

COMMITTEE AGAINST TORTURE  
Forty-fifth session  
1-19 November 2010

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Concluding observations of the Committee against Torture**  
*(Extracts for follow-up of CAT/C/BIH/CO/2-5)*

**BOSNIA AND HERZEGOVINA**

(...)

**C. Main subjects of concern and recommendations**

(...)

**War crimes of rape and other forms 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.**

(...)

**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.**

(...)

### **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.**

(...)

### **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) Fulfil its obligation to investigate all cases of enforced disappearances;
- (f) Consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.

(...)

28. The Committee 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 present document.

(...)

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