



**Follow-up Report on the Human Rights Committee's
Concluding Observations on Bosnia and Herzegovina**

CCPR/C/BIH/CO/3

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Submitted by TRIAL International

Table of contents

Contents	Paragraphs
I. Background	1 – 3
II. Prosecution for Crimes against Humanity and Other Crimes under International Law and Protection of Victims and Witnesses	
1. Adopting the Revised National War Crimes Strategy	4 – 8
2. Denial, Trivialisation, Justification or Condonation of Genocide, Crimes against Humanity or War Crimes	9 – 12
3. The Free Legal Aid System	13 – 15
4. Harmonization of Jurisprudence	16 – 18
III. Access to Justice and Reparation of War Victims	
5. The Ongoing Problems with Access to Effective Remedies – Application of Statute of Limitations and Imposing High Court Fees	19 – 23
6. Amending the Codes of Civil Procedure	24 – 25
7. Deficiencies of the Law on Protection of Victims of Torture of Republika Srpska	26 – 29
IV. The Lack of Implementation of the Views on Individual Communications on Cases of Enforced Disappearance	30
V. Conclusions and Recommendations	31 – 33
VI. The Association Submitting the Follow-up Report	

I. Background

1. On 29 March 2017, the Human Rights Committee (hereinafter: HRC) adopted its concluding observations¹ on Bosnia and Herzegovina (hereinafter: BiH), formulating a number of conclusions and recommendations. It requested BiH to provide, within one year of the adoption of the concluding observations, information on paragraphs 14 (crimes against humanity and other international crimes), 20 (enforced disappearance and missing persons) and 36 (refugees and displaced persons), as well as to submit its next periodic report by 29 March 2022.
2. On 9 August 2018, the HRC published the Addendum – Information received from BiH on follow-up to its concluding observations.²
3. Due to its mandate and expertise, TRIAL International would like to submit an alternative follow-up report on the level of implementation by BiH of the concluding observations. Among the recommendations identified by the HRC in the framework of the follow-up procedure, the present report focuses on those included at para. 14 of the concluding observations, concerning the prosecution of crimes against humanity and other crimes under international law, the protection of victims and witnesses, and access to justice and reparations of war victims. Mention will also be made to the lack of implementation by BiH of the Views on individual communications concerning cases of enforced disappearance perpetrated during the conflict. This subject is included given its pertinence with the other issues at stake, and the recommendation contained in para. 20 of the HRC concluding observations, and because it is illustrative of BiH's general attitude vis-à-vis the implementation of recommendations by international human rights mechanisms. The exclusion of other subjects from the present report does not imply by any means that TRIAL International finds that BiH fully complies with all its obligations under the International Covenant on Civil and Political Rights (hereinafter: the Covenant) or that it has implemented all the other recommendations contained in the concluding observations adopted by the HRC in 2017.

II. Prosecution for Crimes against Humanity and other Crimes under International Law and Protection of Victims and Witnesses

1. Adopting the Revised National War Crimes Strategy

4. In its 2017 concluding observations, the HRC reiterated the concern about the slow pace of prosecution for crimes under international law committed during the conflict, and noted that the goal of completing the investigation and prosecution of

¹ Human Rights Committee (HRC), *Concluding Observations on the Third Periodic Report of Bosnia and Herzegovina*, doc. CCPR/C/BIH/CO/3 of 29 March 2017.

² *Addendum, Information received from Bosnia and Herzegovina on Follow-up to the Concluding Observations*, doc. CCPR/C/BIH/CO/3/Add.1 of 9 August 2018.

the most complex cases by the end of 2015 as foreseen in the National War Crimes Processing Strategy has not been achieved.

