

## **Annex 1: Committee against Torture - List of issues prior to submission of the Seventh Periodic Report of Bosnia and Herzegovina\***

### **Specific information on the implementation of articles 1-16 of the Convention, including with regard to the Committee's previous recommendations**

#### **Issues identified for follow-up in the previous concluding observations**

1. In its previous concluding observations (CAT/C/BIH/CO/6, para. 40),<sup>1</sup> the Committee requested the State party to provide information on the follow-up to its recommendations on ill-treatment by the police; redress for victims of war crimes, including sexual violence; and the Ombudsman and the establishment of a national preventive mechanism (paras. 13, 19 and 21 (b), respectively). Noting that replies concerning the information sought by the Committee were provided on 5 March 2019 (see CAT/C/BIH/CO/6/Add.1) and with reference to the letter dated 9 October 2019 from the Committee's Rapporteur for follow-up to concluding observations, the Committee considers that the recommendations in paragraphs 13, 19 and 21 (b) of the previous concluding observations have not been implemented.

#### **Articles 1 and 4**

2. With reference to the Committee's previous concluding observations (paras. 8–9), please provide updated information on the measures taken to adopt a definition of torture in the criminal legislation of Republika Srpska that is consistent with article 1 of the Convention and to make torture a separate and specific offence in the Criminal Codes of the Federation of Bosnia and Herzegovina and of Brčko District. Has the State party taken steps to ensure that acts of torture are punishable by appropriate penalties commensurate with their grave nature and that the penalties are consistent throughout the State party?

#### **Article 2<sup>2</sup>**

3. With reference to the Committee's previous concluding observations (paras.10–11), please provide information on the measures taken by the State party and on the procedures in place to ensure that detainees enjoy in practice all fundamental legal safeguards from the outset of their deprivations of liberty, in particular the right to have access to a lawyer or legal aid and to request and receive an examination by an independent medical doctor in full confidentiality.

4. Taking note of the Committee's previous concluding observations (paras. 20–21) and noting the State party's follow-up replies,<sup>3</sup> please provide updated information on the measures taken during the period under review to establish or designate a national preventive mechanism for the prevention of torture in compliance with the State party's international obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>4</sup> Please also provide information on the measures taken to ensure that the Institution of Human Rights Ombudsman of Bosnia and Herzegovina operates in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights

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\*Adopted by the Committee intersessionally on 2 December 2020.

<sup>1</sup> Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.

<sup>2</sup> The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2, the obligation to prevent torture in article 2 is wide-ranging. The obligation to prevent torture and other cruel, inhuman and degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

<sup>3</sup> CAT/C/BIH/CO/6/Add.1, paras. 63–67. See also letter dated 9 October 2019 from the Committee's Rapporteur for follow-up to concluding observations.

<sup>4</sup> A/HRC/43/17, paras. 120.2, 120.4, 120.18 and 120.74–75.

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(the Paris Principles), so as to guarantee its operational independence, and that adequate resources are assigned to it.<sup>5</sup>

5. Further to the Committee's previous concluding observations (paras. 32–33), please provide information on the measures taken to combat all forms of violence against women, particularly with regard to cases that involve the actions or omissions of State authorities or others that engage the State party's international responsibility in accordance with the Convention.<sup>6</sup> Please also provide updated information on the protection and support services available to victims of all forms of violence against women that involve actions or omissions of the State authorities. Please include statistical data, disaggregated by the age and ethnicity or nationality of the victims, on the number of complaints, investigations, prosecutions, convictions and sentences recorded in cases of gender-based violence since the consideration of the previous periodic report of Bosnia and Herzegovina.<sup>7</sup> Please provide up-to-date information on the measures taken to strengthen training programmes for law enforcement officers aimed at raising awareness of domestic and sexual violence.<sup>8</sup>

6. In the light of the Committee's previous concluding observations (paras. 34–35), please provide updated information, disaggregated by the age, sex and ethnicity or nationality of the victims, on the number of complaints, investigations, prosecutions and sentences recorded in cases of trafficking in persons since the consideration of the State party's previous report. Please also provide information on:

(a) Any new legislation or measures that have been adopted to prevent, combat or criminalize trafficking in persons;<sup>9</sup>

(b) The measures adopted to ensure that victims of trafficking have access to effective remedies and reparation;<sup>10</sup>

(c) The measures adopted to improve referral mechanisms and to ensure that non-custodial accommodation is provided with full access to appropriate medical and psychological support, for potential victims of trafficking while identification processes are carried out;<sup>11</sup>

(d) The conclusion of agreements with countries concerned to prevent and combat trafficking in persons.

