



Submission to the Committee against Torture in relation to its examination of Bosnia and Herzegovina's Sixth State Party Report

October 2017

I. Introduction

1. In advance of the Committee against Torture’s forthcoming review of Bosnia and Herzegovina (BiH), it is critical that the Committee pays particular attention to the disproportionate and dire effects certain BiH laws have on women and girls. The issues addressed herein, namely the failure to fully redress crimes of sexual violence occurring during the Bosnian War and the absence of sufficient action to end violence against women generally, highlight the obstacles to ensuring women and girls are free from torture and cruel, inhuman or degrading treatment in BiH.

II. The Government of Bosnia and Herzegovina is failing to provide full redress to the Bosnian War’s victims of sexual violence

2. Bringing an end to the region’s three-and-a-half-year armed conflict, the Dayton Peace Agreement (“DPA”) established a new Constitution, governance systems, guidelines for economic reconstruction, social assistance, and human rights commitments.¹ The DPA also granted real property or compensation to refugees and displaced persons.² However, the DPA failed to provide key public services for civilian victims of war—specifically, female victims of conflict-related sexual violence.
3. Two decades after the end of the Bosnian War, female victims of sexual violence continue to suffer from consequences of past crimes, denial and neglect by authorities and public service providers.³ Specific issues include inconsistent classifications of war crimes, delays in prosecutions of such crimes, reduced sentences for perpetrators of wartime sexual violence, failure to enact a national program to support victims of such violence, and discrepancies in legislation for rights of victims.⁴ For further details, a 2017 study by Amnesty International can be found online on Amnesty International’s website.⁵
4. Article 14 of the Convention against Torture (CAT) requires BiH to “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.”⁶ This Committee notes that Article 14 applies to “all victims of torture and acts of cruel, inhuman, or degrading treatment or punishment . . .”⁷ and defines “redress” as effective remedy and reparations in its “full scope of measure,” including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.⁸
5. In other States parties with similar contexts, this Committee has recognized the following efforts as adequate recourse for torture victims: the creation of a specific government fund or budget line for ensuring victims’ access to compensation, ensuring the availability and prompt accessibility of specialized, holistic rehabilitation services, and fostering the creation of rehabilitation centers administered by non-governmental organizations.⁹
6. BiH has failed to provide effective remedies and adequate reparations for victims of conflict-related sexual violence. By delaying prosecuting perpetrators of sexual violence from the Bosnian War for over twenty years, arbitrarily and inconsistently applying sentencing factors, and permitting perpetrators to pay fines in exchange for reduced prison sentences, BiH is falling short of the Convention’s requirements for prompt, impartial, and thorough inquiries and sufficient punishment. These instances indicate a failure to provide timely restitution and compensation, and even aggravate the injustice already inflicted upon these victims.

7. Further, BiH lacks rehabilitative resources and guarantees of non-repetition for civil war victims of conflict-related sexual violence. There has been no implementation of a transitional strategy or national program to support victims of conflict-related sexual violence during or after the DPA. This omission prevents victims' access to benefits guaranteed by Article 14. BiH has also failed to adopt measures to prohibit the silencing and stigmatizing of sexual violence victims from the Bosnian War.
8. Thus, BiH is in violation of Article 14 by failing to provide women victims of conflict-related sexual violence with prompt, effective, and adequate redress.

Recommendations

9. With respect to ensuring full redress for the Bosnian War's victims of sexual violence, this Committee should recommend to the BiH government to:
 - a. Establish a specific national plan with a budget line to support victims of sexual violence, including but not limited to: implementing measures that protect and encourage victims' right to redress, fostering the creation of rehabilitation centers, and providing financial support to NGOs that offer rehabilitation services;
 - b. Prioritize the prosecution of cases involving perpetrators of conflict-related sexual violence;
 - c. Adopt and apply international law standards when prosecuting cases involving perpetrators of conflict-related sexual violence and other war crimes;
 - d. Create a reporting mechanism for civil war victims of sexual assault to submit complaints to authorities for any further issues or delays in prompt, effective, and adequate redress.

