

EXECUTIVE SUMMARY

of the

GENERAL ALLEGATION TO THE SPECIAL RAPPORTEUR ON TORTURE, AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT AND TO THE WORKING GROUP ON ARBITRARY DETENTION

FREED, BUT NOT FREE YET!

THE SITUATION OF FORMER CAMP DETAINEES IN BOSNIA AND HERZEGOVINA

APRIL 2012

I. Background

1. During the 1992-1995 war in Bosnia and Herzegovina (BiH) numerous clandestine detention facilities were set up. More than 600 places of detention have been registered throughout BiH. To date, the total number of the persons who were held in detention camps has not been determined with precision, even though a figure often referred to amounts to 200,000. Camp detainees throughout BiH were systematically subjected to arbitrary detention, forced labour, torture, including rape or other forms of sexual violence and other forms of ill-treatment. Nevertheless, almost 20 years after the commission of the mentioned crimes former camp detainees are still seeking justice and redress for the harm suffered.
2. In this view, TRIAL (*Swiss association against impunity*) and nine associations of former camp detainees representing different ethnic groups or anyway working with this category of people (Association of the Concentration Camp Detainees of Bosnia and Herzegovina; Association of Detained – Association of Camp Detainees of Brčko District Bosnia and Herzegovina; Croatian Association of War Prisoners of the Homeland War in the Canton of Central Bosnia; Croatian Association of Camp Detainees from the Homeland War in Vareš; Prijedor 92; Regional Association of Concentration Camp Detainees Višegrad; Sumejja Gerc; *Vive Žene* Tuzla; and Women's Section of the Concentration Camp Torture Survivors Canton Sarajevo) submit to the Special Rapporteur on Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment and to the Working Group on Arbitrary Detention a general allegation on the situation of former camp detainees, in order to highlight the remaining obstacles for the full implementation of BiH's international obligations on this subject. In this view,

concrete examples are referred to, as well as recommendations to improve the situation.

3. The general allegation is entitled “**Free, but not free yet!**” since those camp detainees who have not been killed or subjected to enforced disappearance during the war have in fact been freed, and illegal detention facilities were closed. Nevertheless, these men and women cannot be considered to be really free. They are not free from the frustration, the suffering, the psychological trauma, and the debasement. In many cases, they are not yet free from fear. Genuine freedom will not be achieved until their fundamental rights are respected and they can realize their right to justice, compensation and full reparation. Until BiH continues violating the rights of thousands of men and women, ignoring their ongoing quest for justice and redress, and keeping them at the margin of society, former camp detainees may indeed have been freed, but they are certainly not free yet. This situation amounts to ongoing violations by BiH of its obligations under, among others, Arts. 1, 2, 4, 5, 7, 12, 13 and 14 of the Convention against Torture; and of Arts. 2, paras. 2 and 3, 7, 8, para. 3, 9, and 10 of the International Covenant on Civil and Political Rights.

II. The Lack of Accurate Data on the number of former Camp Detainees

4. As already mentioned, to date, the very number of former camp detainees remains a controversial issue in BiH. This lack of clarity in numbers and figures that ultimately correspond to broken human lives, aggravates the suffering of victims and family members and deprives them and the BiH society in general of their right to know the truth. Moreover, the lack of reliable and unified data on former camp detainees hampers their right to justice and to obtain compensation and integral reparation for the harm suffered.

▶ *Please refer to paras. 11-22 of the integral document for details and concrete examples*

5. **BiH shall elaborate within the shortest delay a unified and accurate database concerning former camp detainees, duly considering also those currently living outside BiH. In the process, transparency and certainty must be guaranteed by BiH authorities, as well as the security and privacy of the victims, duly taking into account the sensitivity of this subject.**

III. The Inadequate Codification of Torture, Forced Labour and Arbitrary Detention

6. At present, the BiH criminal legal framework both at the national and the entity level does not ensure that torture, arbitrary detention and forced labour are adequately codified and sanctioned by appropriate penalties that take into account the gravity of the crimes. Torture, arbitrary detention and forced labour are either not codified at all or, when they are, domestic provisions do not meet international standards, do not encompass all instances of such crimes or the definitions vary significantly from one entity to the other, thus determining occurrences of discrimination. This situation fosters impunity over past crimes and at the same time jeopardizes prevention of future violations. Despite the recommendations formulated by various international human rights mechanisms, in the spring of 2011, the Criminal Code

Implementation Assessment Team (CCIAT), that is an *ad hoc* body created by the BiH Ministry of Justice for the purpose of legislative reform, estimated that existing provisions on torture are sufficient and decided not to continue considering amendments or modifications of the criminal legislation on this matter. This is a clear indication that, at present, the recommendations issued by international human rights bodies in this sense are disregarded and certainly not likely to be enforced by BiH within a reasonable time-frame.

