



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

Thirty-ninth session

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**List of issues prior to the submission of the
combined second to fifth periodic report of BOSNIA AND HERZEGOVINA***

Article 1

1. Further to the Committee's previous conclusions and recommendations (CAT/C/BIH/CO/1), please inform the Committee about activities undertaken to ensure that the definition of torture in the Convention is fully incorporated into domestic law (para. 9). In particular, what measures have been taken since the Committee's review of the initial report of Bosnia and Herzegovina (CAT/C/21/Add.6) in 2005 to ensure that the legal definition of torture in Republika Srpska and Brcko District are harmonized with the Criminal Code and the Criminal Process Code of Bosnia and Herzegovina¹? Please clarify measures in progress to address gaps that may remain.
2. With reference to the Committee's recommendations, please provide updated information in relation to the criminalization of trafficking in human beings at the federal level and corresponding harmonization efforts at the entity levels (para. 21).

Article 2

3. Please identify any effective measures (adopted or revised since the initial report) to prevent and eradicate torture.
4. Taking into account the Committee's recommendation, please provide information on the existing mechanisms for information collection with respect to the issues covered by the Convention and the criteria for disaggregating such information (para. 22).

* The present list of issues was adopted by the Committee at its thirty-ninth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

¹ See also the Comments by the Government of Bosnia and Herzegovina to the conclusions and recommendations of the Committee against Torture (CAT/C/BIH/CO/1/Add.2), para. 7

5. Please provide information on legal and administrative measures to guarantee that no exceptional circumstances whatsoever or an order from a superior officer or a public authority may be invoked as a justification of torture. Please outline whether derogation is prohibited on both the federal and the entity levels. Please clarify whether recourse procedures are available to permit subordinates to oppose an order involving acts of torture. If so, where and how are these utilized and how have public authorities responded to the prohibition.
6. Please provide updated information on the mandate and activities of the Office of the Ombudsman with respect to the areas covered by the Convention, and in particular to its role with regard to monitoring and visiting prisons.²
7. Please clarify what measures exist to prevent torture and ill-treatment in schools, in institutions that care for children, the aged, mentally ill or disabled, and in hospitals? Please provide statistics and results of cases lodged in these contexts, if any. Please include information about the status of specific cases. Also please provide information about any such measures or cases in the military or institutions under its supervision.
8. With reference to previous conclusions and recommendations, please provide further information with regard to access to lawyers immediately following deprivation of liberty and on the right to request and receive an examination by an independent medical doctor (para. 15).³
9. Please clarify whether the State Party prohibits torture by its nationals in “any territory” over which it exercises de facto control as set forth in paragraph 16 of the Committee’s general comment No. 2 (2007) on the implementation of article 2 by State parties. What measures prevent authorities or others from consenting or acquiescing in any acts of torture as noted in paragraph 17 of the above-mentioned general comment. Please provide case examples as relevant.

Article 3

10. Please inform the Committee of the specific safeguards against *non-refoulement* that are in place and the practice of the State party in this respect. Please provide examples of cases, if any, where the authorities did not proceed with extradition, return or expulsion because of fear that the persons might be tortured⁴.
11. Please provide information on measures undertaken as a result of the report by the Ministry of Justice on the Guantanamo Bay case and as reproduced in the Comments by the Government of Bosnia and Herzegovina to the conclusions and recommendations of the Committee against Torture (CAT/C/BIH/CO/1/Add.1) and what follow-up measures have been undertaken since those comments by the State party in February 2006.
12. Please provide information concerning the criteria for determining that persons who obtained residence or citizenship in Bosnia and Herzegovina during the war in the 1990s must now return to their country of origin. Please outline the results of this reported practice and

² See also CERD/C/BIH/CO/6, para. 9.

³ Follow-up letter to the State party dated 12 February 2008 and CAT/C/BIH/CO/1/Add.2, paras. 97 and 98.

⁴ CAT/C/BIH/CO/1, para. 12; see also CAT/C/BIH/CO/1/Add.1.

provide statistical and other relevant information on how many persons have been returned and to where.

13. Please inform the Committee if instructions have been given to border guards and the military to respect asylum principles and to make them fully aware of the rights of persons in need of international protection, including the prohibition on returns for persons facing a risk of torture, under article 3 of the Convention. Taking into account the concern expressed by the Committee, the information provided should reflect in particular the situation in the different parts of the State party (para. 13).

14. Please provide data, disaggregated by age, sex and nationality, covering the last five years on:

- a) The number of asylum requests registered and the number of requests granted;
- b) The number of forcible deportations or expulsions;
- c) The number of rejected asylum-seekers and undocumented migrants who are held in administrative detention;
- d) The countries to which these persons were expelled.

