



**Written Information for the Adoption of the List of Issues
by the Committee on the Elimination of Discrimination of Violence against Women**

with regard to

Bosnia and Herzegovina's Combined Fourth and Fifth Periodic Reports

(CEDAW/C/BIH/4-5)

SEPTEMBER 2012

Submitted by

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Background

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

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

Paragraph 37

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

Paragraph 38

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

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

The Fourth and Fifth Periodic Reports

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

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

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

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

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

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

At its pre-session for the 55th session, to be held in Geneva from 22 to 25 October 2012, the **CEDAW will adopt the list of issues to be submitted to BiH.**

The adoption of the concluding observations on the fourth and fifth combined periodic reports by BiH is scheduled for the 55th session of the CEDAW to be held in New York in July 2013.

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

The 1992-1995 conflict in BiH was characterised by atrocities: civilians were killed, concentration camps were set up and torture was systematically practiced, mass rapes were committed, more than two millions of human beings were forced to internally displace or to seek refuge abroad, and thousands of people disappeared without leaving a trace.

At present, there are no reliable statistics on the number of women and men¹ who were raped or otherwise sexually abused during the war in BiH. Many of those who were subjected to sexual abuse were arbitrarily detained in one of the many clandestine detention facilities set up during the conflict. Nevertheless, also the total number of former camp-detainees, including women, has not been calculated with certainty.

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

In this light, the associations subscribing this written information consider of the utmost importance that the CEDAW continues monitoring the situation of women victims of rape or other forms of sexual violence during the war, including the various challenges faced by them among the list of issues that will be submitted to BiH in October 2012.

On the basis of the existing situation and the ongoing violations faced by women victims of rape or other forms of sexual violence during the war, the present document proposes concrete questions to be included by the CEDAW in the list of issues to be submitted to the State. Furthermore, at the end of the document, a set of recommendations is put forward.

¹ 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 written information 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 out.

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

1. On 6 March 1992, BiH, formerly one of the six federal States constituting the Socialist Federal Republic of Yugoslavia (SFRY), declared independence. One month later, on 6 April 1992, the European Community recognized BiH as an independent State. It was officially admitted as a member of the United Nations on 22 May 1992 and of the Council of Europe on 24 April 2002.²
2. Its struggle for independence was marked by an armed conflict between various factions from, within and outside BiH and was primarily fought between the Bosnian governmental forces on one side, and the Bosnian Serb forces (Vojska Republike Srpske - VRS) and the Yugoslav National Army (Jugoslovenska Narodna Armija - JNA) on the other. Also the Croatian Defence Council (HVO) took part to the hostilities. It must be stressed that while at the beginning of the conflict the army of BiH and the HVO fought together against the VRS and the JNA, from the spring of 1993 the army of BiH and the HVO engaged in an armed conflict between them. On 23 February 1994 the government of BiH and the HVO signed a general cease-fire agreement which took effect one day later. On 18 March 1994, representatives of the governments of BiH and the Republic of Croatia signed the Washington Agreement on the creation of the Federation of Bosnia and Herzegovina between the government of BiH and the Bosnian Croats. On 14 December 1995 the General Framework Agreement for Peace in BiH (also known as the "Dayton Peace Agreement") put an end to the hostilities. Based on the Dayton Peace Agreement, BiH consists of two semi-autonomous Entities, the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS). A special status was granted to the Brčko District in Northern Bosnia. The three "constitutive peoples" (Bosnian Muslims, Bosnian Croats and Bosnian Serbs) are represented in all public institutions of both Entities and the Brčko District, in proportion to the ethnic composition of the population recorded in the 1991 census. Both Entities within BiH have their own parliaments, governments and judiciaries. The Brčko District is also in charge of its own internal affairs, including the justice system. FBiH is further decentralised into ten cantons all of which organise their judiciaries independently. The judicial system of RS is centralised.
3. During the 1992-1995 war in BiH the use of rape or other forms of sexual violence was unfortunately

² 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, 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); to the International Convention on the Protection of All Persons from Enforced Disappearance (30 March 2012); 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.

widespread.³ Indeed, rape was used as a means of implementing the strategy of ethnic cleansing and to increase inter-ethnic hatred. As mentioned, at present there are no reliable statistics on the number of women and men who were raped or otherwise sexually abused (rates vary from 20,000 to 50,000 victims).⁴ Unfortunately, victims of sexual violence are often turned into outcasts because of the stigma and humiliation associated with the crime and, in general, rape is among the most under-reported crimes. Moreover, it is undisputable that the majority of those responsible for rape or other forms of sexual violence during the war in BiH enjoy impunity.⁵

4. It is known that during the 1992-1995 war in BiH clandestine detention facilities were set up. More than 600 places of detention have been registered.⁶ To date, the total number of the persons who were held in the mentioned camps has not been determined with precision, even though a figure often referred to amounts to 200,000.⁷ It must be stressed that among camp-detainees many were women and children,

³ See Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1992/S-1/1 of 14 August 1992, doc. E/CN.4/1993/50 of 10 February 1993, Annexe II ("Report Mazowiecki"). In general, on the subject of women victims of rape in armed conflicts, see: Parliamentary Assembly of the Council of Europe, Resolution 1670 (2009) of 29 May 2009 on Sexual Violence against Women in Armed Conflict; Security Council, Resolution No. 1820 of 19 June 2008; Report of the Secretary-General, *In-depth Study on All Forms of Violence against Women*, doc. A/61/122/Add.1 of 6 July 2006 (Secretary-General In-depth Study), paras. 144-146, 254-259 and 263-270; Amnesty International, *Making Rights a Reality: Violence against Women in Armed Conflict*, London, 2005; Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 16*, doc. E/C.12/2005/4 of 11 August 2005, para. 27; Report of the Secretary-General, *Women, Peace, Security*, doc. S/2004/814 of 13 October 2004; Security Council Resolution No. 1325 of 31 October 2000; Human Rights Committee (HRC), *General Comment No. 28 Equality of Rights Between Men and Women*, doc. CCPR/C/21/Rev.1/Add.10 of 29 March 2000, para. 8; Committee on the Elimination of Racial Discrimination, *General Recommendation No. 25 Gender Related Dimensions of Racial Discrimination* of 20 March 2000, para. 2; Special Rapporteur on Contemporary Forms of Slavery, *Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict*, doc. E/CN.4/Sub.2/1998/13 of 22 June 1998 ("Report McDougall"); and Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), *General Recommendation No. 19* of 1992; and CEDAW, *General Recommendation No. 12* of 1989.

⁴ 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 3, para. 146. See also Commissioner for Human Rights of the Council of Europe, *Report by Thomas Hammarberg following his visit to Bosnia and Herzegovina on 27-30 November 2010* ("Report Hammarberg"), doc. CommDH(2011)11 of 29 March 2011, para. 153, whereby the reported total number of victims of sexual violence is 20,000.

⁵ See *infra* paras. 20-44. Amnesty International, *Old Crime Same Suffering – No Justice for Survivors of War-time Rape in North-East Bosnia and Herzegovina*, doc. EUR/63/002/2012, March 2012. See also Parliamentary Assembly, Council of Europe, *Report on Sexual Violence against Women in Armed Conflict*, doc. 11916 of 15 May 2009, paras. 23-25.

⁶ It is noteworthy that the nature of some of these detention facilities remains disputed among different ethnic groups. See, among others, *Final Report to the United Nations Security Council of the United Nations Commission of Experts* established pursuant to Security Council Resolution 780 (1992), doc. S/1994/674/Add.2 (Vol. I) of 28 December 1994 ("The Prijedor Report"), available at: <http://www.ess.uwe.ac.uk/comexpert/ANXV.htm>, Chapter VIII. See also International Criminal Tribunal for the Former Yugoslavia (ICTY), *Case Prosecutor v. Duško Sikirica, Damir Došen and Dragan Kolundžija*, judgment by the Trial Chamber of 13 November 2001 (Case No. IT-95-8-S), paras. 52-104; *Case Prosecutor v. Milomir Stakić*, judgment by the Trial Chamber of 31 July 2003 (Case No. IT-97-24), paras. 103-107; *Case Prosecutor v. Miroslav Kvočka et al.*, judgment by the Trial Chamber of 2 November 2001 (Case No. IT-98/30-1), paras. 112-114; *Case Prosecutor v. Predrag Banović*, judgment of the Trial Chamber of 28 October 2003 (Case No. IT-02-65/1-5), paras. 23-30; Court of Bosnia and Herzegovina, *Case Prosecutor v. Željko Mejakić, Momčilo Gruban and Duško Knežević*, judgment of 30 May 2008 (Case X-KR/06/200), available at: http://www.sudbih.gov.ba/files/docs/presude/2008/Zeljko_Mejacic_First_Instance_Verdict.pdf, and Balkan Investigative Reporting Network, *Time for Truth: Review of the Work of the War Crimes Chamber of the Court of Bosnia and Herzegovina 2005-2010*, Sarajevo, 2010. See also Helsinki Watch, *War Crimes in Bosnia-Herzegovina*, New York, 1993, p. 120-131.

⁷ Notably, the Association of the Concentration Camp Detainees of BiH claims that in its database it registered more than 500,000 former camp detainees.

who, both under international human rights and humanitarian law, are entitled to a special degree of protection. On the contrary, they were systematically subjected to the worst forms of torture, forced labour and arbitrary detention. As a matter of fact, the non-existence of a unified database of former camp-detainees has often been used to fuel discriminatory arguments, denying the existence of certain detention camps or arguing that certain ethnic groups would have not been subjected to arbitrary detention and torture in detention camps.

5. At the same time, survivors of the above-mentioned 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 stigmatises the victim, depriving him or her of any social status or intrinsic value as a person.⁸ 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 summarised 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”.⁹ 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.¹⁰ 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 freely expressing an opinion. Socially stigmatised, the victim and his or her relatives encounter difficulties within the community.
6. International doctrine and jurisprudence recognise 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.¹¹ Rape can be qualified as a war crime due to its commission during an armed conflict and the awareness of the perpetrator about the existence of such conflict; while it can be qualified as a crime

⁸ 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 3, paras. 106, 157, 164 and 166.

⁹ Statement released to one of the psychologists of the Association Medica that shared it during the preparation of a previous general allegation to be submitted to the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences, requesting that the identity of the victim is kept confidential.

¹⁰ Josse, ‘*They came with two guns: the Consequences of Sexual Violence for the Mental Health of Women in Armed Conflicts*, *supra* note 8, p. 179.

¹¹ European Court of Human Rights (ECtHR), Case *Aydin v. Turkey*, judgment of 25 September 1997, para. 86; International Criminal Tribunal for Rwanda (ICTR), Case *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Chamber I, judgment of 2 September 1998, para. 597; ICTY, Case *Prosecutor v. 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).

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.

7. In general, victims of rape or other forms of sexual violence during the conflict in BiH feel that the State neglects their existence and tries to escape its responsibility towards them. 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. So far the State failed to put in place a widespread outreach strategy in this field and, in general, the existing legal framework does not adequately guarantee the rights of women victims of rape or other forms of sexual violence during the war.
8. After having conducted a visit to the country (4-11 June 2007), the Commissioner for Human Rights of the Council of Europe, Mr. Thomas Hammarberg, submitted a report to the Committee of Ministers and the Parliamentary Assembly, whereby he expressed that “[...] the situation of victims of sexual violence in the 1992-1995 conflict, most of whom were women, *remains to be adequately addressed. This failure continues to disadvantage large numbers of women, many of whom are female heads of households and internally displaced persons.* The Commissioner regrets that their specific type of suffering was only very lately recognised in the legal framework for civilian war victims and not at all at the State level. Furthermore, there is neither a coherent strategy nor adequate financial allocations in place to support these women, although these measures are included as priority activities under the Project on Gender Action Plan implementation developed by the Gender Equality Agency”.¹²
9. In November 2010 the Committee against Torture (CAT) adopted its concluding observations on the periodic reports submitted by BiH. The CAT included among the principal subjects of concern and recommendations various issues related to the situation of women victims of rape or other forms of sexual violence during the war, pointing out in particular the lack of accurate and updated data on the number of victims of war-time rape and other acts of sexual violence.¹³ Accordingly, it indicated that the “State party should include in its next report the statistical data on war-time rape and sexual violence, as well as on means of redress, including compensation and rehabilitation, provided to the victims”.¹⁴
10. From 23 to 26 November 2010 Mrs. Margot Wallström, the Special Representative of the Secretary-General on Sexual Violence in Conflict conducted a visit to BiH. In her report on the mission she also referred to the lack of precise data on the number of women who were subjected to sexual violence during the war (the figures reported are between 20,000 and 50,000). However, the Special Representative declared that “the sexual violence that occurred during the conflict was systematic, pre-

¹² Council of Europe Commissioner for Human Rights, *Report on the Visit to BiH*, doc. CommDH(2008)1 of 20 February 2008, para. 100 (emphasis is added).

¹³ Committee against Torture (CAT), *Concluding Observations on BiH*, doc. CAT/C/BIH/CO/2-5 of 19 November 2010, para. 9.

¹⁴ *Ibid.*, para. 26.

meditated and on a vast scale”.¹⁵ Moreover, in her report the Special Representative highlighted a number of concerns related to the situation of women victims of rape or other forms of sexual violence and indicated that, given the findings of her mission and the ongoing difficulties to which this most vulnerable category of victims is subjected to daily, BiH will be a focus country for her Office. Indeed, she declared that “despite the struggle of Bosnian women to galvanize international attention and action, rape remains a taboo subject. [...] the lack of rehabilitation has limited women’s ability to find employment. Most rape survivors in Bosnia today are single mothers who lost their husbands during the war. The end of the war has not brought them peace of mind, with survivors showing symptoms of trauma, depression and anxiety. [...] Leaving the victims stigmatized, living on the margins of society, unable to marry, raise families or find jobs, continues the policy of slow ‘ethnic cleansing’”.¹⁶

11. Mr. Thomas Hammarberg, the Commissioner for Human Rights of the Council of Europe, conducted another mission to BiH from 27 to 30 November 2010 and, with regard to sexual crimes committed during the war, he indicated that “the collection of *reliable statistics on the number of victims of these crimes are necessary to establish what kind of measures and resources should be put in place by the authorities in order to prosecute the perpetrators of those crimes and to provide the victims with access to justice and reparation*”.¹⁷
12. In the light of the above, a first crucial step to address the various problems related to the subject of women victims of rape or other forms of sexual violence during the war and former camp-detainees is to set up a unified and accurate database that also encompasses data about victims 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 these matters, an adequate protection of the security and the privacy of the victims.¹⁸

Proposed items to be included in the List of Issues

- ▶ Please provide information on whether the State has ever carried out or is planning to carry out an activity to set up an accurate database concerning women victims of rape or other forms of sexual violence during the war and former camp-detainees.

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

13. 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.¹⁹ As such, they must be codified under domestic criminal legislation and sanctioned with punishments that are appropriate to

¹⁵ Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, 1 February 2011, para. 7.

¹⁶ *Ibid.*, para. 5.

¹⁷ Report Hammarberg, *supra* note 4, para. 194.

¹⁸ In this sense, the provisions of the BiH Law on the Protection of Personal Data (BiH Official Gazette No. 32/01 of 20 December 2001) shall be taken into account.

¹⁹ *Supra* para. 6.

the gravity of the crime.²⁰

14. At present, the Criminal Code of BiH does not include rape or sexual violence as separate offences. Article 172 of the BiH Criminal Code refers to rape or other forms of sexual violence only 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.²¹ 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.²² 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.²³
15. At the Entity level rape is codified as a separate offence and it is sanctioned even when committed as an isolated act.²⁴ All existing definitions require that the offence is committed “by force or threat of immediate attack upon life and limb, or life or limb of a close person”. This does not meet international standards on the subject.²⁵ The Criminal Code of FBiH does not contain a definition of crimes against humanity and of crimes of war. Rape or other forms of sexual violence committed in these specific circumstances are therefore not covered by the existing legal framework in FBiH. The criminal codes of RS and of the District of Brčko regulate “war crimes against civilians”,²⁶ sanctioning, among others

²⁰ See, *inter alia*, *Rape and Sexual Assault: A Legal Study*, Final Report of the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), doc. S/1994/674/Add.2 of 28 December 1994, Annexe II, available at: <http://www.ess.uwe.ac.uk/comexpert/ANX/II.htm>; and Report McDougall, *supra* note 3, para. 102. For the obligation to adopt adequate domestic legislative measures see also: International Covenant on Civil and Political Rights (Arts. 2.2, 3, 7, and 10.1); Convention against Torture (Arts. 1, 2 and 5); and CEDAW, *General Recommendation No. 19*, *supra* note 3, para. 24.b.

²¹ 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.

²² ICTR, *Case Prosecutor v. Akayesu*, *supra* note 11, 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.

²³ ICTR, *Case Prosecutor v. Akayesu*, *supra* note 11, para. 688. In this sense see also Report McDougall, *supra* note 3, para. 25.

²⁴ See Article 183 of the Criminal Code of RS; Article 203 of the Criminal Code of FBiH; and Article 206 of the Criminal Code of the District of Brčko. Notably, the three criminal codes regulate also the offences of sexual violence against a helpless person; sexual intercourse with a child; and sexual intercourse by abuse of position.

²⁵ See, *inter alia*, ECtHR, *Case M.C.*, *supra* note 22, paras. 88-108 and 154-156.

²⁶ Article 148 of the Criminal Code of the District of Brčko; and Article 433 of the Criminal Code of RS.

“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.

16. The described situation on the one hand fosters impunity over past crimes, and on the other jeopardises the prevention of future violations. In fact, ending impunity for the perpetrators of past crimes, including torture, and rape or other forms of sexual violence is a circumstance pivotal, not only to the pursuit of justice, but to effective prevention.
17. In its concluding observations on BiH, the CAT expressed its “[...] serious concerns that the definition of war crimes of sexual violence in the Criminal Code is not consistent with the definition in international standards and in jurisprudence of international courts and that, in particular, articles 172 and 173 of the Criminal Code may result in impunity for such crimes”.²⁷ Accordingly, it recommended to BiH to “amend the Criminal Code to include a definition of sexual violence in accordance with international standards and jurisprudence related to prosecution of war crimes of sexual violence and remove the condition of ‘force or threat of immediate attack’ from the present definition. [...]”.²⁸ Along the same line, in the progress report for 2010 on BiH of the European Commission it is indicated that “[...] War crimes involving sexual violence have not yet been recognized in the Criminal Code in accordance with international standards. [...]”.²⁹
18. Amendments of domestic criminal legislation at the State level are discussed by the Criminal Code Implementation Assessment Team (CCIAT), an *ad hoc* body created for this purpose by the Ministry of Justice. Indeed, the discussion before the CCIAT represents only the first step of a much more complicated process that can lead to the amendment of legislation.
19. The potential amendment of the relevant provisions of the Criminal Code of BiH was considered by the CCIAT during a meeting held in the spring of 2011. While in principle the CCIAT expressed its support to the need of modification of the Criminal Code with regard to sexual violence, the concrete consideration of the matter was postponed because another issue was given priority (special investigative measures). At the end of July 2012, the Ministry of Justice declared that the analysis of this subject could be resumed by the end of 2012. In any case, even assuming that this will happen, it would still be an initial step of a longer process which could therefore last several months, if not years.

