

EXECUTIVE SUMMARY
of the
FOLLOW-UP REPORT ON THE IMPLEMENTATION BY
BOSNIA AND HERZEGOVINA OF THE RECOMMENDATIONS ISSUED BY THE
COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN IN JULY 2013

(CEDAW/C/BIH/CO/4-5)

JULY 2015

I. Background

1. On 26 July 2013, after having considered the combined fourth and fifth periodic reports of Bosnia and Herzegovina (BiH) with regard to the implementation of its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (“the Convention”), the Committee on the Elimination of Discrimination against Women (CEDAW) issued its concluding observations. It requested BiH to provide, within two years (i.e. 26 July 2015), written information on the steps undertaken to implement the recommendations contained, in particular, in paragraph 10 (a) to (d).
2. TRIAL (Track Impunity Always), and 15 BiH associations dealing with the subject of victims of rape or other forms of sexual violence during the war (Association of Women-Victims of War, Centre of Legal Assistance for Women Zenica, Citizens Association Budućnost Modriča, Forum Žene Bratunac, Foundation of Local Democracy, Foundation United Women Banja Luka, Izvor-Prijedor, Medica Zenica, Naš Glas Association, Section of Women Victims of War in Republika Srpska, Sehara Association, Snaga Žene, Vive Žene, Women’s International League for Peace and Freedom, and Women’s Section of the Association of Concentration Camp Torture Survivors Canton Sarajevo) submit to the CEDAW a follow-up report on the implementation of the recommendations issued by the latter in 2013.
3. In general, it is the view of the subscribing associations that there has been **very limited progress in the implementation of the recommendations formulated in July 2013 by the CEDAW with regard to women victims of rape or other forms of sexual violence during the war**. Overall, the latter continue experiencing isolation and indifference, and they are left to bear the brunt of violations that have been ongoing over the past 20 years. This situation is causing a climate of deep distrust towards BiH institutions and, given that not even the recommendations of international mechanisms such as the CEDAW prove effective, there is a general feeling of powerlessness and frustration. BiH remains in breach of its international obligations as spelled out, among others, in Arts. 1, 2, 3, 5, 7, 10, 11, 12 and 13 of the Convention.

II. The Slow Pace of Implementation of the National War Crimes Strategy

4. Pursuant to the National War Crimes Strategy adopted in December 2008, investigation and prosecution of a first batch of “most complex cases” relating to war-time crimes should be **completed by the end of 2015**. Unfortunately, **the pace of investigations remains slow and it is hard to see how the deadline can be respected**. For many victims who have already waited for more than 20 years to see justice done,

this comes as a further blow. Despite the recommendations issued in July 2013 by the CEDAW, **appropriate financing of adequate staffing levels in prosecutors' offices and courts remains an issue to be addressed urgently to ensure timely and effective processing of the backlog.** The competent State authorities failed to allocate the funds needed to complete the support infrastructure. The suspension of an instalment of funding expected from the European Union due to the failure of BiH authorities to adopt the Justice Sector Reform Strategy is further jeopardising the situation. Although **there has been a noticeable increase in the prosecution of cases of war crimes involving sexual violence, the number remains too low compared to the scope of the phenomenon during the conflict, thus determining an unacceptable ongoing state of impunity.** This is further exacerbated by the fact that, even when perpetrators of rape or other forms of sexual violence during the war are eventually convicted, there seems to be a practice to impose the minimum penalty (i.e. **imprisonment between three and five years**) on them. This, coupled with the more general trend of drastically reducing the sentences imposed on persons convicted for war crimes, is a source of distress for many victims who feel mocked. The described situation also discourages other victims from coming forward and seeking justice, as the end result seems unworthy the exceptional obstacles to be faced.

Please refer to paras. 4-14 of the integral version of the follow-up report for details

Recommendations

Ensure that the **National War Crimes Strategy is duly implemented** without further delay and its application is thoroughly explained to the wide public in a transparent manner, thus fostering a climate of trust towards institutions. The existence of the strategy cannot be used to delay indefinitely investigations.

Ensure that all cases of rape or other forms of sexual violence perpetrated during the war are **promptly, independently, impartially, and thoroughly investigated** and that those responsible are judged and sanctioned in accordance with international fair trial standards. **The sentence imposed on those found guilty of rape or other forms of sexual violence during the war must be commensurate to the extreme gravity of the offence.**

Ensure that **victims of rape or other forms of sexual violence and their representative organisations are given information on a regular basis on the process of investigation carried out by the prosecutor's offices**, the results of those investigations, and whether trials might be forthcoming. Courts at all levels shall have consistent rules in dealing with the public in general and with victims of rape or other forms of sexual violence in particular.

