

EXECUTIVE SUMMARY

of the

WRITTEN INFORMATION FOR THE CONSIDERATION OF BOSNIA AND HERZEGOVINA'S SECOND PERIODIC REPORT BY THE HUMAN RIGHTS COMMITTEE

(CCPR/C/BIH/2)

SEPTEMBER 2012

I. Background

1. On 17 November 2010 Bosnia and Herzegovina (BiH) submitted its second periodic report to the Human Rights Committee (HRC). In December 2011 TRIAL and 16 organizations from BiH submitted written information to the HRC to highlight matters that in their view should be included in the list of issues. In March 2012 the HRC adopted the list of issues to be taken up in connection with the consideration of BiH's second periodic report. In relation to Articles 6, 7, 2.3 and 14 of the International Covenant on Civil and Political Rights, the mentioned document contains, among others, questions related to the **investigation and prosecution of war-related crimes** committed during the 1992-1995 conflict, including war-time rape and other crimes of sexual violence; the progress made in implementing the **National War Crimes Processing Strategy**; the measures taken to address deficiencies in the **witness protection and support services**; the measures taken to **fully implement the Law on Missing Persons**, and in particular the material, human and budgetary resources provided by the State to ensure the effective functioning of the **Missing Persons Institute**; the progress made in establishing the **Central Record on Missing Persons** and the **Fund for Support to the Families of Missing Persons**; 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**; how many decisions delivered by the **State Constitutional Court concerning missing persons have not yet been implemented and the reasons therefore**; the status of the draft **National Strategy on Transitional Justice**, the **State-level Programme for Women Victims of Sexual Violence in Conflict and Beyond**, and the draft **Law on the Rights of Victims of Torture and Civilian Victims of War**; and the measures taken to ensure that the **personal disability benefits received by civilian victims of war are harmonized among Entities and cantons**.
2. TRIAL (*Swiss Association against Impunity*), 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 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; and Association Women from Prijedor – *Izvor*); four associations dealing with the subject of victims of rape or other forms of sexual violence during the war (Association of Women-Victims of War, Sumejja Gerc, *Vive Žene* Tuzla, and Women's Section of the Association of Concentration Camp Torture Survivors Canton Sarajevo); and seven associations or federations of associations of former camp-detainees (Association of the Concentration Camp-Detainees Bosnia and Herzegovina, Association of Detained – Association of Camp Detainees of Brčko District Bosnia and Herzegovina, 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, Prijedor 92, Regional Association of Concentration Camp-Detainees Višegrad, and Union of Concentration Camp-Detainees of Sarajevo-Romanija Region) submit to the HRC written information for the consideration of BiH's second periodic report on the occasion of its 106th session (October-November 2012). The associations subscribing this written information consider of the utmost importance that the HRC continues monitoring the implementation of the international obligations of BiH towards relatives of missing people, women victims of sexual violence during the war, and former camp-detainees. In this view, concrete examples are referred to, as well as recommendations to improve the situation.

3. In general, it must be stressed that the associations that submit this written information have a number of concerns with regard to the implementation by BiH of the International Covenant on Civil and Political Rights. However, given the particular expertise of the associations concerned, this document focuses solely on matters related to missing persons and their relatives, to victims of rape or other forms of sexual violence during the war, and to former camp-detainees. 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 International Covenant on Civil and Political Rights.
4. It is the view of the subscribing organizations that there has not been significant progress in the implementation of the recommendations formulated by the HRC in November 2006 on the occasion of the review of the first BiH periodic report, and a number of issues remain the source of deep concern. Despite sporadic attempts to address the obstacles faced by relatives of missing persons, women victims of rape or other forms of sexual violence and former camp-detainees in the fulfillment of their rights, the overall situation does not seem to have really progressed since 2006. 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. While it is often alleged that it is necessary to turn a page over the past, this cannot be done at the price of erasing thousands of people from that page and failing to guarantee their basic rights. BiH remains in breach of its international obligations as spelled out, among others, in the International Covenant on Civil and Political Rights. In particular, the present situation corresponds to ongoing violations by BiH of its obligations under Articles 2, 6, 7, 9, 10, 16, 19 and 21 of the International Covenant on Civil and Political

Rights.