²⁷ CAT, *Concluding observations on BiH*, *supra* note 13, para. 9.

²⁸ *Ibid.*

²⁹ European Commission, *Bosnia and Herzegovina Progress Report for 2010*, doc. SEC(2010) 1331 of 9 November 2010, p. 18.

**Proposed items to be included in the List of Issues
(related to Art. 2.b, 2.f and 2.g in conjunction with Art. 1 of the Convention and General Recommendation N.
19 of CEDAW)**

- ▶ Please indicate which measures have been adopted or are envisaged to amend the existing criminal legislation on rape or other forms of sexual violence, both at the national and Entity level, in order to bring it into accordance with international standards, especially removing the condition of “force or threat of use of force”.

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

20. In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violation and, if found guilty, the duty to punish him or her.³⁰ 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 obligation to ensure the free and full exercise of those rights to the persons under its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of fundamental human rights.
21. Besides the trials carried out before the International Criminal Tribunal for the former Yugoslavia (ICTY),³¹ the main responsibility to investigate, judge and sanction those responsible for the grave violations committed during the conflict, including rape or other forms of sexual violence, lies on the

³⁰ See, *inter alia*, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity* (“UN Principles to Combat Impunity”), recommended by Commission on Human Rights Resolution 2005/81 of 21 April 2005, doc. E/CN.4/2005/102/Add.1 of 8 February 2005, Principle 1; Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, *Study on the phenomenon of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention*, doc. A/HRC/13/39/Add.5 of 5 February 2010, para. 140 (“Study on the phenomenon of torture”), paras. 146-155; Human Rights Committee (HRC), *General Comment No. 31, The Nature of the General Legal Obligation imposed on State Parties to the Covenant*, doc. CCPR/C/21/Ver.1/Add.13 of 29 March 2004, para. 18. In cases of rape or sexual violence, in particular against women, see, *inter alia*, Secretary-General, *In-Depth Study on All Forms of Violence against Women*, *supra* note 3, paras. 266-268; Inter-American Court of Human Rights (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 3, paras. 85-87.

³¹ Trials carried out before the ICTY will not be further analyzed and considered in this written information. On this subject see, *inter alia*, Amnesty International, *Whose Justice: The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 21, pp. 12-17. In general, it has to be pointed out that of the seven cases in the trial stage, six will be concluded in 2012. The trial of Radovan Karadžić is expected to finish in late 2014. Considering the recent arrest of Ratko Mladić and Goran Hadžić, the date of the judgement in these two cases will have to be assessed at an appropriate time. The appeals judgment in the Lukić and Lukić case is expected to be delivered in 2012, with a further five delivered in 2013, including in the two multi-accused cases of Šainović *et al.* and Popović *et al.* Appeals proceedings in three of the ongoing cases are expected to run into 2014, two into 2015 and finally those in the case of Prić *et al.* into 2016.

judicial system of BiH.³² Victims of rape or other forms of sexual violence during the war express deep dissatisfaction towards the work so far carried out by the BiH authorities. Problems regarding 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.³³

22. Even though a number of trials against persons accused of war crimes or crimes against humanity are pending or have been concluded before BiH tribunals, having in mind that the events concerned occurred almost 20 years ago, the pace of the overall process is far from satisfactory. The existence of the National Strategy for War Crimes³⁴ is often invoked by prosecutors to justify the lack of activity on specific cases that allegedly should be dealt within the next 7 to 15 years. It must be stressed that the implementation of the National Strategy for War Crimes has been judged by various international institutions³⁵ as extremely flawed and this, coupled with the age of many victims, is perceived by the latter as an indication that they will die without obtaining justice and redress.
23. In the 2010 progress report on BiH of the European Commission it was pointed out that “implementation of the national war crimes strategy was severely delayed and remained minimal. [...] the estimated total number of untried cases remains high (over 10,000). *Little has been done to implement the 2008 National War Crimes Strategy to reduce the backlog of cases and witnesses protection mechanisms are insufficient. Further steps are needed to strengthen the capacity to deal with war crimes cases, in particular by improving the functioning of cantonal and district courts and to ensure adequate financial resources*”.³⁶ Furthermore, the Commissioner for Human Rights of the Council of Europe expressed deep concern for the “[...] reports indicating that currently the justice systems in both Entities, including the cantonal and district courts and prosecutors’ offices, appear to face serious obstacles in trying war crime cases. Many obstacles are practical, such as limited prosecutorial resources, lack of necessary expertise and lack of witness protection. There also appear to exist obstacles related to the application of different criminal codes throughout Bosnia and Herzegovina, a lack of willingness of the police to investigate crimes, and the failure of prosecutors to

³² See Report McDougall, *supra* note 3, paras. 91-94. The obligation to investigate, judge and sanction those responsible for rape or other forms of sexual violence is enshrined also, among others, in Article 4 of the Declaration on the Elimination of Violence against Women; Articles 5, 7 and 12 of the Convention against Torture; Resolution 1325 (2000), *supra* note 3, para. 11; and Resolution 1820 (2008), *supra* note 3, para. 4. See also the principles affirmed by the CEDAW in the case *Karen Vertido v. The Philippines*, views of 16 July 2010, para. 8.8.

³³ On these issues see the recommendations addressed to BiH from the Working Group on Universal Periodic Review, *supra* note 21, No. 67, 68, 72, 77 and 80. On the drawbacks of prosecution of war crimes in BiH (with particular reference to the situation in RS), see, *inter alia*, Human Rights Watch, *A Chance for Justice? War Crime Prosecutions in Bosnia’s Serb Republic*, March 2006, available at: www2.ohchr.org/english/bodies/hrc/docs/ngos/hrw-chanceforjustice.pdf.

³⁴ On 29 December 2008 the Council of Ministers of BiH adopted the National Strategy for War Crimes. Among other things, the strategy establishes that the most complex crimes (i.e. mass crimes) will be dealt with as a matter of priority within 7 years and the prosecution of other crimes will be dealt with within 15 years from the adoption of the strategy.

³⁵ See in particular Organisation for Security and Cooperation in Europe (OSCE) – Mission in BiH, *Delivering Justice in BiH – An overview of War Crimes Processing from 2005 to 2010*, May 2011, available at: http://www.oscebih.org/documents/osce_bih_doc_2011051909500706eng.pdf.

³⁶ European Commission, *Progress Report on BiH for 2010*, *supra* note 29, pp. 13 and 21.

make use of available evidentiary sources. The Commissioner is concerned by reports indicating the existence of a serious backlog of unresolved court cases in the country, amounting to almost two million. Of this backlog 160,000 are unresolved criminal cases; among them it has been estimated that *between 6,000 and 16,000 are unresolved war-related crimes cases, at different stages of prosecution, registered in all 13 jurisdictions of the country*.³⁷ With regard to the National Strategy for War Crimes, the Commissioner for Human Rights expressed his concerns for “reports indicating that limited progress has been made in its implementation, mainly due to lack of political will, insufficient coordination between the various justice sector institutions at the State level, in the Entities and the Brčko District, and of funds for its implementation”.³⁸

24. According to official data on the implementation of the National Strategy for War Crimes,³⁹ the pace of the latter remains slow. This must be coupled with the fact that the number of judges sitting at the Court of BiH decreased in 2012. With regard to the two remaining international judges sitting at the Court of BiH, one left on 20 July 2012 and the other is expected to leave on 7 September 2012. As a matter of fact, the envisaged appointment of two national judges as replacement for the departed international judges did not take place on time because of interim financing arrangements. With regard to prosecutors, a gradual leaving of international prosecutors working at the Special Department for War Crimes (SDWC) commenced with the departure of the first two prosecutors respectively on 29th February and 31st July 2012. The departure of the remaining prosecutor is scheduled to take place on 31st December 2012. Associations of women victims of rape or other forms of sexual violence during the war have publicly expressed their serious concerns because of the departure of international personnel from the Court of BiH and the Prosecutor’s Office of BiH, as this will expose investigations and ongoing trials to further delays and to a substantive increase in the already existing instances of politicization.
25. This overall climate of impunity is particularly evident with regard to trials concerning people accused of rape or other forms of sexual violence committed during the war. It results that at 2012 those convicted before the Court of BiH are little more than 30.⁴⁰ This number is alarmingly low, especially considering that the estimated number of persons who were raped or otherwise sexually abused during the war ranges between 20,000 and 50,000.⁴¹ This situation fosters an overall lack of trust

³⁷ Report Hammarberg, *supra* note 4, paras. 132 and 133.

³⁸ *Ibid.*, paras. 136 and 184. See also para. 189, whereby the Commissioner recalls the authorities’ obligations arising notably from Articles 2 and 3 of the European Convention on Human Rights. Along the same line, see also United States State Department, *2010 Human Rights Report: Bosnia and Herzegovina*, p. 11: “Despite local and international efforts to prosecute war crimes, many lower-level perpetrators remained unpunished, including those responsible for the approximately 8,000 persons killed in the Srebrenica genocide and those responsible for approximately 13,000 to 15,000 other persons who are missing and presumed to have been killed during the 1992-95 war”. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>.

³⁹ See in particular, Section I and II of the Court of BiH and Special Departments of the Prosecutor’s Office of BiH, *The Registry Quarterly Report – March 2012*, available at: [http://www.registrarbih.gov.ba/files/docs/MARCH_2012_QUARTERLY_REPORT_\(2\).pdf](http://www.registrarbih.gov.ba/files/docs/MARCH_2012_QUARTERLY_REPORT_(2).pdf).

⁴⁰ Šoštarić M., *Living in the Shadows: War Victims and Gender-Sensitive Truth, Justice, Reparations and Non-Recurrence in Bosnia and Herzegovina*, Impunity Watch, Sarajevo, August 2012.

⁴¹ *Supra* para. 3 and note 4.

towards authorities on the side of victims of gross human rights violations and their representative associations.

26. In its concluding observations on BiH the CAT declared to be gravely concerned “[...] that taking into account the number of such war-time crimes, the number of cases prosecuted so far by Bosnia and Herzegovina judiciary is extremely low and local courts still face serious obstacles in prosecuting war crimes cases. [...]”.⁴² In this sense, it urged BiH to “[...] fight impunity by ensuring prompt and effective investigation into all allegations of war-time crimes, prosecuting and punishing the perpetrators by appropriate penalties commensurate with their grave nature. [...]”.
27. Along the same line, in the progress report for 2010 of the European Commission it was pointed out that “the number of prosecuted war crimes involving cases of sexual violence remained low. Sustained efforts are needed to guarantee successful investigations and prosecution, as well as witness protection and psychological support for victims”.⁴³
28. Impunity related to war-time rape was also one of the main concerns expressed by the Special Representative of the Secretary-General on Sexual Violence in Conflict after her visit to BiH in November 2010. Indeed, she highlighted that “the process of pursuing justice has been painfully slow. [...] The conviction rate for sexual violence is roughly 10 percent lower than for other crimes (81% if suspects indicted for sexual violence are convicted: for crimes of a non-sexual character, a guilty verdict is rendered in 92% of cases)”.⁴⁴
29. The above mentioned concerns have been echoed also by the Commissioner for Human Rights of the Council of Europe, who referred to the “[...] failure of the authorities of Bosnia and Herzegovina to fulfil their international obligations to effectively prosecute war-related crimes of sexual violence, and to provide adequate protection and reparation to the victims of these crimes. The Commissioner has noted with serious concern that many perpetrators of war-related crimes of sexual violence enjoy impunity and often live in the same communities as their victims. There are no reliable statistics on the number of unresolved cases of war-related crimes of serious sexual violence. However, there are reports indicating that the number of cases prosecuted so far is extremely low compared to the alleged number of the acts of these crimes that amounts to several thousand. [...]”.⁴⁵ In this vein, he urged the authorities of BiH to undertake all necessary measures to ensure that the war-crimes of rape or other forms of sexual violence are effectively investigated and prosecuted, so as to enable the victims to have access to justice and to adequate reparation. This should also enable the victims who wish to return to their pre-war homes to do so in safety and without fear.⁴⁶

⁴² CAT, *Concluding Observations on BiH*, *supra* note 13, para. 12.

⁴³ European Commission, *BiH 2010 Progress Report*, *supra* note 29, p. 14.

⁴⁴ Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, *supra* note 15, para. 4.

⁴⁵ Report Hammarberg, *supra* note 4, paras. 156-157. In general, on the problem of impunity for war crimes see *ibidem* paras. 132-133 and 136.

⁴⁶ *Ibid.*, para. 193.

30. Numerous are the cases where victims of rape or other forms of sexual violence or their representative associations report having submitted to BiH authorities detailed complaints indicating the identity of those responsible for war crimes or crimes against humanity and even having provided indications on where these people can be found. Notwithstanding, little or no progress in the investigation and prosecution of those responsible has been registered and in some cases those accused are free or have managed to escape.
31. Among many examples that can be quoted is that of the former mayor of the town of Višegrad, Mr. Miladin Miličević, who, during the war, was a member of the crisis staff and the commander of the 4th Dobrunska Brigade in Višegrad. The Association of Women-Victims of War, through its President, has denounced on a number of occasions before the Prosecutor's Office of BiH the responsibility as a high ranking commander of Mr. Miladin Miličević for the crimes, including sexual abuses, committed in the town of Višegrad by people who were under his control.⁴⁷ 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.⁴⁸
32. Another instance is that of a woman assisted by *Vive Žene* Tuzla, who was raped during the conflict in the detention facility of Bosanski Šamac.⁴⁹ This lady identified the person responsible for her rape and accordingly informed without delay the Prosecutor's Office and the competent court. In 2008 she rendered a formal statement and she was requested to identify the perpetrator through a photo, which she did. Between 2008 and the end of 2010 she did not receive other information on the progress and results of the investigation. She knows that the case is with the Prosecutor's Office of BiH that, however, explained her that due to the huge backlog, it can take a long time before her case is dealt with. In this sense the prosecutor proposed to the lady to transfer the case to a local court (Doboj) in order to speed up the proceedings. However, the BiH Court decided that the case shall remain with the Prosecutor's Office of BiH. Accordingly, the victim contacted again the Prosecutor's Office of BiH, requesting information on the development of the investigation and she was notified that, as her case is not considered to attain the "priority level" under the National War Crimes Strategy, it will be dealt with "within the next 15 years".⁵⁰ This information caused a deep shock and sense of frustration to the lady, who fears to die without ever having seen justice done.
33. Another instance referred by the Association of Women-Victims of War is that of Mr. V. P., against whom complaints for war crimes and crimes against humanity, including rape, were filed. The accused usually

⁴⁷ The Association of Women-Victims of War has made public its accusations to Mr. Miladin Miličević on a number of occasions. See, *inter alia*, <http://genocideinvisegrad.wordpress.com/2009/08/24/crisis-committee-visegradkrizni-stab/>.

⁴⁸ On the problems related to the lack of regular information to victims and their representative associations, see *infra* para. 44.

⁴⁹ Due to security and privacy reasons, certain victims of rape or other forms of sexual violence during the war who accepted to render their testimony for this written information to the CEDAW expressly requested that their identity is not disclosed to the wider public. In the present document, letters are used to designate the persons concerned. Their full names could be disclosed, upon request, to the CEDAW, given that guarantees are provided that these data will not be made public in any way.

⁵⁰ See *supra* para. 22 note 34.

resides in Serbia or Russia. However, in 2010 some victims of war crimes saw him in Višegrad, BiH. Accordingly, the Association of Women-Victims of War immediately contacted the Prosecutor's Office of BiH to notify it of the presence of the accused in BiH. Nevertheless, the reaction of the Prosecutor's Office of BiH was not prompt and it eventually gave an official reply according to which the accused was not available to the BiH police and judiciary. This episode certainly fostered a feeling of frustration among women victims of rape or other forms of sexual violence, as they sense that a different and more prompt reaction by domestic authorities could have led to the arrest of the accused.

34. Another outstanding example has been referred by a member of the team of *Vive Žene Tuzla* who in 2009 visited the premises of the ICTY. During the visit, the lady met a person in charge of the investigation of cases related to rape or other forms of sexual violence. The latter recalled to have collected around 35 statements by victims of rape or other forms of sexual violence back in 2003. Those statements were allegedly collected in the village of Salihovići in the municipality of Zvornik and they referred to cases of rape perpetrated in the detention facility of Liplje, where people were detained during the conflict and a considerable number of 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 has been judged and sanctioned. The victims on the other hand, often complain about this situation of impunity, although they have also submitted complaints 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 investigation of these cases and the potential beginning of the criminal proceedings.
35. Also the case of A. H. can be quoted. A. H. is a woman of Croat origin who was raped by three soldiers of the Bosnian Serb forces (VRS) in Ljubinje in August 1995. On the same occasion, at least other two ladies from the same village were subjected to sexual abuse by the same perpetrators. A. H. immediately reported the events to the local police, but this did not lead to any significant result. Around six years later, A. H. returned to the police asking which actions have been undertaken to identify, judge and sanction those responsible for her rape. On that occasion, the police officers answered her that she can "forget about the case" as the crime she denounced allegedly prescribed. The rape of A. H. must be seen in the context of a widespread or systematic practice of sexual violence and, as such, amounts to a crime against humanity. Pursuant to Article 19 of BiH Criminal Code, criminal prosecution and execution of a sentence are not subjected to the statute of limitations for criminal offences of genocide, crimes against humanity and war crimes, or for other criminal offences that, pursuant to international law, are not subjected to the statute of limitations. In any case, even applying the criteria concerning the statute of limitations pursuant to Article 14 of BiH Criminal Code, the rape reported by A. H. in 1995 could not be considered as prescribed in 2000. At the time of writing, A. H. has not obtained justice and none of those responsible for her rape has been judged and sanctioned. She lives in a very precarious state of health and in dire financial conditions.

