



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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Excellency,

In my capacity as Rapporteur for Follow-up on Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW), I have the honour to refer to the examination of the combined fourth and fifth periodic reports of Bosnia and Herzegovina at the Committee's fifty-fifth session, held in July 2013. At the end of that session, the Committee's concluding observations were transmitted to your Permanent Mission (CEDAW/C/BIH/CO/4-5). You may recall that in the concluding observations, the Committee requested Bosnia and Herzegovina to provide, within two years, written information on the steps undertaken to implement the recommendations contained in paragraphs 10 and 34 of the concluding observations.

The Committee welcomes the follow-up report received with a one-month delay in August 2015 (CEDAW/C/BIH/CO/4-5/Add.1) under the CEDAW follow-up procedure. At its sixty-third session, held in February-March 2016 in Geneva, the Committee examined this follow-up report and adopted the following assessment.

Regarding the recommendation made in **paragraph 10** of the concluding observations that the State party “speed up the implementation of the National War Crimes Strategy and increase the number of prosecutions of war crimes cases by allocating more financial resources and investigative capacities to address the large backlog of cases”: The State party indicated that one of the objectives of the National Strategy for Processing of War Crimes Cases is the distribution of war crimes cases between the state-level judiciary and judiciaries of the entities and of Brcko District of Bosnia and Herzegovina. It mentioned that, in the first half of 2014, the permanent Council of the Section I for War Crimes of the Criminal Division has completed the review and assessment of complexity of about 900 war crimes cases and finalized the transfer of all complex cases to the Court and the Prosecutor's Office of Bosnia and Herzegovina. It further reported that, in 2013 and 2014, only 38.5 per cent and 33 per cent, respectively, of the total number of indictments were raised in cases that fall into the category of the most complex and highest priority for which the Strategy foresees a period of 7 years of prosecution, while 38 per cent was raised in cases from the category with a term of processing up to 15 years. In addition, it indicated that the Court of Bosnia and Herzegovina has successfully realized strategic obligation relating to the establishment and updating of a centralized database on the prosecution of war crimes before courts in the entire State party as of 1 March 2003. It highlighted that, in the period

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from 2005 to 1 June 2015, the Court of Bosnia and Herzegovina has finalized 126 war crimes cases, including 38 war crime cases with elements of sexual violence, and that the number of fully completed cases has increased until 2012 before drastically dropping in the following years. It mentioned that 76 cases are currently pending before Section I for War Crimes of the Court of Bosnia and Herzegovina. According to information received by the Committee, the pace of investigations of most complex war crimes cases remains slow and appropriate financing of adequate staffing and support infrastructure levels in prosecutors' offices and courts remains an issue to be addressed urgently to ensure timely and effective processing of the backlog. The Committee welcomes the steps taken by the State party to speed up the implementation of the National War Crimes Strategy. It considers, however, that the State party did not take sufficient measures to increase the number of prosecutions of war crimes cases by allocating more financial resources and investigative capacities to address the large backlog of cases. The Committee considers that the State party took some steps towards the implementation of the recommendation. It considers that the recommendation **has been partially implemented**.

Regarding the recommendation that the State party “amend all relevant criminal codes to include a definition of wartime sexual violence in line with international standards, including a specific definition of rape as a war crime and a crime against humanity, in order to adequately reflect the gravity of the crimes committed and intensify its efforts to harmonize the jurisprudence and sentencing practices of its courts throughout the State party, by establishing effective cooperation mechanisms between prosecutors and courts competent to deal with war crimes at all levels of the State party”: The State party indicated that the provisions of the Criminal Code of Bosnia and Herzegovina are in accordance with the relevant standards of the Rome Statute of the International Criminal Court and recognize persecution on “political, racial, national, ethnic, cultural, religious, sexual or other grounds” as a crime against humanity. It added that the National Strategy helps to resolve cases involving sexual violence by ensuring that the burden of processing is distributed between the judiciary at the state level and in the entities. It further mentioned the amendment of article 193 of the Criminal Code of the Republika Srpska on rape. According to information received by the Committee, the Criminal Code of Bosnia and Herzegovina was amended in May 2015 to define wartime rape and other forms of sexual violence as a war crime and a crime against humanity. However, it was reported that criminal legislation on rape at the entity level remains at odds with international standards. The Committee welcomes the amendment of the Criminal Code of Bosnia and Herzegovina to define rape and other forms of sexual violence as a war crime and a crime against humanity. However, it notes that the State party did not take concrete measures to amend all relevant criminal codes, especially at the entity level, to include a definition of wartime sexual violence in line with international standards, including a specific definition of rape as a war crime and a crime against humanity. Moreover, it considers that the State party did not take sufficient steps to harmonize the jurisprudence and sentencing practices of its courts throughout the State party, by establishing effective cooperation mechanisms between prosecutors and courts competent to deal with war crimes at all levels of the State party. The Committee considers that the State party took some steps towards the implementation of the recommendation. It considers that the recommendation **has been partially implemented**.

