



# Convention on the Elimination of All Forms of Discrimination against Women

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## Committee on the Elimination of Discrimination against Women

### Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 116/2017<sup>\*,\*\*</sup>

<i>Communication submitted by:</i>	S.H. (represented by counsel, TRIAL International)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Bosnia and Herzegovina
<i>Date of communication:</i>	27 January 2017 (initial submission)
<i>References:</i>	Transmitted to the State party on 10 April 2017 (not issued in document form)
<i>Date of adoption of views:</i>	9 July 2020
<i>Subject matter:</i>	State party's failure to act with due diligence for the timely and effective investigation of sexual violence; the right to fair and adequate compensation and support
<i>Procedural issues:</i>	Exhaustion of domestic remedies; <i>actio popularis</i>
<i>Articles of the Convention:</i>	1, 2 (a)–(f), 3, 12, 13 (a) and (b) and 15 (1)
<i>Articles of the Optional Protocol:</i>	2 and 4 (2)

\* Adopted by the Committee at its seventy-sixth session (29 June–9 July 2020).

\*\* The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Nicole Ameline, Gunnar Bergby, Marion Bethel, Louiza Chalal, Esther Eghobamien-Mshelia, Naéla Mohamed Gabr, Hilary Gbedemah, Nahla Haidar, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Wenyan Song, Genoveva Tisheva, Franceline Toé-Bouda and Aicha Vall Verges.



## Background

1. The author of the communication is S.H., a Bosnian national of Croat ethnicity. The author is a survivor of a rape allegedly perpetrated by a member of the Bosnian Serb forces in 1995, during the conflict in the former Yugoslavia. She claims that the State party has violated her rights under articles 1, 2 (a)–(f), 3, 12, 13 (a) and (b) and 15 (1) of the Convention. The Convention and the Optional Protocol thereto entered into force for the State party on 1 October 1993 and 4 December 2002, respectively. The author is represented by counsel, TRIAL International, a non-governmental organization (NGO).

## Facts as submitted by the author

2.1 In 1995, the author was living with her husband in the municipality of Prijedor,<sup>1</sup> Bosnia and Herzegovina, in a village occupied by the Bosnian Serb forces (Vojska Republike Srpske, VRS) since 1993.<sup>2</sup> On 25 August 1995, at around 5 p.m., the author was alone at home when four armed men, dressed in a combination of plain clothes and camouflage uniforms and carrying rifles, entered her house. The author believes that they were members of VRS.<sup>3</sup> They addressed her in derogatory terms related to her ethnicity and stole her belongings. While three of the men went outside, one remained inside the house and ordered the author to take her clothes off. When she refused to do so, the man pushed her on to a couch, and raped her, with vaginal penetration. After hearing a shot outside, the men left the house and the author managed to escape to the nearby woods. She did not tell her family or neighbours about the rape out of shame.

2.2 In September 1995, accompanied by her sister-in-law, the author reported the incident at the police station in Ljubija, a town near Prijedor. She could not obtain a copy of her report to the police, and the case was not followed by any investigation.

2.3 For many years, even after the end of the Bosnian war, the author did not actively pursue her case out of fear of being stigmatized and in the hope that the authorities would finally investigate her case on the basis of her initial complaint of 1995. However, in 2008, when she inquired at the police station in Ljubija about the progress made in the investigation into her case, she was informed that the files had been burned 10 years after the offence. Shocked by that response, the author decided to approach the Social Work Centre in Prijedor to seek justice. The Centre referred her to several NGOs. On 6 November 2008, the author provided the Association of Women Victims of War with the details of the events of 1995. On 26 January 2009, the Association, with the author's approval, brought a criminal case to the Prosecutor's Office of Bosnia and Herzegovina.

2.4 As no evident progress was being made on the investigation into her case, between 2009 and 2014, the author repeatedly presented her allegations to the police stations in Ljubija and Prijedor, the Prosecutor's Office of Bosnia and Herzegovina, the Human Rights Ombudsperson Institution of Bosnia and Herzegovina and the District Prosecutor's Office in Banja Luka. Although most of the correspondence remained unanswered, she received several responses, including from the police station in Ljubija on 17 September 2012 and the police station in Prijedor on 4 December 2012, 16 January 2013 and 17 February 2014. However, the letter from the Prijedor police station in December 2012 informed her only that the police had not

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<sup>1</sup> Now in the Republika Srpska, an entity of Bosnia and Herzegovina.

<sup>2</sup> The majority of the village's inhabitants were Croats. The author alleges that, from the time it was occupied, members of VRS committed rape and sexual violence in the village in the context of ethnic cleansing.

<sup>3</sup> The author believed that this was the case on the basis of the fact that only members of VRS could move freely in the village under their control.

conducted any investigation into her initial complaint in 1995 and that the report of the author had never been registered. On 1 February 2013, the Prosecutor's Office replied to an inquiry from the Human Rights Ombudsperson Institution, stating that the investigation was ongoing and that witnesses and the injured party would be heard. On 19 March 2014, the District Prosecutor's Office in Banja Luka informed the author that, as the case had been registered with the Prosecutor's Office, the District Prosecutor could take no action unless the case was transferred by a court decision.<sup>4</sup>

2.5 On 4 June 2014, the author filed an appeal to the Constitutional Court of Bosnia and Herzegovina, alleging that there had been no effective investigation of her case or prosecution of the perpetrators and that she had not received adequate compensation or reparation.<sup>5</sup> On 17 February 2016, her appeal was rejected as unfounded. The Constitutional Court held that, given the context in which the crimes had been committed and the exceptional difficulties faced by the national authorities in investigating many complex crimes, it was not possible to argue that the authorities were breaching their positive obligations. Although the Court recognized that the investigative process had been slow and mostly inconclusive, it decided that that was a result of the exceptional circumstances and not owing to a lack of due diligence on the part of the authorities. Since the Court's ruling, the author has not been contacted by the Prosecutor's Office or any other authority responsible for investigating her complaints.