II. 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

5. Even though a number of trials against persons accused of war crimes or crimes against humanity have been conducted before BiH tribunals, considering 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 the war, it results that at 2012 those convicted before the Court of BiH are little more than 30. This number is alarmingly low, especially considering that the estimated number of the persons raped or otherwise sexually abused during the war ranges between 20,000 and 50,000. 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 expressing their deep dissatisfaction towards the pace of implementation and increasingly report 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. In fact, the implementation of the National Strategy for War Crimes remains flawed and extremely slow 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 or victims' statements 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 in some cases those accused are free or have managed to escape. Further, despite the jurisprudence of the Constitutional Court of BiH and the recommendations of international mechanisms, cantonal and district prosecutors in particular continue conducting investigations and cantonal and district courts celebrating trials pursuant to the provisions of the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY) instead of those of the 2003 Criminal Code. Associations of victims of gross human rights violations from the war and their relatives continue to experience 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.

▶ *Please refer to paras. 2-19 of the integral version of the report for details and concrete examples*

6. **BiH shall 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. In general, war crimes and crimes against humanity, including torture, enforced disappearance and sexual abuses, must be promptly,**

independently, impartially and thoroughly investigated and those responsible shall be judged and sanctioned in accordance with international fair trial standards. In particular, war-time rape shall be prosecuted as such, applying the relevant rules 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, while it unduly advantages the defendant. 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 events. BiH authorities shall implement 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. Offices of the prosecutors and courts at all levels shall have consistent rules in dealing with the public in general and with victims of gross human rights violations during the war, their relatives, representative associations and counsels in particular. These people shall be more regularly given information on the process of investigation, the results of those investigations and whether trials might be forthcoming.

III. The Ongoing Failure to Provide Adequate Support to Witnesses in War Crimes Trials

7. Notwithstanding the recommendations formulated in the past by the HRC and other international mechanisms, victims of gross human rights violations from the war and their relatives continue struggling with the lack of comprehensive and adequate witness protection measures as well as of appropriate programmes of psychological support before, during and after testifying at war crimes trials. Although over the past two years some tribunals at the district and cantonal level adopted measures to secure witness protection, the overall system remains deficient. Previous attempts to amend the existing law on witness protection failed. In August 2011 the BiH Ministry of Security formed a working group to put forward another draft law. More than one year later, the mentioned draft has not been passed. Victims of gross human rights violations from the war, their relatives and representative associations express their concerns at repeated instances of open mockery and insults addressed to witnesses in war crimes' trials that cause deep traumatising to the individuals concerned and have not been adequately sanctioned. Episodes where organizations or associations working with victims of gross violations during the war have been subjected to harassment or attacks to their members or premises have been registered. Also in these cases those responsible have not been duly identified, judged and sanctioned. Finally, witnesses at war crimes trials feel affected by the impossibility to have access to a system of free legal aid or support. A draft law on the provision of free legal aid was submitted in April 2012 to the BiH Council of Ministers, adopted by the latter as a proposal, and forwarded to undergo the subsequent parliamentary procedure. At the time of writing, it has not been enacted. Psychological support to witnesses in war crimes cases continues being provided in an insufficient and sporadic manner and is not based on any comprehensive State-funded 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 testimony. Recent initiatives launched in this

domain by non-governmental organizations in cooperation with the Ministry of Justice of Zenica-Doboj and Central Bosnia Cantons and local administrations are certainly laudable and welcome, but cannot relieve the State from its international obligations and from the adoption of an articulated policy on the matter, supported by adequate legislation and practice.