Article 4

15. Please provide information in relation to any measures undertaken to harmonize the entity level laws prohibiting and making punishable the crime of torture with the Criminal Code and the Criminal Procedure Code of Bosnia and Herzegovina. Please provide also information on how rape and other forms of sexual abuse are defined under national legislation and describe how different parts of the State party respect and prosecute these crimes, including statistics on the number and results of prosecutions.

16. Please clarify measures taken by the State party to prevent and protect persons from gender-based violence, such as, rape, domestic violence, female genital mutilation and trafficking

17. Please provide information on follow-up activities to the recommendations of the Special Rapporteur on trafficking in human beings, especially in women and children, in particular the recommendations contained in paragraphs 78 and 86 of her report (E/CN.4/2006/62/Add.2) referring to legislative reforms in the area of trafficking.

18. Please provide texts of the most important new judgments relevant to implementation of article 4.

Article 5

19. Please provide information on how the State party has exercised its universal jurisdiction over persons responsible for acts of torture, wherever they occurred and regardless of the nationality of the perpetrator or victim, and provide specific examples and texts of any decisions on the subject.

Article 7

20. With reference to previous concerns and recommendations, please provide updated information with respect to fair trial guarantees at all stages of the proceedings and to alleged discriminatory treatment in criminal proceedings (para. 10 b). Please provide updated information on claim by the State party that there is no evidence that officials belonging to the ethnic majority often fail to prosecute alleged criminals belonging to the same ethnic group.⁵ Please provide statistics and case examples.

21. Please provide data disaggregated by ethnic background and location on the number of officials and personnel appointed to serve in posts at entity courts, the number of reappointments and any reported harassment of ethnic minority appointments.

22. Please provide information on follow-up activities to the recommendations of the Special Representative of the Secretary-General on human rights of internally displaced persons (E/CN.4/2006/71/Add.4), in particular the recommendation on measures to ensure that all crimes and acts of violence against internally displaced persons and returnees are properly investigated and prosecuted (para. 58). The Special Representative has further recommended that a functional witness protection programme should be established (para. 58). Please provide information on the implementation of this recommendation.

Article 8

23. Please provide information on whether the State party has rejected, for any reason, requests for extradition by a third State for an individual suspected of having committed an offence of torture, and thus engaged its own prosecution as a result. Please provide information on the status and outcome of such proceedings. Also include information on the applicability and use of the "Rules of the Road" procedure on war crimes and exhumations, in all parts (and entities) within Bosnia and Herzegovina and the Federation, as well as within Republika Sprska. Please clarify the number of cases that have reached trial and with what result. Please update the Committee on the results and statistics of the court proceedings that have followed extradition of police and military personnel changed in relation to their participation in the Srebrenica massacre.

Article 9

24. With reference to the Committee's recommendations, please provide updated information on any instances of cooperation with the International Criminal Tribunal for the Former Yugoslavia, inter alia, apprehensions, arrests and transfers to the custody of the Tribunal. Furthermore, please provide information with respect to criminal proceedings, in particular the extension of mutual judicial assistance to and cooperation with other relevant countries as required by the Convention (para.10). Also clarify whether all indicted persons have been apprehended and transferred to the custody of the International Criminal Tribunal for the Former Yugoslavia. Provide information on the cases of Radovan Karadzic and Ratko Mladic. Please provide information with respect to any particular challenges that the State party is facing with respect to these requirements⁶, including whether access to required documents and potential witnesses is provided in all instances. Please update information on the impact of the refusal by

⁵ Follow-up letter to the State party dated 12 February 2008, p. 2.

⁶ Ibid.

the State party to sign the September 2006 agreement to facilitate prosecution of war crimes suspects in the country of residence in the Balkans.

Article 10

25. With reference to the Committee's recommendations, please provide information on the instructions and training provided for law enforcement officials, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subject to any form of arrest, detention or imprisonment with respect to human rights and specifically the treatment of detainees and the measures for the prevention of torture and cruel, inhuman or degrading treatment or punishment (para. 13). In addition, please provide information on training in alternative non-coercive techniques as well as the monitoring and evaluation of the various training programmes and who conducts such trainings.

Article 11

26. Please provide statistical information, disaggregated by sex, age, ethnicity and location i.e. municipality/city, on the prison population for the last five years and broken down by offense and length of detention.

27. With reference to previous concerns and recommendations, please inform the Committee of further measures taken to ensure that men, women and children are kept in separate facilities through their whole period of detention or confinement (para. 14).

28. Please inform the Committee on measures taken to follow-up to the recommendations of the Office of the Ombudsman visits to various places of detention.⁷

29. Please update information regarding various basic guarantees, including the use of the registers of detainees and of impartial mechanisms for inspection and visiting places of detention and confinement. What new methods of prevention have been utilized, e.g. videotaping of interrogations, used the Istanbul Protocol of 1999, etc.