▶ *Please refer to paras. 23-30 of the integral document for details and concrete examples*

7. **BiH shall ensure that the Criminal Code of BiH is amended and that the punishment for the offence of torture is commensurate to the gravity of the crime. It shall also guarantee that the criminal codes at the entity level integrate the crime of torture as defined under Art. 1 of the Convention against Torture, criminalising also the incitement, instigation, superior orders or instructions, consent, acquiescence and concealment of acts of torture. Entities shall also integrate torture as a crime against humanity and as a war crime in accordance with international standards. Criminal codes at all levels shall explicitly define that a person who acted pursuant to an order to commit torture shall not be relieved from criminal responsibility and those who refuse to obey such an order will not be punished. Furthermore, criminal codes at all levels shall be harmonized with regard to the codification and sanction of the crimes of arbitrary detention and forced labour, which shall be brought in line with international standards.**

IV. The Failure to Adopt a General Law on the Rights of Victims of Torture

8. Notwithstanding the reiterated recommendations by different human rights mechanisms, BiH has not yet adopted a law on the rights of victims of torture. Different attempts in the past were frustrated by the lack of political consensus. The result of this legal vacuum is on ongoing discriminations between civilian victims of war and veterans, as well as the exclusion of certain categories of victims from the enjoyment of any basic right. Beside the drafting of the mentioned law, other initiatives aiming at addressing the problems of victims of gross human rights violations (in particular the National Strategy on Transitional Justice and the Programme to Improve the Status of BiH Women Victims/Survivors of Sexual Violence in Conflict and Beyond) have been launched but have not progressed as expected. At the time of writing, the draft of the National Strategy on Transitional Justice has been finalized but not implemented yet, while the draft Programme to Improve the Status of BiH Women Victims/Survivors of Sexual Violence in Conflict and Beyond has not been finalized and formally adopted.

▶ *Please refer to paras. 31-35 of the integral document for details and concrete examples*

9. **BiH shall ensure that a law on the rights of victims of torture is adopted without any further delay and adequate financial resources are secured for its implementation. The drafting of this law shall be the result of a broad consultation with civil society, including in particular victims of**

torture and, especially, former camp detainees. In order to avoid instances of overlapping or duplication, the adoption of this law shall be coordinated with other relevant initiatives concerning victims of the conflict, such as the National Strategy on Transitional Justice and the Programme to Improve the Status of BiH Women Victims/Survivors of Sexual Violence in Conflict and Beyond coordinated by UNPFA and the Ministry for Human Rights and Refugees, that must also be implemented without further delay.

V. The Failure to Effectively Investigate, Identify, Judge and Sanction those Responsible for Crimes, including Torture, inflicted on former Camp Detainees

10. The main responsibility to investigate, judge and sanction those responsible for the grave violations committed during the conflict, including torture on former camp detainees, lies within the judicial system of BiH. Often the existence of the National Strategy for War Crimes has been invoked by prosecutors to justify the lack of activity on certain cases that allegedly should be dealt within the next 7 to 15 years. It must be stressed that the implementation of the National Strategy for War Crimes has been judged by various international institutions as extremely flawed and this, coupled with the age of many victims or their relatives, is perceived by the latter as an indication that they will die without seeing justice done. Former camp detainees express dissatisfaction towards the work so far carried out by BiH authorities and point out that impunity still prevails. In particular, they complain about the fact that, even though they have repeatedly provided BiH authorities with detailed accounts and sound evidence of the crimes committed including, in certain cases, the identity of the perpetrators, no thorough and effective investigation has been carried out and the majority of those responsible have not been judged and sanctioned. Notorious instances of flight have been registered also among those already convicted or detained. Another subject of concern is the fact that the competent BiH authorities generally fail to regularly inform former camp detainees on the development of the investigations and, when questioned, tend to elude the matter, thus failing to respect their obligations and fostering a sense of exclusion and frustration of this already vulnerable category of people. Moreover, problems concerning domestic tribunals in charge of war crimes include insufficient staffing and lack of expertise among cantonal and district prosecutors, limited cooperation between prosecutors and police, as well as between police across entity lines. Furthermore, BiH failed to carry out a comprehensive programme of vetting, in particular with reference to people implicated in the commission of crimes committed against former detainees, that contributes to foster an overall climate of impunity, since in certain communities perpetrators of war crimes still hold high positions in public offices or the police. Finally, despite the jurisprudence of the Constitutional Court of BiH and the recommendations of international mechanisms, cantonal prosecutors in particular continue conducting the investigations pursuant to the provisions of the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY) instead of those of the 2003 Criminal Code.

