



REFERENCE:GH/fup-129

4 August 2020

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 14, 20 and 36 of the concluding observations on the report submitted by Bosnia and Herzegovina ([CCPR/C/BIH/CO/3/Add.1](#)), adopted by the Committee at its 119th session in March 2017.

On 13 April 2017, the Committee received the reply of the State party. At its 129th session (29 June to 24 July 2020), the Committee evaluated this information. The assessment of the Committee and the additional information requested from the State party are reflected in the Addendum 3 (see [CCPR/C/129/2/Add.3](#)) to the Report on follow-up to concluding observations (see [CCPR/C/129/2](#)). I hereby include a copy of the Addendum 3 (advance unedited version).

The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. Given that the State party accepted the simplified reporting procedure (LOIPR), the requests for additional information will be included, as appropriate, in the list of issues prior to submission of the fourth periodic report of the State party.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

Please accept, Excellency, the assurances of my highest consideration.

Marcia V.J. KRAN

Special Rapporteur for Follow-up to Concluding Observations
Human Rights Committee

Her Excellency Ms. Nermina Kapetanovic
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Report on follow-up to the concluding observations of the Human Rights Committee

Addendum

Evaluation of the information on follow-up to the concluding observations on Bosnia and Herzegovina*

<i>Concluding observations (119th session):</i>	CCPR/C/BIH/CO/3 , 13 April 2017
<i>Follow-up paragraphs:</i>	14, 20 and 36
<i>Follow-up reply:</i>	CCPR/C/BIH/CO/3/Add.1 , 9 August 2018
<i>Information received from non-governmental organizations:</i>	Trial International ; Trial International and Yale Law School
<i>Committee's evaluation:</i>	Additional information required on paragraphs 14[C], 20[C] and 36[C]

Paragraph 14: Prosecution for crimes against humanity and other international crimes and protection of victims and witnesses

The State party should expedite the prosecution for crimes against humanity and other international crimes and continue to provide adequate support, including psychological support, and protection to victims and witnesses of those crimes, particularly those related to sexual violence. The State party should also make the system of free legal aid fully operational throughout its territory and available to all vulnerable citizens, including victims of wartime sexual violence, and provide for an effective victims and witnesses protection programme.

Summary of State party's reply

A proposal for the revised National War Crimes Prosecution Strategy was submitted to the Council of Ministers of Bosnia and Herzegovina on 16 May 2018 for consideration and adoption. On 12 April 2017, the Council of Ministers established a working group to draft amendments to the Strategy. The fact that the goals set by the Strategy were not achieved by the deadlines and the number of cases of war crimes pending with the Office of the Prosecutor, gave rise to the need for amendments to the Strategy, which would provide for adequate mechanisms to improve the prosecution of cases of war crimes by the Office of the Prosecutor. The amendments contain revised criteria to ensure the transfer of a large number of less complex cases to the judiciary of the entities and the Brčko District of Bosnia and Herzegovina.

The amendments also recognize the need for an analysis of relevant legal provisions, with the aim of establishing a uniform protection mechanism and support for witnesses during trials and after giving testimony. In addition to the Witness Support Department of the Court of Bosnia and Herzegovina, a majority of cantonal and district courts in Bosnia and Herzegovina, as well as the Basic Court of the Brčko District, have established departments and employed psychologists or assistants to support witnesses.

Laws that provide for the right to legal aid were passed in Brčko District, the Republika Srpska and eight cantons of the Federation of Bosnia and Herzegovina. A law on the provision of legal aid (Official Gazette of Bosnia and Herzegovina No. 83/16) was passed at the level of Bosnia and Herzegovina.

* Adopted by the Committee at its 129th session (29 June to 24 July 2020).



The Missing Persons Institute is in daily contact with members of families of missing persons. Employees in the regional and field offices of the Institute give all the assistance required by family members, with whom they cooperate on a daily basis in accordance with the mandate of the Institute.

Information from non-governmental organizations

Trial International and Yale Law School

The State's historic failure to expedite the prosecution of war crimes has created a backlog of several hundred cases, which has compelled victims to seek remedies in the civil court system. The application by civil courts of a statute of limitations (*zastara*) to dismiss victims' claims, combined with the subsequent imposition of court fees, have prevented victims from seeking or obtaining redress.

In Bosnia and Herzegovina, victims have been retraumatized multiple times throughout the process of seeking reparations and justice. For victims, being in court and facing their abusers can bring back vivid and distressing memories of the war. The imposition of *zastara* and court fees has exacerbated their anguish.

Trial International

In two years the Council of Ministers of Bosnia and Herzegovina has neither considered nor adopted the Revised National War Crimes Prosecution Strategy. This remains one of the most pressing issues of justice reform in Bosnia and Herzegovina, especially bearing in mind that 25 years have passed since the end of the war.