2.6 In the meantime, on 9 August 2012, the author wrote to the Department for the Protection of War Veterans and Persons with Disabilities of Prijedor Municipality to request registration as a civilian victim of armed conflict, which is necessary to receive social support and assistance. The request was rejected as time-barred, since it was registrable only until 31 December 2007. On 3 September 2012, the author submitted an appeal against that decision to the Ministry of Labour and Protection of War Veterans and Persons with Disabilities in Banja Luka. On 4 November 2015, that appeal was also rejected owing to the statute of limitations. On 17 December 2015, the author filed a complaint against that decision with the District Court in Banja Luka, which was rejected on 24 June 2016 as unfounded.

2.7 On 25 August 2016, the author submitted a complaint to the Constitutional Court of Bosnia and Herzegovina, alleging that the unreasonable statute of limitations in the Law on the Protection of Civilian Victims of War in the Republika Srpska prevented her from being recognized and registered as a civilian victim of armed conflict and from receiving social benefits to which she would otherwise be entitled.

2.8 The event of 1995 caused the author physical and psychological suffering. The rape caused problems with her thyroid gland and a major genital infection, for which she could not afford appropriate treatment owing to financial constraints. According to the author, it developed into a cervical disease in 2006 and cervical cancer in 2012, as a result of which she had her cervix removed. She has been diagnosed with a depressive disorder and permanent personality change because of her traumatic experience, which also affected her marital life. The author's inability to engage in sexual intercourse with her husband after the rape led to their divorce in 2009. She currently lives below the poverty line and does not have enough resources to cover basic needs and medical expenses.

## **Complaint**

3.1 The author states that the communication should be deemed to be admissible. Although the facts took place before the Optional Protocol entered into force for the

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<sup>4</sup> Similar replies were received from the Prosecutor's Office on 31 July 2014 and the District Court of Banja Luka on 12 September 2014.

<sup>5</sup> Despite the absence of challenged court decision, the author was able to lodge an appeal containing allegations of grave human rights violations pursuant to the rules of the Constitutional Court.

State party, the alleged violations are of an ongoing nature and their effect has continued since 4 December 2002 within the jurisdiction of the State party.<sup>6</sup> Thus, the author contends that the Committee is competent *ratione temporis* and *ratione loci* to examine the present complaint.

3.2 With regard to article 4 (1) of the Optional Protocol, the author claims that she has exhausted all available domestic remedies. She notes that, although she brought the case to the Constitutional Court, and despite her repeated requests and enquiries, there has been no effective investigation, prosecution of alleged perpetrators or adequate remedy for the author. She also notes that the complaint pending before the Constitutional Court with regard to recognition of her status as a civilian victim of the armed conflict has no prospect of success, as that Court has regularly ruled all complaints to be inadmissible owing to the statute of limitations.<sup>7</sup> Thus, she claims that she could not be reasonably expected to undertake any further steps at the domestic level.

3.3 The author claims that she has been a victim of the ongoing failure of the State party to conduct a prompt, effective and thorough investigation of her rape complaint, which has allowed the perpetrators to enjoy impunity, thereby constituting a violation of her rights under article 1, read in conjunction with articles 2 (b), (c), (e) and (f) and 3, of the Convention. The failure to give her access to information on progress made in the investigation or provide her with a timely opportunity to contribute to the investigation with information about the facts also constitutes a violation under those articles.<sup>8</sup>

3.4 The author further claims that the State party has violated her rights under article 15 (1), read in conjunction with article 2 (c) and (e), of the Convention, by not providing any form of adequate compensation or redress for the harm that she suffered.

3.5 Moreover, the author alleges that her rights under article 1, read in conjunction with articles 2 (a) and (c)–(f), 3, 12 and 13 (a) and (b), of the Convention have also been violated by the discriminatory and flawed nature of legislation, as a result of which the authorities failed to recognize or register the author as a civilian victim of armed conflict. The author claims to have been deprived of access to social assistance and benefits, although she lives in extreme poverty and in precarious conditions.

3.6 Pursuant to article 7 (3) of the Optional Protocol, the author requests full reparation for the harm she suffered, including the coverage of material and moral damages and a number of reparation measures to provide restitution, rehabilitation, satisfaction (including restoration of dignity and reputation) and guarantees of non-repetition.

3.7 The author notes that the events occurred in the context of widespread rape and sexual violence during the war and that the failure to investigate or prosecute those

<sup>6</sup> *S.V.P. v. Bulgaria* (CEDAW/C/53/D/31/2011). See also *A.T. v. Hungary* (A/60/38, part one, annex III), para. 8.5; *A.S. v. Hungary* (CEDAW/C/36/D/4/2004), para. 10.4; and *Kayhan v. Turkey* (A/61/38, part one, annex I), para. 7.4. The author also refers to a number of cases of the Human Rights Committee, as well as to European Court of Human Rights, *Palić v. Bosnia and Herzegovina* (application No. 4704/04), judgment of 15 February 2011.

<sup>7</sup> *Vienna Intervention Centre against Domestic Violence and Association for Women's Access to Justice on behalf of Akbak et al. v. Austria* (CEDAW/C/39/D/6/2005), para. 11.3. See also Human Rights Committee, *Taright et al. v. Algeria* (CCPR/C/86/D/1085/2002), para. 7.3; and *Wan v. Portugal* (CCPR/C/73/D/925/2000/Rev.1), para. 6.4.

