

Submitted by

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Municipality**

**Association of Relatives of Missing Persons from Hadžići Municipality**

**Association of Relatives of Missing Persons from Ilijaš Municipality**

**Association of Relatives of Missing Persons from Kalinovik ("Istina-Kalinovik '92")**

**Association of Relatives of Missing Persons of the Sarajevo-Romanija Region**

**Association of Relatives of Missing Persons of the Vogošća Municipality**

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## TABLE OF CONTENTS

Contents	Paragraphs
1. Background	
2. Recommendation No. 13: Witness Support and the National War Crimes Prosecution Strategy	1-2
2.1 The Ongoing Failure to Provide Adequate Protection and Support to Witnesses in War Crimes Trials	3-12
2.2 The Ongoing Failure to Effectively Investigate, Judge and Sanction those Responsible for Enforced Disappearance, Torture, and Rape or other Forms of Sexual Violence during the War	13-28
2.3 The Flaws in the Investigation of Cases of Enforced Disappearance	29-33
3. Recommendation No. 14: Investigation of All Unresolved Cases of Missing Persons, the Missing Persons Institute, the Central Database of Missing Persons and the Fund for Support to Families of Missing Persons	34-35
3.1 The Functioning of the Missing Persons Institute (MPI)	36-40
3.2. The Establishment of the Central Record of the Missing Persons (CEN)	41-44
3.3 The Non-establishment of the Fund for the Support of Families of Missing Persons	45-47
3.4 The Lack of Information on the Progresses Made in the Process of Exhumation and Identification of Mortal Remains and the Lack of Psycho-social Assistance during the Process	48-51
3.5 The Non-implementation of Constitutional Court's Decisions in cases relating to Missing Persons	52-63
4. Recommendation No. 15: Compensation and Integral Reparation to Victims of Gross Human Rights Violations During the War	64-65
4.1 The Failure to Provide Adequate Compensation and Integral Reparation to Relatives of Missing Persons, former Camp-Detainees, and Women Victims of Rape or Other forms of Sexual Violence	66-77
5. Other Matters of Concern	78
5.1 The Inadequacy of the Criminal Legislation on Sexual Violence, Torture and Enforced Disappearance	79-93
5.2 The Non-Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance	94-96
6. Conclusions and Recommendations	97-98
7. The Associations Submitting this Written Information	

## 1. Background

In 2005 Bosnia and Herzegovina (BiH) submitted to the Human Rights Committee (HRC) its initial report (CCPR/C/BIH/1).

On 22 November 2006 the HRC issued its concluding observations (CCPR/C/BIH/CO/1). Of particular relevance for the associations submitting the present written information are:

### Paragraph 13

The Committee expresses concern about the underfunding of district and cantonal courts dealing with war crimes cases and the unsatisfactory implementation of witness protection legislation at the Entity level. (arts. 6, 7 and 14)

**The State party should allocate sufficient funds and human resources to the district and cantonal courts trying war crimes and ensure the effective application of the State and Entity Laws on Protection of Witnesses.**

### Paragraph 14

The Committee notes with concern that the fate and whereabouts of some 15,000 persons who went missing during the armed conflict (1992 to 1995) remain unresolved. It reminds the State party that the family members of missing persons have the right to be informed about the fate of their relatives, and that failure to investigate the cause and circumstances of death, as well as to provide information relating to the burial sites, of missing persons increases uncertainty and, therefore, suffering inflicted to family members and may amount to a violation of article 7 of the Covenant. (arts. 2(3), 6 and 7)

**The State party should take immediate and effective steps to investigate all unresolved cases of missing persons and ensure without delay that the Institute for Missing Persons becomes fully operational, in accordance with the Constitutional Court's decision of 13 August 2005. It should ensure that the central database of missing persons is finalised and accurate, that the Fund for Support to Families of Missing Persons is secured and that payments to families commence as soon as possible.**

### Paragraph 15

The Committee notes with concern that, under the Federation Law on Basics of Social Care, Protection of Civil Victims of War and Protection of Families with Children, torture victims, with the exception of victims of rape and sexual violence, must prove at least 60 per cent of bodily harm in order to be recognised as civilian victims of war, and that this requirement may exclude victims of mental torture from personal disability benefits. The Committee is also concerned that personal disability benefits received by civilian victims of war are significantly lower than those received by war veterans in both Entities. (arts. 2, 7 and 26).

**The State party should ensure that victims of mental torture are granted victim of war status in both Entities and that the personal disability benefits received by civilian victims of war are harmonised among the Entities and cantons and adjusted to the personal disability benefits received by war veterans. The State party should include in its next periodic report updated statistical information on the number of victims of mental torture and/or sexual violence receiving disability benefits, disaggregated by sex, age, ethnic group and place of residence, as well as on the amount of such benefits.**

Further, the HRC established that BiH should submit within one year (e.g. 22 November 2007) information on the follow-up given to its recommendations on certain paragraphs, including para. 14.

### The Follow-Up Process

BiH submitted follow-up information on four occasions (CCPR/C/BIH/CO/1/Add.1; CCPR/C/BIH/CO/1/Add.2; CCPR/C/BIH/CO/1/Add.3; CCPR/C/BIH/CO/1/Add.4).

The Special Rapporteur for Follow-up to concluding observations of the HRC wrote two letters to the State, respectively on **27 August 2009** and **16 December 2010**. Notably, in the letter of 27 August 2009, the Special Rapporteur requested the State to provide further information, among others, on: a) the **current functioning of the Missing Persons Institute (MPI)**; the **establishment of a central database on missing persons (CEN)**; and the **Fund for the support of the families of missing persons (the Fund)**.

In the letter of 16 December 2010 the Special Rapporteur reiterated his request for additional information on the establishment on the **Fund**.

In **September 2010** TRIAL, and six associations of relatives of missing persons (Association of Families of **Killed** and Missing Defenders of the Homeland War from Bugojno Municipality; Association of Relatives of Missing Persons from Hadžići Municipality; Association of Relatives of Missing Persons from Ilijaš Municipality; Association Women from Prijedor – *Izvor*; Association of Relatives of Missing Persons of the Sarajevo-Romanija Region; and Association of Relatives of Missing Persons of the Vogošća Municipality) submitted to the HRC information on the subjects concerned, in order to highlight the progresses made, as well as the remaining obstacles for the full implementation of the recommendations of the HRC.

### The Second Periodic Report

On 17 November 2010 BiH presented its second periodic report to the HRC (CCPR/C/BIH/2).

In paras. 77-83 of the second periodic report reference is made to measures undertaken to implement recommendation No. 13 of the concluding observations by the HRC.

In paras. 84-97 of the second periodic report reference is made to measures undertaken to implement recommendation No. 14 of the concluding observations by the HRC.

In paras. 98-132 of the second periodic report reference is made to measures undertaken to implement recommendation No. 15 of the concluding observations by the HRC.

At its 104<sup>th</sup> session, to be held in New York from 12 to 30 March 2012, the **HRC will adopt the list of issues to be submitted to BiH**.

The adoption of the concluding observations on the second periodic report by BiH is scheduled for the 106<sup>th</sup> session of the HRC to be held in Geneva from 15 October to 2 November 2012.

The associations that submit this written information have a number of concerns with regard to the implementation by BiH of its obligations under the International Covenant on Civil and Political Rights, and of the recommendations formulated in November 2006 by the HRC. However, given the particular expertise of the associations concerned, this document focuses solely on matters related to missing persons and their relatives, to former camp-detainees, and to victims of rape or other forms of sexual violence during the war. 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 International Covenant on Civil and Political Rights or that it has implemented all the recommendations contained in the concluding observations adopted by the

HRC on 22 November 2006.

During the 1992-1995 conflict in BiH, more than 100,000 people were killed, more than two millions were subjected to forced displacement, thousands of people were subjected to enforced disappearance, thousands were subjected to rape or other forms of sexual violence; and other thousands were held in concentration camps whereby they were kept in inhumane conditions and often subjected to torture and inhuman or degrading treatment.

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>1</sup> A second 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>2</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>3</sup> At present, the exact number of missing people remains uncertain.

Furthermore, it is an established fact that the use of rape or other forms of sexual violence during the war was widespread.<sup>4</sup> Indeed, rape was used as a means of implementing the strategy of ethnic cleansing and to increase inter-ethnic hatred. At present, there are no reliable statistics on the number of women and men<sup>5</sup> who were raped or otherwise sexually abused (rates vary from 20,000 to 50,000 victims).<sup>6</sup>

It is also known that during the war clandestine detention facilities were set up. At present 652 places of

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<sup>1</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. Hereinafter “Expert Report No. 1”.

<sup>2</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. Hereinafter “Expert Report No. 3”.

<sup>3</sup> WGEID, *Report on the Mission to BiH*, doc. A/HRC/16/48/Add.1 of 16 December 2010, para. 21.

<sup>4</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”).

<sup>5</sup> During the conflict in BiH both men and women were subjected to rape or other forms of sexual violence. Most of the considerations expressed in this document apply to both categories of victims, since they are facing the same consequences and the same obstacles in fulfilling their rights. However, the majority of information collected and referred to comes from women victims of rape and associations that work with this category. To date, no comprehensive research concerning specifically men victims of rape has ever been carried.

<sup>6</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 on All Forms of Violence against Women*, doc. A/61/122/Add.1 of 6 July 2006 (Secretary-General In-depth Study), 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.

detention have been registered and among them are particularly well known those of Manjača, Omarska, Keraterm, Trnopolje, Luka Brčko, Batković, Dretelj, Heliport, Vojno, Gabela, Drmaljevo, KPD Foča, Sušica-Vlasenica, Kula-Sarajevo, Žepče.<sup>7</sup> The total number of people who were held in the mentioned concentration camps has not been determined with certainty.

While the exact number of the people pertaining to the mentioned three categories has not been determined to date, what is undisputable is that they represent a significant portion of the BiH population, no matter to which ethnic group, if any, they pertain to. Instead of being dealt with pursuant to a comprehensive and adequate legal framework, they remain isolated and often ignored, while the State fails to meet its international obligations in this respect. Although it is often alleged that it is necessary to turn a page over the past, this cannot be done at the price of erasing these people from that page and failing to guarantee their basic rights that have been violated over the past 20 years.

In this light, the associations subscribing this written information consider of the utmost importance that the HRC continues monitoring the situation of relatives of missing people, women victims of sexual violence during the war, and camp-detainees, including the various challenges faced by these categories of people among the list of issues that will be submitted to BiH in March 2012.

On the basis of the existing situation and the ongoing violations faced by relatives of missing persons, victims of sexual violence and camp-detainees, in the present document concrete questions to be included by the HRC in the list of issues to be submitted to the State are proposed. Furthermore, at the end of the document, a set of recommendations is put forward.

As already mentioned, in September 2010 TRIAL and six associations of relatives of missing persons from BiH submitted written information for the follow-up process on the concluding observations issued by the HRC in November 2006. The said submission represents a basis for the present document and will be largely referred to.<sup>8</sup>

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<sup>7</sup> Among others see *Final Report to the United Nations Security Council of the United Nations Commission of Experts established pursuant to Security Council Resolution 780 (1992)*, doc. S/1994/674/Add.2 (Vol. I) of 28 December 1994 ("The Prijedor Report"), available at: <http://www.ess.uwe.ac.uk/comexpert/ANX/V.htm>, Chapter VIII. See also International Criminal Tribunal for the Former Yugoslavia (ICTY), Case *Prosecutor v. Duško Sikirica, Damir Došen and Dragan Kolundžija*, judgment by the Trial Chamber of 13 November 2001 (Case No. IT-95-8-S), paras. 52-104; Case *Prosecutor v. Milomir Stakić*, judgment by the Trial Chamber of 31 July 2003 (Case No. IT-97-24), paras. 103-107; Case *Prosecutor v. Miroslav Kovčeka et al.*, judgment by the Trial Chamber of 2 November 2001 (Case No. IT-98/30-1), paras. 112-114; Case *Prosecutor v. Predrag Banović*, judgment of the Trial Chamber of 28 October 2003 (Case No. IT-02-65/1-5), paras. 23-30; Court of Bosnia and Herzegovina, Case *Prosecutor v. Željko Mejakić, Momčilo Gruban and Duško Knežević*, judgment of 30 May 2008 (Case X-KR/06/200), available at: [http://www.sudbih.gov.ba/files/docs/presude/2008/Zeljko\\_Mejakic\\_First\\_Instance\\_Verdict.pdf](http://www.sudbih.gov.ba/files/docs/presude/2008/Zeljko_Mejakic_First_Instance_Verdict.pdf); and Balkan Investigative Reporting Network, *Time for Truth: Review of the Work of the War Crimes Chamber of the Court of Bosnia and Herzegovina 2005-2010*, Sarajevo, 2010. See also Helsinki Watch, *War Crimes in Bosnia-Herzegovina*, New York, 1993, p. 120-131.

<sup>8</sup> Additional information on the follow-up of the concluding observations on BiH, submitted by TRIAL and 6 other associations in September 2010, available at: [http://www2.ohchr.org/english/bodies/hrc/docs/ngo/NGOs\\_BIH\\_HRC\\_followprocedure.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngo/NGOs_BIH_HRC_followprocedure.pdf). Another document to which reference will be made is the written information for the examination of BiH's combined 2<sup>nd</sup> to 5<sup>th</sup> periodic reports to the Committee against Torture (CAT), submitted by TRIAL and 11 other associations in October 2010, available at [http://www2.ohchr.org/english/bodies/cat/docs/ngos/Trial\\_BosniaHerzegovina45.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/Trial_BosniaHerzegovina45.pdf).

## 2. Recommendation No. 13: Witness Support and the National War Crimes Prosecution Strategy

1. In recommendation No. 13 formulated in November 2006, the HRC called on BiH to allocate sufficient funds and human resources to the district and cantonal courts trying war crimes and to ensure the effective application of the State and Entity Laws on Protection of Witnesses.
2. In its second periodic report to the HRC, BiH indicates that in “in the most recent period there has been an upward trend in the number of judges in the district and cantonal courts, which will ensure faster adjudication of cases pending and help to ensure a sufficient number of staff for the prosecution of war crimes; the project to introduce the witness support department in the district and cantonal courts is being implemented”.<sup>9</sup> Further, reference is made to the adoption in 2008 by the Council of Ministers of the National War Crimes Prosecution Strategy as an effective and systematic approach to solving the large backlog of war crimes in the courts and prosecutor’s offices of BiH.<sup>10</sup>

### 2.1 The Ongoing Failure to Provide Adequate Protection and Support to Witnesses in War Crimes Trials

3. **Victims of gross human rights violations from the war and their relatives continue struggling with the lack of comprehensive and adequate witness protection measures as well as the lack of appropriate programmes of psychological support before, during and after testifying at war crimes trials.**<sup>11</sup>
4. In this sense, among others, in its concluding observations of 2010, the Committee against Torture (CAT) declared to remain “gravely concerned at the lack of adequate measures of witness protection and witness support before, during and after the trials, which have negative impact on the willingness and ability of witnesses to participate in investigations or to testify in proceedings. The Committee also expresses concerns over the reported cases of intimidation against witnesses and attempts at bribery by perpetrator, the insufficient support for witnesses by the competent authorities, such as the State Investigation and Protection Agency (SIPA) and the Witness Support Section (WSS)”.<sup>12</sup> Accordingly, it recommended BiH to “ensure that victims are effectively protected, not further distressed or pressurized to withdraw their testimony and that they are not threatened by alleged perpetrators, in particular by: a) **Strengthening the capacity of the competent organs, in particular the SIPA and its Department for Witness Protection (OZS), and ensuring that they respect the right to privacy of the survivors and provide witnesses at serious risk with long-term or permanent protection measures, including changing their identity or relocation within or outside of Bosnia and Herzegovina;** b) **Giving more attention to the psychological needs of witness in order to minimise possible re-traumatization of survivors in court proceedings;** and c) **Ensuring that witnesses have appropriate means to travel to and from the court and providing escorts for their travel, as**

<sup>9</sup> *Second Periodic Report of BiH to the HRC*, doc. CCPR/C/BIH/2 of 17 November 2010, para. 77.

<sup>10</sup> *Ibid.*, paras. 79-81.

<sup>11</sup> On these matters, see also written information for the examination of the BiH combined 2<sup>nd</sup> to 5<sup>th</sup> periodic reports, *supra* note 8, paras. 79-91.

