

October 2011

Written information for the follow-up to the concluding observations of the committee against torture on Bosnia and Herzegovina's combined second to fifth periodic reports (CAT/C/BIH/CO/2-5).

Submitted by

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

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CONTENTS

Contents	Paragraphs
1. Background	
2. The Non-Amendment of the Criminal Code with regard to Sexual Violence	1-4
3.1 The Failure to Effectively Investigate, Judge and Sanction those Responsible for Enforced Disappearance, Torture, and Rape or other Forms of Sexual Violence during the War	5-16
3.2 The Non-implementation of Constitutional Court's Decisions in cases relating to Missing Persons	7-28
4. 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	29-40
5.1 The Functioning of the Missing Persons Institute (MPI)	41-45
5.2 The Non-establishment of the Fund for the Support of Families of Missing Persons	46-48
5.3 The Establishment of the Central Record of the Missing Persons (CEN)	49-52
5.4 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	53-56
5.5 The Flaws in the Investigation of Cases of Enforced Disappearance	57-61
5.6 The Non-Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance	62-64
6. Other Matters of Concern	65
6.1 The Inadequacy of the Criminal Legislation on Torture and Enforced Disappearance	66-69
6.2 The Failure to Provide Adequate Protection and Support to Witnesses in War Crimes Trials	70-79
7. Conclusions and Recommendations	80-81
8. The Associations Submitting this Written Information	

1. Background

From the Concluding Observations on BiH (CAT/C/BIH/CO/2-5 of 19 November 2010)

Paragraph 28

The Committee requests the State party to **provide, within one year (i.e. 19 November 2011), follow-up information in response to the Committee's recommendations contained in paragraphs 9, 12, 18 and 24.**

Paragraph 9

The Committee recommends that the State party **amend the Criminal Code to include a definition of sexual violence in accordance with international standards and jurisprudence related to the prosecution of war crimes of sexual violence and remove the condition of "force or threat of immediate attack" from the present definition. [...]**

Paragraph 12

The Committee urges the State party to **fight impunity by ensuring prompt and effective investigation into all allegations of war-time crimes and prosecuting and punishing the perpetrators with appropriate penalties commensurate with their grave nature. [...]** Furthermore, it is necessary to **fully implement the Constitutional Court's judgments without further delay, in particular with regard to cases on enforced disappearances, and to prosecute failure to comply with such judgments.**

Paragraph 18

The Committee recommends that the State party **adopt the draft law on the rights of victims of torture and civil victims of war and 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 the aim of obtaining physical and psychological recovery and their social reintegration. [...]**

Paragraph 24

The Committee recommends that [...] the State party:

- (a) Ensure the **full independence of the Institute for Missing Persons and provide the Institute with adequate material, financial and human resources, including available technology** necessary to detect and exhume graves;
- (b) Ensure that the **fund for families of missing persons is established without any further delay** and that its financing is entirely secured;
- (c) **Complete the Central Record of Missing Persons (CEN) without further delay and make it available to the public;**
- (d) Respect the right of families of missing persons, including those who live outside Bosnia and Herzegovina, to know the truth by **keeping them informed of the progress made in the processes of exhumation and identification of mortal remains and provide them with psychosocial assistance** during the process;
- (e) Fulfil its obligation to **investigate all cases of enforced disappearances;**
- (f) Consider **ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.**

The associations that submit this written information have a number of concerns with regard to the implementation by Bosnia and Herzegovina (BiH) of the Convention against Torture in general and of the recommendations contained in the concluding observations issued by the Committee against Torture (CAT) on 19 November 2010 in particular. However, given the specific expertise of the associations concerned, this document focuses solely on matters related to missing persons and their relatives, former camp-detainees, and 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 Convention against Torture or that it has implemented all the recommendations contained in the concluding observations adopted by the CAT on 19 November 2010. In particular, the subscribing associations are concerned at reported human rights violations, as documented in the written follow-up information submitted to the CAT by Amnesty International.

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.¹ 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 30,000.² 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”.³ 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.⁴ 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 men⁵ who

¹ See Report by Mr. Manfred Nowak, Expert Member of the Working Group on Enforced or Involuntary Disappearances (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”.

² 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”. At para. 101.

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

⁴ 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”).

⁵ 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 the knowledge of TRIAL, to date, no comprehensive research concerning specifically men victims of rape has ever been carried.

were raped or otherwise sexually abused (rates vary from 20,000 to 50,000 victims).⁶

It is also known that during the war clandestine detention facilities were set up. At present 652 places of detention have been registered and among them are particularly well known those of Manjača, Omarska, Keraterm, Trnopolje, Luka-Brčko, Batković, Dretelj, Heliport, Gabela, Dermaljevo, KPD Foča, Sušica-Vlasenica, Kula-Sarajevo, Žepče.⁷ 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 Bosnian population, no matter to which ethnic group, if any, they belong 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 their respect. While it is often alleged that it is necessary to turn a page over the past, this cannot be done at the price of erasing these people from that page and failing to guarantee their basic rights that have been violated over the past 20 years.

On these premises, in October 2010 TRIAL, together with six associations of relatives of missing persons and five associations dealing with the subject of victims of rape or other forms of sexual violence during the war submitted written information for the examination by the CAT of BiH's 2nd to 5th combined periodic reports.⁸ The said submission represents a basis for the present document and will be largely referred to.⁹

2. The Non-Amendment of the Criminal Code with regard to Sexual Violence

1. In the concluding observations of 2010 the CAT expressed its serious concern that the definition of war crimes of sexual violence in the BiH Criminal Code is not consistent with the definition in international

⁶ Early estimates by the BiH government suggested the number of 50,000 victims although this figure was questioned as unreliable and politicized. The Parliamentary Assembly of the Council of Europe estimated that 20,000 women were subjected to rape or other forms of sexual violence. The figure of 50,000 is mentioned also in the Secretary-General In-depth Study, *supra* note 8, 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.

⁷ 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/ANXV.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. Milimir 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; 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.

⁸ On 9 November 2010 representative of TRIAL met with the CAT to present the information contained in the written submission.