<sup>8</sup> The author claims that women who have identified the perpetrators of rape, and are willing to testify, are further stigmatized by the fact that their cases can take 15 years to be heard.

grave offences, punish their perpetrators or provide adequate reparation to victims has been systematic.<sup>9</sup>

### State party's observations on admissibility and the merits

4.1 On 16 October 2017, the State party submitted its observations on the admissibility and merits of the communication.

4.2 The State party submits that the communication should be declared inadmissible as an *action popularis* (a lawsuit brought by a third party in the interest of the public as a whole), in particular the parts that relate to the general complaints about national law and domestic judicial and administrative practice. The State party notes that, when claiming to be the victim of systemic violations, an author must produce reasonable and convincing evidence of the fact or the likelihood that a violation affecting him or her personally occurred or will occur according to international judicial practice.<sup>10</sup> The State party contends that the author has not proven that she was personally affected or a direct or immediate victim of the lack of harmonization between the national legal system and administrative and judicial practice. The State party also notes that the author's case continues to be the subject of an ongoing investigation or examination before national authorities in criminal and administrative proceedings.

4.3 Concerning the merits of the communication, the State party submits that the competent authorities at all levels have made significant efforts to process war crimes and bring those responsible to justice. The State party notes that it adopted its national strategy for processing war crimes in 2008, which provides that the most complex and highest priority war crime cases should be prosecuted within seven years and other war crime cases within 15 years.<sup>11</sup> The State party concludes that, by implementing the strategy, it has fulfilled its obligation to process war crimes with reasonable speed, as confirmed by domestic cases on sexual violence during wartime.<sup>12</sup>

4.4 The State party highlights the investigative efforts and commitment of relevant authorities with regard to the author's allegation of sexual violence, in spite of the difficulties generated by the large number of cases related to grave and mass violations of fundamental rights during the war, the complexity of the case at hand and the lapse

<sup>9</sup> Reports of and observations made by the European Commission, the Committee on the Elimination of Discrimination against Women, the Special Rapporteur on violence against women, its causes and consequences, the Special Representative of the Secretary-General on Sexual Violence in Conflict, the Human Rights Committee, the Committee against Torture and the Committee on Economic, Social and Cultural Rights are cited in the communication in support of the author's claims.

<sup>10</sup> The State party refers to *Senator Lines GmbH v. Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom* (application No. 56672/00), decision of 10 March 2004, in which the European Court of Human Rights stated that an applicant "must produce reasonable and convincing evidence of the likelihood that a violation affecting him personally will occur". See also European Court of Human Rights, *Aksu v. Turkey* (applications Nos. 4149/04 and 41029/04), judgment of 15 March 2012, and *Burden v. United Kingdom* (application No. 13378/05), judgment of 29 April 2008, para. 33.

<sup>11</sup> The State party contends that the European Court of Human Rights has deemed the timelines to be reasonable, and the domestic authorities have taken measures to fulfil them (see *Palić v. Bosnia and Herzegovina*, para. 51, and *Zuban and Hamidović v. Bosnia and Herzegovina* (applications Nos. 7175/06 and 8710/06), decision of 2 September 2014, paras. 21 and 23).

<sup>12</sup> See, for example, *Prosecutor's Office of Bosnia and Herzegovina v. Veselin Vlahović*. The details of the case are not provided.

of time since the incident.<sup>13</sup> The State party notes that the author's case was registered when it was filed with the Court in 2009. The Prosecutor's Office investigated a number of alleged war crimes committed between 1992 and 1995 in the Prijedor area, including the author's case. There was, however, not enough evidence to identify perpetrators even after the author and witnesses had been heard. On 28 August 2014, the Prosecutor's Office issued an order to the State Investigation and Protection Agency to take all measures necessary to establish the facts and obtain evidence in order to identify the perpetrator of the crime. In a letter dated 2 October 2014, the author expressed her satisfaction with those investigative actions. The State party contends, therefore, that the author's allegation that the Prosecutor's Office and other relevant authorities did not take an active role in investigating the crime committed against her is unfounded. The ongoing investigation efforts were recognized by the Constitutional Court, thus it had ruled that the allegation of the author was unfounded.<sup>14</sup>

4.5 The State party also states that, although the right of victims, their families and successors to learn the truth of the circumstance of events leading to gross violations of fundamental rights is acknowledged in international jurisprudence, that does not mean that they may scrutinize police records or copies of all documents or that they must be consulted on every measure taken in the course of an investigation or informed of the names of potential suspects.<sup>15</sup> The State party contends that, were it so, suspects who may be innocent could be stigmatized and suffer the consequences of such investigations.

4.6 With regard to the author's allegations on the recognition of her status as a civilian victim of armed conflict and the receipt of social support and benefits,<sup>16</sup> the State party notes that the author's allegation is being re-examined by the administrative body. The State party notes that, on 17 February 2016, the Constitutional Court deemed the allegation by the author that her constitutional rights had been violated as a result of the rejection by the competent bodies of her application for status as a civilian victim of armed conflict to be premature, as the author had filed an administrative claim in 2015. The State party adds that the free legal aid is provided under the Law on Providing Free Legal Aid adopted in 2016, as well as through institutions for the provision of free legal aid, thus the requirement to pursue civil proceedings is not unreasonable or discriminatory and does not place an excessive burden on the author.

4.7 Considering the fact that a victim of sexual violence is particularly vulnerable and may have difficulty in meeting the conditions required in order to be considered a civilian victim of armed conflict, the State party notes that the Government of the Republika Srpska is in the process of adopting a draft law on the protection of victims of torture in wartime, which would ease those conditions and enshrine the rights of victims of sexual violence to financial compensation, health and psychological support, employment assistance, legal aid and exemption from administrative and court fees.

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<sup>13</sup> The State party also contends that international jurisprudence does not impose an impossible and disproportionate burden on the authorities, where a great number of war crime cases are brought and victims appear before the national courts. See European Court of Human Rights, *Osman v. United Kingdom* (application No. 87/1997/871/1083), judgment of 28 October 1998, para. 116, and *Palić v. Bosnia and Herzegovina* (application No. 4704/04), judgment of 15 February 2011. The State party notes that, since 2016, it has seen an increase in the number of war crimes cases involving sexual violence. In February 2017, 46 criminal cases in which the accused had been charged with sexual violence committed during the war were pending.

