

Bosnia and Herzegovina Follow Up Report

Sarajevo Open Centre (§6) - TRIAL (§7 & 12)

January 2014

CCPR/C/BIH/CO/2

November 2012 (adoption of the Concluding Observations)
November 2013 (Deadline for the follow-up Report)

Current status: Follow-up report from the State Party has been submitted on 15 Nov. 2013

Summary Table

Recommendation in par. 6	Grade	Overview
Adopt an electoral system that guarantees equal enjoyment of the rights of all citizens under article 25 of the Covenant, irrespective of ethnicity.	C	The State did not adopt an electoral system that would guarantee equal enjoyment of the rights of all citizens. There was no proposal developed and discussed in State parliament or government.
Amend its Constitution and Election Law to remove provisions that discriminate against citizens from certain ethnic groups by preventing them from participating in elections.	C	The State did not amend its Constitution and Election Law in a way it would allow all ethnic groups to participate in the election. Proposals for amending the Constitution did come from political parties and civil society, but none of them has been discussed in the State parliament. Negotiations between political parties took place without any results.
Recommendation in par. 7	Grade	Overview
Should expedite the prosecution of war crime cases.	B2	Although some progress was made over the past year, prosecutors' offices across country remain unable to effectively deal with all the pending war crime cases.
Should continue to provide adequate psychological support to victims of sexual violence, particularly during the trials.	B2	The psychological support provided during trials to witnesses and victims of war crimes, especially, to women victims of rape or other forms of sexual violence during the war, remains inadequate.
Should ensure that the judiciary in all entities strongly pursues efforts aimed at harmonizing jurisprudence on war crimes and that charges for war crimes are not brought under the archaic Criminal Code of the former Socialist Federal Republic of Yugoslavia	C	Regarding this recommendation the situation is particularly complicated. The European Court of Human Rights in its judgment "Maktouf and Damjanovic v. Bosnia and Herzegovina" affirmed the exact contrary of what the recommendation is asking. This has led to a wave of appeals to the Constitutional Court of BiH of people convicted for crimes against humanity or war crimes. Thus creating outrage among victims
Recommendation in par. 12	Grade	Overview
Should abolish the obligation in cases of disappearance which makes the right to compensation dependent on the family's willingness to have the family member declared dead	B2	An amendment was drafted by TRIAL's representatives and was given to the Human Rights Commission of the Federal Parliament of BiH. For the moment, this amendment to the Federal Law on Social Protection is still being analyzed.
Should ensure that any compensation or other form of redress adequately reflects the gravity of the violation and the harm suffered.	C	So far BiH authorities have not undertaken any measure to provide the authors of the communications with prompt, fair and adequate compensation for the harm suffered as recommended by the Human Rights Committee.

Grade A: Implementation satisfactory:

A1: Response fully satisfactory

A2: Response largely satisfactory

Grade B: Implementation partially satisfactory:

B1: Implementation partially satisfactory: progress made, but need for additional information

B2: Implementation partially satisfactory: progress made, but additional action required

Grade C: Response not satisfactory

C: No action taken by the State Party to implement the recommendation

Detailed Assessment**Paragraph 6:**

The Committee recalls its previous recommendation (CCPR/C/BIH/CO/1, para. 8) and expresses its regret that the Constitution and Election Law of the State party continues to exclude persons who do not belong to one of the State party's "constituent peoples", namely Bosniaks, Croats and Serbs, from being elected to the House of Peoples and to the tripartite Presidency of Bosnia and Herzegovina. The Committee particularly regrets that, notwithstanding its previous recommendations and the judgment of the European Court of Human Rights in the case of Dervo Sejdić and Jakob Finci, application Nos. 27996/06 and 34836/06, handed down on 22 December 2009, efforts to amend the Constitution have stalled such that the law continues to exclude citizens from certain groups from participating in elections that were held in October 2010 (arts. 2, 25 and 26).

Recommendation from the HR Committee	Grade	Action taken by the State	Additional measures needed	Other comments
The Committee reiterates its previous concluding observations (CCPR/C/BIH/CO/1, §.8) that the State party should adopt an electoral system that guarantees equal enjoyment of the rights of all citizens under article 25 of the Covenant, irrespective of ethnicity.	C	The State did not adopt an electoral system that would guarantee equal enjoyment of the rights of all citizens. There was no proposal developed and discussed in State parliament or government.	State parliament should form a parliamentary commission, consisting of parliamentarians and experts, in order to develop proposals.	
In this regard, the Committee recommends that the State party, as a matter of urgency, amend its Constitution and Election Law to remove provisions that discriminate against citizens from certain ethnic groups by preventing them from participating in elections.	C	The State did not amend its Constitution and Election Law in a way it would allow all ethnic groups to participate in the election. Proposals for amending the Constitution did come from political parties and civil society, but none of them has been discussed in the State parliament. Negotiations between political parties took place without any results.	State parliament should form a parliamentary commission, consisting of parliamentarians and experts, in order to develop proposals. Discussions should take place in parliament and not in party centres. The process should be lead by Bosnia and Herzegovina's institutions and not the European Commission like in the second half of 2013.	

Paragraph 7:

While appreciating efforts to deal with war crime cases such as the implementation of the National War Crimes Processing Strategy, the Committee remains concerned at the slow pace of prosecutions, particularly those relating to sexual violence, and the lack of support to victims of such crimes. The Committee is also concerned at the lack of efforts to harmonize jurisprudence on war crimes among entities and that entity-level courts use the archaic Criminal Code of the former Socialist Federal Republic of Yugoslavia that does not, inter alia, define crimes against humanity, command responsibility, sexual slavery and forced pregnancy. The Committee is concerned that this might affect consistency in sentencing among entities (arts. 2 and 14).

