



**Written Information for the Consideration of  
Bosnia and Herzegovina's Combined Fourth and Fifth Periodic Reports  
by the Committee on the Elimination of Discrimination against Women**

(CEDAW/C/BIH/4-5 and CEDAW/C/BIH/Q/4-5/Add.1)

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Submitted by

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## 1. Background

In May 2006 the Committee on the Elimination of Discrimination against Women (“CEDAW”) adopted its concluding observations on Bosnia and Herzegovina (BiH)’s previous reports (CEDAW/C/BIH/CO/3).

Of particular relevance to the associations submitting the present written information are:

### Paragraph 37

The Committee is concerned at the situation of victims of sexual violence of the 1992-1995 armed conflict, most of whom are women, who may suffer from additional disadvantages as female heads of household and internally displaced persons. The Committee is concerned that they and their specific type of suffering are not sufficiently recognized in the respective legal frameworks for civilian war victims in both Entities. The Committee is also concerned that there is **no coherent strategy to support these women and they have only limited or no access to health insurance and financial benefits, as well as to general health services or specific health services relating to their traumatic experiences**. The Committee is also concerned at the pending threat of eviction from their accommodations in the Federation of Bosnia and Herzegovina of women who are civilian victims of sexual violence and internally displaced persons.

### Paragraph 38

The Committee urges the State party to **explicitly recognize and adequately protect women who were civilian victims of sexual violence during the armed conflict through a State law as well as through the allocation of financial resources for adequate social provisions for them**, including health insurance and housing, so that their rights and entitlements are guaranteed in the entire State party at a level comparable to that applicable to military victims of war. It also urges the State party to review its current regulations and plans on accommodation issues for women who are civilian victims of war and displaced persons in order to prevent additional forms of indirect discrimination.

The CEDAW requested BiH to submit its fourth and fifth periodic reports jointly in 2010.

### **The Fourth and Fifth Periodic Reports**

In May 2011 BiH presented its fourth and fifth periodic reports to the CEDAW (CEDAW/C/BIH/4-5).

The fourth and fifth periodic reports contain some reference to the rights of women victims of rape or other forms of sexual violence during the war.

At para. 44 of the combined reports reference is made to the provision of free legal aid to victims of sexual violence during the war.

At paras. 272-273 of the combined reports reference is made to unemployment, including with regard to women victims of sexual abuse during the war, and to vocational trainings.

At paras. 297-304 of the combined reports reference is made to the rights of civilian victims of war, including women victims of rape or other forms of sexual violence during the war.

At para. 354 of the combined reports reference is made to the problems faced by women returnees to their pre-war houses.

## The List of Issues

In **September 2012** the associations that subscribe this report presented **written information to the CEDAW in view of the adoption of the list of issues to be submitted to BiH. Since the majority of the information provided in such occasion remains valid, it will not be reiterated here and extensive reference will be made to it as the “PSWG Report of September 2012”.**

\* \* \*

In **November 2012** the CEDAW adopted the **list of issues to be taken up in connection with the consideration of the second periodic report of BiH (“LOIS”)**. In particular, the list refers to:

### **Women in post-conflict situations (para. 4)**

Please indicate what steps have been taken by the State party to **amend the definition of rape and other forms of sexual violence as war crimes and crimes against humanity**, in order to bring it in line with international jurisprudence, as recommended by the Committee against Torture in its concluding observations (CAT/C/BIH/CO/2-5, para. 9). Please provide updated information on the **implementation of the National Strategy for War Crimes Processing**, on the prosecution of war crimes perpetrated against women, in particular sexual violence, and on **protective measures for victims and witnesses**. Please [...] describe the specific activities developed to date [...] with regard to measures taken to [...] provide assistance and **compensation to women victims of war**. Please provide information on the status of the **National Strategy for Transitional Justice** (para. 303) and updated information on reparations programmes for women victims of enforced or involuntary disappearances.

### **Constitutional and legislative framework (para. 5)**

[...] While it is indicated in the report only that a law on free legal aid was adopted in Republika Srpska (para. 43), information before the Committee mentioned that a **draft law on legal aid was submitted to the Council of Ministers in April 2012**. Please provide information on the status of this draft law, elaborate on its content and provide a timeline for its adoption.

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In **January 2013** BiH submitted its replies to the LOIS.

1. The associations that submit this written information have a number of concerns with regard to the implementation by BiH of its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (“the Convention”), and of the recommendations formulated in May 2006 by the CEDAW. However, given the particular expertise of the associations concerned, this document focuses solely on matters related to women victims of rape or other forms of sexual violence during the war and relatives of missing persons. The omission of other subjects does not imply by any means that the associations submitting this information find that BiH fully complies with all its obligations under the Convention, or that it has implemented all the recommendations contained in the concluding observations adopted by the CEDAW in May 2006.

2. During the 1992-1995 war in BiH the use of rape or other forms of sexual violence was widespread.<sup>1</sup> Rape was used as a means of implementing the strategy of ethnic cleansing and to increase inter-ethnic hatred. Currently there are no reliable statistics on the number of women who were raped or otherwise sexually abused (rates vary from 20,000 to 50,000 victims).<sup>2</sup> Unfortunately, victims of sexual violence are often turned into outcasts because of the stigma and humiliation associated with the crime and, in general, rape is among the most under-reported crimes. Moreover, it is undisputable that the majority of those responsible for rape or other forms of sexual violence during the war in BiH enjoy impunity.<sup>3</sup>
3. Survivors of the above-mentioned crimes suffer trauma and experience ongoing psychological and physical consequences and are often stigmatized and marginalized. In addition to the consequences suffered by the victim himself or herself, sexual violence has a direct impact on the well-being of his or her family. Feelings of humiliation and shame extend to the relatives, who may also be mocked, singled out, or even prevented from freely expressing an opinion.
4. During the 1992-1995 war in BiH, thousands of people were subjected to enforced disappearance. A first wave of enforced disappearances occurred during the armed conflict and “ethnic cleansing” operations in the spring and summer of 1992 and continued over the following years.<sup>4</sup> A second

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<sup>1</sup> See Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1992/S-1/1 of 14 August 1992, doc. E/CN.4/1993/50 of 10 February 1993, Annexe II (“Report Mazowiecki”). In general, on the subject of women victims of rape in armed conflicts, see: Parliamentary Assembly of the Council of Europe, Resolution 1670 (2009) of 29 May 2009 on Sexual Violence against Women in Armed Conflict; Security Council, Resolution No. 1820 of 19 June 2008; Report of the Secretary-General, *In-depth Study on All Forms of Violence against Women*, doc. A/61/122/Add.1 of 6 July 2006 (Secretary-General In-depth Study), paras. 144-146, 254-259 and 263-270; Amnesty International, *Making Rights a Reality: Violence against Women in Armed Conflict*, London, 2005; Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 16*, doc. E/C.12/2005/4 of 11 August 2005, para. 27; Report of the Secretary-General, *Women, Peace, Security*, doc. S/2004/814 of 13 October 2004; Security Council Resolution No. 1325 of 31 October 2000; Human Rights Committee (HRC), *General Comment No. 28 Equality of Rights Between Men and Women*, doc. CCPR/C/21/Rev.1/Add.10 of 29 March 2000, para. 8; Committee on the Elimination of Racial Discrimination, *General Recommendation No. 25 Gender Related Dimensions of Racial Discrimination* of 20 March 2000, para. 2; Special Rapporteur on Contemporary Forms of Slavery, *Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict*, doc. E/CN.4/Sub.2/1998/13 of 22 June 1998 (“Report McDougall”); and Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), *General Recommendation No. 19* of 1992; and CEDAW, *General Recommendation No. 12* of 1989.

<sup>2</sup> Early estimates by the BiH government suggested the number of 50,000 victims although this figure was questioned as unreliable and politicized. The Parliamentary Assembly of the Council of Europe estimated that 20,000 women were subjected to rape or other forms of sexual violence. The figure of 50,000 is mentioned also in the Secretary-General In-depth Study, *supra* note 4, para. 146. See also Commissioner for Human Rights of the Council of Europe, *Report by Thomas Hammarberg following his visit to Bosnia and Herzegovina on 27-30 November 2010* (“Report Hammarberg”), doc. CommDH(2011)11 of 29 March 2011, para. 153, whereby the reported total number of victims of sexual violence is 20,000.

<sup>3</sup> See *infra* paras. 17-33. Amnesty International, *Old Crime Same Suffering – No Justice for Survivors of War-time Rape in North-East Bosnia and Herzegovina*, doc. EUR/63/002/2012, March 2012. See also Parliamentary Assembly, Council of Europe, *Report on Sexual Violence against Women in Armed Conflict*, doc. 11916 of 15 May 2009, paras. 23-25.

<sup>4</sup> See Report by Mr. Manfred Nowak, Expert Member of the WGEID, *Special Process on Missing Persons in the territory of the former Yugoslavia*, doc. E/CN.4/1995/37 of 12 January 1995, para. 3.

wave of enforced disappearances occurred in Bosnian Krajina between May and August 1992, most prominently in the region of Prijedor. In Herzegovina, most of the enforced disappearances occurred during the summers of 1992 and 1993. The last and most notorious wave of enforced disappearances occurred in eastern Bosnia after the fall of UN-declared “safe areas” of Srebrenica and Žepa in July 1995. At the end of 1996 the estimates of disappeared people in BiH amounted to between 25,000 and 30,000.<sup>5</sup> As pointed out by the United Nations Working Group on Enforced or Involuntary Disappearances (“WGEID”) after its visit to BiH, “the number of missing persons is a highly political and controversial issue. There are disagreements about the number of people who went missing. Nevertheless, the WGEID learned from various institutions that they largely agree that between 28,000 and 30,000 persons disappeared in BiH during the conflict. Of these missing persons, it is estimated that about two thirds of the missing people have been accounted for, while one third remain missing”.<sup>6</sup> Currently, the exact number of missing people remains uncertain.

5. On the basis of the existing situation and the ongoing violations of their fundamental rights and freedoms faced by women victims of rape or other forms of sexual violence during the war and relatives of missing persons, the present document highlights a number of concerns, supported by data and concrete examples and puts forward country-specific recommendations.

## **2. The Codification of Rape or other Forms of Sexual Violence**

6. In the PSWG Report of September 2012<sup>7</sup> reference was made to the fact that the definition of rape or other forms of sexual violence as war crimes and crimes against humanity currently included in the Criminal Code of BiH does not meet international standards. In BiH amendments of the criminal legislation at the State level are considered by the Criminal Code Implementation Assessment Team (“CCIAT”), an *ad hoc* body created for this purpose by the BiH Ministry of Justice. The discussion before the CCIAT represents only the first step of a much more complicated process that can lead to the amendment of legislation. During a meeting held in the spring of 2011 the CCIAT expressed its support to the need of modification of the Criminal Code of BiH with regard to sexual violence. However, the concrete consideration of the matter was postponed because another issue was given priority (special investigative measures).
7. In its replies to the LOIS BiH indicated that “the Criminal Code of BiH, which applies to the prosecution of war crimes before the Court of BiH, has two articles defining rape as a war crime against humanity (Article 172) and as a war crime against civilians (Article 173). Although the definitions in the Criminal Code of Bosnia and Herzegovina *have not been amended yet in accordance with recommendations of the Committee against Torture*, the Court has defined the

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<sup>5</sup> See Report by Mr. Manfred Nowak, Expert Member of the WGEID, *Special Process on Missing Persons in the territory of the former Yugoslavia*, doc. E/CN.4/1997/55 of 15 January 1997, paras. 3, 94 and 99-106.

<sup>6</sup> WGEID, *Report on the Mission to BiH*, doc. A/HRC/16/48/Add.1 of 16 December 2010, para. 21.

<sup>7</sup> PSWG Report of September 2012, *supra* note 1, paras. 13-19.

element of force or and expended threat of force in its jurisprudence. In the first case involving sexual violence, the Court of BiH has defined rape and sexual crimes in a way that it added 'coercion' and 'without consent of the victim' elements as an element of commission in the concept of 'force or threat of immediate attack'. It is important to emphasize, however, that *this interpretation applies only to the case law of the Court of BiH, while there is no information about case law of the appropriate courts in BiH Entities and Brčko District. Since 1 March 2003 war crimes cases have been under exclusive jurisdiction of the Court of BiH. Since the 2003 criminal justice reform the matter of war crimes has been regulated exclusively in the Criminal Code of Bosnia and Herzegovina while entity criminal laws and criminal law of Brčko District do not contain provisions dealing with this group of criminal offences.* However, at the time of the entry into force of the 2003 criminal laws, a large number of cases (estimated at 1070) had already been filed with the Prosecutor's Offices or had been already pending before courts in the Entities. According to Article 449 of the Criminal Procedure Code of BiH *these cases shall be finalized by these courts if the indictment in these cases has been confirmed/has taken legal effects. There is a possibility of application of the SFRY Criminal Code in these cases since the SFRY CC was taken over as criminal laws of the then Republic of Bosnia and Herzegovina, Republika Srpska and later the Federation. Although these laws define rape as a war crime, there is no data available that these definitions are not fully consistent with the definition that was developed in jurisprudence of the Court of BiH*.<sup>8</sup>

8. In 2013 the consideration of the amendment of the definition of rape or other forms of sexual violence as war crimes and crimes against humanity within the CCIAT was resumed. In March 2013, the CCIAT issued a draft amended Criminal Code where changes to Articles 172 and 173 are envisaged. Namely, the phrase "by use of force or threat with a direct attack on her life or the life or the body of a person close to her" currently contained in the definition of rape as a crime against humanity and a war crime would be erased from Article 172, para. 1 (g), and from Article 173, para. 1 (e), of the Criminal Code of BiH.
9. Consideration of these amendments is still ongoing. Once the CCIAT will finalize the document containing the proposed amendments, the latter will be forwarded from the Ministry of Justice to the Ministry of Finance, the Direction for European Integration and the Ministry for Human Rights and Refugees, which will be requested to give their opinions before the document is submitted to the Council of Ministers. According to the annual working plan for 2013 of the Ministry of Justice, this should have happened in March 2013.<sup>9</sup> At June 2013 this has not happened yet.
10. Once the proposed amendments will be eventually submitted to the Council of Ministers for approval, internal committees will also review the draft and express their opinions before the Council as such adopts the text and sends it to the Parliamentary Assembly, where it must be included in the

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<sup>8</sup> BiH Replies to LOIS 2013, *supra* note 3, para. 4 (emphasis is added).

<sup>9</sup> See, in the local language: <http://www.mpr.gov.ba/ministarstvo/dokumenti/?id=3249>.

agenda, go through the Constitutional-Legal Committees of both Chambers and be subjected to vote in the plenary of both Chambers. Accordingly, although the fact that the CCIAT resumed consideration of the proposed amendments to the definition of rape as a crime against humanity and as a war crime to bring it in line with international standards is certainly positive, the overall process is far from accomplished. Next phases will require considerable additional time and may take months or even years. Moreover, it is not sure that the amendments as formulated by the Ministry of Justice will be those eventually adopted by the Parliamentary Assembly. The associations subscribing the present document are concerned that the amendment of criminal provisions codifying rape – as recommended by various international mechanisms – is not being dealt as a real priority, thus fostering frustration and lack of trust towards authorities.

11. Further, BiH's reply to the LOIS on this particular matter is the source of concern to the associations subscribing the present report, as it contains a number of inaccuracies.
12. First, while it is true that since 1 March 2003 war crimes have been under exclusive jurisdiction of the Court of BiH, the State fails to clarify that the National Strategy for War Crimes (adopted in December 2008)<sup>10</sup> establishes that cases of war crimes and crimes against humanity deemed to be less complex must be prosecuted before cantonal or district courts and prosecutor's offices of the entities and the Basic Court and Prosecutor's Office of Brčko District of BiH.
13. Currently, a considerable number of war crimes and crimes against humanity is in fact being prosecuted and tried before cantonal or district courts.<sup>11</sup> The associations subscribing this report are therefore disturbed by the fact that in its replies to the LOIS, the government affirms that "there is no information about case law of the appropriate courts in BiH Entities and Brčko District".<sup>12</sup> Further, while admittedly "entity criminal laws and criminal law of Brčko District do not contain provisions dealing with this group [war crimes] of criminal offences [...] there is a possibility of application of the SFRY [Socialist Federal Republic of Yugoslavia] Criminal Code in these cases since the SFRY Criminal Code was taken over as criminal laws of the then Republic of Bosnia and Herzegovina, Republika Srpska and later the Federation",<sup>13</sup> the State alleges that "*there is no data available that these definitions are not fully consistent with the definition that was developed in jurisprudence of the*

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<sup>10</sup> On 29 December 2008 the Council of Ministers of BiH adopted the Nations Strategy for War Crimes. Among other things, the strategy establishes that the most complex crimes (i.e. mass crimes) will be dealt with as a matter of priority within 7 years and the prosecution of other crimes will be dealt with within 15 years from the adoption of the strategy.

<sup>11</sup> According to data referred in an interview released to a Bosnian newspaper by Mr. Francesco Caruso, officer of the Organization for Security and Cooperation in Europe (OSCE) coordinator of the prosecution of war crimes project "in 2012 over 200 'less complex' cases have been referred by the Court of Bosnia and Herzegovina to the entity level and the level of District Brčko. Transfer of cases was carried out in accordance with the strategy and it placed a huge burden on the cantonal and district judicial authorities, who are currently responsible for the prosecution of more than 600 cases". For the integral version of the interview, in the local language, see <http://www.oslobodjenje.ba/vijesti/intervju/1320-predmeta-ratnih-zlocina-jos-ceka>. For statistical data updated at March 2013, see [http://www.oscebih.org/documents/osce\\_bih\\_doc\\_2013032512531594eng.pdf](http://www.oscebih.org/documents/osce_bih_doc_2013032512531594eng.pdf).