<sup>14</sup> The State party also notes that the investigation by the Prosecutor's Office is in its final stages and that the author has been made aware of that fact.

<sup>15</sup> European Court of Human Rights, *Association "21 December 1989" and others v. Romania* (applications Nos. 33810/07 and 18817/08), judgment of 24 May 2011, para. 97.

<sup>16</sup> See article 2 (1) of the Law on the Protection of Civilian Victims of War in the Republika Srpska.

4.8 The State party also notes that it has amended its criminal legislation and the law on witness protection. Amendments introduced into the Criminal Code in 2016 include a definition of hate crime and the criminalization of sexual violence, in line with international standards. The law provides for appropriate prison terms for such criminal offences as rape committed as a hate crime or war crime. The law applies to all war crimes cases in Bosnia and Herzegovina, regardless of the jurisdiction in which the proceedings are conducted (see also [CEDAW/C/BIH/6](#), para. 32). Under legal aid legislation, victims are entitled to legal aid free of charge. Judges and prosecutors receive systematic and compulsory training on protection measures and support for victims of and witnesses to sexual violence under domestic and international laws on gender equality.

4.9 Noting that, under international law, it is necessary to establish a causal relationship between an event and the harm caused, the State party contends that the author has failed to prove that the health condition that she developed in 2006 was a direct consequence of the event in question.

#### **Author's comments on the State party's observations on admissibility and the merits**

5.1 On 19 March 2018, the author submitted comments on the State party's observations on the admissibility and merits of the communication.

5.2 Regarding the State party's claim that the complaint should be declared inadmissible as an *actio popularis*, the author contends that she does not challenge laws or practices in the abstract but, rather, asserts that a certain law or practices affected her directly and personally. The complaint should, therefore, be declared admissible.<sup>17</sup> The author states that, although she explains the legal framework and corresponding practice of the State party as general background information, such a description of the applicable legislation and a summary of the existing loopholes identified by international bodies cannot be seen in any way as an *actio popularis*. The author reiterates that the State party failed to recognize and register her as a civilian victim of armed conflict and deprived her of access to any form of social support or benefits owing to flawed and discriminatory legislation. Thus, the author alleges that the application of the legislation affected her directly and personally and that the direct and personal prejudice she suffered is the core of her complaint.

5.3 On the merits of the communication, the author rebuts the claims of the State party in three main respects: (a) access to information concerning progress made in the investigation into her complaint; (b) the delay in and lack of effectiveness of the investigation, which led to the author not receiving compensation; (c) the failure to recognize the author as a civilian victim of armed conflict and to ensure that she receives social support and benefits.

5.4 With regard to (a), the author alleges that, between 2009 and 2017, she wrote at least 18 letters to different authorities in the country, explicitly seeking information on the status of the investigation of her case. Most of those letters remained unanswered. In the few instances where she received a reply, the information provided was inadequate or even contradictory and inaccurate. As for the author's letter to the Prosecutor's Office of Bosnia and Herzegovina, in which the State party alleges that the author conveyed her satisfaction with the investigation, the author argues that she expressed only generic and complimentary satisfaction that the investigation was continuing, which should not be interpreted as meaning that she was satisfied with the effectiveness of the investigation and communication with the authorities. In that letter, she also requested a time frame for the investigation and to be involved in the

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<sup>17</sup> See *Dayras et al. v. France* ([CEDAW/C/44/D/13/2007](#)).

investigation process as much as possible. The author contends that the fact that those requests have remained unanswered illustrates the indifference of the Prosecutor's Office of Bosnia and Herzegovina to the author's suffering.

5.5 With regard to (b), the author reiterates that the police failed to take any steps to investigate her initial complaint of rape in September 1995. When she filed the complaint, the police did not ask either her, as the injured party, or any witnesses for details. There was no crime scene investigation or medical assessment of the author. Furthermore, she was informed by the State party that the files from that period had been burned and that there was no record of her initial complaint anywhere. Thus, the author had to submit her "new" complaint in January 2009.

5.6 The author notes the State party's claim that its national legal system only recently became capable of processing war crimes cases, in particular under the national strategy for processing war crimes, the aim of which is to ensure that the country's huge backlog of cases is processed within a set time frame. The author contends, however, that the implementation of the strategy is being plagued by delays and refers to the concern expressed by numerous international bodies about the State party's failure to respect the original deadlines and targets set thereunder and about the large number of pending cases.<sup>18</sup>

5.7 With regard to the ongoing investigation of her case by the Prosecutor's Office of Bosnia and Herzegovina, the author notes that it makes no sense for the State party to claim that it is investigating events that occurred in Prijedor between 1992 and 1995, while the author has already specified that she was raped in August 1995. She states that none of the arguments made by the State party alters the fact that it did not exercise due diligence by investigating her case and identifying, prosecuting and punishing those responsible for her rape more than 20 years after the facts and more than nine years after she filed the "new" complaint. The author reiterates her assertion that the number of crimes involving sexual violence that have been brought to court remains low and that impunity for wartime rape remains rampant, including in her case, which amounts to a violation of article 1, read in conjunction with articles 2(b)–(d), (f) and 3, of the Convention.

5.8 The author also states that, regardless of amendments to criminal law mentioned by the State party, she does not foresee any immediate or realistic chance of forthcoming criminal proceedings against the person responsible for her rape and that she has not been given any meaningful opportunity to obtain compensation or any other measures of reparation for the harm she suffered. The author reiterates that this situation constitutes additional violations by the State party under article 15 (1), read in conjunction with article 2 (c) and (e), of the Convention.<sup>19</sup>

5.9 With regard to (c), the author reiterates that her administrative claim for recognition as a civilian victim of armed conflict was rejected by the Banja Luka District Court on 24 June 2016, which the State party does not mention in its observation. In consequence, she has received no social benefits or support and thus

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<sup>18</sup> The author refers to [CCPR/C/BIH/CO/3](#), para. 13, [CAT/C/BIH/CO/6](#), para. 16, and a country visit report issued in 2017 by the Commissioner for Human Rights of the Council of Europe, Nils Muižnieks, in which the Commissioner expressed concern about the fact that, as at December 2016, 358 of the "most complex" and 357 "less complex" cases remained pending in the State party (CommDH(2017)28, para. 17). See also Amnesty International, *We Need Support, Not Pity* (London, 2017), p. 22. The author also contends that, although the State party refers to one conviction in a case of sexual violence committed during the conflict, it does not thereby demonstrate the efficacy of the national legal system in processing war crimes cases.

