



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

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**Committee against Torture**  
**Forty-fifth session**

**Summary record of the first part (public)\* of the 961st meeting**

Held at the Palais Wilson, Geneva, on Thursday, 4 November 2010, at 3 p.m.

*Chairperson:* Mr. Grossman

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Consideration of reports submitted by States parties under article 19 of the Convention  
(*continued*)

*Second to fifth periodic reports of Bosnia-Herzegovina*

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\* No summary record was prepared for the second part (closed) of the meeting.

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*The meeting was called to order at 3.05 p.m.*

**Consideration of reports submitted by States parties under article 19 of the Convention** *(continued)*

*Second to fifth periodic reports of Bosnia-Herzegovina (CAT/C/BIH/2-5; CAT/C/BIH/Q/2)*

1. *At the invitation of the Chairperson, the delegation of Bosnia-Herzegovina took places at the Committee table.*
2. **The Chairperson**, welcoming the delegation, commended Bosnia-Herzegovina for choosing to submit its periodic report under the new optional procedure adopted by the Committee, whereby the response of a State party to a list of issues received prior to the submission of the periodic report was deemed to constitute that report.
3. **Ms. Djuderija** (Bosnia-Herzegovina) said that it was both a pleasure and an honour to present the activities carried out by Bosnia-Herzegovina in the preceding five years to implement the basic principles of the Convention against Torture and to follow up on the recommendations made after consideration of the country's initial report in 2005 (CAT/C/BIH/CO/1). The report had been prepared with the participation of representatives of the Ministry of Justice, the Ministry of Security, the Ministry of Human Rights and Refugees and the Public Prosecutor's Office of Bosnia-Herzegovina. Public prosecutors of the entities and of Brčko District, representatives of the ministries of justice of the entities and of the ministries of internal affairs and of the Brčko District police had also participated.
4. With regard to the definition of torture, measures had been taken to bring the Criminal Codes of Republika Srpska and Brčko District into line with the Criminal Code and Code of Criminal Procedures of Bosnia-Herzegovina. The harmonization process, which was also being applied to provisions on corruption, war crimes and human trafficking, was still under way.
5. Bosnia-Herzegovina was also working to improve witness protection in criminal cases and was intensifying its cooperation with the International Criminal Court. In 2009, the Council of Ministers of Bosnia-Herzegovina had set up a working group to draw up a strategy for transitional justice, which was to be submitted to the Council for adoption in 2011. The strategy included activities to improve fact-finding, initiate reconciliation proceedings, start institutional reform, establish a victim compensation scheme and set in motion a programme to erect memorials to honour and commemorate the victims of the recent conflict in Bosnia-Herzegovina.
6. Bosnia-Herzegovina had adopted a State strategy for addressing war crimes. In collaboration with the United Nations Population Fund, the Ministry of Human Rights and Refugees had launched initiatives to improve the situation of the women who had been victims of violence during the war. A bill to establish a compensation mechanism for victims of war and torture in Bosnia-Herzegovina and to harmonize those victims' rights had been drafted and was due to be submitted to Parliament shortly. Every effort had been made to harness the necessary political support for its passing, which was not, however, a foregone conclusion.
7. Bosnia-Herzegovina had ratified the Optional Protocol to the Convention against Torture in June 2008 and undertaken to set up the national torture prevention mechanism referred to in the Protocol, in collaboration with the Office of the Ombudsman and with the assistance of the Mission of the Organization for Security and Cooperation in Europe (OSCE) in the country. The Ministry of Human Rights and Refugees intended to create a commission to oversee places of detention (prisons, juvenile detention centres, police

stations and psychiatric institutions), as well as a commission to monitor shelters for child victims of violence, victims of human trafficking, asylum-seekers, undocumented migrants, refugees, older persons and persons with disabilities, and other institutions if so required.

8. The Judges and Prosecutors Training Centre provided continuing professional development courses to judges, prosecutors, defence lawyers and other officials of the justice system. In the past few years, the training of those responsible for questioning detainees had improved considerably through the provision of regular courses on the corresponding methods, techniques and regulations.

9. Special attention had been paid to investigating and conducting medical-legal enquiries into violence in prisons and detention centres. Constant efforts were also being made to improve the treatment of prisoners, particularly with regard to the provision of occupational training and activities. A permanent oversight system would soon be in place, which would make it possible for unannounced visits to be made to detention centres and for those making the visits to meet with detainees in private. It should be noted that people who had been deprived of their liberty were regularly kept informed of their rights so that they could exercise them freely.

