



Bosnia and Herzegovina's Compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Report for the 62nd Session (06 November to 06 December 2017) of the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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a non-governmental organization in special consultative status with ECOSOC
and
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a non-governmental organization

I. Reporting Organizations

- 1. The Advocates for Human Rights** ("The Advocates") is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates' Women's Human Rights Program has published more than 25 reports on violence against women as a human rights issue, frequently provides consultation and commentary on drafting laws on domestic violence, and trains lawyers, police, prosecutors, and judges to effectively implement new and existing laws on domestic violence. The Women's Human Rights Program also created training modules on access to justice and drafting legislation on violence against women in all its forms for UN Women's Virtual Knowledge Centre.
- 2. Foundation "Women's Centre" Trebinje** was founded in 2002 as the "Women's Centre" Trebinje, Association by a group of 20 men and women to help children and women victims of domestic violence. It re-registered in 2016 as the Foundation "Women's Centre" Trebinje. It was established due to the need to speak out about violence against women and children which, until then, was considered a private problem of individual households, and not as a problem that affects the whole society. Deeply rooted stereotypes and patriarchal attitudes about the position and the role of women in society and family have created a certain "taboo" in terms of specific relationships between men and women. Guided by a desire to contribute to solving this global problem, especially in the context of its region, but also at the state level and beyond, the Foundation has conducted its activities in various areas of everyday life and work in order to provide the most appropriate response to this challenge. Although its activities are focused on different areas (for example, social life, health services, social security, economy), and apply different methodologies, there is only one overall aim:

improvement of status of women in society of the Republic of Srpska and Bosnia and Herzegovina, primarily through the development of partnerships between men and women in family and in society.

The Foundation's vision is to improve the status of women in society and family, and a life free of violence. Its mission is to fight for children's and women's rights in all segments, and the economic empowerment of women. The Foundation's work is based on needs assessment so that the results are the product of recognized needs and voluntary contributions to attend to those needs.

II. Introduction

3. Domestic violence is a form of discrimination against women and violates women's human rights. It violates a woman's right to life, bodily security and integrity, equal protection, and freedom from torture. The Convention defines torture in Article 1 as severe mental or physical pain or suffering that is intentionally inflicted either by a State actor or with the consent or acquiescence of a State actor for an unlawful purpose. The Convention also obligates the State party to protect victims from torture and hold perpetrators accountable in: Article 2 (non-derogable requirement of effective legislative, administrative, judicial or other measures to prevent acts of torture, including acts by private actors); Article 4 (acts of torture must be identified as offenses under criminal law and receive the appropriate penalty); Article 7 (criminalized cases of torture should be submitted to authorities for prosecution); Article 12 (prompt investigation by impartial and competent authorities); Article 13 (victim's right to complain and to have their complaint examined by competent authorities; State's obligation to protect victim and witnesses); and Article 14 (victims' right to redress and compensation, including rehabilitation).
4. The Committee has clarified that domestic violence falls under the purview of the obligations set forth in the Convention. Violence against women, such as domestic violence, contravenes the Convention when the government fails to prevent such violence from taking place and does not prosecute or punish perpetrators of the violence. As stated in General Comment No. 2:

“... where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-

based violence, such as rape, domestic violence, female genital mutilation, and trafficking.”¹

