

**General Allegation to the Special
Rapporteur on Violence against Women,
its Causes and Consequences**

**THE SITUATION OF WOMEN VICTIMS OF RAPE OR
OTHER FORMS OF SEXUAL VIOLENCE DURING
THE WAR IN BOSNIA AND HERZEGOVINA**

May 2011

Submitted by

TRIAL (*Swiss association against impunity*)

Women's Section of the Association of Concentration Camp Detainees

Centre for Legal Assistance to Women Zenica

Association for Rehabilitation of Torture Victims-Centre for Torture Victims (CTV)

Foundation of Local Democracy

Association of Women-Victims of War

Infoteka (Women's Information and Documentation Centre)

Medica Zenica

Through Heart to Peace

Society for Threatened Peoples

Sumejja Gerc

Viktorija 99

Vive Žene Tuzla

**TRIAL
P.O. Box 5116
1211 Geneva 11
Switzerland
Tel/Fax +41 22 321 61 10
www.trial-ch.org
info@trial-ch.org**

CONTENTS

Contents	Paragraphs
1. Background	1-4
1.1 General Context concerning Victims of Rape or other Forms of Sexual Violence during the War in BiH	5-16
2. The Codification of Rape other Forms of Sexual Violence	17-19
3. The Failure to Effectively Investigate, Identify, Judge and Sanction those Responsible for Rape or other Forms of Sexual Violence and to Regularly Inform Relatives and Victims	20-26
3.1 Concrete Instances relating Victims of Rape or other Forms of Sexual Violence	27-34
4. The Failure to Adequately Protect and Support Witnesses in Proceedings in Cases Rape or other Forms of Sexual Violence during the War	35-40
4.1 The Lack of Adequate Protection of Witnesses in Cases of Harassment and Subsequent Failure to Thoroughly Investigate such Instances and to Judge and Sanction those Responsible	41-42
4.2 Other Instances of Harassment and Reprisals against Associations Working with Women victims of Rape and other Forms of Sexual Violence from the War	43
4.3 The General Inadequacy of the Manner in which Protection of Witnesses is Granted	44-47
4.4 The Material Difficulties Faced by Witnesses	48-49
4.5 The Lack of Adequate Psychological Support for Witnesses before, during and after the Testimony	50-51
5. The Failure to Provide Adequate Compensation and Integral Reparation to Victims of Rape or other Forms of Sexual Violence during the War	52-65
5.1 Problems related to Claiming Compensation from Perpetrators	66-72
5.2 Problems of Adequate Housing as a Measure of Restitution	73-80
5.3 Problems related to Restitution and Preferential Treatment in Employment	81-83
5.4 Problems of Access to Education for Children of Victims of Rape or other Forms of Sexual Violence as a Measure of Restitution	84-86
5.5 Problems related to Medical and Psychological Rehabilitation	87-91
6. Conclusions and Recommendations	92-95

The Associations submitting the General Allegation

Annexes

1. Background

1. The Special Rapporteur on Violence against Women, its Causes and Consequences is mandated to seek and receive information on violence against women and to respond effectively to such information, as well as to recommend measures, ways and means, at the national, regional and international levels, to eliminate violence against women and to remedy its consequences. In the past, the Special Rapporteur has dealt with the subject of violence against women perpetrated in times of war on a number of occasions.¹
2. In particular, in 2001 the Special Rapporteur issued a report on violence against women perpetrated and/or condoned by the State during times of armed conflicts, whereby the subject is analyzed in depth and the international obligations existing for States in such contexts are spelled out in detail.² In the mentioned document reference is made to the instances of rape committed during the conflict in Bosnia and Herzegovina (BiH) and to the jurisprudence developed in this regard until 2000 by the International Criminal Tribunal for the former Yugoslavia. Furthermore, in the study the situation of women victims of rape during armed conflicts in certain countries is analyzed in a detailed manner and there is also an evaluation of the responses provided by the respective governments. However, BiH was not included among the countries studied thereby.³ Moreover, in the annual reports from 2001 to 2010, BiH does not appear among the governments with which the Special Rapporteur has exchanged communications.
3. BiH is a State party to the International Covenant on Civil and Political Rights (on 1 September 1993 it succeeded the former Yugoslavia, which ratified the treaty on 2 June 1971), as well as to the First Optional Protocol to the International Covenant on Civil and Political Rights (ratified on 1 March 1995). Among others, among others, BiH is also a State party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (on 1 September 1993, it succeeded the former Yugoslavia, which ratified the treaty on 10 September 1991); to the Convention on the Rights of the Child (on 1 September 1993, it succeeded the former Yugoslavia, which ratified the treaty on 3 January 1991); to the Convention on the Elimination of All Forms of Discrimination against Women (on 1 September 1993, it succeeded the former Yugoslavia, which ratified the treaty on 26 February 1982) and to the European Convention for the Protection of Human Rights and Fundamental Freedoms (12

¹ See, *inter alia*, Special Rapporteur on Violence against Women, its Causes and Consequences, *Report on the Mission to the Democratic Republic of Congo*, doc. A/HRC/7/6/Add.4 of 28 February 2008; *Report on the Mission to Russia*, doc. E/CN.4/2006/61/Add.2 of 26 January 2006; *Report on the Mission to Colombia*, doc. E/CN.4/2002/83/Add.3 of 11 March 2002; *Report on the Mission to Sierra Leone*, doc. E/CN.4/2002/83/Add.2 of 11 February 2002; *Report on Violence against Women perpetrated and/or condoned by the State*, doc. E/CN.4/1998/54 of 26 January 1998; *Report on the Mission to Rwanda*, doc. E/CN.4/1998/54/Add.1 of 4 February 1998; and *Mission to the Democratic People's Republic of Korea, Republic of Korea and Japan*, doc. E/CN.4/1996/53/Add.1 of 4 January 1996.

² Special Rapporteur on Violence against Women, its Causes and Consequences, *Report on Violence against Women perpetrated and/or Condoned by the State during Times of Armed Conflict (1997/2000)*, doc. E/CN.4/2001/73 of 23 January 2001. Another important reference on the subject is the *Report on 15 Years of the Special Rapporteur on Violence against Women, its Causes and Consequences – A Critical Review*, doc. A/HRC/11/6/Add.5 of 27 May 2009, paras. 42-52.

³ The mentioned countries were Afghanistan, Burundi, Colombia, Democratic Republic of Congo, East Timor, Federal Republic of Yugoslavia (Kosovo), India, Indonesia/West Timor, Japan, Myanmar, the Russian Federation (Chechnya), Sierra Leone and Sri Lanka. Indeed, there was a short reference to the situation in BiH in the already mentioned *Report on Violence against Women perpetrated and/or condoned by the State of 1998*, *supra* note 1, para. 25.

July 2002). Further, BiH ratified the Rome Statute on the establishment of an International Criminal Court on 11 April 2002.⁴

4. Most of the mentioned treaties, as well as the 1949 Geneva Conventions⁵ and the two 1977 Additional Protocols thereto, establish for States parties international obligations which are relevant when dealing with the subject of women victims of rape or other forms of sexual violence. In this general allegation, the international legal standards to which reference will be made are, in particular, the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination against Women,⁶ the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Indeed, also the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974) and the Declaration on the Elimination of Violence against Women (1993) will be taken as references. Finally, Resolutions 1325⁷ and 1820 adopted respectively on 31 October 2000 and 19 June 2008 by the Security Council will be also taken into account.

1.1 General Context concerning Victims of Rape or other Forms of Sexual Violence during the War in BiH

5. On 6 March 1992, BiH, formerly one of the six federal States constituting the Socialist Federal Republic of Yugoslavia (SFRY), declared independence. One month later, on 6 April 1992, the European Community recognized BiH as an independent State. It was officially admitted as a member of the United Nations on 22 May 1992 and of the Council of Europe on 24 April 2002.
6. Its struggle for independence was marked by an armed conflict between various factions from, within and outside BiH and was primarily fought between the Bosnian governmental forces on one side, and the Bosnian Serb forces (VRS) and the Yugoslav National Army (*Jugoslovenska Narodna Armija - JNA*) on the other. The conflict was characterised by atrocities: civilians were killed, concentration camps were set up, more than two millions of human beings were forced to internally displace or to seek refuge abroad, thousands of people disappeared without leaving a trace, and thousands of people were

⁴ It is noteworthy that, under Annex 6 of the Dayton Peace Agreement (“Human Rights”) BiH, the Republika Srpska and the Federation of BiH are under an obligation to secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms, including the rights and freedoms provided in various international treaties listed in the Appendix to Annex 6, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; and the 1949 Geneva Convention on the Protection of the Victims of War and the two 1977 Additional Protocols thereto.

⁵ In particular, Article 27 of the IV Geneva Convention on the Protection of Civilians in Times of War establishes that “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”. Article 38.5 of the same treaty sets forth “children under fifteen years, pregnant women and mothers of children under seven years shall benefit by any preferential treatment to the same extent as the nationals of the State concerned”.

⁶ Interpreted in the light of the General Recommendation No. 19 on Violence against Women adopted in 1992 by the Committee on the Elimination of Discrimination against Women.

⁷ Notably, at para. 10 of Resolution 1325 all parties to armed conflicts are called upon by the Security Council to “[...]take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict”.

subjected to rape or otherwise sexually abused. On 14 December 1995 the General Framework Agreement for Peace in BiH (also known as the “Dayton Peace Agreement”) put an end to the hostilities. Based on the Dayton Peace Agreement, BiH consists of two semi-autonomous entities, the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS). A special status was granted to the Brčko District in Northern Bosnia. All three “constitutive peoples” (Bosnian Muslims, Bosnian Croats and Bosnian Serbs) are represented in all public institutions of both entities and the Brčko District, in proportion to the ethnic composition of the population recorded in the 1991 census. Both entities within BiH have their own parliaments, governments and judiciaries. The Brčko District is also in charge of its own internal affairs, including the justice system. The FBiH is further decentralised into ten cantons all of which organize their judiciaries independently. The judicial system of the RS is centralised.

7. During the 1992-1995 war in BiH the use of rape or other forms of sexual violence was widespread.⁸ 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 men⁹ who were raped or otherwise sexually abused (rates vary from 20,000 to 50,000 victims).¹⁰ Unfortunately, victims of sexual violence are often turned into outcasts because of the stigma and humiliation associated with the crime and, in general, rape is among the most under-reported crimes. Moreover, it is undisputable that the majority of those responsible for rape or other forms of sexual violence during the

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

⁹ During the conflict in BiH both men and women were subjected to rape or other forms of sexual violence. Most of the considerations expressed in this document apply to both categories of victims, since they are facing the same consequences and the same obstacles in fulfilling their rights. However, the majority of information collected and referred to comes from women victims of rape and associations that work with this category. To date, no comprehensive research concerning specifically men victims of rape has ever been carried.

¹⁰ 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.

war in BiH enjoy impunity.¹¹

8. At the same time, survivors of those crimes suffer trauma and experience ongoing psychological and physical consequences. Indeed, sexual violence has serious and multiple consequences on the mental health of victims. At the psychological level, it leads to radical changes in the image that the victim has of himself or herself, in his or her relations with his or her immediate social circle and beyond, in the community as a whole, and in the way in which the victim sees the past, present, and future. At the community level, it stigmatizes the victim, depriving him or her of any social status or intrinsic value as a person.¹² As a matter of fact, in many societies victims of sexual violence are blamed for their fate. Many victims identify themselves with the crime they have suffered and they feel guilty for it. This state of mind is well summarized by the statement of a victim of rape during the conflict: “when people say rape, it sounds to me as if someone is calling me by my name”.¹³ It can be said that in some cases, whether during the war or in times of peace, victims of sexual violence are “buried alive” by society.¹⁴ It is noteworthy that, in addition to the consequences suffered by the victim himself or herself, sexual violence has a direct impact on the well-being of his or her family. Feelings of humiliation and shame extend to the relatives, who may also be mocked, singled out, or even prevented from expressing an opinion. Socially stigmatized, the victim and his or her relatives encounter difficulties within the community.
9. International doctrine and jurisprudence recognize that rape or other forms of sexual violence amount to a violation of the right to personal integrity and can be considered as a particularly grave form of torture.¹⁵ Rape can be qualified as a war crime due to its commission during an armed conflict and the awareness of the perpetrator for the existence of such conflict; while it can be qualified as a crime against humanity when committed as part of a widespread or systematic attack directed against a civilian population with the knowledge of the perpetrator of this fact. When committed with the intent to destroy, in whole or in part, a particular group, targeted as such, rape or other forms of sexual violence can amount to genocide.

¹¹ Parliamentary Assembly, Council of Europe, *Report on Sexual Violence against Women in Armed Conflict*, doc. 11916 of 15 May 2009, paras. 23-25.

¹² See Josse, *‘They came with two guns’: the Consequences of Sexual Violence for the Mental Health of Women in Armed Conflicts*, in *International Review of the Red Cross*, Vol. 92, No. 877, March 2010, pp. 177-195. In particular, on women victims of rape or other forms of sexual violence during the war, see International Committee of the Red Cross, *Women and War*, Geneva, 2008; and United Nations High Commissioner for Refugees, *Sexual and Gender-based Violence against Refugees, Returnees and Internally Displaced Persons*, Geneva, 2003. Moreover, on the consequences endured by victims of rape, see Secretary-General In-depth Study, *supra* note 8, paras. 106, 157, 164 and 166.

¹³ Statement released to one of the psychologists of the Association Medica that shared it during the preparation of this general allegation, requesting that the identity of the victim is kept confidential.

¹⁴ Josse, *‘They came with two guns’: the Consequences of Sexual Violence for the Mental Health of Women in Armed Conflicts*, *supra* note 12, p. 179.

¹⁵ European Court of Human Rights (ECtHR), Case *Aydin v. Turkey*, judgment of 25 September 1997, para. 86; International Criminal Tribunal for Rwanda (ICTR), Case *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Chamber I, judgment of 2 September 1998, para. 597; ICTY, Case *Prosecutor v. Zejnir Delalić*, IT-96-21, Trial Chamber II, judgment of 16 November 1998, paras. 475-496, 943 and 965; and Case *Prosecutor v. Anto Furundzija*, IT-95-17/1, judgment of 10 December 1998, paras. 264-269. See also Medical Foundation for the Care of Victims of Torture, *Rape as a Method of Torture*, London, 2004 (www.torturecare.org.uk/files/rape_singles2.pdf).

10. In general, victims of rape or other forms of sexual violence during the conflict in BiH feel that the State pretends to neglect their existence and tries to escape its responsibility towards this group of victims. According to some of them, this is partly done through delegating tasks to certain associations that are not adequately equipped and trained to assume such delicate tasks,¹⁶ and partly by simply failing to address the existing problems. Finally, it is noteworthy that many victims of rape or other forms of sexual violence, and in particular those living in remote areas of the country or abroad, are not aware of their rights and of the procedures to fulfil them. Indeed, so far the State failed to put in place a widespread outreach strategy in this field and, in general, the existing legal framework does not seem to adequately guarantee the rights of this category of persons.
11. Moreover, BiH failed to develop a comprehensive and unified strategy to address the needs and fulfil the rights of this category of victims. The State has also failed to provide them with integral reparation including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁷ Along the same line, in its concluding comments on BiH, the Committee on the Elimination of Discrimination against Women (CEDAW) expressed its concern on “[...] the situation of victims of sexual violence of the 1992-1995 armed conflict, most of whom are women, who may suffer from additional disadvantages as female heads of household and internally displaced persons. The Committee is concerned that they and their specific type of suffering are not sufficiently recognized in the respective legal frameworks for civilian war victims in both entities. The Committee is also concerned that there is no coherent strategy to support these women and they have only limited or no access to health insurance and financial benefits, as well as to general health services or specific health services relating to their traumatic experiences”.¹⁸
12. After having conducted a visit to the country (4-11 June 2007), Mr. Thomas Hammarberg, the Commissioner for Human Rights of the Council of Europe, submitted a report to the Committee of Ministers and the Parliamentary Assembly, whereby he expressed that “[...] the situation of victims of sexual violence in the 1992-1995 conflict, most of whom were women, remains to be adequately addressed. This failure continues to disadvantage large numbers of women, many of whom are female heads of households and internally displaced persons. The Commissioner regrets that their specific type of suffering was only very lately recognized in the legal framework for civilian war victims and not at all at the State level. Furthermore, there is no coherent strategy nor adequate financial allocations in place to support these women, although these measures are included as priority activities under the Project on Gender Action Plan implementation developed by the Gender Equality Agency”.¹⁹
13. In November 2010 the Committee against Torture (CAT) adopted its concluding observations on the reports submitted by BiH. In such occasion, the CAT included among the principal subjects of concern

¹⁶ Reference here is in particular to the Association of Women-Victims of War which, together with other few organizations, in the FBiH has been mandated by the State to recognize the status of victims of rape or other forms of sexual violence. See *infra* para. 59.

¹⁷ *Infra* paras. 52-91.

¹⁸ CEDAW, *Concluding Comments on BiH*, doc. CEDAW/CO/BH/CO/3 of 2 June 2006, para. 37. Also other United Nations treaty bodies have expressed their concern about the subject of victims of rape or other forms of sexual violence during the war. See, *inter alia*, HRC, *Concluding Observations on BiH*, doc. CCPR/C/BIH/CO/1 of 22 November 2006, para. 15.

