

Written Information for the Follow-up to the Concluding Observations of the Committee Against Torture on Bosnia and Herzegovina's Combined Second to Fifth Periodic Reports (CAT/C/BIH/CO/2-5).

October 2011

I. Background

1. On 19 November 2010 the Committee against Torture (CAT) adopted its concluding observations on the combined 2nd to 5th periodic reports submitted by Bosnia and Herzegovina (BiH). Among a number of recommendations, the CAT requested BiH to provide, within one year (i.e. 19 November 2011), **“follow-up information in response to the Committee’s recommendations contained in paragraphs 9, 12, 18 and 24”**. In the mentioned paragraphs, the CAT recommends to BiH to take the necessary measures to amend the Criminal Code with regard to sexual violence; to ensure the investigation, judgment and sanction of those responsible for war crimes; to ensure that the Constitutional Court’s judgments are fully implemented; to adopt the law on the rights of victims of torture and civil victims of war and to ensure that victims obtain compensation and integral reparation for the harm suffered; to ensure the functioning of the Missing Persons Institute (MPI); to ensure that the Fund for Families of Missing Persons is established without delay; to complete the Central Record of the Missing Persons (CEN); to keep families of missing persons informed on the progress made in the process of exhumation and identification of mortal remains and to provide them psycho-social assistance during the process; to ensure the State party’s obligation to investigate all cases of enforced disappearance; and to consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.
2. TRIAL (Swiss Association against Impunity), seven associations of relatives of missing persons (Association of Families of Killed and Missing Defenders of the Homeland War from Bugojno Municipality; Association of Relatives of Missing Persons from Hadžići Municipality; Association of Relatives of Missing Persons from Ilijaš Municipality; Association of Relatives of Missing Persons from Kalinovik – “Istina-Kalinovik 92”; Association of Relatives of Missing Persons of the Sarajevo-Romanija Region; Association of Relatives of Missing Persons of the Vogošća Municipality; and Association of Women from Prijedor – Izvor); seven associations dealing with the subject of victims of rape or other forms of sexual violence during the war (Association of Women-Victims of War; the Centre for Legal Assistance to Women Zenica; Infoteka Women’s Information and Documentation Centre; Sumejja Gerc; Viktorija 99; Vive Žene Tuzla; and the Women’s Section of the Concentration Camp Torture Survivors Canton Sarajevo); and four associations or federations of associations of former camp-detainees (Association of the Concentration Camp-Detainees – Bosnia and Herzegovina; Association of the Concentration Camp-Detainees of the Republika Srpska; Croatian Association of War Prisoners

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of the Homeland War in Canton of Central Bosnia; and Prijedor 92) submit to the CAT written information for the follow-up on the subjects concerned, in order to assess whether the recommendations have been implemented, and to highlight the remaining obstacles. Moreover, reference is made also to other issues related to the three mentioned categories of people that disclose the existence of practices and situations which are not in accordance with the obligations set forth by the Convention against Torture.

3. In general, it is the view of the subscribing organisations that since November 2010 there has not been a significant progress with regard to the fulfilment of the international obligations of BiH. While the three categories of people concerned continue experiencing isolation and indifference, there seem to be an institutional paralysis and a lack of political will which are causing the non-implementation of the recommendations issued by the CAT. With minor exceptions, that are nonetheless somehow flawed, none of the measures recommended in 2010 by the CAT has been fully implemented to date, leaving relatives of missing persons, former camp-detainees and women victims of rape during the war to bear the brunt of violations that have been ongoing over the past 19 years. This situation is causing a climate of deep distrust of victims of gross human rights violations from the war and their relatives towards Bosnian institutions and, given that not even the recommendations of international mechanisms are proving to be effective, there is a general feeling of powerlessness and frustration. BiH remains in breach of its international obligations as spelled out, among others, by the Convention against Torture. In particular, the present situation corresponds to ongoing violations by BiH of its obligations under Articles 1, 2, 4, 5, 7, 12, 13 and 14 of the Convention against Torture.