⁹ Written information for the examination of BiH's combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, available at http://www2.ohchr.org/english/bodies/cat/docs/ngos/Trial_BosniaHerzegovina45.pdf.

standards and jurisprudence of international courts and that, in particular, articles 172 and 173 of the BiH Criminal Code may result in impunity for such crimes.¹⁰ 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.¹¹

2. 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. [...]”.¹² Moreover, the recommendation to amend the BiH 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 2010.¹³
3. The issue of the amendment of the BiH 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) which is an *ad hoc* body created by the BiH Ministry of Justice for the purpose of legislative amendments. While in principle the CCIAT expressed its support to the modification of the BiH Criminal Code with regard to sexual violence, the concrete consideration of the matter was 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.
4. In this light, it does not seem that BiH has considered the recommendation formulated by the CAT and other international mechanisms as a real priority, and there is no indication that there is a serious will to implement this as soon as possible.

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

5. 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.¹⁴ Besides the trials carried out before the International Criminal Tribunal for the former Yugoslavia (ICTY), the main responsibility to investigate, judge and sanction those responsible

¹⁰ CAT, *Concluding Observations on BiH*, doc. CAT/C/BIH/CO/2-5 of 19 November 2010, para. 9.

¹¹ *Ibid.*

¹² European Commission, *Bosnia and Herzegovina Progress Report for 2010*, doc. SEC(2010) 1331 of 9 November 2010, p. 18.

¹³ 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.

¹⁴ On this matter see the written information for the examination of BiH's combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 9, paras. 64-78.

for the grave violations committed during the conflict lies within the judicial system of BiH.

6. 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”.¹⁵ 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”.¹⁶
7. Along the same line, the WGEID indicated that “impunity remains a problem”¹⁷ and recommended a number of measures to be undertaken to bring to justice those responsible for enforced disappearance.¹⁸ Moreover, in the progress report for 2010 of the European Commission it was pointed out that “the number of prosecuted war crimes involving cases of sexual violence remained low. Sustained efforts are needed to guarantee successful investigations and prosecution, as well as witness protection and psychological support for victims”.¹⁹ Moreover, it was added 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”.²⁰ 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”.²¹ Furthermore, 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”.²² Finally, also the Commissioner for Human Rights of the Council of Europe referred to the “[...] failure of the authorities of Bosnia and Herzegovina to fulfil their international obligations to effectively prosecute war-related crimes of sexual violence, and to provide adequate protection and reparation to the victims of these

¹⁵ CAT, *Concluding Observations on BiH*, *supra* note 10, para. 12.

¹⁶ *Ibid.*

¹⁷ WGEID, *Report on the Mission to BiH*, *supra* note 3, para. 49.

¹⁸ See *infra* paras. 57-61.

¹⁹ European Commission, *Bosnia and Herzegovina 2010 Progress Report*, *supra* note 12, p. 14.

²⁰ *Ibid.*, 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”.

²¹ *Ibid.*, p. 14.

²² Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, 1 February 2011, para. 4.

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. [...]”.²³ 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 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.²⁴

8. Although since November 2010 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 apart from the 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 Progress Report on BiH for 2010 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”.²⁵ 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”.²⁶ With regard to the

²³ 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.

²⁴ *Ibid.*, para. 193.

²⁵ European Commission, *Progress Report on BiH for 2010*, *supra* note 12, pp. 13 and 21.

²⁶ Report Hammarberg, *supra* note 6, paras. 132 and 133.

National Strategy for War Crimes, the Commissioner for Human Rights expressed his concerns for “reports indicating that limited 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”.²⁷

9. 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”,²⁸ 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 without adequate staff and equipment 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 at the fact that there are some areas where war crimes were committed 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 allegations 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 Bosnian authorities.
10. Numerous remain the instances where victims of gross human rights violations during the war, their relatives or their 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.
11. One example is the case of Mr. R. S.²⁹ 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,

²⁷ *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>.

²⁸ 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”.

²⁹ 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 concerned. Their full names could be disclosed, upon request, to the CAT, given that guarantees are provided that these data will not be made public in any way.

the Trebinje Prosecutor's Office conducted an investigation, but the members of the 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 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.

12. 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 obtained 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.
13. 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. At the time of writing, 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.

14. 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 Judicial Council of the 1st 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.³⁰ 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.³¹ 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.³²
15. 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.³³ 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 cases has resulted in their

³⁰ 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/>.

³¹ 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/>.

³² Among others, see Balkan Investigative Reporting Network, *Runaway Indictees Undermine Bosnian Justice*, 2008, at: <http://www.bim.ba/en/113/10/9785/>.

³³ 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).

escape from prison.³⁴

16. 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 hand, 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.

3.2 The Non-implementation of Constitutional Court's Decisions in cases relating Missing Persons

17. Over the past years a considerable number of decisions issued by the Constitutional Court of BiH have not been implemented.³⁵ Although the non-implementation of the mentioned decisions is considered to be a crime under domestic legislation,³⁶ to date no one has been prosecuted and sanctioned for such an offence. It must certainly be stressed that this problem does not concern only cases relating to missing persons, but has a general nature.³⁷ However, in this written information only the decisions

³⁴ 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. It is noteworthy that in October 2011 Mr. Marko Radić, who was serving his sentence in the prison in Zenica was transferred to Mostar, that is his hometown and the place where he perpetrated many of the crimes he has been convicted for (namely, he was sentenced to 20 years of deprivation of liberty for crimes against humanity committed against women, children and elderly in the Vojno prison camp in Mostar). His transfer to Mostar is the source of deep concern to associations of victims and, in particular, of associations working with women victims of rape or other forms of sexual violence during the war, as they fear that this situation may facilitate Mr. Radić escape or bring to instances of threats to witnesses and victims.

³⁵ On this matter see the written information for the examination of BiH's combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 9, paras. 42-45. Moreover, for updates statistics, see Hanušić A., *Justice not Implemented = Justice Denied Optimizing the Enforcement of the Constitutional Court of Bosnia and Herzegovina's Decision*, Policy Brief 65, Open Society Fund Bosnia and Herzegovina, 2011.

³⁶ *Infra* para. 21.

³⁷ 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 *Summary of Stakeholder's Information*, doc. A/HRC/WG.6/7/BIH/3 of 12 November 2009, para. 28.

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.