¹⁹ Council of Europe Commissioner for Human Rights, *Report on the Visit to BiH*, doc. CommDH(2008)1 of 20 February 2008, para. 100.

and recommendations various issues related to the situation of women victims of rape or other forms of sexual violence during the war, pointing out in particular the lack of accurate and updated data on the number of victims of war-time rape and other acts of sexual violence.²⁰ Accordingly, it indicated that the “State party should include in its next report the statistical data on war-time rape and sexual violence, as well as on means of redress, including compensation and rehabilitation, provided to the victims”.²¹

14. From 23 to 26 November 2010 Mrs. Margot Wallström, the Special Representative of the Secretary-General on Sexual Violence in Conflict conducted a visit to BiH. In her report on the mission she also refers to the lack of precise data on the number of women who were subjected to sexual violence during the war (the figures reported are between 20,000 and 50,000). However, the Special Representative declared that “the sexual violence that occurred during the conflict was systematic, pre-meditated and on a vast scale”.²² Moreover, in her report the Special Representative highlighted a number of concerns related to the situation of women victims of rape or other forms of sexual violence and indicated that, given the findings of her mission and the ongoing difficulties to which this most vulnerable category of victims is subjected to daily, BiH will be a focus country for her Office. Indeed, she declared that “despite the struggle of Bosnian women to galvanize international attention and action, rape remains a taboo subject. [...] the lack of rehabilitation has limited women’s ability to find employment. Most rape survivors in Bosnia today are single mothers who lost their husbands during the war. The end of the war has not brought them peace of mind, with survivors showing symptoms of trauma, depression and anxiety. [...] Leaving the victims stigmatized, living on the margins of society, unable to marry, raise families or find jobs, continues the policy of slow ‘ethnic cleansing’”.²³
15. Mr. Thomas Hammarberg, the Commissioner for Human Rights of the Council of Europe, conducted another mission to BiH from 27 to 30 November 2010 and, with regard to sexual crimes committed during the war, he indicated that “the collection of reliable statistics on the number of victims of these crimes are necessary to establish what kind of measures and resources should be put in place by the authorities in order to prosecute the perpetrators of those crimes and to provide the victims with access to justice and reparation”.²⁴
16. In the light of the above, a first crucial step to address the various problems related to the subject of victims of rape or other forms of sexual violence during the war is to set up a unified and accurate database that also encompasses the cases of those currently living abroad. Indeed, the setting up of such a database shall be responsibility of the State, which must secure transparency and certainty in the process, as well as, taking into account the sensitivity of this matter, an adequate protection of the security and the privacy of the victims.²⁵

²⁰ Committee against Torture (CAT), *Concluding Observations on BiH*, doc. CAT/C/BIH/CO/2-5 of 19 November 2010, para. 9.

²¹ *Ibid.*, para. 26.

²² Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, 1 February 2011, para. 7.

²³ *Ibid.*, para. 5.

²⁴ Report Hammarberg, *supra* note 10, para. 194.

²⁵ In this sense, the provisions of the BiH Law on the Protection of Personal Data (BiH Official Gazette No. 32/01 of 20 December 2001) shall be taken into account.

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

International Covenant on Civil and Political Rights (Arts. 2.2, 3, 7 and 10.1): “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant”.

Art. 3 The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Art. 7 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Art. 10.1 All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Convention against Torture (Arts. 1, 2 and 4): Art. 1.1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. 2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Art. 2.1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Art. 4.1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Convention on the Elimination of All Forms of Discrimination against Women (Art. 2.b and 2.g): “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: [...] (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women” and “(g) To repeal all national penal provisions which constitute discrimination against women”.

General Recommendation No. 19: “States parties should ensure that laws against [...] rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. [...]” (para. 24.b).

17. As already mentioned, rape or other forms of sexual violence amount to a violation of the right to personal integrity and can be considered as a particularly grave form of torture.²⁶ As such, they must be codified under domestic criminal legislation and sanctioned with punishments that are appropriate to the gravity of the crime.²⁷ At present, the Criminal Code of BiH does not include rape or sexual violence as separate offences. Article 172 of the BiH Criminal Code refers to rape only or other forms of sexual violence when committed as part of a widespread or systematic attack against any civilian population, with the knowledge of the attack, thus failing to cover isolated instances of this crime and leaving an

²⁶ *Supra* para. 9.

²⁷ See, *inter alia*, *Rape and Sexual Assault: A Legal Study*, Final Report of the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), doc. S/1994/674/Add.2 of 28 December 1994, Annexe II, available at: <http://www.ess.uwe.ac.uk/comexpert/ANX/II.htm>. See also Report McDougall, *supra* note 8, para. 102.

evident gap in the legal framework. Article 172 (g) reads as follows “coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity”. Article 173 of the BiH Criminal Code (war crimes against civilians) defines rape or other forms of sexual violence in a similar way, except that such acts do not have to be a part of a widespread or systematic attack. These definitions are not consistent with international standards and jurisprudence of international courts, in particular as long as the use of force or the threat of force are considered the only means available to establish that the rape or other sexual acts were not consensual.²⁸ International jurisprudence has highlighted that “coercive circumstances” as well as direct force or the threat of force do not need to be evidenced by a show of physical force.²⁹ In fact, threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict.³⁰

18. At the entity level rape is codified as a separate offence and it is sanctioned even when committed as an isolated act.³¹ All existing definitions require that the offence is committed “by force or threat of immediate attack upon life and limb, or life or limb of a close person”. This does not meet international standards on the subject.³² The Criminal Code of the FBiH does not contain a definition of crimes against humanity and of crimes of war. Rape or other forms of sexual violence committed in these specific circumstances are therefore not covered by the existing legal framework in the FBiH. The criminal codes of the RS and of the District of Brčko regulate “war crimes against civilians”,³³ sanctioning, among others “whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, orders an attack against civilian population, settlement, individual civilians or persons unable to fight, which results in [...] rape”. These definitions do not seem to cover rape or other forms of sexual violence as crimes against humanity or war crimes according to international standards.
19. It is noteworthy that in its recent concluding observations on BiH, the CAT expressed its “[...] serious concerns that the definition of war crimes of sexual violence in the Criminal Code is not consistent with the definition in international standards and in jurisprudence of international courts and that, in particular, articles 172 and 173 of the Criminal Code may result in impunity for such crimes”.³⁴

²⁸ For a thorough analysis of the existing loopholes in BiH legal framework concerning rape or other forms of sexual violence, see Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting*, London, 2009, pp. 9-10 and 21-22. On this subject see also the recommendations addressed to BiH from the Working Group on Universal Periodic Review, doc. A/HRC/14/16 of 17 March 2010, No. 7 and 72.

²⁹ ICTR, Case *Prosecutor v. Akayesu*, *supra* note 15, paras.460 and 731. See also CEDAW, Case *AT v. Hungary*, views of 26 January 2005; and ECtHR, Case *M.C. v. Bulgaria*, judgment of 3 December 2003.

³⁰ ICTR, Case *Prosecutor v. Akayesu*, *supra* note 15, para. 688. In this sense see also Report McDougall, *supra* note 8, para. 25.

³¹ See Article 183 of the Criminal Code of the RS; Article 203 of the Criminal Code of the FBiH; and Article 206 of the Criminal Code of the District of Brčko. Notably, the three criminal codes regulate also the offences of sexual violence against a helpless person; sexual intercourse with a child; and sexual intercourse by abuse of position.

³² See, *inter alia*, ECtHR, Case *M.C.*, *supra* note 29, paras. 88-108 and 154-156.

³³ Article 148 of the Criminal Code of the District of Brčko; and Article 433 of the Criminal Code of the RS.

³⁴ CAT, *Concluding observations on BiH*, *supra* note 20, para. 9.

Accordingly, it recommended to 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. [...]”.³⁵ Along the same line, in the progress report for 2010 on BiH of the European Commission it is indicated that “[...] War crimes involving sexual violence have not yet been recognized in the Criminal Code in accordance with international standards. [...]”.³⁶ Notwithstanding these calls from international mechanisms and institutions, BiH has so far failed to bring its criminal legal framework concerning rape and other forms of sexual violence, in particular when committed in the context of war, in line with international standards.

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

Art. 4.c of the Declaration on the Elimination of Violence against Women: “States should [...] exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”.

Convention against Torture (Arts. 5, 7 and 12): Art. 5.1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases: (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State; (b) When the alleged offender is a national of that State; (c) When the victim is a national of that State if that State considers it appropriate. 2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article. 3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Art. 7.1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution. 2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1. 3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Art. 12 Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Resolution 1325 (2000), the Security Council emphasizes “the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard stresses the need to exclude these crimes, where feasible from amnesty provisions” (para. 11).

Resolution 1820 (2008), the Security Council “Notes that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide, stresses the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes, and calls upon Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation”.

³⁵ *Ibid.*

³⁶ European Commission, *Bosnia and Herzegovina Progress Report for 2010*, doc. SEC(2010) 1331 of 9 November 2010, p. 18.

20. In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violation and, if found guilty, the duty to punish him or her.³⁷ Indeed, if the State acts in such a way that a violation goes unpunished and the victim's full enjoyment of his or her rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of fundamental human rights.
21. Besides the trials carried out before the ICTY,³⁸ the main responsibility to investigate, judge and sanction those responsible for the grave violations committed during the conflict, including rape or other forms of sexual violence, lies within the judicial system of BiH.³⁹ Victims of rape or other forms of sexual violence express deep dissatisfaction towards the work so far carried out by the BiH authorities concerned. In fact, the existing situation of widespread impunity although 16 years have passed since the conclusion of the conflict, is not only a blow to the legitimate expectation for justice of thousands of people throughout BiH, but also a threat in the context of prevention of future grave violations. In particular, victims of rape or other forms of sexual violence complain that although they have repeatedly provided BiH authorities with detailed accounts of the crimes committed and sound evidence including, in certain cases, the identity of the perpetrators, no thorough and effective investigation has been carried out. Another subject of high concern is the fact that the BiH authorities concerned generally fail to regularly inform victims of rape or other forms of sexual violence on the development of the investigation and, when questioned, tend to elude the matter, thus failing to respect their obligations and fostering the sense of exclusion and frustration of this already marginalized category of people. Moreover, problems concerning domestic tribunals in charge of war crimes include insufficient staffing and a lack of specialization among cantonal and district prosecutors, limited cooperation between

³⁷ See, *inter alia*, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity* ("UN Principles to Combat Impunity"), recommended by Commission on Human Rights Resolution 2005/81 of 21 April 2005, doc. E/CN.4/2005/102/Add.1 of 8 February 2005, Principle 1; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Study on the phenomenon of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention*, doc. A/HRC/13/39/Add.5 of 5 February 2010, para. 140 ("Study on the phenomenon of torture"), paras. 146-155; HRC, *General Comment No. 31, The Nature of the General Legal Obligation imposed on State Parties to the Covenant*, doc. CCPR/C/21/Ver.1/Add.13 of 29 March 2004, para. 18. In cases of rape or sexual violence, in particular against women, see, *inter alia*, Secretary-General, *In-Depth Study on All Forms of Violence against Women*, *supra* note 8, paras. 266-268; IACHR, *Case Rosendo Cantú and other v. Mexico*, judgment of 31 August 2010, Ser. C No. 216, paras. 105-122 and 168-182; *Case Fernández Ortega and others v. Mexico*, judgment of 30 August 2010, Ser. C No. 215, paras. 112-131 and 185-198; *Case Masacre de las Dos Erres v. Guatemala*, judgment of 24 November 2009, Ser. C No. 211, paras. 137-141. See also Report McDougall, *supra* note 8, paras. 85-87.

³⁸ Trials carried out before the ICTY will not be further analyzed and considered in this report. On this subject see, *inter alia*, Amnesty International, *Whose Justice: The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 28, pp. 12-17. In general, it has to be pointed out that all trials before the ICTY are expected to be completed by mid-2012, with the exception of that of Mr. Radovan Karadžić, which is expected to finish in late 2012. Most appellate work is scheduled to be completed by the end of 2013.

³⁹ See Report McDougall, *supra* note 8, paras. 91-94.

prosecutors and police, as well as between police across entity lines.⁴⁰

22. On these matters, in its recent concluding observations on BiH the CAT declared to be gravely concerned “[...] that taking into account the number of such war-time crimes, the number of cases prosecuted so far by Bosnia and Herzegovina judiciary is extremely low and local courts still face serious obstacles in prosecuting war crimes cases. [...]”.⁴¹ In this sense, it urged 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. [...]”.
23. Along the same line, 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”.⁴² 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”.⁴³ 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”.⁴⁴
24. 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”.⁴⁵
25. The above mentioned concerns have been echoed also by the Commissioner for Human Rights of the

⁴⁰ On these issues see the recommendations addressed to BiH from the Working Group on Universal Periodic Review, *supra* note 28, No. 67, 68, 72, 77 and 80. On the drawbacks of prosecution of war crimes in BiH (with particular reference to the situation in the RS), see, *inter alia*, Human Rights Watch, *A Chance for Justice? War Crime Prosecutions in Bosnia’s Serb Republic*, March 2006, available at: www2.ohchr.org/english/bodies/hrc/docs/ngos/hrw-chanceforjustice.pdf.

⁴¹ CAT, *Concluding Observations on BiH*, *supra* note 20, para. 12.

⁴² European Commission, *Bosnia and Herzegovina 2010 Progress Report*, *supra* note 36, p. 14.

⁴³ *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”.

⁴⁴ *Ibid.*, p. 14.

⁴⁵ Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, *supra* note 22, para. 4.

Council of Europe, who 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 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. [...]”⁴⁶ In this vein, he urged the authorities of BiH to undertake all necessary measures to ensure that the war-crimes of rape or other forms of sexual violence are effectively investigated and prosecuted, so as to enable the victims to have access to justice and to adequate reparation. This should also enable the victims who wish to return to their pre-war homes to do so in safety and without fear.⁴⁷

26. Moreover, it must be stressed that BiH failed to carry out a comprehensive programme of vetting and this contributes to foster the overall climate of impunity, since in certain communities perpetrators of war crimes still hold high positions in public offices or the police. In this sense, 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”.⁴⁸ 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”.⁴⁹ While the fact that war criminals continue to hold public offices is detrimental to the whole BiH society, this situation is likely to produce a tremendous impact on victims of rape or other forms of sexual violence, fostering their sense of humiliation, frustration and defencelessness. In this sense, a particularly delicate situation has been reported in the RS, where the authority in charge of evaluating and awarding the status of civilian victims of war is the Ministry of Veteran Affairs. In many cases women 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.

⁴⁶ Report Hammarberg, *supra* note 10, paras. 156-157. In general, on the problem of impunity for war crimes see *ibidem* paras. 132-133 and 136.

⁴⁷ *Ibid.*, para. 193. On the problems faced by women victims of rape or other forms of sexual violence to return to their pre-war houses, see *infra* paras. 73-80.

⁴⁸ *Ibid.*. Also the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) has stressed that “in many cases perpetrators continue to hold office, often in the same communities where victims and their families live. At times the perpetrators still hold high-level offices. This constitutes a permanent threat and intimidation for the victims. Measures of vetting should be improved and/or systematized. When such measures have been taken in the past, it is not clear whether those identified as perpetrators have been dismissed from public offices, including the police force and public companies” (WGEID, *Report on the Mission to Bosnia and Herzegovina*, doc. A/HRC/16/48/Add.1 of 16 December 2010, para. 69).

⁴⁹ Report Hammarberg, *supra* note 10, para. 143.

3.1 Concrete Instances relating Victims of Rape or other Forms of Sexual Violence

27. In cases concerning rape or other forms of sexual violence victims have seen their reports and denounces ignored by BiH authorities without any formal explanation. Among the examples that can be quoted is that of the former mayor of the town of Višegrad, Mr. Miladin Miličević, who, during the war, was a member of the crisis staff and the commander of the 4th Dobrunska Brigade in Višegrad. The Association of Women-Victims of War, through its President, has denounced on a number of occasions before the State Prosecutor's Office the responsibility as a high ranking commander of Mr. Miladin Miličević for the crimes, including sexual abuses, committed in the town of Višegrad by people who were under his control.⁵⁰ However, so far, no *ex officio*, prompt, impartial and thorough investigation has been launched on these events and the BiH authorities failed to regularly inform the Association of Women-Victims of War on the measures undertaken or, if this is the case, on the obstacles encountered in the investigation.
28. Another instance is that of a woman assisted by *Vive Žene* Tuzla, who was raped during the conflict in the detention facility of Bosanski Šamac.⁵¹ This lady identified the person responsible for her rape and accordingly informed without delay the Prosecutor's Office and the competent Court. In 2008 she rendered a formal statement and she was requested to identify the perpetrator through a photo, which she did. Between 2008 and the end of 2010 she did not receive other information on the progress and results of the investigation. She knows that the case with the Prosecutor's Office of BiH who, however, explained her that due to the huge backlog,⁵² it can take a long time before her case is dealt with. In this sense the prosecutor proposed to the lady to transfer the cases to a local court (Doboj) in order to

⁵⁰ The Association of Women-Victims of War has made public its accusations to Mr. Miladin Miličević on a number of occasions. See, *inter alia*, <http://genocideinvisegrad.wordpress.com/2009/08/24/crisis-committee-visegradkrizni-stab/>.

⁵¹ Due to security and privacy reasons, certain victims of rape or other forms of sexual violence during the war who accepted to render their testimony for this general allegation to the Special Rapporteur expressly requested that their identity is not disclosed to the wider public. In the present allegation, letters are used to designate the persons concerned. Their full names could be disclosed, upon request, to the Special Rapporteur, given that guarantees are provided that these data will not be made public in any way.

⁵² As a matter of fact, on 29 December 2008 the Council of Ministers of BiH adopted the Nations Strategy for War Crimes. Among other things, the strategy establishes that the most complex crimes (i.e. mass crimes) will be dealt with as a matter of priority within 7 years and the prosecution of other crimes will be dealt with within 15 years from the adoption of the strategy. 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" (European Commission, *Progress Report on BiH for 2010*, *supra* note 36, pp. 13 and 21). With regard to the National Strategy for War Crimes, the Commissioner for Human Rights expressed his concerns with regard to "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" (Report Hammarberg, *supra* note 10, paras. 136 and 184). 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>.

speed up the proceedings. However, the lady did not agree to transfer the case to the court in Dobož, since there the latter does not offer witness protection and psychological support and this would prevent the existing witnesses in the case to give their testimonies due to security reasons. At present, the case remains pending before the State Prosecutor's Office.

29. Another outstanding example has been referred by a member of the team of *Vive Źene Tuzla* who in 2009 visited the premises of the ICTY. During the visit, the lady met a person in charge of the investigation of cases related to rape or other forms of sexual violence. The latter recalled to have collected around 35 statements by victims of rape or other forms of sexual violence back in 2003. Those statements were allegedly collected in the village of Salihovići in the municipality of Zvornik and they referred to cases of rape occurred in the detention facility of Liplje, where around 400 people were kept during the conflict and 120 women were raped. The member of the team of *Vive Źene Tuzla* learned this information with great surprise, since, so far, none of those responsible for the multiple cases of rape perpetrated in Liplje have been judged and sentenced. The victims on the other hand, often complain about this situation of impunity, although they have also sent claims and documentation to the competent Prosecutor's Office. Accordingly, the lady from *Vive Źene Tuzla* was told by the ICTY's employee that the case would have been transferred to the BiH State Court. Since November 2009, *Vive Źene Tuzla* and the victims of rape perpetrated in Liplje have not received any information about the developments in the investigations of these cases and the potential beginning of the criminal proceedings.
30. In general, dissatisfaction has been expressed because of the fact that testimonies of victims of rape or other forms of sexual violence have been excluded without any formal explanation by the authorities. Victims in many cases have sent their statements on the violations suffered to the prosecutor's offices concerned, and have expressed their wish to testify in court, but still the perpetrators in their cases live freely and unpunished. For instance, the Association of Women-Victims of War referred that in the proceedings against Mr. Źeljko Lelek⁵³ a woman victim of rape had submitted her statement to the Prosecutor's Office and expressed her will to testify. However, she was never called upon to do so by the court. The same happened to Association's members who had submitted their statements on the violations suffered in the trial of Mr. Nenad Tanasković⁵⁴ and who were never contacted by the State Prosecutor's Office to testify during the trial without any explicit explanation for that.
31. Moreover, it has been reported that, even in cases where a judgment was eventually delivered against persons accused of crimes against humanity (including rape or other forms of sexual violence) the State failed to ensure that those convicted served their sentence. In the view of victims of rape or other forms

⁵³ See *infra* para. 70 and note 123.

