



Association suisse
contre l'impunité

Schweizerische Gesellschaft
für Völkerstrafrecht

Swiss association
against impunity

**Written Information for the Examination
of
Bosnia and Herzegovina's Combined Second to Fifth Periodic Reports
(CAT/C/BIH/2-5)**

12 OCTOBER 2010

Submitted by

TRIAL (*Track Impunity Always*)
**Association of Families of Killed and Missing Defenders of the Homeland War from Bugojno
Municipality**
Women's Section of the Association of Concentration Camp Detainees
Association of Relatives of Missing Persons from Hadžići Municipality
Association of Relatives of Missing Persons from Ilijaš Municipality
Centre for Legal Assistance to Women Zenica
Association Women from Prijedor – *Izvor*
Association of Women-Victims of War
Association of Relatives of Missing Persons of the Sarajevo-Romanija Region
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1. The Associations Submitting this Written Information

a) TRIAL (*Track Impunity Always*)

TRIAL (*Track Impunity Always- 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, ACT has been active and present in the country since early 2008. ACT 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, ACT has submitted 35 applications related to gross human rights violations perpetrated during the war to the European Court of Human Rights (ECtHR) and to United Nations Human Rights Committee (HRC). On 29 June 2009, ACT submitted a general allegation to the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) about the numerous obstacles encountered in the implementation of the 1992 Declaration for the Protection of All Persons from Enforced Disappearance. On that occasion, ACT highlighted that a country visit of the WGEID to BiH could contribute to maintaining such a fundamental issue high on the political agenda, until relatives of disappeared people are granted their rights to justice, truth and integral reparation. As a consequence of the general allegation submitted by ACT, the WGEID visited BiH from 14 to 21 June 2010 and it is expected to present a report on its mission to the Human Rights Council in March 2011.

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

The **Association of Families of Killed and Missing Defenders of the Homeland War from Bugojno Municipality** was founded in 1995 and it has 102 members. To date, the Association is seeking for 43 missing persons (29 soldiers and 14 civilians). The Association represents the relatives of missing persons of Croat origin in and around Bugojno Municipality and it is actively involved in different types of activities

such as: 1) collecting information with regard to missing persons; 2) providing help and support to families of missing persons in the realization of their rights; and 3) cooperating with other associations of relatives of missing persons, with the International Commission on Missing Persons (ICMP) and the Missing Persons Institute (MPI), with the International Committee of the Red Cross (ICRC), with government institutions and with the Prosecutor's Office.

The President of the Association, Ms. Serafina Kolovrat is a member of the Regional Coordination Board of Family Associations of Relatives of Missing Persons from BiH, the Republic of Croatia and the Republic of Serbia, and Ms. Vanda Havranek is a member of the MPI Advisory Board.

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c) 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.

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d) Association of Relatives of Missing Persons from Hadžići Municipality

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

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e) Association of Relatives of Missing Persons from Ilijaš Municipality

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

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f) 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 part of the working group coordinated by the United Nations Development Programme (UNDP) for the development of a National Strategy for Transitional Justice.

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g) Association of Women from Prijedor - *Izvor*

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

Izvor is part of the working group coordinated by the UNDP for the development of a National Strategy for Transitional Justice.

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h) 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 the only institution in the Federation of BiH 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 the UNDP for the development of a National Strategy for Transitional Justice.

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

The **Association of Relatives of Missing Persons of the Sarajevo-Romanija Region** was founded on 12 December 2002 with its headquarters in East Sarajevo. The Association represents the victims of the war in and around this region and has about 1,500 members. Some of the association's activities are: 1) pointing out to relatives of disappeared persons the significance of giving their blood samples for DNA analysis; 2) collecting information with regard to missing persons; 3) organizing the commemoration day for the suffering of Bosnian Serbs on 20th August each year; 4) helping the relatives of missing persons to fulfil their rights (e.g. to obtain disability pensions or the return of property); 5) helping relatives of disappeared people with procedures before domestic and international human rights mechanisms; and 6) cooperating with the MPI, the ICMP and the ICRC.

The Association of Relatives of Missing Persons of the Sarajevo-Romanija Region is part of the working group coordinated by UNDP for the development of a National Strategy for Transitional Justice. The President of the Association, Mr. Milan Mandić, is a member of the Regional Coordination Board of Family Associations of Relatives of Missing Persons from BiH, the Republic of Croatia and the Republic of Serbia.

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

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

The President of the Association, Ms. Ema Čekić, is a member of the Regional Coordination Board of Family Associations of Relatives of Missing Persons from BiH, the Republic of Croatia and the Republic of Serbia.

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k) 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 part of the working group coordinated by the UNDP for the development of a National Strategy for Transitional Justice.

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I) **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 part of the working group coordinated by the UNDP for the development of a National Strategy for Transitional Justice.

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The associations that submit this written information have a number of concerns with regard to the implementation by BiH of the Convention against Torture. However, given the particular expertise of the associations concerned, this document focuses solely on matters related to missing persons and their

relatives and to victims of rape or other forms of sexual violence during the war. The omission of other subjects does not imply by any means that the associations submitting this information find that BiH fully complies with all its obligations under the Convention against Torture. In particular, the subscribing associations are concerned at reported human rights violations, as documented in the written information submitted to the CAT by other organizations, namely Amnesty International and the Helsinki Committee for Human Rights in BiH.

2. Background

From the Concluding Observations on BiH (CAT/C/BIH/CO/1 of 15 December 2005)

Paragraph 9

9. The Committee is concerned at the lack of congruity between the definitions of torture in the State and entity laws and that the definitions, particularly in the laws of the Republika Srpska and Brčko District, do not accord fully with the definition contained in article 1 of the Convention.

The State party should incorporate the crime of torture, as defined in the Convention, into the domestic law throughout the State and ensure that the legal definitions in the Republika Srpska and Brčko District are harmonized with the Criminal Code and the Criminal Procedure Code of Bosnia and Herzegovina through any necessary legal amendments.

Paragraph 10

10. In connection with the well-documented torture and ill-treatment that occurred during the 1992-1995 conflict in the former Yugoslavia, the Committee is concerned about:

- (a) The reported failure by the State party to carry out prompt and impartial investigations, to prosecute the perpetrators and to provide fair and adequate compensation to victims; [...]
- (c) Reported harassment, intimidation and threats faced by witnesses and victims testifying in proceedings and the lack of adequate protection by the State party;
- (d) The failure to recognize survivors of torture, including sexual violence, as victims of the conflict, a status which would enable them to obtain redress and exercise their right to fair and adequate compensation and rehabilitation. [...]

The State party should:

- (a) Take effective measures to ensure prompt and impartial investigations into all allegations of torture and other cruel, inhuman or degrading treatment, the prosecution and punishment of the perpetrators, irrespective of their ethnic origin, and the provision of fair and adequate compensation for victims; [...]**
- (d) Enforce relevant legislation, including providing protection of witnesses and other participants in proceedings, and ensure that testimonies by victims of torture and ill-treatment are provided with fair treatment at all stages of the proceedings;**
- (e) Develop legal and other measures, enforceable throughout the State, including an official programme for the rehabilitation of victims of torture including sexual violence, providing them recognition as victims and the capacity to pursue redress and their right to fair and adequate compensation and rehabilitation in accordance with the requirements of the Convention.**

Paragraph 20

20. While noting the adoption of the Law on Missing Persons and the oral information provided by the State party's delegation, the Committee remains concerned about the lack of full implementation of the law and in particular the creation of relevant institutions foreseen in the law.

The State party should intensify its efforts to establish the Institute for Missing Persons and the Fund for Support to the Families of Missing Persons, and the Central Record of Missing Persons. The State party should also ensure that available avenues for compensation are used in a non-discriminatory manner.

Follow-up process with regard to BiH¹ on the Subjects of Missing Persons and Victims of Rape or other Forms of Sexual Violence during the War

- CAT/C/BIH/CO/1/Add.1 of 1 February 2006; and
- CAT/C/BIH/CO/1/Add.2 of 6 May 2007.

From the List of issues prior to the submission of the combined second to fifth periodic report (CAT/C/BIH/Q/2 of 28 February 2008)

BiH was requested to inform, among others, about:

- a) activities undertaken to ensure that the definition of torture in the Convention is fully incorporated into domestic law and any measures undertaken to harmonize the entity level laws prohibiting and making punishable the crime of torture with the Criminal Code and the Criminal Procedure Code of Bosnia and Herzegovina.
- b) how rape and other forms of sexual abuse are defined under national legislation and on how different parts of the State party respect and prosecute these crimes, including statistics on the number and results of prosecutions;
- c) measures taken by the State party to carry out prompt and impartial investigation into all alleged cases of torture and cruel, inhuman or degrading treatment and to prosecute and punish the perpetrators;
- d) the protection of witnesses and victims of torture and ill-treatment that occurred during the 1992 to 1995 conflict;
- e) developments with regard to the new Law on the Rights of Victims of Torture and Civil Victims of War and information on the National Fund for Compensation of Victims; and
- f) measures for the rehabilitation of victims of torture, including sexual violence, from the period 1992 – 1995.

On 19 November 2009 BiH submitted to the CAT its second to fifth periodic reports (CAT/C/BIH/2-5).

2.1 General Context concerning Missing Persons and their Relatives in BiH

1. During the conflict in BiH, more than 100,000 people were killed, more than two millions were displaced, and thousands of people were subjected to enforced disappearance. A first wave of

¹ 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 July 2002). Further, BiH ratified the Rome Statute on the establishment of an International Criminal Court on 11 April 2002. On 6 February 2007 BiH signed the International Convention for the Protection of All Persons from Enforced Disappearance. According to Article 18 of the 1969 Vienna Convention on the Law of the Treaties, a State that has signed a treaty is under an obligation not to defeat the object and purpose of the treaty prior to its entry into force. Finally, 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 the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as well as in other international human rights treaties listed in the Appendix to Annex 6.

enforced disappearances occurred during the armed conflict and “ethnic cleansing” operations in the spring and summer of 1992 and continued over the following years.² A second wave of enforced disappearances occurred in Bosnian Krajina between May and August 1992, most prominently in the region of Prijedor. In Herzegovina, most of the enforced disappearances occurred during the summers of 1992 and 1993. The last and most notorious wave of enforced disappearances occurred in eastern Bosnia after the fall of UN-declared “safe areas” of Srebrenica and Zepa in July 1995. At the end of 1996 the estimates of disappeared people in BiH amounted to between 25,000 and 30,000.³

2. As pointed out in June 2010 by the WGEID after its visit to BiH, “the number of missing persons is a highly political and controversial issue. There are disagreements about the number of people who went missing. Nevertheless, the WGEID learned from various institutions that they largely agree that between 28,000 and 30,000 persons disappeared in BiH during the conflict. Of these missing persons, it is estimated that about two thirds of the missing people have been accounted for, while one third remain missing”.⁴
3. The expert member of the WGEID indicated since 1996 that the majority of the thousands of cases occurred in BiH can be qualified as enforced disappearance under the 1992 United Nations Declaration on the Protection of All Persons from Enforced Disappearance.⁵ He further pointed out that “the families of the missing persons have the legitimate right to know the truth and to get their loved ones back, alive or dead. They also have the right to compensation, and to provide their deceased relatives with a decent burial. Finally, they have the right to demand that those who are primarily responsible for the disappearance, torture or arbitrary execution of their loved ones are brought to justice”.⁶ In thousands of cases, families of disappeared people in BiH remain deprived of these rights until today.⁷
4. Enforced disappearance is a complex violation of many human rights which requires a *sui generis* regime. Indeed, enforced disappearance is strictly related to the prohibition of torture and other

² See Report by Mr. Manfred Nowak, Expert Member of the WGEID, *Special Process on Missing Persons in the territory of the former Yugoslavia*, doc. E/CN.4/1995/37 of 12 January 1995, para. 3. Hereinafter “Expert Report No. 1”.

³ See Report by Mr. Manfred Nowak, Expert Member of the WGEID, *Special Process on Missing Persons in the territory of the former Yugoslavia*, doc. E/CN.4/1997/55 of 15 January 1997, paras. 3, 94 and 99-106. Hereinafter “Expert Report No. 3”. At para. 101. In this sense see also WGEID, *Press Release of 21 June 2010 on the Visit to BiH*, available at www2.ohchr.org/english/issues/disappear/group/docs/PR21.06.10.pdf.

⁴ WGEID, *Press Release of 21 June 2010 on the Visit to BiH*, *supra* note 3.

⁵ See Expert Report No. 1, *supra* note 2, para. 45; and Report by Mr. Manfred Nowak, Expert Member of the WGEID, *Special Process on Missing Persons in the territory of the former Yugoslavia*, doc. E/CN.4/1996/36 of 4 March 1996, para. 83. Hereinafter: “Expert Report No. 2”.

⁶ See Expert Report No. 3, *supra* note 3, para. 4. Accordingly, the Expert requested to all relevant authorities to “disclose all information on missing persons and refrain from the policy of reciprocity in respect of missing persons, whether alive or dead”; to “continue their efforts to clarify the fate and whereabouts of missing persons by means of exhumation, and to provide forensic experts working for the other parties or relevant international organizations with full and unrestricted access to all grave sites on territory under their control”; and to “fully investigate all reported cases of enforced disappearance, to bring the perpetrators to justice and to provide the victims and their families with adequate compensation” (paras. 117-118).

⁷ Reference to the subject of disappeared people and the ongoing related obligations of BiH was made also by other United Nations treaty bodies. See Human Rights Committee (HRC), *Concluding Observations on Bosnia and Herzegovina*, doc. CCPR/C/BIH/CO/1 of 22 November 2006, para. 14.

forms of inhuman or degrading treatment.⁸ International jurisprudence, doctrine and both non binding and binding legal instruments signal that, on the one hand, material victims of enforced disappearance are subjected to a violation of the prohibition of torture⁹ and, on the other hand, any individual who suffers harm as the direct result of an enforced disappearance, such as relatives of missing persons,¹⁰ is also to be considered a victim of inhuman and degrading treatment.

5. As noted, as of today, the very number of missing persons that have to be found and identified in BiH remains a controversial issue. In 2010 the ICMP and the ICRC estimated that around 10,000 people remain disappeared in BiH.¹¹ In the additional information submitted by BiH to the HRC, it was declared that “there is still search going on for approximately 11,500 missing persons”.¹² This lack of clarity in numbers and figures that ultimately correspond to human lives that have been broken and to the anxiety of thousands of relatives, friends and entire communities, represents a

⁸ See, *inter alia*, 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; and Case *Vicente and others v. Colombia*, views of 29 July 1997, para. 8.8; Case *Mojica v. Dominican Republic*, views of 15 July 1994, para. 5.7; Case *Grioua v. Algeria*, views of 10 July 2007, para. 7.6; Case *Zohra Madoui v. Algeria*, views of 28 October 2008, para. 7.4; Case *Bousroual v. Algeria*, views of 30 March 2006, para. 9.8; and Case *El-Megreisi v. Libyan Arab Jamahiriya*, views of 23 March 1994, para. 5.4; Case *Celis Laureano v. Peru*, views of 25 March 2006, para. 8.5; and Inter-American Court of Human Rights (IACHR), Case *La Cantuta v. Peru*, judgment of 29 November 2006, Ser. C No. 162, para. 113; Case *Velásquez Rodríguez v. Honduras*, judgment of 29 July 1988, Ser. C No. 4, para. 156. See also United Nations, Commission on Human Rights, *Report submitted by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances*, doc. E/CN.4/2002/71 of 8 January 2002 (“Report Nowak”), paras. 70 and 85.

⁹ See, *inter alia*, Veremuelen, *Living beyond Death: Torture or other Ill-treatment Claims in Enforced Disappearances Cases*, in *Inter-American and European Human Rights Journal*, Vol. 1 (2008), p. 164; and Pérez Solla, *Enforced Disappearances in International Human Rights*, North Carolina, 2006, p. 200.

¹⁰ See Articles 1 and 19 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance (“the 1992 Declaration”); Article 24.1 of the International Convention for the Protection of All Persons from Enforced Disappearance (“the 2007 Convention”); Council of Europe, Parliamentary Assembly, *Enforced Disappearances*, Report to the Committee on Legal Affairs and Human Rights, Rapporteur Mr. Christos Pourgourides (“Report Pourgourides”), doc. 10679 of 19 September 2005, paras. 3 and 21; European Court of Human Rights (ECtHR), Case *Kurt v. Turkey*, judgment of 25 May 1998, paras. 130-134; Case *Varnava and others v. Turkey*, Grand Chamber judgment of 18 September 2009, para. 200; and Case *Zaurbekova and Zaurbekova v. Russia*, judgment of 22 January 2009, para. 96; HRC, Case *Grioua*, *supra* note 8, para. 7.7; Case *Yasoda Sharma v. Nepal*, views of 6 November 2008, para. 7.9; and Case *Quinteros v. Uruguay*, views of 21 July 1983, para. 14; IACHR, Case *Radilla Pacheco v. Mexico*, judgment of 23 November 2009, Ser. C No. 209, para. 162; Case *Anzualdo Castro v. Peru*, judgment of 22 September 2009, Ser. C No. 202, para. 113; Case *Goiburú and others v. Paraguay*, judgment of 22 September 2006, Ser. C No. 153, paras. 96-104; and Case *Masacres de Ituango v. Colombia*, judgment of 1 July 2006, Ser. C No. 148, paras. 262-264. Finally, it is noteworthy that in cases concerning enforced disappearance occurred during the conflict in BiH, both the Human Rights Chamber for BiH and the Constitutional Court have constantly declared that relatives of the disappeared person are victims of a violation of their right not to be subjected to torture, inhuman or degrading treatment as well as their right to respect for private and family life. See, *inter alia*, Human Rights Chamber for BiH, Case *Selimović and others* (Srebrenica cases) *v. Republika Srpska*, judgment of 7 March 2003, and Constitutional Court of BiH, Case *M. H. and others* (Case No. AP-129/04), judgment of 27 May 2005 (Admissibility and Merits); and judgment of 27 May 2006 (failure to implement the previous decision), available at: www.ccbh.ba/eng/odluke/index.php?src=2.

