



**Written Information for the Consideration of  
Bosnia and Herzegovina's Second Periodic Report  
by the Human Rights Committee**

(CCPR/C/BIH/2)

SEPTEMBER 2012

Submitted by

**TRIAL (*Swiss Association against Impunity*)**

**Association of the Concentration Camp-Detainees Bosnia and Herzegovina**

**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 from Kalinovik (“Istina-Kalinovik ‘92”)**

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

**Association of Relatives of Missing Persons of the Vogošća Municipality**

**Association Women from Prijedor – *Izvor***

**Association of Women-Victims of War**

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

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

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## Background

In 2005 Bosnia and Herzegovina (BiH) submitted to the Human Rights Committee its initial report (CCPR/C/BIH/1).

On 22 November 2006 the Human Rights Committee issued its concluding observations (CCPR/C/BIH/CO/1). Of particular relevance for the associations submitting the present written information are:

### Paragraph 13

The Committee expresses concern about the underfunding of district and cantonal courts dealing with war crimes cases and the unsatisfactory implementation of witness protection legislation at the Entity level. (arts. 6, 7 and 14)

**The State party should allocate sufficient funds and human resources to the district and cantonal courts trying war crimes and ensure the effective application of the State and Entity Laws on Protection of Witnesses.**

### Paragraph 14

The Committee notes with concern that the fate and whereabouts of some 15,000 persons who went missing during the armed conflict (1992 to 1995) remain unresolved. It reminds the State party that the family members of missing persons have the right to be informed about the fate of their relatives, and that failure to investigate the cause and circumstances of death, as well as to provide information relating to the burial sites, of missing persons increases uncertainty and, therefore, suffering inflicted to family members and may amount to a violation of article 7 of the Covenant. (arts. 2(3), 6 and 7)

**The State party should take immediate and effective steps to investigate all unresolved cases of missing persons and ensure without delay that the Institute for Missing Persons becomes fully operational, in accordance with the Constitutional Court's decision of 13 August 2005. It should ensure that the central database of missing persons is finalized and accurate, that the Fund for Support to Families of Missing Persons is secured and that payments to families commence as soon as possible.**

### Paragraph 15

The Committee notes with concern that, under the Federation Law on Basics of Social Care, Protection of Civil Victims of War and Protection of Families with Children, torture victims, with the exception of victims of rape and sexual violence, must prove at least 60 per cent of bodily harm in order to be recognized as civilian victims of war, and that this requirement may exclude victims of mental torture from personal disability benefits. The Committee is also concerned that personal disability benefits received by civilian victims of war are significantly lower than those received by war veterans in both Entities. (arts. 2, 7 and 26).

**The State party should ensure that victims of mental torture are granted victim of war status in both Entities and that the personal disability benefits received by civilian victims of war are harmonized among the Entities and cantons and adjusted to the personal disability benefits received by war veterans. The State party should include in its next periodic report updated statistical information on the number of victims of mental torture and/or sexual violence receiving disability benefits, disaggregated by sex, age, ethnic group and place of residence, as well as on the amount of such benefits.**

Further, the HRC established that BiH should submit within one year (22 November 2007) information on the follow-up given to its recommendations on certain paragraphs, including para. 14.

## The Follow-Up Process

BiH submitted follow-up information on four occasions (CCPR/C/BIH/CO/1/Add.1; CCPR/C/BIH/CO/1/Add.2; CCPR/C/BIH/CO/1/Add.3; CCPR/C/BIH/CO/1/Add.4).

The Special Rapporteur for follow-up to concluding observations of the Human Rights Committee wrote two letters to BiH, respectively on **27 August 2009** and **16 December 2010**. Notably, in the letter of 27 August 2009, the Special Rapporteur requested the State to provide further information, among others, on: a) the **current functioning of the Missing Persons Institute (MPI)**; the **establishment of a central database on missing persons (CEN)**; and the **Fund for the support of the families of missing persons (the Fund)**.

In the letter of 16 December 2010 the Special Rapporteur reiterated his request for additional information on the establishment of the **Fund**.

In **September 2010** TRIAL, and six associations of relatives of missing persons (Association of Families of Killed and Missing Defenders of the Homeland War from Bugojno Municipality; Association of Relatives of Missing Persons from Hadžići Municipality; Association of Relatives of Missing Persons from Ilijaš Municipality; Association Women from Prijedor – *Izvor*; Association of Relatives of Missing Persons of the Sarajevo-Romanija Region; and Association of Relatives of Missing Persons of the Vogošća Municipality) submitted to the Human Rights Committee information on the subjects concerned, in order to highlight the progresses made, as well as the remaining obstacles for the full implementation of the recommendations of the Human Rights Committee.

In the present written information reference will be made also to the submission made in September 2010.<sup>1</sup>

## The Second Periodic Report and the Adoption of the List of Issues

On 17 November 2010 BiH presented its second periodic report to the Human Rights Committee (CCPR/C/BIH/2).

In paras. 77-83 of the second periodic report reference is made to measures undertaken to implement recommendation No. 13 of the concluding observations by the Human Rights Committee.

In paras. 84-97 of the second periodic report reference is made to measures undertaken to implement recommendation No. 14 of the concluding observations by the Human Rights Committee.

In paras. 98-132 of the second periodic report reference is made to measures undertaken to implement recommendation No. 15 of the concluding observations by the Human Rights Committee.

\* \* \*

In **December 2011** TRIAL and 16 organizations from BiH submitted written information to the Human Rights Committee to highlight **matters that in their view should be included in the list of issues. Since the majority of the information provided in such occasion remains valid, it will not be reiterated here and extensive reference will be made to it as the “December 2011 report”.**<sup>2</sup>

\* \* \*

At its 104<sup>th</sup> session the Human Rights Committee adopted the **list of issues to be taken up in connection with the consideration of the second periodic report of BiH**.<sup>3</sup>

<sup>1</sup> Additional information on the follow-up of the concluding observations on BiH, submitted by TRIAL and six other associations in September 2010, available at: [http://www2.ohchr.org/english/bodies/hrc/docs/ngo/NGOs\\_BIH\\_HRC\\_followprocedure.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngo/NGOs_BIH_HRC_followprocedure.pdf). Another document to which reference will be made is the written information for the examination of BiH's combined 2nd to 5th periodic reports to the Committee against Torture (CAT), submitted by TRIAL and 11 other associations in October 2010, available at [http://www2.ohchr.org/english/bodies/cat/docs/ngos/Trial\\_BosniaHerzegovina45.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/Trial_BosniaHerzegovina45.pdf).

The associations that submit this written information have a number of concerns with regard to the implementation by BiH of its obligations pursuant to the International Covenant on Civil and Political Rights, and of the recommendations formulated in November 2006 by the Human Rights Committee. However, given the particular expertise of the associations concerned, this document focuses solely on matters related to missing persons and their relatives, former camp-detainees, and victims of rape or other forms of sexual violence during the war. The omission of other subjects does not imply by any means that the associations submitting this information consider that BiH fully complies with all its obligations under the International Covenant on Civil and Political Rights or that it has implemented all the recommendations contained in the concluding observations adopted by the Human Rights Committee on 22 November 2006.

As detailed in the December 2011 report, the 1992-1995 conflict in BiH was characterized by atrocities: civilians were killed, concentration camps were set up and torture was systematically practiced, mass rapes were committed, more than two millions of human beings were forced to internally displace or to seek refuge abroad, and thousands of people disappeared without leaving a trace.<sup>4</sup>

There are discrepancies with regard to the exact number of people who were subjected to enforced disappearance during the war, as well as with regard to the number of former camp-detainees and of victims of rape or other forms of sexual violence. These divergences are often used to minimize the magnitude of the violations committed during the conflict and to foster resentments among different ethnic groups. Moreover, as long as accurate data concerning these victims are not established, the guarantee of basic rights to those pertaining to such groups is concretely jeopardized. While the exact number of the people pertaining to the mentioned three categories has not been determined by BiH authorities to date, what is undisputable is that they represent a significant portion of the BiH population, no matter to which ethnic group, if any, they pertain to. Instead of being assisted through a comprehensive and adequate legal framework, they remain marginalized and often ignored, while the State fails to meet its international obligations in this respect. Although it is often alleged that it is necessary to turn a page over the past, this cannot be done at the price of erasing thousands of people from that page and failing to guarantee their basic rights that have been violated over the past 20 years.

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<sup>2</sup> The report submitted in December 2011 by TRIAL, Association of Families of Killed and Missing Defenders of the Homeland War from Bugojno Municipality, Association of Relatives of Missing Persons from Hadžići Municipality, Association of Relatives of Missing Persons from Iljaš Municipality, Association of Relatives of Missing Persons from Kalinovik – “Istina-Kalinovik 92”, Association of Relatives of Missing Persons of the Sarajevo-Romanija Region, Association of Relatives of Missing Persons of the Vogošća Municipality, Association of Women from Prijedor – *Izvor*, Association of Women-Victims of War, Sumejja Gerc, Viktorija 99, *Vive Žene* Tuzla, Women’s Section of the Concentration Camp Torture Survivors Canton Sarajevo, Association of the Concentration Camp-Detainees – Bosnia and Herzegovina, Croatian Association of War Prisoners of the Homeland War in Canton of Central Bosnia, Regional Association of Concentration Camp-Detainees Višegrad, and Prijedor 92 can be found at: [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/TRIAL\\_2\\_BosniaHerzegovina104.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/TRIAL_2_BosniaHerzegovina104.pdf) (hereinafter “December 2011 Report”).

<sup>3</sup> Human Rights Committee (HRC), *List of issues to be taken up in connection with the consideration of the second periodic report of BiH*, doc. CCPR/C/BIH/Q/2 of 27 April 2012 (hereinafter “LOIS BiH 2012”).

<sup>4</sup> See December 2011 Report, *supra* note 2, section 1.

## **1. Right to Life and Prohibition of Torture and Cruel, Inhuman or Degrading Treatment, Remedies and Administration of Justice (Articles 6, 7, 3, para. 3, and 14)**

1. As detailed in the December 2011 report, the situation faced by relatives of missing persons, former camp-detainees, and victims of rape or other forms of sexual violence during the war discloses ongoing violations of Articles 2.3, 6, 7 and 14 of the International Covenant on Civil and Political Rights. Relevant actions and omissions by BiH authorities constitute violations, in particular, of the rights to know the truth, to justice and to redress of those pertaining to the three mentioned groups and their families. The Human Rights Committee upheld this view including a number of questions related to these matters in the relevant session of the list of issues to be taken up in connection with the consideration of the second periodic report of BiH.

### **1.1 The Ongoing Failure to Effectively Investigate, Judge and Sanction Those Responsible for Enforced Disappearance, Torture, and Rape or Other Forms of Sexual Violence during the War**

#### **Questions related to Articles 6, 7, 2, para. 3 and 14 of the Covenant included in the list of issues adopted in March 2012**

*9. Please provide up-to-date statistical information on the investigation and prosecution of war-related crimes committed during the 1992-1995 conflict, including war-time rape and other crimes of sexual violence. Please provide updated information on the progress made in implementing the National War Crimes Processing Strategy adopted in December 2008 with the aim of addressing the serious backlog of unresolved war-related cases. Please comment on reports that the justice system lacks the capacity and resources to effectively investigate and prosecute those crimes and any plans to address the problem.*

2. As mentioned in the December 2011 report,<sup>5</sup> BiH is under an obligation to investigate, judge and sanction those responsible for gross human rights violations committed during the war, including enforced disappearance, torture, and rape or other forms of sexual violence.<sup>6</sup> Besides the trials carried out before the International Criminal Tribunal for the former Yugoslavia (ICTY), the main responsibility to investigate, judge and sanction those responsible for the crimes committed during the conflict lies on the judicial system of BiH.
3. Even though a number of trials against persons accused of war crimes or crimes against humanity are pending or have been concluded before BiH tribunals, having in mind that the events concerned occurred almost 20 years ago, the pace of the overall process is far from satisfactory. In particular, with regard to trials concerning people accused of rape or other forms of sexual violence committed during

<sup>5</sup> December 2011 Report, *supra* note 2, paras. 13-33.

<sup>6</sup> On this matter see also the written information for the examination of BiH's combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 1, paras. 64-78.

the war, it results that at 2012 those convicted before the Court of BiH are little more than 30.<sup>7</sup> This number is alarmingly low, especially considering that the estimated number of persons raped or otherwise sexually abused during the war ranges between 20,000 and 50,000.<sup>8</sup> This situation fosters the existing state of impunity and an overall lack of trust from victims of gross human rights violations and their representative associations towards BiH authorities. In this context, it must also be reported that, as stressed in the past by Mrs. Margot Wallström, the Special Representative of the Secretary-General on Sexual Violence in Conflict, “indictments for rape often fail because judges do not find the witness credible, due inter alia to gender stereotypes. Resilient women are often perceived as less credible”.<sup>9</sup>

4. This assumption seems to be confirmed by an instance referred to as particularly disturbing by associations of women victims of war-time rape, namely the verdict of acquittal rendered by the Court of BiH in the case of Mr. Darko Dolić.<sup>10</sup> While the victims that rendered their testimonies before the Court are persuaded to have recognized the perpetrator because of physical characteristics (namely a scar on his stomach), the judges held that witnesses “demonstrated insecurity and inconsistency by altering their statements with regard to the identity of the perpetrator and they had a fleeting glance during the traumatic event or saw him 18 years after the incident”.<sup>11</sup> Accordingly, the Court observed that it could not be concluded beyond any reasonable doubt that the accused committed the offence charged under the indictment and acquitted him. The first verdict was confirmed on 1 December 2011. This experience was perceived as re-traumatizing and especially frustrating by those who rendered their testimony in court and they are now completely diffident towards BiH authorities, especially because, despite their repeated requests in this sense, the Court failed to hear a key witness who, in their view, would have been in a position to clear all doubts on the identity of the perpetrator. To the victims of sexual abuse who took part to the trial, this experience suggested that BiH authorities would question their credibility and attach more weight to the representatives of those accused. Due to this kind of decisions, victims from Prozor are very disappointed and most of them are not willing to be witnesses in other cases.
5. With regard to the National Strategy for War Crimes, associations of relatives of missing persons, victims of rape or other forms of sexual violence during the war and former camp-detainees continue

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<sup>7</sup> Šoštarić M., *Living in the Shadows: War Victims and Gender-Sensitive Truth, Justice, Reparations and Non-Recurrence in Bosnia and Herzegovina*, Impunity Watch, Sarajevo, August 2012.

<sup>8</sup> Early estimates by the BiH government suggested the number of 50,000 victims although this figure was questioned as unreliable and politicized. The Parliamentary Assembly of the Council of Europe estimated that 20,000 women were subjected to rape or other forms of sexual violence. The figure of 50,000 is mentioned also in the Secretary-General, *In-depth Study on All Forms of Violence against Women*, doc. A/61/122/Add.1 of 6 July 2006 (Secretary-General In-depth Study), para. 146. See also Commissioner for Human Rights of the Council of Europe, *Report by Thomas Hammarberg following his visit to Bosnia and Herzegovina on 27-30 November 2010* (“Report Hammarberg”), doc. CommDH(2011)11 of 29 March 2011, para. 153, whereby the reported total number of victims of sexual violence is 20,000. See also Amnesty International, *Old Crime Same Suffering – No Justice for Survivors of War-time Rape in North-East Bosnia and Herzegovina*, doc. EUR/63/002/2012, March 2012.

<sup>9</sup> Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, 1 February 2011, para. 4.

<sup>10</sup> Court of BiH, Case *Prosecutor v. Darko Dolić*, judgment of 26 April 2011 ([http://www.sudbih.gov.ba/files/docs/presude/2011/S1\\_1K\\_003433\\_10\\_Kr1\\_-\\_26\\_04\\_2011\\_-\\_Prvostepena\\_presuda\\_-\\_anonimizirana\\_-\\_eng.pdf](http://www.sudbih.gov.ba/files/docs/presude/2011/S1_1K_003433_10_Kr1_-_26_04_2011_-_Prvostepena_presuda_-_anonimizirana_-_eng.pdf)).

<sup>11</sup> *Ibid.*, para. 148.



expressing their deep dissatisfaction towards the pace of implementation and increasingly indicate that they perceive that the existence of the strategy is being used as a mere excuse to justify delays and other flaws in the administration of justice for crimes committed during the war.