⁵⁴ BiH State Court, Case *Prosecutor v. Nenad Tanasković* (Case X-KRZ-05/165), judgments of 24 August 2007 (first instance) and of 26 March 2008 (appeals).

of sexual violence this is of particular gravity and contributes to re-traumatisation.⁵⁵ Allegedly, the fact that often 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 escape from prison. An 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 in a first instance judgment his brother to two years in prison for assisting his escape.

32. Another notorious instance is that of the trial which took place before the Court in Banja Luka against three former members of the VRS charged, among others, with the rape and murder of a 19-year old woman occurred in 1993. The three suspected perpetrators were identified and charged already in 1993. However, at the time they were acquitted and the family of the victim was never formally notified about the grounds for such acquittal. Almost ten years later the trial was resumed and the three accused (Mr. Miladin Trivić, Mr. Slobodan Bajić and Mr. Siniša Miložević) were charged with rape and murder. Notably, rape has not been qualified as a war crime, but rather as an ordinary offence.⁵⁶ The family of the victim tried to oppose this classification of the crime by all means, but to no avail. On 20 September 2010 Mr. Miladin Trivić and Mr. Slobodan Bajić were sentenced respectively to 15 and 8 years of deprivation of liberty, among other, for the murder and rape of the above-mentioned young woman. However, in March 2010 the Supreme Court of the RS quashed the first degree verdict on procedural grounds. It is noteworthy that Mr. Siniša Miložević is currently living in Sweden and has acquired Swedish citizenship and has not been extradited to BiH or tried in the country whereby he is residing. He is therefore enjoying complete impunity. Furthermore, Mr. Miladin Trivić is currently at large.
33. The last example sheds light also on a more general problem that is the failure to try as war crimes cases of rape committed during the war, which happens often in particular before RS courts.⁵⁷ Indeed, this practice raises a number of issues, since victims feel discriminated and see that their captors and torturers get lighter sentences. Moreover, the fact that a case of rape committed during the war is not tried as a war crime but as an ordinary offence may also lead to the loss of the status as “civilian victim of the war” of the woman concerned, with obvious prejudices and harmful consequences. For instance, witnesses in such cases would lose their right to a special protection and psycho-social support⁵⁸ as it would not be considered a war crime trial and victims could see their monthly disability pensions

⁵⁵ It is worth mentioning also the case of Mr. Momir Savić who was accused for crimes which could have led to a sentence up to ten years imprisonment. Victims of rape or other forms of sexual violence, through the Association of Women-Victims of War, pointed out that there was a risk of escape. However, BiH authorities estimated that it was not necessary to hold Mr. Momir Savić in pre-trial detention. Mr. Momir Savić managed to escape and is currently at large.

⁵⁶ On the issue of war-time rape dealt with as ordinary rape see *infra* paras. 33-34.

⁵⁷ See, *inter alia*, Balkan Investigative Reporting Network, *Republika Srpska courts shy away from war crimes*, 2011, at <http://www.bim.ba/en/50/10/2316/?tpl=58>.

⁵⁸ See *infra* paras. 50-51.

withdrawn as they could not be considered any longer civilian victims of war. Furthermore, the classification of a war-time rape as an ordinary offence may also bring consequences with regard to the application of the status of limitations, which could ultimately result in impunity for perpetrators of these heinous crimes. Finally, dealing with war-time rapes as ordinary offences represents a distortion of historical events and ultimately does not contribute to the establishment of the truth and to the preservation of historical memory.

34. Another similar example of this practice and the serious consequences that it brings along is that of G. T., who in March 1993 was subjected to rape in the suburb of Grbavica in Sarajevo by a member of a paramilitary group. She immediately reported the events to the competent authorities, denouncing the identity of the person responsible. However, it is until 2007 that the proceedings in fact begun. G. T. was convened before the District Prosecutor's Office in East Sarajevo whereby she repeated her statement about the events occurred in 1993. Indeed, G. T. was never notified that the indictment against the accused was modified from war crime to ordinary rape and therefore she did not have any procedural opportunity to challenge this decision. In March 2010 the Municipal Court in Sokolac convicted him for ordinary rape and sentenced him to five years imprisonment. The Association Women-Victims of War expressed the view that the proceedings were carried out in violation of the existing law concerning competence and jurisdiction. It is their view that, being Grbavica a suburb of Sarajevo, the competent forum was the Cantonal Court in Sarajevo and not the Municipal Court in Sokolac. This first degree decision was upheld in December 2010 by the District Court of East Sarajevo. It is only when this second degree judgment was delivered to the Association Women-Victims of War, that they told G. T. that the perpetrator had been charged with ordinary rape and, due to this, he had enjoyed a significant reduction in the sentencing, while G. T. was exposed to the risk of losing her monthly disability pension as civilian victim of war. This news caused a deep shock and a serious deterioration of the state of health of G. T. that was already precarious. It is noteworthy that G. T. should give her testimony in other ongoing trials related to war-crimes. However, this experience caused such a deep impact and debasement on her, that she is now considering to refuse doing so.

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

35. Witness protection is regulated by the Law on Protection of Witnesses under Threat and Vulnerable Witnesses (Official Gazette of BiH No. 21/2003) and the Law on Witness Protection Programme (Official Gazette of BiH No. 29/2004). Under this legal framework, the obligation to protect witnesses at the pre-trial investigation and after the completion of the testimony lies with the Witness Protection Unit of the State Investigation and Protection Agency (SIPA), which was set up at the end of 2004. The protection of witnesses in criminal proceedings before the State Court of BiH and, since February 2011, before the District Court in Banja Luka, is provided for, while there is no such protection at the other district, municipal and cantonal level. Notably, a number of trials concerning war crimes are taking place before district, cantonal or municipal courts, which lack a comprehensive strategy of witnesses' protection. In this context, it must be kept in mind that cantonal and district courts will have an ever-increasing role in

processing war crimes cases. Moreover, support to witnesses in proceedings before the State Court should be provided by the Witness Support Section (WSS). No similar programme is envisaged before district, cantonal or municipal courts, with the exception of the Cantonal Court of Sarajevo and the Sarajevo Cantonal Prosecutor's Office.

36. 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".⁵⁹ 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. [...]".⁶⁰ 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".⁶¹
37. Although some steps forward to effectively support and protect witnesses against ill-treatment or intimidation as a consequence of the evidence given during war crimes' trials may be registered, a number of obstacles remain and many instances of harassment can be quoted.⁶² The lack of adequate witnesses' protection and support has had and continues to have a tremendous impact on the willingness and ability of people to testify. In general, existing problems can be summarized as follows: the lack of adequate protection of witnesses in cases of harassment and the subsequent failure to thoroughly investigate such instances and to judge and sanction those responsible; the general inadequacy of the manner in which protection of witnesses is granted; the material difficulties faced by witnesses; and the lack of adequate psychological support for witnesses before, during and after testifying.
38. In its concluding observations on BiH the CAT expressed its grave concern at the lack of adequate measures of witness protection and witness support before, during and after the trials, which have a negative impact on the willingness and ability of witnesses to participate in investigations or to testify in proceedings. The CAT also expressed concerns over the reported cases of intimidation against witnesses and of attempts at bribery by perpetrator, the insufficient support for witnesses by the

⁵⁹ Council of Europe, Parliamentary Assembly, Resolution 1784 (2011) of 26 January 2011, para. 4.

⁶⁰ *Ibid.*, para. 7.

⁶¹ *Ibid.*, para. 16.2.2.

⁶² On these issues see the recommendations addressed to BiH from the Working Group on Universal Periodic Review, *supra* note 28, No. 20 and 82. See also Report McDougall, *supra* note 8, para. 104.

competent authorities, such as the SIPA and the WSS. Accordingly, the CAT urged BiH “to ensure that victims are effectively protected, not further distressed or pressurized to withdraw their testimony and that they are not threatened by alleged perpetrators, in particular by: a) strengthening the capacity of the competent organs, in particular the SIPA and its Department for Witness Protection (OZS), and ensuring that they respect the right to privacy of the survivors and provide witnesses at serious risk with long-term or permanent protection measures, including changing their identity or relocation within or outside 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”.⁶³

39. In the report of the Special Representative of the Secretary-General on Sexual Violence in Conflict it is pointed out that “[...] many of the women who testified before the national court said they would never repeat the ordeal, due to the tendency to interrogate the conduct of the victim in ways that are humiliating and legally irrelevant. This is compounded by logistical hurdles, a lack of emotional support, and inadequate follow-up on the progress of cases. [...] the climate of impunity has thus become a climate of intimidation. [...] While the opportunity to testify has brought some solace, there is still no government-subsidized support system. Women are left, in the words of one survivor, to be ‘psychiatrists for each other’. Women’s groups advocate a dedicated police unit to investigate sexual violence, as well as more female police officers to serve as first points of contact between the survivor and the State”.⁶⁴ Moreover, although there are various instances whereby the identity of protected witnesses has been allegedly disclosed, as of the date of writing there seems to be only one indictment raised in this sense by domestic authorities.
40. 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 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

⁶³ CAT, *Concluding Observations on BiH*, *supra* note 20, para. 17.

⁶⁴ Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, *supra* note 22, para. 4.

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”.⁶⁵ 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”.⁶⁶

4.1 The Lack of Adequate Protection of Witnesses in Cases of Harassment and Subsequent Failure to Thoroughly Investigate such Instances and to Judge and Sanction those Responsible

41. An outstanding instance is that of P. C., who is a victim of sexual violence from a village located in the municipality of Foča. In 2009 P. C. was going to testify in the trial against Mr. Ranko Vuković and Mr. Momir Skakavac. Before the proceedings begun, P. C. received a phone-call from the legal representative of Mr. Ranko Vuković, who warned her to be careful with what she was going to say, to remember that she has a family and that nobody was going to protect her after she witnessed against Mr. Vuković. P. C. informed both SIPA and the State Court about these threats. To the knowledge of P. C., these facts have not been subjected to a thorough investigation and no one has been judged and sanctioned for the pressure exerted on her. It is noteworthy that also the daughter of P. C. received a phone-call by the sister of Mr. Ranko Vuković expressing threats against P. C. in case the latter testified against Mr. Ranko Vuković. These events have also been reported to the SIPA and to the Prosecutor’s Office, but, to the knowledge of P. C. and her daughter, there has not been an investigation and no one has been sanctioned.
42. Moreover, 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 rape. She was a witness at the trial before the ICTY against some of the perpetrators.⁶⁷ 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. As of May 2011, she has never heard back from the Police about the investigative steps she may have undertaken nor about the progress of the investigation. To the knowledge of Mrs. Antić, Mr. Delić has not even been questioned by the police

⁶⁵ Report Hammarberg, *supra* note 10; 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.

⁶⁶ *Ibid.*, paras. 191-192.

⁶⁷ ICTY, Case *Prosecutor v. Mucić et al.* (case IT-96-21), judgment of 16 November 1998.

about this episode.⁶⁸

4.2. Other Instances of Harassment and Reprisals against Associations working with Women Victims of Rape and other Forms of Sexual Violence from the War

43. It must be stressed that not only individuals, but also associations dealing with women victims of rape or other forms of sexual violence during the war are subjected to harassment and attacks. One recent outstanding case is that of the association Sumejja Gerc, 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 *OTISCI* documentary film about the sufferings in Vojno, a CD with the speech of Mr. Marko Radić condemning those who cooperate with Bosniaks taped in 1998 during the commemoration of the suffering of soldiers of the Croatian Defence Council (HVO) and a voice recorder. A large LCD TV was taken from the Educational Cabinet and a small LCD TV. Most notably, the money (a total of 450 KM – approximately 231 Euros) which was in the association's premises was taken out of the drawer but left on the table. This episode was reported to the Police station, but as of March 2011 those responsible have not been duly identified, judged and sanctioned.⁶⁹ 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.

⁶⁸ This information has been referred to TRIAL by the Republika Srpska Regional Association of Detainees Višegrad.

⁶⁹ 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.

4.3 The General Inadequacy of the Manner in Which Protection of Witnesses is Granted

44. In general, it has been pointed out by victims of rape or other forms of sexual violence who render their testimony in proceedings against war criminals that, even when they receive protection, this is only granted during the hearing in which they take part. Protection does not extend any further, thus exposing them to concrete security risks in the extremely sensitive phase immediately after the hearing. Moreover, some victims of rape referred to the fact that, when they go to render their testimony, they are not guaranteed the support of any legal representative unless they can pay for it. Indeed, given the delicacy of the subjects on which victims of rape or other forms of sexual violence are called to testify about, they often feel that they would be more confident having a legal representative by their side, who may support them particularly in the cross examination phase and secure that their interests are duly guaranteed. Given that the majority of victims of rape or other forms of sexual violence are not in a position to engage a legal representative for this purpose, the State should ensure that, when rendering their testimony, they are provided free legal aid.
45. Concerns have been expressed also about the way witness protection has been organized at trials at the international level. For example, in 2001 Ms. Bakira Hasečić, the President of the Association of Women-Victims of War was summoned to render her testimony before the ICTY as a protected witness in the case against Mr. Mitar Vasiljević.⁷⁰ Four months before travelling to The Hague, while she was in Višegrad, Ms. Bakira Hasečić was summoned by the Ministry of Interior of the RS to report to their premises. Once there, Ms. Bakira Hasečić was requested to release a statement and to sign a written copy of such statement. Ms. Bakira Hasečić refused to sign the statement, but she took a copy of the document that had been drafted, and forwarded it to the ICTY. Soon after, Ms. Bakira Hasečić was contacted from The Hague and she was notified that, in the meantime, the lawyer of Mr. Mitar Vasiljević (Mr. Radomir Tanasković) had obtained a copy of the statement she had rendered before the Ministry of Interior of the RS and, accordingly, her identity had been disclosed. Ms. Bakira Hasečić perceived this as an attempt to intimidate her. Once in The Hague, she mentioned these events before the Court and Mr. Radomir Tanasković was removed from the case. However, so far, no thorough investigation on the disclosure of confidential information has been carried out by BiH authorities and those responsible for the leak of information have not been identified, judged and sanctioned.⁷¹ Another instance that has been mentioned by an associate of Infoteka who, in 2009, was accompanying two victims of rape to render their testimony before the ICTY in a case concerning crimes committed in Višegrad. Once the

⁷⁰ ICTY, Case *Prosecutor v. Mitar Vasiljević* (Case IT-98-32), judgment of 25 February 2004 (Appeals Chamber).

⁷¹ Reference can also be made to the case of Mr. Milan Susnjar who allegedly participated to the massacre committed on 14 June 1992 in Pionirska Street in Nova Mahala in the municipality of Višegrad, where about 65 civilians were burned alive. Members of the Association of Women-Victims of War have been accusing him for this crime and have been lobbying over the years for transferring his case from the East Sarajevo Court to the State Court of BiH (this eventually happened in 2008). Indeed, before the case was transferred, officers from the SIPA entered the house of one of the survivors of the massacre and took her to East Sarajevo to identify Mr. Milan Šušnjar, which she did. At the same time, the Association of Women-Victims of War denounced that Mr. Milan Šušnjar resides in France and in the past he managed to travel every year to Višegrad. After this information was formally reported to BiH authorities, Mr. Milan Šušnjar did not appear again in Višegrad. Members of the Association of Women-Victims of War consider that this can be due to a leak of information.

ladies eventually arrived at the tribunal in The Hague, they realized that the lawyer of the accused had in fact travelled sitting next to them on the airplane from Sarajevo. This created a serious psychological stress on them, as they perceived this as a form of pressure and threat and they were worried that he might have overheard their conversations in the airplane.

46. In general, it has been reported that for those victims of rape or other forms of sexual violence who accept to render their testimony in court, support is almost non-existent and there is no adequate organization to ensure confidentiality in these particularly delicate cases. For instance, it has been mentioned that witnesses who are waiting for their turn to give their testimonies are often kept in a room together with the witnesses of the defence of the accused. Indeed, this situation is highly uncomfortable and can be perceived as a form of harassment that undermines the capacity of the witness to freely testify. Moreover, it has been reported by some women who testified as “protected witnesses” in trials concerning cases of rape or other forms of sexual violence, that they had the impression that, in fact, someone is actually observing them while they are rendering their testimony. In this sense, they mentioned that, after their appearance in court, they were told by members of the administrative personnel of the court that they “had been good”.
47. Another example that can be quoted is that of a woman victim of rape during the war who was called to render her testimony before the Court in Nevesinje, a city in the Eastern part of the RS. Members of the SIPA went to pick the lady up at her place and then handed her to members of the police of the RS, who were in charge of escorting her to court. When the lady saw the uniform of the policemen of the RS, she felt highly uncomfortable and fell in a state of shock. In fact, the officers were wearing crests with eagles and this reminded the lady of the symbol (eagles with a cross with four letters “S”) that was on the uniforms of members of the VRS who raped her during the war. This kind of incidents generates serious re-traumatisation of the victims, which could easily be prevented by taking a more victim-oriented approach.

4.4 The Material Difficulties Faced by Witnesses

48. It is also noteworthy that many potential witnesses face significant material difficulties in displacing themselves to the courts where they shall be rendering their testimony. On the one hand, domestic authorities fail to provide witnesses with adequate material and logistical support in these cases,⁷² and on the other hand, potential witnesses are notified that if they do not appear in court, they will be fined.⁷³ In 2007 E. B., who was raped in May 1992 in Foča and is currently living in Sarajevo, was called to render her testimony before a court in Trebinje. When summoned to testify, E. B. received a legal warning that, in case of failure to appear before the court, she would have been sanctioned with a fine

⁷² When they accept to testify in war crimes trials, victims receive a *per diem* of 15 KM (approximately 7,50 Euros) and are entitled to the coverage of travel expenses.