¹¹ See www.ic-mp.org/icmp-worldwide/southeast-europe/bosnia-and-herzegovina/. See also declarations released in April 2010 by Mr. Henry Fournier, head of the ICRC BiH: www.mw.nl/international-justice/article/thousands-still-missing-bosnian-war. In the last edition (2010) of the magazine called *Informer* published by the Advisory Board of the MPI, it was mentioned that “8,000 persons are still unaccounted for”. In the speech delivered on 30 August 2010 (International Day of the Disappeared) by Associations of Relatives of Missing Persons before the BiH Parliamentary Assembly it was mentioned that “there are still 13,000 missing persons out of 30,000 registered in BiH”.

¹² See *Further information received from Bosnia and Herzegovina on the Implementation of the Concluding Observations of the HRC*, CCPR/C/BIH/CO/1/Add.4 of 7 April 2010, para. 12.

perpetuation of the uncertainty that characterizes the phenomenon of enforced disappearance and aggravates the suffering of family members, that remain caught between hope and despair after almost 18 years.

6. The answer of the authorities in the face of the real concerns of relatives of missing people must be adequate, coherent and exhaustive. On the contrary, it remains plagued by contradictions and deficiencies and it is often used for political purposes. This situation should be terminated as soon as possible to eventually ensure the right to know the truth¹³ of relatives of missing people as well as of the BiH society as a whole and to guarantee that justice is made and that integral reparation¹⁴ is granted to all the people that have suffered these most severe human rights violations. To this end, the effective functioning of the MPI, together with the prompt establishment of accurate and complete Central Records of missing persons (CEN) and of the Fund for Support to the Families of Missing Persons¹⁵ are of crucial importance.

2.1.1 The Functioning of the MPI

7. The Law on Missing Persons - LMP- (Official Gazette of BiH, No. 50/04) came into force on 17 November 2004 and provided for the establishment of the MPI (Art. 7).¹⁶ The MPI started to operate in June 2007, but it became fully operational only from 1 January 2008, which is well over three years after the entry into force of the LMP. The MPI is responsible, among other tasks, to collect, process and systematise the information on missing persons, as well as individual and mass graves; to establish a central, unified database on missing persons (CEN); to keep records, provide notification to families of missing persons, including the issuance of certificates on disappearance and identity of victims; to find, verify, and mark locations of mass and individual graves; and to participate in excavations and exhumations of mass and individual graves, collection of visible surface remains, autopsies, anthropological examinations.
8. It is composed of three management bodies, namely: a six-member Steering Board, a three-member

¹³ In general, on the contents of the right to the truth in cases of enforced disappearance, see WGEID, *General Comment on the Right to the Truth in Relation to Enforced Disappearance*, 2010, available at: www2.ohchr.org/english/issues/disappear/docs/GC-right_to_the_truth.pdf. For a comprehensive study on the right to the truth, see United Nations, Commission on Human Rights, *Study on the Right to Truth*, doc. E/CN.4/2006/91 of 8 February 2006. See also preamble and Article 24.2 of the 2007 Convention; Article 32 of the First Additional Protocol of 1977 to the Four Geneva Conventions; and United Nations, Commission on Human Rights, *Resolution on the Right to Truth*, doc. E/CN.4/2005/L.84 of 15 April 2005. Further, see ICRC, *The Missing: the Right to Know. Summary of the Conclusions arising from Events held prior to the International Conference of governmental and non-governmental Experts*, Geneva, 2003; WGEID, *Annual Report for 1998*, doc. E/CN.4/1999/62 of 28 December 1998; *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 5, Principles 22 and 24; Report Nowak, *supra* note 8, paras. 78-80; and Report Pourgourides, *supra* note 10, paras. 50-51. It is worthy recalling that under Article 3 of the Law on Missing Persons "families of missing persons have the right to know the fate of their missing family members and relatives, their place of (temporary) residence, or if dead, the circumstances and a cause of death and location of burial, if such location is known, and to receive the mortal remains" (emphasis is added).

¹⁴ See *infra* paras. 92-103.

¹⁵ See *infra* paras. 40-47.

¹⁶ Article 24.1 of the LMP provides that: "the BiH Ministry of Human Rights and Refugees shall oversee the enforcement of this Law". See also Juhl, *The Problem of Ethnic Politics and Trust: the Missing Persons Institute of Bosnia-Herzegovina*, in *Genocide Studies and Prevention*, Vol. 4, No. 2, 2009, pp. 239-270.

Supervisory Board and a three-member Board of Directors. In general, the staff reports to the Board of Directors, which reports to the Steering Board, which reports to the founders;¹⁷ while the Supervisory Board is a reviewing body that reports to the two other management boards and to the founders. There is also an Advisory Board, composed of representatives of associations of relatives of missing persons (two Bosniak, two Bosnian Serb and two Bosnian Croat members).¹⁸ The members of these associations also participate in the work of the Steering Board, but without the right to vote.

9. After conducting its visit to BiH, the WGEID declared that it was impressed by the work of the MPI and its level of commitment and that, in general, the institution “[...] should be supported and strengthened. In particular, the independence of the MPI should be guaranteed. More resources should be put at the disposal of the MPI to allow it do its work”.¹⁹ In general, also associations of relatives of missing people are quite satisfied with the work carried out by the MPI, especially because there is a good established cooperation between the latter and associations of relatives of missing persons and, over the past two years, a relation of trust has been construed. However, a number of obstacles to the effective functioning of the MPI and to the fulfilment of its tasks remain. It is noteworthy that some associations of relatives of missing persons such as *Izvor* (from North-Western BiH), are especially critical towards the work of the MPI and its very composition. These associations allege that the personnel of the MPI is not specialized for the work and that the presence of people who also have political affiliations²⁰ undermines the credibility of the institution and the effectiveness of its work. They argue that the appointment of the MPI staff was done automatically by transferring employees from the former entity commissions in charge of tracing missing people and not on the basis of the results and qualifications of these persons.²¹ Moreover, they argue that the fact that the Board of Directors meets only once or twice a month consistently slows down the pace of the work of the MPI. In general, associations of missing persons claim that some of the employees of the MPI failed to successfully realize the tasks entrusted to them and

¹⁷ The ICMP and the Council of Ministers of BiH. An English version of the Agreement on Assuming the Role of Co-founders of the MPI can be found at: www.ic-mp.org/wp-content/uploads/2007/11/agreement_en.pdf

¹⁸ It is noteworthy that, among the associations that are submitting this additional information to the CAT, the Association of Families of Killed and Missing Defenders of the Homeland War from Bugojno Municipality (Ms. Vanda Havaraneck) is a member of the Advisory Board of the MPI. Moreover, it must be noted that, while in BiH access to power or positions should be granted to Bosniaks, Bosnian Croats, Bosnian Serbs and to “others” (including, for instance, Roma, or those who identify themselves simply as Bosnian-Herzegovinians), the organizational structure of the MPI includes no representation of the “others” category in its organizations structure. In general, on this matter, see ECtHR, Case *Sejdić and Finci v. Bosnia and Herzegovina*, judgment of the Grand Chamber of 22 December 2009.

¹⁹ WGEID, *Press Release of 21 June 2010 on the Visit to BiH*, *supra* note 3.

²⁰ In this sense, it must be recalled that Article 5 of the LMP clearly establish that “officials with duties related to the tracing of missing persons cannot carry out this duty if they are members of steering or other boards, or executive bodies, of political parties, or if they are politically engaged representatives, and must not follow political party instructions” (emphasis is added).

²¹ Notably, Article 5 of the Agreement on Assuming the Role of Cofounders of the MPI prescribes that “the initial staff of the Institute will be taken over from the staff employed in the Federation Commission on Tracing Missing Persons and the Republika Srpska Office on Detained and Missing Persons, on the basis of professional abilities, relevant working experience and in a manner that shall take into account national representation and gender equality”. In this sense, it is noteworthy that the Association *Izvor* has repeatedly expressed its deep concerns on the composition of the MPI, as well as on its functioning, addressing letters to different authorities, including the MPI itself (see Annexes 38-49 in the local language and in English). It is noteworthy that they have never received any formal answer to their letters and inquiries.

should be replaced.

2.1.2 The Failure to Appoint New Members of the MPI Steering Board and Approve its 2009 Audit Report

10. The functioning of the MPI is disturbed by the fact that the Steering Board cannot operate due to the lack of members. In 2008 the Bosniak member (Ms. Jasminka Džumhur) resigned because she was appointed as Ombudsperson. Since then, she has not been replaced, therefore leaving one of the key seats in the Board empty. In June 2009 the mandate of three other members of the Board elected by the ICMP also expired. Pursuant to the Agreement on Assuming the Role of Cofounders of the MPI (Official Gazette BiH – International Agreements, No. 13/05), it falls under the responsibility of the ICMP and of the Council of Ministers of BiH to appoint by consensus the members of the Steering Board of the MPI.²² Since 2009 the ICMP and the Council of Ministers failed to find an agreement on the appointment of new members, with the consequence of considerably slowing down the regular functioning of the institution and undermining its legitimacy.²³
11. Moreover, the ICMP and the Council of Ministers of BiH are in charge of the approval of the audit report of the MPI submitted by the Steering Board. While the ICMP approved the audit report for 2009, the Council of Ministers has failed to do so, allegedly without giving a public explanation for this.²⁴ The lack of approval of the audit report by the Council of Ministers represents a further obstacle to the regular functioning of the MPI.

2.1.3 The Establishment of Mechanisms for the Tracing of Missing Persons Parallel to the MPI

12. One of the basic conditions for the establishment of the MPI was the transfer of the authority from the existing entity commissions for tracing missing persons. This was considered to be crucial for the elimination of potential discriminatory actions in the processes of exhumation and identification of missing persons. Also it was done in order to accelerate and improve the processes of tracing and identifying missing persons. However, even though the MPI managed to realize some of these goals, it did not last very long. Representatives from Republika Srpska left the MPI and with the support of the government of Republika Srpska, on 6 June 2008 (five months after the MPI became fully operational), they set up the Republika Srpska Operative Team for Missing Persons, with the aim of collecting data relating to missing Bosnian Serbs in BiH. Further, parallel to the Republika Srpska Operative Team, the government of Republika Srpska also established the Coordination Team for War Crimes and Missing Persons of Republika Srpska, as well as the Republika Srpska Centre for the Research of War Crimes (the latter was established in 2002). The Republika Srpska Operative Team is in charge of field work connected to tracing missing persons while the Centre for

²² Article 6 of the Agreement on Assuming the Role of Cofounders of the MPI establishes that “members of the Steering Board of the Institute shall be selected based on a public competition. This competition shall be carried out by a Selection Committee appointed by the Co-founders in consultation with the Entity Governments and the Brčko Distric of BiH”.

²³ On this subject see two newspapers articles (Annexes 1 and 2, unofficial translation in English of the original versions), published respectively on 12 June 2010 by *Avaz* and on 7 July 2010 by *Glas Srpske* (“Voice of Srpska”). There has been an exchange of communications between the ICMP and the Council of Ministers of BiH, but so far it has not produced any tangible result.

²⁴ See Annexes 1 and 2.

the Research is entrusted with the mandate of conducting research on war crimes, including enforced disappearance, committed on the territory of the Republika Srpska. For example, the Centre was given the task of reviewing the existing data about the casualties from Srebrenica in the period 1991-1995. The Coordination Team on the other hand, gathers all different actors who deal with the subject of missing persons in Republika Srpska such as representatives of the Operative Team, the Ministry of the Interior, the Prosecutor's Office and local associations of relatives of missing persons in order to improve the process of tracing missing persons through coordinating the work of all these institutions.

13. The original purpose of having a joint State institution for tracing missing persons which would ensure equal treatment of all victims and prevent manipulation with the number of missing persons, has been partially frustrated with the re-establishment of these entity bodies. This does create concrete instances of overlapping²⁵ and the ethnic, religious or national background of the victims is anew used as a criterion for the engagement in the search of missing persons. In fact, the establishment of these separate entities in Republika Srpska, has reopened past conflicts between institutions dealing with tracing missing persons and it is fostering a climate of mistrust, overall confusion and animosity.²⁶ On the one hand, one of the directors of the MPI representing the Bosnian Serb people (Mr. Milan Bogdanić), is being subjected to ongoing criticism, harassment and he has been frequently labelled as a "traitor". On the other hand, the Director of the Republika Srpska Operative Team for Missing Persons, Mr. Goran Krčmar, often releases statements in the press that underestimate the work of the MPI²⁷ and that question the official numbers and figures of missing Bosniaks in BiH.²⁸
14. As a part of its mandate, the MPI is open to cooperation with any other institution concerned with missing people. However, at present the collaboration between the MPI and the Republika Srpska Operative Team for Missing Persons is almost inexistent, although there have been attempts in this sense. On the contrary, cases of hindrance can be quoted and are reported to be on the increase. For example, in many cases the information provided by the Republika Srpska Operative Team to the MPI with regard to the potential location of mass graves, resulted inaccurate or wrong, ultimately causing loss of time and resources of the MPI as well as a blow to the trust of families of missing persons in this institution. It is alleged that the Prosecutor's Offices at the State as well as the cantonal and district level, as well as the State Court of BiH must play a key role in preventing hindrances and in duly coordinating the carrying out of exhumation and identification of mortal remains, since this ultimately falls under their competence. In general, it is noteworthy that mortal remains represent material evidence that can be used in trials and that therefore they shall be adequately preserved. Indeed, the preservation of the mortal remains shall be secured using unified standards and applying the same procedures throughout BiH.

²⁵ *Infra* para. 23.

²⁶ See Annexe 2.

²⁷ *Ibid.*

²⁸ See Annexes 5 and 6 (in the local language and English) reproducing an article published on 30 December 2009 by the newspaper *Glas Srpske* (The Voice of Srpska), entitled "The Institute is Blocking the Process of Tracing Serbian Victims".

15. In general, it would not seem that the Republika Srpska Operative Team disposes of adequate resources and personnel to carry out effective work (it currently counts on only one pathologist doctor and it does not dispose of an adequate equipment to perform DNA matching). This situation, instead of increasing the chances of locating and identifying missing people and making their fate and whereabouts known to their relatives, further delays and complicates this highly delicate process.

2.1.4 The Role of the MPI in the Process of Exhumation and Identification of Mortal Remains

16. As already pointed out, one of the responsibilities of the MPI is the collection of information and the study of locations of individual, group and mass graves, as well as the participation in the process of exhumation of bodies of victims and the identification of the exhumed remains. The last task is carried out in cooperation with the ICMP. As pointed out also by the Advisory Committee of the Human Rights Council, “[...] the exhumation of human remains constitutes part of the right to know the truth and helps establish the whereabouts of the disappeared. It also dignifies the victims, as the right to bury the dead and to carry out ceremonies for them according to each culture is inalienable for all human beings. Exhumation serves several important purposes, including: recovery of the remains for physical examination and analysis for their identification; release of remains to relatives so as to facilitate funeral arrangements and emotional healing; documentation of injuries and other evidence for legal proceedings and to uncover human rights abuses; the search for clues that may assist in the historical reconstruction of events and revelations to create awareness; and acknowledgement that is necessary for healing and drawing lessons for the future of the community [...]”.²⁹ Accordingly, the prompt carrying out of exhumations in a thorough and effective manner³⁰ is crucial for guaranteeing the respect of a number of human rights enshrined in international treaties, including the Convention against Torture.
17. Although some relevant results have been accomplished, the carrying out of exhumations by the MPI has not always met international standards, which brings to a perpetuation of the situation of anxiety and uncertainty suffered by thousands of relatives of missing persons. Consequently, this also constitutes an ongoing violation of their basic human rights and, in particular, of the prohibition of inhuman treatment. In this sense, in its recent general comment on the right to the truth in relation to enforced disappearance, the WGEID indicated that “the State cannot restrict the right to know the truth about the fate and the whereabouts of the disappeared as such restriction only adds to, and prolongs, the continuous torture inflicted on relatives”.³¹
18. Problems concerning the carrying out of exhumations may be summarized in four main categories:

²⁹ Human Rights Council, *Progress Report of the Human Rights Council Advisory Committee on Best Practices on the Issue of Missing Persons*, doc. A/HRC/14/42 of 22 March 2010, paras. 73-74. See also Human Rights Council, Resolution 10/26 of 27 March 2009; and General Assembly, Resolution 61/155 of 19 December 2006.

³⁰ In general, on the criteria to be followed in carrying out exhumations, see Human Rights Council, *Progress Report of the Human Rights Council Advisory Committee on Best Practices on the Issue of Missing Persons*, *supra* note 29, paras. 75-81. See also *Report of the Office of the United Nations High Commissioner for Human Rights on the Right to the Truth and on Forensic Genetics and Human Rights*, doc. A/HRC/15/26 of 24 August 2010.

³¹ WGEID, *General Comment on the Right to the Truth in Relation to Enforced Disappearance*, *supra* note 13, para. 4.

the speed and the manner in which exhumations are being carried out;³² the conflicts between the MPI and the Republika Srpska Operative Team for Missing Persons in the carrying out of exhumations; the lack of adequate psycho-social support for relatives of missing persons during and after the process of exhumation and identification;³³ and the lack of effective cooperation between the MPI and the Prosecutor's Offices.

2.1.4.1 The Speed and the Manner in which Exhumations are Carried Out

19. First, associations of relatives of missing persons complain about the pace of the DNA analysis process (which is materially carried out by the ICMP and then handled to the MPI) when mortal remains are located and the manner in which relevant data are disclosed, often misleading the public opinion. According to these allegations, when a mass grave is found, instead of communicating all together the data regarding the number of people found, exhumed and identified, this is done in small groups (e.g. three by three). This, on the one hand, lowers and dilutes the severity of the crime in the view of the public while, on the other, unnecessarily prolongs the level of anguish and frustration of relatives of missing persons.³⁴ In general, associations of relatives of missing people perceive that the work of the MPI is not adequately presented by the media, with the consequence of not providing a complete picture of the role of the institute, its activities and initiatives.
20. One example that created great dissatisfaction among the members of the organization *Izvor* in Prijedor is that of exhumations carried out in the area of Korićanske stijene and the way in which relevant information concerning the identification of bodies exhumed was released.³⁵ Already in 2003 the former Federal Commission for Tracing Missing Persons carried out exhumations in the area and allegedly discovered tiny bones on the rocky slope of the abyss. Prior to the exhumation,

³² See Annexes 7 and 8 (in the local language and in English) containing the list of Serb victims that have been exhumed at 26 March 2010.