6. In fact, the existence of the National Strategy for War Crimes is often invoked by prosecutors to justify the lack of activity on specific cases that allegedly should be dealt within the next 7 to 15 years.<sup>12</sup> It must be stressed that the implementation of the National Strategy for War Crimes has been judged by various international institutions<sup>13</sup> as extremely flawed and this, coupled with the age of many victims or their relatives, is perceived by the latter as an indication that they will die without obtaining justice. Numerous are the cases where victims of gross human rights violations during the war, their relatives or representative associations report having submitted to BiH authorities detailed complaints indicating the identity of those responsible for war crimes or crimes against humanity and even having provided indications on where these people can be found. Notwithstanding, little or no progress in the investigation and judgment of those responsible has been registered and often those accused are free or have managed to escape.
7. According to official data on the implementation of the National Strategy for War Crimes,<sup>14</sup> the pace of the latter remains slow. This must be coupled with the fact that the number of judges sitting at the Court of BiH decreased in 2012. With regard to the two remaining international judges sitting at the Court of BiH, one left on 20 July 2012 and the other is expected to leave on 7 September 2012. As a matter of fact, the envisaged appointment of two national judges as replacement for the departed international judges did not take place on time because of interim financing arrangements. With regard to prosecutors, a gradual leaving of international prosecutors working in the Special Department for War Crimes (SDWC) commenced with the departure of the first two prosecutors respectively on 29th February and 31st July 2012. The departure of the remaining prosecutor is scheduled to take place on 31st December 2012. Associations of victims of gross human rights violations during the war and their relatives have publicly expressed their serious concerns because of the departure of international personnel from the Court of BiH and the Prosecutor's Office of BiH, as they feel this would expose investigations and ongoing trials to further delays and to a substantive increase in the already existing instances of politicization.

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<sup>12</sup> In the same sense see December 2011 Report, *supra* note 2, para. 32.

<sup>13</sup> See in particular Organization for Security and Cooperation in Europe (OSCE) – Mission in BiH, *Delivering Justice in BiH – An overview of War Crimes Processing from 2005 to 2010*, May 2011, available at: [http://www.oscebih.org/documents/osce\\_bih\\_doc\\_2011051909500706eng.pdf](http://www.oscebih.org/documents/osce_bih_doc_2011051909500706eng.pdf). See also European Commission, 2011 *Progress Report on BiH*, doc. SEC(2011) 1206 of 12 October 2011, pp. 12-13; Report Hammarberg, *supra* note 8, paras. 132-136, 156-157, 184 and 189; Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, *supra* note 9, para. 4; Working Group on Enforced or Involuntary Disappearances (WGEID), *Report on the Mission to BiH*, doc. A/HRC/16/48/Add.3 of 28 December 2010 para. 49; European Commission, Bosnia and Herzegovina 2010 Progress Report, doc. Sec(2010) 1331 of 9 November 2010, p. 13; and CAT, *Concluding Observations on BiH*, doc. CAT/C/BIH/CO/2-5 of 19 November 2010, para. 12.

<sup>14</sup> See in particular, Section I and II of the Court of BiH and Special Departments of the Prosecutor's Office of BiH, *The Registry Quarterly Report – March 2012*, available at: [http://www.registrarbih.gov.ba/files/docs/MARCH\\_2012\\_QUARTERLY\\_REPORT\\_\(2\).pdf](http://www.registrarbih.gov.ba/files/docs/MARCH_2012_QUARTERLY_REPORT_(2).pdf).

8. The instances related to impunity described in the December 2011 report<sup>15</sup> remain valid and no substantive change or improvement in the situation can unfortunately be registered. On the contrary, further examples can be quoted. A case from the Prijedor area concerns crimes against humanity and war crimes committed between 20 and 25 July 1992 in the region known as Mataruško Brdo, composed by the villages of Biščani, Hambarine, Zecovi, Rakovčani, Čarakovo, Briševo and Rizvanovići. In the mentioned period, at least 1,800 civilians were arbitrarily killed and others were subjected to arbitrary detention, forced labour and torture in concentration camps (mainly in Keraterm and Omarska). Associations of former camp-detainees working in the area have reported the events to authorities. Notably, many of those accused for the heinous crimes committed in Mataruško Brdo are allegedly still living free in Prijedor. Moreover, it is noteworthy that the BiH State Court decided not to deal with the events concerning Mataruško Brdo as a single case, but to raise separate indictments. According to the association Prijedor 92, the Prosecutor's Office of BiH launched an investigation. In November 2011, representatives of the association Prijedor 92 had a meeting with the acting Chief Prosecutor of the BiH Prosecutor's Office, calling once more for the prompt and thorough investigation of the crimes concerned, as well as for the judgment and sanction of those responsible. To the knowledge of the representatives of the association, despite 20 years have passed, no significant concrete step has been undertaken by BiH authorities and impunity remains rampant.
9. Another example that can be referred concerns the crimes perpetrated in Trnovo in 1992. Already in 2001 the Association of Relatives of Missing Persons of the Sarajevo-Romanija Region submitted the gathered documentation to the Ministry of Interior of Republika Srpska and forwarded it also to the ICTY. In 2001 the latter in turn forwarded the documentation to the Prosecutor's Office in East Sarajevo. In 2003 the case was transferred to the Prosecutor's Office of BiH. Almost three years later the Prosecutor's Office of BiH contacted the Association of Relatives of Missing Persons of the Sarajevo-Romanija Region to gather testimonies. The president of the association met with a representative of the Prosecutor's Office of BiH and indicated the identity of seven eye-witnesses to the events that are willing to testify. In 2008 the president of the association requested a new meeting with the prosecutor in charge of the case to verify the progresses in the investigation. To the knowledge of the association, since 2008 no further investigative steps have been undertaken on this case and none of the eye-witnesses has been heard.
10. Another instance that can be quoted is that of Mr. Marko and Mr. Marijan Krajina from Fojnica, who reported that in December 2010 they filed a criminal complaint to the Prosecutor's Office of BiH concerning the crimes committed from 1993 onwards in the detention camp "Silos" in Kaćuni, Fojnica. Not having heard back from the Prosecutor's Office of BiH, in June 2011 the Croatian Association of War Prisoners of the Homeland War in Canton of Central Bosnia wrote a letter to seek information from the Prosecutor's Office of BiH. At the time of writing, that is more than one year after the communication was sent, they have never received a formal reply. On the occasion of a public event, Mr. Marko Krajina was informally told by a representative of the BiH Prosecutor's Office that the case will be dealt with in

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<sup>15</sup> December 2011 Report, *supra* note 2, paras. 13-33.

the next 7 to 15 years. The two applicants have never been contacted by the Prosecutor's Office of BiH or by the State Investigation and Protection Agency (SIPA) in order to collect further information and details about the case.

11. The Association of the Concentration Camp Detainees Bosnia and Herzegovina reported that in the region of BiH known as Kraijna many persons accused of war crimes and crimes against humanity, including torture committed on camp-detainees, are still walking freely in the streets. In particular, the association indicates that it drafted a list containing the names and basic data concerning those accused of war crimes committed in the region and who are currently residing in different places throughout BiH.<sup>16</sup> In 2009, such list was submitted by the association to the Prosecutor's Office of BiH. At the beginning of 2012, after seeking information on potential developments in the investigation of the events, representatives of the association were told by the prosecutor that the documentation concerning their case "has been lost" and were requested to submit it anew.
12. Another area where impunity is rampant is Brčko District. In particular, the Association of Camp Detainees of Brčko District maintains that none of the top police officers in Brčko District between 1992 and 1995 has been sanctioned for the crimes committed, even though a number of formal criminal complaints have been filed in this sense.<sup>17</sup> Allegedly, some of the heads of the police in Brčko during the conflict are now holding public offices, including high-rank political positions in Republika Srpska.<sup>18</sup>
13. Also the case of A. H. can be quoted. A. H. is a woman of Croat origin who was raped by three soldiers of the Bosnian Serb forces (VRS) in Ljubinje, Prijedor, in August 1995. On the same occasion, at least two other ladies from the same village were subjected to sexual abuse by the same perpetrators. A. H. immediately reported the events to the local police, but this did not lead to any significant result. Around six years later, A. H. returned to the police asking which actions have been undertaken to identify, judge and sanction those responsible for her rape. On that occasion, the police officers answered her that she can "forget about the case" as the crime she denounced has prescribed. The rape of A. H. must be seen in the context of a widespread and systematic practice of sexual violence and, as such, amounts to a crime against humanity. Pursuant to Article 19 of BiH Criminal Code, criminal prosecution and execution of a sentence are not subjected to the statute of limitations for criminal offences of genocide, crimes

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<sup>16</sup> A copy of such list can be provided to the HRC upon request.

<sup>17</sup> Among others, in 2011 a criminal complaint was filed against C.L., member of the crisis headquarter and President of the Serbian War Municipality of Brčko, currently residing in Brčko and allegedly responsible for the setting up of the detention camps of Laser, Fiskulturni dom, Jelenka Vočkić School, SUP Building, Partisan-guy building, and Luka. Claims have been filed also against Q.K., currently living in Brčko and allegedly responsible for torture committed in the mentioned detention camps. Here and elsewhere in the document the name of the persons concerned is not disclosed due to privacy and security reasons, and letters are used to designate the persons referred to. Their full names could be disclosed to the HRC, upon request, given that guarantees are provided that these data will not be made public in any way.

<sup>18</sup> Notably, the Association of Camp Detainees in Brčko District collected the testimonies of around 500 former camp detainees. According to the association, since 1992 this documentation (also containing a list of 100 names of alleged perpetrators of crimes against humanity) has been forwarded to different State institutions: namely to SIPA; to the Intelligence Security Agency of BiH; to the police in Brčko; to Brčko's Prosecutor; to the Court in Tuzla; to BiH State Court; and to the BiH Prosecutor's Office. According to the association, BiH authorities have not undertaken all necessary steps to investigate, judge and sanction those responsible for the crimes concerned.

against humanity and war crimes, or for other criminal offences that, pursuant to international law, are not subjected to the statute of limitations. In any case, even applying the criteria concerning the statute of limitations pursuant Article 14 of BiH Criminal Code, the rape reported by A. H. in 1995 could not be considered as prescribed in 2000. At the time of writing, A. H. has not obtained justice and none of those responsible for her rape has been judged and sanctioned. She lives in a very precarious state of health and in dire financial conditions.

14. The above-mentioned example must be read in connection with the practice, already denounced in the December 2011 report, of trying cases of rape committed during the war as ordinary crimes instead of war crimes.<sup>19</sup> This happens often in particular before the courts in Republika Srpska.<sup>20</sup> This practice raises a number of issues, since victims feel discriminated and see that their captors and torturers get lighter sentences. Moreover, the fact that a case of rape committed during the war is not tried as a war crime but as an ordinary offence may also lead to the loss of the status as “civilian victim of the war” of the woman concerned, with obvious prejudices and harmful consequences. For instance, witnesses in such cases would lose their right to special protection and psycho-social support as it would not be considered a war crime trial. Finally, dealing with war-time rapes as ordinary offences represents a distortion of historical events and ultimately does not contribute to the establishment of the truth and to the preservation of historical memory.
15. As pointed out in the December 2011 report the overall problem related to impunity is further aggravated by instances of flight of war crimes perpetrators occurred during trials or even while those already convicted are serving their sentences. In this sense, the case of Mr. Dušan Janković was reported.<sup>21</sup> Since the submission of the December 2011 report some developments occurred. Namely, on 24 February 2012, on the occasion of the beginning of the retrial of the four persons sentenced in December 2010, Mr. Dušan Janković eventually appeared before the Appellate Chamber of the Court of BiH. Indeed, the Court confirmed that, pursuant to a decision issued on 31 October 2011, Mr. Dušan Janković had to be taken to a detention facility.<sup>22</sup> At the time of writing, Mr. Dušan Janković is in detention. In fact, the mentioned decision issued by the Court on 31 October 2011 establishes that Mr. Dušan Janković will spend one year in detention.<sup>23</sup> At present, no mention has been made either by the Prosecutor’s Office of BiH or by the Court of BiH on whether Mr. Dušan Janković will be subjected to any consequence or sanction for his previous flight and for having been at large over more than one year. While the capture and subsequent detention of Mr. Dušan Janković are certainly to be welcomed as an encouraging step forward to combat impunity, it is of the utmost importance that BiH authorities undertake all necessary measures to thoroughly investigate on the flight of Mr. Dušan Janković, also in

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<sup>19</sup> December 2011 Report, *supra* note 2, para. 27.

<sup>20</sup> See, *inter alia*, Balkan Investigative Reporting Network, *Republika Srpska courts shy away from war crimes*, 2011, at <http://www.bim.ba/en/50/10/2316/?tpl=58>.

<sup>21</sup> December 2011 Report, *supra* note 2, para. 24.

<sup>22</sup> See, among others, Balkan Investigative Reporting Network, *Koricanske Stijene: Runaway Jankovic in Court Room*, 2012, <http://www.bim.ba/en/310/10/34545/>.

<sup>23</sup> On 1 March 2012 TRIAL sent a letter to update the Special Rapporteur on Torture, the WGEID, the Special Rapporteur on Human Rights Defenders and the Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions on the mentioned events.

order to determine the identity of potential accomplices, or persons who aided or abetted him, and to sanction these events with penalties commensurate to the gravity of the crime. This would be a strong signal in the sense that impunity is not tolerated and, ultimately, it would contribute to preventing similar episodes from happening again.

16. Nonetheless, it is worth highlighting that the case of Mr. Janković is not isolated. It is not infrequent that BiH authorities fail to ensure that persons indicted with or convicted for, crimes against humanity or war crimes do not flee. At present, a number of persons indicted before the BiH War Crimes Section of the BiH Court in Sarajevo are at large.<sup>24</sup> Moreover, people already convicted, as Mr. Dušan Janković, managed to escape before being brought to jail or shortly afterwards. In this sense the example of Mr. Velibor Bogdanović can be referred. On 29 August 2011 the latter was sentenced by the Court of BiH in absentia to six years in prison for crimes against civilians committed in Mostar in 1993. After Mr. Bogdanović was not found at the address given to the Court of BiH, the latter requested and obtained the issuing of an international arrest warrant.<sup>25</sup> On 2 August 2012 the Appellate Chamber of the Court of BiH confirmed the first instance verdict.<sup>26</sup> However, to date Mr. Bogdanović is nowhere to be found. Allegedly, the fact that often those indicted await trial and those sentenced serve their term of imprisonment in their home town<sup>27</sup> puts them in a position of undue advantage, which in some cases has resulted in their escape from prison.<sup>28</sup>
17. With regard to the case of R. S., to which reference was made in the December 2011 report,<sup>29</sup> some relevant developments must also be reported. On 17 May 2012 he was convicted by the District Court in Trebinje for rape and sentenced to 14 years imprisonment. However, instead of applying the provisions of the 2003 Criminal Code, Article 142, para. 1, of the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY) was applied. In the judgment the Court stated that “at the time when the offence was

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<sup>24</sup> Among others, Mr. Jakov Duvnjak (charged with war crimes against civilian population in Kraljeva Sutjeska); Mr. Milsav Gavrić (charged with crimes against humanity and genocide in Srebrenica); Mr. Ivan Hrkać (charged with war crimes against prisoners of war and civilian population in Široki Brijeg); Mr. Jovo Jandrić and Mr. Slobodan Pekez (charged with war crimes against civilian population in Jajce); Mr. Damir Lipovac (charged with war crimes against civilian population in Derventa); Mr. Marinko Marić (charged with war crimes against civilian population in Čapljina); and Mr. Novak Stjepanović (charged with crimes against humanity in Bratunac).

<sup>25</sup> See, among others, Balkan Investigative Reporting Network, *Warrant Issued over Velibor Bogdanović*, 2011, at: <http://www.bim.ba/en/285/10/33223/>.

<sup>26</sup> See, among others, Balkan Investigative Reporting Network, *Verdict against Bogdanović Confirmed*, 2012, at: <http://www.bim.ba/en/333/10/35571/>.

<sup>27</sup> In the sense, the Association of Women-Victims of War expresses its concern because of the new law on annual leave and privileges (Official Gazette of BiH No. 20/2012) as it is feared that this piece of legislation may unduly advantage people convicted for war crimes and further facilitate instances of flee.

<sup>28</sup> Among others, the case of Mr. Momir Savić can be recalled. On 3 July 2009 Mr. Savić was sentenced to 18 years' imprisonment for crimes against humanity (persecution, murder, deportation, imprisonment, rape and other inhuman acts) by the War Crimes Section of the BiH Court. On 21 May 2010 the Appellate Chamber reduced the sentence to 17 years of imprisonment and ordered to keep Mr. Savić into custody until the moment he was sent to prison to serve his sentence. Indeed, Mr. Momir Savić had been released from custody by the Trial Chamber since 2008 and was allegedly obliged to report to the Višegrad Police Station every day. Nonetheless, and in spite of the fact that victims and the Prosecutor had repeatedly pointed out that there was a risk of escape, exactly as in the case of Mr. Dušan Janković, Mr. Momir Savić managed to escape one day before the Appellate Chamber rendered its judgment and he is currently at large.

<sup>29</sup> December 2011 Report, *supra* note 2, para. 21.

committed, pursuant to Article 12 of the Constitutional Law for the Execution of Republika Srpska Constitution, the Criminal Code of the SFRY was in force. It is necessary to apply this law in accordance with the principle of time relevance of criminal laws, because the law which has been brought later on is not milder towards the accused, and thus, this Court accepted the legal assessment of the stated criminal offense from the indictment, according to which this is a case of war crime against civilian population from Article 142 paragraph 1 of the Criminal Code of SFRY”.