5. The State party reported³ that the need for a Revised Strategy has arisen and that the Council of Ministers established a working group for drafting the amendments to the Strategy. After its establishment in April 2017, on 16 May 2018, the working group drafted and submitted a proposal for the Revised National War Crimes Prosecution Strategy to the Council of Ministers of BiH for consideration and adoption.
6. The Revised Strategy sets a goal to ensure the prosecution of the most complex and top priority war crimes cases before the Court of BiH and Prosecutor's Office of BiH and other cases before entity/Brčko District courts by the end of 2023. The document provides new timelines for the completion of all war crimes cases; complexity criteria and efficient distribution of cases to lower-level courts in BiH's entities (Federation of BiH and Republika Srpska) and Brčko District; harmonization of case law; assessment of human and material resource needs; regional co-operation mechanisms to adequately address extradition of suspects with dual citizenship and referring war crimes cases from one country to another and enhanced supervision over the implementation of the Strategy by the Supervisory Body⁴. As indicated in the draft strategy, the State prosecution has more than 550 unresolved war crimes cases in which more than 4,500 perpetrators have been identified, and many perpetrators are still unknown.⁵ The High Judicial and Prosecutorial Council (hereinafter: HJPC) supported the draft Revised Strategy.
7. Since then, **two years have passed and the Council of Ministers of BiH has not considered nor adopted the Revised Strategy, removing the item from the agenda of its sessions.**⁶
8. This remains one of the most pressing issues of justice reforms in BiH, especially bearing in mind that 25 years passed since the end of the war. Due to overwhelming number of unsolved war crimes cases in BiH, and considering the fact that more and more witnesses and perpetrators die thus hindering or making prosecution impossible all together, it is imperative for the fight against impunity that the State party adopts without any further delay the Revised Strategy. This is confirmed by the recent report of the Mission to BiH of the Organization for Security and Co-operation in Europe (hereinafter: OSCE), where it is noted that the

³ *Ibid.*, paras. 2-12.

⁴ Supervisory Body for implementation of the Strategy is a body in charge of monitoring efficiency and quality of implementation of the measures provided by the Strategy. It was established by the Council of Ministers of BiH Decision on Establishment of the Supervisory Body for Implementation of the National War Crimes Processing Strategy (Official Gazette BiH no. 92/09).

⁵ See <http://detektor.ba/en/bosnia-hopes-to-complete-war-crimes-cases-in-2023/>

⁶ See: <https://www.nezavisne.com/novosti/bih/Revidirana-strategija-za-procesuiranje-ratnih-zlocina-skinuta-sa-dnevnog-reda/582519>; <https://balkaninsight.com/2019/07/24/bosnian-ministers-fail-to-adopt-national-war-crimes-strategy/>.

adoption of the Revised Strategy is of paramount importance and it is recommended that the Council of Ministers of BiH adopts the Revised Strategy without any further delay.⁷ Bearing in mind that the draft Revised Strategy foresees the completion of cases for 2023, and two years passed without the draft being adopted, therefore, the date of completion should be revised and updated immediately. In its concluding observations, the HRC requested BiH to expedite the prosecution of war crimes and other crimes under international law. Until the Revised Strategy is not adopted and enforced the recommendation of the HRC remains unimplemented and, in this light, the grade to be assigned to the State party is C (action not satisfactory).

2. Denial, Trivialisation, Justification or Condonation of Genocide, Crimes against Humanity or War Crimes

9. Apart from the large number of cases yet to be prosecuted, for a long time BiH society has been dealing with the denial, trivialisation, justification or condonation of genocide, crimes against humanity or war crimes. Such behaviour has been spreading rapidly, especially since the adoption of the first verdicts of the International Criminal Tribunal for former Yugoslavia (hereinafter: ICTY)⁸. The situation usually worsens prior to elections, commemorations for the victims of crimes and other wartime related events. Examples of such occurrences are the existence of mural of Ratko Mladić in Nevesinje; the dormitory in Pale named after Radovan Karadžić; decorations for Radovan Karadžić; crime rehabilitation; displaying photographs of convicted war criminals in public assemblies; the existence and legal operation of fascist organisations⁹, gathering support for convicted war criminals; commemorating the anniversary of the establishment of Herzeg-Bosnia, but also blatantly denying that certain war crimes ever took place.¹⁰ The described situation and climate have an especially disruptive effect over victims of gross human rights violations and crimes under international law committed during the conflict, many of whom have returned to their home communities and are therefore experiencing serious re-victimisation. Moreover, the circumstances described are troublesome for society at large.
10. Domestic legislation must ensure that such behaviours are prohibited and sanctioned. "Banning genocide denial by law is a way to condemn historical crimes,

