



Association suisse
contre l'impunité

Schweizerische Gesellschaft
für Völkerstrafrecht

Swiss association
against impunity

EXECUTIVE SUMMARY

of the

WRITTEN INFORMATION FOR THE EXAMINATION OF

BOSNIA AND HERZEGOVINA'S COMBINED SECOND TO FIFTH PERIODIC REPORTS

(CAT/C/BIH/2-5)

OCTOBER 2010

I. Background

1. In its concluding observations on Bosnia and Herzegovina (BiH) of 15 December 2005, the Committee against Torture (CAT) expressed its concern, among others, at the lack of congruity between the definitions of torture in the State and the entity laws and it noted that certain definitions did not meet international standards. Therefore, it recommended to BiH to **incorporate the crime of torture, as defined in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment ("Convention against Torture"), into the domestic law and to ensure that definitions at the State and entity level are harmonised.** Further, the CAT expressed its alarm about the failure by BiH to carry out prompt and impartial investigations, prosecute perpetrators and provide fair and adequate compensation to victims of torture and ill-treatment during the conflict, as well as about the reported harassment, intimidation and threats faced by witnesses and victims testifying in proceedings and the lack of adequate protection by BiH; and about the failure of BiH to recognise survivors of torture, including sexual violence, as victims of the conflict. Accordingly, the CAT recommended BiH to **take effective measures to ensure prompt and impartial investigations into all allegations of torture and other cruel, inhuman or degrading treatment, the prosecution and punishment of the perpetrators and the provision of fair and adequate compensation for victims; to enforce relevant legislation, including providing protection of witnesses and other participants in proceedings, and ensure that testimonies by victims of torture are provided with fair treatment at all stages of the proceedings; and to develop legal and other measures, enforceable throughout the State, including an official programme for the**

rehabilitation of victims of torture as well as sexual violence, providing them recognition as victims and the capacity to pursue redress and their right to fair and adequate compensation and rehabilitation in accordance with the requirements of the Convention. Finally, the CAT declared that it remained concerned about the lack of full implementation of the Law on Missing Persons (LMP) and the creation of relevant institutions foreseen therein. The Committee recommended BiH to **intensify its efforts to establish the Institute for Missing Persons (MPI), the Fund for Support to the Families of Missing Persons (the Fund), and the Central Record of Missing Persons (CEN), as well as to ensure that available avenues for compensation are used in a non-discriminatory manner.**

2. As a follow-up to this process, the CAT, on 28 February 2008, requested BiH to provide further information, among others, on:
 - ▶ activities undertaken to ensure that the definition of torture in the Convention is fully incorporated into domestic law and any measures undertaken to harmonise the entity level laws prohibiting and making punishable the crime of torture;
 - ▶ how rape or other forms of sexual abuse are defined under national legislation and on how different parts of BiH respect and prosecute these crimes, including statistics on the number and results of prosecutions;
 - ▶ measures taken by BiH to carry out prompt and impartial investigation into all alleged cases of torture and cruel, inhuman or degrading treatment and to prosecute and punish the perpetrators;
 - ▶ the protection of witnesses and victims of torture and ill-treatment that occurred during the conflict;
 - ▶ the developments with regard to the new Law on the Rights of Victims of Torture and Civil Victims of War and information on the National Fund for Compensation of Victims; and
 - ▶ the measures undertaken for the rehabilitation of victims of torture, including sexual violence, from the conflict period.

3. TRIAL (*Track Impunity Always*), 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) and five associations dealing with the subject of victims of rape or other forms of sexual violence during the war (the Women's Section of the Association of Concentration Camp Detainees, the Centre for Legal Assistance to Women Zenica, the Association of Women-Victims of War, Infoteka Women's Information and Documentation Centre and *Vive Žene* Tuzla) submit to the CAT a report on the subjects concerned,

in order to highlight the progresses made, as well as the remaining obstacles. In this view, **numerous concrete examples are referred to, as well as recommendations to improve the situation.**

