



РЕПУБЛИКА СРПСКА  
САВЕЗ УДРУЖЕЊА ПОРОДИЦА ЗАРОБЉЕНИХ И  
НЕСТАЛИХ ЛИЦА РЕПУБЛИКЕ СРПСКЕ У БиХ



## Written Information for the Adoption of the List of Issues by the Human Rights Committee with regard to Bosnia and Herzegovina

(CCPR/C/BIH/3)

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Submitted by

**TRIAL (Track Impunity Always)**

**Association of Detained - Association of Camp-Detainees of Brčko District Bosnia and Herzegovina**  
**Association of Families of Killed and Missing Defenders of the Homeland War from Bugojno Municipality**  
**Association of Relatives of Missing Persons from Ilijaš Municipality**  
**Association of Relatives of Missing Persons of the Vogošća Municipality**  
**Association of Relatives of Missing Persons from the Sarajevo-Romanija Region**  
**Association of Relatives of Missing Persons from Kalinovik ("Istina-Kalinovik '92")**  
**Association of Victims and Witnesses of Genocide**  
**Association Women from Prijedor – Izvor**  
**Croatian Association of Camp-Detainees from the Homeland War in Vareš**  
**Croatian Association of War Prisoners of the Homeland War in Bosnia and Herzegovina**  
**Regional Association of Concentration Camp-Detainees Višegrad**  
**Vive Žene**  
**Women's Section of the Association of Concentration Camp Torture Survivors Canton Sarajevo**

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## 1. Background

1. On 2 November 2012 the Human Rights Committee (HRC) issued its concluding observations<sup>1</sup> on Bosnia and Herzegovina (BiH), formulating a number of conclusions and recommendations. It requested BiH to submit its third periodic report, due on 31 October 2016, “to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole”.<sup>2</sup>
2. On the occasion of its 115<sup>th</sup> session (19 October - 6 November 2015) the HRC scheduled the adoption of a list of issues prior to reporting (LOIS) to be submitted to BiH. The associations that submit the present alternative report would like to provide information to the HRC on a number of matters related mainly to the ongoing violation of the rights of relatives of missing persons, former camp-detainees, and women victims of rape or other forms of sexual violence during the war. The subscribing organisations aim at sharing their concerns with the HRC, wishing to see them reflected in the LOIS. Concrete recommendations are also formulated. The exclusion of other subjects from the present report does not imply by any means that the subscribing associations find that BiH fully complies with all its obligations under the International Covenant on Civil and Political Rights (“the Covenant”) or that it has implemented all the recommendations contained in the concluding observations adopted by the HRC in 2012.

## 2. The Amendment of Domestic Criminal Legislation concerning Sexual Violence, Torture, and Enforced Disappearance

3. Over the past years several international human rights bodies, including the HRC, noted that, both at the State and at entity level, BiH legislation on enforced disappearance, torture, and sexual violence was at odds with international law standards. Among others, in its 2013 concluding observations on BiH, the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) recommended BiH to “amend all relevant criminal codes to include a definition of wartime sexual violence in line with international standards, including a specific definition of rape as a war crime and a crime against humanity, in order to adequately reflect the gravity of the crimes committed and intensify its efforts to harmonise the jurisprudence and sentencing practices of its courts throughout the State party, by establishing effective cooperation mechanisms between prosecutors and courts competent to deal with war crimes at all levels of the State party”.<sup>3</sup>
4. In 2014 the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) issued a follow-up report on the implementation of the recommendations issued in 2010 after having carried out

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<sup>1</sup> Human Rights Committee (HRC), *Concluding Observations on BiH*, doc. CCPR/C/BIH/CO/2 of 2 November 2012.

<sup>2</sup> *Ibid.*, para. 24.

<sup>3</sup> Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), *Concluding Observations on Bosnia and Herzegovina*, doc. CEDAW/C/BIH/CO/4-5 of 26 July 2013, para. 10 (b).

a country visit. It urged BiH “to take the necessary measures to implement the Convention for the Protection of All Persons against Enforced Disappearances, including by introducing an autonomous crime of enforced disappearances, and by amending the definition of the crime of enforced disappearances as a crime against humanity. The Working Group welcomes the setting up of a ministerial working group to this regard. *The Working Group is also concerned that no harmonization between the codes of the entities and the codes of the State took place, as it creates a legal uncertainty on the crimes, their definitions, and the penalties associated to it.* It also underscores that enforced disappearance is a continuous crime that can thus be punished in the basis of an ex post legislation without violating the principle of non-retroactivity, for as long as the fate or the whereabouts of the disappeared person has not been clarified”.<sup>4</sup>

5. The WGEID added that “*the Criminal Code has not been amended to remove the possibility of granting amnesty for serious international crimes, despite the recommendation of the Working Group.* It is also concerned that a draft law on pardon would allow pardon to be granted to persons convicted for crimes of genocide, war crimes and crimes against humanity after those persons have served three-fifths of their sentence”.<sup>5</sup>
6. **In May 2015, the Criminal Code of BiH was amended and some significant progresses must be reported. However, none of the criminal codes at the entity level was amended and therefore significant pitfalls remain.**<sup>6</sup> The mentioned amendments to the Criminal Code of BiH were approved by the House of Peoples under urgent procedure on 18 May 2015, published in the Official Gazette of BiH No. 40/15, and entered into force on 28 May 2015.
7. With regard to **rape and other forms of sexual violence as a crime against humanity or as a war crime**, Arts. 172, para. 1 (g), and 173, para. 1 (e), of the Criminal Code of BiH were amended and the requirement that the victim is coerced “**by force or by threat of immediate attack upon his or her life or limb, or the life or limb of a person close to him or her**” has been removed. This brings the phrasing of the mentioned provisions in line with international standards on the subject. Nevertheless, it must be stressed that the **Criminal Code of BiH does not codify rape or other forms of sexual violence as a separate offence, unless they are committed in the context of a widespread or systematic attack against civilian population or as a war crime.** This, coupled with the fact that entity legislation on rape is fragmented and plagued by gaps, represents a major loophole that fosters impunity.
8. With regard to **torture, Art. 190** of the Criminal Code of BiH currently reads as follows: “(1) An official

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<sup>4</sup> Working Group on Enforced or Involuntary Disappearances (WGEID), *Follow-up Report on the Mission to BiH*, doc. A/HRC/27/49/Add.2 of 8 September 2014, para. 36 (emphasis added).

<sup>5</sup> *Ibid.*, para. 38 (emphasis added).

<sup>6</sup> Although the amendment of criminal codes at the entity level was recommended during the second cycle of the Universal Periodic Review, the relevant recommendations were only partially accepted and BiH informed that “the Republika Srpska Government has not accepted these recommendations expressing the opinion that most of these activities have already been implemented while the position of the Government of the Federation of BiH and the authorities at the level of Bosnia and Herzegovina is that, based on this recommendation, further activities should be intensified to improve their protection” (doc. A/HRC/29/G/4 of 18 June 2015).

person in BiH institutions or another person who is acting upon order, the instigation or with the explicit or implicit consent of a public official person in BiH institutions, or any other person acting as an official in BiH institutions, who inflicts on a person physical or mental pain or severe physical or mental suffering for such purposes as to obtain from him or a third person information or a confession, or to punish him for a criminal offence he or a third person has perpetrated or is suspected of having perpetrated or who intimidates or coerces him for any other reason based on discrimination of any kind, shall be punished by imprisonment for a term of at least six years. (2) Punishment from paragraph 1 from this article will also apply on an official person in BiH institutions or any other person acting as an official in BiH institutions who has ordered or instigated, who gave explicit consent, or knew and gave implicit consent for the commission of the criminal offence from paragraph 1 of this article”.

9. While the definition of torture under BiH criminal legislation has consistently improved and meets the basic requirements of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, **the sanction envisaged (i.e. at least 6 years of imprisonment) does not seem commensurate to the gravity of the crime.** Finally, the phrasing used to refer to **superior responsibility is less precise than that used in international law instruments and could leave room for impunity.**
10. With regard to **enforced disappearance**, Art. 190-A was added to the Criminal Code of BiH and codifies the offence also when committed outside a widespread or systematic attack against civilian population. The new provision reads as follows: “1. An official person in BiH institutions or any other person who is acting as an official in BiH institutions or upon order, with the instigation, explicit or implicit consent of an official of BiH institutions, detains another person, keeps her detained or deprives her of liberty of movement and refuses to confess to have deprived her from liberty or conceals information about the fate or location of this person, putting her in that way outside the protection of the law, shall be punished with a sentence of at least eight years of imprisonment. 2. The punishment from paragraph 1 of this article shall be applied also for an official person of BiH institutions who has ordered or instigated or knew and gave explicit or implicit consent for the commission of the criminal offence from paragraph 1 of this article. 3. Persons who as superiors knew or consciously neglected the information that their subordinate had committed an offence from paragraph 1 of this article or was about to commit the offence, but they were responsible and had control over the actions related to the commission of the criminal offence from paragraph 1, and did not undertake all necessary and reasonable measures within his power to prevent or neutralise the commission of the criminal offence from paragraph 1 of this article or to forward this issue to State authorities for criminal investigation and prosecution, shall be punished with a sentence of at least eight years of imprisonment. 4. The fact that the person who committed the criminal offences from this article acted upon the order of a public, civilian, military or other authority, cannot be used as a justification for the commission of the criminal offences, but can impact a mitigation of the sanction, if the Court assesses that the interests of justice require so. Persons who refuse to obey such orders will not be punished”.
11. Overall, the new provision of the Criminal Code of BiH on enforced disappearance is quite

comprehensive. However, as in the case of the crime of torture, **the sanction envisaged is not fully in line with international standards, provided that a sanction of 8 years of imprisonment does not seem to adequately reflect and be proportionate to the extreme gravity of the crime at stake.**

12. In the case of enforced disappearance, it is reasonable to require that the punishment be close to the penalties applied to the most serious offences within the given national system. The WGEID stressed that “it is advisable that when considering the punishment which should be set, a comparative study of [domestic] criminal law should be carried out, in order to ensure that less serious offences than enforced disappearance do not incur more severe punishments than that which is to be set for enforced disappearance”.<sup>7</sup> In general, the WGEID found that a penalty of 25 to 40 years of imprisonment for the offence of enforced disappearance is consistent with the 1992 Declaration on the Protection of All Persons from Enforced Disappearance.<sup>8</sup> Finally, **no amendment has been introduced to remove the possibility of granting amnesty for crimes under international law, including enforced disappearance.**

#### Questions to be Included in the LOIS

(related to Arts. 2, 6, 7, 9, 10 and 16 of the Covenant)

- Please provide information on the **existence of projects to amend Criminal Codes at the entity level with regard to torture, enforced disappearance, and sexual violence.**
- Please provide information on the **existence of projects to amend the Criminal Code of BiH introducing the crime of rape or other forms of sexual violence even when not committed as a crime against humanity or as a war crime.**
- Please provide information on whether **there currently is any project to amend the Criminal Code at the State level to remove the possibility of granting amnesty for crimes under international law.**

### 3. The Slow Pace of Implementation of the National War Crimes Strategy

13. In its 2012 concluding observations, the HRC recommended BiH to “[...] expedite the prosecution of war crime cases. [...]”.<sup>9</sup> Similarly, in 2013 the CEDAW recommended BiH to “speed up the implementation of the national war crimes strategy and increase the number of prosecutions of war crimes cases by allocating more financial resources and investigative capacities to address the large backlog of cases”.<sup>10</sup>
14. The Commissioner for Human Rights of the Council of Europe observed that “so far national proceedings in most countries in the region have been slow overall and have presented serious

<sup>7</sup> WGEID, *Report on the Mission to Honduras*, doc. A/HRC/4/41/Add.2 of 6 March 2007, para. 33.

<sup>8</sup> WGEID, *Best Practices on Enforced Disappearances in Domestic Criminal Legislation*, doc. A/HRC/16/48/Add.3 of 28 December 2010, para. 40.

<sup>9</sup> HRC, *Concluding Observations on BiH*, *supra* note 1, para. 7.