### Article 3

7. With reference to the Committee's previous concluding observations (paras. 28–29), please describe the measures taken during the period under review to ensure that no person is returned to a country where he or she would be in danger of torture.<sup>12</sup> Please indicate how, in practice, the State party ensures effective access to the refugee status determination procedure. Please also indicate the procedure followed when a person invokes this right and whether individuals facing expulsion, return or extradition are informed that they have the right to seek asylum and to appeal a deportation decision.<sup>13</sup> If so, please indicate whether such an appeal has suspensive effect.<sup>14</sup> How does the State party guarantee access to free legal assistance and interpretation services during the asylum procedure?<sup>15</sup> Please also provide detailed information on the measures adopted to identify vulnerable persons seeking asylum in Bosnia and Herzegovina, including victims of torture or trauma, and to ensure that their specific needs are taken into consideration and addressed in a timely manner.

8. Please provide information about the number of asylum applications received during the period under review, the number of successful applications and the number of asylum seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin. Please provide detailed information on the type of appeal mechanisms that may exist, any appeals that have been made and the outcome

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<sup>5</sup> CEDAW/C/BIH/CO/6, paras. 19–20; CERD/C/BIH/CO/12-13, paras. 13–14; CMW/C/BIH/CO/3, paras. 23–24; A/HRC/43/17, paras. 120.10 and 120.12–19.

<sup>6</sup> A/HRC/43/17, paras. 120.153–156, 120.158–159 and 120.161–162.

<sup>7</sup> CEDAW/C/BIH/CO/6, paras. 25 (a) and (c) and 26 (d) and (e); A/HRC/43/17, para. 120.160.

<sup>8</sup> CEDAW/C/BIH/CO/6, paras. 25 (b) and 26 (c).

<sup>9</sup> CMW/C/BIH/CO/3, paras. 61–62; CRC/C/BIH/CO/5-6, para. 46; A/HRC/43/17, paras. 120.58 and 120.78–82.

<sup>10</sup> CERD/C/BIH/CO/12-13, paras. 33–34; A/HRC/43/17, para. 120.83.

<sup>11</sup> CEDAW/C/BIH/CO/6, paras. 27–28.

<sup>12</sup> A/HRC/44/42/Add.2, paras. 64–65.

<sup>13</sup> CERD/C/BIH/CO/12-13, paras. 29–30; CMW/C/BIH/CO/3, paras. 31–32; CRC/C/BIH/CO/5-6, paras. 43–44; A/HRC/43/17, para. 120.201; A/HRC/44/42/Add.2, paras. 45–48.

<sup>14</sup> CAT/C/BIH/CO/6, para. 28; CMW/C/BIH/CO/3, paras. 35–36.

<sup>15</sup> CAT/C/BIH/CO/6, para. 28 and 29 (b).

of those appeals. Please include information, disaggregated by sex, age and country of origin, on the number of persons who have been returned, extradited or expelled since the consideration of the previous report. Please provide details on the grounds on which they were sent back, including the list of countries to which individuals were returned.

9. Please indicate the number of refoulements, extraditions and expulsions carried out by the State party during the reporting period on the basis of the acceptance of diplomatic assurances or the equivalent thereof, as well as any instances in which the State party has offered such diplomatic assurances or guarantees. What are the minimum contents of any such assurances or guarantees, whether given or received, and what measures have been taken in such cases with regard to subsequent monitoring?