Regarding the recommendation that the State party “expedite the adoption of pending draft laws and programmes designed to ensure effective access to justice for all women victims of wartime sexual violence, including adequate reparation, such as the draft law on the rights of victims of torture and civilian war victims, the programme for victims of sexual violence in conflict and torture (2013-2016) and the draft strategy on transitional justice aimed at improving access to justice”: The State party reported that the draft Law on the Rights of Victims of Torture in Bosnia and Herzegovina was completed in late 2012 and later submitted to the Council of Ministers, but a decision was taken to postpone the consideration of the said draft to perform additional consultations. The State party also indicated that the Programme for Victims of Wartime Rape, Sexual Abuse and Torture, and their Families 2013-2016 was not approved by all levels of Government. Moreover, it mentioned that the Transitional Justice Draft Strategy and its Action

Plan, which were completed in April 2012, were submitted to the Council of Ministers and are still pending approval. In addition, it highlighted a number of initiatives undertaken at the national and entity level, including the special Information on the position of Serb women who are victims of war sexual violence, which was adopted by the Government and the National Assembly of the Republika Srpska in April 2015, the Decision of the Assembly of Brcko District on protection of civilian victims of war and its subsequent draft law, and the United Nations joint support programme “Seeking care, support and justice for survivors of conflict-related sexual violence in Bosnia and Herzegovina”. It also stressed that for the first time, the Court of Bosnia and Herzegovina has ruled the payment of compensation to victims of rape. However, according to information received by the Committee, there has been no improvement, since July 2013, in the access to adequate compensation and integral reparation for wartime victims of rape or other forms of sexual violence, who have been systematically referred to the existing civil procedure which does not seem to adequately address the special needs of the victims. Moreover, it was reported that the adoption of a State-level law on free legal aid remains pending. While noting the initiatives undertaken to address the situation of women victims of wartime sexual violence at the entity level, the Committee considers that the State party did not take sufficient measures to expedite the adoption of pending draft laws and programmes designed to ensure effective access to justice for all women victims of wartime sexual violence, including adequate reparation, such as the draft law on the rights of victims of torture and civilian war victims, the programme for victims of sexual violence in conflict and torture (2013-2016) and the draft strategy on transitional justice aimed at improving access to justice. It considers that the recommendation **has not been implemented**.

