



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

Distr.
GENERAL

CAT/C/BIH/CO/1
15 December 2005

Original: ENGLISH

COMMITTEE AGAINST TORTURE
Thirty-fifth session
7-25 November 2005

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

BOSNIA AND HERZEGOVINA

1. The Committee considered the initial report of Bosnia and Herzegovina (CAT/C/21/Add.6) at its 667th and 670th meetings (CAT/C/SR.667 and 670), held on 8 and 9 November 2005, and adopted, at its 689th meeting, the following conclusions and recommendations.

A. Introduction

2. While welcoming the initial report of Bosnia and Herzegovina and the information presented therein, the Committee is concerned that the report is overdue by more than 10 years. The Committee expresses its appreciation for the large and high-level delegation, with representatives from relevant ministries and different entities in the State party, which facilitated a constructive oral exchange during the consideration of the report.

3. The Committee notes that following the State party's independence in 1992, the State continued to experience armed conflict which lasted until 1995. Furthermore, the complicated and fragmented legal structure of the State, which grants substantial autonomy to the two entities established under the 1995 Dayton Peace Agreement (the Federation of Bosnia and the Republika Srpska) and the Brcko District, has sometimes led to contradictions and difficulties in implementing all laws and policies at all levels of authority. Nevertheless, the Committee wishes to remind the State party that despite its complex structure, Bosnia and Herzegovina is a single State under international law and has the obligation to implement the Convention in full, and that no exceptional circumstances justify the use of torture.

B. Positive aspects

4. The Committee notes that the State party has rectified the major international treaties protecting the human rights of its citizens, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention relating to the Status of Refugees, and the Rome Statute of the International Criminal Court.

5. The Committee further notes the accession to or ratification of regional instruments, among them the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the European Convention on the Extradition and Transfer of Proceedings in Criminal Matters.

6. The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:

(a) The Criminal Code and the Criminal Procedure Code, which entered into force in March 2003;

(b) The Law on Protection of Witnesses under Threat or Vulnerable Witnesses, which entered into force in March 2003;

(c) The Law on Movement and Stay of Aliens and Asylum, which entered into force in October 2003;

(d) The State Law on Missing Persons, which entered into force in November 2004.

7. The Committee further welcomes the establishment of the State Court of Bosnia and Herzegovina, the Special War Crimes Chamber of the State Court and the Special War Crimes Department of the Prosecutor's Office of Bosnia and Herzegovina, which were inaugurated in March 2005 and paved the way for the transfer of cases from the International Criminal Tribunal for the Former Yugoslavia to the domestic courts. The Committee also welcomes the establishment of the Srebrenica Commission to investigate the events leading to the Srebrenica massacre, to inform families of the fate of their missing relatives, and to make the results of the investigations public through the publication of the report.

8. The Committee takes note with interest of the statement by the State party's representative that although there was no integral structure in place for the protection of victims of torture and sexual violence during the period of conflict, i.e. 1992-1995, a systematic way of extending such protection, such as an umbrella law at the State level, would be initiated in 2006.

C. Principal subjects of concern and recommendations

9. The Committee is concerned at the lack of congruity between the definitions of torture in the State and entity laws and that the definitions, particularly in the laws of the Republika Srpska and Brcko District, do not accord fully with the definition contained in article 1 of the Convention.

The State party should incorporate the crime of torture, as defined in the Convention, into the domestic law throughout the State and ensure that the legal definitions in the Republika Srpska and Brcko District are harmonized with the Criminal Code and the Criminal Procedure Code of Bosnia and Herzegovina through any necessary legal amendments.