<sup>19</sup> The author states that the amendment to the Criminal Code referred to by the State party is irrelevant in the present case, as the Code applies only to cases before the Court of Bosnia and Herzegovina. The author adds that judges and prosecutors in the Republika Srpska receive no training on conflict-related sexual violence.

been left to survive in poverty without resources to cover her basic needs and medical expenses, all of which amounts to a violation of article 1, read in conjunction with articles 2 (a) and (c)–(f), 3, 12 and 13 (a) and (b), of the Convention.

5.10 The author also observes that, as noted by the State party, it is difficult for victims of rape and other forms of sexual violence during the conflict to have their status or rights acknowledged under the Law on the Protection of Civilian Victims of War, owing to the conditions that must be met. She adds that the draft law on the protection of victims of torture in the Republika Srpska has not been adopted.<sup>20</sup>

5.11 With regard to the claim by the State party that provision is made under the law for free legal aid, the author notes that, although she lives in extreme poverty, she has not been able to afford legal assistance from any State institution and that court fees have not been waived in her case.

5.12 The author also notes that she proved that her current state of health is a consequence of the event of 1995 with the medical certificate of 13 March 2014, in which it is affirmed that the author is afflicted by multiple gynaecological problems and inflammation, which was never the case before. Moreover, the author alleges that the State party fails to recall that the author has been assessed as suffering from a depressive disorder and permanent personality change due to the traumatic experience to which she was subjected.

5.13 In the light of the above, the author considers that the State party had failed to provide solid legal arguments against the admissibility of her complaint or to adequately challenge the facts and the merits as described and argued by the author in her initial communication. Hence, she maintains her allegation that her complaint should be declared admissible and that the State party is in violation of its obligations under the articles of the Convention mentioned above.

#### **Author's additional information**

6.1 On 16 April 2019, the author submitted an information note regarding a relevant factual development.

6.2 On 21 June 2018, the Law on the Protection of Victims of Torture was adopted by the Republika Srpska. It entered into force on 5 October 2018 and provides for monthly disability pensions for victims of conflict-related sexual violence.

6.3 On 17 December 2018, the author lodged a request with the Department for the Protection of War Veterans and Persons with Disabilities of Prijedor Municipality to obtain recognition of her status as a victim of conflict-related sexual violence.

6.4 On 8 February 2019, the Department issued a decision recognizing her status as a victim of conflict-related sexual violence and acknowledging her right to receive a monthly disability pension of 130 marka (€66.47).

6.5 Nonetheless, the author maintains her allegations and legal arguments. Although her status as a victim of conflict-related sexual violence has been acknowledged, the amount of the monthly pension can by no means be considered to be proportional to the gravity of the crime and the harm that she suffered. The author also notes that the amount of the pension is discriminatory, given that the amount received for the same reasons in the Federation of Bosnia and Herzegovina is approximately 580 marka (€296.94). Furthermore, in the Republika Srpska, the disability pension for victims of sexual violence tends to be lower than for victims of other forms of torture (the

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<sup>20</sup> The author subsequently provided updated information on the Law on the Protection of Victims of Torture, which was adopted in June 2018 (see below).

monthly disability pension under the Law on the Protection of Victims of Torture in Republika Srpska ranges from 130 marka to 400 marka).

6.6 On 30 April 2020, the author submitted another information note regarding a development in her case. The author reiterates that there have been serious delays in the investigation and prosecution of crimes committed during the conflict, and the goal of completing the investigation and prosecution of the most complex cases by the end of 2015, in accordance with the national strategy for processing war crimes, has not been achieved. Under a revised strategy, it has been proposed that a goal would be set to ensure the prosecution of the most complex and highest priority war crimes cases before the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina by the end of 2023, but that revised strategy has not yet been adopted.

6.7 On 19 April 2017, the Constitutional Court of Bosnia and Herzegovina rejected the complaint submitted by the author on 25 August 2016 regarding her application for status as a civilian victim of armed conflict, declaring it unfounded and thus inadmissible. The Court remarked that the applicant had failed to comply with the applicable statutes of limitations under the Law on the Protection of Civilian Victims of War in Republika Srpska and thus rejected all the complaints concerning alleged violations.

6.8 On 6 March 2020, the author was granted her request to obtain health-care benefits pursuant to the Law on the Protection of Victims of Torture in Republika Srpska by a decision of the Department for the Protection of War Veterans and Persons with Disabilities of Prijedor Municipality. The author notes, however, that this does not represent a reparation measure for the suffering that she endured, as it is merely allowing her to access the regular health-care system henceforth and does not guarantee that she will obtain special medical and psychological support.

6.9 Even though she was recognized as a victim of conflict-related sexual violence under the law of the Republika Srpska on 8 February 2019 and granted the right to obtain health-care benefits on 6 March 2020, the author wishes to maintain her initial allegations because her current legal status does not allow her to fully receive prompt, fair and adequate compensation or adequate medical and psychological support.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

7.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72 (4), it is to do so before considering the merits of the communication.