II. The Non-Amendment of the Criminal Code with regard to Sexual Violence

4. Although the CAT recommended BiH to amend the BiH Criminal Code to include a definition of sexual violence in accordance with international standards and jurisprudence related to prosecution of war crimes of sexual violence and remove the condition of “force or threat of immediate attack” from the present definition, at the time of writing none of this has happened. While the subject has been in fact discussed by the Criminal Code Implementation Assessment Team (CCIAT), that is an ad hoc body created by the Ministry of Justice for the purpose of legislative reform, the consideration of the matter has been postponed because another issue has taken priority (special investigative measures). Even if the CCIAT will resume the analysis of the matter as soon as possible, it must be highlighted that it represents only the first step of a much more complicated process that can lead to legislative modification. In this light, it does not seem that the recommendation issued by the CAT is being considered as a priority by BiH authorities and it is not likely that it will be implemented soon.

▶ Please refer to paras. 1-4 of the full follow-up report for details

5. **BiH shall proceed without delay to amend the criminal codes at the State and entity level to include a definition of sexual violence in accordance with international standards and jurisprudence related to prosecution of war crimes of sexual violence and to remove the condition of “force or threat of immediate attack”.**

III. The Failure to Effectively Investigate, Judge and Sanction those Responsible for Enforced Disappearance, Torture, and Rape or other Forms of Sexual Violence during the War

6. BiH is under an obligation to investigate, judge and sanction those responsible for gross human rights violations committed during the war, including enforced disappearance, torture, and rape or other forms of sexual violence. In its concluding observations of 2010, the CAT recommended BiH to “fight impunity by ensuring prompt and effective investigation into all allegations of war-time crimes, prosecuting and punishing the perpetrators by appropriate penalties commensurate with their grave nature”. Although since November 2010 a number of trials against persons accused of war crimes or crimes against humanity has been conducted, considering that the events concerned occurred almost 20 years ago, the pace of the overall process is far from satisfactory. Often the existence of the National Strategy for War Crimes has been invoked by prosecutors to justify the lack of activity on certain cases that allegedly should be dealt within the next 7 to 15 years. It must be stressed that the implementation of the National Strategy for War Crimes has been judged by various international institutions as extremely flawed and this, coupled with the age of many victims or their relatives, is perceived by the latter as an indication that they will die without seeing justice done. Numerous are the cases where victims of gross human rights violations during the war, their relatives or representative associations report having submitted to BiH authorities detailed complaints indicating the identity of those responsible for war crimes or crimes against humanity and even having provided indications on where these people can be found. Notwithstanding, little or no progress in the investigation and judgement of those responsible has been registered and often those accused are free or have managed to escape. Notorious instances of flight have been registered also among those already convicted or detained.

▶ Please refer to paras. 5-16 of the full follow-up report for details

7. **BiH shall ensure that the National Strategy for War Crimes is duly implemented without delay and its implementation shall be thoroughly explained to the wide public in a transparent manner, thus fostering a climate of trust towards institutions. Undisputedly, the existence of the strategy cannot be used to delay investigations indefinitely and to avoid providing information to victims, their relatives or their representative associations. BiH authorities shall take all necessary measures to prevent the flight of people accused of or convicted for, war crimes and crimes against humanity and to investigate, judge and sanction those responsible for these events.**

IV. The Non-implementation of Constitutional Court’s Decisions in cases relating Missing Persons

8. Over the past years a considerable number of the decisions issued by the Constitutional Court of BiH have not been implemented. Although the non-implementation of the mentioned decisions is considered to be a crime under domestic legislation, to date no one has been sanctioned for such an offence. In this sense, among numerous other international institutions, the CAT recommended BiH to fully implement the Constitutional Court’s judgments without further delay, in particular with regard to cases of enforced disappearances, and prosecute failure to comply with such judgments. Since November 2010, TRIAL and some of the associations subscribing the present document, together with Amnesty

