

EXECUTIVE SUMMARY
of the
WRITTEN INFORMATION FOR THE ADOPTION OF THE LIST OF ISSUES
BY THE HUMAN RIGHTS COMMITTEE
WITH REGARD TO
BOSNIA AND HERZEGOVINA
(CCPR/C/BIH/3)

JULY 2015

I. Background

1. During its 115th session (19 October – 6 November 2015) the Human Rights Committee (HRC) will adopt a list of issues prior to reporting (LOIS) to be submitted to Bosnia and Herzegovina (BiH). In order to provide information mainly related to the difficulties experienced by relatives of missing persons, former camp-detainees, and victims of rape or other forms of sexual violence during the war, TRIAL and 13 local associations (Association of Detained - Association of Camp-Detainees of Brčko District Bosnia and Herzegovina; Association of Families of Killed and Missing Defenders of the Homeland War from Bugojno Municipality; Association of Relatives of Missing Persons from Ilijaš Municipality; Association of Relatives of Missing Persons of the Vogošća Municipality; Association of Relatives of Missing Persons from the Sarajevo-Romanija Region; Association of Relatives of Missing Persons from Kalinovik “Istina-Kalinovik ‘92”; Association of Victims and Witnesses of Genocide; Association Women from Prijedor – *Izvor*; Croatian Association of Camp-Detainees from the Homeland War in Vareš; Croatian Association of War Prisoners of the Homeland War in Bosnia and Herzegovina; Regional Association of Concentration Camp-Detainees Višegrad; *Vive Žene*; Women’s Section of the Association of Concentration Camp Torture Survivors Canton Sarajevo) present an alternative report, highlighting a number of priority concerns which they consider important to be included in the LOIS. The integral version of the alternative report also contains concrete recommendations considered necessary to improve the existing situation (para. 106 of the integral version of the report).
2. Besides BiH’s international obligations pursuant to the International Covenant on Civil and Political Rights (ICCPR), the subscribing associations take as a reference also the concluding observations on BiH issued by the HRC in 2012 and consider that many recommendations formulated therein remain unimplemented. Due to their expertise and mandate, the associations subscribing the report focus mainly on the subjects of missing persons, former camp-detainees, and victims of rape or other forms of sexual violence during the war. The exclusion of other subjects does not imply by any means that the subscribing associations

consider that BiH fully complies with all its obligations pursuant to the ICCPR or that it enforced all the recommendations contained in the concluding observations adopted in 2012.

3. It is the view of the subscribing associations that little has been done to address the pressing needs of relatives of missing persons, former camp-detainees, and victims of rape or other forms of sexual violence during the war. Twenty years after the conclusion of the war, these categories of people remain marginalised and they experience ongoing violations of their rights to justice, truth, and redress. Many of these victims are dying without ever having fulfilled their fundamental rights. This cannot but nourish a profound sense of distrust vis-à-vis authorities that are unwilling or incapable of respecting their international obligations and sticking to their promises. If BiH fails to face its past and does not eventually cease the ongoing violation of its obligations pursuant to, among others, the ICCPR, this jeopardises the chance to build a different future and prevent similar violations from happening again. The HRC can play a significant role in maintaining these issues on the national and international agenda and in eventually helping BiH to respect its undertakings.

II. The Amendment of Domestic Criminal Legislation concerning Sexual Violence, Torture, and Enforced Disappearance

4. Pursuant to the recommendations issued over the past years by several international human rights bodies, including the HRC, **in May 2015 the Criminal Code of BiH has eventually been amended with regard to the crimes of rape, torture, and enforced disappearance.** While this reform is certainly welcome, **certain pitfalls remain. Rape and sexual violence are not codified as an autonomous offence under the Criminal Code of BiH in cases committed as isolated instances** and not in the context of a widespread or systematic attack against the civilian population or as a war crime. In the case of **torture, the phrasing used to codify superior responsibility is more permissive than that of international law** instruments and thus leaves room for impunity. In the cases of **torture and enforced disappearance, the sanctions envisaged do not seem commensurate to the gravity of the crimes at stake.** Moreover, **the Criminal Code of BiH does not explicitly prohibit the possibility of granting amnesty for crimes under international law.** Finally, **none of the Criminal Codes at the entity level has been amended with regard to rape, torture, and enforced disappearance and they remain at odds with international law.**

Please refer to paras. 3-12 of the integral version of the report for details

Suggested Items to be Included in the LOIS (Arts. 2, 6, 7, 9, 10 and 16 ICCPR)

- Please provide information on the **existence of projects to amend Criminal Codes at the entity level** with regard to torture, enforced disappearance, and sexual violence.
- Please provide information on the **existence of projects to amend the Criminal Code of BiH introducing the crimes of rape or other forms of sexual violence even when not committed as a**

crime against humanity or as a war crime.