10. Although the Institute for Missing Persons had run into difficulties, it was fully operational and fulfilling its purpose. In 2009 and 2010, it had established that, of the 27,794 persons still reported as missing, 20,000 had been located and 17,500 identified. Moreover, Bosnia-Herzegovina was continuing to combat human trafficking successfully; measures had been taken to increase victim assistance, and a national database had been created. The Ministry of Human Rights and Refugees compiled an annual report on ethnic hate crimes, some of which involved inhuman or degrading treatment. Also, the powers of the Ombudsman in Bosnia-Herzegovina had been considerably increased, particularly with regard to the Ombudsman's competence to hear complaints of discrimination.

11. The ministries of justice of Republika Srpska and of the Federation of Bosnia-Herzegovina had allocated sizeable amounts to expanding prison facilities and opening new prisons. Particular attention had also been given to the continuing professional development of those working in the administration of justice and in law enforcement. Details would be presented by the representatives of the ministries of justice and the interior of the two entities and Brčko District.

12. **Mr. Gallegos Chiriboga** (Rapporteur for Bosnia-Herzegovina) said that although the State party's considerable efforts to implement the Convention were commendable, many important challenges remained, especially in the fight against impunity for those guilty of torture and ill-treatment. It was regrettable that the State party had not managed to establish the exact number of people who had been victims of torture and ill-treatment, including rape and other forms of sexual violence, during the war. Almost 160,000 criminal cases were reportedly still pending, of which between 6,000 and 16,000 were believed to involve war crimes. Those figures required explanations, as did the reports that the Constitutional Court's rulings on missing persons cases would not be enforced. He asked what was being done to ensure that the Missing Persons Act was applied and that war crimes were properly investigated.

13. In light of the information provided by the delegation and in the report regarding the definition of the crime of torture in domestic legislation, it was essential that the State party should adopt a definition wholly in keeping with the one used in the Convention. As to the criminalization of human trafficking, the Council of Europe Convention on Action against Trafficking in Human Beings had been in force since 1 May 2008, and the Council of Europe Office for Democratic Institutions and Human Rights (ODIHR) had undertaken to analyse the compliance of Bosnia-Herzegovina's legislation with the pertinent international

norms. He asked the delegation to present the conclusions of that analysis and report on the ensuing follow-up.

14. He requested more details on the role of the Ombudsman in prison oversight, specifically the conditions under which the Ombudsman was granted access to detention centres. As to the implementation of article 3 of the Convention, according to data provided by Amnesty International, unfair procedures had been introduced, within the framework of counter-terrorism efforts, to remove the citizenship or permanent residency status of some 1,500 foreigners who had entered the country between 1992 and 1995. Over 400 people had already been affected by such procedures, which was likely to result in their deportation to countries in which they ran a serious risk of being tortured or ill-treated. He asked the delegation to comment on the matter.

15. He also wished to know whether steps had been taken by the State party to ensure that asylum-seekers were given immediate refuge and allowed to make their claim the moment they arrived in the country, whether the fundamental fairness and swiftness of asylum procedures was ensured, whether domestic legislation on asylum complied with international refugee and human rights law, whether the regulations on the prolonged holding of asylum-seekers had been modified, and whether the procedural rights of asylum-seekers were fully respected.

16. He requested information on whether the provisions of article 4 of the Convention had been incorporated into domestic law and for examples of court decisions based on the application of that article, specifically with regard to the extent to which penalties for acts of torture took into account their grave nature. The Committee wished to receive a report on the rape statistics, which, according to paragraph 102 of its report, the State party collected. The fact that no data were collected on other crimes against sexual freedom and morality or on allegations of discriminatory treatment in criminal proceedings (para. 135) called for an explanation.

17. The Committee wished to know to what extent the State party had followed up on the recommendations of the Representative of the Secretary-General on the human rights of internally displaced persons contained in the report on his visit to Bosnia-Herzegovina (E/CN.4/2006/71/Add.4), especially regarding the need to investigate properly the offences and acts of violence committed against displaced persons and to prosecute the perpetrators. Details were also needed on the criteria according to which data on the issues covered by the Convention were broken down, on the existence of recourses allowing subordinates to refuse to obey orders involving acts of torture, and on the scope and application of the "Rules of the Road" procedure to investigate war crimes and carry out exhumations in all parts (and entities) of Bosnia-Herzegovina and the Federation, as well as in Republika Srpska.

18. **Mr. Wang** Xuexian (Second Rapporteur for Bosnia-Herzegovina), noting that paragraph 227 of the report stated that "Most of the recommendations of the Ombudsman of Bosnia and Herzegovina were partly satisfied," asked which recommendations had been implemented and which had not. He requested details on the composition and appointment procedures for the members of the independent commission formed to protect human rights in Republika Srpska (para. 230). He asked about the measures taken by the State party to address prison overcrowding, prison violence and the shortage of prison staff because, according to some sources, there were only two prison guards for every 500 inmates.

