

Consideration of reports submitted by States parties under article 19 of the Convention

Concluding observations of the Committee against Torture

ADVANCE UNEDITED VERSION

Bosnia and Herzegovina

1. The Committee against Torture considered the 2nd to 5th combined periodic reports of Bosnia and Herzegovina (CAT/C/BIH/2-5) at its 961st and 962nd meetings, held on 4 and 5 November 2010 (CAT/C/SR.961 and 962), and adopted the following concluding observations at its 978th meeting (CAT/C/SR.978).

A. Introduction

2. The Committee welcomes the submission of the second to fifth combined periodic reports of Bosnia and Herzegovina. The Committee also welcomes that the report was submitted in accordance with the new optional reporting procedure of the Committee consisting of replies by the State party to a list of issues prepared and transmitted by the Committee. The Committee expresses its appreciation to the State party for its acceptance to report under this new procedure which facilitates the cooperation between the State party and the Committee.

3. The Committee notes with appreciation that a high-level delegation from the State party met with the Committee during its forty-fifth session, and also notes with appreciation the opportunity to engage in a constructive dialogue covering many areas under the Convention.

4. The Committee notes that the State party consists of the two Entities, but recalls that the Bosnia and Herzegovina is a single State under international law and has the obligation to implement the Convention in full at the domestic level.

B. Positive aspects

5. The Committee welcomes that since the consideration of the initial periodic report, the State party has ratified the following international and regional instruments:

a) The Optional Protocol to the Convention against Torture on 24 October 2008;

b) The International Convention on the Rights of Persons with Disabilities and its Optional Protocol on 12 March 2010; and

c) The Convention against Trafficking in Human Beings of the Council of Europe on 11 January 2008.

6. The Committee notes the State party's ongoing efforts to revise its legislation in areas of relevance to the Conventions, including:

a) The adoption of the Law on Movement and Stay of Aliens and Asylum in 2008;

b) The adoption of the Law on Prevention of Discrimination in 2009; and

c) The adoption of the International Assistance Law in 2009 aimed at strengthening international cooperation, in particular by bilateral agreements with neighbouring countries, to ensure the protection of victims and the prosecution and punishment of alleged perpetrators.

7. The Committee also welcomes the efforts being made by the State party to amend its policies and procedures in order to ensure greater protection of human rights and give effect to the Convention, including:

a) The adoption of a Strategy for Dealing with War Crimes Cases in 2008;

b) The adoption of the revised Strategy for the Implementation of Annex 7 of the Dayton Peace Agreement in 2010 aimed at improving the living standards of the remaining internally displaced persons and returnees in Bosnia and Herzegovina;

c) The adoption of the third National Action Plan to Combat Human Trafficking and Illegal Migration in Bosnia and Herzegovina for the period 2008-2012;

d) The adoption of the National Strategy to Combat Violence against Children for the period 2007-2010;

e) The adoption of the National Strategy for the Prevention and Combating Domestic Violence in Bosnia and Herzegovina for the period 2008-2010; and

f) The establishment of a Working Group to prepare a State Strategy for Transitional Justice aimed at improving the situation and protection of all war victims.

C. Principal subjects of concern and recommendations

Definition and offence of torture

8. While noting that the State party envisages amending the Criminal Code and harmonising the legal definition of torture in the State and Entity laws, the Committee remains concerned that the State party has still not incorporated into domestic law the crime of torture as defined in article 1 of the Convention

and that the instigation and superior orders or consent, acquiescence of acts of torture are not criminalised in the State party laws (arts. 1 and 4).

The Committee, in line with its previous recommendations (CAT/C/BIH/CO/1, para. 9), urges the State party 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 Brcko District with the Criminal Code of Bosnia and Herzegovina. The State party should also ensure that these offences are punishable by appropriate penalties which take into account their grave nature, as set out in article 4, paragraph 2 of the Convention.

War crimes of rape and other forms of sexual violence

9. The Committee expresses its serious concerns 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 State party amend the 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. Also, the State party should include in its next report the statistical data of the unresolved cases related to war-time rape and other sexual violence.

Fundamental legal safeguards

10. The Committee notes with concern that, in practice, persons deprived of their liberty are not always afforded all fundamental legal safeguards from the very outset of their detention (art. 2).

The Committee recommends that the State party take all necessary legal and administrative safeguards to ensure that suspects are guaranteed the right to have access to a lawyer and an independent doctor, preferably of their own choice, to notify a relative, to be informed of their rights at the time of detention, and to be brought promptly before a judge in accordance with international standards irrespective of the nature of their alleged crime.