7.2 The Committee notes the State party's argument that the author's claim constitutes an *actio popularis*, since she challenges the legal system as a whole and as it applies to others, rather than an individual violation, and that the communication should be declared inadmissible on that ground. The Committee also notes that the author considers that providing an explanation of the relevant legal framework does not render her communication an *actio popularis*, especially since she explains how she is personally and directly affected by the legislation. In that regard, the Committee recalls that, under article 2 of the Optional Protocol, communications may be submitted by individuals under the jurisdiction of a State party "claiming to be victims of a violation of any of the rights set forth in the Convention by that State party" and that a person can only be a victim in the sense that he or she is actually affected.<sup>21</sup> This means that no person may, in the abstract, by way of an *actio popularis*,

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<sup>21</sup> See *Aumeeruddy-Cziffra et al. v. Mauritius* (CCPR/C/12/D/35/1978), para. 9.2, and *Dayras et al. v. France*, para. 10.5.

challenge a law or practice claimed to be contrary to the Convention.<sup>22</sup> In the present case, the Committee notes that the author presents the legal framework only as background information to help to explain her personal situation and its impact on her claims. Thus, the Committee considers that the communication does not constitute an *actio popularis* and that the facts as submitted do not preclude the Committee from declaring the communication admissible in that regard.

7.3 The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted or that the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.<sup>23</sup> The Committee notes the State party's argument that the author's case is still under investigation or before national authorities. Nonetheless, the Committee also notes the author's submission that she has exhausted all available domestic remedies that would have been likely to bring sufficient relief and the application of which would not have been unreasonably prolonged. As conceded by the State party, the author brought the case to the Prosecutor's Office of Bosnia and Herzegovina in 2009 and appealed on 4 June 2014 to the Constitutional Court, which also recognized that "the investigative process had been slow and mostly inconclusive" in its ruling of 17 February 2016.

7.4 The Committee also notes that the author's additional information submitted on 30 April 2020, indicating that the Constitutional Court rejected the author's complaint regarding her application for status as a civilian victim of armed conflict under the law. Although the author was granted the status of a victim of conflict-related sexual violence on 8 February 2019 under the law of Republika Srpska, the Committee also notes the author's assertion that the amount of the pension is not proportionate to the gravity of the crime and the harm that she has suffered and is thus not fully effective.

7.5 In the absence of an explanation by the State party as to how the investigation would not be further prolonged or how proceedings under those laws would have been effective in securing the rights of the author, the Committee concludes that the domestic remedies referred to by the State party have been unreasonably prolonged and were unlikely to bring effective relief to the author. Accordingly, the Committee is not precluded, by virtue of the requirements of article 4 (1) of the Optional Protocol, from considering the present communication.

7.6 In accordance with article 4 (2) (e) of the Optional Protocol, the Committee shall declare a communication inadmissible where the facts that are the subject of the communication occurred prior to the entry into force of the Protocol for the State party concerned, unless those facts continued after that date.<sup>24</sup> In that regard, the Committee observes that, although the alleged offence against the author occurred in 1995, before the date of the entry into force of the Optional Protocol for the State party, the decision of the Prosecutor's Office of Bosnia and Herzegovina to open a criminal investigation into the allegations of war crimes came after 2009, that is, after the Optional Protocol had entered into force for the State party. Therefore, the alleged failure of the State party to fulfil its obligations to provide the complainant with redress and an enforceable right to fair and adequate compensation occurred after the State party's recognition of the Committee's competence under the Optional Protocol. The Committee further notes that the State party does not contest the Committee's competence *ratione temporis*. In these circumstances, the Committee considers that it is not precluded *ratione temporis* from considering the complainant's allegations regarding violations of her rights under article 4 (2) (e) of the Optional Protocol.

<sup>22</sup> Ibid.

<sup>23</sup> *E.S. and S.C. v. United Republic of Tanzania* (CEDAW/C/60/D/48/2013), para. 6.3; and *L.R. v. Republic of Moldova* (CEDAW/C/66/D/58/2013), para. 12.2.

<sup>24</sup> See *Kayhan v. Turkey* (CEDAW/C/34/D/8/2005), para. 7.4.

7.7 Having found no impediment to the admissibility of the communication, the Committee proceeds to its consideration of the merits.

*Consideration of the merits*

8.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, as provided for in article 7 (1) of the Optional Protocol.

8.2 The Committee notes that the State party has taken measures to provide protection against conflict-related gender-based violence under its national strategy for processing war crimes, as well as the recently adopted Law on the Protection of Victims of Torture in the Republika Srpska. However, in order for the author to enjoy the practical realization of the principle of equality between women and men and of her human rights and fundamental freedoms, the political will that is expressed in that legislation must be supported by all State agents and bodies, which are bound by the obligations of the State party.

8.3 The Committee recalls that gender-based violence against women, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.<sup>25</sup> Under the obligation of due diligence, in particular in the private sphere, States parties must adopt and implement constitutional and legislative measures to tackle gender-based violence against women committed by non-State actors, also in the private sphere, having laws, institutions and a system in place to address such violence and ensuring that they function effectively in practice and are supported by all State agents and bodies, which diligently enforce the laws. The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, prosecute and punish perpetrators and provide reparation to victims and survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations.<sup>26</sup> In this context, the Committee reiterates that gender-based violence against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of war crimes such as rape, which may also constitute international crimes.<sup>27</sup>

8.4 With regard to the author's allegation that the State party had failed to provide her with access to information concerning the progress made in the investigation, the

<sup>25</sup> General recommendations No. 19 (1992) on violence against women ([HRI/GEN/1/Rev.8](#), p. 302) and No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 ([CEDAW/C/GC/35](#)). See also general recommendations No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations ([CEDAW/C/GC/30](#)) and No. 33 (2015) on women's access to justice ([CEDAW/C/GC/33](#)), and the relevant resolutions of the Security Council on women and peace and security, in particular, resolution [1325 \(2000\)](#).

<sup>26</sup> General recommendation No. 35, para. 24 (b).