18. The application of the SFRY Criminal Code instead of the 2003 Criminal Code by Entity courts is contrary to the principles affirmed by the Constitutional Court of BiH in the leading case Maktouf (AP/1785/06 of 30 March 2007) as well as to the recommendations formulated by a number of international institutions. This problem was already reported in the December 2011 report<sup>30</sup> and it has been indicated as a source of great concern by international organizations.<sup>31</sup> In fact, in practice this means that persons convicted of war crimes before different courts may receive widely divergent sentences, taking into account that the SFRY Criminal Code prescribes lower mandatory maximum and minimum penalties in war crimes cases than the 2003 Criminal Code. The minimum sentences prescribed by the 2003 BiH Criminal Code for genocide, crimes against humanity, and war crimes is 10 years’ imprisonment, while the maximum sentence is 45 years’ imprisonment. The SFRY Criminal Code prescribes a minimum sentence of 5 years’ imprisonment and a maximum sentence of 15 years’ imprisonment or death, which could be commuted to 20 years’ imprisonment.
19. Furthermore, almost all the associations subscribing this report continue to experience serious problems in accessing information concerning their cases and in communicating with prosecutors. Allegedly, contacts between victims, their relatives and representative associations and prosecutors are poor or non-existent, thus exacerbating feelings of frustration and marginalization. Despite the recommendations of international human rights mechanisms and the requests put forward by victims, their relatives and their representative associations to be associated as closely as possible to the investigative stage,<sup>32</sup> at September 2012 no regular mechanism of information on the process of investigation has been established. For persons who have been waiting for justice over the past 20 years, this is certainly a source of additional stress and distrust towards authorities.

## 1.2 The Ongoing Failure to Provide Adequate Protection and Support to Witnesses in War Crimes Trials

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<sup>30</sup> *Ibid.*, para. 33.

<sup>31</sup> (OSCE) – Mission in BiH, *Delivering Justice in BiH – An Overview of War Crimes Processing from 2005 to 2010*, *supra* note 12, pp. 19, 48 and 70-74.

<sup>32</sup> In this sense see WGEID, *Mission to BiH*, *supra* note 13, para. 63. In this sense see, among others, Principle 16 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, and WGEID, *General Comment on the Right to the Truth in relation to Enforced Disappearances*, 2010, para. 3.

**Questions related to Articles 6, 7, 2, para. 3 and 14 of the Covenant included in the list of issues adopted in March 2012**

10. Please provide further information on the measures taken to address deficiencies in the witness protection and support services in light of the recommendations made by the rapporteur of the Council of Europe Parliamentary Assembly in the report on his visit to Bosnia and Herzegovina in March 2010 and by the Council of Europe's Commissioner for Human Rights, following his visit to Bosnia and Herzegovina in November 2010.

20. As pointed out in the December 2011 report,<sup>33</sup> the current legal framework concerning witness protection is inadequate: among others, the existing law fails to articulate the Witness Protection Unit's operational autonomy within SIPA, and it does not contain detailed provisions on separation from the investigation, confidentiality of procedure and operations, and organizational autonomy from regular police.<sup>34</sup> In this sense, notwithstanding the recommendations of international mechanisms,<sup>35</sup> previous attempts to amend the existing legislation on witness protection failed. In August 2011 the BiH Ministry of Security formed a working group to put forward another draft law. More than one year later, the mentioned draft has not been passed.
21. Since November 2010, some tribunals at the district and cantonal level adopted a number of measures to secure witness protection.<sup>36</sup> Nevertheless, the overall system remains deficient and besides the instances of harassment already referred to in the December 2011 report – that remain valid – other examples have been reported by some of the associations subscribing this document.
22. M.R., who witnessed at some war crimes trials, in 2012 went to the market in his home-town in the municipality of Foča. One of the sellers at the market is the brother of one of defendants in a trial in which M.R. testified. While M.R. was buying his cigarettes, he was approached by a villager,<sup>37</sup> who publicly threatened him claiming that, had he been his guard in the detention facility during the war, M.R. would not have been there at the market on that day. M.R. promptly reported these events to the

<sup>33</sup> December 2011 Report, *supra* note 2, paras. 3-12. On these matters, see also written information for the examination of the BiH combined 2nd to 5th periodic reports, *supra* note 1, paras. 79-91.

<sup>34</sup> Human Rights Watch, *Justice for Atrocity Crimes – Lessons of International Support for Trials before the State Court of Bosnia and Herzegovina*, New York, March 2012, pp. 29-31.

<sup>35</sup> See, among others, CAT, *Concluding Observations on BiH*, *supra* note 13, para. 17; WGEID, *Report on the Mission to BiH*, *supra* note 13, para. 90 (e); Council of Europe, Parliamentary Assembly, Resolution 1784 (2011) of 26 January 2011; Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, *supra* note 9, para. 4; Report Hammarberg, *supra* note 8; paras. 140-142 and 143. In general, on the pitfalls in the system of protection of witnesses in war-related criminal proceedings, see *ibidem* paras. 138-145 and 191-192; and European Commission, *2011 Progress Report on BiH*, *supra* note 12, p. 13.

<sup>36</sup> These measures have been funded by the United Nations Development Fund (UNDP). In this context, since 2010, departments of witnesses' support have been established within the Sarajevo Cantonal Court and Prosecutor's Office in Sarajevo; and the District Court and Prosecutor's Office in Banja Luka. Between 2010 and 2011 more than 500 witnesses passed through these departments. Since 2012 similar departments have been opened before the District Court and the Prosecutor's Office in East Sarajevo and similar interventions are expected to take place in the Cantonal Prosecutor's Office and the Court in Bihac and the Cantonal Court and Prosecutor's Office in Novi Travnik/Travnik.

<sup>37</sup> Whose identity can be disclosed to the HRC upon request and with guarantees that strict confidentiality will be kept.

prosecutor who, instead of launching an investigation to identify, judge and sanction the person responsible for the harassment of M.R., recommended to the latter to avoid visiting again his hometown.

23. Also the case of A. R. can be quoted. A. R. has been a witness at war crimes trials and is actively involved in supporting women victims of rape or other forms of sexual violence during the war. Between April and May 2012 she received messages on her mobile phone containing the following text “if you come to Prozor again, you will never come back”. In June 2012 A. R. received a threatening phone-call with similar contents. In the same month, when A. R. left to the village of Stolac to visit some victims of rape that she assists, A. R. received another text message on her mobile phone, reading “it is better for you to stop coming here”. A. R. did not formally refer these events to the police, due to the fear and disbelief in the effectiveness of the latter having in mind previous attacks suffered by the association, and the fact that – to her knowledge, some officers are very close to perpetrators of war crimes. However, A. R. informally reported these events to a friend who works as policeman in Mostar.
24. As already pointed out in December 2011, not only individuals, but also associations,<sup>38</sup> and in particular those dealing with former camp-detainees and women victims of rape or other forms of sexual violence during the war are subjected to harassment and attacks.<sup>39</sup> The Association of Former Camp Detainees of BiH mentioned, among many possible examples, a grave episode occurred in January 2012 and concerning a protected witness. P.M. gave his testimony in a case concerning a war crime, upon being guaranteed that his identity would be kept confidential. Nevertheless, his identity was disclosed by local media, and also Mr. Radovan Karadžić referred to this person during a hearing before the ICTY, alleging that P.M. is releasing false statements. After the real identity of P.M. was publicly disclosed, he started receiving a number of threats. Since P.M. was requested by SIPA to render his testimony also in another case concerning war crimes before a domestic court, he is now particularly worried and he is not sure whether to testify or not because of security concerns.
25. The Croatian Association of Camp Detainees from the Homeland War in Vareš<sup>40</sup> reported the instance of F.R., who gave her testimony in a trial before the Cantonal Court in Zenica for crimes committed at Stupni Do. Allegedly, while waiting to render her testimony, F.R. was kept in the same room with the accused and this caused her a deep psychological trauma. F.R. requested the Cantonal Prosecutor to allow a representative from the private organization offering her psychological support to accompany her during the trial. The request was rejected. The same association also reported that one judge formerly living in Vareš and currently serving as a judge in the Court of Visoko and in charge of reviewing the claims for non-pecuniary damage of former camp detainees is showing a particularly aggressive and insulting attitude towards victims whenever they render their testimony. This situation has been repeatedly denounced by lawyers in court, but to no avail. The referral of this case to the High

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<sup>38</sup> See also para. 95 with regard to the attack against the premises of the association *Izvor* in Prijedor that was perpetrated in the night between 4 and 5 August 2012.

<sup>39</sup> December 2011 Report, *supra* note 2, para. 10.

<sup>40</sup> The mentioned information was shared by the Association of detainees 23 October 1993 that cooperates with the Croatian Association of Camp Detainees from the Homeland War in Vareš.



Judicial and Prosecutorial Council is now being considered.

26. Also the Croatian Association of Camp Detainees from the Homeland War in Vareš itself has been subjected to repeated instances of attacks on their premises, the last of which happened in the spring of 2011. In the different episodes, the premises of the association were attacked, even though nothing was stolen. According to the representatives of the association, the purpose of these breakings was therefore intimidation. All instances have been reported in due course to the local police. Nevertheless, at the time of writing no one has been formally charged for the breakings into the office of the association.
27. Representatives of the association Prijedor 92 refer that in April 2012 their premises were visited twice by people who indirectly threatened them. In one case, the brother of one of those accused for the massacre of Korićanske Stijene (21 August 1992) visited the association, allegedly to verify whether he also is suspected of war crimes. In another case, the association received the visit of an individual who was very vocal in expressing his disagreement with denounces of the crimes perpetrated in the detention facility known as Omarska and pretended that the association ceases referring to it as Omarska and instead calls it "Marička". In both occasions, no explicit threat against the association or its members was formulated. Nonetheless, the overall situation was perceived as extremely unpleasant and hostile, thus potentially threatening. Representatives of the association promptly contacted the Prosecutor's Office of BiH and informed the competent magistrate about the incidents.
28. With regard to the instances of harassment referred to by Prijedor 92 in the December 2011 report and related to death threats received immediately after the first appearance of Mr. Ratko Mladić before the ICTY on 3 June 2011,<sup>41</sup> the association highlights that BiH authorities have closed the investigations, generically blaming "naughty kids" for the events, without further explanations. This certainly does not foster a sense of safety among the members of the association, nor of trust towards authorities.
29. Furthermore, associations of victims of gross human rights violations during the war and their relatives continue to denounce the serious difficulties created by the lack of a comprehensive free legal aid programme.<sup>42</sup> In April 2012 a draft law on this subject was submitted to the BiH Council of Ministers, adopted by the latter as a proposal, and forwarded to undergo the parliamentary procedure. Nevertheless, it has not been enacted to date and it does not figure among the priority items on the parliamentary agenda.
30. With regard to the provision of psychological support to witnesses at war crimes trials, associations denounce their ongoing dissatisfaction, as it remains insufficient, sporadic and not based on any comprehensive programme. This kind of support is not guaranteed before the courts at all different levels and it is never provided in a way that covers before, during and after rendering the testimony. Over the past months some important developments must be referred, although it is crucial to highlight that the relevant initiatives have been launched by NGOs (namely Medica Zenica) in partnership with

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<sup>41</sup> December 2011 Report, *supra* note 2, para. 23.

<sup>42</sup> *Ibid.*, para. 11.

the Ministry of Justice of the Zenica-Doboj and Central Bosnia Cantons and local administrations.<sup>43</sup> This does not relieve the State from its international obligations. NGOs' projects, even though most welcomed and so far definitely successful, cannot replace the adoption of an integral State policy on the matter, supported by adequate legislation and practice.

### 1.3 The Flaws in the Implementation of the Law on Missing Persons

#### Questions related to Articles 6, 7, 2, para. 3 and 14 of the Covenant included in the list of issues adopted in March 2012

*11. [...] Please provide further information on the measures taken to fully implement the Law on Missing Persons, and in particular, the material, human and budgetary resources provided by the State party to ensure the effective functioning of the Missing Persons Institute. Please describe steps taken to ensure the full independence of this institution and the timely appointment of the members of its managing bodies. Please provide further information on the progress made in establishing the Central Record on Missing Persons and the Fund for Support to the Families of Missing Persons.*

31. The Law on Missing Persons (Official Gazette of BiH No. 50/04) entered into force on 17 November 2004. This piece of legislation aims at establishing a comprehensive regime to deal with missing persons, defined as an individual "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 SFRY" (Article 2). The law applies to persons who went missing in the period from 30 April 1991 to 14 February 1996 and it contains provisions recognizing, among others, the right to know the fate of missing persons (Article 3) and the obligation to provide information (Article 4). Almost eight years after the entry into force of the Law on Missing Persons and despite reiterated recommendations by international human rights mechanisms in this sense, to date several provisions of the law have not been implemented.<sup>44</sup> After an initial period of optimism, relatives of missing persons and their representative associations are expressing an increasing skepticism and a deep frustration because of this situation. The lack of full implementation of this crucial piece of legislation is perceived by relatives of missing persons as a form of official indifference in the face of their real concerns, also taking into account that their ordeal has been dragged out over more than 20 years.

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

32. Article 7 of the Law of Missing Persons provides for the establishment of the MPI, mandated to improve the process of tracing missing persons and expedite identifications of mortal remains of missing

<sup>43</sup> On 19 December 2011, Medica Zenica in partnership with the Ministry of Justice of Zenica-Doboj Canton and Administration in this Canton (within a project supported by UN Women and Medica Mondiale), formally signed the so-called "Protocol on Mutual Cooperation of Institutions and NGOs in Providing Support to Victims/Witnesses in War Crimes Cases, Sexual Violence and other Forms of Crime". This led to the establishment of the Network to support victims/witnesses in the Zenica-Doboj Canton. The Network provides support to victims/witnesses before, during and after their testimony. Since June 2012 a similar Protocol was signed and network launched in Central Bosnia Canton.

<sup>44</sup> Notably, Article 24.1 of the Law on Missing Persons provides that: "the BiH Ministry of Human Rights and Refugees shall oversee the enforcement of this Law".

persons. The MPI became fully operational only from 1 January 2008. As detailed in the December 2011 report,<sup>45</sup> despite the recommendations by international mechanisms,<sup>46</sup> the MPI is experiencing troubles with regard to the appointment of the members of its different managing bodies.

33. 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>47</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>48</sup> The members of these associations also participate in the work of the Steering Board, but without the right to vote.
34. 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. A call for the election of new members was issued at the end of June 2012 and the process is ongoing. With regard to the members of both the Steering Board and the Supervisory Board, their mandate expired in June 2011 (that is more than one year ago) and those holding the posts are doing so pursuant to a mandate of technical nature. The ICMP and the Council of Ministers of BiH are holding consultations on how to proceed in this regard. Indeed, rumours concerning a possible reduction of the presence in BiH of the ICMP, although discarded by the latter, have generated a climate of concern among associations of relatives of missing persons in the country.<sup>49</sup>
35. With regard to the members of the Advisory Board, elections took place and representatives of the three different ethnic groups were selected. Some associations of relatives of missing persons expressed deep concern because of not having been formally notified on whether the new six members of the Advisory Board have in fact been officially appointed or not and reiterated criticism towards the manner in which elections were held.<sup>50</sup> At the same time, other associations claim that the process was fully transparent, legitimate and satisfactory.<sup>51</sup>

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<sup>45</sup> December 2011 Report, *supra* note 2, paras. 36-40. See also the additional information on the follow-up of the concluding observation by the HRC on BiH, *supra* note 1, paras. 6-22 and 24-30; and the written information for the examination of BiH's combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 1, paras. 7-30.

<sup>46</sup> CAT, *Concluding Observations on BiH*, *supra* note 13, para. 24 (a); and WGEID, *Report on the Mission to BiH*, *supra* note 13, para. 78 (f). For the whole set of recommendations issued see para. 78 in general. See also European Commission, *2011 Progress Report on BiH*, *supra* note 12, p. 21.

<sup>47</sup> The ICMP and the Council of Ministers of BiH. An English version of the Agreement on Assuming the Role of Co-founders of the MPI can be found at: [www.icmp.org/wp-content/uploads/2007/11/agreement\\_en.pdf](http://www.icmp.org/wp-content/uploads/2007/11/agreement_en.pdf).

<sup>48</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, 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>49</sup> See in this sense Balkan Insight, *ICMP to Finish its Work in Bosnia and Herzegovina*, 15 June 2012, at <http://www.balkaninsight.com/en/article/icmp-finished-70-per-cent-identification-in-bosnia>.

<sup>50</sup> In particular, representatives of the Association Women from Prijedor – *Izvor* express their criticism because of the manner in which the election of representatives of Bosniak associations for the Advisory Board were conducted.