Recommendation from the HR Committee	Grade	Action taken by the State	Additional measures needed	Other comments
The State party should expedite the prosecution of war crime cases.	B2	Moderate progress has been made in the implementation of the National War Crimes Processing Strategy.	Human resources are particularly missing and despite some efforts were made to solve this problem, at the time of writing only 13 new prosecutors were appointed. According to the High Judicial and Prosecutorial Council (HJPC), 28 new prosecutors are needed. The pace of prosecution should also be accelerated. Victims of war crimes are trespassing without having the possibility to see the conviction of the criminals.	There is also a great concern about the policy of anonymization implemented since March 2012 by the Court of BiH. Documents issued by the court are currently censored and the Prosecutors' Office of BiH does not provide the complete information on the indictments related to war crimes. Victims of crimes committed during the war consequently fear to be unable to access the information regarding their cases and to lose their right to know the truth and to apply for compensation. Without knowing whether the case is theirs or not, they cannot apply for compensation. This practice also seriously undermines the right of the society as a whole to know the truth.
The State party should also continue to provide adequate psychological support to victims of sexual violence, particularly during the conduct of trials.	B2	New departments to offer support to witnesses during war crimes trials have been set up in Travnik and Bihać. The State party is also analysing a draft law on Witness Protection Programme	Although new departments have been set up, there is no certainty with regard to their future sustainability in terms of financial and human resources. Moreover, it should be ensured that the persons giving the support are adequately trained. The psychological support should also be prolonged to cover the period after the trial. Otherwise, victims and witnesses often have to cope with fear and a sense of abandonment. The State party should also adopt the draft law on Witness Protection Programme. Finally, the State party should ensure that harassment and threats against witnesses at war crimes trials are duly prosecuted.	Since September 2012, new instances of harassment and threats against witnesses at war crimes trials have been reported while, to the knowledge of the associations submitting the report, this kind of crimes is not duly investigated and those responsible are not being prosecuted.

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<p>Furthermore, the State party should ensure that the judiciary in all entities strongly pursues efforts aimed at harmonizing jurisprudence on war crimes and that charges for war crimes are not brought under the archaic Criminal Code of the former Socialist Federal Republic of Yugoslavia, which does not recognize certain offences as crimes against humanity.</p>	<p>C</p>	<p>None</p>		<p>In July 2013, the European Court of Human Rights issued a judgement on the case <i>Maktouf and Damjanović</i> affirming that the SFRY Criminal Code should have been applied instead of the 2003 Criminal Code, to grant to the accused a lighter penalty. In October 2013 the two cases were re-opened. As a consequence, similar appeals could be filed in over 50 war crimes already decided by the Court of BiH since 2003, potentially paralyzing the latter. At the time of writing 40 appeals had in fact already been launched and the Constitutional Court of BiH is granting all of them and freeing all those convicted for war crimes and crimes against humanity pursuant to the Criminal Code of 2003. It is further questionable that the sanctions established by the SFRY Criminal Code for war crimes can be considered commensurate to the gravity of the crimes concerned.</p>
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Paragraph 12:

The Committee is concerned that article 21 of the Law on the Rights of Defenders and Members of their Families, applicable in the Federation of Bosnia and Herzegovina, provides that, in order for the family members of missing persons to accede to or maintain a monthly pension, they have to commence proceedings to declare the missing person deceased within two years of the law coming into force. Furthermore, the Committee is concerned that in the Republic Srpska, municipal courts require the production by family members of evidence in the form of a death certificate that their relative has been subjected to enforced disappearance when assessing a request for a disability pension under article 25 of the Law on the Protection of Civilian Victims of War and article 190 of the Law on Administrative Procedure. The Committee is concerned that this practice raises issues under articles 2, 6 and 7 of the Covenant, as missing persons and those subjected to enforced disappearance are presumed dead when efforts are being made to find them (arts. 2, 6 and 7)

Recommendation from the HR Committee	Grade	Action taken by the State	Additional measures needed	Other comments
The State party should abolish the obligation in cases of disappearance which makes the right to compensation dependent on the family's willingness to have the family member declared dead.	B2	An amendment was drafted by TRIAL's representatives and was given to the Human Rights Commission of the Federal Parliament of BiH. For the moment, this amendment to the Federal Law on Social Protection is still being analyzed.	The State Party should adopt any amendment necessary to ensure that enforced disappearance is not unduly dealt as a direct death and relatives are not forced to obtain a declaration of death of their loved ones in order to have access to social welfare measures or compensation.	The fact that enforced disappearance of persons is treated as direct death does not take into account the continuous nature of the crime, the right to truth of the families of the disappeared and the obligation of the State to continue the investigations. Moreover, forcing the relatives of disappeared people to declare their loved ones dead when they actually do not know their fate and whereabouts amount to a form of inhumane treatment and exposes them to further suffering, stress, and frustration.
The State party should ensure that any compensation or other form of redress adequately reflects the gravity of the violation and the harm suffered.	C	None	According to the Law on Missing Persons, the State Party should have created a Fund to support the families of the missing persons. It should have been established by December 2004. However, nine years later the State Party has still not created such Fund.	