III. The Government of Bosnia and Herzegovina is failing to take action to end violence against women generally

10. BiH's Law on Gender Equality prohibits "violence occurring in the family or household" if it "causes or may cause physical, mental, sexual or economic damage or suffering, as well as threat to such action which prevents [a] person or group of persons to enjoy their human rights and freedoms in public and private sphere of life."¹⁰ The law directs competent authorities in BiH to "take appropriate measures" to prevent gender-based violence in both public and private life, including through the use of protective instruments.¹¹
11. Both of BiH's sub-national entities, Serbia and the Federation of BiH, adopted amended laws on domestic violence in 2012 and 2013, respectively.¹² These amendments improve the domestic legal framework for protecting victims of domestic violence in BiH in line with international standards.¹³ As substantively progressive as these laws are, BiH has yet to utilize and implement their protections or otherwise ensure the prevention of and protection from gender-based violence.
12. Violence against women, including domestic violence and sexual assault, remains widespread and underreported in BiH. A 2013 study showed the overall prevalence of gender-based violence against women in BiH was 47.2% (for women over 15 years).¹⁴ The prevalence of violence experienced in the 12 months preceding the survey was 11.9%.¹⁵ This violence is varied: it is physical, psychological, sexual, and perpetrated by intimate partners.¹⁶
13. Violence of particular note is spousal rape. Although spousal rape is a crime, a sense of shame among rape victims and the failure of police to treat spousal rape as a serious offense inhibits the

effective enforcement of the law. As a result, spousal rape is often unreported by victims and underreported by authorities.¹⁷

14. Even in cases where victims do report violence to the police, the measures taken to protect them and prevent further abuse are inadequate. For instance, while laws in both sub-national entities empower authorities to remove the perpetrator from the home, this provision is rarely, if ever, enforced. Moreover, victims are sometimes treated as though they had provoked the incident.¹⁸ A reported 17% of women who experienced domestic violence sought help.¹⁹ Women did not fully utilize the protections available under the law because they lacked knowledge of the protections or they were concerned about the consequences of revealing such violence.²⁰
15. In addition, social service agencies experience inadequate funding, staff, and training to fully respond to needs of sexual violence victims.²¹
16. Article 2 of the CAT obligates BiH to take actions that will reinforce the prohibition against torture through legislative, administrative, judicial, or other actions that must, in the end, be *effective* in preventing it.²²
17. CAT's General Comment 2 makes clear that where BiH authorities know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by private actors, and fail to exercise due diligence to prevent, investigate, prosecute and punish such private actors, BiH bears responsibility under the CAT for consenting or acquiescing to such impermissible acts.²³ The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape or domestic violence.²⁴
18. In its recent periodic review of Panama, this Committee commended the adoption of domestic legislation to prevent violence against women and gender-based violence. Despite this progress, the Committee observed with concern that the number of reported cases of domestic violence had increased sharply in recent years. The Committee invoked Article 2 of the Convention and urged Panama to redouble its efforts on combating gender based-violence through several listed measures.²⁵
19. Similarly, in its review of Paraguay, this Committee welcomed legislative and administrative measures taken to combat gender-based violence, but was alarmed by the high number of calls concerning domestic violence received by the police. It again applied Article 2 and called on Paraguay to intensify its efforts to combat all forms of gender-based violence, ensuring that publicly actionable offences are investigated, perpetrators are prosecuted, and, if convicted, they are subject to appropriate penalties.²⁶
20. Analogously, while BiH has adopted laws relating to combatting domestic violence, it has so far not succeeded in implementing them. The facts and statistics demonstrate that gender-based violence, and in particular domestic violence, is rampant and not fully addressed by the government. As noted, under Article 2 of the Convention, BiH not only has the obligation to enact laws prohibiting all forms of gender-based violence, but also to take administrative, judicial, or other actions and measures that will, in the end, be *effective* in preventing it such violence.
21. Given the mass of public data and lodged complaints, the BiH government "knows or has reasonable grounds to believe" that domestic violence is being committed by private actors in its jurisdiction. Indeed, it was in response to this knowledge that BiH has enacted laws addressing this widespread problem. However, as evidenced by the continuing violence against women, BiH has largely failed its legal obligation to exercise due diligence to prevent, investigate,

prosecute and punish these private actors consistently with the Convention and with its domestic laws. As such, BiH bears responsibility for these acts under the Convention for consenting or acquiescing to the reoccurrence of domestic violence in its jurisdiction.

Recommendations

22. With respect to implementing its domestic violence legislation, this Committee should recommend to the BiH government to:

- a. Establish a system of regular monitoring of developments and statistics concerning domestic violence;
- b. Improve the state system of protection of women against violence by:
 - i. Providing mandatory training to all state actors involved in domestic violence occurrences (such as law enforcement, judiciary and medical staff) as to the prosecution of gender-based violence and the rights of domestic violence victims;
 - ii. Improving the effectiveness of police action;
 - iii. Providing universal access to a wider network of shelters and safe houses as well as other psycho economical support institutions for victims;
 - iv. Creating and promulgating policies, regulations and measures aimed at the prevention of domestic violence;
- c. Raise awareness among the population of the rights of domestic violence victims and the need to report as a protective and preventive measure through community outreach and NGOs.