<sup>12</sup> CAT, *Concluding Observations on BiH*, doc. CAT/C/BIH/CO/2-5 of 19 November 2010, para. 17.

necessary”.<sup>13</sup>

5. **Other international human rights mechanisms have echoed the concerns and the recommendations of the CAT. For instance, the WGEID indicated that “more should be done to protect and offer assistance to victims and witnesses, in particular women. In particular, the programme for the protection of witnesses should be improved and expanded at the State level, and similar programmes should be created at the local level”.**<sup>14</sup> In Resolution 1784 (2011) of 26 January 2011 on the protection of witnesses as a cornerstone for justice and reconciliation in the Balkans, the Parliamentary Assembly of the Council of Europe noted with deep concern that “in the region of the former Yugoslavia, several witnesses have been killed and numerous others have been intimidated, threatened or have had their identity revealed by people determined to obstruct the course of justice and conceal the truth. The Assembly regrets that, due to these threats, many witnesses finally decide not to testify because they fear for their lives or those of their families”.<sup>15</sup> Moreover, the Assembly reaffirmed that “witnesses have the right to be physically protected so that they can deliver their testimonies safely and free from fear. Furthermore, it considers that witnesses should be given support – including legal and psychological support – before, during and after the trial. [...]”.<sup>16</sup> Accordingly, it called on the authorities of BiH to, among others, “enact legislation to enable the State Agency for Investigations and Protection to provide witnesses protection programmes in all courts across the country and ensure that this Agency has adequate resources, both financial and human, to support witnesses during the investigation phase as well as during the trial and post-trial phase. Similar legislation should be enacted and adequate resources should be made available, in order to provide witness protection in criminal proceedings before the courts in all entities”.<sup>17</sup> Along the same line, in the report of the Special Representative of the Secretary-General on Sexual Violence in Conflict it is pointed out that “[...] many of the women who testified before the national court said they would never repeat the ordeal, due to the tendency to interrogate the conduct of the victim in ways that are humiliating and legally irrelevant. This is compounded by logistical hurdles, a lack of emotional support, and inadequate follow-up on the progress of cases. [...] the climate of impunity has thus become a climate of intimidation. [...] While the opportunity to testify has brought some solace, there is still no government-subsidized support system. Women are left, in the words of one survivor, to be ‘psychiatrists for each other’. Women’s groups advocate a dedicated police unit to investigate sexual violence, as well as more female police officers to serve as first points of contact between the survivor and the State”.<sup>18</sup> On this issue the Commissioner for Human Rights of the Council of Europe expressed that the authorities in BiH “[...] have not taken sufficient steps to effectively guarantee the right of witnesses to life, to stop and prevent unjustified infringements to protect witnesses from acts of harassment and violence, and to enable them to participate in trials with dignity. In reported cases where witnesses have been threatened, the judiciary has not taken action to determine whether these threats are real or serious. Despite the explicit guarantees in the relevant laws relating to psycho-social support to vulnerable

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

<sup>14</sup> WGEID, *Report on the Mission to BiH*, *supra* note 3, para. 90 (e).

<sup>15</sup> Council of Europe, Parliamentary Assembly, Resolution 1784 (2011) of 26 January 2011, para. 4.

<sup>16</sup> *Ibid.*, para. 7.

<sup>17</sup> *Ibid.*, para. 16.2.2.

<sup>18</sup> Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, 1 February 2011, para. 4.



victims and witnesses, there is only one structure that provides such services in a sustainable manner, the Witness and Victim Section at the Court of Bosnia and Herzegovina. The Section was established in May 2005 and is equipped to protect witnesses during trials. The Commissioner is seriously concerned by reports indicating that, due to the fear for their physical integrity, an increasing number of witnesses are unwilling to testify in trials. Many suspects of war-related crimes enjoy impunity for such a long period of time that victims no longer believe that the trials can deliver justice. [...] Another major problem is the lack of systematic protection of witnesses in the war-related criminal proceedings at the Entity level. In some instances the Entity prosecutors avail themselves of services provided by SIPA. However, SIPA does not have sufficient resources to perform its functions to the extent needed for the successful protection of witnesses. The National War Crimes Processing Strategy adopted in 2008 addresses this problem, as it provides that SIPA shall be additionally staffed and equipped with material and technical resources. It further provides that basic and specialized training and education of officers in the field of witness protection will be organized and available".<sup>19</sup> Accordingly, he urged BiH authorities to "[...] implement the National War Crimes Processing Strategy in relation to the provision of adequate staff and equipment for the State Investigation and Protection Agency (SIPA) [...] and to investigate promptly all reported cases of threats and intimidation of witnesses, initiate criminal proceedings in such cases, and fully protect the security of the witnesses concerned".<sup>20</sup> Finally, in the 2011 progress report on BiH the European Commission indicates that: [...] *the current legal framework on witness protection remains fragmented and provisions for the protection of witnesses during and after the criminal proceedings are limited and largely inadequate*. The lack of human and financial resources is an issue to be addressed".<sup>21</sup>

6. It appears that since November 2010 the Cantonal Court in Sarajevo, as well as the District Court in Banja Luka and the District Court in Doboj in fact undertook measures to secure witness protection. Furthermore, the Cantonal Court in Livno is allegedly in the process of building a new entrance door to court for the exclusive use of witnesses. With regard to other courts at the **district, municipal and cantonal level, protection of witnesses remains highly deficient**.
7. There are numerous instances where victims rendering their testimonies during trials are subjected to some sort of open mockery and this brings no consequence whatsoever for those responsible. An outstanding example is that of Ms. Hasna Čusto. She is a former camp-detainee, who was held and subjected to inhumane and degrading treatment for over 40 days in the camp Kalinovik. Moreover, her son Mr. Almir Čusto was arbitrarily deprived of his liberty and seen for the last time in life-threatening circumstances in the hands of members of the police. Ms. Čusto's son remains missing. Furthermore, the husband and two brothers of Ms. Čusto were arbitrarily killed during the conflict. On 1<sup>st</sup> February 2011 Ms. Čusto went to give her testimony before the State Court of BiH in the trial against Mr. Milan Perić and others. When Ms. Čusto entered the trial room, she was verbally insulted and humiliated by Mr. Perić. While Ms. Čusto was requested by the judge to leave the court-room without the possibility to defend herself, Mr. Perić did not receive any warning. This event has inflicted on Ms. Čusto serious psychological trauma and she is not willing to render her testimony before any court in the future as she

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<sup>19</sup> Report Hammarberg, *supra* note 6; paras. 140-142 and 143. In general, on the pitfalls in the system of protection of witnesses in war-related criminal proceedings, see *ibidem* paras. 138-145.

<sup>20</sup> *Ibid.*, paras. 191-192.

<sup>21</sup> European Commission, *2011 Progress Report on BiH*, doc. SEC(2011) 1206 of 12 October 2011, p. 13 (emphasis is added).

does not trust institutions. The Association of Relatives of Missing Persons from Kalinovik raised this matter with authorities, but so far they have not received any significant reply.

8. Also the case of Mrs. Milojka Antić can be mentioned. In 1992 Mrs. Antić was detained in the prison-camp located in the village of Čelebići. In such facility Mrs. Antić was subjected to ill-treatment and rape. She was a witness at the trial before the International Criminal Tribunal for the former Yugoslavia (ICTY) against some of the perpetrators.<sup>22</sup> Indeed, on 6 January 2009, immediately after the release of one of those sentenced (Mr. Hazim Delić), Mrs. Antić received a phone call from him, whereby she was threatened. In particular, Mr. Delić repeated that Mrs. Antić would “suffer much worse things than those she was subjected to in 1992”. As a consequence of this threatening phone call Mrs. Antić felt fear and deep distress. However, she duly reported the episode of harassment to the police in Višegrad. At December 2011, she has never heard back from the police about the investigative steps undertaken or about the progresses of the investigation. To the knowledge of Mrs. Antić, Mr. Delić has not been questioned by the police about this episode.
9. Further, there are cases where those accused or their representatives have publicly disclosed the identity of protected witnesses, putting the life and personal integrity of these people at risk and causing serious re-traumatisation. To date, there seems to be only one indictment raised in this sense by domestic authorities. More must be done to prevent this kind of behaviours and to sanction them in a manner that is commensurate to the gravity of the crimes concerned.
10. It must be stressed that not only individuals, but also associations, and in particular those dealing with women victims of rape or other forms of sexual violence during the war are subjected to harassment and attacks. One outstanding case is that of the association Sumejja Gerc in Mostar. This association works with survivors from the detention camp Vojno and numerous women who have been subjected to rape or other forms of sexual violence during the war. In the night of 26/27 January 2011, the building where the Association's offices are located (500 meters from the police Station in Potoci) was violently broken even though every part of the facility was secured with safety metal grilles. Nevertheless, the padlocks were broken off as well as the door of the association. Inside the office of the association's President's documentation was dispersed, the drawers containing sensitive documentation were emptied despite the locked closet, and certain documentation was alienated. The Registry – Cartulary of women victims of rape from the Vojno concentration camp, the basic documentation of the association, its Statute and Rules of Procedure, press clippings, etc. were all taken away. Also alienated were four computers as well as the President's computer containing huge written and video materials which the association has been collecting for years. The computer from the facility for psychological counselling was also stolen as well as two computer boxes from the Educational Cabinet. The video projector, telephone and fax machines, photo camera were also taken, while the monitors, key-boards and the various computers' mouse were left behind. Also taken were a laptop, a voice recorder, and video tapes containing archive documentation and materials of the association, CDs with testimonies about crimes committed in Prozor and the Vojno area, i.e. the *OTISCI* documentary film about the sufferings in Vojno, a CD with the speech of Mr. Marko Radić condemning those who cooperate with Bosniaks taped in 1998 during the commemoration of the suffering of soldiers of the Croatian

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<sup>22</sup> ICTY, Case *Prosecutor v. Mucić et al.* (case IT-96-21), judgment of 16 November 1998.

Defence Council (HVO) and a voice recorder. A large LCD TV was taken from the Educational Cabinet and a small LCD TV. Most notably, the money (a total of 450 KM – approximately 231 Euros) which was in the association's premises was taken out of the drawer but left on the table. This episode was reported to the police station, but at December 2011 those responsible have not been duly identified, judged and sanctioned.<sup>23</sup> Indeed, between 2006 and 2010 Sumejja Gerc had suffered previous attacks against the office. Although every time the association reported the events to the police, those responsible have never been identified, judged and sanctioned. The association continues its work in a climate of fear and frustration, seriously damaged by the irreparable loss of testimonies and material and testimonial evidence which had been collected over the years. Many women whose testimonies about the violence suffered were among the stolen documents live in fear from the night of 26 January 2011 and this caused a serious psychological trauma to them.

11. Another issue of deep concern for many associations of victims of gross human rights violations from the war and their relatives is also the lack of an adequate legal support to those willing to render their testimony in court. In fact, at present BiH does not offer any comprehensive legal aid programme<sup>24</sup> and therefore only those who can pay for a legal counsel may have access to some sort of support. Many witnesses at war crimes trials indicate that they feel very uncomfortable with the fact that while those accused of war crimes or crimes against humanity are provided with one or more legal counsels, they are not given such a possibility. In many cases, witnesses have therefore felt somehow intimidated by the proceedings before court, as they perceived that they did not have the full understanding of the legal implications of some of their statements or of some of the questions they were asked. This situation fosters the perception that the legal system is more favourable to the accused rather than the victim or the witness, thus nourishing a sense of exclusion and frustration.
12. Further, the provision of psychological support to witnesses at war crimes trials remains insufficient, sporadic and not based on any comprehensive programme. This kind of support is not guaranteed before the courts at all different levels and it is never provided in a way that covers before, during and after rendering the testimony.

**Proposed items to be included in the List of Issues  
(related to arts. 2, 6 and 7 of the ICCPR)**

**On Witnesses Protection and Support at War Crimes Trials**

- ▶ Which concrete measures have been undertaken to strengthen the capacity of the Department for Witness Protection (OZS) within the State Investigation and Protection Agency (SIPA)?
- ▶ Which are the measures adopted to ensure that witnesses at serious risk receive long-term or permanent protection measures? Do such measures include the possibility to change identity or relocation within or outside BiH?

<sup>23</sup> A letter of allegations on this episode has been sent on 17 February 2011 to the United Nations Special Rapporteur on Human Rights Defenders and copied also to the Special Rapporteur on Torture and to the Special Rapporteur on Violence against Women, its Causes and Consequences.

<sup>24</sup> See, among others, European Commission, *2011 Progress Report on BiH*, *supra* note 21, p. 16. Further, on this particular issue see the written Information for the examination of the BiH combined 2<sup>nd</sup> to 5<sup>th</sup> periodic reports, *supra* note 8, para. 107. See, *inter alia*, WGEID, *Report on the Mission to BiH*, *supra* note 3, para. 90 (a).

- ▶ Which are the measures undertaken to provide psychological support to witnesses before, during and after war crimes trials, in particular in order to minimize possible re-traumatization of survivors in court proceedings?
- ▶ Under the current legal framework, do witnesses receive appropriate means to travel to and from the court and, if necessary, escorts?
- ▶ In cases where witnesses or their relatives were in fact threatened, which measures have been undertaken to investigate, identify, judge and sanction those responsible?
- ▶ Which concrete measures have been adopted to prosecute and sanction those responsible for disclosing the identity of protected witnesses during war crimes trials?
- ▶ In cases where associations working with victims of war crimes (e.g. relatives of missing persons, former camp-detainees, and women victims of rape or other forms of sexual violence) have been subjected to instances of threats, harassment or attacks, which measures have been put in place to investigate, identify, judge and sanction those responsible?
- ▶ Does BiH count on a system of accessible free legal aid that covers the State, entity and cantonal level?

## 2.2 The Ongoing Failure to Effectively Investigate, Judge and Sanction those Responsible for Enforced Disappearance, Torture, and Rape or other Forms of Sexual Violence during the War

13. BiH is under an obligation to investigate, judge and sanction those responsible for gross human rights violations committed during the war, including enforced disappearance, torture, and rape or other forms of sexual violence.<sup>25</sup> Besides the trials carried out before the ICTY, the main responsibility to investigate, judge and sanction those responsible for the grave violations committed during the conflict lies within the judicial system of BiH.
14. In the concluding observations of 2010, the CAT indicated that it is “gravely concerned that taking into account the number of such war-time crimes, the number of cases prosecuted so far by the Bosnia and Herzegovina judiciary is extremely low and local courts still face serious obstacles in prosecuting war crimes cases”.<sup>26</sup> Accordingly, it recommended BiH to “fight impunity by ensuring prompt and effective investigation into all allegations of war-time crimes, prosecuting and punishing the perpetrators by appropriate penalties commensurate with their grave nature”.<sup>27</sup>
15. In the 2011 progress report on BiH, the European Commission denounced that “[...] *the processing of war crime cases in the Cantonal and District courts remains limited and uneven*. The ability of the

<sup>25</sup> On this matter see the written information for the examination of BiH’s combined 2<sup>nd</sup> to 5<sup>th</sup> periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 8, paras. 64-78.

<sup>26</sup> CAT, *Concluding Observations on BiH*, *supra* note 12, para. 12.

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

Entities and the Brcko District to prosecute war crime cases continues to be hindered by *the lack of human resources in the various Prosecutors' offices, as well as by limited facilities and lack of adequate witness protection and support services*. Moreover, diverging practices on the applicability of different criminal codes between courts at different levels remains an issue to be addressed in order to guarantee equality of citizens before the law. With a case pending before the European Court of Human Rights, the application of different criminal codes continued to result in uneven sentencing".<sup>28</sup> In particular, the European Commission expressed alarm because "*the prosecution of war crime cases involving sexual violence remains low*. Further efforts are needed to investigate and prosecute these crimes, as well as to enhance the protection and support for victims and witnesses. A comprehensive approach to improving the status of victims of rape and sexual violence remains an issue to be addressed. [...]"<sup>29</sup>

16. Along the same line, the WGEID indicated that "impunity remains a problem"<sup>30</sup> and recommended a number of measures to be undertaken to bring to justice those responsible for enforced disappearance.<sup>31</sup> In the 2010 progress report on BiH, the European Commission had indicated that "the impartiality of courts is not always guaranteed. The backlog of cases [remains] one of the most acute problems facing the judiciary and court proceedings are generally lengthy. [...] the backlog still stands at over 2.1 million cases country-wide. [...] Implementation of the national war crimes strategy [is] severely delayed and [remains] minimal".<sup>32</sup> In particular "war crimes trials at Cantonal and District courts advanced slowly. Progress was hindered by a lack of capacity in the Prosecutor's Offices, inadequate facilities and a lack of appropriate witness protection and support services".<sup>33</sup>
17. Impunity related to war-time rape is also one of the main concerns expressed by the Special Representative of the Secretary-General on Sexual Violence in Conflict after her visit to BiH in November 2010. Indeed, she highlighted that "the process of pursuing justice has been painfully slow. The UN estimates that there were between 20,000 and 50,000 rapes during the conflict (1992-1995), yet there have been just 12 convictions by national courts and 18 ICTY prosecutions. [...] The conviction rate for sexual violence is roughly 10 percent lower than for other crimes (81% if suspects indicted for sexual violence are convicted: for crimes of a non-sexual character, a guilty verdict is rendered in 92% of cases".<sup>34</sup> Finally, also the Commissioner for Human Rights of the Council of Europe referred to the "[...] failure of the authorities of Bosnia and Herzegovina to fulfill their international obligations to effectively prosecute war-related crimes of sexual violence, and to provide adequate protection and

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<sup>28</sup> European Commission, *2011 Progress Report on BiH*, *supra* note 21, p. 13 (emphasis is added). At p. 12 of the report it is indicated that in general the functioning of the judiciary in BiH is hindered by "insufficient allocation of human and financial resources".

<sup>29</sup> *Ibid.*, p. 13 (emphasis is added).

<sup>30</sup> WGEID, *Report on the Mission to BiH*, *supra* note 3, para. 49.

<sup>31</sup> See *infra* paras. 29-33.

<sup>32</sup> European Commission, *Bosnia and Herzegovina 2010 Progress Report*, doc. Sec(2010) 1331 of 9 November 2010, p. 13. Further, at p. 21 it is highlighted that: "the estimated total number of untried cases remains high (over 10,000). Further steps are needed to strengthen the capacity to deal with war crimes cases, in particular by improving the functioning of cantonal and district courts and to ensure adequate financial resources. Regional cooperation and the provision of adequate victim and witness protection will be key in this regard".

<sup>33</sup> *Ibid.*, p. 14.