<sup>10</sup> CEDAW, *Concluding Observations on BiH*, *supra* note 3, para. 10 (a).

shortcomings. [...] there are serious concerns about the lack of progress in the implementation of the National War Crimes Processing Strategy mainly due to the insufficient coordination between the various justice sector institutions at the state level, in the entities and in the Brcko District, and the lack of funds for the strategy's implementation".<sup>11</sup>

15. In its 2014 Progress Report on BiH, the European Commission noted that "the implementation of the national war crimes strategy continues, although at *an unsatisfactory pace, and the body in charge of its supervision requires additional support from all authorities*. The State-level judiciary continues the referral of war crimes cases. The capacities of prosecutors' offices throughout the country were improved through recruiting more staff, and material conditions were significantly improved through international assistance. *Appropriate financing of adequate staffing levels in prosecutors' offices and courts remains an issue to be addressed urgently to ensure timely and effective processing of the backlog. The competent authorities failed to allocate the funds needed to complete the support infrastructure*".<sup>12</sup>
16. On the specific subject of prosecution of war-time sexual violence it was added that "efforts to investigate and prosecute these crimes *need to be stepped up further, as the overall number of indictments for sexual violence is low in comparison to the prevalence of such crimes during the conflict*. The low number of suspects and lack of evidence hampers the progress of investigation. A comprehensive approach to improving the status of victims of rape and sexual violence has still to be achieved".<sup>13</sup>
17. During the second cycle of the Universal Periodic Review BiH was repeatedly recommended to "continue efforts to fight impunity for serious violations of human rights committed during the armed conflict".<sup>14</sup> In particular, BiH shall "thoroughly investigate acts of sexual violence committed during the conflict, with a view to holding perpetrators to account, ensure reparation and full reintegration into society of victims of wartime rape and other sexual violence, and take action to counter any manifestations of stigma and exclusion directed against them".<sup>15</sup>
18. According to the National War Crimes Strategy adopted on 29 December 2008,<sup>16</sup> 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. This means that, **pursuant to the Strategy, the prosecution of "most complex crimes" must be completed by the end of 2015**. However, **this seems far from reality**. In an attempt to speed up the implementation of

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<sup>11</sup> Commissioner for Human Rights of the Council of Europe, *Post-war Justice and Durable Peace in the former Yugoslavia*, 2012, at [http://www.coe.int/t/commissioner/Source/prems/Premis14712\\_GBR\\_1700\\_PostwarJustice.pdf](http://www.coe.int/t/commissioner/Source/prems/Premis14712_GBR_1700_PostwarJustice.pdf), p. 15.

<sup>12</sup> European Commission, *Progress Report on BiH*, doc. SWD(2014)305 of 8 October 2014, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-bosnia-and-herzegovina-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-bosnia-and-herzegovina-progress-report_en.pdf), p. 14 (emphasis added).

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

<sup>14</sup> Report of the Working Group on the Universal Periodic Review, doc. A/HRC/28/17 of 4 December 2014, para. 107.98. See also paras. 107.62, 107.63, 107.64, 107.99 and 107.100.

<sup>15</sup> *Ibid.*, para. 107.61.

<sup>16</sup> The integral text is available at: [http://www.geneva-academy.ch/RULAC/pdf\\_state/War-Crimes-Strategy-f-18-12-08.pdf](http://www.geneva-academy.ch/RULAC/pdf_state/War-Crimes-Strategy-f-18-12-08.pdf).

the Strategy, the Prosecutor's Office of BiH transferred around 400 cases considered to be "less complex" to local and entity courts, and it attracted around 200 cases considered to be "more complex" from local and entity courts. Ideally, the Prosecutor's Office of BiH should now focus only on the most complex cases and leave the others to local and entity courts. However, taking into account the existing data on the conduction of war crimes trials, severe doubts remain on the likeliness to successfully complete the Strategy. During 2014, a total of 50 war crimes proceedings, concerning 65 defendants, were concluded with a final verdict. Twenty-one of these proceedings took place before the Court of BiH and the rest before local or entity courts. Keeping in mind the scope of the atrocities committed during the war and the number of ongoing investigations (in 2014 alone more than 1,000, concerning more than 6,000 perpetrators), if the described pace remains unaltered, it would take more than 20 years more to obtain final verdicts.<sup>17</sup> According to a report recently released by the OSCE Mission to BiH containing an analysis of criminal proceedings on war-time sexual violence between 2004 and 2014, "issues of conflict or overlap among the different jurisdictions represent a serious problem for the overall functioning of the BiH judicial system. When it comes to war crimes processing, the matter becomes even more intricate".<sup>18</sup>

19. **Hundreds of war crimes related investigations are still ongoing across the country.** Upon being questioned on whether it is likely to respect the deadlines established in the National War Crimes Strategy, the Court of BiH limited itself to declare that it cannot predict what will be the pace of the process and how will things unfold. This, **coupled with an admitted severe lack of financial and human resources**, suggests that the successful completion of the Strategy is highly unlikely. The **Chief of the Prosecutor's Office of BiH confirms that currently the office lacks the funds to pay the salaries of more than 20 of its employees, namely five prosecutors and 17 expert associates.** Allegedly, this depends on the delays of funding from the European Union (EU). The EU Delegation in BiH **suspended an instalment of financial support for processing war crimes until the Justice Sector Reform Strategy will take place.** The described situation jeopardises the implementation of the National War Crimes Strategy and the Prosecutor's Office of BiH describes it as a stalemate. Needless to say, this is a source of deep distress for victims of gross human rights violations during the war, who, after having already waited for more than 20 years, now see their hopes for justice fading.
20. The situation is worse with regard to crimes related to war-time rape or other forms of sexual violence. According to official data provided by the Court of BiH, since July 2013, it rendered a **verdict in 15 cases of sexual violence. Ten more cases are currently ongoing.** Moreover, between 2004 and the end of 2014, to the OSCE Mission's knowledge, the Federation of BiH, Republika Srpska and Brčko District BiH courts have completed 173 war crimes cases. Of these, 35 involved charges of sexual

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<sup>17</sup> These data are contained in the "Statistics on War Crimes Cases" elaborated by the Organisation for Security and Co-operation in Europe, on the basis of the Trial Monitoring Programme run by the Mission to BiH.

<sup>18</sup> OSCE Mission to BiH, *Combating Impunity for Conflict-related Sexual Violence in Bosnia and Herzegovina: Progress and Challenges – An Analysis of Criminal Proceedings before Courts of the Federation of Bosnia and Herzegovina, Republika Srpska, and Brčko District between 2004 and 2014*, June 2015, available at <http://www.osce.org/bih/171906?download=true>, p. 7. Hereinafter referred to as "OSCE Mission to BiH's Report".



violence qualified as a war crime. This means that conflict-related sexual violence featured in around 20 per cent of completed war crimes cases before the courts in the entities and Brčko District BiH. At the close of 2014, 20 of the 115 ongoing war crime cases in the post-indictment phase involved sexual violence charges, meaning that sexual violence crimes feature in around 17 per cent of war crimes cases before the courts in the entities and Brčko District BiH. In three of these ongoing cases, three of the accused are at large; therefore, these cases cannot advance beyond confirmation of indictment.<sup>19</sup> The mentioned number, compared with the thousands of victims of rape or other forms of sexual violence during the war suggests that **impunity remains rampant**. This is confirmed by the recent report of the OSCE Mission to BiH, where it is noted that “considering the magnitude of sexual violence that occurred during the conflict in the territory of BiH, the fact remains that the majority of perpetrators of sexual violence continue to enjoy impunity”.<sup>20</sup> A further issue of concern is **the prosecution of conflict-related sexual violence as an “ordinary” crime** (i.e. not as a war crime), often aimed at denying or trivialising the gravity of the crime. This practice was widespread in cases initiated by military courts against soldiers of the same army during the armed conflict in BiH and it may often result in impunity.<sup>21</sup>

21. Moreover, **an alarming trend has emerged: several perpetrators convicted for rape or other forms of sexual violence committed during the war obtain the minimum sentence**. Pursuant to BiH legislation, attenuating and aggravating circumstances may be applied. In this sense, the following circumstances should be taken into account: the degree of criminal liability, the motives for perpetrating the offence, the degree of danger or injury to the protected object, the circumstances in which the offence was perpetrated, the previous conduct of the perpetrator, the personal situation of the perpetrator and his or her conduct after the commission of the criminal offence, as well as other circumstances related to the personality of the perpetrator. BiH courts may set a punishment below the limit prescribed by the law, when law provides for such possibility and when the court finds that attenuating circumstances call for such a decision.<sup>22</sup>
22. To illustrate the current trend, 15 verdicts issued by BiH courts at different levels in cases concerning rape or other forms of sexual violence perpetrated during the war have been analysed. Notably, in two thirds of the analysed verdicts (i.e. nine cases) **the perpetrator was sentenced to imprisonment between three and five years**. Only the Court of BiH and the Cantonal Court of Sarajevo issued six verdicts where perpetrators were sentenced to deprivation of liberty between six and eight years. Before all other BiH courts, **no example of sentences of more than five years for persons found guilty of rape or other forms of sexual violence committed during the war can be found**. In most cases, these mild sentences have been justified by the “young age” of the perpetrator when the crime was committed, and by the fact that the perpetrator has now a family to maintain. It would seem that BiH

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<sup>19</sup> *Ibid.*, pp. 12-13.

<sup>20</sup> *Ibid.*, p. 12.

<sup>21</sup> *Ibid.*, p. 34.

<sup>22</sup> For a thorough analysis of the attenuating and aggravating circumstances applied in criminal proceedings concerning war time sexual violence see OSCE Mission to BiH's Report, *supra* note 18, pp. 36-38.

courts pay less attention to the young age of the victims when the crime was committed and the situation of vulnerability in which the victim found herself at the time, as well as the stigmatisation suffered thereafter for over 20 years. **The criteria applied by BiH courts to sentence perpetrators of rape or other forms of sexual violence during the war are perceived by many victims as discriminatory and a mockery.** As pointed out in the recent report of the OSCE Mission to BiH, it is imperative that “judges and prosecutors broaden their understanding of the harmful consequences to victims of sexual violence, so that these can be more adequately explained in judgments and reflected in sentences”.<sup>23</sup>

23. It is a well established principle of criminal and international law that penalties must be proportionate to the gravity of the crime at stake and the extreme seriousness of the offence concerned must be duly taken into account. **Imprisonment between three and five years is a low penalty and it is hardly proportionate to the extreme gravity of the crime at stake.** Many victims of rape or other forms of sexual violence during the war perceive these low sentences as an additional form of frustration. They sense that their suffering is looked down on, especially considering the extraordinary obstacles they have to face to come forward and to take part to proceedings. In the mid-long term, **the described situation discourages other victims from seeking justice and further nourishes impunity.**
24. The above-described situation must also be read in the light of the **general trend of reducing the sentences of persons convicted for war crimes**, triggered by the judgment delivered on 18 July 2013 by the European Court of Human Rights on the *Maktouf and Damjanović* case and its misinterpretation by BiH courts. In that specific case, the European Court held that since there was a real possibility that the retroactive application of the 2003 Criminal Code operated to the applicants’ disadvantage, in the special circumstances of that case, they had not been afforded effective safeguards against the imposition of a heavier penalty. This led to a high number of appeals on cases already decided by the Court of BiH since 2003. **Twenty-three cases were eventually re-opened and in all of them perpetrators obtained substantially lower sentences.** This situation is perceived by victims of gross human rights violations during the war as a sign that even the gravest crimes are not sanctioned in accordance with their seriousness.
25. With one notable exception,<sup>24</sup> the associations subscribing the present document refer that **communication with prosecutors’ offices, and access to information concerning ongoing or forthcoming trials remain extremely difficult.** In the opinion of several of the associations of victims of war subscribing this report the communication with prosecutors’ offices became even worst in comparison to the problems already highlighted in the past. As a matter of fact, at the time of writing, despite the recommendations issued by international human rights mechanisms, victims of gross human rights violations during the war and their associations **are not systematically associated as closely as possible to the investigative stages, and no regular mechanism of information on the process of**

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<sup>23</sup> *Ibid.*, p. 38.

<sup>24</sup> The Association of Women from Prijedor - *Izvor* reports being satisfied about its communication and cooperation with the Prosecutor’s Office of BiH.

investigation has been established.