IV. The Organization Submitting this Report

Created in 2005, the **Global Justice Center** (GJC) works to achieve sustainable justice, peace and security by building a global rule of law based on gender equality and universally enforced international human rights laws. Adhering to principles over politics, GJC fills a critical niche in the human rights field by serving as an unwavering voice calling for the enforcement of international legal obligations to uphold fundamental human rights. GJC works by combining advocacy with service, forging legal precedents in venues which have the greatest potential for global impact, such as the United Nations Security Council, while empowering strategic partners – including governments, women leaders, and civil society – with international law expertise and tools to embed human rights and gender equality. Based in New York City, GJC focuses on situations which present the greatest opportunity for systemic change, such as conflict and post-conflict situations and transitional democracies. Specifically, GJC's legal projects challenge systemic discrimination in the enforcement of international law, while shaping international law to ensure gender equality. In doing so, GJC seeks to advance the integrity of our global legal system, forge new rights for women and girls, and have a direct positive impact on the rights and lives of persons who suffer from egregious human rights violations. GJC's August 12th Campaign, created in 2010, challenges the denial of safe abortion services to women and girls raped in war and works to ensure that such services are provided in all humanitarian medical settings.

V. Endnotes

- ¹ "Summary of the Dayton Peace Agreement on Bosnia-Herzegovina". *University of Minnesota: Human Rights Library*. 30 November 1995 [hereinafter: Summary of the Dayton Peace Agreement].
- ² Summary of the Dayton Peace Agreement.
- ³ Amnesty International, "‘We Need Support, Not Pity’: Last Chance for Justice for Bosnia’s Wartime Rape Survivors," available at <https://www.amnesty.org/en/documents/eur63/6679/2017/en/> [hereinafter: Amnesty International].
- ⁴ Amnesty International, 10-18, 20-22, 26-27.
- ⁵ Amnesty International, "‘We Need Support, Not Pity’: Last Chance for Justice for Bosnia’s Wartime Rape Survivors," available at <https://www.amnesty.org/en/documents/eur63/6679/2017/en/>.
- ⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, ¶ 14, 1465 U.N.T.S. 85.
- ⁷ United Nations Committee against Torture, *General Comment 3*, ¶ 1, U.N. Doc. CAT/C/GC/3 (2012) [hereinafter General Comment 3].
- ⁸ General Comment 3, ¶ 2.
- ⁹ U.N. Committee against Torture, *Concluding observations on the second periodic report of Afghanistan*, ¶ 42(b)-(d), U.N. Doc. CAT/CAFG/CO/2 (12 June 2017) [hereinafter: Concluding observations on Afghanistan].
- ¹⁰ Consolidated Law on Gender Equality in Bosnia and Herzegovina (2010), Official Gazette of Bosnia and Herzegovina, no. 32/10.
- ¹¹ Consolidated Law on Gender Equality in Bosnia and Herzegovina (2010), arts. 6(3)(a), 6(4), Official Gazette of Bosnia and Herzegovina, no. 32/10.
- ¹² Gender Equality Agency of Bosnia and Herzegovina, *Prevalence and characteristics of violence against women in BiH 2013* by Marija Babovic, Olivera Pavlovic, Katarina Ginic, Nina Karadjinovic/Samra Filipovic – Hadziabdic, sections 1.2.1-1.2.2 ("Prevalence Study").
- ¹³ The Advocates for Human Rights, *Violence Against Women in Bosnia & Herzegovina*, April 2014 http://www.stopvaw.org/bosnia_and_herzegovina#_edn43.
- ¹⁴ U.S. Department of State Country Reports, *Bosnia And Herzegovina 2014 Human Rights Report*, p.24 <https://www.state.gov/documents/organization/236718.pdf> ("DOS Report").
- ¹⁵ Prevalence Study, p. 13.
- ¹⁶ Prevalence Study, p. 13.
- ¹⁷ DOS Report, p.23.
- ¹⁸ Prevalence Study, p. 100.
- ¹⁹ DOS Report, p.24, Prevalence Study p. 14.
- ²⁰ DOS Report, p.24, Prevalence Study p. 14.
- ²¹ DOS Report, p.24.
- ²² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, Art. 2, 1465 U.N.T.S. 85, Art. 2.
- ²³ Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment General Comment No. 2, November 19, 2012, ¶ 18, CAT/C/GC/2.
- ²⁴ Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment General Comment No. 2, November 19, 2012, ¶ 18, CAT/C/GC/2.
- ²⁵ U.N. Committee against Torture, *Concluding observations on the fourth periodic report of Panama*, ¶¶ 40-41, CAT/C/PAN/CO/4 (28 August 2017).
- ²⁶ U.N. Committee against Torture, *Concluding observations on the seventh periodic report of Panama*, ¶¶ 40-41, CAT/C/PRY/CO/7 (7 September 2017).