International, have tried to start a constructive dialogue with Bosnian authorities involved. Despite some meetings where representatives of the Constitutional Court of BiH and of the Prosecutor's Office of BiH recognised the existence of the problem and exposed their position, no significant improvement can be registered. To the contrary, it results that in some cases the Constitutional Court of BiH has adopted an "information note" whereby it declared some decisions enforced. This note was brought without notifying the applicants or even consulting with them and notwithstanding the fact that some of the measures ordered therein (such as the establishment of the Fund for the Support of the Families of Missing Persons) have evidently not been enforced. Further attempts of dialogue or searching for an alternative solution to this serious problem that is jeopardising the rule of law, have not brought tangible results. The recommendation formulated by the CAT remains unenforced and it unfortunately does not seem that there will be any meaningful improvement in the near future.

▶ Please refer to paras.17-28 of the full follow-up report for details

9. BiH shall ensure that Constitutional Court's decisions, in particular regarding missing persons, are fully implemented without further delay. Moreover, if criminal prosecution proves not adequate to address the problem, Bosnian authorities shall start a process, in consultation with many actors, including representatives of civil society, to address the problem and to find an alternative but effective solution to overcome this systemic problem.

V. The Failure to Provide Adequate Compensation and Integral Reparation to Relatives of Missing Persons, former Camp-Detainees, and Women Victims of Rape or Other forms of Sexual Violence

10. Victims of gross human rights violations, including enforced disappearance, torture, rape or other forms of sexual violence are entitled to obtain integral reparation, including restitution, rehabilitation, satisfaction, restoration of dignity and reputation, guarantees of non-repetition as well as prompt, fair and adequate compensation. In this light, in its concluding observations of 2010, the CAT recommended BiH to "adopt the draft Law on the Rights of Victims of Torture and Civil Victims of War as well as 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 aim of obtaining physical and psychological recovery and their social reintegration". At the time of writing, none of the measures concerned has been adopted by BiH. Further concerns are related to the particularly vulnerable situation of former camp-detainees, since the existing legal framework fails to duly define them as an autonomous category of civilian victims of war and to specifically regulate their rights. Discrimination in the enjoyment of the right to compensation and reparation between veterans and civilian victims of war remains rampant. Moreover, instances where alleged perpetrators of war crimes hold public offices related to the recognition of the status as civilian victim of war and the issuing of social benefits have been reported. Finally, another alarming problem is that victims of gross human rights violations, and in particular victims of rape or other forms of sexual violence who were receiving some kind of social assistance due to their status as victims of war, lose their right if they move from one entity to the other and this situation concretely discourages their return to the pre-war place of residence. Markedly, the

situation of victims of rape or other forms of sexual violence in Republika Srpska is significantly worse than in the rest of the country.

▶ Please refer to paras. 29-40 of the full follow-up report for details

11. **BiH shall ensure that the Law on the Rights of Victims of Torture and Civil Victims of War is adopted without any further delay and adequate financial resources are secured. The State shall also take a decision on the adoption and implementation of the National Strategy for Transitional Justice without delay and guarantee that the same is done with the Programme to address the needs of victims of rape or other forms of sexual violence during the war currently coordinated by the United Nations Population Fund (UNFPA) and the BiH Ministry of Human Rights and Refugees. The process to draft the latter shall be as transparent and participative as possible and the measures adopted shall have a transformative aim, in the sense that they must allow women to ameliorate or at least consolidate their position in society. BiH shall undertake all necessary actions to ensure that former camp-detainees are recognised as an autonomous category of victims and the legal vacuum concerning their rights is filled as soon as possible. Discrimination between veterans and civilian victims of war in the access to and enjoyment of, monthly disability pensions shall be eliminated. BiH shall ensure that a comprehensive programme of vetting is undertaken in order to avoid that war criminals hold public offices. In no case shall the return to the pre-war place of residence determine the loss of the social benefits to which the victim is entitled. Indeed, special attention shall be devoted to the amendment of the legal framework in the Republika Srpska in order to overcome the existing gaps.**