18. 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, in its progress report for 2010 on BiH, the European Commission noted that “BiH is in breach of the Interim Agreement due to non-compliance with the European Convention on Human Rights”.³⁸ 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”.³⁹ In his report on the visit to BiH, the Commissioner for Human Rights of 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”.⁴⁰ 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”.⁴¹ 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”.⁴²
19. 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 also subscribing the present document⁴³ submitted a position paper concerning this subject to the President of the Constitutional Court of BiH and to the Head of Department III of the Prosecutor’s Office of BiH. As a consequence, in March 2011 representatives of TRIAL met with representatives of the Constitutional

³⁸ European Commission, *Progress Report on BiH for 2010*, supra note 12, p. 6. In this light, it must be stressed that the European Court of Human Rights (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 is the existence of a shortcoming which can have the result to affect a whole class of citizens (ECtHR, Case *Šekerović 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.

³⁹ *Ibid.*, p. 15.

⁴⁰ 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.

⁴¹ WGEID, *Report on the Mission to BiH*, supra note 3, footnote 5.

⁴² CAT, *Concluding Observations on BiH*, supra note 10, para. 12.

⁴³ 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.

Court of BiH and the Prosecutor's Office of BiH to discuss the information contained in the above-mentioned position paper.

20. 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.
21. 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 to 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.
22. 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).

23. 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.
24. 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).⁴⁴
25. This answer resulted particularly surprising to the applicants since they were never notified about the

⁴⁴ 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).

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 October 2011 the Fund has not been established yet.⁴⁵ 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 not 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.

26. 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”.⁴⁶ 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.⁴⁷
27. 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

⁴⁵ *Infra* paras. 46-48.

⁴⁶ Report Hammarberg, *supra* note 6, para. 175.

⁴⁷ *Ibid.*, para. 197.

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 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 Organisation for Security and Co-operation in Europe (OSCE); and the Department for the Execution of Judgments of the European Court of Human Rights.

28. 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 Bosnian authorities do not seem to assume it as a first priority or to be willing to discuss potential solutions. The recommendation formulated in November 2010 by the CAT remains unenforced and it unfortunately does not seem that there will be any meaningful improvement in the near future.

4. 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

29. 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.⁴⁸

30. 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 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”.⁴⁹ Accordingly, it recommended 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”.⁵⁰

31. Similar recommendations were issued by the WGEID after it conducted its mission to BiH.⁵¹ Along the same line, after her visit to BiH in November 2010, the Special Representative of the Secretary-General

⁴⁸ See written information for the examination of BiH's combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 9, paras. 92-125.

⁴⁹ CAT, *Concluding Observations on BiH*, *supra* note 10, para. 18.

⁵⁰ *Ibid.*

⁵¹ WGEID, *Report on the Mission to BiH*, *supra* note 3, paras. 39-48 and 83-85.

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 recognises 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”.⁵² 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 favourable 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”.⁵³ Furthermore, referring specifically to victims of rape or other forms of sexual violence, he noted that “[...] reports indicating that many women, 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. [...]”.⁵⁴ 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”.⁵⁵

⁵² Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH, supra* note 22, para. 6.

⁵³ Report Hammarberg, *supra* note 6, paras. 147-148.

⁵⁴ *Ibid.*, para. 158.

⁵⁵ *Ibid.*, paras. 187-188.

32. At the time of writing, the Law on the Rights of Victims of Torture and Civil Victims of War⁵⁶ 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.
33. One category of victims that is 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 3 years and objective 5 years.
34. 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 framework, victims that 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 a further instance of discrimination.
35. 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 from the war and their families referred to the fact that the Ministry of the Una-Sana Canton systematically provides an interpretation of the Law on the Basis of Social Protection of Civilian Victims of War and Families with

⁵⁶ As a matter of fact, the law did not even enter the procedure before the Council of Ministers.

Children according to which those who return to the entity because it was 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.

36. 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 to conduct the assessment of their condition as civilian victims of war and 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.
37. Notably, the mentioned situation is a 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”.⁵⁷ 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”.⁵⁸ Despite these recommendations, so far BiH authorities failed to adopt any meaningful measure to 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.
38. With regard to the adoption of a National Strategy on Transitional Justice, in 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 the strategy.⁵⁹ 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

⁵⁷ Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, *supra* note 22, 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 systematised. 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).

⁵⁸ Report Hammarberg, *supra* note 6, para. 143.

⁵⁹ 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 organisation *infra* section 8.

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 finalization 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 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 Expert 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. The Council of Ministers approved the mentioned annual report in June 2011, 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”.⁶⁰

39. Another important ongoing initiative with regard to the need to address the situation of victims of gross human rights violations during the war and in particular of victims of sexual violence is the drafting of a national programme to address the needs of victims of rape or other forms of sexual violence during the war currently coordinated by the United Nations Population Fund (UNFPA)⁶¹ and the BiH Ministry of Human Rights and Refugees. The consultations to draft the programme started in the winter of 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

⁶⁰ 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 40, 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).

⁶¹ 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 8.

association dealing with women victims of rape or other forms of sexual violence from the war, highlighted that, being they are 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, the association received a formal reply, whereby it is said that, in view of their interest in the topic, they will be invited to future meetings.

40. According to data provided by UNFPA, the latter and the BiH Ministry for Human Rights and Refugees are now in the process of hiring two consultants to conduct a situational analysis and mapping of reports of quantitative and qualitative sources of information needed for drafting the strategic frame of the programme. It is expected that the draft programme will be finalised before the end of 2011. Indeed, adequate resources and funding must be secured by the government of BiH to avoid any disappointment of victims of rape or other forms of sexual violence and their families.

5.1 The Functioning of the Missing Persons Institute (MPI)

41. 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).⁶² The MPI started to operate in June 2007, but it became fully operational only from 1 January 2008. The MPI is mandated, among other tasks, to collect, process and systematise the information on missing persons, as well as individual and mass graves; to establish a central, unified database of missing persons (CEN); to keep records, provide notification to families of missing persons, including the issuance of certificates on disappearance and identity of victims; to find, verify, and mark locations of mass and individual graves; and to participate in excavations and exhumations of mass and individual graves, collection of visible surface remains, autopsies, anthropological examinations.⁶³ 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;⁶⁴ 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).⁶⁵ The members of these associations also participate in the work of the Steering Board, but without the right to vote.

⁶² Article 24.1 of the LMP 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.

⁶³ On the MPI, its functioning and the related problems see the written information for the examination of BiH's combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 9, paras. 7-30.

⁶⁴ 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.

⁶⁵ 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.