⁷³ Article 81.5 (Summons to Examine Witnesses) of the Code of Criminal Procedure BiH establishes that: “Should the witness fail to appear or justify his absence the Court may impose upon him a fine an amount up to 5,000 KM, or may order the apprehension of the witness”. Paragraph 7 sets forth: “should the witness refuse to testify, upon the proposal of the Prosecutor, the Court may issue a decision imposing on the witness a fine in an amount up to 30,000 KM. An appeal against this decision shall be allowed, but shall not stay the execution of the decision”.

of 5,000 KM – approximately 2,500 Euros. E. B. is in a poor state of health and suffers serious psychological disturbs as a consequence of what she underwent during the war. Moreover, she lives in very poor financial conditions. When she received the notification, she experienced a new trauma, also for the way in which it was formulated and for the fear generated by the idea of having to pay a fine. Eventually, after the representative of the Women's Section of the Association of Concentration Camp Detainees insisted, E. B. managed to ensure escort to and back from the court by members of the SIPA.

49. A similar example is that of another lady victim of rape during the conflict that, due to her physical conditions, cannot move from bed. She was summoned to appear in Court, indicating that in case she failed to do so, she would be sentenced to pay 5,000 KM. Upon receiving such summon, the lady entered in a state of deep shock and stress, since she clearly could not appear in Court and, at the same time, she did not dispose of the means to pay the fine. The fact that a prosecutor's office summons a person who cannot move from bed to appear in court shows that there is an inadmissible lack of attention to the needs of witnesses and their situation, and a failure to consider the particular vulnerability of victims of rape or other forms of sexual violence.

4.5. The Lack of Adequate Psychological Support for Witnesses before, during and after the Testimony

50. It is noteworthy that, in general, those willing to testify in war crimes' trials do not receive adequate psychological support by BiH authorities. In this context, the situation of victims of rape or other forms of sexual violence during the war is particularly delicate, since the lack of adequate support not only acts as a deterrent, but also may create re-traumatisation of the person concerned.⁷⁴ Victims in cases of rape or other forms of sexual violence complain that they do not receive adequate psychological support before, during and after testifying. Reportedly, at the State level, they only have a preparatory meeting with the Prosecutor and they are generally told by the Court staff to "be strong". However, they do not receive any form of real and professional support to undergo this extremely delicate experience, which, if not properly handled, may cause further traumatisation. The situation is even more critical before cantonal, district and municipal courts, where no form of psychological support whatsoever is envisaged.
51. The protection and support of witnesses shall therefore be more victim-oriented. In this light, the provision of psychological support granted to victims of rape or other forms of sexual violence wishing to testify in court shall be envisaged from the earliest stages of the proceedings until after the conclusion of the trial and shall be given by teams of experts funded by the State.⁷⁵ In general, the judicial personnel that deals with victims of rape or other forms of sexual violence shall be trained to adequately

⁷⁴ See Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are still Waiting*, *supra* note 28, pp. 24-29.

⁷⁵ Certain organizations, such as Medica from Zenica, provide psychological accompaniment to victims of rape or other forms of sexual violence that testify during trials. However, this form of cooperation is provided without any concrete support by the State. The same holds true in the case of *Vive Žene* Tuzla which, to make up for these drawbacks, has signed an agreement of cooperation with the Prosecutor's Office of the Tuzla Canton to take care of the psychological preparation of witnesses in war crimes trials whenever there is a need for that. *Vive Žene* Tuzla also provides professional training to judges and prosecutors who deal with victims of rape or other forms of sexual violence.

address this particularly delicate kind of situation and the taking of statements shall be done in satisfactory premises, which guarantee privacy and security to the witness. A unified protocol shall be adopted and applied throughout BiH to deal with witnesses victims of rape or other forms of sexual violence, and to guarantee them adequate psycho-social support before and after the trial (it shall encompass also municipal and cantonal courts and prosecutors).

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

International Covenant on Civil and Political Rights (Arts. 2.3, 3 and 9.5): "Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted".

Art. 3 The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Art. 9.5 Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Convention on the Elimination of All Forms of Discrimination against Women (Art. 2.b, 2.f, 2.g, 3 and 13.a): "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: [...] (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women", "(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women" and "(g) To repeal all national penal provisions which constitute discrimination against women".

Art. 3 States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Art. 13.a "States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to family benefits [...]".

Art. 4.d and g Declaration on the Elimination of Violence against Women "States should [...] Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms" and "Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation".

Convention against Torture (Art. 14): 1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation. 2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

General Recommendation No. 19: "States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia: [...]Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence [...]" (para. 24.t.i).

52. The existence of an obligation for States to provide reparations⁷⁶ when they are responsible for gross human rights violations is undisputed under international law⁷⁷ and it is also enshrined in domestic law of BiH.⁷⁸ States bear the primary responsibility for providing reparation to victims of human rights violations in their country. There is an express legal obligation on the State to provide reparation when violations are committed by agents of the State or under the State's authority. In some cases, it may be appropriate for authorities to establish reparation programmes to ensure that victims have access to a range of services and benefits. When crimes are committed by agents of other States or non-State actors, then the State has an obligation to ensure that victims can claim reparation against those responsible, including claims before national courts. When obtaining redress from other States or non-State actors is not possible or where there are obstacles that will delay the vital measures of assistance required by survivors or victims, the State should step in and provide reparation to survivors and victims and then seek to reclaim any costs from those responsible.⁷⁹
53. The aim of reparation is to eliminate, as far as possible, the consequences of the illegal act and to restore the situation that would have existed if the act had not been committed. Reparation can thus take many forms and the contents of the right to a remedy will depend on the nature of the substantive right in question. Indeed, such remedy must be effective in practice as well as in law and it cannot be merely illusory or theoretical. Reparations for gross human rights violations have developed their own features. Special rules (*lex specialis*) on the subject, different from those regulating inter-State or inter-individual reparations, have emerged. The main characters of these rules are the articulated notion of

⁷⁶ See Rubio-Marin, *The Gender of Reparations. Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, Cambridge University Press, 2009; Giulio Bartolini, *Riparazione per violazione dei diritti umani e ordinamento internazionale*, Napoli, 2009; Office of the High Commissioner for Human Rights, *Rule of Law Tools for Post-conflict States, Reparations Programmes*, doc. HR/PUB/08/1, New York, 2008; Buyse, *Post-Conflict Housing Restitution: The European Human Rights Perspective, with a Case Study on Bosnia and Herzegovina*, Intersentia, February 2008; International Center for Transitional Justice, *Reparations in Theory and Practice*, New York, 2007; Pablo de Greiff (ed.), *The Handbook on Reparations*, Oxford University Press, 2006; International Commission of Jurists, *The Right to a Remedy and to Reparation for Gross Human Rights Violations: A Practitioner's Guide*, Geneva, 2006; Koen De Feyter, Stephan Parmentier, Mark Bossuyt, Paul Lemmens (eds.), *Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations*, Intersentia, Antwerp, 2006; Dinah Shelton, *Remedies in International Human Rights*, Oxford, 2005; Ilaria Bottigliero, *Redress for Victims of Crimes under International Law*, Brill Academic Publishers, Leiden, 2004; International Review of the Red Cross, *Special Issue: Victims after the War – Humanitarian action, Reparation and Justice*, No. 851, September 2003; Roy Brooks (ed.), *When Sorry Isn't Enough: the Controversy over Apologies and Reparations for Human Injustice*, New York University Press, New York, 1999; UNODCCP, Center for International Crime Prevention, *Handbook on Justice for Victims: On the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, New York, 1999; Roger S. Clark, *The United Nations Crime Prevention and Criminal Justice Programme: Formulation of Standards and Efforts at their Implementation*, Philadelphia, 1994. See also Report McDougall, *supra* note 8, paras. 88-90.

⁷⁷ The leading reference on this subject is the judgment rendered by the Permanent Court of International Justice on 26 July 1927 on the case concerning the *Factory at Chorzów*, where it is established that: "It is a principle of international law that the breach of an engagement involves an obligation to make a reparation in an adequate form".

⁷⁸ Based on Annex 6 of the Dayton Peace Agreement, the European Convention on Human Rights and its Protocols as well as the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel Inhuman and Degrading Treatment are directly applicable in BiH and so is the right to a remedy enshrined by them.

⁷⁹ Currently, the legal framework for claiming compensations from individual perpetrators is unreasonably complicated and BiH authorities have failed to develop a system of free legal aid which would enable survivors to claim compensation in civil proceedings. In this sense see Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 28, p. 66. See *infra* paras. 66-72.

victims (individuals, groups, direct victim, relatives and society as a whole) and the wide range of measures of reparation that must be accompanied by the effective guarantee of the rights to truth and justice of the victims and their relatives. Consequently, taking into account individual circumstances, victims of gross human rights violations shall be provided with full and effective reparation,⁸⁰ which comprises pecuniary compensation (covering material and non-pecuniary damages), as well as other forms of reparation aiming at granting restitution, rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition. In fact, a comprehensive approach to the dimensions of the human being and the human suffering demands for an integral form of reparation.⁸¹ Furthermore, when the victims pertain to particularly vulnerable categories, such as children, the measures of reparation adopted must adequately mirror this aspect and try to meet the specific features and needs of the people harmed.⁸²

54. So far, in BiH there is neither a comprehensive programme nor a State law designed to guarantee civilian victims of war adequate compensation and integral reparation. In general, these notions are identified with that of social assistance.⁸³ The notions of “civilian victim of war” and “beneficiary of welfare measures”⁸⁴ shall be clearly distinguished and this shall result in the adoption of a State law fully addressing the needs and fulfilling the rights of civilian victims of war. In its 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. As of the end of April 2011, none of these initiatives has been realized. As other categories of civilian victims of war, victims of rape or other forms of sexual violence have not obtained adequate compensation and integral reparation. Accordingly, in its last concluding observations on BiH, the CAT expressed concern “[...] over the slow process of the adoption of the draft

⁸⁰ See, *inter alia*, Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, doc. A/HRC/4/33 of 15 January 2007, para. 61; IACHR, Case *Villagrán Morales and others (Street Children) v. Guatemala*, judgment of 26 May 2001, Ser. C No. 77, Concurrent Opinion of Judge A.A. Cançado Trindade, paras. 3-5.

⁸¹ CAT, Case *Kepa Urra Guridi v. Spain*, views of 17 May 2005, para. 6.8.

⁸² See Special Rapporteur on Violence against Women, its Causes and Consequences, *Report on Reparations to Women who have been Subjected to Violence*, doc. A/HRC/14/22 of 23 April 2010. See also, *inter alia*, Oficina en México del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, *Reparaciones con perspectiva de género*, Mexico, 2009; CEDAW, *General Recommendation No. 19 – Violence against Women*, 1992, *supra* note 8, para. 24.(i); United Nations Declaration on the Elimination of Violence against Women, 1993, Article 4.(c) and (d); *Beijing Platform for Action*, adopted at the 4th World Conference on Women, 1995 para. 124.(d). See also Nairobi Declaration on Women’s and Girls’ Rights to Remedy and Reparation, 2007, available at: www.womensrightscoalition.org/site/reparation/signature_es.php.

⁸³ See, among others, Popić, Panjeta, *Compensation, Transitional Justice and Conditional International Credit in Bosnia and Herzegovina*, Sarajevo, 2010, pp. 13-18.

⁸⁴ According to existing legal framework in BiH, economic and social support should in fact be provided by social welfare institutions. However, it is noteworthy that in BiH there is no central government body responsible for the social welfare system. This responsibility is discharged at the entity level, including through the introduction and implementation of legislation, the allocation of resources and the delivery of services. In the RS the social welfare system is organized at the entity level, by the government of the RS, and delivered through municipal departments of social welfare which provide services directly to citizens. The system of the FBiH is decentralised. The federal authorities are responsible for the introduction of legislation and the allocation of resources to cantonal authorities, which then provide services directly to citizens. Each of the ten cantons of the FBiH organises social care services in its own way, and the level and type of social support varies between different cantons. In this sense see, *inter alia*, Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 28, pp. 6-7.

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 at the insufficient medical or psychological support and legal protection available to victims, especially victims of war-time sexual violence”.⁸⁵ In this light it recommended that BiH “adopts 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 provisions 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”.⁸⁶

55. At the entity level, the two relevant legal references are the Law on the Protection of Civilian Victims of War in the RS (Official Gazette of the RS No. 25/93, 1/94 – special edition, 32/94, 37/07 and 60/07) and the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in the FBiH (Official Gazette of the FBiH No. 36/99 and later amendments). As already pointed out, both these laws entitle civilian victims of war with social benefits. Accordingly, they cannot be considered as a basis for adequate compensation and integral reparation *stricto sensu*. Furthermore, both pieces of legislation are plagued by serious gaps and discrepancies in the applicable legal framework in the entities result in instances of discrimination between victims who suffered the same violation. Therefore, the harmonization of the legislation dealing with civilian victims of war shall be considered a priority. In general, civilian victims of war receive lower social benefits if compared to war veterans. This discrimination shall also be eliminated.
56. Along the same line, after her visit to BiH in November 2010, the Special Representative of the Secretary-General on Sexual Violence in Conflict noted that “[...] in comparison with other war victims, women suffer discrimination in accessing benefits. [...] Unlike veterans, rape survivors are often only eligible for a *disability pension, which is a form of social welfare rather than reparation*. Administering war reparations through a welfare system creates practical problems. For instance, a woman who was raped during the war but had a pre-existing disability is barred from continuing her disability pension as she now receives a ‘pension’ for war-time rape. Moreover, if a woman receiving a pension in the FBiH relocates to the RS, she risks losing her benefits. This is because only the FBiH recognizes rape victims as war victims; the RS still only recognizes victims able to demonstrate ‘60 percent physical damage’. Furthermore, sequestration is not provided for in the criminal process, making it difficult to enforce orders for compensation”.⁸⁷
57. With regard to the Law on the Protection of Civilian Victims of War in the RS, it entitles civilian victims of war (including victims of rape or other forms of sexual violence) to receive a monthly pension. Under Article 1 of the Law “the rights prescribed can be awarded to citizens of the RS who have suffered body

⁸⁵ CAT, *Concluding Observations on BiH*, *supra* note 20, para. 18.

⁸⁶ *Ibid.*

⁸⁷ Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, *supra* note 22, para. 6.

harm after 9 January 1992. The rights prescribed by this Law can also be awarded to citizens of the Socialist Republic of BiH and the Social Federative Republic of Yugoslavia, if they settle on the territory of the RS, acquire a Serbian citizenship and if they have body harm caused after 17 August 1990".⁸⁸ As noted, the Law guarantees to those who are recognized as civilian victims of war the access to pure welfare measures (e.g. monthly disability pensions ranging between 100 and 350 KM – 50 and 175 Euros, nursing, help for those incapable to work, etc.)⁸⁹ which cannot be considered *stricto sensu* as measures of reparation for the gross human rights violations suffered.⁹⁰ Further, strict limitations are imposed to those who wish to apply for the measures offered under this Law: among others, only those who can prove a certain degree of physical harm suffered due to the war (at least 60%)⁹¹ and assessed by health commission, or that can demonstrate that they are incapable for work will obtain a monthly pension. Victims of rape are not recognized as a separate category of victims and this falls short of acknowledging the specificity of the damage they have suffered and its consequences. In general, all those who suffered psychological impairment as a consequence of the war are not considered as victims under this Law and are excluded from the enjoyment of social benefits. Moreover, it must be pointed out that the Law on Protection of Civilian Victims of War in the RS poses strict deadlines for those wishing to apply (notably, the final deadline expired on 31 January 2007).⁹² This resulted in the exclusion of many victims from the possibility to obtain the benefits they would be entitled to under the Law. This is the case, in particular, of people living, also temporarily, outside BiH, who were not informed about the existence of this law and therefore failed to submit their claims in due time. On this matter, the Special Rapporteur of the Sub-Commission on the right to reparation for victims of gross violations of human rights and humanitarian law, Mr. Theo van Boven, noted that under the current state of international law, civil claims relating to reparations for gross violations of human rights and humanitarian law shall not be subject to statutes of limitations in any event.⁹³

⁸⁸ Article 2 of the Law defines as civilian victim of the war a person who: "1) Has suffered body harm because of harassment, rape, detention (jail, concentration camp, interment, forced labour etc.) or who during escape from the enemy has suffered injuries or wounds which have caused at least 60% of body harm as well as those persons who have been killed, died or went missing in these circumstances; 2) Has suffered at least 60% of body harm because of wounding or injuring caused by warfare such as: bombing, street fights, bullets, grenades from a cannon or a bazooka and similar; 3) Has suffered at least 60% of body harm because of wounding or injuring caused by old army materials or as a consequence of commando actions by the enemy".

⁸⁹ The great majority of victims of torture, rape or other forms of sexual violence are in need of medical treatment and often of expensive medicines. Since the State fails to guarantee free access to such treatment (*infra* paras. 87-91) to survivors of torture, they see themselves forced to purchase the mentioned medicines, which may cost up to 150 KM – 70 Euros – a month, with their own resources. It follows that the situation is unsustainable for those unable to work who live on a monthly disability of 100 KM.

⁹⁰ See Article 8 of the Law.

⁹¹ It is noteworthy that war veterans are eligible for social support if their bodily damage amounts to 20%.

⁹² Article 33 of the law establishes that "a request for granting of rights on the basis of bodily harm can be submitted within 5 years after the harm was caused, i.e., since the day when the circumstances under which the harm was caused ceased to exist. The fact that the bodily harm occurred under circumstances described in Article 2 of the Law is inevitably proved by medical documentation about a treatment which should have been obtained one year after the harm was caused, i.e. after the circumstances under which the harm was caused ceased to exist and which the applicant should attach to the request [...]".

⁹³ See doc. E/CN.4/Sub.2/1996/17 of 24 May 1996, para. 9. See also Report McDougall, *supra* note 8, para. 90. See also *Principles on the right to a remedy and reparation for victims of gross violations of human rights law and serious violations of humanitarian law* ("UN Principles on the Right to a Remedy"), adopted by General Assembly Resolution No. 60/147 of 16 December 2005, Principle 7, which sets forth "domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive".