⁷ OSCE Mission to BiH, Spot report: *Observations on the National War Crimes Processing Strategy and its 2018 Draft Revisions, including its relation to the Rules of the Road „Category A“ cases*, available at <https://www.osce.org/mission-to-bosnia-and-herzegovina/397541?download=true>

⁸ See: <https://www.dw.com/hr/do%C4%8Dek-iz-snova-za-ratnu-zlo%C4%8Dinku/a-4837402>; <https://zastone.ba/en/csos-demand-the-resignation-of-hdz-officials-for-openly-supporting-criminal-dario-kordic/>; <https://balkaninsight.com/2014/11/12/vojislav-seselj-arrives-to-serbia-after-11-years/>; <https://nap.ba/news/40860>.

⁹ There are sixteen Chetnik associations in BiH, all registered within the courts of Republika Srpska. See <https://www.klix.ba/vijesti/bih/u-bih-registrovano-16-cetnickih-udruzenja-svakom-rjesenje-izdato-u-sudovima-rs-a/190311042>; Two Bosnian courts refuse to ban Chetnik Nationalist Groups, See <https://balkaninsight.com/2020/03/12/two-bosnian-courts-refuse-to-ban-chetnik-nationalist-groups/>

¹⁰ Lejla Gačanica and Caroline Finkeldey "Calling War Atrocities by their Right name – Regulating a Ban on Denial, Trivialisation, Justification or Condonation of Genocide, the Holocaust, Crimes against Humanity or War Crimes", 2019, available at <https://trial.ba/wp-content/uploads/2020/02/Calling-War-Atrocities-by-Their-Right-Name.pdf>; p. 12-13.

but also a way to restore the dignity of victims”.¹¹ Attempting several times to provide regulation through separate laws was as unsuccessful as attempting to make amendments to existing laws to regulate this matter.¹²At the State level, there were several attempts to provide regulation through separate laws at the State level, in 2011 and 2016, both of which were unsuccessful. ¹³ Afterwards, during 2017, there was a proposal of amendments to the BiH Criminal Code¹⁴, which received a general majority of votes but failed to receive an entity majority of votes from Republika Srpska.

11. At present, the Criminal Code of the BiH Federation is the only code that prescribes the act of Inciting National, Racial or Religious Hatred, Discord or Hostility as a criminal offense, in its Article 163 (5).¹⁵ However, the provision is at odds with international standards inasmuch it establishes a conditionality between the denial and justification of a crime and incitement to hatred, discord, or hostility. Currently applicable article of the FBiH Criminal Code is completely impracticable in the court practice, when it comes to prosecuting because of denial alone, as it constitutes a so-called conditional article. This means that there is a deficiency of this regarding the conditionality between denial and justification of a crime and incitement to hatred, discord or hostility (i.e. if denial has not resulted in the latter, there will be no criminal offence- since denial alone is not regarded a criminal offence). Over the past five years, the FBiH Prosecutors’ Office has not dealt with any case that could even remotely be brought into connection with paragraph (5) of this Law.

¹¹ *Ibid.*, p. 14.

¹² Lejla Gačanica and Caroline Finkeldey “Calling War Atrocities by their Right name – Regulating a Ban on Denial, Trivialisation, Justification or Condonation of Genocide, the Holocaust, Crimes against Humanity or War Crimes”, op. cit., pp. 18-20. In addition to the attempts to provide regulation through separate laws, there was also an attempt to criminalise any public condonation, denial or any serious attempt to diminish the crimes of genocide, the Holocaust, crimes against humanity, war crimes against civil population, by making amendments to the BiH Criminal Code in 2009. This law was not adopted either, as two-thirds of the Republika Srpska MPs voted against it. Next, Zlatko Miletić, an MP in the House of Peoples of the BiH Parliamentary Assembly, submitted to the Parliamentary procedure a proposal of amendment to the BiH Criminal Code in June 2019. At the entity level, in the Federal Parliament, Naša stranka political party tabled a Draft Law Banning the Denial of Genocide, the Holocaust and Other Crimes against Humanity. The proposal was adopted in the House of Representatives of the Federation Parliament (in 2016), but it never appeared on the agenda of sessions of the Federation House of Peoples.