Regarding the recommendation that the State party “ensure the effective implementation of the new Law on the Witness Protection Programme and establish sustainable and operational witness protection measures at the district and cantonal levels”: The State party mentioned that the Law on Witness Protection Program, adopted in April 2014, provides for efficient protection of a witness during and after criminal proceedings in order to enable the witness to testify freely and openly before the Court of Bosnia and Herzegovina. It also stated that the Court of Bosnia and Herzegovina, through its Witness Support Section, has taken a leading role in establishing a witness support network by linking local witness support sections with government institutions and non-governmental organizations. It indicated that practical training has been provided to associate professionals (psychologists) who are employed in the 16 local witness support sections, which are located in Republika Srpska as well as in a smaller number of cantons. It further reported that, in places where witness support sections have not been established yet, Rules on the Application of witness protection measures have been adopted in order to ensure the proper application of procedural measures of protection for witnesses under threat and vulnerable witnesses, and associates for witness support have been charged, in some cantonal prosecutor’s offices, with providing psycho-social, informational and organizational support and assistance to witnesses before, during and after the court proceedings. Moreover, it indicated that numerous protocols were signed on cooperation of relevant ministries, judicial institutions, education institutions and non-governmental organizations regarding the provision of support to victims and witnesses in war crimes cases, sexual violence and other forms of criminal offenses. However, according to information received by the Committee, cases where the identity of protected witnesses has been disclosed to the public have been registered. Moreover, the psychological support provided to witnesses and victims before, during, and after war crimes trials remains insufficient and largely dependent on the efforts undertaken by civil society and foreign donors. It was also reported that the Law on Witness Protection Programme only applies to witnesses testifying before the Court of Bosnia and Herzegovina, and that the Witness Protection Department within the Prosecutor’s Office of Bosnia and Herzegovina has been closed. The Committee welcomes the measures taken by the State party to provide protection and assistance to victims and witnesses of war crimes before, during and after criminal proceedings at the national and subnational levels. However, it considers that these measures remain insufficient as they rely too heavily on international and local partners and do not cover all districts and cantons of the State party. Moreover, it considers that the State party did not provide sufficient information on the steps taken to ensure the effective implementation of the new law on the witness protection programme. The Committee considers

that the State party took some steps to implement the recommendation. It considers that the recommendation **has been partially implemented**.

The Committee recommends that, in relation to paragraph 10 of the concluding observations, the State party provide, **in its next periodic report**, information on further actions taken to:

- (1) Speed up the implementation of the National War Crimes Strategy and increase the number of prosecutions of war crimes cases by allocating more financial resources and investigative capacities to address the large backlog of cases;
- (2) Amend all relevant criminal codes, especially at the entity level, to include a definition of wartime sexual violence in line with international standards, including a specific definition of rape as a war crime and a crime against humanity, in order to adequately reflect the gravity of the crimes committed and to intensify its efforts to harmonize the jurisprudence and sentencing practices of its courts throughout the State party, by establishing effective cooperation mechanisms between prosecutors and courts competent to deal with war crimes at all levels of the State party;
- (3) Expedite the adoption of pending draft laws and programmes designed to ensure effective access to justice for all women victims of wartime sexual violence, including adequate reparation, such as the draft law on the rights of victims of torture and civilian war victims, the programme for victims of sexual violence in conflict and torture (2013-2016), the draft strategy on transitional justice aimed at improving access to justice, and the State-level law on free legal aid; and
- (4) Ensure the effective implementation of the Law on the Witness Protection Programme and to strengthen and expand the witness support network to guarantee its sustainability and full coverage of the territory.

Regarding the recommendation made in **paragraph 34** of the concluding observations that the State party “adopt temporary special measures in accordance with article 4, paragraph 1, of the Convention and with the Committee’s general recommendation No. 25, aimed at achieving de facto equal opportunities for women and men in the labour market, including disadvantaged groups of women; and establish special training programmes and counselling for different groups of unemployed women, including by promoting women’s entrepreneurship”: The State party mentioned that all conducted activities, in particular, active employment policies, are in accordance with the primary objective set forth in the Employment Strategy in Bosnia and Herzegovina 2010-2014, which is to increase the quality and quantity of jobs and to promote social inclusion and combat inequalities. It further indicated that, in order to increase the involvement of women in the labour market and develop their entrepreneurship skills, it adopted a number of laws, strategies and programmes, including the Law on the Development of Small and Medium Enterprises in Republika Srpska, the 2012-2015 Program for Development of Women Entrepreneurship in Republika Srpska and Strategy for the Development of Small and Medium Enterprises 2014-2018, the Strategic Plan of Rural Development in Republika Srpska 2009-2015, the 2013-2020 Programme of Rural Development of the Federation and Herzegovina, the 2011-2015 Employment Strategy of Republika Srpska, the Project “Social, Commercial and E-inclusion of women 40+”, as well as various active employment programmes targeting young and older persons, long-term unemployed persons, returnees and Roma, including a large number of women. The Committee welcomes the various laws, strategies and programmes developed to increase the involvement of women, including different groups of unemployed women, in the labour market and promote women’s entrepreneurship. However, it notes that the State party did not adopt temporary special measures in accordance with article 4, paragraph 1, of the Convention and with the Committee’s general recommendation No. 25, aimed at achieving de facto equal opportunities for women and men in the labour market, including disadvantaged groups of women. The Committee considers that the State party took some steps towards the

implementation of the recommendation. It considers that the recommendation **has been partially implemented**.