<sup>34</sup> Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, *supra* note 18, para. 4.

reparation to the victims of these crimes. The Commissioner has noted with serious concern that many perpetrators of war-related crimes of sexual violence enjoy impunity and often live in the same communities as their victims. There are no reliable statistics on the number of unresolved cases of war-related crimes of serious sexual violence. However, there are reports indicating that the number of cases prosecuted so far is extremely low compared to the alleged number of the acts of these crimes that amounts to several thousand. [...]”.<sup>35</sup> In this vein, he urged the authorities of BiH to undertake all necessary measures to ensure that the war-crimes of rape or other forms of sexual violence are effectively investigated and prosecuted, so as to enable the victims to have access to justice and to adequate reparation. This should also enable the victims who wish to return to their pre-war homes to do so in safety and without fear.<sup>36</sup>

18. Although a number of trials against persons accused of war crimes or crimes against humanity has been conducted, considering that the events concerned occurred almost 20 years ago, the pace of the overall process is far from satisfactory. In this light, it must be stressed that although expressing appreciation for the adoption of the National Strategy for War Crimes and the steps undertaken so far to combat impunity for the crimes perpetrated during the war, various international institutions and human rights mechanisms have highlighted the existence of a number of pitfalls in the implementation of the mentioned strategy, which ultimately amount to violations by BiH of its obligation to investigate, prosecute and sanction those responsible for the mentioned crimes, including enforced disappearance, torture and rape or other forms of sexual violence. In the 2010 progress report on BiH of the European Commission it was pointed out that “implementation of the national war crimes strategy was severely delayed and remained minimal. [...] the estimated total number of untried cases remains high (over 10,000). *Little has been done to implement the 2008 National War Crimes Strategy to reduce the backlog of cases and witnesses protection mechanisms are insufficient. Further steps are needed to strengthen the capacity to deal with war crimes cases, in particular by improving the functioning of cantonal and district courts and to ensure adequate financial resources*”.<sup>37</sup> Furthermore, the Commissioner for Human Rights of the Council of Europe expressed deep concern for the “[...] reports indicating that currently the justice systems in both entities, including the cantonal and district courts and prosecutors’ offices, appear to face serious obstacles in trying war crime cases. Many obstacles are practical, such as limited prosecutorial resources, lack of necessary expertise and lack of witness protection. There also appear to exist obstacles related to the application of different criminal codes throughout Bosnia and Herzegovina, a lack of willingness of the police to investigate crimes, and the failure of prosecutors to make use of available evidentiary sources. The Commissioner is concerned by reports indicating the existence of a serious backlog of unresolved court cases in the country, amounting to almost two million. Of this backlog 160,000 are unresolved criminal cases; among them it has been estimated that *between 6,000 and 16,000 are unresolved war-related crimes cases, at different stages of prosecution, registered in all 13 jurisdictions of the country*”.<sup>38</sup> With regard to the National Strategy for War Crimes, the Commissioner for Human Rights expressed his concerns for “reports indicating that limited

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<sup>35</sup> Report Hammarberg, *supra* note 6, paras. 156-157. In general, on the problem of impunity for war crimes see *ibidem* paras. 132-133 and 136.

<sup>36</sup> *Ibid.*, para. 193.

<sup>37</sup> European Commission, *Progress Report on BiH for 2010*, *supra* note 32, pp. 13 and 21.

<sup>38</sup> Report Hammarberg, *supra* note 6, paras. 132 and 133.

progress has been made in its implementation, mainly due to lack of political will, insufficient coordination between the various justice sector institutions at the State level, in the Entities and the Brčko District, and the of funds for its implementation”.<sup>39</sup>

19. It results from the mentioned conclusions and recommendations issued by several international human rights institutions that the mere adoption of the National Strategy for War Crimes cannot be used to justify the lack of activity by BiH prosecutors and courts. Further, associations of victims of gross human rights violations during the war or their relatives express particular concern at the fate of those cases that were investigated by the ICTY and referred to the State Court of BiH under category “A”,<sup>40</sup> because they do not seem to be treated with the level of priority to which they are entitled. Moreover, associations refer to the particularly grave situation of cantonal, municipal and entity courts that allegedly remain not adequately staffed and equipped to deal with war crimes. In this context, where the prosecution and judgment of war criminals does not seem to be working properly, various associations of victims of gross human rights violations from the war highlighted their frustration because of the fact that there are some areas where war crimes were committed and that, so far, have not seen any of those responsible sentenced (among others Stolac, Nevesinje, Uborak-Prozor and Trebinje were mentioned). Moreover, this situation also fosters the claims that prosecutions and judgments may be politicised or ethnically biased, favouring the sentencing of criminals of a particular ethnic group instead of others. This kind of perceptions is particularly worrying in the extremely delicate political and social climate of today BiH and should not be further fuelled by the lack of effectiveness in investigation, judgment and sanction by competent authorities.
20. Numerous remain the instances where victims of gross human rights violations during the war, their relatives or representative associations report having submitted to BiH authorities 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. Notwithstanding, little or no progress in the investigation and judgement of those responsible has been registered and often those accused are free or have managed to escape.
21. One example is the case of Mr. R. S.<sup>41</sup> against whom a complaint for war crimes and crimes against humanity, including rape, was submitted in 2005 by the Association of Women-Victims of War. Allegedly, the Trebinje Prosecutor's Office conducted an investigation, but the members of the

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<sup>39</sup> *Ibid.*, paras. 136 and 184. See also para. 189, whereby the Commissioner recalls the authorities' obligations arising notably from Articles 2 and 3 of the European Convention on Human Rights. Along the same line, see also United States State Department, *2010 Human Rights Report: Bosnia and Herzegovina*, p. 11: “Despite local and international efforts to prosecute war crimes, many lower-level perpetrators remained unpunished, including those responsible for the approximately 8,000 persons killed in the Srebrenica genocide and those responsible for approximately 13,000 to 15,000 other persons who are missing and presumed to have been killed during the 1992-95 war”. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>.

<sup>40</sup> Cases referred from the ICTY to Bosnian tribunals were divided into three categories (A, B and C). Referrals of cases categorised as “A” indicated that, in the view of the ICTY, the evidence against the suspect was sufficient to justify the indictment. ICTY referred to Bosnian judicial authorities 846 cases categorised as “A”.

<sup>41</sup> Here and elsewhere in the document the name of the person concerned is not disclosed due to privacy and security reasons, and letters are used to designate the persons referred to. Their full names could be disclosed to the HRC, upon request, given that guarantees are provided that these data will not be made public in any way.

association have not been regularly informed about the developments of the investigation and have not been closely associated to the latter. Only on 7 October 2011, the association gathered the information (and not through the prosecutor, but through the media), that the Trebinje District Court ordered one-month custody for the accused, who over the past six years lived in Foča. Seeing Mr. R. S. free over the past six years has been the source of particular frustration and trauma for victims of rape or other forms of sexual violence. Another instance referred by the Association of Women-Victims of War is that of Mr. V. P., against whom complaints for war crimes and crimes against humanity, including rape, were filed. The accused usually resides in Serbia or Russia. However, in 2010 some victims of war crimes saw him in Višegrad, BiH. Accordingly, the Association of Women-Victims of War immediately contacted the Prosecutor's Office of BiH to notify it of the presence of the accused in BiH. Nevertheless, the reaction of the Prosecutor's Office was not prompt and it eventually gave an official reply according to which the accused was not available to the BiH police and judiciary. This episode certainly fostered a feeling of frustration among women victims of rape or other forms of sexual violence, as they sense that a different and more prompt reaction by domestic authorities would have led to the arrest of the accused.

22. Another notorious instance of impunity is related to a case concerning war crimes and crimes against humanity committed in Kalinovik during the conflict. On 12 February 2007 the Association of Families of Missing Persons from Kalinovik submitted to the Prosecutor's Office of BiH a complaint against 26 alleged perpetrators of war crimes and crimes against humanity in the area of Kalinovik. The complaint was registered under file number KO 1526/07. One of the main sources of concern for the members of the association is that out of the 26 accused persons, almost half are employees of public institutions such as the State Agency for Investigation and Protection (SIPA), the Republika Srpska Ministry of Interior, as well as of the BiH Ministry of Defence. Since the formal submission of the complaint, only five of those persons occupying public offices were suspended from their posts in order to avoid them influencing the progress of the investigation. However, one of them was allowed to return to work (namely, within the SIPA) after he reached an agreement with the prosecutor. This situation certainly fosters the lack of trust towards institutions and spreads legitimate fear among the members of the association. As a matter of fact, in order to be considered effective, an investigation should be carried out impartially and independently, allowing for a sufficient element of public scrutiny of the investigation and securing that all those accused are not in a position to hinder the conduct of the investigation.
23. Moreover, it would seem that the fight against impunity is still very much connected to security risks for those involved in it. As an instance, Prijedor 92, one of the associations subscribing this document, reports having received death threats immediately after the first appearance of Mr. Ratko Mladić before the ICTY on 3 June 2011. When the secretary of the association, Mr. Sudbin Musić went to open the office in the morning, he found printed labels on the door. On one of the said labels, there was the name of a group called "Patriot boys" with the raised three fingers (nationalistic Serb symbol). On another one, there was written "RS-SRB", which could allegedly mean "Republika Srpska is Serbia". The phrase "we are going to kill you" was added in hand-writing to the label. Mr. Musić was not alone when he reached the office and, together with eye-witnesses, he immediately went to the police station in Prijedor to report the events. To date, none of those responsible for the death threats and the attack against the office of the association Prijedor 92 has been identified, judged and sanctioned. In the meantime, out of



fear of other reprisals, Prijedor 92 moved the offices to different premises.

24. The overall problem related to impunity is further aggravated by instances of flight of war crimes perpetrators occurred during the trials or even while those already convicted were serving their sentences. One outstanding case is the flight of Mr. Dušan Janković who on 21 December 2010 was sentenced by the Judgment Council of the 1<sup>st</sup> Department for War Crimes to 27 years of imprisonment for crimes against humanity. On 29 May 2008 Mr. Dušan Janković had been arrested in Prijedor and placed in pre-trial detention. However, on 11 November 2009 he obtained the conditional release pending trial, notwithstanding the representatives of relatives of the victims of the Korićanske stijene massacre had repeatedly pointed out that there was a risk of flight.<sup>42</sup> As mentioned, on 21 December 2010 Mr. Dušan Janković was sentenced in his quality of Commander of the police Station in Prijedor, and he was found guilty of crimes against humanity (Article 172 of the BiH Criminal Code) in conjunction with command criminal responsibility under Article 180.2 of the BiH Criminal Code. However, Mr. Dušan Janković failed to appear in court when the verdict was delivered. His defence counsel, Mr. Ranko Dakić, explained to the judges that he had received a message from Mr. Dušan Janković saying that “his car broke down in the vicinity of Doboј”. Since then, Mr. Dušan Janković is nowhere to be found and has been officially declared at large. An international arrest warrant has been issued, and the BiH Court has informed the SIPA and the border crossing staff about Mr. Janković’s flight.<sup>43</sup> It is noteworthy that the escape of Mr. Dušan Janković, which could easily have been avoided had the necessary preventive measures been put in place by the competent authorities, is not an isolated instance, but rather seems to be part of a common pattern.<sup>44</sup>
25. In fact, it is all too frequent that BiH authorities fail to ensure that persons indicted with or convicted for, crimes against humanity or war crimes do not flee. At present, a number of persons indicted before the BiH War Crimes Section of the BiH Court in Sarajevo are at large.<sup>45</sup> Moreover, people already convicted, as Mr. Dušan Janković, managed to escape before being brought to jail or shortly afterwards. Allegedly, the fact that often those indicted await trial and those sentenced serve their term of imprisonment in their home town puts them in a position of undue advantage, which in some

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<sup>42</sup> The State Court of BiH recognized the existence of loopholes in the current legal framework on pre-trial detention. In this sense see, Balkan Investigative Reporting Network, *Weaknesses of Laws in Bosnia and Herzegovina*, 24 December 2010, at <http://www.bim.ba/en/250/10/31433/>.

<sup>43</sup> Mr. Janković’s flight has been broadly covered by BiH press. For a press article in English see: Balkan Investigative Reporting Network, *The Search for Dušan Janković*, 22 December 2010, at <http://www.bim.ba/en/250/10/31414/>.

<sup>44</sup> Among others, see Balkan Investigative Reporting Network, *Runaway Indictees Undermine Bosnian Justice*, 2008, at: <http://www.bim.ba/en/113/10/9785/>.

<sup>45</sup> Among others, Mr. Jakov Duvnjak (charged with war crimes against civilian population in Kraljeva Sutjeska); Mr. Milsav Gavrić (charged with crimes against humanity and genocide in Srebrenica); Mr. Ivan Hrkać (charged with war crimes against prisoners of war and civilian population in Siroki Brijeg); Mr. Jovo Jandrić and Mr. Slobodan Pekez (charged with war crimes against civilian population in Jajce); Mr. Damir Lipovac (charged with war crimes against civilian population in Derventa); Mr. Marinko Marić (charged with war crimes against civilian population in Capljina); and Mr. Novak Stjepanović (charged with crimes against humanity in Bratunac).

cases has resulted in their escape from prison.<sup>46</sup>

26. In the view of victims of crimes against humanity or war crimes, their relatives as well as witnesses these events are of particular gravity and contribute to re-traumatisation. On the one hand, they frustrate the attempts to obtain justice and redress for the harm suffered by fostering the impunity of those responsible for such grave crimes. On the other, they create an overall climate of fear of reprisals and harassment among those who have participated in the trials in quality of witnesses or relatives of victims, who feel to be at risk in case the fugitive or his accomplices may want to seek revenge or intimidate them. Indeed, the fact that no serious preventive measures are put in place by BiH authorities and that no thorough investigation is usually launched to clarify these kind of events and that those responsible for having facilitated the escape are not duly identified, judged and sanctioned, contributes to nourish the sense of frustration, anger, debasement and fear of victims, relatives, witnesses and their representatives.
27. Moreover, a general problem that has been reported by victims of sexual violence during the war is the failure to try as war crimes cases of rape committed during the war, which happens often in particular before the courts in Republika Srpska.<sup>47</sup> Indeed, this practice raises a number of issues, since victims feel discriminated and see that their captors and torturers get lighter sentences. Moreover, the fact that a case of rape committed during the war is not tried as a war crime but as an ordinary offence may also lead to the loss of the status as “civilian victim of the war” of the woman concerned, with obvious prejudices and harmful consequences. For instance, witnesses in such cases would lose their right to special protection and psycho-social support as it would not be considered a war crime trial. In addition, victims could see their monthly disability pensions withdrawn as they could no longer be considered civilian victims of war. Furthermore, the classification of a war-time rape as an ordinary offence may also bring consequences with regard to the application of the status of limitations, which could ultimately result in impunity for perpetrators of these heinous crimes. Finally, dealing with war-time rapes as ordinary offences represents a distortion of historical events and ultimately does not contribute to the establishment of the truth and to the preservation of historical memory.
28. An example of this practice and the serious consequences that it brings along is that of G. T., who in March 1993 was subjected to rape in the suburb of Grbavica in Sarajevo by a member of the VRS. She

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<sup>46</sup> Among others, two instances can be here recalled. In the case of Mr. Momir Savić, on 3 July 2009 he was sentenced to 18 years' imprisonment for crimes against humanity (persecution, murder, deportation, imprisonment, rape and other inhuman acts) by the War Crimes Section of the BiH Court. On 21 May 2010 the Appellate Chamber reduced the sentence to 17 years of imprisonment and ordered to keep Mr. Savić into custody until the moment he was sent to prison to serve his sentence. Indeed, Mr. Momir Savić had been released from custody by the Trial Chamber since 2008 and was allegedly obliged to report to the Višegrad Police Station every day. Nonetheless, and in spite of the fact that victims and the Prosecutor had repeatedly pointed out that there was a risk of escape, exactly as in the case of Mr. Dušan Janković, Mr. Momir Savić managed to escape one day before the Appellate Chamber rendered its judgment and he is currently at large. Another outstanding instance is that of Mr. Radovan Stanković who on 17 April 2007 was sentenced to 20 years long-term imprisonment for crimes against humanity (including enslavement, torture and rape). Indeed, Mr. Stanković was assigned to serve his sentence to the prison in Foča, which is his hometown. On 25 May 2007 Mr. Stanković managed to escape from the detention facility. Ten persons (including prison guards as well as relatives) were charged with helping him to escape. In March 2010 the State Court sentenced his brother to two years in prison for assisting his escape in a first instance judgment.

<sup>47</sup> See, *inter alia*, Balkan Investigative Reporting Network, *Republika Srpska courts shy away from war crimes*, 2011, at <http://www.bim.ba/en/50/10/2316/?tpl=58>.

immediately reported the events to the competent authorities, denouncing the identity of the person responsible. However, it was not until 2007 that the proceedings in fact begun. G. T. was convened before the District Prosecutor's Office in East Sarajevo whereby she repeated her statement about the events occurred in 1993. In March 2010 the Municipal Court in Sokolac convicted the perpetrator for ordinary rape and sentenced him to five years imprisonment. The Association Women-Victims of War expressed the view that the proceedings were carried out in violation of the existing law concerning competence and jurisdiction. It is their view that, since Grbavica is a suburb of Sarajevo, the competent forum was the Cantonal Court in Sarajevo and not the Municipal Court in Sokolac. This first degree decision was upheld in December 2010 by the District Court of East Sarajevo. It is only when this second degree judgment was delivered to the victim that the latter shared it with the Association Women-Victims of War that, analysing the decision, realised that the perpetrator had been charged with ordinary rape and, due to this, he had enjoyed a significant reduction in the sentencing. This news caused a deep shock and a serious deterioration of the state of health of G. T. that was already precarious. It is noteworthy that G. T. should give her testimony in other ongoing trials related to war-crimes. However, this experience caused such a deep impact and debasement on her, that she is now considering refusing doing so.

