



DECLARATION OF TRIAL (*Track Impunity Always*)

Association of Concentration Camp-Detainees Bosnia and Herzegovina
Association of Detained – Association of Camp-Detainees of Brčko District Bosnia and Herzegovina
Union of Concentration Camp-Detainees of Sarajevo-Romanija Region
Association of Concentration Camp-Detainees from the Homeland War in Vareš
Regional Association of Concentration Camp-Detainees in Višegrad
Association of Families of Killed and Missing Defenders of the Homeland War from Bugojno Municipality
Association of Families of Missing Persons in Ilijaš
Association of Families of Missing Persons in Kalinovik (“Istina-Kalinovik ‘92”)
Association of Families of Missing Persons of the Sarajevo-Romanija Region
Association of Relatives of Missing Persons of the Vogošća Municipality
Association Women-Victims of War
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1. Presentation of the Organisations

This statement is delivered by TRIAL (*Track Impunity Always*) also on behalf of 19 Bosnian associations that work with relatives of missing persons, former camp-detainees, and victims of rape or other forms of sexual violence perpetrated during the 1992-1995 war in Bosnia and Herzegovina (BiH). This submission is therefore centred on the violations suffered by these specific groups of people and the problems they currently face.

2. Plan of the Statement

The statement addresses the following issues: (1) the non-implementation of some of the recommendations issued during the 1st cycle of the UPR; (2) the non-implementation of the Law on Missing Persons; (3) the status of draft legislation relevant for victims of gross human rights violations during the war; (4) the application of the Criminal Code of the Socialist Federal Republic of Yugoslavia instead of the 2003 Criminal Code to try those accused of crimes under international law committed during the conflict; and (5) the inadequacy of domestic criminal legislation on rape, torture, and enforced disappearance.

For each of the above-mentioned five subjects, concrete suggestions on **questions that should be posed to the representatives of BiH during the official review**, and on **recommendations to be eventually formulated**, will be made.

3. Statement

I. Follow-up Information on the Recommendations from the 1st UPR Cycle

After the 1st UPR cycle, BiH partially accepted recommendations formulated by Switzerland and Australia concerning **witness protection**, the implementation of the **National War Crimes Processing Strategy**, and on the adoption of the **Transitional Justice Strategy**.

a) Witness Protection

The psychological support provided to witnesses and victims before, during and after war crimes trials remains insufficient. The situation is particularly critical in Republika Srpska and before district prosecutors' offices, where **the government suspended the relevant budget line, thus worsening an already precarious situation where local Centres for Social Work were in charge of these tasks without having the necessary training to do so.**

Although new departments to offer support to witnesses during war crimes trials have been set up in different cities, this was done with the support of the United Nations Development Programme (UNDP). If BiH authorities do not provide for adequate financial and human resources to ensure future activities, the sustainability of these new departments may be at risk.

The provision of psychological support before the competent authorities across the country is far from homogenous. In Banja Luka there is one person to provide psychological support during trials at the Court, but no one offers support within the Prosecutor's Office. In East Sarajevo there is only one psychologist working at the district Prosecutor's Office and none at the Court.

With regard to the legal framework applicable to victims and witness protection and support, on 29 April 2014 the **Law on Witness Protection Programme in BiH has been adopted**. However, this law **applies only to witnesses testifying before the Court of BiH and not to district courts in Republika Srpska, cantonal courts in the Federation of BiH, or courts in the Brčko District**.

Questions to be Posed during the Official Review

- What measures have been adopted to guarantee adequate and continuous psychological support to victims and witnesses prior, during and after war crimes trials?
- What measures have been adopted to ensure that in Republika Srpska the necessary budget to provide support to witnesses and victims at war crimes trials is reactivated without delay and secured for the forthcoming months?
- Does BiH envisage extending the measures of support and protection foreseen under the recently adopted Law on Witness Protection Programme also to those testifying before district, cantonal and other lower courts?

Recommendations

BiH must ensure that **a comprehensive programme of victims and witness protection and psychological accompaniment is granted at all levels** prior, during and after the trial takes place.

The witness protection and support measures foreseen under the recently adopted Law on Witness Protection Programme must be **granted also before lower courts in the different Entities**.

b) The National War Crimes Prosecution Strategy

Although moderate progress has been made in the implementation of the **National War Crimes Prosecution Strategy**, **more than 1,000 war crimes related investigations are still ongoing across the country**. In order to be effective and sustainable, this requires additional human resources (esteemed by the High Judicial Prosecutorial Council in the number of 28 new prosecutors). In November 2013 and March 2014 respectively, the Prosecutor's Office of BiH appointed a total of 18 new prosecutors to work on war crimes cases.