<sup>12</sup> BiH Replies to LOIS 2013, *supra* note 3, para. 4.

<sup>13</sup> *Ibid.*

Court of BiH”.<sup>14</sup>

14. In the PSWG Report of September 2012 the associations subscribing the present document elaborated in-depth about the inadequacy of the legislation on rape or other forms of sexual violence at the entity level and in the Brčko District, as well as on the outstanding problem of cantonal or district courts applying the Criminal Code of the SFRY instead of the Criminal Code of 2003 and dealing with cases of rape committed during the war as an ordinary crime and not as a war crime, with the consequence that perpetrators obtain more lenient sentences.<sup>15</sup>
15. The inadequacy of entity and district legislation on rape or other forms of sexual violence committed during the war, as well as the problems related to the application of the Criminal Code of the SFRY instead of the Criminal Code of 2003 have not escaped the criticism of international institutions either. In particular, in the concluding observations on BiH issued in November 2012, the Human Rights Committee (“HRC”) expressed concern at “[...] the lack of efforts to harmonize jurisprudence on war crimes among entities and that *entity-level courts use the archaic Criminal Code of the former Socialist Federal Republic of Yugoslavia that does not, inter alia, define crimes against humanity, command responsibility, sexual slavery and forced pregnancy. The Committee is concerned that this might affect consistency in sentencing among entities (arts. 2 and 14)*”.<sup>16</sup> Accordingly, the HRC recommended to BiH to “[...] ensure that the judiciary in all entities strongly pursues efforts aimed at harmonizing jurisprudence on war crimes and that charges for war crimes are not brought under the archaic Criminal Code of the former Socialist Federal Republic of Yugoslavia, which does not recognize certain offences as crimes against humanity”.<sup>17</sup> In the Progress Report for 2012, the European Commission highlighted that “diverging practices regarding the applicability of different criminal codes between courts at different levels continued to be an issue. [...] With two cases, now merged, pending before the European Court of Human Rights, the application of different criminal codes continued to result in uneven sentencing. Increased coordination between the competent instances throughout the judiciary of Bosnia and Herzegovina is necessary”.<sup>18</sup> In the 2013 report on her mission to BiH, the Special Rapporteur on Violence against Women referred that “numerous calls have been made for amendments to the Criminal Code to include a definition of sexual violence in accordance with international standards and

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<sup>14</sup> *Ibid.*

<sup>15</sup> PSWG Report of September 2012, *supra* note 1, paras. 35-40.

<sup>16</sup> Human Rights Committee (HRC), *Concluding Observations on BiH*, doc. CCPR/C/BIH/CO/2 of 13 November 2012, para. 7 (emphasis is added).

<sup>17</sup> *Ibid.*

<sup>18</sup> European Commission, *Progress Report for 2012 B– Bosnia and Herzegovina*, doc. SWD(2012)335final of 10 October 2012, p. 14.

jurisprudence related to the prosecution of war crimes of sexual violence [...]”.<sup>19</sup> Accordingly, the Special Rapporteur recommended to BiH to “amend the Criminal Code of Bosnia and Herzegovina to ensure it includes a definition of sexual violence that is in accordance with international standards and jurisprudence related to the prosecution of war crimes of sexual violence. Remove from all criminal codes any conditions of force or threat of immediate attack, to recognize a sexual act as non-consensual, and include a specific prohibition of marital rape”.<sup>20</sup>

16. In light of the above, it is all the more surprising that BiH finds no available data on the inconsistencies with international standards of criminal legislation on rape or other forms of sexual violence at the entity and district levels and is not aware of the serious concerns raised by the use of the Criminal Code of SRFY instead of the Criminal Code of 2003 and of the problems related to the existing practice of trying cases of rape committed during the war as ordinary crimes instead of war crimes.

#### Recommendations

Amend the criminal codes at all levels to make sure that the definition of “rape” and “sexual violence” is brought in accordance with international standards and jurisprudence and the condition of “force or threat of immediate attack” is removed from the present definitions. In particular, entity and district criminal legislation shall be brought in line with international law by codifying crimes against humanity, command responsibility, sexual slavery and forced pregnancy and establishing sanctions commensurate to the extreme seriousness of these crimes.

Ensure that criminal codes at all levels explicitly define that a person who acted pursuant to an order to commit rape or other forms of sexual violence shall not be relieved of criminal responsibility and that those who refuse to obey such an order will not be punished.

Ensure that war-time rape is prosecuted as such, applying the relevant standards and that prosecutors and courts refrain from dealing with such cases as ordinary rape, since this does not mirror the particular nature of this heinous crime and it unduly advantages the defendant.

Ensure the implementation of the jurisprudence established by the Constitutional Court of BiH in the sense of investigating and trying those accused of crimes committed during the war pursuant to the provisions of the 2003 Criminal Code instead of those of the Criminal Code of the SFRY.

### **3. The Failure to Effectively Investigate, Identify, Judge and Sanction those Responsible for Rape or other Forms of Sexual Violence during the War and to Regularly Inform Victims**

17. In the PSWG Report of September 2012<sup>21</sup> reference was extensively made to the fact that,

<sup>19</sup> Special Rapporteur on Violence against Women, *Report on the Mission to BiH*, doc. A/HRC/23/49/Add.3 of 29 April 2013, para. 45.

<sup>20</sup> *Ibid.*, para. 105 (c) and (d).

<sup>21</sup> PSWG Report of September 2012, *supra* note 1, paras. 20-44.

notwithstanding BiH tribunals have convicted a number of persons accused of war crimes or crimes against humanity over the past years, the overall pace of the process is far from satisfactory. In particular, with regard to trials concerning people accused of rape or other forms of sexual violence committed during the war, the results are alarmingly poor, especially considering the scope of the phenomenon. With regard to the National Strategy for War Crimes it was expressed that associations of victims of rape or other forms of sexual violence during the war are deeply dissatisfied with its implementation and increasingly report that they perceive that the existence of the strategy is being used as a mere excuse to justify delays and other flaws in the administration of justice for crimes committed during the war.

18. In its replies to the LOIS BiH pointed out that “data on the number of prosecutions of war crimes of sexual violence against women is not statistically processed separately from other war crimes cases. *Aggregate data on the number of prosecuted cases of war crimes of sexual violence against women is difficult to obtain because these crimes are mostly committed in conjunction with other war crimes.* According to information obtained through an analysis of judgments posted on the web site of the Court of BiH in the period until 2011 a total of 75 cases was closed with final verdicts, of which 29 or 38.6 per cent verdicts were rendered for war crimes including acts of sexual violence against women. Still, however, the problem is that the data on the number of cases of sexual violence against women prosecuted at lower levels of administrative units is not collected or published”.<sup>22</sup>
19. It must be highlighted that, according to official data released in April 2013 by the Outreach Office of the Court of BiH from 2005 until the end of March 2013 the BiH Court prosecuted 42 cases that had elements of sexual violence. Five of those cases are currently active in the first instance and two are in a second instance procedure. The mentioned number, compared with the figures of victims of rape or other forms of sexual violence during the war (between 20,000 and 50,000), suggests that impunity remains rampant.
20. Besides being vague, the reply from BiH to the LOIS does not seem to answer the request formulated by the CEDAW to receive updated information on the implementation of the National Strategy for War Crimes Processing.
21. Unfortunately, different international organizations highlighted that the implementation of the National Strategy for War Crimes continues being far from satisfactory. While perpetrators enjoy impunity for the most serious crimes, victims are often dying without seeing justice done. In its concluding observations on BiH, the HRC declared that it remained concerned “[...] at the slow pace of prosecutions, particularly those relating to sexual violence, and the lack of support to victims of such crimes”.<sup>23</sup> Accordingly, it recommended to BiH to “[...] expedite the prosecution of war crimes

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<sup>22</sup> BiH Replies to LOIS 2013, *supra* note 3, para. 4 (emphasis is added).

<sup>23</sup> HRC, *Concluding Observations on BiH*, *supra* note 19, para. 7.

cases”.<sup>24</sup> In its Progress Report for 2012, the European Commission noted that “*the level of prosecution of war crimes cases involving sexual violence remains low*, particularly in the Entities and the Brcko District. Efforts to investigate and prosecute these crimes and to protect victims and witnesses need to be stepped up. [...] Overall, there was limited progress in the area of judicial system reform. A constructive attitude to the need for a comprehensive reform of the judiciary emerged in the Structured Dialogue on Justice, based on domestic ownership, including in the implementation of the Justice Sector Reform Strategy and of the National War Crimes Strategy. Further measures were introduced to reduce the backlog of cases, particularly of utility bill cases, but *the overall backlog remains very high*. Lack of investigative capacities and appropriate resources is affecting the reduction of the war crime cases backlog. The need to harmonise the application of criminal laws throughout the country and the fragmentation of organisation and budgets remain issues to be addressed. Political attacks continued to affect the independence of the judiciary”.<sup>25</sup> Notably, in April 2013, after the 4<sup>th</sup> plenary meeting of the “Structured Dialogue on Justice between the European Union and BiH”, the European Commission issued a number of recommendations, including the encouragement to “[...] all relevant Prosecutors’ offices to address the issue of investigation of rape and violence against women as a matter of priority”<sup>26</sup> and “[...] the remaining backlog of the most complex war crimes cases at the level of BiH should be tackled as a priority. In doing so, the Prosecutor Office of BiH must be provided with necessary human and material-technical resources, as also supported by the associations of victims”.<sup>27</sup>

22. In the 2013 report on her mission to BiH, the Special Rapporteur on Violence against Women highlighted that “[...] *there has been very little progress in providing effective remedies to women survivors, with many perpetrators remaining unpunished and women still struggling to rebuild their lives*. According to data provided by the Gender Agency, until the end of 2011 a total of 75 cases handled by the Court of Bosnia and Herzegovina were closed with final verdicts, of which 29 cases (38.6 per cent) were verdicts for war crimes including acts of sexual violence against women. *This number is extremely low, especially taking into consideration the estimated 20,000 to 50,000 persons that were reportedly raped or sexually abused during the war*. The lack of accountability for many perpetrators has resulted in many victims still having to encounter them in their everyday life. [...] The National Strategy for War Crimes Processing was adopted in December 2008 in order to address a large backlog of unresolved war-related cases, including cases of rape and sexual violence committed during the 1992-1995 war. The Strategy established that by 2010 the

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<sup>24</sup> *Ibid.*

<sup>25</sup> European Commission, *Progress Report for 2012 – BiH*, *supra* note 21, p. 14 (emphasis is added). See also Balkan Investigative Reporting Network, *Bosnia’s War Crimes Strategy May Finally Speed Up*, 28 December 2012, at <http://www.bim.ba/en/354/10/36422/>.

<sup>26</sup> Recommendations by the European Commission after the 4<sup>th</sup> Plenary Meeting of the Structured Dialogue on Justice between the European Union and BiH (hereinafter “2013 Recommendations by the European Commission”), April 2013, available at <http://www.delbih.ec.europa.eu/News.aspx?newsid=5654&lang=EN>, recommendation No. 1.

<sup>27</sup> *Ibid.*

Prosecutor's Office of Bosnia and Herzegovina would undertake a mapping of all war-time cases investigated in the country and that the State Court of Bosnia and Herzegovina would refer each case to be prosecuted either at state or at entity level, depending on the complexity of the case. Less complex cases would be dealt with by the Entity courts to allow state level institutions to focus on the most complex cases, such as mass killing, as opposed to single murder, or systematic rape and sexual slavery, as opposed to individual sexual assault. More complex cases would be prosecuted within 7 years from the time of adoption of the Strategy, and the less complex cases within 15 years. *By October 2012, 1,316 pending cases had been reviewed, with 653 referred to the Prosecutor's Office of Bosnia and Herzegovina and 663 referred to local jurisdictions.* According to civil society stakeholders, this mapping and redistribution of pending cases represented an important step in the implementation of the Strategy as it helped determine the exact number of war crimes case files pending in different jurisdictions. *Unfortunately, there is no publicly available information regarding the percentage of these reassigned cases that refer specifically to rape and other forms of sexual violence.* Another obstacle as regards prosecution is the time these cases take to be heard. Even women who have identified their rapists and are willing to testify, are shocked to learn that their cases will take 15 years to be heard. Activists fear that as time goes by, victims, witnesses and evidence is lost, and this reinforces women's feelings of injustice and insecurity, 20 years after these crimes occurred".<sup>28</sup> Accordingly, the Special Rapporteur recommended to BiH to "expedite the implementation of the National Strategy for War Crimes Processing and *ensure that any crimes of sexual violence are prioritized and prosecuted.* Courts and prosecutors at the state, entity and cantonal levels should be provided with political and financial support to undertake these proceedings [...]"<sup>29</sup>

23. According to an official declaration issued by the President of the High Judicial and Prosecutorial Council, the National Strategy for War Crimes will not be completed on time.<sup>30</sup> This must be coupled with the fact that by the end of 2012 the remaining international judges sitting at the Court of BiH left and their functions were shifted to local personnel and also the remaining international prosecutor eventually left. Associations of women victims of rape or other forms of sexual violence during the war have publicly expressed their serious concerns because of the departure of international personnel from the Court of BiH and the Prosecutor's Office of BiH, as this exposes investigations and ongoing trials to further delays and to a substantive increase in the already existing instances of politicization.
24. In the PSWG Report of September 2012 numerous examples where victims of rape or other forms of sexual violence or their representative associations reported having submitted to BiH authorities

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<sup>28</sup> Special Rapporteur on Violence against Women, *Report on Mission to BiH*, *supra* note 22, paras. 22, 23, 55, 56, 57 and 93 (emphasis is added).

<sup>29</sup> *Ibid.* para. 105 (i) (emphasis is added).

<sup>30</sup> See, in the local language, <http://www.mojevijesti.ba/novosti/144981/Nece-bit-i-spunjeni-rokovi-iz-strategije-za-ratne-zlocine>.

detailed complaints indicating the identity of those responsible for war crimes or crimes against humanity and even having provided indications on where these people can be found were included. In the mentioned instances, little or no progress in the investigation and prosecution of those responsible has been registered and in some cases those accused were free or have managed to escape.

25. In the majority of cases there has unfortunately been no progress whatsoever in the investigation and prosecution of those accused of rape or other forms of sexual violence committed during the war in comparison to the data provided in September 2012.<sup>31</sup> While in very few cases some developments must be registered and are referred to in the present report, the associations subscribing this document can mention other outstanding examples of impunity and inactivity of BiH authorities.
26. A significant change occurred in the case mentioned in September 2012 of the woman psychologically assisted by *Vive Žene* Tuzla, who was raped during the conflict in the detention facility of Bosanski Šamac.<sup>32</sup> This lady had identified the person responsible for her rape and accordingly informed without delay the Prosecutor's Office and the competent court. After sustained efforts by the lady, repeated attempts of communication with the institutions, the involvement of the Ombudsman, and some obstacles in the process, the case was eventually transferred to the local court in Doboj pursuant to a decision of the Court of BiH from January 2012 and an investigation was initiated. The trial started in February 2013, and a first degree judgment was delivered in April 2013. Mr. Dragoljub Kojić was sentenced to three years of imprisonment for war crimes against civilian population, including rape and was excused from paying court fees. The Court justified the fact that the perpetrator was sentenced to an imprisonment below the minimum sentence, because of the time elapsed from the commitment of the crime and the fact that the perpetrator is now a father of one child. While the conviction of the perpetrator is certainly a positive result, it must be stressed that a sentence of three years of imprisonment for war crimes is arguably not commensurate to the gravity of the crime concerned and being father of one child is not among mitigating circumstances established in BiH criminal law. Moreover, had BiH authorities acted promptly in accordance with their international obligations, the perpetrator would arguably have been sentenced much sooner. Invoking the passing of time to reduce his sentence sounds as a mockery.
27. Moreover, the lady concerned had filed a request for compensation during the criminal proceedings. Nevertheless, she was referred to take separate civil action. The justification for the referral was that

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<sup>31</sup> Where no reference to examples contained in the PSWG Report of September 2012 is made in the present document, it must be interpreted in the sense that the situation has not changed and the information then provided remains valid. This is particularly so for paras. 31, 33, 34, 37, 38, 39 of the PSWG Report of September 2012, *supra* note 1.