Ombudsman

11. The Committee, while noting the recent unification of Ombudsman institutions into a single State office of Human Rights Ombudsman with the broadened scope of functions, is concerned about reports of alleged lack of the independence and the effectiveness of the Ombudsman as well as the need for the allocation of adequate resources in order to fulfill its mandate. The Committee regrets the lack of clear explanation about the follow-up measures

taken by the competent authorities to the Ombudsman's recommendations on various places of detention (CAT/C/BIH/2-5, para.227) (art. 2).

The State party should increase its efforts to restructure and strengthen the Ombudsman by:

- a) **Adopting a more consultative and open process for the selection and appointment of the Ombudsman in order to guarantee the independence of Ombudsman in line with the Paris Principles (General Assembly resolution 48/134);**
- b) **Providing adequate human, material and financial resources;**
- c) **Developing the Ombudsman's capacity to monitor all places of deprivation of liberty in Bosnia and Herzegovina, especially in the absence of an independent prisons inspectorate; and**
- d) **Ensuring the implementation of the Ombudsman's recommendations.**

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 concerns 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 , prosecuting and punishing the perpetrators by 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 continue to enhance cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY). 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 prosecute failure to comply with such judgments.

Violence against women and children, including domestic violence

13. The Committee, while noting legal and administrative measures undertaken by the State party to combat gender-based violence, including the resolution on the fight against violence against women in the family adopted by the Parliamentary Assembly, expresses its concern about the persistence of violence against women and children, including domestic violence. While appreciating the State party's intention to amend the elements of crimes of rape

by abolishing the requirements of both penetration and active resistance by the victim, it is concerned at insufficient information on the Entity laws prohibiting and criminalising such violence as well as at the low numbers of investigations and prosecutions of cases of domestic violence. The Committee is concerned at reports about the inadequate provision of protection measures and rehabilitation programmes for victims (arts. 1, 2, 4, 11, 12 and 16)

The Committee recommends that the State party enhance its efforts to prevent, prosecute and punish all forms of violence against women and children, including domestic violence, and ensure effective and full implementation of the existing laws and the national strategies adopted to that end, including the Strategy for the Prevention and Combating Domestic Violence and the National Strategy to Combat Violence against Children. Shelter and counselling service for victims of violence should be provided in sufficient number and with adequate standards. Furthermore, the State party is encouraged to conduct broader awareness-raising campaigns and training on domestic violence for law enforcement agencies, judges, lawyers and social workers who are in direct contact with the victims as well as for the public at large.

Refolement

14. Notwithstanding article 91 of the Law on Movement and Stay of Aliens and Asylum with regard to the principle of prohibition of return (CAT/C/BIH/2-5, para.76), the Committee remains concerned at reports that the competent authorities of Bosnia and Herzegovina have failed to properly assess the risk of refolement faced by applicants for international protection and that persons considered to be a threat to national security are subject to be expelled or returned to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture. It is also concerned at the very low rate of successful asylum applications (art. 3).

The State party should:

- a) Ensure the procedural safeguards against refolement and effective remedies with respect to refolement claims in removal proceedings, including review by an independent judicial body concerning rejections;**
- b) Ensure that a thorough review of each individual case is provided for asylum claims and that persons whose applications for asylum have been rejected can lodge an effective appeal with the effect of suspending the execution of the decision on the expulsion or deportation;**
- c) Revise its current procedures and practices in the area of expulsion, refolement and extradition and align its interpretation of key concepts of domestic asylum law fully with international refugee law and human rights standards;**
- d) Continue to follow up on and keep the Committee informed of the case of the citizen of Bosnia and Herzegovina who remains in detention in Guantanamo Bay military base; and**
- e) Ensure that national security considerations do not undermine the principle of non-refolement and that the State party fulfil its obligations**

to respect the principle of absolute prohibition of torture in all circumstances, in accordance with article 3 of the Convention.

15. With regard to individuals whose citizenship has been revoked by the State Commission for Revision of Decision on the Naturalization and who consequently are detained in the deportation centre, the Committee takes note of the State party's report claiming that legal rights to judicial protection had been provided for them. However, noting the concerns expressed by several international bodies, the Committee remains concerned that reported cases on the prolonged detention in adequate conditions of those individuals and the denial of their right to effectively challenge the decisions to revoke their citizenship, detain and deport them have not been fully clarified (arts. 3 and 16).

The State party should revise its practice regarding prolonged detention of those individuals and fully respect their right to effectively challenge the decisions to revoke their citizenship, detain and deport them. Furthermore, the State party should guarantee key principles related to a fair and efficient asylum procedure, including adequate translation and interpretation services, free legal aid and access of applicants to their case-file.