### Articles 5–9

10. Please provide information on any new legislation or measures that have been adopted to implement article 5 of the Convention. Please also inform the Committee of any extradition treaties concluded with other States parties and indicate whether the offences referred to in article 4 of the Convention are included as extraditable offences in such treaties. Please indicate what measures have been adopted by the State party to comply with its obligations to extradite or prosecute (*aut dedere aut juicare*). Please give details of the mutual legal assistance treaties or agreements that the State party has entered into and whether such treaties or agreements have led in practice to the transfer of any evidence in connection with prosecutions concerning torture or ill-treatment. Please provide examples.

### Article 10

11. With reference to the previous concluding observations (paras. 38–39), please provide up-to-date information on the educational programmes developed by the State party to ensure that all law enforcement officials, including prison staff and border guards, are fully aware of the provisions of the Convention and know that breaches will not be tolerated and will be investigated, and that any offenders will be prosecuted.<sup>16</sup> Please include details on the programmes used in the training of police officers and other law enforcement officials in non-coercive investigating techniques. Please indicate whether the State party has developed a methodology to assess the effectiveness of training and educational programmes in reducing the number of cases of torture and ill-treatment and if so, please provide information on the methodology. Please also indicate the measures taken to give effect to the provisions of article 10 (2) of the Convention. Please also provide detailed information on the training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons on detecting and documenting the physical and psychological sequelae of torture, including whether they contain specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

### Article 11

12. Please describe the procedures for ensuring compliance with article 11 of the Convention and provide information on any rules, instructions, methods and practices or arrangements for custody that may have been introduced since the consideration of the previous periodic report, indicating the frequency with which they are reviewed. Taking note of the Committee's previous concluding observations (paras. 22–23), please provide statistical data, disaggregated by sex, age and ethnic origin or nationality, on the number of pretrial detainees and convicted prisoners and the occupancy rate of all places of detention. Please describe the measures taken to reduce prison overcrowding and improve the material conditions in all places of detention during the period under review,<sup>17</sup> including the building of new prison facilities and any measures to increase the use of alternatives to imprisonment, both before and after trial. Please also inform the Committee on the measures taken to address concerns about inadequate sanitation and medical care, insufficient ventilation and the lack of meaningful activities in prisons and other places of detention.

13. Please provide information on the State party's efforts to meet the special needs of minors and women in detention. With regard to the Committee's previous concluding observations (paras. 30–31), please clarify the current legislation and policies in relation to juvenile remand and the use of alternative measures to conviction

<sup>16</sup> A/HRC/43/17, para. 120.20.

<sup>17</sup> A/HRC/43/17, para. 120.76.

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and imprisonment for juveniles.<sup>18</sup> Please further inform the Committee about measures taken to ensure that detained juveniles are separated from adults in all places of detention.

14. In the light of the Committee's previous concluding observations (paras. 24–25), please inform the Committee about the measures taken to address concerns regarding the special prison regime of enhanced supervision in Republika Srpska. Please indicate whether the State party has taken measures to bring its legislation and practice on solitary confinement into line with international standards. This should include data on the use of solitary confinement during the period under review and an indication of its duration.

15. Further to the Committee's previous concluding observations (paras. 22 and 23 (d)), please provide information on the frequency of inter-prisoner violence, including cases involving possible negligence on the part of law enforcement personnel, the number of complaints made in this regard and their outcome, and what preventive measures have been taken. According to the information before the Committee, during the period under review the Council of Europe has implemented, in close cooperation with the State party's authorities, a two-year project aimed at reducing the adverse effects that radicalized prisoners might have on other prisoners and reducing extremism and violence in prisons. Please comment on the results of this project.

16. Please provide statistical data regarding deaths in custody during the period under review, disaggregated by place of detention, the sex, age and ethnicity or nationality of the deceased and the cause of death. Please provide information on the results of the investigations into those deaths and on the measures taken to prevent similar cases occurring in the future. Please indicate whether relatives received compensation in any of the cases, as provided by applicable law.