<sup>32</sup> Due to security and privacy reasons, certain victims of rape or other forms of sexual violence during the war who accepted to render their testimony for this written information to the CEDAW expressly requested that their identity is not disclosed to the wider public. In the present document, letters are used to designate the persons concerned. Their full names could be disclosed, upon request, to the CEDAW, given that guarantees are provided that these data will not be made public in any way.

the criminal process would have been significantly extended if the compensation request was decided upon. As stressed in the PSWG Report of September 2012<sup>33</sup> this seems to be a common practice. Although criminal courts have the option to award total or part of a claim to the injured parties or to refer them to civil actions, in the almost totality of cases victims are referred to civil actions. This practice hampers the access to compensation of the majority of women victims of rape or other forms of sexual violence, given that to launch a civil action they would need a lawyer to represent them, and, in almost the totality of cases, they cannot afford it, while free legal aid is not granted by the State.<sup>34</sup>

28. After her visit to BiH, the Special Rapporteur on Violence against Women reported with concern that “Victims associations also complained that the criminal procedures normally do not allow for victims to make any financial compensation claims, and they are therefore forced to initiate separate civil procedures to claim compensations. While article 193 of the Criminal Procedures Code of Bosnia and Herzegovina actually allows victims to make financial claims, prosecutors and judges do not use this provision, claiming it would delay the process. However, most survivors are facing economic difficulties, and the costs involved in initiating a separate compensation claim are not feasible given their economic situation”.<sup>35</sup> In this sense, she recommended that “*courts should ensure the right of women to make any financial compensation claims during criminal proceedings*”.<sup>36</sup>
29. Some negative developments must be reported in the case of A. H. to which reference was made in the PSWG Report of September 2012.<sup>37</sup> A. H. is a woman of Croat origin who was raped by three soldiers of the Bosnian Serb forces (*Vojska Republike Srpske - VRS*) in Ljubija in August 1995. On the same occasion, at least other two ladies from the same village were subjected to sexual abuse by the same perpetrators. A. H. immediately reported the events to the local police, but this did not lead to any significant result. Around six years later, A. H. returned to the police asking which actions have been undertaken to identify, judge and sanction those responsible for her rape. On that occasion, the police officers answered her that she can “forget about the case” as the crime she denounced allegedly prescribed. The rape of A. H. must be seen in the context of a widespread or systematic practice of sexual violence and, as such, amounts to a crime against humanity. Pursuant to Article 19 of BiH Criminal Code, criminal prosecution and execution of a sentence are not subjected to the statute of limitations for criminal offences of genocide, crimes against humanity and war crimes, or for other criminal offences that, pursuant to international law, are not subjected to the statute of limitations. In any case, even applying the criteria concerning the statute of limitations pursuant to Article 14 of BiH Criminal Code, the rape reported by A. H. in 1995 could not be

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<sup>33</sup> PSWG Report of September 2012, *supra* note 1, paras. 102-105.

<sup>34</sup> See *infra* paras. 95-99.

<sup>35</sup> Special Rapporteur on Violence against Women, *Mission to BiH*, *supra* note 22, para. 94.

<sup>36</sup> *Ibid.*, para. 105 (i) (emphasis is added).

<sup>37</sup> PSWG Report of September 2012, *supra* note 1, para. 35.

considered as prescribed in 2000. In January 2009, the Association of Women Victims of War submitted a complaint on this specific case to the Prosecutor's Office of BiH. At the time of writing, A. H. has not obtained justice and none of those responsible for her rape has been judged and sanctioned.

30. During 2012 A. H. was proactive in writing to different authorities to seek information on the status of her case. In this regard it is noteworthy that the exchanges between A. H., the Prosecutor's Office of BiH, local authorities in Prijedor and the police station of Ljubija were highly frustrating and flawed. On the one hand, A. H. was told that all documentation from that period was allegedly destroyed. Further, the police station in Prijedor declared that her criminal complaint "does not exist on official registries". On the other hand, after A. H. referred this situation to the Ombudsman, the Prosecutor's Office of BiH sent a template letter to the Ombudsman generally stating that "investigations on crimes committed in Prijedor in 1992 are ongoing". Notably, A. H. was subjected to sexual violence in 1995. Highly frustrated by this official attitude of indifference towards her suffering and claim for justice, A. H. decided to continue her fight, and she is considering submitting her case to the Constitutional Court of BiH. She lives in a very precarious state of health and in dire financial conditions.
31. A further instance that can be quoted refers to events that took place in 1992 in the detention camp known as Caparde, near the town of Zvornik, where women were brought from various parts of North-eastern Bosnia. The said camp was exclusively used for purposes of systematic rape and sexual violence. A significant number of women were imprisoned there, including approximately 45 women from the village of Brezovo polje and 60 women from the countryside of Zvornik. In 2009, some of the women who were subjected to repeated rape and suffered grave physical and psychological damage gave their statements to the State Investigation and Protection Agency ("SIPA"). On such occasion, some of the women also recognized the perpetrators involved in the crimes concerned and informed BiH authorities of their identity. At the time of writing, no one has been prosecuted and sanctioned for the crimes involved and victims experience serious difficulties in having access to information concerning the status of their cases and whether prosecution may be forthcoming.
32. The previous example is related to the fact that almost all the associations subscribing this report confirm experiencing serious problems in accessing information concerning their cases and in communicating with prosecutors. Allegedly, contacts between victims of rape or other forms of sexual violence during the war, their representative associations and prosecutors are poor or non-existent, thus exacerbating feelings of frustration and marginalization. Despite the recommendations from international human rights mechanisms and the requests put forward by victims, their relatives and their representative associations to be associated as closely as possible to the investigative

stage,<sup>38</sup> at June 2013 no regular mechanism of information on the process of investigation has been established. For women that have been waiting for justice over the past 20 years, this is certainly a source of additional stress and distrust towards authorities.

33. Another problem related to the prosecution and sanction of those accused of war crimes or crimes against humanity and access to related information has recently emerged because of the new policy of anonymization implemented by the Court of BiH. In March 2012 the State Court of BiH amended its rulebook on public access to information under the Court's Control and Community Outreach.<sup>39</sup> Currently, documents issued by the Court are censored and the Prosecution of BiH does not provide complete information on the indictments of war crimes. Articles 41 to 46 of the amended rulebook of the Court set forth the "*anonymization of Court decisions and other documents distributed to the public*", thereby disposing that certain data (including names and surnames of those accused, suspected of, or convicted for war crimes, their representatives, the places where the crime has happened, as well as the names of private companies, institutions and the like) are substituted or removed from Court's decisions and other forms of information (case summaries, audio-video materials and the like). This situation has already been the subject of harsh criticism<sup>40</sup> and is a source of further anguish for victims of crimes committed during the war, who fear that their access to the investigation related to their cases or to ongoing proceedings, if any, as well as their right to know the truth may be further hampered. The anonymization policy does not seem to be in line with international standards and, in particular, with Article 14, para. 1, of the International Covenant on Civil and Political Rights which establishes that "any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children".

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<sup>38</sup> In this sense see WGEID, *Mission to BiH*, *supra* note 9, para. 63. In this sense see, among others, Principle 16 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, and WGEID, *General Comment on the Right to the Truth in relation to Enforced Disappearances*, 2010, para. 3.

<sup>39</sup> The integral version, in English, is available at:  
[http://www.sudbih.gov.ba/files/docs/Rulebook\\_on\\_Access\\_to\\_Info\\_Court\\_20\\_03\\_12.pdf](http://www.sudbih.gov.ba/files/docs/Rulebook_on_Access_to_Info_Court_20_03_12.pdf).

<sup>40</sup> Balkan Investigative Reporting Network, *Anonymization "Threat" to Bosnian Justice Criticized*, 25 December 2012, at <http://www.bim.ba/en/354/10/36420/>. See also 2013 Recommendations by the European Commission, *supra* note 29, recommendation No. 14, according to which the European Commission "Invites competent authorities to develop a balance between the necessary protection of personal data and the *requirement for publicity of courts' rulings and proceedings*, especially with regard to cases of general interest to the public, such as *war crimes*, organised crime and corruption and terrorism. This can be achieved by looking at the relevant Council of Europe instruments, and the jurisprudence and practice of the European Court of Human Rights" (emphasis is added).

## Recommendations

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. 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.

Ensure, in particular, that all cases of rape or other forms of sexual violence perpetrated during the war are promptly, independently, impartially and thoroughly investigated and that those responsible are judged and sanctioned in accordance with international fair trial standards.

Ensure that, in general, victims of rape or other forms of sexual violence are given information on a regular basis on the process of investigation carried out by the prosecutor's 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 victims of rape or other forms of sexual violence in particular. Courts shall ensure the right of women to make any financial compensation claims during criminal proceedings.

Ensure that the anonymization policy adopted by the Court of BiH is amended so that the judicial determination of the facts in trials concerning war crimes, crimes against humanity and, in general, gross violations committed during the war are disclosed to the general public without restriction, allowing victims of the crimes concerned, their families and society as a whole to fulfil their right to know the truth.

#### **4. The Failure to Adequately Protect and Support Victims and Witnesses in Cases of Rape or other Forms of Sexual Violence during the War**

34. In the PSWG Report of September 2012 extensive reference was made to the failure by BiH to adequately protect and support victims and witnesses in cases of rape or other forms of sexual violence during the war.<sup>41</sup> Problems then highlighted can be summarized as follows: flawed legal framework concerning witness protection; the lack of adequate protection of witnesses in cases of harassment and the subsequent failure to thoroughly investigate such instances and to judge and sanction those responsible; the general inadequacy of the manner in which protection of witnesses is granted; the material difficulties faced by witnesses; and the lack of adequate psychological support for witnesses before, during and after testifying. Reference was made also to the fact that not only individuals, but also associations dealing with women victims of rape or other forms of sexual violence during the war are subjected to harassment and attacks and BiH authorities fail to investigate these incidents and sanction those responsible.
35. In its replies to the LOIS BiH informed that "In BiH the protection and support of witnesses/victims is governed by laws at the state and entity levels. At the state level the legal framework governing the protection of witnesses are: the Criminal Code, the Criminal Procedure Code, the Law on Protection of Witnesses under Threat and Vulnerable Witnesses and the Law on Witness Protection Program of BiH. The National Strategy for War Crimes Prosecution contains recommendations for

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<sup>41</sup> PSWG Report of September 2012, *supra* note 1, paras. 45-67.

strengthening support of witnesses in proceedings before district and cantonal courts and prosecutor's offices. The Strategy envisages measures to improve the protection and support of witnesses, as well as long-term projections and a financial framework for the implementation of witness protection measures. The Law on Protection of Witnesses under Threat and Vulnerable Witnesses provides for physical and procedural measures to ensure protection of witnesses under threat, sensitive (traumatized) witnesses and protected witnesses in criminal proceedings conducted by the Court of BiH or the Chief Prosecutor of BiH for crimes under jurisdiction of the Court of BiH. The Law on Witness Protection Program, which has been adopted and is implemented at the state level, provides for operational, tactical and technical measures and actions to ensure the physical protection and bodily integrity of witnesses who face a threat to life, health or freedom. The Law prescribes procedures in the witness protection program and what kind of care and support can be given to a witness. Witness support means psychological, social and technical assistance, after confirmation of the indictment, during and after testimony, especially witnesses in war crimes cases. Witness support in the Court of BiH and the Prosecutor's Office of BiH is provided by the Witness Support Departments. They ensure that all witnesses appear before the Court, that the witnesses testifying are advised about their rights before coming to court and, by psychological support, they help reduce anxiety and discomfort caused by taking the stand to a minimum and that the testimony leaves no consequences on the mental health of the witness, especially because the Court of BiH prosecutes a great number of war crimes cases and because it is a majority of protected witnesses in BiH that appear before court just in war crimes cases. With the support by UN Development Agency, Witness Support Departments have been established in the Cantonal Court and Prosecutor's Office of Sarajevo, the District Court and Prosecutor's Office of Banja Luka and the District Court and Prosecutor's Office of East Sarajevo. There is no information if and how support to witnesses and victims is provided in other courts in BiH".<sup>42</sup>

36. The answer provided by BiH repeats information that was submitted to the CEDAW in the PSWG Report of September 2012, but does not seem to "provide *updated information*" on protective measures for victims and witnesses, as requested in the LOIS.<sup>43</sup> The information submitted by the government simply describes the existing framework. Unfortunately, this very framework has been criticized as insufficient and flawed by a number of international institutions. In this sense, in its concluding observations of November 2012 the HRC expressly declared that "while taking note of efforts to provide protection for witnesses of war crimes in the State party, such as the establishment of the Witness Prosecution Unit in the Office of the Prosecutor, the Committee *is concerned at the prevailing deficiencies in the implementation of the witness support programme in entities where war crime cases have been transferred, such as the lack of adequate psychological support and that witnesses have been made to confront accused persons in and outside courts.* The Committee is

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<sup>42</sup> BiH Replies to LOIS 2013, *supra* note 3, para. 4.

<sup>43</sup> LOIS BiH 2012, *supra* note 2, para. 4.

concerned that this affects the willingness of witnesses to provide testimony during trials”.<sup>44</sup> Accordingly, the HRC recommended to BiH to “take practical measures to increase the effectiveness of the witness protection programme to ensure the full protection of witnesses. The State party should also ensure that witnesses continue to receive adequate psychological support in entities where war crimes have been transferred. The State party should further ensure that authorities fully investigate cases of suspected intimidation of witnesses to put an end to the climate of fear that stifles efforts to prosecute war crimes at the entity level in the State party”.<sup>45</sup> On its part, the European Commission highlighted that “efforts to [...] protect victims and witnesses need to be stepped up. [...] Witness protection and support services are unevenly put in place, though there is some improvement connected to the process of referral of war crimes cases from the State to other levels. *The current legal framework remains inadequate and fragmented and varies greatly between District and Cantonal courts and prosecutors’ offices.* [...] A draft Law on the Witness Protection Programme is in the adoption procedure”.<sup>46</sup>

37. The reply provided by BiH to the LOIS on this subject fails to clarify whether any progress has been made in the legislation concerning witness protection and in its implementation.
38. Unluckily, the relevant legal framework remains inadequate. While few attempts to amend it already failed, in July 2011 a working group composed of different authorities was established with the aim of putting forward another draft law. According to the Press Office of the Council of Ministers of BiH, the latter prepared a draft law on Witness Protection Programme in BiH, which should ensure the effective protection. In April 2013 the new draft law was received by the Parliamentary Assembly and should be considered by the House of Representatives in June. In the meantime, the system continues being uneven and overall deficient.<sup>47</sup> Courts at the district, municipal and cantonal level do not count with a comprehensive system of protection, even though since November 2010, some tribunals at the district and cantonal level adopted a number of measures to secure witness

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<sup>44</sup> HRC, *Concluding Observations on BiH*, *supra* note 19, para. 13.

<sup>45</sup> *Ibid.*

<sup>46</sup> European Commission, *Progress Report for 2012 – BiH*, *supra* note 21, pp. 13 and 55.

<sup>47</sup> In an interview released to a Bosnian newspaper, *supra* note 14, Mr. Francesco Caruso, officer of the OSCE coordinator of the prosecution of war crimes project declared that OSCE will be funding travel expenses of witnesses. Although this is certainly a welcome initiative, this does not relieve the State from its international obligations.

protection, often assisted by international organizations.<sup>48</sup>

39. On this matters, in the recommendations issued in April 2013 at the end of the 4<sup>th</sup> plenary meeting of the “Structured Dialogue on Justice between the European Union and BiH”, the European Commission declared that it “[...] expects that steps for overcoming the lack of consensus by all ministers are taken at the early phases of the parliamentary procedure”,<sup>49</sup> highlighting “[...] the particular needs of witnesses in war crimes cases involving sexual violence and expects from all the concerned parties to provide the highest level of victim-oriented protection and support mechanism before, during and after the trial, in particular through protection of victims’ identity and the provision of qualified psychological support to traumatised victims”.<sup>50</sup>
40. In her report of 2013 on the mission to BiH the Special Rapporteur on Violence against Women noted that “[...] activists expressed concerns as regards the treatment of women victims in local courts. While the State level court has established a Witness and Victim Support Section to provide assistance and psychological support to survivors, these mechanisms are absent in district, municipal and cantonal level courts. NGO representatives claim that on occasion the rooms used in local courts to hear cases of sexual violence, place women in a very vulnerable and exposed position. *This adds to women’s reluctance to testify. Due to financial constraints, currently only three out of 16 local courts have witness support staff, including the Banja Luka District Court and the Sarajevo Cantonal Court, which established these systems with international support.* A UNDP initiative was launched in 2008 aimed to create a system of victims/witness protection and support for each prosecutor’s office and court. Civil society advocates claimed, however, that it is not only psychological support and assistance that these victims need, but also protective measures throughout the processes, as many have been subject to threats and harassment when leaving the courts. *Adequate assistance and psychological support to survivors is absent in most districts, municipal and cantonal level courts,* however, two networks were recently established to provide assistance and psychological support to the survivors/witnesses in the Zenica Doboje and Central Bosnia cantons in the FBH.<sup>37</sup> The Special Rapporteur was informed that by the end of 2013 the

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<sup>48</sup> These measures have been funded by the United Nations Development Fund (UNDP). Since 2010, departments of witnesses’ support have been established within Sarajevo Cantonal Court and Prosecutor’s Office; Banja Luka District Court and Prosecutor’s Office. Between 2010 and 2011 more than 500 witnesses passed through these departments. Starting September 2012, the UNDP with the support of the government of the United States of America, has been undertaking activities for the establishment of a Section for Witness Support before cantonal courts and prosecutor’s offices in Bihać, Novi Travnik and Travnik. This involves the reconstruction of facilities, hiring of staff, training of judges and prosecutors. The project will end in February 2014. UNDP seeks to expand these activities also in Mostar and Brčko District. However, due to the lack of funds in the budget of Republika Srpska, the support programmes for witnesses in the courts and prosecutor’s offices in East Sarajevo and Banja Luka that UNDP launched have been terminated. UNDP is working on securing funds for this purpose. As already stated, this kind of initiatives is certainly welcome, but does not relieve the State from the respect of its international obligations.

<sup>49</sup> 2013 Recommendations by the European Commission, *supra* note 29, Recommendation No. 13.