Return of refugees and internally displaced persons

16. In addition to the problem recognised by the State party, *inter alia* the security concerns for the minority returnees as well as the lack of investigation and prosecution of crimes and acts of violence against refugees and internally displaced persons (CAT/C/BIH/2-5, para.142), the Committee expresses its concern at persistent reports claiming that existing programmes of property restitution have failed to take into account gender and psychological needs of the victims of sexual violence. The Committee is also concerned at their lack of economic opportunities and the poor living conditions (arts. 3, 7 and 12).

The Committee recommends that the State party intensify its efforts to facilitate returns of refugees and displaced persons, including by constructing housing and the accompanying infrastructure and addressing the specific situation of those who would otherwise have difficulties in benefiting from the reconstruction assistance. The State party should take all necessary measures to effectively tackle the identified obstacles and ensure that all crimes and acts of violence against refugees and internally displaced persons are properly and promptly investigated and prosecuted. In addition, it is necessary to fully implement the recommendations made by the Representative of the Secretary-General on the human rights of internally displaced persons in his report on mission to Bosnia and Herzegovina (E/CN.4/2006/71/Add.4).

Witness protection and support

17. The Committee, while noting some improvement of witness protection in criminal proceedings, remains gravely concerned at the lack of adequate measures of witness protection and witness support before, during and after the trials, which have a negative impact on the willingness and ability of witnesses

to participate in investigations or to testify in proceedings. The Committee also expresses concerns over the reported cases of intimidation against witnesses and of attempts at bribery by perpetrator, the insufficient support for witnesses by the competent authorities, such as the State Investigation and Protection Agency (SIPA) and the Witness Support Section (WSS) (arts. 2, 11, 12, 13 and 15).

The Committee urges that the State party to ensure that victims are effectively protected, not further distressed or pressurized 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 State Investigation and Protection Agency (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-traumatization 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.**

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 adequate definition of the status and rights of civil victims of war in domestic legislation as well as at the insufficient medical or psycho-social 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 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. To that end, the State party is strongly encouraged to reduce politicisation of these efforts, finalize a plan of action with clearly identified activities and corresponding responsibilities among State and its Entity authorities and ensure the allocation adequate financial resources.

Conditions of detention

19. While welcoming the measures taken by the State party to improve considerably the conditions of detention, including the construction of new facilities and the renovation of existing ones, the Committee remains

particularly concerned about the current material and hygienic conditions, the use of solitary confinement, the problems of overcrowding and ongoing inter-prisoner violence in some places of deprivation of liberty (arts. 11, 12 and 16).

The State party should intensify its efforts to bring the conditions of detention in places of deprivation of liberty into line with the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolutions 663 C and 2076), as well as with other relevant international and national law standards, in particular by:

a) Coordinating the judicial supervision of conditions of detention between competent organs and ensuring thorough investigate all allegations of abuse or ill-treatment committed in detention facilities;

b) Drawing up a comprehensive plan to address the issue of interprisoner violence and sexual violence in all detention facilities, including Zenica Prison, and ensuring effective investigations into those cases;

c) Reducing prison overcrowding and considering non-custodial forms of detention;

d) Ensuring that solitary confinement is only used as a measure of last resort for as short a time as possible under strict supervision;

e) Strengthening the effort to improve regime for prisoners, especially vocational and physical activities and to facilitate their re-integration into society;

f) Ensuring that minors are detained separately from adults through their whole period of detention or confinement and offering them educational and recreational activities ; and

g) Providing adequate accommodation and psycho-social support care for detainees who require psychiatric supervision and treatment.

Psychiatric facilities

20. While noting the progress made in psychiatric facilities, including Sokolac Psychiatric Clinic, the Committee remains concerned at issues of institutional accommodation of mentally disabled persons, in particular with regard to institutions overcrowding and lack of adequate psycho-social support by competent organs (art. 16).

The Committee recommends that the State party ensure that adequate psycho-social support by multi-disciplinary teams is provided for patients in psychiatric institutions, that all places where mental-health patients are held for involuntary treatment are regularly visited by independent monitoring bodies to guarantee the proper implementation of the existing safeguards, and that alternative forms of treatment are developed. Furthermore, the State party should ensure the fully and timely implementation of the recommendations made by the Ombudsman, as contained in its special report on the situation in the institutions for accommodation of mentally disabled persons.

Individual complaints

21. Notwithstanding the information provided in the State party's report on the possibility for prisoners and detainees to present complaints, the Committee is concerned that it continues to receive information on the lack of an independent and effective complaint mechanism for receiving and conducting impartial and full investigations into allegations of torture as well as the failure of the provision of existing complaints procedures to prisoners and detainees (arts.12 and 13).