VI. The Functioning of the Missing Persons Institute (MPI)

12. The MPI, established pursuant to Article 7 of the Law on Missing Persons (Official Gazette No. 50/04, into force since 17 November 2004), became fully operational on 1 January 2008. In the concluding observations issued in November 2010, the CAT recommended to BiH to “ensure the full independence of the Institute for Missing Persons and provide adequate material, financial and human resources to the Institute, including adequate material, financial and human resources to the Institute, including available technology necessary to detect and exhume graves”. Notwithstanding the recommendations issued by international human rights mechanisms, problems in the appointment of all the members of the management of the MPI remain, as the cofounders of the institute do not seem to find an agreement on this subject. Moreover, some associations of relatives of missing persons, and in particular Izvor from Prijedor, express criticism towards the manner in which the election of new members of the Advisory Board (held between July and August 2011) has been conducted, as they consider that there has been an overall lack of transparency in the process. Further, the approval of the audit reports of the MPI for past years seems also to remain problematic. At present, MPI lacks the regular budget for 2011 and it is operating on the basis of a decision of “temporary financing” approved by the BiH Ministry of Finance. The situation described is certainly not contributing to foster the trust of relatives of missing persons and their associations towards MPI. In fact, some associations remain highly critical towards the institute, alleging that the personnel of the MPI is not specialised for the work and that the presence of people

who also have political affiliations undermines the credibility of the institution and the effectiveness of its work.

▶ Please refer to paras. 41-45 of the full follow-up report for details

13. BiH shall ensure that the situation is resolved as soon as possible and that mandates of “technical” nature or holding of posts ad interim is limited to exceptional circumstances, while all the posts of the management of the MPI as well as of the Advisory Board of the MPI are filled through a regular and transparent election process. The approval of audit reports shall be considered a priority and the regular budget for 2011 and 2012 must be secured as a priority. To increase the authority of the MPI, during their term of office the members of the Steering Board, of the Board of Directors and of the Supervisory Board shall not engage in any activity which is incompatible with their independence, impartiality or with the requirements of a full-time office.

VII The Non-establishment of the Fund for the Support of the Families of Missing Persons (the Fund)

14. Article 15 of the Law on Missing Persons establishes that the Fund must be established within 30 days of the date of the coming into force of the Law (the latter entered into force on 17 November 2004). In its concluding observations of November 2010 the CAT recommended BiH to ensure that the Fund for Families of Missing Persons is established without any further delay and its financing is entirely secured. Even though other international human rights mechanisms, including the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) recommended the same to BiH, in October 2011, which is almost seven years after the entry into force of the Law on Missing Persons, the Fund has not been established and there does not seem to be any indication that Bosnian authorities are going to do so any time soon.

▶ Please refer to paras. 46-48 of the full follow-up report for details

15. **BiH shall ensure that the Fund is set up without any further delay and its financing is entirely secured. In any case, BiH shall ensure that, besides measures of social assistance, all relatives of missing persons are granted integral reparation and prompt, fair and adequate compensation for the harm suffered.**

VIII. The Establishment of the Central Record of the Missing Persons (CEN)

16. Article 21 of the Law on Missing Persons provides for the creation of the CEN, intended to include all records that were or are kept at local or entity levels, by associations of families of missing persons and other associations of citizens, Tracing Offices of the organisations of the Red Cross in BiH, as well as international organisations. Pursuant to Article 22.4 of the Law on Missing Persons, the CEN should have been completed by 1 January 2009. In its concluding observations of 2010, the CAT recommended BiH to complete the CEN without further delay and make it available to the public. At October 2011, the CEN has not been completed or made public yet. Indeed, the verification of some of the entries into the registry has