#### Questions to be Included in the LOIS

(related to Arts. 2, 6, 7, 9, 10 and 16 of the Covenant)

- Please provide updated information on **how BiH plans to fully implement the National War Crimes Strategy, completing the investigation of “most complex” cases by the end of 2015.**
- Please provide updated **statistical information on the investigation and prosecution of war-related crimes**, with special emphasis on the quantity of investigations concerning war-time rape or other forms of sexual violence.
- Please provide accurate **figures concerning the penalties imposed on those found guilty of rape or other forms of sexual violence** committed during the war.
- Please inform on the measures taken to ensure that judicial authorities, and in particular the Court of BiH and the Prosecutor’s Office of BiH, receive **adequate funding and resources** to implement the National War Crimes Strategy.
- Please provide information on whether a system to **provide regular information to victims of gross human rights violations during the war, their relatives, and their representatives on the process of investigation, the results of investigations, and whether trials might be forthcoming has been put in place or if there is a project to do so.**

#### 4. The Ongoing Problems in the Implementation of the 2004 Law on Missing Persons and the Obstacles Faced in the Exhumation Process

26. On 17 November 2004 the Law on Missing Persons (LMP, Official Gazette of BiH No. 50/04) entered into force. This piece of legislation aims at establishing a comprehensive regime to deal with missing persons, defined as individuals “about whom his family has no information and/or is reported missing on the basis of reliable information as a consequence of the armed conflict that happened on the territory of the former Socialist Federal Republic of Yugoslavia” (Art. 2). The law applies to persons who went missing in the period from 30 April 1991 to 14 February 1996 and it contains provisions recognising, among others, the right to know the fate of missing persons (Art. 3) and the obligation to provide information (Art. 4). **More than ten years after the entry into force of the LMP and despite reiterated recommendations by international human rights mechanisms, including the HRC, to date several provisions of the law remain dead letter.**<sup>25</sup>

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

27. In its 2012 concluding observations the HRC recommended BiH to “take all necessary measures to

<sup>25</sup> Art. 24, para. 1, of the LMP provides that: “the BiH Ministry of Human Rights and Refugees shall oversee the enforcement of this Law”.

ensure that the Missing Persons Institute is adequately funded and able to fully implement its mandate with a view to completing the resolution of these cases as soon as possible”.<sup>26</sup>

28. In its 2014 follow-up report, the WGEID noted with concern that “*the budget of the MPI has decreased*. It reiterates its recommendation to strengthen the MPI as the central institution for the tracing of the disappeared persons. It also stresses *the need for the MPI to remain open and transparent to families of victims and civil society and to keep on improving its structure and functioning, including by proposing amendments to the law*”.<sup>27</sup>
29. Art. 7 of the LMP provides for the establishment of the MPI, mandated to improve the process of tracing missing persons and expedite identifications of mortal remains of missing persons. The MPI became fully operational only from 1 January 2008. Despite the recommendations from international mechanisms, including the WGEID,<sup>28</sup> the MPI is **experiencing troubles with regard to the appointment of the members of its different managing bodies**.
30. The MPI is composed of three management bodies, namely: a six-member Steering Board, a three-member Supervisory Board and a three-member Board of Directors. The staff reports to the Board of Directors, which reports to the Steering Board, which reports to the founders;<sup>29</sup> while the Supervisory Board is a reviewing body that reports to the two other management boards and to the founders. There is also an Advisory Board, composed by representatives of associations of relatives of missing persons (so far composed by two Bosniak, two Bosnian Serb, and two Bosnian Croat members).<sup>30</sup> The members of these associations also participate in the work of the Steering Board, but without the right to vote.
31. On 30 June 2012 the mandate of the members of the Board of Directors expired and those currently holding the posts are doing so *ad interim* pursuant to a mandate of technical nature.<sup>31</sup> A call for the election of new members was issued at the end of June 2012 and the process remains ongoing more than three years later.
32. In general, while the fact that members of an institution may hold a technical mandate for a limited period of time is natural, the same cannot be said if over the past three years a considerable number of posts in the managing bodies of the MPI have formally been vacant or held *ad interim*. Such a

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<sup>26</sup> HRC, *Concluding Observations on BiH*, *supra* note 1, para. 9.

<sup>27</sup> WGEID, *Follow-up Report on the Mission to BiH*, *supra* note 4, para. 25 (emphasis added).

<sup>28</sup> Committee against Torture (CAT), *Concluding Observations on BiH*, doc. CAT/C/BIH/CO/2-5 of 19 November of 2010, para. 24 (a); and WGEID, *Report on the Mission to BiH*, doc. A/HRC/16/48/Add.1 of 16 December 2010, para. 78 (hereinafter “Report on the Mission to BiH”).

<sup>29</sup> The International Commission on Missing Persons and the Council of Ministers of BiH. An English version of the Agreement on Assuming the Role of Co-founders of the MPI can be found at: [www.ic-mp.org/wp-content/uploads/2007/11/agreement\\_en.pdf](http://www.ic-mp.org/wp-content/uploads/2007/11/agreement_en.pdf).

<sup>30</sup> It must be noted that, while in BiH access to power or positions should be granted to Bosniaks, Bosnian Croats, Bosnian Serbs and to “others” (including, for instance, Roma, Jews, or those who identify themselves simply as Bosnian-Herzegovinians), at present the organizational structure of the MPI includes no representation of the “others” category in its organizations structure.

<sup>31</sup> The association *Izvor* holds that the fact that three persons sit in the Board of Directors, contrary to the appreciation of the WGEID, must be regarded as a negative factor, as currently most of the time would be spent in trying to reach consensus instead of taking substantive decisions.

situation does not contribute to the regular functioning of an institution or to the overall perception of trustworthiness when it comes to public scrutiny. Furthermore, representatives of associations of relatives of missing persons expressed concerns because of the alleged presence of people who have political affiliations within the managing bodies of the MPI<sup>32</sup> and stressed that this undermines the overall credibility of the institution. This situation is worsened by the fact that the press is publicly questioning the regular functioning of the MPI, highlighting that over the past months of 2015 the Serbian member of the Board of Directors (Mr. Milutin Mišić) did not attend sessions.

33. Finally, the news that one of the co-founders of the MPI, i.e. the **International Commission on Missing Persons (ICMP)**, is going to move its headquarters to The Hague and will allegedly reduce its presence in BiH, generated a **climate of concern among associations of relatives of missing persons** in the country.
34. However, among others, the discovery of a significant number of mortal remains in 2013 in a mass grave in Tomašica<sup>33</sup> prompted the ICMP to launch a 3-year project to be implemented between January 2014 and December 2016 to support the Prosecutor's Office of BiH and the MPI, providing them assistance in the forensic work related to the mentioned mass grave. According to representatives of the ICMP, although the institution will move its headquarters, it will nonetheless continue providing technical assistance to BiH authorities with regard to the process of identification of mortal remains. At the same time, the **ICMP intends to withdraw from the agreement as co-founder of the MPI and to leave the corresponding responsibilities with the Council of Ministers of BiH.**

#### 4.2 The Failure to Complete the Central Record of Missing Persons (CEN)

35. In its 2014 follow-up report, the WGEID affirmed that it "had identified the establishment of the Central Records of Missing Persons as an essential step in the search of the disappeared and *regrets that this could not be completed, 10 years after the entry into force of the Law on Missing Persons*".<sup>34</sup>
36. Art. 21 of the LMP provides for the creation of the CEN, intended to include all records that were or are kept at local or entity levels, by associations of families of missing persons and other associations of citizens, Tracing Offices of the organizations of the Red Cross in BiH, as well as international organizations. Art. 22, para. 4, of the LMP prescribes that "verification and entry of previously collected data on missing persons into CEN should be completed by the competent authority *within a year* of the date of the establishment of the MPI" (emphasis added). This means that **the process of verifying and entering data in the CEN should have been completed by 1 January 2009**. Despite the repeated recommendations in this sense issued by various international human rights mechanisms, **at July 2015 the CEN has not been completed yet**. Since 2009, **the status of 17,967 missing persons has been verified. The cases that remain to be verified are more than 16,000**. Despite the deadlines clearly

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<sup>32</sup> In this sense, it must be recalled that Art. 5 of the LMP clearly establishes that "*officials with duties related to the tracing of missing persons cannot carry out this duty if they are members of steering or other boards, or executive bodies, of political parties, or if they are politically engaged representatives, and must not follow political party instructions*" (emphasis is added).

<sup>33</sup> *Infra* para. 43.

<sup>34</sup> WGEID, *Follow-up Report on the Mission to BiH*, *supra* note 4, para. 24 (emphasis added).

set by the LMP, representatives of the MPI allege that “it is impossible to predict the date of finalization of the verification”. This situation is a source of deep distress for relatives of missing persons.

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

37. In its 2014 follow-up report, the WGEID affirmed that it is “*gravely concerned that the Fund for Support to the Families of Missing Persons has not been established yet*. The Fund was provided for by the Law on Missing Persons that entered into force in 2004. *The non establishment of the fund has concretely deprived the victims of reparation and thus Bosnia and Herzegovina is not only in contradiction with its international obligations, but also with a number of decisions delivered by the Constitutional Court of Bosnia and Herzegovina. The Working Group calls on Bosnia and Herzegovina to set up the Fund as a matter of priority*”.<sup>35</sup>
38. Art. 15 of the LMP prescribes the creation of a Fund for the Support of Relatives of Missing Persons (“the Fund”), intended to be a means of support for families of missing persons in BiH. Paragraph 2 of the provision indicates that a decision on the setting up of the Fund “shall be issued by the Council of Ministers of BiH *within 30 days from the date of the coming into force of the Law*” (emphasis is added). The same was provided for the organization of issues related to the work of the Fund. Given that the LMP entered into force on 17 November 2004, a decision on the establishment of the Fund **should have been issued by the Council of Ministers of BiH by 17 December 2004**.
39. Despite reiterated recommendations issued from international human rights bodies, at **July 2015 the Fund does not exist yet. BiH authorities do not show any willingness to address this matter**.<sup>36</sup> It has to be stressed that, besides being an ongoing breach of BiH’s international obligations, the non-establishment of the Fund causes serious damage to relatives of missing people who are denied their right to obtain support and compensation. Associations of relatives of missing people across the country express their deep concern because of this situation and their loss of trust towards domestic institutions. Many of their members are dying without having ever realised the rights they are entitled to, and without having ever obtained any form of support from the Fund. Finally, it must be noted that the **non-establishment of the Fund amounts also to non-implementation of a significant number of decisions delivered by the Constitutional Court of BiH on the subject of missing people, whereby the payment of compensation to relatives recognised as victims of grave human rights violations was associated to the establishment of the Fund, which was expressly ordered by the Constitutional Court of BiH**. The fact that the verdicts of the highest judicial body of the country can remain unimplemented without any significant consequence for those responsible eventually undermines the rule of law and general trust towards institutions.

#### 4.4 The Lack of Information on the Progresses Made in the Process of Exhumation and Identification

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<sup>35</sup> *Ibid.*, para. 30 (emphasis added).

<sup>36</sup> The association *Izvor* wishes to state that, in their view, also the Ministry for Human Rights and Refugees must be held responsible for the non-establishment of the Fund, because they did not foresee adequate mechanisms to set it up when the LMP was drafted. *Izvor* further stresses that there is no effective remedy that can be used to challenge the non-implementation of the provisions of the Law on Missing Persons concerning the establishment of the Fund.

## of Mortal Remains and the Lack of Psycho-social Assistance during the Process

40. In its 2012 concluding observations, the HRC recommended BiH to “expedite the investigation of all unresolved cases involving missing persons”<sup>37</sup> and to “continue to provide adequate psychological support to families of missing persons during the conduct of exhumations”.<sup>38</sup>
41. In its 2014 follow-up report, the WGEID affirmed that “it notes that the strengthening of the national capacities related to exhumations and identification of bodies has been long to come, causing the distress and the legitimate impatience of the families. It welcomes the assistance provided by the EU in the framework of the accession process and the recent appointment of more staff at the State Prosecutor’s Office. It notes that *there is still a need for more forensic pathologists to be appointed and encourages the United Nations and the ICMP to propose solutions in order to establish sustainable forensic capacities at the national level*. The Working Group also recalls that it is essential to expand the use of forensic expertise and DNA testing and make adequate use of all the available technological and scientific techniques”.<sup>39</sup>
42. Since 1<sup>st</sup> January 2011, all exhumations and identifications of mortal remains fall under the jurisdiction of the State Prosecutor’s Office. However, it is **only until March 2012 that a prosecution team comprised of a prosecutor, a legal officer, and an investigator started to operate in full capacity**. All in all, associations of relatives of missing persons are **concerned with the current pace of exhumations and, in particular, of the process of identification**. Further, associations and families of missing persons are worried by the reported **high number of mistaken identifications conducted in the past**, and because of the **increasing difficulties in obtaining information on gravesites**.<sup>40</sup>
43. As already referred,<sup>41</sup> in September 2013 a mass grave was discovered in Tomašica, near Prijedor.<sup>42</sup> Almost two years after the discovery of the mass grave, **local associations voice their disillusion and frustration because of the extremely slow pace of the process, especially in terms of identification of the remains**. Having in mind the age and precarious state of health of many of the relatives of missing persons, it is clear that they fear dying without having buried, honoured, and mourned their loved ones. So far, the remains of 393 victims were exhumed from Tomašica. Forensic experts confirmed that part of the mortal remains originally inhumed in Tomašica was transferred to the secondary grave of Jakarina kosa, where 325 remains had been exhumed in 2001. It is noteworthy that mortal remains had already been located in Tomašica back in 2004 but it took until 2013 to conduct exhumations. Similarly, operations of exhumation were resumed in Jakarina kosa only in 2015, although the first remains had been located already in 2001. In the view of the associations of relatives of missing

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<sup>37</sup> HRC, *Concluding Observations on BiH*, *supra* note 1, para. 9.