▶ *Please refer to paras. 36-59 of the integral report for details and concrete examples*

11. BiH shall ensure that all cases of crimes, including torture, committed against former camp detainees during the conflict are promptly, independently, impartially and thoroughly investigated and that those responsible are judged and sanctioned in accordance with international fair trial standards. BiH shall ensure that the National Strategy for War Crimes is duly implemented without further delay and its application is thoroughly explained to the wide public in a transparent manner, thus fostering a climate of trust towards institutions. Undisputedly, the existence of the strategy cannot be used to delay indefinitely investigations and to avoid providing information to victims of gross human rights violations, their relatives or their representative associations. BiH authorities shall take all necessary measures to prevent the flight of people accused of or convicted for, war crimes and crimes against humanity and to investigate, judge and sanction those responsible for these events. The State shall guarantee that district and cantonal courts as well as prosecutorial offices receive the necessary resources and trained staff to deal with war crimes cases. Specialized investigators shall be employed to assist prosecutors in the investigation of war crimes. Furthermore, BiH shall ensure that former camp detainees are given information on a regular basis on the process of investigation carried out by prosecutors' offices, the results of those investigations and whether trials might be forthcoming. Courts at all levels shall have consistent rules in dealing with the public in general and with former camp detainees in particular. BiH shall ensure that a comprehensive programme of vetting is undertaken in order to avoid war criminals from holding public offices or working in the police. Finally, in the investigation and prosecution of war crimes and crimes against humanity, including those committed against former camp detainees, prosecutors and courts at all levels must apply the 2003 Criminal Code and not the Criminal Code of the SFRY.

VI. The Failure to Adequately Protect and Support Witnesses in War Crimes Proceedings, including in Cases concerning former Camp Detainees

12. Witness protection is regulated by the Law on Protection of Witnesses under Threat and Vulnerable Witnesses (Official Gazette of BiH No. 21/2003) and the Law on Witness Protection Programme (Official Gazette of BiH No. 29/2004). Under this legal framework, the obligation to protect witnesses at the pre-trial investigation and after the completion of the testimony lies with the Witness Protection Unit of the State Investigation and Protection Agency (SIPA). The current legal framework has proved to be flawed. While few attempts to amend it already failed, in August 2011 the BiH Ministry of Security formed a working group to put forward another draft law. At the time of writing, the mentioned draft has not been passed. Victims of gross human rights violations from the war and their relatives, including former camp detainees, have been struggling with the lack of comprehensive and adequate witness protection measures as well as the lack of appropriate programmes of psychological support before, during and after testifying in war crimes trials. It appears that since November 2010 the Cantonal Court in Sarajevo, as well as the District Court in Banja Luka and the District Court in Dobož undertook measures to secure witness protection. Furthermore, the Cantonal Court in Livno is allegedly in the process of building a

new entrance door to court for the exclusive use of witnesses. With regard to other courts at the district, municipal and cantonal level, protection of witnesses remains highly deficient. Former camp detainees express their concerns at repeated instances of open mockery and insults addressed to witnesses in war crimes' trials that cause deep traumatization to the individuals concerned and have not been adequately sanctioned. Episodes where associations of former camp detainees have been subjected to harassment or attacks to their members or premises have been registered. Also in these cases those responsible have not been duly identified, judged and sanctioned. Moreover, on various occasions those accused in war crimes trials or their representatives have disclosed the identities of protected witnesses and BiH authorities failed to prevent and adequately sanction such instances. Finally, witnesses at war crimes trials feel affected by the impossibility to have access to a system of free legal aid or support, as they often perceive that they cannot have a full understanding of the legal implications of their statements and the overall conduct of the proceedings. At the same time, seeing that accused persons have access to legal aid nourishes a sense of abandonment and discrimination. Psychological support to witnesses in war crimes cases continues being provided in an insufficient and sporadic manner and is not based on any comprehensive programme. This kind of support is not guaranteed before the courts at all different levels and it is never provided in a way that covers before, during and after rendering testimony.