58. In the case of returnees, Article 33.5 of the Law establishes that “a person who has realized the right as a civilian victim of war or a family-member of a civilian victim of war under the regulations of the Federation or a surrounding country has no right to file a request for the granting of rights under this law”, thus excluding them from the enjoyment of any social benefits in case they decide to return in the RS. In practice, this situation has prevented a considerable number of women from returning to their pre-war houses, since they realized that moving back to the RS would have brought as a consequence the loss of their monthly disability pensions which, in the majority of cases, are their only means of subsistence.
59. The Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in the FBiH makes clear that measures adopted in favour of civilian victims of war and their families are of the nature of welfare and social protection (e.g. monthly disability pensions which may be up to 506 KM – 259 Euros, nursing and other material benefits). Access to the mentioned measures of protection is reserved for people unable to work or financially unsecure. To obtain the status of civilian victim of war a bodily damage of at least 60%⁹⁴ is required. The mentioned condition is not applied to victims of rape or other forms of sexual violence, who are considered a different category of victims. Article 9 of the Law openly discriminates against the category of civilian victims, since it prescribes the maximum monthly financial allowance for the civilian victims of war which should equal 70% of the maximum allowance available to war invalids. Also this Law establishes short deadlines⁹⁵ to apply to obtain the status of civilian victim of war and many people have been excluded.⁹⁶ One particular problem that has been raised with regard to the procedure to obtain the status as civilian victims of war concerns the fact that the medical documentation that shall be produced to show the damage suffered by the applicant, must have been gathered or obtained before the end of 1997.⁹⁷ This criterion is

⁹⁴ It is noteworthy that war veterans are eligible for social support if their bodily damage amounts to 20%.

⁹⁵ Article 101 of the law as amended in 2005 established that “the current users who have realized their rights as well as those who have filed requests for the realization of the rights and whose requests have not been answered under the provisions on social and children protection and the protection of civilian victims of war, which were applied on the territory of the Federation until the coming into force of this Law, are obliged to apply for the granting of rights under this Law *within six months after the entering of the Law into force. Persons from paragraph 1 of this article, who do not file requests in the deadline prescribed in paragraph 1, will have their rights terminated*” (emphasis added).

⁹⁶ It results that, among victims of rape or other forms of sexual violence during the conflict, those residing outside BiH, also temporarily, see their rights particularly impaired. In this sense, the Women’s Section of the Association of Concentration Camp Detainees expressed its concern for the fact that Article 76.(a) of amended version of the Law on Civilian Victims of War in the FBiH (Official Gazette FBiH No. 39/06) establishes that “the user of rights under this Law will have those rights terminated if the user leaves BiH for more than three months, counting from the day the person left. When the person returns to BiH” he/she can reapply for the granting of the same rights”. One example referred to by members of the Women’s Section of the Association of Concentration Camp Detainees is that of G. C. from Prijedor, who in 1992 was taken with her two children to the concentration camp of Trnopolje, where she was raped. The same year G. C. was exchanged with other prisoners and managed to reach Germany, where her two children live to this day. Due to the mentioned provision, G. C. feels at risk to lose her monthly disability pension, since from time to time she remains in Germany for more than three months when she visits her children, although her place of residence is the municipality of Novi Grad in Sarajevo.

⁹⁷ This problem has been emphasized in particular by the Women’s Section of the Association of Concentration Camp Detainees. Indeed, they raised the question with Ms. Mevlida Kemura, who at the time was the Director of the Institute for Medical Forensic and Health Ability (tasked to issue an evaluation necessary for the granting of the status as “civilian victim of the conflict”), and she emphasized that this requirement is established under the Federal law. See Article 79 of the Law on Civilian Victims of War in the FBiH.

particularly restrictive, since, due to the conflict and as a result of forced displacement, until 1998 many people did not even have an identity document and they could obtain it only later on. It is therefore particularly unlikely that such people can dispose of the required medical documentation. Finally, it must be stressed that, pursuant to the legal framework in the FBiH,⁹⁸ there are only few organizations designated to provide survivors of rape or other forms of sexual violence with the certificates that allow them to obtain the status of civilian victims of war and, hence, to obtain social benefits. The association that awards the great majority⁹⁹ of such certificates is the Association of Women-Victims of War, which is based in the suburbs of Sarajevo.¹⁰⁰ This has not escaped criticism.¹⁰¹ For many victims of rape or other forms of sexual violence that live out of Sarajevo, the fact that, in order to apply for the certificate as civilian victims of war, they have to travel to the Association's premises represents an almost insurmountable obstacle.¹⁰² Notably, the Association of Women-Victims of War claims that on a number of occasions, some of its members have travelled to the field to collect statements from applicants and to facilitate them in the procedure. Indeed, this should become the regular practice and the State shall ensure that the Association, as well as the other organizations that are entitled to issue the mentioned certificates, have the resources and trained staff to do so.¹⁰³ Moreover, the premises of the Association of Women-Victims of War do not guarantee enough privacy: victims are kept in the same room and have to expose their experience in front of others, which, for many, is a form of grave re-traumatisation. Allegedly, it does not seem that interviews of applicants are conducted by specialized personnel, and there is no psychological support during the process. In this sense, it has to be recalled that the

⁹⁸ See Federal Ministry of Labour and Social Policy, *Instruction for the Procedure to Recognizing the Status of Civilian Victim of War No. 05-02/1-1247/06* of 5 October 2006.

⁹⁹ Indeed, the fact that in the FBiH there are also other organizations and institutions that are entitled to issue the mentioned certificates is not well known to the general public and the State failed so far to carry on a comprehensive campaign of awareness raising and to thoroughly inform women victims of rape on their rights and the possibilities and procedures they have to follow to enforced them.

¹⁰⁰ In order to recognize the status as "victim of rape or other forms of sexual violence during the war" Association of Women-Victims of War follows this procedure: after having taken a statement by an alleged victim, the data gathered are compared with those contained in a database run by the Association. If the data are not in their database, then they ask the alleged victim if he/she has ever reported the violations suffered before any other authority and, in case of positive answer, they cross-check the information. Otherwise, the alleged victim is requested to bring forward witnesses of the violations suffered within 15 days. Once the Association is persuaded of the veracity of the statements received, they issue a certificate which shall be presented by the victim to municipal authorities in order to obtain a certificate recognizing his or her state as a civilian victim of war. This procedure usually takes from six to eight months, but in certain cases, it lasted for over four years. Many victims have pointed out that the whole procedure is too slow. When the Association of Women-Victims of War is persuaded that the information referred by a victim contains relevant elements for prosecution, they forward the information to the Prosecutor's Office. It is alleged that the Association does not require a specific consent from the victim to do so, but they consider it as implicit in the fact that the victim released his or her statement. This aspect has also been criticized.

¹⁰¹ See, *inter alia*, Popić, Panjeta, *Compensation, Transitional Justice and Conditional International Credit in Bosnia and Herzegovina*, *supra* note 83, p. 29. See also Amnesty International, *Whose Justice: The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 28, pp. 44-46.

¹⁰² Usually, victims who live in the Tuzla-Doboj Canton and apply for the status as civilian victims of war before the Association of Women-Victims of War are referred to *Vive Žene Tuzla* and therefore can avoid travelling to Sarajevo. However, this does not extend to those victims who live in isolated areas, far from any organization that may support them in the fulfilment of their rights. In their case, they depend on their own resources.

¹⁰³ Moreover, also those victims of rape who managed to travel to Sarajevo to undergo the procedure to obtain the certificate expressed discomfort and dissatisfaction with the conditions in which the procedure is actually conducted.

responsibility for recognizing the status as civilian victims of war and to guarantee them access to compensation and reparation ultimately lies on the State (BiH). It is therefore BiH that must ensure that adequate and effective criteria are applied to recognize the status of civilian victim of war without discrimination. Where this responsibility has been entrusted to a particular organization, the State shall adopt all necessary measures to guarantee that such organization has adequate resources to carry out the task in full respect of the victim's rights and needs. In this sense, the Association of Women-Victims of War pointed out that they have already requested BiH authorities to obtain a new working space¹⁰⁴ which is more adequate to the needs of privacy and security of victims, as well as to be granted the presence in the office of trained medical personnel¹⁰⁵ and of a psychologist. In this light, BiH shall deal with these requests as a matter of priority. The same conditions must be guaranteed by the State also to other associations and organizations which are entitled to issue certificates to women victims of sexual violence. Finally, it must be pointed out that even when victims obtain a certificate attesting their status, they cannot accede directly the benefits they would be entitled to, but they are referred by the Centres for Social Work to Medical Commissions which shall assess their percentage of disability. This other procedure in many cases re-traumatizes victims and discourages many potential beneficiaries from applying.

60. Among the many problems raised by this system that unduly overlaps the notion of social assistance to that of compensation, it can be mentioned that when a woman receives a monthly disability pension, this prevents her from access to bank-loans. In this view, victims are ultimately prevented from moving on with their lives and are forced to remain dependant on a sometimes meagre pension. In this sense, it must also be duly stressed that there are instances where women are requested to undergo multiple examinations in order to challenge contradictory medical evaluations of their situation. This exposes them to a serious and clearly unnecessary humiliation. An instance is that of A. D. who in 2010 obtained a certificate recognizing her as a victim of rape during the war from the Association Women-Victims of War that afterwards indicated her that, in order to realize her rights, she had to undergo medical examination. In January 2010 A.D. submitted all required documentation and went to a first degree medical commission in Mostar where she was denied to realize her rights on social benefits. On this occasion, A.D. felt uncomfortable since the doctor who examined was not very polite to her. A.D. appealed the decision issued by the first degree commission and went on second degree commission in Sarajevo at the Institute of Forensic Medicine and Health Ability. In this occasion A.D. underwent a new examination and the medical commission told her that they were in favour of recognizing her status as a victim and that they would have transferred for this purpose her documentation to the Centre for Social Work in Mostar to enable her to realize her social benefits. Over a certain period of time, A. D. was not contacted by any authority and, to discover what was happening, she contacted the Centre for Social Work in Mostar, where they told her that the Institute in Sarajevo had mistakenly sent her

¹⁰⁴ Allegedly, the Association already received from the authorities the communication that a new place for their headquarters has been found and they have to visit it and express their view about the appropriateness of the premises.

¹⁰⁵ At present, the Association of Women-Victims of War has an agreement with the Sarajevo Clinical Centre, according to which their members can be attended by doctors on specific days during the week. Members of the Association who are based in Sarajevo are also granted priority in visiting doctors due to an agreement with the Sarajevo Canton.

documentation under the name of another victim. On this occasion, the personnel of the Centre for Social Work in Mostar told A.D. that they would have sent back her documentation to Sarajevo to have the formal problem solved. Indeed, since she did not receive any further communication over some months, at the beginning of March 2011 A.D. arranged a meeting with the director of the Institute of Forensic Medicine and Health Ability in Sarajevo. On such occasion, the director promised to solve the situation as soon as possible and to proceed to correct the mistake without delay. The formal correction was operated within a short delay. As of May 2011, A.D. is waiting to start receiving the social benefits she is entitled to.

61. A particular situation which is worth mentioning since it affects a considerable number of women victims of rape or other forms of sexual violence during the war and has already been brought to the attention of BiH authorities without any significant result is that of the women in Una-Sana Canton. About 15 women victims of rape or other forms of sexual violence during the war who obtained decisions awarding them a monthly disability pension, found themselves in a situation of not being able to obtain the mentioned pension due to the obstruction exercised in this sense by an employee of the Cantonal Ministry of Health from Una Sana in Bihać (Mr. Jasmin Fikić). Allegedly, when the mentioned women claimed the payment of monthly pensions they are entitled to under the law, Mr. Jasmin Fikić refused to proceed with the payment and therefore fails to enforce the decisions legally obtained from the competent authorities. On one occasion he allegedly indicated to a woman who was requesting some clarifications on this situation that if she wants to receive monthly disability pension she has to go to the Ministry office and bring along with her the perpetrator who has to confirm what had happened to her. Indeed, this is not required by any legal provision. On another occasion, allegedly Mr. Fikić went door to door to verify if the victims in fact live at the addresses they have indicated in the documentation submitted. In this context, Mr. Fikić also allegedly posed questions to neighbours to verify whether they are familiar with what had happened to the victims, therefore disclosing the identity of the ladies concerned and jeopardizing their right to privacy and security. It is noteworthy that this procedure is not prescribed anywhere in the law. On the contrary, the initiative on Mr. Fikić has had the result of putting at risk the women whose identities he has disclosed, as well as subjecting them to serious stigma and discrimination within their local communities. As mentioned, this situation has been reported to the former Cantonal Minister (Mr. Mustafa Avdagić) as well as to the Federal Ministry of Labour and Social Policy (Mr. Perica Jelečević). The latter organized a meeting in Sarajevo with associations representing victims of violence as well as with the Cantonal Minister to discuss this problem. At the meeting the authorities promised that the situation would have been duly addressed. In fact, some cases were resolved. However, after a while, Mr. Fikić resumed his former practice. Accordingly, the issue has been communicated to the Ombudsperson who is at present scrutinizing and considering the situation.¹⁰⁶
62. Another critical situation is that reported from the association Viktorija 99 concerning the Central Bosnia Canton. Although the association is aware of a considerable number of women from this canton who are

¹⁰⁶ This information has been referred to TRIAL by the BiH Union of Former Concentration Camp Detainees and the Association Women-Victims of War.

victims of war-time rape or other forms of sexual violence, after having conducted a survey with the Centres for Social Work in charge of issuing monthly disability pension, they realized that in the municipalities of Jajice, Donji Vakuf, Novi Travnik, Kreševo, Busovača, Bugojno, Gornji Vakuf and Travnik, only ten women applied for the status as civilian victims of war. Out of these ten, only six were in fact recognized such status and are currently receiving a monthly disability pension. In the opinion of the association Viktorija 99, the present situation which largely fails to mirror the real scope of the phenomenon of war-time rape in the Central Bosnia Canton, is the result, among others, of the almost non-existent information provided by authorities to women about their rights, as well as of the lack of familiarity of authorities with the existing relevant legal framework.

63. In order to overcome the mentioned gaps and obstacles in the full guarantee of the rights of civilian victims of war, the UNDP is coordinating and supporting the drafting of a National Strategy for Transitional Justice.¹⁰⁷ This strategy is being developed in consultation with representatives of the civil society, including associations dealing with the subject of victims of rape or other forms of sexual violence during the war¹⁰⁸ and could represent a positive opportunity to eventually ensure, among others, the right to obtain integral reparation for civilian victims of war. At the same time, to overcome the particular obstacles faced by victims of rape or other forms of sexual violence, BiH initiated, in collaboration with the UNFPA, the drafting of a programme intended to address the needs of the survivors of war crimes and sexual violence.¹⁰⁹ For these initiatives to be successful, it is crucial that BiH ensures adequate support and funding to guarantee their prompt and full implementation, which shall result in granting the same rights to all beneficiaries, regardless of where they live and without any discrimination related to their ethnic belonging.
64. With regard to the specific problems faced by victims of rape or other forms of sexual violence in receiving compensation and integral reparation, the CEDAW urged BiH “to explicitly recognize and adequately protect women who were civilian victims of sexual violence during the armed conflict through a State law as well as through the allocation of financial resources for adequate social provisions for them, including health insurance and housing, so that their rights and entitlements are guaranteed in the entire State party at a level comparable to that applicable to military victims of war”.¹¹⁰ Along the same line, the Committee on Social and Economic Rights expressed grave concern about “the absence of a coherent strategy to support victims of sexual violence suffered during the armed conflict of 1992-1995 and that Entity laws pertaining to civilian war victims are gender-insensitive and provide inadequate

¹⁰⁷ See, *inter alia*, UNDP, *Transitional Justice Guidebook for Bosnia and Herzegovina*, Sarajevo, 2009, available at: www.undp.ba/upload/publications/executive_ENG_WEB.pdf.

¹⁰⁸ Among the associations that are submitting the present document, the Centre for Legal Assistance to Women Zenica, the Foundation for Local Democracy, the Association of Women-Victims of War, Infoteka, the Society for Threatened Peoples and Vive Žene Tuzla are involved in the consultations to design the National Strategy for Transitional Justice coordinated by the UNDP.

¹⁰⁹ Among the associations that are submitting the present document, the Association for Rehabilitation of Torture Victims-Center for Torture Victims (CTV), the Foundation for Local Democracy, the Association of Women-Victims of War, Infoteka, the Society for Threatened Peoples, Sumejja Gerc, Women’s Section of the Association of the Concentration Camp Detainees and Vive Žene Tuzla are involved in the consultation for the programme coordinated by UNFPA.

¹¹⁰ CEDAW, *Concluding Comments on BiH*, *supra* note 18, para. 38.

social protection for victims of sexual violence”¹¹¹ and it recommended BiH to “ensure that victims of sexual violence suffered during the armed conflict of 1992-1995 obtain the status of civilian war victims, to devise and implement a coherent strategy at State level to protect the economic, social and cultural rights of victims of sexual violence and their family members, and to ensure the participation of victims of sexual violence in any decision-making processes affecting them”.¹¹² Given the fact that victims of sexual violence often face ostracism and discrimination from their families and communities and that these destructive attitudes are mirrored in the adoption of discriminatory legislation and in the impossibility to accede to appropriate measures of reparation, BiH shall, in conjunction with local victims’ groups, undertake campaigns in conformity with international obligations to end demeaning stereotypes regarding women and men.

65. On this subject 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”.¹¹³ Furthermore, referring specifically to victims of rape or other forms of sexual violence, he noted “[...] 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. [...]”.¹¹⁴ 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

¹¹¹ CESCR, *Concluding Observations on BiH*, doc. E/C.12/BIH/CO/1 of 24 January 2006, para. 19. See also para. 23, where the Committee expresses its concern about the extent of poverty in the BiH, especially in rural areas and among internally displaced persons, minority returnees, families headed by single parents and victims of sexual violence during the armed conflict.

¹¹² *Ibid.*, para. 41. See also paras. 39-40.

¹¹³ Report Hammarberg, *supra* note 10, paras. 147-148.