4. The associations that submit this written information have a number of concerns with regard to the implementation by BiH of the Convention against Torture. However, given the particular expertise of the associations concerned, this document focuses solely on matters related to missing persons and their relatives and to victims of rape or other forms of sexual violence during the war. The omission of other subjects does not imply by any means that the associations submitting this information find that BiH fully complies with all its obligations under the Convention against Torture. In particular, the subscribing associations are concerned at reported human rights violations, as documented in the written information submitted to the CAT by other organizations, namely Amnesty International and the Helsinki Committee for Human Rights in BiH.
5. Although almost 15 years have passed since the conclusion of the war in BiH, thousands of relatives of missing persons remain caught between hope and despair to this very day, as they do not know the fate and whereabouts of their loved ones. BiH authorities have so far failed to guarantee their right to know the truth regarding the circumstances of the enforced disappearance of their loved ones, the progress and results of the investigation and the fate of their relatives, their right to justice and their right to obtain integral reparation and prompt, fair and adequate compensation. Thousands of victims of rape or other forms of sexual violence have not been guaranteed access to justice and integral reparation for the harm suffered. On the contrary, they remain among the most marginalised and stigmatised categories within BiH society. The present situation corresponds to ongoing violations by BiH of its obligations under Articles 1, 2, 4, 5, 7, 12, 13 and 14 of the Convention against Torture.

II. The Lack of Accurate Data on the number of Missing Persons and Victims of Rape or other Forms of Sexual Violence during the War

6. To date, the very number of missing persons that have to be found and identified remains a controversial issue in BiH, as well as the total number of victims of rape or other forms of sexual violence during the war. This lack of clarity in numbers and figures that ultimately correspond to broken human lives and to the anxiety of thousands of relatives of missing persons, friends and entire communities, aggravates the suffering of victims and family members and deprives them and the BiH society in general of their right to know the truth. Moreover, the lack of reliable and unified data on missing persons and on victims of rape or other forms of sexual violence hamper their right to justice and to obtain compensation and integral reparation for the harm suffered.

▶ *Please refer to paras. 5, 48 and 53 of the full report for details and concrete examples*

7. **BiH shall elaborate within the shortest delay accurate and complete figures concerning the total number of missing people during the war as well as the number of people whose fate and whereabouts remain unknown since then. This subject shall be treated with the utmost transparency, accuracy and certainty and BiH authorities shall refrain from any politicisation thereof. In order to be as credible as possible, these figures shall make reference also to those cases of “false” or mistaken identification of mortal remains occurred in the past. BiH shall also elaborate a unified and accurate database concerning victims of rape or other forms of sexual violence during the war, duly considering also those currently living outside BiH. Transparency and certainty must here also be guaranteed by BiH authorities, as well as the security and privacy of the victims, duly taking into account the sensitivity of this subject.**

III. The Functioning of the MPI

8. The LMP (Official Gazette of BiH, No. 50/04, into force since 17 November 2004) provided for the establishment of the MPI (Art. 7). The MPI became fully operational only from 1 January 2008, more than three years after the entry into force of the LMP. At present, the functioning of the MPI is disturbed by the fact that the Council of Ministers of BiH has not approved the audit report for 2009, which was submitted almost a year ago. Furthermore, although four seats of the Steering Board of the MPI are vacant (one since 2008 and three since 2009), the Council of Ministers and the International Commission on Missing Persons (ICMP) failed to find an agreement on the appointment of the new members, thus concretely slowing down the functioning of the institution and undermining its legitimacy. Some associations such as *Izvor* from Prijedor, are especially critical towards the MPI and allege that the personnel is not qualified enough and that the presence of people who also have political affiliations undermines the credibility of the institution and the effectiveness of its work. Another problem which occurs in the eyes of these associations of relatives of missing persons is the fact that employees of the MPI are people who used to work for the entity commissions and who allegedly got their jobs based solely on this fact and not on their actual expertise. In general, associations of missing persons claim that some of the employees of the MPI failed to successfully realise the tasks entrusted to them.

▶ *Please refer to paras. 7-11 of the full report for details and concrete examples*

9. **BiH shall ensure that this situation is resolved as soon as possible and that the Council of Ministers proceeds without any further delay to approve the audit report for 2009 of the MPI, and to agree with the ICMP on the appointment of the vacant members of the Steering Board of the MPI, thus enabling this institution to discharge its mandate. 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 demands of a full-time office.