30. Please provide information on how the State party systematically reviews the rules for interrogation, instructions, methods and practices concerning persons deprived of their liberty. Following the Committee's previous recommendation, please provide information on recommendations, and their implementation, issued by the Office of the Ombudsman (para. 18).

Article 12

31. Please update information on measures taken by the State party to carry out prompt and impartial investigation into all alleged cases of torture and cruel, inhuman or degrading treatment and to prosecute and punish the perpetrators. Please include relevant data.

32. Please provide information on mechanisms to detect and investigate the possible misconduct of both police and prison officials and interprisoner violence as well as cases of sexual violence in prisons and places of detention. Furthermore, with reference to the Committee's recommendations, please provide relevant statistical data on the number of

⁷ See also CERD/C/BIH/CO/6, para. 9.

complaints received and investigated during the last five years, as well as the number of prosecutions and convictions thereof (paras. 13 and 16).

33. Please provide more information with respect to the allegations of cases of ethnic bias and politically influenced police and judicial procedures as highlighted in paragraph 11 of the Committee's conclusions and recommendations, in particular in relation to ethnic and other minorities and returnees.⁸

Article 13

34. With reference to the Committee's recommendations, please provide information on what mechanisms exist to handle complaints, and how persons deprived of their liberty are made aware of their right to complain and are able to exercise this right (para. 19). Also provide information on how follow-up to complaints are handled and by whom.

35. Please provide detailed statistical data, disaggregated by crime, geographical location, ethnicity and gender, on complaints relating to torture or acts amounting to cruel, inhuman or degrading treatment, which have been filed during the last five years, as well as related investigations, prosecutions and penal and disciplinary sentences.

36. Please provide updated information on the measures taken to guarantee the protection of all persons complaining about or witnessing acts of torture and/or ill-treatment against any intimidation as a consequence of the complaint made or evidence given. With reference to the Committee's previous conclusions and recommendations, please provide updated information with respect to the protection of witnesses and victims of torture and ill-treatment that occurred during the 1992 to 1995 conflict (para. 10). Also please update information on the special division for Witness Protection within the State Investigation and Protection Agency (SIPA).

Article 14

37. Please provide information on any redress and compensation measures ordered by the courts and actually provided to victims of torture, or their families, since the examination of the initial report in 2005. This information should include the number of requests filed, the number granted, and the amounts ordered and those actually provided in each case, and other avenues for redress and compensation when the accountable party can not provide it. In this context, the Committee would also welcome information on developments with regard to the new Law on the Rights of Victims of Torture and Civil Victims of War. Updated information on the National Fund for Compensation of Victims should also be provided.

38. Please provide the Committee with information on follow-up activities with regard to the recommendations on redress and compensation for victims of trafficking, and with regard to requested measures for the rehabilitation of victims of torture, including sexual violence, from the period 1992 – 1995 (paras. 10 and 21).

39. Please provide further information with respect to the development of policy frameworks and/or legal structures for combating trafficking in particular in light of increased investigations and indictments but still comparatively low level of judgments issued. Provide also information

⁸ See also Follow-up letter to the State party dated 12 February 2008, p. 3.

on legal, policy or other initiatives to counter the still low prison sentences or fines imposed on perpetrators of criminal acts related to trafficking in human beings.⁹

Article 15

40. Please provide further information on the law and practice relating to the admissibility of evidence obtained through torture or ill-treatment. Please provide examples of any cases where evidence was excluded and the decisions reached. In this connection, please also clarify whether confessions made by a person in police detention without the presence of a lawyer are considered as evidence admissible in Court.

Article 16

41. Please provide updated information concerning prison overcrowding, in particular with regard to Zenica and specific measures to prevent or punish interprisoner violence

42. With reference to the Committee's recommendation, please provide information on the regime for prisoners, including vocational and physical activities (para. 17).

43. Please clarify whether the State Party has adopted measures or legislation to prohibit cruel, inhuman and degrading treatment or punishment.

Others

44. Please inform the Committee on whether there are any developments concerning the ratification of the Optional Protocol to the Convention.

General information on the national human rights situation and on the implementation of human rights at the national level

45. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the initial report and the relevant parts of the follow-up information submitted, including any relevant jurisprudential decisions.

46. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level, that have occurred since the initial report and the relevant parts of the follow-up information submitted, including on any national human rights plans or programmes, and the resources allocated to it, its means, objectives and results.

47. Please update information as requested in the letter from the Committee's Rapporteur on follow-up to recommendations.

⁹ CAT/C/BIH/CO/1/Add 2 paras. 132-154.