<sup>51</sup> The Association Kalinovik 92, also subscribing this report, affirms that the election process was fully transparent and satisfactory.

36. 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 two years a considerable number of posts in the managing bodies of the MPI have formally been vacant or held ad interim. Such a situation does not contribute to the regular functioning of an institution or to the overall perception of trustworthiness when it comes to public scrutiny. Furthermore, representatives of associations of relatives of missing persons also expressed concerns because of the alleged presence of people who have political affiliations within the managing bodies of the MPI<sup>52</sup> and stressed that this undermines the overall credibility of the institution.<sup>53</sup>

### 1.3.2 The Establishment of the Central Records of Missing Persons (CEN)

37. As highlighted in the December 2011 report,<sup>54</sup> Article 21 of the Law on Missing Persons provides for the creation of the CEN, intended to include all records that were or are kept at local or Entity levels, by associations of families of missing persons and other associations of citizens, Tracing Offices of the organizations of the Red Cross in BiH, as well as international organizations. Article 22.4 of the Law on Missing Persons prescribes that “verification and entry of previously collected data on missing persons into CEN should be completed by the competent authority within a year of the date of the establishment of the MPI” (emphasis added). This means that the process of verifying and entering data in the CEN should have been completed by 1 January 2009.<sup>55</sup>
38. Despite the repeated recommendations in this sense issued by various international human rights mechanisms,<sup>56</sup> at September 2012 the CEN has not been completed yet. Out of 34,965 entries to be verified through cross-references, around 10,200 have been validated. It is worth reiterating that these entries correspond almost completely to missing people whose mortal remains have already been exhumed, identified and returned to the relatives. The adoption of this criterion to commence the filling of the CEN is the source of dissatisfaction among many associations of relatives of missing people, as they feel that the imperative need to deal first with those missing people whose fate and whereabouts have not been determined yet has been ignored. This overall situation fosters a sense of disillusion and

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<sup>52</sup> In this sense, it must be recalled that Article 5 of the Law on Missing Persons 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>53</sup> On its part, one of the associations subscribing this written information (Association of Relatives of Missing Persons from Kalinovik) expressed that it wishes to fully support the work carried out by MPI, which is working in accordance with its possibilities and competency, while its functioning is hindered by the passivity of the Council of Ministers of BiH.

<sup>54</sup> December 2011 Report, *supra* note 2, paras. 41-44.

<sup>55</sup> On this matter see the additional information on the follow-up of the concluding observations by the HRC on BiH, *supra* note 1, paras. 31-39. See also written information for the examination of BiH’s combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 1, paras. 31-39.

<sup>56</sup> CAT, *Concluding Observations on BiH*, *supra* note 13, para. 24 (c); and WGEID, *Report on the Mission to BiH*, *supra* note 13, paras. 24 and 75.

bitterness among associations of relatives of missing persons.<sup>57</sup>

39. With regard to the potential problems related to Article 27 of the Law on Missing Persons,<sup>58</sup> according to which “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),<sup>59</sup> notwithstanding the recommendations issued by international human rights mechanisms,<sup>60</sup> to date BiH authorities have not carried out any particular assessment, nor have they consulted with associations of relatives of missing persons. Accordingly, the risk remains that enforced disappearance is unduly treated as a direct death, without taking into account its continuous nature.
40. The above must now be read in the light of the WGEID’s general comment on the right to recognition as a person before the law in the context of enforced disappearances, where it was pointed out that “[...] such an acknowledgement should take the form of a ‘declaration of absence by reason of enforced disappearance’, to be issued, with the consent of the family, by a State authority after a certain time has elapsed since the disappearance, in any case no less than one year. Such a declaration should allow the appointment of a representative of the disappeared person, with the mandate to exercise his/her rights and obligations for the duration of his/her absence, in his/her interests and those of his/her next-of-kin. The latter should be allowed to manage temporarily the disappeared person’s properties, for as long as the enforced disappearance continues, and to receive due assistance from the State through social allowances. In most cases, the disappeared persons are men and were the family breadwinners and special social support should be provided to dependent women and children. The acceptance of financial support for members of the families should not be considered as a waiver of the right to integral reparation for the damage caused by the crime of enforced disappearance, in accordance with article 19 of the Declaration”.<sup>61</sup> The current wording of Article 27 of the Law on Missing Persons does not seem to meet these criteria.

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

41. As stated in the December 2011 report, Article 15 of the Law on Missing Persons prescribes the creation of the Fund, intended to be a means of support for families of missing persons in BiH. Paragraph 2 of the provision indicates that a decision on the setting up of the Fund “shall be issued by the Council of Ministers of BiH within 30 days from the date of the coming into force of the

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<sup>57</sup> The Association of Relatives of Missing Persons from Kalinovik (“Istina-Kalinovik ‘92”) subscribing this written information, wishes to highlight that in their view the flaws and delays in the completion of the CEN are mainly due to the non-cooperative attitude shown by the Operative Team of RS for Tracing Missing Persons.

<sup>58</sup> See the additional information on the follow-up of the concluding observations by the HRC on BiH, *supra* note 1, paras. 36-39.

<sup>59</sup> On this matter see the written information for the examination of BiH’s combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 1, paras. 36-39 and 101-103.

<sup>60</sup> WGEID, Report on the Mission to BiH, *supra* note 13, paras. 46 and 85.

<sup>61</sup> WGEID, *General Comment on the Right to Recognition as a Person before the Law in the Context of Enforced Disappearances*, 2011, at <http://www.ohchr.org/Documents/Issues/Disappearances/GCRecognition.pdf>, paras. 8 and 9. See also para. 10 in the sense that, beside issuing a “declaration of absence due to enforced disappearance”, States maintain their obligation to investigate, judge and sanction those responsible, as well as to establish the truth on the fate and whereabouts of the victim.

Law” (emphasis is added). The same was provided for the organization of issues related to the work of the Fund. Given that the Law on Missing Persons 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.<sup>62</sup>

42. Despite reiterated recommendations issued by international human rights mechanisms,<sup>63</sup> at September 2012 the Fund does not exist yet. BiH authorities do not show any willingness to address this matter. It has to be stressed that, besides being an ongoing breach of BiH’s international obligations, the non-establishment of the Fund causes serious damage to relatives of missing people who are denied their right to obtain support and compensation.<sup>64</sup> Associations of relatives of missing people throughout the country express their deep concern because of this situation and their loss of trust towards domestic institutions, because many of their members are dying without having ever realized the rights they are entitled to, and without having ever obtained any form of support from the Fund.<sup>65</sup> Finally, it must be noted that the non-establishment of the Fund amounts also to non-implementation of a significant number of decisions delivered by the Constitutional Court of BiH on the subject of missing people, whereby the payment of compensation to relatives recognized as victims of grave human rights violations was associated to the establishment of the Fund.<sup>66</sup>

#### **1.4 The Lack of Information on the Progresses Made in the Process of Exhumation and Identification of Mortal Remains and the Lack of Psycho-social Assistance during the Process**

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<sup>62</sup> See December 2011 Report, *supra* note 2, paras. 45-47. Problems related to the non-establishment of the Fund were analyzed in detail in the additional information on the follow-up of the concluding observations by the HRC on BiH, *supra* note 1, paras. 40-47. See also the written information for the examination of BiH’s combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 1, paras. 40-41.

<sup>63</sup> See, among others, CAT, *Concluding Observations on BiH*, *supra* note 13, para. 24 (b); and WGEID, *Report on the Mission to BiH*, *supra* note 13, para. 84 (a).

<sup>64</sup> *Infra* paras. 64-79.

<sup>65</sup> The Association of Relatives of Missing Persons from Kalinovik (“Istina-Kalinovik ‘92”) points out that in its view the main reason for the non-implementation of the Fund is related to politics. At the same time, the association points out that while Article 20 of the Law on Missing Persons establishes the procedures to be followed with regard to the marking of burial places, this is not duly implemented. For instance, the association sent reiterated requests to the Mayors of Kalinovik municipality and Foča municipality to mark the places of mass graves, but all the requests were rejected because of the non-establishment of the Fund.

<sup>66</sup> On this matter see the additional information on the follow-up of the concluding observations by the HRC on BiH, *supra* note 1, paras. 42-45. See also written information for the examination of BiH’s combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 1, paras. 42-45. In this sense, the association *Izvor*, subscribing this written information wishes to highlight that in its view a different system shall be put in place, whereby first and second-instance institutions are authorized to award the status of families of missing persons. Under the current situation, there is no possibility to successfully bring claims against those responsible for not establishing the Fund and therefore there is no effective remedy that can be used to challenge and change this situation.

**Questions related to Articles 6, 7, 2, para. 3 and 14 of the Covenant included in the list of issues adopted in March 2012**

11. [...] as of 1 January 2011, the State Prosecutor's Office is responsible for the exhumation and identification of human remains. Please provide information on the steps taken to ensure that the relatives of missing persons are regularly kept informed of the process of exhumation and that they receive adequate psychological support.

43. Unfortunately, most of the problems concerning the lack of information on the progresses made in the process of exhumation and identification of mortal remains and the lack of psycho-social assistance during this process referred in the 2011 December report continue to exist.<sup>67</sup>
44. Since 1st 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. The newly appointed prosecution team received a total of 183 exhumation cases in which the exhumation orders were not enforced. Out of this number, the Prosecutor's Office of BiH filed proposals for issuing exhumation orders in 94 cases, which were all accepted by the Court of BiH. From January to June 2012 there have been 85 exhumations. This number is somehow the source of concerns, given that the Prosecutor's Office of BiH declared that in 2012 it plans to "work on approximately 350 cases of exhumation".<sup>68</sup> In view of the forthcoming fall and winter seasons (the period of intensified exhumation works is included between the beginning of April and the end of November) this does not seem to be a realistic expectation.
45. The above situation further exacerbates the concerns repeatedly expressed by associations of relatives of missing persons that the overall pace of exhumations is slowing down and their hopes are consequently fading. While this perception may not be necessarily correct, it is surely fostered by the fact that communication with the Prosecutor's Office of BiH on this issue remains extremely difficult and relatives of missing persons feel that they cannot find official answers to the various doubts they have on the organization of the process. This situation nourishes a sense of isolation and resentment. All the more so, when the localization, exhumation, identification and restitution of mortal remains of missing persons is perceived by relatives of the victims as their very first priority: the time is passing and in many cases almost 20 years have elapsed since the person was seen alive for the last time. Further, the association *Izvor* has reported a particular problem concerning requests for exhumations filed before 1st January 2011 on which cantonal and district prosecutors did not act upon. Allegedly, the Prosecutor's Office of BiH is not dealing with such requests, as they would fall under the competence of cantonal and district prosecutors who received the relevant funding. On this part, cantonal and district prosecutors do not consider this to be their obligation anymore. *Izvor* refers that there are almost 20 such requests concerning the Prijedor area currently stuck in the described limbo.

<sup>67</sup> December 2011 Report, *supra* note 2, paras. 48-51. See also written Information for the examination of the BiH combined 2nd to 5th periodic reports, *supra* note 1, paras. 19-30.

<sup>68</sup> See in particular, Section I and II of the Court of BiH and Special Departments of the Prosecutor's Office of BiH, *The Registry Quarterly Report – March 2012*, *supra* note 14, p. 26.

46. The exhumation and identification of mortal remains also represents an aspect of the right to know the truth and must be carried out respecting international standards.<sup>69</sup> While the exhumation and identification of mortal remains is an extremely delicate moment for relatives of missing persons that concentrate plenty of their hopes and expectations on it, despite the recommendations of international mechanisms, there continues to be a lack of any kind of State programme of psycho-social assistance and support during and after the process.<sup>70</sup> In this context, often relatives of missing persons are subjected to instances of re-traumatization and amplification of their suffering.
47. Notable instances in this sense have been reported from the association *Vive Žene* from Tuzla with regard to numerous cases where new body parts of a missing person are found and require the re-opening of the grave to be buried together with previously recovered remains. In particular, the association referred to the case of a woman whose father and three brothers were subjected to enforced disappearance. In the past some of the remains of her loved ones had been located and identified and she could bury them according to her religious beliefs. However, recently the head of one of her brothers was found and identified, thus requiring the re-opening of the grave for burial. The lady did not receive any form of psychological support from the State prior, during and after the first burial and did not received it either on the occasion of reburial. Allegedly, the latter caused severe re-traumatization, precipitating the lady in a state of debasement and acute suffering.

## 1.5 The Non-implementation of Constitutional Court's Decisions in Cases concerning Missing Persons

### Questions related to Articles 6, 7, 2, para. 3 and 14 of the Covenant included in the list of issues adopted in March 2012

11. [...] Please indicate how many decisions delivered by the State Constitutional Court concerning missing persons have not yet been implemented and the reasons therefore.

48. As detailed in the December 2011 report,<sup>71</sup> over the past years a considerable number of decisions issued by the Constitutional Court of BiH have not been implemented. Although the non-implementation

<sup>69</sup> On this matter see WGEID, *General Comment on the Right to Truth in Relation to Enforced Disappearance*, *supra* note 32, para. 6; Human Rights Council, *Progress Report of the Human Rights Council Advisory Committee on Best Practices on the Issue of Missing Persons*, doc. A/HRC/14/42 of 22 March 2010; *Report of the Office of the United Nations High Commissioner for Human Rights on the Right to the Truth and on Forensic Genetics and Human Rights*, doc. A/HRC/15/26 of 24 August 2010; and Human Rights Council, *Report of the Human Rights Council Advisory Committee on Best Practices on the Issue of Missing Persons*, doc. A/HRC/16/70 of 21 February 2011.

<sup>70</sup> According to information provided by the Prosecutor's Office of BiH during 2012 "the Red Cross trained teams to provide psychological support to families of missing persons in Banja Luka, East Sarajevo, Nevesinje, Visoko, Tuzla, Lukavac and Mostar". However, these activities have been carried out without any support from the State which is therefore not relieved of its international obligations.

<sup>71</sup> December 2011 Report, *supra* note 2, paras. 52-63. On this matter see also the additional information on the follow-up of the concluding observations by the HRC on BiH, *supra* note 1, paras. 42-45; and the written information for the examination of BiH's combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 1, paras. 42-45.



of the mentioned decisions is considered to be a crime pursuant to domestic legislation,<sup>72</sup> to the knowledge of the subscribing associations to date no one has been prosecuted and sanctioned for such an offence in cases concerning missing persons. It must certainly be stressed that this problem does not only concern cases relating to missing persons, but has a general nature.<sup>73</sup> However, in this written information only the decisions relating to missing persons and their relatives will be referred to, highlighting that the majority of the considerations formulated hereby are applicable also to decisions concerning other matters.

49. Despite previous recommendations by international human rights mechanisms,<sup>74</sup> and the attempts made by TRIAL and some of the associations subscribing this written information,<sup>75</sup> together with Amnesty International, to start a constructive dialogue with BiH authorities, no significant improvement can be registered. BiH authorities do not seem to assume this as a first priority or to be willing to discuss potential solutions. The recommendation formulated by the mentioned international mechanisms in the sense that the implementation of Constitutional Court of BiH's decisions is secured remains unenforced and it unfortunately does not seem that there will be any meaningful improvement in the near future.
50. The case of Mr. Milan Mandić, who is the author of a communication currently pending before the Human Rights Committee,<sup>76</sup> can be quoted as an example. On 15 December 2005 the Human Rights Commission within the Constitutional Court of BiH adopted a decision on the admissibility and the merits of the application concerning the enforced disappearance, among others, of Mr. Božo Mandić (the father of Mr. Milan Mandić). In this decision, the Constitutional Court of BiH declared the violation of a number of provisions of the European Convention on Human Rights and ordered the government of BiH and the government of the Federation of BiH to undertake certain measures (e.g. provide information on the fate and whereabouts of the disappeared person) within fixed deadlines.<sup>77</sup> The Human Rights Commission within the Constitutional Court of BiH did not make a decision on the issue

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<sup>72</sup> *Infra* para. 51.

<sup>73</sup> In this sense, in 2009, while submitting information for the Universal Periodic Review of BiH, the Informal UPR Coalition noted that 20% of the decisions passed by the Constitutional Court are not respected or implemented. See Universal Periodic Review, *Summary of Stakeholder's Information*, doc. A/HRC/WG.6/7/BIH/3 of 12 November 2009, para. 28.