<sup>38</sup> *Ibid.*

<sup>39</sup> WGEID, *Follow-up Report on the Mission to BiH*, *supra* note 4, para. 26 (emphasis added).

<sup>40</sup> ICMP, *Bosnia and Herzegovina: Missing Persons from the 1990s Conflicts: A Stocktaking*, December 2014, [http://www.icmp.org/wp-content/uploads/2014/12/StocktakingReport\\_ENG\\_web.pdf](http://www.icmp.org/wp-content/uploads/2014/12/StocktakingReport_ENG_web.pdf), pp. 62-63.

<sup>41</sup> *Supra* para. 34.

<sup>42</sup> See, *inter alia*, <http://www.dailymail.co.uk/news/article-2444015/Dozens-bodies-discovered-Bosnian-mass-grave-believed-victims-genocide-carried-Serb-forces.html> and <http://www.justice-report.com/en/articles/268-victims-remains-found-in-bosnia-mass-grave>.

persons working in the area, these delays are a clear example of the lack of effectiveness of several BiH authorities and institutions, including the Cantonal Court in Bihać, the Cantonal Prosecutor's Office in Bihać, the Prosecutor's Office of BiH, the Federal Commission for Missing Persons, and the MPI.

44. Associations of relatives of missing persons highlight that **the process of exhumation remains slow**. In many cases, although the MPI submitted a request to conduct exhumations to the Prosecutor's Office of BiH, the latter may take months to decide. Furthermore, **although the concealment of mortal remains is a crime pursuant to the applicable legislation, to the knowledge of the associations subscribing the report, there are no instances of prosecution and conviction for such practice**. For example, when rendering a statement to the Prosecutor's Office of BiH concerning the massacre of Korićanske stijene, the former mayor of Kneževo (Mr. Čedo Vuković) recognised that he led the Civic Protection Unit responsible for having removed and concealed four bodies. Nonetheless, no investigation was launched. The lack of investigation and adequate sanctions for instances of removal, concealment, or mutilation of mortal remains is particularly grave and further complicates the process of exhumation and identification. Finally, the role played in exhumations by the police is limited to securing the relevant areas when the process is already taking place, while it could also be involved in the collection of information related to the location of individual and collective graves.
45. A review of 11 mortuaries in the country, aimed at establishing why almost 3,000 bone samples received from local authorities do not match the genetic profiles of almost 9,000 complete sets of reference provided by family members was launched in 2014. At July 2015, unidentified human remains ("NN cases") have been reviewed in the three mortuary facilities of Sutina, Nevesinje and Goradze. The process is ongoing in Visoko and Tuzla, while the overall process is scheduled to be completed by mid-2016.
46. To the knowledge of the subscribing organizations, **no additional forensic pathologists have been appointed in the last years**. One of the main problems in this area is the fact that to date **there is no Forensic Institute of BiH**: there is one for Republika Srpska, but allegedly understaffed and without the necessary professional training, and there is none for the Federation of BiH.
47. **Relatives of missing persons continue not receiving any form of adequate psychological support prior, during, and after exhumations, thus remaining subjected to ongoing stress and instances of re-traumatisation.**

#### Questions to be Included in the LOIS

(related to Arts. 2, 6, 7, 9, 10 and 16 of the Covenant)

- Please provide information on the **measures taken to fully implement the Law on Missing Persons, and in particular the material, human and budgetary resources** provided by BiH to ensure the **full independence of the Missing Persons Institute**. Please describe steps taken to ensure the timely appointment of the members of its managing bodies.
- Please provide **accurate data on the progresses made in the establishment of the Central Record of Missing Persons and indicate by when it will be completed.**



- Please provide further information on **any progress made in the establishment of the Fund for Support of Relatives of Missing Persons**, and on the measures undertaken to ensure an adequate budget.
- Please provide adequate **information on the number of rulings issued by the Constitutional Court of BiH concerning missing persons that have not yet been implemented and the reasons therefore**. Illustrate whether anyone has been **prosecuted so far for the non-implementation** of the mentioned rulings.
  - Please provide information on the steps taken to **ensure that the relatives of missing persons are regularly kept informed on the process of exhumation and identification of mortal remains** and that they **receive adequate psychological support** prior, during and after the process.
  - Please provide information on whether any activity has been undertaken to **ensure the training and appointment of new forensic pathologists** and to **guarantee that the Prosecutor's Office of BiH counts with adequate human and financial resources** to ensure that exhumations regularly take place.

## 5. The Failure to Amend Domestic Legislation concerning the Declaration of Death of Missing Persons

48. In its 2012 concluding observations the HRC recommended BiH to “abolish the obligation in cases of disappearance which makes the right to compensation dependent on the family’s willingness to have the family member declared dead. The State party should ensure that any compensation or other form of redress adequately reflects the gravity of the violation and the harm suffered”.<sup>43</sup>
49. In its views on a case concerning BiH, the HRC found a violation of Arts. 2, 6, 7 and 9 of the Covenant with regard to the obligation imposed on relatives of missing persons to obtain a death certificate in order to have access to social welfare and reparation and it recommended to BiH “the abolition of the obligation for family members to declare their missing dead to benefit from social allowances or any other forms of compensation”.<sup>44</sup>
50. In the views expressed on the case *Rizvanović*, the HRC found that to oblige families of *disappeared persons to have the family member declared dead in order to be eligible for compensation while the investigation is ongoing makes the availability of compensation dependent on a harmful process, and constitutes inhumane and degrading treatment* in violation of article 7 read alone and in conjunction with article 2, paragraph 3, of the Covenant”.<sup>45</sup>
51. Notably, Art. 24, para. 6, of the International Convention for the Protection of All Persons from Enforced Disappearance<sup>46</sup> requires States parties to take “the appropriate steps with regard to the legal situation

<sup>43</sup> HRC, *Concluding Observations on BiH*, *supra* note 1, para. 12.

<sup>44</sup> HRC, *Case Prutina, Zlatarac, Kozica, Ćekić v. Bosnia and Herzegovina*, views of 28 March 2013, para. 11.

<sup>45</sup> HRC, *Case Rizvanović v. Bosnia and Herzegovina*, views of 21 March 2014, para. 9.6 (emphasis added).

<sup>46</sup> BiH ratified the International Convention for the Protection of All Persons from Enforced Disappearance on 30 March 2012.

of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights". In its jurisprudence, the Committee on Enforced Disappearances (CED) recommended states to review their legislation, with a view to incorporating a declaration of absence as a result of enforced disappearance, considering that the use of the 'legal presumption of death' is not adequate.<sup>47</sup>

52. To advocate for the amendment of domestic legislation so that it is brought in line with international standards, on 23 September 2013 representatives of TRIAL met with members of the Commission for Human Rights and Freedoms of the Federal Parliament and called on them to amend the existing legislation (i.e. the Federal Law on Social Protection, the Protection of Civilian Victims of War and Families with Children, and the Federal Law on the Rights of Demobilised Defenders and their Families) abolishing the obligation to declare a disappeared person dead in order to have access to social allowances. The Commission expressed its willingness to consider potential amendments and requested TRIAL to present a draft text, which was done on 30 September 2013. **On 10 October 2013, the draft document was forwarded for consideration to the competent federal ministries, who expressed positive feedback. Similarly, the government of Federation of BiH expressed its support to the initiative in April 2014. However, these advancements were frustrated by the fact that after the recent elections in the country new authorities have been appointed and the proposed amendments to the law will have to undergo the same procedure, be re-considered, and approved again. As of July, 2015 the amendments have not yet been adopted.**
53. It must be further highlighted that, besides the above-mentioned legislation, Art. 27 of the LMP establishes that "three years after the date of the coming into force of the law, persons registered as missing in the period from 30 April 1991 to 14 February 1996 whose disappearance has been verified within the CEN BiH, *shall be considered dead* and this fact shall be officially entered in the Register of Death [...]" (emphasis is added). Notwithstanding the recommendations issued by international human rights bodies, to the knowledge of the subscribing associations, to date **BiH authorities have not carried out any particular assessment, nor have they consulted with associations of relatives of missing persons on this subject. Accordingly, the risk remains that enforced disappearance is unduly treated as a death, without taking into account its continuous nature.**
54. In November 2013, TRIAL, in its capacity of representative before different international bodies of relatives of missing persons, sent a letter to inquiry on whether the Ministry of Human Rights and

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<sup>47</sup> Committee on Enforced Disappearances (CED), *Concluding Observations on Germany*, doc. CED/C/DEU/CO/1 of 27 March 2014, paras. 26-27; and *Concluding Observations on the Netherlands*, doc. CED/C/NLD/CO/1 of 27 March 2014, paras. 34-35. On this subject, see Citroni, *The Pitfalls of Regulating the Legal Status of Disappeared Persons Through Declaration of Death*, in *Journal of International Criminal Justice*, 2014, pp. 787-803.

Refugees had the intention to undertake the above-mentioned assessment of the compatibility of Art. 27 of the LMP with international standards. In the same month the Ministry sent a letter to TRIAL, where it avoided providing any meaningful answer to the question and instead indicated that if families of missing persons wish to receive information on Art. 27 of the LMP, they should address directly the Ministry in order to obtain a reply. It is not clear why the Ministry of Human Rights and Refugees refused to provide information that should be accessible to the public, all the more being TRIAL the legal representative of a number of relatives of missing persons who have a direct interest in clarifying the meaning and implications on their fundamental rights of the legislative provision concerned. Exchanges on this subject are ongoing.

55. On its part, in its 2014 follow-up report the WGEID affirmed being “*concerned that article 27 of the Law on Missing Persons has not been amended, as recommended by the Working Group. It reiterates that an enforced disappearance is a continuous crime until the person’s fate or whereabouts is determined*”.<sup>48</sup>

#### Questions to be Included in the LOIS

(related to Arts. 2, 6, 7, 9, 10 and 16 of the Covenant)

- Please provide information on the **measures taken to abolish the obligation in cases of disappearance which makes the right to compensation and to social allowances dependent on the family willingness to have the missing relative declared dead.**
- Please inform **about the measures taken to amend Art. 27 of the Law on Missing Persons to ensure that there is no automatic declaration of death** of those whose names are entered in the Central Record on Missing Persons and that the **continuous nature of enforced disappearance is duly taken into account.**

#### 6. The Status of Draft Legislation Relevant for Victims of Gross Human Rights Violations during the War

56. Over the past years, a number of legislative initiatives have been launched with the aim to bring BiH legal framework in line with international standards, pursuant to reiterated recommendations issued in this sense by international human rights bodies, including the HRC. Some of these initiatives have been pending over the past ten years, first fostering the illusions of victims of gross human rights violations during the war, and then nourishing their frustration.
57. Despite pledges and assurances given by BiH in this sense, to the great disappointment of the associations subscribing the present report, as of July 2015 none of those initiatives has seen the light of the day. Time passes, BiH authorities fail to take any positive measure and indulge into lulls, while in the meantime victims of gross human rights violations from the war are dying without having ever obtained justice, redress and truth. This is all the more troubling when, as in the present case, international human

<sup>48</sup> WGEID, *Follow-up Report on the Mission to BiH*, *supra* note 4, para. 35 (emphasis added).

rights bodies have issued precise recommendations to the State, which consistently fail to implement them.

## 6.1 The Draft National Strategy on Transitional Justice

58. In 2010, under the auspices of the United Nations Development Programme (UNDP) the process of drafting and adoption of draft National Strategy on Transitional Justice was launched. The working document containing the draft Transitional Justice Strategy was expected to be presented for adoption to the Parliamentary Assembly during the summer of 2012.
59. In 2013, the CEDAW recommended BiH “*to expedite the adoption of pending draft laws and programmes designed to ensure effective access to justice for all women victims of wartime sexual violence, including adequate reparation, such as [...] the draft strategy on transitional justice aimed at improving access to justice*”.<sup>49</sup>
60. In its 2014 follow-up report, the WGEID expressed “*deep regret that the Transitional Justice Strategy could not be adopted and encourages Bosnia and Herzegovina to speed up the process of its adoption* . It underlines the fact that this strategy is regarded as a priority by victims of the war who have been waiting for justice and redress over the past 20 years”.<sup>50</sup>
61. Although UNDP supported a dialogue between government institutions in cooperation with civil society organizations on the draft Strategy on Transitional Justice, the **draft was never presented for adoption to the Parliamentary Assembly**. Some segments of the draft strategy are being implemented by UNDP, but there is no institutional long-term commitment whatsoever and the initiative of adopted a national strategy on transitional justice as such is at an impasse. If this initiative is re-launched, the draft should nevertheless be updated, because many of its sections referred to the period 2010-2014.