³³ In the process of exhuming and identifying mortal remains, when a body is exhumed, it is taken to a morgue, where the pathologist takes bone samples which he/she sends to the ICMP for carrying out a DNA analysis. When the ICMP has the results, it delivers them to the MPI, which sends copies to the competent prosecutor working on the case and the original to the pathologist. At that point, the pathologist invites the relatives for the carrying out of what is consider the real "identification": he/she presents the results, the mortal remains and the ante mortem data to the relatives and then asks for an official confirmation of the identification. If the relatives accept the results presented by the pathologist, they are handed over the remains and the MPI covers the burial costs. Accordingly, the identification takes place only in the last stage of the process, when the pathologist meets the relatives and discloses the results.

³⁴ In the *Report of the Office of the United Nations High Commissioner for Human Rights on the Right to the Truth and on Forensic Genetics and Human Rights*, *supra* note 30, it is pointed out that "the information generated in the course of different operations should be handled in a coordinated manner to enable case monitoring, consultation and cross-referencing of the data, and consequently better handling of investigations, especially when there are overlaps between similar investigations [...]" (para. 17.c) and that "information should be made available on key discoveries and exhumations, including information on the number of bodies recovered, the type of grave (primary or secondary), and soil characteristics that might affect the outcome of the genetic analysis, and the general condition of the remains recovered, as well as an indication of whether or not a body was found whole, whether a potential identity is known, whether the victims included blood relatives and if so how they were related, etc." (para. 17.e.vi). Moreover, it was highlighted that "investigations should be comprehensive in the sense that they should not only focus on the reliable identification of corpses but also on the circumstances that led to those persons' death" (para. 17.a).

³⁵ See also the article published on 20 August 2010 by the Balkan Investigative Reporting Network, *New Search Ordered for Koricanske stijene Victims*, available at www.bim.ba/en/232/10/30091/.

survivors of the massacre perpetrated in Korićanske stijene in August 1992 claimed that people were arbitrary executed in two separate locations not far from one another. Soldiers who admitted having taken part in the massacre confirmed these allegations.³⁶ In 2009 the MPI conducted other exhumations in a place located less than 200 meters away on the slopes of the same abyss in Korićanske stijene and discovered around 60 almost complete skeleton remains. The mortal remains exhumed in 2003 and 2009 were transferred to the City Cemetery in Visoko, where there is no pathologist working full-time. The MPI did not coordinate any unified communication of the DNA findings to the relatives of the identified victims who, as a consequence, had to organize themselves the visit of the City Cemetery in Visoko, trying to discover from time to time whether their loved ones were among those exhumed on Korićanske stijene. Allegedly, the results of the DNA matching process with regard to the bones exhumed in 2003 were available already in 2004. However, they were not disclosed to relatives of people massacred in Korićanske stijene until 2009.³⁷ The results of the DNA matching process of the bodies located and exhumed in 2009 were made public in June 2010 during a public event in Kozarac attended by very few relatives of the victims of the Korićanske stijene massacre, also considering that the majority of these relatives live outside Kozarac or even abroad and could not attend the event. To date many relatives of victims of the Korićanske stijene massacre have not received official notification by the MPI about the results of the DNA matching process, although in fact their loved ones are among those who have finally been identified. It is noteworthy that the MPI has all necessary contact details for these people, because they gave blood samples and filled ante-mortem questionnaires precisely for this purpose. This lack of organization of the disclosure of DNA matching process results has caused and is causing further suffering to relatives of victims of the Korićanske stijene massacre and it is unduly prolonging the violation of their right to know the truth on the fate and whereabouts of their loved ones. Also, it deprives them of their right to mourn and bury their relatives in accordance with their religious beliefs and customs.

21. Further, there is criticism with regard to the facilities where mortal remains are kept and the way they are dealt with. For instance, it is argued that, over many years, the halls for autopsy and identification in Goražde were located in a ruined building, where wild animals used to penetrate and where any person could easily enter and manipulate the mortal remains. In this sense, it must be recalled that “the dead should be treated with respect and dignity. [...] Acts of mutilation and despoliation must be criminalized. [...] Authorities must ensure that the examination of human remains and their identification are undertaken by qualified and competent people. [...] at all times,

³⁶ On 30 June 2009 Mr. Damir Ivanković entered a plea agreement before the State Court of BiH and declared that in the past he accompanied one of the Directors of the MPI (Mr. Amor Mašović) to Korićanske stijene, showing him the places where people were extra-judicially executed. In July 2009, in the presence of almost 200 visitors to the site of Korićanske stijene, Mr. Amor Mašović denied to know Mr. Damir Ivanković and to have ever visited the spot with him. For the plea agreement entered by Mr. Damir Ivanković see: www.sudbih.gov.ba/files/docs/presude/2009/Damir_Ivankovic_First_Instance_Verdict.pdf. On 18 March 2010, Mr. Velibor Vrabčić (witness of the Prosecutor's Office) declared that that the bodies of some of the victims of the Korićanske stijene massacre were mined and buried in the location where in 2003 the Federal Commission for Tracing Missing Persons had conducted the first exhumations. Part of this statement can be read at: www.bim.ba/bh/210/10/26716.

³⁷ In 2009 one of the Directors of the MPI disclosed a list of 37 names of people who had been exhumed and identified in Korićanske stijene.

the dignity, honour, reputation and privacy of the deceased must be respected [...]”.³⁸ After associations of relatives of missing persons reported this situation to the Advisory Board of the MPI, a visit was conducted to the facilities in Goražde and, eventually, some of the walls were restored and windows were replaced so that animals cannot penetrate the building. Indeed, it is impossible to make up for the mortal remains that have been mutilated during many years and, in certain cases, this creates a damage which will never be restored. Another instance is that of the “Krajina Identification Project” (also known as Šejkovača) in Sanski Most. This facility was set up by the ICMP and from 1st June 2010 the MPI assumed the responsibility for the management and maintenance of the project, which is financed through the Cantonal Prosecutor’s Office in Bihać. However, so far the project does not count with a full-time pathologist.³⁹ Since exhumations can be carried out only in the presence of a pathologist, the situation in Šejkovača is critical and numerous mortal remains are stored there waiting to undergo the process of identification. In general, with regard to this subject, after its visit to the country, the WGEID stressed that “[...] all available technology necessary to detect graves and to exhume them should be provided to the institution [MPI]”.⁴⁰

22. It is also noteworthy that a number of fatal mistakes have occurred in the past in the identification of mortal remains by using classical methods of visual identification. This situation has prolonged the suffering of relatives of missing people and made it almost impossible to determine the real identity of the missing persons concerned. Indeed, the work of the MPI will not make up for these mistakes, which should nonetheless be considered when elaborating the figures of missing people who have been identified and whose fate and whereabouts have been established with certainty. For instance, in 1995 the mortal remains of Mr. Dragoslav Kulina who was a soldier of the Army of Republika Srpska (VRS) killed during the war were allegedly identified and buried. As the father of Mr. Kulina was also registered as a missing person, other members of the family gave their blood samples to facilitate the identification. In 2008, almost 13 years after the supposed burial of Mr. Dragoslav Kulina, it was demonstrated that the mortal remains of the latter were not those buried in the grave in 1995 – that his mother and relatives have been visiting and mourning over the last 15 years -, but they were actually kept in the identification hall in Lukavica. A second instance that may be recalled is that of Mr. Adnan Dupovac, a civilian who was arbitrarily killed⁴¹ in 1992 in the village of Grivica, Hadžići municipality. At the time, his father and his sister identified the body of Mr. Dupovac through the method of visual identification and his supposed remains were buried there. However, after

³⁸ Human Rights Council, *Progress Report of the Human Rights Council Advisory Committee on Best Practices on the Issue of Missing Persons*, *supra* note 29, paras. 67, 69, 75 and 76.

³⁹ Notably, on the whole territory of BiH there are only seven pathologists that hold the necessary certificate issued by the BiH State Court.

⁴⁰ WGEID, *Press Release of 21 June 2010 on the Visit to BiH*, *supra* note 3. See also *Report of the Office of the United Nations High Commissioner for Human Rights on the Right to the Truth and on Forensic Genetics and Human Rights*, *supra* note 29, where it is stressed that “upgrading equipment and providing training is crucial to improving results and credibility” (para. 14) and that “the establishment of protocols for exhumation, ante mortem data collection, autopsies and identification based on scientifically valid and reliable methods and technologies and/or customary, clinical or circumstantial evidence that are deemed appropriate and which have been previously adopted by the scientific community” (para. 13.a).

⁴¹ Mr. Kovacević and Mr. Zoran Golub (known as “Carlama”) were allegedly responsible for the arbitrary killing. The first one died during the war and the other passed away in 2009.

seven years, because the sister of Mr. Dupovac was not completely sure about the identification, she gave her blood samples for cross examination. In 2008 the DNA analysis showed that, in fact, the mortal remains originally buried were not those of Mr. Dupovac but of a neighbour, Mr. Meho Cović. Mr. Dupovac had been buried in another grave for more than 13 years, while his family mourned someone else's mortal remains.⁴² Another example that may be recalled is that of the mass grave located in 1998 in the old pit of the Ljubija mine (Jakarina kosa). At the time the Federal Commission for Tracing Missing Persons was immediately notified about the locating of the mass grave and went to the site. The exhumations began only in September 2001. Eventually 325 skeleton remains were exhumed from Jakarina kosa and, nine years later another 69 bodies were found at the same site. The latter have not been identified to date. For some of them it is impossible to carry out the DNA analysis because they remained exposed for too long to erosion in the mine.

2.1.4.2 The Conflicts between the MPI and the Republika Srpska Operative Team for Missing Persons in the Carrying out of Exhumations

23. The already mentioned problems of coordination between the MPI and the Republika Srpska Operative Team for Missing Persons have repercussions also in the processes of exhumation and conservation of mortal remains.⁴³ For instance, associations of relatives of missing people in the Republika Srpska argue that the District Prosecutor's Office conceded halls for autopsy and identification in East Sarajevo and Banja Luka to the Republika Srpska Operative Team for Missing Persons, although, according to the law, these facilities should be used by the MPI. As an example it can be recalled that, in March 2010, a witness informed about the fact that mortal remains of a missing person could be located in an individual grave near Srebrenica. The remains were laying on the ground surface and they were found by Mr. Slobodan Škrba, an employee of the Republika Srpska Operative Team for Missing Persons.⁴⁴ Mr. Škrba allegedly notified the police in Srebrenica and then, instead of waiting for the MPI and the representatives of the Prosecutor's Office and to obtain a Court's order of exhumation, he proceeded to collect the mortal remains, putting them in a plastic bag which he subsequently handed over to the mortuary at the Srebrenica Hospital. Allegedly, when cleaning the Hospital premises, the maintenance lady unintentionally took the

⁴² Many are also the cases where dead bodies have been manipulated and removed, thus making it impossible to proceed to their exhumation and identification. An example to be recalled is that of Mr. Dusan Zorovac, who died by natural causes in 1991 and was buried in a cemetery near Mostar. After the signing of the Dayton Peace Agreement, Mr. Novica Zorovac, the son of Mr. Dusan Zorovac, went to the cemetery to honour his father's grave. He found an empty open grave. Allegedly, the body of Mr. Dusan Zorovac may have been used for exchange in the past. It has to be noted that the act of mutilating or despoiling the dead can constitute the war crime of committing outrages upon personal dignity, in particular humiliating or degrading treatment as identified in Art. 8.2.(b).(xxi) and Art. 8.2.(c).(ii) of the Rome Statute of the International Criminal Court. Further, criminal sanctions should be established for the non-respect of burial sites and the desecration of graves. In the reported instances, no investigation has been opened and BiH authorities failed to identify, judge and sanction those responsible.

⁴³ See Annexes 5 and 6.

⁴⁴ See also Annexes 3 and 4 (in the local language and an unofficial translation into English) containing a newspaper's article on this case (from the newspaper *Glas Srpske* – The Voice of Srpska - of 30 December 2009, *Exhumed Bones Thrown in the Dumpster*).

plastic bag with the remains and threw it into the trash. This unprofessional behaviour resulted in the permanent loss of mortal remains of a person, which will never be identified, thus depriving forever his or her relatives of their right to know the truth and to mourn and bury his mortal remains.

2.1.4.3 The Lack of Adequate Psycho-social Support for Relatives of Missing Persons during and after the Process of Exhumation and Identification

24. When the potential location of new graves is announced, relatives of missing persons experiment hope, expectations and, at the same time, as memories resurface, they go through debasement, doubts and anxiety. Instances of inadequate identification, inadequate handling of remains, disrespect or mutilation represent a form of re-traumatisation for relatives of missing persons that amplifies their suffering and may generate grave psychological and medical consequences. This creates an extraordinarily negative impact on individuals as well as on society as a whole and fosters a climate of mistrust. In general, exhumations should be seen as a process rather than a specific or isolated activity. In fact, they start before and continue long after the excavation and identification themselves, which are just the most visible and notorious parts of the work. Exhumations and identifications are essential for establishing the truth on what has happened, in obtaining justice and they are also reparatory in nature. For these reasons, it is crucial that relatives of missing people involved in processes of exhumation and identification are provided with appropriate psychological support.⁴⁵ While there are some instances of psychological accompaniment that has been provided to relatives of missing people by international organizations or NGOs, so far BiH has not addressed this aspect through providing a comprehensive and adequate programme. Thus, relatives of missing persons are exposed to ongoing suffering and often to re-traumatisation caused by the inefficiency and negligence of State's institutions.

2.1.4.4 The Lack of Effective Cooperation between the MPI and the Prosecutor's Offices

25. When the MPI receives information concerning a potential location of mass, group or individual graves, it firstly carries out a process of verification. Afterwards, the data are officially forwarded to the Prosecutor's Office of BiH, which forwards the case to the Court of BiH where individual judges issue an order for exhumation and identification. The Court of BiH delegates the case to the district or cantonal prosecutor's offices;⁴⁶ appoints the pathologists; authorized representatives of the Ministry of Interior, utility, anthropologist, the facility to place the body for autopsy; gathers the bone

⁴⁵ See, *inter alia*, Navarro-García, Pérez-Sales, Fernández-Liria, *Exhumations in Latin America: Current Status and pending Challenges: a Psychosocial View*, in *Peace and Conflict Review*, Vol. 4, No. 2, 2010, pp. 39-57; Navarro-García, Pérez-Sales, *Resistencias contra el olvido: trabajo psicosocial en procesos de exhumaciones*, Buenos Aires, 2009; ECAP et al., *Working Document for an International Consensus on Minimum Standards for Psychosocial Work in Exhumation Processes*, 2009 (available at: www.congresoexhumaciones.com/images/stories/pdf/validacion%20peru.pdf). Keough, Simmons, Samuels, *Missing Persons in post-conflict Settings: best practices for integrating psychosocial and scientific approaches*, in *The Journal of the Royal Society for the Promotion of Health*, 2004, pp. 271-275.

⁴⁶ Allegedly, over the past years, certain prosecutors established the practice to delegate the field work to lower level prosecutors. However, according to the domestic legislation, high level prosecutors cannot issue orders to delegate the work to lower level prosecutors that, consequently, refuse to carry out the work. This situation created a certain degree of confusion and, accordingly, the Head Prosecutor, Mr. Milorad Barasin, issued an order according to which from January 2011 all exhumations will be carried out under the authority of the State Prosecutor's Office.

samples for DNA; determines who conducts the identification and determines the place of storage of personal items of the exhumed victims and other material evidence.

26. On the relationships between the MPI and the Prosecutor's Office, after having conducted its visit to BiH the WGEID noted that "for an exhumation to take place, a prosecutor has to obtain a court order. This has not always been easy and which court and which prosecutor has jurisdiction has been a complicating factor. The number of prosecutors working on exhumations and war crimes prosecutions is extremely low. They also have few resources and staff. Additional prosecutors at local level should be appointed to accelerate the process of investigations".⁴⁷
27. There are many instances of malfunctioning of this procedure, which can be seen through the delay in the carrying out of exhumation and identification of mortal remains done by the prosecutors' offices and the lack of coordination between the latter,⁴⁸ ultimately jeopardizing the work of the MPI and further violating the human rights of the relatives of missing people.
28. A first example in this sense is the case of a mass grave located in Trnovo. All relevant information about it was provided to the MPI, which promptly forwarded it to the Prosecutor's Office. It took more than a year and a half for the District Prosecutor's Office in East Sarajevo to issue the required authorization. Over this period, the District Prosecutor's Office did not provide any explanation or information about the ongoing process to associations of relatives of missing persons, thus fostering their uncertainty and anguish. Furthermore, it has to be stressed that the passing of time without the adoption of adequate measures to protect the site, increases the risk of interference with the grave, of despoliation and of permanent loss of evidence.
29. Second, a case occurred in 2007 in Vogošća can be quoted as an outstanding instance. A gentleman had bought himself a place for burial next to his wife in the Vogošća's cemetery. When he eventually passed away, the people who were digging the burial site came across someone's mortal remains. The Association of Relatives of Missing Persons from Vogošća Municipality was immediately informed and they notified without delay the local police as well as the Sarajevo Canton Prosecutor's Office. Initially, the latter did not even acknowledge the receipt of the notification. In the meantime, on the request of members of the Association, a policeman remained at the cemetery to safeguard the site, as the members of the Association feared that the mortal remains found could be removed or subjected to despoliation. It is noteworthy that the mortal remains remained exposed to the pouring rain for three days. Only after the President of the Association of Relatives of Missing Persons from Vogošća Municipality, Ms. Ema Čekić, threatened the Prosecutor, Mr. Nedžad Corović, to publicly denounce this case, he eventually raised an initiative for this case. He personally came to the cemetery, chasing away the relatives of missing people arguing that it was not their task to be there, and he exclaimed: "But this is one person only". Apart from the lack of professionalism, this is a mockery to relatives of missing people, who are devoting their lives to locating, exhuming and

⁴⁷ WGEID, *Press Release of 21 June 2010 on the Visit to BiH*, *supra* note 3.

⁴⁸ Notably, under BiH legislation, prosecutors have a certain amount of cases to deal with and of investigations that they have to carry out annually. Allegedly, many prosecutors refrain from working on exhumations since it is a lengthy process which would require much of their time and attention and would make difficult for them to comply with the required number of cases and investigations.

identification of their loved ones.