### 2.3 The Flaws in the Investigation of Cases of Enforced Disappearance

29. Although some significant results have been accomplished and there are some investigations ongoing in cases of enforced disappearance,<sup>48</sup> as highlighted by the WGEID "impunity remains a problem in the country"<sup>49</sup> and, among others, "the contact between the families and prosecutors were poor or non-existent, and that it was difficult to get information about their cases".<sup>50</sup> In this sense, it recommended BiH to ensure that "offices of the prosecutors and courts at all levels should have consistent rules in dealing with the public in general and with families of the disappeared in particular. In particular, families of victims should be more regularly given information on the process of investigation, the results of investigations and whether trials might be forthcoming".<sup>51</sup> On its part, the CAT recommended that BiH's obligation to investigate all cases of enforced disappearance must be ensured.<sup>52</sup> While this section of the document will focus especially on cases of enforced disappearance, the majority of the considerations expressed hereby are valid and applicable also to cases of torture, rape or other forms of sexual violence and other war crimes.
30. At December 2011 no regular mechanism of information on the process of investigation has been established. The great majority of relatives of missing persons continue experiencing problems in obtaining information on the developments of the investigations concerning their cases and in being associated as closely as possible to the overall process.<sup>53</sup> For people that have been waiting for justice over the past almost 20 years, this is certainly a source of frustration and additional stress. In this

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<sup>48</sup> See also written Information for the examination of the BiH combined 2<sup>nd</sup> to 5<sup>th</sup> periodic reports, *supra* note 8, paras. 67-73.

<sup>49</sup> WGEID, *Report on the Mission to BiH*, *supra* note 3, para. 49.

<sup>50</sup> *Ibid.*, para. 63.

<sup>51</sup> *Ibid.*, para. 90 (b).

<sup>52</sup> CAT, *Concluding Observations on BiH*, *supra* note 8, para. 24 (e).

<sup>53</sup> 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.

context it is worth recalling what has been affirmed by the WGEID in the sense that “[...] the relatives of the victims should be closely associated with an investigation into a case of enforced disappearance. [...] General information on procedural matters, such as the fact that the matter has been given to a judge for examination, is insufficient and should be considered a violation of the right to the truth. The State has the obligation to let any interested person know the concrete steps taken to clarify the fate and the whereabouts of the person. Such information must include the steps taken on the basis of the evidence provided by the relatives or other witnesses. [...]”<sup>54</sup>

31. In those cases where relatives of missing persons, often through associations that represent them, have managed to establish some communication with prosecutor’s offices, they often were answered in the first place that prosecutor’s offices were not investigating on some cases as they had not received any formal complaint from relatives. It must be recalled that authorities have an obligation to initiate *ex officio* investigations on certain crimes, including enforced disappearance, torture and arbitrary executions. According to the existing international jurisprudence the investigation on gross human rights violations must be carried out *ex officio*, without the victims or their relatives having to launch a complaint.<sup>55</sup> In particular, the European Court of Human Rights has made clear that: “the authorities must act of their own motion, once the matter has come to their attention. They cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures”.<sup>56</sup>
32. In many other cases, prosecutors answered generically referring to the adoption of the National Strategy for War Crimes and indicating that given the high number of pending war crimes cases, the solution of individual applications will require a longer period of time.<sup>57</sup> Some relatives of missing persons received from the prosecutor’s office a reply whereby it was indicated that the case concerned was not deemed to be “high priority” and therefore it should be disposed of within 15 years. In the first place, although it is perfectly understandable that, given the high number of pending cases of war crimes there is a need to establish some criteria of prioritisation; two aspects must nonetheless be kept in mind. On the one hand, some relatives of missing people are already in their eighties. Telling to these people that their “non-high priority” case should be disposed of within 15 years (whereby it is not clear if “disposed of” means that the investigation will be then opened or completed) taking in consideration that the crimes concerned happened almost 20 years ago, certainly violates any reasonable delay and sounds as a mockery to the person concerned who basically understands that he or she will not be alive to see justice done. On the other hand, the very use of the wording “non high priority” often hurts the sensitivity of relatives of missing persons who develop an overall feeling of discrimination and claim to be treated as “series-B victims”, that is even worse than “series-B citizens”. It is all the more so in a context where there is a tendency to believe that certain prosecutorial choices are ethnically or politically biased. To avoid this kind of prejudices and misunderstandings, a more the implementation of the National Strategy for War Crimes does not justify the lack of information to the families of missing persons on the progress and results of investigations on the cases of their loved ones and the inactivity

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<sup>54</sup> WGEID, *General Comment on the Right to the Truth in relation to Enforced Disappearances*, 2010, para. 3.

<sup>55</sup> See, *inter alia*, European Court of Human Rights (ECtHR), Case *Hugh Jordan v. United Kingdom*, judgment of 4 May 2001, para. 141.

<sup>56</sup> See, *inter alia*, ECtHR, Case *Finucane v. United Kingdom*, judgment of 1 July 2003, para. 67.

<sup>57</sup> See *supra* paras. 18-19.

of the authorities concerned.

33. Finally, another subject of great concern is that in some of those cases where relatives of missing persons eventually established communication with prosecutors' offices, they were informed, in particular by Cantonal Prosecutor's Offices, of the intention to investigate their cases under provisions of the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY) and not of those of the 2003 Criminal Code of BiH. This indeed would be contrary to the principles affirmed by the Constitutional Court of BiH in the leading case *Maktouf* (AP/1785/06 of 30 March 2007) as well as to the recommendations formulated by a number of international institutions. Most notably, the WGEID addressed the issue in this sense: "at the local level (Federation, Republika Srpska, Brčko District) the criminal codes do not include crimes against humanity and thus the specific crime of enforced disappearance. Even if the laws were to be amended, the jurisprudence of local courts would prevent them from convicting the accused on the basis of this crime, as they refuse to apply the 2003 criminal codes to crimes perpetrated in the period 1992-1995. They instead apply the Code of the former Yugoslavia. This position remains, despite the fact that the issue was dealt with in the *Maktouf* case, first by the War Crimes Chamber appellate panel of the Court of Bosnia and Herzegovina (judgment of 4 April 2006), and then by the Constitutional Court. In its judgment, the Court found that the retroactive application of the Bosnia and Herzegovina Criminal Code was permissible under article 7, paragraph 2, of the European Convention on Human Rights because those acts, at the time when they were committed, were already criminal according to the 'general principles of law recognised by civilised nations' (judgment of 30 March 2007)".<sup>58</sup> Also, the WGEID underlined the fact that an enforced disappearance is a continuous crime and thus can be punished on the basis of an *ex post* legislation without violating the principle of non-retroactivity, for as long as the fate or whereabouts of the disappeared person has not been clarified.<sup>59</sup> In this sense, the WGEID recommended that the local courts change their position on the issue of the non-retroactivity of the new criminal codes, as far as international crimes are concerned.<sup>60</sup> Unfortunately, the indications provided by some Cantonal Prosecutors seem to disregard these recommendations and to run in the opposite direction.

**Proposed items to be included in the List of Issues  
(related to arts. 2, 6 and 7 of the ICCPR)**

**On Investigation, Judgment and Sanction of those responsible for international crimes, war crimes and crimes against humanity**

- ▶ Which measures have been concretely adopted to implement the National War Crimes Prosecution Strategy and to reduce the existing backlog?
- ▶ Which measures are BiH authorities planning to adopt to reduce the delay in the implementation of the National War Crimes Prosecution Strategy?
- ▶ Which measures have been adopted to guarantee that cantonal and district courts receive adequate human resources and funding?

<sup>58</sup> WGEID, *Report on the Mission to BiH*, supra note 3, para. 56.

<sup>59</sup> *Ibid.*, para. 57. See also WGEID, *General Comment on Enforced Disappearance as a Continuous Crime*, 2010.

<sup>60</sup> WGEID, *Report on the Mission to BiH*, supra note 3, paras. 57 and 87 (e).

- ▶ Which measures have been adopted to ensure a sound increase in the number of trials of persons accused of rape or other forms of sexual violence during the war?
- ▶ Which measures have been undertaken to ensure that persons indicted with or convicted for, crimes against humanity or war crimes do not flee?
- ▶ Which measures have been adopted to ensure that those indicted with or convicted for, crimes against humanity or war crimes that managed to escape are secured to justice within the shortest delay?
- ▶ Which measures have been adopted to ensure the establishment of a regular system of information on the process of investigation of relatives of missing persons?
- ▶ Which measures have been adopted to ensure that all judicial authorities throughout the country apply the principles affirmed by the Constitutional Court of BiH in the *Maktouf* landmark decision and refrain from applying the the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY) instead of the 2003 Criminal Code in cases concerning crimes against humanity and war crimes?
- ▶ Which measures have been adopted to ensure that cases of war time rape are not tried as ordinary crimes?

### 3. Recommendation No. 14: Investigation of All Unresolved Cases of Missing Persons, the Missing Persons Institute, the Central Database of Missing Persons and the Fund for Support to Families of Missing Persons

34. In recommendation No. 14 formulated in November 2006, the HRC called on BiH to take immediate and effective steps to investigate all unresolved cases of missing persons and ensure without delay that the Missing Persons Institute becomes fully operational, in accordance with the Constitutional Court's decision of 13 August 2005. Further, the HRC recommended BiH to ensure that the central database of missing persons is finalized and accurate, that the Fund for Support to Families of Missing Persons is secured and that payments to families commence as soon as possible.
35. In its second periodic report to the HRC, BiH indicates among others that "with regard to the Missing Persons Institute [...] there have been significant positive developments".<sup>61</sup> Further, reference is made to the fact that the Verification Commission for the establishment of the Central Records of Missing Persons (CEN) has started work;<sup>62</sup> while "[...] the Fund, to this date, has not become operational due to a lack of consensus on the mode of its funding and where it is going to be based".<sup>63</sup> No reference is made to the functioning of the system of exhumations, identification and restitution of mortal remains of missing persons, or to the non-implementation of decisions delivered by the Constitutional Court of BiH.

<sup>61</sup> *Second Periodic Report of BiH to the HRC, supra note 9, para. 84.*

<sup>62</sup> *Ibid.*, para. 93.

<sup>63</sup> *Ibid.*, para. 97.

### 3.1 The Functioning of the Missing Persons Institute (MPI)

36. The Law on Missing Persons (Official Gazette of BiH, No. 50/04) came into force on 17 November 2004 and provided for the establishment of the MPI (Art. 7).<sup>64</sup> The MPI started to operate in June 2007, but it became fully operational only from 1 January 2008.<sup>65</sup> It is composed of three management bodies, namely: a six-member Steering Board, a three-member Supervisory Board and a three-member Board of Directors. In general, the staff reports to the Board of Directors, which reports to the Steering Board, which reports to the founders;<sup>66</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 of representatives of associations of relatives of missing persons (so far composed by two Bosniak, two Bosnian Serb and two Bosnian Croat members).<sup>67</sup> The members of these associations also participate in the work of the Steering Board, but without the right to vote.
37. Besides the recommendations formulated in 2006 by the HRC, in its concluding observations of 2010 also the CAT recommended to BiH to “ensure the full independence of the Institute for Missing Persons and provide adequate material, financial and human resources to the Institute, including adequate material, financial and human resources to the Institute, including available technology necessary to detect and exhume graves”.<sup>68</sup> Further, the WGEID in its report on the mission to BiH issued a number of recommendations with regard to the MPI and its functioning, highlighting, among others, the necessity that the “vacant posts of the management board of the MPI be filled”.<sup>69</sup> Recently, the European Commission indicated that “[...] political pressures and attempts to undermine the work of the MPI have continued”.<sup>70</sup>
38. Notwithstanding the recommendations by international mechanisms, there continues to be a problem with regard to the appointment of the members of the different managing bodies of the institution. For a long period of time, the posts of various members of the Steering Board remained vacant and were not filled for over two years as the cofounders of the MPI (the Council of Ministers of BiH and the International Commission for Missing Persons – ICMP) did not find an agreement on the subject.<sup>71</sup>

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<sup>64</sup> 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”. See also Juhl, *The Problem of Ethnic Politics and Trust: the Missing Persons Institute of Bosnia-Herzegovina*, in *Genocide Studies and Prevention*, Vol. 4, No. 2, 2009, pp. 239-270.

<sup>65</sup> On the MPI, its functioning and the related problems see the additional information on the follow-up of the concluding observation by the HRC on BiH, *supra* note 8, paras. 6-22 and 24-30. See also the written information for the examination of BiH’s combined 2<sup>nd</sup> to 5<sup>th</sup> periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 8, paras. 7-30.

<sup>66</sup> The ICMP 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>67</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 organisational structure of the MPI includes no representation of the “others” category in its organisations structure.

<sup>68</sup> CAT, *Concluding Observations on BiH*, *supra* note 12, para. 24 (a).

<sup>69</sup> WGEID, *Report on the Mission to BiH*, *supra* note 3, para. 78 (f). For the whole set of recommendations issued see para. 78 in general.

<sup>70</sup> European Commission, *2011 Progress Report on BiH*, *supra* note 21, p. 21.

<sup>71</sup> Pursuant to the Agreement on Assuming the Role of Cofounders of the MPI (Official Gazette BiH – International Agreements, No. 13/05), it falls under the responsibility of the ICMP and of the Council of Ministers of BiH to appoint by consensus the members of the Steering Board of the MPI.

Moreover, one member of the Board of Directors resigned. In the meantime, the mandate of all the members of the Steering Board, as well as of the Supervisory and Advisory boards expired in June 2011. Those currently holding the posts are doing so *ad interim* pursuant to a mandate of technical nature. In July and August 2011 consultations to elect representatives of associations of relatives of missing persons from the different ethnic groups for the Advisory Board took place. Some associations are critical towards the way these elections were conducted, as they allege a lack of transparency in the overall process.<sup>72</sup> All in all, 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, either in the Steering Board or in the Supervisory Board or in the Board of Directors 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.

39. Furthermore, the audit reports submitted to the co-founders for approval by the MPI for 2009 and 2010 have not obtained the favorable votes of both cofounders over a prolonged period of time.<sup>73</sup> At present, MPI lacks the regular budget for 2011 and it is operating on the basis of a decision of “temporary financing” approved by the BiH Ministry of Finance. This situation does not allow for the regular functioning of the institute as, for instance, operating under “temporary financing” allegedly does not allow the MPI to undergo the public procedure that would be mandatory in case it had to buy new infrastructure. This is particularly worrying in view of the fact that year 2011 is almost concluded and this means that for almost one year MPI has worked without an approved regular budget and therefore, in a situation of scarce stability. In this already delicate context, the Prosecutor’s Office of BiH that since 1 January 2011 holds the exclusive competence over the exhumation process<sup>74</sup> has been kept waiting for the transfer of resources (approximately 250,000 KM – 125,000 Euros) from the MPI. Indeed, the approval by the BiH Ministry of Council was procrastinated for over three months, until it was eventually issued on 15 September 2011.
40. The situation described is certainly not contributing to foster the trust of relatives of missing persons and their associations towards MPI. In fact, some associations remain highly critical towards the institute, alleging that the personnel of the MPI is not specialized for the work and that the presence of people who also have political affiliations<sup>75</sup> undermines the credibility of the institution and the effectiveness of its work.

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<sup>72</sup> In particular, representatives of the Association Women from Prijedor – *Izvor* express their criticism at the manner in which the election of representatives of Bosniak associations for the Advisory Board were elected at a meeting held in Sarajevo on 18 July 2011. On 10 August 2011 the association wrote a letter to the director of ICMP in her capacity as cofounder of the MPI to formally complain about the election of the members of the Advisory Board. At the time of writing, *Izvor* has not received a reply.

<sup>73</sup> Namely, while the ICMP has voted in favour, the Council of Ministries has not.

<sup>74</sup> *Infra* para. 50.

<sup>75</sup> In this sense, it must be recalled that Article 5 of the Law on Missing Persons clearly establish 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).



**Proposed items to be included in the List of Issues  
(related to arts. 2, 6, 7, 9, 10 and 16 of the ICCPR)**

**On the Functioning of the MPI**

- ▶ Which measures have been adopted to ensure that the members of the different managing bodies of the MPI are regularly appointed and there are no vacant seats?
- ▶ Which measures have been adopted to ensure that the MPI is secured the regular budget for 2011? Which measures are envisaged in this sense with regard to the regular budget for 2012?
- ▶ Which measures have been undertaken to avoid political pressures on the work of the MPI?

### **3.2 The Establishment of the Central Record of the Missing Persons (CEN)**

41. 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 organisations of the Red Cross in BiH, as well as international organizations. Article 22.4 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.<sup>76</sup>
42. Among others, in its concluding observations of 2010, the CAT recommended to BiH to “complete the Central Record of the Missing Persons (CEN) without further delay and make it available to the public”.<sup>77</sup> Along the same line, the WGEID indicated that BiH should complete the CEN as soon as possible and make it public.<sup>78</sup>
43. At December 2011 the CEN has not been completed or made public yet. Indeed, the verification of some of the entries into the registry has in fact started, although it is proceeding at an extremely slow pace. Currently, out of 34,965 entries to be verified through cross-references, over 8,000 have been validated. The MPI affirmed that by the end of December 2011 the number of verified entries should reach 10,000. These entries correspond almost completely to missing people whose mortal remains have already been exhumed, identified and returned to the relatives. The adoption of this criterion to commence the filling of the CEN is the source of dissatisfaction among many associations of relatives of missing people, as they feel that the imperative need to deal first with those missing people whose fate and whereabouts have not been determined yet has been ignored. This fosters a growing sense of frustration and debasement. Moreover, given that at present only six employees are working at the completion of the CEN, it is not to be expected that the registry will be finalised soon.

<sup>76</sup> On this matter see the additional information on the follow-up of the concluding observations by the HRC on BiH, *supra* note 8, paras. 31-39. See also written information for the examination of BiH's combined 2<sup>nd</sup> to 5<sup>th</sup> periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 8, paras. 31-39.

<sup>77</sup> CAT, *Concluding Observations on BiH*, *supra* note 12, para. 24 (c).