▶ *Please refer to paras. 20-30 of the integral version of the report for details and concrete examples*

8. **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 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. The State shall ensure that witnesses at war crimes trials have access to adequate legal consultancy free of charge and the draft law on the subject must be enacted as soon as possible to guarantee the establishment of an effective public system of free legal aid enabling victims of war to receive legal support (counselling and, if need be, access to court), if they are not able to afford it.**

IV. The Functioning of the Missing Persons Institute (MPI)

9. The Law on Missing Persons (Official Gazette of BiH, No. 50/04, into force since 17 November 2004) provided for the establishment of the MPI to improve the process of tracing missing persons and expedite identifications of mortal remains of missing persons (Art. 7). The MPI became fully operational only from 1 January 2008. At present, those holding the posts within the Board of Directors, the Steering Board and the Supervisory Board are doing so ad interim pursuant to a mandate of technical nature (the latter two bodies since 2011, while the Board of Directors since 2012). On the other hand, elections of the new members of the Advisory Board allegedly took place, even though it is not clear whether the new members have in fact been formally appointed. In fact, certain associations of relatives of missing persons and in particular *Izvor* from Prijedor express criticism towards this whole process, which they deem not transparent and ultimately illegitimate, while other associations claim to be satisfied with the results of what they consider a perfectly regular election process. 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 of the managing bodies of the MPI have formally been vacant or held ad interim. Such a situation, as well as the alleged presence of people with political affiliations among those sitting in the managing bodies of the MPI, does not contribute to the regular functioning of an institution or to the overall perception of trustworthiness when it comes to public scrutiny.

▶ *Please refer to paras. 32-36 of the integral version of the report for details*

10. **BiH shall ensure that 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 of the MPI 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.**

V. The Establishment of the Central Records of Missing Persons (CEN)

11. Pursuant to the Law on Missing Persons, the CEN should have been completed by 1 January 2009. At September 2012, out of 34,965 entries to be verified through cross-references, around 10,200 have been validated. The protracted lack of completion of the CEN fosters a feeling of debasement and dissatisfaction among associations of relatives of missing persons. Furthermore, another problematic issue is that Article 27 of the Law on Missing Persons 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 of the families of the disappeared and the obligation of the State to continue the investigation. Despite recommendations issued by international human rights mechanisms in the sense of assessing the compatibility of Article 27 with international standards and consider its amendment, no such assessment has been conducted so far.

▶ *Please refer to paras. 37-40 of the integral version of the report for details*

12. **BiH shall 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.**

VI. The Non-establishment of the Fund for the Support of Families of Missing Persons (the Fund)

13. Pursuant to Article 15 of the Law on Missing Persons, a Fund to support families of missing persons in BiH should be established and a decision on such matter should have been issued by the Council of Ministers of BiH within 30 days from the date of the coming into force of the law. Accordingly, such decision should have been taken by 17 December 2004. Almost eight years after the given deadline, the Fund does not exist yet and reiterated recommendations by international human rights mechanisms are ignored. Associations of relatives of missing persons are deeply concerned because of the described

situation and fear that many of their members will die without having ever seen the Fund being set up. Notably, 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 victims of grave human rights violations was associated to the establishment of the Fund. Nevertheless, it must be stressed that, even when the Fund will be eventually established, it is conceived to provide relatives of missing people with social benefits (welfare) 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. 41-42 of the integral version of the report for details*

14. **BiH shall ensure that the Fund is set up without any further delay and its financing is entirely secured. 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.**

VII. The Lack of Information on the Progresses Made in the Process of Exhumation and Identification of Mortal Remains and the Lack of Psycho-social Support during the Process

15. The localization, exhumation, identification and restitution of mortal remains of missing persons is perceived by relatives of the victims as their very first priority. All the more so because time is passing and in many cases almost 20 years have elapsed since the person was seen alive for the last time. Since 1st January 2011, all exhumations and identifications of mortal remains fall under the jurisdiction of the Prosecutor's Office of BiH. However, it is only until March 2012 that a prosecution team comprised of a prosecutor, a legal officer and an investigator become fully operational. From January to June 2012 there have been 85 exhumations. Relatives of missing persons express their concern at the overall pace of exhumations, which in their view is slowing down while their hopes are fading. While this perception may be exaggerated, 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. Despite the recommendations of international mechanisms, there continues to be a lack of any State programme of psycho-social assistance and support during and after the process. In this context, often relatives of missing persons are subjected to instances of re-traumatization and amplification of their suffering.