<sup>50</sup> *Ibid.*

model would be established in the Una Sana canton and the Banja Luka region”.<sup>51</sup> The Special Rapporteur recommended to BiH to ensure that “courts and prosecutors at the state, entity and cantonal levels should be provided with political and financial support to undertake these proceedings while ensuring witness support and protection measures and programmes for victims”.<sup>52</sup>

41. In the PSWG Report of September 2012 various examples where victims rendering their testimonies during trials were subjected to some sort of open mockery, harassment or threat were provided, as well as instances of associations dealing with women victims of rape or other forms of sexual violence during the war subjected to harassment and attacks. Examples of material difficulties experienced by witnesses and flawed psychological support were also referred to. Unfortunately, in many cases the situation did not improve<sup>53</sup> and BiH authorities have not undertaken actions aiming at punishing those responsible for harassment and threats nor at preventing similar crimes from happening again. In the meantime, new cases where the physical and psychological integrity of witnesses in war crimes trials has been threatened or violated can be reported.
42. In the PSWG Report of September 2012, reference was made to several cases where those accused or their representatives publicly disclosed the identity of protected witnesses, putting the life and personal integrity of these people at risk and causing serious re-traumatization.<sup>54</sup> In March 2013 at one of the hearings during the trial of Mr. Željko Jukić before the Court of BiH, former member of the Croatian Defence Council (“HVO”) and of the Croatian army (“HV”), charged for participation together with other HVO members in persecution, murders and enforced disappearance of Bosniak persons in the municipality of Prozor from July to September 1993, protected witness “A4” was examined. She testified from a separate room with her voice altered. The witness said that in summer 1993 HVO entered the village of Klek, killing her father and a neighbour. According to the witness, who at the time of the events was 17 years old, women and children were forced into a house, where she was raped by six soldiers wearing HVO insignia. At the hearing, Ms. Irena Pehar, defence council for the accused, presented the statement taken from the witness after the war, disclosing her full name. All those present in the courtroom could hear the identity of the protected witness. The Court Panel cautioned the defence council and everyone present in the courtroom that the disclosure of protected witness’s identity constitutes a criminal offence. Mrs. Pehar subsequently

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<sup>51</sup> Special Rapporteur on Violence against Women, *Report on Mission to BiH*, *supra* note 22, paras. 90-92 (emphasis is added).

<sup>52</sup> *Ibid.*, para. 105 (i).

<sup>53</sup> Where no reference to examples contained in the PSWG Report of September 2012 is made in the present document, it must be interpreted in the sense that the situation has not changed and the information then provided remains valid. This is particularly so for paras. 50, 51, 52, 54, 57, 59, 60, 61, 63, 64 and 66 of the PSWG Report of September 2012, *supra* note 1.

<sup>54</sup> PSWG Report of September 2012, *supra* note 1, para. 53. Nevertheless, reference must be made to the fact that between 2010 and 2012, SIPA provided protection to 234 witnesses who were given the status of a protected witness in proceedings before the Court of BiH. The Center for Investigative Reporting (“CIN”) learned that the witnesses were provided with physical and technical protection, and social and psychological support. Some of them received temporary false identity, some received temporary ownership data, and there were witnesses displaced within and outside the territory of BiH.

apologized, but to the knowledge of the associations subscribing this report she has not been prosecuted and sanctioned for the crime concerned.

43. Another example was provided by the Association Women Victims of War and relates Mr. Mladen Marković, accused of having committed rape in Višegrad in July 1992 and tried before the District Court of East Sarajevo. During the trial, measures for protection of victims and witnesses were not provided. The Court Chamber contacted the Centre for Social Work of East Sarajevo and requested them to support victims and witnesses of sexual violence, including those qualified as "vulnerable witnesses". Seven days before appearance in court of two women qualified as "vulnerable witnesses" and therefore entitled to special measures of protection, a representative of the Centre for Social Work of East Sarajevo phoned them to inform the two ladies that he would have been waiting for them an hour before in the hallway of the District Court of East Sarajevo, wearing black glasses to be recognized. This highly unprofessional approach re-traumatized the two ladies and fostered fear and lack of trust towards authorities. Eventually, the two ladies said that they would refuse to testify in case the support was provided by the Centre for Social Welfare. The Association Women Victims of War therefore hired a psychotherapist to assist the two ladies and ensure their testimony during the trial.
44. In March 2013, M.N. from Brezovo Polje, was called by the Ministry of Interior of Brčko District to make an identification of a person suspected of raping her in 1992 in Caparde prison camp, when she was 14 years old. In the past, M.N. had already been called by the Ministry of Interior for the same purpose and she had always been confronted with pictures of potential suspects. Accordingly, she was expecting to follow the same procedure, while this time the identification procedure was with a personal confrontation. M.N. was not warned in advance and she had to wait in the hall of the ministerial building together with the suspect's lawyer, who was with her in the room also when she was actually conducting the recognition procedure. In this context, the suspect's lawyer was standing behind M.N, and expressing his comments on the procedure, asking her how could she be sure about the identity of the perpetrator after so many years. M.N. did not obtain any psychological support prior, during, or after this grave episode, nor did she obtain any kind of escort before, during, or after the recognition. M.N. experienced deep stress and trauma.
45. In the PSWG Report of September 2012 details were provided with regard to the fact that during 2012, associations of victims, among others, of sexual abuse who were subjected to gross human rights violations in the detention camp of Omarska, near Prijedor, experienced violations by BiH authorities to their freedom of expression, as well as to their right to peaceful assembly.<sup>55</sup> In particular, it was reported that a number of commemorative ceremonies were prohibited by authorities and that in the night between 4 and 5 August 2012, on the eve of the celebration of the 20<sup>th</sup> anniversary of the crimes committed against children in Prijedor, the premises of the association *Izvor* in Prijedor were subjected to an attack: stones were launched against the windows of the office

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<sup>55</sup> PSWG Report of September 2012, *supra* note 1, paras. 127-133.

that were consequently broken. At June 2013, despite the facts were duly reported to the local police, no one has been judged and sanctioned for the crimes concerned.

46. With regard to measures of psychological support to witnesses before, during and after war-crimes trials, relevant initiatives have been launched by NGOs (namely Medica Zenica) in partnership with the Dobož Canton, the Una Sana Canton, the Banja Luka region, and Central Bosnia Canton Ministry of Justice and local administrations.<sup>56</sup> This does not relieve the State from its international obligations. NGOs' projects, even though most welcome and so far definitely successful, cannot replace the adoption of an integral State policy on the matter, supported by adequate legislation and practice.
47. In the PSWG Report of September 2012<sup>57</sup> reference was made to the fact that in several instances war criminals continue to hold public offices. This is detrimental to the whole BiH society and likely to produce a tremendous impact on victims of rape or other forms of sexual violence, fostering their sense of humiliation, frustration and defencelessness. A particularly delicate situation existing in Republika Srpska was highlighted, where victims of violence refrained from submitting their documentation to obtain the disability pension as victims of war, as they feared that it could be evaluated by the very perpetrators of the crimes they were subjected to or that the people working at the Ministry could disclose their identity or personal details to perpetrators. In Prijedor, a high ranking officer of the Department of Veteran's and Disabled Care – the institution competent for assessing the status of civilian victims of war – who is in charge of interrogating prisoners, allegedly inflicted torture and inhumane and degrading treatment on detainees in the detention camps of Omarska and Keraterm. This situation has not changed since September 2012.

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<sup>56</sup> On 19 December 2011, Medica Zenica in partnership with the Ministry of Justice of Zenica-Dobož Canton and Administration of Zenica-Dobož Canton (within a project supported by UN Women and Medica Mondiale), formally signed the so-called "Protocol on Mutual Cooperation of Institutions and NGOs in Providing Support to Victims/Witnesses in War Crimes Cases, Sexual Violence and other Forms of Crime". This led to the establishment of the Network to support victims/witnesses in the Zenica-Dobož Canton. The Network provides support to victims/witnesses before, during and after their testimony. Since June 2012 a similar Protocol was signed and network launched in Central Bosnia Canton.

<sup>57</sup> PSWG, Report of September 2012, *supra* note 1, para. 43.

## Recommendations

Ensure that a comprehensive programme of witness protection and psychological accompaniment is granted at all levels prior, during and after the trial takes place. 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. 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 draft law on witnesses' protection and support currently pending before the Parliamentary Assembly must be discussed and enacted without further delay.

Guarantee that witnesses obtain adequate material support, including safe and free of charge transportation to and from the court.

Ensure that a prompt, independent, impartial and thorough investigation is carried out to identify, judge and sanction those responsible for the attack committed during the night of 4 August 2012 against the premises of the association *Izvor* in Prijedor.

Ensure that a comprehensive programme of vetting is undertaken in order to avoid that war criminals hold public offices or work in the police.

## 5. The Status of Draft Legislation relevant for Victims of Rape or other Forms of Sexual Violence during the War

48. In the PSWG Report of September 2012<sup>58</sup> details were provided with regard to a number of legislative initiatives launched over the past years in order to bring BiH legal framework in line with international standards, pursuant to reiterated recommendations issued in this sense by international human rights mechanisms. As it was stressed in September 2012, some of these initiatives have been ongoing over the past seven or eight years, fostering first the illusions of victims of gross human rights violations during the war and then their frustration. In fact, despite pledges and assurances given by BiH in this sense, to the great disappointment of the associations subscribing the present report, at June 2013 none of those initiatives has seen the light of the day. Time passes, BiH authorities fail to take any positive measure and indulge into lulls, while in the meantime victims of gross human rights violations from the war are dying without having ever obtained justice, redress and truth.
49. This report focuses on three major and long due initiatives, namely the draft National Strategy on Transitional Justice, the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence, and the draft Law on the Rights of Victims of Torture.

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<sup>58</sup> PSWG Report of September 2012, *supra* note 1, paras. 68-79.

## 5.1 The Draft National Strategy on Transitional Justice

50. In the PSWG Report of September 2012 details were provided with regard to the process of drafting and adoption of the draft National Strategy on Transitional Justice.<sup>59</sup> The whole process, supported by the United Nations Development Programme (“UNDP”), started in 2010. The working document containing the draft Transitional Justice Strategy was expected to be presented for adoption to the Parliamentary Assembly during the summer of 2012.
51. In its replies to the LOIS, BiH mentioned that “the draft Strategy of transitional justice was prepared and is currently in the process of obtaining the opinions of all levels of government, which is a prerequisite for the adoption by the Council of Ministers”.<sup>60</sup>
52. In its concluding observations of November 2012 on BiH, the HRC expressed concern because “[...] the Strategy on Transitional Justice that aims at ensuring access to justice and reparation for all civilian victims of war including survivors of sexual violence has not been adopted”<sup>61</sup> and it recommended to BiH to “[...] take concrete measures to ensure that survivors of sexual violence and torture have access to justice and reparations [...]”.<sup>62</sup>
53. In her 2013 report on the mission to BiH, the Special Rapporteur on Violence against Women referred that she was “[...] also informed of the Transitional Justice Strategy (TJS), which is spearheaded by the Ministry of Human Rights, with the participation of the judiciary, other authorities, and in collaboration with civil society representatives. In June 2012, a working document was presented by the Ministry of Human Rights and Refugees, together with the Ministry of Justice and the United Nations Development Programme. The Strategy is yet to be adopted. The Strategy is focused on non-judicial transitional justice mechanisms such as reparations, memorials, truth telling, and institutional reform. It aims to address the issue of past war-crimes, [...] The Strategy does not deal with women victims as a separate category, yet women are considered within the category of ‘civilian victims of war’. While the Strategy does not define actions specifically intended for women, it reportedly aims to ensure that the basic principles of gender equality, as well as the special needs of this category of victims are recognized and taken into consideration when developing concrete programmes. The Strategy recognizes that the war had a differentiated impact on women which has also affected their post-war situation. It also stresses women’s roles during the war, not only as victims of sexual violence, but also as witnesses, veterans, and even perpetrators. The Special Rapporteur was informed that the Transitional Justice Strategy aims to establish non-judicial mechanisms to address these concerns through fact-finding and truth-telling activities, memorialisation, reparation and compensation programs, as well as rehabilitation through, *inter alia*,

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<sup>59</sup> *Ibid.*, paras. 69-72.

<sup>60</sup> BiH Replies to LOIS 2013, *supra* note 3, para. 4.

<sup>61</sup> HRC, *Concluding Observations on BiH*, *supra* note 19, para. 8.

<sup>62</sup> *Ibid.*

psycho-social services. Civil society representatives from both Entities expressed their support for this initiative and have made efforts to contact women victims of rape, as well as associations of victims of concentration camps, in order to organize consultations. However, *while the CSO sector from the Republika Srpska has been involved in the development of the Strategy, the Entity-level authorities have not been as supportive. While they were formally involved in the development of the Strategy during the pre-drafting consultations, and as members of the Working Group, they then left the Working Group half-way through the process.* The Gender Centre in the Republika Srpska is reportedly engaging and discussing with relevant entity level Ministries and authorities to reconcile views and prompt the participation of the Entity in this important initiative. State-level authorities are also striving to create an atmosphere for minimum consensus. According to interviewed stakeholders, some progress had been achieved and it is hoped that political divisions will be overcome to facilitate a process that would be very beneficial for women victims of war of all ethnic and religious backgrounds”.<sup>63</sup>

54. The Special Rapporteur recommended to BiH to “*finalize the launch of a nation-wide Transitional Justice Strategy that includes: (i) Fact-finding and truth-telling activities that acknowledge the war-crimes experienced by women, regardless of their religious or ethnic background, and also recognize how shame, trauma or fear of stigmatization have restricted victims from speaking out. (ii) Memorialisation activities that foster the widespread societal recognition of the harms suffered by women during wartime, as well as the disparate and disproportionate consequences that these crimes had on them. (iii) Reparations programs that target the rehabilitation and de-victimization of survivors, as well as the improvement of their psycho-social and physical health, including by better coordinating the existing services provided by both State and civil society organizations. A clear differentiation should also be made between any reparations programs and the social welfare provisions to which women are entitled. (iv) Compensations schemes that avoid the differentiated treatment currently being received by civilian victims of war throughout the country. Such schemes should broadly include employment, housing and financial incentives for women survivors of war-time violence*”.<sup>64</sup>
55. Although UNDP is supporting a dialogue between government institutions in cooperation with civil society organizations on the draft Strategy on Transitional Justice, at June 2013 the draft has not yet been presented for adoption to the Parliamentary Assembly. Considering that this should have occurred in the summer of 2012, it would seem that the adoption of the draft Strategy on Transitional Justice is not a priority for BiH authorities. On the contrary, for victims of the war, including women victims of rape or other forms of sexual violence during the war that have been waiting for justice and redress over the past 20 years, this piece of legislation is a top priority that cannot be eluded any further.

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<sup>63</sup> Special Rapporteur on Violence against Women, *Report on the Mission to BiH, supra note 22*, paras. 58-61 and 98-100 (emphasis is added).

<sup>64</sup> *Ibid.*, para. 105 (k) (emphasis is added).

### Recommendation

Ensure that the National Strategy for Transitional Justice is adopted and implemented without further delay, keeping in mind that fact-finding processes, although crucial for the establishment of the truth, cannot replace access to justice and redress for victims of gross human rights violations and their relatives that must thus be guaranteed such rights independently from the adoption of the strategy concerned.

## 5.2 The Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence

56. In the PSWG Report of September 2012 details were provided also with regard to the process of drafting and adoption of the “Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence”.<sup>65</sup> Also this initiative, coordinated by the United Nations Population Fund (“UNPFA”) and the BiH Ministry of Human Rights and Refugees, was launched at the end of 2010. The finalization of the draft programme was initially expected by the end of 2011 and was then repeatedly postponed. When the PSWG Report of September 2012 was submitted, the indication was that the draft containing the programme should have been finalized by November 2012 and then submitted to the Council of Ministers of BiH for approval.
57. In its replies to the LOIS, BiH indicated that “with the aim of improving the overall situation of women victims of rape the Ministry for Human Rights and Refugees, in cooperation with representatives of the institutions of BiH, its entities, cantons, Brčko District and NGOs, *is finalizing* drafting of the document ‘Program for victims of rape, sexual abuse and torture in BiH 2013-2016’ which will seek to improve the position of all the victims. One of the program goals within this Program emphasizes the obligation of the state to provide access to programs for victims and/or witnesses in court proceedings and after them”.<sup>66</sup>
58. In the Progress Report for 2012, the European Commission noted that “*a comprehensive approach to improving the status of victims of rape and sexual violence remains outstanding*. The adoption of a State-level programme for improving the status of victims of war crimes involving sexual violence is pending”.<sup>67</sup>
59. In the 2013 report on her visit to BiH the Special Rapporteur on Violence against Women referred that “the Programme for Victims of Wartime Rape, Sexual Abuse and Torture, and their Families 2013-2016 is also led by the Ministry of Human Rights and Refugees, with the support of the United Nations Population Fund (UNFPA). The programme will focus on issues including the implementing of rehabilitation programs, the right to compensation, and the social integration of victims. The

<sup>65</sup> PSWG Report for September 2012, *supra* note 1, paras. 73-74.

<sup>66</sup> BiH Replies to LOIS 2013, *supra* note 3, para. 4.