17. Please provide updated data on the number of asylum seekers and migrants in detention awaiting administrative deportation in the State party. Please indicate the measures taken by the State party during the reporting period to ensure that the detention of asylum seekers and migrants is only used as a last resort, where necessary and for as short a period as possible, and that alternatives to detention are further implemented in practice.<sup>19</sup> Please also inform the Committee about measures taken to address concerns regarding living conditions of asylum seekers and migrants, including minors, in Vučjak camp and other centres located in former factories in Bira in Bihać and Miral in Velika Kladuša, and in particular whether measures have been taken to relocate them and ensure they are provided with adequate accommodation.<sup>20</sup>

18. Please provide information on the number of persons deprived of their liberty in psychiatric hospitals and other institutions for persons with psychosocial disabilities, including care homes. Please indicate what the situation is with respect to alternative forms of treatment, such as community-based rehabilitation services and other forms of outpatient treatment.

### Articles 12–13

19. With reference to the Committee's previous concluding observations (paras. 12–15) and noting the State party's follow-up replies,<sup>21</sup> please provide updated statistical data on complaints of acts of torture, ill-treatment and excessive use of force recorded by the State authorities during the reporting period.<sup>22</sup> Please include information on investigations, disciplinary and criminal proceedings and convictions, and on the criminal or disciplinary sanctions applied. Please provide examples of relevant cases and/or judicial decisions. With regard to the Committee's previous concluding observations (paras. 14–15), please indicate whether the State party plans to set up an independent body to investigate allegations of acts of torture and ill-treatment by law enforcement personnel. Please also provide information on the measures taken to establish an effective unified complaints mechanism for persons deprived of their liberty.

20. Bearing in mind the Committee's previous concluding observations (paras. 14 and 15 (d)), please describe any efforts by the State party to ensure that witnesses and victims of human rights violations, including torture, and members of their families are effectively protected and assisted. Please indicate what measures have been

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<sup>18</sup> CRC/C/BIH/CO/5-6, para. 47.

<sup>19</sup> CAT/C/BIH/CO/6, paras. 28 and 29 (d); CERD/C/BIH/CO/12-13, para. 30 (e); CRC/C/BIH/CO/5-6, paras. 43 (c) and 44 (c); A/HRC/43/17, para. 120.203; A/HRC/44/42/Add.2, paras. 56–60.

<sup>20</sup> A/HRC/44/42/Add.2, paras. 40–44; Inter-agency operational update – Bosnia and Herzegovina (December 2019).

<sup>21</sup> CAT/C/BIH/CO/6/Add.1, paras. 11–29. Letter dated 9 October 2019 from the Committee's Rapporteur for follow-up to concluding observations.

<sup>22</sup> A/HRC/43/17, para. 120.76.

taken to ensure that all medical examinations of complainants or victims of ill-treatment and/or torture are conducted out of hearing and, whenever security allows, out of sight of law enforcement officers. Please also provide information on the measures taken to ensure adequate protection for health professionals documenting torture and ill-treatment from intimidation, retaliation and other forms of reprisals.

21. In light of the Committee's previous concluding observations (paras. 16–17), please provide up-to-date information on the investigation and prosecution of war-related crimes committed during the 1992–1995 conflict, including wartime rape and other crimes of sexual violence.<sup>23</sup> Please indicate the status of the revised national War Crimes Strategy and provide detailed information on any relevant amendments, as well as updated information on the progress made in its implementation.<sup>24</sup> Please include information on the review of the criteria for the referral of cases to the entity-level judiciaries and on any impact that it may have had on the existing backlog of cases concerning past violations.<sup>25</sup> With regard to the Committee's previous concluding observations (paras. 26–27), please provide information on the progress made to shed light on cases of enforced disappearances committed in the past.<sup>26</sup> Please include information on the measures taken to fully implement the Law on Missing Persons<sup>27</sup> and in particular the material, human and budgetary resources provided by the State party to ensure the effective functioning of the Missing Persons Institute. Please describe any measures taken to guarantee that the relatives of missing persons receive appropriate redress.<sup>28</sup>

#### **Article 14**

22. With reference to the Committee's previous concluding observations (paras. 18–19) and noting the State party's follow-up replies,<sup>29</sup> please provide information on the measures taken to establish an effective reparation scheme at the national level in order to provide all forms of redress to victims of war crimes, including sexual violence.<sup>30</sup> Please also provide information on redress and compensation measures, including means of rehabilitation, ordered by the courts and actually provided to the victims of torture or their families since the consideration of the previous periodic report. This should include the number of requests for compensation that have been made, the number granted and the amounts ordered and actually provided in each case. Please also provide information on any ongoing reparation programmes, including the treatment of trauma and other forms of rehabilitation, provided to victims of torture and ill-treatment, and on the material, human and budgetary resources allocated for their effective functioning.