<sup>74</sup> European Commission, *2011 Progress Report on BiH*, *supra* note 12, pp. 14-15; European Commission, *2010 Progress Report on BiH*, *supra* note 13, pp. 6 and 15. In this light, it must be stressed that the European Court of Human Rights (ECtHR) accepted that the State's failure to fully enforce final domestic decisions causes to applicants distress, anxiety and frustration which amount to ill-treatment (ECtHR, Case *Čolić and others v. Bosnia and Herzegovina*, judgment of 10 November 2009, para. 21). The Court also reiterated that the non-enforcement of domestic decisions amounts to a violation of Article 6 of the European Convention on Human Rights and it discloses the existence of a shortcoming which can have the result to affect a whole class of citizens (ECtHR, Case *Šekerović and Pašalić v. Bosnia and Herzegovina*, judgment of 8 March 2011, paras. 31 and 39). In similar cases, the ECtHR considered that this situation generates a large number of potential applicants, which represents a threat to the future effectiveness of the Convention machinery. See also Report by the Commissioner for Human Rights at the Council of Europe, Mr. Thomas Hammarberg on his visit to BiH, doc. CommDH(2008)1 of 20 February 2008, para. 17; WGEID, *Report on the Mission to BiH*, *supra* note 13, footnote 5; and CAT, *Concluding Observations on BiH*, *supra* note 13, para. 12.

<sup>75</sup> The Association of Women from Prijedor – *Izvor*; the Association of Families of Killed and Missing Defenders of the Homeland War from Bugojno Municipality; the Association of Relatives of Missing Persons of the Vogošća Municipality; the Association of Families of Missing Persons from Ilijaš; and the Association of Families of Missing Persons from the Sarajevo-Romanija Region.

<sup>76</sup> Communication No. 2064/2011 submitted on 15 April 2011.

<sup>77</sup> *Ibid.*, para. 105.

of compensation, as it considered the latter to be covered by the provisions of the Law on Missing Persons concerning “financial support” and the establishment of the Fund. This, indeed, is common to all decisions concerning missing persons issued by the Constitutional Court of BiH. Given that the Fund has not been established to date,<sup>78</sup> the non-implementation of the decisions of the Constitutional Court of BiH on this aspect is self-evident.

51. The deadlines fixed by the Human Rights Commission within the Constitutional Court of BiH expired and the measures ordered were not adopted. In 2006 Mr. Milan Mandić tried to obtain a ruling of non-implementation pursuant to Article 74.6 of the rules of procedure of the Constitutional Court of BiH, but failed due to procedural mistakes. In February 2011 Mr. Milan Mandić wrote anew a letter to the Constitutional Court of BiH pointing out that five years had passed since the delivery of a decision concerning his father’s case and the institutions concerned failed to implement it. On 25 October 2011 the Constitutional Court of BiH adopted ruling No. CH/03/15108, declaring that the previous decision of 2005 has not been implemented.<sup>79</sup> The ruling of the Constitutional Court of BiH was forwarded to the Prosecutor’s Office of BiH that is competent to prosecute those responsible for the non-implementation pursuant to Article 239 of the Criminal Code. In December 2011 Mr. Milan Mandić wrote to the Prosecutor’s Office of BiH requesting to be closely associated to the investigation on the non-implementation and to be informed about the progresses of such investigation and the obstacles potentially encountered. At the time of writing, Mr. Milan Mandić has not received any formal reply by the Prosecutor’s Office of BiH. It is only through a submission of BiH concerning his communication pending before the Human Rights Committee that Mr. Mandić learned that allegedly in March 2012 the prosecutor requested the Council of Ministers to submit a report on activities undertaken to implement the 2005 decision.<sup>80</sup> Despite subsequent attempts made by Mr. Milan Mandić to verify whether the Council of Ministers replied to the Prosecutor’s Office of BiH and those responsible for the non-implementation of the decision of the Commission on Human Rights have been identified and are being prosecuted, to date he has not received any formal reply. To his knowledge no one has been sanctioned, while the decision concerning his father’s case remains non-implemented.
52. In the light of the above, it results that not only the non-implementation of decisions of the Constitutional Court of BiH remains rampant, but communication with BiH authorities in this respect is extremely complicated and applicants are confronted with indifference and inactivity of the authorities, while no one is sanctioned for disregarding the orders issued by the Constitutional Court of BiH.

## **1.6 The Status of Draft Legislation relevant for Victims of Enforced Disappearance and Their Relatives, Victims of Sexual Violence and Victims of Torture during the War**

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<sup>78</sup> *Supra* paras. 41-42.

<sup>79</sup> See Decision No. CH/03/15108 of 25 October 2011, para. 14.

<sup>80</sup> Letter No. A-296/12 dated 8 May 2012.

**Questions related to Articles 6, 7, 2, para. 3 and 14 of the Covenant included in the list of issues adopted in March 2012**

12. Please indicate the status of the following draft legislation and policy proposals:

a) the draft National Strategy on Transitional Justice;

b) the State-level Programme for Women Victims of Sexual Violence in Conflict and Beyond, which is intended to complement the Transitional Justice Strategy; and

c) the draft Law on the Rights of Victims of Torture and Civilian Victims of War.

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

### **1.6.1 The Draft National Strategy on Transitional Justice**

54. As already indicated in the December 2011 Report,<sup>81</sup> since 2010 the United Nations Development Programme (UNDP) has been providing technical, administrative and logistical support to an experts' working group charged with the drafting of a National Strategy on Transitional Justice.<sup>82</sup> Both the working document of the strategy and the related action plan for its implementation were finalized in late 2011, but in the form of a draft due to the absence of representatives of Republika Srpska from the endeavour. On the occasion of a presentation session held on 26 and 27 April 2012 for the authorized members of the Joint Parliamentary Human Rights Commission, the members of the experts' working group presented the working document and the related action plan.
55. In June 2012, two years after the beginning of their work, on the occasion of a public roundtable, members of the experts' group illustrated the draft Transitional Justice Strategy.<sup>83</sup> The participants to the event agreed to fully support the process of dialogue on the strategy at all levels; and invited all government institutions to promptly engage in the process of dialogue on the issues raised in the working document containing the Transitional Justice Strategy. The latter was expected to be presented for adoption to the parliamentary assembly during the summer. At the time of writing, this has not

<sup>81</sup> December 2011 Report, *supra* note 2, para. 75.

<sup>82</sup> Representatives of a number of associations submitting the present document took part to the works of the experts working group. In this sense, see the information provided for each organization *infra* section 5.

<sup>83</sup> See, *inter alia*, Balkan Investigative Reporting Network, *Bosnian State Strategy for Victims Presented*, 21 June 2012, at <http://www.bim.ba/en/327/10/35343/>.

happened yet. Associations of victims of gross human rights committed during the war and their relatives are increasingly expressing perplexities with regard to the overly complicated process and the slow pace of approval of the transitional justice strategy, especially given that almost 18 years have passed since the conclusion of the conflict.

56. In any event, it is worth recalling that, even if the strategy is eventually adopted, fact-finding processes, although crucial for the establishment of the truth, can never replace access to justice and redress for victims of gross human rights violations and their relatives. In this sense the WGEID indicated that “victims could benefit from a truth process, but not as a substitute of justice”.<sup>84</sup> In the same sense, in a recent report the Special Rapporteur on Torture clearly pointed out that “by itself, a commission of inquiry is never sufficient to fully satisfy a State’s obligations under international law with regard to torture and other forms of ill-treatment. This framework demands that States (and, in default, the international community) ensure truth, justice, reparations for victims and guarantees of non-repetition through deep institutional reform. A policy or practice designed to fulfill one of those objectives to the detriment of others would violate well-established legal obligations. Commissions of inquiry should therefore be considered complementary to other mechanisms, including criminal investigations and prosecution of perpetrators, the provision of reparations to victims, and extensive reforms to institutions, including the vetting of public officials. [...]”.<sup>85</sup>

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

57. As indicated in the December 2011 report,<sup>86</sup> another important initiative launched in 2010 and related to victims of gross human rights violations during the war and in particular to victims of sexual violence is the drafting of a Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence.<sup>87</sup> Such initiative is coordinated by the United Nations Population Fund (UNPFA) and the BiH Ministry of Human Rights and Refugees.<sup>88</sup> The finalization of the draft programme was initially expected by the end of 2011 and was then postponed to the “first months” of 2012. It is now alleged that the draft should be finalized by November 2012 and then submitted to the Council of Ministers of BiH for approval.

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<sup>84</sup> WGEID, *Report on the Mission to BiH*, *supra* note 32, para. 38. See also para. 82. On the subject the Commissioner for Human Rights on the Council of Europe in his *Report on the Mission to BiH*, *supra* note 74, has pointed out that “genuine inter-ethnic reconciliation in the former Yugoslavia, including Bosnia and Herzegovina, cannot be achieved without justice. Justice is not only retributive, in the sense that it is aimed to punish through fair proceedings those who have committed gross human rights violations and serious violations of humanitarian law. It is also, or above all, preventive, aiming to ensure that all people in the region come to terms with the past, and live in peace in a cohesive, pluralist democratic society. Justice means, moreover, provision of adequate, effective and proportionate reparation to comfort and heal the wounds of all victims of the war without any distinction” (para. 125).

<sup>85</sup> Special Rapporteur on Torture, *Annual Report for 2011*, doc. A/HRC/19/61 of 18 January 2012, paras. 69 and 70.

<sup>86</sup> December 2011 Report, *supra* note 2, paras. 76-77.

<sup>87</sup> The programme was previously called “Programme for Women victims of Sexual Violence in Conflict and Beyond”, while the new name referred to in the present written information has recently been made public by UNPFA.

<sup>88</sup> Representatives of a number of associations submitting the present document are taking part to this exercise. In this sense, see the information provided for each organization *infra* section 5.

58. In the meantime, in April 2012 two meetings were held, namely one of the focus' groups and one of the experts' working group charged with the drafting of the programme. Based on the inputs gathered from different actors during the discussion, the experts' group advanced in the drafting process. Accordingly, there are now clearly defined strategic goals and measures, even though the draft admittedly still requires some work to better define some sections of the document. In this sense, the experts' working group held four more consultations at the local level (Doboj/Derventa, Tuzla/Brčko, Srebrenica/Bratunac and Zenica) and is planning to hold three more consultative meetings in September 2012 (Trebinje, Bijeljina and Banja Luka) to complete the overall process of consultations. However, it must be specified that at the time of writing, while representatives of associations of victims of gross human rights violations from Republika Srpska and of local authorities from Republika Srpska started to participate to the process, representatives of the government of Republika Srpska have not yet done so, thus undermining the chances of success of the overall exercise.

### **1.6.3 The Draft Law on the Rights of Victims of Torture and Civilian Victims of War**

59. As referred in the December 2011 report,<sup>89</sup> BiH does not have a general law addressing the rights of victims of torture. Notably, in the follow-up reports submitted by BiH to the Committee against Torture in 2006 and 2007, the State referred to the "imminent" adoption of a national Law on the Rights of Victims of Torture and Civilian Victims of War, as well as to the establishment of a National Fund for Compensation of Victims. At September 2012, notwithstanding the reiterated recommendations of the Committee against Torture,<sup>90</sup> no such law has been adopted nor a fund established. Victims of gross human rights violations are definitely exacerbated by this situation, particularly when the majority of them have to face harsh living conditions and economic restraints, as well as serious psychological traumas.

60. At the end of November 2011 the Ministry of Human Rights and Refugees re-launched a debate concerning the adoption of the Law on the Rights of Victims of Torture. A first draft was circulated in February 2012 and both members of the civil society and of the government were given the opportunity to comment. Unfortunately, the representatives of the government of Republika Srpska, despite being invited, have so far not taken part to any meeting to discuss the draft law.<sup>91</sup> This potentially undermines the outcome of the whole exercise.

61. The Ministry of Human Rights and Refugees sent an "information note" concerning the activities for the drafting of the law to the Entities' governments as well as to the government of Brčko District, given that they had expressed negative opinions on previous drafts. At the end of July 2012 the Ministry had received a reply only from the government of Brčko District and thus sent an urgent appeal to the other

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<sup>89</sup> December 2011 Report, *supra* note 2, para. 67.

<sup>90</sup> CAT, *Concluding Observations on BiH*, *supra* note 13, para. 18.

<sup>91</sup> It is noteworthy that in Republika Srpska associations of civil society tried twice (in 2007 and 2008) to promote a draft law for Republika Srpska on former camp detainees and torture victims. The draft laws were tabled before the National Assembly, but both proposals were rejected. Pressures in this sense were allegedly exercised by associations of war veterans in Republika Srpska and groups representing the Bosniak ethnic group living in Republika Srpska.

Entity's governments reiterating the request for their opinions.

62. From 16 to 18 July 2012 representatives of civil society met in Lukavac, Tuzla, to discuss the different opinions on the draft law. The final result of their work was forwarded for further comments to the Ministry of Human Rights and Refugees. The latter emphasized that the reception of official replies from the Entity's governments to the information note is a precondition for the Ministry's further work on the subject. Accordingly, the Ministry is waiting for the potential feedback to the urgent appeals submitted and will reconsider the issue after the summer.
63. Associations of victims of gross human rights violations during the war and their families are concerned about these delays and the remaining obstacles for the adoption of a piece of legislation whose adoption has been promised more than six years ago. Indeed, for the success of the ongoing initiatives it is crucial that all parties participate, guaranteeing that civil society associations remain consistently involved.

## **1.7 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**

### **Questions related to Articles 6, 7, 2, para. 3 and 14 of the Covenant included in the list of issues adopted in March 2012**

*12. [...] Please provide updated information on the measures taken by the State party to ensure that the personal disability benefits received by civilian victims of war are harmonized among Entities and cantons.*

64. As analyzed in detail in the December 2011 report,<sup>92</sup> victims of gross human rights violations during the war and their relatives have not yet fulfilled their right to receive prompt, adequate and fair compensation for the harm suffered and integral reparation including restitution, rehabilitation, satisfaction and guarantees of non-repetition. Despite repeated recommendations and appeals from international human rights mechanisms,<sup>93</sup> the notions of compensation and reparation continue being unduly confused with that of social welfare measures (such as disability pensions). Further, discrimination between veterans and civilian victims of war when it comes to obtaining compensation or monthly disability allowances must be reported. Namely, under the existing legal framework, victims who have suffered the same bodily damage are entitled to substantially different amounts of money as disability pensions, depending on whether they are veterans or not. Another alarming problem is that

<sup>92</sup> December 2011 Report, *supra* note 2, paras. 66-77. See also additional information on the follow-up of the concluding observations by the HRC on BiH, *supra* note 1, paras. 48-57; and written information for the examination of BiH's combined 2nd to 5th periodic reports, submitted by TRIAL and 11 other associations in October 2010, *supra* note 1, paras. 92-125.

<sup>93</sup> See, among others, CAT, *Concluding Observations on BiH*, *supra* note 13, para. 18; WGEID, *Report on the Mission to BiH*, *supra* note 13, paras. 39-48 and 83-85; Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, *supra* note 9, para. 6; Report Hammarberg, *supra* note 8, paras. 147-148, 158 and 187-188.

relatives of missing persons who were receiving some kind of social assistance due to their status as victims of war, may such right if they move from one Entity to the other and this situation concretely discourages their return to the pre-war place of residence and undermines their freedom of movement. In this overall context, the situation of former camp-detainees is especially critical as they are not recognized as an autonomous category of war victims entitled to compensation.

65. In particular, the Law on the Protection of Civilian Victims of War in Republika Srpska, entitles civilian victims of war (assuming that this expression encompasses also “concentration camp-detainees”, which is far from clear) to receive a monthly disability pension. Pursuant to Article 1 of the Law “the rights prescribed can be awarded to citizens of Republika Srpska who have suffered bodily harm after 9 January 1992. The rights prescribed by this law can also be awarded to citizens of the Socialist Republic of BiH and the SFRY, if they settle on the territory of Republika Srpska, acquire a Serbian citizenship and if they have bodily harm caused after 17 August 1990”.<sup>94</sup> As noted, the law guarantees to those who are recognized as civilian victims of war the access to welfare measures (e.g. monthly disability pensions ranging between 100 and 350 KM – 50 and 175 Euros, nursing, help for those incapable to work, etc.)<sup>95</sup> which cannot be considered *stricto sensu* as measures of reparation for the gross human rights violations suffered.<sup>96</sup> Further, strict limitations are imposed to those who wish to apply for the measures offered pursuant to this law: among others, only those who can prove a certain degree of physical harm suffered due to the war (at least 60%)<sup>97</sup> and assessed by health commissions, or that can demonstrate that they are incapable for work will obtain a monthly pension. Victims of rape are not recognized as a separate category of victims and this falls short of acknowledging the specificity of the damage they have suffered and its consequences. In general, all those who suffered psychological impairment as a consequence of the war are not considered as victims under this law and are excluded from the enjoyment of social benefits. Moreover, it must be pointed out that the Law on Protection of Civilian Victims of War in Republika Srpska poses strict deadlines for those wishing to apply (notably, the final deadline expired on 31 January 2007).<sup>98</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,

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<sup>94</sup> Article 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”.

<sup>95</sup> The great majority of victims of torture, rape or other forms of sexual violence are in need of medical treatment and often of expensive medicines. Since the State fails to guarantee free access to such treatment to survivors of torture, they see themselves forced to purchase the mentioned medicines, which may cost up to 150 KM – 70 Euros – a month, with their own resources. It follows that the situation is unsustainable for those unable to work who live on a monthly disability of 100 KM.