36. The above-mentioned example must be read in connection with the existing practice of trying cases of rape committed during the war as ordinary crimes instead of war crimes. This happens often in particular before the courts in RS.⁵¹ This practice raises a number of issues, since victims feel discriminated and see that their captors and torturers get lighter sentences. Moreover, the fact that a case of rape committed during the war is not tried as a war crime but as an ordinary offence may also lead to the loss of the status as “civilian victim of the war” of the woman concerned, with obvious prejudices and harmful consequences. For instance, witnesses in such cases would lose their right to special protection and psycho-social support as it would not be considered a war crime trial. Finally, dealing with war-time rapes as ordinary offences represents a distortion of the events and ultimately does not contribute to the establishment of the truth and to the preservation of historical memory.
37. A similar example is that of the trial which took place before the Court in Banja Luka against three former members of the VRS charged, among others, with the rape and murder of a 19-year old woman which occurred in 1993. The three suspected perpetrators were identified and charged already in 1993. However, at the time they were acquitted and the family of the victim was never formally notified about the grounds for such acquittal. Almost ten years later the trial was resumed and the three accused (Mr. Miladin Trivić, Mr. Slobodan Bajić and Mr. Siniša Miložčić) were charged with rape and murder. Originally, rape had not been qualified as a war crime, but as an ordinary offence, and the qualification changed only after sustained pressure by the family of the victim and the associations. On 20 September 2010 Mr. Miladin Trivić and Mr. Slobodan Bajić were sentenced respectively to 15 and 8 years of imprisonment, among other, for the murder and rape of the above-mentioned young woman. It is noteworthy that Mr. Siniša Miložčić is currently living in Sweden and has acquired Swedish citizenship and has not been extradited to BiH or tried in the country whereby he is residing. He is therefore enjoying complete impunity.
38. Another similar example of the practice of trying war-time rape as an ordinary crime and the serious consequences that it brings along is that of G. T., who in March 1993 was subjected to rape in the suburb of Grbavica in Sarajevo by a member of the VRS. She immediately reported the events to the competent authorities, denouncing the identity of the person responsible. However, it is until 2007 that the proceedings in fact begun. G. T. was convened before the District Prosecutor’s Office in East Sarajevo whereby she repeated her statement about the events occurred in 1993. In March 2010 the Municipal Court in Sokolac convicted the perpetrator for ordinary rape and sentenced him to five years imprisonment. The Association Women-Victims of War expressed the view that the proceedings were carried out in violation of the existing law concerning competence and jurisdiction. It is their view that, Grbavica being a suburb of Sarajevo, the competent forum was the Cantonal Court in Sarajevo and not the Municipal Court in Sokolac. This first degree decision was upheld in December 2010 by the District Court of East Sarajevo. It is only when this second degree judgment was delivered to the victim that the latter went to share it with the Association Women-Victims of War, which by analysing the decision

⁵¹ See, *inter alia*, Balkan Investigative Reporting Network, *Republika Srpska courts shy away from war crimes*, 2011, at <http://www.bim.ba/en/50/10/2316/?tp=58>.

realised that the perpetrator had been charged with ordinary rape and, due to this, he had enjoyed a significant reduction in the sentence. This news caused a deep shock and a serious deterioration of the state of health of G. T. that was already precarious. G. T. should give her testimony in other ongoing trials related to war-crimes. However, this experience had such a deep impact and debasement on her, that she is now considering refusing doing so.

39. A further case that must be examined is that of Mr. R. S., against whom a complaint for war crimes and crimes against humanity, including rape, was submitted in 2005 by the Association of Women-Victims of War. The Trebinje Prosecutor's Office conducted an investigation, but the members of the association have not been regularly informed about the developments of the investigation and have not been closely associated to the latter.⁵² Only on 7 October 2011, the association gathered the information (and not through the prosecutor, but through the media), that the Trebinje District Court ordered one-month custody for the accused, who over the past six years lived in Foča. Seeing Mr. R. S. free over the past six years has been the source of particular frustration and trauma for victims of rape or other forms of sexual violence. On 17 May 2012 Mr. R. S. was eventually convicted by the District Court in Trebinje for rape and sentenced to 14 years imprisonment. However, instead of applying the provisions of the 2003 Criminal Code, Article 142, para. 1, of the Criminal Code of the SFRY was applied. In the judgment the Court stated that "at the time when the offence was committed, pursuant to Article 12 of the Constitutional Law for the Execution of RS Constitution, the Criminal Code of the SFRY was in force. It is necessary to apply this law in accordance with the principle of time relevance of criminal laws, because the law which has been brought later on is not milder towards the accused, and thus, this Court accepted the legal assessment of the stated criminal offense from the indictment, according to which this is a case of war crime against civilian population from Article 142 paragraph 1 of the Criminal Code of SFRY".
40. The application of the SFRY Criminal Code instead of the 2003 Criminal Code is contrary to the principles affirmed by the Constitutional Court of BiH in the leading case *Maktouf* (AP/1785/06 of 30 March 2007) as well as to the recommendations formulated by a number of international institutions.⁵³ In fact, in practice this means that persons convicted of war crimes before different courts may receive widely divergent sentences, taking into account that the SFRY Criminal Code prescribes lower mandatory maximum and minimum penalties in war crimes cases than the 2003 Criminal Code. The minimum sentences prescribed by the 2003 BiH Criminal Code for genocide, crimes against humanity, and war crimes is 10 years' imprisonment, while the maximum sentence is 45 years' imprisonment. The SFRY Criminal Code prescribes a minimum sentence of 5 years' imprisonment and a maximum sentence of 15 years' imprisonment or death, which could be commuted to 20 years' imprisonment.
41. The overall problem related to impunity is further aggravated by instances of flight of war crimes

⁵² See also *infra* para. 44.

⁵³ (OSCE) – Mission in BiH, *Delivering Justice in BiH – An Overview of War Crimes Processing from 2005 to 2010*, *supra* note 35, pp. 19, 48 and 70-74.

perpetrators occurred during the trials or even while those already convicted were serving their sentences. In fact, it is not infrequent that BiH authorities fail to ensure that persons indicted with or convicted for, crimes against humanity or war crimes do not flee. At present, a number of persons indicted before the BiH War Crimes Section of the BiH Court in Sarajevo are at large.⁵⁴ Moreover, people already convicted, managed to escape before being brought to jail or shortly afterwards.⁵⁵ Allegedly, the fact that often those indicted await trial and those sentenced serve their term of imprisonment in their home town puts them in a position of undue advantage, which in some cases has resulted in their escape from prison.⁵⁶

42. In this sense the example of Mr. Velibor Bogdanović can be referred. On 29 August 2011 the latter was sentenced by the Court of BiH *in absentia* to six years in prison for crimes against civilians committed in Mostar in 1993. After Mr. Bogdanović was not found at the address given to the Court of BiH, the latter requested and obtained the issuing of an international arrest warrant.⁵⁷ On 2 August 2012 the Appellate Chamber of the Court of BiH confirmed the first instance verdict.⁵⁸ However, Mr. Bogdanović remains nowhere to be found. The case of Mr. Bogdanović is not isolated, but rather seems to be part of a common pattern.⁵⁹
43. A further problem that must be stressed is that, despite the adoption of some measures,⁶⁰ BiH failed to carry out a comprehensive programme of vetting, and in certain communities perpetrators of war crimes still hold high positions in public institutions. In this sense, the Special Representative of the Secretary-

⁵⁴ Among others, Mr. Jakov Duvnjak (charged with war crimes against civilian population in Kraljeva Sutjeska); Mr. Milsav Gavrić (charged with crimes against humanity and genocide in Srebrenica); Mr. Ivan Hrkać (charged with war crimes against prisoners of war and civilian population in Siroki Brijeg); Mr. Jovo Jandrić and Mr. Slobodan Pekez (charged with war crimes against civilian population in Jajce); Mr. Damir Lipovac (charged with war crimes against civilian population in Derventa); Mr. Marinko Marić (charged with war crimes against civilian population in Capljina); and Mr. Novak Stjepanović (charged with crimes against humanity in Bratunac).

⁵⁵ In the sense, the Association of Women-Victims of War expresses its concern at the new law on annual leave and privileges (Official Gazette of BiH No. 20/2012) as it is feared that this piece of legislation may unduly advantage people convicted for war-time sexual crimes and further facilitate instances of flee-

⁵⁶ Among others, two instances can be here recalled. In the case of Mr. Momir Savić, on 3 July 2009 he was sentenced to 18 years' imprisonment for crimes against humanity (persecution, murder, deportation, imprisonment, rape and other inhuman acts) by the War Crimes Section of the BiH Court. On 21 May 2010 the Appellate Chamber reduced the sentence to 17 years of imprisonment and ordered to keep Mr. Savić into custody until the moment he was sent to prison to serve his sentence. Indeed, Mr. Momir Savić had been released from custody by the Trial Chamber since 2008 and was allegedly obliged to report to the Višegrad Police Station every day. Nonetheless, and in spite of the fact that victims and the Prosecutor had repeatedly pointed out that there was a risk of escape, Mr. Momir Savić managed to escape one day before the Appellate Chamber rendered its judgment and he is currently at large. In the case of Mr. Dušan Janković who escaped on 21 December 2010, while a verdict against him of 27 years of deprivation of liberty for crimes against humanity was pronounced. On 24 February 2012, on the occasion of the beginning of the retrial, Mr. Dušan Janković eventually appeared before the Appellate Chamber of the Court of BiH and was eventually taken to a detention facility.

⁵⁷ See, among others, Balkan Investigative Reporting Network, *Warrant Issued over Velibor Bogdanović*, 2011, at: <http://www.bim.ba/en/285/10/33223/>.

⁵⁸ See, among others, Balkan Investigative Reporting Network, *Verdict against Bogdanović Confirmed*, 2012, at: <http://www.bim.ba/en/333/10/35571/>.

⁵⁹ Among others, see Balkan Investigative Reporting Network, *Runaway Indictees Undermine Bosnian Justice*, 2008, at: <http://www.bim.ba/en/113/10/9785/>.

⁶⁰ Notably, compared to the past, there is now a more serious system to verify the war-time past of people applying for vacant positions at the BiH Prosecutor's Office or the Court of BiH and also at the entity level. This is certainly a positive development.

General on Sexual Violence in Conflict recommended that “a system of screening individuals in public service based on their war record is also needed to ensure that perpetrators are not integrated into the police or other branches of the government”.⁶¹ On his side, the Commissioner for Human Rights of the Council of Europe highlighted that “[...] despite the vetting process that was carried out by the UN International Police Task Forces in the late 1990s, there is still a certain number of active law enforcement officers who are suspected of having committed war-related crimes”.⁶² While the fact that war criminals continue to hold public offices is detrimental to the whole BiH society, this situation is likely to produce a tremendous impact on victims of rape or other forms of sexual violence, fostering their sense of humiliation, frustration and defencelessness. It has been pointed out that in some cases perpetrators of war crimes and crimes against humanity continue holding public offices, in particular within institutions that are in charge of ensuring the payment of monthly disability pensions to victims or to conduct the assessment of their condition as civilian victims of war and to recognize them the status as such. One particularly delicate situation has been reported to exist in RS. In many cases victims of violence refrained from submitting their documentation to obtain the disability pension as victims of war, as they feared that it could be evaluated by the very perpetrators of the crimes they were subjected to or that the people working at the Ministry could disclose their identity or personal details to perpetrators. In Prijedor, a high ranking officer of the Department of Veteran’s and Disabled Care – the institution competent for assessing the status of civilian victims of war – who is in charge of interrogating prisoners, allegedly inflicted torture and inhuman and degrading treatment on detainees in the detention camps of Omarska and Keraterm.

44. Finally, almost all the associations subscribing this written information continue to experience serious problems in accessing information concerning their cases and in communicating with prosecutors. Allegedly, contacts between victims of rape or other forms of sexual violence during the war, their representative associations and prosecutors are poor or non-existent, thus exacerbating feelings of frustration and marginalization. Despite the recommendations of international human rights mechanisms and the requests put forward by victims, their relatives and their representative associations to be associated as closely as possible to the investigative stage,⁶³ at September 2012 no regular mechanism of information on the process of investigation has been established. For women that have been waiting for justice over the past 20 years, this is certainly a source of additional stress and distrust towards authorities.

⁶¹ *Ibid.*. Also the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) stressed that “in many cases perpetrators continue to hold office, often in the same communities where victims and their families live. At times the perpetrators still hold high-level offices. This constitutes a permanent threat and intimidation for the victims. Measures of vetting should be improved and/or systematized. When such measures have been taken in the past, it is not clear whether those identified as perpetrators have been dismissed from public offices, including the police force and public companies” (WGEID, *Report on the Mission to BiH*, doc. A/HRC/16/48/Add.1 of 16 December 2010, para. 69).

⁶² Report Hammarberg, *supra* note 4, para. 143.

⁶³ In this sense see WGEID, *Mission to BiH*, *supra* note 61, para. 63. In this sense see, among others, Principle 16 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, and WGEID, *General Comment on the Right to the Truth in relation to Enforced Disappearances*, 2010, para. 3.

**Proposed items to be included in the List of Issues
(related to Art. 2.c, 2.f, and 5.a in conjunction with Art. 1 of the Convention and General Recommendation N. 19 of CEDAW)**

- ▶ Please provide up-dated statistical information on the investigation and prosecution of war-time rape and other crimes of sexual violence.
- ▶ Please inform on which progresses have been made in implementing the National War Crimes Processing Strategy with the aim of addressing the serious backlog of unresolved war-related cases, including war-time rape.
- ▶ Please indicate which measures have been adopted to ensure that cases of war-time rape are not tried as ordinary rape.
- ▶ Please refer which measures have been adopted to ensure that, in war-related cases, judicial authorities at all levels apply the 2003 Criminal Code instead of that of the SFRY.
- ▶ Please provide information on which measures have been adopted to ensure that persons indicted with or convicted for, crimes against humanity or war crimes do not flee, and, in case of flight, are secured to justice within the shortest delay and sanctioned accordingly.
- ▶ Please detail which measures have been adopted to conduct a comprehensive programme of vetting.
- ▶ Please indicate which measures have been adopted to ensure the establishment of a mechanism of regular information on the process of investigation within the prosecutors' offices with regard to victims of rape or other forms of sexual violence.

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

45. Victims of rape or other forms of sexual violence during the war continue struggling with the lack of comprehensive and adequate witness protection measures as well as the lack of appropriate programmes of psychological support before, during and after testifying at war crimes trials. Witness protection is regulated by the Law on Protection of Witnesses under Threat and Vulnerable Witnesses (Official Gazette of BiH No. 21/2003) and the Law on Witness Protection Programme (Official Gazette of BiH No. 29/2004). Under this legal framework, the obligation to protect witnesses at the pre-trial investigation and after the completion of the testimony lies with the Witness Protection Unit of the State Investigation and Protection Agency (SIPA), which was set up at the end of 2004. Support to witnesses in proceedings before the Court of BiH should be provided by the Witness Support Section (WSS). Courts at the district, municipal and cantonal level do not count with a comprehensive system of protection, even though since November 2010, some tribunals at the district and cantonal level adopted a number of measures to secure witness protection.⁶⁴ Nevertheless, the overall system remains deficient. 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.

⁶⁴ These measures have been funded by the United Nations Development Fund (UNDP). In this context, since 2010, departments of witnesses' support have been established within Sarajevo Cantonal Court and Prosecutor's Office; Banja Luka District Court and Prosecutor's Office. Between 2010 and 2011 more than 500 witnesses passed through these departments. Since 2012 similar departments have been opened before the District Court and the Prosecutor's Office in East Sarajevo and similar interventions are expected to take place within the Cantonal Prosecutor's Office and the Court in Bihac and the Cantonal Court and Prosecutor's Office in Novi Travnik/Travnik.

46. In this sense, among others, in its concluding observations of 2010, the CAT declared to remain “gravely concerned at the lack of adequate measures of witness protection and witness support before, during and after the trials, which have negative impact on the willingness and ability of witnesses to participate in investigations or to testify in proceedings. The Committee also expresses concerns over the reported cases of intimidation against witnesses and attempts at bribery by perpetrators, the insufficient support for witnesses by the competent authorities, such as the State Investigation and Protection Agency (SIPA) and the Witness Support Section (WSS)”.⁶⁵ Accordingly, it recommended BiH to “ensure that victims are effectively protected, not further distressed or pressurised to withdraw their testimony and that they are not threatened by alleged perpetrators, in particular by: a) Strengthening the capacity of the competent organs, in particular the SIPA and its Department for Witness Protection (OZS), and ensuring that they respect the right to privacy of the survivors and provide witnesses at serious risk with long-term or permanent protection measures, including changing their identity or relocation within or outside of Bosnia and Herzegovina; b) Giving more attention to the psychological needs of witness in order to minimise possible re-traumatization of survivors in court proceedings; and c) Ensuring that witnesses have appropriate means to travel to and from the court and providing escorts for their travel, as necessary”.⁶⁶
47. Other international human rights mechanisms have echoed the concerns and the recommendations of the CAT. For instance, the WGEID indicated that “more should be done to protect and offer assistance to victims and witnesses, in particular women. In particular, the programme for the protection of witnesses should be improved and expanded at the State level, and similar programmes should be created at the local level”.⁶⁷ In Resolution 1784 (2011) of 26 January 2011 on the protection of witnesses as a cornerstone for justice and reconciliation in the Balkans, the Parliamentary Assembly of the Council of Europe noted with deep concern that “in the region of the former Yugoslavia, several witnesses have been killed and numerous others have been intimidated, threatened or have had their identity revealed by people determined to obstruct the course of justice and conceal the truth. The Assembly regrets that, due to these threats, many witnesses finally decide not to testify because they fear for their lives or those of their families”.⁶⁸ Moreover, the Assembly reaffirmed that “witnesses have the right to be physically protected so that they can deliver their testimonies safely and free from fear. Furthermore, it considers that witnesses should be given support – including legal and psychological support – before, during and after the trial. [...]”.⁶⁹ Accordingly, it called on the authorities of BiH to, among others, “enact legislation to enable the State Agency for Investigations and Protection to provide witnesses protection programmes in all courts across the country and ensure that this Agency has adequate resources, both financial and human, to support witnesses during the investigation phase as well as during the trial and post-trial phase. Similar legislation should be enacted and adequate resources should be made available, in order to provide witness protection in criminal proceedings

⁶⁵ CAT, *Concluding Observations on BiH*, *supra* note 13, para. 17.

⁶⁶ *Ibid.*

⁶⁷ WGEID, *Report on the Mission to BiH*, *supra* note 61, para. 90 (e).

⁶⁸ Council of Europe, Parliamentary Assembly, Resolution 1784 (2011) of 26 January 2011, para. 4.

