non-enforced decisions on applications of several hundred family members of missing persons in BiH, whereby the court ordered the government of Bosnia and Herzegovina to ensure that the Institute for Missing Persons and the Fund for Missing Persons Support of BiH are in place and working and the Missing Persons Central Records of BiH is set up in order to finally end the agony of thousands of citizens of Bosnia and Herzegovina who do not know the fate of their loved ones.

The legal system of BiH has introduced the Prosecutor's Office of BiH as institution that penalizes obstructions to the execution of decisions of the Constitutional Court. Regarding the execution of decisions of the Constitutional Court, the Ministry of Human Rights and Refugees is of the opinion that, given the current level of development of governance and rule of law in BiH, there is a need to introduce a more precise mechanism of supervision and control over the execution of decisions of this judicial authority in BiH.

Redress, including compensation and rehabilitation

18. The Committee notes that the State party has strengthened its efforts to guarantee the victims' rights to redress, including the development of the Strategy for Transitional Justice. However, the Committee expresses concern over the slow process of the adoption of the draft law on the rights of victims of torture, the absence of an adequate definition of the status and rights of civil victims of war in domestic legislation and the insufficient medical or psychosocial support and legal protection available to victims, especially victims of war-time sexual violence (art.14).

The Committee recommends that the State party adopt the draft law on the rights of victims of torture and civil victims of war and the strategy for transitional justice without delay in order to fully protect the rights of victims, including the provision of compensation and as full a rehabilitation as possible, with the aim of obtaining physical and psychological recovery and their social reintegration. To that end, the

State party is strongly encouraged to reduce politicization of these efforts, to finalize a plan of action with clearly identified activities and corresponding responsibilities among State and entity authorities and to ensure the allocation of adequate financial resources.

Strategy for Transitional Justice

In the last year strong efforts were made to adopt a systematic approach to building mutual trust between different ethnic groups and accountability for past human rights violations. In order to implement this approach in Bosnia and Herzegovina, the Ministry of Justice and the Ministry for Human Rights and Refugees of BiH, with the support of United Nations Development Programme BiH (UNDP BiH), have been working towards developing a draft strategy for transitional justice for BiH. Representatives of other relevant institutions from the state, entity and Brcko District levels, as well as representatives of civil society and victims' associations from all parts of the country were engaged in its development.

Transitional justice is a method applied in societies burdened by a legacy of serious human rights violations and includes several mechanisms which are an attempt to respond to human rights violations and which lead to the establishment of the rule of law, renewal of trust and development of democratic processes in post-conflict country. These mechanisms include: criminal justice, institutional reform, establishing the facts (truth-seeking) and reparation.

The January 2010 Decision of the Council of Ministers established a working group to develop strategy for transitional justice in BiH, as a coordinating body that will conduct transparent and inclusive consultations with all stakeholders of civil society and local institutions with a view to designing the strategy.

The draft Strategy for Transitional Justice has been prepared, but the entity governments have not reached an agreement about it, so at the moment consultations are carried in collaboration with the Parliamentary Assembly and the competent committee, which will be followed, on a proposal by appropriate ministries, by new consultations with the Council of Ministers and entity governments, in order to agree on the final draft of prepared text of this strategic document.

Apart from this strategy, the Ministry of Human Rights and Refugees of BiH, in cooperation with the United Nations Population Fund (UNFPA), is taking actions to develop the Enhancement Programme of Position of Women Victims of Rape, Sexual Violence and Torture in Bosnia and Herzegovina. These preparations include relevant ministries at the entity level in RS and, in FBiH, at the cantonal level. They are slowed because of the non-participation of some entity institutions, but we predict that the consultations and drafting of this planning document will be finalized by the end of 2012. We estimate that the political process of agreeing about this document in Bosnia and Herzegovina will last a while longer.

Law on Torture Victims and Civilian Wartime Victims

In Bosnia and Herzegovina, a particularly significant problem remains to be the outstanding issue of resolving the status of victims of torture and civilian wartime victims in Bosnia and Herzegovina and, although the entity government adopted amendments to the law in this area, there is still a problem how the authorities of Bosnia Herzegovina will regulate the issue of compensation of war victims in BiH in a unique and comprehensive way.

Specifically, after 2006 and after having received negative opinions given by the entity governments on a draft law on victims of torture and civilian wartime victims in BiH, the Ministry for Human Rights and Refugees of BiH made the second attempt in 2009 to resolve the issue of reparations to wartime victims in Bosnia and made a new draft of the law on victims of torture and civilian wartime victims, but in consultations with relevant institutions in BiH and entity governments the Law did receive positive opinions and it was a reason why it has not been sent to the Parliament for consideration and passage. The 2012 Program of the Ministry for Human Rights and Refugees of BiH envisages drafting the law on victims of torture, in cooperation with a network of nongovernmental organizations, for which purpose the funds were allocated from IPA funds.

Enforced disappearances

24. While acknowledging the State party's statement that the Institute for Missing Persons is fully functional and noting ongoing cooperation with the International Commission on Missing Persons aimed at the identification of missing persons, the Committee is concerned by the inadequate protection for the rights of relatives of missing persons and the delay in establishing a State-level fund to assist them. The Committee also regrets that the lack of the harmonization in the State party laws makes it difficult to prosecute enforced disappearances as crimes against humanity (arts. 1, 4, 14 and 16).