<sup>96</sup> See Article 8 of the law.

<sup>97</sup> It is noteworthy that war veterans are eligible for social support if their bodily damage amounts to 20%.

<sup>98</sup> Article 33 of the law establishes that “a request for granting of rights on the basis of bodily harm can be submitted within 5 years after the harm was caused, i.e., since the day when the circumstances under which the harm was caused ceased to exist. The fact that the bodily harm occurred under circumstances described in Article 2 of the Law is inevitably proved by medical documentation about a treatment which should have been obtained one year after the harm was caused, i.e. after the circumstances under which the harm was caused ceased to exist and which the applicant should attach to the request [...]”.

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>99</sup>

66. Another piece of legislation that has been used in Republika Srpska to claim for compensation for pecuniary or non-pecuniary damage suffered during the war is the Law on the Right to a Compensation for Pecuniary and non-Pecuniary Damage, caused by the War Activities in the Period from 20 May 1992 to 19 June 1996 (Official Gazette No. 01-409/05 of 30 June 2005 and Amendments of 15 December 2008 published in the Official Gazette of Republika Srpska No. 1/09).<sup>100</sup> Nevertheless, it must be pointed out that the great majority of claims submitted by former camp-detainees and relatives of missing persons pursuant to this law have been rejected by Republika Srpska State Attorney's Office and Republika Srpska Ministry of Justice, thus proving this a non-effective legal tool to obtain compensation. First, the claims submitted by civilians have systematically been rejected, as Republika Srpska State Attorney's Office and the Ministry of Justice deemed to be incompetent to judge on damages not suffered "in connection with the conduct of military service and military defence activities". This interpretation of the law seems to unduly penalize civilian victims of the conflict. Moreover, the law establishes strict deadlines for the submission of the claims and most applicants missed such deadlines. In many cases the claims submitted were rejected either on the basis of an alleged lack of competence or on the basis of the application of the statute of limitations. Furthermore, compensation awarded under this scheme is to be paid in government bonds, which are to be amortised in ten annual instalments,<sup>101</sup> and the enforcement of the decisions already issued (apart from legal costs and associated default interest which have recently been paid) has been suspended since 28 May 2002 pursuant to the Postponement of Enforcement Act 2002, the Temporary Postponement of Enforcement Act 2003 and the Domestic Debt Act 2004.
67. As an instance, the association Prijedor 92 reported that all the claims for compensation for non-pecuniary damage submitted by their members have been rejected on the basis of an alleged lack of

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<sup>99</sup> See 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 recognizes "persons who have suffered permanent mental damage due to sexual harassment and rape, as a person with a special status, to whom there is no percentage determined for the harm suffered" (Art. 2). Most notably, the regulation does not fix a deadline to apply for the recognition of the status of civilian victims of war. This new regulation entitles victims to receive monthly disability pensions, as well as vocational trainings in the form of professional rehabilitation, right to special projects of employment, right to priority housing and right to free legal aid (Art. 4).

<sup>100</sup> Pursuant to Article 5 of the Amendments of 2008 to the mentioned law, applications to receive compensation should be submitted to the Office of the State Attorney of Republika Srpska before 31 December 2009.

<sup>101</sup> It is noteworthy that under Republika Srpska Law on Debts, there is a deadline of 50 years for cashing the bonds.



competence of Republika Srpska State Attorney's Office. Accordingly, on 16 February 2011 the association filed a collective claim on behalf of 418 former camp-detainees before the District Court in Banja Luka.<sup>102</sup> At the time of writing, the judge in charge has not even fixed the date of the first hearing. This situation is a source of particular concern to members of the association, as many of them are in a precarious state of health and are getting old, thus fearing to die without obtaining justice and redress for the harm suffered. As a matter of fact, ten of the claimants already died since the filing of the complaint.

68. A notable exception to the situation above described is the judgment issued on 26 September 2011 by the Basic Court in Trebinje, that ordered Federation of BiH to pay 100,000 BAM to Ms. Olga Draško, as compensation for the non-pecuniary damage suffered due to the torture inflicted on her while she was arbitrarily held in the detention camp of Dretelj from the beginning of May to August 1992.<sup>103</sup>
69. In the case of returnees, Article 33, para. 5, of the law establishes that "a person who has realized the right as a civilian victim of war or a family-member of a civilian victim of war under the regulations of the Federation or a surrounding country has no right to file a request for the granting of rights under this law". This provision has often been interpreted as excluding those who decide to return in Republika Srpska from the enjoyment of any social benefits.<sup>104</sup> In practice, this specific interpretation of the law has prevented a considerable number of people from returning to their pre-war houses, since they realized that moving back to Republika Srpska would have brought as a consequence the loss of their monthly disability pensions which, in the majority of cases, are their only means of subsistence. It is noteworthy that on 2 February 2011 the Supreme Court of Republika Srpska rendered a significant decision (Annexes 12 and 13 in the local language and excerpts in English) according to which lower courts should not automatically deny access to social benefits to those who received monthly disability pensions in the Federation of BiH and later on returned to Republika Srpska. This decision should represent a landmark judgment that sets the criteria to be followed by lower administrative bodies and courts throughout Republika Srpska. Nevertheless, it would seem that at the time of writing such decision has not been implemented and, on the contrary, lower administrative bodies continue interpreting the law as it was done in the past. In this light, on 27 January 2012 the applicant concerned filed a complaint before the Ombudsperson. The complaint has been registered under file number Ž-

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<sup>102</sup> Registered under the file No. 71 0 P 11123411P.

<sup>103</sup> See, among others, <http://www.bim.ba/en/290/10/33518/>. It is noteworthy that the mentioned case concerns a victim of Serb origin, while the events took place in Federation of BiH and Trebinje Court is in Republika Srpska.

<sup>104</sup> The law was amended in 2006 (Official Gazette Federation BiH No. 39/06). Article 33.1 reads: "Civilian victims of war and family members of civilian victims of war with temporary residence on the territory of the Federation BiH will upon their return in their earlier places of residence in Republika Srpska or Brčko District of BiH be assured rights which they had in their temporary place of residence". After the law was amended, a big number of returnees reapplied in the Federation BiH for the granting of their lost rights. Their claims were, however, all rejected, at least in the Una-Sana Canton, because the competent Ministry of Work and Social Policy interpreted the new provision as having to be applied only to people who had these rights at the moment when the amendments entered into force and who returned thereafter to Republika Srpska, and not to the people who already had lost their rights at the moment when the changes entered into force. As the majority of people had returned in Republika Srpska in 2004, all of them were excluded from regaining social assistance in Federation BiH, while at the same time incapable of gaining this assistance in Republika Srpska.

BL-05-79/12 and is currently pending.

70. The Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in the Federation of BiH makes clear that measures adopted in favour of civilian victims of war and their families are of the nature of welfare and social protection (e.g. monthly disability pensions which may be up to 506 KM – 259 Euros, nursing and other material benefits). Access to the mentioned measures of protection is reserved for people unable to work or financially unsecure. To obtain the status of civilian victim of war a bodily damage of at least 60%<sup>105</sup> is required. The mentioned condition is not applied to victims of rape or other forms of sexual violence, who are considered a different category of victims. Article 9 of the law openly discriminates against the category of civilian victims, since it prescribes 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>106</sup> to apply to obtain the status of civilian victim of war and many people have been excluded.<sup>107</sup> One particular problem that has been raised with regard to the procedure to obtain the status as civilian victims of war concerns the fact that the medical documentation that shall be produced to show the damage suffered by the applicant, must have been gathered or obtained before the end of 1997.<sup>108</sup> This criterion is particularly restrictive, since, due to the conflict and as a result of forced displacement, until 1998 many people did not even have an identity document and they could obtain it only later on. It is therefore particularly unlikely that such people can dispose of the required medical documentation. An outstanding situation in this regard has been reported by the Regional Association of Concentration Camp Detainees Višegrad, whose members are almost all victims of forced displacement from the area of Herzegovina. During the conflict, they were forced to leave their houses and therefore they lost all their original documents (including identification documents). Indeed, the almost totality of these

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<sup>105</sup> It is noteworthy that also in this case war veterans are eligible for social support if their bodily damage amounts to 20%.

<sup>106</sup> Article 101 of the law as amended in 2005 established that “the current users who have realized their rights as well as those who have filed requests for the realization of the rights and whose requests have not been answered under the provisions on social and children protection and the protection of civilian victims of war, which were applied on the territory of 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>107</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”. One example referred to by members of the Women’s Section of the Association of Concentration Camp Detainees is that of G. C. from Prijedor, who in 1992 was taken with her two children to the concentration camp of Trnopolje, where she was raped. The same year G. C. was exchanged with other prisoners and managed to reach Germany, where her two children live to this day. Due to the mentioned provision, G. C. feels at risk to lose her monthly disability pension, since from time to time she remains in Germany for more than three months when she visits her children, although her place of residence is the municipality of Novi Grad in Sarajevo.

<sup>108</sup> This problem has been emphasized in particular by the Women’s Section of the Association of Concentration Camp Detainees. Indeed, they raised the question with Ms. Mevlida Kemura, who at the time was the Director of the Institute for Medical Forensic and Health Ability (tasked to issue an evaluation necessary for the granting of the status as “civilian victim of the conflict”), and she emphasized that this requirement is established under the Federal law. See Article 79 of the Law on Civilian Victims of War in Federation of BiH.

persons have never obtained a medical certificate or a document attesting their detention during the war and this caused their exclusion from any social benefit.<sup>109</sup>

71. It must also be pointed out that even when victims obtain a certificate attesting their status, they cannot realize directly the benefits they would be entitled to, but they are referred by the Centres for Social Work to Medical Commissions which assess their percentage of disability. This other procedure in many cases re-traumatizes victims and discourages many potential beneficiaries from applying. Furthermore, to have their status duly certified, former camp-detainees must produce the testimony of two eye-witnesses. The whole procedure is lengthy and extremely complicated from a bureaucratic view-point. As a consequence, many people feel discouraged and avoid submitting claims at all.
72. Among the many problems raised by this system that unduly overlaps the notion of social assistance to that of compensation, it can be mentioned that when a person receives a monthly disability pension, this prevents him or her from accessing bank-loans. In this view, victims are ultimately prevented from moving on with their lives and are forced to remain dependant on a sometimes meagre pension. In this sense, it must also be duly stressed that there are instances where victims are requested to undergo multiple examinations in order to challenge contradictory medical evaluations of their situation. This exposes them to a serious and clearly unnecessary humiliation.
73. A particular situation which is worth mentioning since it affects a considerable number of victims of torture during the war and has already been brought to the attention of BiH authorities without any significant result is that of the women in Una-Sana Canton. About 15 women victims of rape or other forms of sexual violence during the war who obtained decisions awarding them monthly disability pension, found themselves in a situation of not being able to receive the mentioned pension due to the obstruction exercised in this sense by an employee of the Cantonal Ministry of Health from Una Sana in Bihać (Mr. Jasmin Fikić). Allegedly, when the mentioned women claimed the payment of monthly pensions they are entitled to, Mr. Jasmin Fikić refused to proceed with the payment and therefore failed to enforce the decisions legally obtained from the competent authorities. On one occasion he allegedly indicated to a woman who was requesting some clarifications on this situation that if she wants to receive monthly disability pension she has to go to the Ministry's office and bring along with her the perpetrator who has to confirm what had happened to her. Indeed, this is not required by any legal provision. On another occasion, Mr. Fikić allegedly went door to door to verify if the victims in fact live at the addresses they have indicated in the documentation submitted. In this context, Mr. Fikić allegedly also posed questions to neighbours to verify whether they are familiar with what had happened to the victims, therefore disclosing the identity of the ladies concerned and jeopardizing their right to privacy and security. It is noteworthy that this procedure is not prescribed anywhere in the law. On the contrary, the initiative on Mr. Fikić has had the result of putting at risk the women whose identities he has

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<sup>109</sup> It must be stressed that also war veterans are confronted with the problem of documentation. In fact, Republika Srpska Law on the Rights of Soldiers, War Disabled Persons and Families of Fallen Soldiers of the Defence-Homeland War requires war veterans who were captured and held in detention centre and wish to obtain a disability pension for it to produce a certificate of detention issued immediately after the war. Many people could never obtain such certificates and are therefore excluded from the enjoyment of any form of social assistance.

disclosed, as well as subjecting them to stigma and discrimination within their local communities. As mentioned, this situation has been reported to the former Cantonal Minister (Mr. Mustafa Avdagić) as well as to the Federal Ministry of Labour and Social Policy (Mr. Perica Jelečević). The latter organized a meeting in Sarajevo with associations representing victims of violence and former camp-detainees as well as with the Cantonal Minister to discuss this problem. At the meeting the authorities promised that the situation would have been duly addressed. In fact, some cases were resolved. However, after a while, Mr. Fikić resumed his former practice, until the beginning of 2012, when he was removed from this post.

74. Another problem that has been reported as a source of great concern by associations of former camp-detainees in the Federation BiH is the process of revision of disability pensions of former war veterans that has been launched at the end of 2011 by the Federal Ministry of War Veterans (Annexes 1 and 2 in the local language and English). Pursuant to this order, war veterans who were captured and detained in detention camps during the war and who had obtained monthly disability pensions for this must now undergo a process of revision of their status and many former camp-detainees already lost their social benefits as a consequence. According to associations of former camp-detainees, the whole procedure is characterized by a number of problems. First, war veterans must undergo a re-assessment of their degree of disability before an ad hoc commission in Sarajevo. For those not living in Sarajevo this implies additional expenses that often they are not in a capacity to afford. Second, veterans are requested to produce a “copy of the certificate of detention as a member of the military”. Indeed, this documentation is not very easy to obtain. Further, the whole revision process is mainly based on the assessment of the existence of formal discrepancies in the documentation submitted to obtain the disability pension (e.g. differences in the dates reported on documents, or in the writing of the names). Indeed, this criterion does not seem to take into account that the great majority of documents concerning war veterans were issued in the past, under exceptional circumstances, that caused a generally poor quality and a low level of precision. The fact that potential mistakes committed by administrative authorities and other offices are now interpreted to the total detriment of former war prisoners with the consequence to deprive them of social benefits, does not seem to respond to any particular logic nor to international standards.
75. With regard to the process of revision of disability pensions for veterans, the Croatian Association of War Prisoners of the Homeland War in the Canton of Central Bosnia highlighted the existence of a specific problem affecting veterans of Croat ethnicity. In fact, the majority of them obtained a disability pension pursuant to an ad hoc inter-State agreement with the Republic of Croatia. It is alleged that the revision process would affect also the rights obtained pursuant to the inter-State agreement, thus leaving members of the association without any form of support both from BiH and the Republic of Croatia.
76. Further, several associations of former camp-detainees reported instances of suicides among their members. An outstanding example that can be quoted is that of Mr. Sakib Balić, a 40-year old former camp-detainee who, in January 2012, set himself alight in front of the Croatian Embassy in Sarajevo

and passed away due to the injuries. Apparently, Mr. Balić had recently undergone the revision process of his disability pension, and the ad hoc Commission of the Federal Ministry of Veterans had reduced his disability from 80% to 30%.<sup>110</sup> Another example is that of Mr. E.Z., a former camp-detainee who survived torture in Omarska and Keraterm, whereby his two brothers were arbitrarily killed. Mr. E.Z. had serious health problems as a consequence of the torture he was subjected to in the detention camp, but he could not afford the necessary medical expenses. In the summer 2000, at the age of 35, Mr. E.Z. committed suicide in Sanski Most, by shooting himself. Mr. R.P., a former camp-detainee from Tuzla who had been detained and arbitrarily deprived of his liberty in 1993 in Travnik by members of the Croatian Defence Council (HVO), attempted to commit suicide when his claim for disability pension was rejected. At present, he is in the Psychiatric Clinic in Tuzla.

77. Moreover, the Association of Concentration Camp Detainees of BiH highlighted that there is an uncommon rate of deaths of former camp-detainees aged between 35 and 50. These deaths have been attributed to “natural causes”. Nevertheless, it must be pointed out that the average age of death in BiH is higher and to date there has been no serious study to determine whether these deaths could be attributed to the ill-treatment suffered in detention during the war. According to the data gathered by the association, in the municipality of Sanski Most in the period 2008-2011, 80 former camp-detainees aged between 35 and 50 passed away.
78. As already mentioned, former camp-detainees face particular troubles in obtaining compensation for the harm suffered. Indeed, they are not recognized as an autonomous category of victims of the conflict, and therefore fall in a grave legal loophole. In this sense, they would have to turn to regular courts in order to claim for compensation, but many of them are not in a position to afford this for a number of reasons. As a matter of fact, proceedings before ordinary courts<sup>111</sup> require a number of expenses in terms of court fees and other legal costs that the great majority of former camp-detainees are not able to bear.<sup>112</sup> While the exemption from court fees can sometimes be ordered by the judge, this is not automatic and many persons do not want to take the risk of finding themselves in a situation where they are not able to afford the costs of the proceedings. Moreover, expert testimonies and medical certificates (required in this kind of proceedings) must be obtained at the expense of the claimant and, again, this is often not feasible for victims or their families. It seems to be the practice of ordinary courts to reject claims for non-pecuniary damage concerning harm suffered during the war, as they apply a

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<sup>110</sup> This tragic episode has been covered by the media in BiH. See, among others: [http://www.bportal.ba/index.php?option=com\\_content&view=article&id=3795:drama-pred-ambasadom-hrvatske-u-sarajevu-zato-se-spalio-hos-ovac-sakib-bali-foto&catid=43:vijesti-crna&Itemid=61](http://www.bportal.ba/index.php?option=com_content&view=article&id=3795:drama-pred-ambasadom-hrvatske-u-sarajevu-zato-se-spalio-hos-ovac-sakib-bali-foto&catid=43:vijesti-crna&Itemid=61); and <http://www.braniteljski-portal.hr/sadrzaj/hrvatska/13856>.