<sup>67</sup> European Commission, *Progress Report for 2012 – BiH*, *supra* note 21, p. 13.

development of the program is important to provide clarity *vis à vis* the scope and nature of transitional justice mechanisms and their differentiation from provisions related to social security. The prevailing confusion as regards these concepts has negatively affected the way authorities have responded to wartime victims. It is hoped that this programme will also foster social integration and better understanding within communities. *While the Programme was originally conceived to focus on women, it was later modified to recognize the existence of male victims of war-time rape. As with the Transitional Justice Strategy State level authorities and NGO's have been very supportive of the initiative, yet Entity level governments have shown less support. This is particularly the case for the Republika Srpska which has reportedly still not delegated members to the program's working groups. The program has been debated in public and in Parliamentary committees, but still has no endorsement. It is argued that financial implications may be the main obstacle*.<sup>68</sup> The Special Rapporteur recommended BiH to “finalize and launch the Programme for Victims of Wartime Rape, Sexual Abuse and Torture, and their Families 2013-2016 and ensure allocation of necessary financial and human resources for its implementation. The programme should be implemented with the full participation of relevant entity-level authorities and in consultation with civil society and victims' organizations”.<sup>69</sup>

60. At June 2013, the draft programme has not yet been submitted to Council of Ministers of BiH for approval and it remains at the entities' level. The programme was submitted for feedback opinions to entity governments, but the latter failed to formulate their opinions so far,<sup>70</sup> thus paralyzing the whole process.<sup>71</sup> Anew, this situation casts serious doubts on the level of priority attributed by BiH authorities to this legislative initiative and discloses a discrepancy between the expectations of women victims of rape or other forms of sexual violence during the war and the attitude demonstrated towards them by the State.

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<sup>68</sup> Special Rapporteur on Violence against Women, *Report on the Mission to BiH, supra* note 22, paras. 62-63 (emphasis is added).

<sup>69</sup> *Ibid.*, para. 105 (j).

<sup>70</sup> Some opinions were actually given, namely: the government of Brčko District sent a positive opinion; the Legislative Office of BiH gave its positive opinion; the Gender Centre of Republika Srpska expressed “support to the programme”, as well as the Gender Centre of the Federation of BiH.

<sup>71</sup> In the meantime, the Ministry for Human Rights and Refugees, in cooperation with UNFPA, continued to promote the draft of the programme in local communities. In partnership with the Una Sana Canton and Bosansko podrinjski Canton, namely with their Cantonal Ministries of Social Work and Health, they agreed to implement pilot projects of the programme relating to the provision of direct support to victims. In this regard, they held consultative discussions with key stakeholders in Bihac and Gorazde and introduced them with the idea for the establishment of the Protocol on cooperation. When official agreement on the mentioned Protocol will be reached, assistance will be delivered in these pilot areas in accordance with the programme.

## Recommendation

Ensure that the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence is referred for approval to the Council of Ministers of BiH without further delay. Representatives of the Entities must express their opinion on the programme and show their genuine support without further delay. Measures envisaged by the programme shall have a transformative aim, in the sense that they must allow women to ameliorate or at least consolidate their position in society. In this sense women victims of rape or other forms of sexual violence during the war shall be guaranteed full participation not only in the drafting of the programme, but also in the subsequent implementation, evaluation and decision-making.

### 5.3 The Draft Law on the Rights of Victims of Torture

61. In the PSWG Report of September 2012 detailed information was provided with regard to the long awaited Law on the Rights of Victims of Torture.<sup>72</sup> Since 2006 (i.e. seven years ago) BiH has been affirming before international mechanisms that the adoption of such law was “imminent”. BiH did not provide any information on the status of the law in its replies to the LOIS.
62. Yet, international human rights mechanisms continue highlighting the importance of the adoption of such law. Among others, the HRC expressed concern in its concluding observations on BiH of November 2012 that “[...] a draft law on the rights of victims of torture and civilian victims of war that aims at ensuring that all civilian victims of war in the State party have equal access to social benefits has not been adopted”.<sup>73</sup> The Special Rapporteur on Violence against Women recommended BiH to “expedite the enactment of the Law on Civilian War Victims and Victims of Torture”.<sup>74</sup>
63. When the PSWG Report of September 2012 was submitted, the BiH Ministry of Human Rights and Refugees had re-launched the initiative to draft a law on the rights of victims of torture and had submitted a draft for comments to entities.
64. On 15 March 2013 a meeting was held at the Ministry for Human Rights and Refugees of BiH where the Ministry representatives highlighted that there seems to be no readiness from the side of the entities to adopt the law. To date, the governments of the Federation of BiH and Republika Srpska have not sent feedback with regard to the draft law and its adoption. It was also said that the issue of the adoption of the law has not been included in the Action Programme for the work of the Ministry for 2013. At the meetings held by representatives of the initiative and political parties and parliamentarians the lack of political will to adopt this law was highlighted.
65. This callous inactivity of BiH authorities in the face of the acute suffering of victims of torture, including women victims of rape or other forms of sexual violence during the war, who have been waiting for a law to eventually realize their fundamental rights is not only a flagrant breach of BiH’s

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<sup>72</sup> PSWG Report of September 2012, *supra* note 1, paras. 75-79.

<sup>73</sup> HRC, *Concluding Observations on BiH*, *supra* note 19, para. 8.

<sup>74</sup> Special Rapporteur on Violence against Women, *Report on the Mission to BiH*, *supra* note 22, para. 105 (b).

international obligations, but discloses an obstinate disregard of recommendations repeatedly put forward by international human rights mechanisms, and is perceived by thousands of victims as a mockery.

#### Recommendation

Ensure that the obstacles for the adoption of the Law on the Rights of Victims of Torture are swiftly removed and this crucial piece of legislation is adopted and enforced without further delay. Financial resources for its implementation must be secured and the overall exercise must be coordinated with the other mentioned legislative initiatives concerning victims of the conflict in BiH in order to avoid overlapping or lacunae. To ensure the finalization of a sound draft law, all parties shall constructively participate to the endeavour and associations of victims of rape or other forms of sexual violence during the war must be thoroughly involved and allowed to express their opinions, needs and expectations.

## 6. The Failure to Provide Adequate Compensation and Integral Reparation to Victims of Rape or other Forms of Sexual Violence during the War

66. In the PSWG Report of September 2012 a thorough description of the failure of BiH to provide adequate compensation and integral reparation to victims of rape or other forms of sexual violence during the war was provided.<sup>75</sup> Problems then reported can be summarized as follows: the notions of compensation and reparation continue being unduly confused with that of social welfare measures (such as disability pensions); the existing legal framework is plagued by gaps and there are serious drawbacks in its implementation and discrimination between veterans and civilian victims of war when it comes to obtaining compensation or monthly disability allowances remains a reality. Under the current legal framework, victims who have suffered the same body damage are entitled to substantially different amounts of money as disability pensions depending on whether they are veterans or not and on the place of residence (amounts recognized in Republika Srpska are lower than in the Federation of BiH). Further, psychological damage is not recognized as a valid basis to obtain social benefits; and the legislation in Republika Srpska does not recognize women victims of rape or other forms of sexual violence as an autonomous category of victims and establishes deadlines to claim compensation that already expired; and in the Federation of BiH women victims of sexual abuse that were receiving social assistance due to their status as victims of war may lose such right if they reside outside BiH for more than three months.
67. Moreover, the PSWG Report of September 2012 specified that as a direct consequence of the harm suffered during the war, the majority of victims of rape or other forms of sexual violence live in a particularly difficult material situation and, so far, BiH 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. Also, the State has not guaranteed these women access to adequate housing, preferential treatment in employment and access to education for their children, as well as proper

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<sup>75</sup> PSWG Report of September 2012, *supra* note 1, paras. 80-126.

free of charge medical and psychological support. In this context, it is noteworthy that the situation of victims of rape or other forms of sexual violence in Republika Srpska is significantly worse than in the rest of the country. Although NGOs or international agencies have launched or are implementing projects to provide housing, psychological and medical support, and similar measures, this does not relieve BiH from its primary responsibility to do so.

68. Despite the CEDAW explicitly requested BiH to describe the specific activities carried out to provide assistance and compensation to women victims of war,<sup>76</sup> in its replies to the LOIS BiH did not answer on this point. This is a source of concern to the association subscribing the present report that fear that this could be a sign of the scarce importance attached by BiH to these matters.
69. On the contrary, as they already repeatedly did in the past, international mechanisms continue denouncing the pressing need to adopt without delay adequate measures of assistance and compensation to women victims of war. In particular, in its concluding observations of November 2012, the HRC expressed its concern “[...] that personal disability benefits received by civilian victims of war are significantly lower than those received by war veterans in entities and respective cantons”.<sup>77</sup> Accordingly, it recommended to BiH to “take practical measures to ensure that survivors of sexual violence and torture have access to justice and reparations. Furthermore, the Committee reiterates its previous recommendation (CCPR/C/BiH/CO/1, para. 15) and urges the State party to harmonize disability benefits among entities and cantons so that personal disability benefits received by civilian victims are adjusted to ensure they are in line with the personal disability benefits received by war veterans”.<sup>78</sup>
70. In the 2013 report on the visit to BiH the Special Rapporteur on Violence against Women noted that “[...] challenges faced by women survivors of wartime sexual violence are *compounded by the lack of a coherent legal framework to address past crimes*, which results in women *having unequal access to the limited remedies available, depending on their geographic location within the country*. [...] interviewees reported an *overt reluctance among authorities in the Republika Srpska to recognize the existence of war-time rape victims*. During interviews with the *Centres for Social Work’s in Banja Luka and East Sarajevo*, it was made clear that they do not undertake any work with women victims of sexual violence in conflict. The reluctance to address the issue goes up to the highest levels and is evident in statements made by high-ranking politicians who have criticized the Court and the Prosecutor’s Office of Bosnia and Herzegovina, questioning their integrity and legitimacy, and labelling them as anti-Serb institutions. Politicians have reportedly also pressed the judiciary to indict certain individuals on the basis of ethnic considerations. [...] *Women survivors of war-time rape and sexual violence generally feel the State neglects their existence and tries to avoid addressing their responsibilities towards them. This is particularly the case for women living in*

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<sup>76</sup> LOIS BiH 2012, *supra* note 2, para. 4.

<sup>77</sup> HRC, *Concluding Observations on BiH*, *supra* note 19, para. 8.

<sup>78</sup> *Ibid.*

*remote areas who are still not aware of their rights and the legal avenues available to them. So far there has not been a widespread outreach strategy by the State and it is mainly NGOs and women's organisations who have strived to identify new victims, support them and encourage them to provide their testimonies and ensure more perpetrators are identified and brought to justice. In addition to overcoming the trauma of the harms they suffered, women victims of conflict related sexual violence carry the burden social and economic marginalization. Survivors face general poverty, low educational levels and unemployment. This is exacerbated by the country's poor economic situation, the inadequate resources assigned for public services, the lack of training and sensitivity among civil servants, and the lack of clarity about applicable laws. Local institutions do not appear to have the capacity or resources to provide much needed services. Survivors are also discriminated vis a vis veterans in terms of access to social benefits. [...] The failure by Bosnia and Herzegovina to comply with its due diligence obligation to provide reparations to women victims of violence, has resulted in a lack of access for victims of war-time sexual violence to both criminal and civil remedies, as well as to adequate protection, support and rehabilitation services".<sup>79</sup> The Special Rapporteur therefore emphasizes that it is "crucial for government authorities at all levels to recognize the existence of civilian women victims of rape and torture, regardless of their ethnic or religious backgrounds, and to ensure that they have equal access to remedies and services, regardless of their physical location within the country".<sup>80</sup>*

71. In the PSWG Report of September 2012 various examples regarding the failure of BiH to provide redress to women victims of sexual violence during the war and their difficulties in obtaining adequate housing, preferential treatment in employment and access to education for their children as measures of restitution, as well as problems related to medical and psychological rehabilitation were consistently referred to. Unfortunately, in many cases the situation did not improve<sup>81</sup> and BiH authorities have not undertaken any positive measure to ensure that women victims of rape or other forms of sexual violence obtain adequate, fair and prompt compensation. In some cases, the situation reported in September 2012 even deteriorated. Moreover, new examples showing the failure of BiH authorities to respect international obligations in this domain can be quoted.
72. As consistently detailed in PSWG Report of September 2012, the existing system in BiH unduly overlaps the notions of social benefits and compensation. Given that a monthly pension cannot replace by any means the compensation due for the harm suffered, it is worth highlighting that in many cases women victims of sexual violence during the war experience serious problems in obtaining their monthly pensions. For instance, the association Naš Glas from Tuzla reported that

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<sup>79</sup> Special Rapporteur on Violence against Women, *Report on the Mission to BiH*, *supra* note 22, paras. 29, 95-97 and 101 (emphasis is added).

<sup>80</sup> *Ibid.*, para. 104.

<sup>81</sup> Where no reference to examples contained in the PSWG Report of September 2012 is made in the present document, it must be interpreted in the sense that the situation has not changed and the information then provided remains valid. This is particularly so for paras. 91, 94, 109, 110, 115, 118, 120, 123 and 125 of the PSWG Report of September 2012, *supra* note 1.

from January 2013 their members are not receiving their monthly pensions. It seems that in Tuzla Canton civilian victims of war are the only category which is not regularly receiving the due social benefits. According to official information provided by the Federal Ministry of Labour and Social Policy, the situation is particularly harsh in the Western part of the country, where civilian victims of war received their monthly pensions only for seven months of 2012, despite having regularly submitted their documentation. Reportedly, also in Zenica-Doboj Canton, civilian victims of war have not yet received the monthly pensions due in December 2012.<sup>82</sup>

73. As referred in the PSWG Report of September 2012,<sup>83</sup> in 2010 the government of the Federation of BiH begun the study of further amendments to the Law on Protection of Civilian Victims in Federation BiH and a first draft was adopted which would modify the procedure to actualize the rights of women victims of rape or other forms of sexual violence during the war. The discussion of the amendments was postponed to 2013 by the government of Federation BiH. At June 2013, the discussion on the potential amendments to the law has not been resumed and there is no clear indication that this will happen any time soon.
74. Various details concerning the problems faced by women victims of rape or other forms of sexual violence in having access to adequate housing as a measure of restitution were provided in the PSWG Report of September 2012.<sup>84</sup> At June 2013, 40 members of the Association of Women-Victims of War are facing problems related to housing and the State is failing to provide them with adequate material and financial support.

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<sup>82</sup> See, in the local language: [http://fmrsp.gov.ba/s/index.php?option=com\\_content&task=view&id=350&Itemid=41](http://fmrsp.gov.ba/s/index.php?option=com_content&task=view&id=350&Itemid=41).

<sup>83</sup> PSWG Report of September 2012, *supra* note 1, para. 92.

<sup>84</sup> PSWG Report of September 2012, *supra* note 1, paras. 106-115.

## Recommendations

Ensure that all victims of rape or other forms of sexual violence during the war have access to social benefits and other measures of social support irrespective of where they live. Such legislation should be adopted on the State level in order to avoid the continuation of the current situation in which there exists discrimination in access to and levels of social benefits depending on the entity involved. In general, civilian victims of war shall not receive a worse treatment compared to that of war veterans.

Ensure that those Cantons (i.e. Tuzla and Zenica-Doboj Cantons) that are late in paying monthly benefits to civilian victims of war proceed to pay the amounts owed without any further delay. The State shall pay interest on the amounts owed corresponding to banking interest rates on arrears in BiH.

Implement a national programme on measures of reparations for civilian victims of war, including victims of rape or other forms of sexual violence and relatives of missing persons 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. In particular, the State shall guarantee, as a measure of reparation, access to free psychosocial support, provided through State's institutions and health services. Measures envisaged by the reparation programme shall have a transformative aim, in the sense that they must allow women to ameliorate or at least consolidate their position in society. In this sense women victims of rape or other forms of sexual violence during the war shall be guaranteed full participation not only in the drafting of the programme, but also in the subsequent implementation, evaluation and decision-making.

Take measures to raise awareness about the status of civilian victim of war and, in particular, the possibility for applying for such status and the rights deriving from it.

Ensure that adequate and effective criteria are applied to recognize the status of civilian victim of war without discrimination and further traumatising for the people involved.

Ensure that the psychological impact of the return on individuals is duly considered when evaluating whether there are the conditions for a "safe and dignified" return of internally displaced persons to their pre-war places. No forcibly displaced person, and in particular victims of rape or other forms of sexual violence 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.

Undertake without delay all necessary measures to guarantee the reintegration in the labour market of victims of rape or other forms of sexual violence as well as access to vocational trainings. Both at the State and the entity level preferential treatment in employment shall be assured to victims of rape or other forms of sexual violence and the legal framework shall be amended accordingly.

Guarantee to the children of victims of rape or other forms of sexual violence the access to education and, if they wish to continue with their studies, to the highest levels of instruction.

Develop a system to provide victims of rape or other forms of sexual violence and relatives of missing persons in BiH, including those who live in remote areas of the country, with access to psychological accompaniment and medical treatment free of charge. BiH shall remove existing barriers that unduly obstruct the access to medical and psychological treatment and medicines, including unaffordable travel expenses. Moreover the State shall support and provide resources to those organizations that already work in this field, making sure that they continue supplying good quality treatments to victims of rape or other forms of sexual violence. BiH shall ensure that programmes of health and psychological support are also put in place to adequately assist children born as a result of war-time rape.