in fact started, although it is proceeding at an extremely slow pace. Currently, out of 34,965 entries to be verified through cross-references, over 8,000 have been validated. These entries correspond almost completely to missing people whose mortal remains have already been exhumed, identified and returned to the relatives. The adoption of this criterion to commence the filling of the CEN is a source of dissatisfaction among many associations of relatives of missing people, as they feel that the imperative need to deal first with those missing people whose fate and whereabouts have not been determined yet has been ignored. Moreover, given that at present only six employees are working at the completion of the CEN, it is not to be expected that the recommendation of the CAT will be implemented very soon.

▶ Please refer to paras. 49-52 of the full follow-up report for details

17. BiH shall ensure that the Law on Missing Persons is fully implemented and that the CEN is completed within the shortest delay. Failure to comply with this shall be prosecuted and sanctioned. The information contained in the CEN shall be as complete and accurate as possible. BiH shall also make sure that the entry into the CEN is not considered as sufficient evidence for declaring a missing person dead and Article 27 of the Law on Missing Persons shall be amended accordingly.

IX. The Lack of Information on the Progresses Made in the Process of Exhumation and Identification of Mortal Remains and the Lack of Psycho-social Assistance during the Process

18. The localisation, exhumation, identification and restitution of mortal remains of missing persons is perceived by relatives of the victims as their very first priority. All the more so when the time is passing and in many cases almost 20 years have elapsed since the victim was seen alive for the last time in life-threatening circumstances. The CAT recommended BiH to “respect the right to know the truth of the families of missing persons, including those who live outside Bosnia and Herzegovina, by keeping them informed of the progress made in the processes of exhumation and identification of mortal remains as well as providing them with psycho-social assistance during the process”. Since 1 January 2011, all exhumations and identifications of mortal remains fall under the jurisdiction of the State Prosecutor’s Office. While originally this reform was welcomed with optimism by families of missing persons and their associations, almost nine months later there is a palpable sense of disillusion and frustration and the common position is that, even though some exhumations have in fact been carried out, the pace of the overall process has slowed down even more and certain areas of BiH have completely been kept out of it. While this perception may be exaggerated, it is surely fostered by the fact that communication with the Prosecutor’s Office of BiH on this issue has proved to be extremely difficult and relatives of missing persons feel that they cannot find official answers to the various doubts they have on the organisation of the process. This situation fosters a sense of isolation and resentment. Despite the recommendations of international mechanisms, there continues to be a lack of any programme of psycho-social assistance and support during and after the process. In this context, often relatives of missing persons are subjected to instances of re-traumatisation and amplification of their suffering.

▶ Please refer to paras. 53-56 of the full follow-up report for details

19. **BiH shall ensure that the process of exhumation of mortal remains is accelerated and the necessary staff and resources are appointed to this end. Moreover, the State shall ensure that the Prosecutor's Office of BiH establishes a mechanism to regularly inform relatives of missing persons and their associations on the progresses made in the process of exhumation and identification of remains and answer to the questions that they may have in this regard. Finally, BiH shall ensure that during and after the processes of exhumation and identification of mortal remains relatives of missing persons receive, free of charge, adequate psychosocial accompaniment, provided by teams of professionals especially trained for this work and financed by the State.**

