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REFERENCE: jmn/mm/fg/follow-up/CAT

12 February 2008

Mr. Ambassador,

In my capacity as Rapporteur for Follow-Up on Conclusions and Recommendations of the United Nations Committee against Torture, I refer to the examination of the initial report of Bosnia and Herzegovina (CAT/C/21/Add.6) at its 667th and 670th meetings (CAT/C/SR.667 and 670), held on 8 and 9 November 2005 and adopted, at its 689th meeting, conclusions and recommendations. At the end of that session, the Committee's Conclusions and Recommendations (CAT/C/BIH/CO/1) were transmitted to your Permanent Mission.

In those Conclusions and Recommendations the Committee requested Bosnia and Herzegovina to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 10(a)-(e), 11, 15, 19, and 21. This is part of the procedure through which the Committee follows up on country conclusions by focusing on issues that are serious, that can be accomplished by the State party, in a one-year period, and that are protective.

I am writing to thank you for your Government's communications of 1 February 2006 (CAT/C/BIH/CO/1/Add.1) and of 6 May 2007 (CAT/C/BIH/CO/1/Add.2) in which responses concerning the conclusions and recommendations were submitted. They have now been reproduced in UN document format and reviewed. The Committee appreciates the substantial information provided in these responses. We welcome the timely response, yet wish to note that responses from various Bosnian interlocutors were simply compiled rather than analysed for evidence of compliance with the Committee's recommendations. Because of this, our own review and response has taken longer and, as is evident below, leaves many questions unanswered. Thus, your Government's clarification of the following concerns would be appreciated, as the information provided does not yet provide sufficient information with regard to the implementation of the Convention in Bosnia and Herzegovina, and to the Committee's specific recommendations.

With regard to paragraph 10(a), the Committee appreciates learning that the Department I for War Crimes of the Court of Bosnia and Herzegovina has been operating since January 2005. However, the Committee remains concerned with the slow pace of prosecution of perpetrators in connection with the torture and ill-treatment that occurred during the 1992-1995 conflict in the former Yugoslavia. For example, the 2006 report of the European Commission noted that the district courts in Republika Srpska have been slow to try war crimes and that only two of the entity's five district courts - Banja Luka and Trebinje - were hearing war crimes cases. The European Commission's 2007 report referenced the "slow court proceedings, poor case management, and a large and growing backlog" of unresolved cases.

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Ambassador

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In paragraph 53 of your Government's 6 May 2007 response, it is stated that 317 cases were then under investigation by the State Investigation and Protection Agency (SIPA). In view of the opening of the Srebrenica list, we understand that investigations were begun for an additional 93 cases, and that 35 members of the police in Republic of Srpska were suspended in connection with them. Could you please inform us of what measures the Government has taken to carry out an increased number of investigations and also to ensure the effective, prompt, and impartial investigation into all allegations of torture and other cruel, inhuman or degrading treatment in connection with the above mentioned cases, as well as the prosecution and punishment of the perpetrators, irrespective of their ethnic origin?

The Committee has received information that Bosnia and Herzegovina declined to sign the September 2006 agreement that would facilitate prosecutions of war crime suspects in the Balkans in the country of residence. In regard to the Committee's recommendation that Bosnia and Herzegovina extend "mutual judicial assistance to and cooperati[on] with other relevant countries and the Tribunal," as required by the Convention, could you please provide more detailed information on how this is being accomplished, and information on specific cases and requests?

We also appreciate the information in paragraph 53 which summarizes the cooperation among police authorities in Bosnia and Herzegovina, and in paragraph 61 which explains that conduct of investigations and prosecution of persons providing support to war crime defendants is under the responsibility of the Prosecutor's office of Bosnia and Herzegovina, and that investigations are in progress with a number of other agencies such as ICTY, EUFOR, NATO and domestic law enforcement agencies. Can you clarify the status of police reform efforts aimed at enhancing cooperation within Bosnia and Herzegovina, and also the status of the 42 newly opened inquiries regarding persons accused of helping war crimes fugitives, as reported by UPI in January 2008?