5. The Committee has also recognized State party obligations to report on violence against women by private actors in communities and homes and the measures taken to prevent and punish such violence,² ensure adequate care and protection for victims to avoid retraumatization during legal procedures,³ provide adequate legal aid to victims lacking the necessary resources to bring complaints and make claims for redress,⁴ take measures to protect victims against intimidation and retaliation “at all times before, during and after judicial, administrative or other proceedings that affect the interests of victims,”⁵ and not impede the enjoyment of the right to redress through, for example, “evidential burdens and procedural requirements that interfere with the determination of the right to redress” or the “failure to provide sufficient legal aid and protection measures for victims.”⁶
6. Domestic violence continues to be a widespread problem throughout Bosnia and Herzegovina. In 2013, the State-level Agency for Gender Equality published research on the prevalence of abuse against women. The study found that almost half of the women surveyed experienced psychological or physical abuse from the age of 15 (47.2 percent across the country and 47.3 percent in the Republic of Srpska).⁷ Psychological abuse was the most common form, with a prevalence rate of 41.9 percent. Physical violence was second, with a prevalence rate of 24.3 percent, and sexual violence was third, with a rate of 6 percent.⁸ The Agency for Gender Equality also reported that only 17 percent of women who experienced domestic violence sought help.⁹
7. In the concluding observations to Bosnia and Herzegovina’s last review, the Committee recommended that the State party “enhance its efforts to prevent, prosecute and punish all forms of violence against women and children, including domestic violence” and “provide support for victims through the establishment of additional shelters, the provision of free counseling services and such other measures as may be necessary for the protection of victims.”¹⁰ In paragraph 6 of the List of Issues, the Committee requested information on the number of complaints, investigations, prosecutions, convictions, and sentences handed down

¹ U.N. Committee Against Torture (CAT), General Comment No. 2: Implementation of Article 2 by States Parties, 24 January 2008, CAT/C/GC/2, para. 18, available at, <http://www.unhcr.org/refworld/docid/47ac78ce2.html>, last visited Oct. 8, 2017.

² General Comment No. 2, para. 22.

³ General Comment No. 3, paras. 21 and 33.

⁴ General Comment No. 3, para. 30.

⁵ General Comment No. 3, para. 31.

⁶ General Comment No. 3, para. 38.

⁷ Executive Summary, p. 15, http://arsbih.gov.ba/wp-content/uploads/2014/01/studija_prevalenca.pdf, last accessed Oct. 8, 2017.

⁸ Executive Summary, p. 15, http://arsbih.gov.ba/wp-content/uploads/2014/01/studija_prevalenca.pdf.

⁹ US. Dep’t of State, Country Reports on Human Rights Practices for 2015, Bosnia and Herzegovina, available at <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (2015 Human Rights Report).

¹⁰ U.N. Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, 20 Jan 2011, CAT/C/BIH/CO.2-5, para. 13.

in cases of gender-based violence since November 2010.¹¹ This report provides information with respect to the Committee's request in paragraph 6, particularly with respect to the Republic of Srpska, and other issues with respect to violence against women in the Republic of Srpska.

III. Overview of Legal Framework.

8. Bosnia and Herzegovina is composed of two entities, the Federation of Bosnia and Herzegovina and Republic of Srpska (RS), and one self-governing district, District Brčko. The two entities are highly autonomous. Each has its own constitution, judicial systems, and legislatures. The national legislature has authority over limited issues and most legislative functions occur at the entity level.
9. Although RS has enacted several laws, challenges still exist in their implementation to effectively protect victims and hold perpetrators of domestic violence accountable.

IV. Analysis of Compliance with the Convention in Response to Paragraph 6 of the List of Issues.

A. Data on domestic violence is not consistently collected.

10. Article 34 of the Law on Protection from Domestic Violence (LPDV) of RS results in a significant improvement in collecting data on domestic violence. The article requires all parties and other bodies authorized to act under the law to keep records of their actions, directs the Ministry of Family, Youth and Sports to collect, process, and record information on domestic violence, and regulates the content of the records and reports of domestic violence. As a result, data for 2014, 2015, and the first half of 2016 are in a merged register of cases of domestic violence recorded by all security and protection organs. However, this data does not include reports from NGOs, who provide direct services to victims of domestic violence. In addition, the different forms of reporting lead to confusion and a lack of clarity on the situation throughout RS. Analyzing and comparing the statistics published by the Ministry of Family, Youth and Sports by each of the protection organs for the aforementioned period (January 2014-June 2016), yields the following results:
11. The Ministry of Internal Affairs RS reported a total of 2,839 cases of domestic violence, out of which men were the perpetrators in 95 percent of cases. The police submitted 1,098 reports on committed criminal offenses to prosecutors, out of which 293 persons were detained. The police filed a total of 45 requests for the imposition of emergency protective measures to misdemeanor courts, and the courts issued orders in at least 18 cases. There were 291 protective measures proposed (most of which were protective measures for the prohibition of harassment or stalking). The police implemented 173 different protective measures. Perpetrators possessed legal or illegal weapons in 106 cases, and perpetrators used weapons in 18 cases.¹²