Regarding the recommendation that the State party “take effective measures to integrate disadvantaged groups of women and women working in the “grey economy” into the formal labour market”: The State party indicated that no strategy or programme has been developed to implement effective measures for the integration of vulnerable groups of women working in the informal sector into the formal labour market. It further mentioned that the financial crisis has contributed to the rise of the “grey” economy. The Committee considers that the State party did not take effective measures to integrate disadvantaged groups of women and women working in the “grey economy” into the formal labour market. It considers that the recommendation **has not been implemented**.

Regarding the recommendation that the State party “closely monitor the working conditions of women in the informal sector and those employed with temporary contracts, by strengthening labour inspections; ensure their access to social services and social security; and consider ratifying International Labour Organization Convention No. 189 (2011), concerning decent work for domestic workers”: The State party mentioned that, within the framework of the Decent Work Country Programme (2012-2015), two reports were produced and a campaign was launched to raise awareness on the need to formalize the informal economy. It added that the development and implementation of guidelines and work plans in selected areas to strengthen the effectiveness of the labour inspection system in undeclared work was envisaged in 2015. Moreover, it reported that ILO Convention No. 189 (2011) concerning decent work for domestic workers and Domestic Workers Recommendation No. 201 (2011) have been submitted to the competent authorities of entities and Brcko District, which decided to postpone the ratification of the Convention and acceptance of the Recommendation, as they would require significant corrections of legislation and introduction of new working practices. While noting the project to develop and implement guidelines and work plans in selected areas to enhance the labour inspection system in undeclared work, the Committee considers that the State party did not take concrete measures to closely monitor the working conditions of women in the informal sector and those employed with temporary contracts, by strengthening labour inspections, and ensure their access to social services and social security. Moreover, it notes that the ratification of International Labour Organization Convention No. 189 (2011), concerning decent work for domestic workers, has been postponed. The Committee considers that the recommendation **has not been implemented**.

Regarding the recommendation that the State party “adopt effective measures, including temporary special measures, to eliminate horizontal and vertical occupational segregation based on stereotypes related to gender”: The Committee considers that the State party did not adopt effective measures, including temporary special measures, to eliminate horizontal and vertical occupational segregation based on stereotypes related to gender. It considers that the recommendation **has not been implemented**.

Regarding the recommendation that the State party “develop a confidential and safe system for filing complaints related to gender-based discrimination and sexual harassment in the workplace, and ensure that victims have effective access to such means of redress”: The State party indicated that the central institution competent for ensuring protection from discrimination is the Ombudsman for Human Rights of Bosnia and Herzegovina. It further mentioned that the complaint shall be filed in writing, by mail, fax, e-mail or personal delivery, should contain a short description of events, facts or decisions that led to the filing, and must be signed and submitted by the person concerned or an authorized representative. It added that the Ombudsman receives more work-related complaints from men than women, and that those complaints usually relate to a hostile work environment, insults and degradation of the subordinate officers, or selective and incomplete realization of labour rights with respect to annual leave, vocational training and remuneration. In addition, it reported that The High Judicial and Prosecutorial Council of Bosnia and Herzegovina adopted Guidelines for the Prevention of Sexual and Gender-based Harassment

within the Judicial Institutions. Moreover, it indicated that the Gender Equality Agency and the Ministry of Human Rights and Refugees drafted the Information on mechanisms for effective prevention and protection against harassment based on gender and sexual harassment in the workplace in public institutions, which is pending adoption. While noting the procedure to lodge a complaint with the Ombudsman for Human Rights of Bosnia and Herzegovina, as well as the draft Information on mechanisms for effective prevention and protection against harassment based on gender and sexual harassment in the workplace in public institutions, the Committee considers that the State party did not take sufficient measures to develop a confidential and safe system for filing complaints related to gender-based discrimination and sexual harassment in the workplace, and to ensure that victims have effective access to such means of redress. The Committee considers that the recommendation **has not been implemented**.