The Committee recommends that, in line with the preliminary recommendations made by the Working Group on Enforced or Involuntary Disappearances following its fact-finding mission to Bosnia and Herzegovina in June 2010, the State party:

- (a) Ensure the full independence of the Institute for Missing Persons and provide the Institute with adequate material, financial and human resources, including available technology necessary to detect and exhume graves;
- (b) Ensure that the fund for families of missing persons is established without any further delay and that its financing is entirely secured;
- (c) Complete the Central Record of Missing Persons (CEN) without further delay and make it available to the public;
- (d) Respect the right of families of missing persons, including those who live outside Bosnia and Herzegovina, to know the truth by keeping them informed of the progress made in the processes of exhumation and identification of mortal remains and provide them with psychosocial assistance during the process;
- (e) Fulfill its obligation to investigate all cases of enforced disappearances;
- (f) Consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.

With regard to the Missing Persons Institute of BiH, we should underline that a significant progress has been made.

The Law on Missing Persons ("BiH Official Gazette" No. 50/04) determines the principles for improving the process of searching, the definition of a missing person, the manner of keeping central records, the exercise of entitlements and other rights of family members of missing persons. The Law *inter alia* takes into account the International Covenant on Civil and Political Rights and the 1992 UN Declaration on the Protection of All Persons from Forced or Involuntary Disappearance. Thereafter, the international Agreement on Assuming the Role of Co-founders of the Missing Persons Institute of BiH was signed and ratified by the Council of Ministers of BiH and the International Commission for Missing Persons based in Sarajevo ("BiH Official Gazette - International Treaties", No. 13/05), establishing the Missing Persons Institute of Bosnia and Herzegovina (hereinafter: the Institute).

Although the Institute started to work on 1 July 2007 it became fully operational, staffed and equipped only a year ago. However, despite many difficulties, obstacles and obstructions imposed by individuals and the institutions over the past nearly three years of its existence, the Institute, in cooperation with the International Commission on Missing Persons (hereinafter: ICMP), the International Committee of the Red Cross (hereinafter: ICRC), the Court and the Prosecutor's Office of BH, Entity and Brcko District Prosecutor's Offices, State and Entity police and intelligence authorities and agencies, forensic experts, the companies that provide utility and burial services, demining and mountaineering teams, numerous witnesses and families of missing persons, has managed to locate and exhume the remains of about 2,700 missing persons.

In the same period of time the remains of 2,584 missing persons were identified and handed over to their families.

The above-mentioned data suggests that out of about 28,000 (precisely, 27,794 registered) missing persons, so far more than 20,000 have been found and more than 17,500 missing persons have been identified, which makes 72% of the total number of registered missing persons.

The ratio of identified and found persons is 87.5%.

So, currently, approximately 8,000 more missing persons are searched for, some of which will never be found, such as the ones burned, thrown to the bottom of rivers and lakes etc. In other words, about 10,500 missing persons (8,000 still missing persons and 2,500 found but unidentified missing persons) are still searched for.

Comparing the above-mentioned figures with those from the 2006 report of the UN Human Rights Council when 15,000 people were still believed missing, the accepted view is that a significant step has been made in a positive direction.

The issue of the causes and circumstances of disappearance (death) of missing persons should be considered separately from the process of searching for the missing. Resolving this issue is within the exclusive competence of judicial and police institutions, including the International Criminal Tribunal for Former Yugoslavia (ICTY).

Significant assistance in the identification of victims has been provided by the ICMP (DNA analysis laboratories) and ICRC (AMDB - anti-mortal database).

When it comes to verification of the primary database, i.e. developing the Central Records of Missing Persons (hereinafter: CRMP), the Institute has recently got access to all necessary databases (ICMP, ICRC, the Federation Commission for Missing Persons, the RS Office on Missing and Captured Persons), all necessary by-laws have been adopted for effective enforcement and protection of the verification process and the CRPM itself and the Commission for verification that has started to work on verification has been established.

In order to implement the Law on Missing Persons in full, numerous by-laws have been adopted and they are:

- *Rulebook on the Marking of the Exhumation and Burial Sites of Missing Persons ("BiH Official Gazette" No. 83/06);*
- *Decision on the Establishment of the Fund to Support Families of Missing Persons in BiH ("BiH Official Gazette" No. 96/06);*
- *Rulebook on the Receipt, Recording and Delivery of DNA Reports, adopted in 2008 by the Steering Board of MPI;*
- *Rulebook on the Use of Funds of the Institute for Missing Persons for the Exhumation and Identification, adopted in 2008 by the Steering Board of MPI;*
- *Rulebook on the Central Records of Missing Persons ("BiH Official Gazette" No. 80/09). The Institute has also enacted the Guidelines on Security and Protection of Information System of the Central Registry of Missing Persons ("BiH Official Gazette", No. 2 / 10), governing the security goals of the Central Information System of Records, organization of protection and measures and means to protect the security and their implementation.*

The establishment of the Fund for Missing Persons, which is a fund to support families of missing persons of BiH (hereinafter: Fund) is an exclusive competence of the Council of Ministers and Governments of FBiH, RS and Brcko District.

Unfortunately, despite the fact that some of these by-laws, whose enactment is within competence of the above-mentioned governments, the Fund, to this date, has not become operational due to a lack of consensus on the mode of its funding and where it is going to be based.

With regard to the International Convention for the Protection of All Persons from Forced Disappearance, the Ministry of Human Rights and Refugees launched an initiative for accession to this Convention, after which, at the meeting held on 17 November 2010, the Presidency issued a decision on the accession of Bosnia and Herzegovina to the International Convention for the Protection of All Persons from Forced Disappearance.

The Ministry of Foreign Affairs continued the process of ratification and at the 14th session held on 24 November 2011, the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina gave consent to ratification of the Convention.