¹³ *Ibid.*, pp. 18-20. The first legislative proposal was made in 2011 under the title Proposed Law on the Ban of Denial, Trivialisation, Justification, or Condonation of the Holocaust, Crimes of Genocide and Crimes against Humanity, submitted by Members of the Parliament of BiH Azra Hadžiahmetović and Beriz Belkić. Another proposal was submitted to the Parliament of BiH in 2016 in the form of a Proposed Law Banning Public Denial, Trivialisation, Justification or Condonation of the Holocaust, Genocide Crimes and Crimes against Humanity, by Denis Bećirović, Member of the Parliament in the House of Peoples of the BiH Parliamentary Assembly.

¹⁴ Proposed by Denis Bećirović, Member of the Parliament in the House of Peoples of the BiH Parliamentary Assembly

¹⁵ “Whoever publicly incites and inflames ethnic (national), racial or religious hatred, discord or hostility among constituent peoples and others who live in the Federation (...) by public denial or justification of genocide, crimes against humanity or perpetrated war crimes established under a final and binding decision of the International Court of Justice (ICJ), the International Criminal Tribunal for the former Yugoslavia (ICTY) or any national court, shall be punished by imprisonment for a term between three months and three years”. Criminal Code of Federation of BiH (“Official Gazette of the Federation of BiH” 36/03, 21/04, 96/04, 18/05, 42/10, 42/11, 59/14, 76/16 and 75/17).

Accordingly, it is hardly possible to speak of the existence of a “prescribed criminal offence of denial”.¹⁶

12. The already existing nationalistic and hostile political climate and the lack of suitable regulation empowers political elites to twist the facts and use them for its own agenda, thus severely jeopardising peace building and reconciliation in BiH. BiH should therefore ensure both at the State and entity level, the criminalisation of public denial of, trivialisation, justification or condonation of genocide, war crimes and crimes against humanity. This would contribute to truth-telling based on established judicial facts, and support the process of peace building, but also empower victims in their local communities.

3. The Free Legal Aid System

13. Over the past years, several international human rights bodies, including the HRC in its concluding observations, expressed that State party needs to harmonise the system of free legal aid. The **system of free legal aid remains fragmented and non-harmonized throughout the country**. There is no doubt that by adopting BiH Law on Provision of Free Legal Aid¹⁷ the State party recognized the need to regulate the matter, which is commendable, but deficiencies which affect survivors of war crimes when requesting compensation claims to be resolved within criminal proceedings arise mainly from the fact that the BiH Ministry of Justice Office for provision of free legal aid (hereinafter: Free Legal Aid Office) is severely understaffed and this which prevents victims from obtaining free legal aid.
14. Although the BiH Law on Provision of Free Legal Aid was adopted in 2016, to this day the work of the Free Legal Aid Office did not fully take effect. Pursuant to Article 7 (2) of the Law on Provision of Free Legal Aid, the Free Legal Aid Office is established as an organizational part within the BiH Ministry of Justice. Instead of hiring staff which could work primarily on free legal aid cases, the BiH Ministry of Justice assigns staff from its other departments and authorizes them for a certain period of time to additionally work in the Free Legal Aid Office. Moreover, at the time of writing, the head of the Free Legal Aid Office has not been appointed. Although allegedly¹⁸ the Ministry of Justice did try to fill some of those positions since the Office was established, it was unsuccessful and the post(s) remain

¹⁶ Lejla Gačanica and Caroline Finkeldey “*Calling War Atrocities by their right name – Regulating a Ban on Denial, Trivialisation, Justification or Condonation of Genocide, the Holocaust, Crimes against Humanity or War Crimes*”, op. cit. p. 20.

¹⁷ BiH Law on Provision of Free Legal Aid was adopted on 27 October 2016 and has been in force since mid-November 2016. It provides each person with no financial means equal access to justice before the Court of BiH and before administrative and other bodies and institutions at the State level, in administrative procedures and proceedings, civil proceedings, enforcement proceedings and in civil proceedings in order to file compensation claims. Pursuant to this law, victims of core crimes, based on the nature of the crime as gender-based violence (Art. 15, para. 1, f), can be entitled to representation in the above stated areas, but it is mostly done for the purpose of filing and obtaining compensation claims in criminal proceedings and enforcement proceedings.