¹¹⁴ *Ibid.*, para. 158.

social protection, eliminating unequal treatment that exists between civilian and military victims of war”.¹¹⁵

5.1 Problems related to claiming Compensation from Perpetrators

66. According to the domestic legal framework, a possibility exists to claim compensation for damage (claims under property law) suffered during the war in civil proceedings. Indeed, it is a complex procedure, which is regulated in a different manner in the entities.¹¹⁶ Although this procedure has proved effective for a small number of war victims, it does not hold true in the case of victims of rape or other forms of sexual violence.
67. Article 195 of the Code of Criminal Procedure BiH establishes that “1) A petition to pursue a claim under property law in criminal proceedings shall be filed with the Court. 2) The petition may be submitted no later than the end of the main trial or sentencing hearing before the Court. 3) The person authorized to submit the petition must state his claim specifically and must submit evidence. 4) If the authorized person has not filed the petition to pursue his claim under property law in criminal proceedings before the indictment is confirmed, he shall be informed that he may file that petition by the end of the main trial or sentencing hearing. If a criminal offence has caused damage to the property of the State of Bosnia and Herzegovina, and no petition has been filed, the Court shall so inform the body referred to in Article 194, Paragraph 2 of this Code. 5) If the authorized person does not file the claim under property law until the end of the main trial or if he requests a transfer to civil action, and the data concerning the criminal proceedings provide a reliable grounds for a complete or partial resolution of the claim under property law, the Court shall decide in the convicting verdict to pronounce on the accused the measure of forfeiture of property gain”. Article 198.2 adds that: “in a verdict pronouncing the accused guilty, the Court may award the injured party the entire claim under property law or may award part of the claim under property law and refer him to a civil action for the remainder. If the data of criminal proceedings do not provide a reliable basis for either a complete or partial award, the Court shall instruct the injured party that he may take civil action to pursue his entire claim under property law”. It results that the Court has the option to award part of a claim to the injured parties or to refer them to civil actions. To date, out of alleged 100 victims of rape¹¹⁷ or other forms of sexual violence whose cases have been the subject of criminal verdicts, none has been awarded reparation directly by the Court or on the initiative of the competent prosecutor. Injured parties have instead been instructed that they may take civil action to pursue their entire claims under property law.¹¹⁸
68. On this subject, the Special Rapporteur on Torture pointed out that “while the State bears the primary responsibility to provide an effective remedy and full reparation for victims of torture, the individual

¹¹⁵ *Ibid.*, paras. 187-188.

¹¹⁶ For a thorough analysis of the problems existing on this subject at the entity level, which, for reasons of space, here will not be further considered, see, Amnesty International, *Whose Justice: The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 28, pp. 47-49.

¹¹⁷ The estimate is not official and was provided by the Association of Women-Victims of War.

¹¹⁸ Articles 193 and 194 of the Code of Criminal Procedure of BiH regulate respectively the “subject of the claim under property law” and “petition to satisfy a claim under property law”.

perpetrator, his or her superiors and the authorities directly responsible should be held accountable to bear the costs for as full as rehabilitation as possible, which may also have a deterrent effect".¹¹⁹ He also declared that "[...] it is important that victims of torture themselves be entitled to initiate such procedures and enjoy equal access to these mechanisms without fear of reprisals. [...] In this context, it also needs to be emphasised that, as the standard of proof may be higher in criminal proceedings, *the availability of civil procedures to claim reparation should not be dependent on the outcome of a criminal procedure*".¹²⁰

69. Problems concerning the existing procedure in BiH may be summarized as follows: in the majority of cases, victims are not aware of their right to apply for compensation from perpetrators and of the functioning of the procedure to enforce such right and are not duly informed on the existence and functioning of the procedures to enforce their rights; victims who give their testimony in the course of a trial are not automatically included among those who are notified about the delivery of a decision that refers them to civil action for compensation; although the State Court would be entitled to award compensation to the injured party, this is a discretionary choice depending on the initiative of the competent prosecutor which, so far, has not been taken, rather favouring referral to civil action; victims would need a lawyer to represent them in civil claims for compensation and, in almost the totality of cases, they cannot afford it, while free legal aid is not granted to them by the State.¹²¹ This situation creates a vicious circle that penalizes the most vulnerable parties, who find themselves trapped between complicated procedural burdens, the failure of prosecutors to apply for compensation claims on behalf of the injured parties and the lack of adequate legal aid and representation.
70. In this sense, the Association of Women-Victims of War points out that many victims are not aware of the procedure to claim compensation directly from the perpetrator and that, where a person is sentenced for the commission of multiple crimes, it is not clear which of the injured parties are entitled to apply for compensation. In certain cases, when a tribunal sentences a person for war crimes, injured parties are afterwards formally notified about the possibility to submit a claim to obtain compensation from the perpetrator.¹²² However, this does not seem to be the regular practice. For instance, in the proceedings against Mr. Željko Lelek,¹²³ four victims of rape rendered their testimony as protected

¹¹⁹ *Study on the Phenomenon of Torture*, supra note 37, para. 167.

¹²⁰ *Ibid.*, para. 171 (emphasis is added).

¹²¹ There is no State institution guaranteeing free legal aid to civilian victims of war. Although there are some NGOs (e.g. Vaša Prava and the FLD) that provide this service, this remains an obligation of the State which, so far, has not been implemented by BiH. On this problem see European Commission, *Bosnia and Herzegovina 2010 Progress Report*, supra note 36, p. 16, whereby it is reported that "the adoption of the framework Law on free legal aid needed to comply with the ECHR is still pending. [...] Legal aid in civil cases continues to be provided on a mainly *ad hoc* basis by privately founded NGOs".

¹²² With regard to notification of decisions, Article 167 of the Code of Criminal Procedure of BiH establishes that "1. Unless otherwise determined by this Code, decisions shall be communicated to parties by way of oral announcement if they are present or a certified copy shall be delivered to them if they are absent. 2) If a decision has been orally communicated, this shall be indicated in the relevant record or case file, and the person who has acknowledged the communication shall confirm this by his signature. If the concerned person declares that he will not appeal, no certified copy of the orally communicated decision shall be delivered to him unless otherwise determined by this Code".

¹²³ On 12 January 2009 Mr. Željko Lelek was sentenced to 16 years imprisonment for crimes against humanity (imprisonment, torture, rape or other forms of sexual violence) perpetrated in Višegrad. See Court of Bosnia and Herzegovina, Case *Prosecutor v. Željko Lelek* (Case X-KRZ-06/202), judgments of 23 May 2008 (first instance) and 12 January 2009 (appeal).

witnesses (protected witnesses S., A., C. and D.). In its judgment the Court of BiH declared that “pursuant to article 198 (2) CPC BiH the injured party Mirsada Tobaković and protected witnesses S., A. and D. *and others* are hereby instructed to take civil action to pursue their claims under property law” (emphasis added).¹²⁴ However, the Court did not notify the witnesses concerned and the Association of Women-Victims of War was not able to find out which of the witnesses were in fact entitled to apply for compensation and what did the Court mean by “and others” when referring to subjects entitled to apply for compensation. In the same proceedings against Mr. Željko Lelek, which concerned also the arbitrary killing of Mr. Ibro Međuseljac, the family of the latter did not receive any notification by the court, and the daughter of the victim discovered only through the Association of Women-Victims of War that she and her family could apply for compensation.

71. It is also noteworthy that, to exercise the right to obtain compensation from a perpetrator, victims must be represented by a lawyer, while the great majority of them cannot afford to pay for legal representation.¹²⁵ In the past, the Association of Women-Victims of War has contacted a number of lawyers, requesting support in these procedures. However, all the lawyers who were contacted answered that they could not provide support, since they allegedly were not familiar with the relevant procedure. The Association of Women-Victims of War insisted to make arrangements with domestic lawyers to obtain *pro bono* representation or also to pay them a percentage of the amount of money received by the victims as compensation. So far, no lawyer allegedly accepted to assume the representation of members of the Association of Women-Victims of War in proceedings for compensation. At the same time, the State failed to guarantee free legal aid and legal services, thus *de facto* making it impossible for victims of rape or other forms of sexual violence to enforce their right to compensation. Indeed, in many cases victims of sexual violence feel particularly frustrated due to the fact that, while they have such considerable obstacles in acceding to free legal aid, those accused and undergoing criminal proceedings can avail themselves of the representation which is provided to them by the lawyers of the Criminal Defence Section (*Odsjek Krivične Odbrane*). While this is a fair trial guarantee that shall be preserved, victims of sexual violence consider that they also should be placed in a position to enjoy similar guarantees.
72. Finally, it has to be highlighted that, upon indictment, many people charged for crimes against humanity or war crimes, including rape or other forms of sexual violence, immediately declare to have no property whatsoever. In these cases, even if the conviction eventually enables witnesses or injured parties to

¹²⁴ In this judgment, the Court justified the fact that it did not proceed to award compensation to the injured parties with the consideration that “deliberation on this notion would considerably prolong these proceedings”.

¹²⁵ On this subject, the Special Rapporteur on Torture pointed out that “[...] in order to make effective use of existing remedies, victims are also often in need of legal aid and legal services, including forensic and medical expertise to secure evidence and substantiate their claims” (*Study on the Phenomenon of Torture, supra* note 37, para. 171). Indeed, victims of rape or other forms of sexual violence referred that they perceive as a form of discrimination that fact that, according to the Code of Criminal Procedure (Art. 40), those suspected or accused of war crimes are entitled to have more than one defence lawyer, while there is no similar provision to grant them adequate representation.

apply for compensation, they would not have concrete perspectives of success.¹²⁶ Accordingly, the State shall guarantee that, even though the person convicted claims to have no property the rights of injured parties must be secured anyway. Victims of rape or other forms of sexual violence repeatedly pointed out that payment of compensation shall be in cash and not in bonds and that they should be exempted from the payment of court fees (which the majority of them cannot afford).

5.2 Problems of Adequate Housing as a Measure of Restitution

International Covenant on Economic, Social and Cultural Rights (Art. 11.1): “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions [...]”.

73. As a result of the violations suffered during the war, many of those who were subjected to rape or other forms of sexual violence, were forced to leave their homes. Those who obtained the status as internally displaced persons were entitled to stay in alternative accommodation. BiH is under an obligation, as a measure of restitution for the harm suffered, to guarantee, if victims so wish, return to their place of origin in safe and dignified conditions, or otherwise the access to alternative housing programmes.¹²⁷
74. To date, access to adequate housing¹²⁸ remains one of the major problems for victims of rape or other forms of sexual violence. The Women’s Section of the Association of Concentration Camp Detainees reports that many of their members have been victims of several violations of their rights: originally they were raped or otherwise sexually abused, afterwards they were banned from their places of origin and from their homes (mainly in Eastern and North-Western Bosnia) and to date they still live in collective centres in the Sarajevo Canton.¹²⁹
75. The existence of this kind of problems has been pointed out with concern by the CAT in its last concluding observations on BiH: “the Committee expresses its concern at persistent reports claiming that existing programmes of property restitution have failed to take into account gender and psychological needs of the victims of sexual violence. The Committee is also concerned at their lack of economic opportunities and the poor living conditions”.¹³⁰

¹²⁶ An example that can be recalled is that of Mr. Veselin Vlahović (“Batko”) who in March 2010 was arrested in Spain. He is accused, among others, of crimes against humanity, including rape or other forms of sexual violence, committed from 1992 to 1995 in the district of Grbavica, in Sarajevo. Upon arrest, Mr. Vlahović immediately declared that he does not have any property. Victims of rape or other forms of sexual violence therefore fear of not being able to obtain compensation. Mr. Vlahović was extradited from Spain to BiH and is currently awaiting trial.

¹²⁷ See also Committee on the Rights of the Child (CRC), *Concluding Observations on BiH*, doc. CRC/5/15/Add.260 of 21 September 2005, para. 62 a) and b); and Representative of the Secretary-General on Human Rights of Internally Displaced Persons, *Report on the Mission to Bosnia and Herzegovina*, doc. E/CN.4/2006/71/Add.4 of 29 December 2005, paras. 38-53 and 57. See Buyse, *Post-Conflict Housing Restitution: The European Human Rights Perspective, with a Case Study on Bosnia and Herzegovina*, *supra* note 76.

¹²⁸ In general, BiH lacks a housing national strategy. In this sense, CESCR, *Concluding Observations on BiH*, *supra* note 111, paras. 24 and 46.

¹²⁹ Over the years the Women’s Section of the Association of Concentration Camp Detainees has been in contact with the Ministry of Labour, Social Politics, Displaced Persons and Refugees to solve the problem of victims of rape during the war members of the Section who have not obtained adequate housing (Annexes 17-22 in the local language and English).

¹³⁰ CAT, *Concluding Observations on BiH*, *supra* note 20, para. 16.

76. A first instance that may be recalled is that of C. C. and A. R.. Both ladies are originally from Foča where, in 1992, they were subjected to sexual violence and subsequently banned from their houses by members of the VRS.¹³¹ From Foča they were forced to move to Sarajevo Canton, where they were accommodated in houses that had been abandoned and where Bosnian Serb people used to live. However, Annexe 7 to the Dayton Peace Agreement gave the opportunity to all people to go back to their pre-war houses until the year 2003. That year C. C. and A. R. were notified that within 15 days they should leave the apartments they were living in. Consequently, they were transferred from the places where they were living to collective centres. In the Sarajevo Canton there were three centres of collective housing, namely in Gladon polje, Stup and Hrasnica. C. C. and A. R. were accommodated in Hrasnica, where they live until this very date together with their families, while other victims of sexual violence managed to move to individual flats through the support of international donors.¹³² Since 2007 the Women's Section of the Association of Concentration Camp Detainees has been sending letters to the Ministry of Labour, Social Policy and Displaced Persons, but to no avail. The Association never received any formal answer by the Ministry, but, informally, they were repeatedly told that there are not enough resources to implement a housing programme (Annexes 9-12 in the local language and in English). The Women's Section of the Association of Concentration Camp Detainees sent letters also to the municipal mayors of the municipalities where the ladies concerned live, but this did not produce any significant result.
77. A second significant instance is that of B. P. who used to live in Sarajevo but, when the conflict started, remained trapped in Vogošća, where she was deprived of her liberty and conducted to the JNA army barrack. There she was subjected to sexual violence until she was exchanged with Bosnian Serb prisoners and returned to Sarajevo. Together with her four children B. P. went to live with her mother in a small room in the suburb of Panjina Kula, where she resides until present. B. P.'s mother is in a very precarious health situation. The Women's Section of the Association of Concentration Camp Detainees sent letters to the Ministry of Labour, Social Policy and Displaced Persons and to the municipal mayor (Annexes 1-4 in the local language and English). However, to date these steps have not produced any significant result and the Association has not received any formal answer by the authorities concerned.
78. Thirty of the members of the Association of Women-Victims of War are facing problems related to housing. Almost ten women victims of rape during the war are still located in places of alternative collective accommodation that fall under the jurisdiction of the different municipalities concerned. Others

¹³¹ C. C. was raped by members of the VRS in 1992 in the village of Brod, in the municipality of Foča. In the case of A. R., after her husband was deprived of his liberty by members of the VRS and detained in the prison in Foča (known as KPD Foča), she remained in the village of Saš with her two children (respectively 8-month and 1-year and half old). From 1992 to 1993 A. R. was repeatedly subjected to rape or other forms of sexual violence by members of the VRS. In 1993 also A. R. and her children were transferred to the KPD Foča and, after having spent some time there, A. R. was eventually forced to leave to Goražde. Due to the harm inflicted on her as a result of the repeated acts of sexual violence, A. R. had to undergo seven surgeries and, to date she would need constant medical care and support.

¹³² It is noteworthy that not all of those who received support from international donors were granted adequate housing. For instance, one member of the Women's Section of the Association of the Concentration Camp Detainees, was accommodated together with her four children in a 39 square meters' flat.

have started the process of building a house, but do not have enough means to complete their projects. Indeed, the State is failing to provide them with adequate material and financial support.

79. In BiH, internally displaced persons are entitled to this status and to related benefits until a “safe and dignified” return to their pre-war residence is possible. When obstacles to return exist, regardless of the opinion of the persons involved, those displaced are forced to return and they are no longer entitled to social benefits. In this context, many people, including survivors of rape or other forms of sexual violence, were forced to return to their pre-war houses, although they did not consider that conditions for “safe and dignified return existed”.¹³³ In its concluding comments on BiH, the CEDAW expressed concern “at the pending threat of eviction from their accommodations in the Federation of BiH of women who are civilian victims of sexual violence and internally displaced persons”¹³⁴ and it accordingly urged BiH to “review its current regulations and plans on accommodation issues for women who are civilian victims of war and displaced persons in order to prevent additional forms of indirect discrimination”.¹³⁵ In this context, it must be also added that the Committee on Economic, Social and Cultural Rights expressed its deep concern for the fact that “returnees, in particular those belonging to ethnic minorities, are often denied access to social protection, health care, school education for their children and other economic, social and cultural rights, thereby impeding their sustainable return to their communities”¹³⁶ and it recommended BiH to “intensify its efforts to ensure the sustainable return of returnees to their home communities by ensuring their equal enjoyment of the Covenant rights, especially in the fields of social protection, health care and education”.¹³⁷
80. The Women’s Section of the Association of Concentration Camp Survivors referred to the outstanding example of M. R. from Bijeljina, who was raped by members of the VRS over a period of an entire year from 1992 to 1993.¹³⁸ In 1993 M. R. was granted an accommodation by the municipality of Novi Grad (Sarajevo), where she resides to date with her husband and two children. The tenants of the flat passed away. M. R. suffers from post-traumatic stress disorder (PTSD) and her husband has hepatitis C. In 2005 M. R. received a notification saying that if she did not sign a ‘voluntary return certificate’ for her return to Bijeljina in an apartment which was destroyed and was not her property but the property of her husband’s family, she would be evicted from Sarajevo to Bijeljina in three days. M. R. turned to the Women’s Section of the Association of Concentration Camp Detainees and they advised her to sign the certificate, promising that they would see what they could do in five or six-month time. M. R. signed the certificate while the government repaired the house in Bijeljina. In a couple of months, M. R. was asked to leave the apartment in Sarajevo and to go back to the renovated house in Bijeljina. She refused to do so because she feels she cannot live in the same city where she had been raped for a year. Luckily, the

¹³³ See, *inter alia*, Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 28, p. 50.

¹³⁴ CEDAW, *Concluding Comments on BiH*, *supra* note 18, para. 37.

¹³⁵ *Ibid.*, para. 38.

¹³⁶ CESCR, *Concluding Observations on BiH*, *supra* note 111, para. 12.

¹³⁷ *Ibid.*, para. 32. See also para. 42.

¹³⁸ To date no one has been formally accused, prosecuted and sanctioned for the sexual crimes committed against M. R. from 1992 to 1993 in Bjeljina.

Women's Section of the Association of Concentration Camp Detainees addressed the mayor of the municipality and managed to keep M. R. and her family in their apartment in Sarajevo (Annexes 5-8 and 23-30 in the local language and English).