10. One of the basic conditions for the establishment of the MPI was the transfer of authority from previously existing entity commissions for tracing missing persons. However, representatives of the Republika Srpska Office for Tracing Missing Persons left the MPI and, on 6 June 2008, the Republika Srpska Operative Team for Missing Persons was set up, with the aim of collecting data relating to missing Bosnian Serbs in BiH, which shall eventually be transmitted to the MPI. Accordingly, the original purpose to have one State institution dealing with missing persons, ensure equal treatment to all victims and their relatives and prevent manipulation with the number of missing persons has been partially frustrated. This does create instances of overlapping and the ethnic, religious or national background of the victims is anew used as a criterion for engagement in the search of missing persons. As a part of its mandate, the MPI is open to cooperation with any other institution concerned with missing people. However, at present the collaboration between the MPI and the Republika Srpska Operative Team for Missing Persons is almost inexistent although there have been attempts in this sense. This ultimately results in the loss of credibility of both institutions and in being prejudicial to relatives of missing persons.

▶ *Please refer to paras. 12-15 of the full report for details and concrete examples*

- 11. BiH shall guarantee that the MPI and the Republika Srpska Operative Team for Missing Persons actively cooperate, eliminating any hindrance or conflict and carefully avoiding episodes of public mutual discredit. Further, it shall ensure the full independence of the MPI as guaranteed by the law, including preventing threats to members of the institute, harassment and unfounded public attacks. When cases of harassment are reported, BiH authorities shall promptly investigate and sanction such acts.**

12. Although some relevant results have been accomplished, the carrying out of exhumations by the MPI has not always met international standards. This causes the perpetuation of the situation of anxiety and uncertainty suffered by thousands of relatives of missing persons. Problems concerning the carrying out of exhumations may be summarized in four main categories: the speed and the manner in which exhumations are being carried out; the conflicts between the MPI and the Republika Srpska Operative Team for Missing Persons in the carrying out of exhumations; the lack of adequate psycho-social support to relatives of missing persons during and after the process of exhumation and identification; and the lack of effective cooperation between the MPI and the Prosecutor's Offices.

▶ *Please refer to paras. 16-30 of the full report for details and concrete examples*

13. BiH shall ensure that adequate resources are put at the disposal of the MPI to allow it to do its work. In particular, all available technology necessary to detect graves and to exhume them should be provided to the institution, as well as more coolers and adequate facilities where mortal remains can be preserved and treated with respect and dignity. The preservation of mortal remains shall be secured using unified standards and applying the same procedures throughout BiH. More people within the MPI shall be deployed as investigators to gather relevant information for the location of individual, collective and mass graves, in particular in the areas of North-Western, Eastern and Central BiH as well as Herzegovina (e.g. the valley of the Neretva River). The personnel shall be appropriately trained and work full-time. The State shall also ensure that relatives of missing people, including those living outside BiH, are regularly informed on the progress of the processes of exhumation and identification of mortal remains. Further, the release of information to the general public on the exhumation of mass graves shall be done in a manner that does not dilute the gravity of the crimes concerned. BiH shall 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. The State shall make sure that the cooperation between the MPI and the Prosecutor's Offices is enhanced so that the process of exhumations is not unduly delayed. The number of prosecutors working on exhumations and war crimes shall be increased and they must be ensured adequate training, resources and staff. Also the number of pathologists working in the field and in charge of exhumations shall be increased.

IV. The Establishment of the CEN

14. According to the LMP, the process of verifying and entering data in the CEN should have been completed by 1 January 2009. As of October 2010 this has not been completed yet. So far, the completion of a unified and reliable database has been delayed and complicated by controversies on the total number of missing persons and by the fact that some persons have never been registered as missing. Another problematic issue is that Article 27 of the LMP establishes that those who will be registered in the CEN will be considered as dead. The fact that enforced disappearance of persons is treated as direct death does not take into account the continuous nature of the crime, the right to truth for the families of the disappeared and the obligation of the State to continue the investigation.