⁶⁹ *Ibid.*, para. 7.

before the courts in all Entities”.⁷⁰ Along the same line, in the report of the Special Representative of the Secretary-General on Sexual Violence in Conflict it is pointed out that “[...] many of the women who testified before the national court said they would never repeat the ordeal, due to the tendency to interrogate the conduct of the victim in ways that are humiliating and legally irrelevant. This is compounded by logistical hurdles, a lack of emotional support, and inadequate follow-up on the progress of cases. [...] the climate of impunity has thus become a climate of intimidation. [...] While the opportunity to testify has brought some solace, there is still no government-subsidised support system. Women are left, in the words of one survivor, to be ‘psychiatrists for each other’. Women’s groups advocate a dedicated police unit to investigate sexual violence, as well as more female police officers to serve as first points of contact between the survivor and the State”.⁷¹ On this issue the Commissioner for Human Rights of the Council of Europe expressed that the authorities in BiH “[...] have not taken sufficient steps to effectively guarantee the right of witnesses to life, to stop and prevent unjustified infringements to protect witnesses from acts of harassment and violence, and to enable them to participate in trials with dignity. In reported cases where witnesses have been threatened, the judiciary has not taken action to determine whether these threats are real or serious. Despite the explicit guarantees in the relevant laws relating to psycho-social support to vulnerable victims and witnesses, there is only one structure that provides such services in a sustainable manner, the Witness and Victim Section at the Court of Bosnia and Herzegovina. The Section was established in May 2005 and is equipped to protect witnesses during trials. The Commissioner is seriously concerned by reports indicating that, due to the fear for their physical integrity, an increasing number of witnesses are unwilling to testify in trials. Many suspects of war-related crimes enjoy impunity for such a long period of time that victims no longer believe that the trials can deliver justice. [...] Another major problem is the lack of systematic protection of witnesses in the war-related criminal proceedings at the Entity level. In some instances the Entity prosecutors avail themselves of services provided by SIPA. However, SIPA does not have sufficient resources to perform its functions to the extent needed for the successful protection of witnesses. The National War Crimes Processing Strategy adopted in 2008 addresses this problem, as it provides that SIPA shall be additionally staffed and equipped with material and technical resources. It further provides that basic and specialized training and education of officers in the field of witness protection will be organized and available”.⁷² Accordingly, he urged BiH authorities to “[...] implement the National War Crimes Processing Strategy in relation to the provision of adequate staff and equipment for the State Investigation and Protection Agency (SIPA) [...] and to investigate promptly all reported cases of threats and intimidation of witnesses, initiate criminal proceedings in such cases, and fully protect the security of the witnesses concerned”.⁷³ Finally, in the 2011 progress report on BiH the European Commission indicates that: [...] *the current legal framework on witness protection remains*

⁷⁰ *Ibid.*, para. 16.2.2.

⁷¹ Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, *supra* note 15, para. 4.

⁷² Report Hammarberg, *supra* note 4; paras. 140-142 and 143. In general, on the pitfalls in the system of protection of witnesses in war-related criminal proceedings, see *ibidem* paras. 138-145.

⁷³ *Ibid.*, paras. 191-192.

*fragmented and provisions for the protection of witnesses during and after the criminal proceedings are limited and largely inadequate. The lack of human and financial resources is an issue to be addressed”.*⁷⁴

48. All in all, the existing legal framework concerning witness protection is inadequate: among others, the existing law fails to articulate the Witness Protection Unit's operational autonomy within SIPA, and it does not contain detailed provisions on separation from the investigation, confidentiality of procedure and operations, and organisational autonomy from regular police.⁷⁵ Previous attempts to amend the existing law on witness protection failed. In August 2011 the BiH Ministry of Security formed a working group to put forward another draft law. At the time of writing, that is more than one year later, the mentioned draft has not passed.
49. There are numerous instances where victims rendering their testimonies during trials are subjected to some sort of open mockery and this brings no consequence whatsoever for those responsible, thus fostering a climate of impunity.⁷⁶ 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 summarised as follows: the lack of adequate protection of witnesses in cases of harassment and the subsequent failure to thoroughly investigate such instances and to judge and sanction those responsible; the general inadequacy of the manner in which protection of witnesses is granted; the material difficulties faced by witnesses; and the lack of adequate psychological support for witnesses before, during and after testifying.

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

50. An outstanding instance is that of P. C., who is a victim of sexual violence from a village located in the municipality of Foča. In 2009 P. C. was going to testify in the trial against Mr. Ranko Vuković and Mr. Momir Skakavac. Before the proceedings begun, P. C. received a phone-call from the legal representative of Mr. Ranko Vuković, who warned her to be careful with what she was going to say, to remember that she has a family and that nobody was going to protect her after she witnessed against Mr. Vuković. P. C. informed both SIPA and the Court of BiH 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 of BiH, but, to the knowledge of P. C. and her daughter, there has not been an investigation and no one has been sanctioned.

⁷⁴ European Commission, *2011 Progress Report on BiH*, doc. SEC(2011) 1206 of 12 October 2011, p. 13 (emphasis is added).

⁷⁵ Human Rights Watch, *Justice for Atrocity Crimes – Lessons of International Support for Trials before the State Court of Bosnia and Herzegovina*, New York, March 2012, pp. 29-31.

⁷⁶ On these issues see the recommendations addressed to BiH from the Working Group on Universal Periodic Review, *supra* note 21, No. 20 and 82. See also Report McDougall, *supra* note 3, para. 104.

51. Also the case of Mrs. Milojka Antić can be mentioned. In 1992 Mrs. Antić was detained in the prison-camp located in the village of Čelebići. In such facility Mrs. Antić was subjected to ill-treatment and rape. She was a witness at the trial before the ICTY against some of the perpetrators.⁷⁷ On 6 January 2009, immediately after the release of one of those sentenced (Mr. Hazim Delić), Mrs. Antić received a phone call from him, whereby she was threatened. In particular, Mr. Delić repeated that Mrs. Antić would “suffer much worse things than those she was subjected to in 1992”. As a consequence of this threatening phone call Mrs. Antić felt fear and deep distress. However, she duly reported the episode of harassment to the police in Višegrad. At the time of writing, she has never heard back from the police about the investigative steps undertaken or about the progresses of the investigation. To the knowledge of Mrs. Antić, Mr. Delić has not been questioned by the police about this episode.
52. Also the case of A. K. can be quoted. A. K. has been a witness at war crimes trials and is actively involved in supporting women victims of rape or other forms of sexual violence during the war. Between April and May 2012 she received messages on her mobile phone containing the following text “if you come to Prozor again, you will never come back”. In June 2012 A. K. received a threatening phone-call with similar contents. In the same month, when A. K. left to the village of Stolac and visit some victims of rape that she assists, A. K. received another text message on her mobile phone, reading “it is better for you to stop coming here”. A. K. did not formally refer these events to the police, due to the fear and disbelief in the effectiveness of the latter having in mind previous attacks suffered by the association, and the fact that – to her knowledge, some officers are very close to perpetrators of war crimes. However, A. K. informally reported these events to a friend who works as policeman in Mostar.
53. Further, there are several cases where those accused or their representatives have publicly disclosed the identity of protected witnesses, putting the life and personal integrity of these people at risk and causing serious re-traumatisation. To date, there seems to be only one indictment raised in this sense by domestic authorities. More must be done to prevent this kind of behaviours and to sanction them in a manner that is commensurate to the gravity of the crimes concerned.

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

54. It must be stressed that not only individuals, but also associations dealing with women victims of rape or other forms of sexual violence during the war are subjected to harassment and attacks.⁷⁸ One outstanding case is that of the association Sumejja Gerc in Mostar. This association works with survivors from the detention camp Vojno and numerous women who have been subjected to rape or other forms of sexual violence during the war. In the night of 26/27 January 2011, the building where the Association's offices are located (500 meters from the police Station in Potoci) was violently broken even though every part of the facility was secured with safety metal grilles. Nevertheless, the padlocks were broken off as well as the door of the association. Inside the office of the association's President's

⁷⁷ ICTY, Case *Prosecutor v. Mucić et al.* (case IT-96-21), judgment of 16 November 1998.

⁷⁸ See also *infra* para. 133 concerning the attack suffered in August 2012 by the Association of Women from Prijedor-Izvor.

documentation was dispersed, the drawers containing sensitive documentation were emptied despite the locked closet, and certain documentation was alienated. The Registry – Cartulary of women victims of rape from the Vojno concentration camp, the basic documentation of the association, its Statute and Rules of Procedure, press clippings, etc. were all taken away. Also alienated were four computers as well as the President's computer containing huge written and video materials which the association has been collecting for years. The computer from the facility for psychological counselling was also stolen as well as two computer boxes from the Educational Cabinet. The video projector, telephone and fax machines, photo camera were also taken, while the monitors, key-boards and the various computers' mouse were left behind. Also taken were a laptop, a voice recorder, and video tapes containing archive documentation and materials of the association, CDs with testimonies about crimes committed in Prozor and the Vojno area, i.e. the OTISCI documentary film about the sufferings in Vojno, a CD with the speech of Mr. Marko Radić condemning those who cooperate with Bosniaks taped in 1998 during the commemoration of the suffering of soldiers of the HVO and a voice recorder. A large LCD TV was taken from the Educational Cabinet and a small LCD TV. Most notably, the money (a total of 450 KM – approximately 231 Euros) which was in the association's premises was taken out of the drawer but left on the table. This episode was reported to the police station, but at April 2012 those responsible have not been duly identified, judged and sanctioned.⁷⁹ Indeed, between 2006 and 2010 Sumejja Gerc had suffered previous attacks against the office. Although every time the association reported the events to the police, those responsible have never been identified, judged and sanctioned. The association continues its work in a climate of fear and frustration, seriously damaged by the irreparable loss of testimonies and material and testimonial evidence which had been collected over the years. Many women whose testimonies about the violence suffered were among the stolen documents live in fear from the night of 26 January 2011 and this caused a serious psychological trauma to them.

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

55. In general, it has been pointed out by victims of rape or other forms of sexual violence who render their testimony in proceedings against war criminals that, even when they receive protection, this is only granted during the hearing in which they take part. Protection does not extend any further, thus exposing them to concrete security risks in the extremely sensitive phase immediately after the hearing. Moreover, some victims of rape referred to the fact that, when they go to render their testimony, they are not guaranteed the support of any legal representative unless they can pay for it. Indeed, given the delicacy of the subjects on which victims of rape or other forms of sexual violence are called to testify about, they often feel that they would be more confident having a legal representative by their side, who may support them particularly in the cross examination phase and make sure 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 on their own, the State should ensure that, when rendering their testimony, they are provided free legal aid.

⁷⁹ A letter of allegations on this episode has been sent on 17 February 2011 to the United Nations Special Rapporteur on Human Rights Defenders and copied also to the Special Rapporteur on Torture and to the Special Rapporteur on Violence against Women, its Causes and Consequences. To date, the association has not received any feedback from any of these special procedures.

56. In its combined fourth and fifth periodic reports to the CEDAW, BiH indicates that “in BiH there are NGOs that provide free legal aid [...] to women and particularly vulnerable groups of women such as women victims of war, trafficking, domestic violence and sexual abuse. [...]”.⁸⁰ In fact, some of the associations subscribing the present written information are among those NGOs providing free legal aid to women victims of war. These initiatives are laudable and certainly most welcome. However, this does not relieve the State from its international obligations. NGOs’ projects, even though hailed as positive, cannot replace the adoption of an integral State policy on the matter, supported by adequate legislation and practice. In fact, in April 2012 a draft law on this subject was submitted to the BiH Council of Ministers, adopted by the latter as a proposal, and forwarded to undergo the parliamentary procedure. Nevertheless, it has not been enacted to date and it does not figure among the priority items on the parliamentary agenda.
57. Moreover, concerns have been expressed also about the way witness protection has been organised 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.⁸¹ Four months before travelling to The Hague, while she was in Višegrad, Ms. Bakira Hasečić was summoned by the Ministry of Interior of RS to report to their premises. Once there, Ms. Bakira Hasečić was requested to release a statement and to sign a written copy of such statement. Ms. Bakira Hasečić refused to sign the statement. 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 RS and, accordingly, her identity had been disclosed. Ms. Bakira Hasečić perceived this as an attempt to intimidate her. Once in The Hague, she mentioned these events before the Court and Mr. Radomir Tanasković was removed from the case. However, so far, no thorough investigation on the disclosure of confidential information has been carried out by BiH authorities and those responsible for the leak of information have not been identified, judged and sanctioned.⁸²
58. In general, it has been reported that for those victims of rape or other forms of sexual violence who accept to render their testimony in court, support is almost non-existent and there is no adequate organisation to ensure confidentiality in these particularly delicate cases. For instance, it has been mentioned that witnesses who are waiting for their turn to give testimonies are often kept in a room together with the witnesses of the defence. This situation is highly uncomfortable and can be perceived

⁸⁰ *BiH Combined Fourth and Fifth Periodic Reports*, doc. CEDAW/C/BIH/4-5 of May 2011, para. 44.

⁸¹ ICTY, *Case Prosecutor v. Mitar Vasiljević* (Case IT-98-32), judgment of 25 February 2004 (Appeals Chamber).

⁸² Reference can also be made to the case of Mr. Milan Šušnjar who allegedly participated to the massacre committed on 14 June 1992 in Pionirska Street in Nova Mahala in the municipality of Višegrad, where about 65 civilians were burned alive. Members of the Association of Women-Victims of War have been accusing him for this crime and have been lobbying over the years for transferring his case from the East Sarajevo Court to the State Court of BiH (this eventually happened in 2008). Indeed, before the case was transferred, officers from the SIPA entered the house of one of the survivors of the massacre and took her to East Sarajevo to identify Mr. Milan Šušnjar, which she did. At the same time, the Association of Women-Victims of War denounced that Mr. Milan Šušnjar resides in France and in the past he managed to travel every year to Višegrad. After this information was formally reported to BiH authorities, Mr. Milan Šušnjar did not appear again in Višegrad. Members of the Association of Women-Victims of War consider that this can be due to a leak of information.

as a form of harassment that undermines the capacity of the witness to freely testify. Moreover, it has been reported by some women who testified as “protected witnesses” in trials concerning cases of rape or other forms of sexual violence, that they had the impression that, in fact, someone is actually observing them while they are rendering their testimony. In this sense, they mentioned that, after their appearance in court, they were told by members of the administrative personnel of the court that they “had been good”.

59. 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 RS. Members of the SIPA went to pick the lady up at her place and then handled her to members of the police of RS, who were in charge of escorting her to court. When the lady saw the uniform of the policemen of RS, she felt highly uncomfortable and fell in a state of shock. In fact, the officers were wearing crests with eagles and this reminded the lady of the symbol (eagles with a cross with four letters “S”) that was on the uniforms of members of the VRS who raped her during the war. This kind of incidents generates serious re-traumatisation of the victims, which could easily be prevented by taking a more victim-oriented approach.

4.4 The Material Difficulties Faced by Witnesses

60. 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,⁸³ and on the other hand, potential witnesses are notified that if they do not appear in court, they will be fined.⁸⁴ 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 Camp Detainees insisted, E. B. managed to ensure escort to and back from the court by members of the SIPA.
61. 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

⁸³ 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.

⁸⁴ 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”.

entered in a state of deep shock and stress, since she clearly could not appear in Court and, at the same time, she did not dispose of the means to pay the fine. The fact that a prosecutor's office summons a person who cannot move from bed to appear in court shows that there is an inadmissible lack of attention to the needs of witnesses and their situation, and a failure to consider the particular vulnerability of victims of rape or other forms of sexual violence.

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

62. Testifying at a trial can be an extremely traumatising experience for victims of rape or other forms of sexual violence. While it represents a crucial moment of catharsis and resilience, it does also encompass huge challenges and obstacles. In this light, it is essential that women victims of rape or other forms of sexual violence during the war who render their testimony at trial receive an adequate psychological support prior, during and after the hearings, and are in general treated with the utmost respect. On the contrary, as stressed in the past by Mrs. Margot Wallström, the Special Representative of the Secretary-General on Sexual Violence in Conflict, "indictments for rape often fail because judges do not find the witness credible, due inter alia to gender stereotypes. Resilient women are often perceived as less credible".⁸⁵
63. This assumption seems to be confirmed by an instance referred to as particularly disturbing by associations of women victims of war-time rape, namely the verdict of acquittal rendered by the Court of BiH in the case of Mr. Darko Dolić.⁸⁶ While the victims that rendered their testimonies before the Court are persuaded to have recognized the perpetrator because of physical characteristics (namely a scar on his stomach), the judges held that witnesses "demonstrated insecurity and inconsistency by altering their statements with regard to the identity of the perpetrator and they had a fleeting glance during the traumatic event or saw him 18 years after the incident".⁸⁷ Accordingly, the Court observed that it could not be concluded beyond any reasonable doubt that the accused committed the offence charged under the indictment and acquitted him. The first verdict was confirmed on 1 December 2011. This experience was perceived as re-traumatizing and especially frustrating by those who rendered their testimony in court and they are now completely diffident towards BiH authorities, especially because, despite their repeated requests in this sense, the Court failed to hear a key witness who, in their view, would have been in a position to clear all doubts on the identity of the perpetrator. To the victims of sexual abuse who took part to the trial, this experience suggested that BiH authorities would question their credibility and attach more weight to the representatives of those accused. Due to this court decision, victims from Prozor are very disappointed and most of them are not willing to be heard as witnesses in other cases.
64. Dissatisfaction has been expressed because of the fact that testimonies of victims of rape or other

⁸⁵ Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, 1 February 2011, para. 4.

⁸⁶ Court of BiH, Case *Prosecutor v. Darko Dolić*, judgment of 26 April 2011 (http://www.sudbih.gov.ba/files/docs/presude/2011/S1_1K_003433_10_Kr1_-_26_04_2011_-_Prvostepena_presuda_-_anonimizirana_-_eng.pdf).

⁸⁷ *Ibid.*, para. 148.

forms of sexual violence have been excluded by the authorities without any formal explanation. Victims in many cases have sent their statements about 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 Lelek⁸⁸ a woman victim of rape had submitted her statement to the Prosecutor's Office and expressed her will to testify. However, she was never called upon to do so by the court. The same happened to association's members who had submitted their statements on the violations suffered in the trial of Mr. Nenad Tanasković⁸⁹ and who were never contacted by the State Prosecutor's Office to testify during the trial without any explicit explanation for that.

65. In general, those willing to testify in war crimes' trials do not receive adequate psychological support by BiH authorities. In this context, as already pointed out, 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 creates re-traumatisation of the person concerned.⁹⁰ 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. The Witness and Victim Support Section of the Court of BiH is responsible for logistics and administrative tasks related to all witnesses involved in cases tried before Sections I and II of the Court of BiH. However, reportedly, at the State level, women witnessing 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 from State institutions to undergo this extremely delicate experience, which, if not properly handled, may cause further traumatisation. The situation is even more critical before cantonal, district and municipal courts, where no form of psychological support whatsoever is envisaged.
66. An example has been currently registered at the already mentioned trial against Mr. R. S.,⁹¹ accused of rape during the war. A lady who had been subjected to rape in 1992 by Mr. R. S. went to testify without receiving any psychological support prior the trial. When she entered the court-room and saw the perpetrator of the horrific crime after 20 years, she fainted.
67. The above shows that the protection and support of witnesses shall therefore be more victim-oriented. In this light, the provision of psychological support granted to victims of rape or other forms of sexual violence wishing to testify in court shall be envisaged from the earliest stages of the proceedings until after the conclusion of the trial. Over the past months some important developments must be referred, although it is crucial to highlight that the relevant initiatives have been launched by NGOs (namely Medica Zenica) in partnership with the Doboj Canton and Central Bosnia Canton Ministry of Justice and

⁸⁸ See *infra* para. 103 and note 145.