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

62. At the end of 2010, the United Nations Population Fund (UNPFA) and the BiH Ministry of Human Rights and Refugees launched the drafting and adoption of the “Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence”. The finalization of the draft programme was expected by the end of 2011 and was then repeatedly postponed.
63. In 2013 the CEDAW recommended BiH to “*expedite the adoption of pending draft laws and programmes designed to ensure effective access to justice for all women victims of wartime sexual violence, including adequate reparation, such as [...] the programme for victims of sexual violence in conflict and torture (2013-2016)*”.<sup>51</sup> Similarly, the European Commission highlighted that “the adoption of a State-level programme to improve the status of victims of war crimes involving sexual violence is

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<sup>49</sup> CEDAW, *Concluding Observations on BiH*, *supra* note 3, para. 10 (c), emphasis added.

<sup>50</sup> WGEID, *Follow-up Report on the Mission to BiH*, *supra* note 4, para. 29 (emphasis added).

<sup>51</sup> CEDAW, *Concluding Observations on BiH*, *supra* note 3, para. 10 (c), emphasis added.

pending”.<sup>52</sup>

64. At July 2015, despite the recommendations of international human rights bodies, **the draft programme has not yet been submitted to the Council of Ministers of BiH for approval and it remains at the entities’ level.** The programme was submitted for feedback opinions to entity governments, but the government of Republika Srpska failed to formulate its opinion so far, thus paralysing the whole process. The government indicates that, once formally approved, the programme will be implemented by UN agencies and a comprehensive survey to determine the needs in the area of economic empowerment, service delivery, public perception, justice, reparations and help is allegedly ongoing. However, it is unclear how the programme could be carried out without any institutional commitment. Failure to adopt this programme demonstrates persistence on behalf of the State in avoiding to meet its international obligations in terms of “allocating adequate resources and adopt effective measures to ensure that victims of gender-based violence, in particular sexual violence, have access to comprehensive medical treatment, mental health care, and psychosocial support.

### 6.3 The Draft Law on the Rights of Victims of Torture

65. Since 2006 (i.e. seven years ago) BiH has been affirming before international human rights mechanisms that the adoption of a Law on the Rights of Victims of Torture was “imminent”.
66. In 2013, the CEDAW recommended BiH to “*expedite the adoption of pending draft laws and programmes designed to ensure effective access to justice for all women victims of wartime sexual violence, including adequate reparation, such as the draft law on the rights of victims of torture and civilian war victims*”.<sup>53</sup>
67. Among others, the European Commission noted that “legislation on the rights of victims of torture remains to be adopted”.<sup>54</sup> During the second cycle of the Universal Periodic Review, BiH was anew recommended to “adopt a law on reparation and compensation for victims of torture during the war”.<sup>55</sup> This recommendation was only partially accepted and the State declared that “BiH has sought to get agreement on a legal solution to the rights of victims of torture in BiH, in which a proposal for solution to the reparation / compensation to victims of torture is to be regulated in a uniform way for all victims of torture in BiH. Given there are still different views on this issue by the Entity governments, in the coming period we expect reconciliation of the opinions of the Entity governments and relevant authorities of BiH in terms of the legal solutions that will meet the needs of BiH and regulate the rights of victims of torture and the right to reparation / compensation”.<sup>56</sup>
68. **At July 2015, no law on the rights of victims of torture has been adopted.** The callous inactivity of BiH authorities in the face of the acute suffering of victims of torture, including relatives of missing

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<sup>52</sup> European Commission, *2014 Progress Report on BiH*, *supra* note 12, p. 14.

<sup>53</sup> CEDAW, *Concluding Observations on BiH*, *supra* note 3, para. 10 (c), emphasis added.

<sup>54</sup> European Commission, *2014 Progress Report on BiH*, *supra* note 12, p. 17.

<sup>55</sup> Report of the Working Group on the Universal Periodic Review, *supra* note 14, para. 107.97.

<sup>56</sup> Doc. A/HRC/29/G/4 of 18 June 2015.

persons, former camp-detainees, women victims of rape or other forms of sexual violence during the war, who have been waiting for a law to eventually realise their fundamental rights is not only a flagrant breach of BiH's international obligations, but discloses an obstinate disregard of recommendations repeatedly put forward by international human rights mechanisms, and is perceived by thousands of victims as a mockery.

#### 6.4 The Draft Law on Free Legal Aid

69. Despite some attempts to adopt a State law on free legal aid, **at July 2015 no such piece of legislation has been adopted**, thus leaving especially vulnerable people, including relatives of missing persons, former camp-detainees, women victims of rape or other forms of sexual violence during the war, exposed to further marginalisation and hampering their access to justice, while their trust towards institutions is seriously jeopardised. The adoption of a law on free legal aid is a priority that cannot be postponed anymore.
70. In this sense, the European Commission has highlighted that “concerning free legal aid, *the risk of discrimination continues to be of serious concern as a consequence of a fragmented and non-harmonised system*. A free legal aid agency has been established in one more Canton of the Federation, bringing the total to eight. However, the free legal aid system is still unregulated in two Cantons and in the Federation. *The adoption of a State-level law on free legal aid is still pending*. Civil society organisations actively continue to provide free legal aid, particularly in civil cases, but their role is not consistently recognised or even regulated in the country”.<sup>57</sup> On its part, in its 2014 follow-up report, the WGEID expressed regret “that the draft law on free legal aid was not adopted by the Parliamentary Assembly”.<sup>58</sup>

#### Question to be Included in the LOIS

(related to Arts. 2, 6, 7, 9, 10 and 16 of the Covenant)

Please indicate the status of the following draft legislation and policy proposals: (a) the draft National Strategy on Transitional Justice; (b) the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence; (c) the draft Law on the Rights of Victims of Torture; and (d) the draft Law on Free Legal Aid.

#### 7. The Remaining Problems concerning Witness Protection and Support in War Crimes Trials

71. In its 2012 concluding observations the HRC recommended BiH to “[...] continue to provide adequate psychological support to victims of sexual violence, particularly during the conduct of trials”<sup>59</sup> and, more in general, to “take practical measures to increase the effectiveness of the witness protection programme to ensure the full protection of witnesses. The State party should also ensure that witnesses

<sup>57</sup> European Commission, 2014 Progress Report for BiH, *supra* note 14, p. 14 (emphasis added).

<sup>58</sup> WGEID, *Follow-up Report on the Mission to BiH*, *supra* note 4, para. 39.

<sup>59</sup> HRC, *Concluding Observations on BiH*, *supra* note 1, para. 7.

continue to receive adequate psychological support in entities where war crimes have been transferred. The State party should further ensure that authorities fully investigate cases of suspected intimidation of witnesses to put an end to the climate of fear that stifles efforts to prosecute war crimes at the entity level in the State party”.<sup>60</sup>

72. In 2013, the CEDAW recommended BiH to “ensure the effective implementation of the new law on the witness protection programme and establish sustainable and operational witness protection measures at the district and cantonal levels”.<sup>61</sup>
73. On 29 April 2014 the **Law on Witness Protection Programme in BiH was adopted**. However, this law **applies only to witnesses testifying before the Court of BiH and not to district courts in Republika Srpska, cantonal courts in the Federation of BiH, or courts in the Brčko District**. Having in mind the **increasingly high number of proceedings concerning war crimes that are taking place before entity or district courts, this is certainly problematic**. As noted by the OSCE Mission to BiH, “insufficient witness protection capacity, including the absence of witness protection programmes, remains a problem in the entities”.<sup>62</sup> Instances of **witnesses refusing to testify** due to the lack of adequate protection are not infrequent,<sup>63</sup> especially in cases concerning conflict-related sexual violence.<sup>64</sup>
74. Notably, also the National War Crimes Strategy contains several indications concerning witness protection and support. In particular, it is established that “in order to strengthen the witness support in proceedings conducted before district/cantonal courts and prosecutor’s offices, a network of witness and victim support at the level of entire BiH will be created and developed. *Witness Support Section of the Court of BiH will play a key role in coordinating activities and will serve as a model for other offices*. In order to establish this support network, capacities of local nongovernmental organizations that provide psycho-social support or are already professionally working with victims and witnesses, will be used. Staffing capacities of the 34 Centres for Social Affairs, that is, centres for mental health, which will also be used for this purpose, will be advanced”.<sup>65</sup>
75. Further, the National War Crimes Strategy also establishes that sets forth that “in order to ensure equal treatment of witnesses, the Witness Support Section of the Court of BiH will provide professional support in the process of establishment of regional offices, training, and education of staff and cooperation on witness issues. [...] Psychologist who will provide psychological support to the vulnerable witnesses when giving statement during investigation and entire proceedings will be engaged in the Prosecutor’s Office of

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<sup>60</sup> *Ibid.*, para. 14.

<sup>61</sup> CEDAW, *Concluding Observations on BiH*, *supra* note 3, para. 10 (d).

<sup>62</sup> OSCE Mission to BiH’s Report, *supra* note 18, p. 42.

<sup>63</sup> BIRN Justice Report, *Interview - District Court President Senaid Ibrahimfendic: Witnesses Refuse to Testify*, July 2015, available at <http://www.justice-report.com/en/articles/interview-district-court-president-senaid-ibrahimefendic-witnesses-refuse-to-testify>.

<sup>64</sup> OSCE Mission to BiH’s Report, *supra* note 18, p. 39.

<sup>65</sup> National War Crimes Strategy, *supra* note 16, pp. 33-34 (emphasis added).

BiH, as well as the cantonal/district prosecutor's offices and the courts".<sup>66</sup>

76. **These sections of the National War Crimes Strategy have not been given full implementation.** This is all the more troubling taking into account **the information, confirmed both by UNDP and a judge of the Court of BiH, that the Witness Protection Department within the Prosecutor's Office of BiH has been closed.**
77. **The provision of assistance and psychological support before the competent authorities across the country is far from homogenous.** Although new departments to offer support to witnesses during war crimes trials have been set up in different cities, this was done with the support of the UNDP. Further, a network of support provided by NGOs was established with the support of the EU.<sup>67</sup> AS noted by the OSCE Mission to BiH, "no progress has been observed with regards to strengthening the capacity of Social Welfare Centres which are, under the Laws on the Protection of Witnesses under Threat and Vulnerable Witnesses, required to provide psychosocial support to witnesses. In practice, they still lack capacity to do so".<sup>68</sup> **If BiH authorities do not provide for adequate financial and human resources to ensure future activities, the sustainability of these endeavours may be at risk.** All in all, **institutional support to witness protection and assistance is lacking.**
78. In its 2014 follow-up report, the WGEID welcomed "the measures taken in order to improve the protection of witnesses before State Courts and district courts, as well as other measures to improve the work of judges, prosecutors and lawyers in charge of war crime cases. It welcomes the assistance given by some states and international organisations to this regard, and the work done by associations and NGOs, in particular after the completion of criminal proceedings, when the support given the courts has ended. [...] It also expresses concerns over the suspension of the budget line concerning support to victims and witnesses during war crime trials in Republika Srpska".<sup>69</sup>
79. During the second cycle of the Universal Periodic Review, BiH was recommended to "ensure that all the courts and the prosecutors' offices of various entities take adequate measures to support and protect witnesses, in order to avoid the transfer of files to these entities resulting in impunity, particularly in

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<sup>66</sup> *Ibid.*

<sup>67</sup> In particular, the EU funded the programme "Ensuring Access to Justice for Witnesses/Victims by Strengthening Existing and Developing New Networks of Support to Witnesses throughout BiH". The project is currently run by Viva Žene Tuzla, Medica Zenica, the Foundation United Women Banja Luka, and the Agency for Cooperation, Education and Development Banja Luka. The establishment of the network was funded by UN Women since 2010, and after that the British Embassy in BiH have continued the support, they have helped to establishment of networks in the Zenica-Doboj Canton, Central Bosnia Canton, Una-Sana Canton, Tuzla Canton, Herzegovina-Neretva Canton and the city of Banja Luka. The British Embassy also supports establishment of networks in Livno and East Sarajevo. The formation of the Network for support to witnesses which gathers 19 NGOs across the country has established a coordinated form of providing psychological and legal support to witnesses-victims of wartime sexual violence before, during and after the trial. It has improved the quality of the testimony through the process of informing witnesses about their rights, ways of functioning of the criminal proceedings and the psychological empowerment to overcome the trauma, and the prevention of re-traumatisation. See here: <http://www.fld.ba/novost/9693/network-for-support-to-witnesseswomen-victims-of-war>.

<sup>68</sup> OSCE Mission to BiH's Report, *supra* note 18, p. 41.

