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REFERENCE: cc/jmnf/jli/follow-up/CAT

23 May 2011

Mr. Ambassador,

In my capacity as Rapporteur for Follow-up on Concluding Observations of the United Nations Committee against Torture (CAT), I refer to the examination of the initial report of Serbia (CAT/C/SRB/2) on 5 and 6 November 2009. The Committee adopted its Concluding Observations (CAT/C/SRB/CO/1), in which it requested further comments by the Government of Serbia in relation to the specific concerns listed in paragraphs 6, 9, 11, 12, 13, and 16(b).

On behalf of the Committee, allow me to thank you for your Government's response dated 3 February 2010 (CAT/C/SRB/CO/1/Add.1) with comments on the recommendations. I have reviewed them with care. The added information provided assists the Committee in its ongoing analysis of the implementation of measures identified for follow-up. I would be grateful for clarification of the following items, as sufficient information is not yet provided to enable completing analysis of the progress made.

Safeguards against torture (paragraph 6)

In paragraph 6 of the Concluding Observations, the Committee expressed its concern over the lack of fundamental legal safeguards against torture, such as an independent and external oversight mechanism for alleged unlawful acts committed by police, and the failure of police to respect detainees' rights to access to a lawyer of their choice, to be examined by an independent doctor within 24 hours of detention, and to contact a family member upon apprehension by the authorities. The Committee appreciates the information provided on current legislation that regulates the conduct of police officers. Please clarify what independent, oversight mechanisms ensure that these laws are utilized effectively at present. In particular, the Committee requests clarification as to the status of the *Sector for Internal Police Control*, mentioned on page 3 of your response, including how it is independent, whether it falls within the hierarchical police structure, who serves on this body, as well as its responsibility and record in addressing complaints of police abuse.

Additionally, according to the information provided to the Committee, individuals may file a complaint alleging police abuse to either the police or the Ministry of Internal Affairs within 30 days of the violation, but all such complaints are first considered by the head of the police unit where the allegedly offending officer is based. Given this fact, please clarify how the independence and impartiality of investigations into police abuse are ensured in the first instance? What measures is the Government taking to ensure that victims of police abuse, particularly those in police custody, are able to submit complaints of alleged abuse without fear of reprisal and intimidation, particularly since in the reported procedure such complaints are first investigated by the head of the police unit where the alleged abuse took place. Please also inform the Committee whether police officers are suspended from duty pending the investigation of a complaint made against them.

.../...

H.E. Mr. Uglješa ZVEKIĆ
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Please also clarify for the Committee whether, upon the conclusion of an investigation by the head of the relevant police unit which produces evidence suggesting guilt, the Ministry of Internal Affairs is the agency responsible for bringing charges against the offending police officer, or whether the onus to bring charges is on the victim. Please also provide statistical information, if available, on the number of complaints of police abuse filed with the police and with the Ministry of Internal Affairs in, how many led to prosecutions, and with what outcome. Please indicate any that addressed torture or ill-treatment.

The Committee appreciates the information provided regarding detainees' rights to access counsel, family members, and doctors. Please explain which official determines whether a detainee is permitted to contact counsel after apprehension, and how soon after arrest such contact is allowed. Please also clarify what oversight mechanisms are in place in detention centers and lock-ups to ensure that in practice, detainees are able to access legal counsel immediately after apprehension.

Regarding detainees' rights to a medical examination by an independent doctor, kindly clarify on what basis an investigation judge would approve or deny a detainee's request for a doctor's visit, as noted on page 7 of your response. Please provide information on how a detainee is made aware of his/her right to demand a medical examination by an independent doctor within 24 hours of apprehension.

Asylum and refugee policy (paragraph 9)

The Committee appreciates the information provided on the measures taken to protect persons seeking asylum and the rights of individuals requesting refugee status, as requested in paragraph 9 of the Concluding Observations. Indeed, the opening of the Asylum Centre in Banja Koviljaca is commendable, and the Committee would appreciate updated information on the number of persons that have been housed in the Asylum Centre. What measures were taken to ensure that all persons seeking asylum, whether or not they are housed at the Asylum Centre or not, are made aware of their rights?

The Committee is concerned by your Government's report that, between April 2008 and September 2009, although 100 asylum status applications were formally submitted, none of these applications were approved. Please clarify how many individuals seeking asylum have been returned to their country of origin since the entry into force of the Law on Asylum to the present, including a list of all countries to which asylum-seekers or refugees in Serbia were returned, as well as the grounds for denying applications for asylum. We also request updated information on the number of applications for asylum that have been formally submitted since September 2009 and the number that have been granted.

