



# International Covenant on Civil and Political Rights

Distr.: General  
8 September 2020

Original: English

## Human Rights Committee

### Report on follow-up to the concluding observations of the Human Rights Committee\*

#### Addendum

### Evaluation of the information on follow-up to the concluding observations on Bosnia and Herzegovina

<i>Concluding observations (119th session):</i>	CCPR/C/BIH/CO/3, 23 March 2017
<i>Follow-up paragraphs:</i>	14, 20 and 36
<i>Follow-up reply:</i>	CCPR/C/BIH/CO/3/Add.1, 5 July 2018
<i>Committee's evaluation:</i>	Additional information required on paragraphs 14[C], 20[C] and 36[C]
<i>Information received from non- governmental organizations:</i>	TRIAL International; <sup>1</sup> and TRIAL International and Yale Law School <sup>2</sup>

#### Paragraph 14: Prosecution for crimes against humanity and other international crimes and protection of victims and witnesses

The State party should expedite the prosecution for crimes against humanity and other international crimes and continue to provide adequate support, including psychological support, and protection to victims and witnesses of those crimes, particularly those related to sexual violence. The State party should also make the system of free legal aid fully operational throughout its territory and available to all vulnerable citizens, including victims of wartime sexual violence, and provide for an effective victims and witnesses protection programme.

#### Summary of the State party's reply

A proposal for a revised National War Crimes Prosecution Strategy was submitted to the Council of Ministers of Bosnia and Herzegovina on 16 May 2018 for consideration and adoption. On 12 April 2017, the Council of Ministers established a working group to draft amendments to the Strategy. The need for amendments arose given the fact that the

\* Adopted by the Committee at its 129th session (29 June–24 July 2020).

<sup>1</sup> See

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGS%2fBIH%2f42053&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGS%2fBIH%2f42053&Lang=en).

<sup>2</sup> See

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGS%2fBIH%2f30781&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGS%2fBIH%2f30781&Lang=en).



goals set by the Strategy were not achieved by the deadlines and given the number of cases of war crimes pending with the Prosecutor's Office. It is envisaged that the amendments will provide for adequate mechanisms to improve the prosecution of cases of war crimes in the courts and the prosecutor's offices. The amendments contain revised criteria to ensure the transfer of a large number of less complex cases from the national-level judiciary to the judiciaries of the entities and of Brcko District.

The amendments also recognize the need for an analysis of relevant legal provisions, with the aim of establishing a uniform protection mechanism and support for witnesses during trials and after giving testimony. In addition to the Witness Support Department of the Court of Bosnia and Herzegovina, the majority of cantonal and district courts in Bosnia and Herzegovina, as well as the Basic Court of Brcko District, have established departments and employed psychologists or assistants to support witnesses.

Laws that provide for the right to legal aid were passed in Brcko District, the Republika Srpska and eight cantons of the Federation of Bosnia and Herzegovina. A law on the provision of legal aid (Official Gazette of Bosnia and Herzegovina No. 83/16) was passed at the national level.

The Missing Persons Institute is in daily contact with members of the families of missing persons. Employees in the Institute's regional and field offices provide all the assistance required by family members, with whom they cooperate on a daily basis in accordance with the Institute's mandate.

### **Information from non-governmental organizations**

#### *TRIAL International and Yale Law School*

The State party's historic failure to expedite the prosecution of war crimes has created a backlog of several hundred cases, which has compelled victims to seek remedies in the civil court system. The application by civil courts of *zastara* (statute of limitations) to dismiss victims' claims, combined with the subsequent imposition of court fees, have prevented victims from seeking or obtaining redress.

In Bosnia and Herzegovina, victims have been retraumatized at many points throughout the process of seeking reparations and justice. For victims, being in court and facing their abusers can bring back vivid and distressing memories of the war. The imposition of *zastara* and court fees has exacerbated victims' anguish.

#### *Trial International*

Over the course of two years, the Council of Ministers of Bosnia and Herzegovina has neither considered nor adopted the revised National War Crimes Prosecution Strategy. This remains one of the most pressing issues of justice reform in the State party, especially bearing in mind that 25 years have passed since the end of the war.

Given the overwhelming number of unsolved war crimes in the State party and the fact that an increasing number of witnesses and perpetrators have died, thus hindering or precluding prosecution, it is imperative to the fight against impunity that the State party adopt the revised Strategy without any further delay. The draft revised Strategy envisaged the completion of cases by 2023, yet two years have passed without the draft being adopted. The date of completion should therefore be revised and updated immediately.