42. In its concluding observations of 2010, 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”.⁶⁶ Also 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”.⁶⁷
43. 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.⁶⁸ Moreover, one member of the Board of Directors resigned and was replaced only on 1st September 2011. 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.⁶⁹ 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.
44. Furthermore, the audit reports submitted to the co-founders for approval by the MPI for 2009 and 2010 have not obtained the favourable votes of both cofounders over a prolonged period of time.⁷⁰ 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

⁶⁶ CAT, *Concluding Observations on BiH*, *supra* note 10, para. 24 (a).

⁶⁷ 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.

⁶⁸ 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.

⁶⁹ 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 received a reply from ICMP, according to which the procedure to appoint the new members is not completed yet and that in the upcoming period the Steering Board of the MPI would need to convene a meeting in order to solve the problems concerning the elections.

⁷⁰ Namely, while the ICMP has voted in favour, the Council of Ministries has not.

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 been working 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 process⁷¹ has been kept waiting for the transfer of resources 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.

45. 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 affiliations⁷² undermines the credibility of the institution and the effectiveness of its work.

5.2 The Non-establishment of the Fund for Support Families of Missing Persons

46. 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 2004.⁷³
47. In its concluding observations of November 2010, 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”.⁷⁴ In the same sense, the WGEID recommended to BiH to establish the Fund as a matter of priority.⁷⁵
48. Notwithstanding the recommendations issued by international human rights mechanisms, at October 2011, which is almost 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

⁷¹ *Infra* para. 55.

⁷² In this sense, it must be recalled that Article 5 of the LMP 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).

⁷³ The problems related to the non-establishment of the Fund were analysed in detail in the written information for the examination of BiH’s combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 9, paras. 40-41.

⁷⁴ CAT, *Concluding Observations on BiH*, *supra* note 10, para. 24 (b).

⁷⁵ WGEID, *Report on the Mission to BiH*, *supra* note 3, para. 84 (a).

damage to relatives of missing people who are denied their right to obtain support and compensation. Associations of relatives of missing people throughout the country express their deep concern 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 enforced the rights they are entitled to and without having ever obtained any form of support from a Fund that 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.⁷⁶

5.3 The Establishment of the Central Record of the Missing Persons (CEN)

49. Article 21 of the Law on Missing Persons provides for the creation of the CEN, intended to include all records that were or are kept at local or entity levels, by associations of families of missing persons and other associations of citizens, Tracing Offices of the organizations of the Red Cross in BiH, as well as international organisations. 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 2009.⁷⁷
50. In this sense, 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”.⁷⁸ Along the same line, the WGEID indicated that BiH should complete the CEN as soon as possible and make it public.⁷⁹
51. At October 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. 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 recommendation of the CAT will be implemented

⁷⁶ On this matter see the written information for the examination of BiH's combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 9, paras. 42-45. See also *supra* paras. 17-28.

⁷⁷ On this matter see the written information for the examination of BiH's combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 9, paras. 31-39.

⁷⁸ CAT, *Concluding Observations on BiH*, *supra* note 10, para. 24 (c).

⁷⁹ WGEID, *Report on the Mission to BiH*, *supra* note 3, paras. 24 and 75.

very soon.

52. 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).⁸⁰ 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”⁸¹ and it accordingly recommended BiH to “clarify what the impact of this provision will be for families and for investigations and prosecutions”,⁸² Bosnian 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.

5.4 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

53. 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.⁸³ 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.⁸⁴
54. The CAT recommended 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”.⁸⁵ On its part, the WGEID noted that the number of prosecutors working on exhumations is extremely low and there are few resources and staff devoted to this crucial issue. 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

⁸⁰ On this matter see the written information for the examination of BiH's combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 9, paras. 36-39 and 101-103.

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

⁸² *Ibid.*, para. 85.

⁸³ See written Information for the examination of the BiH combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 9, paras. 19-30.

⁸⁴ 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.

⁸⁵ CAT, *Concluding Observations on BiH*, *supra* note 10, para. 24 (d).

resources should be given to people working in this area to enable them to complete these gruelling tasks”.⁸⁶

55. Since 1st January 2011, all exhumations and identifications of mortal remains fall under the jurisdiction of the Prosecutor’s Office of BiH. 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 be exaggerated, 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,⁸⁷ limited herself to suggest to these people to “check on the Prosecutor’s Office of BiH’s web-site”.⁸⁸ Among the many considerations that can be expressed on such a reply, it is enough to point out that not 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 in 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.
56. 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 – including the CAT – 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

⁸⁶ WGEID, *Report on the Mission to BiH*, *supra* note 3; paras. 31- 36 and 79 (a-d).

⁸⁷ 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.

⁸⁸ 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.

amplification of their suffering.

5.5 The Flaws in the Investigation of Cases of Enforced Disappearance

57. Although some significant results have been accomplished and there are some investigations ongoing in cases of enforced disappearance,⁸⁹ as highlighted by the WGEID “impunity remains a problem in the country”⁹⁰ and that, 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”.⁹¹ 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”.⁹² On its part, the CAT recommended that BiH’s obligation to investigate all cases of enforced disappearance must be ensured.⁹³ 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.
58. Since November 2010 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.⁹⁴ 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 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. [...]”.⁹⁵
59. 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

⁸⁹ See also written Information for the examination of the BiH combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 9, paras. 67-73. See also *supra* paras. 5-16.

⁹⁰ WGEID, *Report on the Mission to BiH*, *supra* note 3, para. 49.

⁹¹ *Ibid.*, para. 63.

⁹² *Ibid.*, para. 90 (b).

⁹³ CAT, *Concluding Observations on BiH*, *supra* note 10, para. 24 (e).

⁹⁴ 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.

⁹⁵ WGEID, *General Comment on the Right to the Truth in relation to Enforced Disappearances*, 2010, para. 3.

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.⁹⁶ 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”.⁹⁷

60. In many other cases, the 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.⁹⁸ 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 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 allegedly ethnically or politically biased. To avoid this kind of prejudices and misunderstandings, a more transparent policy would certainly help, as well as an enhanced outreach strategy. Indeed, 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 of the authorities concerned.
61. Finally, another subject of great concern is that in some of those cases where relatives of missing persons eventually established a 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 BiH Criminal Code. 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

⁹⁶ See, *inter alia*, ECtHR, Case *Hugh Jordan v. United Kingdom*, judgment of 4 May 2001, para. 141.

⁹⁷ See, *inter alia*, ECtHR, Case *Finucane v. United Kingdom*, judgment of 1 July 2003, para. 67.

⁹⁸ See *supra* paras. 5-16.