<sup>27</sup> See general recommendation No. 35, para. 16; reports of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment ([A/HRC/31/57](#) and [A/HRC/7/3](#), para. 36); concluding observations of the Committee against Torture on periodic reports submitted to it by Burundi ([CAT/C/BDI/CO/1](#)), Guyana ([CAT/C/GUY/CO/1](#)), Mexico ([CAT/C/MEX/CO/4](#)), Peru ([CAT/C/PER/CO/5-6](#)), Senegal ([CAT/C/SEN/CO/3](#)), Tajikistan ([CAT/C/TJK/CO/2](#)) and Togo ([CAT/C/TGO/CO/1](#)); Human Rights Committee, general comment No. 28 (2000) on the equality of rights between men and women ([HRI/GEN/1/Rev.9 \(Vol. I\)](#), p. 228); concluding observations of the Human Rights Committee on periodic reports submitted to it by Slovakia ([CCPR/CO/78/SVK](#)), Japan ([CCPR/C/79/Add.102](#)) and Peru ([CCPR/CO/70/PER](#)); and the Rome Statute of the International Criminal Court, arts. 7 (1) (g), 8 (2) (b) (xxii) and 8 (2) (e) (vi).

Committee recalls that States parties must take appropriate measures to create supportive environments that encourage women to claim their rights, report crimes committed against them and actively participate in criminal justice processes.<sup>28</sup> The Committee notes that the State party argues that the injured party cannot be allowed to scrutinize the police record or copies of all documents or be consulted or informed with regard to every measure taken in the course of the investigation or to the names of potential suspects, as that could adversely affect possible suspects, their families and relevant parties. The Committee also notes that the author states that many of her letters, sent to the authorities between 2009 and 2017, went unanswered or that information provided was inaccurate, abstract or even contradictory. On the basis of the information provided, the Committee considers that the author was not requesting to see all the investigation documents or the names of possible perpetrators. Rather, she was requesting regular information on progress in and the results of the investigation carried out by the Prosecutor's Office, whether a trial might be forthcoming and, to the extent possible, the corresponding time frame. She might also require any reasonable and concrete explanation regarding delays holding up the investigation so that she might provide any possible contribution to accelerate the process. The Committee observes that, in that context, the State party could have provided the author with general information regarding progress made in the investigation in a more accurate, timely and individualized manner, without revealing confidential information. Therefore, the Committee concludes that the State party has breached its obligations under articles 2 (b), (c), (e) and (f) and 3 of the Convention.

8.5 With regard to the author's allegation that the delay in and lack of effectiveness of the investigation of her case amounts to a violation of article 1, read in conjunction with articles 2 (b)–(d) and (f) and 3, of the Convention, and that the failure to provide her with compensation amounts to a violation of article 15 (1), read in conjunction with article 2 (c) and (e), of the Convention, the Committee notes the State party's argument that it has made every possible effort, in spite of the heavy case load relating to wartime violence, the complexity of the author's case and the lapse of time since the incident occurred. The Committee also notes, however, that her initial complaint to the police in 1995 was not investigated or registered and that, more than 10 years after the author filed her complaint in 2006, the case has not yet been examined by a court. In that context, the Committee refers to paragraph 51 of its general recommendation No. 33 (2015) on women's access to justice ([CEDAW/C/GC/33](#)), in which it recommends that States parties take steps to guarantee that women are not subjected to undue delays in applications for protection orders and that all cases of gender-based discrimination subject to criminal law, including cases involving violence, are heard in a timely and impartial manner. The Committee also refers to paragraph 19 of its general recommendation No. 33, in which it recommends that States parties ensure that remedies are adequate, effective, promptly attributed, holistic and proportional to the gravity of the harm suffered. Remedies should include, as appropriate, restitution (reinstatement), compensation (whether provided in the form of money, goods or services) and rehabilitation (medical and psychological care and other social services). Remedies for civil damages and criminal sanctions should not be mutually exclusive. The Committee recalls its concluding observations on the sixth periodic report of the State party ([CEDAW/C/BIH/CO/6](#)), in which it recommended that the State party raise awareness among women, in particular those in disadvantaged situations and victims of wartime sexual violence, about their rights under the Convention and the remedies available to claim them (para. 14), noted with concern the slow pace of prosecutions for war crimes, including sexual crimes (para. 15), and urged the State party to accelerate the prosecution of crimes of sexual violence committed during the conflict of the 1990s (para. 16).

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<sup>28</sup> See general recommendation No. 33, paras. 11 and 51.

8.6 In the light of the facts before it, the Committee considers that the delay in and lack of an effective and timely investigation amount to a violation of article 1, read in conjunction with articles 2 (b)–(d) and (f) and 3, of the Convention. The Committee also observes that the State party's failure to provide the author with adequate, effective, promptly attributed compensation and redress for the harm suffered by her as a consequence results in a violation of article 15 (1), read in conjunction with article 2 (c) and (e), of the Convention.

8.7 With regard to the author's allegation that the failure of the State party to recognize her as civilian victim of armed conflict and provide her with social support and benefits results in a violation of article 1, read in conjunction with articles 2 (a) and (c)–(f), 3, 12 and 13 (a) and (b), of the Convention, the Committee recalls its concluding observations on the sixth periodic report of the State party (CEDAW/C/BIH/CO/6), in which it noted with concern the limited support and assistance provided to victims of and witnesses to war crimes and the lack of reparation for victims (para. 15) and recommended that the State party establish a fund to provide compensation and other forms of reparation to women who are victims of war crimes (para. 16). In that context, the Committee also refers to the concluding observations of the Committee against Torture on the sixth periodic report of the State party (CAT/C/BIH/CO/6), in which it expressed its serious concern about the prolonged delay in the development of relevant legislation and policies and its regret that the absence of a national reparation mechanism forces victims of war crimes, especially survivors of wartime sexual violence, to go through complex and lengthy proceedings at the entity level to obtain limited assistance, including social welfare benefits (para. 18). The Committee against Torture also recalls that States parties are obliged to provide redress to victims of torture procedurally and substantively.<sup>29</sup> To satisfy their procedural obligations, States parties shall enact legislation and establish complaints mechanisms and ensure that such mechanisms and bodies are effective and accessible to all victims.<sup>30</sup> The Committee against Torture recalls that, on account of the continuous nature of the effects of torture, statutes of limitations should not be applicable, as they deprive victims of the redress, compensation and rehabilitation due to them.<sup>31</sup> The Committee against Torture urged the State party to take all the measures necessary to enable victims of torture and ill-treatment, including victims of wartime sexual violence, to exercise their right to redress (ibid., para. 19). The Committee on the Elimination of Discrimination against Women considers that redress, including restitution, compensation and rehabilitation, should cover all the harm suffered by the victim and measures to guarantee that there is no recurrence of the violation, always bearing in mind the circumstances of each case.