The Committee noted with interest that the Ministry for Human Rights and Refugees of Bosnia and Herzegovina has started activities on preparing the text of the Law on the Rights of Victims of Torture and Civil Victims of War, which is aimed at improving protection measures for victims of torture. Could you provide a copy of the draft law and also your assessment of when it may be enacted.

The Committee also appreciates learning that progress is being made concerning the rights of victims to compensation due to violations of their human rights - through the adoption of new European and international instruments which will be incorporated into the judicial system of Bosnia and Herzegovina. Could you clarify what will be required so that the State can provide compensation to a victim or his/her family in the event that an accountable party cannot do so? Additionally, when will the National Fund for Compensation of Victims be established and with what sources of funding? The Committee takes note that the authorities of Bosnia and Herzegovina will prepare a program defining categories of victims, types of benefits, as well as methods of their application. Again, please clarify when this will be completed, and forward a copy of the draft when it is made available.

In regard to paragraph 10(b), we note that the Federation Ministry of Interior states, in paragraph 74, that "there are no data available" to justify the claim that there is discriminatory treatment in criminal proceedings whereby officials belonging to the ethnic majority often fail to prosecute alleged criminals belonging to the same ethnic group. As no information was provided by the other bodies to whom the government sent the CAT conclusions, please clarify what measures can be documented, or have been documented, by the State party to assist in the examination of this claim.

Further, regarding paragraph 10(b) and (e), the Committee appreciates the information provided as to co-operation of the Federation of Bosnia and Herzegovina with the ICTY, yet remains concerned that the cooperation of the Republika Srpska is not yet sufficient. The Committee notes with interest the positive steps that have been taken regarding some local prosecutions of indicted war criminals. However, the Committee is concerned to learn from the European Commission report that wartime archives in some parts of Republika Srpska have yet to be handed over to the Tribunal. Furthermore, indicted persons, including Radovan Karadzic and Ratko Mladic, who are accused of genocide, torture and other international crimes, still have not been arrested and transferred to the ICTY. In paragraph 10 (b), the Committee emphasized the need for all indicted persons to be apprehended, arrested and transferred to the custody of the Tribunal. As a matter of urgency, the

Committee would appreciate further information on the steps the Government is taking to ensure full cooperation is extended to the ICTY, including providing the Tribunal with information on the whereabouts of these two key indicted persons, and other affirmative measures to apprehend, arrest and transfer them to the Hague.

In regard to paragraph 10(c), the Committee welcomes the information that the Government has established a Special Division for Witness Protection within the State Investigation and Protection Agency (SIPA) and that 6 new courtrooms with sophisticated technical systems have been built in the Court. The Committee notes the laws that have been adopted establishing additional legal and technical preconditions for efficient prosecution of complex criminal cases at the State level, including the Law on the Protection of Witnesses Under Threat and Vulnerable Witnesses, and the Law on the Witness Protection Programme and that these laws obligate the Court to control the manner of examination of vulnerable witnesses to protect them from harassment. Please provide information as to the criminal cases now in progress, and the number, age, sex and ethnicity of persons who have been included in Witness Protection initiatives, including those provided protection.

As to paragraph 10(d), we would appreciate receiving the section of the Criminal Procedure Code that is cited and reportedly contains provisions aimed at preventing the harassment of witnesses and victims. What assessment methods are used for evaluating the needs for physical and other forms of assistance for witnesses? Please elaborate on the information in paragraph 47, and provide any examples of the mechanism or techniques used in practice by the Government to prevent harassment of persons who are victims of sexual misdemeanors.

The Committee is concerned about information it has received that weaknesses within witness protection mechanisms continue to be a critical issue and hindrance to effectuate the prosecution of war criminals in Bosnia and Herzegovina. The 2006 report of the European Commission notes that cantonal and district courts are hindered in their ability to prosecute war crimes because of lack of resources, and witness cooperation issues. It states, "Victims are generally reluctant to travel to another entity's courts to testify against the accused, and entity-level witness protection schemes need developing," and that, "Local courts in both entities are poorly equipped and witness protection is not fully ensured. This has an adverse effect on proceedings." The Committee would appreciate clarification on the measures taken to address such matters of witness travel and protection, as well as any plans to upgrade existing court rooms.