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 BiH 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).⁹⁹ 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.¹⁰⁰ 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.¹⁰¹ Unfortunately, the indications provided by some cantonal prosecutors seem to disregard these recommendations and to run in the opposite direction.

5.6 The Non-Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance

62. 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 BiH to "consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance".¹⁰² Also the WGEID issued the same recommendation.¹⁰³
63. The International Convention for the Protection of All Persons from Enforced Disappearance entered into force on 23 December 2010. At October 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.

⁹⁹ WGEID, *Report on the Mission to BiH*, *supra* note 3, para. 56.

¹⁰⁰ *Ibid.*, para. 57. See also WGEID, *General Comment on Enforced Disappearance as a Continuous Crime*, 2010.

¹⁰¹ WGEID, *Report on the Mission to BiH*, *supra* note 3, paras. 57 and 87 (e).

¹⁰² CAT, *Concluding Observations on BiH*, *supra* note 10, para. 24 (f).

¹⁰³ WGEID, *Annual Report for 2010*, doc. A/HRC/16/48 of 26 January 2011, para. 92.

64. Notwithstanding the recommendation of the CAT, 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.

6. Other Matters of Concern

65. Although in its concluding observations of November 2010, the CAT requested BiH to provide follow-up information, within one year, only on the issues analysed above, the associations subscribing this document are persuaded that there are a number of other matters that are subject of concern and would like to use this opportunity to update the CAT on the current situation. It is noteworthy that most of these matters were in fact already considered by the CAT in its concluding observations of 2010, even though it did not specifically require the State to submit follow-up information on them.

6.1 The Inadequacy of the Criminal Legislation on Torture and Enforced Disappearance

66. In the written information for the examination of BiH combined 2nd to 5th periodic reports submitted in October 2010 by TRIAL and other 11 BiH organisations, a thorough analysis of the gaps and pitfalls of the criminal legislation on torture and enforced disappearance was provided.¹⁰⁴

67. In its concluding observations, 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 are not criminalised in the State party laws”.¹⁰⁵ Accordingly, reiterating a recommendation already formulated in 2005,¹⁰⁶ 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 harmonisation 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”.¹⁰⁷

68. On its part, after having conducted its mission to BiH, the WGEID analysed the existing criminal legal framework on enforced disappearance¹⁰⁸ 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”.¹⁰⁹

69. Although the amendment of criminal legislation concerning torture was discussed at the already

¹⁰⁴ Written Information for the examination of the BiH combined 2nd to 5th periodic reports, *supra* note 9, paras. 55-61.

¹⁰⁵ CAT, *Concluding Observations on BiH*, *supra* note 10, para. 8.

¹⁰⁶ CAT, *Concluding Observations on BiH (2005)*, doc. CAT/C/BIH/CO/1 of 25 November 2005, para. 9.

¹⁰⁷ CAT, *Concluding Observations on BiH*, *supra* note 10, para. 8.

¹⁰⁸ WGEID, *Report on the Mission on BiH*, *supra* note 3, paras. 12-13.

¹⁰⁹ *Ibid.*, paras. 54 and 87(b). For related recommendations see also paras. 55 and 87 (c).

mentioned meeting of the CCIAT in the spring of 2011,¹¹⁰ 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, including the CAT, on this issue are disregarded and certainly not likely to be enforced by BiH within a reasonable time-frame.

6.2 The Failure to Provide Adequate Protection and Support to Witnesses in War Crimes Trials

70. Besides the already mentioned **problem of impunity**,¹¹¹ **victims of gross human rights violations from the war and their relatives have been struggling with the lack of comprehensive and adequate witness protection measures as well as the lack of appropriate programmes of psychological support before, during and after testifying in war crimes trials.**¹¹²
71. In this sense, in its concluding observations of 2010, the 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)”.¹¹³ Accordingly, it recommended BiH to “ensure that victims are effectively protected, not further distressed or pressurised 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-traumatisation 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 necessary**”.¹¹⁴
72. **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,**

¹¹⁰ *Supra* para. 3.

¹¹¹ *Supra* paras. 5-16.

¹¹² On these matters, see written information for the examination of the BiH combined 2nd to 5th periodic reports, *supra* note 9, paras. 79-91.

¹¹³ CAT, *Concluding Observations on BiH*, *supra* note 10, para. 17.

¹¹⁴ *Ibid.*

and similar programmes should be created at the local level”.¹¹⁵ 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”.¹¹⁶ 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. [...]”.¹¹⁷ 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”.¹¹⁸ 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-subsidised 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”.¹¹⁹ 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 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

¹¹⁵ WGEID, *Report on the Mission to BiH*, *supra* note 3, para. 90 (e).

¹¹⁶ Council of Europe, Parliamentary Assembly, Resolution 1784 (2011) of 26 January 2011, para. 4.

¹¹⁷ *Ibid.*, para. 7.

¹¹⁸ *Ibid.*, para. 16.2.2.

¹¹⁹ Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, *supra* note 22, para. 4.

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".¹²⁰ 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".¹²¹

73. 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.**
74. In fact, 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. The latter 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 1st 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 quit the court-room without the possibility to defend herself, Mr. Perić did not receive any warning. This event has inflicted on Ms. Čusto a serious psychological trauma and she is not willing to render her testimony before any court in the future as she 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.
75. 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 to

¹²⁰ 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.

¹²¹ *Ibid.*, paras. 191-192.

rape. She was a witness at the trial before the ICTY against some of the perpetrators.¹²² 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 have “suffered 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 October 2011, she has never heard back from the Police about the investigative steps they may have undertaken or about the progresses of the investigation. To the knowledge of Mrs. Antić, Mr. Delić has not even been questioned by the police about this episode.¹²³

76. Further, there are many 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. At the time of writing, 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.
77. 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 that is located in Mostar. This association works with survivors of 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 (located 500 meters from the Police Station) 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 *OT/SC/* 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 Defence Council (HVO) and a voice recorder. A large LCD TV was taken from the

¹²² ICTY, Case *Prosecutor v. Mucić et al.* (case IT-96-21), judgment of 16 November 1998.

¹²³ This information has been referred to TRIAL by the Republika Srpska Regional Association of Detainees Višegrad.

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 October 2011 those responsible have not been duly identified, judged and sanctioned.¹²⁴ 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.