Please provide information on whether **there currently is any project to amend the Criminal Code at the State level to remove the possibility of granting amnesty for crimes under international law.**

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

5. 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 have been 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. **Appropriate financing of adequate staffing levels in prosecutors’ offices and courts remain an issue to be addressed urgently to ensure timely and effective processing of the backlog. The competent authorities failed to allocate the funds needed to complete the support infrastructure** and 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 little increase in the prosecution of cases of war crimes cases 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. **Even when perpetrators of rape or other forms of sexual violence during the war are eventually convicted, the the minimum penalty (i.e. imprisonment between three and five years)** is usually imposed on them. This, coupled with the **more general trend of drastically reducing the sentences imposed on persons already convicted for war crimes**, is a source of distress for many victims who often feel mocked. In many cases, victims of war-time rape, relatives of missing persons, and former camp-detainees or their representative associations report that they have submitted to BiH authorities detailed complaints indicating the identity of those responsible and have even provided indications on where these people can be found. Notwithstanding, little or no progress in the investigation and prosecution of those responsible has been registered and in some cases those accused are free or have managed to escape. With few notable exceptions, **associations of victims of gross human rights violations during the war continue experiencing problems in accessing information concerning their cases and in communicating with prosecutors.** This exacerbates feelings of frustration and marginalisation.

Please refer to paras. 13-25 of the integral version of the report for details

Suggested Items to be Included in the LOIS (Arts. 2, 6, 7, 9, 10 and 16 ICCPR)

Please provide updated information on **how BiH plans to fully implement the National War Crimes Strategy, completing the investigation of “most complex” cases by the end of 2015.**

Please provide updated **statistical information on the investigation and prosecution of war-related crimes**, with special emphasis on the quantity of ongoing investigations and trials concerning war-time rape or other forms of sexual violence.

Please provide accurate **figures concerning the penalties imposed on those found guilty of rape or other forms of sexual violence** committed during the war by entity courts and by the Court of BiH.

Please inform on the measures taken to ensure that judicial authorities, and in particular the Court of BiH and the Prosecutor’s Office of BiH, receive **adequate funding and resources** to implement the National War Crimes Strategy.

Please provide information on whether a system to **provide regular information to victims of gross human rights violations during the war, their relatives and their representatives on the process of investigation, the results of investigations, and whether trials might be forthcoming** has been put in place or if there is a project to do so.

IV. The Ongoing Problems in the Implementation of the 2004 Law on Missing Persons and the Obstacles Faced in the Exhumation Process

6. On 17 November 2004 the Law on Missing Persons (LMP, Official Gazette of BiH No. 50/04) entered into force. Nevertheless, **more than 10 years after the entry into force of the LMP and despite reiterated recommendations by international human rights bodies, several provisions of the law remain dead letter.** In particular, the institution that should be responsible of dealing with the issue of missing persons (i.e. **Missing Persons Institute**) is **experiencing troubles with regard to the appointment of the members of its different managing bodies** and this is undermining the trust of associations of relatives of missing persons. Moreover, the **LMP provided for the creation of a Central Record of Missing Persons (CEN)**, intended to include all records that were or are kept at local or entity level, by associations of families of missing persons and other associations of citizens, Tracing Offices of the organizations of the Red Cross in BiH, as well as international organisations. According to the law, **the CEN should have been completed by 1 January 2009, but at July 2015 (i.e. six years later) the CEN has not been completed yet** and this is a source of distress for relatives of missing persons. Finally, **the LMP prescribes the creation of a Fund for the Support of Relatives of Missing Persons (“the Fund”)**. According to the law, a decision on the establishment of the Fund should have been issued by the Council of Ministers of BiH by 17 December 2004. **More than 10 years have passed and the Fund does not exist yet, while BiH authorities do not show any willingness to address this matter.** It must be further noted that the non-establishment of the Fund amounts to the **non-implementation of a significant number of decisions delivered by the Constitutional Court of BiH on the subject of**

missing people, whereby the payment of compensation to relatives recognised as victims of grave human rights violations was associated to the establishment of the Fund, which was expressly ordered by the Constitutional Court of BiH.