⁸⁹ 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).

⁹⁰ See Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are still Waiting*, *supra* note 21, pp. 24-29.

⁹¹ *Supra* para. 39.

local administrations.⁹² This does not relieve the State from its international obligations. NGOs' projects, even though most welcomed and so far definitely successful, cannot replace the adoption of an integral State policy on the matter, supported by adequate legislation and practice.

**Proposed Items to be included in the List of Issues
(related to Art. 2.c, 2.f, and 5.a in conjunction with Art. 1 of the Convention and General Recommendation N. 19 of CEDAW)**

- ▶ Please provide information on the measures taken to address deficiencies in the witness protection and support services in light of the recommendations made by several international mechanisms.
- ▶ Please indicate the status of the new law concerning witness protection and support that is being drafted by the working group formed by the BiH Ministry of Security in August 2011.
- ▶ Please refer which measures were adopted to investigate, judge and sanction those responsible for threats against witnesses at war crimes trials, or disclosure of the identity of protected witnesses.
- ▶ Please report on the measures taken to investigate, judge and sanction those responsible for instances of harassment or attacks against associations working with women victims of rape or other forms of sexual violence during the war.
- ▶ Please indicate which concrete measures have been adopted by the State to guarantee material and psychological support prior, during and after trial to women victims of sexual abuse during the war testifying at war crimes trials.
- ▶ Please indicate the status of the draft law on free legal aid submitted in April 2012 to the Council of Ministers and on the measures adopted to ensure that free legal consultancy is guaranteed to witnesses at war crimes trials.

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

68. The lack of a comprehensive programme of compensation and reparations for victims of gross human rights violations during the war and their families has been denounced by many international human rights mechanisms that have repeatedly recommended to BiH to amend its legislation and fulfil its international obligations. Over the past years a number of legislative initiatives have been launched, sometimes involving representatives of civil society, in order to bring BiH legal framework in line with international standards and to finally guarantee the victims' rights to justice and redress. Despite several pledges by BiH authorities that the mentioned initiatives were about to be approved and implemented, to date none of them has in fact seen the light of the day. For some of these initiatives, this has been the case over the past seven or eight years. Associations of women victims of rape or other forms of sexual violence during the war see the time passing, continue facing the harsh consequences of the harm suffered, and experience growing disillusion and scepticism.

⁹² On 19 December 2011, Medica Zenica in partnership with the Ministry of Justice of Zenica-Doboj Canton and Administration of Zenica-Doboj Canton (within a project supported by UN Women and Medica Mondiale), formally signed the so-called "Protocol on Mutual Cooperation of Institutions and NGOs in Providing Support to Victims/Witnesses in War Crimes Cases, Sexual Violence and other Forms of Crime". This led to the establishment of the Network to support victims/witnesses in the Zenica-Doboj Canton. The Network provides support to victims/witnesses before, during and after their testimony. Since June 2012 a similar Protocol was signed and network launched in Central Bosnia Canton.

5.1 The Draft National Strategy on Transitional Justice

69. In its combined fourth and fifth periodic reports to the CEDAW the State mentions that “at the State level, the process of developing the Strategy in the field of transitional justice, which will also include the issue of women civilian victims of war and victims of torture, has started. The working group is comprised of representatives of: Ministry of Human Rights and Refugees, Ministry of Justice, the Institute for Missing Persons of Bosnia and Herzegovina, Entities’ Ministries of Justice, Ministry of Labour and Social Affairs of the Federation of BiH, Ministry of Labour and Veterans and Disabled Protection of Republika Srpska, Brčko District of BiH Government, and nongovernmental organisations”.⁹³
70. In fact, since 2010 the United Nations Development Programme (UNDP) has been providing technical, administrative and logistical support to an experts’ working group charged with the drafting of a National Strategy on Transitional Justice.⁹⁴ Both the working document of the strategy and the related action plan for its implementation were finalised in late 2011, but in the form of a draft due to the absence of representatives of RS from the endeavour. On the occasion of a meeting held on 26 and 27 April 2012 before the authorised members of the Joint Parliamentary Human Rights Commission, members of the experts’ working group presented the working document and the related action plan.
71. In June 2012, two years after beginning their work, on the occasion of a public roundtable, members of the experts’ group illustrated the draft Transitional Justice Strategy.⁹⁵ The participants to the event agreed to fully support the process of dialogue on the strategy at all levels; and invited all government institutions to promptly engage in the process of dialogue on the issues raised in the working document containing the Transitional Justice Strategy. The latter was expected to be presented for adoption to the parliamentary assembly during the summer. At the time of writing, this has not happened yet. Associations of victims of rape or other forms of sexual violence during the war are expressing increasing perplexities with regard to the overly complicated process and the slow pace of approval of the transitional justice strategy, especially given that almost 18 years have passed since the conclusion of the conflict.
72. In any event, it is worth recalling that, even if the strategy is eventually adopted, fact-finding processes, although crucial for the establishment of the truth, can never replace access to justice and redress for victims of gross human rights violations and their relatives. In this sense, among others, the Working Group on Enforced or Involuntary Disappearances (WGEID) indicated that “victims could benefit from a truth

⁹³ *BiH Fourth and Fifth Combined Reports to CEDAW, supra note 80, para. 303.*

⁹⁴ Representatives of a number of associations submitting the present document took part to the works of the experts working group. In this sense, see the information provided for each organisation *infra* section 9.

⁹⁵ See, *inter alia*, Balkan Investigative Reporting Network, *Bosnian State Strategy for Victims Presented*, 21 June 2012, at <http://www.bim.ba/en/327/10/35343/>.

process, but not as a substitute of justice”.⁹⁶ In the same sense, in a recent report the Special Rapporteur on Torture clearly pointed out that “by itself, a commission of inquiry is never sufficient to fully satisfy a State’s obligations under international law with regard to torture and other forms of ill-treatment. This framework demands that States (and, in default, the international community) ensure truth, justice, reparations for victims and guarantees of non-repetition through deep institutional reform. A policy or practice designed to fulfill one of those objectives to the detriment of others would violate well-established legal obligations. Commissions of inquiry should therefore be considered complementary to other mechanisms, including criminal investigations and prosecution of perpetrators, the provision of reparations to victims, and extensive reforms to institutions, including the vetting of public officials. [...]”.⁹⁷

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

73. Another initiative that is particularly relevant for women victims of rape during the war was launched in 2010. It consists in the drafting of a Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence in BiH (2013-2016). Such initiative is coordinated by the United Nations Population Fund (UNPFA) and the BiH Ministry of Human Rights and Refugees.⁹⁸ The finalisation of the draft programme was initially expected by the end of 2011 and was then postponed to the “first months” of 2012. It is now alleged that the draft should be finalised by November 2012 and then submitted to the Council of Ministers of BiH for approval.
74. In the meantime, in April 2012 two meetings were held, namely one of the focus’ groups and one of the experts’ working group charged with drafting the programme. Based on the inputs gathered from different actors during the discussion, the experts’ group advanced in the drafting process. Accordingly, there are now clearly defined strategic goals and measures, even though the draft admittedly still requires some work to better define some sections of the document. In this sense, the experts’ working group held four more consultations at the local level (Doboj/Derventa, Tuzla/Brčko, Srebrenica/Bratunac and Zenica) and is planning to hold three more consultative meetings in September 2012 (Trebinje, Bijeljina and Banja Luka) to complete the overall process of consultations. However, it must be specified that at the time of writing, while representatives of associations of victims of gross human rights violations from RS as well as representatives of local authorities from RS started to participate to the process, representatives of the government of RS have not yet done so, thus undermining the chances

⁹⁶ WGEID, *Report on the Mission to BiH*, *supra* note 61, para. 38. See also para. 82. On the subject the Commissioner for Human Rights on the Council of Europe in his *Report on the Mission to BiH*, *supra* note 12, has pointed out that “genuine inter-ethnic reconciliation in the former Yugoslavia, including Bosnia and Herzegovina, cannot be achieved without justice. Justice is not only retributive, in the sense that it is aimed to punish through fair proceedings those who have committed gross human rights violations and serious violations of humanitarian law. It is also, or above all, preventive, aiming to ensure that all people in the region come to terms with the past, and live in peace in a cohesive, pluralist democratic society. Justice means, moreover, provision of adequate, effective and proportionate reparation to comfort and heal the wounds of all victims of the war without any distinction” (para. 125).

⁹⁷ Special Rapporteur on Torture, *Annual Report for 2011*, doc. A/HRC/19/61 of 18 January 2012, paras. 69 and 70.

⁹⁸ Representatives of a number of associations submitting the present document are taking part also to this exercise. In this sense, see the information provided for each organisation *infra* section 9.

of success of the overall exercise.

5.3 The Draft Law on the Rights of Victims of Torture and Civilian Victims of War

75. BiH does not count on a general law addressing the rights of victims of torture. Notably, in the follow-up reports submitted by BiH to the CAT in 2006 and 2007, the State referred to the “imminent” adoption of a national Law on the Rights of Victims of Torture and Civilian Victims of War, as well as to the establishment of a National Fund for Compensation of Victims. At September 2012, notwithstanding the reiterated recommendations of the CAT,⁹⁹ no such law has been adopted nor a fund established. Victims of gross human rights violations, including victims of rape or other forms of sexual violence during the war are definitely exacerbated by this situation, particularly when the majority of them have to face harsh living conditions and economic restraints, as well as serious psychological traumas.
76. At the end of November 2011 the BiH Ministry of Human Rights and Refugees re-launched a debate concerning the adoption of the Law on the Rights of Victims of Torture. A first draft was circulated in February 2012 and both members of the civil society and of the government were given the opportunity to comment. Unfortunately, the representatives of the government of RS, despite being invited, have so far not taken part to any meeting to discuss the draft law.¹⁰⁰ This potentially undermines the outcome of the whole exercise.
77. The BiH Ministry of Human Rights and Refugees sent an “information note” concerning the activities for the drafting of the law to the Entities’ governments as well as to the government of the Brčko District, given that they had expressed negative opinions on previous drafts. At the end of July 2012 the Ministry had received a reply only from the government of Brčko District and thus sent an urgent appeal to the other Entity governments reiterating the request for their opinions.
78. From 16 to 18 July 2012 representatives of civil society met in Lukavac to express their opinions on the draft law and forwarded the outcome of their work for further comments to the Ministry of Human Rights and Refugees. The latter emphasized that the reception of official replies from the Entity governments to the information note is a precondition for the Ministry’s further work on the subject. Accordingly, the Ministry is waiting for the potential feedback to the urgent appeals submitted and will reconsider the issue after the summer.
79. Associations of victims of rape or other forms of sexual violence during the war are concerned about these delays and the remaining obstacles for the adoption of a piece of legislation whose adoption has been promised more than six years ago. Indeed, for the success of the ongoing initiative it is crucial that all parties participate, guaranteeing that associations from the civil society remain consistently involved.

⁹⁹ CAT, *Concluding Observations on BiH*, *supra* note 13, para. 18.

¹⁰⁰ It is noteworthy that in RS associations of civil society tried twice (in 2007 and 2008) to promote a draft law for RS on former camp detainees and torture victims. The draft laws were tabled before the National Assembly, but both proposals were rejected. Pressures in this sense were allegedly exercised by associations of war veterans in RS and groups representing the Bosniak ethnic group living in RS.

**Proposed Item to be Included in the List of Issues
(related to Art. 2.b and 2.f in conjunction with Art. 1 of the Convention and General Recommendation No. 19
of CEDAW)**

- ▶ Please provide information on the measures undertaken to promptly finalise the drafting of the following policy proposal and legislation: a) the National Strategy on Transitional Justice; b) the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence; and c) the Law on the Rights of Victims of Torture and Civilian Victims of War. In this respect, please indicate the measures to facilitate the participation of representatives of RS in the mentioned endeavours.

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

80. The existence of an obligation for States to provide reparations¹⁰¹ when they are responsible for gross human rights violations is undisputed under international law¹⁰² and it is also enshrined in domestic law of BiH.¹⁰³ 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

¹⁰¹ See Rubio-Marín, *The Gender of Reparations. Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, Cambridge University Press, 2009; 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; De Feyter, Parmentier, Bossuyt, Lemmens (eds.), *Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations*, Intersentia, Anvers, 2006; Dinah Shelton, *Remedies in International Human Rights*, Oxford, 2005; Bottiglieri, *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; 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; 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 3, paras. 88-90.

¹⁰² 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".

¹⁰³ 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.

and then seek to reclaim any costs from those responsible.¹⁰⁴

81. 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 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,¹⁰⁵ 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 an integral form of reparation.¹⁰⁶ 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.¹⁰⁷
82. As mentioned, in its concluding observations of 2006 the CEDAW urged BiH to “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 [...]”.¹⁰⁸
83. In its combined fourth and fifth periodic reports to the CEDAW, BiH argues that “the Law on Principles of Social Protection, Protection of Civilian Victims of War, and Protection of Families with Children of FBiH

¹⁰⁴ 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 21, p. 66. See *infra* paras. 99-105.

¹⁰⁵ 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.

¹⁰⁶ CAT, Case *Kepa Urra Guridi v. Spain*, views of 17 May 2005, para. 6.8.

¹⁰⁷ See Special Rapporteur on Violence against Women, its Causes and Consequences, *Report on Reparations to Women who have been Subjected to Violence*, doc. A/HRC/14/22 of 23 April 2010. See also, *inter alia*, Oficina en México del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, *Reparaciones con perspectiva de género*, Mexico, 2009; CEDAW, *General Recommendation No. 19*, *supra* note 3, 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.

¹⁰⁸ CEDAW, *Concluding Observations on BiH*, doc. CEDAW/C/BIH/CO/3 of 2 June 2006, para. 38.

defines the persons who are survivors of sexual abuse and rape as having the status of special category of civil war victims. *This amendment which was adopted in 2006 by the Parliamentary Assembly of BiH represents the implementation of the Recommendation No. 38 CEDAW/C/BiH/CO/3.* In the territory of Republika Srpska, the war-time victims of sexual abuse and rape realise their right through recognizing their status of a civilian victim of war pursuant to the Law on Civilian Victims of War of Republika Srpska” (emphasis is added).¹⁰⁹

84. However, the further information provided by BiH in its combined fourth and fifth periodic reports seems to contradict the above and to rather demonstrate that recommendation No. 38 of the CEDAW has not been implemented. In fact, BiH admits that, pursuant to the law which is in force in RS, “the process of realizing this right requires an assessment of damage to the body of at least 60%, *making it difficult to recognize the status of civilian war victims. It is recommended that the assessment include the psychological problems that these victims have. It is necessary that the war-time victims of sexual violence and rape are recognized as a separate category of civilian war victims*” (emphasis is added).¹¹⁰ Moreover, BiH specifies that “*the amount of monthly disability benefits for victims of sexual abuse and rape is not uniform between the Entities and ranges between BAM 105.30 paid in RS and BAM 514.00 paid in the Federation of BiH*” (emphasis is added).¹¹¹
85. From the assessment provided by BiH itself, it turns out that the recommendation put forward by the CEDAW in 2006 has not been enforced. As a matter of fact, 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 unduly identified with that of social assistance.¹¹² The notions of “civilian victim of war” and “beneficiary of welfare measures”¹¹³ shall be clearly distinguished.
86. As referred also by the State in its combined fourth and fifth combined reports to the CEDAW, at the Entity level, the two relevant legal references are the Law on the Protection of Civilian Victims of War in RS (Official Gazette of the RS No. 25/93, 1/94 – special edition, 32/94, 37/07 and 60/07) and the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in FBiH (Official Gazette of FBiH No. 36/99 and later amendments). It must be added that on 7 August 2012 the government of Brčko District adopted a regulation concerning civilian victims of war who reside

¹⁰⁹ *BiH Fourth and Fifth Combined Reports to CEDAW, supra note 80, para. 297.*

¹¹⁰ *Ibid.*, para. 298.

¹¹¹ *Ibid.*, para. 300.

¹¹² See, among others, Popić, Panjeta, *Compensation, Transitional Justice and Conditional International Credit in Bosnia and Herzegovina*, Sarajevo, 2010, pp. 13-18.

¹¹³ 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 RS the social welfare system is organised at the entity level, by the government of RS, and delivered through municipal departments of social welfare which provide services directly to citizens. The system of FBiH is decentralised. The federal authorities are responsible for the introduction of legislation and the allocation of resources to cantonal authorities, which then provide services directly to citizens. Each of the ten cantons of FBiH organises social care services in its own way, and the level and type of social support varies between different cantons. In this sense see, *inter alia*, Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting*, *supra note 21*, pp. 6-7.

in the District. The new regulation recognizes “persons who have suffered permanent mental damage due to sexual harassment and rape, as a person with a special status, to whom there is no percentage determined for the harm suffered” (Art. 2). Most notably, the regulation does not fix a deadline to apply for the recognition of the status of civilian victims of war. This new regulation entitles victims to receive monthly disability pensions, as well as vocational trainings in the form of professional rehabilitation, right to special projects of employment, right to priority housing and right to free legal aid (Art. 4).

87. As already pointed out, both FBiH and RS laws entitle civilian victims of war to receive some 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 and this results 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.
88. In this sense, after her visit to BiH in November 2010, the Special Representative of the Secretary-General on Sexual Violence in Conflict noted that “[...] in comparison with other war victims, women suffer discrimination in accessing benefits. [...] Unlike veterans, rape survivors are often only eligible for a *disability pension, which is a form of social welfare rather than reparation*. Administering war reparations through a welfare system creates practical problems. For instance, a woman who was raped during the war but had a pre-existing disability is barred from continuing her disability pension as she now receives a ‘pension’ for war-time rape. Moreover, if a woman receiving a pension in FBiH relocates to RS, she risks losing her benefits. This is because only FBiH recognizes rape victims as war victims; RS still only recognizes victims able to demonstrate ‘60 percent physical damage’. Furthermore, sequestration is not provided for in the criminal process, making it difficult to enforce orders for compensation”.¹¹⁴
89. With regard to the Law on the Protection of Civilian Victims of War in RS, it entitles civilian victims of war (including victims of rape or other forms of sexual violence) to receive a monthly pension. Pursuant to Article 1 of the Law “the rights prescribed can be awarded to citizens of RS 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 SFRY, if they settle on the territory of RS, acquire a Serbian citizenship and if they have body harm caused after 17 August 1990”.¹¹⁵ As noted, the law guarantees to those who are recognized as civilian victims of war the access to welfare measures (e.g. monthly disability pensions ranging between 100 and 350 KM – 50 and 175 Euros, nursing, help

¹¹⁴ Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, *supra* note 15, para. 6.