III. The Amended Criminal Legislation on War-time Sexual Violence

5. A positive development since July 2013 is the amendment of criminal legislation concerning rape at the national level. After several frustrated attempts, in May 2015 **the Criminal Code of BiH was eventually amended.** The amendments of the Criminal Code concern only the crimes of rape and other forms of sexual violence when committed as a crime against humanity or a war crime. Unfortunately, **rape and sexual violence are not codified as autonomous offences under the Criminal Code of BiH in case**

they are committed as isolated instances and not in the context of a widespread or systematic attack against the civilian population or as a war crime. This represents a major loophole that fosters impunity. Moreover, **criminal legislation on rape at the entity level remains at odds with international standards.**

Please refer to paras. 15-18 of the integral version of the follow-up report for details

Recommendations

Amend the criminal codes at the entity level to make sure that the **definition of “rape” and “sexual violence” is brought in accordance with international standards.** In particular, entity and district criminal legislation shall be brought in line with international law by codifying crimes against humanity, command responsibility, sexual slavery and forced pregnancy and establishing sanctions commensurate to the extreme seriousness of these crimes.

Ensure that **rape and sexual violence are codified under the Criminal Code of BiH as autonomous offences also when committed outside a widespread or systematic attack against civilian population or as a war crime.**

Ensure that **criminal codes at all levels explicitly define that a person who acted pursuant to an order to commit rape or other forms of sexual violence shall not be relieved of criminal responsibility** and that those who refuse to obey such an order will not be punished.

Ensure that **war-time rape is prosecuted as such** and that prosecutors and courts refrain from dealing with such cases as ordinary rape, since this does not mirror the particular nature of this heinous crime and it unduly advantages the defendant.

IV. The Status of Draft Legislation and Programmes relevant for Victims of Rape or other Forms of Sexual Violence during the War

6. Over the past years a number of legislative initiatives and programmes have been launched, sometimes involving representatives of civil society, in order to bring BiH legal framework in line with international standards and to finally guarantee the victims' rights to justice and redress. **Despite several pledges by BiH authorities that the mentioned initiatives and programmes were about to be approved and implemented and repeated recommendations on these issues from international human rights mechanisms, including the CEDAW, to date none of the initiatives and programmes concerned has seen the light of the day.** This holds particularly true for the **draft National Strategy on Transitional Justice, the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence, and the draft Law on the Rights of Victims of Torture.** In the three cases, despite assurances from BiH of an “imminent” adoption, the relevant drafts have not been approved and do not seem close to significant advancement, paralysed by lack of political will and failure of the entities to take a clear stand. Time passes, BiH authorities fail to adopt positive measures and indulge into lulls, while in the meantime victims of gross human rights violations from the war, including women victims of rape or other forms of sexual violence, are dying without having ever obtained justice, redress

and truth. This is not only a flagrant violation of BiH's international obligations, but is perceived as a mockery by thousands of people.

Please refer to paras. 19-27 of the integral version of the follow-up report for details

Recommendations

Ensure that the **National Strategy on Transitional Justice 2010–2014 is revised so as to reflect the period that has passed since the finalisation of the draft and it is subsequently adopted and implemented without further delay**. In this process the State must keep in mind that the Strategy is complementary to formal access to justice processes, and that the obligation of the State to provide redress for victims of gross human rights violations and their relatives must be guaranteed notwithstanding the adoption of the Strategy in question.

Ensure that the **Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence** is referred for approval to the Council of Ministers of BiH without further delay. Representatives of Republika Srpska must express their opinion on the programme and show their genuine support without further delay. Ensure that any measures aiming at redressing women survivors of rape and other forms of sexual violence, envisaged by the Programme must have a **transformative character**, aiming at ameliorating, or at least consolidating, their position in society. Women victims of rape or other forms of sexual violence during the war shall be **guaranteed full participation** not only in the drafting of the Programme or other measures, but also in the subsequent implementation, evaluation, and decision-making processes.