¹⁸ Vacancies offered by the BiH MoJ:

http://www.ads.gov.ba/v2/index.php?option=com_content&view=article&id=4955%3Ajavni-oglas-za-popunjavanje-radnih-mjesta-dravnih-slubenika-u-ministarstvu-pravde-bosne-i-hercegovine&catid=41%3Aotvoreni-konkursi&Itemid=61&lang=bs

vacant, eventually hindering the functioning and effectiveness of the institution. Rotating staff authorized to provide free legal aid can result in omissions in taking legal action or failure to meet deadlines. Changing staff frequently can also affect victims of conflict-related sexual violence, who often develop a certain amount of trust with the staff member authorized to work on their cases.

15. In the light of the above, free legal aid remains available only to a limited number of war crimes victims and survivors, and the State party needs to take additional measures to ensure the implementation of the recommendation formulated in 2017 by the HRC on this subject. Until then, the level of implementation of this measure can be graded “B” (action partially satisfactory).

4. Harmonization of Jurisprudence

16. There is 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. Sentencing for such crimes in BiH is low and inconsistent, and the disparities between the approach of courts across BiH**, particularly between State level and entity level panels, create a sense of arbitrariness and a climate of mistrust in the justice system.
17. Taking into account that 57% of entity level first instance verdicts between 2012 and 2017 resulted in sentences less than the statutory minimum, and the average sentence for relevant entity level cases in the same period was 4.77 years, below the minimum, several problematic sentencing patterns made by judging panels are identified.¹⁹ Such patterns include the use of questionable mitigating and aggravating circumstances; disproportionate use of mitigating circumstances; affording excessive weight to negligible mitigating circumstances; underuse of aggravating circumstances and overuse of mitigating circumstances; overlooking sexual violence at the State level and rarely referencing the same offence at the entity level; and the use of plea bargaining agreements unfavourable to the victims.
18. Civil society organisations consistently reminded of the existence of the loopholes summarised in the previous paragraph and organised capacity-building activities directed at the judiciary to provide sentencing guidelines which could uniform the sentencing patterns. Nevertheless, no significant progress can be registered in this regard. Notably, its concluding observations, the HRC called on BiH to harmonise the jurisprudence on crimes committed during the conflict, and apply the law in a

¹⁹ See TRIAL International, *Punishing Conflict-Related Sexual Violence*, 2018, available at: https://trial.ba/wp-content/uploads/2019/05/01_publication_en_page_by_page_WEB.pdf; OSCE Mission to BiH, *Towards Justice for Survivors of Conflict-Related Sexual Violence in BiH - Progress before Courts in BiH 2014-2016, 2017*, available at: <https://www.osce.org/mission-to-bosnia-and-herzegovina/324131?download=true>; and Amnesty International, *Last Chance for Justice for Bosnia's Wartime Rape Survivors*, 2017, available at: <https://www.amnesty.org/download/Documents/EUR6366792017ENGLISH.PDF>.

manner consistent with the applicable international legal standards. The level of implementation of this measure should be graded “C” (action not satisfactory).

III. Access to Justice and Reparation of War Victims

5. The Ongoing Problems with Access to Effective Remedies – Application of Statute of Limitations and Imposing High Court Fees

19. The State party did not take action so far to adopt legislative and practical measures in order to ensure that survivors of torture and sexual violence have access to effective remedies. During the years, various international human rights bodies have recommended BiH to adopt such measures for victims of gross human rights violations during the war, but the BiH authorities showed no willingness to address this matter. Notably, in its concluding observations of 2017, the HRC explicitly called on BiH to ensure that survivors of torture and sexual violence have access to effective remedies.
20. This topic, and in particular the failure to provide redress to a victim of conflict-related sexual violence due to the application of statutes of limitation to civil claims for non-pecuniary damages, has been the subject of a landmark decision against BiH issued on August 2019 by the Committee Against Torture (hereinafter: CAT).²⁰ The CAT observed that BiH breached its international obligations because of the application of statutes of limitation to civil claims for conflict-related non-pecuniary damage and of the failure to acknowledge the principle of subsidiary liability when convicted perpetrators are unable to pay compensation. Accordingly, the CAT requested BiH to ensure that the author of that communication receives prompt, fair and adequate compensation and medical and psychological care immediately and free of charge; to offer public official apologies to the victim; and to establish an effective reparation scheme at the national level to provide all forms of redress to victim of war crimes, including sexual violence. At the time of writing, none of those recommendations has been implemented.
21. BiH continues to apply a statute of limitation to civil claims for wartime non-pecuniary damages, and this is consistently upheld by the Constitutional Court of