78. 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 programme¹²⁵ and therefore only those who can pay for a legal counsel may have access to some sort of support. Many witnesses in war crimes trials indicated 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 do not have such possibility. In many cases, witnesses have therefore felt somehow intimidated by the whole 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.
79. Further, the provision of psychological support to witnesses in 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 testimony. In this sense, the recommendations of the CAT have not been implemented.

7. Conclusions and Recommendations

80. In general, it is the view of the subscribing organisations that since November 2010 there has not been a significant progress. 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 CAT in its concluding observations, as well as by other international human rights mechanisms. With minor exceptions, that are nonetheless somehow flawed, to date none of the measures recommended in 2010 by the CAT has been implemented, leaving

¹²⁴ 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.

¹²⁵ On this particular issue see the written Information for the examination of the BiH combined 2nd to 5th periodic reports, *supra* note 9, para. 107. See, inter alia, WGEID, *Report on the Mission to BiH*, *supra* note 3, para. 90 (a).

relatives of missing persons, former camp-detainees and women victims of rape during the war to bear the brunt of violations that have been ongoing over the past 19 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 Convention against Torture. In particular, the present situation corresponds to ongoing violations by BiH of its obligations under Articles 1, 2, 4, 5, 7, 12, 13 and 14 of the Convention against Torture.

81. For the reasons explained above, the associations submitting the present document respectfully request the CAT to recommend to BiH¹²⁶ to:

- ▶ 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 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 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, BiH 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 UNFPA 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

¹²⁶ In general, the recommendations contained in the written information for the examination of the BiH combined 2nd to 5th periodic reports, *supra* note 9, para. 126, remain valid.

their position in society. BiH shall undertake all necessary actions to ensure that former camp-detainees are recognised 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.

- ▶ 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 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 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 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 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 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. BiH 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.

- ▶ 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.
- ▶ 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.
- ▶ 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.

On behalf of:

Association of the Concentration Camp-Detainees Bosnia and Herzegovina

Association of the Concentration Camp-Detainees of Republika Srpska

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

Centre for Legal Assistance to Women Zenica

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

Infoteka (Women's Information and Documentation Centre)

Prijedor 92

Sumejja Gerc

Viktorija 99

Vive Žene Tuzla

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

Philip Grant

TRIAL Director

8. The Associations Submitting this Written Information

a) TRIAL (*Swiss Association against Impunity*)

TRIAL (*Swiss Association against Impunity*) is a Geneva-based NGO established in 2002 and in consultative status with the United Nations Economic and Social Council (ECOSOC). It is apolitical and non-confessional. Its principal goals are: the fight against impunity of perpetrators, accomplices and instigators of genocide, war crimes, crimes against humanity, enforced disappearances and



acts of torture. TRIAL has set up an Advocacy Centre, born from the premise that, despite the existence of legal tools able to provide redress to victims of international crimes, these mechanisms are considerably underused and thus their usage should be enforced.

Considering that the needs of victims of gross human rights violations during the war, their relatives and the organisations which represent them are sadly overwhelming and that there is no similar initiative in BiH and the region, TRIAL has been active and present in the country since early 2008. TRIAL is thus currently providing legal support to victims of gross human rights violations committed during the war and their relatives who wish to bring their cases before an international human rights mechanism. So far, TRIAL has submitted 40 applications related to gross human rights violations perpetrated during the war to the European Court of Human Rights (ECtHR) and to United Nations Human Rights Committee (HRC). On 29 June 2009 TRIAL submitted a general allegation to the WGEID about the numerous obstacles encountered in the implementation of the 1992 Declaration for the Protection of All Persons from Enforced Disappearance. As a consequence of the general allegation submitted by TRIAL, the WGEID visited BiH from 14 to 21 June 2010 and in March 2011 it presented the report on its mission to the Human Rights Council.

In October 2010 TRIAL, together with six associations of relatives of missing persons and five associations working on the issue of women victims of rape or other forms of sexual violence from the war submitted an 80-page alternative report to CAT in view of the examination of the combined 2nd to 5th periodic reports. In November 2010 representatives of TRIAL met with the CAT to illustrate the contents of the alternative report. In May 2011 TRIAL, together with 12 associations dealing with the issue of women victims of rape or other forms of sexual violence during the war submitted to the Special Rapporteur on Violence against Women, its Causes and Consequences a general allegation on the obstacles encountered by this category of people in the enjoyment of their rights.

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b) Association of the Concentration Camp-Detainees – Bosnia and Herzegovina

The **Association of the Concentration Camp-Detainees – Bosnia and Herzegovina** was established on 25 August 1996. It is a non-governmental, non-partisan and multinational federation of associations of citizens of BiH, of survived detainees and family members of detainees who were killed. It is composed by many associations in the country, as well as in diaspora. The Association consists of 52 municipal associations, four associations in the diaspora (Germany, Denmark, Sweden, United States of America), six cantonal Association of Detainees (Una-Sana, Central Bosnia, Neretva, Zenica-Doboj, Tuzla and Sarajevo).



Representatives of the Association of the Concentration Camp-Detainees – Bosnia and Herzegovina participated to one of the sub-thematic working groups coordinated by UNDP for the development of a National Strategy for Transitional Justice.

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c) Association of the Concentration Camp-Detainees of Republika Srpska

The **Association of the Concentration Camp-Detainees of Republika Srpska** was founded 10 years ago and was formally registered in Banja Luka. The primary goal of the association was to gather all former detainees in Republika Srpska in order to represent them as their only and legitimate representative. The association's main tasks are: establishing an accurate database about all detainees who were in detention, as well as records of places of detention and number of detainees that passed through these places; and supporting this category of people in their basic needs and in the realisation of their fundamental rights.



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

The **Association of Families of Killed and Missing Defenders of the Homeland War from Bugojno Municipality** was founded in 1995 and it has 98 members. To date, the Association is seeking for 35 missing persons (20 soldiers and 15 civilians). The Association represents the relatives of missing persons of Croat origin in and around Bugojno Municipality and it is actively involved in different types of activities such as: 1) collecting information with regard to missing persons; 2) providing help and support to families of missing persons in the realisation of their rights; and 3) cooperating with other associations of relatives of missing persons, with the ICMP and the MPI, with the ICRC, with government institutions and with the Prosecutor's Office.

The Association actively participates to the work of the Regional Coordination of Family Associations of Relatives of Missing Persons from former Yugoslavia, and until the end of September 2011 Ms. Vanda Havranek was a member of the MPI Advisory Board.