Ensure that the obstacles for the adoption of the **Law on the Rights of Victims of Torture** are swiftly removed and this crucial piece of legislation is adopted and enforced without further delay. Financial resources for its implementation must be secured and the overall exercise must be coordinated with the other mentioned legislative initiatives and programmes concerning victims of the conflict in BiH in order to avoid overlapping or lacunae. To ensure the finalisation of a sound draft law, all parties shall constructively participate to the endeavour and associations of victims of rape or other forms of sexual violence during the war must be thoroughly involved and allowed to express their opinions, needs, and expectations.

V. The Protection and Support of Victims and Witnesses in Cases of Rape or other Forms of Sexual Violence during the War

7. 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, while institutional support is lacking**. Although new departments to offer support to witnesses during war crimes trials have been set up in different cities, this was done with the support of the United Nations Development Programme (UNDP). Further, a network of support provided by NGOs has been set up with the financial assistance of the European Union. **However, if BiH authorities do not provide for adequate financial and human resources to ensure future activities, the sustainability of these endeavours may be at risk**. With regard to the legal framework applicable to victims and witness protection and support, **on 29 April 2014 the Law on Witness Protection Programme in BiH has been adopted. However, this law applies only to witnesses testifying before the Court of BiH and not to district courts in Republika Srpska, cantonal courts in the Federation of BiH, or courts in the Brčko District**. Having in mind that a considerable number of war crimes trials take place before district, cantonal, or other lower courts, this

is especially worrying. The **sections of the National War Crimes Strategy concerning witness protection and support have not been fully implemented**. An additional source of concern is the **information, confirmed both by UNDP and a judge of the Court of BiH, that the Witness Protection Department within the Prosecutor's Office of BiH has been closed**.

Please refer to paras. 28-34 of the integral version of the follow-up report for details

Recommendations

BiH must ensure that a **comprehensive programme of victims and witness protection and psychological accompaniment is granted at all levels prior, during, and after the trial takes place**.

The **witness protection and support measures foreseen under the Law on Witness Protection Programme must be granted also before lower courts in the different entities**, taking into account the specificities of the country.

Ensure that the **Witness Protection Department within the Prosecutor's Office of BiH** is either reactivated after having been adequately staffed and funded, or replaced by an alternative effective mechanism.

Ensure the **full implementation of the sections of the National War Crimes Strategy concerning witness protection and support**.

VI. Additional Issues of Concern

8. Besides the subjects on which the CEDAW had issued specific recommendations and explicitly requested for written information on the level of implementation, there are other issues of concern for the associations subscribing the follow-up report.
9. Since July 2013, there has been **no improvement in the access to adequate compensation and integral reparation for victims of rape or other forms of sexual violence during the war**. The notions of compensation and reparation continue being unduly confused with that of social benefits. The existing legal framework is plagued by gaps and there are serious drawbacks in its implementation. **Discrimination between veterans and civilian victims of war when it comes to obtaining compensation or social benefits remains a reality**. Although criminal courts have the option to award total or part of a claim for compensation to the injured parties or to refer them to civil actions, victims have been systematically **referred to civil actions**. This practice **hampers the access to compensation of the majority of victims**, given that launching a civil action requires additional expenses that they are often unable to afford. On 24 and 29 June 2015 respectively, the Court of BiH issued two landmark verdicts whereby it awarded for the first time compensation to victims besides sentencing those responsible. These precedents must be followed by all criminal courts across BiH. The **existing civil procedure for obtaining compensation does not seem to respect the special needs and the situation of victims of rape or other forms of sexual violence**. Cases where the identity

of protected witnesses has been disclosed to the public have been registered.

10. Under the existing legal framework, victims who have suffered the same body damage are entitled to substantially different amounts of money as disability pensions depending on whether they are veterans or not and on the place of residence (amounts recognised in Republika Srpska are lower than in the Federation of BiH). Psychological damage is not recognised as a valid basis to obtain social benefits and this situation should be changed. **Legislation of Republika Srpska does not recognise women victims of rape or other forms of sexual violence as an autonomous category of victims.** The existing law on social benefits in Republika Srpska establishes strict deadlines that already expired, thus excluding a considerable group of potential applicants from claiming their rights. The existing laws seriously impair and fail to guarantee the rights of civilian victims of war currently living outside BiH. Moreover, current procedures under which victims may apply for the status of civilian victim of war do not seem to be totally transparent and sensitive to the psychological needs of the persons involved. Although after many years the situation of victims who returned to Republika Srpska and saw their social benefits suspended upon return has eventually been settled and they are now receiving benefits pursuant to the legislation of the Federation of BiH, nothing has been done to return them what they lost over the past years while the enjoyment of the allowances was suspended.
11. As a direct consequence of the harm suffered during the war, the majority of victims of rape or other forms of sexual violence live in a particularly difficult material situation and, so far, BiH failed to guarantee them adequate restitution and rehabilitation, especially in the sense of a safe and sustainable return to their pre-war place of residence. Also, the **State does not guarantee these women access to adequate housing, preferential treatment in employment, and access to education for their children, as well as free of charge medical and psychological support.** In this context, it is noteworthy that 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.** Although NGOs or international agencies have launched or are implementing projects to provide housing, psychological and medical support, and similar measures, this does not relieve BiH from its primary responsibility to do so. The situation described is made even worse by the general financial crisis affecting BiH, as well as by damages caused by the floods that hit the country in 2014 and left hundreds of people, including women victims of rape or other forms of sexual violence during the war homeless.