▶ *Please refer to paras. 31-39 of the full report for details and concrete examples*

15. **BiH shall ensure that the LMP is fully implemented and that the CEN is completed within the shortest delay. Failure to comply with this shall be prosecuted and sanctioned. The information contained in the CEN shall be as complete and accurate as possible. 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 LMP shall be amended accordingly.**

V. The Establishment of the Fund for the Support of Relatives of Missing Persons

16. Article 15 of the LMP establishes the creation of the Fund. Almost six years after the required deadline, the Fund has not been established yet. The main problem for the setting up of the Fund and to its proper functioning seems to be that the entity governments do not agree on the criteria to be used for financing the Fund. In a number of judgments concerning relatives of missing persons, the BiH Constitutional Court referred to the Fund for the compensation to be corresponded to the applicants and called on the State to proceed without delay to set up the Fund. To date those rulings have not been implemented and BiH authorities failed to take any action to guarantee the enforcement and to sanction those responsible. With regard to relatives of missing persons it must be stressed out that, even when the Fund will be eventually set up, it is conceived to provide relatives of missing people with measures of social benefits that do not correspond and cannot replace adequate compensation for the damage suffered and certainly do not amount to integral reparation.

▶ *Please refer to paras. 40-47 of the full report for details and concrete examples*

17. **BiH shall ensure that the Fund is set up without any further delay and its financing is entirely secured. The State shall also make sure that all judgments of the Constitutional Court on cases related to missing persons are implemented without any further delay and that failure to comply is prosecuted as provided by the law. 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.**

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

18. At present, the BiH criminal legal framework both at the national and the entity level does not ensure that all acts of torture are adequately codified as separate offences and sanctioned by appropriate penalties that take into account the gravity of the crime. 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, do not encompass all instances of such crimes or the definitions vary significantly

from one entity to the other, thus determining occurrences of discrimination. This situation fosters impunity over past crimes and at the same time jeopardises prevention of future violations.

▶ *Please refer to paras. 54-63 of the full report for details and concrete examples*

- 19. BiH shall ensure that the Criminal Code of BiH is amended in order to make the punishment for the offence of torture commensurate to the gravity of the crime. BiH shall ensure that the criminal codes at the entity level integrate the crime of torture as defined under Article 1 of the Convention against Torture, criminalising also the incitement, instigation, superior orders or instructions, consent, acquiescence and concealment of acts of torture. Entities shall also integrate torture and enforced disappearance as crimes against humanity in accordance with international standards. Moreover, criminal codes at all levels shall be amended to integrate the autonomous offence of enforced disappearance and shall ensure that the statute of limitations for criminal proceedings in 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. BiH shall guarantee that criminal codes at all levels include a definition of “rape” and “sexual violence” in accordance with international standards and jurisprudence and remove the condition of “force or threat of immediate attack” from the present definitions. Rape or other forms of sexual violence shall be codified as separate offences in the Criminal Code of BiH also when they are committed as isolated acts. Criminal codes at all levels shall explicitly define that a person who acted pursuant to an order to commit torture, enforced disappearance or rape shall not be relieved of criminal responsibility and that those who refuse to obey such an order will not be punished.**

VII. The Failure to Effectively Investigate, Identify, Judge and Sanction those Responsible for Enforced Disappearance, Rape or other Forms of Sexual Violence

20. The main responsibility to investigate, judge and sanction those responsible for the grave violations committed during the conflict, including enforced disappearance, rape or other forms of sexual violence, lies within the judicial system of BiH. However, both relatives of missing persons and victims of rape or other forms of sexual violence express deep dissatisfaction towards the work so far carried out by the BiH authorities and point out that impunity still prevails. In particular, they complain about the fact that, even though they have repeatedly provided BiH authorities with detailed accounts of the crimes committed and with sound evidence including, in certain cases, the identity of the perpetrators, no thorough and effective investigation has been carried out and those responsible have not been judged and sanctioned. Another subject of concern is the fact that the competent BiH authorities generally fail to regularly inform relatives

of missing persons and victims of rape or other forms of sexual violence on the development of the investigations and, when questioned, tend to elude the matter, thus failing to respect their obligations and fostering the sense of exclusion and frustration of these two already vulnerable categories of people. Moreover, problems concerning domestic tribunals in charge of war crimes include insufficient staffing and lack of expertise among cantonal and district prosecutors, limited cooperation between prosecutors and police, as well as between police across entity lines.