Apart from the large number of cases yet to be prosecuted, society in Bosnia and Herzegovina has long had to dealing with the denial, trivialization, justification and condonation of genocide, crimes against humanity and war crimes.

The system of free legal aid remains fragmented and lacking in harmonization throughout the country. By adopting a law on the provision of free legal aid, the State party recognized the need to regulate the matter, which is commendable. Nonetheless, the office responsible for providing such aid, under the Ministry of Justice, is severely understaffed, which prevents victims from obtaining free legal aid. Even though the law on the provision of free legal aid was adopted in 2016, the legal aid office is still not working effectively.

There was still no reassurance that State- and entity-level judicial authorities are making efforts to harmonize jurisprudence on crimes committed during the conflict,

especially with regard to conflict-related sexual violence. The sentencing rate for such crimes in Bosnia and Herzegovina is low, and sentencing is inconsistent. Disparities between the approaches of courts across the country, particularly between State-level and entity-level panels, create a sense of arbitrariness and a climate of distrust in the justice system.

The State party has failed to adopt legislative and practical measures to ensure that survivors of torture and sexual violence have access to effective remedies. Bosnia and Herzegovina continues to apply a statute of limitations to civil claims for wartime non-pecuniary damages, and that application has consistently been upheld by the Constitutional Court. In addition, many victims are still facing high court fees and enforcement procedures, as there are still many cases in which court fees have been imposed.

#### **Committee's evaluation**

[C]: The Committee regrets that the State party has taken no specific measures to implement the Committee's recommendation. In this regard, it requests information on the content of the revised National War Crimes Prosecution Strategy, including information on whether it complies with the Covenant and on measures taken to expedite its adoption. The Committee also requests information on specific measures taken to provide adequate support, including psychological support, and protection to victims and witnesses of crimes against humanity and other international crimes, particularly those relating to sexual violence; and on specific measures taken to make fully operational the law on the provision of free legal aid adopted in 2016, including by providing sufficient financial and human resources for its implementation. The Committee further requires information on the application by civil courts of a statute of limitations, and on the imposition of high court fees and the resulting impact on victims seeking redress.

#### **Paragraph 20: Enforced disappearance and missing persons**

**The State party should expedite the investigation of all unresolved cases involving missing persons. Furthermore, it should take all measures necessary to ensure that the Missing Persons Institute is adequately funded and able to fully implement its mandate with a view to resolving those cases as foreseen in the Law on Missing Persons. The State party should, as a matter of urgency, establish a fund for support to families of missing persons to provide adequate support to families of missing persons.**

#### **Summary of the State party's reply**

The attitude of the State party's authorities towards the issue of missing persons is not the same as that of other countries in the region, although 7,146 persons are still missing in Bosnia and Herzegovina. This attitude is clearly seen in the fact that the State party's authorities have not fully complied with the recommendations of the Working Group on Enforced or Involuntary Disappearances.

Regarding the financial situation of the Missing Persons Institute, a trend of permanent budget reduction is noticeable. The State party provides a table detailing the reduction in the Institute's approved budget, from 6,455,467 marka in 2008 to 3,004,000 marka in 2018.

The Institute does not possess any modern or sophisticated technology or equipment that would facilitate its work and increase the efficiency of its fieldwork.

#### **Information from non-governmental organizations**

##### *TRIAL International*

The organization refers to several Views adopted between 2013 and 2017 by the Human Rights Committee concerning individual communications on cases of enforced disappearance perpetrated during the conflict in Bosnia and Herzegovina. The State party's failure to implement those Views indirectly confirms its failure to implement the Committee's recommendation in paragraph 20 of its concluding observations.

**Committee's evaluation**

[C]: The Committee regrets the lack of measures taken to expedite the investigation of all unresolved cases involving missing persons and to establish a fund for support to families of missing persons.

The Committee regrets the consistent reduction in budgetary allocations to the Missing Persons Institute, which runs counter to the Committee's recommendation. The Committee reiterates its recommendation.

**Paragraph 36: Refugees and displaced persons**

**The State party should strengthen its efforts to fully implement the revised strategy for the implementation of annex VII to the Dayton Peace Agreement to facilitate reintegration of returnees and internally displaced persons and enjoyment of their rights without discrimination. It should also continue its efforts to close collective centres and provide internally displaced persons with alternative housing solutions and ensure that persons granted with international subsidiary protection receive access to services on an equal basis with refugees, including for family reunification and travel documents.**

**Summary of the State party's reply**

No information provided.

**Committee's evaluation**

[C]: The Committee regrets the lack of information provided on the implementation of the Committee's recommendation. The Committee reiterates its recommendation.

**Recommended action:** A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

**Next periodic report due:** 29 March 2022.

---