X. The Flaws in the Investigation of Cases of Enforced Disappearance

20. Although some significant results have been accomplished and there are some investigations ongoing in cases of enforced disappearance, impunity remains a problem. Furthermore, for relatives of missing persons and their associations the contact with prosecutors is poor or non-existent and it is difficult to get information on the investigations. In November 2010 the CAT recommended BiH to comply with "the obligation to investigate all cases of enforced disappearance". One year later progresses in this field are little. First, for the majority of relatives of missing people and their associations, the communication with prosecutors remains extremely complicated and they experience serious difficulties in obtaining indications concerning the progresses of the investigation in their cases, if any. Also in those cases where communication is established, relatives of missing persons or their associations have been answered by prosecutors that they were not actively investigating the cases due to lack of formal complaints, while it is a well-established principle that in cases involving gross human rights violations, authorities must act ex officio. Further, despite the jurisprudence of the Constitutional Court of BiH and the recommendations of international mechanisms, cantonal prosecutors in particular continue conducting the investigations pursuant to the provisions of the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY) instead of those of the 2003 Criminal Code. While this section of the written information focuses especially on enforced disappearance, the majority of the considerations expressed are valid and applicable also to cases of torture, rape or other forms of sexual violence and other war crimes.

▶ Please refer to paras. 57-61 of the full follow-up report for details

21. **BiH shall ensure that all cases of enforced disappearances are investigated within the shortest delay and that prosecutors and courts establish a mechanism of regular information of families of victims and their associations with regard to the process of investigation, the results of the investigations and whether trials may be forthcoming. Bosnian investigative authorities must bear in mind that once the existence of gross human rights violations has come to their attention, they shall act of their own motion and they shall not leave it to the initiative of the relatives of the victims either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures. Finally, in the investigation and prosecution of war crimes, including enforced disappearances, prosecutors and courts at all levels shall apply the**

2003 Criminal Code and not the Criminal Code of the SFRY.

XI. The Non-Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance

22. Notwithstanding the recommendation of the CAT, at the time of writing, BiH has not yet ratified the International Convention for the Protection of All Persons from Enforced Disappearance.

▶ Please refer to paras. 62-64 of the full follow-up report for details

23. BiH shall ratify without delay the Convention for the Protection of All Persons from Enforced Disappearance and it shall refrain from formulating any reservation that may result incompatible with the object and purpose of the treaty. BiH shall also recognize the competence of the Committee on Enforced Disappearances to receive and examine individual and inter-State communications pursuant to Articles 31 and 32 of the Convention.

XII. Other Matters of Concern

24. Although in its concluding observations of November 2010, the CAT requested BiH to provide follow-up information, within one year, only on the issues analysed above, the associations signing the written information are persuaded that there are a number of other matters that are subject of concern and would like to use this opportunity to update the CAT on the current situation.

XII. The Inadequacy of the Criminal Legislation on Torture and Enforced Disappearance

25. As noted in the concluding observations of November 2010, the existing criminal legislation of BiH on torture is not in line with international standards. Accordingly, the CAT recommended BiH to speed up the process of the incorporation of the crime of torture, as defined in the Convention, into the State party laws as well as the harmonisation of the legal definition of torture in the Republika Srpska and Brčko District with the Criminal Code of BiH. With regard to enforced disappearance, the WGEID assessed the inadequacy of the existing criminal legislation and recommended BiH to amend the Criminal Code to include enforced disappearance as an autonomous crime, so that it can be punished in situations where it cannot be qualified as a crime against humanity. Although the amendment of criminal legislation concerning torture was discussed by the CCIAT in the spring of 2011, the Team estimated that existing provisions are sufficient and decided not to continue considering amendments or modifications of the criminal legislation on this matter. On the other hand, the issue of criminal legislation on enforced disappearance does not seem to have been discussed yet. This is a clear indication that, at present, the recommendations issued by international human rights bodies in this sense, including the CAT, are disregarded and certainly not likely to be enforced by BiH within a reasonable time-frame.