²⁰ CAT, Case A. v. *Bosnia and Herzegovina*, Communication No. 854/2017, decision of 2 August 2019. Pursuant to para. 9 of the decision, BiH is required to: a) ensure that complainant obtains prompt, fair and adequate compensation; b) ensure that the complainant receives medical and psychological care immediately and free of charge; c) offer public official apologies to the complainant; d) comply with Concluding observations with respect to establishing an effective reparation scheme at the national level to provide all forms of redress to victims of war crimes, including sexual violence and development and adoption of a framework law that clearly defines criteria for obtaining the status of victims of war crimes, including sexual violence, and sets out the specific rights and entitlements guaranteed to victims throughout the State party. Finally, CAT also requests BiH to inform it, within 90 days of the date of the decision's transmission, of the steps undertaken to respond to the above-mentioned observations.

BiH.²¹ Namely, for victims who are unable to file a compensation claims in criminal proceedings (due to the difficulty of identifying perpetrators, flight or death of perpetrators), civil courts are the only method for many victims to seek redress for harms suffered during the war. Ever since the Constitutional Court's 2013 decision in Hamza Rekic case, courts are applying statute of limitations and rejecting all wartime claims. The imposition of statute of limitations to claims filed by wartime victims prevents victims from exercising their right to an effective remedy, and is contradicting BiH's responsibility to provide effective redress for victims.

22. As a result of the undue application of statute of limitations, courts dismiss such cases, leaving the plaintiff – the victim with an obligation to pay court fees and public attorney fees, according to the “loser pays rule. Many victims are still facing high court fees and enforcement procedures, as there is still a lot of cases where court fees have been imposed. Even now, many victims are facing enforcement procedures where their assets are being seized in order to pay court fees and public attorney fees.
23. The application of a statute of limitation to civil claims, and the corresponding imposition of high court fees and public attorney fees, concretely prevents victims from obtaining redress, unless their case is the subject of criminal proceedings against an alleged perpetrator. If the court finds the perpetrator guilty and awards compensation to the victim, even then there might be a problem if the perpetrator does not have assets from which the compensation could be paid. In that situation, the victim remains without compensation, since BiH fails to apply subsidiary liability and there is no system which can offer redress to the victim.

6. Amending the Codes of Civil Procedure

24. Victims of conflict-related sexual violence, but sometimes even other victims of war crimes testifying in criminal proceedings are mostly covered by identity protection measures. For the reasons explained in the previous paragraph, most of them would prefer to lodge a compensation claim within criminal proceedings. In some cases, a full amount of compensation is awarded in criminal proceedings, and in some cases, victims are referred to obtaining compensation in civil proceedings. This poses a great difficulty, as victims with court appointed identity protection measures cannot reveal their identity in civil or enforcement proceedings before the lower courts. The applicable legislation needs to be amended in order to ensure that victims are enabled to obtain redress. During 2018, a working group was established by Ministry of Justice of BiH to amend the Code of Civil Procedure in order to allow survivors with court appointed identity protection measures to obtain redress in civil proceedings, without having to reveal their identity. The working

²¹ Detailed explanation on the matter available at: <https://trial.ba/wp-content/uploads/2019/07/General-Allegation-BiH-07-01-2019.pdf>.

group agreed they should look after that the entity-level Codes of Civil Procedure are subsequently harmonized.

25. The first meeting of the working group was held on 10 October 2018, and meetings continued until the end of 2019. During this time, the work group drafted the proposed legislative amendments. However, there was no agreement among the members of the working group. In this regard, some members considered that an amendment to the Code of Civil Procedure would be in conflict with the provisions of the Republika Srpska Law on the Protection of Victims of War Torture. Notably, this law concerns the provision of social benefits to war victims of torture and is not relevant for civil claims for compensation. Due to these disagreements among the members of the working group, the draft amendments to the Code of Civil Procedure could not be finalised and the procedure did not progress any further.