▶ *Please refer to paras. 60-78 of the integral document for details and concrete examples*

13. **BiH shall ensure that a comprehensive programme of witness protection and psychological accompaniment is granted at all levels prior, during and after the trial takes place. BiH shall ensure the passage of the 2011 draft witness protection programme law and allocate resources to SIPA as needed to provide effective protection. Instances of threats or harassment against witnesses, victims, their families, their counsels as well as against their representative associations shall be promptly and thoroughly investigated and those responsible shall be judged and sanctioned. Witnesses shall obtain adequate material support, including safe and free of charge transportation to and from the court and other judicial institutions. Witness protection and support shall be victim-oriented and supplied by experts who are adequately trained to provide these services and are financed by the State. The State shall ensure that witnesses in war crimes trials have access to adequate legal consultancy free of charge. The State must ensure to set up without delay an effective public system of free legal aid enabling victims of war to receive legal support (counselling and, if need be, access to court), if they are not able to afford it.**

VII. The Failure to Provide Adequate Compensation and Integral Reparation to former Camp Detainees

14. Victims of gross human rights violations, including former camp detainees, shall be provided with full and effective reparation, which comprises pecuniary compensation (covering material and non-

pecuniary damages), as well as other forms of reparation aiming at granting restitution; rehabilitation; satisfaction, including restoration of dignity and reputation; and guarantees of non-repetition. So far, in BiH there is no comprehensive programme nor a State law designed to guarantee adequate compensation and integral reparation to civilian victims of war, including victims of former camp detainees. In general, these notions are unduly assimilated to that of social assistance. The existing legal framework is plagued by gaps and there are serious drawbacks in its implementation. Legal provisions vary significantly in the entities, with the result of discriminating among former camp detainees. In general, civilian victims of war receive lower social benefits if compared to war veterans. Nevertheless, also war veterans, including prisoners of war, in the Federation of BiH are currently affected by a process of revision of their disability pensions that is mainly based on the verification of the existence of discrepancies in the documentation. The existing law on social benefits establishes strict deadlines that already expired, thus excluding a considerable group of potential applicants from claiming their rights. The existing laws seriously impair and fail to guarantee the rights of civilian victims of war currently living outside BiH. Moreover, current procedures under which victims may apply for the status of civilian victim of war do not seem to be totally transparent and sensitive to the psychological needs of the persons involved. In those cases where former camp detainees have filed their claims for non-pecuniary damages before civil courts, the process has often been hampered by the undue application of a statute of limitations, the request to sustain expensive court fees that many victims are unable to afford, and the need to produce documentation issued during or immediately after the war that a great majority of former camp detainees cannot obtain.

▶ *Please refer to paras. 79-100 of the integral document for details and concrete examples*

15. **BiH shall implement a national programme of measures of reparations for civilian victims of war, including former camp detainees that encompasses compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. Also civilian victims of war currently living abroad shall be entitled to realize their right to compensation and restitution. The notions of “civilian victim of war” and “beneficiary of social assistance” shall be clearly distinguished, as well as those of “compensation and reparation” and “social assistance”. In general, civilian victims of war shall not receive a worst treatment compared to that of war veterans. BiH shall take all necessary measures to raise awareness about the status as civilian victim of war, the conditions and procedures to apply for it and the rights deriving from this. BiH must ensure that adequate and effective criteria are applied to recognize the status of civilian victim of war without discrimination. The process of revision of social benefits awarded to war veterans, including prisoners of war, in the Federation of BiH shall not depend solely on the existence of formal mistakes in the documentation and certificates held by the veterans and shall be conducted without discrimination. BiH shall also guarantee that claims relating to reparations for gross violations of human rights and humanitarian law shall not be subject to statutes of limitations in any event. Furthermore, proceedings concerning claims for compensation for the harm suffered**

by former camp detainees and victims of torture should not be subjected to court fees and they should not depend on the production of documentation issued during the conflict.