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e) Association of Relatives of Missing Persons from Hadžići Municipality

The Association of Relatives of Missing Persons from Hadžići Municipality was founded in 2000 with its headquarters in Hadžići. The Association represents the relatives of missing persons in and around this region and it is involved in different types of activities such as: 1) pointing out to families of missing persons the significance of giving their blood samples for DNA analysis; 2) collecting information with regard to missing persons; 3) organising the commemoration day for the suffering of citizens of Hadžići (25th May each year); 4) helping relatives of missing persons to fulfil their rights, and to obtain compensation, disability pensions and return of property; and 5) cooperating with the Prosecutor's Office, the MPI, the ICMP, the ICRC, and the International Criminal Tribunal for the former Yugoslavia (ICTY).

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f) Association of Relatives of Missing Persons from Ilijaš Municipality

The Association of Relatives of Missing Persons from Ilijaš Municipality was founded on 6 June 2009 with its headquarters in Ilijaš. The Association represents the families of missing persons in and around this region and it is actively involved in different types of activities. In particular: 1) pointing out to families of missing persons the significance of giving their blood samples for DNA analysis; 2) collecting information with regard to missing persons; 3) helping the relatives of missing persons to fulfil their rights, and to obtain disability pensions, return of property, etc.; 4) cooperating with the MPI, the ICMP and the ICRC.

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

The Association of Relatives of Missing Persons from Kalinovik ("Istina-Kalinovik 92") was established in August 2004 under the name "Istina-Kalinovik '92". It is a non-governmental, non-political, multiethnic and multinational association of citizens. The Association gathers members of families of missing persons from Kalinovik area, as well as families of missing persons from other municipalities whose loved ones went missing on the territory of Kalinovik. The Association implements many activities and among them are the following: gathering data about missing persons from Kalinovik; establishing a missing persons database; drafting a book about killed civilians at the area of municipality Kalinovik; gathering information about the process of identification of the missing people from Kalinovik.



Representatives of the Association participate to the work of the Regional Coordination of Family Associations of Relatives of Missing Persons from former Yugoslavia.

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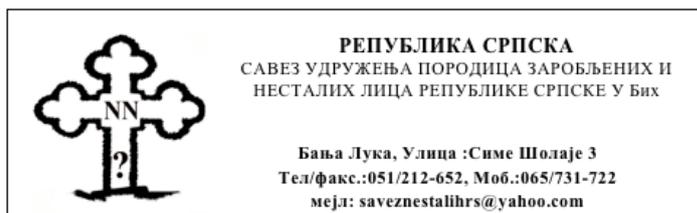
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h) Association of Relatives of Missing Persons of the Sarajevo-Romanija Region

The **Association of Relatives of Missing Persons of the Sarajevo-Romanija Region** was founded on 12 December 2002 with its headquarters in East Sarajevo. The Association represents the victims of the war in and around this region and has about 1,500 members. Some of the association's activities are: 1)

pointing out to relatives of disappeared persons the significance of giving their blood samples for DNA analysis; 2) collecting information with regard to missing persons; 3) organising the commemoration day for the suffering of Bosnian Serbs on 20th August each year; 4) helping the relatives of missing persons to fulfil their rights (e.g. to obtain disability pensions or the return of property); 5) helping relatives of disappeared people with procedures before domestic and international human rights mechanisms; and 6) cooperating with the MPI, the ICMP and the ICRC.



The President of the Association, Mr. Milan Mandić, is a member of the Regional Coordination of Missing Persons' Family Associations from the former Yugoslavia.

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i) Association of Relatives of Missing Persons of the Vogošća Municipality

The **Association of Relatives of Missing Persons of the Vogošća Municipality** was established in 2001 and its main aim is to help relatives of disappeared people to realise their rights before domestic courts and State institutions. The Association represents the interests of its members before all relevant institutions and organises the holding of a commemoration ceremony (in June each year) to mark the enforced disappearance of people from Vogošća. The Association is also an active member of the Regional Coordination Board of Family Associations of Relatives of Missing Persons from BiH, the Republic of Croatia and the Republic of Serbia. As part of this engagement, the Association gives its contribution in organising conferences and lobbying for the signing of an agreement between neighbouring countries of the former Yugoslavia for the establishment and disclosure of the fate and whereabouts of missing persons. This work of the Board is supported by the ICMP. Since 2008 the Association cooperates actively with the TRIAL to implement activities related to, among others, the filing of individual communications on behalf of relatives of victims of enforced disappearance to the HRC.

The President of the Association, Ms. Ema Čekić, is also the President of the Regional Coordination of Missing Persons' Family Associations from the former Yugoslavia.

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j) Association of Women from Prijedor - Izvor

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



Izvor participated to the expert working group coordinated by the UNDP for the development of a National Strategy for Transitional Justice.

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k) Association of Women-Victims of War

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



to obtain a stable employment and to solve housing problems.

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

Moreover, the association formed part of one of the sub-thematic working groups coordinated by UNDP for the development of a National Strategy for Transitional Justice, and it is participating to the working group coordinated by UNFPA for the development of a National Strategy to deal with Women victims of violence during the war.

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I) Centre for Legal Assistance to Women Zenica

The **Centre for Legal Assistance to Women Zenica** is registered as an association of citizens and it acts as an independent, non-governmental, apolitical and non-profit organisation. The Centre for Legal Assistance to Women was established in 1996 by graduated lawyers from Zenica, in order to help women in the protection and fulfilment of their fundamental human rights. The basic objectives of the Centre are: 1) offering free legal aid to women who face problems in the realisation of their rights; 2) ensuring psychological support to women in the realisation of their rights; 3) promoting women's rights; 4) raising awareness on women's rights in all areas and stressing the need to harmonise the existing legal framework with international human rights standards; 5) educating and informing women about their fundamental rights and the existing mechanisms of self-protection in case their rights are violated; 6) pointing out in public the existing problems related to the respect of women's rights and proposing solutions to overcome them; 7) educating students of law about the practical application of human rights law and young girls about feminism, sex discrimination and prevention of violence; 8) advocating for an increased participation of women in decision-making bodies in order to build a permanent mechanism to achieve a satisfying level of respect of women's rights; 9) supporting the establishment of development programmes to prevent and protect women from domestic violence, trafficking and economic exploitation; 10) monitoring domestic and international legislation concerning women's rights; 11) supporting the development of a women's network for a more effective protection of women's rights; 12) cooperating with other NGOs and governmental agencies dealing with issues related to women's rights.