7. Although there has been some progress in the carrying out of exhumations to locate and identify missing persons, there is still a **need for more forensic pathologists to be appointed and very limited resources have been allocated within the Prosecutor's Office of BiH to carry out this task**. Relatives of missing persons continue facing **obstacles in accessing information on the progress of exhumations** and they **do not receive any form of adequate psychological support prior, during, and after exhumations**, remaining subjected to ongoing stress and instances of re-traumatisation.

Please refer to paras. 26-47 of the integral version of the report for details

Suggested Items to be Included in the LOIS (Arts. 2, 6, 7, 9, 10 and 16 ICCPR)

- Please provide information on the **measures taken to fully implement the Law on Missing Persons, and in particular the material, human and budgetary resources** provided to ensure the **full independence of the Missing Persons Institute**. Please describe steps taken to ensure the timely appointment of the members of its managing bodies.
- Please provide **accurate data on the progresses made in the establishment of the Central Record of Missing Persons and indicate by when it will be completed**.
- Please provide further information on **any progress made in the establishment of the Fund for the Support of Relatives of Missing Persons**, and on the measures undertaken to ensure an adequate budget.
- Please provide adequate **information on the number of rulings issued by the Constitutional Court of BiH concerning missing persons that have not yet been implemented and the reasons therefore**. Illustrate whether anyone has been **prosecuted so far for the non-implementation** of the mentioned rulings.
- Please provide information on the steps taken to **ensure that the relatives of missing persons are regularly kept informed on the process of exhumation and identification of remains** and that they **receive adequate psychological support** prior, during, and after the process.
- Please provide information on whether any activity has been undertaken to **ensure the training and appointment of new forensic pathologists** and to **guarantee that the Prosecutor's Office of BiH counts with adequate human and financial resources** to ensure that exhumations regularly take place.

V. The Failure to Amend Domestic Legislation concerning the Declaration of Death of Missing Persons

8. Despite the recommendations of various international human rights bodies, BiH failed to amend its legislation and **relatives of victims of enforced disappearance continue being subjected to the obligation to obtain a declaration of death of their loved ones in order to have access to social allowances and compensation**. Neither there has been an amendment of Art. 27 of the LMP, pursuant to which missing persons whose names have been entered in the CEN shall be considered dead

and this fact shall be officially entered in the Register of Death. This provision does not take into account the continuous nature of enforced disappearance and imposes an additional emotional burden on relatives of disappeared persons.

Please refer to paras. 48-55 of the integral version of the report for details

Suggested Items to be Included in the LOIS (Arts. 2, 6, 7, 9, 10 and 16 ICCPR)

- Please provide information on the **measures taken to abolish the obligation in cases of disappearance which makes the right to compensation and to social allowances dependent on the family willingness to have the missing relative declared dead.**
- Please inform **about the measures taken to amend Art. 27 of the Law on Missing Persons to ensure that there is no automatic declaration of death** of those whose names are entered in the Central Record of Missing Persons and that the **continuous nature of enforced disappearance is duly taken into account.**

VI. The Status of Domestic Legislation Relevant for Victims of Gross Human Rights Violations during the War

9. Over the past years a number of legislative initiatives or 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 were about to be approved and implemented and repeated recommendations on these issues from international human rights bodies, to date **none of the legislative initiatives or programmes concerned has seen the light of the day. This holds particularly true for four major and long due initiatives or programmes, namely the draft National Strategy on Transitional Justice, the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence, the draft Law on the Rights of Victims of Torture, and the draft law on free legal aid.** In the four 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 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. 56-70 of the integral version of the report for details

Suggested Item to be Included in the LOIS (Arts. 2, 6, 7, 9, 10 and 16 ICCPR)

- Please indicate the status of the following draft legislation and policy proposals: (a) the draft

National Strategy on Transitional Justice; (b) the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence; (c) the draft Law on the Rights of Victims of Torture; and (d) the draft Law on Free Legal Aid.

VII. The Remaining Problems concerning Witness Protection and Support in War Crimes Trials

10. 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, international organisations, and foreign donors, while institutional support on the part of the BiH government 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). A network of support has been set up with the financial assistance of the European Union. **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.** The provision of psychological support before the competent authorities across the country is far from homogenous. 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. All the more so, taking into account **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.** Finally, the sections of the National War Crimes Strategy concerning witness protection and support have not been fully implemented.