<sup>111</sup> The notable exception of the Canton of Una Sana must be mentioned. In Una Sana the Law on Court Taxes has been amended as to exempt victims of gross human rights violations applying for non-pecuniary damage from paying court fees.

<sup>112</sup> As an example, the case of Mr. Semir Brzina can be quoted. Mr. Brzina is a former camp detainee who was subjected to ill-treatment during the war in the detention camp known as “Heliodrom”. In 2011, the Court in Mostar ruled in his favour, ordering the payment of 12,000 KM (almost 6,000 Euros) as non-pecuniary compensation for the harm suffered. Indeed, he was charged the court fees, amount to 1,900 KM (800 Euros), to be paid within eight days. In case of non-payment, the amount of the court fee is doubled. Mr. Brzina does not hold such amount of money and his non-pecuniary compensation has not been paid to him yet. It appears clearly that the current system is only detrimental to the applicants and prevents a number of former camp detainees from filing claims for non-pecuniary damages as they are unable to sustain the required expenses.

statute of limitations of subjective 3 years and objective 5 years.

79. It is noteworthy that on 15 November 2011 the Supreme Court of the Federation of BiH rendered a landmark judgment (Annexes 14 and 15 in the local language and English), whereby it is affirmed that the statute of limitations cannot be applied to claims for non-pecuniary compensation submitted by former camp-detainees. Indeed, this precedent shall be followed by all other tribunals in BiH, even though the practice so far has been the contrary.

## **2. Other Matters of Concern**

80. Although in the list of issues to be taken up in connection with the consideration of the second periodic report of BiH the Human Rights Committee formulated questions relevant for relatives of missing persons, former camp-detainees and women victims of rape or other forms of sexual violence during the war only on the matters analyzed above, the associations subscribing this written information are persuaded that there are a number of other matters that are subject of concern and would like to use this opportunity to update the Human Rights Committee on the current situation.

### **2.1 The Inadequacy of Domestic Criminal Legislation on Sexual Violence, Torture, and Enforced Disappearance**

81. As detailed in the December 2011 report, the BiH criminal legal framework on sexual violence, torture and enforced disappearance both at the national and the Entity level is inadequate. Torture, enforced disappearance, rape or other forms of sexual violence are either not codified at all or, when they are, domestic provisions do not meet international standards. On the one hand, this situation fosters impunity over past crimes and, on the other, it jeopardizes the prevention of future violations. In fact, ending impunity for the perpetrators of past crimes, including torture, enforced disappearances and rape or other forms of sexual violence is a circumstance pivotal, not only to the pursuit of justice, but to effective prevention.<sup>113</sup>
82. Amendments of domestic criminal legislation at the State level are discussed by the Criminal Code Implementation Assessment Team (CCIAT) that is an ad hoc body created for this purpose by the Ministry of Justice. Indeed, the discussion before the CCIAT represents only the first step of a much more complicated process that can lead to legislative modification.
83. The potential amendment of criminal legislation at the State level concerning torture was discussed at a meeting held in the spring of 2011 by the CCIAT. Notwithstanding the reiterated and clear recommendations issued by international human rights mechanisms with regard to the need of amending criminal legislation on torture to bring it into accordance with international standards, the CCIAT estimated that the existing provisions are adequate enough, and decided not to continue considering amendments or modifications of domestic criminal legislation on this matter. With regard to

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<sup>113</sup> December 2011 Report, *supra* note 2, paras. 79-93.

sexual violence, the potential amendment of the relevant provisions of the Criminal Code was also considered by the CCIAT in the spring of 2011. While in principle the CCIAT expressed its support to the need of modification of the Criminal Code with regard to sexual violence, the concrete consideration of the matter has been postponed because another issue has taken priority (special investigative measures). At the end of July 2012, the Ministry of Justice declared that the analysis of this subject could be resumed by the end of 2012. In any case, even assuming that this will happen, it would still be an initial step of a longer process which could therefore last several months, if not years. Finally, the CCIAT has not discussed yet the potential amendment of domestic criminal legislation concerning enforced disappearance and this does not figure explicitly in the agenda for the next months.

84. The above are clear indications that, at present, the recommendations issued by international human rights bodies on the necessity to amend BiH domestic criminal legal framework to bring it in line with international standards and make it more effective are disregarded and certainly not likely to be enforced by BiH within a reasonable time-frame.

## **2.2 The Non Recognition of the Competence of the Committee on Enforced Disappearances pursuant to Articles 31 and 32 of the International Convention for the Protection of All Persons from Enforced Disappearance**

85. On 31 March 2012 BiH ratified the International Convention for the Protection of All Persons from Enforced Disappearance. Although this must be recognized as a significant step forward showing the commitment of BiH in the struggle against this international crime,<sup>114</sup> it must nonetheless be noted that BiH failed to recognize the competence of the Committee on Enforced Disappearances pursuant to Articles 31 and 32 of the International Convention for the Protection of All Persons from Enforced Disappearance to receive and examine individual and inter-State communications.
86. Following the recommendations issued by different international human rights mechanisms,<sup>115</sup> BiH shall therefore proceed to recognize the competence of the Committee on Enforced Disappearances to show its genuine commitment in this sense. This would be perceived by associations of relatives of a missing persons as a sign of serious and ongoing commitment and as a guarantee of non-repetition.

## **3. The Limitations to the Freedom of Expression and the Right to Peaceful Assembly (Articles 19 and 21) with regard to Associations of Victims of War from the Prijedor Area**

87. During 2012, associations of former camp-detainees, victims of torture, sexual violence and relatives of missing persons who were subjected to gross human rights violations in the detention camp of

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<sup>114</sup> See December 2011 Report, *supra* note 2, paras. 94-96.

<sup>115</sup> CAT, *Concluding Observations on BiH*, *supra* note 13, para. 24 (f); and WGEID, *Annual Report for 2010*, doc. A/HRC/16/48 of 26 January 2011, para. 92.

Omarska,<sup>116</sup> near Prijedor, experienced violations by BiH authorities to their freedom of expression, as well as to their right to peaceful assembly.

88. The “Omarska” prison camp (opened in the administrative centre of the Omarska iron ore mine) was operative from 27 May 1992 to 21 August 1992. During this period between 3,000 and 5,000 civilians were imprisoned in Omarska, and were kept under inhuman conditions, physically and psychologically abused, arbitrary killed and tortured. Those who were detained at Omarska were severely beaten by the camp guards and were subjected to all sorts of inhumane treatment. In fact, many of the prisoners at Omarska were beaten to death. Notably, in July 1992, at least 15 men went missing from Omarska camp, while by the end of the same month, a large number of unidentified prisoners (of whom at least 50 were villagers from Hambarine), were killed using firearms. The inhumane treatment and the living conditions in Omarska were said to be the most horrendous. In general, those who were detained there were provided insufficient food and water, inadequate medical care and treatment, and they were subjected to overcrowding and lack of proper hygiene arrangements.<sup>117</sup>
89. At present, the steel and mining company “Arcelor Mittal” runs the industrial complex where the former detention camp was situated. The property of the company is shared between Arcelor Mittal and Republika Srpska. In March 2012, Arcelor Mittal denied access to its premises to a group of students from Munich. On 14 April 2012 access was also denied to a delegation of former camp-detainees, two art/theory groups called respectively Four Faces of Omarska and Grupa Spomenik, and researchers from the University of London.<sup>118</sup> Arcelor Mittal holds that local authorities are responsible for this situation, as they are the real owners of the land where Omarska is located and are those taking decisions.<sup>119</sup>
90. These events must be read in a broader context where local authorities (and in particular Mr. Marko Pavić, the Mayor of Prijedor) are placing restrictions on the freedom of expression and association, as well as the right to peaceful assembly of local associations of victims of gross human rights violations during the conflict or their relatives. In particular, public commemorations for the 20th anniversary of mass atrocities organized by local NGOs (9 May 2012), were formally prohibited and it was announced that any transgression of such prohibition and the use of the term “genocide” when referring to the crimes committed at Omarska will be prosecuted and sanctioned.
91. The associations *Izvor* and *Prijedor 92* report that local police prohibited the holding of a

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<sup>116</sup> On Omarska see, *inter alia*, ICTY, Case *Prosecutor v. Miroslav Kovčeka et al.*, judgment by the Trial Chamber of 2 November 2001 (Case No. IT-98/30-1), paras. 28-44; and *Final Report to the United Nations Security Council of the United Nations Commission of Experts* established pursuant to Security Council Resolution 780 (1992), doc. S/1994/674/Add.2 (Vol. I) of 28 December 1994 (“The Prijedor Report”), available at: <http://www.ess.uwe.ac.uk/comexpert/ANX/V.htm>, Chapter VIII.A “Logor Omarska”.

<sup>117</sup> See ICTY, Case *Prosecutor v. Miroslav Kovčeka et al.*, *supra* note 116; Case *Prosecutor v. Predrag Banović*, judgment of the Trial Chamber of 28 October 2003 (Case No. IT-02-65/1-5); Court of Bosnia and Herzegovina, Case *Prosecutor v. Željko Mejakić, Momčilo Gruban and Duško Knežević*, judgment of 30 May 2008 (Case X-KR/06/200), available at: [http://www.sudbih.gov.ba/files/docs/presude/2008/Zeljko\\_Mejacic\\_First\\_Instance\\_Verdict.pdf](http://www.sudbih.gov.ba/files/docs/presude/2008/Zeljko_Mejacic_First_Instance_Verdict.pdf); and Balkan Investigative Reporting Network, *Time for Truth: Review of the Work of the War Crimes Chamber of the Court of Bosnia and Herzegovina 2005-2010*, Sarajevo, 2010, p. 81.

<sup>118</sup> On these events see, *inter alia*, <http://talkbosnia.net/sydneyforum/?p=1509>

<sup>119</sup> See <http://www.arcelormittal.com/corp/news-and-media/news/2012/may/15-05-2012> and <http://www.arcelormittal.com/corp/news-and-media/news/2012/jul/02-07-2012>.



commemoration for the 20th anniversary of the suffering of women in Prijedor (23 May 2012). Allegedly, members of the associations intended to place 266 bags for exhumations in the name of 266 killed women and girls at the main city square, decorated by a single rose and the name and surname of each of the women. This performance was prohibited under the justification that it would disturb the interethnic relations and that the police had reasons to believe that there could be incidents, because of extremist groups which could threaten the non-Serb activists in Prijedor. *Izvor* formally complained against these restrictions to the Ministry of Interior which nonetheless confirmed the prohibition to hold the commemoration already imposed by the police. Accordingly, a claim was filed by *Izvor* before the District Court in Banja Luka and is currently pending.

92. To protest against these restrictions a public campaign named “Day of White Armbands” was launched: on 31 May 2012 people were invited to wear a white armband to commemorate the day on which in 1992 all non-Serb population living in Prijedor was forced to wear a white armband.<sup>120</sup>
93. Prominent politicians of the Savez nezavisnih socijaldemokrata (SNSD)<sup>121</sup> publicly called on local authorities in Prijedor and in the rest of Republika Srpska to prevent commemorative events using police and to deny the occurrence of genocide.
94. A special session of the Municipal Assembly of Prijedor was held on 8 June 2012 and on such occasion the Mayor of Prijedor warned the representatives of associations of victims of gross human rights violations that the use of the word “genocide” during public ceremonies would “trigger consequences”. Moreover, Arcelor Mittal confirmed restrictions to the visits to Omarska, formally authorizing only those envisaged for 6 August (commemoration of the 20th anniversary of the crimes committed in the detention facility).
95. A particularly grave episode occurred in connection with the public event titled “For Equity and Right to Remembrance” (6 August), organized to commemorate the anniversary of the suffering of children in Prijedor. In the evening of 4 August 2012 the association *Izvor* organized an event to promote the book “The War is Dead, Long Live the War” by Mr. Ed Vulliamy (the British journalist who first reported about the concentration camps set up in Omarska and Trnopolje during the war). While this event was taking place or immediately afterwards (e.g. in the night between 4 and 5 August 2012) the premises of *Izvor* in Prijedor were subjected to an attack: stones were launched and the windows of the office were broken (Annexes 3-9 with the pictures of the damages inflicted on the offices of *Izvor*). In the morning of 5 August 2012, neighbours noticed the broken windows and called the police to collect the evidence. On 8 August 2012 representatives of *Izvor* submitted a formal denounce of the incident to the local police (Annexes 10 and 11 in the local language and English), requesting that a prompt, independent, impartial and thorough investigation is launched to identify, judge and sanction those responsible. In the view of the members of *Izvor*, these events are strictly related to the celebrations held during the first days of August to commemorate the gross human rights violations perpetrated in and around Prijedor and were

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<sup>120</sup> See, *inter alia*, <http://stopgenocidedenial.org/2012/05/15/remembering-prijedor-massacre/>.

<sup>121</sup> See, *inter alia*, <http://vasicrajko.blogspot.it/search?updated-max=2012-06-17T00:13:00%2B02:00> (in the local language).

meant to be a form of intimidation.

96. Indeed, the manifestations to commemorate the 20th anniversary of the crimes committed in Prijedor were held between 5 and 7 August 2012 without major accidents. However, the president of the association of former camp-detainees from Kozarac (Mr. Sabahudin Garibović) – one of the organizers of the manifestations (a performance and a peaceful walk) – reports that he was approached by a policeman who claimed that criminal charges will be raised against him, the association and all those involved in the organization of the performance, because the word “genocide” to refer to the crimes committed in Prijedor during the war was used. In fact, on 7 August 2012 Mr. Garibović was convoked at the police station, where he was told that, by allowing the use of the word “genocide” at the manifestations, he had not respected previous “agreements”.<sup>122</sup> On 9 August 2012 Mr. Garibović received a letter from the Ministry of Interior of Republika Srpska informing him that a claim for minor charges has been filed against him before the Municipal Court in Prijedor. While the charges mentioned do not make any reference to the alleged unlawfulness of the use of the word “genocide”, the submission of different minor charges is perceived by Mr. Garibović as a pretext to intimidate him and ultimately unduly restrict his freedom of expression. It is noteworthy that no similar problems had been experienced in the past at the yearly ceremonies held in Prijedor. This would hint at a worsening of the overall climate in the area.
97. According to the International Covenant on Civil and Political Rights, restrictions to the freedom of expression could be imposed only if provided by law and necessary to a) for respect of the rights or reputation of others; b) for the protection of national security or of public order, or of public health or morals. Further, no restrictions may be placed on the exercise of the right of peaceful assembly other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedom of others.
98. Over the past years, associations of former camp-detainees, victims of torture, rape or other forms of sexual violence and relatives of missing persons from the Prijedor area were regularly allowed to carry out ceremonies to commemorate the mass crimes committed during the war in the area, as well as to pay tribute to the memory of their loved ones and to visit the site where the Omarska detention facility had been established during the war. The public manifestations concerned have always been peaceful and were carried out without harm to public safety or public order.
99. The recent restrictions imposed on the freedom of expression and on the right of peaceful assembly in Prijedor do not seem to meet the strict requirements set forth by the Covenant and spelled out by the Human Rights Committee in its case law and its recent General Comment No. 34.<sup>123</sup> In particular, they

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<sup>122</sup> The use of the term “agreements” possibly refers to the Municipal Assembly held in Prijedor on 8 June 2012, *supra* para. 94. Nevertheless, it is noteworthy that on such occasion no formal agreement was reached, while the Mayor generically warned that the use of the term genocide during public commemorations would trigger “consequences”.

<sup>123</sup> See, *inter alia*, HRC, General Comment No. 34 of 12 September 2011; General Comment No. 10 of 29 June 1983; and, among others, *Case Kivenmaa v. Finland*, views of 31 March 1994.

do not seem to be necessary in a democratic society to preserve public order or public safety and even less to be proportionate to the aim potentially sought.