<sup>78</sup> WGEID, *Report on the Mission to BiH*, *supra* note 3, paras. 24 and 75.

44. As already reported,<sup>79</sup> a problem related to the establishment of the CEN is that Article 27 of the Law of Missing Persons (Entry into the Register of Deaths) provides that “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 CEN BiH, *shall be considered dead* and this fact shall be officially entered in the Register of Death [...]” (emphasis is added).<sup>80</sup> Although the WGEID has declared that when the CEN will be operating the mentioned provision “will be problematic as it declares people dead possibly against the wishes of their loved ones”<sup>81</sup> and it accordingly recommended BiH to “clarify what the impact of this provision will be for families and for investigations and prosecutions”,<sup>82</sup> BiH authorities have not carried out any particular assessment in this sense, nor have they consulted with associations of relatives of missing persons. In this light, the risk remains that enforced disappearance is unduly treated as a direct death, without taking into account its continuous nature.

**Proposed items to be included in the List of Issues  
(related to arts. 2, 6, 7, 9, 10 and 16 of the ICCPR)**

**On the Completion of the CEN**

- ▶ When will the CEN be finalized and made public?
- ▶ Which measures have been undertaken to ensure the necessary resources (human and financial) for the establishment of the CEN?
- ▶ How are BiH authorities planning to deal with Article 27 of the Law of Missing Persons in order to ensure that enforced disappearance is not treated as a direct death and the continuous nature of the offence is duly taken into account?

### **3.3 The Non-establishment of the Fund for Support Families of Missing Persons**

45. Article 15 of the Law on Missing Persons prescribes the creation of the Fund, intended to be a means of support for families of missing 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. The Law on Missing Persons entered into force on 17 November 2004.<sup>83</sup>

<sup>79</sup> See the additional information on the follow-up of the concluding observations by the HRC on BiH, *supra* note 8, paras. 36-39.

<sup>80</sup> On this matter see the written information for the examination of BiH’s combined 2<sup>nd</sup> to 5<sup>th</sup> periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 8, paras. 36-39 and 101-103.

<sup>81</sup> WGEID, *Report on the Mission to BiH*, *supra* note 3, para. 46.

<sup>82</sup> *Ibid.*, para. 85.

<sup>83</sup> The problems related to the non-establishment of the Fund were analyzed in detail in the additional information on the follow-up of the concluding observations by the HRC on BiH, *supra* note 8, paras. 40-47. See also the written information for the examination of BiH’s combined 2<sup>nd</sup> to 5<sup>th</sup> periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 8, paras. 40-41.

46. Besides the repeated recommendations in this sense issued by the HRC, in November 2010 also the CAT recommended to BiH to “ensure that the Fund for Families of Missing Persons is established without any further delay and its financing entirely secured”.<sup>84</sup> Along the same line, the WGEID recommended to BiH to establish the Fund as a matter of priority.<sup>85</sup>
47. Notwithstanding the recommendations issued by international human rights mechanisms, at December 2011, which is more than seven years after the required deadline, the Fund has not been established. Since November 2010 there does not seem to be any significant development in this sense and 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.<sup>86</sup> Associations of relatives of missing people throughout the country express their deep concern at this situation and their loss of trust in domestic institutions. Many of the associations of relatives of missing persons that subscribe this document highlighted their frustration and scorn since 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, that therefore they consider as a “ghost”. 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 victims of grave human rights violations was associated to the establishment of the Fund.<sup>87</sup>

**Proposed items to be included in the List of Issues  
(related to arts. 2, 6, 7, 9, 10 and 16 of the ICCPR)**

**On the Establishment of the Fund**

- ▶ By when could it be expected that the Fund will be established?
- ▶ Which measures have been adopted by BiH authorities to remove the existing obstacles to the establishment of the Fund?

### **3.4 The Lack of Information on the Progresses Made in the Process of Exhumation and Identification of Mortal Remains and the Lack of Psycho-social Assistance during the Process**

48. The localisation, exhumation, identification and restitution of mortal remains of missing persons is perceived by relatives of the victims as their very first priority. All the more so when the time is passing and in many cases almost 20 years have elapsed since the person was seen alive for the last time.<sup>88</sup>

<sup>84</sup> CAT, *Concluding Observations on BiH*, *supra* note 12, para. 24 (b).

<sup>85</sup> WGEID, *Report on the Mission to BiH*, *supra* note 3, para. 84 (a).

<sup>86</sup> *Infra* paras. 66-77.

<sup>87</sup> On this matter see the additional information on the follow-up of the concluding observations by the HRC on BiH, *supra* note 8, paras. 42-45. See also written information for the examination of BiH’s combined 2<sup>nd</sup> to 5<sup>th</sup> periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 8, paras. 42-45. See also *infra* paras. 52-63.

<sup>88</sup> See written Information for the examination of the BiH combined 2<sup>nd</sup> to 5<sup>th</sup> periodic reports, *supra* note 8, paras. 19-30.

The exhumation and identification of mortal remains also represents an aspect of the right to know the truth and must be carried out respecting international standards.<sup>89</sup>

49. Besides the HRC, also the CAT recommended to BiH to “respect the right to know the truth of the families of missing persons, including those who live outside Bosnia and Herzegovina, by keeping them informed of the progress made in the processes of exhumation and identification of mortal remains as well as providing them with psycho-social assistance during the process”.<sup>90</sup> On its part, the WGEID noted that the number of prosecutors working on exhumations is extremely low and there few resources and staff are devoted to this crucial aspect. Accordingly, the WGEID recommended that “additional staff should be appointed to accelerate the process; those working on exhumations should be provided with needed assistance and equipment; to speed up the process, needed forensic pathologists should be provided; and more resources should be given to people working in this area to enable them to complete these gruelling tasks”.<sup>91</sup>
50. Since 1<sup>st</sup> January 2011, all exhumations and identifications of mortal remains fall under the jurisdiction of the State Prosecutor’s Office. While originally this reform was welcomed with optimism by families of missing persons and their associations, almost nine months later there is a palpable sense of disillusion and frustration and the common position is that, even though some exhumations have in fact been carried out, the pace of the overall process has slowed down even more and certain areas of BiH have completely been kept out of the process. While this perception may not be necessarily correct, it is surely fostered by the fact that communication with the Prosecutor’s Office of BiH on this issue has proved to be extremely difficult and relatives of missing persons feel that they cannot find official answers to the various doubts they have on the organisation of the process. This situation fosters a sense of isolation and resentment. For instance, at an event organised in Sarajevo by TRIAL in March 2011, the representative of the Prosecutor’s Office of BiH who was attending, when asked a number of very concrete and detailed questions by the numerous relatives of missing persons present,<sup>92</sup> limited herself to suggest to these people to “check on the Prosecutor’s Office of BiH’s web-site”.<sup>93</sup> Among the many considerations that can be expressed on such a reply, it is enough to point out that not

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<sup>89</sup> On this matter see WGEID, *General Comment on the Right to Truth in Relation to Enforced Disappearance*, 2010, para. 6; Human Rights Council, *Progress Report of the Human Rights Council Advisory Committee on Best Practices on the Issue of Missing Persons*, doc. A/HRC/14/42 of 22 March 2010; *Report of the Office of the United Nations High Commissioner for Human Rights on the Right to the Truth and on Forensic Genetics and Human Rights*, doc. A/HRC/15/26 of 24 August 2010; and Human Rights Council, *Report of the Human Rights Council Advisory Committee on Best Practices on the Issue of Missing Persons*, doc. A/HRC/16/70 of 21 February 2011.

<sup>90</sup> CAT, *Concluding Observations on BiH*, *supra* note 12, para. 24 (d).

<sup>91</sup> WGEID, *Report on the Mission to BiH*, *supra* note 3; paras. 31- 36 and 79 (a-d).

<sup>92</sup> Among other questions, the representative of the Prosecutor’s Office of BiH was asked about the exact number of Prosecutor’s that are going to deal specifically with exhumations and how the institution is planning to organise the internal division of the work. Certainly, the most burning questions concerned how the Prosecutor’s Office of BiH envisages dealing with cases that are already pending before cantonal or district prosecutors and how these potential conflicts of competence will be solved, and how will the Prosecutor’s Office of BiH coordinate with the MPI.

<sup>93</sup> It is noteworthy that the Web-site of the State Prosecutor’s Office (<http://www.tuzilastvobih.gov.ba/index.php?jezik=e>) is not totally up-to-date. For instance, it indicates that Mr. Milorad Barašin is the Chief Prosecutor while in July 2011 the latter was suspended by the High Judicial Prosecutorial Council from his charge until the completion of the disciplinary action launched against him. At present the post as Chief Prosecutor is held *ad interim* by Mrs. Jadranka Lokmić. In any case, the specific data requested by the relatives of missing persons at the event held in Sarajevo in March 2011 do not seem to be in the web-site.

necessarily all relatives of missing persons have access to internet and that it is not on them to become “detectives” to find information that shall be regularly provided by a public officer. While this may be just an episode motivated by the lack of information of the person concerned, since she was there in an official capacity, she was speaking on behalf of the whole institution. The overall impression of relatives of missing persons taking part to the mentioned event was that they are so insignificant to the Prosecutor’s Office of BiH that it does not even dare to send an officer that has previously acquired the necessary information. Certainly, this does not contribute to foster a climate of trust towards institutions and it does not represent a good practice in terms of informing relatives of missing persons on the progress of the process of exhumation.

51. While the exhumation and identification of mortal remains is an extremely delicate moment for relatives of missing persons that concentrate plenty of their hopes and expectations on it, despite the recommendations of international mechanisms, there continues to be a lack of any kind of programme of psycho-social assistance and support during and after the process. In this context, often relatives of missing persons are subjected to instances of re-traumatisation and amplification of their suffering.

**Proposed items to be included in the List of Issues  
(related to arts. 2, 6, 7, 9, 10 and 16 of the ICCPR)**

**On the Process of Exhumation of Mortal Remains**

- ▶ Which measures are envisaged to ensure that the Prosecutor’s Office of BiH is secured the necessary resources and funding for 2012 for carrying out the exhumation process?
- ▶ Which measures have been undertaken to secure that relatives of missing persons, their associations and their representatives are regularly kept informed on the process of exhumation and that their right to know the truth is fully guaranteed?
- ▶ Which measures have been undertaken to ensure that relatives of missing persons receive adequate psycho-social support during and after the exhumation process?

### **3.5 The Non-implementation of Constitutional Court’s Decisions in cases relating Missing Persons**

52. Over the past years a considerable number of the decisions issued by the Constitutional Court of BiH have not been implemented.<sup>94</sup> Although the non-implementation of the mentioned decisions is considered to be a crime under domestic legislation,<sup>95</sup> to the knowledge of the subscribing associations to date no one has been prosecuted and sanctioned for such an offence in cases relating missing persons. It must certainly be stressed that this problem does not concern only cases relating to missing

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<sup>94</sup> On this matter see the additional information on the follow-up of the concluding observations by the HRC on BiH, *supra* note 8, paras. 42-45. See also written information for the examination of BiH’s combined 2<sup>nd</sup> to 5<sup>th</sup> periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 8, paras. 42-45.

<sup>95</sup> *Infra* para. 56.

persons, but has a general nature.<sup>96</sup> However, in this written information only the decisions relating to missing persons and their relatives will be referred to, highlighting that the majority of the considerations formulated hereby are applicable also to decisions concerning other matters.

53. The existence of this most serious problem that is eventually undermining the rule of law and the general trust towards the highest judicial body of the country has been singled out and defined as the subject of alarm by a number of international institutions. For instance, the European Commission in its 2011 progress report on BiH indicated that “in a number of cases, the decisions of the Constitutional Court of Bosnia and Herzegovina have not been enforced, which led to cases being lodged before the European Court of Human Rights”.<sup>97</sup> The same concern had been expressed in the progress report for 2010: “BiH is in breach of the Interim Agreement due to non-compliance with the European Convention on Human Rights”.<sup>98</sup> In particular, it was underlined that: “[...] There were several cases of non-enforcement of decisions of the Constitutional Court of Bosnia and Herzegovina, which led to cases being lodged before the European Court of Human Rights”.<sup>99</sup> In his report on the visit to BiH, the Commissioner for Human Rights at the Council of Europe, Mr. Thomas Hammarberg, noted with concern that: “[...] the decisions of the Constitutional Court are, however, often non implemented by the relevant bodies and authorities, which is of serious concern as it undermines the rule of law and respect for the Constitutional Court. Furthermore, there is no mechanism in place currently that could remedy the situation. The non-execution of final court decisions needs to be addressed”.<sup>100</sup> After having conducted its mission in the country, the WGEID noted that “many orders of the Constitutional Court are not implemented. Such orders should be implemented, and failure to comply with them should be prosecuted as provided by the law of Bosnia and Herzegovina”.<sup>101</sup> On its part, the CAT indicated to BiH that “it is necessary to fully implement the Constitutional Court’s judgments without further delay, in particular with regard to cases on enforced disappearances, and prosecute failure to comply with such judgments”.<sup>102</sup>
54. In order to highlight the existence of the problem and to look for potential solutions, in February 2011 TRIAL, Amnesty International, and six associations of relatives of missing people from BiH that are also

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<sup>96</sup> In this sense, in 2009, while submitting information for the Universal Periodic Review of BiH, the Informal UPR Coalition noted that 20% of the decisions passed by the Constitutional Court are not respected or implemented. See Universal Periodic Review, *Summary of Stakeholder’s Information*, doc. A/HRC/WG.6/7/BIH/3 of 12 November 2009, para. 28.

<sup>97</sup> European Commission, *2011 Progress Report on BiH*, *supra* note 21, pp. 14-15.

<sup>98</sup> European Commission, *2010 Progress Report on BiH*, *supra* note 32, p. 6. In this light, it must be stressed that the ECtHR accepted that the State’s failure to fully enforce final domestic decisions causes to applicants distress, anxiety and frustration which amount to ill-treatment (ECtHR, *Case Čolić and others v. Bosnia and Herzegovina*, judgment of 10 November 2009, para. 21). The Court also reiterated that the non-enforcement of domestic decisions amounts to a violation of Article 6 of the European Convention on Human Rights and it discloses the existence of a shortcoming which can have the result to affect a whole class of citizens (ECtHR, *Case Škerović and Pašalić v. Bosnia and Herzegovina*, judgment of 8 March 2011, paras. 31 and 39). In similar cases, the ECtHR considered that this situation generates a large number of potential applicants, which represents a threat to the future effectiveness of the Convention machinery.

<sup>99</sup> European Commission, *2010 Progress Report on BiH*, *supra* note 32, p. 15.

<sup>100</sup> Report by the Commissioner for Human Rights at the Council of Europe, Mr. Thomas Hammarberg on his visit to BiH, doc. CommDH(2008)1 of 20 February 2008, para. 17.

<sup>101</sup> WGEID, *Report on the Mission to BiH*, *supra* note 3, footnote 5.

<sup>102</sup> CAT, *Concluding Observations on BiH*, *supra* note 12, para. 12.

subscribing the present document<sup>103</sup> submitted to the distinguished president of the Constitutional Court of BiH and to the Head of Department III of the Prosecutor's Office of BiH a position paper concerning this subject. As a consequence, in March 2011 representatives of TRIAL met with representatives of the Constitutional Court of BiH and of the Prosecutor's Office of BiH to discuss the information contained in the above-mentioned position paper.

55. Both institutions indicated that they are aware of the existing problem of non-implementation of decisions delivered by the Constitutional Court and alleged that the mechanism to guarantee the enforcement of the decisions, as currently conceived (i.e. the adoption of a ruling of non-implementation by the Constitutional Court of BiH itself and the possibility for the Prosecutor's Office to open a criminal procedure against those responsible for non-implementation), does not seem to be effective. On the one hand, the representative of the Constitutional Court of BiH stressed that, from its side, the Court does whatever falls under its competence: it adopts a decision on a given application, and, if it deems that it has not been implemented, it proceeds *motu proprio* to issue a ruling of non-implementation pursuant to Article 74.6 of the Rules of Procedure. It is the view of the representative of the Constitutional Court of BiH that, after this stage, the enforcement of the decisions does not fall anymore within the sphere of competence of the Court, but rather within that of the Prosecutor's Office of BiH.
56. On the other hand, the representative of the Prosecutor's Office of BiH explained the reasons why, although they launch an investigation when a case of non-implementation of a decision by the Constitutional Court of BiH is brought to their attention, in particular in cases of decisions relating to relatives of missing persons, they are procedurally prevented from charging and prosecuting the institutions and entities to which orders are issued by the Constitutional Court of BiH. Article 239 of the BiH Criminal Code reads as follows: "An official person in the institutions of Bosnia and Herzegovina, institutions of the entities and institutions of the Brčko District of Bosnia and Herzegovina, who refuses to enforce the final and enforceable decision of the Constitutional Court of Bosnia and Herzegovina or Court of Bosnia and Herzegovina or Human Rights Chamber of Bosnia and Herzegovina, or if he prevents enforcement of such a decision, or if he prevents the enforcement of the decision in some other way, shall be punished by imprisonment for a term between six months and five years." The offence codified by Article 239 can only be committed intentionally. In this sense, it is necessary to establish the intent of the perpetrator or the fact that someone has deliberately refused to enforce a decision, is preventing a decision from being implemented or in any other way is precluding its enforcement. In the commentary of the BiH Criminal Code it has been clarified that the act of refusal represents resistance to enforce something which an official of the State is obliged to enforce. Accordingly, refusal arises if all the conditions for the enforcement of a decision exist and the official of the State does not act upon the decision or for example, does not deliver it to the competent body, conceals the decision, deliberately retains it or does not act upon it, all of which can be considered as obstruction or non-enforcement of the decision. These obstructions have to be established prior to the bringing of an indictment and be supported by relevant evidences.