7. Deficiencies of the Law on Protection of Victims of Torture of Republika Srpska

26. As mentioned in the previous paragraph, the Law on the Protection of Victims of Torture of Republika Srpska concerns the provision of social benefits. Its adoption is commendable because it allows victims of torture during the war, irrespective of their ethnicity, to have access to social benefits, including healthcare services. The law was adopted in June 2018, largely due to the contribution and engagement of the international community which addressed its shortcomings and afterwards which continued following its enactment. During the first year and a half of its implementation several provisions of the Law posed as key obstacles for obtaining the status of victim of wartime torture.
27. In general, although the implementation phase formally commenced in November 2018, only few victims are familiar with the existence of the law, its contents and the applicable procedure to obtain the “victim status”. Those who are familiar with the new law, consider nonetheless that it presents significant flaws that prevent its effective implementation, such as the deadline to lodge an application (i.e. 5 years since the Law came into force); the virtual impossibility to obtain valid evidence (mainly medical documentation) within the period prescribed; ; and the lack of other valid documentation etc. Among those legal issues, identity disclosure risk needs to be emphasized. As illustrated above, survivors who are under identity protection measures assigned to them during criminal proceedings in war crime trials, face difficulties when trying to apply for the status and are required to disclose their identity. However, pursuant to the applicable criminal legislation, they are equally forbidden to disclose their identity to civil servants, thus being trapped in a vicious circle which jeopardises their access to redress. With this in mind, a special procedure for these victims should be designed, so that they can apply to be recognised the status without having to disclose their identity.

28. Among other issues there is a lack of standardised approach to processing case files. Also, the lack of harmonized procedure for dealing with such cases results in less than unified approach to obtaining the status. So far, it is unknown whether the government of Republika Srpska developed the employment programme for victims of war torture envisaged pursuant to Article 13 of the Law, and there have been reports from victims' organisations highlighting the imperative need for capacity building activities, so that civil servants working with victims could have a more victim sensitive approach to the application process.
29. In light of the above, the Law on the Protection of Victims of Torture of Republika Srpska should be amended as soon as possible, or alternatively, the Republika Srpska Ministry of Labour, War Veterans and Disabled Persons' Protection should adopt procedures and regulations to overcome the obstacles and to allow survivors to obtain wartime victim status and to realise their rights. Until this happens, the recommendation issued by the HRC in its concluding observations shall be regarded as only partially satisfactory and hence be graded "B".

IV. The Lack of Implementation of the Views on Individual Communications on Cases of Enforced Disappearance

30. Between 2013 and 2017, the HRC issued several Views on individual communications concerning cases of enforced disappearance perpetrated during the conflict in BiH,²² whereby it declared the international responsibility of the State for the violation of several rights enshrined in the Covenant and formulated a number of recommendations, including the prosecution of the perpetrators of the crimes concerned, the establishment of the fate and whereabouts of the disappeared persons, and the provision of adequate compensation to their relatives. At the time of writing, those Views have not been implemented. This indirectly confirms the failure by BiH to enforce the recommendation included at para. 20 of the concluding observations of 2017 and, in general, a reluctance in the prompt implementation of decisions and recommendations issued by international human rights mechanisms, including the HRC. This is especially troublesome and a mockery in the face of victims who have been struggling over the past 25 years to unveil the truth on the fate and whereabouts of their loved ones and to obtain justice and redress.

²² HRC, Case *Prutina, Zlatarac, Kozica, Ćekić v. Bosnia and Herzegovina*, views of 28 March 2013; Case *Durić v. Bosnia and Herzegovina*, views of 16 July 2014; Case *Selimović and others v. Bosnia and Herzegovina*, views of 17 July 2014; Case *Hero v. Bosnia and Herzegovina*, views of 28 October 2014; and Case *Kožljak v. Bosnia and Herzegovina*, views of 28 October 2014; Case *Rizvanović v. Bosnia and Herzegovina*, views of 21 March 2014; Case *Ičić v. Bosnia and Herzegovina*, views of 31 March 2015; Case *Hamulić and Hodzić v. Bosnia and Herzegovina*, views of 30 March 2015; Case *Kadić v. Bosnia and Herzegovina*, views of 5 November 2015; Case *Mandić v. Bosnia and Herzegovina*, views of 5 November 2015; and Case *Lale and Blagojević v. Bosnia and Herzegovina*, views of 17 March 2017.