<sup>69</sup> WGEID, *Follow-up Report on the Mission to BiH*, *supra* note 4, para. 39.



cases of sexual violence”.<sup>70</sup> This recommendation was only partially accepted by BiH, which declared that it “applies four laws relating to the protection of witnesses that need continued coordination and improvement. The position regarding the quality of witness protection is different, with the Ministry of Security and the Government of the Federation being in favour of this recommendation and the Republika Srpska Government having the position that this Entity adequately implements the witness protection program”.<sup>71</sup>

80. The associations subscribing this report express their dissatisfaction vis-à-vis the support offered to witnesses during war crimes proceedings. **Even when some support is provided, this is generally not done in a professional manner and by people adequately trained to this aim.** Moreover, the measures of protection and support are not offered for a sufficiently long period of time. Usually witnesses are contacted only few hours before the trial takes place and then are often left to themselves immediately after the trial is over, therefore being exposed to further trauma and frustration.

#### Questions to be Included in the LOIS

(related to Arts. 2, 6, 7, 9, 10 and 16 of the Covenant)

- Please provide information on the measures taken to **guarantee adequate and continuous psychological support to victims and witnesses prior, during, and after war crimes trials.** Kindly indicate whether the State is planning to adopt an institutional policy to ensure that initiatives currently run by NGOs with the support of international organisations continue and receive an adequate budget.
- Please provide information on **whether BiH envisages extending the measures of support and protection foreseen under the 2014 Law on Witness Protection Programme also to those testifying before district, cantonal, and other lower courts.**
- Please provide information on how will the **closure of the Witness Protection Department within the Prosecutor’s Office of BiH be addressed.**

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

81. In its 2012 concluding observations, the HRC recommended BiH to “[...] take practical measures to ensure that survivors of sexual violence and torture have access to justice and reparations [...] and urges the State party to *harmonise disability benefits among entities and cantons so that personal disability benefits received by civilian victims are adjusted to ensure they are in line with the personal disability benefits received by war veterans*”.<sup>72</sup>

82. The Commissioner for Human Rights of the Council of Europe observed that in BiH “there has been a

<sup>70</sup> Report of the Working Group on the Universal Periodic Review, *supra* note 14, para. 107.94.

<sup>71</sup> Doc. A/HRC/29/G/4 of 18 June 2015.

<sup>72</sup> HRC, *Concluding Observations on BiH*, *supra* note 1, para. 8 (emphasis added).

*failure on the part of the authorities to establish an effective mechanism that would ensure reparation for all victims of war related crimes and their families.* 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 at the level of the entities and cantons aimed at providing reparation to the victims of the war is significantly more favourable to war veterans than to civilian victims.* [...] Under the 2005 War Damages Act the Republika Srpska authorities developed a general compensation scheme for war damages. However, the nonexistence of a 'formal reparation scheme' prompted many war victims from 1999 to 2005 to initiate ordinary civil proceedings in which they requested compensation for pecuniary and non-pecuniary damages. During this period, the courts in Republika Srpska rendered around 9 000 judgments ordering the Republika Srpska to pay some €70 million in total plus default interest to the plaintiffs. Their enforcement has been pending since 2002 pursuant to the legislation which provided for the settlement scheme and the payment of the principal debt and default interest in annual instalments.<sup>73</sup>

83. Referring in particular to women victims of rape or other forms of sexual violence during the war, the Commissioner for Human Rights of the Council of Europe highlighted that "reports indicate 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 and still suffering from the physical and psychological consequences of their war-time experience. Many survivors of war-related sexual violence suffer post-traumatic stress disorder and other psychological and physical problems. *Provision of psychological support to survivors of war-related sexual violence is inadequate and many of the women victims have not been able to gain access to the health-care system.* [...] *the authorities have so far failed to provide adequate reparation to the survivors of war crimes of sexual violence in order to enable them to rebuild their lives*".<sup>74</sup>
84. In its 2014 follow-up report, the WGEID expressed concern because of "the fact that no State law on access to social benefits has been adopted. It is furthermore concerned that the *notions of reparations and of social allowances for relatives of disappeared people continue to be unduly confused and that the lack of centralized system continues to cause numerous cases of discrimination at the level of the entities.* Local legislation remains for the most not appropriate, as they do not correctly take into account the specific situation of the families of disappeared persons".<sup>75</sup>
85. The WGEID further emphasised that "*no national programme on reparation has been set up. It underscores that reparations does not limit itself to compensation, but also includes restitution, rehabilitation, satisfaction and guarantees of non repetition.* It reiterates its recommendation on the need to conceive an overall programme of reparation, with specific consideration to the situation of women,

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<sup>73</sup> Commissioner for Human Rights of the Council of Europe, *Post-war Justice and Durable Peace in the former Yugoslavia*, *supra* note 11, pp. 26-27 (emphasis added).

<sup>74</sup> *Ibid.*, pp. 25-26 (emphasis added).

<sup>75</sup> WGEID, *Follow-up Report on the Mission to BiH*, *supra* note 4, para. 31 (emphasis added).

as most family relatives of missing persons are women”.<sup>76</sup>

86. Despite 20 years have passed since the conclusion of the war and **various international human rights bodies, including the HRC, have recommended BiH to adopt a national programme on measures of reparation for victims of gross human rights violations during the war, at the time of writing no such programme has been adopted.** To the knowledge of the associations subscribing this report, there is no draft legislation in this sense. In this context, the **notions of reparations and social allowances for victims of gross human rights violations during the war continue being unduly overlapped in BiH.**
87. With regard to **social benefits, no State law has been adopted since 2012 nor does it seem to be forthcoming.** In the case of relatives of missing persons, the only State institution envisaged in this field (i.e. the Fund) has not been established.<sup>77</sup> All in all, this subject remains regulated at the entity level and this fosters **discrepancies and instances of discrimination.** Victims of gross human rights violations during the war are treated in a different manner depending on the place of residence, as **the amounts of social allowances vary between the two entities.**
88. Moreover, it must be pointed out that the Law on Protection of Civilian Victims of War in Republika Srpska poses strict deadlines for those wishing to apply (notably, the final deadline expired on 31 January 2007).<sup>78</sup> This resulted in the exclusion of many victims from the possibility to obtain the benefits they would be entitled to. 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.<sup>79</sup>
89. A further problem is related to some **provisions of the Law on Protection of Civilian Victims of War**

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<sup>76</sup> *Ibid.*, para. 32 (emphasis added).

<sup>77</sup> *Supra* paras. 37-39.

<sup>78</sup> Art. 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 Art. 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 [...]”.

<sup>79</sup> See UN doc. E/CN.4/Sub.2/1996/17 of 24 May 1996, para. 9. 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”. In this sense, it must be reported that on 7 August 2012 the government of Brčko District adopted a regulation concerning civilian victims of war who reside in the District. The new regulation recognises “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).

**in Republika Srpska and their interpretation by local authorities.** Art. 2 of the law defines as civilian victim of the war a person who: “1) Has suffered **bodily 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 bodily harm as well as those persons who have been killed, died or went missing in these circumstances; 2) Has suffered at least 60% of bodily 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 bodily harm because of wounding or injuring caused by old army materials *or as a consequence of commando actions by the enemy*”. Art. 4 of the law establishes that “rights under this law cannot be realised by persons who have been members of enemy formations or aiders of the enemy”. Given the peculiarities of the conflict in BiH, the notions of “enemy” or “enemy formations” lend themselves to misinterpretation and are certainly vague. So far, local authorities have interpreted this as being any army or soldiers other than the Republika Srpska army. **The provisions of the mentioned law and the practice of local authorities impose a disproportionate burden of proof on relatives of missing persons**, who are often **requested to demonstrate in which circumstances their loved ones** perished, while, because of the nature of enforced disappearance, they are not in a position to do so. Many relatives of missing persons were therefore precluded from having access to social allowances, adding mockery to the suffering. On the one hand, authorities do not disclose the fate and whereabouts of their loved ones; and, on the other, they would impose an unbearable burden of proof on relatives to allow the latter having access to meagre monthly pensions.

90. There is also a **substantial and unjustified discrimination between civilian victims and veterans**. Art. 9 of the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in the Federation of BiH prescribes that the maximum monthly financial allowance **for civilian victims of war should equal 70% of the maximum allowance available to war invalids**. Also this law establishes short deadlines<sup>80</sup> to apply to obtain the status of civilian victim of war and many people have been excluded.<sup>81</sup>
91. **Former camp-detainees are not recognised as an autonomous category of civilian victims of war and this concretely jeopardises the enjoyment of their fundamental rights. In Republika Srpska, the Law on Civilian Victims of War does not recognise victims of rape as a separate category of**

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<sup>80</sup> Art. 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 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).

<sup>81</sup> It results that, among civilian victims of war, 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 Federation of BiH (Official Gazette Federation of BiH No. 39/06) establishes that “the user of rights under this Law will have those rights terminated if the user leaves BiH for more than three months, counting from the day the person left. When the person returns to BiH” he/she can reapply for the granting of the same rights”.

### **civilian victims of war.**

92. An improvement must be reported with regard to the situation of women victims of rape or other forms of sexual violence returned from the Federation of BiH to Republika Srpska. While in the past they lost their right to receive social benefits upon return, they have finally been recognised again as civilian victims of war pursuant to the legislation of the Federation of BiH. However, there is no recognition of the loss they have incurred in during the period of suspension of their right. In many cases, the entitlement terminated because the children of the women victims of rape or other forms of sexual violence in the meanwhile turned 18 years old.
93. The Assembly of Brčko District adopted a decision amending the Law on Protection of Civilian Victims of War in the District. While victims of gross human rights violations during the war still must provide a valid court's judgment to fulfil their rights as civilian victims of war, an exception is now envisaged where such decisions do not exist. In these cases, victims will have to go through special procedures before committees of experts and court experts to see their status as civilian victims of war duly recognised. However, **while the existence of a criminal court's decision could indeed be used in favour of the victim in order to prove that sexual violence took place, it should under no circumstance be seen as a compulsory requirement for victims to have access to compensation.** Moreover, a new provision has been introduced by the mentioned amendments, envisaging the potential loss of the status of victim in case a judicial decision acquitting the accused is adopted. The phrasing of this new provision is rather imprecise and, in general, the enjoyment of monthly disability pensions should not be prejudiced by the acquittal of potential perpetrators. Finally, the amendments to the Law on Protection of Civilian Victims of War in the District **did not modify the provisions that require proving that a victim of sexual violence suffered permanent psychological harm in order to guarantee monthly disability pensions.** This is at odds with international standards and represents a major pitfall in the applicable legislation.
94. The procedures to be recognised as victims of sexual violence vary throughout the country and are not always applied homogeneously. In many cases, the recognition of such status is based on a certificate released by local NGOs that do not seem to always follow uniform criteria. Pursuant to domestic legislation, the involvement of NGOs in the assessment of the status of victims of sexual violence during the war was meant to be a temporary solution, until the establishment of ad hoc institutions. The **setting up of such ad hoc State institutions and the application of systematic and homogeneous criteria across the country are priorities that cannot be postponed anymore.**
95. Victims of torture experience significant difficulties also in accessing social benefits. In particular, the **Commission at the Institute for Medical Assessment of Health Status in Sarajevo requires victims to produce medical documentation dating back to the war or, at least, 1997.** However, many victims do not have any such certificate, because during the war it was almost impossible to obtain this kind of documentation. Moreover, victims of torture often suffer from psychological, and sometimes physical, consequences years after the events took place. It is therefore difficult to see why social benefits should be granted only to those who obtained medical certificates during the Nineties.