The Committee appreciates the fact that the Prosecutor's Office and the Court of Bosnia and Herzegovina are making additional efforts to re-examine in detail and make amendments to the law aimed at achieving greater clarity, efficiency and harmonization with human rights protection standards; Will the amendments address the need for stronger implementation of protective measures for all witnesses? Please forward a copy of the draft amendment.

In regard to paragraph 10(e), we note with interest that paragraph 72 affirms that amendments to the Law on Civil Victims of War of the Federation of Bosnia and Herzegovina "include women victims of sexual torture (rape) as a special category." Please update the Committee on the status of the State-level law on this matter. The Committee reiterates that recognition of survivors of torture, including sexual violence, as victims of the conflict, would enable them to obtain redress and exercise the right to fair and adequate compensation and rehabilitation.

Concerning paragraph 11, thank you for the information about the professional training of judges and prosecutors conducted by the Centres for Education of Judges and Prosecutors of the Federation and Republika Srpska (paragraphs 122-131) as well as information from the Court of Bosnia and Herzegovina (paras. 48-51), the Federation Ministry of Interior (para. 78) and the Ministry of Interior of Republika Srpska (para. 91-93). Only the Federation Ministry of Interior addresses the issue of ethnic prejudice and violence: stating that "There have been no cases of ethnic prejudices ... [by police]" and Cases of "violent attacks on members of ethnic and other minorities have been solved to a great extent..." However, specific information concerning procedures relating to the protection of minorities and returnees, and the investigation into violent attacks against them is requested in order to ascertain how the obligation to ensure fair treatment is implemented in practice. Precise information is needed, particularly in view of ongoing allegations of cases of ethnic bias and politically influenced police and judicial procedures, and recent reports on violent attacks against members of ethnic minorities, in particular returnees.

As you may know, several international bodies have called attention to the issue of ethnically motivated violence in Bosnia and Herzegovina. For example, the European Commission reported that there was an increase in cases of harassment and attacks against minority returnees in 2006; the International Helsinki Federation for Human Right reported that the failure to address such hate crimes was due to a lack of police will to deal with perpetrators disturbing inter-ethnic relations; and the Council of Europe reported that returnees still face difficulties in accessing their rights. The Committee would appreciate receiving information on the measures the Government is taking to prevent and investigate such violent attacks on ethnic and other minorities, particularly returnees.

With regard to the recommendation in paragraph 15, thank you for the information in paragraphs 79-82, 94-98, and 111-115. Please provide statistics or other data regarding any complaints by detainees about their right to obtain access to a lawyer immediately following loss of liberty, and their right to request and receive examination by an independent medical doctor, or to contact a relative.


Thank you for the information in paragraph 121 concerning certain new programs aimed at facilitating complaints and inspections of prison premises. With regard to the recommendation in paragraph 19, the Committee continues to seek further information about measures by the State party's authorities to ensure throughout the country that procedures for filing complaints do not differ from one prison to another and that prisoners are aware of their right to complain. Please provide any relevant statistics on complaints to the Ombudsman or Ministry of Interior, the number of prison inspections, etc.

Finally, thank you for the detailed information regarding measures to investigate and prosecute persons engaged in trafficking which we are continuing to study. Please clarify to what extent the measures taken at the entity level are harmonized with State laws at the Federation level.

Upon receipt of additional information, the Committee will be able to assess how the Government's response has comported with the Committee's recommendations and whether further information may be required. The Committee looks forward to pursuing the constructive dialogue it has started with the authorities of Bosnia and Herzegovina on the implementation of the Convention.

Accept, Mr. Ambassador, the assurances of my highest considerations.



 Felice Gaer
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Committee Against Torture