## 7. The Lack of Adequate Reparation Programmes for Women Victims of Enforced Disappearance

75. In the LOIS, the CEDAW expressly requested BiH to provide updated information on reparation programmes for women victims of enforced or involuntary disappearances.<sup>85</sup> To the great dismay of the associations subscribing the present report, in its replies to the LOIS BiH did not include any reference to this most sensitive issue.
76. International law and jurisprudence establish that, in cases of enforced disappearance, “victim” means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance, including the relatives.<sup>86</sup> In 2012 the WGEID adopted a general comment on women affected by enforced disappearances, where it pointed out that “women are victims of enforced disappearances. Although statistics show that mainly men are forcibly disappeared, the Working Group has also in its files a number of cases of women who disappeared. *Additionally, women as relatives of those men who disappeared are also considered victims of enforced disappearances*”.<sup>87</sup> The WGEID specified that “States must acknowledge disappeared women, and recognize the particular types of harm they suffer based on their gender, including instances of sexual violence and forced impregnation, and the resulting *psychological damage and social stigma as well as the disruption of family structures*. [...] The Working Group is conscious that women are in a situation of particular vulnerability during times of conflict. During those times, many women are targeted and are forcibly disappeared or suffer other forms of gender-based violence”.<sup>88</sup>
77. In particular, the WGEID indicated that “family members’ victimization becomes even greater when men, who mainly suffer the fate of enforced disappearances, were the head of household. *Here, enforced disappearance of men results in entire families becoming victims of enforced disappearances. As the family structure is disrupted, women are negatively affected economically, socially and psychologically. The emotional upheaval is thus exacerbated by material deprivation, made more acute by the costs incurred should they decide to undertake a search for their loved ones. Furthermore, they do not know when—if ever—their loved one is going to return, which makes it difficult for them to adapt to the new situation. In some cases, national legislation may make it impossible to draw a pension or receive other means of support in the absence of a death certificate. Therefore, economic and social marginalization is frequently the result of an enforced disappearance*. In such circumstances, several economic, social and cultural rights enshrined in the Universal Declaration of Human Rights and in other instruments, such as the rights to health,

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<sup>85</sup> LOIS BiH – 2012, *supra* note 2, para. 4.

<sup>86</sup> See, in particular, Art. 24, para. 1, of the International Convention on the Protection of All Persons from Enforced Disappearance (ratified by BiH on 30 March 2012).

<sup>87</sup> WGEID, *General Comment on Women Affected by Enforced Disappearances*, doc. A/HRC/WGEID/98/2 of 14 February 2013, para. 4 (emphasis is added).

<sup>88</sup> *Ibid.*, paras. 5 and 7 (emphasis is added).

education, social security, property and family life are violated”.<sup>89</sup>

78. In its general comment the WGEID elaborates on the duties of States vis-à-vis women victims of enforced disappearance, in particular with regard to the right to truth, the right to justice, the right to an effective remedy, witness and victim protection and the right to reparation. On the latter,<sup>90</sup> the WGEID clarifies that in reparation programmes “[...] a comprehensive definition should recognize that family members of the disappeared are also victims because they endure unique forms of suffering as a direct result of the disappearance. To include women and family members of the disappeared as victims acknowledges their suffering by allowing them to be fully recognized, compensated and rehabilitated as victims. This will assist in breaking down stereotypes and eliminating gender hierarchies. [...] Women as family members, particularly where they become household heads due to an enforced disappearance, are in specific material, financial, psychological and legal needs. The relevant governmental institutions must provide them adequate counselling, rehabilitation and support services, assistance and information”.<sup>91</sup> The WGEID has also made clear that “[...] *social allowances and/or measures of reparation should not be made conditional on the requirement that the relatives of the disappeared person produce a death certificate*”.<sup>92</sup>
79. Although BiH does not refer to the situation of women victims of enforced disappearance in its replies to the LOIS, this subject remains the source of concern for different international human rights mechanisms. Among others, in its concluding observations of November 2012, the HRC, besides recalling previous recommendations disregarded by the State affirmed to regret “[...] the slow progress that has been made to find persons who went missing during the armed conflict between 1992 and 1995. The Committee is also concerned at the budget cuts for the Missing Persons Institute that adversely affect the implementation of its mandate”.<sup>93</sup> Accordingly, the HRC recommended to BiH to “[...] expedite the investigation of all unresolved cases involving missing persons. Furthermore, the State party should take all necessary measures to ensure that the Missing Persons Institute is adequately funded and able to fully implement its mandate with a view to completing the resolution of these cases as soon as possible. The State party should also continue to provide adequate psychological support to families of missing persons during the conduct of exhumations”.<sup>94</sup>
80. Further, the HRC expressed particular concern because “article 21 of the Law on the Rights of Defenders and Members of their Families, applicable in the Federation of Bosnia and Herzegovina,

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<sup>89</sup> *Ibid.*, para. 12 (emphasis is added).

<sup>90</sup> See *ibid.* paras. 37-44.

<sup>91</sup> *Ibid.* paras. 38 and 44.

<sup>92</sup> WGEID, *Annual Report for 2012*, doc. A/HRC/22/45 of 22 January 2013, para. 50 (emphasis is added).

<sup>93</sup> HRC, *Concluding Observations on BiH*, *supra* note 19, para. 9.

<sup>94</sup> *Ibid.*

provides that, in order for the family members of missing persons to accede to or maintain a monthly pension, they have to commence proceedings to declare the missing person deceased within two years of the law coming into force. Furthermore, the Committee is concerned that in the Republic Srpska, municipal courts require the production by family members of evidence in the form of a death certificate that their relative has been subjected to enforced disappearance when assessing a request for a disability pension under article 25 of the Law on the Protection of Civilian Victims of War and article 190 of the Law on Administrative Procedure. *The Committee is concerned that this practice raises issues under articles 2, 6 and 7 of the Covenant, as missing persons and those subjected to enforced disappearance are presumed dead when efforts are being made to find them*.<sup>95</sup> The HRC therefore recommended to BiH to “abolish the obligation in cases of disappearance which makes the right to compensation dependent on the family’s willingness to have the family member declared dead. The State party should ensure that any compensation or other form of redress adequately reflects the gravity of the violation and the harm suffered”.<sup>96</sup> Recently, the HRC has in fact found a violation of Article 2, 6, 7 and 9 of the Covenant with regard to the obligation imposed on relatives of missing persons to obtain a death certificate in order to have access to social welfare and reparation and it recommended to BiH “the abolition of the obligation for family members to declare their missing dead to benefit from social allowances or any other forms of compensation”.<sup>97</sup>

81. In light of the above, it results that despite the silence of BiH on this subject in its replies to the LOIS, the situation of women victims of enforced disappearance, in particular with regard to reparation programmes remains critical. Many of the observations and recommendations formulated above on the failure of BiH to provide adequate compensation and integral reparation to women victims of rape and other forms of sexual violence<sup>98</sup> hold true, *mutatis mutandis*, also for women relatives of missing persons. In the present report mention will be made to a number of selected outstanding issues related to women relatives of missing persons and mainly related to reparation programmes that are the source of special concern to the associations subscribing this document.<sup>99</sup>
82. In the PSWG Report of September 2012 reference was made to a particular problem affecting women relatives of missing persons who would also be entitled to receiving a monthly disability pension concerns returnees.<sup>100</sup> Article 33, para. 5, of the Law on the Basis of the Social Protection,

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<sup>95</sup> *Ibid.*, para. 12 (emphasis is added).

<sup>96</sup> *Ibid.* (emphasis is added).

<sup>97</sup> HRC, Case *Prutina, Zlatarac, Kozica, Ćekić v. Bosnia and Herzegovina*, views of 28 March 2013, para. 11.

<sup>98</sup> *Supra* paras. 66-74.

<sup>99</sup> The analysis here provided does not deal with all the existing violations by BiH of its international obligations vis-à-vis missing persons and their relatives. In this sense see the alternative report submitted to the HRC in September 2012 by TRIAL and 17 BiH civil society organizations, available at: <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/TRIALAlternativeReportBosnia106.pdf>.

<sup>100</sup> PSWG Report of September 2012, *supra* note 1, para. 90.

Protection of Civilian Victims of War and Families with Children in Federation of BiH (Official Gazette of Federation of BiH No. 36/99 and later amendments) establishes that “a person who has realized the right as a civilian victim of war or a family-member of a civilian victim of war under the regulations of the Federation or a surrounding country has no right to file a request for the granting of rights under this law”, thus excluding them from the enjoyment of any social benefits in case they decide to return in Republika Srpska.<sup>101</sup> In practice, this situation has prevented a considerable number of women relatives of missing persons from returning to their pre-war houses, since they realised that moving back to Republika Srpska would have brought as a consequence the loss of their monthly disability pensions which, in the majority of cases, are their only means of subsistence. It is noteworthy that on 2 February 2011 the Supreme Court of Republika Srpska rendered a significant decision according to which lower courts should not automatically deny access to social benefits to those who received monthly disability pensions in Federation BiH and later on returned to Republika Srpska. This decision should represent a landmark judgment that sets the criteria to be followed by lower administrative bodies and courts throughout Republika Srpska. Nevertheless, it would seem that at the time of writing such decision has not been implemented and, on the contrary, lower administrative bodies continue interpreting the law as it has been done in the past. A complaint was submitted on 27 January 2012 to the Ombudsperson under file number Ž-BL-05-79/12 and at June 2013 remains pending.

83. In the past months some of the women concerned submitted applications related to the issue to the Constitutional Court of BiH, which in decisions issued between April and June 2012 declared that there has been no violation as the applicants had the possibility to realize their rights anyway in Federation of BiH.<sup>102</sup> It is noteworthy that by this means the Constitutional Court of BiH affirmed that in fact the women concerned must obtain their disability pensions in Federation of BiH. Unfortunately, it seems that domestic authorities are not following this authoritative interpretation. Some of the women that, following the Constitutional Court of BiH’s decisions, applied anew to obtain their monthly pensions in Federation of BiH but could not realize their rights.
84. *Izvor*, one of the associations subscribing this document and representing several women relatives of missing persons and victims of sexual violence during the war, sent letters to the Federal Ministry

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<sup>101</sup> The law was amended in 2006 (Official Gazette Federation of BiH No. 39/06). Article 33, para. 1, reads: "Civilian victims of war and family members of civilian victims of war with temporary residence on the territory of Federation of BiH will upon their return in their earlier places of residence in Republika Srpska or the Brčko District of BiH be assured rights which they had in their temporary place of residence". After the law was amended, a big number of returnees reapplied in Federation of BiH for the granting of their lost rights. Their claims were, however, all rejected, at least in the Una-Sana Canton, because the competent Ministry of Work and Social Policy interpreted the new provision as having to be applied only to people who had these rights at the moment when the amendments entered into force and who returned thereafter to Republika Srpska, and not to the people who already had lost their rights at the moment when the changes entered into force. As the majority of people had returned in Republika Srpska in 2004, all of them were excluded from regaining social assistance in Federation of BiH, while at the same time incapable of gaining this assistance in Republika Srpska.

<sup>102</sup> In this sense see Constitutional Court of BiH, decisions AP 943/09 of 18 April 2012; AP 944/09 of 15 May 2012; and AP 978/09 of 13 June 2012.

of Labour and Social Policy and to the Una-Sana Canton Ministry of Health and Social Policy, referring to the findings of the Constitutional Court of BiH and arguing that the women concerned must obtain their disability pensions in Federation of BiH. Following these letters, the competent federal body answered to *Izvor* and informed the cantonal body that the families have a right to disability pensions in Federation BiH, which would be granted from the day of submission of a new request (therefore not covering the years in which the women concerned have not been receiving their monthly disability pension). Accordingly, new requests were promptly filed by the women concerned before the competent Municipal Centres for Social Work in the Una-Sana Canton. Although the requests were accepted, the Cantonal Ministry suspended the payment of disability pensions, declaring that it will undertake a “revision” of the decisions issued. At the time of writing, only a few monthly disability pensions have been paid to the women entitled to receive them and it is not clear when the revision launched by the Cantonal Ministry will be over. In the meantime, some of the women concerned are either dying or, in any case, bearing an extremely dire financial situation and see their right to an effective remedy emptied of any significance on a day by day basis. When collecting the information and data to be included in the present report, people concerned expressed their fear that, by means of the revision of decisions adopted by Municipal Centres for Social Work, the Cantonal Ministry is actually waiting until “there is a biological selection among applicants, so that less will have to be paid”. This bitter consideration well depicts the sense of frustration and abandonment experienced by the women concerned and associations that work with them.

85. Other problematic issues are related to the non-implementation of crucial provisions of the Law on Missing Persons (Official Gazette of BiH No. 50/04) entered into force on 17 November 2004. This piece of legislation aims at establishing a comprehensive regime to deal with missing persons, defined as an individual “about whom his family has no information and/or is reported missing on the basis of reliable information as a consequence of the armed conflict that happened on the territory of the former SFRY” (Article 2). The law applies to persons who went missing in the period from 30 April 1991 to 14 February 1996 and it contains provisions recognizing, among others, the right to know the fate of missing persons (Article 3) and the obligation to provide information (Article 4). Eight years after the entry into force of the Law on Missing Persons and despite reiterated recommendations by international human rights mechanisms in this sense, to date several provisions of the law remain dead letter.<sup>103</sup>
86. Article 7 of the Law of Missing Persons provides for the establishment of the Missing Persons Institute (“MPI”), mandated to improve the process of tracing missing persons and expedite identifications of mortal remains of missing persons. The MPI became fully operational only from 1

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<sup>103</sup> Notably, Article 24.1 of the Law on Missing Persons provides that: “the BiH Ministry of Human Rights and Refugees shall oversee the enforcement of this Law”.

January 2008. Despite the recommendations from international mechanisms,<sup>104</sup> the MPI is experiencing troubles with regard to the appointment of the members of its different managing bodies.

87. The MPI is composed of three management bodies, namely: a six-member Steering Board, a three-member Supervisory Board and a three-member Board of Directors. The staff reports to the Board of Directors, which reports to the Steering Board, which reports to the founders;<sup>105</sup> while the Supervisory Board is a reviewing body that reports to the two other management boards and to the founders. There is also an Advisory Board, composed by representatives of associations of relatives of missing persons (so far composed by two Bosniak, two Bosnian Serb and two Bosnian Croat members).<sup>106</sup> The members of these associations also participate in the work of the Steering Board, but without the right to vote.
88. On 30 June 2012 the mandate of the members of the Board of Directors expired and those currently holding the posts are doing so *ad interim* pursuant to a mandate of technical nature. A call for the election of new members was issued at the end of June 2012 and the process is ongoing. With regard to the members of both the Steering Board and the Supervisory Board, their mandate expired in June 2011 (that is more than two years ago) and those holding the posts are doing so pursuant to a mandate of technical nature. The International Commission on Missing Persons (“ICMP”) and the Council of Ministers of BiH are holding consultations on how to proceed in this regard. Indeed, rumours concerning a possible reduction of the presence in BiH of the ICMP, although discarded by the latter, have generated a climate of concern among associations of relatives of missing persons in the country.<sup>107</sup>
89. With regard to the members of the Advisory Board, elections took place and representatives of the three different ethnic groups were selected. Some associations of relatives of missing persons expressed deep concern because of not having been formally notified on whether the new six members of the Advisory Board have in fact been officially appointed or not and reiterated criticism towards the manner in which elections were held.<sup>108</sup> At the same time, other associations claim that

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<sup>104</sup> Committee against Torture (CAT), *Concluding Observations on BiH*, doc. CAT/C/BIH/CO/2-5 of 19 November of 2010, para. 24 (a); and WGEID, *Report on the Mission to BiH*, *supra* note 9, para. 78 (f). For the whole set of recommendations issued see para. 78.

<sup>105</sup> The International Commission on Missing Persons and the Council of Ministers of BiH. An English version of the Agreement on Assuming the Role of Co-founders of the MPI can be found at: [www.ic-mp.org/wp-content/uploads/2007/11/agreement\\_en.pdf](http://www.ic-mp.org/wp-content/uploads/2007/11/agreement_en.pdf).

<sup>106</sup> It must be noted that, while in BiH access to power or positions should be granted to Bosniaks, Bosnian Croats, Bosnian Serbs and to “others” (including, for instance, Roma, or those who identify themselves simply as Bosnian-Herzegovinians), at present the organizational structure of the MPI includes no representation of the “others” category in its organizations structure.

<sup>107</sup> See in this sense Balkan Insight, *ICMP to Finish its Work in Bosnia and Herzegovina*, 15 June 2012, at <http://www.balkaninsight.com/en/article/icmp-finished-70-per-cent-identification-in-bosnia>.

<sup>108</sup> In particular, representatives of the Association Women from Prijedor – *Izvor* express their criticism because of the manner in which the election of representatives of Bosniak associations for the Advisory Board were conducted.

the process was fully transparent, legitimate and satisfactory.

90. In general, while the fact that members of an institution may hold a technical mandate for a limited period of time is natural, the same cannot be said if over the past two years a considerable number of posts in the managing bodies of the MPI have formally been vacant or held *ad interim*. Such a situation does not contribute to the regular functioning of an institution or to the overall perception of trustworthiness when it comes to public scrutiny. Furthermore, representatives of associations of relatives of missing persons also expressed concerns because of the alleged presence of people who have political affiliations within the managing bodies of the MPI<sup>109</sup> and stressed that this undermines the overall credibility of the institution.
91. Article 21 of the Law on Missing Persons provides for the creation of the CEN, intended to include all records that were or are kept at local or Entity levels, by associations of families of missing persons and other associations of citizens, Tracing Offices of the organizations of the Red Cross in BiH, as well as international organizations. Article 22, para. 4, of the Law on Missing Persons prescribes that “verification and entry of previously collected data on missing persons into CEN should be completed by the competent authority *within a year* of the date of the establishment of the MPI” (emphasis added). This means that the process of verifying and entering data in the CEN should have been completed by 1 January 2009. Despite the repeated recommendations in this sense issued by various international human rights mechanisms,<sup>110</sup> at June 2013 the CEN has not been completed yet.
92. With regard to the potential problems related to Article 27 of the Law on Missing Persons, according to which “three years after the date of the coming into force of the law, persons registered as missing in the period from 30 April 1991 to 14 February 1996 whose disappearance has been verified within the Central Records on Missing Persons (“CEN”) BiH, *shall be considered dead* and this fact shall be officially entered in the Register of Death [...]” (emphasis is added), notwithstanding the recommendations issued by international human rights mechanisms,<sup>111</sup> to date BiH authorities have not carried out any particular assessment, nor have they consulted with associations of relatives of missing persons. Accordingly, the risk remains that enforced disappearance is unduly treated as a direct death, without taking into account its continuous nature.
93. Article 15 of the Law on Missing Persons prescribes the creation of a Fund for the Support of Relatives of Missing Persons (“the Fund”), intended to be a means of support for families of missing

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<sup>109</sup> In this sense, it must be recalled that Article 5 of the Law on Missing Persons clearly establishes that “*officials with duties related to the tracing of missing persons cannot carry out this duty* if they are members of steering or other boards, or executive bodies, of *political parties*, or if they are politically engaged representatives, and must not follow political party instructions” (emphasis is added).