96. Many women victims of rape or other forms of sexual violence during the war highlight that they **still do not have access to adequate housing and this is a source of deep distress for many of them and is perceived as one of the main challenges that they have to face and that prevents them from achieving social reintegration.**<sup>82</sup> The housing situation worsened in 2014, after massive floods hit the country and left hundreds of women, including victims of rape or other forms of sexual violence during the war, homeless. A **similarly difficult situation can be reported with regard to the provision of medical support** to women victims of rape or other forms of sexual violence.
97. Associations representing women victims of rape or other forms of sexual violence during the war have been trying to advocate before competent authorities, but they have often been left without a reply. For instance, the Women's Section at the Association of Concentration Camp Detainees sent letters to the Federal Ministry of Displaced Persons and Refugees seeking to establish a dialogue on the housing issue, but they never obtained any reply. The attitude of official indifference vis-à-vis the acute suffering and the legitimate concerns of hundreds of women can be characterised as inhumane and degrading treatment.
98. Finally, a problem that has seriously affected many victims of gross human rights violations during the conflict and in particular women victims of rape or other forms of sexual violence is **the virtual impossibility to obtain compensation during criminal proceedings.** Although criminal courts have the option to award total or part of a claim for compensation to the injured parties or to refer them to civil actions, victims have usually been **referred to civil actions.** This practice **hampers the access to compensation of the majority of victims,** given that to launch a civil action they would need a lawyer to represent them, and, in almost the totality of cases, they cannot afford it, while **free legal aid is not granted by the State.**
99. One additional problem **related to filing civil claims for compensation is related to the disclosure of the identity of protected witnesses during criminal trials.** Although the disclosure of the identity of protected witnesses is a criminal offence under BiH legislation, this has already happened in a number of occasions.
100. For instance, in a case decided by the Court of BiH where the perpetrator was convicted, the victim decided to file a claim for compensation before the Municipal Court in Sarajevo. Notably, during the criminal proceedings, pursuant to a decision of the Court of BiH granting her the status as protected witness, the lady had been referred to by using a pseudonym. When the lawyer representing the plaintiff contacted the Court of BiH to obtain a copy of such decision, he was informed that such data would be provided only at the request of the judge in charge of the civil proceedings concerning the claim for compensation. The lawyer thus called on the acting judge of the Municipal Court in Sarajevo to submit a request to the Court of BiH to obtain the necessary data and to invite the plaintiff and her representative

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<sup>82</sup> Pursuant to the applicable legislation in the Federation of BiH, Cantons must adopt programmes on housing provision to civilian victims of war, with a special emphasis on those having witnessed in war crimes trials. However, to the knowledge of the associations subscribing this report none of the Cantons has done this so far.

for a preparatory meeting to verify the data at stake. The Municipal Court in Sarajevo refused to do so, holding that the plaintiff does not enjoy the status of protected witness as a party to civil proceedings, based on the belief that she does not meet the requirements provided for by the Law on Civil Proceedings of the Federation of BiH. As the attorney was not authorised to disclose the name and last name of the plaintiff at his own initiative, the plaintiff was forced to find another solution with her representative, namely making a statement before a notary public, declaring that she renounced the status of protected witness. By doing so, she put her personal safety and the safety of her family at risk, as it was the only means to pursue her claim for compensation.

101. To overcome the described situation, TRIAL filed for the first time a compensation claim for damages suffered by a victim of rape in criminal proceedings pending before the Court of BiH. On 24 June 2015, the Court of BiH issued a landmark ruling whereby, besides condemning to 10 years imprisonment the two defendants (Mr. Bosiljko Marković and Mr. Ostoja Marković) for having repeatedly raped a Croat woman during the Serb attack on the northern village of Orahova, the Court also ordered them the payment of 26,500 KM (approximately 13,500 Euros) to the victim as compensation for damages. Similarly, on 29 June 2015 a former Bosnian Serb soldier was sentenced to 8 years imprisonment for a rape committed in 1993 (Mr. Slavko Savić) and ordered to pay 29,300 KM (approximately 15,000 Euros) to the Bosniak woman he attacked. Notably, these landmark decisions were obtained because an NGO provided free legal aid to victims and proactively advocated with the acting prosecutor to achieve the result. However, the main responsibility to ensure that victims of gross human rights violations obtain compensation in the context of criminal proceedings and are not referred to civil action lies with prosecutors and courts across the country that should from now on follow these two precedents.

#### **Questions to be Included in the LOIS**

**(related to Arts. 2, 6, 7, 9, 10 and 16 of the Covenant)**

- Please provide information on the **measures adopted to set up a national programme of reparation (including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) for victims of gross human rights violations during the war.**
- Please provide updated information on the **measures taken to ensure that the social allowances (disability pensions) received by civilian victims of war are harmonised among entities and cantons and that there is no discrimination between civilian victims of war and veterans.**
- Please indicate which measures have been adopted to **guarantee that women victims of rape during the conflict are considered as civilian victims in Republika Srpska.** Please provide information on whether any measure has been undertaken to recognise **former camp-detainees as an autonomous category of civilian victims.**
- Please provide detailed information on the measures taken to **ensure that also victims of gross human rights violations during the war residing outside BiH enjoy their right to reparation.**
- Please provide information on which measures have been undertaken to **ensure that criminal**

**courts award compensation during the criminal trial to injured parties without systematically referring them to civil actions, correctly applying the precedents set by the Court of BiH on 24 and 29 June 2015 respectively.**

## **9. The Failure to Implement the Human Rights Committee's Views**

102. Since March 2013, the HRC adopted a number of views on communications concerning victims of enforced disappearance and their relatives.<sup>83</sup> The HRC found violations of Arts. 6, 7, and 9, read in conjunction with Art. 2, para. 3, of the Covenant with regard to the disappeared persons, and of Art. 7, read alone and in conjunction with Art. 2, para. 3, of the Covenant with regard to the authors of the communications. On certain occasions, it also found a violation of Art. 24, para. 1, of the Covenant.<sup>84</sup>
103. The HRC recalled that pursuant to Art. 2, para. 3, of the Covenant, BiH is under an obligation to provide the authors of the communications with an effective remedy and it spelled out a number of measures to be taken by the State in this regard. In particular, the HRC requested BiH to continue its efforts to establish the fate and whereabouts of the missing persons concerned; to continue its efforts to bring to justice those responsible for the crimes concerned by the end of 2015, as required by the National War Crimes Strategy; to abolish the obligation for family members to declare their missing relatives dead to benefit from social allowances or any other forms of compensation;<sup>85</sup> and to ensure adequate compensation. Furthermore, the HRC requested BiH to ensure that investigations into allegations of enforced disappearances are accessible to the missing persons' families, and to publish its views and have them widely disseminated in the local languages.
104. The views of the HRC play a particular importance for relatives of disappeared persons in BiH, provided that this is the only international human rights procedure of investigation or settlement that has analysed in detail the violation of their rights by the State and requested the adoption of a set of concrete measures.<sup>86</sup> For this reason, it is all the more deplorable that, **to date, the only measure that BiH has implemented is the translation of the HRC's views in the local language and their publication on the website of the Ministry for Human Rights and Refugees.** While this is certainly a positive step, it is far from enough in order to grant redress to the authors of the communications and shows a blatant disregard by BiH vis-à-vis its international obligations and, in particular, the HRC's requests.

### **Question to be Included in the LOIS**

<sup>83</sup> HRC, Case *Prutina and others*, *supra* note 44; Case *Durić v. Bosnia and Herzegovina*, views of 16 July 2014; Case *Selimović and others v. Bosnia and Herzegovina*, views of 17 July 2014; Case *Hero v. Bosnia and Herzegovina*, views of 28 October 2014; and Case *Kožljak v. Bosnia and Herzegovina*, views of 28 October 2014; and Case *Rizvanović*, *supra* note 45.

<sup>84</sup> HRC, Case *Prutina and others*, *supra* note 44, para. 9.8.

<sup>85</sup> *Supra* paras. 48-55.

<sup>86</sup> The European Court of Human Rights has taken an unduly restrictive approach vis-à-vis cases of enforced disappearance, arbitrary executions and massacres committed during the conflict in BiH and does not represent an effective mechanism to which victims can turn to seek justice and redress. In this sense see, Nowak, *Enforced Disappearances in Bosnia and Herzegovina – Recent Developments in International Jurisprudence*, in *Legal Journal of Law*, issue in Honour of Dr. Rona Aybay, 2014, pp. 2751-2768.



(related to Arts. 2, 6, 7, 9, 10 and 16 of the Covenant)



Please inform in detail on the measures taken to fully implement the views of the HRC on the communications concerning victims of enforced disappearance and their relatives.

## 10. Conclusions and Recommendations

105. It is the view of the associations subscribing this report that little has been done to address the pressing needs of relatives of missing persons, former camp-detainees, and victims of rape or other forms of sexual violence during the war. Almost 20 years after the conclusion of the conflict, these categories of people remain marginalised and they experience ongoing violations of their rights to justice, truth, and redress. Many of these victims are dying without ever having fulfilled their fundamental rights. This cannot but nourish a profound sense of distrust vis-à-vis authorities that are unwilling or incapable of respecting their international obligations and sticking to their promises. If BiH fails to face its past and does not eventually cease the ongoing violation of its obligations pursuant to, among others, Arts. 2, 6, 7, 9, 10 and 16 of the Covenant, this jeopardises the chance to build a different future and prevent similar violations from happening again. The HRC can play a significant role in maintaining these issues on the national and international agenda and in eventually helping BiH to respect its undertakings.
106. For the reasons explained above, the associations subscribing the present report respectfully request the HRC to recommend BiH to:
- Proceed without delay to amend the Criminal Codes at the entity level to include a definition of sexual violence, torture, and enforced disappearance in accordance with international standards. In particular, crimes against humanity and war crimes must be defined respecting international law.
  - Ensure that rape and sexual violence are codified under the Criminal Code of BiH as autonomous offences also when committed outside a widespread or systematic attack against civilian population or as a war crime.
  - Ensure that the sanctions envisaged for torture and enforced disappearance in the Criminal Code of BiH are brought in line with international standards and are commensurate to the extreme gravity of the crimes at stake.
  - Ensure that the Criminal Code of BiH is amended to make sure that superior responsibility in case of torture is regulated in accordance with international law standards.

- Ensure that the National War Crimes Strategy 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.
- Ensure, in particular, that all cases of enforced disappearance, torture, and rape or other forms of sexual violence perpetrated during the war are promptly, independently, impartially and thoroughly investigated and that those responsible are prosecuted and sanctioned in accordance with international fair trial standards.
- Ensure that relatives of missing persons, former camp-detainees, and victims of rape or other forms of sexual violence are given information on a regular basis on the process of investigation carried out by the prosecutor's 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 relatives of missing persons, former camp-detainees, and victims of rape or other forms of sexual violence in particular. Courts shall ensure the right of victims of gross human rights violations during the war to make any financial compensation claims during criminal proceedings.
- Ensure that, within the MPI, the recourse to mandates of "technical" nature or the holding of posts *ad interim* is limited to exceptional circumstances, while all the posts of the management of the MPI are filled through a regular and transparent election process. To increase the authority of the MPI, during their term of office the members of the Steering Board, of the Board of Directors and of the Supervisory Board shall not engage in any activity which is incompatible with their independence, impartiality or with the requirements of a full-time office.
- Ensure that the LMP is fully implemented and that the CEN is completed within the shortest delay. Failure to comply with this shall be prosecuted and sanctioned. The information contained in the CEN shall be as complete and accurate as possible.
- Ensure that the Fund is set up without any further delay and its financing is entirely secured. In any case, BiH shall ensure that, besides measures of social benefits, all relatives of missing persons are granted integral reparation and prompt, fair and adequate compensation for the harm suffered.
- Ensure that the Prosecutor's Office of BiH receives adequate funding for exhumations operations and that additional forensic pathologists are hired. Consider the establishment of a State Forensic Institute, and in the meantime ensure that the personnel working in this area receives adequate training.
- Ensure that the process of exhumation of mortal remains is accelerated. Moreover, BiH must ensure that the Prosecutor's Office of BiH establishes a mechanism to regularly inform relatives of missing persons,

including those residing outside BiH, and their associations on the progresses made in the process of exhumation and identification of mortal remains and to answer the questions that they may have in this regard. Finally, BiH must ensure that during and after the processes of exhumation and identification of mortal remains relatives of missing persons receive, free of charge, adequate psychosocial accompaniment, provided by teams of professionals especially trained for this work and financed by the State.

- Ensure that domestic legislation is amended in order to abolish the obligation in cases of enforced disappearance which makes the right to compensation and to social allowances dependent on the family's willingness to have their missing relative declared dead.
- Amend Art. 27 of the LMP, making sure that victims of enforced disappearance are not automatically declared dead and that the nature of enforced disappearance as a continuous crime is duly taken into account.
- Ensure that the National Strategy for Transitional Justice 2010–2014 is revised so as to reflect the period that has passed since the finalisation of the draft and it is subsequently adopted and implemented without further delay. In this process the State must keep in mind that the Strategy is complementary to formal access to justice processes, and that the obligation of the State to provide redress for victims of gross human rights violations and their relatives must be guaranteed independently of the adoption of the Strategy in question.
- Ensure that the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence is referred for approval to the Council of Ministers of BiH without further delay. Representatives of Republika Srpska must express their opinion on the programme and show their genuine support without further delay. Ensure that any measures aiming at redressing women survivors of rape and other forms of sexual violence, envisaged by the Programme, or independently of it, must have a transformative character, aiming at, ameliorating or at least consolidate their position in society. Subsequent to this, 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 or other measures, 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 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 finalization of a sound draft law, all parties shall constructively participate to the endeavour and

associations 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 a new State draft law on free legal aid is finalised without delay and that associations of relatives of gross human rights violations during the war are thoroughly involved in such process and allowed to express their opinions, needs and expectations. The draft law on free legal aid shall be promptly approved and its funding secured. BiH 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 a comprehensive programme of victims and witness protection and psychological accompaniment is granted at all levels prior, during, and after the trial takes place.
- Guarantee the witness protection and support measures foreseen under the 2014 Law on Witness Protection Programme also before lower courts in the different entities, taking into account the specificities of the country.
- Ensure the full implementation of the sections of the National War Crimes Strategy concerning witness protection and support.
- Ensure that the Witness Protection Department within the Prosecutor's Office of BiH is either reactivated after having been adequately staffed and funded, or replaced by an alternative effective mechanism.
- Ensure that a national programme of reparation, including restitution, rehabilitation, satisfaction, guarantees of non-repetition and compensation to victims of gross human rights violations during the conflict, including those living outside BiH, is adopted without further delay.
- Eliminate discrimination between veterans and civilian victims of war in the access to and enjoyment of, monthly disability pensions. Special attention shall be devoted to the amendment of the legal framework in Republika Srpska in order to overcome the existing gaps.
- Recognise former camp-detainees as an autonomous category of civilian victims of war and ensure that they are entitled to receive social allowances and reparation.
- Guarantee that criminal courts avail themselves of their power to award compensation to victims of gross human rights violations during the war, instead of systematically referring them to civil actions, following the precedents set on 24 and 29 June 2015 by the Court of BiH. Prosecutors' Offices across the country must also become proactive in prompting the award of compensation during criminal proceedings.