16. In the case of former camp detainees, the possibility to claim compensation from individual perpetrators has proved to be particularly ineffective. First, in the majority of cases, victims are not aware of their right to apply for compensation from perpetrators and of the functioning of the procedure to enforce such right. Second, victims who give their testimony in the course of a criminal proceeding are not automatically included among those who are notified about the delivery of a decision that refers them to civil action for compensation. Third, although the State Court would be entitled to award compensation to the injured party, this is a discretionary choice depending on the initiative of the competent prosecutor that, so far, has not been taken, rather favouring referral to civil action. Lastly, victims would need a lawyer to represent them in civil claims for compensation and, in almost all cases they cannot afford it, while free legal aid is not granted to them by the State.

▶ *Please refer to paras. 101-106 of the integral document for details and concrete examples*

17. **BiH shall ensure that former camp detainees are adequately informed about their right to claim compensation from individual perpetrators and, where a judgment of the State Court refers them to civil proceedings for this purpose, they are automatically notified about the relevant decision and provided with free legal aid to effectively fulfil their rights.**

18. As a direct consequence of the harm suffered during the war, the majority of former camp detainees live in a particularly difficult material situation and, so far, BiH has failed to guarantee them adequate restitution and rehabilitation, especially in the sense of a safe and sustainable return to their pre-war place of residence. In this sense, it must be stressed that those who were receiving some kind of social assistance due to their qualification as victims of war, lose such right if they move from one entity to the other and this situation concretely discourages their return to the pre-war place of residence. Also, the State has not granted these victims access to adequate housing, preferential treatment in employment and in access to education for their children, and supply of proper free of charge medical and psychological support. A very high number of former camp detainees do not have a medical insurance and are thus incapable of taking care of the costs that their particularly delicate situation would require. In this context, it is noteworthy that the situation of victims of gross human rights violations, including former camp detainees, in the Republika Srpska and in the District of Brčko is significantly worse than in the rest of the country.

▶ *Please refer to paras. 107-123 of the integral document for details and concrete examples*

19. **BiH shall adopt all necessary measures to ensure that the psychological impact on individuals, in particular on former camp detainees as a result of their return to the pre-war places of residence, is duly considered when evaluating whether there are the conditions for a “safe and**

dignified” return of internally displaced persons or refugees. No one shall be forced to return if they do not wish to do so. Those not willing to return shall be provided with alternative options of resettlement, guaranteeing access to safe and adequate housing to them and their families. In no case shall the return to the pre-war place of residence determine the loss of the social benefits to which the victim is entitled. The State shall undertake without delay all necessary measures to guarantee the reintegration of former camp detainees in the labour market as well as access to vocational trainings. Both at the State and the entity level preferential treatment in employment shall be assured to former camp detainees and the legal framework shall be amended accordingly. BiH shall guarantee to the children of former camp detainees the access to education. Finally, the State shall develop a system to provide former camp detainees in BiH, including those who live in remote areas of the country, with access to psychological accompaniment, medical insurance and medical treatment free of charge. Indeed, special attention shall be devoted to the amendment of the legal framework in the Republika Srpska and in the District of Brčko in order to overcome the existing gaps.

VIII. Conclusions and Requests

20. The situation of former camp detainees and the ongoing violation of their basic human rights has been denounced as a subject of deep concern by a number of international institutions and human rights mechanisms (e.g., *inter alia*, the Committee against Torture, the Commissioner for Human Rights of the Council of Europe, and the Special Representative of the Secretary-General on Sexual Violence in Conflict). During the conflict in BiH, both the Special Rapporteur on Torture and a representative of the Working Group on Arbitrary Detention visited the country and expressed their deep concern for the gross human rights violations suffered by camp detainees. However, afterwards neither the Special Rapporteur on Torture or the Working Group on Arbitrary Detention followed-up on the country visit or further inquired on the violations committed and on the existing practices. Nevertheless, the situation of former camp detainees remains critical and many of them are dying without seeing justice and obtaining redress for the harm suffered.
21. In order to maintain this item on the domestic and the international agendas and to guarantee that the situation of former camp detainees is finally dealt with in an appropriate manner, TRIAL and the nine subscribing associations are persuaded that a country visit, either jointly or separately, of the distinguished Special Rapporteur on Torture and the Working Group on Arbitrary Detention to BiH would provide them with a firsthand account of the situation concerning this particularly vulnerable category of people. Therefore, the subscribing associations respectfully request the Special Rapporteur and the Working Group to solicit an invitation to the government of BiH to carry out such visit, bearing in mind that on 7 May 2010 BiH issued a standing invitation to all United Nations thematic procedures, thereby announcing that it will always accept requests to visit.