8.8 In the present case, the Committee observes that the author's requests for redress had been time-barred. The Committee notes that, although the author was granted, in February 2019, the status of victim of sexual violence and a monthly disability pension of 130 marka (€66.47) under the new Law on the Protection of Victims of Torture in the Republika Srpska, the State party still failed to provide her with timely recognition of her status as a victim and that the amount of the pension is not commensurate with the harm suffered by the author, comprising severe physical harm, including the impact on her sexual and reproductive health and rights, as well as psychological harm and material damage and prejudice. Moreover, while the Committee notes that the State party argues that adequate compensation could be provided under amendments to

<sup>29</sup> See Committee against Torture, general comment No. 3 (2012) on the implementation of article 14 (CAT/C/GC/3), para. 5; and *A v. Bosnia and Herzegovina* (CAT/C/67/D/854/2017), para. 7.5.

<sup>30</sup> See Committee against Torture, general comment No. 3.

<sup>31</sup> Ibid., para. 40.

criminal procedure, the author cannot benefit from the application of that provision of the Criminal Code because the criminal charge in relation to her case has not yet been examined in court, in spite of her repeated requests. Given the seriousness of the act of gender based violence to which the author was subjected and her right to obtain restitution, compensation and rehabilitation, and given the absence of any possibility of enforcing her right as fully as possible, the Committee concludes that the State party has breached its obligations under article 1, read in conjunction with articles 2 (a) and (c)–(f), 3, 12 and 13 (a) and (b), of the Convention.

9. Acting under article 7 (3) of the Optional Protocol and in the light of the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the author's rights under articles 2 (a)–(f), 3, 12, 13 (a) and (b) and 15 (1) of the Convention, read in conjunction with article 1, of the Convention.

10. The Committee makes the following recommendations to the State party:

(a) Concerning the author of the communication:

(i) Take immediate and effective measures to ensure that the author's case is investigated promptly, impartially and effectively, and that those accused are prosecuted and, if found guilty, sentenced to penalties commensurate with the gravity of their acts;

(ii) Ensure that the author is given timely and adequate information on progress made in the investigation carried out by the Prosecutor's Office, its results and any forthcoming trial to the extent possible, in line with the guidance provided in the Committee's general recommendation No. 33;

(iii) Ensure that the author receives full reparation, including material and moral damages, for the harm she suffered and restitution, rehabilitation and satisfaction, including the restoration of her dignity and reputation, which includes free legal assistance and financial reparation proportionate to the physical, psychological and material damage suffered by her and with the gravity of the violations of her rights.

(b) General:

(i) Investigate promptly, thoroughly, impartially and seriously all allegations of gender-based violence against women, especially war crimes, including rape and sexual violence; ensure that criminal proceedings are initiated in all such cases, bring the alleged perpetrators to trial in a fair, impartial, timely and expeditious manner, and ensure that those accused are, if found guilty, sentenced to penalties commensurate with the gravity of their acts;

(ii) Provide victims of gender-based violence against women, especially war crimes, including rape and sexual violence, with safe and prompt access to justice, including free legal aid where necessary, and ensure that they are informed of the progress made in the investigation of their allegations, in line with the guidance provided in the Committee's general recommendation No. 33;

(iii) Ensure that legislative measures are taken to preclude convicted perpetrators of war crimes from being exempted from their sanctions, including through the routine reduction of sentences and replacement of imprisonment by fines;

(iv) Establish an effective, nationwide reparation scheme to provide all forms of redress to victims of war crimes, including sexual violence, with equal access to social benefits and other support measures to which they are entitled;

- (v) Ensure that the authorities at the entity level remove restrictive and discriminatory provisions from their legislation and policies relating to redress for civilian victims of war, including survivors of wartime sexual violence;
  - (vi) Adopt, without delay, the revised national strategy for processing war crimes, in which a timeline is defined for the prosecution of all war crimes by 2023, so as to accelerate the prosecution of crimes of sexual violence committed during the conflict in the 1990s;
  - (vii) Establish a fund to provide compensation and other forms of reparation to women who are victims of war crimes;
  - (viii) Provide timely gender-sensitive training for judges, lawyers, law enforcement officials, administrative personnel, and social workers on the application of international standards with regard to combating gender-based violence against women, and on the Convention, the Optional Protocol thereto and the Committee's jurisprudence and general recommendations, in particular, general recommendations No. 19 (1992) on violence against women ([HRI/GEN/1/Rev.8](#)), No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations ([CEDAW/C/GC/30](#)), No. 33 and No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 ([CEDAW/C/GC/35](#));
  - (ix) Harmonize war crimes legislation throughout the State party and ensure that it is consistently applied in accordance with the Convention and other international standards, including the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention);
  - (x) Implement expeditiously the Committee's recommendations, in particular those on combating violence against women, contained in its concluding observations on the sixth periodic report of Bosnia and Herzegovina ([CEDAW/C/BIH/CO/6](#)).
11. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and submit to the Committee, within six months, a written response, including information on any action taken in the light of those views and recommendations. The State party is requested to publish the Committee's views and recommendations and to have them widely disseminated in order to reach all sectors of society.
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