

**EXECUTIVE SUMMARY**  
of the  
**ADDITIONAL INFORMATION ON THE FOLLOW-UP OF THE CONCLUDING OBSERVATIONS**  
**BOSNIA AND HERZEGOVINA**  
**(CCPR/C/BIH/CO/1)**  
SEPTEMBER 2010

**I. Background**

1. In its concluding observations on Bosnia and Herzegovina (BiH) of 22 November 2006, the Human Rights Committee noted with concern that the fate and whereabouts of some 15,000 persons who went missing during the armed conflict remain unresolved. It reminded BiH 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. Accordingly, it recommended BiH to take immediate and effective steps to **investigate all unresolved cases of missing persons; ensure without delay that the Institute for Missing Persons becomes fully operational; ensure that the central database of missing persons is finalized and accurate; and that the Fund for Support to Families of Missing Persons is secured and that payments to families commence as soon as possible.**
  
2. In its periodical follow-up reports BiH referred to the implementation of the recommendations contained in the concluding observations of the HRC. On 27 August 2009 the Special Rapporteur for Follow-up 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).**
  
3. TRIAL (*Track Impunity Always*) 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) submit 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 Committee. In this view, concrete examples are referred to, as well as recommendations to improve the situation.

## **II. The Functioning of the MPI**

4. The Law on Missing Persons - LMP - (Official Gazette of Bosnia and Herzegovina, 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, which is more than three years after the entry into force of the LMP. At present, the functioning of the MPI is hindered by the fact that the Council of Ministers of BiH has not approved the audit report for 2009, which was submitted almost one 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 ICMP failed to find an agreement on the appointment of the new members, thus concretely paralyzing the functioning of the institution and undermining the legitimacy of the latter. 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 on this fact and not their actual expertise. In general, associations of missing persons claim that some of the employees of the MPI failed to successfully realize the tasks entrusted to them.
5. **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.**
6. 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 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 for all victims and their relatives and prevent manipulation with the number of missing persons has been 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 and although there have been attempts in this sense, so far no formal agreement between the two institutions could be reached. This ultimately results in the loss of credibility of both institutions and in being prejudicial to relatives of missing persons.

- 7. 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.**
8. 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 (also by the Republika Srpska Operative Team for Missing Persons); 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 the lack of effective cooperation between the MPI and the Prosecutor's Offices.
- 9. 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 mass graves, in particular in the North-Western part of BiH. 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 resources and staff.

### III. The Establishment of the CEN

10. According to the LMP, the process of verifying and entering data in the CEN should have been completed by 1 January 2009. In September 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.
11. **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.**

### IV. The Establishment of the Fund

12. 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.
13. **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.**
14. Nonetheless, even when it will be eventually set up, the Fund is conceived to provide relatives of missing people with measures of social welfare that do not correspond and cannot replace compensation for the damage suffered and certainly do not amount to integral reparation. Also in the

already existing legal framework the notions of “social assistance” and “integral reparation” are unduly assimilated. Moreover, existing laws vary significantly in the entities, with the result of discriminating relatives of missing persons. Finally, 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.

15. **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. This shall be done through the implementation of a national programme on measures of reparations for relatives of missing persons that encompasses compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. BiH shall also 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”.**