¹¹⁵ 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”.

for those incapable to work, etc.)¹¹⁶ which cannot be considered *stricto sensu* as measures of reparation for the gross human rights violations suffered.¹¹⁷ 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%)¹¹⁸ 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 crimes they were subjected to during 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 RS poses strict deadlines for those wishing to apply (notably, the final deadline expired on 31 January 2007).¹¹⁹ 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.¹²⁰

90. A particular problem affecting women relatives of missing persons who would also be entitled to receiving a monthly disability pension concerns returnees. Article 33.5 of the Law establishes that “a person who has realized the right as a civilian victim of war or a family-member of a civilian victim of war under the regulations of the Federation or a surrounding country has no right to file a request for the granting of rights under this law”, thus excluding them from the enjoyment of any social benefits in case they decide to

¹¹⁶ 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. 122-126) 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.

¹¹⁷ See Article 8 of the Law.

¹¹⁸ It is noteworthy that war veterans are eligible for social support if their bodily damage amounts to 20%.

¹¹⁹ 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 [...]”. In its combined fourth and fifth periodic reports to the CEDAW, *supra* note 80, para. 298 the State refers to “31 December 2007” as the final deadline for submission of applications”.

¹²⁰ See doc. E/CN.4/Sub.2/1996/17 of 24 May 1996, para. 9. See also Report McDougall, *supra* note 3, 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”.

return in RS.¹²¹ In practice, this situation has prevented a considerable number of women relatives of missing persons from returning to their pre-war houses, since they realised that moving back to RS would have brought as a consequence the loss of their monthly disability pensions which, in the majority of cases, are their only means of subsistence. It is noteworthy that on 2 February 2011 the Supreme Court of RS rendered a significant decision (Annexes 10 and 11 in the local language and excerpts in English) according to which lower courts should not automatically deny access to social benefits to those who received monthly disability pensions in FBiH and later on returned to RS. This decision should represent a landmark judgment that sets the criteria to be followed by lower administrative bodies and courts throughout RS. Nevertheless, it would seem that at the time of writing such decision has not been implemented and, on the contrary, lower administrative bodies continue interpreting the law as it has been done in the past. In this light, on 27 January 2012 the applicant concerned filed a complaint before the Ombudsperson. The complaint was registered under file number Ž-BL-05-79/12 and is currently pending.

91. The Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in FBiH makes it clear that measures adopted in favour of civilian victims of war and their families are of the nature of welfare and social protection (e.g. monthly disability pensions which may be up to 506 KM – 259 Euros, nursing and other material benefits). Access to the mentioned measures of protection is reserved for people unable to work or financially unsecure. To obtain the status of civilian victim of war a bodily damage of at least 60%¹²² 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 deadlines¹²³ to apply to obtain the status of civilian victim of war and many people have been excluded. 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 FBiH (Official Gazette FBiH No. 39/06) establishes that

¹²¹ The law was amended in 2006 (Official Gazette FBiH No. 39/06). Article 33.1 reads: "Civilian victims of war and family members of civilian victims of war with temporary residence on the territory of the FBiH will upon their return in their earlier places of residence in the RS or the Brčko District of BiH be assured rights which they had in their temporary place of residence". After the law was amended, a big number of returnees reapplied in the FBiH for the granting of their lost rights. Their claims were, however, all rejected, at least in the Una-Sana Canton, because the competent Ministry of Work and Social Policy interpreted the new provision as having to be applied only to people who had these rights at the moment when the amendments entered into force and who returned thereafter to the RS, and not to the people who already had lost their rights at the moment when the changes entered into force. As the majority of people had returned in the RS in 2004, all of them were excluded from regaining social assistance in the FBiH, while at the same time incapable of gaining this assistance in the RS.

¹²² It is noteworthy that war veterans are eligible for social support if their bodily damage amounts to 20%.

¹²³ 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).

“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. Another 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 1997.¹²⁴ 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.¹²⁵ Finally, it must be stressed that, pursuant to the legal framework in FBiH,¹²⁶ there are only few organisations designated to provide survivors of rape or other forms of sexual violence with the certificates that allow them to obtain the status of civilian victims of war and, hence, to obtain social benefits. The association that awards the great majority¹²⁷ of such certificates is the Association of Women-Victims of War, which is based in Sarajevo.¹²⁸ In the past, this has not escaped criticism.¹²⁹ In

¹²⁴ This problem has been emphasized in particular by the Women’s Section of the Association of Concentration Camp Detainees. Indeed, they raised the question with Ms. Mevlida Kemura, who at the time was the Director of the Institute for Medical Forensic and Health Ability (tasked to issue an evaluation necessary for the granting of the status as “civilian victim of the conflict”), and she emphasized that this requirement is established under the Federal law. See Article 79 of the Law on Civilian Victims of War in FBiH.

¹²⁵ In 2011, there have been cases of women survivors of war rape which rights as civilian war victims of war were subjected to a revision of their status. A lady assisted by the association Medica Zenica from the Zenica-Doboj Canton who was recognized as a victim of war-time rape long time ago was summoned by the local commission to review her status. On such occasion, she was requested to resubmit all documents, claiming among other things, to submit evidence of suffering from the period of war or immediately after the war. This lady again gathered all documents she had, but the commission rejected her request. It is only after the association Medica Zenica intervened on her behalf before cantonal authorities that she obtained anew her status.

¹²⁶ 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.

¹²⁷ As indicated also by the State in its combined fourth and fifth reports to the CEDAW, *supra* note 80, para. 299.

¹²⁸ In order to recognise 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. The Association of Women-Victims of War forward the information to the Prosecutor’s Office.

¹²⁹ See, *inter alia*, Popić, Panjeta, *Compensation, Transitional Justice and Conditional International Credit in Bosnia and Herzegovina*, *supra* note 112, p. 29. See also Amnesty International, *Whose Justice: The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 21, pp. 44-46.

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. Finally, it must be pointed out that even when victims obtain a certificate attesting their status, they cannot accede directly the benefits they would be entitled to, but they are referred by the Centres for Social Work to Medical Commissions which shall assess their disability. This other procedure in many cases re-traumatizes victims and discourages many potential beneficiaries from applying.

92. In 2010 the government of FBiH begun the study of further amendments to the Law on Protection of Civilian Victims in FBiH and a first draft was adopted which would modify the procedure to actualize the rights of women victims of rape or other forms of sexual violence during the war. However, the discussion of the amendments has been postponed to 2013 by the government of FBiH.
93. Among the many problems created by this system that unduly overlaps the notion of social assistance to that of compensation, it can be mentioned that when a woman receives a monthly disability pension, this prevents her from access to bank-loans. In this view, victims are ultimately prevented from moving on with their lives and are forced to remain dependant on a sometimes meagre pension. In this sense, it must also be duly stressed that there are instances where women are requested to undergo multiple examinations in order to challenge contradictory medical evaluations of their situation. This exposes them to a serious and clearly unnecessary humiliation.
94. An instance is that of A.D. who in 2010 obtained a certificate recognising her as a victim of rape during the war from the Association Women-Victims of War that afterwards indicated her that, in order to realize her rights, she had to undergo medical examination. In January 2010 A.D. submitted all required documentation and went to a first degree medical commission in Mostar where she was denied to realize her rights to social benefits. On this occasion, A.D. felt uncomfortable since the doctor who examined was not very polite to her. A.D. appealed the decision issued by the first degree commission and went on second degree commission in Sarajevo at the Institute of Forensic Medicine and Health Ability. In this occasion A.D. underwent a new examination and the medical commission told her that they were in favour of recognising her status as a victim and that they would have transferred for this purpose her documentation to the Centre for Social Work in Mostar to enable her to realize her social benefits. Over a certain period of time, A. D. was not contacted by any authority and, to discover what was happening, she contacted the Centre for Social Work in Mostar, where they told her that the Institute in Sarajevo had mistakenly sent her documentation under the name of another victim. On this occasion, the personnel of the Centre for Social Work in Mostar told A.D. that they would have sent back her documentation to Sarajevo to have the formal problem solved. Indeed, since she did not receive any further communication over some months, at the beginning of March 2011 A.D. arranged a meeting with the director of the Institute of Forensic Medicine and Health Ability in Sarajevo. On such occasion, the director promised to solve the situation as soon as possible and to proceed to correct the mistake without delay. The formal correction was operated within a short delay. At the end of May 2011,

A.D. eventually started receiving her disability pension.

95. A particular situation which is worth mentioning since it affects a considerable number of victims of torture during the war and has already been brought to the attention of BiH authorities without any significant result is that of the women in Una-Sana Canton. About 15 women victims of rape or other forms of sexual violence during the war who obtained decisions awarding them monthly disability pension, found themselves in a situation of not being able to obtain the mentioned pension due to the obstruction exercised in this sense by an employee of the Cantonal Ministry of Health from Una Sana in Bihac (Mr. Jasmin Fikić). Allegedly, when the mentioned women claimed the payment of monthly pensions they are entitled to under the law, Mr. Jasmin Fikić refused to proceed with the payment and therefore fails to enforce the decisions legally obtained from the competent authorities. On one occasion he allegedly indicated to a woman who was requesting some clarifications on this situation that if she wants to receive monthly disability pension she has to go to the Ministry office and bring along with her the perpetrator who has to confirm what had happened to her. Indeed, this is not required by any legal provision. On another occasion, Mr. Fikić allegedly went door to door to verify if the victims in fact live at the addresses they have indicated in the documentation submitted. In this context, Mr. Fikić allegedly also posed questions to neighbours to verify whether they are familiar with what had happened to the victims, therefore disclosing the identity of the ladies concerned and jeopardising their right to privacy and security. It is noteworthy that this procedure is not prescribed anywhere in the law. On the contrary, the initiative on Mr. Fikić has had the result of putting at risk the women whose identities he has disclosed, as well as subjecting them to serious stigma and discrimination within their local communities. As mentioned, this situation has been reported to the former Cantonal Minister (Mr. Mustafa Avdagić) as well as to the Federal Ministry of Labour and Social Policy (Mr. Perica Jelečević). The latter organised a meeting in Sarajevo with associations representing victims of violence and former camp detainees as well as with the Cantonal Minister to discuss this problem. At the meeting the authorities promised that the situation would have been duly addressed. In fact, some cases were resolved. However, after a while, Mr. Fikić resumed his former practice, until at the beginning of 2012 he was removed from his post.
96. With regard to the problems faced by women victims of rape or other forms of sexual violence during the war, 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”¹³⁰ 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

¹³⁰ 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.

participation of victims of sexual violence in any decision-making processes affecting them”.¹³¹ 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.

97. On this subject the Commissioner for Human Rights of the Council of Europe expressed that he “[...] remains concerned by the failure of the authorities of Bosnia and Herzegovina to establish an effective mechanism that would ensure reparation for all victims of war-related crimes and their families in Bosnia and Herzegovina. A representative of an NGO working in the field of assistance to the war victims, with whom the Commissioner met during his visit, stressed that the lack of adequate state support caused individual tragedies: ten former detainees of concentration camps in Bosnia and Herzegovina during the 1992-1995 war had committed suicide since 2000. Post-war justice may not be obtained solely by prosecuting and convicting war criminals, but also by restoring the human dignity of all victims who have suffered pecuniary and especially non-pecuniary damages. The existing system of complicated individual payments through the social protection and disability scheme in the Federation of Bosnia and Herzegovina does not effectively address the needs of the victims of war-related crimes. The relevant legislation on Entity and cantonal levels aimed at providing reparation to the victims of the war is significantly more favourable to war veterans than to civilian victims. Furthermore, the authorities have so far failed to provide adequate reparation to the survivors of war crimes of sexual violence, in order to enable them to rebuild their lives”.¹³² Furthermore, referring specifically to victims of rape or other forms of sexual violence, he noted “[...] reports indicating that many women, who are victims of war related crimes of sexual violence, have continued to live in poverty, being unable to find a job still suffering from the physical and psychological consequences of their war-time experience. [...]”.¹³³ Accordingly, he recommended that “everyone claiming to be a victim of war-related crimes should have effective access to justice and be provided with effective remedies, making reparation possible. The Commissioner urges the authorities of Bosnia and Herzegovina to take all necessary measures to ensure reparation to victims of war-related crimes and their families, in line with the established principles of international law as reiterated in the 2005 UN 'Basic Principles and Guidelines'. The authorities are urged, in particular, to examine with care the cases of civilian victims of war-related crimes and to provide them with adequate social protection, eliminating unequal treatment that exists between civilian and military victims of war”.¹³⁴
98. Finally, women victims of rape or other forms of sexual violence during the war could try to turn to regular courts in order to claim for compensation, but many of them are not in a position to afford this for

¹³¹ *Ibid.*, para. 41. See also paras. 39-40.

¹³² Report Hammarberg, *supra* note 4, paras. 147-148.

¹³³ *Ibid.*, para. 158.

¹³⁴ *Ibid.*, paras. 187-188.

a number of reasons. As a matter of fact, proceedings before ordinary courts¹³⁵ require a number of expenses in terms of court fees and other legal costs that the great majority of women victims of rape or other forms of sexual violence during the war are not able to bear. While the exemption from court fees can sometimes be ordered by a judge, this is not automatic and many women do not want to take the risk to find themselves in a situation where they are not able to afford the costs of the proceedings. Moreover, expert testimonies and medical certificates (required in this kind of proceedings) must be obtained at the expense of the claimant and, again, this is often not feasible for women victims of rape or other forms of sexual violence during the war. It seems to be the practice of ordinary courts to reject claims for non-pecuniary damage concerning harm suffered during the war, as they apply a statute of limitations of subjective 3 years and objective 5 years.¹³⁶

6.1 Problems related to claiming Compensation from Perpetrators

99. According to the domestic legal framework, a possibility exists to claim compensation for damage (claims under property law) suffered during the war in civil proceedings. Indeed, it is a complex procedure, which is regulated in a different manner in the Entities.¹³⁷ 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.
100. 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 authorised to submit the petition must state his claim specifically and must submit evidence. 4) If the authorised 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 authorised 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

¹³⁵ The notable exception of the Canton of Una Sana must be mentioned. In Una Sana the Law on Court Taxes has been amended as to exempt victims of gross human rights violations applying for non-pecuniary damage from paying court fees.

¹³⁶ On 15 November 2011 the Supreme Court of FBiH rendered a landmark judgment, whereby it is affirmed that the statute of limitations cannot be applied to claims for non-pecuniary compensation submitted by former camp detainees. Indeed, this precedent shall be followed by all other tribunals in BiH and encompass also women victims of rape or other forms of sexual violence during the war, even though the practice so far has been the contrary.

¹³⁷ 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 21, pp. 47-49.

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 rape¹³⁸ 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.¹³⁹

101. 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".¹⁴⁰ He also declared that "[...] it is important that victims of torture themselves be entitled to initiate such procedures and enjoy equal access to these mechanisms without fear of reprisals. [...] In this context, it also needs to be emphasised that, as the standard of proof may be higher in criminal proceedings, *the availability of civil procedures to claim reparation should not be dependent on the outcome of a criminal procedure*".¹⁴¹
102. Problems concerning the existing procedure in BiH may be summarised as follows: in the majority of cases, victims are not aware of their right to apply for compensation from perpetrators and of the functioning of the procedure to enforce such right and are not duly informed on the existence and functioning of the procedures to enforce their rights; victims who give their testimony in the course of a trial are not automatically included among those who are notified about the delivery of a decision that refers them to civil action for compensation; although the State Court would be entitled to award compensation to the injured party, this is a discretionary choice depending on the initiative of the competent prosecutor which, so far, has not been taken, rather favouring referral to civil action; victims would need a lawyer to represent them in civil claims for compensation and, in almost the totality of cases, they cannot afford it, while free legal aid is not granted to them by the State. 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.
103. 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 convicts a person for war crimes, injured parties are afterwards formally notified about the possibility to submit a claim to obtain compensation

¹³⁸ The estimate is not official and was provided by the Association of Women-Victims of War.

¹³⁹ 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".

¹⁴⁰ *Study on the Phenomenon of Torture, supra* note 30, para. 167.

¹⁴¹ *Ibid.*, para. 171 (emphasis is added).

from the perpetrator.¹⁴² However, this does not seem to be the regular practice. For instance, in the proceedings against Mr. Željko Lelek,¹⁴³ 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 Tabaković 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).¹⁴⁴ However, the Court did not notify the witnesses concerned and the Association of Women-Victims of War was not able to find out which of the witnesses were in fact entitled to apply for compensation and what did the Court mean by “and others” when referring to subjects entitled to apply for compensation. In the same proceedings against Mr. Željko Lelek, which concerned also the arbitrary killing of Mr. Ibro Međuseljac, the family of the latter did not receive any notification by the court, and the daughter of the victim discovered only through the Association of Women-Victims of War that she and her family could apply for compensation.

104. It is also noteworthy that, to exercise the right to obtain compensation from a perpetrator, victims must be represented by a lawyer, while the great majority of them cannot afford to pay for legal representation.¹⁴⁵ In the past, the Association of Women-Victims of War has contacted a number of lawyers, requesting support in these procedures. However, all the lawyers who were contacted answered that they could not provide support, since they allegedly were not familiar with the relevant procedure. The Association of Women-Victims of War insisted to make arrangements with domestic lawyers to obtain *pro bono* representation or also to pay them a percentage of the amount of money received by the victims as compensation. So far, no lawyer allegedly accepted to assume the representation of members of the Association of Women-Victims of War in proceedings for compensation. At the same time, the State failed to guarantee free legal aid and legal services, thus *de facto* making it impossible for victims of rape or other forms of sexual violence to enforce their right to compensation. Indeed, in many cases victims of sexual violence feel particularly frustrated due to the fact that, while they have such considerable obstacles in acceding to free legal aid, those accused and undergoing criminal proceedings can avail themselves of the representation which is provided to them

¹⁴² 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”.

¹⁴³ 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). See *supra* para. 64.

¹⁴⁴ 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”.

¹⁴⁵ 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 30, 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.

by the lawyers of the Criminal Defence Section (*Odsjek Krivične Odbrane*). While this is a fair trial guarantee that shall be preserved, victims of sexual violence consider that they also should be placed in a position to enjoy similar guarantees.

105. 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.¹⁴⁶ Accordingly, the State shall guarantee that, even though the person convicted claims to have no property the rights of injured parties must be secured anyway. Victims of rape or other forms of sexual violence repeatedly pointed out that payment of compensation shall be in cash and not in bonds and that they should be exempted from the payment of court fees (which the majority of them cannot afford).