Please refer to paras. 71-80 of the integral version of the report for details

Suggested Item to be Included in the LOIS (Arts. 2, 6, 7, 9, 10 and 16 ICCPR)

- Please provide information on the measures taken to **guarantee adequate and continuous psychological support to victims and witnesses prior, during, and after war crimes trials.** Kindly indicate whether the State is planning to adopt an institutional policy to ensure that initiatives currently run by NGOs with the support of international organisations continue and receive an adequate budget.
- Please provide information on **whether BiH envisages extending the measures of support and protection foreseen under the 2014 Law on Witness Protection Programme also to those testifying before district, cantonal and other lower courts.**
- Please provide information on how will the **closure of the Witness Protection Department within the Prosecutor's Office of BiH be addressed.**

VIII. The Failure to Provide Adequate Compensation and Integral Reparation to Relatives of Missing Persons, former Camp-detainees, and Women Victims of Rape or Other Forms of Sexual Violence during the War

11. BiH has **not adopted an effective programme to grant integral reparation, comprising restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition to victims of gross human rights violations during the war.** The notions of reparation and social assistance continue being **unduly confused** and the **lack of a centralised system continues to cause numerous cases of discrimination at the entities level.** **Discrimination between veterans and civilian victims of war when it comes to obtaining compensation or monthly disability allowances remains a reality.** 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 awarded 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 must be changed.** **The existing 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. **Former camp-detainees are not considered as an autonomous category of civilian victims of war.** The existing laws seriously impair and fail to guarantee the rights of civilian victims of war currently living outside BiH. 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. Existing 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. Despite the decision to amend the Law on Protection of Civilian Victims of War in the Brčko District, some major pitfalls remain and impose a disproportionate burden on victims in order to have access and maintain monthly disability pensions.
12. Finally, although criminal courts have the power to award total or part of a claim for compensation to the injured parties during war crimes trials or to refer them to civil actions, mainly due to the inactivity of the Prosecutors' Offices and the lack of free legal aid for victims, the latter have almost always been **referred to civil actions.** This practice **hampers the access to compensation of the majority of victims,** given that to launch a civil action they would need a lawyer to represent them, and they usually cannot afford it. Moreover, the **existing civil procedure for obtaining compensation does not seem to respect the special needs and the situation of victims of sexual violence and cases where the identity of protected witnesses have been disclosed to the public** have been registered. 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 and Prosecutors' Offices across BiH.

Please refer to paras. 81-101 of the integral version of the report for details

Suggested Items to be Included in the LOIS (Arts. 2, 6, 7, 9, 10 and 16 ICCPR)

- Please provide information on the **measures adopted to set up a national programme of reparation (including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) for victims of gross human rights violations during the war.**
- Please provide updated information on the **measures taken to ensure that the social allowances (disability pensions) received by civilian victims of war are harmonised among entities and cantons and that there is no discrimination between civilian victims of war and veterans.**
- Please indicate which measures have been adopted to **guarantee that women victims of rape during the conflict are considered as civilian victims in Republika Srpska.** Please provide information on whether any measure has been undertaken to recognise **former camp-detainees as an autonomous category of civilian victims.**
- Please provide detailed information on the measures taken to **ensure that also victims of gross human rights violations during the war residing outside BiH enjoy their right to reparation.**
- Please provide information on which measures have been undertaken to **ensure that criminal courts award compensation during the criminal trial to injured parties without systematically referring them to civil actions, correctly applying the precedents set by the Court of BiH on 24 and 29 June 2015 respectively.**

IX. The Failure to Implement the Human Rights Committee's Views

13. Since March 2013, the HRC adopted a number of views on cases relating to victims of enforced disappearance in BiH and found violations of Arts. 6, 7 and 9, read in conjunction with Art. 2, para. 3, of the ICCPR with regard to the missing persons concerned, and of Art. 7, read alone and in conjunction with Art. 2, para. 3, of the ICCPR with regard to the authors of the communications. In some cases, it also found a violation of Art. 24, para. 1, of the ICCPR. In its views the HRC recalled that BiH is under an obligation to provide an effective remedy to the authors and indicated various measures of reparation to be adopted. **Apart from translating the views of the HRC in the local language and publishing them on the website of the Ministry for Human Rights and Refugees, BiH failed to take any other measure to duly enforce the measures recommended by the HRC.**

Please refer to paras. 102-104 of the integral version of the report for details

Suggested Item to be Included in the LOIS (Arts. 2, 6, 7, 9, 10 and 16 ICCPR)

- Please **inform in detail on the measures taken to fully implement the views of the HRC on the communications concerning victims of enforced disappearance and their relatives.**