<sup>110</sup> CAT, *Concluding Observations on BiH*, *supra* note 107, para. 24 (c); and WGEID, *Report on the Mission to BiH*, *supra* note 9, paras. 24 and 75.

<sup>111</sup> WGEID, *Report on the Mission to BiH*, *supra* note 9, paras. 46 and 85.

persons in BiH. Paragraph 2 of the provision indicates that a decision on the setting up of the Fund “shall be issued by the Council of Ministers of BiH *within 30 days from the date of the coming into force of the Law*” (emphasis is added). The same was provided for the organization of issues related to the work of the Fund. Given that the Law on Missing Persons entered into force on 17 November 2004, a decision on the establishment of the Fund should have been issued by the Council of Ministers of BiH by 17 December 2004.

94. Despite reiterated recommendations issued from international human rights mechanisms,<sup>112</sup> at June 2013 the Fund does not exist yet. BiH authorities do not show any willingness to address this matter. It has to be stressed that, besides being an ongoing breach of BiH’s international obligations, the non-establishment of the Fund causes serious damage to relatives of missing people who are denied their right to obtain support and compensation. Associations of relatives of missing people throughout the country express their deep concern because of this situation and their loss of trust towards domestic institutions, because many of their members are dying without having ever realized the rights they are entitled to, and without having ever obtained any form of support from the Fund. Finally, it must be noted that the non-establishment of the Fund amounts also to non-implementation of a significant number of decisions delivered by the Constitutional Court of BiH on the subject of missing people, whereby the payment of compensation to relatives recognized as victims of grave human rights violations was associated to the establishment of the Fund, which was expressly ordered by the Constitutional Court of BiH.

### Recommendations

Ensure that, within the MPI, the recourse to mandates of “technical” nature or the holding of posts *ad interim* is limited to exceptional circumstances, while all the posts of the management of the MPI as well as of the Advisory Board are filled through a regular and transparent election process. The regular budget for 2013 must be secured as a priority. To increase the authority of the MPI, during their term of office the members of the Steering Board, of the Board of Directors and of the Supervisory Board shall not engage in any activity which is incompatible with their independence, impartiality or with the requirements of a full-time office.

Ensure that the Law on Missing Persons is fully implemented and that the CEN is completed within the shortest delay. Failure to comply with this shall be prosecuted and sanctioned. The information contained in the CEN shall be as complete and accurate as possible. BiH shall also make sure that the entry into the CEN is not considered as sufficient evidence for declaring a missing person dead and Article 27 of the Law on Missing Persons shall be amended accordingly.

Ensure that the Fund is set up without any further delay and its financing is entirely secured. In any case, BiH shall ensure that, besides measures of social assistance, all relatives of missing persons are granted integral reparation and prompt, fair and adequate compensation for the harm suffered.

Ensure that the obligation in cases of disappearance which makes the right to compensation dependent on the family’s willingness to have the family member declared dead is abolished. The State party should ensure that any compensation or other form of redress adequately reflects the gravity of the violation and the harm suffered.

<sup>112</sup> See, among others, CAT, *Concluding Observations on BiH*, *supra* note 107, para. 24 (b); and WGEID, *Report on the Mission to BiH*, *supra* note 9, para. 84 (a).

## 8. The Draft Law on Free Legal Aid

95. In the PSWG Report of September 2012<sup>113</sup> reference was made to the fact that in April 2012 a draft law on free legal aid was submitted to the BiH Council of Ministers, adopted by the latter as a proposal, and forwarded to undergo the parliamentary procedure.
96. In its replies to the LOIS BiH indicated that “the Draft Law on Legal Aid has been introduced into the BiH Parliamentary Assembly on 23 July 2012. This Law regulates the issues of effective and equal access to justice in order to ensure the rule of law and equality of citizens before the court, administrative authorities and other authorities before which individual rights, obligations and interests are exercised/protected. The Draft Law has a general provision prohibiting discrimination of beneficiaries of legal aid on any grounds. It is particularly important that victims of domestic violence or sexual violence are defined as beneficiaries of legal aid”.<sup>114</sup>
97. It is noteworthy that in its reply to the LOIS BiH failed to provide a timeline for the adoption of the draft law on legal aid. This is particularly disturbing given the fact that the draft introduced into the BiH Parliamentary Assembly on 23 July 2012 was eventually not approved. The deadline for the drafting of a new law is now December 2013. On such date the new draft prepared by the Ministry of Justice should be submitted to the BiH Council of Ministers. The latter should then approve it and forward it to the Parliamentary Assembly.
98. Accordingly, the information provided by BiH in its replies to the LOIS is not valid anymore and, at the time of writing, the contents of the new draft are unknown. This is a source of deep concern because the great majority of women victims of rape or other forms of sexual violence during the war and relatives of missing persons are in dire financial conditions and cannot pay for legal assistance and representation. Even though some of the associations subscribing the present report information are among those NGOs providing free legal aid to women victims of war and this kind of initiatives are laudable and certainly most welcome, this does not relieve the State from its international obligations. As recently declared by the Special Rapporteur on the Independence of Judges and Lawyers “States bear the primary responsibility to adopt all appropriate measures to fully realize the right to legal aid for any individual within its territory and subject to its jurisdiction”.<sup>115</sup> NGOs’ projects, even though hailed as positive, cannot replace the adoption of an integral State policy on the matter, supported by adequate legislation and practice. Over the past decade different international mechanisms have been calling on BiH for the adoption of a law on free legal aid. As recently noted in the European Commission Progress Report for 2012: “the system of free legal aid

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<sup>113</sup> PSWG Report of September 2012, *supra* note 1, para. 56.

<sup>114</sup> BiH Replies to LOIS 2013, *supra* note 3, para. 5.

<sup>115</sup> Special Rapporteur on Independence of Judges and Lawyers, *Legal Aid, a Right in Itself!*, 2013, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13382&LangID=E>.

in Bosnia and Herzegovina remains fragmented and unregulated in some Cantons of the Federation. The adoption of a State-level Law on Free Legal Aid is still pending. Free legal aid in civil cases continues to be mainly provided by privately funded NGOs. Free legal aid for administrative cases remains problematic”.<sup>116</sup> Lately, the Special Rapporteur on Violence against Women emphasized that “survivors needs include services such as free legal aid advice to help them navigate the complex legal framework in the entities and apply for welfare or other benefits [...]”.<sup>117</sup>

99. Despite some attempts and a number of drafts, thousands of people, including women victims of rape or other forms of sexual violence during the war and relatives of missing persons, are left without access to free legal aid and see their right to access to justice daily hindered, while their trust towards institutions is seriously jeopardized. The adoption of a law on free legal aid is a priority that cannot be postponed anymore.

#### Recommendations

Ensure that a new draft law on free legal aid is finalized without delay and that associations of victims of rape or other forms of sexual violence during the war and of relatives of missing persons are thoroughly involved in such process and allowed to express their opinions, needs and expectations.

The draft law on free legal aid shall be promptly approved and its funding secured.

BiH 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.

### 9. Additional Issues of Concern

100. Besides the various issues of concern highlighted in the PSWG Report of September 2012 and taken up by the CEDAW in the LOIS there are other matters that the associations subscribing the present report would like to bring to the attention of the CEDAW.
101. Associations of victims of gross violations committed during the war are firmly persuaded of the need to prevent similar crimes from ever happening again. In this sense, it is essential that BiH ratifies relevant international treaties and adopts adequate implementing legislation.
102. While it is positive that on 11 April 2002 BiH ratified the Rome Statute for the establishment of an International Criminal Court (“ICC”) and on 24 January 2012 it signed the Agreement on Privileges and Immunities of the Court (APIC),<sup>118</sup> at the time of writing BiH has not yet ratified the latter.

<sup>116</sup> European Commission, *Progress Report for 2012 BiH*, *supra* note 21, p. 16.

<sup>117</sup> Special Rapporteur on Violence against Women, *Report on the Mission to BiH*, *supra* note 22, para. 27.

<sup>118</sup> The APIC is a separate treaty, designed to provide officials and staff of the ICC with certain privileges and immunities necessary for them to perform their duties in an independent and unconditional manner. States that are not parties to the Rome Statute can nonetheless ratify/accede to the APIC.

Ratification of the APIC is instrumental to ensuring full cooperation with the ICC. At the time of writing, BiH has not either ratified the Kampala Amendments<sup>119</sup> to the Rome Statute and, as noted above, national legislation does not seem to be fully in line with all obligations under the Rome Statute both with regard to the definition of genocide, crimes against humanity and war crimes<sup>120</sup> and with regard to effective cooperation.

### Recommendations

BiH must ratify without delay the Agreement on Privileges and Immunities of the International Criminal Court (APIC) as well as the Kampala Amendments. Moreover, it must ensure that it fully aligns its national legislation with all obligations under the Rome Statute, including providing for effective cooperation with the ICC as set out in the Rome Statute and defining genocide, crimes against humanity, and war crimes in accordance with the Rome Statute and the Elements of Crimes. BiH must conclude specialized agreements with the ICC on the enforcement of sentences, and witnesses protection and relocation.

## 10. Conclusions and Recommendations

103. Although 18 years have passed since the conclusion of the war in BiH, thousands of victims of rape or other forms of sexual violence and relatives of missing persons have not been guaranteed access to justice, compensation and integral reparation for the harm suffered. On the contrary, they remain among the most marginalized and stigmatized categories within BiH society. It is the view of the subscribing organizations that there has not been significant progress in the implementation of the recommendations formulated in May 2006 by the CEDAW with regard to women victims of rape or other forms of sexual violence during the war and relatives of missing persons and a number of issues remain the source of deep concern. While it is often alleged that it is necessary to turn a page over the past, this cannot be done at the price of erasing thousands of people from that page and failing to guarantee their basic rights. BiH remains in breach of its international obligations as spelled out, among others, in Articles 1, 2, 3, 5, 7, 10, 11, 12 and 13 of the Convention on the Elimination of All Forms of Discrimination against Women.
104. For the reasons explained above, the associations submitting the present report respectfully request the CEDAW to recommend BiH to:
- ▶ Amend the criminal codes at all levels to make sure that the definition of “rape” and “sexual violence” is brought in accordance with international standards and jurisprudence and the condition of “force or threat of immediate attack” is removed from the present definitions. In particular, entity and district criminal legislation shall be brought in line with international law by codifying crimes against humanity, command responsibility, sexual slavery and forced pregnancy and establishing sanctions commensurate to the extreme seriousness of these

<sup>119</sup> At the Review Conference held in Kampala in 2010, amendments were adopted relating to the prohibition of the use of certain weapons in a non-international armed conflict (Art. 8.2.e), and to the crime of aggression (Art. 8 bis).

<sup>120</sup> See *supra* paras. 6-16.

crimes.

- ▶ Ensure that criminal codes at all levels explicitly define that a person who acted pursuant to an order to commit rape or other forms of sexual violence shall not be relieved of criminal responsibility and that those who refuse to obey such an order will not be punished.
- ▶ Ensure that war-time rape is prosecuted as such, applying the relevant standards and that prosecutors and courts refrain from dealing with such cases as ordinary rape, since this does not mirror the particular nature of this heinous crime and it unduly advantages the defendant.
- ▶ Ensure the implementation of the jurisprudence established by the Constitutional Court of BiH in the sense of investigating and trying those accused of crimes committed during the war pursuant to the provisions of the 2003 Criminal Code instead of those of the Criminal Code of the SFRY.
- ▶ 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. 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.
- ▶ Ensure, in particular, that all cases of rape or other forms of sexual violence perpetrated during the war are promptly, independently, impartially and thoroughly investigated and that those responsible are judged and sanctioned in accordance with international fair trial standards.
- ▶ Ensure that, in general, victims of rape or other forms of sexual violence are given information on a regular basis on the process of investigation carried out by the prosecutor's 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 victims of rape or other forms of sexual violence in particular. Courts shall ensure the right of women to make any financial compensation claims during criminal proceedings.
- ▶ Ensure that the anonymization policy adopted by the Court of BiH is amended so that the judicial determination of the facts in trials concerning war crimes, crimes against humanity and, in general, gross violations committed during the war are disclosed to the general public without restriction, allowing victims of the crimes concerned, their families and society as a whole to fulfil their right to know the truth.
- ▶ Ensure that a comprehensive programme of witness protection and psychological accompaniment is granted at all levels prior, during and after the trial takes place. 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. 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 draft law on witnesses' protection and support currently pending before the Parliamentary Assembly is discussed and enacted without further delay.

- ▶ Guarantee that witnesses obtain adequate material support, including safe and free of charge transportation to and from the court.
- ▶ Ensure that a prompt, independent, impartial and thorough investigation is carried out to identify, judge and sanction those responsible for the attack committed during the night of 4 August 2012 against the premises of the association *Izvor* in Prijedor.
- ▶ Ensure that a comprehensive programme of vetting is undertaken in order to avoid that war criminals hold public offices or work in the police.
- ▶ Ensure that the National Strategy for Transitional Justice is adopted and implemented without further delay, keeping in mind that fact-finding processes, although crucial for the establishment of the truth, cannot replace access to justice and redress for victims of gross human rights violations and their relatives that must thus be guaranteed such rights independently from the adoption of the strategy concerned.
- ▶ Ensure that the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence is referred for approval to the Council of Ministers of BiH without further delay. Representatives of the Entities must express their opinion on the programme and show their genuine support without further delay. Measures envisaged by the programme shall have a transformative aim, in the sense that they must allow women to ameliorate or at least consolidate their position in society. In this sense women victims of rape or other forms of sexual violence during the war shall be guaranteed full participation not only in the drafting of the programme, but also in the subsequent implementation, evaluation and decision-making.
- ▶ Ensure that the obstacles for the adoption of the Law on the Rights of Victims of Torture are swiftly removed and this crucial piece of legislation is adopted and enforced without further delay. Financial resources for its implementation must be secured and the overall exercise must be coordinated with the other mentioned legislative initiatives concerning victims of the conflict in BiH in order to avoid overlapping or lacunae. To ensure the finalization of a sound draft law, all parties shall constructively participate to the endeavour and associations of victims of rape or other forms of sexual violence during the war must be thoroughly involved and allowed to express their opinions, needs and expectations.
- ▶ Ensure that all victims of rape or other forms of sexual violence during the war have access to social benefits and other measures of social support irrespective of where they live. Such legislation should be adopted on the State level in order to avoid the continuation of the current situation in which there exists discrimination in access to and levels of social benefits depending on the Entity involved. In general, civilian victims of war shall not receive a worse treatment compared to that of war veterans.
- ▶ Ensure that those Cantons (i.e. Tuzla and Zenica-Doboj Cantons) that are late in paying monthly benefits to civilian victims of war proceed to pay the amounts owed without any further delay. The State shall pay interest on the amounts owed corresponding to banking interest rates on arrears in BiH.
- ▶ Implement a national programme on measures of reparations for civilian victims of war,

including victims of rape or other forms of sexual violence and relatives of missing persons 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. In particular, the State shall guarantee, as a measure of reparation, access to free psychosocial support, provided through State's institutions and health services. Measures envisaged by the reparation programme shall have a transformative aim, in the sense that they must allow women to ameliorate or at least consolidate their position in society. In this sense women victims of rape or other forms of sexual violence during the war shall be guaranteed full participation not only in the drafting of the programme, but also in the subsequent implementation, evaluation and decision-making.

- ▶ Take measures to raise awareness about the status of civilian victim of war and, in particular, the possibility for applying for such status and the rights deriving from it.
- ▶ Ensure that adequate and effective criteria are applied to recognize the status of civilian victim of war without discrimination and further traumatising for the people involved.
- ▶ Ensure that the psychological impact of the return on individuals is duly considered when evaluating whether there are the conditions for a "safe and dignified" return of internally displaced persons to their pre-war places. No forcibly displaced person, and in particular victims of rape or other forms of sexual violence 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.
- ▶ Undertake without delay all necessary measures to guarantee the reintegration in the labour market of victims of rape or other forms of sexual violence as well as access to vocational trainings. Both at the State and the Entity level preferential treatment in employment shall be assured to victims of rape or other forms of sexual violence and the legal framework shall be amended accordingly.
- ▶ Guarantee to the children of victims of rape or other forms of sexual violence the access to education and, if they wish to continue with their studies, to the highest levels of instruction.
- ▶ Develop a system to provide victims of rape or other forms of sexual violence and relatives of missing persons in BiH, including those who live in remote areas of the country, with access to psychological accompaniment and medical treatment free of charge. BiH shall remove existing barriers that unduly obstruct the access to medical and psychological treatment and medicines, including unaffordable travel expenses. Moreover the State shall support and provide resources to those organizations that already work in this field, making sure that they continue supplying good quality treatments to victims of rape or other forms of sexual violence. BiH shall ensure that programmes of health and psychological support are also put in place to adequately assist children born as a result of war-time rape.
- ▶ Ensure that a new draft law on free legal aid is finalized without delay and that associations of victims of rape or other forms of sexual violence during the war and of relatives of missing persons are thoroughly involved in such process and allowed to express their opinions, needs and expectations. The draft law on free legal aid shall be promptly approved and its funding

secured. BiH 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.