¹¹ U.N. Committee against Torture, List of issues prior to the submission of the sixth periodic report of Bosnia and Herzegovina, CAT/C/BIH/Q/6, 17 Jan 2013, ¶6.

¹² Data for January 2014 to June 2016 available through reports on the Ministry of Family, Youth and Sports' website at <http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpos/oPorodica/Pages/Splash.aspx#collapsible0>.

12. During the same period (January 2014 – June 2016), primary courts in RS reported a total of 1,855 requests for misdemeanor proceedings, for which there were 22 proposals for emergency protective measures. During this period, the courts issued 33 emergency protective measures. There were 1,684 accused persons, out of which 1,488 were men (88.3%) and 196 were women. Based on the imposed sanctions and protective measures in cases of domestic violence, there appears to be a trend in imposing fines for domestic violence or issuing suspended sentences. The courts ordered fines in 537 cases, and suspended sentences in 337 cases. Fines directly affect women and children because the perpetrator pays the fine with household funds, which are in fact deducted from the victims who share households and funds with the perpetrator. Thus, courts also punish victims when they fine perpetrators. In addition, victims may become reluctant to report violence out of fear that the court will order fines and they will lose household funds.¹³
13. Primary courts also reported that in total, there were 171 protection measures imposed during this period and 163 executed protective measures. There were 826 perpetrators convicted of domestic violence, out of which 732 were men (88.6%) and 94 (11.4%) were women. In this reporting period, at least 50 proceedings were terminated.¹⁴

B. Accurate data is not available on the number of femicides.

14. Prosecutors in the Republic of Srpska qualify cases where domestic violence ends with a fatal outcome – femicides – as murder and not as domestic violence resulting in death. The Criminal Code provides the same sanction for both crimes.¹⁵ **This classification creates the incorrect illusion that the RS does not have cases of murder as a result of domestic violence.** The only information on this issue comes from the media, and there are no clear statistics on this issue.

C. Police are not correctly responding to domestic violence.

15. Findings from a 2013 report demonstrate that there is much work needed to standardize and improve police responses to domestic violence. In 4.4 percent of cases, the police did not respond to the call, in 2.9 percent of cases the police took the victim to the police station; in 30.9 percent of cases the police warned the perpetrator and calmed him down; in 41.2 percent of cases the police arrived, talked to the perpetrator and then left with no follow-up or further consequences; and in less than 17.6 percent of reported cases, the police filed criminal or misdemeanor reports against the perpetrator.¹⁶ The lack of police response or further consequences allows perpetrators to act with impunity and reduces the likelihood that a victim will contact police if she is subjected to more violence.
16. Even though police reportedly received specialized training in handling cases of domestic violence, NGOs reported a widespread reluctance by police to arrest offenders because this

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Criminal Code of RS, Article 208, and Article 149 and 198.

¹⁶ Agency for Gender Equality of Bosnia and Herzegovina, Prevalence and Characteristics of Violence Against Women in BiH, p. 100, 2013, available at http://arsbih.gov.ba/wp-content/uploads/2014/01/studija_prevalenca.pdf.

would break up families.¹⁷ In addition, although police are authorized to temporarily remove domestic violence perpetrators from their homes, they rarely use this provision because they incorrectly consider where the perpetrator would live as part of their analysis.¹⁸ Instead, non-violent victims must leave their homes to seek safety.