Regarding the recommendation that the State party “enhance the availability and affordability of childcare facilities to help women exercise their right to work, in order to increase women’s access to the labour market”: The State party indicated that, in recent years, there has been a rise in the number of newly established pre-school institutions, as well as in the number of children placed in such institutions. It reported, however, that regional disparities are noticeable in this regard, and that the ratio of teachers to children has decreased. The Committee welcomes the increase in the number of pre-school institutions in the State party. However, it notes the uneven territorial coverage of such institutions, and considers that the State party did not indicate whether it took specific steps to enhance the affordability of childcare facilities to help women exercise their right to work, in order to increase women’s access to the labour market. The Committee considers that the State party took some steps towards the implementation of the recommendation. It considers that the recommendation **has been partially implemented**.

Regarding the recommendation that the State party “ensure that the implementation of the framework law regulating the social sector results in the harmonization of pregnancy and maternity protection in the State party, in order to guarantee paid maternity leave for all women”: The State party indicated that, according to unofficial data and research, about 47 per cent of mothers do not receive any compensation. It further mentioned that, in order to harmonize the rights and protection of families and children, the Federal Ministry of Labour and Social Affairs appointed a Working Group to draft a paper on “Public policies on protection of families and children in the Federation of Bosnia and Herzegovina”, as the basis for a new law on the matter. The Committee considers that the State party did not take specific steps to ensure that the implementation of the framework law regulating the social sector results in the harmonization of pregnancy and maternity protection in the State party, in order to guarantee paid maternity leave for all women. It considers that the recommendation **has not been implemented**.

Regarding the recommendation that the State party “carry out awareness-raising and education initiatives for both women and men on the sharing of domestic and family responsibilities between women and men and provide incentives for active participation by men in such responsibilities, e.g., by introducing special non-transferable paternity leave”: The Committee considers that it **did not receive sufficient information** to assess whether the recommendation has been implemented.

The Committee recommends that, in relation to paragraph 34 of the concluding observations, the State party provide, **in its next periodic report**, information on further actions taken to:

(1) Adopt temporary special measures in accordance with article 4, paragraph 1, of the Convention and with the Committee’s general recommendation No. 25, aimed at achieving de facto equal opportunities for women and men in the labour market, including disadvantaged groups of women;

(2) Integrate disadvantaged groups of women and women working in the “grey economy” into the formal labour market;

(3) Closely monitor the working conditions of women in the informal sector and those employed with temporary contracts, by strengthening labour inspections; to ensure their access to social services and social security; and to ratify International Labour Organization Convention No. 189 (2011), concerning decent work for domestic workers;

(4) Adopt effective measures, including temporary special measures, to eliminate horizontal and vertical occupational segregation based on stereotypes related to gender;

(5) Develop a confidential and safe system for filing complaints related to gender-based discrimination and sexual harassment in the workplace in both the public and private sectors, and to ensure that victims have effective access to such means of redress;

(6) Enhance the availability and affordability of childcare facilities to help women exercise their right to work, in order to increase women's access to the labour market;

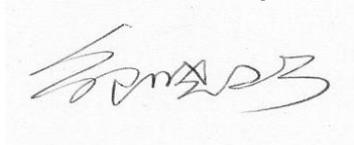
(7) Ensure that the implementation of the framework law regulating the social sector results in the harmonization of pregnancy and maternity protection in the State party, in order to guarantee paid maternity leave for all women; and

(8) Carry out awareness-raising and education initiatives for both women and men on the sharing of domestic and family responsibilities between women and men and provide incentives for active participation by men in such responsibilities, e.g., by introducing special non-transferable paternity leave.

The Committee looks forward to pursuing its constructive dialogue with the authorities of Bosnia and Herzegovina on the implementation of the Convention.

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

Yours sincerely,



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