- ▶ Ensure that, within the MPI, the recourse to mandates of “technical” nature or the holding of posts *ad interim* is limited to exceptional circumstances, while all the posts of the management of the MPI as well as of the Advisory Board are filled through a regular and transparent election process. The regular budget for 2013 must be secured as a priority. To increase the authority of the MPI, during their term of office the members of the Steering Board, of the Board of Directors and of the Supervisory Board shall not engage in any activity which is incompatible with their independence, impartiality or with the requirements of a full-time office.
- ▶ Ensure that the Law on Missing Persons is fully implemented and that the CEN is completed within the shortest delay. Failure to comply with this shall be prosecuted and sanctioned. The information contained in the CEN shall be as complete and accurate as possible. BiH shall also make sure that the entry into the CEN is not considered as sufficient evidence for declaring a missing person dead and Article 27 of the Law on Missing Persons shall be amended accordingly.
- ▶ Ensure that the Fund is set up without any further delay and its financing is entirely secured. In any case, BiH shall ensure that, besides measures of social assistance, all relatives of missing persons are granted integral reparation and prompt, fair and adequate compensation for the harm suffered.
- ▶ Ensure that the obligation in cases of disappearance which makes the right to compensation dependent on the family’s willingness to have the family member declared dead is abolished. The State party should ensure that any compensation or other form of redress adequately reflects the gravity of the violation and the harm suffered.
- ▶ Ratify without delay the Agreement on Privileges and Immunities of the International Criminal Court (APIC) as well as the Kampala Amendments. Moreover, it must ensure that it fully aligns its national legislation with all obligations under the Rome Statute, including providing for effective cooperation with the ICC as set out in the Rome Statute and defining genocide, crimes against humanity, and war crimes in accordance with the Rome Statute and the Elements of Crimes. BiH must conclude specialized agreements with the ICC on the enforcement of sentences, and witnesses protection and relocation.

On behalf of:

Association of Women-Victims of War

Women’s Section of the Concentration Camp Torture Survivors Canton Sarajevo

Foundation of Local Democracy

Izvor-Prijedor

Medica Zenica

Naš Glas

Snaga Žene

Society for Threatened Peoples

Sumejja Gerc

Vive Žene Tuzla

Philip Grant

TRIAL Director

## 11. Information on the Associations Submitting this Written Information



### a) TRIAL (Swiss Association against Impunity)

TRIAL (Swiss Association against Impunity) is a Geneva-based NGO established in 2002 and in consultative status with the United Nations Economic and Social Council (ECOSOC). It is apolitical and non-confessional. Its principal goals are: the fight against impunity of perpetrators, accomplices and instigators of genocide, war crimes, crimes against humanity, enforced disappearance and acts of torture. TRIAL has set up an Advocacy Centre, born from the premise that, despite the existence of legal tools able to provide redress to victims of international crimes, these mechanisms are considerably underused and thus their usage should be enforced.

Considering that the needs of victims of gross human rights violations during the war, their relatives and the organizations which represent them are sadly overwhelming and that there is no similar initiative in BiH and the region, TRIAL has been active and present in the country since early 2008. TRIAL is currently providing legal support to victims of gross human rights violations committed during the war and their relatives who wish to bring their cases before an international human rights mechanism. So far, TRIAL has submitted 44 applications related to gross human rights violations perpetrated during the war to the European Court of Human Rights (ECtHR) and to United Nations Human Rights Committee (HRC). On 29 June 2009 TRIAL submitted a general allegation to the WGEID about the numerous obstacles encountered in the implementation of the 1992 Declaration for the Protection of All Persons from Enforced Disappearance. As a consequence of the general allegation submitted by TRIAL, the WGEID visited BiH from 14 to 21 June 2010 and in March 2011 it presented the report on its mission to the Human Rights Council.

In October 2010 TRIAL, together with six associations of relatives of missing persons and five associations working on the issue of women victims of rape or other forms of sexual violence during the war submitted an 80-page alternative report to CAT in view of the examination of the combined 2<sup>nd</sup> to 5<sup>th</sup> periodic reports. In November 2010 representatives of TRIAL met with the CAT to illustrate the contents of the alternative report.

In May 2011 TRIAL, together with 12 associations dealing with the issue of women victims of rape or other forms of sexual violence during the war submitted to the Special Rapporteur on Violence against Women, its Causes and Consequences a general allegation on the obstacles encountered by this category of people in the enjoyment of their rights.

In October 2011 TRIAL, together with seven associations of relatives of missing persons, seven associations dealing with the subject of women victims of sexual violence during the war and four associations or federations of associations of former camp-detainees submitted a follow-up report to the recommendations formulated by the CAT in November 2010 in its concluding observations.

In May 2012, TRIAL, together with nine associations of former camp-detainees representing different ethnic groups or anyway working with this category of people submitted the report "Freed, but not free yet!" in the form of a general allegation to the United Nations Special Rapporteur on Torture and the Working Group on Arbitrary Detention. The report thoroughly analyzes the obstacles faced by former camp-detainees throughout the country in the realization of their fundamental rights.

In September 2012, TRIAL, together with six associations of relatives of missing persons, four associations working with women victims of rape or other forms of sexual violence during the war, and seven associations or federations of associations of former camp-detainees submitted a report to the HRC for the consideration of BiH's second periodic report. Many of the concerns raised in the mentioned report were eventually taken up by the HRC and included in its concluding observations.

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## b) Association of Women-Victims of War



UDRUŽENJE «ŽENA – ŽRTVA RATA» SARAJEVO  
The Association «Women Victims of War» Sarajevo

The **Association of Women-Victims of War** (*Udruženje Žena Žrtva Rata*) is a NGO founded in 2003 with the aim to gather women who have been subjected to rape or other forms of sexual violence during the war in order to help them in fulfilling their rights and in acceding the benefits they are entitled to under the law, also in terms of social and health protection. As a part of its mandate, the association is multiethnic and multinational. In 2006 also some men who were subjected to rape or other forms of sexual violence during the war joined the association. The main activities of the association are: 1) capacity building of its members; 2) helping its members to return to normal life after the grave violation they have suffered; and 3) enabling members to enjoy health protection, as well as to obtain a stable employment and to solve housing problems.

The Association of Women-Victims of War is one of the institutions designated in the Federation of BiH to issue certificates attesting the situation of victims of sexual violence which enable the holders to apply for the status as civilian victim of war.

Moreover, the association formed part of one of the sub-thematic working groups coordinated by UNDP for the development of a National Strategy for Transitional Justice, and it is participating to the working group coordinated by UNPFA for the development of the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence.

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### c) Women's Section of the Association of Concentration Camp Torture Survivors Canton Sarajevo



The **Women's Section of the Association of Concentration Camp Torture Survivors Canton Sarajevo** which functions as part of the Union of Concentration Camp Torture Survivors of Canton Sarajevo (formed in 1997) is an NGO that gathers women who were forcibly taken away and interned in concentration camps during the war in BiH. The Section has about 1,000 members out of which around 60% came from Eastern Bosnia: Foča, Rogatica, Rudo, Višegrad, Čajniče while around 40% from the area of Sarajevo Canton. Most of the members of the association suffered the worst possible psychological and physical torture, rape or other forms of sexual violence which left a deep mark on their mental and physical health. The Section of Women works with people who have altered their personality, who consider themselves persons who have been changed forever and for whom it is unlikely that they would ever be able to function in line with their role in the family and society. The Women's Section offers to these victims the following programmes of support: computer school; English school; sewing classes; nature empowerment programme; human rights classes; discount on bus tickets; support packages (including food and hygienic items); medical and psychological support in collaboration with the Centre for Victims of Torture; and massage treatments in collaboration with "Healing Hands Network". Ten members of the Women's Section participated in the award-winning film *Grbavica* directed by Ms. Jasmila Žbanić.

The **Women's Section of the Association of Concentration Camp Torture Survivors Canton Sarajevo** participated to consultation meetings convened by UNPFA for the development of the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence.

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### d) Foundation of Local Democracy

The **Foundation of Local Democracy** (FLD) is a local NGO with a 14-year experience of work in the field. Its primary focus is on protection, promotion and advancement of human rights, especially the rights of victims of gender-based violence, community building, and creation of institutional capacity for networking and development.



FLD carries out a number of activities, including promoting and protecting human rights at all levels of social and public life, and through organizing and implementing education, training, seminars, conferences and congresses; preparing and publishing brochures, books and other promotional materials, in accordance with applicable legal regulations in BiH; stimulating and supporting research projects and policies; supporting collective action of women's groups and NGOs to

empower women in actively participating in the transformation of the BiH society and their equal role in public and private spheres; fundraising and the creation of a fund to help the NGO sector in BiH and the institutions designed for their institutional and economic empowerment in accordance with applicable legal regulations in BiH; improving the social status of women through: prevention and protection from domestic violence by organizing shelters, centres and private treatment centres, but also training, retraining and assistance in the organization brought in particular by providing legal assistance; promoting and protecting of children's rights especially regarding domestic violence, manipulation of children and their exploitation in any form, and by organizing educational and cultural programmes dedicated to children and adults.

Since 2007, with the financial support of the United Nations High Commissioner for Refugees, FLD implemented a project called "Assistance to Women Victims of Domestic Violence, Trafficking and War". The project aims at providing assistance to women who are displaced, returnees, refugees and victims of war.

On 15 October 2010 FLD opened the Centre for free legal assistance to women of BiH, based in Sarajevo. This project aims at providing free legal aid to women victims of war, women victims of trafficking, domestic violence, sexual abuse, and single mothers. Since 2010, 125 women victims of war have benefitted of free legal aid to realize their basic rights.

The FLD formed part of the working group coordinated by UNDP for the development of a National Strategy for Transitional Justice as well as of the working group coordinated by the UNPFA for the development of the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence.

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**e) Izvor-Prijedor**The Association of Women from Prijedor - Izvor was founded on 3 June 1996 with its headquarters in Prijedor, Bosanska Krajina region. The association represents the victims of the war in and around this region. Over the past years, Izvor has been working on the collection of data and the documenting of facts about the people from this region who were arbitrarily killed or were subjected to enforced disappearance. A concrete result from this effort is an established database and two editions of a book "Ni krivi ni dužni" where 3,227 disappeared persons from Prijedor municipality have been registered. In addition to this, Izvor gives advice and provides help to all the victims of gross human rights violations perpetrated during the war and their relatives to realize their rights and obtain justice and reparation before domestic institutions and judicial bodies. One of the most frequent activities of Izvor is the support given to witnesses in war crimes trials before the State and other courts in BiH. Since 2008 Izvor established cooperation with the TRIAL and the two organizations are filing applications to the ECtHR and to the HRC, as well as to the Constitutional Court of BiH, on behalf of relatives of disappeared people from the Bosanska Krajina region.



Izvor participated to the expert working group coordinated by the UNDP for the development of a National Strategy for Transitional Justice. The association also participated in meetings convened by UNPFA for the development of the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence.

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#### f) Medica Zenica

Medica Zenica is professional women's NGO, which since April 1993 has continuously been providing psycho-social and medical support to women and children victims of war, and post-war violence, including victims of war rape and sexual violence in peacetime; victims of domestic violence and victims of human trafficking.

Medica Zenica's approach to women and children victims of violence, is based on humanistic values and includes the provision of shelter and psychological counselling along with medical and psychological assistance to women, children and men within a family therapy programme (psychological counselling during recovery from trauma and violence, as well as occupational therapy and economic empowerment through retraining programmes, crafting trainings for people living in rural areas).



In addition to the direct work with victims of trauma and violence, Medica Zenica also conducts educational, research, publishing and advocating projects aimed at the promotion and protection of human rights, prevention of sexual and domestic violence, and combating human trafficking.

Medica Zenica participated to consultation meetings convened by UNPFA for the development of the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence.

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#### g) Naš Glas Association

The association Naš Glas, headquartered in Tuzla, was registered in August 2012. The associations' activities are conducted in Tuzla Canton, and its main objectives are: a) empowerment of victims and survivors of sexual violence during the war by improving their health, economic and social status and quality of life in collaboration with State institutions, local and international institutions and organizations; b) Raising awareness of victims and survivors of sexual violence during the war with regard to existing legislation, protection of human rights and other rights of the victims and survivors of sexual violence, in cooperation with institutions that offer educational programs and legal assistance; c) promotion and protection of human rights and promotion of the rights of other people who have experienced sexual violence during the war, and the rights of their families; d) social inclusion of victims and survivors of sexual violence during the war; and e) raising public awareness and sensitizing the media on the importance of active participation and community support for victims and survivors of sexual violence during the war in the recovery process.

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#### h) **Snaga Žene**

The association Snaga Žene was established in 1999 upon the initiative of women from Tuzla and the German association Vive Žene e.V. from Dortmund. The association is active in the area of Tuzla Canton and Eastern Republika Srpska. It offers psychological, social, medical, pedagogical and legal support to women, children and adolescents (refugees, returnees and displaced persons) who suffered different traumatic experiences during and after the war in BiH. Snaga Žene supports these people in retrieving their psychological balance, strengthening their family relations and in their endeavours to fit in everyday life. Snaga Žene takes part to the activity of different networks and advocates for better social, educational, police, legislative, medical and social services in order to deal effectively with the impacts of trauma, domestic violence, trafficking and general violence against women and children's problems.



Snaga Žene participated in the expert working group coordinated by UNDP for the development of a National Strategy for Transitional Justice. The association also participated in consultation meetings convened by the UNPFA for the development of the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence.

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#### i) **Society for Threatened Peoples**

The association **Society for Threatened Peoples**, BiH section, was founded in 1997 as one of the sections of the Society for Threatened Peoples International (which was established in 1968 to support Biafra). The mission of the latter is helping expelled religious or ethnic groups around the world. The Society for Threatened Peoples has a consultative status within the Economic and Social Council of the UN since 1993. The BiH section is a non-partisan organization and independent from the government which stands for human rights, peaceful coexistence of all religious communities and constitutive peoples into a single BiH. The Society for Threatened Peoples in BiH reveals violations of human rights, advocates for the return of all displaced persons and refugees to their homes, supports the work of the associations of victims of war and refugee organizations, and cooperates with the associations for human rights in neighbouring countries. The Society also advocates for the rehabilitation of victims of war and their families; documents war crimes and crimes of genocide and records statements from witnesses of crimes against humanity and violations of the rights of all citizens of BiH. In addition it informs local and international media about the respect of human rights in BiH and neighbouring countries; publishes reports on human rights; organizes seminars, symposia, conferences and other actions aiming at the promotion of human rights such as warning and watch demonstrations; and provides advices in conflict situations.



Moreover, the Society of Threatened Peoples participate as observers to the working group coordinated by UNDP for the development of a National Strategy for Transitional Justice, as well as to consultation meetings coordinated by UNPFA for the development of the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence.

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## j) Sumejja Gerc



**U.G. "GERC SUMEJJA -CENTAR ŽRTAVA LOGORA VOJNO"**  
Mostar Sjever - Potoci

The association **Sumejja Gerc**, also known as **Centre for Victims of the Vojno Concentration Camp** fights for the rights of 120 women victims of concentration camps and war torture, 56 children victims of torture, 134 men former concentration camp-detainees of Herzegovina camps and 28 women victims of war torture from the area of Prozor Municipality. The association has a mandate to empower victims to regain their dignity; to gather information and written statements about places and manner of suffering; to cooperate with the Prosecutor's Office and the Court of BiH and establish a network of children and women who have suffered on the territory of Herzegovina. The protection of social rights of the victims is also one part of the mandate of the association as well as the organizing of rehabilitation activities (organizing field-trips, social events, and medical treatments). Educational programmes for the economical empowerment for victims are also initiated and realized by the association and they lead to the overall development of the local community. The association cooperates with social and medical institutions with the aim of providing expert help in the treatment of victims of war.

Sumejja Gerc participated in consultation meetings convened by UNPFA for the development of the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence.

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## k) Vive Žene Tuzla

The association **Vive Žene Tuzla** (Centre for Therapy and Rehabilitation) is a NGO established in 1994 and that focuses on psycho-social help and support, education, and promotional-editorial activities with a multi-disciplinary, democratic and participatory approach to the work with traumatized families and individuals. The primary goal of **Vive Žene Tuzla** is to improve the mental health of people who were subjected to torture during the conflict in BiH, minimizing the effects of trauma-related disorders in the lives of tortured, raped or abused victims and facilitating their emotional healing. **Vive Žene Tuzla**



considers that the maintaining and protection of the mental health of citizens is a sound way to contribute to the reconstruction of a war-torn society. While respecting the basic principles of humanity and human rights, the organization implements basic values laid through the work with marginalized groups, civilian victims of war and the protection of the families with children. The work carried out by Vive Žene Tuzla aims at preventing torture through a multidisciplinary approach, including psychotherapy, psychosocial, social, medical and legal counselling. Accordingly, the team of Vive Žene Tuzla consists of psychologists, social workers, instructors, teachers, doctors, a nurse, a psychotherapist and a legal counsel. Besides working with individuals, the organization works also in the community, with a view to foster reconciliation, representation, rebuilding of trust and reconstruction of broken relationships and reduction of ethnic barriers.

Representatives of Vive Žene Tuzla took part to the consultation process for the development of a National Strategy for Transitional Justice lead by the UNDP. The association also participated to consultation meetings convened by UNPFA for the development of the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence.

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