17. Problems also arise if the police do not communicate with the prosecutors and the courts regarding cases where they file both criminal and misdemeanor reports for the same act of domestic violence. Misdemeanor proceedings are typically faster than criminal proceedings. If the police do not inform the prosecutor and the Magistrates Court that other proceedings are pending, the misdemeanor court is likely to reach a conclusion first. Because a defendant cannot be tried twice for the same incident, the criminal proceedings are withdrawn.¹⁹ As a result, perpetrators of domestic violence are able to escape more severe sanctions.

D. Domestic violence is prosecuted as a misdemeanor.

18. In RS, domestic violence can be treated as a misdemeanor under the Law on Protection of Domestic Violence (LPDV) or a crime under the Criminal Code. **In practice, however, most domestic violence cases are filed as misdemeanors, which results in lower sanctions, increased recidivism, and only the most serious cases being identified as criminal offenses.** The reasons cited are that misdemeanors are easier to prove and cases will be processed more quickly.²⁰ There were reports that higher levels of sanctions would only be imposed in cases resulting in serious bodily injury or death of the victim.²¹
19. **Courts typically sentence perpetrators of gender-based violence, especially perpetrators of domestic violence, to fines and, rarely, very short prison sentences, even for repeat offenders.** Many of the sentences for gender-based violence are often suspended or thrown out altogether. Judges often justify these reduced sanctions based on the family status and the need to provide for minor children as a reason to mitigate the offense, even though the crime was committed against family members.²²

V. Analysis of Compliance with the Convention regarding other issues.

¹⁷ 2015 Human Rights Report.

¹⁸ *Id.*

¹⁹ Information from Foundation “Women’s Center” Trebinje.

²⁰ This does not appear to be the case, however. Activists reported to the Special Rapporteur on violence against women, its causes and consequences, that protection measures still take up to six months to be processed, even though these are urgent measures. Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Addendum, Mission to Bosnia and Herzegovina, A/HRC/23/49/Add. 3, 4 June 2013, ¶¶ 82-83, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-49-Add3_en.pdf (Special Rapporteur Report); information also from Foundation “Women’s Center” Trebinje.

²¹ Special Rapporteur Report, ¶83.

²² A. Petric, *Absence of Systemic Protection and Secured Access to Justice*, 2016, p.7.

A. Serious problems with adequate funding and availability for victim shelters compromise women’s rights.

20. There are nine shelters throughout Bosnia and Herzegovina, with a total capacity of 173 persons.²³ Based on the country’s population and international recommendations, there should be 379 shelter beds available.²⁴ Many shelters also serve as safe houses for human trafficking victims—putting additional strain on not only resources and staff, but also victims seeking refuge and protective services.²⁵
21. Three of the shelters are located in RS, and they are operated by NGOs. All three shelter locations are in the northern and central part of RS. According to the three NGOs in RS that run the shelters, there were 107 women and 113 children sheltered during 2013. Data from the Ministry of Family, Youth and Sport of the RS Government only identified 40 women and 46 children.²⁶
22. **Centers for social work (CSW) control access because of the way shelters are funded.** Under the LPDV, up to 70 percent of funds for shelters are paid from the budget of RS and 30 percent are paid by the local governments. However, the funds from the local government are transferred to the CSW, not directly to the NGO operating the shelter.²⁷ CSWs only provide referrals to shelters if they have established that the victim has no family member or friend who could accommodate her and if there is no danger of repeated violence in such accommodation.²⁸ CSWs also habitually refuse to recognize psychological violence as a form of domestic violence, and therefore deny shelter for victims of psychological violence.²⁹ NGOs reported that women who call the SOS telephone number are referred to the CSWs, who refuse to issue referrals to avoid paying the associated costs, and that CSWs usually plan in advance the number of victims to be placed in safe houses during the year and do not want to increase it.³⁰
23. **CSWs determine whether a victim receives a referral to a shelter and also decide the number of days she may stay there.** In practice, issuing decisions for a 15-day or a one-month stay, instead of allowing longer periods of time that would allow for psycho-social treatment and trauma recovery, reduces the effect that shelters can have, and approximately 80 percent of women victims of domestic violence return to violent households. Recovering from a violent relationship is painful and arduous and requires more than 15 days or a month.³¹

²³ 2015 Human Rights Report.