Unless more resources are employed in the implementation of the strategy without further delay, **it is unlikely that the deadlines set will be respected and that the most complex cases will be completed by the end of 2015.**

Questions to be Posed during the Official Review

- What measures have been adopted to ensure that the necessary human and material resources are allocated to enable the timely implementation of the National War Crimes Prosecution Strategy?
- What actions are foreseen to ensure that the deadlines established under the National War Crimes Prosecution Strategy are duly respected?

Recommendation

BiH must ensure that the National War Crimes Prosecution Strategy is **duly implemented without any further delay and that adequate financial and human resources are allocated to guarantee that the pace of proceedings increases.**

c) The Transitional Justice Strategy

In the commitments undertaken in 2010, BiH affirmed that the development of a **Transitional Justice Strategy** was “under way”. A working document containing the draft Transitional Justice Strategy was expected to be presented for adoption to the Parliamentary Assembly during the summer of 2012. However, at October 2014 **the draft has not yet been presented for adoption to the Parliamentary Assembly.**

Questions to be Posed during the Official Review

- When does BiH plan to formally adopt the Transitional Justice Strategy?
- What steps have been taken to secure the necessary means and resources for the implementation of the Transitional Justice Strategy?

Recommendation

BiH shall ensure that the **Transitional Justice Strategy** is adopted and implemented without any further delay and the necessary funding is secured.

d) Women Victims of Rape and Other Form of Sexual Violence during the War

BiH accepted a number of recommendations concerning **women victims of rape or other forms of sexual violence during the war**, put forward respectively by Chile, Spain and Austria.

With regard to **trials concerning people accused of these crimes** committed during the war, the **results are alarmingly poor**. From 2005 until present, the Court of BiH prosecuted little more than **50 cases** that had elements of sexual violence. The mentioned number, compared with the figures of victims of rape during the war (between 20,000 and 50,000), suggests that **impunity remains rampant**.

When trials for the crimes concerned actually took place, two main problems have been reported. First, in some cases **the crime is dealt with as “ordinary rape” instead of a crime against humanity or a war crime**, with the consequence that **perpetrators get significantly lighter sentences and victims and witnesses do not enjoy the special measures of protection they would be entitled to**. Second, although criminal courts have the option to award total or part of a claim for compensation to the injured parties or to refer them to civil actions, victims are always **referred to civil actions**. This practice **hampers the access to compensation of the majority of victims**, given that to launch a civil action they would need a lawyer to represent them, and, in almost the totality of cases, they cannot afford it, while **free legal aid is not granted by the State**.

In Republika Srpska, the Law on Civilian Victims of War **does not recognise victims of rape as a separate category of civilian victims of war** and establishes a statute of limitations for requests concerning disability pensions that expired in 2007.

The process of drafting and adoption of the **“Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence”**, coordinated by the United Nations Population Fund (UNPFA) and the BiH Ministry of Human Rights and Refugees was launched at the end of 2010. The finalisation of the draft programme was expected by the end of 2011 and was repeatedly postponed. At October 2014, **the draft programme has not yet been submitted to the Council of Ministers of BiH for approval**.

Questions to be Posed during the Official Review

- What actions are foreseen to tackle the impunity that exists with relation to victims of rape or other forms of sexual violence during the war? More specifically: what actions are taken to ensure an increase in the number of proceedings concerning these crimes and to ensure that they are dealt with as crimes against humanity or war crimes instead of ‘ordinary rape’?
- What measures have been undertaken to guarantee that criminal courts award compensation to victims of war-time sexual violence, instead of systematically referring them to civil actions?
- What measures have been undertaken to ensure that victims of rape or other forms of sexual violence in Republika Srpska have access to disability pension and are recognized as civilian victims of war?
- When does BiH plan to formally adopt the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence?
- What steps have been taken to secure the necessary means and resources for the implementation of the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence?

Recommendations

BiH must **prioritise the trial of persons accused of these crimes**, ensuring adequate support and protection to victims and witnesses. BiH must ensure that crimes of sexual nature committed during the war are dealt with as crimes against humanity or war crimes, and sanctioned in accordance with their gravity.

BiH must guarantee that **criminal courts avail themselves of their power to award compensation to victims of sexual violence, instead of systematically referring them to civil actions.**

BiH must ensure that all victims of rape or other forms of sexual violence during the conflict, **including those residing in Republika Srpska, are recognized as civilian victims of war** and, as such, are **entitled to social allowances, which shall not be subjected to any statute of limitations.**

BiH must ensure that the **Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence is referred for approval to the Council of Ministers of BiH without further delay.**

e) Freedom of Expression and Human Rights Defenders

In its 2010 commitments, BiH partially accepted recommendations put forward by Switzerland and Poland to intensify its efforts to ensure the full and unhindered exercise of the freedom of expression.