▶ *Please refer to paras. 43-47 of the integral version of the report for details and concrete examples*

16. **BiH shall ensure that the process of exhumation of mortal remains is accelerated and the necessary staff and resources are allocated to this end. BiH shall also ensure that the Prosecutor's Office of BiH establishes a mechanism to regularly inform relatives of missing people, including those living outside BiH, and their associations on the progresses made in the**

process of exhumation and identification of mortal remains and to answer to the questions that they may have in this regard. 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.

VIII. The Non-implementation of Constitutional Court's Decisions in Cases concerning Missing Persons

17. Over the past years a considerable number of decisions issued by the Constitutional Court of BiH, in particular relating to missing persons, have not been implemented. Although the non-implementation of the mentioned decisions is a criminal offence pursuant to domestic legislation, to the knowledge of the associations subscribing the written information to date no one has been prosecuted and sanctioned for such an offence. This problem does not concern only cases relating to missing persons, but has a general nature. Despite previous recommendations by international human rights mechanisms, and the attempts made by TRIAL and some of the associations subscribing the written information, together with Amnesty International, to start a constructive dialogue with BiH authorities, no significant improvement can be registered. This situation is eventually undermining the rule of law and the general trust towards the highest judicial body of the country.

▶ *Please refer to paras. 48-52 of the integral version of the report for details and concrete examples*

18. **BiH shall 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 launch 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.**

IX. The Draft National Strategy on Transitional Justice

19. Since 2010 the United Nations Development Programme (UNDP) has been providing technical, administrative and logistical support to an experts' group charged with the drafting of a National Strategy on Transitional Justice. In late 2011 the working document of the strategy and the related action plan were finalized, but in the form of a draft due to the absence of representatives of Republika Srpska. In June 2012, that is two years after starting their work, members of the experts' group illustrated the contents of the draft strategy on the occasion of a public roundtable. The draft was expected to be presented for adoption to the parliamentary assembly during the summer. At the time of writing, this has not happened yet. Given that almost 18 years have passed since the conclusion of the conflict, associations of victims of gross human rights violations and their relatives are expressing perplexities with regard to the complicated process and the slow pace of approval of the strategy.

▶ *Please refer to paras. 54-56 of the integral version of the report for details*

20. **BiH shall 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.**

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

21. 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 in BiH (2013-2016). Such initiative is coordinated by the United Nations Population Fund (UNPFA) and the BiH Ministry of Human Rights and Refugees. The finalization of the draft programme was initially expected by the end of 2011. 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. Despite a number of meetings and consultations has taken place, unfortunately representatives of the government of Republika Srpska have not answered to the invitations received, with the risk of undermining the overall exercise and its future perspectives of success.

▶ *Please refer to paras. 57-58 of the integral version of the report for details*

22. **BiH shall 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.**

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

23. Since 2006 BiH pledged before international mechanisms that the adoption of a Law on the Rights of Victims of Torture and Civilian Victims of War was “imminent”. Nevertheless, at September 2012 this law has not seen the light of the day. Victims of gross human rights violations and their relatives 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. Even though in November 2011 the Ministry of Human Rights and Refugees re-launched a debate for the adoption of

the law, this initiative has not culminated yet. Representatives of the government of Republika Srpska have not participated to the meetings and consultations held and, in general, the Entities' governments are not responding to urgent appeals and requests for feedback submitted by the Ministry of Human Rights and Refugees, thus concretely slowing and ultimately hindering the overall endeavour.

▶ *Please refer to paras. 59-63 of the integral version of the report for details*

- 24. BiH shall ensure that the obstacles for the adoption of the Law on the Rights of Victims of Torture and Civilian Victims of War are swiftly removed and this crucial piece of legislation is adopted and enforced without further delay. Financial resources for its implementation must be secured and the overall exercise must be coordinated with the other mentioned legislative initiatives concerning victims of the conflict in BiH in order to avoid overlapping or lacunae. To ensure the finalization of a sound draft law, 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 continue to be thoroughly involved and allowed to express their opinions, needs and expectations.**