19. He asked the delegation to comment on the allegations made by NGOs that complaints of police brutality were rarely investigated. He wished to know how staff of the Office for Public Complaints were recruited and how that unit of the Federal Ministry of Internal Affairs could independently investigate complaints and petitions which were dealt with by the Ministry. It was encouraging to read in paragraph 330 of the report that about

95 per cent of the witnesses who had been offered the protection and support of the Special Division for Witness Protection had testified in criminal proceedings involving war crimes. According to several sources, however, witnesses were still being threatened and he asked what the State party intended to do about it. He also wished to know the status of the Law on the Rights of Victims of Torture and Civil Victims of War mentioned in paragraph 333. It was very important that victims received not only financial compensation but also moral reparation, and he asked whether the State party had set up a victim compensation fund.

20. On the subject of human trafficking, he wished to know what measures had been taken to encourage victims to exercise their rights, given that the prolonged duration of proceedings, as acknowledged by the State party in paragraph 339 of its report, discouraged victims from filing lawsuits. The same paragraph stated that the Minister of Security of Bosnia-Herzegovina had signed an agreement with an NGO to provide legal assistance to victims; he was surprised that the State would delegate such matters to an NGO. He asked the State party to provide general information on the measures it had taken to tackle the root causes of human trafficking.

21. Finally, he requested more specific details on the duration of the solitary confinement that could be imposed on a detainee and asked what the “reinforced surveillance measures,” mentioned in paragraph 352 of the report, involved.

22. **Mr. Gaye** said that he was surprised to read in paragraph 24 of the report that the State party maintained that it was not necessary to take special legal and administrative measures to provide guarantees that neither “exceptional circumstances” nor “an order from a superior officer or a public authority” could be invoked as a justification of torture. Comments on the matter would be welcome. Given that paragraph 73 of the report stated that persons deprived of their liberty were informed in their native language of the reasons for their arrest, the right to take a counsel of their own choice and their right of access to a doctor, he wished to know if proceedings were declared invalid when those legal guarantees had not been upheld.

23. He asked what recourses were available to people who had been issued with a deportation order and wished to know whether expulsion orders were suspended during appeal proceedings. According to the figures given in paragraph 222 of the report, people could be held in police custody for over 6 months, including in the Brčko District. He wished to know under which circumstances that could occur. He also asked for details on the possibilities and procedures available to convicted persons for bringing matters before the courts, the Ministry of Justice and the Ombudsman, as referred to in paragraph 272 of the report. Rape was currently punishable only if accompanied by a threat or act of violence, yet absence of consent should suffice to define the offence of rape. He wished to know the delegation’s opinion on the matter and asked why so few cases of rape were prosecuted.

24. **Mr. Mariño Menéndez** asked whether the same definition of torture was used by the Federation of Bosnia-Herzegovina, Republika Srpska and the Brčko District or whether the applicable criminal provisions varied between entities. He also wished to know how the distribution of competence among the courts worked, for example, whether those charged with criminal offences were tried in the first instance only in the place where the offence had been committed regardless of their nationality. He asked whether the State party had adopted a nationality act and whether it was possible to hold dual Bosnian-Serbian nationality. Clear explanations of the status and identity of the citizens of Bosnia-Herzegovina would be welcome.

25. He wished to know whether Bosnia-Herzegovina had enacted a law on statelessness and whether it had ratified the Convention relating to the Status of Stateless Persons or the Convention on the Reduction of Statelessness. He asked whether Bosnia-Herzegovina had

had the occasion to request diplomatic assurances regarding torture or ill-treatment in extradition cases, whether current extradition treaties applied across both the Federation of Bosnia-Herzegovina and Republika Srpska and whether future ones would do so as well.

26. **Mr. Bruni** said that, according to the State party's report (paras. 25–37), the Ombudsman had made several visits to different prisons in the Federation of Bosnia-Herzegovina and Republika Srpska and that most of the recommendations made as a result of those visits had been satisfied (para. 227). He wished to know what those recommendations had been, which aspects had not been fulfilled and for what reasons. In keeping with the Convention, situations in which persons were left entirely at the mercy of others posed the risk of torture and ill-treatment and called for preventive measures. The statement in paragraph 39 of the report that in an institution for mentally disabled persons “there is no torture and ill treatment and therefore the measures to prevent torture and abuse are not necessary” completely violated the spirit of the Convention. He asked whether the State party would be willing to reconsider its position on the matter and introduce the corresponding preventive measures.