The overwhelming number of unsolved war crimes in Bosnia and Herzegovina and the fact that an increasing number of witnesses and perpetrators are dying, thus hindering or making prosecution impossible, make it imperative to the fight against impunity that the State party adopt the Strategy without any further delay. The draft Strategy envisaged the completion of cases by 2023. Two years passed without the draft being adopted. The date of completion should therefore be revised and updated immediately.

Apart from the large number of cases yet to be prosecuted, Bosnian society has long had to dealing with the denial, trivialization, justification and condoning of genocide, crimes against humanity and war crimes.

The system of free legal aid remains fragmented and unharmonized throughout the country. By adopting a law on the provision of free legal aid, the State party recognized the need to regulate the matter, which is commendable; nonetheless, the office responsible for providing legal aid under the Ministry of Justice is severely understaffed, which prevents victims from obtaining aid. Even though the law on the provision of free legal Aid was adopted in 2016, the legal aid office is still not fully operational.

There was still no reassurance that State- and entity-level judicial authorities are making efforts to harmonize jurisprudence on crimes committed during the conflict, especially with regard to conflict-related sexual violence. The number of sentences for such crimes in Bosnia and Herzegovina is low, and sentencing is inconsistent. Disparities between the approaches of courts across the country, particularly between State-level and entity-level panels, create a sense of arbitrariness and a climate of distrust in the justice system.

The State party had not adopted legislative and practical measures to ensure that survivors of torture and sexual violence have access to effective remedies. Bosnia and Herzegovina continues to apply a statute of limitations to civil claims for wartime non-pecuniary damages, which was consistently upheld by the Constitutional Court. In addition, many victims were still facing high court fees and enforcement procedures, as there were many cases where court fees had been imposed.



Committee's evaluation

[C]: The Committee regrets that the State party has taken no concrete measures to implement the Committee's recommendation. In this regard, it requests information on the content of the Revised National War Crimes Prosecution Strategy, including information on whether it complies with the Covenant, and measures taken to expedite its adoption. The Committee also requests information on concrete measures to provide adequate support, including psychological support, and protection to victims and witnesses of those crimes, particularly those relating to sexual violence, and to make the law on the provision of free legal aid adopted in 2016 fully operational, including by providing sufficient financial and human resources for its implementation. The Committee also requires information on the application by civil courts of a statute of limitations (*zastara*) and the imposition of high court fees and its impact on victims seeking redress.

Paragraph 20: Enforced disappearance and missing persons

The State party should expedite the investigation of all unresolved cases involving missing persons. Furthermore, it should take all measures necessary to ensure that the Missing Persons Institute is adequately funded and able to fully implement its mandate with a view to resolving those cases as foreseen in the Law on Missing Persons. The State party should, as a matter of urgency, establish a fund for support to families of missing persons to provide adequate support to families of missing persons.

Summary of State party's reply

The attitude of the authorities in Bosnia and Herzegovina towards the issue of missing persons is not the same as in other countries in the region, although 7,146 persons are still missing in Bosnia and Herzegovina. This attitude is clearly seen in the fact that the authorities of Bosnia and Herzegovina have not fully complied with the recommendations made in the reports of the Committee on Enforced Disappearances.

Regarding the financial situation of the Missing Persons Institute, the trend towards a permanent budget reduction is noticeable. The State party provided a table detailing the reduction in allocations, from 6,455,467 marka in 2008 to 3,004,000 marka in 2018.

The Institute does not possess any modern or sophisticated technology or equipment that would facilitate its work and increase the efficiency of its field work.

Information from non-governmental organizations

Trial International

The organization referred to several Views of the Human Rights Committee in individual communications released between 2013 and 2017 addressing cases of enforced disappearance perpetrated during the conflict in Bosnia and Herzegovina. It claimed that this indirectly confirmed the failure of Bosnia and Herzegovina to implement the Committee's recommendation in paragraph 20 of its concluding observations.

Committee's evaluation

[C]: The Committee regrets the lack of measures taken to expedite the investigation of all unresolved cases involving missing persons and to establish a fund to support families of missing persons.

The Committee regrets that the consistent reduction in budgetary allocations to the Missing Persons Institute runs counter to the Committee's recommendation. The Committee reiterates its recommendation.

Paragraph 36: Refugees and displaced persons

The State party should strengthen its efforts to fully implement the revised strategy for the implementation of annex VII to the Dayton Peace Agreement to facilitate reintegration of returnees and internally displaced persons and enjoyment



of their rights without discrimination. It should also continue its efforts to close collective centres and provide internally displaced persons with alternative housing solutions and ensure that persons granted with international subsidiary protection receive access to services on an equal basis with refugees, including for family reunification and travel documents.

Summary of State party's reply

No information provided.

Committee's evaluation

[C]: The Committee regrets the lack of information provided on the implementation of the Committee's recommendation. The Committee reiterates its recommendation.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be addressed by the State party in its next periodic report.

Next periodic report due: 29 March 2022.