The State party should ensure that every individual who alleges that he or she has been subjected to torture or ill-treatment has the right to complain to the competent authorities without any impediment and that they have access to their medical file upon their request. Furthermore, in line with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), information on the possibilities for lodging complaints be provided to all detainees and prisoners, including on the right to correspond on a confidential basis with outside judicial and complaints' bodies, and that closed complaints boxes be installed in the prisons (CPT/Inf (2010) 10, para. 36).

Training

22. While welcoming the detailed information provided by the State party on training programmes for law enforcement officials and the judiciary, the Committee remains concerned at the lack of standardized capacity at the state level for training of all public officer and at the insufficient information on monitoring and evaluation of the effectiveness of these programmes in preventing and detecting torture and ill-treatment (arts.10 and 16).

The Committee recommends that the State party:

a) Ensure that trainings on the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) are provided to medical personnel and others involved in persons deprived of liberty on a regular and systematic basis and that it is translated into all appropriate languages and applied as widely as possible;

b) Develop and implement a methodology to assess the effectiveness and impact of such educational and training programmes on the reduction of cases of torture and ill-treatment and regularly evaluate the training provided to its law enforcement officials;

c) Strengthen its efforts to implement a gender sensitive approach for the training of those involved in the custody, interrogation or treatment of women subjected to any form of arrest, detention or imprisonment; and

d) Strengthen professional training in both social-protection institutions for persons with mental disability and in psychiatric clinics.

Trafficking in persons

23. The Committee takes note of several measures taken by the State party, including the adoption of the State Action Plan to combat human trafficking and illegal migration 2008-2010, the establishment of a central database on identified victims of trafficking as well as the regulations on the protection for trafficking victims issued by the Ministry of Security. However, the Committee remains concerned at the absence of provision in the Criminal Code in relation to the legal penalties for persons who have committed or been involved in the crime of trafficking as well as the lenient sentences imposed in case of trafficking. The Committee also expresses concern over the slowness and the complexity of redress procedures for victims of trafficking. (arts. 2, 4 and 16).

The State party should strengthen its efforts to combat trafficking in persons, especially in women and children, in particular by:

- a) **Ensuring that trafficking is defined as crime in all parts of the State party in accordance with international standards, and that these offences are punishable by appropriate penalties which take into account their grave nature;**
- b) **Improving identification of trafficking victims and providing them appropriate rehabilitation programmes, genuine access to health care and counselling; and**
- c) **Providing training to law enforcement personnel and other relevant groups, and raising awareness of the problem among the public.**

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 (ICMP) aimed at the identification of missing persons, the Committee concerns at 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 adequate material, financial and human resources to the Institute, 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 its financing is entirely secured;**
- c) **Complete the Central Record of the Missing Persons (CEN) without further delay and make it available to the public;**

d) **Respect the right to know the truth for 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;**

e) **Ensure the State party's obligation to investigate all case of enforced disappearances; and**

f) **Consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.**

National Preventive Mechanism

25. While noting that the State party is preparing the establishment of National Preventive Mechanism in collaboration with the Ombudsman and with the support of the OSCE Mission to Bosnia and Herzegovina, the Committee remains concerned about reported lack of effective legislative and logistic measures taken by the competent authorities in order to establish an independent national preventive mechanism in line with articles 17 to 23 of the Optional Protocol (arts. 2, 11 and 16).

The State party should, in line with the recommendations made by the Working Group on the Universal Periodic Review and accepted by the State party (A/HRC/14/16, para. 90 (17) and A/HRC/14/16/ADD.1, para 10), expedite the establishment of the National Preventive Mechanism, in full compliance with the minimum requirements of the Optional Protocol. The National Preventive Mechanism should be granted sufficient financial, human and material resources with a view to assuming its mandate effectively.

Data collection

26. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill treatment by law enforcement and prison personnel, war-time rape and sexual violence, extrajudicial killings, enforced disappearances, trafficking, domestic and sexual violence and means of redress for victims.

The State party should compile statistical data, disaggregated by crime, ethnicity, age and sex, relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill treatment by law enforcement and prison personnel, war-time rape and sexual violence, extrajudicial killings, enforced disappearances, trafficking and domestic and sexual violence, as well as on means of redress, including compensation and rehabilitation, provided to the victims.

27. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

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.

29. The Committee invites the State party to present its next periodic report in accordance with its reporting guidelines and to observe the page limit of 40 pages for the treaty-specific document. The Committee also invites the State party to submit an updated common core document in accordance with the requirements of the Common Core Document contained in the Harmonized Guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the Inter-Committee meeting of the human rights treaty bodies, and to observe the page limit of 80 pages for the common core document. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

30. The State party is invited to submit its next periodic report, which will be the 6th report, by 19 November 2014.