27. As to the right to a medical examination by a doctor upon admission to a detention centre, he wished to know whether detainees were free to appoint the doctor of their choice, how the independence of the doctors performing such examinations was guaranteed and, if the doctors were public servants, to which ministry they were attached. In its report, the State party had stated that the Council of Ministers had not reached a consensus regarding the adoption of the Road Map for the return of nationals of Bosnia-Herzegovina detained in Guantanamo (paras. 85–87). As the report covered events up to 2007, he wondered whether the situation had changed since then.

28. Paragraph 229 of the State party's report indicated that authorized officials of the Ministry of Justice conducted prison inspections at least once a year, and he wished to know whether any recent inspections had been carried out and what the results had been. As to the video surveillance systems installed in certain correctional facilities, he asked what was meant by the statement that the systems were not used in investigations (para. 232). He also asked whether audio or video recordings were made of interrogations.

29. With reference to paragraph 241 of the report, he wished to know whether the prison officer charged with causing bodily harm who was awaiting trial at the time that the report had been submitted had since been tried and, if so, what the outcome of the trial had been. He also wished to know whether solutions had been found to the overcrowding problems in the Foča and Banja Luka prisons and what the occupancy rate was in the prisons of Bosnia-Herzegovina. He requested information on the types of cells used for the solitary confinement of prisoners who committed serious violations of prison regulations (para. 352) and whether the use of solitary confinement was overseen by a judicial authority. He wished to know the delegation's opinion on the report published in 2008 by Amnesty International after its visits to various detention centres in Bosnia-Herzegovina. That report contained many allegations of ill-treatment inflicted by police and prison staff on detainees in their custody, and he asked, if it was true that such treatment was widespread, what measures the State party intended to take to eradicate them.

30. **Ms. Gaer** commended the State party on the quality and content of its report and especially on its efforts to provide detailed statistics. She requested more information on how judicial cooperation between the two entities worked and on how effective it was. That question was particularly important because the work of the International Criminal Tribunal for the Former Yugoslavia was coming to an end and, increasingly, cases involving offences committed during the war would be dealt with by domestic courts.

31. In the report on its visit to Bosnia-Herzegovina in 2007, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

stated that the presence of weapons and restraints of various kinds had been detected in the interrogation rooms of several police stations, suggesting that unlawful methods were being used to obtain information from detainees or to punish them. In its response to the CPT report, the State party had said that it had drawn the attention of all the authorities to the issues raised, but she wished to know what specific steps had been taken to address the problems and would appreciate any information that the delegation could provide on the subject. In the report on its most recent visit to Bosnia-Herzegovina, in 2009, CPT had commented that a culture of violence prevailed among inmates and that prison staff failed to ensure effective control at the Zenica prison. She wished to know how the situation in the prison had evolved since 2009.

32. In its report to the Committee, Amnesty International noted that, contrary to the legislation of the Federation of Bosnia-Herzegovina on compensation for civilian victims of the war, the legal provisions of Republika Srpska on the subject did not recognize victims of sexual violence as a specific category of victim, which penalized such victims when they sought compensation. Amnesty International had therefore recommended that Republika Srpska should amend its legislation to grant special status to the victims of sexual violence, and she wished to know the delegation's comments on that recommendation. The Amnesty International report also indicated that, under the legislation of the Federation of Bosnia-Herzegovina, compensation awarded to civilian war victims could not exceed 70 per cent of the amount of compensation awarded to war veterans. She wished to know the reasons behind the difference in treatment.

33. Paragraph 239 of the State party's report stated that information and complaints of unprofessional behaviour of prison officials were "checked by the managers of correctional institutions" and that, if reasonable grounds for believing them were found, disciplinary proceedings were instigated. She wished to know whether an investigation was systematically opened when violations were reported and whether prison officials involved in such violations could be subject to criminal prosecution. With regard to paragraph 259 of the report, she wondered about the effectiveness of the unit in charge of detecting cases of police misconduct and sexual violence in places of detention, as it had detected only one such case in the previous five years. Comments on the matter would be most welcome.

34. **Ms. Belmir** said that, based on information provided to the Committee, the complexity of the State party's legal system, which reflected its internal organization, appeared to affect the way the law was applied. It seemed that individuals could be judged differently for the same offence depending on the jurisdiction to which their cases were referred and that judges' decisions were influenced by ethnic background and political considerations. If so, she wished to know whether the State party intended to reform the judicial system in order to ensure that the principle of equality of all individuals before the law was effectively upheld.