▶ *Please refer to paras. 64-78 of the full report for details and concrete examples*

- 21. BiH shall ensure that all cases of enforced disappearance as well as of rape or other forms of sexual violence perpetrated during the conflict are promptly, independently, impartially and thoroughly investigated and that those responsible are judged and sanctioned in accordance with international fair trial standards. The State shall guarantee that district and cantonal courts as well as prosecutorial offices receive the necessary resources and trained staff to deal with war crimes cases. Specialised investigators shall be employed to assist prosecutors in the investigation of war crimes. Furthermore, BiH shall ensure that relatives of missing persons and victims of rape or other forms of sexual violence are given information on a regular basis on the process of investigation carried out by the Prosecutor's Office, the results of those investigations and whether trials might be forthcoming. Courts at all levels shall have consistent rules in dealing with the public in general and with relatives of missing persons and victims of rape or other forms of sexual violence in particular.**

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

22. Witness protection is regulated by the Law on Protection of Witnesses under Threat and Vulnerable Witnesses (Official Gazette of BiH No. 21/2003) and the Law on Witness Protection Programme (Official Gazette of BiH No. 29/2004). Under this legal framework, the obligation to protect witnesses at the pre-trial investigation and after the completion of the testimony lies with the Witness Protection Unit of the State Investigation and Protection Agency (SIPA). The protection of witnesses in criminal proceedings before the State Court of BiH is provided for, but currently this programme is working only at the State level, while there is no such protection at the district, municipal and cantonal levels. Support to witnesses in proceedings before the State Court should be provided by the Witness Support Section. No similar programme is envisaged before district, cantonal or municipal courts. In general, existing problems can be summarized as follows: the lack of adequate protection of witnesses in cases of threat or harassment and subsequent failure to thoroughly investigate such instances and to judge and sanction those

responsible; the general inadequacy of the manner in which protection of witnesses is granted; the material difficulties faced by witnesses; the lack of adequate psychological support for witnesses before, during and after the testimony; and the existence of cases where victims of rape or other forms of sexual violence have been forced to render their testimony to maintain their status as civilian victims of war.

▶ *Please refer to paras. 79-91 of the full report for details and concrete examples*

23. BiH shall 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 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. Witnesses shall obtain adequate material support, including safe and free of charge transportation to and from the court. BiH shall ensure that when survivors of traumatic human rights violations, in particular of rape or other forms of sexual violence, are called to give evidence, a detailed witness assessment is conducted by professionals. In case it results that the person may be at psychological risk from testifying and does not wish to appear in court, he or she shall be excused to do so without punishment and shall never be forced to do so. The State shall ensure that no one, including civil society associations, unduly pressurises potential witnesses.

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

24. Victims of gross human rights violations shall be provided with full and effective reparation, which comprises pecuniary compensation (covering material and non-pecuniary damages), as well as other forms of reparation aiming at granting restitution; rehabilitation; satisfaction, including restoration of dignity and reputation; and guarantees of non-repetition. So far, in BiH there is no comprehensive programme nor a State law designed to guarantee adequate compensation and integral reparation to civilian victims of war. In general, these notions are unduly assimilated to that of social assistance. The existing legal framework is plagued by gaps and there are serious drawbacks in its implementation. Such legal tools vary significantly in the entities, with the result of discriminating relatives of missing persons or victims of rape or other forms of sexual violence. In general, civilian victims of war receive lower social benefits if compared to war veterans. Moreover, the existing law established strict deadlines that already expired, thus excluding a group of potential applicants from claiming their rights. The existing laws seriously impair and fail to guarantee the rights of civilian victims of war currently living outside BiH.

Finally, current procedures under which victims (in particular of rape or other forms of sexual violence) may apply for the status of civilian victim of war do not seem to be totally transparent and sensitive to the psychological needs of the persons involved.

▶ *Please refer to paras. 92-99 of the full report for details and concrete examples*

- 25. BiH shall implement a national programme on measures of reparations for civilian victims of war, including relatives of missing persons and victims of rape or other forms of sexual violence that encompasses compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. Also civilian victims of war currently living abroad shall be entitled to realise 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”. In general, civilian victims of war shall not receive a worst treatment compared to that of war veterans. The State shall also guarantee, as a measure of reparation to civilian victims of war, access to psycho-social support and to free legal aid, provided through State’s institutions and health services. Accordingly, BiH shall 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. Where this responsibility has been entrusted to a particular organization, the State shall adopt all necessary measures to guarantee that such organization has adequate resources to carry out the task in full respect of the victim’s rights and needs.**

X. Specific Problems Highlighted with regard to Relatives of Missing Persons

26. Beside others, a relevant piece of legislation for relatives of missing persons in the Republika Srpska 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 subsequent amendments). Article 6 of the original version of the Law established that 30 June 2006 was the deadline to decide on all applications filed. In the amended version of the Law, which applies to relatives of missing people, Article 6 of the original version was abrogated and no other deadline was fixed. Indeed, compensation awarded under this scheme is to be paid in government bonds, which are to be amortised in ten annual instalments. Moreover, the enforcement of decisions already issued under this Law 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.