²⁴ Women Against Violence Europe, Report on the Role of Specialist Women’s Support Services in Europe, p. 24-25 and Table 13, 2015 http://files.wave-network.org/researchreports/WAVE_Report_2015.pdf.

²⁵ 2015 Human Rights Report.

²⁶ Written Contribution to the EU Progress Report on Bosnia and Herzegovina 2014, Foundation United Women Banja Luka, BiH, p.2, available at <http://eu-monitoring.ba/site/wp-content/uploads/2014/06/Contribution-to-the-EU-Progress-Report-on-BiH-2014-UWBL-1.pdf>.

²⁷ Information from Foundation “Women’s Center” Trebinje.

²⁸ A. Petric, Absence of Systemic Protection and Secured Access to Justice, p. 9 and n. 15, 2016 (citing Experiences from the safe house managed by Fonacija Udružene zene Banja Luka and Fondacija Lara Bijeljina).

²⁹ Written Contribution to the EU Progress Report on Bosnia and Herzegovina 2014, Foundation United Women Banja Luka, BiH, p.2 (citing evidence provided by the Women’s Organization “Lara” Bijeljina).

³⁰ A. Petric, Absence of Systemic Protection and Secured Access to Justice, p. 9, 2016.

³¹ Information from Foundation “Women’s Center” Trebinje.

24. Official authorities perceive sheltering survivors of domestic violence in the safe houses as a service, and not measure of social support and protection guaranteed by the laws. According to the Ministry of Family, Youth and Sport in the period from January 2014 to June 2016 the CSWs reported 3,094 cases of domestic violence, out of which only 103 of them were accommodated in safe houses.³²
25. The Foundation “Women’s Center” Trebinje has lobbied for years for a shelter in the Eastern Herzegovina part of RS. There currently are no shelters in this area, so victims must be transferred to shelters in the northern or central part of RS. Victims from RS are not able to stay in shelters in the Federation of Bosnia and Herzegovina because of the specific way that shelters are funded. Thus, **a victim from Trebinje would have to travel to Banja Luka, which is a six-hour drive in one direction. For many victims, this is an insurmountable obstacle, and they have been forced to stay in a violent household.** A positive development is that the Ministry of Family, Youth and Sports has decided to help build a safe house in Trebinje.³³

B. RS Family Law allows parents who sexually abuse their children to have their parental rights restored.

26. Inconsistencies in legal provisions mean that parents who have sexually exploited their children may be able to restore their parental rights. Articles 195 and 196 of the Criminal Code of RS provide that any person who commits a sexual act with a child and who is a guardian or adoptive parent of such child will be punished by imprisonment for a term between five and fifteen years. Article 106(2) of the Family Law also allows the courts to deprive parental rights because of the sexual exploitation of a child. However, Article 106(4) of the Family Law of RS provides that the court can restore the parental rights of those who sexually exploited a child, if the reason for which the parent was denied their parental rights no longer exists. NGOs have advocated amending Article 106 of the Family Law of RS³⁴ to add the words "except in cases of sexual exploitation of a child," but this amendment has not been adopted.

C. Economic issues create barriers for victims to leave violent situations.

27. **About 80 percent of domestic violence victims who reside in safe houses return to a violent household,** mainly because of economic dependence and a lack of opportunities to find employment or start a business. Also, due to the lack of economic support, a large number of women do not report violence. For these reasons, it is necessary to provide financial support or employment to women victims of domestic violence so that they can achieve their independence from the abuser and leave an abusive situation.³⁵

³² *Id.*

³³ *Id.*

³⁴ Foundation "Women's Center" Trebinje has repeatedly been the proponent of the Amendment to Article 106 of the Family Law RS.

³⁵ Information from Foundation “Women’s Center” Trebinje.