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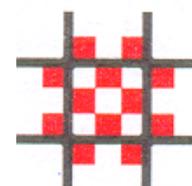
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m) Croatian Association of War Prisoners of the Homeland War in Canton of Central Bosnia

The **Croatian Association of War Prisoners of the Homeland War in Canton of Central Bosnia** was established in 2004. The primary goal of the Association is to ensure that former camp-detainees enjoy the fundamental rights to which they are entitled. At present, the Association counts with approximately 4,000 members. The Association premises are based in Busovača, and are complemented by six branches based in Fojnica, Novi Travnik, Travnik, Kiseljak, Bugojno and Jajce.



Mr. Anđelko Kvesić, as president of the Croatian Association of War Prisoners of the Homeland War in Canton of Central Bosnia participated to one of the sub-thematic working groups coordinated by UNDP for the development of a National Strategy for Transitional Justice.

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n) Infoteka (Women's Information and Documentation Centre)

The association **Infoteka (Women's Information and Documentation Centre)** is a voluntary, non-partisan organisation of citizens gathered on the basis of feminist principles, general principles of non-violence in relation to gender, the principle of non discrimination and, in general, on women's rights. From 1993 to 2009 Infoteka worked as a part of the NGO Medica. On 17 March 2009 it was decided to create a new, autonomous organisation with the aim of focussing on women's rights. Infoteka keeps as a legal reference for its work the Convention on the Elimination of All Forms of Discrimination against Women. The main goal of Infoteka is to improve the quality of life of girls and women in BiH, ensuring them a life without violence, access to education, information and work, economic independence, freedom of speech, equal social and political participation, guarantee of general and reproductive health and family planning as well as of sexual health and sexuality, gender and sexual identity, social rights and protection, ownership and



disposition of private property.

Representatives of Infoteka took part to one of the sub-thematic working groups coordinated by the UNDP for the development of a National Strategy for Transitional Justice, as well as of the working group coordinated by UNFPA for the development of a National Strategy to deal with Women victims of violence during the war.

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o) Prijedor 92

The Association **Prijedor 92** from Prijedor was established in July 2007. Previously, they worked informally due to the political situation in the country and fear, until they registered in 2007. The Association brings together survivors of detention camps, families of killed persons in camps, people who were taken to forced labour. Even if most of the members are Bosniaks (90%), the Association also counts with members pertaining to other ethnic groups. At present the Association has approximately 4,000 members.



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p) Sumejja Gerc

The Association **Sumejja Gerc**, also known as **Centre for Victims of the Vojno Concentration Camp** fights for the rights of 120 women victims of



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

concentration camps and war torture, 56 children victims of torture, 134 men former concentration camp-detainees of Herzegovina camps and 28 women victims of war torture from the area of Prozor Municipality. The Association has a mandate to empower victims to regain their dignity; to gather information and written statements about places and manner of suffering; to cooperate with the Prosecutor's Office and the Court of BiH and establish a network of children and women who have suffered on the territory of Herzegovina. The

protection of social rights of the victims is also one part of the mandate of the Association as well as the organising of rehabilitation activities (organising field-trips, social events, and medical treatments). Educational programmes for the economical empowerment for victims are also initiated and realised by the Association and they lead to the overall development of the local community. The Association cooperates with social and medical institutions with the aim of providing expert help in the treatment of victims of war.

Sumejja Gerc participates to the extended working group coordinated by UNFPA for the development of a National Strategy to deal with Women victims of violence during the war.

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q) **Viktorija 99**

The Association **Viktorija 99**, which has its Headquarters in Jajce, is an apolitical NGO aiming at improving the quality of living conditions of women. It started operating in 1996, organising educational activities and humanitarian assistance. At present, it is mostly dedicated to solving various problems of women, their families and young people; organising different educational programmes; doing advocacy and providing various services. The objectives of the association's work are:

women's education on the principles of functioning of democratic society; affirmation of women and their involvement in society; improving the working conditions of women; better and faster labour recruitment of women; general education of women; health and psycho-social care for women and their families; inclusion of women in cultural and sport events and environmental protection. After years of experience with a variety of activities and through various partnerships, the organisation has recognised the problems of the women who have experienced sexual abuse or rape during the war in the Central Bosnia Canton, especially those who failed for various reasons to realise their status and rights as civilian victims of war. In order to help them the association has initiated a campaign of advocating for the support of women victims of torture.



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r) *Vive Žene* Tuzla

The Association *Vive Žene Tuzla* (Centre for Therapy and Rehabilitation) is a NGO which was established in 1994 and that focuses on psycho-social help and support, education, and promotional-editorial activities with a multi-disciplinary, democratic and participatory approach to the work with traumatised families and individuals. The primary goal of *Vive Žene Tuzla* is to improve the mental health of people who were subjected to torture during the conflict in BiH, minimising the effects of trauma-related disorders in the lives of tortured, raped or abused victims and facilitating their emotional healing. *Vive Žene Tuzla* considers that the maintaining and protection of the mental health of citizens is a sound way to contribute to the reconstruction of a war-torn society. While respecting the basic principles of humanity and human rights, the organisation implements basic values laid through the work with marginalised groups, civilian victims of war and the protection of the families with children. The work carried out by *Vive Žene Tuzla* aims at preventing torture through a multidisciplinary approach, including psychotherapy, psychosocial, social, medical and legal counselling. Accordingly, the team of *Vive Žene Tuzla* consists of psychologists, social workers, instructors, teachers, doctors, a nurse, a psychotherapist and a legal counsel. Besides working with individuals, the organisation works also in the community, with a view to foster reconciliation, representation, rebuilding of trust and reconstruction of broken relationships and reduction of ethnic barriers.



Representatives of *Vive Žene Tuzla* took part to the consultation process for the development of a National Strategy for Transitional Justice lead by the UNDP. The Association also participates to the extended working group coordinated by UNFPA for the development of a National Strategy to deal with Women victims of violence during the war.

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

The Women's Section of the Concentration Camp Torture Survivors Canton Sarajevo which functions as part of the Union of Concentration Camp Torture



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

The Women's Section of the Concentration Camp Torture Survivors Canton Sarajevo participates to the extended working group coordinated by UNFPA for the development of a National Strategy to deal with Women victims of violence during the war.

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