5.3 Problems related to Restitution and Preferential Treatment in Employment

International Covenant on Economic, Social and Cultural Rights (Arts. 2.2 and 6): "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Art. 6 "1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual".

Convention on the Elimination of All Forms of Discrimination against Women (Arts. 3, 10.1.a, 11.1.a and 11.1.b): "Art. 3 States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men".

Art. 10.1.a "States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training".

Art. 11.1 "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings; (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment".

General Recommendation No. 19: "Measures to protect [women] from violence should include training and employment opportunities [...]" (para. 24.p).

81. Another serious problem faced by victims of rape or other forms of sexual violence is the lack of access to stable employment.¹³⁹ This is seen as a measure of restitution for the harm suffered.¹⁴⁰ In the FBiH the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children establishes that, among others, survivors of rape or other forms of sexual violence are entitled to receive vocational trainings and special measures to qualify them for jobs. This part of the law remains almost a dead letter. On the other hand, the Law on the Protection of Civilian Victims of War in the RS does not recognize any right to preferential treatment in employment or trainings for survivors of rape or other forms of sexual violence.

¹³⁹ See, *inter alia*, Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 28, pp. 51-52. Indeed, this subject shall be seen in the wider context of unemployment in BiH: CESCR, *Concluding Observations on BiH*, *supra* note 111, paras. 14 and 35.

¹⁴⁰ In this sense see, *inter alia*, *Principles on the Right to a Remedy*, *supra* note 93, Principle 19; and HRC, *Case Busyo v. Democratic Republic of Congo*, views of 9 August 2003, para. 6.2.

82. This situation was referred to as a matter of deep concern by the Commissioner for Human Rights of the Council of Europe, who indicated that: “[...] the relevant legislation in the Federation of Bosnia and Herzegovina provides that the civilian victims of war-related crimes of rape and other forms of sexual violence shall have preferential treatment in employment. Access to vocational training to help them qualify for jobs is also provided for by the law. The Commissioner is concerned by reports indicating that these parts of the law remain largely unimplemented. Moreover, in the RS the right to preferential treatment in employment or to vocational training is not enshrined in the law regulating the status of the civilian victims of war”.¹⁴¹
83. As an example of this situation, it may be quoted that out of the 60 members of the Women’s Section of the Association of the Camp Concentration Detainees who were raped or otherwise sexually abused during the war, 99% do not have a stable employment to date. These women would like to have a job and not to depend merely on disability pensions. In their view, this would have a very positive impact for them, both materially and psychologically. So far, the State has failed to guarantee them any preferential treatment in the access to employment and they were not admitted to any vocational training. Accordingly, the Women’s Section of the Association of the Camp Concentration Detainees offered to its members access to, among other activities, a sewing school. The women who participated in this activity benefited from a solid therapeutic impact. However, members of the Section who live outside Sarajevo cannot accede to this programme. Overall, it remains the responsibility of the State to guarantee access to stable employment and to vocational trainings to all survivors of rape or other forms of sexual violence, regardless of where they live.

5.4 Problems of Access to Education for Children of Victims of Rape or other Forms of Sexual Violence as a Measure of Restitution

International Covenant on Economic, Social and Cultural Rights (Arts. 2.2, 10.1 and 10.3): “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Art. 10 [...] The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses. 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. [...]”.

84. Children of victims of rape or other forms of sexual violence have often been subjected to discrimination and they have to face additional obstacles in the access to school and employment.¹⁴² The possibility for these children to receive adequate education and to find a job is a particular concern for survivors of rape or other forms of sexual violence. While in the RS the legal framework does not specifically address this matter, in the FBiH it is stipulated that preferential treatment shall be accorded to this

¹⁴¹ Report Hammarberg, *supra* note 10, para. 160.

¹⁴² Indeed, the rights of children born from war-time rape in BiH shall be read in the light of the international obligations established for BiH by the Convention on the Rights of the Child. BiH is a State party to such treaty, see *supra* para. 3.

particularly vulnerable category. Nevertheless, this is largely unimplemented.¹⁴³

85. The members of the Women's Section of the Association of the Camp Concentration Detainees referred to the specific instance of L. K., who is the son of a victim of rape during the war. He wanted to enrol to the Electro-Technical Faculty, but neither he nor his family had the sufficient means to pay the fee. Notwithstanding the Women's Section of the Association of the Camp Concentration Detainees sent a letter to the Faculty requesting that L. K. is guaranteed a preferential treatment (Annexes 13-14 in the local language and English), his application has been rejected. This situation has been lived by the mother of L. K. as an additional trauma that fostered her feelings of marginalization, inadequacy and further damaged her self-esteem.
86. Associations that work on the subject of victims of sexual violence during the war reiterated that the situation of children of victims of rape is particularly difficult in the RS, since there is no support to this category of people. The Association of Women-Victims of War referred to the fact that the lack of an adequate legal framework in the RS generates a number of obstacles in the fulfilment of the rights of victims of rape and their children. The example of the son of a victim of rape from a town in the RS was quoted: the boy, a returnee in the RS born as a result of the rape suffered by his mother during the war, did not have enough resources to pursue his education and therefore missed one year in school. The authorities in the RS did not intervene and accordingly the Association of Women-Victims of War managed to arrange for the transfer of the boy to a school in the FBiH. The boy was therefore forced to leave the RS once more and see his access to education duly guaranteed.

5.5 Problems related to Medical and Psychological Rehabilitation

International Covenant on Economic, Social and Cultural Rights (Art. 12.1 and 12.2.d): "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". "The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: [...] The creation of conditions which would assure to all medical service and medical attention in the event of sickness".

Convention on the Elimination of All Forms of Discrimination against Women (Arts. 3 and 12.1): "Art. 3 States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men".

Art. 12. 1 "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning".

General Recommendation No. 19: "States parties should establish or support services for victims of [...] rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling" (para. 24.k).

87. Sexual violence can seriously affect the victim's mental health, with dire consequences in the short,

¹⁴³ CRC, *Concluding Observations on BiH*, supra note 127, para. 64.

medium or long term.¹⁴⁴ Accordingly, victims of rape or other forms of sexual violence shall be guaranteed, as measures of rehabilitation for the harm suffered, access to adequate, timely and appropriate medical and psychological care, consistent with the right to the highest attainable standard of physical and mental health.¹⁴⁵

88. Although in some cases medical and psychological care are provided to survivors of rape or other forms of sexual violence by the Centre for Victims of Torture or by other NGOs, such as Medica or *Vive Žene* Tuzla, it shall be emphasized that this is limited to those who live close to the mentioned organizations and, therefore, a large number of people who would be entitled to receive treatment cannot actually accede to it. Furthermore, it must be stressed that organizations such as the Centre for Victims of Torture, Medica and *Vive Žene* Tuzla are NGOs that work on the basis of their own resources, which are usually almost entirely based on international donations. Nonetheless, it remains an obligation of the State (BiH) to provide medical and psychological support as a form of rehabilitation.¹⁴⁶ Indeed, it results that so far there are certain areas of BiH, such as Bosanska Krajina, where no programme of psychological support for victims of sexual violence during the war has ever been carried out by State institutions.¹⁴⁷ Programmes of health and psychological rehabilitation must be implemented at the community level, with the input of those who have been traumatized. Such programmes shall be conceived as non-stigmatizing for victims of rape or other forms of sexual violence and shall cover the whole territory of BiH. It is also crucial that family doctors are educated in the special area of women's health, as well as the existing personnel of the Centre for Mental Health.
89. In this sense, the Commissioner for Human Rights of the Council of Europe expressed that: “[...] many survivors of war-related sexual violence suffer post-traumatic stress disorder and other psychological and physical problems. The Commissioner is concerned that provision of psychological support to survivors of war-related sexual violence is inadequate and that many of the women victims have not been able to access the healthcare system. On average there is one mental health centre for every 40–50,000 people. This situation leaves many local communities without a psychologist or a psychiatrist, as is the case in Bratunac, where 8,000 IDPs have returned since the end of the war. It has been reported that almost 90% of rape victims do not receive any kind of psychological treatment. Local NGOs appear

¹⁴⁴ For a thorough analysis of the psychological and physical consequences of sexual violence see, *inter alia*, Josse, “*They Came with Two Guns*”: *the Consequences of Sexual Violence for the Mental Health of Women in Armed Conflicts*”, *supra* note 12. See also CEDAW, *General Recommendation No. 19*, *supra* note 8, para. 7; *General Recommendation No. 24, Women and Health*, 1999, para. 15.(a); Report of the Special Rapporteur on the Right to the Highest Attainable Standard of Physical and Mental Health, doc. E/CN.4/2004/49 of 16 February 2004, para. 25.

¹⁴⁵ See, *inter alia*, *UN Principles on the Right to a Remedy*, *supra* note 93, Principle 21; Redress, *Rehabilitation as a Form of Reparation under International Law*, London, 2009; and *UN Principles to Combat Impunity*, *supra* note 37, Principle 34. Indeed, the concept of rehabilitation includes also “access to legal and social services”. Victims of rape or other forms of sexual violence have so far not been guaranteed access to legal services either. See also of the Special Rapporteur on the Right to the Highest Attainable Standard of Physical and Mental Health, *supra* note 144, paras. 12 and 46.(a).

¹⁴⁶ This obligation was clearly spelled out already in 1993 by the then UN Special Rapporteur on the Situation in the former Yugoslavia, Report Mazowiecki, *supra* note 8, para. 269.1.(d).

¹⁴⁷ In the first months of 2011 some NGOs have launched a programme in the area (using offices in Prijedor) to address victims of sexual violence during the war. However, these organizations are not receiving any kind of support from the State.

to be the only institutions offering psychological support to victims".¹⁴⁸

90. A particular situation has been reported in the Canton Tuzla, whereby women victims of rape or other forms of sexual violence are allegedly denied access to health insurance to which they are entitled according to the legislation in the FBiH and which other women in a similar condition are receiving in the other cantons of the FBiH. This situation would amount to a discrimination against women victims of sexual violence in the Canton Tuzla, which does not seem to have any objective justification and that would have the only result of penalizing an already extremely vulnerable category of people. Indeed, there does not seem to have been a thorough investigation on these extremely grave allegations.
91. In many cases women who were raped during the war and who eventually had a child as result of the rape face an additional challenge in coping with children in this situation. In many cases, they are not prepared to explain the situation to the child and they face an additional emotional stress for this. Also the children themselves are in an exceptionally delicate condition: discovering their origin and learning to cope with it, in particular when they are exposed to discrimination and stigmatization requires the assistance of specialized professionals. In this sense, when establishing a strategy to provide psychological support to women victims of rape or others forms of sexual violence during the war, BiH should include also children born as a result of rape and their special needs. Accordingly, the State shall implement programmes of health and psychological support to adequately assist children born as a result of war-time rape, ultimately allowing them to process their trauma and to play an active role in BiH society.

6. Conclusions and Recommendations

92. Although 16 years have passed since the conclusion of the war in BiH, thousands of victims of rape or other forms of sexual violence have not been guaranteed access to justice, compensation and integral reparation for the harm suffered. On the contrary, they remain among the most marginalized and stigmatized categories within BiH society. The present situation amounts to ongoing violations by BiH of its international obligations as established, among others, under Articles 2, 3, 7, 9.5 and 10 of the International Covenant on Civil and Political Rights; Articles 2, 3, 10, 11, 12 and 13 of the Convention on the Elimination of All the Forms of Discrimination against Women; Articles 2, 6, 10, 11, 12 of the International Covenant on Economic, Social and Cultural Rights; and Articles 1, 2, 4, 5, 7, 12, 13 and 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Moreover, also the rights enshrined in the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974); as well as in the Declaration on the Elimination of Violence against Women (1993); and in the Geneva Convention relative to the Protection of Civilians in Times of War (1949), with particular reference to Articles 27 and 38.5, are seriously hampered by the mentioned situation.
93. The subscribing associations are persuaded that a country visit of the distinguished Special Rapporteur to BiH would provide her with a first hand account of the situation concerning women victims of rape or

¹⁴⁸ Report Hammarberg, *supra* note 10, para. 161.

other forms of sexual violence during the war and would greatly contribute to maintaining such a fundamental item on the agenda, until thousands of women are granted their right to justice and integral reparation. Therefore, we would request the Special Rapporteur to solicit an invitation to carry out such visit to the government of BiH, bearing in mind that on 7 May 2010 BiH issued a standing invitation to all United Nations thematic procedures, thereby announcing that it will always accept requests to visit.

94. Moreover, for the reasons explained above, the associations submitting the present document respectfully request the Special Rapporteur to recommend BiH to:

- ▶ Elaborate a unified and accurate database concerning victims of rape or other forms of sexual violence during the war, duly considering also those currently living outside BiH. In the process, BiH authorities must guarantee transparency and certainty, as well as the security and privacy of the victims, duly taking into account the sensitivity of this subject.
- ▶ Include in the criminal codes at all levels a definition of “rape” and “sexual violence” in accordance with international standards and jurisprudence and remove the condition of “force or threat of immediate attack” from the present definitions. Rape or other forms of sexual violence shall be codified as separate offences in the Criminal Code of BiH also when they are committed as isolated acts.
- ▶ Ensure that criminal codes at all levels explicitly define that a person who acted pursuant to an order to commit rape or other forms of sexual violence shall not be relieved of criminal responsibility and that those who refuse to obey such an order will not be punished.
- ▶ Ensure that a comprehensive programme of vetting is undertaken in order to avoid war criminals from holding public offices or working in the police.
- ▶ 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 harassment shall be promptly and thoroughly investigated and those responsible shall be judged and sanctioned.
- ▶ Ensure that witness protection and support are victim-oriented and supplied by experts who are adequately trained to provide these services and are financed by the State.
- ▶ Guarantee that witnesses obtain adequate material support, including safe and free of charge transportation to and from the court.
- ▶ Ensure that when survivors of traumatic human rights violations, in particular of rape or other forms of sexual violence, are called to give evidence, a detailed witness assessment is conducted by professionals. In case it results that the person may be at psychological risk from testifying and does not wish to appear in court, he or she should be excused to do so without punishment. The State shall ensure that no one, including associations from the civil society, unduly pressurizes potential witnesses, who shall freely give their consent to testify.

- ▶ Ensure that all cases of rape or other forms of sexual violence perpetrated during the war are promptly, independently, impartially and thoroughly investigated and that those responsible are judged and sanctioned in accordance with international fair trial standards. War-time rape shall be prosecuted as such, applying the relevant standards and prosecutors and courts shall refrain from using dealing with such cases as ordinary rape, since this does not mirror the particular nature of this heinous crimes and while it unduly advantages the defendant, it creates serious prejudices to the women who have already been subjected to this gravest violation of their basic human rights.
- ▶ Guarantee that district and cantonal courts as well as prosecutorial offices receive the necessary resources and trained staff to deal with war crimes cases. Specialized investigators shall be employed to assist prosecutors in the investigation of war crimes.
- ▶ Ensure that, in general, victims of rape or other forms of sexual violence are given information on a regular basis on the process of investigation carried out by the Prosecutor's Office, the results of those investigations and whether trials might be forthcoming. Courts at all levels shall have consistent rules in dealing with the public in general and with victims of rape or other forms of sexual violence in particular.
- ▶ Ensure that all relatives of victims of rape or other forms of sexual violence have access to social benefits and other measures of social support irrespective of where they live. Such legislation should be adopted on the State level in order to avoid the continuation of the current situation in which there exists discrimination in access to and levels of social benefits depending on the entity involved. In general, civilian victims of war shall not receive a worse treatment compared to that of war veterans.
- ▶ Implement a national programme on measures of reparations for civilian victims of war, including victims of rape or other forms of sexual violence that encompasses compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. Also civilian victims of war currently living abroad shall be entitled to realize their right to compensation and restitution. In particular, the State shall guarantee, as a measure of reparation, access to free psychosocial support, provided through State's institutions and health services.
- ▶ Ensure an effective public system of free legal aid enabling civilian victims of war, including victims of rape or other forms of sexual violence to receive legal support (counselling and, if need be, access to court), if they are not able to afford them.
- ▶ Take measures to raise awareness about the status of civilian victim of war and, in particular, the possibility for applying for such status and the rights deriving from it.
- ▶ Ensure that adequate and effective criteria are applied to recognize the status of civilian victim of war without discrimination and further traumatising for the people involved. Where this

responsibility has been entrusted to a particular organization, BiH shall adopt all necessary measures to guarantee that such organization has adequate resources to do so and to carry out the task in full respect of the victim's rights and needs.

- ▶ Ensure full support and funding to the National Strategy for Transitional Justice currently coordinated by the UNDP and to the National Strategy to address the needs of victims of rape or other forms of sexual violence during the war currently coordinated by the UNFPA. BiH shall ensure that the mentioned programmes are developed with the involvement of victims of rape and other forms of sexual violence and, in general, of NGOs that work with these categories.
- ▶ Ensure that victims of rape or other forms of sexual violence are adequately informed about their right to claim compensation from individual perpetrators and, where a judgment of the State Court refers them to civil proceedings for this purpose, are automatically notified about the relevant decision and are provided with free legal aid to effectively fulfil their rights.
- ▶ Ensure that the psychological impact of the return on individuals is duly considered when evaluating whether there are the conditions for a "safe and dignified" return of internally displaced persons to their pre-war places. No forcibly displaced person, and in particular victims of rape or other forms of sexual violence shall be forced to return if they do not wish to do so. Those not willing to return shall be provided with alternative options of resettlement, guaranteeing access to safe and adequate housing to them and their families.
- ▶ Undertake without delay all necessary measures to guarantee the reintegration in the labour market of victims of rape or other forms of sexual violence as well as access to vocational trainings. Both at the State and the entity level preferential treatment in employment shall be assured to victims of rape or other forms of sexual violence and the legal framework shall be amended accordingly.
- ▶ Guarantee to the children of victims of rape or other forms of sexual violence the access to education and, if they wish to continue with their studies, to the highest levels of instruction.
- ▶ Develop a system to provide victims of rape or other forms of sexual violence in BiH, including those who live in remote areas of the country, with access to psychological accompaniment and medical treatment free of charge. BiH shall remove existing barriers that unduly obstruct the access to medical and psychological treatment and medicines, including unaffordable travel expenses. Moreover the State shall support and provide resources to those organizations that already work in this field, making sure that they continue supplying good quality treatments to victims of rape or other forms of sexual violence. BiH shall ensure that programmes of health and psychological support are also put in place to adequately assist children born as a result of war-time rape.