28. Women victims of domestic violence usually are forced to stay in a violent household because of economic dependence on their perpetrators. Perpetrators usually do not allow their wives to work because economic dependence contributes to their control and keeps the victim dependant on him and without the possibility of leaving the household.³⁶ The LPDV of RS does not include any provisions for protective measures that provide economic support when a domestic violence victim leaves a perpetrator.
29. Even if the victim is empowered to leave the abuser, private sector employers are reluctant to employ victims of domestic violence out of fear that her abuser will show up at the workplace and threaten not only her, but others as well, or because victims may have higher rates of absence because they are caring for their children as single mothers. As a result, there are reduced employment opportunities, and a victim is unable to establish her economic independence.
30. Moreover, a woman may not be able to obtain a loan to establish her economic independence. The banks that provide loans with reasonable interest rates require clients to grant a security interest in or mortgage assets adequate to secure the loan amount. Such conditions discriminate against women because women often give up property they inherited under customary law to their brothers. In addition, a woman's acquired assets are usually registered in her father's, husband's, or son's name, not in her name. As a result, women are not listed as the owners of real estate, and banks may deem them not to be credit-worthy.³⁷
31. A positive development has been including victims of domestic violence for the first time as a vulnerable category in the "Employment Strategy of the Republic of Srpska for 2016 to 2020" and in the "Action plan for employment of the RS for 2017."³⁸ Unfortunately, the RS Gender Centre and the Gender Equality Agency of Bosnia and Herzegovina have reduced their activities, with no substantial efforts to amend laws and other regulations in order to improve the situation of vulnerable women.

D. Mediation in Divorce

32. Mediation is a mandatory part of divorce proceedings where spouses have a child, even in cases of severe forms of domestic violence or where this procedure is redundant and only prolongs divorce proceedings. As indicated in the Handbook for Legislation on Violence Against Women, legislation should prohibit mediation in all cases of violence against women because mediation can be problematic and dangerous where there is domestic violence, as the parties may not have equal negotiating power.³⁹

³⁶ *Id.*

³⁷ *Id.*

³⁸ Foundation Women's Center "Trebinje, Foundation" Lara "Bijeljina, and Association" Helsinki Citizens' Assembly "Banja Luka submitted a package of economic measures for women victims of domestic violence.

³⁹ Economic & Social Affairs, Division for the Advancement of Women, Handbook for Legislation on Violence Against Women 3.9, (2010).

VI. Suggested Recommendations

- Continue to improve collection procedures with respect to data on domestic violence and work with NGOs to identify deficiencies in data collection and work to remove those deficiencies.
- Train police, prosecutors, and judges to ensure the use of the Criminal Code to prosecute qualifying acts of domestic violence, rather than the LPDV's lower misdemeanor sanctions.
- Train prosecutors on the importance and use of search warrants and confiscation of weapons in situations of domestic violence.
- Track femicide information at the entity and national level so that clear data is available to identify which murders result from domestic violence or other causes.
- Ensure that prosecutors are trained and able to conduct and continue criminal proceedings in the absence of victim testimony.
- Establish clear procedures and sentencing tools for judges in cases of domestic violence and ensure that they are implemented.
- Improve police training with respect to responses to domestic violence, including arrests, the use of the emergency barring order, and inter-agency communication, especially when filing criminal and misdemeanor proceedings.
- Increase the number of shelters and the funding available to them.
- Remove the CSW referral requirement for shelters and remove the CSW's authority to set the length of a shelter stay.
- Amend Article 106, paragraph (4) of the Family Law of RS to add the words "except in cases of sexual exploitation of a child."
- Amend legislation to prohibit the use of mediation in divorce proceedings that involve victims of domestic violence.
- Ensure that Gender Centers and the Agency for Gender Equality fulfill their roles.
- Ensure that the Law on Gender Equality of BiH is implemented in practice.
- Commission and ensure funding for research with respect to the connection and impact among social status, education, family history, and current violence; the benefits of measures of economic empowerment; the number of women who would benefit from such measures, and its impact on violence prevention.