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<sup>103</sup> The Association of Women from Prijedor – *Izvor*; the Association of Families of Killed and Missing Defenders of the Homeland War from Bugojno Municipality; the Association of Relatives of Missing Persons of the Vogošća Municipality; the Association of Families of Missing Persons from Hadžići Municipality; the Association of Families of Missing Persons from Ilijaš; and the Association of Families of Missing Persons from the Sarajevo-Romanija Region.

57. In the decisions of the Constitutional Court of BiH relating to relatives of missing people, the measures to be adopted are referred to the *Council of Ministers of BiH, the government of the Federation of BiH, the government of the Republika Srpska and the government of the Brčko District*, who are therefore those formally in charge of enforcing the decisions of the Constitutional Court of BiH. However, the representative of the Prosecutor's Office stressed that in BiH a criminal procedure cannot be initiated against an institution, but only against physical or legal entities. Legal entities are defined in Article 122 of the BiH Criminal Code, whose paragraph 1 reads as follows: "This Chapter regulates criminal liability of a legal person, with the exclusion of *Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska, the Brčko District of Bosnia and Herzegovina, canton, city, municipality and local community*, for a criminal offence perpetrated by the perpetrator in the name of, for account of or in favour of the legal person (emphasis is added)".
58. This means that after the delivery of a ruling on the non-enforcement of Constitutional Court of BiH's decisions which usually order measures to those institutions which are excused from responsibility according to the quoted provision (i.e. *Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska, the Brčko District of Bosnia and Herzegovina*), the Prosecutor's Office in the process of investigation has to identify a physical entity (an individual) from these institutions who has committed the criminal act of non-enforcement of decisions delivered by the Constitutional Court of BiH. Thus, in the investigative stage, it is necessary to conduct an individualization of the perpetrator of this criminal act since criminal proceedings cannot be initiated against BiH, the Republika Srpska, the Federation, Brčko District, cantons, cities, municipalities, or local communities. In order to initiate a criminal action it is first necessary to establish who, for example, within a given ministry was in charge for the enforcement of the Constitutional Court of BiH's decisions, or which municipal organ had this competence. In the light of the above, the Prosecutor's Office of BiH has so far allegedly not been able to open criminal proceedings relating to the non-implementation of decisions delivered by the Constitutional Court of BiH. In this context, it would not seem that criminal prosecution is the most effective tool to achieve the goal of implementation of decisions by the Constitutional Court of BiH.
59. After the meeting between representatives of TRIAL and of the Constitutional Court of BiH and the Prosecutor's Office of BiH, two other events relevant for this subject occurred. On the one hand, relatives of missing persons represented by TRIAL before the Human Rights Committee or the European Court of Human Rights who had obtained a decision by the Constitutional Court of BiH (namely, decision AP-36/06 of 16 July 2007) which has not been enforced wrote to the Court to point out this situation and to request it to adopt a ruling on non-implementation pursuant to Rule 74.6 of the Rules of Procedure. In March 2011 they received an answer by the Constitutional Court of BiH, whereby it was stated that: "[...] at a plenary session held on 27 March 2009 the Constitutional Court adopted an *Information on the Enforcement of Constitutional Court Decisions in the period from 1 January until 31 December 2008*, from which it derives that the above mentioned decision is *considered enforced*" (emphasis is added).<sup>104</sup>

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<sup>104</sup> It is noteworthy that the decision for which the applicants had requested the adoption of a ruling of non-implementation (i.e. AP-36/06) had been issued in 16 July 2007 and therefore it does not even formally fall under the time-frame mentioned by the Constitutional Court of BiH (i.e. 1 January – 31 December 2008).



60. This answer resulted particularly surprising to the applicants since they were never notified about the adoption of this “information” by the Constitutional Court of BiH nor informed about its existence by any other means. At the same time, they were never consulted by the Constitutional Court of BiH before such an information note was issued. Indeed, it is the view-point of the persons concerned that decision AP-36/06 has clearly not been implemented. On the one hand, one of the recommendations of the Constitutional Court of BiH was that “*the Fund for supporting the families of missing persons in BiH is set up without any further delay and no later than 30 days*”. The decision concerned was issued on 17 July 2007. At December 2011 the Fund has not been established yet.<sup>105</sup> On the other hand, in the decision issued on 16 July 2007 the Council of Ministers of BiH, the government of the Federation of BiH, the government of the Republika Srpska and the government of the Brčko District were ordered to provide all available information to relatives of missing persons about the fate and whereabouts of their loved ones, urgently and without further delay and no later than 30 days from the date of receipt of the decision concerned. Indeed, the applicants did not receive such information to date. In the light of the above, it is hard to see how the Constitutional Court of BiH can have considered its decision as duly implemented.
61. This reasoning could be extended to other decisions adopted by the Constitutional Court of BiH in the period from 1 January until 31 December 2008, as it results, among others, from the considerations expressed by Mr. Thomas Hammarberg, the Commissioner for Human Rights of the Council of Europe in his report issued on 29 March 2011 following the visit to BiH on 27-30 November 2010, whereby he noted that: “the Commissioner has noted that non-enforcement of domestic court judgments *continues to be a systemic problem that seriously hinders the efficiency of the judicial system, thus threatening the rule of law in Bosnia and Herzegovina*. In seven (out of a total of fourteen) judgements delivered from October 2006 to May 2010 against Bosnia and Herzegovina, the European Court of Human Rights found a violation of Article 6 of the European Convention on Human Rights due to non-enforcement of domestic court judgments. *Around 100 decisions of the Constitutional Court of Bosnia and Herzegovina and the Human Rights Chamber have not been enforced since 2003*. In all cases the Constitutional Court forwarded the decisions on non-enforcement to the Prosecutor’s Office of Bosnia and Herzegovina. Although some investigations are pending, no one has been charged so far with a criminal offence of non-enforcement of decisions of the Constitutional Court and the Human Rights Chamber”.<sup>106</sup> Accordingly, the Commissioner urged the authorities to immediately take all necessary measures that would ensure effective implementation of domestic court decisions and the removal of all obstacles to the proper functioning of the courts in BiH.<sup>107</sup>
62. In May 2011 TRIAL, Amnesty International and the other six already mentioned associations of relatives of missing persons wrote an updated position paper to maintain the attention of the authorities on this burning issue. The paper was submitted to the Constitutional Court of BiH and the Prosecutor’s Office of BiH to call on these institutions to continue the dialogue on the matter with a view of formulating alternative proposals and to comprehensively address this complex situation. Further, in order to include other crucial actors in the process and to make it as participative and inclusive as possible, the information was forwarded also to the Office of the High Representative in BiH; the Commissioner for

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<sup>105</sup> *Supra* paras. 45-47.

<sup>106</sup> Report Hammarberg, *supra* note 6, para. 175.

<sup>107</sup> *Ibid.*, para. 197.

Human Rights at the Council of Europe; the President of the High Judicial and Prosecutorial Council; the Ministry of Justice; the Ministry for Human Rights and Refugees; the Head of the Human Dimension Department within the Organization for Security and Co-operation in Europe (OSCE); and the Department for the Execution of Judgments of the European Court of Human Rights.

63. At the time of writing, answers were received only from OSCE and the Department for the Execution of Judgments of the European Court of Human Rights. Not only the non-implementation of decisions of the Constitutional Court of BiH remains rampant, but BiH authorities do not seem to assume it as a first priority or to be willing to discuss potential solutions. The recommendation formulated by the mentioned international mechanisms in the sense that the implementation of Constitutional Court's decisions is secured remains unenforced and it unfortunately does not seem that there will be any meaningful improvement in the near future.

**Proposed items to be included in the List of Issues  
(related to arts. 2, 6, 7, 9, 10 and 16 of the ICCPR)**

**On the Non-Implementation of Constitutional Court's Decisions concerning Missing Persons**

- ▶ How many decisions delivered by the Constitutional Court of BiH on the issue of missing person have not been implemented?
- ▶ Which measures have been adopted by BiH authorities to ensure the implementation of the decisions delivered by the Constitutional Court of BiH on the issue of missing persons?
- ▶ Which measures have been adopted to sanction those responsible for the non-implementation of the decisions delivered by the Constitutional Court of BiH on the issue of missing persons?
- ▶ If the current legal framework on the enforcement of decisions delivered by the Constitutional Court of BiH is not effective, which measures are envisaged to amend it?
- ▶ In cases where the Constitutional Court of BiH adopted "information" notes on the implementation of its decisions on the issue of missing person, has it first consulted with applicants? Has it notified applicants of the adoption of the said information notes? Do applicants have effective remedies to challenge the adoption of the mentioned information notes by the Constitutional Court of BiH?

**4. Recommendation No. 15: Compensation and Integral Reparation to Victims of Gross Human Rights Violations during the War**

64. In its recommendation No. 15, the HRC called on BiH to ensure that victims of mental torture are granted victim of war status in both entities and that the personal disability benefits received by civilian victims of war are harmonised among the Entities and cantons and adjusted to the personal disability benefits received by war veterans. It was further requested that BiH includes in its second periodic report updated statistical information on the number of victims of mental torture and/or sexual violence receiving disability benefits, disaggregated by sex, age, ethnic group and place of residence, as well as on the amount of such benefits.

65. In its second periodic report BiH indicates that “[...] amendments to the legislation which has improved the position of the victims of torture and civilian war victims, and persons with disabilities in general have been adopted. This particularly applies to camp detainees and victims of sexual abuse and rape. However, the existing legal framework has significantly extended discrimination among people who have already achieved the status of disabled persons, particularly, between disabled war veterans, civilian victims of war, disabled civilians and disabled workers, whereby the latter are placed in the worst position”.<sup>108</sup> According to the information provided by the State, the requirement to demonstrate that a victim sustained a body impairment of at least 60% (in the Federation of BiH)<sup>109</sup> and between 20% and 60% (in the Republika Srpska)<sup>110</sup> to obtain monthly disability pensions remains. Moreover, the State indicates that in the Federation of BiH civilian victims of war receive benefits in the amount equivalent to 70% of the base paid to disabled war veterans,<sup>111</sup> while in the Republika Srpska there is no specific law regulating the status of victims of torture as a specific group.<sup>112</sup> Finally, the State itself points out major loopholes in the existing legal framework: “omissions were noted in the Law on the Protection of Civilian Victims of War and their Families, for example, in exercising the entitlements by *previous beneficiaries – returnees to the Republika Srpska, where applications for the status of civilian victim of war could not be filed after late 2007, and Article 76a of the Federation Law that revokes the entitlements of the beneficiaries if they leave Bosnia and Herzegovina for more than three months is questionable, too. It is well known that most victims of sexual abuse and rape left Bosnia and Herzegovina for a number of reasons, mostly for not being able to protect privacy and what they lived through in a community that is traditional and loaded with prejudices*”.<sup>113</sup>

#### **4.1 The Failure to Provide Adequate Compensation and Integral Reparation to Relatives of Missing Persons, former Camp-Detainees, and Women Victims of Rape or Other forms of Sexual Violence**

66. Victims of gross human rights violations, including enforced disappearance, torture, rape or other forms of sexual violence are entitled to obtain integral reparation, including restitution, rehabilitation, satisfaction, restoration of dignity and reputation, guarantees of non-repetition as well as prompt, fair and adequate compensation for the harm suffered.<sup>114</sup> It must be stressed that the notions of compensation and reparation are and must be kept different from that of social welfare measures (such as disability pensions).

67. Besides the mentioned recommendations formulated by the HRC, in its concluding observations of November 2010, the CAT expressed its concern over “the slow process of the adoption of the draft Law on the Rights of Victims of Torture, the absence of adequate definition of the status and rights of civil

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<sup>108</sup> *BiH Second Periodic Report to the HRC, supra* note 9, para. 98.

<sup>109</sup> *Ibid.*, paras. 100, 109 and 111.

<sup>110</sup> *Ibid.*, paras. 127-128.

<sup>111</sup> *Ibid.*, paras. 105 and 110.

<sup>112</sup> *Ibid.*, para. 125.

<sup>113</sup> *Ibid.*, paras. 113-114.

<sup>114</sup> See additional information on the follow-up of the concluding observations by the HRC on BiH, *supra* note 8, paras. 48-57. See also written information for the examination of BiH's combined 2<sup>nd</sup> to 5<sup>th</sup> periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 8, paras. 92-125.

victims of war in domestic legislation as well as the insufficient medical or psycho-social support and legal protection available to victims, especially victims of war-time sexual violence”.<sup>115</sup> Accordingly, it recommended to BiH to “adopt the draft Law on the Rights of Victims of Torture and Civil Victims of War as well as the Strategy for Transitional Justice without delay in order to fully protect the rights of victims, including the provision of compensation and as full a rehabilitation as possible, with aim of obtaining physical and psychological recovery and their social reintegration. To that end, the State party is strongly encouraged to reduce politicization of these efforts, finalize a plan of action with clearly identified activities and corresponding responsibilities among State and its Entity authorities and ensure the allocation of adequate financial resources”.<sup>116</sup>

68. Similar recommendations were issued by the WGEID after it conducted its mission to BiH.<sup>117</sup> Along the same line, after her visit to BiH in November 2010, the Special Representative of the Secretary-General on Sexual Violence in Conflict noted that “[...] in comparison with other war victims, women suffer discrimination in accessing benefits. [...] Unlike veterans, rape survivors are often only eligible for a *disability pension, which is a form of social welfare rather than reparation*. Administering war reparations through a welfare system creates practical problems. For instance, a woman who was raped during the war but had a pre-existing disability is barred from continuing her disability pension as she now receives a ‘pension’ for war-time rape. Moreover, if a woman receiving a pension in the FBiH relocates to the RS, she risks losing her benefits. This is because only the FBiH recognises rape victims as war victims; the RS still only recognizes victims able to demonstrate ‘60 percent physical damage’. Furthermore, sequestration is not provided for in the criminal process, making it difficult to enforce orders for compensation”.<sup>118</sup> On the subject of reparation the Commissioner for Human Rights of the Council of Europe expressed that he “[...] remains concerned by the failure of the authorities of Bosnia and Herzegovina to establish an effective mechanism that would ensure reparation for all victims of war-related crimes and their families in Bosnia and Herzegovina. A representative of an NGO working in the field of assistance to the war victims, with whom the Commissioner met during his visit, stressed that the lack of adequate state support caused individual tragedies: *ten former detainees of concentration camps in Bosnia and Herzegovina during the 1992-1995 war had committed suicide since 2000*. Post-war justice may not be obtained solely by prosecuting and convicting war criminals, but also by restoring the human dignity of all victims who have suffered pecuniary and especially non-pecuniary damages. The existing system of complicated individual payments through the social protection and disability scheme in the Federation of Bosnia and Herzegovina does not effectively address the needs of the victims of war-related crimes. The relevant legislation on Entity and cantonal levels aimed at providing reparation to the victims of the war is significantly more favorable to war veterans than to civilian victims. Furthermore, the authorities have so far failed to provide adequate reparation to the survivors of war crimes of sexual violence, in order to enable them to rebuild their lives”.<sup>119</sup> Furthermore, referring specifically to victims of rape or other forms of sexual violence, he noted that “[...] reports indicating that many women,

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<sup>115</sup> CAT, *Concluding Observations on BiH*, *supra* note 12, para. 18.

<sup>116</sup> *Ibid.*

<sup>117</sup> WGEID, *Report on the Mission to BiH*, *supra* note 3, paras. 39-48 and 83-85.

<sup>118</sup> Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, *supra* note 18, para. 6.

<sup>119</sup> Report Hammarberg, *supra* note 6, paras. 147-148.

who are victims of war related crimes of sexual violence, have continued to live in poverty, being unable to find a job still suffering from the physical and psychological consequences of their war-time experience. [...]”<sup>120</sup> Accordingly, he recommended that “everyone claiming to be a victim of war-related crimes should have effective access to justice and be provided with effective remedies, making reparation possible. The Commissioner urges the authorities of Bosnia and Herzegovina to take all necessary measures to ensure reparation to victims of war-related crimes and their families, in line with the established principles of international law as reiterated in the 2005 UN 'Basic Principles and Guidelines'. The authorities are urged, in particular, to examine with care the cases of civilian victims of war-related crimes and to provide them with adequate social protection, eliminating unequal treatment that exists between civilian and military victims of war”.<sup>121</sup>

69. At the time of writing, the Law on the Rights of Victims of Torture and Civilian Victims of War has not been adopted and the recommendations issued by international mechanisms remain unenforced. In the case of the CAT, as mentioned, the adoption of the Law was recommended in the last concluding observations of 2010. However, it is worth noting that in its previous follow-up reports to the CAT (submitted respectively in 2006 and 2007), BiH referred to the forthcoming adoption of a national Law on Rights of Victims of Torture and Civil Victims of War, as well as the establishment of a National Fund for Compensation of Victims. In this light, BiH has been violating its obligations over the past years and reiterating a pledge that it has not enforced since 2006. Victims of gross human rights violations are definitely exacerbated by this situation, particularly when the majority of them have to face harsh living conditions and economic restraints, as well as serious psychological traumas.
70. Contrary to the information provided by BiH in its second periodic report,<sup>122</sup> one category of victims that continues facing particular troubles in obtaining compensation for the harm suffered is that of former camp-detainees. Indeed, they are not recognised as an autonomous category of victims of the conflict. Former camp-detainees fall in a grave legal loophole. In this sense, they would have to turn to regular courts in order to claim for compensation, but many of them are not in a position to afford this for a number of reasons. As a matter of fact, proceedings before ordinary courts require a number of expenses in terms of court fees and other legal costs that the great majority of former camp-detainees are not able to bear. While the exemption from court fees can sometimes be ordered by a judge, this is not automatic and many persons do not want to take the risk to find themselves in a situation where they are not able to afford the costs of the proceedings. Moreover, expert testimonies and medical certificates (required in this kind of proceedings) must be obtained at the expense of the claimant and, again, this is often not feasible for victims or their families. Moreover, it seems to be the practice of ordinary courts to reject claims for non-pecuniary damage concerning harm suffered during the war, as they apply a statute of limitations of subjective three years and objective five years.
71. Associations of victims of gross human rights violations during the war and their relatives express their serious concerns at the existing discrimination between veterans and civilian victims of war when it comes to obtaining compensation or monthly disability allowances. Namely, under the existing legal

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<sup>120</sup> *Ibid.*, para. 158.