10. In connection with the well-documented torture and ill-treatment that occurred during the 1992-1995 conflict in the former Yugoslavia, the Committee is concerned about:

(a) The reported failure by the State party to carry out prompt and impartial investigations, to prosecute the perpetrators and to provide fair and adequate compensation to victims;

(b) Alleged discriminatory treatment in criminal proceedings whereby officials belonging to the ethnic majority often fail to prosecute alleged criminals belonging to the same ethnic group;

(c) Reported harassment, intimidation and threats faced by witnesses and victims testifying in proceedings and the lack of adequate protection by the State party;

(d) The failure to recognize survivors of torture, including sexual violence, as victims of the conflict, a status which would enable them to obtain redress and exercise their right to fair and adequate compensation and rehabilitation; and

(e) The failure to cooperate adequately with the International Criminal Tribunal on the Former Yugoslavia, in particular on the part of the Republika Srpska, by failing to arrest and transfer indicted persons, including Radovan Karadzic and Ratko Mladic, accused of genocide, torture and other international crimes.

The State party should:

(a) **Take effective measures to ensure prompt and impartial investigations into all allegations of torture and other cruel, inhuman or degrading treatment, the prosecution and punishment of the perpetrators, irrespective of their ethnic origin, and the provision of fair and adequate compensation for victims;**

(b) **Extend full cooperation to the International Criminal Tribunal for the Former Yugoslavia, inter alia by ensuring that all indicted persons are apprehended, arrested and transferred to the custody of the Tribunal, as well as granting the Tribunal full access to requested documents and potential witnesses;**

(c) Provide information in connection with criminal proceedings, extending mutual judicial assistance to and cooperating with other relevant countries and the Tribunal, as required by the Convention;

(d) Enforce relevant legislation, including providing protection of witnesses and other participants in proceedings, and ensure that testimonies by victims of torture and ill-treatment are provided with fair treatment at all stages of the proceedings;

(e) Develop legal and other measures, enforceable throughout the State, including an official programme for the rehabilitation of victims of torture including sexual violence, providing them recognition as victims and the capacity to pursue redress and their right to fair and adequate compensation and rehabilitation in accordance with the requirements of the Convention.

11. While noting the developments towards multi-ethnic structures within the respective authorities, the Committee remains concerned about alleged cases of ethnic bias and politically influenced police and judicial procedures. The Committee is also concerned that the State party has not been able to prevent and investigate violent attacks against members of ethnic and other minorities, in particular returnees.

The State should ensure that judges, prosecutors, lawyers and other personnel are fully aware of the State party's international obligations enshrined in the Convention, that fair treatment prevails in all judicial procedures and that independence of the judiciary is fully guaranteed and safeguarded, in particular in procedures relating to the protection of minorities and returnees.

12. The Committee is concerned that individuals may not have been able, in all instances, to enjoy full protection under the relevant articles of the Convention in relation to expulsion, return, or extradition to another country.

The State party should ensure that it complies fully with article 3 of the Convention and that individuals under the State party's jurisdiction receive appropriate consideration by its competent authorities and guaranteed fair treatment at all stages of the proceedings, including an opportunity for effective, independent and impartial review of decisions on expulsion, return or extradition.

The State party should provide the Committee with information regarding cases of extradition where the risk of being subjected to torture has or has not been considered, including information on whether safeguards are in place to prevent extradition in such cases.

13. While noting the information provided by the State party on the various law enforcement and prison administration procedures, the Committee remains concerned that procedures are implemented differently in different parts of the State party. In addition, the education and information provided to police and prison officers in the different entities and the practical implementation of the knowledge and skills acquired through training vary.

The State party should:

(a) **Conduct, on a regular basis, education and training of law enforcement personnel, including those in police and prison establishments, to ensure that all officers are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. All personnel should receive specific training on how to identify signs of torture;**

(b) **Allow and ensure regular and independent monitoring of the conduct of police and prison officials, inter alia through existing channels such as the Offices of the Ombudsman and non-governmental organizations;**

(c) **Ensure that the mechanisms of internal oversight of the police and prisons function properly and are independent and effective.**

14. The Committee is concerned at the lack of separate facilities for imprisoned men, women and children, both at the outset of detention and following sentencing.

The State party should ensure that men, women and children are kept in separate facilities through their whole period of detention or confinement, in conformity with international standards in force.

15. The Committee is concerned that all persons deprived of their liberty are not ensured prompt access to a lawyer, a doctor and a family member.