30. Associations of relatives of missing persons from North-Western BiH such as *Izvor* also allege that in many cases, although the blame is put on prosecutors' offices, in fact those designated as "investigators" within the MPI are the ones who do not carry out their work effectively. The latter allegedly fail to collect and communicate relevant information on potential locations of mass or individual graves where the mortal remains of missing persons could be situated. In 2009, the MPI did not have a single full-time investigator to cover the North-Western part of BiH. Associations of relatives of missing persons report that also in the areas of Eastern and Central BiH, as well as in Herzegovina (e.g. the valley of the Neretva River) there is not enough personnel working to locate graves. In this view, the MPI should hire more personnel to act as "investigators" in these areas and, in general, there should be a thorough scrutiny of the work carried out by these officers.

2.1.5 The Establishment of the CEN

31. Article 21 of the LMP provides for the creation of the CEN, intended to include all records that were or are kept at local or entity levels, by associations of families of missing persons and other associations of citizens, Tracing Offices of the organizations of the Red Cross in BiH, as well as international organizations. Article 22.4 of the LMP prescribes that "verification and entry of previously collected data on missing persons into CEN should be completed by the competent authority *within a year* of the date of the establishment of the MPI" (emphasis added). This means that the process of verifying and entering data in the CEN should have been completed by 1 January 2009. As of October 2010, this has not been completed yet.⁴⁹
32. The only concrete steps forward in the setting up of the CEN are the adoption of the Regulation on the establishment of the CEN (Official Gazette of BiH, No. 80/09) by the Council of Ministers; the approval of the Rules of Procedure of the Verification Commission, and in September 2009 the hand-over of the missing persons database by the ICMP. Although BiH pledged that "the central database will be completed by the end of 2010",⁵⁰ unfortunately there seem to remain a number of obstacles to the prompt and effective completion of this task.
33. For instance, associations of relatives of missing persons point out that, so far, the creation of a unified and reliable database has been delayed and complicated by controversies concerning the total number of missing persons.⁵¹ Allegedly, persons pertaining to different ethnic groups, and in particular spoke-persons of political parties,⁵² tend to diminish the number of missing persons

⁴⁹ After its visit to the country, the WGEID noted that "while the Law on Missing Persons provides for a Central Record of the Missing Persons (CEN) this has not yet been completed. This should be done as soon as possible and be made public with the listing of ethnic origin of those classified as missing. This will promote transparency, accuracy and certainty about who went missing. It will reduce the politicization of these issues" (WGEID, *Press Release of 21 June 2010 on the Visit to BiH*, *supra* note 3).

⁵⁰ *Further information received from Bosnia and Herzegovina on the Implementation of the Concluding Observations of the HRC*, *supra* note 12; para. 21 (b).

⁵¹ *Supra* paras. 2 and 5.

⁵² See for instance a newspaper article where Mr. Nedeljko Mitrović, the President of the Republika Srpska Organization of Killed and Missing Persons, declares that the number of victims in Srebrenica is half of what has usually been alleged, Annexes 5 and 6 (in the local language and English).

claimed by other ethnic groups and to increase the number of those belonging to their group, thus delaying and obstructing the setting up of a unified registry.

34. Associations of relatives of missing people refer to the existence of a further obstacle, namely the fact that certain persons have never been registered as missing because their relatives failed to do so as they are living abroad or because there are no relatives left to report the enforced disappearance. The number of missing persons who fall within these categories could be considerable and this would result in the inaccuracy of the CEN. Some instances may be recalled. In 2010 the mortal remains of Ms. Mileva Misić were exhumed and identified. Notably, Ms. Misić was not inscribed as a missing person under any registry and her identification was made possible through the investigation carried out by Mr. Zdenko Mitrović (of the Ministry of Interior), who eventually found relatives of the lady in Serbia and made the identification possible. Similarly, in 1993 the body of a man was exhumed in a location known as Gorsko, near Vogošća and he could not be identified, since his data and DNA did not match any person registered as missing.
35. Associations of relatives of missing persons also claim that in certain cases it is impossible to obtain precise data to set up the CEN, as the information is kept by the ICRC that, by mandate, is bound to confidentiality. For instance, it is known that, when the BiH army occupied Trnovo, 23 persons tried to flee in the direction of Kalinovik, but were captured and taken to the village of Dejčići,⁵³ where they were detained and subjected to interrogation. Allegedly, at the time the ICRC visited those prisoners. Out of the 23 persons, 19 were able to leave the detention facility, while the other four died due to the severe ill-treatment. Associations of relatives of missing people (in particular, the Association of Relatives of Missing Persons from East Sarajevo – Romanija Region), as well as persons who had been captured and held in Dejčići (namely, Mr. Mihajlo and Ms. Bahra Lalović), tried to obtain data about this case from the ICRC. However, the institution refused to share information, as this would have been contrary to their mandate. It is not clear whether this type of information, which may be crucial when completing the CEN, will be duly secured and included.
36. Article 27 of the LMP (Entry into the Register of Deaths) provides that “three years after the date of the coming into force of the Law, persons registered as missing in the period from 30 April 1991 to 14 February 1996 whose disappearance has been verified within the CEN BiH, *shall be considered dead* and this fact shall be officially entered in the Register of Death [...]” (emphasis is added).⁵⁴ It is noteworthy that Article 9 of the LMP clarifies that “in the event that a missing person is proclaimed dead, but the mortal remains have not been found, the process of tracing shall not be terminated”. To date, as the CEN has not been completed, Article 27 of the LMP has not been implemented either.
37. The WGEID has pointed out that “the fact that a disappearance is treated as a direct death does not take into account the continuous nature of the crime, the right to truth for the families of the disappeared and the obligation of the State to continue the investigation”.⁵⁵ The Human Rights Council Advisory Committee declared that “missing persons should be presumed to be alive until

⁵³ See Annexes 24 and 25 in the local language and English.

⁵⁴ On the obligation to obtain a declaration of death of missing people to obtain monthly pensions, see *infra* paras. 101-103.

⁵⁵ WGEID, *Annual Report for 2008*, doc. A/HRC/10/9 of 6 February 2009, para. 114.

their fate has been ascertained. The foremost right of a missing person is that of search and recovery. A person should not be declared dead without sufficient supporting evidence”.⁵⁶ Article 27 of the LMP does not seem to respect these criteria, since it treats enforced disappearance as a direct death. Further, the sole fact that a person is registered as missing in the CEN does not seem, alone, a sufficient evidence to declare someone dead.

38. Enforced disappearance is by its very nature a continuous offence⁵⁷ and this brings a number of relevant legal consequences, among which the impossibility for statute of limitations for criminal proceedings to commence until the moment when the fate and whereabouts of the disappeared person are established with certainty. Under the current formulation of the LMP it is unclear if, after Article 27 will be implemented, the obligatory inscription of disappeared people in the Register of Death will bring significant consequences (and in case of positive answer, which) to the application of statute of limitations for criminal proceedings.
39. The formulation of Article 27 of the LMP, by treating enforced disappearance as a direct death, creates a number of obstacles for the realization of the right to justice and the right to truth of relatives of missing persons. It should be made clear that the State not only remains under an obligation of continuing tracing activities, but also it must grant relatives the right to know the truth, obtain integral reparation and of continuing investigations in order to identify, judge and sanction those responsible for the acts of enforced disappearance.

2.1.6 The Establishment of the Fund

40. Article 15 of the LMP prescribes the creation of the Fund, intended to be a means of support for families of missing persons in BiH. Paragraph 2 of the provision indicates that a decision on the setting up of the Fund “shall be issued by the Council of Ministers of BiH within 30 days of the date of the coming into force of the Law”. The same was provided for the organization of issues related to the work of the Fund. As noted, the LMP entered into force on 17 November 2004. As of October 2010, which is almost six years after the required deadline, the Fund has not been established. The adoption of the decision on the establishment of the Fund (Official Gazette of BiH No. 96/06), addressed only partially the lack of implementation of the LMP. However, to date, the seat, the method of financing and management of the Fund, as well as other practical issues concerning the functioning of the Fund remain to be determined. In the meantime, the right of relatives of missing persons to obtain redress⁵⁸ for the harm suffered continues being violated.

2.1.6.1 The Lack of Agreement on the Financing of the Fund

41. At present, the main obstacle to the setting up of the Fund and to its proper functioning seems to be that the entity governments do not agree on the criteria to be used for financing of the Fund. The

⁵⁶ Human Rights Council, *Progress Report of the Human Rights Council Advisory Committee on Best Practices on the Issue of Missing Persons*, *supra* note 29, para. 60.

⁵⁷ See, *inter alia*, WGEID, *General Comment on Enforced Disappearance as a Continuous Crime*, 2010, available at <http://www2.ohchr.org/english/issues/disappear/docs/GC-EDCC.pdf>. See also Article 17 of the 1992 Declaration; Article III of the Inter-American Convention on the Forced Disappearance of Persons; and Articles 8 and 24.6 of the 2007 Convention.

⁵⁸ See, *inter alia*, Article 19 of the 1992 Declaration and Article 24 of the 2007 Convention.

Agreement on the Financing of the Fund has not been adopted, since the governments of the Federation of BiH, Republika Srpska and the District of Brčko have not agreed on the percentage of financing set aside for the Fund. Due to this ongoing non-coordination of positions, the Fund is unable to provide financial assistance determined in Article 19 of the LMP. After its visit to BiH, the WGEID pointed out that “[...] the establishment of the Fund is a priority”.⁵⁹

2.1.6.2 The Non Implementation of Constitutional Court Decisions that, on the Subject of Compensation for Relatives of Missing Persons, Refer to the Fund

42. While the Fund is not yet operating, the Constitutional Court of BiH has delivered a considerable number of decisions concerning cases of relatives of missing persons whereby it found violations of Articles 3 and 8 of the European Convention on Human Rights with respect to the applicants,⁶⁰ because of the lack of information about the destiny of their missing loved ones. In the mentioned decisions, the Constitutional Court did not pronounce itself on the issue of compensation, as it considered the latter to be covered by the provisions of the LMP concerning “financial support” and the establishment of the Fund. In these judgments, the Constitutional Court ordered “the parties referred to in Article 15 of the LMP”⁶¹ to provide for operational functioning of the institutions established in accordance with the LMP, namely the MPI, the Fund and the CEN *immediately and without further delay and no later than 30 days*.⁶² Given the present situation, the provisions referred to remain a dead letter and consequently also the Constitutional Court’s rulings are unimplemented. In this sense, the ECtHR has accepted that the State’s failure to fully enforce final domestic judgments causes to applicants distress, anxiety and frustration.⁶³
43. Article 74 of the Rules of Procedure of the Constitutional Court reads as follows: “1. The decisions of the Constitutional Court shall be final and binding. Every physical and legal person shall be obligated to respect them. 2. All bodies shall be obligated to enforce the decisions of the Constitutional Court within their competences established by the Constitution and law. 3. Every person who has a legal interest may seek enforcement of a decision of the Constitutional Court. 4. The Constitutional Court may specify in its decision the manner of and time-limit for the enforcement of the decision of the Constitutional Court. 5. Within the time-limit referred to in paragraph 4 of this Article, the body obligated to enforce the decision of the Constitutional Court shall be obligated to submit information about the measures taken to enforce the decision of the Constitutional Court, as required by the decision. 6. In the event of a failure to enforce a decision, or a delay in enforcement or in giving information to the Constitutional Court about the measures taken, the Constitutional Court shall render a ruling in which it shall establish that its decision has not been enforced and it may determine the manner of enforcement of the decision. This ruling shall be transmitted to the

⁵⁹ WGEID, *Press Release of 21 June 2010 on the Visit to BiH*, *supra* note 3.

⁶⁰ See, *inter alia*, Constitutional Court of BiH, decision No. AP 1226/05 of 23 February 2006 and the ruling of 18 November 2006 on the lack of implementation of the previous decision.

⁶¹ Council of Ministers of BiH, government of the Federation of BiH, government of the Republika Srpska, and government of Brčko District of BiH.

⁶² See, *inter alia*, Constitutional Court of BiH, Case *M. H. and others*, *supra* note 10.

⁶³ ECtHR, Case *Čolić and others v. Bosnia and Herzegovina*, judgment of 10 November 2009, para. 21.

competent prosecutor or another body competent to enforce the decision, as designated by the Constitutional Court". The Rules of Procedure do not establish any deadline for the Constitutional Court to adopt the mentioned ruling on the lack of enforcement of previous decisions.

44. In a number of cases concerning relatives of missing people the Constitutional Court adopted judgments of non-implementation of its previous rulings pursuant to Article 74.6 of its Rules of Procedure,⁶⁴ while in many other cases, notwithstanding the lack of implementation of its judgments, it did not proceed to adopt any further decision. Associations of relatives of missing persons are not aware of any instance where the prosecutor has taken any action to enforce the Constitutional Court's decision.
45. On the one hand the Constitutional Court has repeatedly declared that "no specialized institution on missing persons in BiH seems to be operating effectively",⁶⁵ and on the other hand the very decisions of the highest judicial body in BiH are systematically not implemented and no action is undertaken by competent BiH authorities to enforce such rulings. This concretely puts relatives of missing people in a situation of defencelessness, where they lack any effective remedy. In this sense, after its visit to BiH, the WGEID has pointed out that "many orders of the Constitutional Court are not implemented. This should be done and failure to comply should be prosecuted as provided by the law of BiH".⁶⁶

2.1.6.3 The Impossibility to Provide Integral Reparation to Relatives of Missing Persons through the Fund

46. Moreover, it has to be pointed out that, even when it will be eventually set up, the Fund is conceived to provide relatives of missing people with measures of social welfare that do not correspond and cannot replace compensation for the damage suffered and certainly do not amount to integral reparation.⁶⁷ The government of BiH has pointed out that "the law provides that families choose the exercise of this right, which means that the family may be entitled to realize this right in accordance with state or entity regulation, **the choice of a more favourable right**, i.e. if you already realize this right by another law in one of the entities (as a civilian war victim or as the family of a missing person in the veteran fund) **you can decide to receive only one aspect of social cash benefits because both entities and Brčko District have the same source of funding for this right**. The Fund is planned as a restrictive one (generally entitles persons who would otherwise be supported by the missing person if alive), because it does not ensure this right to users on the basis for pension insurance **for people who receive more than the minimum pension** since this concerns an additional social right".⁶⁸

⁶⁴ *Supra* notes 10 and 60.

⁶⁵ Constitutional Court of BiH, Case *M. H. and others*, *supra* note 10, paras. 37-40. At para. 39 the Court noted that "[...] there is no specialized institution at the level of Bosnia and Herzegovina that operates efficiently, its task being conductance of impartial investigations concerning persons who went missing during the war".

⁶⁶ WGEID, *Press Release of 21 June 2010 on the Visit to BiH*, *supra* note 3.

⁶⁷ See *infra* paras. 92-103.

⁶⁸ *Further information received from BiH on the implementation of the concluding observations of the HRC*, *supra* note 12, paras. 33-34 (emphasis is used in the original text).

47. From the words of the State, it results that the Fund is conceived as a restrictive Fund to grant to relatives of missing persons forms of social assistance. In this regard, the WGEID indicated that “measures should be taken in order to see that members of families of disappeared persons are entitled to social benefits and other measures of social support irrespective of where they live, including health care, special education programmes and psychological assistance”.⁶⁹ However, the notion of “social assistance” shall be clearly differentiated from those of “redress” or “integral reparation”, to which relatives of missing persons are entitled for the harm suffered and independently from their economic situation or their ability to work.⁷⁰ The Fund alone, therefore, will not be enough to guarantee to relatives of missing persons their right to integral reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition.⁷¹

2.2 General Context concerning Victims of Rape or other Forms of Sexual Violence during the War

48. During the war in BiH the use of rape or other forms of sexual violence was widespread.⁷² 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 men⁷³ who were raped or otherwise sexually abused (rates vary from 20,000 to 50,000 victims).⁷⁴ 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,

⁶⁹ WGEID, *Press Release of 21 June 2010 on the Visit to BiH*, *supra* note 3.

⁷⁰ On the conditions to accede to or maintain the financial support granted by the Fund, see Articles 14 and 18 of the LMP.

⁷¹ See *infra* paras. 92-103.

⁷² 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; Special Rapporteur on Violence against Women, its Causes and Consequences, *Violence against Women Perpetrated and/or Condoned by the State during Times of Armed Conflict*, doc. E/CN.4/2001/73 of 23 January 2001; Security Council Resolution No. 1325 of 31 October 2000; 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”); CEDAW, *General Recommendation No. 19* of 1992; and CEDAW, *General Recommendation No. 12* of 1989.

⁷³ 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.

⁷⁴ 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 72, para. 146.

it is undisputable that the majority of those responsible for rape or other forms of sexual violence during the war in BiH enjoy impunity.⁷⁵

49. 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.⁷⁶ 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”.⁷⁷ 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.⁷⁸ 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 at large.
50. 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.⁷⁹ 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.

⁷⁵ Parliamentary Assembly, Council of Europe, *Report on Sexual Violence against Women in Armed Conflict*, doc. 11916 of 15 May 2009, paras. 23-25.

⁷⁶ 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 72, paras. 106, 157, 164 and 166.

⁷⁷ Statement released to one of the psychologists of the Association Medica that shared it during the preparation of this report, requesting that the identity of the victim is kept confidential.

⁷⁸ Josse, *‘They came with two guns’: the Consequences of Sexual Violence for the Mental Health of Women in Armed Conflicts*, *supra* note 76, p. 179.

⁷⁹ 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. Zejnil 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).

51. 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,⁸⁰ 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.
52. 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.⁸¹ 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”.⁸²
53. As in the case of missing persons,⁸³ 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.

3. The Inadequacy of the Criminal Legislation on Torture, Enforced Disappearance, Rape or other Forms of Sexual Violence

Article 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

⁸⁰ Reference here is to the Association of Women-Victims of War which in the Federation of BiH has been mandated by the State to recognize the status of victims of rape or other forms of sexual violence. See *infra* para. 97.

⁸¹ *Infra* paras. 92-98 and 104-125.

⁸² 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*, *supra* note 7, para. 15.