<sup>121</sup> *Ibid.*, paras. 187-188.

<sup>122</sup> *BiH Second Periodic Report to the HRC, supra* note 9, paras. 98, 109.

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. Further, this must be read in a context where local or entity institutions also provide different interpretations of the same provisions or regulations, thus generating further discrimination.

72. Another alarming problem is that victims of gross human rights violations, and in particular victims of rape or other forms of sexual violence who were receiving some kind of social assistance due to their status as victims of war, lose such right if they move from one entity to the other and this situation concretely discourages their return to the pre-war place of residence and undermines their freedom of movement. Some associations of victims of gross human rights violations and their families referred to the fact that the Ministry of the Una-Sana Canton systematically provides an interpretation of the Law on Civilian Victims of War according to which those who return to the entity as their pre-war place of residence, lose their right to compensation as granted in the Federation of BiH. The situation is said to be the same in the District of Brčko.
73. Finally, another general problem that has been highlighted by associations of victims of gross human rights violations from the war and their relatives is the fact that in some cases perpetrators of war crimes and crimes against humanity continue holding public offices, in particular in institutions that are in charge of ensuring the payment of monthly disability pensions to victims or of conducting the assessment of their condition as civilian victims of war in order to recognise them the status as such. One particularly delicate situation has been reported to exist in the Republika Srpska. In many cases women victims of violence refrained from submitting their documentation, 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. Indeed, another critical situation has been reported in Prijedor, where 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 – was allegedly in charge of interrogating prisoners and allegedly inflicted on detainees torture and inhuman and degrading treatment in the detention camps of Omarska and Keraterm.
74. Notably, the mentioned situation is the subject of concern for various international institutions. For example, the Special Representative of the Secretary-General on Sexual Violence in Conflict recommended that “a system of screening individuals in public service based on their war record is also needed to ensure that perpetrators are not integrated into the police or other branches of the government”.<sup>123</sup> On his side, the Commissioner for Human Rights of the Council of Europe highlighted that “[...] despite the vetting process that was carried out by the UN International police Task Forces in the late 1990s, there is still a certain number of active law enforcement officers who are suspected of having committed war-related crimes”.<sup>124</sup> Despite these recommendations, so far Bosnian authorities failed to adopt any meaningful measure to

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<sup>123</sup> Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, *supra* note 18, para. 4. Also the WGEID stressed that “in many cases perpetrators continue to hold office, often in the same communities where victims and their families live. At times the perpetrators still hold high-level offices. This constitutes a permanent threat and intimidation for the victims. Measures of vetting should be improved and/or systematized. When such measures have been taken in the past, it is not clear whether those identified as perpetrators have been dismissed from public offices, including the police force and public companies” (WGEID, *Report on the Mission to BiH*, *supra* note 3, para. 69).

<sup>124</sup> Report Hammarberg, *supra* note 6, para. 143.

address this critical problem and this affects a number of victims of gross human rights violations in the enjoyment of their basic rights and in the access to social benefits.

75. It must be noted that, over 2010 and 2011 the United Nations Development Programme (UNDP) has provided technical, administrative and logistical support to the experts working group in charge of drafting a National Strategy on Transitional Justice.<sup>125</sup> Throughout 2010 a wide consultation process was held in order to develop a matrix for the draft text of the strategy. Allegedly, during the process the experts working group faced some challenges with regard to the commitment of its members. In particular, representatives of the three ministries of the Republika Srpska involved, in line with the operational policy of the government of the Republika Srpska, had to brief the government and the Republika Srpska National Assembly on all the points of the strategy in order to obtain their endorsement for the finalisation of the strategy. At the time of writing, the government of the Republika Srpska has not discussed the subject of the National Strategy for Transitional Justice and has not adopted a decision on it. Accordingly, the representatives of the ministries of Republika Srpska that were involved in the experts working group withdrew from participating to the process until a decision is made by the government of the Republika Srpska. Thus the experts working group continued its work without representatives of the Republika Srpska and it submitted the annual report on its work to the BiH Council of Ministries that, in June 2011, approved the mentioned annual report and authorised the experts working group to finalise the strategic development process. An initial draft text of the Strategy, Strategic Matrix and Action Plan has been circulated among all the members of the experts working group, including those from the ministries of the Republika Srpska. To date no feedback whatsoever has been obtained from the latter. The UNDP has pointed out that in case the government of the Republika Srpska does not show the willingness to hold a fruitful dialogue on the draft text within a reasonable delay, then UNDP will consider the opportunity of investing in other areas in BiH, though remaining committed to promote the core values of transitional justice. If this situation of impasse is not overcome as soon as possible, it is likely that the whole exercise of putting in place a transitional justice strategy will collapse, thus leaving many problems unaddressed and deepening the sense of frustration and exclusion felt by members of associations of victims of gross human rights violations from the war and their relatives who have put in this whole endeavour many expectations. It is noteworthy that, even in the event of the eventual adoption of the strategy, fact-finding processes, although crucial for the establishment of the truth, can never replace access to justice and redress for victims of gross human rights violations and their relatives. In this sense the WGEID indicated that “victims could benefit from a truth process, but not as a substitute of justice”.<sup>126</sup>
76. Another important ongoing initiative with regard to the need to address the situation of victims of gross

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<sup>125</sup> Representatives of a number of associations submitting the present document took part to the works of the experts working group. In this sense, see the information provided for each organization *infra* section 7.

<sup>126</sup> WGEID, *Report on the Mission to BiH*, *supra* note 3, para. 38. See also para. 82. On the subject the Commissioner for Human Rights on the Council of Europe in his *Report on the Mission to BiH*, *supra* note 6, has pointed out that “genuine inter-ethnic reconciliation in the former Yugoslavia, including Bosnia and Herzegovina, cannot be achieved without justice. Justice is not only retributive, in the sense that it is aimed to punish through fair proceedings those who have committed gross human rights violations and serious violations of humanitarian law. It is also, or above all, preventive, aiming to ensure that all people in the region come to terms with the past, and live in peace in a cohesive, pluralist democratic society. Justice means, moreover, provision of adequate, effective and proportionate reparation to comfort and heal the wounds of all victims of the war without any distinction” (para. 125).

human rights violations during the war and in particular of victims of sexual violence is the drafting of a strategy to improve the status of BiH women victims/survivors of sexual violence in conflict and beyond currently coordinated by the United Nations Population Fund (UNPFA)<sup>127</sup> and the BiH Ministry of Human Rights and Refugees. The consultations to draft the strategy started in 2010 and are ongoing. Indeed, they should involve different actors from civil society and, in particular from associations working on the subject of sexual violence during the war. In this regard, Viktorija 99, an association dealing with women victims of rape or other forms of sexual violence from the war, highlighted that, being they the only NGO that deals with this topic in Central Bosnia Canton, they addressed a letter to the BiH Ministry of Human Rights and Refugees expressly requesting to be involved in the drafting and development of the national strategy. At the time of writing, received a formal reply, whereby it is said that, in view of their interest in the topic, they will be invited to future meetings.

77. According to data provided by UNPFA, the latter and the Ministry for Human Rights and Refugees are now in the process of hiring two consultants to conduct a situational analysis and gathering of quantitative and qualitative sources of information needed for the drafting of the strategy. Originally it was expected that the draft strategy would have been finalised before the end of 2011, but it would now seem more likely that this could happen in the first months of 2012. However, if adequate resources and funding are not secured by the government of BiH, also this strategy risks remaining merely on paper, to the further disappointment of victims of rape or other forms of sexual violence and their families.

**Proposed items to be included in the List of Issues  
(related to arts. 2, 6 and 7 of the ICCPR)**

**On the Lack of Compensation and Integral Reparation for Victims  
of Gross Human Rights Violations**

- ▶ Which measures have been adopted to eliminate the differences between the benefits received by civilian victims of war and veterans?
- ▶ By when it can be expected that the Law on the Rights of Victims of Torture and Civilian Victims of War will be eventually adopted? In general, what would be the main features of this law? Which measures have been adopted to secure the necessary funding to cover the expenses which would be generated by the implementation of this law?
- ▶ Which measures have been adopted to adopt and enforce the National Strategy on Transitional Justice? By when this strategy can be expected to be operational? Which measures have been adopted to secure the necessary funding to cover the expenses which would be generated by the implementation of the strategy?
- ▶ At what stage is the adoption of the national strategy to improve the status of BiH women victims/survivors of sexual violence in conflict and beyond? By when can it be expected to be operational? Which measures have been adopted to secure the necessary funding to cover the expenses which would be generated by the implementation of the strategy?
- ▶ Which measures have been adopted or are envisaged to eliminate the requirement to prove to have

<sup>127</sup> Representatives of a number of associations submitting the present document are taking part to this exercise. In this sense, see the information provided for each organisation *infra* section 7.



- sustained a certain percentage of bodily harm in order to obtain the status of civilian victim of war?
- ▶ Which measures have been adopted concretely to ensure that former camp-detainees obtain compensation and integral reparation for the harm suffered during the war?
  - ▶ Under the current legal framework, is there a possibility for civilian victims of war and, in general, victims of gross human rights violations during the war, to obtain an exemption from court fees in case they decide to bring civil claims for damage before ordinary court? Can you provide data concerning the amount of civilian victims of war that obtained exemption from court fees in claims for damage before ordinary courts before district and cantonal courts?
  - ▶ Which measures have been adopted to ensure that returnees do not lose their social benefits when transferring from an Entity to the other?
  - ▶ Which measures have been adopted or are envisaged to avoid that beneficiaries of social benefits that leave BiH for more than three months do not lose their pensions?
  - ▶ Considering the special circumstances under which many civilian victims of the war may have missed the strict deadlines to apply to obtain benefits (either because they were not aware of this or because they were temporarily leaving somewhere else), has any measure been envisaged to create a new deadline to enable those previously excluded to apply for benefits?
  - ▶ Considering the particular situation faced by victims of rape or sexual violence and the stigma they have been and continue being exposed to, has any measure been envisaged to guarantee that these people are not forced to disclose their experience in order to obtain compensation and that, in any case, the filing of claims for compensation is not subjected to any statute of limitations?
  - ▶ Considering that in the Republika Srpska there is no specific law regulating the status of victims of torture as a specific group, is there any measure envisaged to fill this gap? With regard to this specific group, what measures have been designed and implemented in the Federation of Bosnia and Herzegovina?
  - ▶ Which measures have been adopted or are envisaged to guarantee that in the Republika Srpska also those victims that do not hold medical records about treatment that dates back to no more than one year from the date of impairment or cessation of the circumstances under which the impairment occurred can obtain the status of civilian victims of war?
  - ▶ Apart from the whole system of social benefits, is there any legal framework to guarantee that victims of gross human rights violations during the war and their relatives obtain fair, adequate and prompt compensation for the harm suffered and integral reparation (including restitution, rehabilitation, satisfaction, and guarantees of non-repetition)?
  - ▶ Which measures have been adopted to ensure that a thorough programme of vetting is conducted in order to ensure that people accused of crimes against humanity or war crimes cannot hold public offices?

## 5. Other Matters of Concern

78. Although in its concluding observations of November 2006 the HRC had formulated recommendations to BiH on the specific issues analysed above, the associations subscribing this document are persuaded that there are a number of other matters that generate concern and would like to use this opportunity to update the HRC on the current situation, inviting it to include these matters in the list of

issues to be adopted in March 2012.

## 5.1 The Inadequacy of Domestic Criminal Legislation on Sexual Violence, Torture, and Enforced Disappearance

79. At present, the BiH criminal legal framework on sexual violence, torture and enforced disappearance both at the national and the entity level is inadequate. Torture, enforced disappearance, rape or other forms of sexual violence are either not codified at all or, when they are, domestic provisions do not meet international standards. On the one hand, this situation fosters impunity over past crimes and, on the other it jeopardises the prevention of future violations. In fact, ending impunity for the perpetrators of past crimes, including torture, enforced disappearances and rape or other forms of sexual violence is a circumstance pivotal, not only to the pursuit of justice, but to effective prevention.
80. With regard to rape or other forms of sexual violence, at present, the Criminal Code of BiH does not include rape or sexual violence as separate offences. Article 172 of the BiH Criminal Code refers only to rape or other forms of sexual violence when committed as part of a widespread or systematic attack against any civilian population, with the knowledge of the attack, thus failing to cover isolated instances of this crime and leaving an evident gap in the legal framework. Article 172 (g) reads as follows “coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity”. Article 173 of the BiH Criminal Code (war crimes against civilians) defines rape or other forms of sexual violence in a similar way, except that such acts do not have to be a part of a widespread or systematic attack. These definitions are not consistent with international standards and jurisprudence of international courts, in particular as long as the use of force or the threat of force are considered the only means available to establish that the rape or other sexual acts were not consensual.<sup>128</sup> International jurisprudence has highlighted that “coercive circumstances” as well as direct force or the threat of force do not need to be evidenced by a show of physical force.<sup>129</sup> In fact, threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict.<sup>130</sup>
81. At the entity level rape is codified as a separate offence and it is sanctioned even when committed as an isolated act.<sup>131</sup> All existing definitions require that the offence is committed “by force or threat of immediate attack upon life and limb, or life or limb of a close person”. This does not meet international

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<sup>128</sup> For a thorough analysis of the existing loopholes in BiH legal framework concerning rape or other forms of sexual violence, see Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting*, London, 2009, pp. 9-10 and 21-22. On this subject see also the recommendations addressed to BiH from the Working Group on Universal Periodic Review, doc. A/HRC/14/16 of 17 March 2010, No. 7 and 72.

<sup>129</sup> International Criminal Tribunal for Rwanda (ICTR), Case *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Chamber I, judgment of 2 September 1998, paras.460 and 731. See also CEDAW, Case *AT v. Hungary*, views of 26 January 2005; and ECtHR, Case *M.C. v. Bulgaria*, judgment of 3 December 2003.

<sup>130</sup> ICTR, Case *Jean-Paul Akayesu*, *supra* note 129, para. 688.

<sup>131</sup> See Article 183 of the Criminal Code of Republika Srpska; Article 203 of the Criminal Code of the Federation of BiH; and Article 206 of the Criminal Code of the District of Brčko. Notably, the three criminal codes regulate also the offences of sexual violence against a helpless person; sexual intercourse with a child; and sexual intercourse by abuse of position.

standards on the subject.<sup>132</sup> The Criminal Code of the Federation of BiH does not contain a definition of crimes against humanity and of crimes of war. Rape or other forms of sexual violence committed in these specific circumstances are therefore not covered by the existing legal framework in the Federation of BiH. The criminal codes of the Republika Srpska and of the District of Brčko regulate “war crimes against civilians”,<sup>133</sup> sanctioning, among others “whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, orders an attack against civilian population, settlement, individual civilians or persons unable to fight, which results in [...] rape”. These definitions do not seem to cover rape or other forms of sexual violence as crimes against humanity or war crimes according to international standards.

82. In the light of the above, in the concluding observations of 2010 the CAT expressed its serious concern that the definition of war crimes of sexual violence in the Criminal Code is not consistent with the definition in international standards and jurisprudence of international courts and that, in particular, articles 172 and 173 of the Criminal Code may result in impunity for such crimes.<sup>134</sup> Accordingly, the CAT recommended BiH to amend the Criminal Code to include a definition of sexual violence in accordance with international standards and jurisprudence related to prosecution of war crimes of sexual violence and remove the condition of “force or threat of immediate attack” from the present definition. At the time of writing, none of this has happened.<sup>135</sup>
83. The concern expressed by the CAT has been echoed also by other international institutions, including the European Commission. In fact, in the progress report for 2010 on BiH it is indicated that “[...] War crimes involving sexual violence have not yet been recognised in the Criminal Code in accordance with international standards. [...]”<sup>136</sup> Moreover, the recommendation to amend the Criminal Code in order to include a definition of sexual violence in accordance with international standards was addressed to BiH also in the context of the Universal Periodic Review, which the country underwent in February 2010.<sup>137</sup>
84. The issue of the amendment of the Criminal Code with regard to sexual violence was considered at a meeting held in the spring of 2011 by the Criminal Code Implementation Assessment Team (CCIAT) that is an *ad hoc* body created for the purpose of legislative amendments by the Ministry of Justice. While in principle the CCIAT expressed its support to the need of modification of the Criminal Code with regard to sexual violence, the concrete consideration of the matter has been postponed because another issue has taken priority (special investigative measures). At the time of writing, it is not clear when the discussion on this subject will be resumed. In any case, even assuming that this may happen as soon as possible, it must be highlighted that the CCIAT represents only the first step of a much more complicated process that leads to legislative amendment or modification.
85. The BiH Criminal Code sanctions torture both when committed as an isolated instance (Article 190) and when committed as part of a widespread or systematic attack against any civilian population, with the

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<sup>132</sup> See, *inter alia*, ECtHR, Case *M.C.*, *supra* note 129, paras. 88-108 and 154-156.

<sup>133</sup> Article 148 of the Criminal Code of the District of Brčko; and Article 433 of the Criminal Code of the Republika Srpska.