- Enforce without any further delay the views rendered by the HRC on individual communications concerning victims of enforced disappearance during the war and guarantee that the authors of such communications receive an effective remedy.

On behalf of:

Association of Detained - Association of Camp-Detainees of Brčko District Bosnia and Herzegovina

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

Association of Relatives of Missing Persons from Ilijaš Municipality

Association of Relatives of Missing Persons of the Vogošća Municipality

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

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

Association of Victims and Witnesses of Genocide

Association Women from Prijedor – *Izvor*

Croatian Association of Camp-Detainees from the Homeland War in Vareš

Croatian Association of War Prisoners of the Homeland War in Bosnia and Herzegovina

Regional Association of Concentration Camp-Detainees Višegrad

*Vive Žene*

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

Philip Grant

TRIAL Director



## 11. The Associations Submitting this Written Information

### a) TRIAL (Track Impunity Always)

Founded in 2002 TRIAL is an association under Swiss law based in Geneva putting the law at the service of victims of crimes under international law (genocide, crimes against humanity, war crimes, torture and enforced disappearances). TRIAL fights against the impunity of perpetrators and instigators of the most serious crimes under international law and their accomplices. The organization defends the interests of the victims before Swiss and foreign courts and various international human rights bodies. TRIAL also raises awareness among the authorities and the general public regarding the necessity of an efficient national and international justice system for the prosecution of crimes under international law. To date TRIAL has defended more than 350 victims in the course of 143 international proceedings. In addition, 40 reports were submitted to the United Nations and 15 criminal complaints filed in Switzerland, which have led to various investigations and a trial.

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

**E-mail:** [philip.grant@trial-ch.org](mailto:philip.grant@trial-ch.org)

**Address:** TRIAL (Track Impunity Always), P.O. Box 5116, 1211, Geneva 11, Switzerland

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

**Website:** [www.trial-ch.org](http://www.trial-ch.org) and [www.trial-ch.org/BiH](http://www.trial-ch.org/BiH)

**Office in BiH:** Čobanija, 19, 71 000 Sarajevo, BiH

**Tel./Fax No.:** +38733 219 873

### b) Association of Detained - Association of Camp-Detainees of Brčko District Bosnia and Herzegovina

Association of Detained – Association of Camp-Detainees of Brčko District Bosnia and Herzegovina is a non-governmental and non-partisan association of citizens, former detainees from the area of Brčko District in BiH, and it gathers the persons who went through different types of torture during the war. It was established on 25 September 2005 in Brčko. In its database, the association registered 1,300 persons who were arbitrarily detained in different camps on the territories of BiH, Serbia and Croatia. 421 members of the association went through the procedure for obtaining a status of camp detainees. In its activities, among others, the association does the following: registers former detainees, gives statements for the purposes of proving the arrests and detention, identifies mass graves, gathers documents and other evidences of detention, cooperates with domestic judicial institutions.

**Contact person:** Mr. Fadil Redžić, President

**Address:** Savska 4, 76100 Brčko

**Tel/Fax No.:** 049 213 324

**E-mail:** [fadilredzic@yahoo.com](mailto:fadilredzic@yahoo.com)

**Website:** [www.logorasi.bdbih.net](http://www.logorasi.bdbih.net)

### c) Association of Families of Killed and Missing Defenders of the Homeland War from Bugojno

It was founded in 1995 and it has 98 members. To date, the association is seeking for 35 missing persons (20 soldiers and 15 civilians). The association represents the relatives of missing persons of Croat origin in and around Bugojno Municipality and it is actively involved in different types of activities to facilitate the establishment of the fate and whereabouts of missing persons.

**Contact person:** Ms. Vanda Havranek

**E-mail:** [uopinbdr@starnet.ba](mailto:uopinbdr@starnet.ba)

**Address:** Kulina Bana 1/3, 70 230, Bugojno, BiH

**Tel. No.:** + 387 30 252 522

### d) Association of Relatives of Missing Persons from Ilijaš Municipality

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

**Contact person:** Mr. Hajrudin Avdibegović (Secretary)

**E-mail:** [info@upnilijas.com](mailto:info@upnilijas.com)

**Address:** Hašima Spahića No. 34, Ilijaš, BiH

**Tel. No.:** + 387 33 580 183

#### **e) Association of Relatives of Missing Persons of the Vogošća Municipality**

It was established in 2001 and its main aim is to help relatives of disappeared people to realise their rights before domestic courts and State institutions. Since 2008 the association cooperates actively with the TRIAL to implement activities related to, among others, the filing of individual communications on behalf of relatives of victims of enforced disappearance to the Human Rights Committee.

**Contact person:** Ms. Ema Čekić (President)

**Address:** Jošanička No. 80, 71320 Vogošća, BiH

**Tel. No.:** + 387 61 566 139

#### **f) Association of Relatives of Missing Persons of the Sarajevo-Romanija Region**

It was founded on 12 December 2002 with its headquarters in East Sarajevo. The association represents the victims of the war in and around this region and has about 1,500 members.

**Contact person:** Mr. Milan Mandić (President)

**Address:** Ulica Cara Lazara br. 4, Lukavica, East Sarajevo, BiH

**Tel. No.:** + 387 65 731 722

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

It was established in August 2004. It is a non-governmental, non-political, multiethnic and multinational association of citizens. The association gathers members of families of missing persons from Kalinovik area, as well as families of missing persons from other municipalities whose loved ones went missing on the territory of Kalinovik.

**Contact person:** Mr. Kemal Pervan (President)

**Address:** Bare kod Stupa 23, Ilidža, Sarajevo, BiH

**E-mail address:** [istina.kalinovik@gmail.com](mailto:istina.kalinovik@gmail.com)

**Tel/Fax No.:** + 387 061 222 735

#### **h) Association of Victims and Witnesses of Genocide**

The Association of Victims and Witnesses of Genocide was established on 11 July 2010. It was founded with the idea of establishing the truth about the genocide and other serious violations of international humanitarian law perpetrated from 1992 to 1995 in BiH. Furthermore, it helps the discovery of mass graves, detecting planners, commanders, organisers and perpetrators of crimes in and outside of BiH, and finding potential evidence and witnesses of past crimes. It also raises public awareness in regard to access to justice and promotes transitional justice mechanisms as a necessary precondition for reconciliation. The association also provides help to victims of torture and victims' family members. The Association has implemented a number of activities and projects, including the International Conference "Research, documentation and prosecution of genocide in BiH" (11-12 June 2015 in Sarajevo); and "We have not forgotten you" - a project of scholarships and technical assistance to the students, children of victims of torture.

**Contact person:** Mr. Murat Tahirović (President)  
**Tel. No.:** +387 (0)33 211 340  
**E-mail:** [udruzenje.zrtava.torture@gmail.com](mailto:udruzenje.zrtava.torture@gmail.com)  
**Website:** <http://tortura.com.ba/>

**i) Association of Women from Prijedor - *Izvor***

It 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. Since 2008 *Izvor* established cooperation with TRIAL and the two organizations are filing applications to the European Court of Human Rights and to the Human Rights Committee on behalf of relatives of disappeared people from the Bosanska Krajina region.

**Contact person:** Mr. Edin Ramulić (Project Coordinator)  
**Address:** Ul. Muharema Suljanovića, 23 - 79101 Prijedor, BiH  
**E-mail:** [izvorpd@gmail.com](mailto:izvorpd@gmail.com)  
**Tel. No.:** + 387 52 215 635

**j) Croatian Association of Camp-Detainees from the Homeland War in Vareš**

It was established in 1998. After a re-organisation, it reinitiated its activities only in 2004. It works with families of missing persons and former camp detainees from Vareš, Kakanj, Breza, Ilijaš, Visoko and Olovo, aiming to be of help to war victims through its work. The association is a multi-ethnic non-governmental organization whose main characteristic is the good cooperation with other association, especially with the Bosniak association of former camp detainees from Vareš.

**Contact person:** Mr. Zlatko Prkić, President  
**Address:** Put Mira bb, 71330 Vareš BiH  
**Tel/Fax No.:** +387 032 843 787  
**E-mail:** [udrugalogorasavares@bih.net.ba](mailto:udrugalogorasavares@bih.net.ba)

**k) Croatian Association of War Prisoners of the Homeland War in Bosnia and Herzegovina**

It was established in 2004. Considering the fact that the large number of Croatian camp-detainees, war veterans and civilians went through torture and were victims of cruel and inhumane acts, the association tries to ensure the fundamental rights to these persons. In order to achieve its objectives the association focuses on the collection and processing of data on camps and prisons; the collection of documents as evidence of the violation of human rights of prisoners; cooperation with domestic and international judicial institutions for the purpose of prosecuting perpetrators; connection and cooperation with other associations of camp-detainees; cooperation with local and international organisations dealing with the promotion and protection of human rights; protection and regulation the legal status of its members; commitment to actively participate in all forms of promotion of human rights and freedoms; assistance and cooperation in the search for missing camp-detainees, and promote culture, sports and recreation to improve the skills and situation of former camp-detainees.

**Contact person:** Mr. Anđelko Kvesić (President)  
**Address:** Nikole Šubića Zrinjskog bb, Busovača, BiH  
**E-mail address:** [huldrsbk@gmail.com](mailto:huldrsbk@gmail.com)  
**Tel/Fax No.** + 387 30/732-904  
**Website:** [www.huldr-ksb.com](http://www.huldr-ksb.com)



### **l) Regional Association of Concentration Camp-Detainees Višegrad**

The **Regional Association of Concentration Camp-Detainees Višegrad** was founded in December 2003 and it is a member of the Association of Concentration Camp-Detainees of Republika Srpska. The association is organised and operates at a regional level and includes the following municipalities: Višegrad, Rudo, Foča, Čajniče, Kalinovik and Novo Goražde. In its work, the association strives to gather information regarding camp-detainees in the region. The association has been implementing different activities and by now has implemented projects of different nature, including healthcare treatment, employment, and housing. The primary goal of the association is to help the population of former camp-detainees, especially ensuring that they overcome their trauma and are fully inserted in Bosnian society.

**Contact person:** Mr. Dragiša Andrić (President)

**Address:** Užičkog korpusa 4a, Višegrad, BiH

**Tel./Fax No.:** + 387 058/623-220, 065 417-626

### **m) *Vive Žene***

This association was established in 1994 and focuses on psycho-social help and support, education, and promotional-editorial activities with a multi-disciplinary, democratic and participatory approach to the work with traumatised families and individuals. The primary goal of *Vive Žene* Tuzla is to improve the mental health of people who were subjected to torture during the conflict in BiH, minimising the effects of trauma-related disorders in the lives of tortured, raped or abused victims and facilitating their emotional healing.

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

**Address:** Alekse Šantića bb, 75000 Tuzla, BiH

**Tel. No.:** + 387 35 224 310

**Fax No.:** + 387 35 224 311

**E-mail:** [vivezene@bih.net.ba](mailto:vivezene@bih.net.ba)

**Website:** [www.vivezene.ba/](http://www.vivezene.ba/)

### **n) Women's Section of the Association of Concentration Camp Torture Survivors Canton Sarajevo**

It 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.

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

**E-mail:** [Sulks3@bih.net.ba](mailto:Sulks3@bih.net.ba)

**Address:** Canton Sarajevo - 7 Saraći, Sarajevo, 71000, BiH

**Tel. No.:** +387 33 232 925

**Website:** <http://www.accts.org.ba>