95. We remain at full disposal of the Special Rapporteur for any clarification or further information and we take this opportunity to acknowledge in advance the kind attention and to commend the Special Rapporteur and her Secretariat for their commitment and indispensable work in the struggle against the scourge of violence against women.

On behalf of:

Women's Section of the Association of Concentration Camp Detainees

Centre for Legal Assistance to Women Zenica

Association for Rehabilitation of Torture Victims-Centre for Torture Victims (CTV)

Foundation of Local Democracy

Association of Women-Victims of War

Infoteka (Women's Information and Documentation Centre)

Medica Zenica

Through Heart to Peace

Society for Threatened Peoples

Sumejja Gerc

Viktorija 99

Vive Žene Tuzla

Philip Grant

TRIAL Director

Information on the Associations Submitting the General Allegation

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 (ACT), born from the premise that, despite the existence of legal tools able to provide redress to victims of international crimes, these mechanisms are considerably underused and thus their usage should be enforced.

Considering that the needs of victims of gross human rights violations during the war, their relatives and the organizations which represent them are sadly overwhelming and that there is no similar initiative in Bosnia and Herzegovina (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 38 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). In 2009 and 2010 respectively, TRIAL has also submitted a general allegation to the United Nations Working Group on Enforced or Involuntary Disappearances as well as an alternative report to the United Nations Committee against Torture (CAT).

Contact person: Dr. iur. Philip Grant (Director)

E-mail: philip.grant@trial-ch.org

Address: TRIAL (*Swiss association against impunity*), P.O. Box 5116, 1211, Geneva 11, Switzerland

Tel./Fax No.: + 41 22 321 61 10

Websites: www.trial-ch.org/ and www.trial-ch.org/BiH

b) Women's Section of the Association of the Concentration Camp Detainees

The **Women's Section of the Association of Concentration Camp Detainees** 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 for ever 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 Association of the Concentration Camp Detainees participates to the extended working group coordinated by UNPFA for the development of a National Strategy to deal with Women victims of violence during the war.

Contact persons: Ms. Alisa Muratčauš Project coordinator and Mrs. Enisa Salčinović President of the Women's Section of the Association

E-mail: Sulks3@bih.net.ba

Address: Canton Sarajevo - 7 Saraći, Sarajevo 71000, Bosnia and Herzegovina

Tel. No.: +387 33 232 925

c) 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 organization. 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 realization of their rights; 2) ensuring psychological support to women in the realization of their rights; 3) promoting women's rights; 4) raising awareness on women's rights in all areas and stressing the need to harmonize 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.

The Centre for Legal Assistance to Women Zenica is taking part to the consultation process coordinated by the United Nations Development Programme (UNDP) for the development of a National Strategy for Transitional Justice.

Contact person: Ms. Meliha Sendić (Project Coordinator)

Address: Mejdandžik 9, Zenica 72 000, Bosnia and Herzegovina

Tel./Fax No.: + 387 32 40 20 49

E-mail: cenppz@bih.net.ba

Website: www.cenppz.org.ba

d) Association for Rehabilitation of Torture Victims Centre for Torture Victims (CTV)

The **Association for Rehabilitation of Torture Victims Centre for Torture Victims (CTV)** in Sarajevo was founded on 7 April 1997. Its foundation was generated by the acknowledgement by professionals in this field (the International Council for Rehabilitation of Torture Victims-IRCT, based in Copenhagen) of the scope of all the long-term consequences of war torture in BiH.

From July 2002 the Centre started functioning as a local NGO, registered on the territory of BiH, in line with the recommendations of the IRCT. The Centre is part of the network of Centres within the framework of the IRCT, as well as part of the Balkan Network of Centres for Rehabilitation of Torture Victims (BAN). The Centre for Torture Victims

engages a multidisciplinary team consisting, among others, of psychiatrists-psychotherapists, psychologists, social workers, legal advisors, and administrative staff. Basic activities of Association for Rehabilitation of Torture Victims-Center for Torture Victims in Sarajevo are: comprehensive treatment and rehabilitation of war torture survivors; comprehensive treatment of women-victims of domestic and sexual violence; documentation, monitoring, research and publishing of research results; cooperation with official health sector in BiH, as well as with local and international governmental and non-governmental organizations; activities in the field of primary prevention of torture by raising awareness on torture and its consequences and of secondary prevention of torture through organizing trainings for all professional categories that may deal with victims of torture and for members of the police; experiences of clinical practice in local and international symposia and conferences; and, in general, advocating for torture victims.

The Association for Rehabilitation of Torture Victims-Center for Torture Victims is part of the working group coordinated by the United Nations Population Fund (UNPFA) for the development of a National Strategy to deal with Women victims of violence during the war.

Contact person: Ms. Lejla Čaković

Address: Branilaca Sarajeva 11/1, 71000 Sarajevo, Bosnia and Herzegovina

Tel./Fax No.: +387 33 222 867

E-mail: ctvmost@bih.net.ba

Web-site: www.ctvbih.com

e) Foundation of Local Democracy

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

FLD carries out a number of activities, including promoting and protecting human rights at all levels of social and public life, and through organizing and implementing education, training, seminars, conferences and congresses; preparing and publishing brochures, books and other promotional materials, in accordance with applicable legal regulations in BiH; stimulating and supporting research projects and policies; supporting collective action of women's groups and NGOs to empower women in actively participating in the transformation of the BiH society and their equal role in public and private spheres; fundraising and the creation of a fund to help the NGO sector in BiH and the institutions designed for their institutional and economic empowerment in accordance with applicable legal regulations in BiH; improving the social status of women through: prevention and protection from domestic violence by organizing shelters, centres and private treatment centres, but also training, retraining and assistance in the organization brought in particular by providing legal assistance; promoting and protecting of children's rights especially regarding domestic violence, manipulation of children and their exploitation in any form, and by organizing educational and cultural programmes dedicated to children and adults.

The FLD is part of the working group coordinated by UNDP for the development of a National Strategy for Transitional Justice as well as of the working group coordinated by the UNPFA for the development of a National Strategy to deal with Women victims of violence during the war.

Contact Person: Mrs. Jasmina Mujezinović, Director

Address: Radićeva 11, 71000 Sarajevo, Bosnia Herzegovina

Tel/Fax: +387 33 237 240 / 236 899 / 668 459

E-mail: adl@bih.net.ba

Web-site: www.fld.ba

f) 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.

Notably, the Association of Women-Victims of War is one of the institutions in the FBiH designated 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 is part of the working group coordinated by UNDP for the development of a National Strategy for Transitional Justice, as well as of the working group coordinated by UNPFA for the development of a National Strategy to deal with Women victims of violence during the war.

Contact person: Ms. Bakira Hasečić (President)

Address: Sarajevo-Ilidža (Otes), Trg oteškog bataljona No. 64 Street, Bosnia and Herzegovina

Tel./Fax No.: + 387 33 628 121

Mobile: + 387 61 272 000

E-mail: udruzenjezenazrtva_rata@bih.net.ba

Website: www.zena-zrtva-rata.ba

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

The association **Infoteka (Women's Information and Documentation Centre)** is a voluntary, non-partisan organization 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 organization with the aim to 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.

Infoteka is taking part in the consultation process coordinated by the UNDP for the development of a National Strategy for Transitional Justice, as well as of the working group coordinated by UNPFA for the development of a National Strategy to deal with Women victims of violence during the war.

Contact person: Ms. Duška Andrić-Ružičić (Director)
Address: Mejdandžik 7, 72 000 Zenica, Bosnia and Herzegovina
Tel. No.: + 387 32 446 269
Fax No.: + 387 32 446 261
E-mail: infoteka@infoteka.org.ba, infoteka.ze@gmail.com

h) Medica Zenica

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

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

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

Contact Person: Mrs. Sabiha Haskić, Director
Address: Krivače 40, 72000 Zenica, Bosnia and Herzegovina
Tel. No.: ++387 (032) 463 920
Tel./fax No.: ++ 387 (032) 463 924
E-mail: medica1@bih.net.ba
Web-site: www.medicazenica.org

i) Through Hearth to Peace

The Association Through Hearth to Peace (*Screm do Mira*) was established in 1992 in Zagreb, Croatia, originally under the name Women's Association of BiH. In 1996 the Association moved from Croatia and continued to work in BiH, locating its headquarters in Sanski Most. From 2000 the Association is located in Kozarac, nearby Prijedor. The Association has about 350 members in BiH and other countries in the world. Some of the members are survivors of concentration camps and different kind of torture from the war. The aim of the organization is to assist victims in having their human rights realized and respected, and its special focus is on helping refugees return to their pre-war homes. Another aim is to participate in the building of a democratic civil society in BiH. Some of the Association's activities include: assisting war victims in the realization of their human rights; support sustainable return and reintegration; assisting the economic empowerment of women and young people; giving support in the development of cultural and traditional events; assisting the establishing new NGOs, and voluntary associations in BiH.

Contact Person: Mrs. Emsuda Mujagić
Address: Maršala Tita 50, Kozarac, 79202, Bosnia and Herzegovina
Tel./Fax No.: + 387 052 344 280
E-mail: srcemdomira@hotmail.com

j) Society for Threatened Peoples

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

Moreover, the Society of Threatened Peoples **participate as observers** to the working group coordinated by UNDP for the development of a National Strategy for Transitional Justice, as well as to the extended working group coordinated by UNPFA for the development of a National Strategy to deal with Women victims of violence during the war.

Contact Person: Mrs. Fadila Memišević (President of Bosnian section)

Address: Trampina 4 / IV, 71000 Sarajevo, Bosnia and Herzegovina

Tel. No.: +387 33 213 707

Fax No.: +387 33 213 709

E-mail: gfbv_sa@bih.net.ba

Web-site: www.gfbv.ba

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

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

Contact person: Mrs. Saja Ćorić

Address: Društveni centar no number Street, Mostar, 88208 Potoci, Bosnia and Herzegovina

Tel. No.: + 38736 554 610,

Mobile No.: + 38762 652 026,

E-mail: sajacoric@hotmail.com

l) 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, organizing educational activities and humanitarian assistance. At present, it is mostly dedicated to solving various problems of women, their families and young people; organizing 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 organization has recognized 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 realize 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.

Contact person: Ms. Senka Zulum

Address: Kralja Tomislava no number, 70101 Jajce, Bosnia and Herzegovina

Tel. No.: + 387 030 654 204

Fax No.: + 387 030 654 205

E-mail: info@viktorija99.ba

m) 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 traumatized families and individuals. The primary goal of *Vive Žene Tuzla* is to improve the mental health of people who were subjected to torture during the conflict in BiH, minimizing the effects of trauma-related disorders in the lives of tortured, raped or abused victims and facilitating their emotional healing. *Vive Žene Tuzla* considers that the maintaining and protection of the mental health of citizens is a sound way to contribute to the reconstruction of a war-torn society. While respecting the basic principles of humanity and human rights, the organization implements basic values laid through the work with marginalized groups, civilian victims of war and the protection of the families with children. The work carried out by *Vive Žene Tuzla* aims at preventing torture through a multidisciplinary approach, including psychotherapy, psychosocial, social, medical and legal counselling. Accordingly, the team of *Vive Žene Tuzla* consists of psychologists, social workers, instructors, teachers, doctors, a nurse, a psychotherapist and a legal counsel. Besides working with individuals, the organization works also in the community, with a view to foster reconciliation, representation, rebuilding of trust and reconstruction of broken relationships and reduction of ethnic barriers.

Vive Žene Tuzla is participating in the consultation process for the development of a National Strategy for Transitional Justice lead by the UNDP and it also participates to the extended working group coordinated by UNPFA for the development of a National Strategy to deal with Women victims of violence during the war.

Contact persons: Ms. Teufika Ibrahimfendić (Psychotherapist and coordinator of the education programme), and Ms. Jasna Zečević (Director)

Address: Alekse Šantića bb, 75000 Tuzla, Bosnia and Herzegovina

Tel. No.: + 387 35 224 310

Fax No.: + 387 35 224 311

E-mail: vivezene@bih.net.ba

Website: www.vivezene.ba/

Annexes

1. Letter No. 05-23/08 of 15 June 2008 from the Women's Section of the Association of Concentration Camp Detainees to the President of the Commission for Awarding Apartments of the Sarajevo Canton (in the local language).
2. Letter No. 05-23/08 of 15 June 2008 from the Women's Section of the Association of Concentration Camp Detainees to the President of the Commission for Awarding Apartments of the Sarajevo Canton (unofficial translation in English).
3. Letter No. 05-168/08 of 20 May 2009 from the Women's Section of the Association of Concentration Camp Detainees to the Ministry of Labour, Social Politics, Displaced Persons and Refugees (in the local language).
4. Letter No. 05-168/08 of 20 May 2009 from the Women's Section of the Association of Concentration Camp Detainees to the Ministry of Labour, Social Politics, Displaced Persons and Refugees (unofficial translation in English).
5. Letter No. 05-289/07 of 23 May 2007 from the Women's Section of the Association of Concentration Camp Detainees to the Department of Housing Affairs of the Sarajevo Canton (in the local language).
6. Letter No. 05-289/07 of 23 May 2007 from the Women's Section of the Association of Concentration Camp Detainees to the Department of Housing Affairs of the Sarajevo Canton (unofficial translation in English).
7. Letter No. 05-72/10 of 6 March 2010 from the Women's Section of the Association of Concentration Camp Detainees to the Municipal Commission of Novi Grad for awarding apartments (in the local language).
8. Letter No. 05-72/10 of 6 March 2010 from the Women's Section of the Association of Concentration Camp Detainees to the Municipal Commission of Novi Grad for awarding apartments (unofficial translation in English).
9. Letter No. 05-502/07 of 11 December 2007 from the Women's Section of the Association of Concentration Camp Detainees to the President of the Commission of Awarding Apartments in the Municipality of Ilidža (in the local language).
10. Letter No. 05-502/07 of 11 December 2007 from the Women's Section of the Association of Concentration Camp Detainees to the President of the Commission of Awarding Apartments in the Municipality of Ilidža (unofficial translation in English).
11. Letter No. 05-128/09 of 21 April 2009 from the Women's Section of the Association of Concentration Camp Detainees to the Public Facility Centre for Social Work of the Sarajevo Canton – Service for Social Work of the Vogošća Municipality (in the local language).
12. Letter No. 05-128/09 of 21 April 2009 from the Women's Section of the Association of Concentration Camp Detainees to the Public Facility Centre for Social Work of the Sarajevo Canton – Service for Social Work of the Vogošća Municipality (unofficial translation in English).
13. Letter No. 05-150/10 of 28 June 2010 from the Women's Section of the Association of Concentration Camp Detainees to the Dean of the Electro-Technical Faculty of the University of Sarajevo (in the local language).
14. Letter No. 05-150/10 of 28 June 2010 from the Women's Section of the Association of Concentration Camp Detainees to the Dean of the Electro-Technical Faculty of the University of Sarajevo (unofficial translation in

English).

15. Letter No. 05-249/06 of 8 June 2006 from the Women's Section of the Association of Concentration Camp Detainees to the Ministry of Labour, Social Politics, Displaced Persons and Refugees containing a list of victims of rape during the war who need adequate housing (in the local language).
16. Letter No. 05-249/06 of 8 June 2006 from the Women's Section of the Association of Concentration Camp Detainees to the Ministry of Labour, Social Politics, Displaced Persons and Refugees containing a list of victims of rape during the war who need adequate housing (unofficial translation in English).
17. Letter No. 05-271/07 of 3 May 2007 from the Women's Section of the Association of Concentration Camp Detainees to the Ministry of Labour, Social Politics, Displaced Persons and Refugees containing a list of victims of rape during the war who need adequate housing (in the local language).
18. Letter No. 05-271/07 of 3 May 2007 from the Women's Section of the Association of Concentration Camp Detainees to the Ministry of Labour, Social Politics, Displaced Persons and Refugees containing a list of victims of rape during the war who need adequate housing (unofficial translation in English).
19. Letter No. 05-228/08 of 25 September 2008 from the Women's Section of the Association of Concentration Camp Detainees to the Ministry of Labour, Social Politics, Displaced Persons and Refugees containing a list of victims of rape during the war who need adequate housing (in the local language).
20. Letter No. 05-228/08 of 25 September 2008 from the Women's Section of the Association of Concentration Camp Detainees to the Ministry of Labour, Social Politics, Displaced Persons and Refugees containing a list of victims of rape during the war who need adequate housing (unofficial translation in English).
21. Letter No. 05-177/08 of 10 June 2008 from the Women's Section of the Association of Concentration Camp Detainees to the Ministry of Labour, Social Politics, Displaced Persons and Refugees requesting for a meeting to adequately address the subject of victims of rape during the war in need of housing (in the local language).
22. Letter No. 05-177/08 of 10 June 2008 from the Women's Section of the Association of Concentration Camp Detainees to the Ministry of Labour, Social Politics, Displaced Persons and Refugees requesting for a meeting to adequately address the subject of victims of rape during the war in need of housing (unofficial translation in English).
23. Letter No. 13-05-36-23013 of 28 December 2005 from the Ministry of Labour, Social Politics, Displaced Persons and Refugees to the Women's Section of the Association of Concentration Camp Detainees (in the local language).
24. Letter No. 13-05-36-23013 of 28 December 2005 from the Ministry of Labour, Social Politics, Displaced Persons and Refugees to the Women's Section of the Association of Concentration Camp Detainees (unofficial translation in English).
25. Letter No. 05-155/05 of 25 June 2005 from the Women's Section of the Association of Concentration Camp Detainees to the Ministry of Labour, Social Politics, Displaced Persons and Refugees (in the local language).
26. Letter No. 05-155/05 of 25 June 2005 from the Women's Section of the Association of Concentration Camp Detainees to the Ministry of Labour, Social Politics, Displaced Persons and Refugees (unofficial translation in English).
27. Letter No. 05-73/10 of 6 March 2010 from the Women's Section of the Association of Concentration Camp

Detainees to the Municipal Mayor of Novi Grad (in the local language).

28. Letter No. 05-73/10 of 6 March 2010 from the Women's Section of the Association of Concentration Camp Detainees to the Municipal Mayor of Novi Grad (unofficial translation in English).
29. Letter No. 20-01-91/10 of 13 April 2010 from the Clinical Centre of the University of Sarajevo to the Municipal Commission for Awarding Apartments (in the local language).
30. Letter No. 20-01-91/10 of 13 April 2010 from the Clinical Centre of the University of Sarajevo to the Municipal Commission for Awarding Apartments (unofficial translation in English).