▶ Please refer to paras. 66-69 of the full follow-up report for details

26. **BiH shall ensure that the Criminal Code of BiH is amended in order to make the punishment for the offence of torture commensurate to the gravity of the crime. BiH shall ensure that the criminal codes at the entity level integrate the crime of torture as defined under Article 1 of the Convention against Torture, criminalising also the incitement, instigation, superior orders or instructions, consent, acquiescence and concealment of acts of torture. Entities shall also integrate torture and enforced disappearance as crimes against humanity in accordance with international standards. Moreover, criminal codes at all levels shall be amended to integrate the autonomous offence of enforced disappearance and shall ensure that the statute of limitations for criminal proceedings in cases of enforced disappearance take into account the continuous nature of the offence and hence commence to run from when the fate or whereabouts of the victim are established with certainty and made known to their relatives. Criminal codes at all levels shall explicitly define that a person who acted pursuant to an order to commit torture or enforced disappearance shall not be relieved of criminal responsibility and that those who refuse to obey such an order will not be punished.**

XIV. The Failure to Provide Adequate Protection and Support to Witnesses in War Crimes Trials

27. Besides the already mentioned problem of impunity, victims of gross human rights violations from the war and their relatives have been struggling with the lack of comprehensive and adequate witness protection measures as well as the lack of appropriate programmes of psychological support before, during and after testifying in war crimes trials. Accordingly, the CAT recommended BiH to “ensure that victims are effectively protected, not further distressed or pressurised to withdraw their testimony and that they are not threatened by alleged perpetrators, in particular by: a) Strengthening the capacity of the competent organs, in particular the SIPA and its Department for Witness Protection (OZS), and ensuring that they respect the right to privacy of the survivors and provide witnesses at serious risk with long-term or permanent protection measures, including changing their identity or relocation within or outside of Bosnia and Herzegovina; b) Giving more attention to the psychological needs of witness in order to minimise possible re-traumatisation of survivors in court proceedings; and c) Ensuring that witnesses have appropriate means to travel to and from the court and providing escorts for their travel, as necessary”. It appears that since November 2010 the Cantonal Court in Sarajevo, as well as the District Court in Banja Luka and the District Court in Dobož undertook measures to secure witness protection. Furthermore, the Cantonal Court in Livno is allegedly in the process of building a new entrance door to court for the exclusive use of witnesses. With regard to other courts at the district, municipal and cantonal level, protection of witnesses remains highly deficient. Victims of gross human rights violations from the war, their relatives and representative associations express their concerns at repeated instances of open mockery and insults addressed to witnesses in war crimes’ trials that cause deep traumatisation to the individuals concerned and have not been adequately sanctioned. Episodes where organisations or associations working on the subject of women victims of rape or other forms of sexual violence during the war have been subjected to harassment or attacks to their members or premises have been registered. Also in these cases those responsible have not been duly identified, judged and sanctioned. Moreover, on various occasions those accused in war crimes trials or their representatives have disclosed the identities of protected witnesses and Bosnian authorities failed to prevent and adequately repress such instances. Finally, witnesses in war crimes trials feel affected by

the impossibility to have access to a system of free legal aid or support, as they often perceive that they cannot have a full understanding of the legal implications of their statements and the overall conduct of the proceedings. At the same time, seeing that accused persons have access to legal aid nourishes a sense of abandonment and discrimination. Psychological support to witnesses in war crimes cases continues being provided in an insufficient and sporadic manner and is not based on any comprehensive programme. This kind of support is not guaranteed before the courts at all different levels and it is never provided in a way that covers before, during and after rendering testimony. In this light, the recommendations issued by the CAT in 2010 cannot be considered as implemented.

▶ Please refer to paras. 70-79 of the full follow-up report for details

- 28. BiH shall ensure that a comprehensive programme of witness protection and psychological accompaniment is granted at all levels prior, during and after the trial takes place. Instances of threats or harassment against witnesses, victims, their families, their counsels as well as their representative associations shall be promptly and thoroughly investigated and those responsible shall be judged and sanctioned. Witness protection and support shall be victim-oriented and supplied by experts who are adequately trained to provide these services and are financed by the State. The State shall ensure that witnesses in war crimes trials have access to adequate legal consultancy free of charge. The State must ensure to set up without delay an effective public system of free legal aid enabling victims of war to receive legal support (counselling and, if need be, access to court), if they are not able to afford it.**