⁸³ *Supra* paras. 2 and 5.

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.

Article 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.

Article 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.

54. As pointed out by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (the “Special Rapporteur on Torture”), “impunity for the perpetrators of torture is one of the root causes for its widespread practice worldwide. To fight impunity it is important that States establish a legal framework that unambiguously prohibits and sanctions torture. [...]”.⁸⁴ The crucial importance of the obligation to incorporate torture as a separate offence in domestic criminal codes has repeatedly been emphasized also by the CAT.⁸⁵ At present, the BiH criminal legal framework both at the national and the entity level is inadequate. Torture, enforced disappearance, rape or other forms of sexual violence are either not codified at all or, when they are, domestic provisions do not meet international standards. On the one hand, this situation fosters impunity over past crimes and, on the other it jeopardizes the prevention of future violations. In fact, ending impunity for the perpetrators of past crimes, including torture, enforced disappearances and rape or other forms of sexual violence is a circumstance pivotal, not only to the pursuit of justice, but to effective prevention.

3.1 The Codification of Torture

55. The BiH Criminal Code sanctions torture both when committed as an isolated instance (Article 190) and when committed as part of a widespread or systematic attack against any civilian population, with the knowledge of the attack (Article 172.1.f and 172.2.e). Torture is also codified as a war crime (Article 173.1.c). Article 180 of the Criminal Code sanctions those who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of, among others, crimes against humanity and war crimes, therefore including torture when committed in these specific circumstances. This provision regulates also superior responsibility for crimes against

⁸⁴ 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”). On the obligation to codify torture as a separate offence under domestic criminal legislation see also, *inter alia*, and IACHR, *Case Heliodoro Portugal v. Panama*, judgment of 12 August 2008, Ser. C No. 186, paras. 213-216.

⁸⁵ See, *inter alia*, CAT, *General Comment No. 2 Implementation of Article 2 by States Parties*, doc. CAT/C/GC/2 of 24 January 2008, paras. 8-11.

humanity and war crimes and establishes that “the fact that a person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the court determines that justice so requires”. The sanction envisaged for the crime of torture pursuant to Article 190 is imprisonment for a term between one and ten years. According to the Special Rapporteur on Torture, torture should be punishable with imprisonment between six and twenty years.⁸⁶ In order to have a deterrent effect, the sanction provided for under the BiH Criminal Code shall be modified to be commensurate to the gravity of the crime.

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

3.2 The Codification of Enforced Disappearance

58. As pointed out above, enforced disappearance maintains a strict relation with torture and other forms of inhuman treatment.⁸⁹ Indeed, enforced disappearance represents *per se* a form of torture.⁹⁰

⁸⁶ Study on the phenomenon of torture, *supra* note 84, para. 144.

⁸⁷ Article 148 of the Criminal Code of the District of Brčko; and Article 433 of the Criminal Code of the Republika Srpska.

⁸⁸ Notably, Articles 399 (failure and refusal to execute an order) and 401 (resisting a superior) of the Criminal Code of the Federation of BiH fail to establish that those who refuse or disobey an order to commit torture, crimes against humanity or war crimes will not be punished.

⁸⁹ *Supra* para. 4 and notes 8-10.

⁹⁰ Veremuelen, *Living beyond Death: Torture or other Ill-treatment Claims in Enforced Disappearances Cases*, *supra* note 9, pp. 159-198.

Accordingly, it must be codified as a separate offence under domestic criminal law.⁹¹ Enforced disappearance is a unique and consolidated act and it is impermissible to reduce it to a fragmented combination of acts that falls short in addressing the complexity of this heinous offence. At present, the Criminal Codes of the entities do not include enforced disappearance neither as a crime against humanity or as a separate criminal offence. Entities rely on provisions of criminal codes outlawing offences that are related but nevertheless not equal to enforced disappearance, such as abduction, torture, illegal deprivation of liberty, etc. While all these offences may form part of a type of enforced disappearance, none of them covers all the elements of this particular offence.

59. At the national level, enforced disappearance is not codified as an autonomous offence. Article 172 of BiH Criminal Code refers only to enforced disappearances committed as part of a widespread or systematic attack against any civilian population, with the knowledge of the attack. The inclusion of enforced disappearance among crimes against humanity carries significant legal consequences. Criminalizing enforced disappearance in domestic law only when committed as part of a widespread or systematic attack against civilians implies that many acts of enforced disappearance would remain outside the scope of domestic criminal law and the competence of national jurisdiction.⁹² Accordingly, Article 172 of BiH Criminal Code would fail to cover criminal responsibility for isolated instances of the crime of enforced disappearance.
60. Moreover, Article 15 of the BiH Criminal Code defines that the running of the period set by statute of limitation to institute criminal prosecution commences on the day on which the criminal offence has been perpetrated, without referring to any exception in the case of continuous offences or crimes. Article 19 of the BiH Criminal Code provides that “criminal prosecution and execution of a sentence are not subject to the statute of limitations for criminal offences of genocide, crimes against humanity and war crimes, or for other criminal offences that, pursuant to international law, are not subject to the statute of limitations”.⁹³ Under the existing legal framework it does not result sufficiently clear whether a statute of limitations for criminal proceedings would be applied to crimes of enforced disappearance that do not fall under the narrow definition provided by Article 172 of the BiH Criminal Code.
61. Notably, after its visit to BiH, the WGEID recommended that “the criminal codes at the Entity level should be harmonized with the criminal code at the State level, in particular with the view to integrate the crime of enforced disappearance as a crime against humanity and to set appropriate penalties.

⁹¹ On the obligation to codify enforced disappearance as a separate offence under domestic criminal law, see Article 4 of the 1992 Declaration; Article III of the Inter-American Convention on Forced Disappearance of Persons; and Article 4 of the 2007 Convention. See also WGEID, *Annual Report for 1995*, doc. E/CN.4/1996/38, 15 January 1996, paras. 46, 54 and 473; *Annual Report for 2009*, doc. A/HRC/13/31 of 21 December 2009, para. 650; *Annual Report for 2008*, *supra* note 55, paras. 26 (para. 3 of the general comment on the definition of enforced disappearance) and 218; *Annual Report for 2007*, doc. A/HRC/7/2 of 10 January 2008, para. 304; *Annual Report for 2006*, doc. A/HRC/4/41 of 25 January 2007, para. 345; *Annual Report for 1996*, doc. E/CN.4/1997/34 of 13 December 1996, para. 395; IACHR, *Case Gómez Palomino v. Peru*, judgment of 22 November 2005, Ser. C No. 136, para. 96; *Case Anzualdo Castro*, *supra* note 10, para. 165.

⁹² Report Nowak, *supra* note 8, paras. 74 and 81; Report Pourgourides, *supra* note 10, para. 44; Council of Europe, Parliamentary Assembly, Resolution 1463 (2005), *Enforced Disappearances*, 3 October 2005, para. 10.1.2.

⁹³ In the same sense see Article 20 of the Criminal Code of the Federation of BiH; Article 116 of the Criminal Code of the Republika Srpska; and Article 126 of the Criminal Code of the District of Brčko.

The criminal codes at all levels should be amended to integrate an autonomous crime of enforced disappearance”.⁹⁴

3.3 The Codification of Rape or other Forms of Sexual Violence

62. 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.⁹⁵ As such, they also must be codified under domestic criminal legislation and sanctioned with punishments that are appropriate to the gravity of the crime.⁹⁶ At present, the Criminal Code of BiH does not include rape or sexual violence as separate offences. Article 172 of the BiH Criminal Code refers only to rape or other forms of sexual violence when committed as part of a widespread or systematic attack against any civilian population, with the knowledge of the attack, thus failing to cover isolated instances of this crime and leaving an evident gap in the legal framework. Article 172 (g) reads as follows “coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity”. Article 173 of the BiH Criminal Code (war crimes against civilians) defines rape or other forms of sexual violence in a similar way, except that such acts do not have to be a part of a widespread or systematic attack. These definitions are not consistent with international standards and jurisprudence of international courts, in particular as long as the use of force or the threat of force are considered the only means available to establish that the rape or other sexual acts were not consensual.⁹⁷ 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.⁹⁸ 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.⁹⁹
63. At the entity level rape is codified as a separate offence and it is sanctioned even when committed as an isolated act.¹⁰⁰ 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

⁹⁴ See Press Release of 21 June 2010 on the Visit to BiH, *supra* note 3.

⁹⁵ *Supra* para. 50.

⁹⁶ 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, Annex II, available at: <http://www.ess.uwe.ac.uk/comexpert/ANX/II.htm>. See also Report McDougall, *supra* note 72, para. 102.

⁹⁷ 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.

⁹⁸ ICTR, Case *Prosecutor v. Akayesu*, *supra* note 79, 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.

⁹⁹ *Ibid.*, para. 688. In this sense see also Report McDougall, *supra* note 72, para. 25.

¹⁰⁰ See Article 183 of the Criminal Code of Republika Srpska; Article 203 of the Criminal Code of the Federation of BiH; and Article 206 of the Criminal Code of the District of Brčko. Notably, the three criminal codes regulate also the offences of sexual violence against a helpless person; sexual intercourse with a child; and sexual intercourse by abuse of position.

international standards on the subject.¹⁰¹ The Criminal Code of the Federation of BiH does not contain a definition of crimes against humanity and of crimes of war. Rape or other forms of sexual violence committed in these specific circumstances are therefore not covered by the existing legal framework in the Federation of BiH. The criminal codes of the Republika Srpska and of the District of Brčko regulate “war crimes against civilians”,¹⁰² 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.

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

Article 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.

Article 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.

Article 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.

64. 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

¹⁰¹ See, *inter alia*, ECtHR, Case *M.C.*, *supra* note 98, paras. 88-108 and 154-156.

¹⁰² Article 148 of the Criminal Code of the District of Brčko; and Article 433 of the Criminal Code of the Republika Srpska.

the violation and, if found guilty, the duty to punish him or her.¹⁰³ 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 the rights recognized, among others, by the Convention against Torture.

65. Besides the trials carried out before the ICTY,¹⁰⁴ the main responsibility to investigate, judge and sanction those responsible for the grave violations committed during the conflict, including enforced disappearance, rape or other forms of sexual violence, lies within the judicial system of BiH.¹⁰⁵ Both relatives of missing people and 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 15 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, relatives of missing people and victims of rape or other forms of sexual violence complain about the fact that, in spite 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 relatives of missing persons and 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 these two already vulnerable categories 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 prosecutors and police, as well as between police across entity lines.¹⁰⁶

¹⁰³ See, *inter alia*, *Principles against Impunity*, supra note 13, Principle 1; *Study on the Phenomenon of Torture*, supra note 84, paras. 146-155; HRC, *General Comment No. 31*, supra note 8, para. 18. In cases of enforced disappearance see, in particular Articles 13, 14 and 16 of the 1992 Declaration; I, IV and IX of the Inter-American Convention against Forced Disappearance of Persons; and 3, 6, 9, 10, 11, 12, 14, 22, 24 and 25 of the 2007 Convention; WGEID, *Annual Report for 2008*, supra note 55, para. 447; *Annual Report for 2005*, doc. E/CN.4/2006/56 of 27 December 2005, para. 49; Report Nowak, supra note 8, paras. 81-82; and Report Pourgourides, supra note 10, paras. 52 and 58. 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 72, 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 72, paras. 85-87.

¹⁰⁴ 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 97, 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.

¹⁰⁵ See Report McDougall, supra note 72, paras. 91-94.

¹⁰⁶ On these issues see the recommendations addressed to BiH from the Working Group on Universal Periodic Review, supra note 97, 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 Republika Srpska), 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

66. On these matters, upon the conclusion of its visit to BiH, the WGEID pointed out that “families of victims should be more regularly given information on the process of investigation, the results of those investigations and whether trials might be forthcoming. Courts at all levels should have consistent rules in dealing with the public in general and with families of the disappeared in particular. Special personnel should be appointed to meet with families and inform them, on a regular basis, of progresses made in their cases. Some courts have appointed psychologists. This should be more regularly done. Programs that especially assist women ought to be implemented”.¹⁰⁷

4.1 Concrete Instances relating Relatives of Missing Persons

67. Many are the cases where Prosecutors have received substantiated reports concerning grave human rights violations perpetrated during the war, including concurrent allegations on the identity of perpetrators (who, if interrogated, may have at least contributed in disclosing some information on the fate and whereabouts of missing persons). In many instances, apart from prosecutors not acting on the claims without any explanation, they have also failed to provide witnesses, relatives of missing persons and those who had formally presented the claim, with information on the progress of their investigation. In this sense, the WGEID has clarified that “the relatives of the victims should be closely associated with an investigation into a case of enforced disappearance. The refusal to provide information is a limitation on the right to truth. [...] A refusal to provide any information, or to communicate with the relatives at all, in other words a blanket refusal, is a violation of the right to the truth”.¹⁰⁸
68. In the current situation, relatives of missing persons often feel ignored, when not openly mocked by the authorities.¹⁰⁹ Given the length of time over which the ordeal of thousands of relatives of missing people has been dragged out and their incessant efforts, the silence and the indifference of BiH authorities amount to inhumane treatment.
69. An example that can be quoted is that of the enforced disappearance of 98 men occurred in June 1992 in the municipality of Vogošća. Survivors of the events identified and recognized most of the soldiers who took part in the operation, as they used to be their neighbours before the war.¹¹⁰ To date, none of these people have been arrested, charged with any offence, prosecuted or

¹⁰⁷ WGEID, *Press Release of 21 June 2010 on the Visit to BiH*, *supra* note 3.

¹⁰⁸ WGEID, *General Comment on the Right to the Truth in Relation to Enforced Disappearance*, *supra* note 13, para. 3.

¹⁰⁹ See, *inter alia*, United Nations Development Programme (UNDP), *A Situation and Needs Assessment of the Cantonal/District Prosecutor’s Offices and Courts in the Field of Witness/Victim Support and Protection in War Crimes Cases in Bosnia and Herzegovina*, Sarajevo, 2010, available at: www.undp.ba/upload/publications/Needs%20Assessment%20in%20the%20Field%20of%20Support%20to%20Witness-Victims%20in%20BiH.pdf.

¹¹⁰ Several testimonies indicate that the arbitrary detentions were carried out by the following members of the Bosnian Serb army (VRS): Mr. Jovo Tintor (who was the head of the Unit), Mr. Nebojša Berović, Mr. Makso Berović, Mr. Milan Borovčanin, Mr. Vlado Četković, and Mr. Hristo Berović.

sanctioned, which fosters an ongoing climate of overall impunity.¹¹¹ On 16 August 2005 Ms. Ema Čekić together with other members of the Association of Families of Missing Persons from Vogošća reported the kidnapping of her husband and other 97 men to the 5th Police Station of Vogošća (Annexes 11 and 12 in the local language and in English). On 9 September 2005 the same Association brought criminal charges against members of the VRS to the Sarajevo Cantonal Prosecutor's Office, with a request to the Prosecutor to undertake all necessary measures to identify those responsible for the kidnapping and to locate and identify the disappeared persons (Annexes 13 and 14 in the local language and in English).¹¹² Five years later, Ms. Ema Čekić and the other members of the Association of Families of Missing Persons from Vogošća have not received any formal response or meaningful feedback from the mentioned authorities.

70. A further outstanding example is that concerning the massacre of 29 women and children perpetrated in July 1992 in the village of Zecovi, near Prijedor by members of the Serb army. After the ill-treatment and the arbitrary execution of the 29 women and children, their mortal remains were removed and concealed and their whereabouts remain unknown to date. Only three persons survived the massacre of their respective families (Mr. Zijad Bačić, then 14 years old; Ms. Hidajeta Horozović, then 14 years old; and Mr. Hidajet Horozović, then 9 years old).¹¹³ The survivors have reported on a number of occasions to BiH authorities the identity of those responsible for the massacre. Mr. Zijad Bačić denounced the events before the competent authorities (e.g. the police in Sanski Most, the Cantonal Prosecutor in Bihac and the State Prosecutor in Sarajevo),¹¹⁴ as well as before international organizations present in BiH (e.g. the United Nations International Police Task Force).¹¹⁵ Mr. Zijad Bačić also formally gave his testimony to the State Agency for Investigation and

¹¹¹ On 15 December 2006 the State Court of BiH sentenced Mr. Dragan Damjanović to 20 years of imprisonment for crimes against humanity. The indictment alleged that he had gone on several occasions to the *Planjina kuća* camp. As set out in the indictment, he insulted and beat several times those kept prisoners in *Planjina kuća* with the help of the camp guards. Mr. Damjanović was also reported to have used a large number of prisoners as human shields, resulting in serious injury and even death of some. Mr. Dragan Damjanović was not summoned or convicted for the torture and enforced disappearance of the 98 men from Vogošća. An English translation of the verdict can be found at: www.sudbih.gov.ba/files/docs/presude/2006/Dragan_Damjanovic_Verdict_ENG.pdf.

¹¹² It is noteworthy that, when the Association of Families of Missing Persons from Vogošća filed the complaints to the 5th Police Station of Vogošća and to the Sarajevo Cantonal Prosecutor's Office, they thought that their letters would just constitute the beginning of a process, and they therefore were hoping that the relevant institutions would investigate and ask them questions during the inquiry. They also thought that they would have been informed of any relevant step undertaken by authorities and entitled to present evidences. So far, this has not been the case.

¹¹³ On this case see Committee on the Elimination of Racial Discrimination, *Additional Documents submitted on Bosnia and Herzegovina in compliance with a special edition of the Committee*, doc. CERD/C/247/Add.1 of 11 April 1995, para. 11; United States government, 4th Report on War Crimes in the former Yugoslavia submitted pursuant to paragraph 5 of Security Council resolution 771 (1992), 7 December 1992, available at: www.ess.uwe.ac.uk/documents/sdrpt4a.htm; and Human Rights Watch, *A Chance for Justice? War Crime Prosecutions in Bosnia's Serb Republic*, *supra* note 106, p. 12.

¹¹⁴ In particular to Mr. Nicolas Koumijan from the State Prosecutor's Office and to Ms. Ornela Cerić from the Prosecutor's Office in Bihac.