6.2 Problems of Adequate Housing as a Measure of Restitution

106. As a result of the violations suffered during the war, many of those who were subjected to rape or other forms of sexual violence, were forced to leave their homes. Those who obtained the status as internally displaced persons were entitled to stay in alternative accommodation. BiH is under an obligation, as a measure of restitution for the harm suffered, to guarantee, if victims so wish, return to their place of origin in safe and dignified conditions, or otherwise the access to alternative housing programmes.¹⁴⁷
107. To date, access to adequate housing¹⁴⁸ 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 forced to live for many years in collective centres in the Sarajevo Canton.¹⁴⁹
108. The existence of this kind of problems has been pointed out with concern by the CAT in its last concluding observations on BiH: "the Committee expresses its concern at persistent reports claiming

¹⁴⁶ An example that can be recalled is that of Mr. Veselin Vlahović ("Batko") who in March 2010 was arrested in Spain. He is accused, among others, of crimes against humanity, including rape or other forms of sexual violence, committed from 1992 to 1995 in the district of Grbavica, in Sarajevo. Upon arrest, Mr. Vlahović immediately declared that he does not have any property. Victims of rape or other forms of sexual violence therefore fear of not being able to obtain compensation. Mr. Vlahović was extradited from Spain to BiH and is currently awaiting trial.

¹⁴⁷ 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 101.

¹⁴⁸ In general, BiH lacks a housing national strategy. In this sense, CESCR, *Concluding Observations on BiH*, *supra* note 130, paras. 24 and 46.

¹⁴⁹ Over the years the Women's Section of the Association of Concentration Camp Detainees has been in contact with the Federal 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.

that existing programmes of property restitution have failed to take into account gender and psychological needs of the victims of sexual violence. The Committee is also concerned at their lack of economic opportunities and the poor living conditions".¹⁵⁰

109. A first instance that may be recalled is that of C. C. and A. R. Both ladies are originally from Foča where, in 1992, they were subjected to sexual violence and subsequently banned from their houses by members of the VRS.¹⁵¹ 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, Annex 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 lived for many years together with their families, while other victims of sexual violence managed to move to individual flats through the support of international donors.¹⁵² Since 2007 the Women's Section of the Association of Concentration Camp Detainees has been sending letters to the Federal 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. 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. Eventually, one of the ladies concerned could move from Hrasnica in the spring of 2012 and was accommodated in an individual flat in Tarcin, while the other is in the process of moving to an individual flat in Ilijaš with the assistance of the Cantonal Ministry of Labour, Social Affairs, Displaced Persons and Refugees.
110. Another 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.

¹⁵⁰ CAT, *Concluding Observations on BiH*, *supra* note 13, para. 16.

¹⁵¹ C. C. was raped by members of the VRS in 1992 in the village of Brod, in the municipality of Foča. In the case of A. R., after her husband was deprived of his liberty by members of the VRS and detained in the prison in Foča (known as KPD Foča), she remained in the village of Saš with her two children (respectively 8-month and 1-year and half old). From 1992 to 1993 A. R. was repeatedly subjected to rape or other forms of sexual violence by members of the VRS. In 1993 also A. R. and her children were transferred to the KPD Foča and, after having spent some time there, A. R. was eventually forced to leave to Goražde. Due to the harm inflicted on her as a result of the repeated acts of sexual violence, A. R. had to undergo seven surgeries and, to date she would need constant medical care and support.

¹⁵² 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.

However, to date these steps have not produced any significant result and the Association has not received any formal answer by the authorities concerned.

111. 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.
112. In its combined fourth and fifth periodic reports to the CEDAW, BiH referred that “in order to improve the situation of women civilian victims of war in BiH, UNHRC launched a project in the municipalities of Goražde and Ilijaš, ‘Restoring human dignity through the provision of permanent housing’, which resulted in the provision of accommodation and the initiation of occupational therapy for women civilian victims of war”.¹⁵³ In fact, this project has been implemented with success and some of the beneficiaries are in fact women victims of rape or other forms of sexual violence during the war. Besides accommodation and support in employment, beneficiaries of the project, including women victims of rape or other forms of sexual violence during the war, have been receiving also physiotherapy. However, notwithstanding the cooperation of the Municipality of Goražde, the project is financed and implemented by United Nations High Commissioner for Refugees. The implementation of the project has been extended also to Mostar and it is envisaged that also the Prozor area will be reached in the future (in these two cases the support is limited to psychosocial support and resources to start their business). Although the mentioned project is certainly welcome and associations of women victims of rape or other forms of sexual violence during the war express satisfaction, this does not relieve BiH from its international obligations concerning the right to house, in particular vis-à-vis women.
113. 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”.¹⁵⁴ 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”¹⁵⁵ 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”.¹⁵⁶ 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,

¹⁵³ *BiH Combined Fourth and Fifth Reports to CEDAW*, *supra* note 80, para. 304.

¹⁵⁴ See, *inter alia*, Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 21, p. 50.

¹⁵⁵ CEDAW, *Concluding Comments on BiH*, *supra* note 108, para. 37.

¹⁵⁶ *Ibid.*, para. 38.

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”¹⁵⁷ 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”.¹⁵⁸

114. From the information submitted by the very State in its combined fourth and fifth periodic reports to CEDAW results that the situation has not improved since 2006. Namely: “women returnees are faced with numerous obstacles and problems in exercising their rights and ensuring sustainable return. Opportunities for permanent employment are few, mainly because the returnees mainly [sic] go back to the places that were essentially destroyed in the conflict and where infrastructure has not been restored after the war. Underdevelopment of services particularly complicate the lives of women returnees. Women returnees are often bread-winners, which puts them in a position that in addition to household duties they must earn an income to support their families”.¹⁵⁹
115. 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 entire year from 1992 to 1993.¹⁶⁰ In 1993 M. R. was granted an accommodation by the municipality of Novi Grad (Sarajevo), where she resides to date with her husband and two children. The tenants of the flat passed away. M. R. suffers from post-traumatic stress disorder (PTSD) and her husband has hepatitis C. In 2005 M. R. received a notification saying that if she did not sign a ‘voluntary return certificate’ for her return to Bijeljina in an apartment which was destroyed and was not her property but the property of her husband’s family, she would be evicted from Sarajevo to Bijeljina in three days. M. R. turned to the Women’s Section of the Association of Concentration Camp Detainees and they advised her to sign the certificate, promising that they would see what they could do in five or six-month time. M. R. signed the certificate while the government repaired the house in Bijeljina. In a couple of months, M. R. was asked to leave the apartment in Sarajevo and to go back to the renovated house in Bijeljina. She refused to do so because she feels she cannot live in the same city where she had been raped for a year. Luckily, the 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. In 2011, M.R. was formally assigned the apartment, which is now her own property, for which she will have to pay a small amount of money within the next years.

6.3 Problems related to Restitution and Preferential Treatment in Employment

116. Another serious problem faced by victims of rape or other forms of sexual violence is the lack of access

¹⁵⁷ CESCR, *Concluding Observations on BiH*, *supra* note 130, para. 12.

¹⁵⁸ *Ibid.*, para. 32. See also para. 42.

¹⁵⁹ *BiH Combined Fourth and Fifth Periodic Reports to CEDAW*, *supra* note 80, para. 354.

¹⁶⁰ To date no one has been formally accused, prosecuted and sanctioned for the sexual crimes committed against M. R. from 1992 to 1993 in Bjeljina.

to stable employment.¹⁶¹ This is seen as a measure of restitution for the harm suffered.¹⁶² In FBiH the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children establishes that, among others, survivors of rape or other forms of sexual violence are entitled to receive vocational trainings and special measures to qualify them for jobs. This part of the law remains almost a dead letter. On the other hand, the Law on the Protection of Civilian Victims of War in RS does not recognise any right to preferential treatment in employment or trainings for survivors of rape or other forms of sexual violence.

117. This situation was referred to as a matter of deep concern by the Commissioner for Human Rights of the Council of Europe, who indicated that: “[...] the relevant legislation in the Federation of Bosnia and Herzegovina provides that the civilian victims of war-related crimes of rape or other forms of sexual violence shall have preferential treatment in employment. Access to vocational training to help them qualify for jobs is also provided for by the law. The Commissioner is concerned by reports indicating that these parts of the law remain largely unimplemented. Moreover, in RS the right to preferential treatment in employment or to vocational training is not enshrined in the law regulating the status of the civilian victims of war”.¹⁶³
118. 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 its members access to, among other activities, a sewing school. The women who participated in this activity benefited from a solid therapeutic impact. However, members of the Section who live outside Sarajevo cannot accede to this programme. Overall, it remains the responsibility of the State to guarantee access to stable employment and to vocational trainings to all survivors of rape or other forms of sexual violence, regardless of where they live.

6.4 Problems of Access to Education for Children of Victims of Rape or other Forms of Sexual Violence during the War as a Measure of Restitution

119. Children of victims of rape or other forms of sexual violence have often been subjected to discrimination and they have to face additional obstacles in the access to school and employment.¹⁶⁴ The possibility

¹⁶¹ See, *inter alia*, Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 80, pp. 51-52. Indeed, this subject shall be seen in the wider context of unemployment in BiH: CESCR, *Concluding Observations on BiH*, *supra* note 130, paras. 14 and 35.

¹⁶² In this sense see, *inter alia*, *Principles on the Right to a Remedy*, *supra* note 93, Principle 19; and HRC, Case *Busyo v. Democratic Republic of Congo*, views of 9 August 2003, para. 6.2.

¹⁶³ Report Hammarberg, *supra* note 4, para. 160.

¹⁶⁴ Indeed, the rights of children born from war-time rape in BiH shall be read in the light of the international obligations established for BiH by the Convention on the Rights of the Child. BiH is a State party to such treaty, see *supra* note 2.

for these children to receive adequate education and to find a job is a particular concern for survivors of rape or other forms of sexual violence. While in RS the legal framework does not specifically address this matter, in FBiH it is stipulated that preferential treatment shall be accorded to this particularly vulnerable category. Nevertheless, this is largely unimplemented.¹⁶⁵

120. 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, 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.
121. 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 RS, since there is no support to this category of people. The Association of Women-Victims of War referred to the fact that the lack of an adequate legal framework in RS generates a number of obstacles in the fulfilment of the rights of victims of rape and their children. The example of the child of a victim of rape from a town in RS was quoted: the child, a returnee in RS born as a result of the rape suffered by his mother during the war, did not have enough resources to pursue his education and therefore missed one year in school. The authorities in RS did not intervene and accordingly the Association of Women-Victims of War managed to arrange for the transfer of the child to a school in FBiH. The child was therefore forced to leave RS once more and see his access to education duly guaranteed.

6.5 Problems related to Medical and Psychological Rehabilitation

122. Sexual violence can seriously affect the victim's mental health, with dire consequences in the short, medium or long term.¹⁶⁶ Accordingly, victims of rape or other forms of sexual violence shall be guaranteed, as measures of rehabilitation for the harm suffered, access to adequate, timely and appropriate medical and psychological care, consistent with the right to the highest attainable standard of physical and mental health.¹⁶⁷
123. Although in some cases medical and psychological care are provided to survivors of rape or other forms

¹⁶⁵ CRC, *Concluding Observations on BiH*, *supra* note 147, para. 64.

¹⁶⁶ 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 8. See also CEDAW, *General Recommendation No. 19*, *supra* note 3, 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.

¹⁶⁷ See, *inter alia*, *UN Principles on the Right to a Remedy*, *supra* note 120, Principle 21; Redress, *Rehabilitation as a Form of Reparation under International Law*, London, 2009; and *UN Principles to Combat Impunity*, *supra* note 30, Principle 34. Indeed, the concept of rehabilitation includes also "access to legal and social services". Victims of rape or other forms of sexual violence have so far not been guaranteed access to legal services either. See also of the Special Rapporteur on the Right to the Highest Attainable Standard of Physical and Mental Health, *supra* note 166, paras. 12 and 46.(a).

of sexual violence by the Centre for Victims of Torture or by other NGOs, such as Medica, Snaga Žene, or *Vive Žene* Tuzla, it shall be emphasized that this is limited to those who live close to the mentioned organisations 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 organisations such as the Centre for Victims of Torture, Medica, Snaga Žene, 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.¹⁶⁸ Indeed, it results that so far there are certain areas of BiH, such as Bosanska Krajina, where no programme of psychological support for victims of sexual violence during the war has ever been carried out by State institutions.¹⁶⁹ Programmes of health and psychological rehabilitation must be implemented at the community level, with the input of those who have been traumatized. Such programmes shall be conceived as non-stigmatizing for victims of rape or other forms of sexual violence and shall cover the whole territory of BiH. It is also crucial that family doctors are educated in the special area of women's health, as well as the existing personnel of the Centre for Mental Health.

124. In this sense, the Commissioner for Human Rights of the Council of Europe expressed that: “[...] many survivors of war-related sexual violence suffer post-traumatic stress disorder and other psychological and physical problems. The Commissioner is concerned that provision of psychological support to survivors of war-related sexual violence is inadequate and that many of the women victims have not been able to access the healthcare system. On average there is one mental health centre for every 40–50,000 people. This situation leaves many local communities without a psychologist or a psychiatrist, as is the case in Bratunac, where 8,000 IDPs have returned since the end of the war. It has been reported that almost 90% of rape victims do not receive any kind of psychological treatment. Local NGOs appear to be the only institutions offering psychological support to victims”.¹⁷⁰
125. A particular situation has been reported in Mostar, whereby women victims of rape or other forms of sexual violence are allegedly denied access to health insurance to which they are entitled according to the legislation in FBiH and which other women in a similar condition are receiving in the other cantons of FBiH. This situation would amount to a discrimination against women victims of sexual violence in Mostar, which does not seem to have any objective justification and that would have the only result of penalising an already extremely vulnerable category of people. Indeed, there does not seem to have been a thorough investigation on these extremely grave allegations.
126. In many cases women who were raped during the war and who eventually had a child as result of the rape face an additional challenge in coping with children in this situation. In many cases, they are not prepared to explain the situation to the child and they face an additional emotional stress for this. Also the children themselves are in an exceptionally delicate condition: discovering their origin and learning to cope with it, in

¹⁶⁸ 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 3, para. 269.1.(d).

¹⁶⁹ In the first months of 2011 some NGOs have launched a programme in the area (using offices in Prijedor) to address victims of sexual violence during the war. However, these organisations are not receiving any kind of support from the State.

¹⁷⁰ Report Hammarberg, *supra* note 4, para. 161.

particular when they are exposed to discrimination and stigmatisation requires the assistance of specialised professionals. In this sense, when establishing a strategy to provide psychological support to women victims of rape or others forms of sexual violence during the war, BiH should include also children born as a result of rape and their special needs. Accordingly, the State shall implement programmes of health and psychological support to adequately assist children born as a result of war-time rape, ultimately allowing them to process their trauma and to play an active role in BiH society.

**Proposed Items to be included in the List of Issues
(related to Arts. 2.b, 2.f, 2.g, 3, 10.1.a, 11.1.a and b, 12.1 and 13 in conjunction with Art. 1 of the Convention
and General Recommendation No. 19 of the CEDAW)**

- ▶ Please indicate which measures have been adopted to guarantee that women victims of rape or other forms of sexual violence during the war obtain fair and adequate compensation for the harm suffered, as well as integral reparation, including restitution, rehabilitation, satisfaction and guarantees of non-repetition.
- ▶ Please refer if measures adopted in favour of women victims of rape or other forms of sexual violence during the war have been conceived so to have a transformative aim, in the sense that they allow women to ameliorate or at least consolidate their position in society. In this light, please clarify if women victims of sexual abuse during the conflict have been guaranteed full participation in the drafting, implementation, evaluation and decision-making process relating the measures concerned.
- ▶ Please specify which measures have been adopted to ensure that differences in the social benefits received by civilian victims of war, including women victims of rape or other forms of sexual violence, and war veterans are eliminated.
- ▶ Please indicate whether any measure has been undertaken in order to harmonize the amount of money perceived as a social benefit (monthly disability pension) in the different Entities.
- ▶ Please clarify whether any measure has been adopted to guarantee that also psychological damage, besides bodily harm, is taken into account when recognizing the status of civilian victim of war.
- ▶ Please indicate whether any measure has ever been taken at the State level to raise awareness among civilian victims of war, including women victims of rape or other forms of sexual violence during the war, to inform them on their rights and on the procedures to realize such rights.
- ▶ Please inform on whether there is a possibility for civilian victims of war, including women victims of sexual abuse during the conflict, to obtain an exemption from court fees in case they decide to bring civil claims for damage before ordinary courts.
- ▶ Please report on measures taken to facilitate the process claiming compensation from individual perpetrators in court for victims of rape or other forms of sexual violence during the war. In particular, explain why, even though the State Court would be entitled to award compensation to the injured party, so far this discretionary choice depending on the initiative of the competent prosecutor, has not been taken, rather favouring referral to civil action which encompasses a number of additional obstacles for victims.
- ▶ Please specify whether any measure has ever been undertaken to guarantee that civilian victims of war, including women victims of rape or other forms of sexual violence during the war, residing – also temporarily – outside BiH are granted redress for the harm suffered and receive the social benefits they are entitled to.
- ▶ Please clarify whether any measure has been envisaged to solve the situation of the numerous civilian victims of war, including women victims of rape or other forms of sexual violence during the war, who missed the overly strict deadlines to apply to obtain social benefits or who do not hold certificates or documentation of the harm suffered issued during the war.
- ▶ Please report on measures taken to guarantee throughout the whole country that women victims of rape or other forms of sexual violence during the war are guaranteed adequate housing, preferential treatment in employment and in access to education for their children, and sufficient medical and psychological support free of charge.

7. Interferences in the Right of Women Victims of Rape or other Forms of Sexual Violence during the War to Freely Participate in NGOs and Associations Concerned with Public and Political Life

127. Besides the attacks suffered by associations dealing with women victims of sexual violence already referred before,¹⁷¹ that can be seen as interferences in the right of women to participate to NGOs and associations concerned with public and political life enshrined in Art. 7.c of the Convention, the case of the Association of Women from Prijedor-Izvor can also be quoted. However, the latter must be seen in the broader context of restrictions imposed on the freedom of expression and the right to peaceful assembly experienced during 2012 by, among others, associations of former camp-detainees and victims of sexual violence who were subjected to gross human rights violations in the detention camp of Omarska,¹⁷² near Prijedor.
128. The “Omarska” prison camp (opened in the administrative centre of the Omarska iron ore mine) was operative from 27 May 1992 to 21 August 1992. During this period between 3,000 and 5,000 civilians were imprisoned in Omarska, and were kept under inhuman conditions, physically and psychologically abused, arbitrary killed and tortured. Those who were detained at Omarska were severely beaten by the camp guards and were subjected to all sorts of inhumane treatment, including rape and sexual abuse. In fact, many of the prisoners at Omarska were beaten to death. Notably, in July 1992, at least 15 men went missing from Omarska camp, while by the end of the same month, a large number of unidentified prisoners (of whom at least 50 were villagers from Hambarine), were killed using firearms. The inhumane treatment and the living conditions in Omarska were said to be the most horrendous. In general, those who were detained there were provided insufficient food and water, inadequate medical care and treatment, and they were subjected to overcrowding and lack of proper hygiene arrangements.¹⁷³
129. At present, the steel and mining company “Arcelor Mittal” runs the industrial complex where the former detention camp was situated. The property of the company is shared with RS. In March 2012, Arcelor Mittal denied access to a group of students from Munich. On 14 April 2012 access was also denied to a delegation of former camp-detainees, two art/theory groups called respectively Four Faces of Omarska and Grupa Spomenik, and researchers from the University of London.¹⁷⁴ Arcelor Mittal holds that local authorities are responsible for this situation, as they are the real owners of the land where Omarska is

¹⁷¹ *Supra* para. 54.