#### 4. Conclusions and Recommendations

100. In general, it is the view of the subscribing organizations that there has not been a significant progress in the implementation of the recommendations formulated in November 2006 by the Human Rights Committee and a number of issues remain the source of deep concern. While relatives of missing persons, women victims of rape or other forms of sexual violence and former camp-detainees continue experiencing isolation and indifference, the previous recommendations issued by the Human Rights Committee almost six years ago, as well as those put forward by other international human rights mechanisms, have not been implemented. In this context, relatives of missing persons, former camp-detainees and women victims of rape during the war are left to bear the brunt of violations that have been ongoing over the past 20 years. This situation is causing a climate of deep distrust among victims of gross human rights violations from the war and their relatives towards BiH institutions and, given that not even the recommendations of international mechanisms are proving effective, there is a general feeling of powerlessness and frustration. BiH remains in breach of its international obligations as spelled out, among others, by the International Covenant on Civil and Political Rights. In particular, the present situation corresponds to ongoing violations by BiH of its obligations pursuant to Articles 2, 6, 7, 9, 10 and 16 of the International Covenant on Civil and Political Rights. Furthermore, as detailed above,<sup>124</sup> recent events also disclose interferences with the rights enshrined in Articles 19, 21 and 22 of the Covenant.
101. For the reasons explained above, the associations submitting the present written information respectfully request the Human Rights Committee to recommend BiH to:
- ▶ ensure that the National Strategy for War Crimes is duly implemented without delay and its application is thoroughly explained to the wide public in a transparent manner, thus fostering a climate of trust towards institutions. Undisputedly, the existence of the strategy cannot be used to delay indefinitely investigations and to avoid providing information to victims of gross human rights violations, their relatives or their representative associations. BiH authorities shall take all necessary measures to prevent the flight of people accused of or convicted for, war crimes and crimes against humanity and to investigate, judge and sanction those responsible for these crimes.
  - ▶ ensure in particular that all cases of rape or other forms of sexual violence perpetrated during the war are promptly, independently, impartially and thoroughly investigated and that those responsible are judged and sanctioned in accordance with international fair trial standards. War-time rape shall be prosecuted as such, applying the relevant standards and prosecutors and courts shall refrain from dealing with such cases as ordinary rape, since this does not mirror the particular nature of this heinous crime and while it unduly advantages the defendant, it creates

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<sup>124</sup> *Supra* paras. 87-99.

serious prejudices to the women who have already been subjected to this gravest violation of their basic human rights.

- ▶ ensure that BiH investigative authorities bear in mind that once the existence of gross human rights violations has come to their attention, they must act of their own motion and they cannot leave it to the initiative of relatives of the victims either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures.
- ▶ ensure the implementation of the jurisprudence established by the Constitutional Court of BiH in the sense of investigating and trying those accused of crimes committed during the war pursuant to the provisions of the 2003 Criminal Code instead of those of the Criminal Code of the SFRY.
- ▶ ensure that offices of the prosecutors and courts at all levels have consistent rules in dealing with the public in general and with victims of war crimes, their relatives and counsels in particular. These persons shall be more regularly given information on the process of investigation, the results of those investigations and whether trials might be forthcoming.
- ▶ ensure that a comprehensive programme of witness protection and psychological accompaniment is granted at all levels prior, during and after the trial takes place. Instances of threats or harassment against witnesses, victims, their families, their counsels as well as against their representative associations shall be promptly and thoroughly investigated and those responsible shall be judged and sanctioned. Witness protection and support shall be victim-oriented and supplied by experts who are adequately trained to provide these services and are financed by the State. The draft law on witnesses' protection and support promoted by the BiH Ministry of Security in 2011 must be discussed and enacted without further delay.
- ▶ ensure that witnesses in war crimes trials have access to adequate legal consultancy free of charge and the draft law on legal aid approved as a proposal by the BiH Council of Ministers is enacted as soon as possible and its funding secured. The State must ensure to set up without delay an effective public system of free legal aid enabling victims of war to receive legal support (counseling and, if need be, access to court), if they are not able to afford it.
- ▶ ensure that, within the MPI, the recourse to mandates of "technical" nature or the holding of posts *ad interim* is limited to exceptional circumstances, while all the posts of the management of the MPI as well as of the Advisory Board are filled through a regular and transparent election process. The regular budget for 2013 must be secured as a priority. To increase the authority of the MPI, during their term of office the members of the Steering Board, of the Board of Directors and of the Supervisory Board shall not engage in any activity which is incompatible with their independence, impartiality or with the requirements of a full-time office.
- ▶ ensure that the Law on Missing Persons is fully implemented and that the CEN is completed within the shortest delay. Failure to comply with this shall be prosecuted and sanctioned. The information contained in the CEN shall be as complete and accurate as possible. BiH shall also make sure that the entry into the CEN is not considered as sufficient evidence for declaring a missing person dead and Article 27 of the Law on Missing Persons shall be amended accordingly.
- ▶ ensure that the Fund is set up without any further delay and its financing is entirely secured. In any case, BiH shall ensure that, besides measures of social assistance, all relatives of missing

persons are granted integral reparation and prompt, fair and adequate compensation for the harm suffered.

- ▶ ensure that the process of exhumation of mortal remains is accelerated and the necessary staff and resources are allocated to this end. 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 Constitutional Court of BiH's decisions, in particular those regarding missing persons, are fully implemented without further delay. Moreover, if criminal prosecution proves not adequate to solve the matter, BiH authorities shall start a process, in consultation with many actors, including representatives of civil society, to address the problem and to find an alternative effective solution to eventually overcome this systemic problem.
- ▶ ensure that the National Strategy for Transitional Justice is adopted and implemented without further delay, keeping in mind that fact-finding processes, although crucial for the establishment of the truth, cannot replace access to justice and redress for victims of gross human rights violations and their relatives that must thus be guaranteed such rights independently from the adoption of the strategy concerned.
- ▶ ensure that the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence is finalized and referred for approval to the Council of Ministers of BiH without further delay. Representatives of the government of Republika Srpska shall participate to the finalization of the draft programme, thus ensuring their subsequent genuine support to the implementation of the programme. Measures envisaged by the latter shall have a transformative aim, in the sense that they must allow women to ameliorate or at least consolidate their position in society. In this sense women victims of rape or other forms of sexual violence during the war shall be guaranteed full participation not only in the drafting of the programme, but also in the subsequent implementation, evaluation and decision-making.
- ▶ ensure that the obstacles for the adoption of the Law on the Rights of Victims of Torture and Civilian Victims of War are swiftly removed and this crucial piece of legislation is adopted and enforced without further delay. Financial resources for its implementation must be secured and the overall exercise must be coordinated with the other mentioned legislative initiatives concerning victims of the conflict in BiH in order to avoid overlapping or lacunae. All parties, including representatives of the government of Republika Srpska, shall constructively participate to the endeavour and associations of victims of gross human rights violations and their relatives must be thoroughly involved and allowed to express their opinions, needs and expectations.
- ▶ implement without delay a national programme of measures of reparation for victims of gross human rights violations during the war, including former camp-detainees that encompasses compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. Also

victims of war currently living abroad shall be entitled to realize their right to compensation and restitution. The notions of “civilian victim of war” and “beneficiary of social assistance” shall be clearly distinguished, as well as those of “compensation and reparation” and “social assistance”.

- ▶ take all necessary measures to raise awareness about the status as civilian victim of war, the conditions and procedures to apply for it and the rights deriving from this. BiH must ensure that adequate and effective criteria are applied to recognize the status of civilian victim of war without discrimination.
- ▶ the process of revision of social benefits awarded to war veterans in Federation BiH shall not depend solely on the existence of formal mistakes in the documentation and certificates held by the veterans and shall be conducted without discrimination. Moreover, those living outside Sarajevo who have to travel there to be subjected to the revision process and are not able to cover travel costs shall receive support in this sense.
- ▶ guarantee that claims relating to reparations for gross violations of human rights and humanitarian law shall not be subject to statutes of limitations in any event. Furthermore, proceedings concerning claims for compensation for the harm suffered by former camp-detainees and victims of torture should not be subjected to court fees and they should not depend on the production of documentation issued during the conflict.
- ▶ ensure that victims of gross human rights violations during the war are adequately informed about their right to claim compensation from individual perpetrators and, where a judgment of the State Court refers them to civil proceedings for this purpose, they are automatically notified about the relevant decision and provided free legal aid to effectively fulfil their rights.
- ▶ adopt all necessary measures to ensure that the psychological impact on victims of gross human rights violations as a result of their return to the pre-war places of residence, is duly considered when evaluating whether there are the conditions for a “safe and dignified” return of internally displaced persons or refugees. No one shall be forced to return if they do not wish to do so. Those not willing to return shall be provided with alternative options of resettlement, guaranteeing access to safe and adequate housing to them and their families. In no case shall the return to the pre-war place of residence determine the loss of the social benefits to which the victim is entitled.
- ▶ proceed without delay to amend the criminal codes at the State and at the Entity level to include a definition of sexual violence in accordance with international standards and jurisprudence related to prosecution of war crimes of sexual violence and remove the condition of “force or threat of immediate attack”.
- ▶ ensure that the Criminal Code of BiH is amended and that the punishment for the offence of torture is commensurate to the gravity of the crime. Ensure that the criminal codes at the Entity level integrate the crime of torture as defined under Article 1 of the Convention against Torture, criminalizing also the incitement, instigation, superior orders or instructions, consent, acquiescence and concealment of acts of torture. Entities shall also integrate torture as a crime against humanity and as a war crime in accordance with international standards.
- ▶ ensure that the criminal codes at the Entity level are harmonized with the criminal code at the State level, in particular with the view to integrate the crime of enforced disappearance as a crime

against humanity, and set appropriate penalties. The criminal codes at all levels shall be amended to integrate the autonomous crime of enforced disappearance and shall establish that the statutes of limitations for criminal proceedings on cases of enforced disappearance take into account the continuous nature of the offence and hence commence to run from when the fate or whereabouts of the victim are established with certainty and made known to their relatives.

- ▶ ensure that criminal codes at all levels explicitly define that a person who acted pursuant to an order to commit torture, or enforced disappearance shall not be relieved of criminal responsibility and that those who refuse to obey such an order will not be punished.
- ▶ recognize without delay the competence of the Committee on Enforced Disappearances to receive and examine individual and inter-State communications pursuant to Articles 31 and 32 of the International Convention for the Protection of All Persons from Enforced Disappearance.
- ▶ ensure that associations of former camp-detainees, victims of torture, rape or other forms of sexual violence, as well as relatives of missing persons from the Prijedor area can commemorate freely the anniversaries of the suffering of their loved ones, hold peaceful public ceremonies, thereby expressing their opinions without unlawful interferences. In particular, access to the detention facility of Omarska for peaceful commemorative purposes shall not be unduly restricted by BiH authorities or by private entities.
- ▶ ensure that a prompt, independent, impartial and thorough investigation is carried out to identify, judge and sanction those responsible for the attack committed during the night of 4 August 2012 against the premises of the association *Izvor* in Prijedor.

On behalf of:

Association of the Concentration Camp-Detainees Bosnia and Herzegovina

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 from Kalinovik (“Istina-Kalinovik ‘92”)

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

Association of Relatives of Missing Persons of the Vogošća Municipality

Association Women from Prijedor – *Izvor*

Association of Women-Victims of War

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

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

Prijedor 92

Regional Association of Concentration Camp-Detainees Višegrad

Sumejja Gerc

Union of Concentration Camp-Detainees of Sarajevo-Romanija Region

*Vive Žene* Tuzla

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

Philip Grant

TRIAL Director



## 5. The Associations Submitting this Written Information

### a) TRIAL (Swiss Association against Impunity)



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

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

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

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

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

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

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

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



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

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## c) Association of 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.



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

The **Association of Families of Killed and Missing Defenders of the Homeland War from Bugojno Municipality** was founded in 1995 and it has 98 members. To date, the Association is seeking for 35 missing persons (20 soldiers and 15 civilians). The association represents the relatives of missing persons of Croat origin in and around Bugojno Municipality and it is actively involved in different types of activities such as: 1) collecting information with regard to missing persons; 2) providing help and support to families of missing persons in the

realization of their rights; and 3) cooperating with other associations of relatives of missing persons, with the ICMP and the MPI, with the ICRC, with government institutions and with the Prosecutor's Office.

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

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

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

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

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



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

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

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



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

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

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

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

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

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



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

**Contact person:** Mr. Edin Ramulić (Project Coordinator)

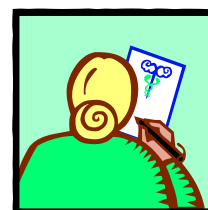
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## j) Association of Women-Victims of War

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



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

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

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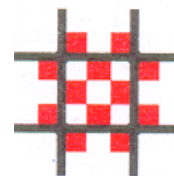
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## k) Croatian Association of War Prisoners of the Homeland War in Canton of Central Bosnia

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



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

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

The **Croatian Association of Camp Detainees from the Homeland War in Vareš** was established in 1998 but after the reorganization, it started being active 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.



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domovinskog rata u ZE-DO županiji  
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### **m) Prijedor 92**

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



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### **n) 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 organized 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.



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## o) Sumejja Gerc



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

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

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## p) Union of Concentration Camp-Detainees of Sarajevo-Romanija Region

The **Union of Concentration Camp-Detainees of Sarajevo-Romanija Region** was established at the end of 2008 and has been gathering data and information concerning former camp-detainees in the Sarajevo-Romanija region. The association is active in supporting victims of torture and sexual violence and it holds trainings and workshops for its members.



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## q) Vive Žene Tuzla



The Association **Vive Žene Tuzla** (Centre for Therapy and Rehabilitation) is a NGO which was established in 1994 and that focuses on psycho-social help and support, education, and promotional-editorial activities with a multi-disciplinary, democratic and participatory approach to the work with traumatized families and individuals. The primary goal of *Vive Žene Tuzla* is to improve the mental health of people who were subjected to torture during the conflict in BiH, minimizing the effects of trauma-related disorders in the lives of tortured, raped or abused victims and facilitating their emotional healing. *Vive Žene Tuzla* considers that the maintaining and protection of the mental health of citizens is a sound way to contribute to the reconstruction of a war-torn society. While respecting the basic principles of humanity and human rights, the organisation implements basic values laid through the work with marginalized groups, civilian victims of war and the protection of the families with children. The work carried out by *Vive Žene Tuzla* aims at preventing torture through a multidisciplinary approach, including psychotherapy, psychosocial, social, medical and legal counselling. Accordingly, the team of

*Vive Žene* Tuzla consists of psychologists, social workers, instructors, teachers, doctors, a nurse, a psychotherapist and a legal counsel. Besides working with individuals, the organisation works also in the community, with a view to foster reconciliation, representation, rebuilding of trust and reconstruction of broken relationships and reduction of ethnic barriers.

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

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

The **Women's Section of the Association of Concentration Camp Torture Survivors Canton Sarajevo** which functions as part of the Union of Concentration Camp Torture Survivors of Canton Sarajevo (formed in 1997) is a non-governmental association which gathers women who were forcibly



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

The **Women's Section of the Association of Concentration Camp Torture Survivors Canton Sarajevo** participates to the extended working group coordinated by UNPFA for the development of the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence.

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## Annexes

1. Order No. 01-41-6112/11 of 7 December 2011 issued by the Federal Ministry of War Veterans (in the local language, on two separate pages)
2. Order No. 01-41-6112/11 of 7 December 2011 issued by the Federal Ministry of War Veterans (unofficial translation in English).
3. Picture of the damages inflicted on the premises of the NGO *Izvor* in the night between 4 and 5 August 2012.
4. Picture of the damages inflicted on the premises of the NGO *Izvor* in the night between 4 and 5 August 2012.
5. Picture of the damages inflicted on the premises of the NGO *Izvor* in the night between 4 and 5 August 2012.
6. Picture of the damages inflicted on the premises of the NGO *Izvor* in the night between 4 and 5 August 2012.
7. Picture of the damages inflicted on the premises of the NGO *Izvor* in the night between 4 and 5 August 2012.
8. Picture of the damages inflicted on the premises of the NGO *Izvor* in the night between 4 and 5 August 2012.
9. Picture of the damages inflicted on the premises of the NGO *Izvor* in the night between 4 and 5 August 2012.
10. Denounce submitted by the NGO *Izvor* to the police in Prijedor (in the local language).
11. Denounce submitted by the NGO *Izvor* to the police in Prijedor (unofficial translation in English).
12. Decision issued on 2 February 2011 by the Supreme Court of Republika Srpska (in the original language).
13. Decision issued on 2 February 2011 by the Supreme Court of Republika Srpska (unofficial translation of relevant excerpts and summary in English).
14. Decision delivered on 15 November 2011 by the Supreme Court of Federation of BiH on the non applicability of statutory limitations to claims for non-pecuniary damage filed by former camp detainees (in the local language).
15. Decision delivered on 15 November 2011 by the Supreme Court of Federation of BiH on the non applicability of statutory limitations to claims for non-pecuniary damage filed by former camp detainees (unofficial translation in English of relevant excerpts).