¹¹⁵ In 1998 Mr. Zijad Bačić released a statement which was videotaped by a Dutch soldier of the United Nations International Police Task Force (Mr. Jan Hahne). The same soldier brought Mr. Zijad Bačić to the local office of the United Nations International Police Task Force in Prijedor, whereby he released a statement about the massacre of his family and the subsequent concealment of their dead bodies to a German officer whose name was Jurgen. Also this interview was videotaped. In fact, Mr. Zijad Bačić could not obtain any certificate or document attesting that he gave his testimony before the mentioned instances.

Protection (SIPA),¹¹⁶ and requested BiH authorities to enact criminal proceedings to duly ascertain responsibilities and to punish the perpetrators. So far no one has been formally investigated or charged with the grave crimes relating the instant case, thus supporting an overall state of impunity.

71. It can also be recalled that in 2007 and in 2010 Mr. Mehmed Musić, the President of the Association of Relatives of Missing Persons from Hadžići Municipality, sent a number of letters to the State Prosecutor's Office, the Office of the High Representative in BiH and the High Judicial and Prosecutorial Council of BiH (Annexes 26-33 in the local language and in English), denouncing that Mr. Slobodan Avlijaš, Mr. Vojo Vukotić and Mr. Tomislav Šipčić are responsible for the enforced disappearance of 48 people from the detention facility located in the Army Barracks Slaviša Vajner in Lukavica. Allegedly, on 23 June 1992 Mr. Avlijaš took away 48 people from the detention camp and drove them to an unknown direction. Their fate and whereabouts remain unknown since then. Mr. Slobodan Avlijaš is currently free and lives between Pale and Bijelinja. Apart from the existence of many witnesses to his involvement in the mentioned crimes, he has never been interrogated by the State Prosecutor's Office. In the mentioned communications, names of potential sources of information to determine the fate and whereabouts of the missing people (e.g. Mr. Rade Veselinović and Mr. Nemanja Jovičić) have also been referred to the State Prosecutor.¹¹⁷
72. A similar example is that of Mr. Edhem Godinjak, who was the commander of the BiH army in the territory of Trnovo, with headquarters in Tarcin. In 2004, over 20 witnesses were brought before the State Prosecutor Ms. Vesna Ilić and they testified about the involvement of Mr. Godinjak in the commission of a number of crimes (in particular, the enforced disappearance of 78 people from Trnovo). To date, Mr. Godinjak lives free in Sarajevo and has never been interrogated, let alone investigated, by the Prosecutor. Ms. Ilić has never informed those who rendered their testimony and relatives of missing people from Trnovo on the steps taken on the basis of their claims. On the contrary, when relatives of missing people have approached her with requests for clarification about the current status of the case, she released contradictory information.¹¹⁸ During 2009 Mr. Milan Mandić (President of the Association of Relatives of Missing Persons from East Sarajevo – Romanija Region) approached Ms. Vesna Ilić three times to seek information on the progress of the investigation against Mr. Godinjak. On the first occasion, Ms. Ilić confirmed to be the person in charge of dealing with the case, but affirmed that, due to the complexity of the events, the investigation was taking a lot of time. On a second occasion, Ms. Ilić told Mr. Mandić that she was no

¹¹⁶ On 20 March 2006, Mr. Zijad Bačić rendered his testimony over the events occurred in July 1992 to the SIPA (see Annexes 16 and 17 in the local language and English). Mr. Zijad Bačić was called by the State Prosecutor's Office to give his testimony once more, but on that occasion he did not receive any copy of his statement. Since then, the uncle of Mr. Zijad Bačić (Mr. Fikret Bačić) has remained in constant contact with SIPA, but they have ensured him that no Prosecutor's Office has called them to follow up on the testimony rendered by Mr. Zijad Bačić in 2006.

¹¹⁷ See Annexes 36 and 37 in the local language and English. Mr. Rade Veselinović was sentenced to seven years and six months of imprisonment for crimes committed during the war. Notwithstanding during the trial witnesses reiterated the responsibility of Mr. Rade Veselinović for the enforced disappearance of 48 people, he has not been charged with these crimes nor questioned about the facts.

¹¹⁸ See Annexes 18-23 in the local language and English, containing letters sent in 2006 from the Association of Relatives of Missing Persons from East-Sarajevo – Romanija Region to the Court of BiH and to the Prosecutor's Office seeking information on the status of the case. Notably, the Court of BiH sent an answer to the Association, while the Prosecutor's Office remained silent.

longer in charge of the case. Subsequently, Ms. Ilić told a journalist that she is in fact in charge of the case and that the investigation is ongoing.

73. Another example that can be recalled relates to Mr. Dragan Pušara and Mr. Gavro Todorović, respectively commander and member of the Igman Battalion during the war. These men are suspected for the enforced disappearance and the arbitrary killing of 60 people who were fleeing from Hadžići to the free territory of Igman Mountain. After 2004, Mr. Mehmed Musić, the President of the Association of Relatives of Missing Persons from Hadžići Municipality, sent information about these crimes to the Prosecutor's Office of Canton Sarajevo (Mr. Safet Hrapo). However, no formal investigation has been undertaken and the two mentioned people have not been interrogated, let alone investigated or indicted. With regard to Mr. Dragan Pušara, it is noteworthy that he is currently detained in Belgrade and that, therefore, a formal request for interrogation or extradition could be submitted to Serbian authorities. So far, this has not been the case and Mr. Mehmed Musić has not received any further information from the Prosecutor's Office.¹¹⁹

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

74. 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 Milicević, 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 Milicević for the crimes, including sexual abuses, committed in the town of Višegrad by people who were under his control.¹²⁰ 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.
75. Another instance is that of a woman assisted by *Vive Žene* Tuzla, who was raped during the conflict in the detention facility of Bosanski Samac. 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. Since then, she has not received any further information on the progress of the investigations. She could only manage to find out that the case is under the competence of the Court in Doboj. However, BiH authorities did not provide her with any further information, in spite of her repeated attempts in this sense.
76. Another outstanding example has been referred by a member of the team of *Vive Žene* Tuzla who in

¹¹⁹ Notably, Mr. Mehmed Musić denounced the involvement of Mr. Dragan Pušara and Mr. Gavro Todorović in the commission of grave crimes also before the ICTY when rendering his testimony in the trials against Mr. Slobodan Milošević (http://www.icty.org/x/cases/slobodan_milosevic/trans/en/031210ED.htm) and Mr. Momčilo Krajišnik (<http://www.ictytranscripts.org/TrialTranscripts/HTML/transe39/04-11-22-IT.html>).

¹²⁰ The Association of Women-Victims of War has made public its accusations to Mr. Miladin Milicević on a number of occasions. See, *inter alia*, <http://genocideinvisegrad.wordpress.com/2009/08/24/crisis-committee-visegradkrizni-stab/>.

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 Salihovici 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 Žene* 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 Žene* Tuzla was told by the ICTY's employee that the case would have been transferred to the BiH State Court. Since November 2009, *Vive Žene* 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.

77. 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. Željko Lelek¹²¹ 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 members who had submitted their statements on the violations suffered in the trial of Mr. Nenad Tanasković¹²² and who were never contacted by the State Prosecutor's Office to testify during the trial without any explicit explanation for that.
78. 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 sanction. In the view of victims of rape or other forms of sexual violence this is of particular gravity and contributes to re-traumatisation. 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

¹²¹ See *infra* para. 109 and note 185.

¹²² 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).

helping him to escape.¹²³ To date, no one has been sanctioned in relation to the mentioned event, and the escapee has not been found.

5. The Failure to Adequately Protect and Support Witnesses in Cases of Enforced Disappearance, Rape or other Forms of Sexual Violence

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

79. 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 SIPA, which was set up at the end of 2004. The protection of witnesses in criminal proceedings before the State Court of BiH is provided for, but currently this programme is working only at the State level, while there is no such protection at the 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. No similar programme is envisaged before district, cantonal or municipal courts.
80. 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.¹²⁴ 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; the lack of adequate psychological support for witnesses before, during and after testifying; and the existence of cases where victims of rape or other forms of sexual violence have been forced to render their testimony to maintain their status as civilian victims of war and access to social benefits.

¹²³ It is worthy 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.

¹²⁴ On these issues see the recommendations addressed to BiH from the Working Group on Universal Periodic Review, *supra* note 97, No. 20 and 82. See also Report McDougall, *supra* note 72, para. 104.

5.1 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

81. Among many others, an instance of intimidation suffered due to witnessing at war crimes trials is that of Mr. Eset Muračević (Annexes 9 and 10 in the local language and in English), who gave his testimony during the proceedings before the War Crimes Chamber against Mr. Dragan Damjanović, Mr. Momčilo Mandić, and Mr. Sretko Damjanović. Before he appeared at court, Mr. Eset Muračević was receiving anonymous phone-calls during day and night, by which he and members of his family were threatened with physical elimination. Even though he tried to prevent this intimidation through the application of a mechanism to identify the origin of the phone-calls, this did not prove to be effective and he kept receiving the same messages until he eventually decided to shut his land-line. In spite of the numerous appearances of Mr. Eset Muračević as a witness at court, the only support he has received from those in charge of witness protection was allegedly a phone-call before the trial. During and after the proceedings, he never heard back from any State institution. He reported the harassment suffered to authorities. However, his complaints about the intimidation he had received have never been investigated and, to date, no one has been judged and sanctioned for them.
82. A similar example is that of P. C.,¹²⁵ who is a victim of sexual violence from the village of Miljevine, 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.

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

83. 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

¹²⁵ 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 submission to the CAT expressly requested that their identity is not disclosed to the wider public. In the present document, letters are used to designate the persons concerned. Their full names could be disclosed, upon request, to the CAT, given that guarantees are provided that these data will not be made public in any way.

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.

84. 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.¹²⁶ Four months before travelling to The Hague, while she was in Višegrad, Ms. Bakira Hasečić was summoned by the Ministry of Interior of Republika Srpska 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 Republika Srpska 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.¹²⁷ Another instance that has been mentioned is that of a psychiatrist from 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 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.
85. In general, it has been reported that for those victims of rape or other forms of sexual violence

¹²⁶ ICTY, Case *Prosecutor v. Mitar Vasiljević* (Case IT-98-32), judgment of 25 February 2004 (Appeals Chamber).

¹²⁷ 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 Susnjar, which she did. At the same time, the Association of Women-Victims of War denounced that Mr. Milan Susnjar 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 Susnjar 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.

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 could actually observe them while 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”.

86. 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 Republika Srpska. Members of the SIPA went to pick up the lady at her place and then handled her to members of the police of the Republika Srpska, who were in charge of escorting her to court. When the lady saw the uniform of the policemen of the Republika Srpska, 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.

5.3 The Material Difficulties Faced by Witnesses

87. 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,¹²⁸ and on the other hand, potential witnesses are notified that if they do not appear in court, they will be fined.¹²⁹ 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 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

¹²⁸ 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.

¹²⁹ 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”.

Camp Detainees insisted, E. B. managed to ensure escort to and back from the court by members of the SIPA.

88. 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 the Prosecutor's Office summons a person that 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.

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

89. 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.¹³⁰ 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 and municipal courts, where no form of psychological support whatsoever is envisaged.
90. The protection and support of witnesses shall therefore be more victim-oriented. In this light, the provision of psychological support granted to relatives of missing persons and 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.¹³¹ In general, the judicial personnel that deals with victims of rape or other forms of sexual violence shall be trained to adequately 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

¹³⁰ See Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are still Waiting*, supra note 97, pp. 24-29.

¹³¹ 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.

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).

5.5 The Existence of Cases Where Victims of Rape or other Forms of Sexual Violence have been Forced to Render their Testimony to Maintain their Status as Civilian Victims of War

91. In the Federation of BiH, instances of pressure on witnesses at war crimes trials exerted by the only organization (the Association of Women-Victims of War) designated to issue certificates recognizing the status as civilian victims of war to victims of rape or other forms of sexual violence have been reported.¹³² Allegedly, witnesses have been pressurized to testify or otherwise they would have no longer received their monthly pensions.¹³³ The association concerned dismisses these allegations as untrue. In this sense, there shall be a thorough scrutiny done by the institutions in charge of witness support and protection and the forcible testifying in criminal proceedings of those who do not wish to do so under the threat of losing social benefits will be prohibited. As a matter of fact, survivors of traumatic human rights violations, such as rape or other forms of sexual violence, may be at psychological risk from testifying. 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 should be 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.

6. The Failure to Provide Adequate Compensation and Integral Reparation to Relatives of Missing Persons and to Victims of Rape or other Forms of Sexual Violence

Article 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.

¹³² On the problems related to this system of recognizing the status of "victim" in the Federation of BiH, see *infra* para. 97.

¹³³ On this incident see Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 97, p. 46. In the same sense see State Court of BiH, case *Prosecutor v. Boban Šimšić*, judgment of 11 July 2006 (case X-KRZ-05-04), para. 44, available at: www.sudbih.gov.ba/files/docs/presude/2006/Simsic_ENG_X-KR-05-04.pdf. Notably, the Association of Women-Victims of War claims that they have never denied to anyone the status as "victims of sexual violence" on the ground that this person refused to testify. Allegedly, the only cases where they have denied the status to an applicant are those where they were convinced that the person was not a victim of sexual violence. However, in the latter case, it is a practice of the Association to refer the applicant to organizations of former detainees, where the applicant can usually realize his or her rights.

92. The existence of an obligation for States to provide reparations¹³⁴ when they are responsible for gross human rights violations is undisputed under international law¹³⁵ and it is also enshrined in domestic law of BiH.¹³⁶ 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.¹³⁷
93. 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

¹³⁴ See Rubio-Marín, *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 72, paras. 88-90.

¹³⁵ 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".

¹³⁶ 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.

¹³⁷ 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 97, p. 66. See *infra* paras. 104-125.

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,¹³⁸ 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.¹³⁹ 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.¹⁴⁰

94. 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.¹⁴¹ The notions of “civilian victim of war” and “beneficiary of welfare measures”¹⁴² shall be clearly distinguished and this shall result in the adoption of a State law

¹³⁸ 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.

¹³⁹ CAT, Case *Kepa Urra Guridi v. Spain*, views of 17 May 2005, para. 6.8. On the right to obtain integral reparation for relatives of missing persons see: Article 19 of the 1992 Declaration; UNWGEID, *Annual Report for 1996*, *supra* note 91, paras. 72-75; Article 24.5 of the 2007 Convention; HRC, *General Comment No. 31*, *supra* note 8, paras. 16-17; HRC, *Concluding Observations on Bosnia and Herzegovina*, *supra* note 7, para. 14; Case *Bleier v. Uruguay*, views of 29 March 1982, para. 15; IACHR, Case *Velásquez Rodríguez v. Honduras*, judgment of 21 July 1989, Ser. C No. 7 (Reparations); Case *Godínez Cruz v. Honduras*, judgment of 21 June 1989, Ser. C No. 8 (Reparations); Case *Garrido and Baigorria v. Argentina*, judgment of 27 August 1998, Ser. C No. 39, para. 74; Case *Heliodoro Portugal*, *supra* note 84, paras. 241-247; Case *López Álvarez v. Honduras*, judgment of 1 February 2006, Ser. C No. 141, paras. 180-182; Case *El Caracazo v. Venezuela*, judgment of 29 August 2002, Ser. C No. 95, para. 124-127. See also Human Rights Chamber for BiH, Case *Selimović and others (Srebrenica cases)*, *supra* note 10, paras. 211-214 and 217-219; Report Nowak, *supra* note 8, paras. 84-91; Report Pourgourides, *supra* note 10, paras. 62-66; and Resolution 1463 (2005), *supra* note 92, paras. 10.5.1-10.5.3.

¹⁴⁰ On specific measures of reparation for children see, *inter alia*, IACHR, Case *Masacre de las Dos Erres*, *supra* note 103, paras. 288 and 293-294. In cases, such as the present one, where the victims are women, a gender approach in the determination of the measures of reparation shall also be adopted. In this sense see, *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, 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.

¹⁴¹ See, among others, Popić, Panjeta, *Compensation, Transitional Justice and Conditional International Credit in Bosnia and Herzegovina*, Sarajevo, 2010, pp. 13-18.

¹⁴² 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 Republika Srpska the social welfare system is organized at the entity level, by the government of the Republika Srpska, and delivered through municipal departments of social welfare which provide services directly to citizens. The system of the Federation of BiH 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 Federation of BiH 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 97, pp. 6-7.

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 October 2010, none of these initiatives has been realized. Both relatives of missing persons and victims of rape or other forms of sexual violence have not obtained adequate compensation and integral reparation.

95. At the entity level, the two relevant legal references are the Law on the Protection of Civilian Victims of War in the Republika Srpska (Official Gazette of the RS No. 25/93, 1/94 – special edition, 32/94, 37/07 and 60/07)¹⁴³ and the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in the Federation of BiH (Official Gazette of the FBH No. 36/99 and later amendments).¹⁴⁴ 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.
96. With regard to the Law on the Protection of Civilian Victims of War in the Republika Srpska, it entitles civilian victims of war (including relatives of missing people and 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 Republika Srpska who have suffered body 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 Republika Srpska, acquire a Serbian citizenship and if they have body harm caused after 17 August 1990”.¹⁴⁵ Article 3 specifies that “rights under this Law are also awarded to *family-members of a*

¹⁴³ See, *inter alia*, ICMP, *Guidebook for Civilian Victims of War in the Republika Srpska*, Sarajevo, 2008, available at: www.icmp.org/wp-content/uploads/2008/02/guidebook-wictim-of-war-rs.pdf. Another relevant piece of legislation in the Republika Srpska is the Law on the Rights of Servicemen, Military Invalids and Families of the Deceased Servicemen of the Defence of Motherland War in the Republika Srpska (Official Gazette of the Republika Srpska No. 46/04 and 53/04).

¹⁴⁴ See, *inter alia*, ICMP, *Guidebook for Civilian Victims of War in the Federation of BiH*, Sarajevo, 2008, available at: www.icmp.org/wp-content/uploads/2008/02/guidebook-wictim-of-war-fbih.pdf. Another relevant piece of legislation in the Federation of BiH is the Law on the Rights of Demobilized Soldiers and their Families (Federation BiH Official Gazette No. 33/04, entered into force on 20 June 2004). Under this law, relatives of missing people who are in a difficult economical situation, unable to work or those who have not terminated their studies, are entitled to receive a monthly pension, which is a form of social support. Indeed, to obtain or maintain such pension, they are forced to declare their loved ones dead. On this subject, see *infra* paras. 101-103.