▶ *Please refer to para. 100 of the full report for details and concrete examples*

27. BiH shall ensure that the sums already awarded in decisions issued pursuant to the Law on the Right to a Compensation for Pecuniary and non-Pecuniary Damage are paid without any further delay. Further, BiH authorities shall promptly proceed to adopt decisions on the claims currently pending and the enforcement of these decisions shall be secured. Payment of compensation shall not be in bonds, but in cash. BiH shall adopt all necessary measures to make sure that civilian victims of war are not discriminated and do not receive a worse treatment compared to veterans.

28. In both entities, in order to accede or maintain monthly pensions, relatives of missing persons are required to declare their loved ones dead, although they do not know with certainty their fate and whereabouts. The fact that enforced disappearance is treated as a direct death is contrary to the continuing nature of the crime and may jeopardize the fulfilment of the right to justice, to know the truth and to obtain integral reparation of relatives of missing persons.

▶ *Please refer to paras. 101-103 of the full report for details and concrete examples*

29. BiH shall amend the legal framework so that providing social benefits and measures of reparation to relatives of missing persons is not subjected to the obligation to obtain a municipal court's decision certifying the death of the victim. The certificate of death shall be replaced by a "certificate of absence due to enforced disappearance".

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

30. In the case of victims of rape or other forms of sexual violence, the possibility to claim compensation from individual perpetrators has proved to be particularly ineffective. First, in the majority of cases, victims are not aware of their right to apply for compensation from perpetrators and of the functioning of the procedure to enforce such right. Second, victims who give their testimony in the course of a trial are not automatically included among those who are notified about the delivery of a decision that refers them to civil action for compensation. Third, although the State Court would be entitled to award compensation to the injured party, this is a discretionary choice depending on the initiative of the competent prosecutor which, so far, has not been taken, rather favouring referral to civil action. Last, victims would need a lawyer to represent them in civil claims for compensation and, in almost the totality of cases, they cannot afford it, while free legal aid is not granted to them by the State.

▶ *Please refer to paras. 105-111 of the full report for details and concrete examples*

31. BiH shall ensure that victims of rape or other forms of sexual violence are adequately informed about their right to claim compensation from individual perpetrators and, where a judgment of the

State Court refers them to civil proceedings for this purpose, they are automatically notified about the relevant decision and are provided with free legal aid to effectively fulfil their rights.

32. As a direct consequence of the harm suffered during the war, the majority of victims of rape or other forms of sexual violence live in a particularly difficult material situation and, so far, BiH has failed to guarantee them adequate restitution and rehabilitation, especially in the sense of a safe and sustainable return to their pre-war place of residence. Also, the State has not granted these victims access to adequate housing, preferential treatment in employment and in access to education for their children, and supply of proper free of charge medical and psychological support. In this context, it is noteworthy that the situation of victims of rape or other forms of sexual violence in Republika Srpska is significantly worse than in the rest of the country.

▶ *Please refer to paras. 112-125 of the full report for details and concrete examples*

33. **BiH shall adopt all necessary measures to ensure that the psychological impact on individuals, in particular on victims of rape or other forms of sexual violence 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. The State shall undertake without delay all necessary measures to guarantee the reintegration of victims of rape or other forms of sexual violence in the labour market as well as access to vocational trainings. Both at the State and the entity level preferential treatment in employment shall be assured to victims of rape or other forms of sexual violence and the legal framework shall be amended accordingly. BiH shall guarantee to the children of victims of rape or other forms of sexual violence the access to education. Finally, the State shall develop a system to provide victims of rape or other forms of sexual violence in BiH, including those who live in remote areas of the country, with access to psychological accompaniment and medical treatment free of charge. Indeed, special attention shall be devoted to the amendment of the legal framework in the Republika Srpska in order to overcome the existing gaps.**