V. Conclusions and Recommendations

31. Twenty-five years after the conclusion of the conflict in BiH, not enough has been done to address the pressing needs of victims of crimes under international law. These categories of people remain deprived of their fundamental rights as they continue experiencing violations of their rights to justice, truth, and redress.
32. With regard to the relevant recommendations issued by the HRC in its concluding observations in 2017, the actions undertaken by BiH are mostly unsatisfactory, meaning that the State party continues violating its obligations pursuant to, among others, Arts. 2, 6, 7, 9, 10 and 16 of the Covenant. This is deepening the sense of distrust towards authorities, which seem incapable or unwilling to respect their international obligations. The role of HRC can be highly significant in maintaining these issues on the national and international agendas and in eventually helping BiH to abide by its duties.
33. For the reasons explained above, the association subscribing the present follow-up report respectfully requests the HRC to grade the relevant recommendations between B and C, as illustrated above, and to recommend BiH to:
 - Ensure that the Revised National War Crimes Processing Strategy is adopted urgently and duly implemented without further delay in order to expedite the prosecution of gross human rights violations and crimes under international law perpetrated during the war. Its application shall be thoroughly explained to the wide public in a transparent manner, thus fostering a climate of trust towards institutions.
 - Adopt a State Law regulating the ban of denial, trivialisation, justification or condonation of genocide, crimes against humanity or war crimes.
 - Ensure that the Ministry of Justice's – Office for the Provision of Free Legal Aid is adequately staffed and obtains the necessary human, financial and technical resources to discharge its mandate.
 - Take up a more proactive role through its institutions in efforts to harmonize jurisprudence and end inconsistencies in sentencing policies, especially with regard to gross human rights violations and crimes under international law, including sexual violence, committed during the war.
 - Adopt the necessary measures, including legislative, to guarantee that conflict-related sexual violence survivors and other victims of wartime related torture have access to effective remedies, primarily putting an end to application of statutes of limitations to civil claims for non-pecuniary damage.

- Eliminate court fees and public attorney fees in cases concerning civil claims for non-pecuniary damages concerning the war.
- Ensure that the measures of reparation indicated by the CAT in its decision on the case A. v. Bosnia and Herzegovina are fully implemented without delay.
- Amend the Codes of Civil Procedure to allow victims of war crimes, including sexual violence with court appointed identity protection measures to obtain redress in civil proceedings, without having to reveal their identity.
- Amend the Law on the Protection of Victims of Torture of Republika Srpska as soon as possible to ensure that a deadline to lodge an application is extended, the documentation which serves as evidence is broadened and identity disclosure risk addressed by prescribing special procedure designed for such victims. Alternatively, ensure that the Republika Srpska Ministry of Labour, War Veterans and Disabled Persons' Protection adopts without delay adequate measures to harmonize the approach towards victims and allow victims of war crimes to obtain the recognition of their status and the corresponding ensuing rights.
- Implement without delay the measures of reparation indicated by the HRC in its Views on individual communications concerning cases of enforced disappearance perpetrated during the conflict in BiH.

On behalf of TRIAL International
Philip Grant, Executive Director



VI. The Association Submitting the Follow-up Report

TRIAL International is an international non-governmental organization fighting against impunity for international crimes and supporting victims in their quest for justice. The organization provides legal aid, submits cases, develops local capacities and advocates the human rights agenda, while raising awareness among the authorities and the general public regarding the necessity of an efficient national and international justice system for the prosecution of crimes under international law. In supporting war crimes victims in BiH, the organization focuses on vulnerable groups, including sexual violence survivors, the families of missing persons and former camp detainees. Since the beginning of its operations in the country, TRIAL International - Office in BiH has provided free legal assistance to more than 500 victims of international crimes in their quest for justice and represented 466 in front of national or international bodies.

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