However, restrictions on freedom of expression and assembly, as well as prohibitions to hold public commemorations, were reported in Prijedor (Republika Srpska) in the past four years. Between 2011 and 2012 **civil society organisations headquartered in Prijedor were subjected to attacks on their premises**, and so far **no one has been prosecuted and sanctioned for those events.**

Questions to be Posed during the Official Review

What measures have been undertaken to investigate episodes of harassment and 6 defamation of those participating to peaceful assemblies and commemorations and ensure that those responsible are identified, prosecuted, and sanctioned?

Recommendations

BiH must ensure that **restrictions on freedoms of expression and peaceful assembly comply with the strict requirements of Arts. 19 and 21 of the International Covenant on Civil and Political Rights.**

BiH must guarantee that **episodes of harassment and defamation of those participating to peaceful assemblies and commemorations of war crimes are duly investigated** and, where appropriate, prosecuted and sanctioned.

II. Other Issues of Concern and Recommendations

A) The Non-Implementation of the Law on Missing Persons

On 17 November 2004 the Law on Missing Persons entered into force. **Almost 10 years later, several provisions remain dead letter.** In particular, the **Missing Persons Institute** experiences troubles with regard to the **appointment of the members of its different managing bodies**; the **Central Record of Missing Persons**, which should have been completed by 1 January 2009, **has not been completed yet**; and the **Fund for the Support of Relatives of Missing Persons**, which should have been established by 17 December 2004, **does not exist**.

Questions to be Posed during the Official Review

- When does BiH expect the Central Record of Missing Persons to be completed?
- What actions have been taken to ensure that the Fund for Support of Relatives of Missing Persons is established?

Recommendations

BiH must ensure that the **Law on Missing Persons is fully enforced without any further delay**. In particular, the **Central Record of Missing Persons must be completed and the Fund for Support of Missing Persons must be established**.

All the posts of the management of the Missing Persons Institute must be filled through a regular and transparent election process and its funding must be secured.

B) The Status of Draft Legislation Relevant for Victims of Gross Human Rights Violations during the War

Since 2006 BiH has been pledging that the adoption of a **Law on the Rights of Victims of Torture was “imminent”**. However, **at October 2014 no such law has been adopted**. Since August 2012, the situation deteriorated especially for victims of torture residing in Brčko District, who are experiencing significant troubles also in accessing measures of social support.

Similarly, despite several pledges, **BiH has not yet adopted a Law on Free Legal Aid.**

Questions to be Posed during the Official Review

- When does BiH expect to approve the Law on the Rights of Victims of Torture?
- When does BiH expect to approve the Law on Free Legal Aid and ensure adequate budget for its implementation?

Recommendation

BiH must ensure that the **Law on the Rights of Victims of Torture and the Law on Free Legal Aid are adopted without any further delay and the funding for their implementation is secured.**

C) The Application of the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY) instead of the 2003 Criminal Code

Following a change in the jurisprudence of the Constitutional Court of BiH, a considerable number of persons **convicted for war crimes and crimes against humanity are obtaining the reopening of proceedings and the reduction of sentence**, pursuant to the application of the SFRY Criminal Code. Many of these persons have also been **released pending retrial, fostering a climate of fear among witnesses, victims, and survivors.**

The **SFRY Criminal Code prescribes lower mandatory maximum and minimum penalties in war crimes cases than the 2003 Criminal Code** and it **does not criminalise crimes against humanity.**

Questions to be Posed during the Official Review

- What actions have been undertaken to ensure that those accused of crimes committed during the war, and in particular of genocide and the most serious war crimes, are prosecuted pursuant to the provisions of the 2003 Criminal Code in conformity with the gravity of their crime?
- What measures have been taken to ensure that persons already convicted for war crimes or crimes against humanity remain detained while awaiting for a new examination of their cases?

Recommendations

BiH must ensure that those accused of crimes committed during the war, and in particular of genocide and the most serious war crimes, **are investigated and prosecuted pursuant to the provisions of the 2003 Criminal Code** instead of those of the Criminal Code of the SFRY, taking into account the extreme gravity of the crimes concerned.

Authorities must take all necessary measures, to ensure, wherever required, the continued detention of those convicted awaiting a new examination to be conducted by the Court of BiH.

D) The Inadequacy of Criminal Legislation on Rape, Torture and Enforced Disappearance

The BiH criminal legal framework on sexual violence, torture, and enforced disappearance both at the national and the Entity level is inadequate. **Torture, enforced disappearance, rape or other forms of sexual violence are either not codified at all or, when they are, domestic provisions do not meet international standards.**

Questions to be Posed during the Official Review

Is BiH planning to fully align its legislation on torture, enforced disappearance and sexual violence, both at the national and at the Entity level, with international standards?

Recommendation

BiH must **amend its domestic legislation, both at the national and the Entity level, on torture, enforced disappearance and sexual violence and bring it in line with international standards.**