XII. 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

25. 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 recommendations and appeals from international human rights mechanisms, 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. Under the existing legal framework, victims who have suffered the same body damage are entitled to substantially different amounts of money as disability pensions depending on whether they are veterans or not. Nevertheless, also war veterans, including prisoners of war, in Federation of BiH are currently affected by a process of revision of their disability pensions that is mainly based on the verification of the existence of discrepancies in the documentation. Another alarming problem is that victims of gross human rights violations who were receiving some kind of social assistance due to their status as victims of war, lose 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. The existing law on social benefits establishes strict deadlines that already expired, thus excluding a considerable 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. Moreover, current procedures under which victims 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. In this context, the

situation of former camp-detainees is especially critical as they are not recognized as an autonomous category of victims entitled to compensation. In those cases where former camp-detainees have filed their claims for non-pecuniary damages before civil courts, the process has often been hampered by the undue application of a statute of limitations, the request to sustain expensive court fees that many victims are unable to afford, and the need to produce documentation issued during or immediately after the war that a great majority of former camp-detainees cannot obtain.

▶ *Please refer to paras. 64-79 of the integral version of the report for details and concrete examples*

- 26. BiH shall implement 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”. In general, civilian victims of war shall not receive a worst treatment compared to that of war veterans. 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. The process of revision of social benefits awarded to war veterans, including prisoners of war, in Federation of 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. BiH shall also 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 solely on the production of documentation issued during the conflict.**

XIII. Other Matters of Concern

27. Although in the list of issues to be taken up in connection with the consideration of BiH's second periodic report, the HRC 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 issues analyzed above, the associations subscribing the 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 HRC in this regard.

XIII.a) The Inadequacy of the Criminal Legislation on Sexual Violence, Torture and Enforced Disappearance

28. The BiH criminal legal framework both at the national and the Entity level does not ensure that sexual violence, torture and enforced disappearance are adequately codified and sanctioned by appropriate penalties that take into account the gravity of these crimes. 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 jeopardizes prevention of future violations. Despite the recommendations formulated by various international human rights mechanisms, the Criminal Code Implementation Assessment Team (CCIAT), that is an ad hoc body created by the BiH Ministry of Justice for the purpose of legislative reform, has further postponed the consideration of the amendment of the codification of sexual violence because another issue has taken priority (special investigative measures). Even if the CCIAT will resume the analysis of the matter as soon as possible, it must be highlighted that it represents only the first step of a much more complicated process that can lead to legislative modification. On the other hand, the CCIAT has not yet scheduled the consideration of potential amendments of domestic criminal law with regard to enforced disappearance, while it estimated that existing provisions on torture are adequate enough, and decided not to continue considering amendments or modifications of the criminal legislation on such matter. It follows that the recommendations issued by international human rights bodies with regard to the need to amend domestic criminal legal framework are disregarded and certainly not likely to be enforced by BiH within a reasonable time-frame.

▶ *Please refer to paras. 81-84 of the integral version of the report for details*

29. **BiH shall amend without further delay the Criminal Codes at the State and at the Entity level with regard to sexual violence, torture and enforced disappearance. First, it shall include a definition of sexual violence that is in line 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”. Second, it shall 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, and 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. Third, BiH must 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 statute 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. Finally, BiH must 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.

XIII.b) The Non Recognition of the Competence of the Committee on Enforced Disappearances

30. 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, 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.

▶ *Please refer to paras. 85-86 of the integral version of the report for details*

31. **BiH shall proceed to 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 on the Protection of All Persons from Enforced Disappearance.**

XIII.c) The Limitations to the Freedom of Expression and the Right of Peaceful Assembly with regard to Associations of Victims of War

32. During 2012, associations of former camp-detainees, victims of torture, sexual violence and relatives of missing persons reported instances of restriction to their freedom of expression, as well as to their right to peaceful assembly. Further, in connection to these restrictions, an instance of attack against the premises of a local association of victims of war and their families has been registered. At the time of writing, no one has been judged and sanctioned for these events.

▶ *Please refer to paras. 87-99 of the integral version of the report for details and concrete examples*

33. **BiH shall ensure that associations of former camp-detainees, victims of torture, rape or other forms of sexual violence, as well as relatives of missing persons can commemorate freely the anniversaries of the suffering of their loved ones, hold peaceful public ceremonies, thereby expressing their opinions without interference. Moreover, BiH shall ensure that reports of attacks against local associations are promptly, impartially and thoroughly investigated and those responsible are identified, judged and sanctioned.**