#### **Article 15**

23. Please provide information on the concrete measures taken to ensure respect, both in law and in practice, for the principle of inadmissibility of evidence obtained through torture. Please also provide examples of any cases that have been dismissed by the courts owing to the introduction of evidence or testimony obtained through torture or ill-treatment.

#### **Article 16**

24. Taking into account the Committee's previous concluding observations (paras. 36–37), please indicate what concrete measures have been taken by the State party to combat violence against individuals based on their actual or perceived sexual orientation or gender identity and expression. In particular, please provide statistical data, disaggregated by age, sex and ethnicity of the victims, on complaints, investigations, prosecutions and convictions in cases of hate crimes against lesbian, gay, bisexual and transgender persons.

25. What measures have been taken by the State party to combat hate crimes, including crimes committed on the basis of race, ethnicity and religion, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity? Please provide statistical data on the number of complaints, investigations, prosecutions, convictions and sentences recorded

<sup>23</sup> CERD/C/BIH/CO/12-13, paras. 35–36; A/HRC/43/17, paras. 120.30–31, 120.33–35 and 120.68.

<sup>24</sup> A/HRC/43/17, para. 120.32, 120.34 and 120.36.

<sup>25</sup> See letter dated 9 October 2019 from the Committee's Rapporteur for follow-up to concluding observations.

<sup>26</sup> A/HRC/43/17, para. 120.65.

<sup>27</sup> A/HRC/43/17, para. 120.69.

<sup>28</sup> A/HRC/43/17, para. 120.65.

<sup>29</sup> CAT/C/BIH/CO/6/Add.1, paras. 30–62. See also letter dated 9 October 2019 from the Committee's Rapporteur for follow-up to concluding observations.

<sup>30</sup> A/HRC/43/17, paras. 120.29 and 120.66–67.

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in cases of hate crimes. Please provide information on the specific measures taken to combat violence against persons belonging to the Roma community.

26. Please provide information on the measures taken to protect journalists and media workers who expose acts of torture or ill-treatment or punishment, and to punish the perpetrators of attacks, intimidation and other criminal acts against them.<sup>31</sup>

27. Please indicate the measures taken by the State party to prohibit the corporal punishment of children in all settings.

#### **Other issues**

28. Please provide updated information on the measures taken by the State party to respond to threats of terrorism. Please describe whether those measures have affected human rights safeguards in law and in practice and, if so, how they have affected them. Please also describe how the State party has ensured that those measures are compatible with its obligations under international law, especially the Convention. Furthermore, please indicate what training is given to law enforcement officers in this area; the number of persons who have been convicted under legislation adopted to combat terrorism; the legal remedies and safeguards available in law and in practice to persons subjected to anti-terrorism measures; and whether there have been complaints of non-observance of international standards, and if so, what the outcome was.

29. Given that the prohibition of torture is absolute and cannot be derogated from, including within the framework of measures related to states of emergency and other exceptional circumstances, please provide information on any steps taken by the State party during the coronavirus disease (COVID-19) pandemic to ensure that its policies and action comply with its obligations under the Convention. Also, please specify the measures taken in relation to persons deprived of their liberty and in other situations of confinement such as homes for the elderly, hospitals or institutions for persons with mental and psychosocial disabilities.

#### **General information on other measures and developments relating to the implementation of the Convention in the State party**

30. Please provide detailed information on any other relevant legislative, administrative, judicial or other measure taken since the consideration of the previous periodic report to implement the provisions of the Convention or the Committee's recommendations. Such measures may include institutional developments, plans or programmes. Please indicate the resources allocated and statistical data. Please also provide any other information that the State party may consider relevant.

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<sup>31</sup> A/HRC/43/17, paras. 120.84, 120.86–87, 120.89, 120.91, 120.93–95, 120.99 and 120.101.