¹⁷² On Omarska see, *inter alia*, ICTY, Case *Prosecutor v. Miroslav Kovčeka et al.*, judgment by the Trial Chamber of 2 November 2001 (Case No. IT-98/30-1), paras. 28-44; and the Prijedor Report, *supra* note 6, Chapter VIII.A “Logor Omarska”.

¹⁷³ See ICTY, Case *Prosecutor v. Miroslav Kovčeka et al.*, *supra* note 6; Case *Prosecutor v. Predrag Banović*, judgment of the Trial Chamber of 28 October 2003 (Case No. IT-02-65/1-5); Court of Bosnia and Herzegovina, Case *Prosecutor v. Željko Mejakić, Momčilo Gruban and Duško Knežević*, judgment of 30 May 2008 (Case X-KR/06/200), available at: http://www.sudbih.gov.ba/files/docs/presude/2008/Zeljko_Mejakic_First_Instance_Verdict.pdf; and Balkan Investigative Reporting Network, *Time for Truth: Review of the Work of the War Crimes Chamber of the Court of Bosnia and Herzegovina 2005-2010*, *supra* note 6, p. 81.

¹⁷⁴ On these events see, *inter alia*, <http://talkbosnia.net/sydneyforum/?p=1509>

located and are those taking decisions.¹⁷⁵

130. These events must be read in a broader context where local authorities (and in particular Mr. Marko Pavić, the Mayor of Prijedor) are placing restrictions on the freedom of expression and association, as well as the right to peaceful assembly of local associations of victims of gross human rights violations during the conflict or their relatives. In particular, public commemorations for the 20th anniversary of mass atrocities organised by local NGOs (9 May 2012), were formally prohibited and it was announced that any transgression of such prohibition and the use of the term “genocide” when referring to the crimes committed at Omarska will be prosecuted and sanctioned.
131. The association *Izvor* reports that local police prohibited the holding of a commemoration for the 20th anniversary of the suffering of women in Prijedor (23 May 2012). Allegedly, members of the association, together with others, intended to place 266 bags for exhumations in the name of 266 killed women and girls at the main city square, decorated by a single rose and the name and surname of each of the women. This performance was prohibited under the justification that it would disturb the interethnic relations and that the police had reasons to believe that there could be incidents, because of extremist groups which could threaten the non-Serb activists in Prijedor. *Izvor* formally complained against these restrictions to the Ministry of Interior which nonetheless confirmed the prohibition to hold the commemoration already imposed by the police. Accordingly, a claim was filed by *Izvor* before the District Court in Banja Luka and is currently pending.
132. A special session of the Municipal Assembly of Prijedor was held on 8 June 2012 and on such occasion the Mayor of Prijedor warned the representatives of associations of victims of gross human rights violations that the use of the word “genocide” during public ceremonies would “trigger consequences”. Moreover, Arcelor Mittal confirmed restrictions to the visits to Omarska, formally authorising only those envisaged for 6 August (commemoration of the 20th anniversary of the crimes committed in the detention facility).
133. A particularly grave episode occurred in connection with the public event titled “For Equity and Right to Remembrance” (6 August), organised to commemorate the anniversary of the suffering of children in Prijedor. In the evening of 4 August the association *Izvor* organised an event to promote the book “The War is Dead, Long Live the War” by Mr. Ed Vulliamy (the British journalist who first reported about the concentration camps set up in Omarska and Trnopolje during the war). While this event was taking place or immediately afterwards (e.g. in the night between 4 and 5 August 2012) the premises of *Izvor* in Prijedor were subjected to an attack: stones were launched and the windows of the office were broken (Annexes 1-7 with the pictures of the damages inflicted on the offices of *Izvor*). In the morning of 5 August 2012, neighbours noticed the broken windows and called the police to collect the evidence. On 8 August 2012 representatives of *Izvor* submitted a formal denounce of the incident to the local police (Annexes 8 and 9 in the local language and English), requesting that a prompt, independent, impartial

¹⁷⁵ See <http://www.arcelormittal.com/corp/news-and-media/news/2012/may/15-05-2012> and <http://www.arcelormittal.com/corp/news-and-media/news/2012/jul/02-07-2012>.

and thorough investigation is launched to identify, judge and sanction those responsible. In the view of the members of *Izvor*, these events are strictly related to the celebrations held during the first days of August to commemorate the gross human rights violations perpetrated in and around Prijedor and were meant to be a form of intimidation.

Proposed items to be included in the List of Issues

(related to Art. 7.c in conjunction with Art. 1 of the Convention and General Recommendation No. 19 of the CEDAW)

- ▶ Please indicate the measures that have been taken in general, and in particular in the Prijedor area, to effectively guarantee to women the right to participate freely in NGOs and associations concerned with public and political life, as well as to express their opinion and take part to peaceful manifestations.
- ▶ Please indicate the measures adopted to investigate, judge and sanction those responsible for the attack on the premises of the Association of Women *Izvor* in Prijedor in August 2012.

8. Conclusions and Recommendations

134. Although 18 years have passed since the conclusion of the war in BiH, thousands of victims of rape or other forms of sexual violence have not been guaranteed access to justice, compensation and integral reparation for the harm suffered. On the contrary, they remain among the most marginalised and stigmatised categories within BiH society. It is the view of the subscribing organisations that there has not been significant progress in the implementation of the recommendations formulated in May 2006 by the CEDAW with regard to women victims of rape or other forms of sexual violence during the war and a number of issues remain the source of deep concern. While it is often alleged that it is necessary to turn a page over the past, this cannot be done at the price of erasing thousands of people from that page and failing to guarantee their basic rights. BiH remains in breach of its international obligations as spelled out, among others, in Articles 1, 2, 3, 5, 7, 10, 11, 12 and 13 of the Convention on the Elimination of All Forms of Discrimination against Women.

135. For the reasons explained above, the associations submitting the present written information respectfully request the CEDAW to recommend BiH to:

- ▶ Elaborate a unified and accurate database concerning victims of rape or other forms of sexual violence during the war and former camp-detainees, duly considering also those currently living outside BiH. In the process, BiH authorities must guarantee transparency and certainty, as well as the security and privacy of the victims, duly taking into account the sensitivity of this subject.
- ▶ Include in the criminal codes at all levels a definition of “rape” and “sexual violence” in accordance with international standards and jurisprudence and remove the condition of “force or threat of immediate attack” from the present definitions. Rape or other forms of sexual violence shall be codified as separate offences in the Criminal Code of BiH also when they are committed as isolated acts.
- ▶ Ensure that criminal codes at all levels explicitly define that a person who acted pursuant to an order to commit rape or other forms of sexual violence shall not be relieved of criminal

responsibility and that those who refuse to obey such an order will not be punished.

- ▶ Ensure that the National Strategy for War Crimes is duly implemented without further delay and its application is thoroughly explained to the wide public in a transparent manner, thus fostering a climate of trust towards institutions. The existence of the strategy cannot be used to delay indefinitely investigations and to avoid providing information to victims of gross human rights violations, their relatives or their representative associations.
- ▶ Ensure, in particular, that all cases of rape or other forms of sexual violence perpetrated during the war are promptly, independently, impartially and thoroughly investigated and that those responsible are judged and sanctioned in accordance with international fair trial standards.
- ▶ Ensure that war-time rape is prosecuted as such, applying the relevant standards and prosecutors and courts refrain from dealing with such cases as ordinary rape, since this does not mirror the particular nature of this heinous crime and it unduly advantages the defendant.
- ▶ Ensure the implementation of the jurisprudence established by the Constitutional Court of BiH in the sense of investigating and trying those accused of crimes committed during the war pursuant to the provisions of the 2003 Criminal Code instead of those of the Criminal Code of the SFRY.
- ▶ Ensure that all necessary measures are adopted to prevent the flight of people accused of or convicted for, war crimes and crimes against humanity, and to investigate, judge and sanction those responsible for these crimes.
- ▶ Ensure that a comprehensive programme of vetting is undertaken in order to avoid that war criminals hold public offices or work in the police.
- ▶ Ensure that, in general, victims of rape or other forms of sexual violence are given information on a regular basis on the process of investigation carried out by the prosecutor's offices, the results of those investigations and whether trials might be forthcoming. Courts at all levels shall have consistent rules in dealing with the public in general and with victims of rape or other forms of sexual violence in particular.
- ▶ Ensure that a comprehensive programme of witness protection and psychological accompaniment is granted at all levels prior, during and after the trial takes place. Instances of threats or harassment against witnesses, victims, their families, their counsels as well as against their representative associations shall be promptly and thoroughly investigated and those responsible shall be judged and sanctioned. Witness protection and support shall be victim-oriented and supplied by experts who are adequately trained to provide these services and are financed by the State. The draft law on witnesses' protection and support promoted by the BiH Ministry of Security in 2011 must be discussed and enacted without further delay.
- ▶ Guarantee that witnesses obtain adequate material support, including safe and free of charge transportation to and from the court.
- ▶ Ensure that witnesses in war crimes trials have access to adequate legal consultancy free of charge and the draft law on legal aid approved as a proposal by the BiH Council of Ministers is enacted as soon as possible and its funding secured. The State must ensure to set up without delay an effective public system of free legal aid enabling victims of war to receive legal support

(counselling and, if need be, access to court), if they are not able to afford it.

- ▶ Ensure that the National Strategy for Transitional Justice is adopted and implemented without further delay, keeping in mind that fact-finding processes, although crucial for the establishment of the truth, cannot replace access to justice and redress for victims of gross human rights violations and their relatives that must thus be guaranteed such rights independently from the adoption of the strategy concerned.
- ▶ Ensure that the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence is finalised and referred for approval to the Council of Ministers of BiH without further delay. Representatives of the government of RS shall participate to the finalisation of the draft programme, thus ensuring their subsequent genuine support to the implementation of the programme. Measures envisaged by the latter shall have a transformative aim, in the sense that they must allow women to ameliorate or at least consolidate their position in society. In this sense women victims of rape or other forms of sexual violence during the war shall be guaranteed full participation not only in the drafting of the programme, but also in the subsequent implementation, evaluation and decision-making.
- ▶ Ensure that the obstacles for the adoption of the Law on the Rights of Victims of Torture and Civilian Victims of War are swiftly removed and this crucial piece of legislation is adopted and enforced without further delay. Financial resources for its implementation must be secured and the overall exercise must be coordinated with the other mentioned legislative initiatives concerning victims of the conflict in BiH in order to avoid overlapping or lacunae. To ensure the finalisation of a sound draft law, all parties, including representatives of the government of RS, shall constructively participate to the endeavour and associations of victims of victims of rape or other forms of sexual violence during the war must be thoroughly involved and allowed to express their opinions, needs and expectations.
- ▶ Ensure that all victims of rape or other forms of sexual violence during the war have access to social benefits and other measures of social support irrespective of where they live. Such legislation should be adopted on the State level in order to avoid the continuation of the current situation in which there exists discrimination in access to and levels of social benefits depending on the Entity involved. In general, civilian victims of war shall not receive a worse treatment compared to that of war veterans.
- ▶ Implement a national programme on measures of reparations for civilian victims of war, including victims of rape or other forms of sexual violence that encompasses compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. Also civilian victims of war currently living abroad shall be entitled to realize their right to compensation and restitution. In particular, the State shall guarantee, as a measure of reparation, access to free psychosocial support, provided through State's institutions and health services. Measures envisaged by the reparation programme shall have a transformative aim, in the sense that they must allow women to ameliorate or at least consolidate their position in society. In this sense women victims of rape or other forms of sexual violence during the war shall be guaranteed full participation not only in the drafting of the programme, but also in the subsequent implementation, evaluation and decision-making.

- ▶ Take measures to raise awareness about the status of civilian victim of war and, in particular, the possibility for applying for such status and the rights deriving from it.
- ▶ Ensure that adequate and effective criteria are applied to recognize the status of civilian victim of war without discrimination and further traumatisation for the people involved.
- ▶ 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 organisations that already work in this field, making sure that they continue supplying good quality treatments to victims of rape or other forms of sexual violence. BiH shall ensure that programmes of health and psychological support are also put in place to adequately assist children born as a result of war-time rape.
- ▶ Ensure that associations of victims of rape or other forms of sexual violence and former camp-detainees from the Prijedor area can commemorate freely the anniversaries of the suffering of their loved ones, hold peaceful public ceremonies, thereby participating to associations concerned with public and political life and expressing their opinions without unlawful interferences. In particular, access to the detention facility of Omarska for peaceful commemorative purposes shall not be unduly restricted by BiH authorities or by private entities.
- ▶ Ensure that a prompt, independent, impartial and thorough investigation is carried out to identify, judge and sanction those responsible for the attack committed during the night of 4 August 2012 against the premises of the association *Izvor* in Prijedor.

On behalf of:

Association of Women-Victims of War

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

Foundation of Local Democracy

Izvor-Prijedor

Medica Zenica

Snaga Žene

Society for Threatened Peoples

Sumejja Gerc

Vive Žene Tuzla

Philip Grant
TRIAL Director

9. Information on the Associations Submitting the Written Information

a) TRIAL (Swiss Association against Impunity)

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



Considering that the needs of victims of gross human rights violations during the war, their relatives and the organisations which represent them are sadly overwhelming and that there is no similar initiative in BiH and the region, TRIAL has been active and present in the country since early 2008. TRIAL is thus currently providing legal support to victims of gross human rights violations committed during the war and their relatives who wish to bring their cases before an international human rights mechanism. So far, TRIAL has submitted 43 applications related to gross human rights violations perpetrated during the war to the European Court of Human Rights (ECtHR) and to United Nations Human Rights Committee (HRC). On 29 June 2009 TRIAL submitted a general allegation to the WGEID about the numerous obstacles encountered in the implementation of the 1992 Declaration for the Protection of All Persons from Enforced Disappearance. As a consequence of the general allegation submitted by TRIAL, the WGEID visited BiH from 14 to 21 June 2010 and in March 2011 it presented the report on its mission to the Human Rights Council.

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

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

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

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

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b) Association of Women-Victims of War



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

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

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

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

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



The Women's Section of the Association of Concentration Camp Torture Survivors Canton Sarajevo which functions as part of the Union of Concentration Camp Torture Survivors of Canton Sarajevo (formed in 1997) is a non-governmental association which gathers women who were forcibly taken away and interned in concentration camps during the war in BiH. The Section has about 1,000 members out of which around 60% came from Eastern Bosnia: Foča, Rogatica, Rudo, Višegrad, Čajniče while around 40% from the area of Sarajevo Canton. Most of the members of the association suffered the worst possible psychological and physical torture, rape or other forms of sexual violence which left a deep mark on their mental and physical health. The Section of Women works with people who have altered their personality, who consider themselves persons who have been changed forever and for whom it is unlikely that they would ever be able to function in line with their role in the family and society. The Women's Section offers to these victims the following programmes of support: computer school; English school; sewing classes; nature

empowerment programme; human rights classes; discount on bus tickets; support packages (including food and hygienic items); medical and psychological support in collaboration with the Centre for Victims of Torture; and massage treatments in collaboration with the Healing Hands Network. It is noteworthy that ten members of the Women's Section participated in the award-winning film Grbavica directed by Ms. Jasmila Žbanić.

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

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d) Foundation of Local Democracy

The Foundation of Local Democracy (FLD) is a local NGO with a 14-year experience of work in the field. Its primary focus is on the protection,

promotion and advancement of human rights, especially the rights of victims of gender-based violence, community building, and creation of institutional capacity for networking and development.



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

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

On 15 October 2010 FLD opened the Centre for free legal assistance to women of BiH, based in Sarajevo. This project aims at providing free legal aid to women victims of war, women victims of trafficking, domestic violence, sexual abuse, and single mothers. Since 2010, 103 women victims of war have benefitted of free legal aid to realize their basic rights.

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

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e) Izvor-Prijedor

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



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

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f) Medica Zenica

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



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

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

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

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g) Snaga Žene

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



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

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h) Society for Threatened Peoples

The association Society for Threatened Peoples, BiH section, was founded in 1997 as one of the sections of the Society for Threatened Peoples International (which was established in 1968 to support Biafra). The mission of the latter is helping expelled religious or ethnic groups around the world. The Society for Threatened Peoples has a consultative status within the Economic and Social Council of the UN since 1993. The BiH section is a non-partisan organisation and independent from the government which stands for human rights, peaceful coexistence of all religious communities and constitutive peoples into a single BiH. The Society for Threatened Peoples in BiH reveals violations of human rights, advocates for the return of all displaced persons and refugees to their homes, supports the work of the associations of victims of war and refugee organisations, and cooperates with the associations for human rights in neighbouring countries. The Society also advocates for the rehabilitation of victims of war and their families; documents war crimes and crimes of genocide and records



statements from witnesses of crimes against humanity and violations of the rights of all citizens of BiH. In addition it informs local and international media about the respect of human rights in BiH and neighbouring countries; publishes reports on human rights; organises seminars, symposia, conferences and other actions aiming at the promotion of human rights such as warning and watch demonstrations; and provides advices in conflict situations.

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

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i) Sumejja Gerc



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

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

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

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j) 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 organisation 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 organisation works also in the community, with a view to foster reconciliation, representation, rebuilding of trust and reconstruction of broken relationships and reduction of ethnic barriers.

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

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Annexes

1. Picture of the damages inflicted on the premises of the NGO Izvor in the night between 4 and 5 August 2012.
2. Picture of the damages inflicted on the premises of the NGO Izvor in the night between 4 and 5 August 2012.
3. Picture of the damages inflicted on the premises of the NGO Izvor in the night between 4 and 5 August 2012.
4. Picture of the damages inflicted on the premises of the NGO Izvor in the night between 4 and 5 August 2012.
5. Picture of the damages inflicted on the premises of the NGO Izvor in the night between 4 and 5 August 2012.
6. Picture of the damages inflicted on the premises of the NGO Izvor in the night between 4 and 5 August 2012.
7. Picture of the damages inflicted on the premises of the NGO Izvor in the night between 4 and 5 August 2012.
8. Denounce submitted by the NGO Izvor to the police in Prijedor (in the local language).
9. Denounce submitted by the NGO Izvor to the police in Prijedor (unofficial translation in English).
10. Decision issued on 2 February 2011 by the Supreme Court of the RS (in the original language).
11. Decision issued on 2 February 2011 by the Supreme Court of the RS (unofficial translation of relevant excerpts and summary in English).