Please refer to paras. 37-51 of the integral version of the follow-up report for details

12. International mechanisms have been calling on BiH for the adoption of a State law on free legal aid over the past decade. Unfortunately, the risk of discrimination continues to be of serious concern as a consequence of a fragmented and non-harmonised system. A free legal aid agency has been established in one more Canton of the Federation of BiH, bringing the total to eight. However, the free legal aid system is still unregulated in two Cantons and in the Federation of BiH. **The adoption of a State-level law on free legal aid remains pending and is a priority that cannot be postponed anymore.**

Recommendations

Ensure that all victims of rape and other forms of sexual violence during war have **equal access to social benefits and other measures of social support they are entitled to due to their status of civilian victim of war, irrespective of where they live**. However, necessary improvements of the discriminatory elements in the existing legislation of the entities related to social benefits, should not be seen as an alternative to the State obligation to provide redress for the violations and harms suffered by the victims, including survivors of rape and other forms of sexual violence – ultimately separating the right to redress from the obligation of the State to provide equal access to social and economic rights to the general population.

Ensure that courts and prosecutors across BiH shall guarantee the right of women to make any financial compensation claims during criminal proceedings. The precedents set by the Court of BiH on 24 and 29 June 2015 must be followed by other courts across BiH.

Ensure that the **redress and social benefits received by civilian victims of war are not below those received by war veterans**.

Implement a **national programme on measures of reparation for civilian victims of war, including victims of rape or other forms of sexual violence and relatives of missing persons that encompasses compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition**. Also civilian victims of war currently living abroad shall be entitled to realise their right to compensation and restitution. In particular, the State shall guarantee, as a measure of reparation, access to free psychosocial support, provided through State's institutions and health services. Measures envisaged by the **reparations programme shall have a transformative aim** and victims of rape or other forms of sexual violence during the war shall be guaranteed full participation not only in the drafting of the programme, but also in the subsequent implementation, evaluation, and decision-making.

Take measures to **raise awareness about the status of civilian victim of war** and, in particular, the possibility for applying for such status and the rights deriving from it.

Ensure that **adequate and effective criteria are applied to recognise the status of civilian victim of war without discrimination** and further traumatising for the people involved.

Undertake without delay all necessary measures to facilitate access to **adequate housing** to victims of rape or other forms of sexual violence during the war and guarantee them **reintegration in the labour market**. Both at the State and the entity level preferential treatment in employment shall be assured to victims of rape or other forms of sexual violence and legislation shall be amended accordingly.

Guarantee to the children of victims of rape or other forms of sexual violence the access to education and, if they wish to continue with their studies, to the highest levels of instruction.

Develop a **system to provide victims of rape or other forms of sexual violence during the war, including those who live in remote areas of the country, with access to psychological accompaniment and medical treatment free of charge**. BiH shall remove existing barriers that unduly

obstruct the access to medical and psychological treatment and medicines. Moreover the State shall support and provide resources to those organisations that already work in this field, making sure that they continue supplying good quality treatments to victims of rape or other forms of sexual violence. BiH shall ensure that programmes of health and psychological support are also put in place to adequately assist children born as a result of war-time rape.

Ensure that a new **draft law on free legal aid** is finalised without delay and that associations of victims of rape or other forms of sexual violence during the war are thoroughly involved in such process and allowed to express their opinions, needs, and expectations. The draft law on free legal aid shall be promptly approved and its funding secured. BiH 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. **NGOs which provide free legal aid should be included in the financial segment of the Law and their role in the whole process of providing free legal aid should be emphasised.**