¹⁴⁵ 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”.

civilian victim of war who was killed or went missing under the circumstances enlisted in paragraph (a) point 1 of the Law as well as the family-members of a killed person who was recognized as a civilian victim of war” (emphasis is added). It is further clarified that under the Law, “family members” are spouses, children and parents. Siblings and other relatives are therefore excluded from the scope of this Law. 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.)¹⁴⁶ which cannot be considered *stricto sensu* as measures of reparation for the gross human rights violations suffered.¹⁴⁷ 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%)¹⁴⁸ 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 Republika Srpska poses strict deadlines for those wishing to apply (notably, the final deadline expired on 31 January 2007).¹⁴⁹ 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.¹⁵⁰ 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

¹⁴⁶ 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. 124-125) 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.

¹⁴⁷ See Article 8 of the Law.

¹⁴⁸ It is noteworthy that war veterans are eligible for social support if their bodily damage amounts to 20%.

¹⁴⁹ 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 [...]”.

¹⁵⁰ See doc. E/CN.4/Sub.2/1996/17 of 24 May 1996, para. 9. See also Report McDougall, *supra* note 72, 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”.

has no right to file a request for the granting of rights under this law”, thus excluding them from the enjoyment of any social benefits in case they decide to return in Republika Srpska.

97. The Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in the Federation of BiH 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 563 KM – 281 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% ¹⁵¹ 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 deadlines¹⁵² to apply to obtain the status of civilian victim of war and many people have been excluded.¹⁵³ 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 1997.¹⁵⁴ This criterion is 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 Federation of BiH,¹⁵⁵ the only organization designated to provide survivors of rape or other forms of sexual violence with the certificates that allow them to

¹⁵¹ It is noteworthy that war veterans are eligible for social support if their bodily damage amounts to 20%.

¹⁵² 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).

¹⁵³ 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 Federation of BiH (Official Gazette Federation BiH 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.

¹⁵⁴ 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, 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 Federation of BiH.

¹⁵⁵ 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.

obtain the status of civilian victims of war and, hence, to obtain social benefits, is the Association of Women-Victims of War, which is based in the suburbs of Sarajevo.¹⁵⁶ This has not escaped criticism.¹⁵⁷ 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.¹⁵⁸ 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 has the resources and trained staff to do so. 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.¹⁵⁹ Allegedly, the premises of the Association 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. Moreover, 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 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 to BiH

¹⁵⁶ 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.

¹⁵⁷ See, *inter alia*, Popić, Panjeta, *Compensation, Transitional Justice and Conditional International Credit in Bosnia and Herzegovina*, *supra* note 141, p. 29. See also Amnesty International, *Whose Justice: The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 97, pp. 44-46.

¹⁵⁸ 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.

¹⁵⁹ It is noteworthy that in certain cases, even when victims obtain a certificate by the Association of Women-Victims of War attesting their status, they cannot accede directly the benefits they would be entitled to, but they are referred by some Centres for Social Work to Medical Commissions which shall assess their percentage of disability.

authorities to obtain a new space of work¹⁶⁰ 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 personnel¹⁶¹ and of a psychologist. In this light, BiH shall deal with these requests as a matter of priority.

98. In order to overcome the mentioned gaps and obstacles in the full guarantee of the rights of civilian victims of war, UNDP is coordinating and supporting the drafting of a National Strategy for Transitional Justice.¹⁶² This strategy is being developed in consultation with representatives of associations of relatives of missing persons as well as with associations dealing with the subject of victims of rape or other forms of sexual violence during the war¹⁶³ and could represent a positive opportunity to eventually ensure, among others, the right to obtain integral reparation of 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 United Nations Population Fund (UNFPA), the drafting of a planning document intended to address the needs of the survivors of war crimes and sexual violence. For these programmes to be successful, it is crucial that BiH ensures adequate support and funding to guarantee their prompt and full implementation, which shall recognize the same rights to all beneficiaries, regardless of where they live and without any discrimination related to their ethnic belonging.

6.1 Specific Problems Highlighted with regard to Relatives of Missing Persons

99. In its preliminary observations after its visit to BiH, the WGEID recalled that “[...] reparations are not only financial in nature. A national programme on reparations for relatives of victims of enforced disappearance that includes compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition should be established. Reparation programmes should take into account a gender perspective, considering that most of family relatives of missing persons are women”.¹⁶⁴

6.1.2 The Drawbacks in the Procedure established by the Republika Srpska Law on the Right to Compensation for Pecuniary and non-Pecuniary Damage

100. Besides the already mentioned Law on Protection of Civilian Victims of War of Republika Srpska, another relevant piece of legislation for relatives of missing persons in the Republika Srpska is the Law on the Right to Compensation for Pecuniary and non-Pecuniary Damage, caused by the War

¹⁶⁰ 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.

¹⁶¹ 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.

¹⁶² See, *inter alia*, UNDP, *Transitional Justice Guidebook for Bosnia and Herzegovina*, Sarajevo, 2009, available at: www.undp.ba/upload/publications/executive_ENG_WEB.pdf. After its visit to BiH, the WGEID declared that “the National Strategy for Transitional Justice should be fully supported and funded” (See, WGEID, *Press Release of 21 June 2010 on the Visit to BiH*, *supra* note 3).

¹⁶³ Among the associations that are submitting the present document, the Centre for Legal Assistance to Women Zenica, the Association of Women-Victims of War, Infoteka, Izvor and the Association of Relatives of Missing Persons of the Sarajevo-Romanija Region and Vive Žene Tuzla are involved in the consultations to design the National Strategy for Transitional Justice coordinated by the UNDP.

¹⁶⁴ WGEID, *Press Release of 21 June 2010 on the Visit to BiH*, *supra* note 3.

Activities in the Period from 20 May 1992 to 19 June 1996 (Official Gazette No. 01-409/05 of 30 June 2005 and amendments of 15 December 2008 published in the Official Gazette of the Republika Srpska No. 1/09).¹⁶⁵ Article 6 of the original version of the Law established that 30 June 2006 was the deadline to decide on all applications filed. In the amended version of the Law, which applies to relatives of missing people that submit their claim before 31 December 2009, Article 6 of the original version was abrogated and no other deadline to adopt decisions was fixed¹⁶⁶. A considerable number of applications have been submitted pursuant to the amended version of the Law, but so far the majority of the applicants have not obtained a decision. The few who received a decision saw their claims rejected By the State Attorney's Office of the Republika Srpska, which argued to be incompetent because the missing relatives were civilians and did not disappear in connection with the conduct of military service and military defence activities. Since this "exclusion of civilian victims of war" is not written anywhere in the Law, requested to provide an explanation, the representative of the State Attorney's Office admitted that civilians are not expressly excluded from the enjoyment of compensation by the text of the law, but this is the interpretation that the State Attorney's Office gives to the law, according to which only members of the Bosnian Serb army (*Vojska Republike Srpske* - VRS) are entitled to compensation. This interpretation of the law is clearly discriminatory and not grounded in any legal provision and it excludes civilian victims of war as well as members of other armies, with the result of hampering their right to compensation and to integral reparation for the harm suffered. Nevertheless, compensation awarded under this scheme is to be paid in government bonds, which are to be amortised in ten annual instalments.¹⁶⁷ Moreover, the enforcement of the decisions already issued (apart from legal costs and associated default interest which have recently been paid) has been suspended since 28 May 2002 pursuant to the Postponement of Enforcement Act 2002, the Temporary Postponement of Enforcement Act 2003 and the Domestic Debt Act 2004. The ECtHR has already been called to pronounce itself on the lack of implementation of this kind of decisions, and it found violations of Articles 6 of the European Convention and Article 1 of Protocol No. 1 to the Convention.¹⁶⁸ Accordingly, it awarded compensation to the applicants, reminding the respondent State that it is under "a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures. Such measures must also be taken in respect of other persons in the applicants' position, notably by solving the problems that have led to the Court's findings".¹⁶⁹

¹⁶⁵ Under Article 5 of the Amendments of 2008 to the mentioned law, applications to receive compensation should be submitted to the Office of the Defence Attorney of the Republika Srpska before 31 December 2009. The existence of the amendments to the 2005 Law, which extend the number of persons that can apply for compensation was not diffused and publicized among victims of the war and their relatives.

¹⁶⁶ See *supra* para. 96 and note 150 in the sense 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. See also UN Principles on the Right to a Remedy, *supra* note 150, 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".

¹⁶⁷ It is noteworthy that under the Law of Debts in the Republika Srpska, there is a deadline of 50 years for cashing the bonds.

¹⁶⁸ See, inter alia, ECtHR, Case *Čolić and others*, *supra* note 63, paras. 10-11 and 15.

¹⁶⁹ *Ibid.*, para. 17.

6.1.3 The Declaration of Death of a Victim as a Pre-Condition to Obtaining Compensation for Relatives of Missing Persons

101. In the Federation of BiH, Article 21 of the Law on the Rights of Demobilized Soldiers and their Families establishes that “the rights referred to in the paragraph 1 of this Article shall be also employed by members of family of missing defender *until he is declared deceased but not longer than two years after this Law comes into force if during that period they do not commence a procedure to declare the missing defender deceased*”. Accordingly, in order to accede or to maintain to a monthly pension, relatives of missing persons are forced to declare their loved ones dead in a non-litigation procedure, although this causes them additional pain, since in fact they do not know the fate and whereabouts of their loved ones. The Law on the Basis of the Social Protection, Protection of Civilians Victims of War and Families with Children does not include a specific provision in this sense but, *de facto*, if relatives wish to apply or to maintain a monthly pension, the “certificate of death” of the relative concerned is the evidence required by municipal courts.¹⁷⁰
102. In the Republika Srpska, although there is no specific provision that prescribes that it is obligatory to obtain a certificate of death to accede or to maintain a disability pension, *de facto*, this is the case. When assessing a request to obtain a disability pension pursuant to Article 25 of the Law on Protection of Civilian Victims of War of Republika Srpska and Article 190 of the Law on Administrative Procedure, municipal courts require evidences that a loved one of the claimant has been subjected to enforced disappearance. In BiH, certificates of “absence due to enforced disappearance” do not exist and municipal courts do not consider as valid means of proof certificates that a person has been registered as missing before the ICRC, or the MPI or any other tracing commission. The certificate of death is the only evidence accepted by municipal courts to award a monthly pension to relatives of missing persons who, therefore, are obliged to undergo this painful procedure in order to enforce their rights, although this determines that “enforced disappearance” is treated as a “direct death”, when, in fact, relatives do not know with certainty the fate and whereabouts of their loved ones.¹⁷¹
103. The WGEID has declared that the fact that relatives, in order to obtain reparation, must apply for a death certificate, “re-victimizes families by making them go through the process of having a death certificate, although neither the fate nor the whereabouts of the disappeared person are known”.¹⁷² The CAT observed that requiring the families of missing persons to certify the death of a family member in order to receive compensation could constitute a form of inhuman and degrading

¹⁷⁰ Article 61.4 of the Federal Law on Non-Contentious Acts (Official Gazette of the Federation BiH No. 2/98, into force since 28 January 1998, and subsequent amendments) establishes that a certificate of death can be released to “a person who went missing during war or in connection with warfare, and if there have been no news about the person’s whereabouts a year after the cease of the danger”.

¹⁷¹ See *supra* paras. 37-38 and notes 55-56.

¹⁷² WGEID, *Annual Report for 2008*, *supra* note 55, para. 113.

treatment for such person, by laying them open to additional victimization.¹⁷³ The HRC considered that obliging the families of disappeared persons to have the family member declared dead in order to be eligible for compensation raises issues under Articles 2, 6 and 7 of the Covenant. Accordingly, it clarified that the responded State had to abolish the obligation in cases of disappearance which makes the right to compensation dependent on the family's willingness to have the family member declared dead; and to ensure that any compensation or other form of redress adequately reflects the gravity of the violation and of the harm suffered.¹⁷⁴

6.2 Specific Problems Highlighted with regard to Victims of Rape or other Forms of Sexual Violence

104. 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".¹⁷⁵ 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 social protection for victims of sexual violence"¹⁷⁶ 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".¹⁷⁷ 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.

6.2.1 Problems related to Claiming Compensation from Perpetrators

105. According to the domestic legal framework, a possibility exists to claim compensation for damage

¹⁷³ CAT, *Concluding Observations on Algeria*, doc. CAT/C/DZA/CO/3 of 26 May 2008, para. 13. The Committee accordingly reminded that a State shall "[also guarantee the right of such families to seek redress or be fairly and adequately compensated, including by giving them the necessary psychological, social and financial support so that they may make the fullest possible readjustment (*ibid.*)".

¹⁷⁴ HRC, *Concluding Observations on Algeria*, doc. CCPR/C/DZA/CO/3 of 12 December 2007, para. 13.

¹⁷⁵ CEDAW, *Concluding Comments on BiH*, *supra* note 82, para. 38.

¹⁷⁶ 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.

¹⁷⁷ *Ibid.*, para. 41. See also paras. 39-40.

(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.¹⁷⁸ 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.

106. 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 rape¹⁷⁹ 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.¹⁸⁰
107. 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 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”.¹⁸¹ 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

¹⁷⁸ 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 97, pp. 47-49.

¹⁷⁹ The estimate is not official and was provided by the Association of Women-Victims of War.

¹⁸⁰ 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”.

¹⁸¹ *Study on the Phenomenon of Torture*, *supra* note 84, para. 167.

higher in criminal proceedings, *the availability of civil procedures to claim reparation should not be dependent on the outcome of a criminal procedure*".¹⁸²

108. 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; 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.¹⁸³ 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.
109. 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.¹⁸⁴ However, this does not seem to be the regular practice. For instance, in the proceedings against Mr. Željko Lelek,¹⁸⁵ four victims of rape rendered their testimony as protected 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).¹⁸⁶ 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

¹⁸² *Ibid.*, para. 171.

¹⁸³ There is no State institution guaranteeing free legal aid to civilian victims of war. Although there are some NGOs (e.g. Vaša Prava) that provide this service, this remains an obligation of the State which, so far, has not been implemented by BiH.

¹⁸⁴ 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".

¹⁸⁵ 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).

¹⁸⁶ 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".

against Mr. Željko Lelek, which concerned also the arbitrary killing of Mr. Ibro Medjuseljac, 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.

110. It is also noteworthy that, to exercise the right to obtain compensation from a perpetrator victims should be represented by a lawyer, while the great majority of them cannot afford to pay for legal representation.¹⁸⁷ In the past, the Association of Women-Victims of War has contacted a number of lawyers, requesting support in the procedure to obtain compensation. 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.
111. 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 apply for compensation, they would not have concrete perspectives of success.¹⁸⁸ 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.¹⁸⁹

6.2.2 Problems of Adequate Housing as a Measure of Restitution

112. 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

¹⁸⁷ 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 84, 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.

¹⁸⁸ 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 Gbravica, 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. Procedures to obtain the extradition of Mr. Vlahović from Spain to BiH are ongoing. See, inter alia, www.bim.ba/en/208/10/26272/.

¹⁸⁹ On the use of bonds to pay for compensation and the related difficulties, see para. 100 and notes 63 and 167-169.

programmes.¹⁹⁰

113. To date, access to adequate housing¹⁹¹ 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.¹⁹²
114. A first instance that may be recalled is that of C. C. and A. R.. The two ladies are both originally from Foča where, in 1992, they were subjected to sexual violence and subsequently banned from their houses by members of the VRS.¹⁹³ 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.¹⁹⁴ 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 58-61 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.

¹⁹⁰ 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 134.

¹⁹¹ In general, BiH lacks a housing national strategy. In this sense, CESCR, *Concluding Observations on BiH*, *supra* note 176, paras. 24 and 46.

¹⁹² 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 66-71 in the local language and English).

¹⁹³ 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 Sas 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.

¹⁹⁴ 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.

115. 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 50-53 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.
116. 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 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.
117. 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".¹⁹⁵ 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"¹⁹⁶ 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".¹⁹⁷ 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"¹⁹⁸ 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".¹⁹⁹
118. 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

¹⁹⁵ See, *inter alia*, Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 97, p. 50.

¹⁹⁶ CEDAW, *Concluding Comments on BiH*, *supra* note 82; para. 37.

¹⁹⁷ *Ibid.*, para. 38.

¹⁹⁸ CESCR, *Concluding Observations on BiH*, *supra* note 176, para. 12.

¹⁹⁹ *Ibid.*, para. 32. See also para. 42.

an entire year from 1992 to 1993.²⁰⁰ 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 months 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 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 54-57 and 72-79 in the local language and English).

6.2.3 Problems related to Restitution and Preferential Treatment in Employment

119. Another serious problem faced by victims of rape or other forms of sexual violence is the lack of access to stable employment.²⁰¹ This is seen as a measure of restitution for the harm suffered.²⁰² In the Federation of BiH 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 Republika Srpska does not recognize any right to preferential treatment in employment or trainings for survivors of rape or other forms of sexual violence.
120. 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 far from Sarajevo cannot accede to this programme. Overall, it

²⁰⁰ To date no one has been formally accused, prosecuted and sanctioned for the sexual crimes committed against M. R. from 1992 to 1993 in Bijeljina.

²⁰¹ See, *inter alia*, Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 97, pp. 51-52. Indeed, this subject shall be seen in the wider context of unemployment in BiH: CESCR, *Concluding Observations on BiH*, *supra* note 176, paras. 14 and 35.

²⁰² In this sense see, *inter alia*, Principles on the Right to a Remedy, *supra* note 150, Principle 19; and HRC, Case *Busyo v. Democratic Republic of Congo*, views of 9 August 2003, para. 6.2.

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.

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

121. Children of victims of rape or other forms of sexual violence have been often subjected to discrimination and they have to face additional obstacles in the access to school and employment. The possibility for their 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 Republika Srpska the legal framework does not specifically address this matter, in the Federation of BiH it is stipulated that preferential treatment shall be accorded to this particularly vulnerable category. Nevertheless, this is largely unimplemented.²⁰³
122. 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 62-63 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.
123. 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 Republika Srpska, 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 background in the Republika Srpska 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 Vlasenica was quoted: the boy, a returnee in the Republika Srpska 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 Republika Srpska 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 Sarajevo. The boy was therefore forced to leave Republika Srpska once more and see his access to education duly guaranteed.