Cooperation with the International Criminal Tribunal for the Former Yugoslavia (paragraph 11)

With regard to the Committee's recommendations in paragraph 11 for the Serbian authorities to fully cooperate with the International Criminal Tribunal for the Former Yugoslavia (ICTY), the Committee is pleased to learn of the various efforts taken to ensure that such cooperation has occurred routinely and successfully. The Committee regrets that Ratko Mladic and Goran Hazdic remain fugitives from justice more than 15 years after the arrest warrants against them were issued by ICTY. Further information on the establishment of regional cooperation efforts to apprehend these fugitives, as mentioned on pages 11-12 of your response, would be much appreciated, including information on the countries with whose security agencies Serbian authorities have established such cooperation. Please provide the Committee with information on the measures taken to ensure that investigations into alleged war crimes which are carried out by the Ministry of Interior are independent and impartial, especially given that in some cases those investigated have included members of the Ministry of Interior and retired army officials, as stated on page 12 of your response.

The Committee is pleased to note your Government's support for mechanisms to take on the functions of ICTY upon its closure, such as the creation of a new residual mechanism, utilizing national courts, or assigning certain functions to the International Criminal Court (ICC). With regard to the protection of witnesses, please provide further information on the measures taken to provide witnesses with the requisite protection from reprisal, as well as information on the number of witnesses who have benefited from such protection and how witnesses are made aware of their right to witness protection.

Other war crimes investigations (paragraph 12)

The Committee thanks your Government for the response to paragraph 12 of the Concluding Observations with information regarding the war crimes convictions in the "Ovcara case." The Committee had requested information on the outcomes of the trials and the reasons for ordering a re-trial in 2006. We appreciate the update provided on the outcomes as of that date, but regret that information provided does not address the reasons for re-trial, stating only that generalized "formal legal reasons" were its basis. Therefore, allow me to reiterate the Committee's request.

The Committee is pleased to note that in November 2010, a final verdict was issued by the Appellate Court, upholding the verdict of the Court of First Instance from March 2009, in which 15 individuals were convicted and sentenced to varying prison terms ranging from 5 to 20 years, and five individuals were acquitted. Please update the Committee on the exact charges against each defendant in all stages of the trials, and whether all of the defendants are serving their prison terms at this time.

Human rights defenders (paragraph 13)

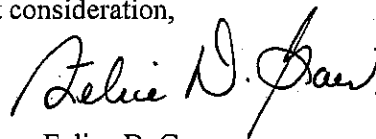
With regard to the Committee's recommendation in paragraph 13, which urged the Government to ensure that cases brought against human rights defenders are conducted in conformity with international fair trial standards, the Committee welcomes the Government's adoption of the Law on Prohibition of Discrimination and the framework for reform of applications of mechanisms protecting human rights, as articulated on page 16 of your response. However, the requested information on the measures taken by the Government to protect human rights defenders from illegitimate prosecution and to address claims that human rights defenders have been denied the right to a fair trial, is not provided. Please forward information to the Committee on these matters. In particular, please update the Committee with regard to measures to protect human rights defender Natasa Kandic, director of the Humanitarian Law Centre.

Torture and disability (paragraph 16(b))

Lastly, with regard to the Committee's recommendations in paragraph 16(b) of the Concluding Observations, which recommended that Serbia investigate reports of torture or cruel, inhuman, or degrading treatment or punishment of persons with disabilities in institutions, the Committee appreciates the information provided on the measures taken to improve the treatment of persons with disabilities. The Committee regrets that despite investigations cited on the abuse he suffered, no one has yet been identified as responsible nor held accountable for the reported ill-treatment of Marko Bajcic. Please clarify whether any additional investigations into allegations of specific instances of ill-treatment of persons with disabilities or broader investigations regarding the use of restraints and the general treatment of patients at institutions has been carried out, and the results of these investigations and recommendations, if any, directed to responsible institutions. The Committee appreciates the information provided regarding physical restraints. Please clarify whether every use of restraints against a person in an institution for persons with disabilities is registered and recorded.

Upon receipt of additional information, the Committee will be able to assess whether further information may be required. We look forward to continuing this constructive dialogue with the Government of Serbia on the implementation of the Convention.

Accept, Excellency, the assurances of my highest consideration,



Felice D. Gaer

Rapporteur for Follow-up on Concluding Observations
Committee against Torture