The State party should ensure that all persons detained are guaranteed a right to contact their families and have immediate access to an independent medical doctor and legal counsel from the very outset of the deprivation of liberty.

16. The Committee is concerned about reports of interprisoner violence and reported cases of sexual violence in the prisons and places of detention.

The State party should investigate promptly all allegations of violence within detention or prison establishments, including forensic examinations, and take measures to prevent such incidents.

17. The Committee is concerned about reports that prisoners spend up to 23 hours in their cells without meaningful activities.

The State party should take all necessary steps to improve the regime for prisoners. Activities could include work with a vocational value and regular physical exercise.

18. The Committee is concerned that insufficient measures have been taken to review investigation and prosecution procedures and address possible shortcomings and problems.

The State party should ensure that the rules for interrogations, instructions, methods and practices concerning persons deprived of their liberty are systematically reviewed. Recommendations emerging from the Offices of the Ombudsman and others conducting regular monitoring should be implemented in a timely manner.

19. The Committee notes, based on the information provided by the State party, that a framework or procedures allowing prisoners to file complaints is in place, but the Committee remains concerned that the procedures differ from one prison to another and that the prisoners are not aware of their right to complain as ensured by article 13 of the Convention.

The State party should:

(a) **Ensure, inter alia, that persons deprived of their liberty are aware of their rights and have the opportunity to complain;**

(b) **Establish an independent mechanism to investigate alleged torture or ill-treatment; and**

(c) **Allow for and provide regular and confidential access to persons deprived of their liberty by competent individuals and bodies such as the judges of competent courts, the Office of the Ombudsman and non-governmental organizations.**

20. While noting the adoption of the Law on Missing Persons and the oral information provided by the State party's delegation, the Committee remains concerned about the lack of full implementation of the law and in particular the creation of relevant institutions foreseen in the law.

The State party should intensify its efforts to establish the Institute for Missing Persons and the Fund for Support to the Families of Missing Persons, and the Central Record of Missing Persons. The State party should also ensure that available avenues for compensation are used in a non-discriminatory manner.

21. While noting the efforts made by the State party to combat trafficking for sexual slavery, the Committee is concerned that only a small number of cases have actually been investigated and prosecuted and that mainly fines and light sentences have been imposed in the cases that have been pursued. The Committee is also concerned about the alleged complicity of the police and border authorities. In addition, the entity-level laws, i.e. the criminal codes and criminal procedure codes, are not fully harmonized with the federal-level legal provisions.

The State party should:

(a) **Take the necessary measures to ensure that all law enforcement officials fully and promptly investigate all alleged cases of trafficking in persons and that offenders are prosecuted;**

(b) Consider amending the Criminal Code and the Criminal Procedure Code to ensure that persons convicted of trafficking receive punishments that reflect the seriousness of the crime;

(c) Ensure the full implementation of the Law on the Movement and Stay of Aliens and its by-law on protection of victims of trafficking;

(d) Ensure that victims of trafficking obtain redress and have an enforceable right to fair and adequate compensation.

22. The Committee notes that much information was provided in the State party's report on a number of situations, but that this information was not disaggregated in the way requested by the Committee, thereby hampering the identification of possible patterns of abuse or measures requiring attention.

The State party should provide in the next periodic report detailed statistical data, disaggregated by gender, ethnicity or nationality, age, geographical region, and type and location of place of deprivation of liberty, on complaints related to cases of torture and other ill-treatment, including those rejected by the courts, as well as related investigations, prosecutions, and disciplinary and penal sanctions, and on the compensation and rehabilitation provided to the victims.

23. The State party is encouraged to disseminate widely the reports submitted by Bosnia and Herzegovina and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations. Furthermore, the Committee encourages the State party to discuss the conclusions and recommendations broadly, including with the Offices of the Ombudsman and non-governmental organizations, in particular those that submitted information to the State party and participated in the preparation of the report.

24. The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 10, 11, 15, 19 and 21 (a) above.

25. The State party is invited to submit its next periodic report, which will be considered as the combined second to fifth report, by 5 March 2009, the due date of the fifth periodic report