35. Although she welcomed the fact that a bill in favour of victims of torture and civilian victims of the war was under way, according to the NGOs which had met with the Committee the day before, the provisions on compensation in the bill did not fully comply with article 14 of the Convention and the amount of compensation could vary according to the applicant's place of residence. Also, the relatives of missing persons would be obliged to declare them dead before they could apply for compensation, even if they had no proof that that was the case. She asked the delegation to comment on that information.

36. **Ms. Sveaass** said that, according to the reports published in 2007 and 2009 by CPT after its visits to Bosnia-Herzegovina, the Commission for Protection of Persons with Mental Disorders was still not operational in Republika Srpska. She wished to know whether the problem existed in that entity only and what measures had been taken to fulfil the recommendation of CPT that the State party should take urgent steps to ensure that the Commission became operational in the immediate future. She also requested details on the

conditions of internment in the Sokolac Psychiatric Hospital, where the distinction between voluntary and involuntary admission seemed to be blurred. Apparently, some patients who had consented to their internment had not been authorized to leave the hospital after completing their prescribed period of treatment. Moreover, in the hospital's acute patients' ward, inmates were confined to their rooms for 22 hours a day; few outdoor activities were arranged for them and care chiefly consisted of medication, which was worrying. She asked the delegation to comment.

37. Noting that the Ombudsman, in his report of October 2010, had recommended that the competent authorities should take all necessary steps to establish a legal framework that fully defined and protected the rights of persons with disabilities, she hoped that that recommendation would be implemented forthwith and asked whether the State party intended to ratify the Convention on the Rights of Persons with Disabilities.

38. According to the replies of Bosnia-Herzegovina to the 2009 report of CPT, minors continued to be held in custody alongside adults, particularly in the provisional detention centre in Sarajevo. She asked the delegation to report whether that situation had changed and whether measures had been taken to follow up on the memorandum of understanding whereby all the inmates of the Forensic-Psychiatric Ward of the Zenica Prison were supposed to be transferred to a renovated facility by December 2005. Finally, she wished to know the status of the bill on victims of torture and of civilian war victims and whether it would be accompanied by a rehabilitation plan for victims. In Bosnia-Herzegovina, such a plan of action could focus on providing psychological support to the women who had been raped during the war, to their families and to the children born as a result of those rapes, as well as to relatives of missing persons, particularly during moments of high stress, such as at the opening of mass graves or the exhumation of the corpses.

39. **The Chairperson** asked the delegation to indicate how long it would be before the work to harmonize the criminal legislation of Republika Srpska and Brčko District would be concluded. He wished to know whether a law enforcement officer who knew that a superior used torture or ill-treatment was obliged to report such conduct and whether there was a mechanism to monitor adherence to the professional standards and ethical codes mentioned in paragraph 20 of the State party's report. He asked whether the ombudsman institutions investigated allegations of psychological torture, whether there were mechanisms for cooperation among those institutions and how much progress had been made in implementing the 2006 Ombudsman Act, which aimed to merge the three institutions into one.

40. He asked under which circumstances people could be placed in solitary confinement, how often that measure was applied and with what objective. He asked the delegation to provide examples of cases in which the Guidelines on Treatment of Persons Deprived of Their Liberty had not been followed and to indicate the measures taken as a result. He would also like statistics on the requests for medical attention submitted by detainees and the response (request accepted or denied) in each case.

41. According to the information provided in the State party's report on the case of the "Algerian group" (paras. 77–87), the Council of Ministers had still not approved the Road Map for the return of nationals of Bosnia-Herzegovina detained in Guantanamo, which the Council had been considering since 2007. He wished to know whether a solution to that impasse might be expected in the near future. He requested details on the State party's position on the use of diplomatic assurances as a means of avoiding violations of the principle of non-refoulement and whether the State party had procedures and guidelines in place for detecting victims of human trafficking.

42. According to the information provided by NGOs, staff at the Banja Luka and Zenica prisons used violence and restraints on detainees. He wished to know whether disciplinary

action had been taken against the staff allegedly involved. As the Ombudsman's recommendations on the subject had been only partially implemented, he requested information on what still remained to be done and how many complaints filed with the Ombudsman of Bosnia-Herzegovina had been investigated since 2007. He also requested statistics on the number of complaints of ill-treatment in prisons that had been lodged with the Ministry of Justice and on the follow-up given. More detailed information was needed on the measures taken to rehabilitate the victims of acts of sexual violence committed between 1992 and 1995 and the resources that the State party intended to use to ensure that minors were held separately from adults in detention centres.

*The first part (public) of the meeting rose at 5 p.m.*