<sup>134</sup> CAT, *Concluding Observations on BiH*, *supra* note 12, para. 9.

<sup>135</sup> *Ibid.*

<sup>136</sup> European Commission, *2010 Progress Report on BiH*, *supra* note 32, p. 18.

<sup>137</sup> Human Rights Council, *Report of the Working on the Universal Periodic Review – BiH*, doc. A/HRC/14/16 of 17 March 2010, paras. 90.7 and 90.72.

knowledge of the attack (Article 172.1.f and 172.2.e). Torture is also codified as a war crime (Article 173.1.c). Article 180 of the Criminal Code sanctions those who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of, among others, crimes against humanity and war crimes, therefore including torture when committed in these specific circumstances. This provision regulates also superior responsibility for crimes against humanity and war crimes and establishes that “the fact that a person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the court determines that justice so requires”. The sanction envisaged for the crime of torture pursuant to Article 190 is imprisonment for a term between one and ten years. According to the Special Rapporteur on Torture, torture should be punishable with imprisonment between six and twenty years.<sup>138</sup> In order to have a deterrent effect, the sanction provided for under the BiH Criminal Code shall be modified to be commensurate to the gravity of the crime.

86. The Criminal Codes of the Republika Srpska, of the Federation of BiH and of the District of Brčko do not codify torture as a separate criminal offence. Indeed, these codes contain provisions outlawing several offences which are similar but not equal to torture, such as the infliction of bodily injuries, battery, duress, wilful violence, etc. While all these offences may constitute a type of torture, none of them is sufficient to cover all the elements contained in the definition of Article 1 of the Convention against Torture and therefore fall short of providing an equally comprehensive protection of physical and psychological integrity. Furthermore, the incitement, instigation, superior orders or instructions, consent, acquiescence and concealment of acts of torture are not criminalised under the entities’ criminal codes.
87. The Criminal Code of the Federation of BiH does not contain a definition of crimes against humanity and of crimes of war. Torture committed in these specific circumstances is therefore not covered by the existing legal framework in the Federation of BiH. The criminal codes of the Republika Srpska and of the District of Brčko regulate “war crimes against civilians”,<sup>139</sup> sanctioning, among others “whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, orders an attack against civilian population, settlement, individual civilians or persons unable to fight, which results in [...] that civilian population be subject to killings, torture, inhuman treatment, biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation, immense suffering or violation of bodily integrity or health”. This definition does not seem to duly cover torture when committed as a crime against humanity or as a war crime according to international standards. Criminal codes at the entity level fail to expressly codify that no order or instruction from any public authority, civilian, military or other, may be invoked to justify torture.<sup>140</sup>
88. In its concluding observations of November 2010, the CAT indicated that it remained concerned that “the State party has still not incorporated into domestic law the crime of torture as defined in article 1 of the Convention and that the instigation and superior orders or consent, acquiescence of acts of torture

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<sup>138</sup> Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Study on the phenomenon of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention*, doc. A/HRC/13/39/Add.5 of 5 February 2010, para. 144.

<sup>139</sup> Article 148 of the Criminal Code of the District of Brčko; and Article 433 of the Criminal Code of the Republika Srpska.

<sup>140</sup> Notably, Articles 399 (failure and refusal to execute an order) and 401 (resisting a superior) of the Criminal Code of the Federation of BiH fail to establish that those who refuse or disobey an order to commit torture, crimes against humanity or war crimes will not be punished.

are not criminalized in the State party laws”.<sup>141</sup> Accordingly, reiterating a recommendation already formulated in 2005,<sup>142</sup> it urged BiH to “speed up the process of the incorporation of the crime of torture, as defined in the Convention into the State party laws as well as the harmonization of the legal definition of torture in the Republika Srpska and Brčko District with the Criminal Code of Bosnia and Herzegovina. The State party should also ensure that these offences are punishable by appropriate penalties which take into account their grave nature, as set out in article 4, paragraph 2 of the Convention”.<sup>143</sup>

89. Enforced disappearance is a unique and consolidated act and it is impermissible to reduce it to a fragmented combination of acts that falls short in addressing the complexity of this heinous offence. At present, the Criminal Codes of the entities do not include enforced disappearance neither as a crime against humanity or as a separate criminal offence. Entities rely on provisions of criminal codes outlawing offences that are related but nevertheless not equal to enforced disappearance, such as abduction, torture, illegal deprivation of liberty, etc. While all these offences may form part of a type of enforced disappearance, none of them covers all the elements of this particular offence.
90. At the national level, enforced disappearance is not codified as an autonomous offence. Article 172 of BiH Criminal Code refers only to enforced disappearances committed as part of a widespread or systematic attack against any civilian population, with the knowledge of the attack. The inclusion of enforced disappearance among crimes against humanity carries significant legal consequences. Criminalising enforced disappearance in domestic law only when committed as part of a widespread or systematic attack against civilians implies that many acts of enforced disappearance would remain outside the scope of domestic criminal law and the competence of national jurisdiction.<sup>144</sup> Accordingly, Article 172 of BiH Criminal Code would fail to cover criminal responsibility for isolated instances of the crime of enforced disappearance.
91. Moreover, Article 15 of the BiH Criminal Code defines that the running of the period set by statute of limitation to institute criminal prosecution commences on the day on which the criminal offence has been perpetrated, without referring to any exception in the case of continuous offences or crimes. Article 19 of the BiH Criminal Code provides that “criminal prosecution and execution of a sentence are not subject 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 subject to the statute of limitations”.<sup>145</sup> Under the existing legal framework it does not result sufficiently clear whether a statute of limitations for criminal proceedings would be applied to crimes of enforced disappearance that do not fall under the narrow definition provided by Article 172 of the BiH Criminal Code.
92. On its part, after having conducted its mission to BiH, the WGEID analysed the existing criminal legal

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<sup>141</sup> CAT, *Concluding Observations on BiH*, *supra* note 12, para. 8.

<sup>142</sup> CAT, *Concluding Observations on BiH (2005)*, doc. CAT/C/BIH/CO/1 of 25 November 2005, para. 9.

<sup>143</sup> CAT, *Concluding Observations on BiH*, *supra* note 12, para. 8.

<sup>144</sup> United Nations, Commission on Human Rights, *Report submitted by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances*, doc. E/CN.4/2002/71 of 8 January 2002 (“Report Nowak”), paras. 74 and 81; and Council of Europe, Parliamentary Assembly, Resolution 1463 (2005), *Enforced Disappearances*, 3 October 2005, para. 10.1.2.

<sup>145</sup> In the same sense see Article 20 of the Criminal Code of the Federation of BiH; Article 116 of the Criminal Code of the Republika Srpska; and Article 126 of the Criminal Code of the District of Brčko.

framework on enforced disappearance<sup>146</sup> and it recommended that “in accordance with the Declaration and the Convention, the Code be amended to include enforced disappearances as an autonomous crime, so that it can be punished in situations where it cannot be qualified as a crime against humanity”.<sup>147</sup>

93. Although the amendment of criminal legislation concerning torture was discussed at the already mentioned meeting of the CCIAT in the spring of 2011,<sup>148</sup> the Team estimated that existing provisions are adequate enough, and decided not to continue considering amendments or modifications of the criminal legislation on this matter. On the other hand, the issue of criminal legislation on enforced disappearance does not seem to have been discussed yet. This is a clear indication that, at present, the recommendations issued by international human rights bodies on this issue are disregarded and certainly not likely to be enforced by BiH within a reasonable time-frame.

**Proposed items to be included in the List of Issues  
(related to arts. 2, 6, and 7 of the ICCPR)**

**On the Criminal Legal Framework on Sexual Violence, Torture and Enforced Disappearance**

- ▶ Which measures have been adopted or are envisaged to amend the existing criminal legislation on rape or other forms of sexual violence, both at the national and entity level, in order to bring it into accordance with international standards?
- ▶ Which measures have been adopted or are envisaged to amend the existing criminal legislation on torture, both at the national and entity level, in order to bring it into accordance with international standards?
- ▶ Which measures have been adopted or are envisaged to amend the existing criminal legislation on enforced disappearance, both at the national and entity level, in order to bring it into accordance with international standards?

## **5.2 The Non-Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance**

94. The International Convention for the Protection of All Persons from Enforced Disappearance was adopted by Resolution 61/177 of the General Assembly of 20 December 2006 and it was opened for signature on 6 February 2007 in Paris. In fact, BiH signed the Convention on 6 February 2007. Pursuant to Article 18 of the 1969 Vienna Convention on the Law of the Treaties, a State that has signed a treaty is obliged to refrain from acts which would defeat the object and purpose of the treaty concerned. In its concluding observations of 2010, the CAT recommended to BiH to “consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance”.<sup>149</sup> Also the WGEID issued

<sup>146</sup> WGEID, *Report on the Mission on BiH*, *supra* note 3, paras. 12-13.

<sup>147</sup> *Ibid.*, paras. 54 and 87(b). For related recommendations see also paras. 55 and 87 (c).

<sup>148</sup> *Supra* para. 84.

<sup>149</sup> CAT, *Concluding Observations on BiH*, *supra* note 12, para. 24 (f).

the same recommendation.<sup>150</sup>

95. The International Convention for the Protection of All Persons from Enforced Disappearance entered into force on 23 December 2010. At December 2011, it has been signed by 90 States and ratified or acceded by 30. Among the States parties to the Convention, 12 have recognised the competence of the Committee on Enforced Disappearances to receive and examine individual communications pursuant to Article 31 of the Convention, and 13 have recognised the competence of the Committee to receive and examine inter-State communications pursuant to Article 32.
96. Notwithstanding the recommendation of the CAT and the WGEID, at the time of writing BiH has not yet ratified the International Convention for the Protection of All Persons from Enforced Disappearance. BiH does not seem to consider the recommendations issued in this sense by international mechanisms as a first priority.

**Proposed items to be included in the List of Issues  
(related to arts. 2, 6, 7, 9, 10 and 16 of the ICCPR)**

**On the Ratification of the International Convention on the Protection of All Persons from Enforced Disappearance**

- ▶ When is BiH going to ratify the International Convention on the Protection of All Persons from Enforced Disappearance and to recognize the competence of the Committee on Enforced Disappearance to receive and examine individual and inter-State communications?

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## **6. Conclusions and Recommendations**

97. In general, it is the view of the subscribing organisations that there has not been a significant progress in the implementation of the recommendations formulated in November 2006 by the HRC and a number of issues remain the source of deep concern. While relatives of missing persons, women victims of rape or other forms of sexual violence and former camp-detainees continue experiencing isolation and indifference, there seem to be an institutional paralysis and a lack of political will which are causing the non-implementation of the recommendations issued by the HRC in its concluding observations, as well as by other international human rights mechanisms. In this context, relatives of missing persons, former camp-detainees and women victims of rape during the war are left to bear the brunt of violations that have been ongoing over the past 20 years. This situation is causing a climate of deep distrust among victims of gross human rights violations from the war and their relatives towards BiH institutions and, given that not even the recommendations of international mechanisms are proving effective, there is a general feeling of powerlessness and frustration. BiH remains in breach of its international obligations as spelled out, among others, by the International Covenant on Civil and Political Rights. In particular,

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<sup>150</sup> WGEID, *Annual Report for 2010*, doc. A/HRC/16/48 of 26 January 2011, para. 92.

the present situation corresponds to ongoing violations by BiH of its obligations under Articles 2, 6, 7, 9, 10 and 16 of the International Covenant on Civil and Political Rights.

98. For the reasons explained above, the associations submitting the present document respectfully request the HRC to recommend to BiH<sup>151</sup> to:

- ▶ 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 State shall ensure that witnesses in war crimes trials have access to adequate legal consultancy free of charge. The State must ensure to set up without delay an effective public system of free legal aid enabling victims of war to receive legal support (counselling and, if need be, access to court), if they are not able to afford it.
- ▶ ensure that the National Strategy for War Crimes is duly implemented without delay and its application is thoroughly explained to the wide public in a transparent manner, thus fostering a climate of trust towards institutions. Undisputedly, the existence of the strategy cannot be used to delay indefinitely investigations and to avoid providing information to victims of gross human rights violations, their relatives or their representative associations. BiH authorities shall take all necessary measures to prevent the flight of people accused of or convicted for, war crimes and crimes against humanity and to investigate, judge and sanction those responsible for these events.
- ▶ ensure that all cases of enforced disappearance are investigated within the shortest delay and that prosecutors and courts establish a mechanism of regular information of families of victims and their associations with regard to the process of investigation, the results of the investigations and whether trials may be forthcoming. Bosnian investigative authorities must bear in mind that once the existence of gross human rights violations has come to their attention, they must act of their own motion and they cannot leave it to the initiative of the relatives of the victims either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures. Further, in the investigation and prosecution of war crimes, including enforced disappearances, prosecutors and courts at all levels must apply the 2003 Criminal Code and not the Criminal Code of the SFRY.
- ▶ 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 of the MPI are filled through a regular and transparent election process. The approval of audit reports shall be considered a priority and the regular budget for 2011 and 2012 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

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<sup>151</sup> In general, the recommendations contained in the additional information on the follow-up of the concluding observation by the HRC on BiH, *supra* note 8, para. 58, remain valid.



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 process of exhumation of mortal remains is accelerated and the necessary staff and resources are appointed to this end. Moreover, the State must ensure that the Prosecutor's Office of BiH establishes a mechanism to regularly inform relatives of missing persons and their associations on the progresses made in the process of exhumation and identification of mortal remains and to answer to the questions that they may have in this regard. Finally, BiH must ensure that during and after the processes of exhumation and identification of mortal remains relatives of missing persons receive, free of charge, adequate psychosocial accompaniment, provided by teams of professionals especially trained for this work and financed by the State.
- ▶ ensure that Constitutional Court's decisions, in particular those regarding missing persons, are fully implemented without further delay. Moreover, if criminal prosecution proves not adequate to address the problem, Bosnian authorities shall start a process, in consultation with many actors, including representatives of civil society, to address the problem and to find an alternative effective solution to eventually overcome this systemic problem.
- ▶ ensure that the Law on the Rights of Victims of Torture and Civil Victims of War is adopted without any further delay and adequate financial resources are secured. The State shall also take a decision on the adoption and implementation of the National Strategy for Transitional Justice without delay and guarantee that the same is done with the Programme to address the needs of victims of rape or other forms of sexual violence during the war currently coordinated by the UNPFA and the BiH Ministry of Human Rights and Refugees. The process to draft the latter shall be as transparent and participative as possible and the measures adopted shall have a transformative aim, in the sense that they must allow women to ameliorate or at least consolidate their position in society. BiH shall undertake all necessary actions to ensure that former camp-detainees are recognized as an autonomous category of victims and the legal vacuum concerning their rights is filled as soon as possible. Discrimination between veterans and civilian victims of war in the access to and enjoyment of, monthly disability pensions shall be eliminated. BiH shall ensure that a comprehensive programme of vetting is undertaken in order to avoid that war criminals hold public offices. In no case shall the return to the pre-war place of residence determine the loss of the social benefits to which the victim is entitled. Indeed, special attention shall be devoted to the amendment of the legal framework in the Republika Srpska in order to

overcome the existing gaps.

- ▶ proceed without delay to amend the criminal codes at the State and at the entity level to include a definition of sexual violence in accordance with international standards and jurisprudence related to prosecution of war crimes of sexual violence and remove the condition of “force or threat of immediate attack”.
- ▶ ensure that the Criminal Code of BiH is amended and that the punishment for the offence of torture is commensurate to the gravity of the crime. Ensure that the criminal codes at the entity level integrate the crime of torture as defined under Article 1 of the Convention against Torture, criminalising also the incitement, instigation, superior orders or instructions, consent, acquiescence and concealment of acts of torture. Entities shall also integrate torture as a crime against humanity and as a war crime in accordance with international standards.
- ▶ ensure that the criminal codes at the entity level are harmonised with the criminal code at the State level, in particular with the view to integrate the crime of enforced disappearance as a crime against humanity, and set appropriate penalties. The criminal codes at all levels shall be amended to integrate the autonomous crime of enforced disappearance and shall establish that the statutes of limitations for criminal proceedings on cases of enforced disappearance take into account the continuous nature of the offence and hence commence to run from when the fate or whereabouts of the victim are established with certainty and made known to their relatives.
- ▶ ensure that criminal codes at all levels explicitly define that a person who acted pursuant to an order to commit torture, or enforced disappearance shall not be relieved of criminal responsibility and that those who refuse to obey such an order will not be punished.
- ▶ ratify without delay the Convention for the Protection of All Persons from Enforced Disappearance and refrain from formulating any reservation that may result incompatible with the object and purpose of the treaty. BiH shall also recognize the competence of the Committee on Enforced Disappearances to receive and examine individual and inter-State communications pursuant to Articles 31 and 32 of the Convention.

On behalf of:

Association of the Concentration Camp-Detainees Bosnia and Herzegovina

Association of Families of Killed and Missing Defenders of the Homeland War from Bugojno Municipality

Association of Relatives of Missing Persons from Hadžići Municipality

Association of Relatives of Missing Persons from Ilijaš Municipality

Association of Relatives of Missing Persons from Kalinovik (“Istina-Kalinovik ‘92”)

Association of Relatives of Missing Persons of the Sarajevo-Romanija Region

Association of Relatives of Missing Persons of the Vogošća Municipality

Association Women from Prijedor – *Izvor*

Association of Women-Victims of War

Croatian Association of Prisoners of the Homeland War in Canton of Central Bosnia

Prijedor 92

Regional Association of Concentration Camp-Detainees Višegrad

Sumejja Gerc

Viktorija 99

*Vive Žene* Tuzla

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

A handwritten signature in black ink, appearing to read 'Philip Grant', with a stylized, cursive script.

Philip Grant

TRIAL Director