6.2.5 Problems related to Medical and Psychological Rehabilitation

124. Sexual violence can seriously affect the victim's mental health, with dire consequences in the short, medium or long term.²⁰⁴ Accordingly, victims of rape or other forms of sexual violence shall be

²⁰³ CRC, Concluding Observations on BiH, *supra* note 190, para. 64.

²⁰⁴ 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 76. See also CEDAW, *General Recommendation No. 19*, *supra* note 72, 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.

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.²⁰⁵

125. 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 institutions 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.²⁰⁶ 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.

7. Conclusions and Recommendations

126. Although 15 years have passed since the conclusion of the war in BiH, thousands of relatives of missing persons remain caught between hope and despair to this very day, as they do not know the fate and whereabouts of their loved ones and BiH authorities have so far failed to guarantee their right to know the truth regarding the circumstances of the enforced disappearance of their loved ones, the progress and results of the investigation and the fate of their relatives, their right to justice and their right to obtain integral reparation and prompt, fair and adequate compensation. 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 corresponds to ongoing violations by BiH of its obligations under Articles 1, 2, 4, 5, 7, 12, 13 and 14 of the Convention against Torture.
127. For the reasons explained above, the associations submitting the present document respectfully request the CAT to recommend to BiH to:
- ▶ Elaborate within the shortest delay accurate and complete figures concerning the total number of missing people during the war as well as the amount of people whose fate and whereabouts remain unknown. This subject shall be treated with the utmost transparency, accuracy and certainty and BiH authorities shall refrain from any politicization thereof. In order

²⁰⁵ See, *inter alia*, UN Principles on the Right to a Remedy, *supra* note 150, Principle 21; Redress, *Rehabilitation as a Form of Reparation under International Law*, London, 2009; and *UN Principles to Combat Impunity*, *supra* note 13, 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 *supra* paras. 83, 108 and 110 and notes 137, 183 and 187. See also of the Special Rapporteur on the Right to the Highest Attainable Standard of Physical and Mental Health, *supra* note 204, paras. 12 and 46.(a).

²⁰⁶ 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 72, para. 269.1.(d).

to be as credible as possible, these figures shall make reference also to those cases of “false” or mistaken identification of mortal remains occurred in the past.

- ▶ 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. Also in this case, transparency and certainty must be guaranteed by BiH authorities, as well as the security and privacy of the victims, duly taking into account the sensitivity of this subject.
- ▶ Ensure that the Council of Ministers of BiH proceeds without any further delay to consider and vote on the audit report for 2009 of the MPI, as well as to find an agreement with the ICMP on the appointment of the vacant members of the Steering Board of the MPI, thus enabling this institution to discharge its mandate. With regard to the election of the members of the Steering Board, the inclusion of representatives of associations of relatives of missing people should be considered, as it would increase the credibility of the institution, by ensuring more empathy and genuine understanding for the pain and suffering of relatives of missing persons. In order to increase the authority of the MPI, during their term of office the members of the Steering Committee, of the Board of Directors and of the Supervisory Board shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time position.
- ▶ Guarantee that the MPI and the Republika Srpska Operative Team for Missing Persons actively cooperate, eliminating any hindrance or conflict and carefully avoiding episodes of public mutual discredit.
- ▶ Ensure the full independence of the MPI as guaranteed by the law, including preventing threats to members of the institute, harassment and unfounded public attacks. When cases of harassment are reported, BiH authorities shall promptly investigate and sanction such acts.
- ▶ Ensure that adequate resources are put at the disposal of the MPI to allow it to do its work. In particular, all available technology necessary to detect and exhume graves should be provided to the institution, as well as more coolers and adequate facilities where mortal remains can be preserved and treated with respect and dignity. The preservation of mortal remains shall be secured using unified standards and applying the same procedures throughout BiH. More people within the institution shall be deployed as investigators to gather relevant information for the location of mass graves, in particular in the North-Western, Eastern and Central areas of BiH, as well as in Herzegovina (e.g. the valley of Neretva River). The personnel shall be appropriately trained and work full-time. Also the number of pathologists working on exhumations shall be increased.
- ▶ Ensure that relatives of missing people, including those who do not live in BiH, are regularly informed on the progress of the processes of exhumation and identification of mortal remains. Further, the release of information to the general public on the exhumation of mass graves

shall be done in a manner that does not dilute the gravity of the crimes concerned and at the same time does not create false hopes or further disillusion for relatives of missing persons.

- ▶ Ensure that during and after the processes of exhumation and identification of mortal remains, relatives of missing persons receive, free of charge, adequate psychosocial accompaniment, provided by teams of professionals especially trained for this work and financed by the State.
- ▶ Ensure that the cooperation between the MPI and the Prosecutor's Offices is enhanced so that the process of exhumations is not unduly delayed. The number of prosecutors working on exhumations and war crimes shall be increased and they must be ensured adequate training, resources and staff.
- ▶ Ensure that the LMP is fully implemented and that the CEN is completed within the shortest delay. Failure to comply with this shall be prosecuted and sanctioned. The information contained in the CEN shall include data from the 1991 census; data gathered from the Agency for Identification Documents, Registers and Data Exchange of BiH (CIPS) after the conclusion of the Dayton Peace Agreement; data managed by the entities' Ministers of Interior; data gathered by the ICRC; data in the possession of the Intelligence and Security Agency of BiH (OSA) and the SIPA; as well as data collected over the years by any other body dealing with the matter of missing persons (e.g. the Research and Documentation Centre). The police and the municipal administration shall also be involved in this process. Given the high number of people who sought refuge abroad during and after the conflict, consideration shall be given to the setting up of a system of gathering notifications of missing persons through the diplomatic or consular headquarters of BiH or through mail with certified statements made by families of missing persons living abroad.
- ▶ Ensure that the entry into the CEN is not considered as sufficient evidence for declaring a missing person dead. Given that this does not take into account the gravity and the continuous nature of the crime, Article 27 of the LMP shall be amended accordingly.
- ▶ Ensure that the Fund is set up without any further delay and its financing is entirely secured.
- ▶ Ensure that all judgments of the Constitutional Court on cases related to enforced disappearance are implemented without any further delay and failure to comply is prosecuted as provided by the law. The full implementation of the Constitutional Court's judgments shall include the carrying out of rigorous criminal investigations with a view to bringing the perpetrators to justice and to providing the relatives of the victims of enforced disappearance with information about the fate and whereabouts of their loved ones and ensuring them social assistance through the Fund.
- ▶ Make sure the Constitutional Court automatically adopts rulings on non-implementation of its prior judgments and systematically transfers these to the Prosecutor's Office for prompt action, and eventually guarantees applicants a right to obtain such rulings within a reasonable

delay.

- ▶ Ensure that the Criminal Code of BiH is amended and that the punishment for the offence of torture is commensurate to the gravity of the crime. Ensure that the criminal codes at the entity level integrate the crime of torture as defined under Article 1 of the Convention against Torture, criminalizing also the incitement, instigation, superior orders or instructions, consent, acquiescence and concealment of acts of torture. Entities shall also integrate torture as a crime against humanity and as a war crime in accordance with international standards.
- ▶ Ensure that the criminal codes at the entity level are harmonized with the criminal code at the State level, in particular with the view to integrate the crime of enforced disappearance as a crime against humanity, and set appropriate penalties. The criminal codes at all levels shall be amended to integrate the autonomous crime of enforced disappearance and shall establish that the statutes of limitations for criminal proceedings on cases of enforced disappearance take into account the continuous nature of the offence and hence commence to run from when the fate or whereabouts of the victim are established with certainty and made known to their relatives.
- ▶ 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.
- ▶ Criminal codes at all levels shall explicitly define that a person who acted pursuant to an order to commit torture, enforced disappearance or 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 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.
- ▶ Witness protection and support shall be victim-oriented and supplied by experts who are adequately trained to provide these services and are financed by the State.
- ▶ 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 enforced disappearance as well as 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.
- ▶ 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, relatives of missing persons and 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 relatives of missing persons and victims of rape or other forms of sexual violence in particular.
- ▶ Ensure that all relatives of missing people and 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 relatives of missing persons and 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 relatives of missing persons and 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 relatives of missing persons and of victims of rape and other forms of sexual violence and, in general, of NGOs that work with these categories.
- ▶ Ensure that the sums already awarded in decisions issued pursuant to the Law on the Right to Compensation for Pecuniary and non-Pecuniary Damage are paid without any further delay. Further, BiH authorities shall proceed to promptly adopt decisions on the claims still pending and the enforcement of the relevant rulings shall be secured. Payment of compensation shall not be in bonds, but in cash. BiH shall adopt all necessary measures to make sure that civilian victims of war are not discriminated and do not receive a worse treatment compared to veterans.
- ▶ Amend the current legal framework so that providing social benefits and measures of reparations to relatives of missing persons is not subjected to the obligation to obtain a municipal court's decision certifying the death of the victim. Replace the certificate of death with a "certificate of absence due to enforced disappearance" that, while recognizing the gravity and real nature of the crime without treating it as a direct death, nonetheless allows to regulate the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.
- ▶ 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.

On behalf of:

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

Women's Section of the Association of Concentration Camp Detainees

Association of Relatives of Missing Persons from Hadžići Municipality

Association of Relatives of Missing Persons from Ilijaš Municipality

Centre for Legal Assistance to Women Zenica

Association Women from Prijedor – *Izvor*

Association of Women-Victims of War

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

Association of Relatives of Missing Persons of the Vogošća Municipality

Infoteka (Women's Information and Documentation Centre)

Vive Žene Tuzla



Philip Grant

TRIAL Director

Annexes

1. Article published on 12 June 2010 by the newspaper "Avaz" (unofficial translation in English).
2. Article published on 6 July 2010 by the newspaper "Glas Srpske" – The Voice of Srpska – (unofficial translation in English).
3. Article "Exhumed Bones Thrown in the Dumpster", published on 30 December 2009 by the newspaper "Glas Srpske" – The Voice of Srpska (in the local language).
4. Article "Exhumed Bones Thrown in the Dumpster", published on 30 December 2009 by the newspaper "Glas Srpske" – The Voice of Srpska (unofficial translation in English).
5. Article "The Institute is blocking the Process of Tracing Serbian Victims", published on 30 December 2009 by the newspaper "Glas Srpske" – The Voice of Srpska (in the local language).
6. Article "The Institute is blocking the Process of Tracing Serbian Victims", published on 30 December 2009 by the newspaper "Glas Srpske" – The Voice of Srpska (unofficial translation in English).
7. List of Victims of Serb origin Exhumed and Identified at 26 March 2010, elaborated by the MPI Office in East Sarajevo (in the local language).
8. List of Victims of Serb origin Exhumed and Identified at 26 March 2010, elaborated by the MPI Office in East Sarajevo (unofficial translation in English).
9. Statement released by Mr. Eset Muračević to TRIAL on the harassment received as a witness in war crimes' trials (in the local language).
10. Statement released by Mr. Eset Muračević to TRIAL on the harassment received as a witness in war crimes' trials (unofficial translation in English).
11. Evidence that the kidnapping of a citizen of the municipality of Vogošća was reported to the 5th Police Station of Vogošća by the Association of Families of Missing Persons from Vogošća on 16 August 2005 (in the local language).
12. Evidence that the kidnapping of a citizen of the municipality of Vogošća was reported to the 5th Police Station of Vogošća by the Association of Families of Missing Persons from Vogošća on 16 August 2005 (unofficial translation in English).
13. Evidence that criminal charges were brought by the Association of Relatives of Missing Persons from Vogošća, against unknown perpetrators members of the Serb army, to the Sarajevo Cantonal Prosecutor's Office on 9 September 2005, with a request for the Prosecutor to undertake all necessary measures to identify and sanction those responsible and to locate the disappeared persons (in the local language).
14. Evidence that criminal charges were brought by the Association of Relatives of Missing Persons from Vogošća, against unknown perpetrators members of the Serb Army, to the Sarajevo Cantonal Prosecutor's Office on 9 September 2005, with a request for the Prosecutor to undertake all necessary measures to identify and sanction those responsible and to locate the disappeared persons (unofficial

translation in English).

15. List of the people reported missing in Vogošća as presented to the 5th Police Station in Vogošća and to the Sarajevo Cantonal Prosecutor's Office (on 4 different pages).
16. Statement No. 17/1/3-44-83/05 released on 20 March 2006 by Mr. Zijad Bačić to the State Agency for Investigation and Protection (in the local language, on 4 separate pages).
17. Statement No. 17/1/3-44-83/05 released on 20 March 2006 by Mr. Zijad Bačić to the State Agency for Investigation and Protection (unofficial translation in English).
18. Letter of 15 June 2006 from the Association of Relatives of Missing Persons of the Sarajevo-Romanija Region to the Court of BiH (in the local language).
19. Letter of 15 June 2006 from the Association of Relatives of Missing Persons of the Sarajevo-Romanija Region to the Court of BiH (unofficial translation in English).
20. Letter of 15 June 2006 from the Association of Relatives of Missing Persons of the Sarajevo-Romanija Region to the Court of BiH (in the local language).
21. Letter of 15 June 2006 from the Association of Relatives of Missing Persons of the Sarajevo-Romanija Region to the Prosecutor's Office (unofficial translation in English).
22. Letter No. SU-521/06 of 7 July 2006 from the Court of BiH to the Association of Relatives of Missing Persons of the Sarajevo-Romanija Region (in the local language).
23. Letter No. SU-521/06 of 7 July 2006 from the Court of BiH to the Association of Relatives of Missing Persons of the Sarajevo-Romanija Region (unofficial translation in English).
24. Statement forwarded in 2008 to the Cantonal Prosecutor's Office and to the State Prosecutor's Office by Mr. Savo Timotija (in the local language).
25. Statement forwarded in 2008 to the Cantonal Prosecutor's Office and to the State Prosecutor's Office by Mr. Savo Timotija (unofficial translation in English).
26. Letter No. 14-09/07 of 17 September 2007 from the Association of Relatives of Missing Persons from Hadžići Municipality to the Office of the High Representative for BiH (in the local language).
27. Letter No. 14-09/07 of 17 September 2007 from the Association of Relatives of Missing Persons from Hadžići Municipality to the Office of the High Representative for BiH (unofficial translation in English).
28. Letter No. 15-09/07 of 17 September 2007 from the Association of Relatives of Missing Persons from Hadžići Municipality to the High Judicial and Prosecutorial Council of BiH (in the local language).
29. Letter No. 15-09/07 of 17 September 2007 from the Association of Relatives of Missing Persons from Hadžići Municipality to the High Judicial and Prosecutorial Council of BiH (unofficial translation in English).
30. Letter No. 16-09/07 of 17 September 2007 from the Association of Relatives of Missing Persons from Hadžići Municipality to the State Prosecutor's Office (in the local language).
31. Letter No. 16-09/07 of 17 September 2007 from the Association of Relatives of Missing Persons from

- Hadžići Municipality to the State Prosecutor's Office (unofficial translation in English).
32. Letter No. 08-04 of 19 March 2010 from the Association of Relatives of Missing Persons from Hadžići Municipality to the Prosecutor's Office (in the local language).
 33. Letter No. 08-04 of 19 March 2010 from the Association of Relatives of Missing Persons from Hadžići Municipality to the Prosecutor's Office (unofficial translation in English).
 34. Letter No. 11/10 of 26 March 2010 from the Association of Relatives of Missing Persons from Hadžići Municipality to the Prosecutor's Office (in the local language).
 35. Letter No. 11/10 of 26 March 2010 from the Association of Relatives of Missing Persons from Hadžići Municipality to the Prosecutor's Office (unofficial translation in English).
 36. Press Release No. 26-06/09 of 30 June 2009 by the Association of Relatives of Missing Persons from Hadžići Municipality (in the local language).
 37. Press Release No. 26-06/09 of 30 June 2009 by the Association of Relatives of Missing Persons from Hadžići Municipality (unofficial translation in English).
 38. Letter No. 01-181/06 of 12 December 2006 from the Association *Izvor* to the Ministry for Human Rights and Refugees (in the local language).
 39. Letter No. 01-181/06 of 12 December 2006 from the Association *Izvor* to the Ministry for Human Rights and Refugees (unofficial translation in English).
 40. Letter No. 01-47-1/08 of 14 March 2008 for the Association *Izvor* to the Steering Board of the MPI (in the local language, on two separate pages).
 41. Letter No. 01-47-1/08 of 14 March 2008 for the Association *Izvor* to the Steering Board of the MPI (unofficial translation in English).
 42. Letter No. 01-72-1/07 of 16 April 2008 from the Association *Izvor* to the Steering Board, the Supervisory Board and the Advisory Committee of the MPI (in the local language, on two separate pages).
 43. Letter No. 01-72-1/07 of 16 April 2008 from the Association *Izvor* to the Steering Board, the Supervisory Board and the Advisory Committee of the MPI (unofficial translation in English).
 44. Letter No. 01-205/08 of 8 December 2008 from the Association *Izvor* to the Parliamentary Assembly, the Representatives' Chamber and the People's Chamber (in the local language).
 45. Letter No. 01-205/08 of 8 December 2008 from the Association *Izvor* to the Parliamentary Assembly, the Representatives' Chamber and the People's Chamber (unofficial translation in English).
 46. Letter No. 01-214/08 of 24 December 2008 from the Association *Izvor* to the Board of Directors of the MPI (in the local language).
 47. Letter No. 01-214/08 of 24 December 2008 from the Association *Izvor* to the Board of Directors of the MPI (unofficial translation in English).
 48. Letter No. 01-33/09 of 27 April 2009 from the Association *Izvor* to the Board of Directors of the MPI (in the local language).

49. Letter No. 01-33/09 of 27 April 2009 from the Association *Izvor* to the Board of Directors of the MPI (unofficial translation in English).
50. 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).
51. 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).
52. 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).
53. 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).
54. 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).
55. 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).
56. 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).
57. 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).
58. 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).
59. 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).
60. 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).
61. 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).

62. 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).
63. 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).
64. 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).
65. 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).
66. 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).
67. 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).
68. 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).
69. 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).
70. 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).
71. 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).
72. 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).

73. 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).
74. 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).
75. 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).
76. 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).
77. 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).
78. 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).
79. 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).